Asbestos Litigation

2017 Year-End Update

Walsworth is pleased to provide you with its year-end update regarding asbestos litigation in California.

Volume of Asbestos Cases and Overall Filing Trends

- San Francisco Superior Court

We continue to see lower filing numbers compared to those of five years ago, though this year's filings are slightly up from 2016. The number of asbestos-related filings in San Francisco Superior Court through November 2017 totals 85, including 15 mesothelioma, 30 lung cancer, 31 asbestosis, and nine "other cancer" matters.

- Alameda Superior Court

As in San Francisco, the number of asbestos-related claims filed in Alameda continues to be lower than we saw five years ago – filings this year have been approximately two-thirds of last year's. Through the end of November 2017, there were a total of 52 asbestos-related claims filed, including two for asbestosis, four for lung cancer, 44 for mesothelioma, and two for "other cancers."

- Solano Superior Court

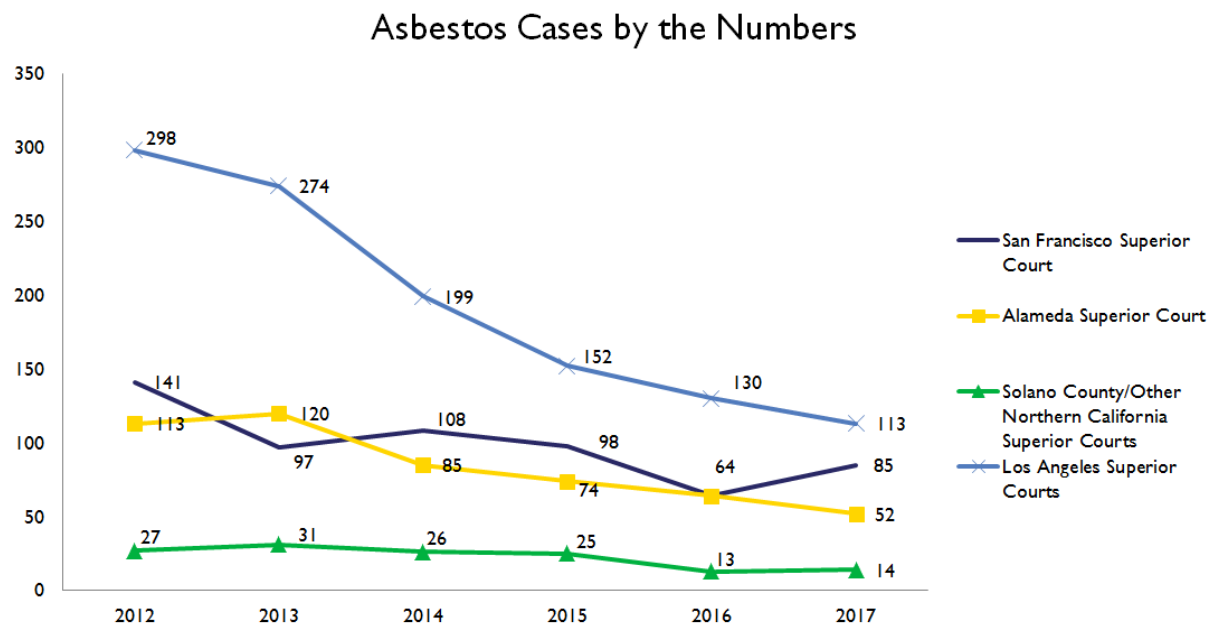
In Solano County Superior Court, three asbestosis claims, three mesothelioma claims, and two "other cancer" matters were filed through the end of November 2017, for a total of 14 asbestos-related claims. This is up a few cases from the number of asbestos-related claims filed in Solano County in 2016.

- Los Angeles Superior Court

In Los Angeles Superior Court, 113 asbestos-related matters were filed through the end of November 2017. Cases involving malignancies continue to be more numerous than those involving asbestosis.

- Other Southern California Superior Courts

As of November 2017, one asbestos-related claim was filed in Orange County Superior Court. In Ventura Superior Court, one asbestos-related claim has been filed.



Trends Associated With Southern California Asbestos Coordination Judge, the Honorable Steven J. Kleifield

For almost 18 months now, Judge Steven J. Kleifield has presided over discovery and pretrial matters in all asbestos-related coordinated cases in the Los Angeles Superior Court. Judge Kleifield currently presides in Department 324 of the Los Angeles Superior Court Central Civil West Courthouse. Though it was anticipated that 2017 would bring a move of his department from the Central Civil West Courthouse to the historic United States Courthouse on Spring Street in downtown Los Angeles, delays have pushed the move date to mid- to late 2018.

- Courtroom Congestion

Due to ongoing concerns of trial readiness, and Judge Kleifield's inability to assign matters to trial judges in light of their unavailability, we have seen a variety of suggested fixes to the system this year, including the threat of reinstatement of mandatory settlement conferences with Judge Bendix, which would require the personal appearance of all those with settlement authority (including clients and carrier representatives), as well as adjustments to certain pretrial deadlines and requirements for page and line designations of prior testimony.

While mandatory settlement conferences are still not required in Los Angeles asbestos cases, during two group status conferences this year Judges Bendix and Kleifield discussed their desire for the parties to be more proactive in settlement negotiations leading up to trial. Accordingly, they have stated that if counsel in any given case believes that the parties would benefit from a settlement conference, they can request one be set. If too many parties object to the request, then a mandatory settlement conference will not be set. However, if most parties agree, a further conference will determine Judge Bendix's availability to conduct the settlement conference, its requirements, and its logistics. Judge Kleifield emphasized that he would expect *all* "important decision makers" involved in

the case to be physically present at any settlement conference which is set.

In order to address the feedback from trial judges who complained that cases were not adequately prepared for trial when they arrived in their department for trial, Judge Kleifield has just issued an order requiring that page and line designations of prior testimony be completed prior to trial assignment. Per this new order filed on December 11, 2017, every party who intends to present evidence by way of transcript of prior deposition or trial testimony must use a specific form to identify each transcript excerpt the party intends to offer, and opposing parties' counter-designations and objections. The parties then must meet and confer/coordinate to present the Court with one joint copy of the transcript itself, which marks in separate colors each designation, counter-designation, and objection, and lists specific objections in the margins of the transcript. This form must be submitted to Judge Kleifield no later than the Final Status Conference in any given case.

It is unclear from the new order whether Judge Kleifield himself will rule on the designations and objections thereto, or if he will simply pass along the form and marked transcript to the trial judge upon assignment. We would much prefer to have the trial judge assigned to the case – who will hear and rule on the evidence – make all rulings on the admissibility and scope of prior testimony, and will do all we can to urge Judge Kleifield to defer to the trial judges who will hear our cases for this important step in pretrial proceedings.

In the past, the prior presiding judge, Emilie Elias, tried a similar idea, requiring parties to submit page and line designations, which she ruled upon prior to trial assignment. However, after receiving complaints from the parties that it was a waste of resources because trial judges often had conflicting requisite formats for page and line designations, or had different requirements, she ceased ruling upon the designations and deferred to the trial judges. We will see shortly whether this new order produces similar problems.

More recently, both sides of the aisle met with Judges Weintraub, Kuhl, and Kleifield regarding the trial courtroom congestion that all matters up and down California continue to face as a result of defunding and tighter budgets. Many, if not all, non-preference asbestos-related matters set for trial in Los Angeles face numerous continuances in light of the lack of available trial judges. Judge Weintraub explained that the courts were dealing with a large influx of unlawful detainer cases that receive priority above *all* other cases, including asbestos-related matters with preferential status. She further discussed many of the perceived issues with asbestos trials, including whether the matters were ready for trial on the date of assignment, and also noted that many cases resolve after a jury is picked, leading to a "waste" of judicial resources. In order to address the courtroom congestion issue, the judges asked both sides to separately suggest plans to ensure cases are sent out on the date, or close to the date, of trial. There is a rough deadline of "early 2018" for plaintiffs' counsel and defense counsel to provide their suggested courses of action. Once the parties have exchanged their plans, the judges will set up a joint committee to discuss those plans and to propose next steps. Walsworth is actively participating in these early discussions to ensure our clients' concerns are addressed.

Trends Associated With San Francisco Asbestos Department Judge, the Honorable Cynthia Ming-Mei Lee

In San Francisco, Judge Cynthia Ming-Mei Lee is now handling the San Francisco Asbestos Department. When Judge Lee took over as asbestos presiding judge earlier this year, there was some belief, based on similar steps she took when she was the judge presiding over the non-asbestos San Francisco master calendar, that she would move to try to clear the asbestos case trial backlog that exists. This has not happened to date, as cases that do not need trial

departments (e.g., non-preference cases, or cases without five-year aging issues) are having their trial dates continued with some regularity. Recently, Judge Lee has taken a stricter stance on granting plaintiffs' motions for a preferential trial date based only on age (per California *Code of Civil Procedure* Section 36a), requiring plaintiffs' counsel to submit some evidence from plaintiffs' physicians to bolster their request for a preferential trial date. If this continues, we see it as a favorable development, since the overwhelming number of cases set for trial in San Francisco are non-malignancy cases that should not qualify for preference but for the advanced age of the plaintiffs.

- San Francisco Mandatory Settlement Conferences

As we reported in our mid-year summary, the issue of carrier attendance at mandatory settlement conferences in San Francisco remains a thorny one. Judge Lee has been frustrated by what she perceives as defense unwillingness to take seriously her mandates of in-person attendance for client and carrier representatives. She tried three separate processes for settlement conferences earlier this year, and for two months temporarily suspended mandatory settlement conferences altogether. She issued a fourth process, starting in December 2017, which reinstates mandatory settlement conferences in certain cases.

Judge Lee's "version 1" procedure scheduled mandatory settlement conferences twice a week in trial call cases, with lengthy and detailed confidential settlement statements to be submitted in advance. The "version 2" process scheduled one mandatory settlement conference one week before the trial date, with personal appearance of counsel, clients, and carrier representatives required. The "version 3" procedure required one mandatory settlement conference only, but only in preference cases and cases with a quickly approaching five-year statute of limitations for trial assignment; cases which did not meet those criteria had no settlement conference assigned.

After suspending all mandatory settlement conferences for two months, Judge Lee recently issued a new "version 4" procedure, which – like version 3 – requires one mandatory settlement conference in preference cases and cases with a quickly approaching five-year statute of limitations for trial assignment (at which clients and insurers must be available by telephone), and further allows the trial judge to, at his or her discretion, order a mandatory settlement conference requiring the personal appearance of the client and all carrier representatives. For any defendant who has multiple insurers, decision-maker representatives from each insurer will be required to appear in person at any such conference ordered by the trial judge.

Under versions 1-3 of the procedure, the Court streamlined the notice process by e-mailing active parties with notifications of continuances of trial dates. Under the new version 4 procedure, the Court is now requiring all parties to appear at the courthouse on the day of trial to view a printed announcement in front of Judge Lee's courtroom for the status of trial cases, including those which have been assigned a new return holding date.

The San Francisco Defense Steering Committee continues to confer with Judge Lee regarding mandatory settlement conference procedures. The Defense Steering Committee will continue to consult the defense bar before finalizing any set of proposals to be delivered to the Court.

Changes With Solano County Superior Court Asbestos Coordination Judge

The Solano County Superior Court judge who has been overseeing all Solano asbestos matters, Judge Paul Beeman, is retiring at the end of the year. Upon his retirement, the asbestos docket will be transferred to Judge D. Scott Daniels. Judge Daniels was appointed to Solano's Superior Court in 2005

by Governor Arnold Schwarzenegger after acting as a judge pro tem on the Solano Superior Court from 2002 to 2003, and as elected commissioner from 2003 to 2005. He was most recently re-elected in 2012, and his current term will expire in 2019. He previously had a long career in private practice, from 1978 to 2003, focusing on family law, real estate law, municipal law, and plaintiff personal injury matters.

Changes With Alameda County Superior Court Asbestos Trial Assignment Judge and Mandatory Settlement Conference Judge

Though a formal announcement has not yet been made by the Court, we have been informed that Judge George Hernandez, who is one of the three judges in Alameda County Superior Court to whom asbestos trials have been routinely assigned, will be transferring out of his department at the end of the year. His replacement has not yet been determined.

Starting January 1, 2018, Judge Evelio Grillo will no longer be conducting mandatory settlement conferences in asbestos cases. The Court has not yet announced if another department will start conducting settlement conferences in Judge Grillo's place. There are currently three other judges who conduct mandatory settlement conferences in Alameda.

Take-Home Exposure in the Wake of Kesner/Haver

Since the California Supreme Court issued its ruling in *Kesner* and *Haver* – finding that an employer owes a duty to members of an employee's household – the Court of Appeals has reviewed a number of cases that involve take-home exposure allegations, including most recently *Petitpas v. Ford Motor Company*. The plaintiffs in *Petitpas* asserted claims that Marline Petitpas developed mesothelioma as a result of exposure to asbestos-containing dust brought home on the clothes of her then-boyfriend Joseph. The plaintiffs argued that as Joseph's girlfriend, she should be considered a family member to whom Joseph's employer owed a duty. However, the Second District Court of Appeals disagreed, finding that because Marline was not married to Joseph and they did not live together at the time of the alleged exposure, his employer did not owe a duty to Marline. The Court reasoned that "a trial to determine whether a non-household member's contact with the employee was 'similar to the status of a household member' appears to be exactly what the Supreme Court was attempting to avoid." In so ruling, the Court declined to create a new class of secondary exposure plaintiffs – individuals who are dating, but not living with, a defendant's employee. However, the Court refused to provide any further clarification or "bright-line rule" as to who will be considered a member of a household.

Jurisdiction Motions

Non-resident defendants who are sued in California for exposures occurring outside of California have continued to file motions to quash service of summons for lack of personal jurisdiction.

In June of this year, the U.S. Supreme Court issued a game-changing ruling in *Bristol-Myers Squibb v. Superior Court of Cal.* (BMS), further narrowing a court's jurisdictional power over non-resident individuals and corporations. In BMS, dozens of California residents and hundreds of non-residents filed a complaint in California, alleging they were prescribed and ingested Plavix and suffered numerous injuries. BMS moved to quash service of summons on the grounds that the California court lacked jurisdiction to adjudicate the non-resident plaintiffs' claims because none of the non-resident plaintiffs' injuries occurred in California, nor had they been treated for their injuries in California. In finding for BMS against the non-resident plaintiffs, the Supreme Court of the United States (SCOTUS) noted that BMS did not develop Plavix in California, did not create a marketing strategy for the drug in California, and did not "manufacture, label, package, or work on the regulatory approval of the product in California." Although BMS had millions of dollars of sales of Plavix in California, these sales amounted to just

over 1 percent of the company's nationwide sales. In an 8-1 decision, SCOTUS held that specific jurisdiction is only present when a lawsuit arises out of, or relates to, the defendants' contacts with the forum. SCOTUS rejected California's "sliding scale" approach to jurisdiction, which had allowed jurisdiction over a non-resident defendant if the defendant had extensive contacts with California, even if those contacts did not relate to the specific activities upon which the lawsuit was based. This decision limits plaintiffs' attorneys' ability to "forum shop" non-resident product liability cases, and in the context of mass torts, means that a defendant's home jurisdiction – where it is incorporated or maintains its headquarters – may be the only state-court forum for a consolidated nationwide suit.

In the wake of this ruling by the U.S. Supreme Court, Los Angeles' presiding judge, Judge Kleifield, has granted a number of Motions to Quash for Lack of Personal Jurisdiction in asbestos-related matters. However, before granting the motions, he has allowed jurisdictional discovery to take place, which at times included the depositions of the plaintiff and other fact witnesses. In determining whether an exercise of jurisdiction over the defendant is proper, Judge Kleifield closely examines the allegations of alleged exposure to asbestos with the defendants' contacts with California to determine whether there is evidence of any relationship, transaction, or act defendant conducted in California during the alleged exposure period which caused the plaintiff's alleged injury.

Though earlier this year we reported that the California Court of Appeal had issued a writ of mandate to Judge Kleifield to rehear and reconsider Exxon and Wm. Powell's jurisdictional challenge motions in *Buttaro v. A.W. Chesterton*, neither motion was heard after being sent back to Judge Kleifield. Both Exxon and Wm. Powell took their motions off calendar after appearing to have received dismissals from the plaintiffs. As reported, *Butarro* involved an Italian national who sued Exxon and Wm. Powell, neither of which are California companies, for exposure that occurred outside of California.

Legislation Updates

- Deposition Time Limits

As we reported in our mid-year litigation update, the California asbestos plaintiffs' bar, through Consumer Attorneys of California, continues to try to change the "rules of the road" with respect to asbestos plaintiffs' depositions. They have renewed their effort to limit depositions of plaintiffs in asbestos cases to no more than seven hours through California Senate Bill 632.

This bill has undergone numerous iterations since initially being introduced in February. Its current language requires a seven-hour time limit if a licensed physician attests in a declaration that the deponent suffers from mesothelioma, raising substantial medical doubt of the survival of the deponent beyond six months. The Court may allow an additional seven hours of testimony – up to a total of 14 hours – if it finds that the extension is in the interest of fairness, and the health of the deponent does not appear to be endangered by the grant of additional time.

Defendants have been quite concerned that Senate Bill 632 requires judges to assume the role of a doctor in determining whether granting the defense additional time to depose the plaintiff could endanger his or her health.

This summer, the bill passed the Senate and the Assembly's version of the Judiciary Committee. The vote out of committee was along party lines, with the Democrats voting for it and the Republicans against it. However, the bill has stalled in the full Assembly, while it has been repeatedly modified to its current iteration. In mid-September, the bill was ordered to the inactive file, but we anticipate it will be raised again in the 2018 session. Even with its initial passage through committee, the bill still needs

to pass the full Assembly, followed by a vote in the Senate to reconcile it with the Assembly version, before being sent to the governor, who would have 30 days to sign or veto.

- Asbestos Ban
  - Federal Action

In November 2017, a bill was introduced in the U.S. Senate by Senator Jeff Merkley of Oregon, co-sponsored by six other senators including Senators Cory Booker (NJ), Dianne Feinstein (CA), and Bernie Sanders (VT). Senate Bill 2072 would amend the Toxic Substances Control Act to prohibit all manufacture, processing, use, distribution in commerce, and disposal of any form of asbestos and articles containing asbestos. The president of the United States would be permitted to grant an exemption from this prohibition only after determining that the use of asbestos is necessary to protect the national security interests of the United States, no reasonable alternative to the asbestos use exists for the intended purpose, and the use of asbestos will not result in an unreasonable risk to health or the environment. This bill has been referred to the Senate's Environment and Public Works Committee for discussion.

Much remains to be seen about how this ban could be implemented with any practicality. While it seems straightforward to ban the use and sale of new asbestos-containing products, the bill's ban on the disposal of any type of asbestos would on its face appear to foreclose the ability to abate asbestos-containing products already in place, or even to dispose of dirt which contains serpentine, California's state rock. Representatives in the sponsoring senators' offices with knowledge of this bill have not yet responded to requests for further detail.

- Bankruptcy Trust Transparency
  - Federal Action

In March 2017, the U.S. House of Representatives passed – by the narrow margin of 220-201 – H.R. 985, known as the "Fairness in Class Action Litigation and Furthering Asbestos Claim Transparency Act of 2017." Since that time, the bill has stagnated in the Senate.

Aimed at addressing alleged abuses of the asbestos bankruptcy trust processes and the impact those abuses have on cases proceeding under state tort laws, the Asbestos Claim Transparency Act section of the bill mandates quarterly public reporting by each asbestos bankruptcy trust, listing the claimant name and exposure history for each claim made to the trust during the preceding quarter, and the basis for any payment made to each trust claimant during the preceding quarter.

Since being sent to the Senate, the bill has been ignored. It is presently unclear if it will be addressed in 2018, or if it will continue to stagnate.

  - State Action

Arizona, Oklahoma, Tennessee, Texas, Utah, and Wisconsin have passed different versions of asbestos bankruptcy trust reform legislation, and Pennsylvania is considering a similar bankruptcy trust reform bill introduced earlier this year. California – as well as other states with large asbestos case dockets – continues to remain notably absent from this list.

California

In February 2017, California Assembly Bill 1056, titled the Asbestos Tort Trust Transparency Act and trial preferences, was introduced. This bill proposed a number of changes to various existing California codes that touch on and concern established asbestos case procedures, by imposing additional requirements that plaintiffs in asbestos cases disclose early in their asbestos tort action information about

any asbestos trusts against which the plaintiff has or could pursue a claim. The proposed disclosure requirements impose a continuing obligation on the plaintiffs to supplement their initial disclosures through the course of their case, entitle the defense to discovery with respect to the trust claims, and impose a variety of sanctions – including denying, staying, or vacating trial dates (including those in matters granted trial preference) – on plaintiffs for failure to timely make or disclose their bankruptcy trust claims.

Though the bill was referred to California's Committee on the Judiciary in March 2017, its initial hearing was canceled at the request of the bill's author, and a further hearing was postponed. To date, there has been no hearing or vote related to this bill, and no hearing in 2018 has been set. Given these delays, this bill's success, particularly in its present form, is uncertain.

Utah

A group of state attorneys general are using a different tactic in pursuing bankruptcy trust information which has culminated in a lawsuit in Utah. In December 2016, attorneys general from Alabama, Arkansas, Kansas, Louisiana, Michigan, Montana, Nebraska, Nevada, South Carolina, South Dakota, Utah, West Virginia, and Wisconsin came together and issued civil investigative demands (CIDs) to four of the nation's largest asbestos bankruptcy trusts – Armstrong World Industries Asbestos Personal Injury Settlement Trust; Babcock & Wilcox Asbestos Settlement Trust; DII Industries, LLC Asbestos PI Trust; and Owens Corning/Fibreboard Asbestos Personal Injury Trust. The CIDs requested the trusts produce documents and information relating to a handful of specific trust claimants who were identified in information released by the U.S. Bankruptcy Court in the *In Re Garlock Sealing Technologies, LLC* matter as having been compensated by each of the trusts.

With respect to each of the claimants for which information is sought, the CIDs ask specific questions about each trust's knowledge of the claimants' work and exposure histories as disclosed in state tort actions by the claimants (if available), and the trust's knowledge of "inconsistent claims" that were filed by certain claimants with other bankruptcy trusts. The CIDs issued to the four trusts requested responses by February 2017.

In March 2017, after the lack of any response from any of the four trusts to which CIDs were issued, the state of Utah filed an enforcement action against those four trusts. In September, a Utah judge dismissed Utah's claim by granting the trusts' motion to dismiss for lack of jurisdiction. The judge, applying the recent U.S. Supreme Court ruling in *Bristol Meyers Squibb* (detailed above), found that the trusts, which were based in Delaware and Pennsylvania, were not subject to the Utah Court's jurisdiction. Neither Utah nor the other states that joined its efforts have decided their next steps in light of the ruling.

Recent California Asbestos Litigation Jury Verdicts

The following are California asbestos case verdicts of which we are aware from late May through November 2017:

- Booth v. John Crane

In *Roy and Julie Booth v. John Crane*, an Alameda County jury returned a **defense verdict** in an asbestos case arising from the plaintiffs' assertion that Roy Booth developed mesothelioma as a result of working with asbestos-containing gasket and packing products he encountered while serving aboard U.S. Naval ships for nearly 20 years. The trial court had granted defendant John Crane's motion for non-suit at the close of the plaintiff's evidence on design defect claims, agreeing with defendant that the gaskets and packing products conformed to "reasonably precise government specifications" and the claims were therefore barred by the military

contractor defense. Only the plaintiff's failure to warn claims were submitted to the jury, which ultimately determined that John Crane's alleged failure to warn of dangers associated with its products was not a substantial contributing factor to the plaintiff's illness. Jurors further found in favor of defendant Triple A shipyard on the plaintiffs' negligence claims.

Judge Brad Seligman presided over the trial. The plaintiffs were represented by the Roger Gold firm and The Law Offices of Anthony E. Viera.

- Estes v. The Okonite Co.

A Solano County Superior Court jury returned a **defense verdict** in favor of defendant Eaton Corporation/Cutler-Hammer in the *Estes* matter, though the verdict was appealed and a new trial has been granted. Brayton Purcell represented the plaintiff, a 72-year-old former civilian shipyard electrician and diver with mesothelioma, who was also paraplegic and had multiple sclerosis. After a six-week trial, the jury voted 9-3 that there was no product defect in the Cutler Hammer/Eaton electrical products with which the plaintiff allegedly worked, and the defendant was not negligent.

The plaintiff's post-verdict motion for a new trial against Eaton was granted by Judge Paul Beeman, who found that the "jury clearly should have reached a different verdict." Eaton has since appealed Judge Beeman's ruling, and no new trial date has been set pending the outcome of that appeal.

- Faiaipau v. J&H Marine & Industrial

An Alameda County jury returned a $4,359,492 verdict in favor of the plaintiff in a non-smoking lung cancer matter, finding that the remaining defendant J&H Marine & Industrial was both negligent and a substantial factor in causing decedent Saipele Faiaipau's lung cancer. The decedent, age 58 at the time of his passing, worked as a rigger and claimed that employees of J&H Marine routinely worked in close proximity to him tearing out old asbestos-containing decking. The decedent had emphysema, no asbestos bodies in his lung tissue, and no asbestos markers. Even so, J&H Marine was assigned 5 percent liability, and the jury awarded $2,029,492 in economic and $2,330,000 in non-economic damages. The Brayton firm tried the case on behalf of the plaintiff. The presiding judge was Judge Brad Seligman.

- Hart v. Calaveras Asbestos

After a four-week trial, an Alameda County jury awarded $5,321,050 to Frank Hart, who allegedly contracted mesothelioma after exposure to asbestos from work with asbestos-cement pipe. At the time of trial, the sole remaining defendant was Keenan Pipe & Supply, the alleged seller of the asbestos-cement pipe at issue. The jury found that Mr. Hart was exposed to pipe supplied by Keenan, and that the pipe contained a design defect that was a substantial factor in increasing his risk of mesothelioma. The jury found Keenan negligent and strictly liable, and awarded $1,821,050 in economic damages, $3 million in non-economic damages, and an additional $500,000 to Mrs. Hart for loss of consortium.

Judge Brad Seligman presided over this trial. The plaintiffs were represented by Maune, Raichle, Hartley, French & Mudd.

- Herford v. Johnson & Johnson

In *Herford*, tried before Judge C. Edward Simpson in Los Angeles, the jury returned a **defense verdict** after two days of deliberations following a four-week trial. Plaintiffs Tina and Douglas Herford had argued that Mrs. Herford developed malignant mesothelioma as a result of using talcum powder that was contaminated with asbestos fibers, and sought more than $23 million in damages. Defendants Johnson & Johnson (J&J), the talcum products manufacturer, and Imerys Talc, J&J's supplier, argued that the talc did not contain

asbestos, and that Mrs. Herford's disease was caused by radiation treatment for prior breast cancer. The jury found that J&J did not negligently design or sell its talc, that the talc did not fail to perform as safely as a reasonable consumer would have expected, that the talc was not defective, and that J&J did not fail to warn of any potential risks, "known or knowable based on general scientific knowledge at time of sale."

This jury verdict came in the second trial of this case – a mistrial had been declared during the first trial when a witness violated a court order by referencing the alleged link between J&J's talc and ovarian cancer. Simon Greenstone Panatier & Bartlett represented the plaintiffs.

- Lamb v. CertainTeed Corporation

In *Nolan Lamb v. CertainTeed Corporation,* tried for approximately two months before Judge Barry Goode in Contra Costa County Superior Court, the jury returned a **defense verdict** in favor of sole remaining defendant CertainTeed. The plaintiffs – represented at trial by the Brayton firm – argued that 37-year-old Nolan Lamb's peritoneal mesothelioma was caused by take-home exposure from his father who worked as a building inspector, and from his own direct exposure to asbestos-containing gravel spread at skiing areas where he spent a few winters. The defendant argued that the plaintiff was never exposed to asbestos for which it could be held liable, and also that the plaintiff's genetic BAP1 mutation, and not asbestos exposure, caused his mesothelioma.

The jury found 9 to 3 that defendant was not negligent and did not fail to warn the plaintiff; with those findings, they never had to consider whether BAP1 alone caused the plaintiff's illness.

- Lopez v. The Hillshire Brands Company

An Alameda County jury awarded a $13 million verdict to the family of a man who died at age 61 of mesothelioma after alleged exposure to asbestos from insulation used at a sugar refinery located near the decedent's home. According to the plaintiffs, the work performed with asbestos by employees of Hillshire's sugar refinery contaminated not only the refinery but also the surrounding area, including the decedent's nearby home. Though the decedent did not work for Hillshire, several members of his family did, including his grandfather and father. The decedent allegedly played in a dump near the facility where asbestos debris was taken. The plaintiffs accused Hillshire of allowing asbestos-containing insulation to be used and disposed of on the premises without consulting with properly trained safety experts and medical personnel, failing to maintain a safe workplace, and failing to understand the state and federal health/safety regulations concerning asbestos. Hillshire argued that it played no part in the manufacture or distribution of the allegedly harmful insulation, and that any alleged misuse of the asbestos-containing insulation was not intentional.

After a three-week trial and four hours of deliberation, the jury awarded the plaintiffs $1,958,461 in economic damages and $11 million in non-economic damages. Hillshire was allocated 100 percent liability; no liability was assigned to the manufacturers of the asbestos insulation. The plaintiffs were represented by Kaiser Gornick LLP. Judge Brad Seligman presided over the trial.

- Lucas v. CertainTeed Corporation

A San Francisco jury awarded a $24,260,000 verdict to an 83-year-old single man suffering from mesothelioma allegedly caused by exposure to asbestos from products used at various shipping companies for which he was employed as a longshoreman. His job duties involved loading and unloading cargo, including bags of raw asbestos fiber in burlap bags, and working in ships' holds under asbestos-insulated pipe. The plaintiff claimed that during his work at Triple A Shipyard, the shipyard's employees routinely disturbed asbestos-containing

thermal insulation in his presence. After a three-week trial, the jury found that Triple A was negligent, and its negligence was a substantial factor in causing Mr. Lucas' disease. They assigned 27 percent liability to Triple A, and 73 percent to "all others," awarding $760,000 in economic and $23.5 million in non-economic damages.

The Brayton Purcell firm represented the plaintiffs. Judge Andrew Y.S. Cheng presided over the trial.

- Mettias v. Arby's Restaurant Group

A Pasadena jury returned a **defense verdict** in the wrongful death matter of *Phillip and Febi Mettias*. Decedents Phillip Mettias and his wife Febi Mettias both died of mesothelioma, which the plaintiffs alleged was caused by exposure to asbestos in automotive replacement parts sold and supplied by Honeywell and Pep Boys. After a seven-week trial, the jury took just two hours to return an 11-1 defense verdict. Some jurors appeared to have been convinced by the defense that the decedents were exposed to environmental asbestos from their life in Egypt prior to immigrating to the United States, while others were convinced that neither Pep Boys nor Honeywell had exposed the decedents to asbestos. The plaintiffs, represented by the Simona Farisse firm, had asked for $95 million in damages. Judge James A. Kaddo presided over the trial.

- Searcy v. 3M Corporation

A Long Beach jury returned a **defense verdict** in October 2017 in the *Searcy* case. The plaintiffs alleged that decedent Velma Searcy died at age 51 from mesothelioma caused by exposure to asbestos during her work as an electrician in the aerospace industry. Defendant Dexter Hysol argued that the decedent had sarcoma, not mesothelioma, which was not caused by asbestos. The defendant further argued that no Dexter Hysol products were used in the decedent's workplace. After just three hours of deliberation following a three-week trial, the jury found that Ms. Searcy's illness was not caused by exposure to asbestos. The plaintiffs, represented by the Simmons Hanly Conroy firm, had asked the jury to award $21.6 million in damages, plus punitive damages. Judge Michelle Fleurer presided over the trial.

- Silva V. BASF Catalysts, LLC

A San Francisco Superior Court jury recently returned a plaintiffs' verdict in the personal injury matter of *John Silva v. Albay Construction Company and Tosco Corporation*. The case was filed by the Brayton Purcell firm. The plaintiff claimed his kidney cancer was caused by his exposure to asbestos. The defendants at the time of the verdict were Albay Construction Company and Tosco Corporation. The jury found in favor of the plaintiff and awarded $745,290 in economic damages and $2,120,000 in non-economic damages. The jury assigned 77.625 percent of the liability to the plaintiff; 19.921 percent liability to "all others"; 2.454 percent liability to Tosco Corporation; and 0 percent liability to Albay Construction. The plaintiff was represented by Gilbert Purcell. The trial was presided over by Judge Angela M. Bradstreet.

- Booker V. BASF Catalysts, LLC

An Alameda County jury recently returned a plaintiffs' verdict in the wrongful death matter of *Cheryl Booker, et al. v. BASF Catalysts, et al*. The case involved the alleged mesothelioma and wrongful death of former commercial painter Richard Booker. The case was filed in Alameda Superior Court by Kazan, McClain, Satterly and Greenwood. The plaintiffs claimed that the decedent mixed asbestos-containing talc into paint during his work as a commercial painter. The defendants at the time of verdict were talc suppliers Vanderbilt Minerals, LLC, and Imerys Talc America, Inc. The jury found in favor of the plaintiffs and awarded $440,000 in economic damages and $17,130,000 in non-economic damages. Vanderbilt Minerals, LLC, was found 60 percent liable and Imerys Talc America was found 40 percent liable. No other entities were included on the

verdict form. The jury added $4.6 million in punitive damages. The plaintiffs were represented at trial by Joseph Satterly. Judge Winnifred Smith presided over the trial.

About Walsworth

Walsworth was founded in 1989 with a commitment to establish a law firm focused on working collaboratively with clients to meet their unique objectives. The firm has since grown to more than 75 attorneys with offices in Orange, Los Angeles, and San Francisco, and is known for excellence in litigation and transactional matters. We are equally distinct in our long-standing commitment to diversity, which is recognized through our certification as a Women's Business Enterprise (WBE) by the Women's Business Enterprise National Council and the California Public Utilities Commission, and we are proud to be the largest certified WBE law firm in the United States. Walsworth is also a National Association of Minority and Women Owned Law Firms (NAMWOLF) member, the largest in California and the third-largest nationwide. For more information, visit www.wfbm.com.