

Asbestos Litigation

2019 Year In Review

As 2020 begins, we at Walsworth are pleased to provide you with an update on the status of asbestos claims and on local and national trends and recent case law impacting asbestos litigation over the past year.

Volume of Asbestos Cases and Overall Filing Trends

▶ San Francisco Superior Court

2019's filings in San Francisco dropped precipitously from prior years. In fact, 2019 had fewer filings than any year in the past 10 years. The number of asbestos-related filings in San Francisco Superior Court through November 2019 totaled only 48, down from 107 in 2018 and 93 in 2017. Of the 2019 filings, there were only six mesothelioma cases, 15 lung cancers, 21 asbestosis, and six "other" cancer matters.

▶ Alameda Superior Court

Unlike the drop in San Francisco, 2019 filings in Alameda County remained relatively steady from 2018. Through the end of November 2019, there were a total of 58 asbestos-related filings (compared with 59 in calendar year 2018), including five lung cancer, 52 mesothelioma, and one "other" cancer matters, although no asbestosis cases.

▶ Solano Superior Court

In Solano County Superior Court, already-rare filings dropped further, from 2018's six cases to only two cases filed through November 2019. Both of the 2019 cases were mesothelioma matters.

▶ Los Angeles Superior Court

In Los Angeles Superior Court, 134 asbestos-related

matters were filed through the end of November 2019, up from the reported 118 through November of 2018. Cases involving malignancies continue to be more numerous than those involving asbestosis. We continue to see the number of contaminated personal talc matters grow, while the more familiar asbestos product claim filings remain constant.

▶ Other Southern California Superior Courts

The Keller Fishback & Jackson firm has filed one matter in Orange County Superior Court. We are not aware of any cases filed in other Southern California jurisdictions.

[Update on Hon. David S. Cunningham, Southern California Coordinated Cases Presiding Judge](#)

2019 started out with Judge David S. Cunningham being assigned as the presiding judge for all Southern California Coordinated cases. However, in the summer, he was temporarily reassigned to another courtroom. Unfortunately, the Court has not made clear how long Judge Cunningham's "temporary" reassignment will last, and when (if ever) he will return to Department 15. During his absence, Hon. Maurice Leiter has taken over the Southern California Coordinated case bench. Judge Leiter continues to set status conferences according to his own schedule, and has provided his availability through the spring of 2020, so it appears certain that Judge Cunningham will not return to Department 15 for at least a few more months.

Judge Leiter has been setting final status conferences and trials on separate dates, with mandatory appearances by trial counsel at each to force the parties to meet and confer regarding all trial documents ahead of any assignment to a trial

department. Unlike past judges handling the asbestos docket, Judge Leiter has been reluctant to grant trial continuances, believing that keeping the trial date forces the parties to litigate their case rather than allow the matter to languish for a variety of reasons. As with most Los Angeles judges of the recent past, Judge Leiter has denied most dispositive motions presented to him; however, he has granted some motions for summary adjudication of punitive damages claims. Overall, Judge Leiter has been thoughtful and evenhanded in his decisions. He does not appear to lean heavily toward either side, and encourages the parties to work out their differences as much as possible without motion practice.

We will provide a further update regarding the Southern California Coordinated judge as we learn more.

[Trends Associated With San Francisco Asbestos Department Judge, the Honorable Cynthia Ming-mei Lee](#)

Judge Lee continues in her role as San Francisco's presiding judge in the Asbestos/CEQA Department. Trial department availability and the backlog of asbestos cases remain the primary challenges facing Judge Lee in her administration of the San Francisco complex civil litigation docket, and in 2019 she continued to use case consolidation and trial continuances as her main tools for addressing those issues. Although the mandatory settlement conference procedure in San Francisco has not changed since our previous updates, long time settlement conference coordinator Pang Ly is running for the San Francisco bench in 2020. Elections will take place in March, and it has not yet been determined whether another settlement coordinator will be appointed if Ms. Ly is elected.

[Judge Jo-Lynne Q. Lee Returns to Preside Over the Asbestos Department in Alameda County Superior Court](#)

In Alameda, Judge Jo-Lynne Q. Lee has recently

taken over as the presiding judge of the Civil Complex/Asbestos Department. Since 2015, Judge Brad Seligman had been the supervising judge, but in late 2019 he announced that Judge Lee would be taking over as of January 1, 2020. In 2019, asbestos cases were routinely assigned to trial judges at the outset of the cases, but in 2020, pretrial case management will return to how the Alameda courts used to manage its asbestos cases a few years ago — Judge Lee will manage all asbestos cases for all pretrial purposes and then assign the cases out to trial departments when the trial date arrives.

Judge Lee previously presided over Alameda's asbestos department from January 2011 through December 2014. During that time, she was involved in updating the Alameda Case Management Orders, including modification of the preliminary fact investigation sheet and trial setting order. In the past, Judge Lee also ordered discovery referees in matters that she could not resolve efficiently. During Judge Seligman's tenure as Presiding Judge from 2015 through 2019, Judge Lee continued to handle some asbestos trials, including the recent *Amos Webb v. 3M* trial that resulted in a \$28,500,000 verdict against General Cable for an 80-year-old career electrician with mesothelioma.

Judge Lee has been rethinking the Mandatory Settlement Conference process used by the Alameda courts, and may start scheduling such conferences closer to the trial date of a case, after Motions for Summary Judgment have been ruled upon. We will continue to keep you apprised of any new rules or procedures for MSCs in 2020.

[Solano County Superior Court Assigns New Judge for Asbestos Case Handling](#)

In 2020, Hon. Christine A. Carringer will be taking over the role of asbestos presiding judge in Solano County, replacing Judge D. Scott Daniels. Judge Carringer was appointed to the bench by former Governor Jerry Brown in 2013, and has primarily presided over the Family Law and Adoptions courts

during her time in Solano. She has also served as the Supervising Judge of the Family Law Division. Given how rare asbestos case filings have become in Solano County, it is unclear whether Judge Carringer will continue Judge Daniels' routines or set any new procedures of her own.

Seven-Hour Deposition Limit in Mesothelioma Matters

On January 1, 2020, *Code of Civil Procedure* section 2025.295 went into effect. This new code section limits the defense examination of a plaintiff at deposition to only seven hours of total testimony in cases where individuals have mesothelioma and a physician attests that there is substantial medical doubt of survival of the deponent beyond six months. The law does not limit the time of a plaintiff's own counsel's examination.

Defendants will be able to request additional time to depose the plaintiff if the Court makes the determination — at its discretion — that an extension of time is in the interest of fairness based on the number defendants appearing at the deposition, and further determines that the health of the plaintiff does not appear to be endangered by the grant of additional time. If the Court makes these determinations, it may then grant an additional three hours of testimony, for a total of 10 hours of examination by defendants if there are more than 10 defendants appearing at the deposition, or an additional seven hours of testimony for no more than 14 hours of total examination by defendants if there are more than 20 defendants appearing at the deposition.

The law does not require that the physician who attests to the survival of the plaintiff be a treating physician, or have a specialization or board certification in pulmonology or oncology. It is anticipated that Plaintiffs' firms will begin obtaining declarations from a physician in advance of mesothelioma case depositions and invoke the limitation in most, if not all, of their personal injury

mesothelioma matters.

This new state-wide law trumps many local Case Management Orders, including the Southern California Coordinated August 11, 2014, Case Management Order that allows for 20 hours of cross-examination in all matters with a preferential trial date, so defendants are examining the need for amended Case Management Orders that address concerns about the new deposition time limits. However, any changes to the Case Management Order would likely not go into effect until 2021 at the earliest. These new time limitations will greatly hamper defendants' ability to meet their alternative cause burden under Proposition 51 through their cross-examination of the plaintiff, and to meet the strict requirements of evidence to support motions for summary judgment. This is especially true where defendants are not provided with detailed and substantive responses to written discovery in advance of depositions, or encounter evasive or nonresponsive plaintiffs. Given these issues, defense counsel are working together to propose new standard interrogatories and other advanced disclosure requirements to propose to the courts in order to assist in streamlining defense questioning.

New Rules for Producing Documents and Initial Disclosures in California Civil Matters

In early 2019, Gov. Gavin Newsom took aim at written discovery in civil matters. One amendment to existing law of particular concern for defendants is Senate Bill 370, which amends *Code of Civil Procedure* section 2031.280 to require that documents produced in response to a demand for inspection, copying, testing or sampling be identified by the request number to which the document is responsive. Presently, documents may be produced either as they are kept in the usual course of business, or organized and labeled to correspond with the categories in the demand. The amendment applies to all forms of documents produced, including electronically stored information; however, exactly how the electronically stored documents are

to be identified must be worked out by counsel. This new amendment is retroactive and applies to all active cases regardless of when filed.

The new amendment is anticipated to increase litigation costs by eliminating the ability to produce documents as they are kept in the usual course of business. It also may incentivize broader and more numerous requests from the requesting party. Further, there is the concern that identification of documents that are responsive to a specific request may be attorney-work product.

Gov. Newsom also signed into law Senate Bill 17 regarding initial disclosures required upon order of the court, or by stipulation of all parties to the action. Although we do not anticipate that S.B. 17 will be utilized in most asbestos-related matters given the parties' anticipated objections, it is important to note the potentially high costs relating to such initial disclosure requirements if a court does order that they be produced. Specifically, the parties would be required to provide initial disclosures within 45 days of the order or stipulation. Much like the federal rules, the initial disclosures would include 1) names and contact information of those likely to have discoverable information, and the subject of the information; 2) a copy of the documents that support the party's claims; 3) any relevant insurance information; and 4) any agreement regarding potential indemnification. The parties would have an ongoing duty to supplement the initial disclosures with all newly discovered evidence throughout the case. S.B. 17 also authorizes the court to impose a sanction of \$250 on any party, person, or attorney who fails to properly comply with the initial disclosure requirements.

Recent California Asbestos Litigation Jury Verdicts

There were 25 verdicts reached in California asbestos cases from January through December 2019 of which we are aware, including 11 plaintiff verdicts and 14 defense verdicts. The following is a

summary of those verdicts:

▶ *Godber v. Amcord, Inc.*

In *James Godber v. Amcord, Inc.*, tried before Judge Frank Johnson in Van Nuys, the jury returned a **plaintiff verdict** of \$937,500 in favor of plaintiffs James Godber, 78, and Suprahee Godber against stage lighting defendant Mole Richardson, and a defense verdict in favor of stucco defendant CalPortland (Colton) on March 5, 2019. James Godber — represented by Trey Jones and Simona Farrise — argued that he developed asbestosis and asbestos-related lung cancer as a result of his work in the movie and television industry. The Defendant argued that Godber's lung cancer was caused by his extensive smoking history and not his asbestos exposure.

The jury awarded \$772,500 in economic damages and \$165,000 in non-economic damages. Mole Richardson was allocated 30% liability, the plaintiff received 60% fault, and tobacco companies received 10% fault. Though the jury determined that Godber was exposed to asbestos by CalPortland, it concluded that CalPortland was not a substantial factor in the development of his alleged asbestos-related diseases.

▶ *Teresa Leavitt v. Johnson & Johnson*

In the well-publicized trial of *Teresa Leavitt v. Johnson & Johnson* tried before Judge Brad Seligman, an Oakland jury returned a **plaintiff verdict** totaling \$29,500,000 on March 13, 2019. Leavitt, represented by Kazan McClain's Joseph Satterly, claimed that she was exposed to asbestos when her mother used J&J baby powder on Leavitt and her sister when they were babies in the 1960s in the Philippines. Leavitt also claimed that her mother continued to use the baby powder after their family moved to the United States in 1968. As a young woman, Leavitt also powdered her hair and face with the product, using it as dry shampoo and a foundation for makeup through the 1970s.

The jury returned its decision after two days of deliberating. Leavitt was awarded \$1,200,000 in economic damages, and \$1,291,000 in medical specials. An additional \$22,000,000 was awarded to Leavitt for her past and future pain and suffering, and \$5,000,000 was awarded to her husband, Dean McElroy, for his loss of consortium. The jury did not award punitive damages. Johnson & Johnson was allocated 98% fault, while a supplier of talc to Johnson & Johnson, Cyprus Mines, was found to be 2% at fault. Critically, during the trial, Imerys Talc, another alleged supplier of talc to Johnson & Johnson, declared bankruptcy and was promptly dismissed by the plaintiffs.

► *Sabetian v. Fluor Enterprises*

On March 14, 2019, a Downtown Los Angeles jury returned a **plaintiff verdict** totaling \$25,000,000 for plaintiffs Houshang and Soroya Sabetian in *Houshang Sabetian v. Fluor Enterprises*. The Plaintiffs, represented by Weitz & Luxenberg, argued that Houshang Sabetian, 85, developed testicular mesothelioma as a result of his employment for the National Iranian Oil Company between 1960 and 1979 during his work in refineries and industrial sites in Iran. Defendants Fluor Enterprises, Brand Insulation, and Parsons Governmental Services argued that there are no studies linking asbestos exposure to testicular mesothelioma and, even assuming the Plaintiff was exposed, he was not exposed to the Defendants' products.

The matter was tried before Judge Rupert Byrdsong under Iranian law and, accordingly, punitive damages were not available. The jury concluded that the Fluor entities were 80% liable, and that the Plaintiff's employer, National Iranian Oil Company, was 20% liable. The jury did not find Brand Insulation or Parsons Governmental Services to have been negligent, and therefore did not find either liable. Houshang was awarded \$14,000,000 in past and future noneconomic pain and suffering damages and Soraya was awarded \$11,000,000 in non-economic

damages for her loss of consortium. The jury did not award economic damages.

► *Blinkinsop v. Albertsons Cos., Inc.*

On April 5, 2019, a Long Beach jury returned a **defense verdict** for Johnson & Johnson in the *Robert Blinkinsop v. Albertson Cos., Inc.*, matter tried before Judge Michele Flurer. Blinkinsop, 65, represented by Weitz & Luxenberg, argued that he developed mesothelioma as a result of his use of personal talc products. Specifically, he claimed he used J&J's baby powder daily between 1977 and 1994, and on his children between 1992 and 1996. He also claimed to have used J&J's Shower to Shower talc product. J&J argued that its talc did not contain asbestos and that Blinkinsop could have been exposed to asbestos while working on construction jobs.

The unanimous verdict came after less than a day of deliberations following nearly five weeks of trial.

► *Groves v. ABB Inc., et al.*

On April 15, 2019, a Van Nuys jury returned a **plaintiff verdict** and awarded plaintiff Ervan Groves \$3,000,430 in *Ervan Groves v. ABB Inc.* The matter was tried before Judge Valerie Salkin. The Plaintiff, who was 80 years old, represented by Weitz & Luxenberg, alleged he developed mesothelioma as a result of his exposure to asbestos by contractor D.W. Nicholson, who allegedly worked on over 100 jobs at the Plaintiff's employer's facility between 1964 and 1999.

D.W. Nicholson, the only defendant remaining at verdict, was assigned 20% fault; Mr. Groves' employer, Masonite, was assigned 70% fault; and J.T. Thorpe and Son was assigned 10% fault. Mr. Groves was awarded \$1,300,000 in past and future noneconomic pain and suffering damages, \$555,000 in economic damages, and \$300,000 for medical specials. The jury also awarded his wife \$800,000 in noneconomic loss of consortium damages.

▶ *Vanni v. AMF Bowling Centers, Inc.*

On April 23, 2019, a Long Beach jury returned a **plaintiff verdict** in the amount of \$4,397,716 for plaintiffs Barbara Vanni, Michael Vanni, and Mark Vanni. The matter was tried before Judge Michele Flurer. The Plaintiffs, represented by Waters Kraus & Paul, argued that decedent Donald Vanni, 78, developed pericardial mesothelioma as a result of his exposure to asbestos while working at a bowling alley from 1957 to 1986. His work included drilling holes in Ebonite bowling balls. The Plaintiffs alleged that Honeywell supplied Ebonite with discarded brake lining dust that was used as a filler in bowling balls. According to the Plaintiffs, the dust was a waste product of a Bendix brake manufacturing plant in New York that was sold as a filler for other commercial products.

The jury assigned Honeywell 40% fault, Ebonite 37% fault, and "other suppliers and distributors" the remaining 23% fault. The jury awarded the decedent's widow \$2,000,000 in non-economic damages, and awarded each of his children \$1,000,000 in non-economic damages; \$397,716 in economic damages was also awarded to the Plaintiffs. It was disclosed to the Court that the Plaintiffs received \$300,000 in settlements prior to the verdict.

▶ *Kimberling v. Kaiser Gypsum*

On April 24, 2019, a Los Angeles jury returned a **plaintiff verdict** of \$904,229 for the widow and adult children of James Kimberling in a wrongful death asbestosis matter tried before Judge John Kralik. The Plaintiffs, represented by Brayton Purcell, argued that the Decedent, 74, developed asbestosis as a result of his occupational exposure to drywall products, including asbestos-containing joint compound manufactured by Kaiser Gypsum.

The Decedent was assigned 50% fault, while Kaiser Gypsum received 3.5% fault. The remaining fault was assigned to various joint compound, gun plastic, and

stucco entities in amounts ranging from 2% to 3.5%. The jury awarded \$700,000 in non-economic damages and \$204,229 in economic damages.

▶ *Collins v. Parsons Government Services*

On May 8, 2019, a San Francisco jury returned a **defense verdict** for Parsons Government Services in a wrongful death stomach cancer case. The matter was tried before Judge Harold Kahn. The Plaintiffs, represented by Brayton Purcell, contended that decedent Jodie Collins, 60, developed asbestos-related stomach cancer as a result of his work as a laborer, boilermaker, and pipefitter from 1972 until 2011. Parsons contended that the seven months during which decedent Collins allegedly saw Parsons employees work at refineries near him was not a substantial factor in the development of his cancer because, according to the Decedent's own testimony, those Parsons employees were generally between five and 50 feet away from him.

▶ *Schmitz v. Johnson & Johnson*

On June 12, 2019, an Alameda jury returned a **plaintiff verdict** for plaintiff Patricia Schmitz in the amount of \$12,000,000 against Johnson & Johnson and Colgate-Palmolive. Schmitz, 61, represented by Kazan McClain, was a former fifth-grade teacher who claimed she developed mesothelioma as a result of her use of personal talc products. Specifically, she claimed she applied either J&J's baby powder or Colgate's Cashmere Bouquet most of her life after showering.

The verdict came after one week of deliberations. The jury concluded that the J&J entities were 40% liable, Colgate-Palmolive was 40% liable, and Avon was 20% liable. The jury awarded Schmitz \$2,003,006 in economic damages, and \$10,000,000 in non-economic pain and suffering damages. The jury rejected the Plaintiff's claim for punitive damages against Colgate; however, the court was forced to declare a mistrial as to the Plaintiff's claim for punitive damages against the J&J entities when the

jury was at an impasse as to these damages. Schmitz passed away during the pendency of the retrial of the punitive damages phase against J&J.

► *Waring v. Asbestos Co.*

On June 21, 2019, an Alameda jury returned a **defense verdict** in a wrongful death mesothelioma matter for defendant Metalclad Insulation. The matter was tried before Judge Stephen Kaus. The Plaintiffs, represented by Roger Gold and Simona Farrise, alleged that decedent Fred Wareing, 68, was exposed to asbestos while serving in the U.S. Navy, including during an overhaul in 1969 at Long Beach Naval Station. Metalclad argued that there was no evidence that it supplied the insulation that was used on the ship the Decedent was stationed aboard.

Though the jury concluded that the Decedent was exposed to asbestos, the jury did not find that he was exposed to asbestos by Metalclad.

► *Phipps v. Copeland Corp.*

Also on June 21, 2019, a Long Beach jury returned a **plaintiff verdict** for plaintiffs William and Linda Phipps in the amount of \$26,619,000. Judge Michele Flurer presided. Plaintiffs, represented by the Paul Law Firm, alleged that William Phipps, 70, was exposed to asbestos as a HVAC technician during his work with a variety of compressors, including Copeland compressors that had asbestos-containing gaskets. Copeland argued that work with their products was not a substantial factor in the development of Phipps' injuries because the alleged exposure levels did not exceed levels above California's typical ambient levels of asbestos in the air, and instead it was his service in the U.S. Navy from 1966 to 1969 that caused substantial exposures to asbestos.

The jury concluded that Copeland was 60% at fault and Phipps was 1% at fault, and assigned the remaining fault to the Navy, Phipps' employer, other manufacturers of compressors, insulation

manufacturers, and gasket manufacturers. The jury awarded William Phipps \$5,000,000 in past non-economic damages and \$20,000,000 in future economic damages, and \$250,000 in non-economic damages to Mrs. Phipps. The parties had stipulated to economic damages of \$1,369,000.

► *Morton v. 3M Company*

On July 29, 2019, a Santa Monica jury returned a **defense verdict** for Hennessy and Pneumo Abex in a personal injury lung cancer case before Judge Chester Horn. The Plaintiff, 73, represented by Trey Jones, was a nonsmoker who alleged that he developed asbestos-related lung cancer from his exposure to asbestos in a variety of products, including automotive friction materials, construction materials, and maritime insulation products, between 1961 and the 2000s. He alleged that he was exposed to the products while a high school student, through non-occupational settings through the 2000s, and in the course and scope of his employment at various companies in the 1970s. The Defendants, both friction defendants, argued that they were not a substantial factor in the Plaintiff's development of lung cancer, and that he was genetically predisposed to develop lung cancer.

The jury returned the defense verdict after seven weeks of trial.

► *Putt v. Ford Motor Company*

On August 30, 2019, a Downtown Los Angeles jury returned a **plaintiff verdict** totaling \$34,000,000 against Ford Motor Company in *Arthur Putt v. Ford Motor Company*. The matter was tried by Judge Stephen Moloney. The Plaintiffs, Arthur and Janet Putt, represented by Simmons Hanley, argued that Arthur Putt, 80, developed mesothelioma from his work in service stations in the late 1960s and 1970s, where he worked with asbestos-containing brakes, including those manufactured by Ford.

After four weeks of trial, and less than two hours of

deliberation, the jury concluded that Ford was 100% liable. The jury awarded the Plaintiffs \$25,500,000 in punitive damages and \$8,000,000 in non-economic damages (\$4,000,000 for past and future non-economic damages for each of the two plaintiffs). Prior to verdict, the parties had stipulated to \$500,000 in economic damages.

▶ *Smith v. Amcord, Inc.*

On September 4, 2019, a Santa Monica jury returned a **defense verdict** for defendants Union Carbide, CertainTeed, and Elementis in *Ronald Smith v. Amcord, Inc.* The matter was tried before Judge Lawrence Cho. Plaintiffs Ronald and Barbara Smith were represented by the Paul Law Firm. They argued that plaintiff Ronald Smith, 75, developed mesothelioma as a result of his exposure to asbestos through joint compound, asbestos-cement pipe, and insulation between 1963 and 1978 during his work as a plumber, and through shade tree automobile repairs. The Defendants contended there was no evidence that Ronald's exposure to the Defendants' products were a substantial factor in the development of his disease.

▶ *Draper, Talley and Sinclair v. Kaiser Gypsum*

On September 23, 2019, a San Francisco jury returned a **defense verdict** for Kaiser Gypsum in the three consolidated matters of *Thomas Sinclair v. Kaiser Gypsum*, *Nathan Talley v. Kaiser Gypsum*, and *Billy Draper v. Kaiser Gypsum*. The matters were tried before Judge Harold Kahn. The Plaintiffs, represented by Brayton Purcell, contended among other exposures that they were exposed to asbestos-containing Kaiser Gypsum joint compound.

The jury concluded that Kaiser Gypsum was not a substantial factor in 92-year-old plaintiff Billy Draper's disease. As to 79-year-old plaintiff Thomas Sinclair and 82-year-old plaintiff Nathan Talley, the jury concluded neither had an asbestos-related disease.

▶ *Cabibi v. Avon Products*

On September 27, 2019, a Downtown Los Angeles jury returned a **plaintiff verdict** totaling \$40,300,000 against Johnson & Johnson in *Nancy Cabibi v. Avon Products*. The matter was tried before Judge Rafael A. Ongkeko. Plaintiff Nancy Cabibi, represented by Simon Greenstone Panatier, contended she was exposed to asbestos through her use of J&J's baby powder and Shower to Shower product.

The jury awarded the Cabibis \$1,200,000 in economic damages, \$19,000,000 for past and future noneconomic damages, and \$20,000,000 for Phil Cabibi's damages. The jury did not award the Cabibis any punitive damages.

▶ *Leslie v. Foster Wheeler*

On October 4, 2019, a Fairfield jury returned a **defense verdict** for Kaiser Gypsum and Hanson Permanente in the *Leslie David v. Foster Wheeler* matter. The matter was tried before Judge Scott Daniels. The plaintiff, David Leslie, 83, represented by Brayton Purcell, argued he developed lung cancer as a result of his exposure to asbestos, including asbestos-containing Kaiser Gypsum joint compound.

▶ *Weirick v. Johnson & Johnson*

On October 9, 2019, a Torrance jury returned a **defense verdict** in the retrial of the *Carolyn Weirick v. Johnson & Johnson* personal injury mesothelioma matter. The matter was tried before Judge Cary Nishimoto. Plaintiff Carolyn Weirick, 60, represented by Simon Greenstone Panatier, claimed that she used Johnson & Johnson baby powder, and later Shower to Shower, for more than 40 years. Her only alleged exposure was to asbestos-contaminated talc. The Plaintiffs claimed that baby powder found in her home contained 11 asbestos fibers, which was "enough to have caused her cancer."

This retrial came as a result of a mistrial after a deadlocked jury in 2018. The defense verdict came after five weeks of trial. The verdict was not unanimous, with two jurors finding that J&J was negligent, finding a manufacturing defect, finding that the talc product failed to meet consumer expectations, and its risks outweighed its benefits, and finding that J&J failed to warn of its risks.

► *Crudge v. Johnson & Johnson*

On October 11, 2019, a Long Beach jury returned a **defense verdict** for Johnson & Johnson in the *George Crudge v. Johnson & Johnson* matter. The matter was tried before Judge Michele Flurer. The Plaintiffs, represented by Simon Greenstone Panatier, alleged that Donald Crudge, 64, developed pleural mesothelioma as a result of his use of J&J baby powder for 30 years, Clubman talc powder after his haircuts, and friction materials. J&J contended that the Plaintiff was likely exposed to asbestos while traveling aboard military transport ships used to transport asbestos, and during construction jobs at which he worked.

The defense verdict came after three weeks of trial and roughly a day of deliberations.

► *Webb v. General Cable Corp.*

On October 23, 2019, an Alameda jury returned a **plaintiff verdict** totaling \$26,500,000 against General Cable in *Amos Webb v. General Cable Corporation*. The matter was tried before Judge Jo-Lynne Lee. Plaintiffs Amos and Jeannie Webb, represented by the Paul Law Firm, claimed that Amos Webb, 80, developed mesothelioma as a result of his work with asbestos-containing wire and cable, including Romex — a trademark owned by General Cable for a period of time. General Cable argued there was no evidence that the Plaintiff worked with the Romex wiring, or that the Romex wiring the Plaintiff worked with was asbestos-containing.

After four days of deliberation, the jury found General Cable 39% liable, and CertainTeed, who was briefly in the trial, 5% liable. The remaining liability was allocated to premises owners, and to equipment, joint compound, and insulation manufacturers.

The jury awarded Mr. Webb \$2,500,000 in future medical specials despite a lack of evidence to support the claim. Prior to verdict, the parties stipulated to approximately \$343,000 in past medical specials and approximately \$592,000 in economic damages. The jury awarded the Plaintiffs \$13,450,000 in past and future non-economic damages, and awarded plaintiff Jeannie Webb \$11,450,000 for her loss of consortium claim. After the verdict, Plaintiffs disclosed they had negotiated nearly \$1.6 in settlements.

► *Fong v. Johnson & Johnson*

On December 16, 2019, a Downtown Los Angeles jury returned a **defense verdict** for Johnson & Johnson after a month long trial and a little over a day deliberating in *Pui Fong v. Johnson & Johnson*. The matter was tried before Judge David S. Cunningham. Plaintiff Pui "Amy" Fong, 48, represented by Kazan McClain, alleged she had been exposed to asbestos from 1971 until 2004. Because the Plaintiff resided in Hong Kong until the age of 13, she alleged that the contaminated talc in the J&J powder came from Korean mines. The Plaintiff further alleged that after she moved to the U.S. in 1984, and through 2004, the contaminated talc came from Vermont mines. The testing of the talc by Plaintiff's micropsy expert, Dr. William Longo, became a hot-button issue for a variety of reasons, but most notable was Judge Cunningham's instruction to the jury to disregard Longo's testimony regarding testing he had done from mines in China, and that any exposure the Plaintiff had to J&J talc after 2004 was not a part of the case.

Contacts

Kate Gardiner, Partner
(415) 781-7072 | kgardiner@wfbm.com

Kendra Bray, Partner
(714) 634-2522 | kbray@wfbm.com

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. Since then, the firm has grown to 50 attorneys with offices in Orange, Los Angeles, San Francisco and Seattle and is known for excellence in litigation and transactional matters. We are equally distinct in our longstanding commitment to diversity, which is recognized through our certification as a Women's Business Enterprise (WBE) by the Women's Business Enterprise National Council (WBENC) and by the California Public Utilities Commission. We are proud to have the largest California attorney presence of certified WBE law firms in the United States. Walsworth is also a National Association of Minority and Women Owned Law Firms (NAMWOLF) member, the largest member in California. For more information, visit www.wfbm.com.