

Grossman v A.O. Smith Water Products Co.
2008 NY Slip Op 33715(U)
July 23, 2008
Supreme Court, New York County
Docket Number: 103812/05
Judge: Louis B. York
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SUPREME COURT OF THE STATE OF NEW YORK — NEW YORK COUNTY
PRESENT: Hon. LOUIS B. YORK PART 2
Justice

-----X
YETTA GROSSMAN, as Executrix of THE ESTATE OF
MARTIN GROSSMAN,
Plaintiff,
-against-
A.O. SMITH WATER PRODUCTS CO., ET AL,
Defendants.

Index No. 103812/05
Motion Date _____
Motion Seq. No. 009
Motion Cal. No. _____

-----X
DOMINICK SGANGA and MARILYN SGANGA,
Plaintiffs,
-against-
A.W. CHESTERTON CO., INC., ET AL,
Defendants.

Index No. 116160/05

-----X
STACEY F. ZIMMERMAN, as Personal Representative of
THE ESTATE OF NORMAN FORIN,
Plaintiff,
-against-
A.W. CHESTERTON CO., INC., ET AL,
Defendants.

Index No. 104952/06

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005
7-29-08
EA

FILED

JUL 30 2008

-----X
JOSEPH O'NEILL,
Plaintiff,
-against-
ALLUIS CHALMER, INC. ET AL,
Defendants.

COUNTY CLERK'S OFFICE
NEW YORK

Index No. 109587/06

NYS SUPREME COURT
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-----X
The following papers, numbered 1 to _____ were read on this motion to Consolidate
NUMBERED
Notice of Motion/ Order to Show Cause — Affidavits — Exhibits _____
Answering Affidavits — Exhibits _____
Replying Affidavits _____

MDAI

Cross-Motion: Yes No

The Court is asked in this motion to join four cases for joint trial. Two of these actions are brought by the representatives of two deceased plaintiffs whose deaths are attributable to mesothelioma. In the other two cases, both plaintiffs suffer from a fatal form of lung cancer. One of them is dead. That action is brought by a representative of his estate. The fourth plaintiff is alive but confined to a nursing home. The latter two plaintiffs attribute their diseases to lung cancer.

The defendants seek to convince the Court to try these cases separately, claiming, *inter alia*, that their exposures occurred at different times at different sites. There is also the argument that the jury will be unduly prejudiced against the alive plaintiff because his case will be jointly tried by the evidence of the deceased plaintiffs. Moreover, asking the jury to decide mesothelioma cases with lung cancer cases for plaintiffs who were exposed at different times with different states of the law would be too complicated and too cumbersome for the jury to handle.

Under CPLR 602(a), the Court is accorded discretion to order joint trials when there are common questions of law and fact. That section encourages the Court to take into account how such joinder may avoid any unnecessary costs and delay.

Given the thousands, if not tens of thousands, of asbestos cases that have been filed in this court, joinder is necessary to avoid court dockets from being overwhelmed. Thus,

joinder of 25 cases was approved by the Appellate Division with the following comment:

The joint trial has the potential to reduce the costs of litigation, make more economical use of the Court's time and speed the disposition of cases as well as to enforce settlements.

In re NYC Asbestos Litigation, 188 AD2d 214, 225 [1st Dept 1993], affd 82 NY2d 821. In contrast, we have only four cases to deal with here. In these cases, many of the witnesses can be utilized by all of the plaintiffs and more than one of the remaining defendants. While there are differences in exposure times, all of the plaintiffs were exposed in the 1940's on ships. Thus, the state of the art testimony about what was known at this time need not be repeated four separate times. All of the plaintiffs' exposures resulted in malignant cancers. The description of how these cancers are caused and their effects on the human body as well as the etymology of the diseases will not have to be repeated for each separate case. The causes of action based on negligent failure to warn and the application of strict liability standards resulting from the doctrine of strict liability are issues common to all of these actions.

The argument that the number of cases that the jury has to deal with make matters too cumbersome and complicated for a jury has been successfully dealt with by this judge and other judges in this and other courts (see decisions annexed to plaintiff's motion as exhibits). The jury will be encouraged to take notes in trial notebooks with separate sections for each plaintiff along with intermediate instructions by the Court at strategic intervals during the trial.

Also to be taken into account is that plaintiffs are represented by the same attorney in all four actions. Many of the defendants appear in two or more of these actions. Aurora Pumps appear in three of the actions, as does Crane Pumps & Systems. These defendants are all represented by a single law firm. Not to be forgotten is the benefit to the Court as it clears its docket of four trials at once, instead of one at a time. A benefit in efficiency and costs also redounds to the defendants and their attorneys who appear in more than one of the actions.

The foregoing indicates that the benefits in the joint trials outweigh the differences. Accordingly, these four cases shall be tried jointly.

The parties are directed to appear in this Part on August 21, 2008 for a pre-trial conference.

Motions in limine are to be brought by Order to Show Cause and served and filed in this Part on or before September 4, 2008. Opposition shall be filed by September 25, 2008. Each defendant shall be limited to four such motions in a single Order to Show Cause. The Court may or may not schedule oral argument. Jury selection is scheduled for October 23, 2008 with trial scheduled to commence immediately thereafter. Please appear in this Part on October 23, 2008 at 9:30 a.m.

This constitutes the Decision and Order of the Court

Dated: 7/23/08

Enter:

ly
Louis B. York, J.S.C.

LOUIS B. YORK
J.S.C.

FILED
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