

**Munna v American Honda Motor Co., Inc.**

2023 NY Slip Op 33228(U)

September 15, 2023

Supreme Court, New York County

Docket Number: Index No. 190353/2016

Judge: Adam Silvera

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SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: HON. ADAM SILVERA PART 13

Justice

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JOSEPH MUNNA, KAREN MUNNA,
Plaintiff,

INDEX NO. 190353/2016

MOTION DATE 05/22/2023

MOTION SEQ. NO. 006

- v -

AMERICAN HONDA MOTOR CO., INC.;, BMW OF NORTH AMERICA, LLC; BORGWARNER MORSE TEC LLC, FEDERAL-MOGUL ASBESTOS PERSONAL INJURY TRUST, FIAT CHRYSLER AUTOMOBILES N.V.;, FIAT U.S.A., INC.;, FORD MOTOR COMPANY; GENUINE PARTS COMPANY; GOODRICH CORPORATION, GOODYEAR TIRE & RUBBER COMPANY, THE, HENNESSY INDUSTRIES, INC.;, HONEYWELL INTERNATIONAL, INC., MCCORD CORPORATION, MERCEDES-BENZ USA, LLC; MORTON THIOKOL; NATIONAL AUTO PARTS ASSOCIATION, PEP BOYS - MANNY, MOE & JACK, PERFORMANCE INDUSTRIES, INC., PNEUMO-ABEX, LLC, ROBERT BOSCH CORPORATION, TOYOTA MOTOR SALES, USA, INC.;, VOLKSWAGEN OF AMERICA, INC.;, VOLVO CARS OF NORTH AMERICA, INC.;, VOLVO CARS OF NORTH AMERICA, LLC; VOLVO TRUCKS NORTH AMERICA, INC., WESTERN AUTO SUPPLY COMPANY; ADVANCE AUTO PARTS, INC., DANA COMPANIES, LLC, FORMERLY KNOWN AS DANA CORPORATION AND INDIVIDUALLY AND AS SUCCESSOR TO MIDLAND BRAKE, INC., SPICER ENTERPRISES, INC., VICTOR GASKETS AND WICHITA CLUTCH CO., INC., MOROSO PERFORMANCE PRODUCTS, TENECO INC., UNION CARBIDE CORPORATION, JOHN DOE 1 THROUGH JOHN DOE 75

DECISION + ORDER ON MOTION

Defendant.

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The following e-filed documents, listed by NYSCEF document number (Motion 006) 236, 237, 238, 239, 240, 241, 242, 243, 244, 247, 250, 251, 252, 253, 254, 255, 256, 257, 258, 259, 260, 261, 262, 265

were read on this motion to/for CONSOLIDATE/JOIN FOR TRIAL

Upon the foregoing documents, it is ordered that plaintiff's order to show cause for joint trials is granted for the reasons set forth below.

Here, plaintiff moves for a joint trial of two actions. Plaintiff seeks to consolidate the instant action with *Lamonica v AO Smith Water Products Co.*, 190006/2021. Defendants oppose and plaintiff replies.

The Case Management Order dated June 20, 2017 (hereinafter referred to as the “CMO”) states that “[t]wo cases may be joined for trial where plaintiff demonstrates that joinder is warranted under *Malcolm v National Gypsum Co.* (995 F2d 346), and New York State cases interpreting *Malcolm*. *Malcolm* and its progeny list factors to measure whether cases should be joined; it is not necessary under *Malcolm* that all such factors be present to warrant joinder.” CMO, §XXV. B. The factors to be considered under *Malcolm* are “(1) common worksites; (2) similar occupation; (3) similar time of exposure; (4) type of disease; (5) whether plaintiffs were living or deceased; (6) status of discovery in each case; (7) whether all plaintiffs were represented by the same counsel; and (8) type of cancer alleged”. *Malcolm*, 955 F2d at 350-351. The United States Court of Appeals, 2<sup>nd</sup> Circuit, further noted that “[c]onsolidation of tort actions sharing common questions of law and fact is commonplace. This is true of asbestos-related personal injury cases as well.” *Malcolm, id.* at 350 (internal quotations and citations omitted).

Plaintiff argues that consolidation of the cases for joint trial as specified above is appropriate. Plaintiff contends that both plaintiffs, Joseph Munna and Daniel Lamonica were exposed to asbestos during the course of their employment as auto mechanics, working on similar equipment and machinery; i.e. brakes, gaskets, and clutches. Plaintiff further contends that both plaintiffs developed lung cancer and are both still living with such illness. Moreover, the discovery in both of these cases have been completed, and both plaintiffs are represented by the same counsel.

Defendants Mercedes-Benz USA, LLC and Volkswagen Group of America, Inc. jointly oppose, and defendants Hennessy Industries, LLC, Ford Motor Company, and Advance Auto Parts, Inc. file separate opposition papers to join defendant Mercedes-Benz USA, LLC and Volkswagen Group of America, Inc.'s opposition. Plaintiff replies.

Opposing defendants argue that plaintiff failed to meet the burden to establish sufficient commonalities amongst the 2 actions. Specifically, opposing defendants contend that there is no commonality as to the plaintiffs' worksite, occupation, years of exposure, and similar counsel.

Here, reviewing all the *Malcolm* factors, the Court finds, and it is undisputed, that plaintiffs, Mr. Munna and Mr. Lamonica, were both exposed to asbestos through their employment and their handling of similar materials and equipment. Moreover, during significant portions of their career, Mr. Munna and Mr. Lamonica were both auto mechanics. Additionally, both plaintiffs developed lung cancer from which both plaintiffs are currently living with, the discovery in these actions are complete, and the plaintiffs have the same counsel. Opposing defendants correctly argue that their respective counsel differ. Thus, six of the eight *Malcolm* factors have been satisfied.

There are common issues of law and fact in both actions. The CMO explicitly states that the Court may order joinder of cases based upon the *Malcolm* factors and that not all such factors must be present. Here, the *Malcolm* factors support joinder of the 2 actions. As Hon. Manuel Mendez previously held, "[j]udicial economy would be served by consolidating the actions of deceased plaintiffs with mesothelioma and whose exposure was related to their work on similar products... . In these case consolidations: (1) the central issue is the same; (2) it is the same Plaintiffs' counsel in the actions; (3) the Plaintiffs suffered from the same disease; (4) the Plaintiffs in the group are all deceased; and (5) the Plaintiffs were exposed...in a similar

manner.” *Haley v ABB, Inc.*, 190150/19, mot. 008, dated December 11, 2019. As stated above, although the plaintiffs did not share common worksites, this does not preclude joinder of the cases for trial. Adequate safeguards can be put in place during the trial to avoid juror confusion. Thus, plaintiff’s motion seeking a joint trial is granted as to the instant action with *Lamonica v AO Smith Water Products Co.*, 190006/2021.

Accordingly, it is

ORDERED that plaintiff’s motion seeking a joint trial is granted; and it is further

ORDERED that a joint trial is granted as to the instant action with *Lamonica v AO Smith Water Products Co.*, 190006/2021; and it is further

ORDERED that the trial of these actions is hereby scheduled on October 10, 2023; and it is further

ORDERED that, within 14 days of entry, plaintiffs shall serve a copy of this order upon all parties, together with notice of entry.

This constitutes the Decision/Order of the Court.

9/15/2023

DATE

  
ADAM SILVERA, J.S.C.

CHECK ONE:

CASE DISPOSED

NON-FINAL DISPOSITION

GRANTED

DENIED

GRANTED IN PART

OTHER

APPLICATION:

SETTLE ORDER

SUBMIT ORDER

CHECK IF APPROPRIATE:

INCLUDES TRANSFER/REASSIGN

FIDUCIARY APPOINTMENT

REFERENCE