

Molina v Avon Prods., Inc.

2019 NY Slip Op 31809(U)

June 21, 2019

Supreme Court, New York County

Docket Number: 190042/2016

Judge: Manuel J. Mendez

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SUPREME COURT OF THE STATE OF NEW YORK — NEW YORK COUNTY

PRESENT: MANUEL J. MENDEZ **PART** 13
Justice

IN RE: NEW YORK CITY ASBESTOS LITIGATION

LUZ E. MOLINA as Executor for the Estate of
IRIS N. HERNANDEZ,
Plaintiffs,

INDEX NO. 190042/2016

- against -

MOTION DATE 05/22/2019

AVON PRODUCTS, INC., *et al.*,
Defendants.

MOTION SEQ. NO. 003

MOTION CAL. NO. _____

The following papers, numbered 1 to 10 were read on defendant Whittaker, Clark & Daniels, Inc.'s motion for summary judgment:

	PAPERS NUMBERED
Notice of Motion/ Order to Show Cause — Affidavits — Exhibits ...	1 - 4
Answering Affidavits — Exhibits _____	5 - 7
Replying Affidavits _____	8 - 10

Cross-Motion: Yes No

Upon a reading of the foregoing cited papers, it is Ordered that defendant Whittaker, Clark & Daniels, Inc.'s (hereinafter "WCD") motion pursuant to CPLR §3212, for summary judgment on plaintiffs' claims and all cross-claims asserted against it, is granted as stated herein.

Plaintiff, Iris N. Hernandez (hereinafter referred to as "decedent"), was diagnosed with malignant peritoneal mesothelioma in March of 2015 and died from her illness. Decedent's sister Luz E. Molina has been appointed as Executor for the Estate. Decedent's exposure - as relevant to this motion - is from the use of Johnson & Johnson's and Avon Product Inc.'s (hereinafter "Avon") talcum powder products that are alleged to have contained asbestos contaminated talc supplied, sold and distributed by WCD (Mot. Exhs. A, C, D and J, Opp. Exh. B, pgs. 242-243).

Decedent was deposed in this action over the course of three days on July 17 and 18, 2016 and her de bene esse deposition was on October 14, 2016 (Mot. Exhs. D and J, and Opp. Exhs. B and C). Decedent testified that she used Avon's products "Unforgettable" from the age of fifteen years while living in Puerto Rico from 1966 through 1984, and "Imari" from around 1987 through 2015 when she was diagnosed with mesothelioma (Opp. Exh. C, pgs. 53-55 and 62-63, and Exh. B pgs. 143-144 and 147-159). Decedent testified she applied the Avon talcum powder every time she took a bath, which was once daily in the winter and twice daily in the summer. She used a powder puff to apply Avon talc mostly on her upper body. Applying the talc would create visible dust that she breathed in. Decedent stated that once a week she would have to clean the dust which was created by the talcum powder applications, this would generate more dust that she breathed in (Opp. Exh. C, pgs. 63-71).

Decedent stated that she had second-hand exposure to Avon's "Wild Country" talcum powder products she purchased for her husband from approximately 1960 through 1980. She was present and observed him apply the "Wild Country" talcum powder to his shoulder, chest, arms and back, which created visible dust in the air (Opp. Exh. C, pgs. 54-59).

Decedent testified that she used Johnson & Johnson's product "Johnson's Baby Powder" (hereinafter "JBP") on her two children from birth until they were five years old, from about 1976 through 1983. She testified that after giving them a bath she would shake the JBP powder onto her children's bodies and then rub it

MOTION/CASE IS RESPECTFULLY REFERRED TO JUSTICE FOR THE FOLLOWING REASON(S):

in (Opp. Exh. B, pg. 215-216 and 218-219). Decedent stated that when she applied JBP on her children it would spread and she would inhale it (Opp. Exh. B, pg. 242).

Plaintiffs commenced this action on February 19, 2016 (NYSCEF Doc. # 1). The summons and complaint were subsequently amended to add additional unrelated defendants (NYSCF Doc. #s 2 and 36) The Second Amended Summons and Complaint added WCD as a defendant (NYSCEF Doc. #32). The Fourth Amended Summons and Complaint dated March 19, 2018 was amended to substitute the Estate on behalf of the decedent (Mot. Exh. A). WCD's Verified Answer dated October 24, 2017 asserts cross-claims (Mot., Exh. B).

WCD now moves for summary judgment pursuant to CPLR §3212 to dismiss plaintiff's complaint and all cross-claims asserted against it based on lack of identification.

WCD argues that it did not supply, sell or distribute talc to Johnson & Johnson and it is entitled to summary judgment on plaintiff's claims related to that manufacturer's products during the relevant time period of about 1976 through 1983. WCD provides testimony of corporate representatives of Johnson & Johnson and Imerys Talc America in support of its argument that it made random sales of several grades of talc to Johnson & Johnson and that none was for use in consumer products during the period relevant to decedent's exposure. WCD also relies on testimony that from 1968 through 1989 Johnson & Johnson self-supplied its' own talc (Mot. Exhs. E, F pgs. 1689-1699, 1717-1718, 2472, 2549-2550 and 2674, G pgs. 1350 and 1408, H pgs. 1244-1249 and I).

Plaintiff did not make any arguments refuting WCD's arguments that it did not sell, distribute, or supply talc for consumer use in Johnson's Baby Powder during the years relevant to decedent's exposure, and has not raised any issues of fact. WCD is granted summary judgment on plaintiff's claims asserted against it as to the supply of asbestos contaminated talc to Johnson & Johnson during the years 1976 through 1983 for use in Johnson's Baby Powder.

WCD claims that it closed its traditional business activities in 2004. WCD argues that the relevant period of plaintiffs' claims as to decedent's use of contaminated talc in Avon's talc powder product's must end as of 2004. WCD did not sell, distribute or supply the talc plaintiff alleges was contaminated after 2004. Plaintiffs do not provide proof or raise an issue of fact on whether WCD sold, distributed or supplied asbestos contaminated talc to Avon for use in its talcum powder products decedent purchased after 2004. WCD is granted summary judgment on plaintiff's claims asserted against WCD for the period after 2004.

WCD argues that it cannot be found liable as a supplier of asbestos contaminated talc because Avon used multiple suppliers during the period relevant to decedent's alleged exposure and its raw talc products were tested with a finding of no detectible asbestos fibers. WCD further argues that there is no causation because cosmetic talc does not cause peritoneal mesothelioma.

To prevail on a motion for summary judgment the proponent must make a prima facie showing of entitlement to judgment as a matter of law, through admissible evidence, eliminating all material issues of fact (*Klein v City of New York*, 81 N.Y. 2d 833, 652 N.Y.S. 2d 723 [1996]). It is only after the burden of proof is met that the burden switches to the nonmoving party to rebut that prima facie showing, by producing contrary evidence in admissible form, sufficient to require a trial of material factual issues (*Amatulli v Delhi Constr. Corp.*, 77 N.Y. 2d 525, 569 N.Y.S. 2d 337 [1999]). In determining the motion, the court must construe the evidence in the light most favorable to the non-moving party by giving the non-moving party the benefit of all reasonable inferences that can be drawn from the evidence (*SSBS Realty Corp. v Public Service Mut. Ins. Co.*, 253 A.D. 2d 583, 677 N.Y.S. 2d 136 [1st Dept. 1998]).

WCD argues that plaintiffs cannot provide evidence or raise an issue of fact as to WCD's liability as a supplier of talc, make content identification on the talc

sold to Avon, or otherwise show WCD's talc was contaminated with asbestos. WCD further argues that plaintiffs' experts cannot establish causation from Avon products containing WCD talc, warranting summary judgment.

A defendant cannot obtain summary judgment simply by "pointing to gaps in plaintiffs' proof" (*Ricci v. A.O. Smith Water Products*, 143 A.D. 3d 516, 38 N.Y.S. 3d 797 [1st Dept. 2016] and *Koulermos v A.O. Smith Water Prods.*, 137 A.D. 3d 575, 27 N.Y.S. 3d 157 [1st Dept. 2016]). Regarding asbestos, a defendant must make a prima facie showing that its product could not have contributed to the causation of Plaintiff's illness (*Comeau v W. R. Grace & Co.- Conn. (Matter of New York City Asbestos Litig.)*, 216 AD2d 79, 628 NYS2d 72 [1st Dept. 1995] citing to *Reid v. Georgia - Pacific Corp.*, 212 A.D.2d 462, 622 N.Y.S. 2d 946 [1st Dept. 1995], *DiSalvo v. A.O. Smith Water Products (In re New York City Asbestos Litigation)*, 123 A.D. 3d 498, 1 N.Y.S. 3d 20 [1st Dept. 2014] and *O'Connor v. Aerco Intl., Inc.*, 152 A.D. 3d 841, 57 N.Y.S. 3d 766 [3rd Dept. 2017]). WCD must unequivocally establish that the decedent either was not exposed to asbestos from their products, or that the levels of asbestos she was exposed to were not sufficient to contribute to the development of her mesothelioma (*Berensmann v. 3M Company (Matter of New York City Asbestos Litig.)*, 122 A.D. 3d 520, 997 N.Y.S. 2d 381 [1st Dept. 2014]).

WCD's arguments as to the plaintiffs' lack of evidence and inability to establish liability, amount to "pointing to gaps in plaintiff's proof" and are not a prima facie basis to obtain summary judgment.

WCD claims that it has no records prior to 1975 to establish whether talc was sold to Avon during the period of 1960 through 1974. WCD claims that its records for the remaining period of plaintiff's alleged exposure, 1975 through 2004, identifies sixteen grades of talc sold to Avon, specifically Talc Grades: 1, 123, 141, 1525, 1621, 1623, 1625, 2278, 2450, 2462, 2755, 2923, 3300, 3355, 3465, and 3468. WCD argues that Avon used multiple raw talc suppliers and there is no evidence of which supplier's talc was used by Avon to make the talcum powder products that are alleged to have exposed the decedent to asbestos. WCD claims that the only affirmative evidence that Avon used WCD's talc shows the talc was not contaminated with asbestos, and the regions WCD's talc was sourced from were known to be "asbestos free."

WCD provides formula cards and raw ingredient specifications lists with multiple approved talc codes to establish that plaintiffs have no means of telling which talc could have been used, or the ingredients in any of Avon's "Imari," "Unforgettable," and "Wild Country" talcum powder products that decedent alleged she or her husband used during the relevant time periods (Mot. Ex. L, M, N and O). WCD does not meet its prima facie burden with this proof. The burden is on WCD to prove that none of Avon's talc powder products used by the decedent and her husband during the relevant time period contained any talc supplied, sold or distributed by WCD, or that the talc sold, distributed or supplied by WCD did not contain asbestos. The burden does not shift to the plaintiffs until WCD makes a prima facie case.

Additionally, plaintiffs also provide the formula batch cards for Avon's "Unforgettable" which show various grades of talc, in addition to the ones identified by WCD (Opp. Exh. E). Plaintiffs cite to deposition testimony to establish that WCD acted as a sales agent for other miners and millers of raw talc and a 1972 memo stating that WCD was Charles Mathieu's sales agent with a "common talc source" (Opp. Exh. F, pg. 77, and Exh. G). Plaintiffs have provided proof sufficient to raise an issue of fact as to whether WCD supplied, sold or distributed the alleged asbestos contaminated talc to Avon during the period relevant to decedent's exposure, including prior to 1975.

WCD claims that there is no asbestos contamination from their products because: (1) the talc was sourced from "asbestos free" mines, (2) there were internal tests to ensure the lack of contamination and (3) both government and independent tests confirmed the product was asbestos free. It is WCD's

contention that decedent was not exposed to asbestos through use of Avon products that contained WCD's talc, and that it did not cause her mesothelioma.

WCD contends that summary judgment is warranted under *Parker v Mobil Oil Corp.*, 7 NY3d 434, 824 NYS2d 584, 857 NE2d 1114 [2006], *Cornell v 360 West 51st Street Realty, LLC*, 22 NY3d 762, 986 NYS2d 389, 9 NE3d 762 [2014] and in the *Matter of New York City Asbestos Litigation (Juni)*, 32 N.Y. 3d 1116, 116 N.E. 3d 75, 91 N.Y.S. 3d 784 [2018], because plaintiffs are unable to establish general and specific causation.

General Causation:

In toxic tort cases, expert opinion must set forth (1) a plaintiff's level of exposure to a toxin, and (2) whether the toxin is capable of causing the particular injuries plaintiff suffered to establish general causation (*Parker v. Mobil Oil Corp.*, 7 NY3d 434, 448, *supra*).

WCD relies on the findings of the U.S. Food & Drug Administration (1971, 1976, 1986), U.S. Dept. of Health and Human Services (1985, 1994) and World Health Organization (WHO)(1987 and 2010) as establishing that cosmetic talc is safe and does not increase the risk of developing mesothelioma (Mot. Exhs. X, Y, Z, AA, BB, CC and RR).

WCD also relies on the expert affidavit of Alan M. Seagrave, Professional Geologist (P.G.), prepared for an unrelated action, to establish that the decedent had no level of exposure to asbestos from the raw talc it sold, delivered or distributed (Mot. Exh. P). Mr. Seagrave's February 15, 2019 report summarizes available literature on regions from where WCD talc was sourced, specifically Val Chinsone, Italy, Murphy, North Carolina, Southwest Montana and Alpine, Alabama from 1972 through 1998 (Mot. Exh. P, pgs. 13-20 of 50). Mr. Seagrave refers to the Occupational Safety and Health Administration (OSHA) not making any distinction between asbestos and tremolite fibers until 1992 (Mot. Exh. P, pgs. 8-9 and 13-20 of 50). Mr. Seagrave cites to reports and standards from various individuals and entities, including the U.S. Environmental Protection Agency (EPA), and WHO, as further establishing that the WCD talc from mines in various regions was not contaminated. Mr. Seagrave also summarizes testing performed on talc from 1971 through 1987. Mr. Seagrave states that testing of Avon Products Inc. talc for the period of 1971 through 1987 shows no detectable asbestos minerals were in WCD Talc Grades: 1, 141, 1621, 1623, 2450, 2755 and 3300 (Mot. Exh. P, pg. 27 of 50). Mr. Seagrave also reports on testing performed on a sample from the Mill in Guangxi, China, and states no asbestos was detected (Mot. Exh. P).

Plaintiffs in opposition raise an issue of fact by providing Avon's reports of testing in the early 1970s through X-ray diffraction of talcs that found asbestos fibers, including a 1971 report that found tremolite in "significant quantities," and 1972 testing done by ES Laboratories on behalf of WCD that found chrysotile asbestos fibers in WCD's talc (Opp. Exhs. P, Q and S). Plaintiff also provides the October 16, 1973 report of Ernest F. Fullam, Inc. on behalf of WCD that found chrysotile and amphibole fibers (Opp. Exh. V).

Plaintiffs also provide the August 1, 2017 report of Dr. Steven P. Compton, Ph.D., assessing and testing thirteen of the Italian talc samples obtained by WCD's expert Mr. Alan Seagrave (Opp. Exh. X). Dr. Compton performed TEM analysis, Energy Dispersive Spectrometry (EDS), and Selected Area Electron Diffraction (SAED). Dr. Compton detected amphibole fibers in eleven of the thirteen samples analyzed. He determined that "the primary fibrous contaminants are anthophyllite and tremolite/actinolite and the asbestos content of the samples ranged from approximately 1.7 to 660 million fibers per 0.0002% to 0.68% by weight." Dr. Compton states "Fiber release studies of consumer talc products within this range documented elevated concentrations of airborne asbestos fibers during use of those products"(Opp. Exh. X).

These reports used by plaintiffs, contradict the findings of WCD's expert, Mr. Seagrave, and raise issues of fact as to WCD's claim that the talc it sold, supplied and distributed was properly deemed from "asbestos free" mines, and that internal tests ensured the lack of contamination.

Plaintiffs also provide the December 26, 2017 report of Dr. Jacqueline Moline, M.D., a medical doctor specializing in occupational and environmental disease (Opp. Exh. EE). Dr. Moline reviewed the decedent's clinical history, past medical history, occupational and environmental history, and deposition testimony. She refers to studies, reports and findings from OSHA, the WHO and the Food and Drug Administration (FDA) stating that asbestos is a known carcinogen and that asbestos fibers have been reported in cosmetic talcum powder for decades. Dr. Moline concludes decedent's peritoneal mesothelioma is a result of her use of asbestos contaminated talcum powder (Opp. Exh. EE).

WCD argues that summary judgment is warranted under *Cornell v. 360 West 51st Street Realty, LLC*, 22 NY3d 762, 986 NYS2d 389, 9 NE3d 762 [2014] because plaintiffs are unable to establish general causation. In *Cornell*, 22 NY3d 762, supra, the defendant-corporation established a prima facie case as to general causation establishing generally accepted standards within the relevant community, of scientists and scientific organizations, that exposure to mold caused disease in three ways, none of which were claimed by the plaintiff. This case is distinguishable because plaintiffs' expert, Dr. Moline, is relying on some of the same scientists and scientific organizations as defendant's experts to show there is general causation.

Summary judgment is a drastic remedy that should not be granted where conflicting affidavits cannot be resolved (*Millerton Agway Cooperative v. Briarcliff Farms, Inc.*, 17 N.Y. 2d 57, 268 N.Y.S. 2d 18, 215 N.E. 2d 341 [1966] and *Ansah v. A.W.I. Sec. & Investigation, Inc.*, 129 A.D. 3d 538, 12 N.Y.S. 3d 35 [1st Dept., 2015]). Conflicting testimony raises credibility issues that cannot be resolved on papers and is a basis to deny summary judgment (*Messina v. New York City Transit Authority*, 84 A.D. 3d 439, 922 N.Y.S. 2d 76 [2011]).

WCD's expert Mr. Segrave, P.G. relies on his own testing, studies and reports to establish that there is no causal relationship between tremolite fibers in WCD's talc and mesothelioma. Plaintiffs' expert Dr. Jacqueline Moline, M.D. also relies on studies and reports in part from the same scientific organizations to establish that exposure to asbestos fibers can cause mesothelioma. These conflicting affidavits raise credibility issues, and issues of fact on general causation.

Additionally there remain issues of fact because Mr. Seagrave's report dated February 15, 2019 was prepared for an unrelated action and does not specifically assess decedent's exposure to WCD's talc sold to Avon for their talc powder products "Imari" and "Wild Country" during the relevant time period. Mr. Seagrave made no assessment on the remaining nine out of sixteen Talc Grades it alleges were sold to Avon for use in talcum powder products relevant to decedent's alleged exposure from 1975 through 2004.

Special Causation:

WCD states that to the extent its talc did contain asbestos, it did not cause decedent's peritoneal mesothelioma, and thus plaintiffs are unable to establish special causation.

The Court of Appeals has enumerated several ways an expert might demonstrate special causation. For example, "exposure can be estimated through the use of mathematical modeling by taking a plaintiff's work history into account to estimate the exposure to a toxin." The "[c]omparison to the exposure levels of subjects of other studies could be helpful, provided that the expert made a

specific comparison sufficient to show how the plaintiff's exposure level related to those of the other subjects" (Parker v. Mobil Oil Corp., 7 NY3d 434, 448, 824 NYS2d 584, 857 NE2d 11114 [2006]). In toxic tort cases, an expert opinion must set forth "that the plaintiff was exposed to sufficient levels of the toxin to cause such injuries" to establish special causation (see Parker v. Mobil Oil Corp., 7 NY3d 434, supra at 448]). In turn, the Appellate Division in the case *In re New York City Asbestos Litigation*, 148 AD3d 233, 48 NYS3d 365 [1st Dept. 2017] held that the standards set by *Parker* and *Cornell* are applicable in asbestos litigation.

Plaintiffs on special causation rely on the reports of Dr. William E. Longo, Doctorate of Philosophy in Materials Science and Engineering, employed by MAS, Analytical Services, LLC and Jacqueline Moline, M.D. (Opp. Exhs. CC and EE).

Dr. Longo performed Transmission Electron Microscopy (TEM), Selected Area Diffraction (SAED) and Energy Dispersive Spectroscopy (EDXA) on the talc found in two historic samples of Avon's "Unforgettable" perfumed talc. Dr. Longo's report analyzed the results of his testing and found asbestos fibers or bundles with at least a 5 to 1 ratio in the "Unforgettable" samples (Opp. Exh. CC).

Dr. Moline relies on Dr. Longo's testing, and Dr. Seymour Lewin's report of testing performed in 1972 that found chrysotile and tremolite fibers in WCD's talc (Opp. Exh. T), decedent's testimony of exposure to Avon's products containing WCD talc, and fiber release studies involving talc powder using the same source mines. Dr. Moline concludes decedent's mesothelioma was a result of exposure to asbestos contaminated talcum powder (Opp. Exh. EE).

WCD does not provide experts that specifically assess decedent's peritoneal mesothelioma or the alleged lack of causation from her exposure to WCD's talc in Avon's "Unforgettable," "Imari" and "Wild Country" talcum powder during the relevant period. The expert affidavits, the "reasonable inference" standard and construing the evidence in a light most favorable to the plaintiffs as the non-moving party, warrants denial of the summary judgment sought by WCD. Plaintiffs have sufficiently raised credibility issues and issues of fact as to general and specific causation, requiring a trial of this matter.

Additionally WCD's argument that the specific Avon talc powder and bottles of "Unforgettable," "Imari" and "Wild Country" used by the decedent and her husband were not tested and that there is no direct evidence of exposure to asbestos from WCD talc, is not dispositive. Plaintiffs are not required to show the precise causes of decedent's damages, but only show facts and conditions from which WCD's liability may be reasonably inferred. The opposition papers have provided sufficient proof to create an inference as to specific causation for WCD's talc (Oken v A.C. & S. (*Matter of New York City Asbestos Litig.*), 7 A.D. 3d 285, 776 N.Y.S. 2d 253 [1st Dept. 2004], Parker v. Mobil Oil Corp., 7 N.Y. 3d 434, supra at pg. 448, and Cornell v. 360 West 51st Street Realty, LLC, 22 N.Y. 3d 762, 9 N.E. 3d 884, 986 N.Y.S. 2d 389 [2014]).

"In asbestos-related litigation, the plaintiff on a summary judgment motion must demonstrate that there was actual exposure to asbestos from the defendant's product" (Cawein v Flintkote Co., 203 AD2d 105, 610 NYS2d 487 [1st Dept 1994]). The Plaintiff need "only show facts and conditions from which defendant's liability may be reasonably inferred" (Reid v Ga.-Pacific Corp., 212 AD2d 462, 622 NYS2d 946 [1st Dept. 1995]). A plaintiff's inability to recall exact details of the exposure is not fatal to the claim and should not automatically result in the granting of summary judgment (Lloyd v W.R. Grace & Co., 215 AD2d 177, 626 NYS2d 147 [1st Dept. 1995]). Summary judgment must be denied when the plaintiff has "presented sufficient evidence, not all of which is hearsay, to warrant a trial" (Oken v A.C. & S. (*In re N.Y.C. Asbestos Litig.*), 7 AD3d 285, 776 NYS2d 253 [1st Dept. 2004]).

Decedent's deposition testimony, the reports of Dr. Longo and Dr. Moline, and the other evidence plaintiffs presented sufficiently create "facts and conditions from which [WCD's] liability may be reasonably inferred" (Reid v Ga-Pacific Corp., 212 AD 2d 462, supra), and raise issues of fact. There remain issues of fact as to whether WCD's talc was contaminated with asbestos, and whether WCD's talc used in Avon's talc products, "Unforgettable," "Imari" and "Wild Country," during the relevant periods exposed decedent to asbestos and caused her peritoneal mesothelioma, further warranting denial of summary judgment.

Plaintiffs have also raised issues of fact as to the cause of action for punitive damages. The purpose of punitive damages is to punish the defendant for wanton, reckless or malicious acts and discourage them and other companies from acting that way in the future (Ross v. Louise Wise Servs., Inc., 8 N.Y. 3d 478, 868 N.E. 2d 189, 836 N.Y.S. 2d 590[2007]). To the extent WCD argues it has closed its traditional business operations effective 2004 and does not sell minerals, that does not preclude the imposition of punitive damages as a deterrent. Plaintiffs' claim that WCD conducted testing and found both chrysotile and tremolite asbestos throughout the 1970's and continued to advocate for the use of its talc as uncontaminated and for the use of XRD testing that would not be able to find any asbestos. To the extent WCD allegedly placed corporate profits and reputation above the health and safety of the decedent and WCD's continued insistence that there is no asbestos in its talc, the issue of punitive damages is to be determined by the trial judge after submission of all the evidence.

ACCORDINGLY, it is ORDERED that defendant Whittaker Clark & Daniels, Inc.'s motion pursuant to CPLR §3212 for summary judgment dismissing the complaint and all cross-claims asserted against it, is granted only to the extent of dismissing plaintiffs' claims asserted against Whittaker Clark & Daniels, Inc. for the period after 2004, and dismissing plaintiff's claims asserted against Whittaker Clark & Daniels, Inc. based on sales to Johnson & Johnson for use in Johnson's Baby Powder for the period of 1976 through 1983, and it is further,

ORDERED that plaintiff's claims asserted against Whittaker Clark & Daniels, Inc. for the sale, distribution or supply of asbestos contaminated talc to the manufacturer's of talc powder she used after 2004, are severed and dismissed, and it is further,

ORDERED that plaintiff's claims asserted against Whittaker Clark & Daniels, Inc. alleging it sold, distributed or supplied asbestos contaminated talc to Johnson & Johnson for use in Johnson's Baby Powder for the period of 1976 through 1983, are severed and dismissed, and it is further,

ORDERED that Whittaker Clark & Daniels, Inc. is directed to serve a copy of this Order with Notice of Entry pursuant to NYSCEF e-filing protocol on the remaining parties, the trial support clerk located in the General Clerk's Office and the County Clerk's Office, who are directed to mark their records accordingly, and it is further,

ORDERED that the remainder of the relief sought in this motion is denied.

ENTER:

Dated: June 21, 2019



MANUEL J. MENDEZ
J.S.C.

MANUEL J. MENDEZ
J.S.C.

Check one: FINAL DISPOSITION NON-FINAL DISPOSITION
Check if appropriate: DO NOT POST REFERENCE