

**Matter of New York City Asbestos Litig.
v All Defendants**

2023 NY Slip Op 30352(U)

January 31, 2023

Supreme Court, New York County

Docket Number: Index No. 782000/2017

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

-----X

IN RE. NEW YORK CITY ASBESTOS LITIGATION,

Plaintiff,

- v -

ALL DEFENDANTS IN RE. NEW YORK CITY ASBESTOS LITIGATION,

Defendant.

-----X

INDEX NO. 782000/2017
MOTION DATE N/A
MOTION SEQ. NO. 007

DECISION + ORDER ON MOTION

The following e-filed documents, listed by NYSCEF document number (Motion 007) 2883, 2884, 2885, 2886, 2887, 2888, 2889, 2890, 2891, 2892, 2893, 2894, 3078, 3083, 3225, 3226, 3227, 3228, 3229, 3230, 3231, 3232, 3233, 3234, 3277

were read on this motion to/for MISCELLANEOUS

Upon the foregoing documents, and after oral arguments, it is hereby ordered that defendants order to show cause appealing the Special Master's recommendation of December 28, 2021 (hereinafter referred to as the "Special Master's Recommendation"), regarding standard talc interrogatories, is decided as detailed below.

The Court notes that in the New York City Asbestos Litigation (hereinafter referred to as "NYCAL"), the Special Master supervises discovery such as the adequacy of discovery responses, production of documents, the completion of depositions, and other discovery disputes that may arise.

Here, a discovery dispute arose regarding interrogatories in the actions involving talcum powder, in which the Special Master recommended a set of standard interrogatories for such actions filed in NYCAL. The first talc action was filed in 2008. Since such date, discovery disputes have plagued the actions involving talc. From 2008 through the present, each individual talc action has had individualized interrogatories rather than a standard set of interrogatories such

as the standard discovery in other NYCAL actions. In an attempt to streamline discovery, the Special Master met and conferred with counsel for plaintiffs and defendants to come up with a standard set of interrogatories specifically for talc cases.

By recommendation dated December 28, 2021, and after months of conferences with plaintiffs and defendants, the Special Master ordered a standard set of interrogatories for talc actions in NYCAL. Thereafter, moving defendants timely appealed the Special Master's Recommendation arguing that the Special Master disregarded all of the demands which were negotiated by plaintiffs' and defendants' counsel, adopted the entirety of plaintiffs' original demands, and neglected to address defendants' need for standard discovery from plaintiffs. Defendants further argue that the Special Master is not authorized by the CMO to promulgate standard discovery. Rather, defendants contend that the role of the Special Master is to supervise compliance with discovery. Thus, defendants seek to vacate the Special Master's Recommendation, for the adoption of defendants' proposed set of standard interrogatories, or to direct plaintiffs to negotiate a mutually agreed upon set of standard interrogatories, or to remand the issue to the current Special Master for consideration and recommendation.

In opposition, plaintiffs' argue that moving defendants ignore the Special Master's Recommendation in making its arguments. According to plaintiffs, the Special Master's Recommendation was a revised set of interrogatories she proposed in July of 2021 which later encompassed changes agreed upon by both plaintiffs and defendants. However, plaintiffs contend that moving defendants refer to a prior ruling made by the Special Master in a separate and specific case, rather than the negotiated standard set of interrogatories at issue herein. Plaintiffs argue that for the past 14 years, defendants have delayed resolution of discovery in talc cases and here, are attempting to evade discovery with the instant motion. Without a standard set

of interrogatories for talc actions, plaintiffs contend that for the past 14 years they have been drafting individual sets of interrogatories per each talc action, seeking Special Master approval to serve and file such individualized interrogatories, and engaged in motion and appellate practice just to obtain standard discovery in talc actions. Plaintiffs argue that the Special Master's Recommendation came after numerous months of negotiations and should be upheld as an expeditious manner in which to proceed with discovery in talc actions moving forward.

In reply, moving defendants argue that they seek only the opportunity for the Special Master to consider their proposed interrogatories. According to defendants', the Special Master ignored all of defendants' proposed interrogatories while rubber stamping all of plaintiffs' proposed interrogatories. Defendants further argue that the Special Master's Recommendation is overburdensome as the approved interrogatories encompass 228 questions and 107 demands whereas standard discovery in NYCAL consists of 87 questions and 35 demands.

Here, the Special Master did not exceed her authority in recommending a standard set of interrogatories for talcum litigation, as this Court specifically requested that she work with plaintiffs and defendants to work on a standard set. Furthermore, contrary to moving defendants' insistence that the Special Master's Recommendation approved all of plaintiffs' proposed interrogatories while ignoring defendants' proposed interrogatories, a review of the papers herein reveals that, in fact, defendants and plaintiffs conferred for months to work on a set of agreed upon interrogatories. This Court, having heard arguments regarding this issue in 2021, suggested that both sides come together to work out a mutually agreed upon set of interrogatories. At the end of July 2021, this Court requested that counsel complete this task within 30 days. After requests for additional time, which was granted by this Court, counsel worked for months and were able to agree upon certain changes to the set of interrogatories initially recommended by

the Special Master in July of 2021. Thus, defendants' argument that the Special Master rubber stamped all of plaintiff's proposed interrogatories fails, as the parties worked together and agreed upon certain changes and deletions to the interrogatories which were ultimately adopted by the Special Master in her December 28, 2021 Recommendation.

Defendants' argument that the interrogatories are unduly burdensome also fails. Comparison of the number of interrogatories with the standard discovery in NYCAL is not proof of undue burden. It is undisputed that actions involving talcum powder differ from the other actions in NYCAL. Thus, discovery in talcum powder actions cannot be expected to mirror the standard discovery already set forth in NYCAL actions. The CMO is clear that "[o]bjections to discovery based on burdensomeness shall describe the burden with reasonable particularity. Any objection to the time, place or manner of production, or as to burdensomeness, shall state a reasonable available alternative as a counterproposal." CMO, §IX. J. Here, defendants failed to establish that the set of interrogatories recommended by the Special Master is unduly burdensome.

It has been established that plaintiff and defense counsel were to work together, under the supervision of the Special Master, to come up with a set of standard interrogatories for talcum powder cases. The Court notes that, for speedy and efficient discovery to occur in talc litigation, it is undoubtedly necessary for a standard set of interrogatories to be promulgated for all actions involving talcum powder in NYCAL. The alternative would dictate that additional motions, all of which would be redundant, be filed in every talc action in NYCAL such as a motion to serve individualized interrogatories. As such, and for the reasons stated above, the Special Master's recommendation regarding standard talc interrogatories is affirmed.

Accordingly, it is

ORDERED that the Special Master's December 28, 2021 recommendation is affirmed;
and it is further

ORDERED that the Special Master's set of interrogatories shall forthwith be the standard
set of interrogatories for all actions involving talcum powder in NYCAL.

This constitutes the Decision/Order of the Court.



ADAM SILVERA, J.S.C.

1/31/2023
DATE

CHECK ONE:	<input type="checkbox"/>	CASE DISPOSED	<input checked="" type="checkbox"/>	NON-FINAL DISPOSITION	
APPLICATION:	<input type="checkbox"/>	GRANTED	<input checked="" type="checkbox"/> DENIED	GRANTED IN PART	<input type="checkbox"/> OTHER
CHECK IF APPROPRIATE:	<input type="checkbox"/>	SETTLE ORDER		SUBMIT ORDER	
	<input type="checkbox"/>	INCLUDES TRANSFER/REASSIGN		FIDUCIARY APPOINTMENT	<input type="checkbox"/> REFERENCE