



# WALSWORTH

Los Angeles | Orange County | San Francisco



## 2023 Asbestos Litigation Year In Review

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### What's Inside:

Volume of Cases and Overall Filing Trends	1
Trends Associated with San Francisco Superior Court	2
Trends Associated with Alameda Superior Court	2-3
Trends Associated with Los Angeles County Superior Court	3-5
Changes in the Law That Concern All California Jurisdictions	5-6
Noteworthy Rulings	6-7
Cases to Watch in 2024	8
Recent California Asbestos Litigation Verdicts	8-10
About Walsworth	11



We are now in 2024, and it is time to look back and evaluate the changes the year 2023 brought with it. Our team at Walsworth is happy to present you with a comprehensive overview of the status of claims, trends, and recent case law impacting asbestos litigation in California over the past year.

## [Volume of Cases and Overall Filing Trends](#)

Statewide filings of asbestos cases in California stayed consistent between 2022 and 2023. However, the locations of those filings changed, decreasing significantly in Alameda County and increasing in Los Angeles County.

### **San Francisco Superior Court**

San Francisco had the same number of filings in 2023 as in 2022, with 90 new matters. There were 14 mesothelioma cases (compared to 17 in 2022), 27 lung cancer (18 in 2022), 26 asbestosis (35 in 2022), and 23 “other” cancers (20 in 2022). Brayton Purcell dominated filings in San Francisco by originating 85 of the 90 cases. Maune Raichle and Pearce Lewis each had two filings, and Gold Law rounded out the year with one new case.

### **Alameda County Superior Court**

Alameda saw a 15% decrease from 2022 in the number of filings, with only 67 new cases compared with 2022’s 78 new filings. This number is still up from 2021’s 64 filings. The number of mesothelioma cases dropped slightly to 61 compared to last year’s 69. Interestingly, the number of lung cancer matters stayed the same at five, while there was only one asbestosis matter (three in 2022) and no other cancers (compared to one in 2022). In terms of who had the most filings in 2023, Kazan Law topped the pack with 24 new cases, but Maune Raichle followed closely with 21 new matters. Brayton Purcell and Weitz & Luxenberg each filed five, followed by Simmons Hanly, Simon Greenstone, Frost Law, and Gold Law, all filing two new cases each. Rounding out the cases for 2023, Jones & Bendon, Nideffer Law, Pearce Lewis, and Waters Kraus each filed one new matter.

### **Southern California**

In Southern California, including Los Angeles County, Orange County, Ventura County, Santa Barbara County, and San Diego County, we saw a 17% increase in filings, from 126 in 2022 to 151 in 2023. Of the matters filed, 141 were claimed to be mesothelioma matters, seven were lung cancer, one was renal cancer, and two were asbestosis. Although the majority of those filings were “traditional” asbestos cases, we also saw an upward trend of alleged contaminated talc filings. Waters Kraus led the filings with 33 in 2023, followed by Simmons Hanly with 23, Weitz & Luxenberg with 21, and Simon Greenstone and Maune Raichle with 15. We also saw filings from Deblase Brown and Frost Law with seven each; Dean Omar, Brayton Purcell, Kazan McClain, The Gori Law Firm, and Pearce Lewis with four each; Lanier and Gold Law with two each; and Joshua Paul and Jones & Bendon with one each. This year we saw a return of the Madeksho Law Firm, which filed two matters with Florida-based Vinson Law.



## Trends Associated with San Francisco Superior Court

### **New Asbestos Coordinating Judge Assignment and Streamlining of Case Handling**

After Judge Feng's brief stint presiding over San Francisco asbestos matters, Judge Anne-Christine Massullo has been appointed presiding judge in San Francisco Superior Court beginning in January 2024. Per her appointment, she will serve in this position for a two-year term. Judge Rochelle East will be the assistant presiding judge and will be handling the asbestos matters going forward. Important administrative changes are also being made to her department; the asbestos and California Environmental Quality Act ("CEQA") departments are being combined in an effort to streamline handling and move matters more quickly toward resolution. Now that asbestos and CEQA cases are being consolidated in a single courtroom, the court will gain an additional civil department to try these matters, making a total of six available trial courtrooms.

Judge East received her B.A. from Stanford University and her J.D. from the University of San Francisco School of Law. From 1983 to 1993, Judge East served in the United States Navy. She began her legal career in 1996 working as an associate attorney at Schachter Kristoff Orenstein and Berkowitz. Judge East left the firm four years later to join the Office of the Attorney General of the California Department of Justice as deputy attorney general. For a short period in 2004, she worked as a foreign service officer for the United States Department of State in Haiti. In 2013, Judge East was appointed by Governor Jerry Brown to the San Francisco County Superior Court and assumed her judicial role, after occupying the position of chief deputy attorney general in the California Department of Justice. Her current term ends in January 2027.

Changes have also been made to the handling of mandatory settlement conferences ("MSC"), aimed at improving resolution at MSC with a judge who has knowledge of the facts of the case and a better understanding of the parties involved. Going forward, the Court's ADR Coordinator, Rexanne Biserra, will set MSCs in preference cases and cases which are coming close to the five-year statute of limitations to advance to trial. Trial judges will be made available for MSCs in those matters for one full day of a settlement conference, with the parties required to appear in person. The parties must submit formal MSC briefs, which detail their last and best offer. If the case does not resolve on that first day, then the parties may request a second, two-hour conference with the same judge after the start of trial. One additional two-hour session may also be granted later in trial. Depending upon availability of trial judges, MSCs might also be set in cases where all parties request one.

## Trends Associated with Alameda Superior Court

Judge McKinney continues his oversight of the Alameda asbestos docket, and he is steadily working to streamline cases and update general discovery.

### **Discovery Issues**

Standard Interrogatory Updates: Alameda's "Dieden" interrogatories were drafted in 1989 and have never been amended, but Judge McKinney recently agreed that revisions are needed given the change in focus of asbestos litigation over the decades. Those revisions would include delving into the expanded scope of asbestos litigation, including talc-based exposures and other issues not seen in 1989. Judge McKinney has asked that a committee be established to propose and evaluate requested changes, and it is anticipated that the conversations on this subject will continue throughout 2024.



## Trends Associated with Alameda Superior Court (Cont.)

First Look and Privilege Log Redactions: Redactions of plaintiffs' medical records have been an issue frequently addressed in Alameda County cases, as some asbestos plaintiffs' firms, including Maune Raichle and Kazan Law, have been taking an aggressive approach to redacting medical records. The Maune firm has particularly taken the novel position that their "first look" at documents triggers a 45-day deadline for defendants to challenge any redactions and move to compel unredacted information. In the recent matter of *William Teach v. ABB, Inc., et al.* (No. 23CV039252), Judge McKinney agreed with defendants that plaintiffs' redactions of names, religious affiliations, and phone numbers were excessive, but exactly what information plaintiffs can redact and how redactions should be challenged are ongoing issues and will continue to be the topic of conferences and motion practice in 2024.

Pathology and Genetic Testing: The long-fought battle concerning pathology and privacy of genetic testing information remains a hot and highly contentious topic. Judge McKinney's predecessor, Judge Jo-Lynne Lee, issued a number of rulings on the subject that plaintiffs' counsel argued were aimed to protect the privacy rights of plaintiffs. Defendants argued that plaintiffs waived their privacy rights by putting their medical condition at issue. Judge McKinney's rulings have, for the most part, echoed Judge Lee's, still leaving unanswered questions as to whether or not defense experts are prohibited from publishing genetic information or all medical information. Since this dispute spearheaded by Maune Raichle is now being advanced by other plaintiffs' firms, we anticipate further motion practice addressing this issue in 2024.

### **Trials**

Throughout the pandemic, trials were routinely conducted remotely, often for half days. This schedule, with frequent Friday "dark" days, became favored by the attorneys on both sides, although some defendants believe it lengthens total trial time and results in volunteer jurors who are not otherwise gainfully employed. We currently anticipate this shorter trial day trend will continue in 2024.

## Trends Associated with Los Angeles County Superior Court

Judge Seigle continues to preside over all coordinated asbestos matters in Southern California. She runs a tight ship and continues to focus her efforts on cleaning up the asbestos docket, from the initial stages of the matter all the way through trial assignment and resolution. As part of her efforts to tidy up the docket, Judge Seigle has continued to hold all parties' feet to the fire, granting few trial continuances, and then only after the parties provide detailed status updates, including litigation plans for cases that she deems old. She has issued many key orders aimed at expediting cases, including the following.

### **Initial Pleadings and Dispositive Motions**

Unlike other recent coordinating judges, Judge Seigle has granted some demurrers and motions to strike plaintiffs' complaints for fraud, intentional tort, and punitive damages. While plaintiffs are almost always permitted to amend their complaints, Judge Seigle's willingness to require plaintiffs to provide detail in their causes of action is a sharp departure from situations in years past, when defendants typically did not learn of the scope of plaintiffs' claims or potential evidence until the discovery phase. Along these same lines, Judge Seigle has continued to grant summary adjudication motions when warranted on plaintiffs' causes of action for fraud, fraudulent misrepresentation, intentional tort, failure to warn, concealment, conspiracy, and punitive damages.



## Trends Associated with Los Angeles County Superior Court (Cont.)

### Discovery

Judge Siegle has also made clear she is a stickler for the rules on the discovery front. In a recent ruling, she granted a motion *in limine* prohibiting the use of an expert at trial when the proffering party's expert designation was deemed faulty. In that case, defendant had designated an expert it purported had agreed to testify about issues related to "naval and/or commercial shipbuilding," "various insulation materials used in ship construction and repair," Navy involvement in "the design and manufacture of equipment intended for use on Navy vessels," government involvement in ship construction and repair, knowledge about asbestos hazards in the shipping industry, and Navy and commercial shipping programs for the elimination of asbestos. When the expert attempted to testify instead regarding "asbestos-containing materials in buildings at U.S. government and U.S. military facilities" and plaintiff's work with asbestos cement pipe at Camp Pendelton, Judge Siegle commented that "defendant should have known that its expert designation was not accurate, and that the expert was not really going to opine about ships." Because defendant had failed to provide an accurate narrative statement of what the expert's opinion would encompass, and instead used a "cut and paste" generic expert designation, Judge Siegle barred that expert from testifying.

Following the 2022 California Supreme Court decision in *Berroteran v. Superior Court* (2022) 12 Cal.5th 867, Judge Seigle and her predecessor, Judge Lawrence Riff, also issued a detailed case management order to parties that seek to use the prior testimony of corporate representatives in trial. The order requires that when a party seeks to present former deposition testimony, the parties must meet and confer regarding whether the testimony proposed to be used is admissible under *Berroteran*. If the parties do not stipulate to admissibility, then the party seeking to present the testimony is required to file and serve, along with its initial page-line designations, a trial brief of three pages or less that addresses how the *Berroteran* factors have been satisfied. To establish admissibility, the moving party must demonstrate that the parties intended, at the outset, that the deposition testimony at issue was to be used as trial testimony – i.e., trial preservation. Judge Seigle's adherence to these requirements has created a substantial hurdle for plaintiffs to overcome when trying to use prior testimony against a corporate defendant, and not coincidentally, it has reduced the amount of time spent by the parties and trial courts addressing page-line designations.

Just before the Memorial Day holiday, defendants were alerted that the designated records vendor, Pike Photocopy, was shutting down and would no longer be operating as of September 30, 2023. After the initial shock, defendants formed a committee to investigate, review numerous proposals, and interview dozens of potential vendors to take over the functions that Pike served. This led to the eventual appointment of Lexitas in early July. Upon appointment, Lexitas held training for all who wanted to attend. The transition has been relatively easy, with only minor and expected hiccups along the way.

### Trial Preparations

Methods of submitting trial binders to the court have gradually evolved over the years from lodging boxes full of binders to simply providing the court with a USB drive. However, it appears that the USB drive era has come to an end. Consistent issues with ever-changing USBs that were sent to the court and difficulties associated with tracking changes have essentially forced a move to a virtual trial binder, which will be accessible to everyone in order to make the necessary updates. Judge Seigle will be able to place rulings on the various documents in the virtual binder, and after the case is assigned to a trial judge, that judge will have immediate access to that virtual binder. Although there are definite upsides to having the virtual trial binder, the cost involved has long been an important determining factor. After lengthy discussions with File and ServeXpress, the parties appear to be nearing an agreement regarding the costs and function of the virtual trial binder. We should expect to see the virtual trial binder rolled out before the end of the first half of 2024.



## Trends Associated with Los Angeles County Superior Court (Cont.)

Another notable trend in Judge Seigle's court involves the limit on the number of exhibits parties are permitted to use at trial. When matters are up for trial, Judge Seigle carefully reviews the trial documents and oftentimes has ordered that the parties reduce their exhibit lists, or she herself independently redlines the lists. (In the recent *Hernandezcueva* trial, for example, Judge Seigle reportedly restricted each party to 50 exhibits.) Parties are frequently ordered to continue to meet and confer on exhibits, witnesses, and the like and will only be assigned to a trial department once Judge Seigle determines the trial documents are ready.

## Changes in the Law That Concern All Jurisdictions in California

A new change to the California Code of Civil Procedure is aimed at streamlining discovery in all lawsuits. On September 30, 2023, Governor Gavin Newsom signed into law Senate Bill No. 235, which adds new rules for initial disclosures of information in discovery. This statute will impose discovery obligations on the parties in civil cases, similar to the disclosures required by Federal Rule of Civil Procedure, Rule 26, which operates in federal courts. Code of Civil Procedure section 2016.090 ("CCP") will now require each party that has appeared in a civil action to provide initial disclosures to the other parties to the action within 60 days of a demand by any party, unless modified by stipulation. Those disclosures include the following:

- The names, addresses, telephone numbers, and email addresses of all persons likely to have discoverable information, along with the subjects of that information, that the disclosing party may use to support its claims or defenses or that are relevant to the subject matter of the action or the order on any motion made in that action, unless the use would be solely for impeachment. The disclosure does not require the parties to include persons who are expert trial witnesses or are retained as consultants who may later be designated as expert trial witnesses.
- A copy, or a description by category and location, of all documents, electronically stored information, and tangible things that the disclosing party has in its possession, custody, or control and may use to support its claims or defenses or that are relevant to the subject matter of the action or the order on any motion made in that action, unless the use would be solely for impeachment.
- Any contractual agreement and any insurance policy under which an insurance company may be liable to satisfy, in whole or in part, a judgment entered in the action or to indemnify or reimburse for payments made to satisfy the judgment.
- Any and all contractual agreements and any and all insurance policies under which a person, as defined in Section 175 of the Evidence Code, may be liable to satisfy, in whole or in part, a judgment entered in the action or to indemnify or reimburse for payments made to satisfy the judgment. Only those provisions of an agreement that are material to the terms of the insurance, indemnification, or reimbursement are required to be included in the initial disclosure. Material provisions include, but are not limited to, the identities of parties to the agreement, the nature and limits of the coverage, and any and all documents regarding whether any insurance carrier is disputing the agreement's or the policy's coverage of the claim involved in the action.

Previously, in cases venued in state courts, initial disclosures were discretionary. SB 235 changes CCP section 2016.090 to mandate those initial disclosures and increases the current suggested \$250 sanction to a mandatory \$1,000 minimum sanction for lawyers who fail to timely respond to a documents request, intend to cause unnecessary delay, and/or fail to meet and confer to resolve any dispute regarding the request. Additionally, attorneys found to have violated CCP section 2016.090's mandatory requirements may also be reported to the state Bar. Section 2016.090's early initial disclosure requirements can be avoided only by written stipulation of the parties or by court order.



## Changes in the Law That Concern All Jurisdictions in California (Cont.)

Although seemingly beneficial for litigants, this new law presents certain challenges, especially in cases that are complex in nature and have complicated causation or medical issues, such as asbestos matters. For example, although the plain language of the new rule states that it will not apply to cases for which a preferential trial date has been set, it is unclear if it will apply when a plaintiff waits longer than 60 days from filing their complaint before pursuing preference. It is also yet to be determined how, if at all, this amendment will impact the case management orders already in place in the major asbestos venues. Per the plain language of this new bill, parties can request that the disclosures be issued and then amended up to three times; it is yet to be seen if these multiple requests can be made by multiple parties – a potentially onerous task in cases involving a substantial number of parties such as we usually see in asbestos matters. Judges will be authorizing committees to look into these issues. Parties and their counsel will need to be vigilant and take additional precautions to ensure they comply with this new section when responding to the initial demand and to any subsequent demands to account for new information or documents identified through further investigation and discovery.

### Noteworthy Rulings

#### **Personal Knowledge Requirement for the Admission of Person Most Knowledgeable Testimony at Trial – *Ramirez v. Avon Products, Inc.***

With its ruling in *Ramirez v. Avon Products, Inc.* (2023) 87 Cal.App.5th 939, the California Court of Appeal placed a significant hurdle in the paths of asbestos defendants seeking to use the testimony of current employees to explain the history and knowledge of companies in the context of cases where the claims are tied to events decades in the past.

*Ramirez* was an asbestos case involving claims of contaminated talc against defendant Avon. Avon moved for summary judgment supported by a declaration from Avon's person most knowledgeable ("PMK") stating, in part, that Avon never used asbestos in its products, required talc suppliers to provide asbestos-free talc, and had internal programs to ensure the talc used in its products was asbestos-free. Avon's motion was granted, and plaintiffs appealed.

The Court of Appeal concluded that the trial court abused its discretion in granting summary judgment by relying on the declaration of Avon's PMK, finding that the declaration and documents used to support it were inadmissible based on the PMK's lack of foundation, lack of personal knowledge, and basic hearsay rules.

The court made it clear that foundation and hearsay rules apply to all evidence to be used at trial, and while hearsay prior testimony and documents can be used against a defendant's PMK at deposition to elicit unfavorable testimony for use at trial (as admissions), the corporate defendant cannot use testimony from its PMK to introduce favorable hearsay evidence at trial. The PMK must have the same personal knowledge of any nonexpert witness pursuant to the basic rules of evidence; the appellate court made it clear that there is no special category in the California Evidence Code for evidence introduced by a PMK witness.

Avon had argued that depositions of corporations are different from those of natural persons because corporations may have existed for generations and have multiple sources of relevant information – including individuals who are no longer available – which requires review by a PMK to be properly prepared to testify under *Maldonado v. Superior Court* (2002) 94 Cal. App.4th 1390. In rejecting this argument, the appellate court countered that plaintiffs are often equally handicapped in asbestos cases and have a more "acute" problem when a latent injury began years ago (**Cont. on page 7**)



## Noteworthy Rulings (Cont.)

**(Cont. from page 6)** because it is plaintiffs' burden to prove the products contained asbestos.

Crucially for defendants whose only source of information about their historical knowledge and practices is older company records, much of the appellate court's focus and justification for overturning Avon's summary judgment order was based on the Avon PMK's reliance on old company records attached to the PMK's declaration. The court found that all of the documents were hearsay and/or "double hearsay," as the documents themselves contained hearsay statements. Further, Avon's records did not satisfy the business records hearsay exception, since no witness had personal knowledge to testify that these documents were prepared in the ordinary course of Avon's business.

The court also rejected Avon's argument that a PMK lacking personal knowledge could still testify on admissible underlying evidence, such as properly authenticated corporate records, because the court had already ruled that the underlying evidence cited was inadmissible. Avon's PMK did not identify the sources for most of the information cited in the declaration, so the PMK lacked personal knowledge and had "likely" acquired the information from others who also lacked personal information.

*Ramirez* presents defendants with a real problem when it comes to the preparation and the admission of favorable historical evidence, which due to the passage of time and the backward-looking nature of most asbestos cases, typically comes from both prior PMK depositions and older corporate documents. Without personal knowledge, a PMK simply cannot "adopt" prior testimony or information in older documents as evidence for the corporation.

While older corporate documents might come into evidence via a properly established business records exception to the hearsay rules, a PMK without personal knowledge of the documents or the events described therein cannot explain or embellish that information. Similarly, prior PMK testimony might come into evidence as former testimony (subject to the factors established by the California Supreme Court in *Berroteran v. Superior Court* (2022) 12 Cal.5th 867 – good and bad, favorable and unfavorable – without the benefit of explanation or context provided by the current PMK.

The *Ramirez* restrictions on the trial admissibility of certain PMK testimony apply equally to all parties and may benefit defendants in some cases. Plaintiffs have the burden of proving "long-ago activities" occurred – which may be more difficult if a defendant's current PMK is not allowed to read and respond to questions about old corporate documents or comment on prior PMK testimony. Corporate defendants may be able to rely on *Ramirez* along with the decision in *Berroteran*, which limits the admission of former testimony, to prevent plaintiffs from admitting into evidence some historical corporate documents and former testimony considered unfavorable to defendants.





## Cases to Watch in 2024

In addition to the developments discussed above, we anticipate seeing additional key rulings in 2024 that will impact asbestos litigation.

### ***The People of the State of California, By and Through the County of Los Angeles v. Johnson & Johnson, et al.***

In fall 2023, Los Angeles County filed suit against Johnson & Johnson (“J&J”), alleging its products containing talc are responsible for many Los Angeles County residents’ cancer and mesothelioma. The suit alleges claims of false advertising, unfair competition, and public nuisance. Los Angeles specifically claims that J&J knew for decades that talc is toxic to human health, yet it continued to market products containing talc to residents while knowing the products could cause cancer and other deadly illnesses. The complaint goes on to allege that with the “nation’s largest Hispanic population, California, including Los Angeles, was an important strategic market for [J&J’s] products.”

Like many recent filings in asbestos-related personal injury matters, the complaint in this matter includes an examination of health studies that the county contends demonstrates that talc often contains asbestos, which is believed to cause an increased risk of ovarian cancer and mesothelioma. The suit further contends that J&J knew of the link between ovarian cancer and talc in 1975.

This matter will certainly be one to watch in light of the allegations and potential ramifications. Los Angeles is represented by the Office of County Counsel and Mark Robinson of Robison Calagnie, Inc.

## Recent California Asbestos Litigation Verdicts

There were seven verdicts reached in California asbestos cases from January through December 2023, including five plaintiff verdicts and two defense verdicts. The following is a summary of those verdicts.

### ***Mary Gaborko, et al. v. Emerson Electric Co. (April 7, 2023)***

In the first California asbestos-related verdict of 2023, a Los-Angeles based jury awarded a total of \$40 million of noneconomic damages to plaintiffs in this wrongful death mesothelioma matter. Decedent, age 84, worked as an electrical repairman between 1959 and 2021, which caused him to be exposed to a “dust storm” of asbestos when he repaired and rewound U.S. Electric Motors-branded motors. The only defendant remaining at the time of verdict, Emerson Electric, was assigned 65% fault. The U.S. Navy was assigned 10% fault, decedent 12.5% fault, and other non-party companies the remainder. No economic damages or punitive damages were awarded. Judge Flurer of Long Beach oversaw the trial. Leonard Sandoval and Venus Burns of the Weitz Luxenberg firm represented plaintiffs.

### ***Gary and Margaret Hargan v. Oscar E. Erickson, Inc. (April 27, 2023)***

William Ruiz of Maune Raichle achieved a plaintiffs’ verdict in this living mesothelioma matter. Presided over by Judge Seabolt, the Alameda-based jury awarded a total of \$2,115,134 to plaintiffs (economic damages of \$1,261,134, and noneconomic damages of \$984,000) in this negligence-only lawsuit, even though plaintiffs had claimed over \$17.5 million in economic damages alone. Plaintiff, age 68, was an insulator whose work allegedly overlapped with that of the last remaining defendant, Oscar E. Erickson, for two or three years at certain refineries. **(Cont. on page 9)**



## **Recent California Asbestos Litigation Verdicts (Cont.)**

**(Cont. from page 8)** Judge Seabolt admitted into evidence a letter sent to plaintiff by his union, which stated that he had been trained on asbestos; two of the polled jurors found this letter to be pivotal. Last remaining defendant Erickson was assigned only 1% of fault; the jury assigned the remaining 99% of fault to plaintiff.

### ***John Metzger, et al. v. Ameron International Corp. (June 26, 2023)***

Judge Lawrence Cho presided over a Santa Monica-based jury, which awarded \$8,874,741 (\$874,741 in economic and \$8 million in noneconomic damages) to plaintiffs in this living mesothelioma matter. Plaintiffs, represented by Patrick Deblase and Campbell Filmer of the Deblase Brown firm, alleged that defendants exposed John Metzger, age 76, to asbestos during his work as a laborer in Southern California and as a land surveyor for the City of Newport Beach from 1980 to 2000. The jury assigned 27% fault to each of the remaining defendants, J-M Manufacturing Company, Inc. (asbestos-cement pipe manufacturer) and George Dakovich & Sons (pipe supplier); the jury assigned the remainder of fault to non-parties.

### ***Jovana Hernandezcueva, et al. v. American Standard Inc. (July 11, 2023; overturned December 14, 2023)***

In July 2023, Judge Cary Nishimoto presided over a Torrance-based jury in this wrongful death mesothelioma matter. Plaintiffs, represented by Dean Omar's Ben Adams and Rachel Gross, contended that decedent Joel Hernandezcueva died at age 45 from mesothelioma allegedly caused by his work as a janitor during demolition work at Fluor Corporation's business park between 1992 and 1995. The matter had a lengthy and tortured procedural history, including an initial defense verdict in 2013 for defendant contractor E.F. Brady, which was overturned on appeal, and orders granting summary judgment in favor of defendants Elementis and fiber supplier UCC, which were reversed. Trial finally proceeded against defendants Elementis, UCC, and E.F. Brady in the summer of 2023, and the jury entered a verdict in plaintiffs' favor. Fault was assigned 46.4% to UCC, 10% to E.F. Brady, and 5% to Elementis. Economic damages of \$2,846,044 and noneconomic damages of \$29,530,000 were awarded. Punitive damages of \$75 million were awarded against UCC only. However, in mid-December 2023, Judge Nishimoto granted defendants' motions for a new trial and judgment notwithstanding the verdict, finding the award to the Hernandezcueva family excessive and unsupported by the weight of the evidence. Those orders are now headed to the Court of Appeal for further determination.

### ***Anthony Hernandez Valedex v. Johnson & Johnson (July 18, 2023)***

An Alameda-based jury awarded \$3.8 million in economic damages and \$15 million in noneconomic damages to the 24-year-old plaintiff in this mesothelioma matter. Plaintiff, represented by Joe Satterly and Denyse Clancy of Kazan Law, contended that cosmetic talc manufactured by defendant J&J and supplied by defendants Target and Safeway caused his disease. Presided over by Judge Seabolt, the jury assigned 100% of fault to J&J, concluding that although Safeway and Target were strictly liable, neither was a substantial factor in causing Valadez's development of mesothelioma.

### ***Kirt Bjoin v. BTR, LLC (September 19, 2023)***

A Van Nuys-based jury awarded a defense verdict to J-M Manufacturing Company, Inc. and Familian Corporation in this living lung cancer matter. Plaintiff, age 62, was represented by Benno Ashrafi and Venus Burns of The Weitz Firm. After a five-week trial, the jury deliberated for only three hours before concluding that although plaintiff was exposed to asbestos-cement pipe supplied by both defendants, only J-M Manufacturing was a substantial factor in his development of lung cancer. Because they also found that plaintiff – as the owner of his own company and obligated to comply with all safety regulations – was a sophisticated user of asbestos-cement pipe and that use of a power saw to cut and bevel such pipe was extraordinary and not reasonably foreseeable, the jury ultimately determined that defendants were not negligent.



## [Recent California Asbestos Litigation Verdicts \(Cont.\)](#)

### ***Patrick and Rosa Dennis v. Air & Liquid Systems Corp. (November 15, 2023)***

Judge George Wu of the U.S. District Court, Central District, presided over the only California federal court verdict of 2023, a living mesothelioma case tried by Scott Frost and Ron Shingler of the Frost Law Firm against defendant Foster Wheeler. Plaintiff, age 75, alleged exposure through his service as a boiler tender aboard ships in the U.S. Navy between 1967 and 1969 and while performing automotive repair work from the 1960s through 1979. Trial lasted six days. Although plaintiff requested more than \$32 million during closing arguments, the jury issued a defense verdict after concluding that Foster Wheeler was not negligent. Because the jury found no negligence, they did not need to make any further determinations regarding substantial factor or failure to warn.





## About Walsworth

Walsworth is proud to have established itself as a nationally recognized law firm with an experienced team of lawyers, paralegals and other support staff defending all types of clients. Over the course of many years, we have represented clients in excess of 30,000 asbestos cases.

Our team works for many national and international corporations on the defense of asbestos litigation claims and cost effectively manages large asbestos dockets from the inception of a claim through discovery, motions, and final resolution. We work closely with our clients to investigate and evaluate cases as early as possible and regularly obtain dismissals on their behalf. We have dedicated lawyers who specialize in settlement negotiations and have longstanding working relationships with plaintiffs' counsel to allow meet and confer efforts throughout the life of the case. As always, our skilled trial team is also prepared to defend our clients in those cases that proceed to trial. Our asbestos trial team has commenced trial in over 500 cases.

Our numerous long-term clients appreciate the personal and team-based litigation management system that we employ which helps to distinguish Walsworth from other firms. Our clients include distributors, manufacturers, contractors and premises owners in cases venued throughout the State of California and other jurisdictions. We also serve as regional and national counsel for a number of high-profile asbestos defendants. Representation of these varied clients allows our team to develop, implement and manage national as well as local defense strategies that most effectively serve each client.

The diversity of our clientele provides our team with a unique and broad perspective on the many key issues presented by asbestos litigation, including state-of-the-art knowledge, asbestos-related medicine, industrial hygiene, and specialized defenses available to each type of defendant we represent.

Of course, our asbestos litigation clients often differ in their approach to managing their litigation, and this uniqueness dictates how our efforts are directed. However, our dedication to our clients, regardless of overall strategy, remains consistent. The talent of our asbestos litigation team members is consistently recognized via invitations to co-chair and participate in prominent industry conferences throughout the country.

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