



# **Update on Asbestos Litigation**

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**Forty Years Ago – First Cases**

**Thirty Years Ago – General Orders**

**Twenty Years Ago – Spread of BK**

**Ten Years Ago – Meso and LC Eclipse  
Asbestosis**

**Today – Co-Morbidities Ascend**



# **San Francisco and Alameda Asbestos Case Filings**

**2012 – 308**

**2013 – 820**

**2014 – 313**

**2015 – 390**

**2016 – 302**

**2017 - 234**



## Today's Jurors

Challenge of Attention Span

Challenge of Sketchy Historical Knowledge

Challenge of Bias Toward the Individual

Challenge of Preventing Juror Research



## Today's Judges

One Judge per County as Gatekeeper

Lee in San Francisco

Seligman in Alameda

Kleifield in Los Angeles, Orange, and San Diego

Daniels in Solano

Walsh in Ventura

Pros and Cons of One Judge per County



## Judges' Function as Gatekeeper

Federal v. State Court

Sargon - Sword and Shield

Motions in Limine and Trial Briefs

Ambient

Single Fiber

Substantial Factor



## Role of CIH in Shaping Case

Interviewing Counsel

Gathering Client Information

Gathering Other Side's Information

Discussion of Expert Disclosure

Discussion of Opinion and Options



## Report vs. Notes

Reports Required in Federal Court

Notes Optional - Pros and Cons

Assistant Review





## Proposition 51 – Co-Defendants

Retention by Amphibole and Chrysotile Defendants

Fluidity of Defendants as Trial Approaches

Paring Down Opinions to Essentials

Stay in Touch with Disclosing Party(ies)



## Deposition Strategy

Prepare to Offer All Opinions at Start

Balance Between Too Little and Too Much

Listen for Attorney Objections / Guidance

Review Latest Literature Before and After Depo

Discuss Depo with Disclosing Attorney

Read Your Depo Transcript



## **Trial Strategy**

Obtain Summary of Opponent Testimony

Rehearse Expected Opponent Questions

Ask Questions of Disclosing Attorney

Prepare to Customize Opinions



## **Current Issues**

Reptile

Navy Documentation

Take-Home Exposure

Re-Entrainment

Anti-Science Trend



## TALC CLAIMS

Failure to Warn and Design Defect.

Johnson & Johnson baby powder started manufacture in 1967

First study linking talc powder and cancer in 1982

The company denies its product contained asbestos

Plaintiff uses J&J memos allegedly showing knowledge of asbestos in its talc



## Talc Suits

Over 5,500 suits against Johnson & Johnson nationwide

Missouri verdicts re ovarian cancer: 4 of 5 for plaintiff

One Missouri verdict for \$72 million, overturned on appeal

Another Missouri verdict for \$110 million upheld by trial judge

Show-Me State home for talc litigation?

What about Bristol-Myers Squibb?



## California Cases

Over 300 talc cases in California

*Lloyd v. Johnson & Johnson*, BC628228

\$417 million talc verdict overturned on JNOV by  
Los Angeles trial Judge Maren Nelson

Lengthy analysis of scientific articles in 70 page opinion

IARC's conclusion that talc is "possibly carcinogenic" is  
insufficient as a matter of law to require any warning



## **Defense Verdict in Los Angeles Talc Case**

*Herford v. AT&T* – November 16, 2017

Mesothelioma case re J&J Baby Powder

Johnson & Johnson and its suppliers – Defense Verdict

**<https://cvm.com/proceedings/herford-v-att-corp-et-al-trial-2017-10-02>**





## **Future of Asbestos Litigation**

New Plaintiffs

New Defendants

New Theories

New Medical Research

New Venues / Tort Reform



**Questions?**

