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Talcum user fails to establish jurisdiction

The U.S. District Court for the Northern District of Alabama recently dismissed a complaint after finding the plaintiff failed to establish the court had specific jurisdiction over the nonresident defendants for the claims asserted in the action.

The case is *Smith v. Avon Products,* No. 2:18-cv-00826-RDP, 2019 U.S. Dist. LEXIS 28991, at *2-3 (N.D. Ala., Feb. 25).

Billie N. Smith sued Cyprus Amax Minerals Co., Cyprus Mines Corp. (collectively the Imerys defendants), Imerys Talc America Inc. and Johnson & Johnson, alleging she contracted mesothelioma following her exposure to multiple talc products that allegedly contained asbestos.

The plaintiff further alleged that the Johnson's Baby Powder used was tested, designed, manufactured, produced, marketed, distributed, sold and supplied by J&J and its subsidiary, Johnson & Johnson Consumer Inc., and that the Imerys defendants supplied the talc to JJCI and J&J during the relevant time period.

The plaintiff alleged liability based on theories of negligence, wantonness and breach of warranty. She asserted that the defendants are liable under the Alabama extended manufacturer's liability doctrine. The Imerys defendants and J&J each filed motions to dismiss for lack of personal jurisdiction.

Cyprus Amax Minerals Co. is a Delaware corporation with its principal place of business in Arizona. Defendant Cyprus mines is a wholly owned subsidiary of CAMC. Imerys Talc America is a Delaware corporation with its principal place of business in California.

Imerys has registered with the Alabama secretary of state to do business in Alabama. As to the Imerys defendants, the plaintiff alleged that from 1979 through May 2000, the defendants owned and operated a talc mine, mill and pilot plant in Alpine, Talladega County, Ala., and that Cyprus Mines purchased the Alpine plant through a wholly owned subsidiary and from 1989 to present supplied the majority of cosmetic grade talc used by J&J.

J&J is a New Jersey corporation with its principal place of business in New Jersey and JJCI is a wholly owned subsidiary of J&J.

The plaintiff alleged that in 1966, J&J purchased a talc mine in Vermont, and in 1989, J&J entered into an agreement to sell the mine to Cyprus mines. Part of the agreement allegedly was that Cyprus mines supply cosmetic grade talc to JJCI. The talc used in Johnson's Baby Powder was sourced from the Vermont mine in part until 2003.

The plaintiff asserts that J&J continued to be the public voice for the product since the 1980s and sought to establish personal jurisdiction over J&J based on its conduct related to Johnson's Baby Powder within Alabama, or in the alternative, based on JJCI's contacts with Alabama through corporate veil-piercing principles.

J&J argued that after Jan. 2, 1979, it no longer designed, manufactured, marketed or sold Johnson's Baby Powder. After Jan. 2, 1979, JJCI exclusively sold and distributed the product and J&J did not design, manufacture, market or sell any products in Alabama during any actionable period.

J&J then applied Alabama's "last exposure rule" and argued that the plaintiff's claims relating to the sale of Johnson's Baby Powder were time-barred. Moreover, J&J argued it could not be subject to personal jurisdiction for any claim after Jan. 2, 1979, because JJCI — an entirely separate corporate entity — became the exclusive distributor of Johnson's Baby Powder.

The court stated that a federal court sitting in diversity may exercise personal jurisdiction over a nonresident defendant to the same extent that an Alabama court may. Under the Alabama long-arm statute, an Alabama court is permitted to exercise jurisdiction over nonresidents to the fullest extent allowed by the due process clause of the U.S. Constitution's 14th Amendment.

TOXIC TORT TALK

CRAIG T. LILJESTRAND

Craig T. Liljestrand, a partner at Hinshaw & Culbertson LLP, has extensive experience in toxic tort litigation. He is recognized for his litigation and trial skills in the areas of asbestos, silica, welding fumes, lead paint, chemical and occupational disease claims. His client base is expansive, and includes Fortune 500 companies in which he has successfully defended various industrial product and equipment manufacturers, contractors and premises owners in numerous toxic tort cases throughout the country. He is also the regional counsel for a major industrial manufacturer.

The court then laid out the three-part test followed in the 11th U.S. Circuit Court of Appeals and noted the plaintiff failed the first prong — that the plaintiff's claims must arise out of or relate to at least one of the defendant's contacts with the forum. The court stated there must be an affiliation between the forum and the underlying controversy.

The Imerys defendants pointed to the testimony of their jurisdictional deponent citing that Imerys and CAMC never sold talc to J&J in the state of Alabama. The deponent asserted that while Imerys defendants supplied the majority of cosmetic grade talc used by J&J, none of the talc from the Alpine plant was sold to J&J. The court concluded the plaintiff failed to establish her claims were related to any of the defendants' contacts with Alabama.

J&J raised a hybrid challenge in its motion to dismiss and argued that Alabama's asbestos-specific rules of accrual prevented the court from exercising personal jurisdiction over J&J.

J&J pointed to the last-exposure rule which grants the plaintiff one year from the last date of exposure to file suit and argues that because the plaintiff's exposure occurred before May 19, 1979, she had one year from the date of her last exposure to file her suit.

J&J claimed Jan. 2, 1979, was the date on which J&J stopped designing, manufacturing, marketing and selling Johnson's Baby Powder and the plaintiff's claims are time-barred and attached to its motion an affidavit in which the deponent averred to the Jan. 2, 1979, date in which JJCI has been the sole entity responsible for the design, production and sale of the product.

The court determined that notwithstanding the plaintiff's arguments, she cannot establish any relationship to the state of Alabama and the mere purchasing of and use of a product within the state does not show that J&J had a sufficient connection with the forum.

The court determined the plaintiff cannot pierce the corporate veil to impute JJCI's contacts with Alabama to J&J as the parent company as an alternative means of establishing jurisdiction, and that the plaintiff's claims that JJCI did not have an independent board of directors and was overseen by J&J was without merit.

Relying on affidavits attached to J&J's motion, the court concluded that the plaintiff failed to demonstrate that J&J exercised complete control and dominion over JJCI and found the plaintiff's argument insufficient to justify piercing the corporate veil under Alabama law.