

SUPREME COURT OF THE STATE OF NEW YORK  
NEW YORK COUNTY: I.A.S. PART 8

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FRANK GADALETA AND JESSIE GADALETA,

Plaintiffs,

-against-

Index No. 110739/02

Mot. Seq. No. 014

AC & S, INC., et al.,

Defendants.

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**DIANE A. LEBEDEFF, J.:**

In this asbestos case, plaintiff moves for modification of the existing trial procedures and asks that the punitive damages claim – currently deferred for a later trial – be joined for the purposes of the pending trial. In the exercise of the court’s discretion, the application is denied.

Plaintiff Gadaleta has lung cancer, which he claims resulted from his long work-related exposure to asbestos and his former history of cigarette smoking. This court, as have many members of the bench of the Supreme Court of New York County, has tried a legion of similar lung cancer cases with a mixed history of industrial asbestos exposure and cigarette use, all under the same existing rule that punitive damages claims are deferred until a future date. This practice has facilitated the noteworthy speed with which trials are reached in *in extremis* asbestos cases, such as this one.

This matter was commenced under the existing Asbestos Case Management Order (“Asbestos CMO”) which directs a deferral of punitive damages claims, as is permitted by CPLR

§ 603 (“In furtherance of convenience or to avoid prejudice the court may order a severance of claims, or may order a separate trial of any claim, or of any separate issue. The court may order the trial of any claim or issue prior to the trial of the others”). The Asbestos CMO is consistent with established law that the question of severance or joinder of issues for trial purposes is a decision to be made in the exercise of the court’s discretion (*Baseball Office of the Commissioner v. Marsh & McLennan, Inc.*, 295 A.D.2d 73 [1st Dept. 2002]), which decision may be based upon trial considerations (*Federal Ins. Co. v. Whale Realty Corp.*, 65 A.D.2d 523 [1st Dept. 1978], consolidated claims severed at trial to simplify case; Robert L. Haig, 3 N.Y. Prac., Commercial Litigation in New York State Courts § 30.3 [2003]; *see also* CPLR 4011, “[t]he court may determine the sequence in which the issues shall be tried and otherwise regulate the conduct of the trial in order to achieve a speedy and unprejudiced disposition of the matters at issue in a setting of proper decorum”).

It cannot be ignored that, because of the known nature of the rules under which asbestos cases are tried and the reliance of all parties upon a swift and uniform procedural course of trial preparation, *in extremis* asbestos cases move toward trial dates with considerable ease. The participants benefit from a system of firm parameters which “allow[s] them to more accurately gauge the plaintiffs’ possible recovery and the defendants’ possible exposure, which in turn ... improve[s] their ability to weigh the economic risks and benefits of litigating versus settling” (*In the Matter of New York City Asbestos Litigation [Tancredi v. A C and S]*, 194 Misc.2d 214, 220 [Sup. Ct. N.Y. Co. 2002, Freedman, J.]). This system also recognizes trial urgency imposed by conditions of the age and health of plaintiffs and permits trials “on an expedited basis”

(*Cross v. Cross*, 112 A.D.2d 62, 64 [1st Dept. 1985]).

The court declines to break this admirable course. This case clearly moved forward with extreme expedition: the request for judicial intervention was filed on August 16, 2002; the note of issue was filed on September 6, 2002; it is the single case remaining of the nine May 2003 *in extremis* trial grouping cases and – after adjournments on consent – is scheduled to commence jury selection at the end of this month. It has reaped all the benefits of treatment as an asbestos case for the last two years and, as long as it is within the asbestos grouping, remains subject to the well-known and established limitations of the existing Asbestos CMO.

Based on the foregoing, the application is denied.

This decision constitutes the order of the court.

Dated: September 22, 2004

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J.S.C.