

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF NEW YORK

x

IN RE: NEW YORK CITY  
ASBESTOS LITIGATION

This Document Refers To:

Index No.: 190156/2010

HAROLD O'CONNOR

RECOMMENDATION OF THE  
SPECIAL MASTER

Pursuant to the CMO, defense liaison counsel interposed a forum objection to the Weitz & Luxenberg case of Harold O'Connor, Index No. 190156/10. After plaintiff was deposed, defense liaison asserted that there was insufficient New York City exposure to warrant placement in the October 2010 in extremis group.

After reading the entire deposition transcript, reading the memoranda submitted by counsel and holding a conference, I concur.

The test for whether a case may remain in NYCAL is not a bright line test. Significantly, it is not and has never been a traditional *forum non conveniens* analysis. The propriety of the forum is examined is a matter for the Court's discretion as a means to control its docket and to prevent forum shopping. Access to the in extremis docket is limited to those plaintiffs who demonstrate *significant* exposure to asbestos in any one of the five boroughs. Significant exposure is measured by length of time and quality of exposure.

There is no "magic number" of days or weeks of exposure that is sufficient. It is a case-by-case analysis. In some cases, a few weeks might be sufficient. In other cases, two months might not be sufficient. The quality of exposure reflects how the plaintiff was exposed – was he a mere bystander or was he working directly with an identifiable asbestos-containing product? In addition, the Court looks at whether there is another forum where there is significant exposure that is more appropriate than New York.

Here, the plaintiff's exposure in New York, to the extent there is any, is *de minimis* bystander exposure at best for a very short period of time and was brought out largely by questioning of his own counsel at the very end of the deposition. There is

significant exposure in New Jersey, where plaintiff resides, and where there is an active asbestos docket, and in Florida. The case does not belong in NYCAL.

Respectfully submitted:

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Laraine Pacheco  
Special Master, NYCAL  
June 3, 2010