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California Asbestos Litigation Alert

Dean Pollack and Bina Ghanaat

October 2011

San Francisco Superior Court Sets Hearing to Rescind Asbestos Litigation General Orders

On November 15, 2011, the San Francisco Superior Court will hold a hearing on Presiding Judge Katherine Feinstein's intention to issue an order ("Order") that will rescind most San Francisco County Asbestos General Orders ("General Orders") and cease the grouping of asbestos cases. According to Pang Ly, Asbestos Litigation Settlement Manager, Judge Feinstein's decision reflects the opinion of S.F. Superior judges that the General Orders are outdated and unnecessary.

In the late 1990s, S.F. Superior promulgated the General Orders to better manage the then-existing massive asbestos caseload. The General Orders address a variety of pre-trial issues common to every asbestos case, including mandating that both Plaintiffs and Defendants provide responses and annual updates to a standard set of interrogatories, setting forth discovery timelines (including timelines for expert discovery), and authorizing Berry & Berry to serve as Designated Defense Counsel.

Although this may appear to be a sweeping change, there are exceptions that will dilute the Order's impact. Berry & Berry will remain Designated Defense Counsel until December 31, 2013. In addition, General Orders covering expert witness discovery, depositions, and responding to standard interrogatories, with the exception of the annual update requirement, will also remain in effect until the end of 2013. General Orders mandating electronic filing and designating asbestos cases as complex will remain in effect indefinitely.

In addition to the foregoing exceptions, the Order vests the asbestos case management judge with the discretion to reinstate General Order(s) in specific cases (this is common practice in Alameda County, where the General Orders were rescinded earlier this year), and allows parties to stipulate to the application of General Order(s) in particular cases. We expect reinstatement and/or stipulations to occur in preference cases with respect to discovery and expert deadlines as well as filing summary judgment motions within 30 days of trial on shortened time.

Of significance is that under the Order, the Court will cease the practice of "grouping" asbestos cases by plaintiffs' firm, personal injury or wrongful death, and disease. Parties may still stipulate "that any two or more cases will be treated as a 'group' for discovery or any other purpose." Currently, groups of up to 12 cases, with 60 or more defendants are routinely assigned to trial departments. We expect the Plaintiff Bar to file stiff opposition to this portion of the proposed Order.

Judge Feinstein has invited the Asbestos Bar to comment on the Order, which she intends to sign prior to the end of the year. Initial comments must be served by October 21st, and responses must be served by October 28th. The court will hold a hearing on November 15, 2011 at 2:00 p.m. so that interested parties may make their positions known to the court. Although Judge Feinstein will be signing the Order, it is not clear whether Judge Feinstein or some other judge will conduct the hearing.

Dean Pollack is a trial lawyer whose practice focuses on product liability and asbestos litigation. He can be reached at 510.835.6705 or dpollack@burnhambrown.com. Bina Ghanaat's practice focuses on insurance coverage analysis and advice. She can be reached at 510.835.6730 or bghanaat@burnhambrown.com. Burnham Brown's San Francisco Bay Area location is in walking distance to Alameda County Superior Court and an 18 minute BART ride to San Francisco Superior Court.



Superior Court of California

County of San Francisco



Oct 7 2011
2:54PM

T. MICHAEL YUEN
CHIEF EXECUTIVE OFFICER

October 7, 2011

Re: Intention of the Presiding Judge to Issue an Order Rescinding Most San Francisco County Asbestos General Orders and Ceasing Grouping of Cases

Counsel,

Presiding Judge Katherine Feinstein, after consultation and assent from the Judges of the San Francisco Superior Court, currently intends to sign the attached order prior to the end of the year.

Although not required by any statute or rule, Judge Feinstein desires to elicit the written and oral comments of the Asbestos Bar. Judge Feinstein has asked me to facilitate this process. Accordingly, I have established the schedule set out below to enable the Asbestos Bar to submit comments.

First Round of Written Comments

Any person may serve written comments via LexisNexis under the Complex Asbestos caption and case number (No. 828684). Service on Lexis must occur no later than October 21 at 4pm with five courtesy copies delivered to Department 503 by 4pm on October 25.

Second and Final Round of Written Comments

Any person may serve a written response to any comments made in the first round via LexisNexis under the Complex Asbestos caption and case number (No. 828684). Service on Lexis must occur no later than October 28 at 4pm with five courtesy copies delivered to Department 503 by 4pm on November 1.

Hearing

A hearing will be held on November 9, 2011 at 1:30pm in room 509 of the Civic Center Courthouse located at 400 McAllister Street in San Francisco. The Court will supply a court reporter for the hearing.

Sincerely,

A handwritten signature in black ink, appearing to read "H. Kahn", is written over a horizontal line.

Harold E. Kahn
Judge of the Superior Court

400 McAllister Street, Room 103
San Francisco, CA 94102-4514

1 Prepared by the Court

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8 **SUPERIOR COURT OF CALIFORNIA**

9 **County Of San Francisco**

10 Department No. 206

11
12 IN RE COMPLEX ASBESTOS LITIGATION

No. 828684

13 ORDER: 1) RESCINDING ALL ASBESTOS
14 GENERAL ORDERS EXCEPT THOSE
15 SPECIFICALLY RETAINED AND 2)
16 CEASING THE PRACTICE OF GROUPING
ASBESTOS CASES

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18 Effective January 1, 2012, all asbestos general orders and portions thereof that have not
19 previously been invalidated, deleted or rescinded are rescinded except as specifically set forth
20 herein.

21 Effective January 1, 2012, the Court will cease the practice of "grouping" asbestos cases
22 by plaintiffs' firm, personal injury or wrongful death, and disease.

23 The general orders and portions thereof that are not rescinded by this order and thus
24 expressly retained after January 1, 2012 are:
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