

Asbestos-silica trial meets abrupt end

By **Matthew Hirsch**
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The Brent Coon & Associates firm was poised last week to put a mixed asbestos-silica suit before a jury in Alameda County, a kind of claim that's often derided by the defense but has rarely been tested at trial. And then the trial was over before it had begun.

In January, plaintiff attorneys selected 10 cases to be prepared for trial ahead of

others on the county's silica docket. A cancer diagnosis had moved Eugene McClarty's case to the front of that line. But, says his lawyer, the Coon firm's Louis Beary, McClarty's history as a smoker was a factor that weighed heavily toward settling; he said he was worried the jury would blame his client's cancer on the smoking.

The parties reached a deal last week following three weeks of settlement talks with Alameda County Superior Court

Judge Frank Roesch. (Beary declined to disclose terms of the settlement.)

"What's a case worth if you are a smoker? Potentially nothing. What's your case if you are exposed to asbestos and silica? Potentially a million dollars, if you can get a jury to buy it," Beary said.

McClarty was suing several manufacturers of asbestos and silica products and makers of safety equipment that he claimed was supposed to protect him. Sev-

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eral defendants settled with him or had their cases dismissed in recent months. As of last week two defendants, General Motors Corp. and Honeywell, remained in the case.

McClarty's suit had made claims that he had been exposed not just to silica, but also to asbestos. Defense lawyers in general have questioned the likelihood of one person being exposed to both, and have targeted the medical evidence. Two months ago, for example, defendants in an asbestos suit in Philadelphia moved to exclude evidence from a medical expert, claiming the doctor was a "professional witness" who conveniently didn't distinguish between asbestos and silicosis exposures.

In a trial brief filed last month, defense attorneys in the McClarty case highlighted his history as a smoker and also challenged the plaintiff's medical evidence.

In the brief for former defendant 3M, Gordon & Rees' Thomas Packer wrote that the medical screenings that produced a mixed-dust diagnosis were made "on the basis of limited (and sometimes false) information, and under highly questionable circumstances."

Beary agreed that it is rare to find plaintiffs who have been exposed to both asbestos and silica. But he said that is because few people worked both in industries where asbestos exposure was prevalent, such as brake repair, and where silica exposure was prevalent, such as sandblasting.

"You don't find a lot of brake workers out there blasting. You don't find a lot of blasters out there working on brakes." McClarty worked in both fields, Beary said.

GM was represented by lawyers at Filice Brown Eassa & McLeod. Honeywell was represented by lawyers at Perkins Coie.

Barbara Adams of Adams Nye Trapani Becht represented four defendants against claims in the McClarty case that she said were resolved more than a month ago.

Adams said defense lawyers had wanted

Judge Robert Freedman, who runs Alameda County's silica docket, to handle challenges to medical evidence before silica cases make it to trial.

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— BARBARA ADAMS
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"We were hoping for some degree of precedent to be set by the rulings in this case," Adams said. "Of course, it's not binding, but it would give both sides a clearer idea of where [the courts] were going on these issues."

"There have been diligent attempts to interest [Freedman] in the qualifications of the experts," she added, "and he has not been particularly interested [in having those issues resolved], at least at the case management level."

Beary, who took control of silica litigation for the Texas-founded Coon firm's San Francisco office after the local managing partner, Cheryl White, left the firm earlier this year, said one of the silica suits will go to trial soon enough. He said another mixed-dust case in Alameda County, *McElroy v. Lone Star Industries*, RG05210578, has been set for trial in March.

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