



1 MURRIN & ASSOCIATES LLC  
 2 CHARLES P. MURRIN (State Bar No. 188081)  
 3 REYNOLD M. MARTINEZ (State Bar No. 184774)  
 4 MICHAEL C. SCANLON, JR. (State Bar No. 106590)  
 5 3675 Mount Diablo Blvd., Suite 230  
 Lafayette, California 94549  
 Telephone: (925) 284-5770  
 Facsimile: (925) 262-2111  
 Email: reynold.martinez@murrinlaw.net

6 Attorneys for Specially Appearing Defendant  
 7 WHITTAKER, CLARK, & DANIELS, INC.

8 IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA  
 9 IN AND FOR THE COUNTY OF LOS ANGELES

11 CARMEN VILLANUEVA, et al,  
 12 Plaintiffs,  
 13 v.  
 14 3M COMPANY (F/K/A MINNESOTA  
 15 MINING & MANUFACTURING  
 COMPANY)., et al.,  
 16 Defendants.

JCCP 4674

Case No. BC584543

**NOTICE OF ENTRY OF ORDER  
 GRANTING SPECIALLY APPEARING  
 DEFENDANT WHITTAKER, CLARK,  
 AND DANIELS' MOTION TO QUASH**

**[C.C.P. 418.10]**

DATE: September 22, 2015  
 TIME: 1:45 p.m.  
 DEPT: 324  
 JUDGE: Hon. E. Elias

20 On October 15, 2015 this court issued the Order Granting Whittaker, Clark, & Daniels Motion to  
 21 Quash, attached hereto as Exhibit A.

22 Dated: 10/16/15

MURRIN & ASSOCIATES LLC

By: Reynold M. Martinez  
 REYNOLD M. MARTINEZ  
 Attorney for Specially Appearing  
 Defendant Whittaker, Clark & Daniels

# Exhibit A

**SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES**



DATE: 10/15/15

DEPT. 324

HONORABLE EMILIE H. ELIAS

JUDGE A. MORALES

DEPUTY CLERK

HONORABLE  
ADD-ON

JUDGE PRO TEM

ELECTRONIC RECORDING MONITOR

E. RUIZ, C.A.

Deputy Sheriff

NONE

Reporter

11:15 am

JCCP4674

Plaintiff  
Counsel

Coordination Proceeding Special  
Title Rule (3.550)  
LAOSD ASBESTOS CASES

NONE

Defendant  
Counsel

**NATURE OF PROCEEDINGS:**

MOTION OF DEFENDANT, WHITTAKER, CLARK & DANIELS  
INC., TO QUASH SERVICE OF SUMMONS FOR LACK OF  
PERSONAL JURISDICTION- NOTICE OF RULING ON SUBMITTED  
MATTER (BC584543-VILLANUEVA)

In the matter heretofore taken under submission on  
September 22, 2015, the Court hereby issues its ruling  
as set forth in the separate Order Re: Motion to Quash  
for Lack of Personal Jurisdiction signed and filed  
this date.

The Clerk is to give notice by having copies of this  
minute order and the signed order posted on File &  
ServeXpress.

<p><b>MINUTES ENTERED</b> 10/15/15 COUNTY CLERK</p>
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**FILED**  
Superior Court of California  
County of Los Angeles

**OCT 15 2015**

Sherri R. Carter, Executive Officer/Clerk  
By Alfredo Morales deputy  
ALFREDO MORALES

**SUPERIOR COURT OF CALIFORNIA  
COUNTY OF LOS ANGELES**

Coordinated Proceeding  
Special Title (Rule 3.550)

Case No.: JCCP 4674

LAOSD ASBESTOS CASES

CARMEN VILLANUEVA, et al.,

Case No.: BC584543

Plaintiffs,

ORDER RE: MOTION TO QUASH FOR  
LACK OF PERSONAL JURISDICTION

vs.

3M COMPANY, et al.,

Defendants.

**I.**

**BACKGROUND**

This is an action for wrongful death. Carmen Villanueva, Daniel Villanueva, and Diane Deatrick (collectively "Plaintiffs") are the heirs of Oscar Villanueva ("Mr. Villanueva" or "Decedent"). They allege that Mr. Villanueva died as a result of exposures – from 1968 through the 1980s – to Old Spice talcum powder that contained asbestos-contaminated talc supplied by Defendant Whittaker, Clark & Daniels, Inc. ("WCD").

1 On July 29, 2015, the Court heard oral arguments concerning WCD's motion to quash  
2 for lack of personal jurisdiction. The Court granted the motion as to general jurisdiction  
3 pursuant to the agreement of the parties and continued the hearing as to specific jurisdiction,  
4 providing Plaintiffs an opportunity to conduct jurisdictional discovery.

5 On September 22, 2015, the parties returned for a hearing regarding their supplemental  
6 briefs.<sup>1</sup> At the end of the hearing, the Court took the matter under submission in order to further  
7 consider the parties' arguments and evidence. Having so considered, the Court now issues its  
8 ruling.

## 9 II.

### 10 DISCUSSION

#### 11 A. Plaintiffs' Supplemental Opposition

12 Citing the deposition testimony of Dennis St. George, WCD's person most  
13 knowledgeable, Plaintiffs contend there is specific jurisdiction in California because:

- 14 • The relevant product is Old Spice talcum powder.
- 15 • WCD sold talc to Shulton, Inc. ("Shulton"), the former manufacturer of Old  
16 Spice talcum powder.
- 17 • In light of the sales to Shulton, it is reasonable to infer that WCD's talc was used  
18 in the manufacture of Old Spice talcum powder.
- 19 • Old Spice was a national brand during the alleged exposure period, and Old  
20 Spice products were sold throughout the United States, including California.
- 21 • WCD's talc, being a likely ingredient in Old Spice talcum powder, reached  
22 California through the stream of commerce.
- 23 • Under *Buckeye Boiler Co. v. Superior Court* (1969) 71 Cal.App.2d 892, specific  
24 jurisdiction can be based on "stream of commerce" contacts.

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25 <sup>1</sup> Plaintiffs served their supplemental opposition on September 10, 2015, and WCD served a supplemental reply on September 16, 2015.

1 Plaintiffs also argue that WCD marketed itself to the national cosmetics industry as a  
2 supplier of talc for use in cosmetic products. Plaintiffs contend WCD was a member of a trade  
3 group known as the Cosmetic, Fragrance, and Toiletries Association and advertised to the  
4 cosmetics industry in the group's trade journal.

5 Additionally, Plaintiffs state that their initial opposition brief includes evidence that  
6 demonstrates:

- 7 • WCD sold talc to The Sherwin-Williams Company ("Sherwin-Williams") and  
8 John K. Bice Company, Inc. ("Bice"), and had a mining and distribution  
9 relationship with Pfizer, Inc. ("Pfizer"), in California.
- 10 • WCD filed for incorporation in California in July 1993, was qualified to conduct  
11 business in California from June 1993 to 2004, and had an agent for service of  
12 process and an office in California.
- 13 • WCD has waived any jurisdictional challenge in the instant case by filing  
14 answers in other lawsuits in California for fifteen years without contesting  
15 jurisdiction.

16 In the alternative, Plaintiffs' counsel argued at the hearing that a further discovery  
17 continuance is necessary because WCD asserted objections and did not respond to certain  
18 deposition questions and written discovery requests.

19 **B. WCD's Supplemental Reply**

20 WCD contends the motion should be denied because:

- 21 • WCD sold talc to Shulton in New Jersey.
- 22 • There is no evidence showing California sales of Old Spice talcum powder that  
23 contained WCD talc.
- 24 • There is no evidence indicating that the specific Old Spice talcum powder used  
25 by Decedent contained WCD talc.

- 1 • There is no evidence establishing that WCD had knowledge of, or participated in,  
2 the design, manufacture, or sale of Old Spice talcum powder, especially in  
3 California.
- 4 • While Plaintiffs claim it was foreseeable that Shulton and other third parties  
5 would sell Old Spice talcum powder in California, “foreseeability alone is not  
6 sufficient to confer jurisdiction.” (Supp. Reply, p. 4 [emphasis deleted].)
- 7 • “The fact that WCD was a member of a trade group and that it advertised in the  
8 trade group’s publication does not create specific jurisdiction.” (*Id.* at p. 2.)

9 **C. Law**

10 There are two types of personal jurisdiction – general and specific. Only specific  
11 jurisdiction is at issue here.

12 Specific jurisdiction exists where the defendant’s in-state activities give rise to the  
13 alleged liabilities but are not continuous and systematic. (*See Daimler AG v. Bauman* (2014)  
14 134 S.Ct. 746, 754.) Stated another way, “single or occasional acts of the corporate agent in the  
15 [forum] state” are sufficient to support assertion of specific jurisdiction where “the suit ‘aris[es]  
16 out of or relate[s] to the defendant’s contacts with the forum[.]’” (*Id.*)

17 In particular, a court must find the following elements present: (1) purposeful availment  
18 – i.e., the defendant purposefully made contacts with the forum; (2) the lawsuit arises out of or  
19 is related to the defendant’s forum contacts; and (3) reasonableness – i.e., “[t]he forum’s  
20 exercise of personal jurisdiction . . . comports with ‘fair play and substantial justice.’” (Weil &  
21 Brown, *Cal. Practice Guide: Civil Procedure Before Trial* (The Rutter Group 2015) ¶ 3:225  
22 [emphasis deleted].)

23 The plaintiff has the initial burden of demonstrating facts sufficient to justify exercise of  
24 personal jurisdiction. (*See Snowney v. Harrah’s Entertainment, Inc.* (2005) 35 Cal.4th 1054,  
25 1062.)

1 **D. Analysis**

2 To begin, the Court denies Plaintiffs' request for a further discovery continuance. The  
3 original continuance provided ample time to conduct discovery. Plaintiffs had the chance under  
4 the Discovery Act to file an *ex parte* application or a motion to compel to address objections  
5 and/or deficient responses, but they chose to do neither. The Court does not see a justifiable  
6 reason for continuing the matter again given that Plaintiffs sat on their hands and avoided the  
7 relief options available to them.

8 Turning to the substantive arguments, Plaintiffs contend there is personal jurisdiction  
9 because the evidence shows WCD conducted business with Sherwin-Williams, Bice, and Pfizer  
10 in California. The Court finds the contention unpersuasive since it relates to general  
11 jurisdiction. As noted above, the Court already denied the motion as to general jurisdiction  
12 pursuant to the agreement of the parties (*see* 7/29/15 Minute Order, p. 12); thus, Plaintiffs  
13 cannot re-raise the argument here.<sup>2</sup>

14 Plaintiffs' assertion – that WCD sought incorporation in California in July 1993, was  
15 qualified to do business in California from mid-1993 to 2004, and had an agent for service of  
16 process and an office in California – likewise relates to general jurisdiction. Moreover,  
17 Plaintiffs' counsel does not have personal knowledge to authenticate and verify the cited  
18 documents, and the alleged years of incorporation postdate the end of the alleged exposure  
19 period.

20 Next, Plaintiffs claim WCD waived its right to make a jurisdictional challenge by filing  
21 answers in other lawsuits in California without contesting jurisdiction. The Court disagrees.  
22 Plaintiffs do not cite any authority holding that a defendant waives a jurisdictional challenge in  
23 one case by not challenging jurisdiction in another case. Plaintiffs also fail to lay foundation

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24  
25 <sup>2</sup> To the extent Plaintiffs argue that this evidence is relevant to the "purposeful availment" prong of specific jurisdiction, the argument must be rejected because the documents are not adequately authenticated and because purposeful availment, without more, does not create specific jurisdiction. Plaintiffs do not show that Decedent's death arose out of or related to WCD's business activities with Sherwin-Williams, Bice, and Pfizer.



1 regarding WCD's litigation tactics in the other actions. For example, the record is inconclusive  
2 with respect to whether WCD filed motions to quash prior to filing the answers.<sup>3</sup> In addition,  
3 Plaintiffs' counsel lacks personal knowledge to authenticate the purported answers, and  
4 Plaintiffs did not ask the Court to judicially notice the documents.

5 Consequently, for the following reasons, the Court finds that the motion to quash should  
6 be granted on ground that Plaintiffs fail to meet their burden to demonstrate specific  
7 jurisdiction:

- 8 • "The fact that WCD was a member of a trade group and that it advertised in the  
9 trade group's publication does not create specific jurisdiction." (Supp. Reply, p.  
10 2.)
- 11 • Plaintiffs cite no evidence establishing that WCD sold talc to Shulton in  
12 California.
- 13 • Plaintiffs cite no evidence showing that Shulton actually used WCD's talc in Old  
14 Spice talcum powder in California (Plaintiffs' reliance on a purported reasonable  
15 inference is speculative and lacks foundation).
- 16 • Even assuming Shulton used WCD's talc in Old Spice products, Plaintiffs cite no  
17 evidence demonstrating that WCD was the exclusive or majority supplier.
- 18 • Plaintiffs cite no evidence establishing that Decedent's Old Spice talcum powder  
19 actually contained WCD's talc as opposed to some other supplier's talc.
- 20 • Plaintiffs' assertion – that there is specific jurisdiction because WCD's talc, as a  
21 probable ingredient in Old Spice talcum powder, reached California through the  
22 stream of commerce – is unavailing. The assertion is based on *Buckeye Boiler*,  
23 *supra*, 71 Cal.2d 892, which no longer appears to be good law. Indeed, in a  
24 recent decision by the United States Supreme Court – *J. McIntyre Machinery*,

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25 <sup>3</sup> Plaintiffs merely cite the answers, which, on their faces, do not indicate if WCD did or did not file motions to quash.

1 *Ltd. v. Nicastro* (2011) 131 S.Ct. 2780 – a plurality of four justices held that  
2 specific jurisdiction cannot be based on a “stream of commerce” theory.<sup>4</sup>


- 3 • *Nicastro’s* status as a plurality decision does not change the analysis. In  
4 concurrence with the plurality, Justices Stephen Breyer and Samuel Alito agreed  
5 that the “stream of commerce” theory does not support a finding of specific  
6 jurisdiction. In other words, at least six justices rejected the “stream of  
7 commerce” theory.
- 8 • At least two California appellate decisions, which were decided after *Buckeye*  
9 *Boiler*, hold that the “stream of commerce” theory lacks merit as to specific  
10 jurisdiction. (See *Bombardier Recreational Products, Inc. v. Dow Chemical*  
11 *Canada ULC* (2013) 216 Cal.App.4<sup>th</sup> 591; see also *Dow Chemical Canada ULC*  
12 *v. Superior Court* (2011) 202 Cal.App.4<sup>th</sup> 170.)

13 III.

14 CONCLUSION AND ORDER

15 WCD’s motion to quash for lack of personal jurisdiction is granted.

16  
17 DATED: 10/15/18

18   
19 \_\_\_\_\_  
20 EMILIE H. ELIAS  
21 Judge of the Superior Court  
22

23 \_\_\_\_\_  
24 <sup>4</sup> In *Nicastro*, the New Jersey Supreme Court held that a British manufacturer was subject to specific jurisdiction in  
25 New Jersey because it participated in a nationwide distribution system that resulted in a few of its products being  
sold in New Jersey. The United States Supreme Court reversed, finding that the British manufacturer had no office  
in New Jersey, neither paid taxes nor owned property in New Jersey, did not advertise in New Jersey, and did not  
send any employees to New Jersey. The fact that some of the defendant’s products ended up in New Jersey  
through the “stream of commerce” was not enough.

1 **PROOF OF SERVICE**

2 I am a resident of the State of California, over the age of eighteen years, and not a party to  
3 the within action. My business address is Murrin and Associates, LLC, 3675 Mt. Diablo Blvd,  
4 Suite 230, Lafayette, CA 94549. On October 16, 2015, I served the within document:

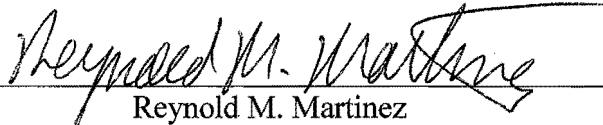
5 **NOTICE OF ENTRY OF ORDER GRANTING SPECIALLY APPEARING**  
6 **DEFENDANT WHITTAKER, CLARK AND DANIELS' MOTION TO QUASH**  
7 **(VILLANUEVA)**

- 8  FACSIMILE – by transmitting via facsimile the document listed above to the fax numbers set forth on the attached Telecommunications Cover Page on this date before 5:00 p.m.
- 9  MAIL – by placing the document listed above in a sealed envelope with postage thereon fully prepaid, in the United States mail at San Francisco, California addressed as set forth below.
- 10  ELECTRONIC SERVICE – I transmitted a copy of the foregoing documents via File & ServeXpress to the parties in this action as reflected on the transaction receipt in the records of File & ServeXpress including the party below.
- 11  PERSONAL SERVICE – by personally delivering the document listed above to the persons at the addresses set forth below.
- 12  OVERNIGHT COURIER – by placing the document listed above in a sealed envelope with shipping prepaid, and depositing in a collection box for next day delivery to the persons at the addresses set forth below via Overnight Express.

14 H.W. Trey Jones  
15 Lanier Law Firm  
16 6810 FM 1960 W  
Houston, TX 77063

*Attorneys For Plaintiffs*

17  
18 I declare under penalty of perjury under the laws of the State of California that the above  
19 is true and correct. Executed on October 16, 2015 at Lafayette, California.

20   
21 Reynold M. Martinez