

## Matter of New York City Asbestos Litig.

Supreme Court of New York, Appellate Division, First Department

May 21, 2024, Decided; May 21, 2024, Entered

Index No. 190346/18, Appeal No. 2317, Case No. 2023-05032

### Reporter

2024 N.Y. App. Div. LEXIS 2844 \*; 2024 NY Slip Op 02786 \*\*

**[\*\*1]** In the Matter of New York City **Asbestos** Litigation. Patricia Rasso, as Independent Executor of the Estate of Linda English, Deceased, Plaintiff-Respondent, Avon Products, Inc., et al., Defendants, Colgate-Palmolive Company (For Cashmere Bouquet), Defendant-Appellant.

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THIS OPINION IS UNCORRECTED AND SUBJECT TO REVISION BEFORE PUBLICATION IN THE OFFICIAL REPORTS.

**Prior History:** **[\*1]** Order, Supreme Court, New York County (Adam Silvera, J.), entered on or about September 13, 2023, which denied defendant Colgate-Palmolive Co.'s (Colgate) motion for summary judgment dismissing the complaint as against it, unanimously reversed, on the law, without costs, and the motion granted. The Clerk is directed to enter judgment accordingly.

### Core Terms

exposure, causation, studies, double

**Counsel:** Gordan Rees Scully Mansukhani, LLP, New York (Mohammad Haque of counsel), for appellant.

Simmons Hanly Conroy LLP, New York (James M. Kramer of counsel), for respondent.

**Judges:** Before: Manzanet-Daniels, J.P., Moulton, Rosado, O'Neill Levy, JJ.

### Opinion

When a foreign resident's exposure to a toxin occurs in

foreign states, New York's connection to the action "is tenuous at best" (*Kush v Abbott Labs.*, 238 AD2d 172, 172 [1st Dept 1997]). While decedent used defendant's talcum powder product while in New York on a number of regular layovers as a flight attendant, her use of the product over the course of decades was overwhelmingly in Texas, which was the state of her domiciliary, and she could not recall ever purchasing the product in New York (see *Schultz v Boy Scouts of Am.*, 65 NY2d 189, 195 [1985]; compare *Matter of Eighth Judicial Dist. Asbestos Litig.*, 273 AD2d 863, 863, [4th Dept 2000]; *In re Joint E. & S. Districts Asbestos Litig. [Coseglia]*, 1990 WL 3572, at 3 [ED NY 1990]). Thus, Texas law concerning proof of specific causation in toxic tort cases applies (*Bostic v Georgia-Pac. Corp.*, 439 SW3d 332, 336 [Tex 2014]; *Borg-Warner Corp. v Flores*, 232 SW3d 765 [Tex 2007]). Under *Bostic*, where a plaintiff cannot adduce direct evidence of specific **[\*2]** causation, they may rely on scientifically reliable evidence in the form of epidemiological studies, but only where the studies showed that the product at issue more than doubled a plaintiff's risk of injury. Plaintiff failed to meet that standard, her experts opining only that decedent's exposure to **asbestos** contributed to the development of her mesothelioma, without any data quantifying her exposure or data showing at what level of exposure the risk of disease would double.

THIS CONSTITUTES THE DECISION AND ORDER OF THE SUPREME COURT, APPELLATE DIVISION, FIRST DEPARTMENT.

ENTERED: May 21, 2024

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