

## **Herman v. Am. Honda Motor Co.**

Superior Court of Connecticut, Judicial District of Bridgeport

July 3, 2025, Decided

CV23-6124687

### **Reporter**

2025 Conn. Super. LEXIS 2049 \*; 2025 LX 290779; 2025 WL 1879275

ELAINE HERMAN v AMERICAN HONDA MOTOR CO

**Notice:** THIS DECISION IS UNREPORTED AND MAY BE SUBJECT TO FURTHER APPELLATE REVIEW. COUNSEL IS CAUTIONED TO MAKE AN INDEPENDENT DETERMINATION OF THE STATUS OF THIS CASE.

## **Core Terms**

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asbestos, personal jurisdiction, asbestos-containing, motion to dismiss, decedent, foreign corporation, manufacture, do business

**Judges:** [\*1] BELLIS, J.

**Opinion by:** BELLIS

## **Opinion**

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### MEMORANDUM OF DECISION RE: ASBESTOS CORPORATION LIMITED'S MOTION TO DISMISS # 170

On May 7, 2024, the plaintiff, Jacob Russell Herman Sr., the surviving spouse and executor of the estate of Elaine Adelia Hickey Herman (the decedent),<sup>1</sup> filed the operative complaint in this action against numerous defendants, both in his personal capacity and as the executor of the decedent's estate.<sup>2</sup> In the complaint, the plaintiff alleges the following relevant facts. The decedent was exposed to asbestos and/or asbestos-containing talcum products at various times in her life, from approximately the 1960s, through her personal use of asbestos-containing talcum products on herself and her children. She was further exposed to asbestos and/or asbestos-containing products from approximately the late 1950s to the late 1970s, through her contact with her father, an automobile mechanic, and from approximately the late 1970s to the early 2000s through her contact with the plaintiff, an automobile mechanic, from asbestos dust on their bodies and work clothes, in their vehicles, and from the dust being distributed and re-entrained in the family home. During these periods, the decedent was exposed [\*2] to and did inhale/ingest asbestos dust, fibers, and particles, all of which originated from the asbestos-containing products that the defendants placed into the stream of commerce. Such exposure in Connecticut contributed in part or totally to the decedent's contraction of asbestos-related mesothelioma and other asbestos-related pathologies.

The plaintiff is a resident of Connecticut. The defendants are corporations, companies, or other business entities which, during all times material, and for a long time prior thereto, have been and/or are now engaged directly or indirectly, in the manufacturing, producing, selling, merchandising, supplying, distributing, and/or otherwise placing in the stream of commerce, asbestos-containing products. Courts of the state of Connecticut allegedly have

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<sup>1</sup> The decedent, Elaine Herman, was a party to this action at the time the original complaint was filed on June 8, 2023.

<sup>2</sup> The operative complaint is the plaintiff's third amended complaint, hereinafter referred to as "the complaint."

personal jurisdiction over all the defendants. The plaintiff alleges that his claims against the defendants arise out of the defendants' purposeful efforts to serve directly or indirectly the market for their asbestos and/or asbestos-containing products in this state, either through direct sales or through utilizing an established distribution channel with the expectation that their products would be [\*3] purchased and/or used within the state of Connecticut.

According to the plaintiff's allegations, this court has personal jurisdiction over the defendants because his claims arise from the defendants' conduct in: (a) transacting business in this state, including the sale, supply, purchase, and/or use of asbestos and/or asbestos-containing products within this state; (b) contracting to supply services or things in the state; (c) commission of a tortious act in whole or in part in this state; (d) having an interest in, using, or possessing real property in this state; (e) entering into a contract to be performed in whole or in part by either party in this state; and/or (f) exposing the decedent to asbestos dust, fibers and/or particles generated from the ordinary and foreseeable use of the asbestos-containing products it sold, supplied, distributed, incorporated, and/or otherwise placed in the stream of commerce in Connecticut.

The plaintiff further alleges that ACL was and is a corporation organized and existing under the laws of the country of Canada, with its principal place of business in Canada. At all relevant times, ACL was authorized to do business in the state of Connecticut and [\*4] was engaged in the business of designing, manufacturing, processing, importing, converting, compounding, supplying, installing, replacing, repairing, using, and/or retailing substantial amounts of asbestos and/or asbestos-containing products, material, or equipment, including, but not limited to, raw asbestos fibers. ACL is a "Product Defendant."<sup>3</sup> Furthermore, ACL does substantial business in the state of Connecticut, including the sale and distribution of its dangerous and/or defective products and services. The exposures to ACL's products, actions, inactions, and/or other activities, which caused or contributed to cause the decedent's disease and injury, occurred in Connecticut and arose out of the business ACL conducted in Connecticut. The plaintiff's claims against ACL sound in product liability in count one; negligence and recklessness in count two; and loss of consortium in count five.

On October 6, 2023, ACL filed a motion to dismiss based on lack of personal jurisdiction under the applicable long-arm statute, [General Statutes § 33-929](#). The motion was accompanied by a memorandum of law and exhibits.<sup>4</sup> On November 2, 2023, the plaintiff filed an objection to the motion.<sup>5</sup> On July 26, 2024, ACL filed a reply [\*5] memorandum. The court heard argument on April 28, 2025.

"A motion to dismiss tests, inter alia, whether, on the face of the record, the court is without jurisdiction." (Internal quotation marks omitted.) [MacDermid, Inc. v. Leonetti, 310 Conn. 616, 626, 79 A.3d 60 \(2013\)](#). "A motion to dismiss shall be used to assert . . . lack of jurisdiction over the person . . . ." *Practice Book* § 10-30 (a). "A court deciding a motion to dismiss must determine not the merits of the claim or even its legal sufficiency, but rather, whether the claim is one that the court has jurisdiction to hear and decide." (Internal quotation marks omitted.) [Hinde v. Specialized Education of Connecticut, Inc., 147 Conn. App. 730, 740-41, 84 A.3d 895 \(2014\)](#).

"In deciding a jurisdictional question raised by a motion to dismiss, a court must take the facts to be those alleged in the complaint, including those facts necessarily implied from the allegations, construing them in a manner most favorable to the pleader. . . . In most instances, the motion must be decided on the complaint alone. However, when the complaint is supplemented by undisputed facts established by affidavits submitted in support of the motion to dismiss the trial court, in determining the jurisdictional issue, may consider these supplementary undisputed facts and need not conclusively presume the validity of the allegations of the complaint. [\*6] . . . Rather, those allegations are tempered by the light shed on them by the [supplementary undisputed facts]. . . . If affidavits and/or other evidence submitted in support of a defendant's motion to dismiss conclusively establish that jurisdiction is

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<sup>3</sup> The complaint refers to those defendants alleged to have "manufactured, sold, and/or distributed asbestos-containing products or raw asbestos materials for use in Connecticut and other states at times relevant to this action," as the "Product Defendants."

<sup>4</sup> ACL attached a signed and sworn affidavit by Richard Dufour, dated October 6, 2023, and copies of decisions from the Connecticut Superior Court and federal district court in Connecticut.

<sup>5</sup> The plaintiff's sole exhibit consisted of a copy of the summons and complaint, dated June 8, 2023.

lacking, and the plaintiff fails to undermine this conclusion with counteraffidavits . . . or other evidence, the trial court may dismiss the action without further proceedings. . . . If, however, the defendant submits either no proof to rebut the plaintiff's jurisdictional allegations . . . or only evidence that fails to call those allegations into question . . . the plaintiff need not supply counteraffidavits or other evidence to support the complaint . . . but may rest on the jurisdictional allegations therein." (Citation omitted; internal quotation marks omitted.) [\*North Sails Group, LLC v. Boards & More GmbH\*, 340 Conn. 266, 269-70, 264 A.3d 1 \(2021\)](#).

"Ordinarily, the defendant has the burden to disprove personal jurisdiction. . . . However, [i]f the defendant challenging the court's personal jurisdiction is a foreign corporation . . . it is the plaintiff's burden to prove the court's jurisdiction. . . . To do so, the plaintiffs must produce evidence adequate to establish such jurisdiction. . . . When a defendant challenges [\*7] personal jurisdiction in a motion to dismiss, the court must undertake a two part inquiry to determine the propriety of its exercising such jurisdiction over the defendant. The trial court must first decide whether the applicable state [long arm] statute authorizes the assertion of jurisdiction over the [defendant]. If the statutory requirements [are] met, its second obligation [is] then to decide whether the exercise of jurisdiction over the [defendant] would violate constitutional principles of due process." (Citations omitted; internal quotation marks omitted.) [\*Samelko v. Kingstone Ins. Co.\*, 329 Conn. 249, 256, 184 A.3d 741 \(2018\)](#).

ACL moves to dismiss all pending claims against it on the ground that the court lacks personal jurisdiction over it pursuant to [§ 33-929](#), the Connecticut long arm statute governing suits brought against foreign corporations. Specifically, it argues that the requirements of [subsections \(e\)](#) and [\(f\) \(3\)](#) have not been met.

[Section 33-929 \(e\)](#) provides "[e]very foreign corporation which transacts business in this state in violation of [section 33-920](#) shall be subject to suit in this state upon any cause of action arising out of such business." [Subsection \(f\) \(3\)](#) provides: "Every foreign corporation shall be subject to suit in this state, by a resident of this state or by a person having a usual place of business [\*8] in this state, whether or not such foreign corporation is transacting or has transacted business in this state and whether or not it is engaged exclusively in interstate or foreign commerce, on any cause of action arising as follows: . . . (3) out of the production, manufacture or distribution of goods by such corporation with the reasonable expectation that such goods are to be used or consumed in this state and are so used or consumed, regardless of how or where the goods were produced, manufactured, marketed or sold or whether or not through the medium of independent contractors or dealers . . . ."

In support of its motion, ACL submitted an affidavit by Richard Dufour, who avers he is counsel for ACL and that the facts in his affidavit are based upon his "personal knowledge and/or [his] information and belief based on reliable information made known to [him] and documents reviewed by [him] or at his direction." The facts set forth in his affidavit are reproduced below:

3. Since its incorporation, ACL has been and is a corporation incorporated and organized under the laws of Canada.
4. ACL's principal office is in the Province of Quebec, located in Thetford Mines. It is not now and [\*9] never has been a corporation organized or existing under the laws of Connecticut. ACL does not do business in Connecticut and has no subsidiary company which does business in Connecticut.
5. ACL was and is solely a mining corporation and has never been engaged in the manufacture, distribution, or sale of asbestos-containing products.
6. ACL mined ore in Canada, and all of its sales were made F.O.B. Thetford Mines, Quebec, Canada, and all payments were made to it at its offices at Thetford Mines, Quebec, Canada. After such sales, other parties subjected the raw asbestos to formulation, processing, and manufacturing, which, with additional ingredients, became products ultimately designed, produced and distributed by others wholly beyond the control and knowledge of ACL.
7. ACL is not presently, nor has it ever been, registered as a foreign corporation doing business in Connecticut, nor has ACL ever applied for a certificate of authority to do business within Connecticut.
8. ACL has never appointed or authorized any agent to accept process for it for suit in Connecticut.
9. ACL does not maintain, and has never maintained, an office within Connecticut.
10. ACL does not maintain, and has never [\*10] maintained, employees in Connecticut.

11. ACL has never paid taxe[s] or fees in Connecticut.
12. ACL does not have, and has never had, bank accounts in Connecticut.
13. ACL does not own, and has never owned, any real or personal property in Connecticut.
14. ACL does not, and has never, maintained any telephones or received mail in Connecticut.
15. ACL has never initiated any lawsuit in Connecticut in which it has sought recovery of any money or other things due or owing to it or any other relief on its behalf.

The plaintiff did not file a counteraffidavit or other evidence in opposition to the defendant's motion.<sup>6</sup> Because the plaintiff has failed to meet his burden to show personal jurisdiction exists, the court concludes that it lacks personal jurisdiction against ACL. See, e.g., *Ferrara v. Munro*, Superior Court, judicial district of Middlesex, Docket No. CV-156013059-S (June 25, 2015, *Aurigemma, J.*) (granting motion to dismiss based on lack of personal jurisdiction where plaintiffs failed to offer evidentiary support for their allegations or countervailing affidavit to dispute assertions in defendant's affidavit); *Dutkiewicz v. MacDermid, Inc.*, Superior Court, judicial district of New Britain, [\*11] Docket No. CV-03-0520436-S (August 12, 2003, *Robinson, J.*) (same). [Section 33-929](#) does not authorize an action against ACL in the present case, and thus, all claims against it are dismissed.<sup>7</sup>

BELLIS, J.

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End of Document

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<sup>6</sup> The plaintiff's counsel acknowledged at oral argument on the motion that "[t]here is no information that I have to counter what is in [the defendant's] motion separate and apart from what is there." Moreover, in his objection to the motion to dismiss, the plaintiff requested further jurisdictional discovery. Nevertheless, his counsel indicated to the court during oral argument that the court may adjudicate the motion to dismiss based on the current record.

<sup>7</sup> Because the plaintiff failed to meet his burden to show that the statutory requirements of the long arm statute are met, the court need not reach the issue of whether exercising jurisdiction would violate constitutional principles of due process. See, e.g., [Matthews v. SBA, Inc.](#), 149 Conn. App. 513, 543, 89 A.3d 938 ("Only if we find the [long arm] statute to be applicable do we reach the question whether it would offend due process to assert jurisdiction" [internal quotation marks omitted.]), cert. denied, 312 Conn. 917, 94 A.3d 642 (2014).