

Supreme Court of the State of New York
Appellate Division, First Judicial Department

Manzanet-Daniels, J.P., Moulton, Rosado, O'Neill Levy, JJ.

2317 IN RE: NEW YORK CITY ASBESTOS LITIGATION Index No. 190346/18
 PATRICIA RASSO, as independent executor of Case No. 2023-05032
 THE ESTATE OF LINDA ENGLISH, deceased,
 Plaintiff- Respondent,

-against-

AVON PRODUCTS, INC., et al.,
Defendants,

COLGATE-PALMOLIVE COMPANY (FOR CASHMERE
BOUQUET),
Defendant-Appellant.

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.

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.

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 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



Susanna Molina Rojas
Clerk of the Court