

# NEW YORK ASBESTOS LITIGATION CONFERENCE

New York City Bar Association | December 11, 2024

UPSTATE NEW YORK UPDATE



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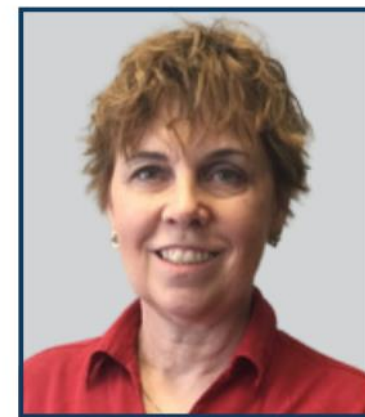
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**Hon. Paul Edwin**  
**Davenport**  
Supreme Court of the  
State of New York  
Schenectady County, NY



**Hon. Vincent M. Dinolfo**  
Supreme Court Justice  
Monroe County, NY



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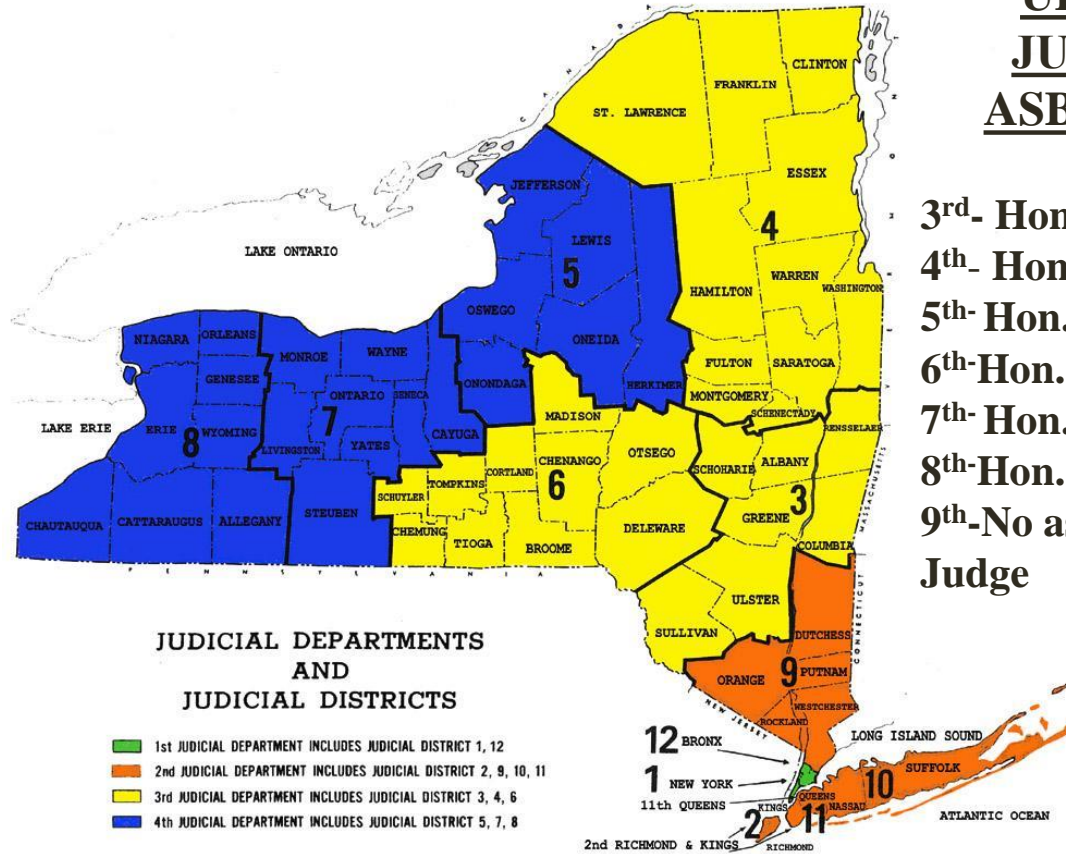
# JURISDICTIONAL UPDATE

## UPSTATE NEW YORK



Joseph W. Belluck, Belluck & Fox, LLP  
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Carol G. Snider, Barclay Damon LLP  
Hon. Paul E. Davenport, J.S.C.  
Hon. Vincent M. Dinolfo, J.S.C.

## UPSTATE NEW YORK JUDICIAL DISTRICTS' ASBESTOS LITIGATION:



3<sup>rd</sup>- Hon. Justin O. Corcoran, J.S.C.

4<sup>th</sup>- Hon. Paul E. Davenport, J.S.C.

5<sup>th</sup>- Hon. James P. McClusky, J.S.C.

6<sup>th</sup>-Hon. Mark G. Masler, J.S.C.

7<sup>th</sup>- Hon. Vincent M. Dinolfo, J.S.C.

8<sup>th</sup>-Hon. Raymond W. Walter, J.S.C.

9<sup>th</sup>-No assigned asbestos litigation  
Judge

## **OVERVIEW**

- 2024 Trends
- Operative Case Management Orders
- Trial Scheduling
- Judges' Expectations
- Notable Decisions
- Current Dockets
  - Judges' Expectations-updates to practices & procedures
  - 2025 Outlook

# 2024 TRENDS

## Increase In Case Filings

- ❑ Continued increase in both mesothelioma and lung cancer filings across the 3<sup>rd</sup>-8<sup>th</sup> JDALs.
- ❑ Active Plaintiffs' Law Firms:
  - ❑ Belluck & Fox-96 (+6) (78 in the 3<sup>rd</sup>-7<sup>th</sup> JDALs, 18 in 8<sup>th</sup> JDAL)
  - ❑ Lipsitz, Ponterio & Comerford-73 (+5) (25 in the 3<sup>rd</sup>-7<sup>th</sup> JDALs, 48 in 8<sup>th</sup> JDAL)
  - ❑ Weitz & Luxenberg- 49 (+15) (35 in 3<sup>rd</sup>-7<sup>th</sup> JDALs, 14 in 8<sup>th</sup> JDAL)
  - ❑ Meirowitz & Wasserberg-17 (+6) (all in 3<sup>rd</sup>-7<sup>th</sup> JDALs)
  - ❑ Gori-7 (+2) (5 in 3<sup>rd</sup>-7<sup>th</sup> JDALs, 2 in 8<sup>th</sup> JDAL)
  - ❑ Maune Raichle-7 (+3) (5 in 3<sup>rd</sup>-7<sup>th</sup> JDALs, 2 in 8<sup>th</sup> JDAL)
  - ❑ Richmond Vona-5 (+1) (2 in 3<sup>rd</sup>-7<sup>th</sup> JDALs, 3 in 8<sup>th</sup> JDAL)
  - ❑ Levy Konigsberg- 3 (+1) (all in 3<sup>rd</sup>-7<sup>th</sup> JDALs)
  - ❑ Early Law Firm-2 (-2) (all in 3<sup>rd</sup>-7<sup>th</sup> JDALs)
  - ❑ Simmons-1 (same) (3<sup>rd</sup> JDAL)
  - ❑ Michael P. Joyce-1 (+1) (8<sup>th</sup> JDAL)
  - ❑ Nachawati Law Group- 1 (+1) (5<sup>th</sup> JDAL)



# 2024 TRENDS

## ❑ Active Plaintiffs' Law Firms:

- ❑ Belluck & Fox-96 (+6) (78 in the 3<sup>rd</sup>-7<sup>th</sup> JDALs, 18 in 8<sup>th</sup> JDAL)
  - ❑ 2024 filings: 48
- ❑ Lipsitz, Ponterio & Comerford-73 (+5) (25 in the 3<sup>rd</sup>-7<sup>th</sup> JDALs, 48 in 8<sup>th</sup> JDAL)
  - ❑ 2024 filings: 49
- ❑ Weitz & Luxenberg- 49 (+15) (35 in 3<sup>rd</sup>-7<sup>th</sup> JDALs, 14 in 8<sup>th</sup> JDAL)
  - ❑ 2024 filings: 18
- ❑ Meirowitz & Wasserberg-17 (+6) (all in 3<sup>rd</sup>-7<sup>th</sup> JDALs)
  - ❑ 2024 filings: 12
- ❑ Gori-7 (+2) (5 in 3<sup>rd</sup>-7<sup>th</sup> JDALs, 2 in 8<sup>th</sup> JDAL)
  - ❑ 2024 filings: 5
- ❑ Maune Raichle-7 (+3) (5 in 3<sup>rd</sup>-7<sup>th</sup> JDALs, 2 in 8<sup>th</sup> JDAL)
  - ❑ 2024 filings: 5
- ❑ Richmond Vona-5 (+1) (2 in 3<sup>rd</sup>-7<sup>th</sup> JDALs, 3 in 8<sup>th</sup> JDAL)
  - ❑ 2024 filings: 3
- ❑ Levy Konigsberg- 3 (same) (all in 3<sup>rd</sup>-7<sup>th</sup> JDALs)
- ❑ Early Law Firm-2 (-2) (all in 3<sup>rd</sup>-7<sup>th</sup> JDALs)
- ❑ Simmons-1 (same) (3<sup>rd</sup> JDAL)
- ❑ Michael P. Joyce-1 (same) (8<sup>th</sup> JDAL)
- ❑ Nachawati Law Group- 1 (+1) (5<sup>th</sup> JDAL)
  - ❑ 2024 filing: 1

**NEW FILINGS AS OF 12/10/24: 141**

# OPERATIVE CASE MANAGEMENT ORDERS

## ☐ Uniform CMO for 3<sup>rd</sup>-7<sup>th</sup> JDALs

- ☐ Executed by Hon. Erin P. Gall, J.S.C., February 1, 2021. Adopted by each presently-assigned Justice of the 3<sup>rd</sup>-7<sup>th</sup> JDALs.
- ☐ Update to Sec. VII(A)(2)(c)/Exhibit “E”- “Plaintiffs’ First Set of Product Identification Interrogatories and Document Requests *with respect to case-specific worksites*.”
- ☐ Approved Standard Interrogatories are in the CMO.

## ☐ 8<sup>th</sup> JDAL CMO

- ☐ Executed by Hon. James B. Kane, Jr., J.S.C., January 24, 2000.
- ☐ Still followed by Justice Walter with certain adjustments to practices/procedures

# TRIAL SCHEDULING

## ☐ 3<sup>rd</sup>-7<sup>th</sup> JDALs

- ☐ Trials scheduled 2-3x per week-mostly Tuesday and Thursday jury selections in county wherein case is venued; certain Wednesdays now being utilized given volume of filings.
- ☐ 3<sup>rd</sup>-7<sup>th</sup> JDALs operate on a master trial calendar Trials currently scheduled through July 2026 in the 3<sup>rd</sup>-7<sup>th</sup> JDALs, with 2-3 per week until February 2026 and an average of 2 per week thereafter.
- ☐ *Extremis* vs. non-*extremis* filings.

## ☐ 8<sup>th</sup> JDAL

- ☐ 8<sup>th</sup> JDAL has separate trial calendar
- ☐ Trials scheduled twice per week to accommodate increased filings.
- ☐ Trials currently scheduled through February 2026 in 8<sup>th</sup> JDAL, average of 2 per week until Nov. 2025, and 1 per week thereafter.



# JUDGES' EXPECTATIONS

## ☐ DISCOVERY DISPUTES

## ☐ SETTLEMENT CONFERENCES

- ☐ Initial Settlement Conference

- ☐ Final Settlement Conference

## ☐ TRIAL PROCEEDINGS

- ☐ Jury selection



# Confidential Settlement Memoranda

## Prior to Final Settlement Conference:

- Counsel for Plaintiff is to provide the Court with an *ex parte* Confidential Settlement Memorandum containing: (1) the name of the managing settlement attorney for the file; (2) a description of the Plaintiff, including the exposure claimed, the date of diagnosis, the date of passing (if applicable) and the asbestos-related diagnosis; (3) a list of remaining Defendants; (4) the amount of each demand, and the identity of the primary target Defendant(s); and (5) and the factual predicate for liability for each remaining Defendant.
- Counsel for each remaining Defendant is to provide the Court with an *ex parte* Confidential Settlement Memorandum consisting of: (1) the settlement history involving similar claimants including, where applicable, with this specific Plaintiff's counsel; (2) the amount offered for settlement; and (3) the factual predicate of each claimed defense. Any Defendant intending to assert a good-faith, no-pay position at the Conference shall advise the Court and detail the merits supporting that position.
- These memoranda are for *in-camera ex parte* review by the Court only, and should be sent to court attorney in respective jurisdiction.

# NOTABLE RULINGS & DECISIONS



- **Discovery Limitations**
  - Following prior rulings of Justice Gall (*Kulcavage*), and Justice Chimes (*Wilger*). Most recently discussed in *Gordon Chase* matter (Justice Walter).
- **Personal Jurisdiction**
  - *McInnis v A.O. Smith water Products, et al.*
  - (8007921/2024).

# DISCOVERY LIMITATIONS

- ❑ *Shirley Kulcavage, individually and as personal representative of the Estate of Edward Kulcavage v. Burnett Process, Inc., et al. (Sup. Ct. of NY, Monroe Co., Index No. E2021009637)-May 2022*
  - ❑ **Background:** Plaintiffs' counsel sued over 230 separately-named Defendants in a case involving alleged exposure of the Decedent at the Corning Plant in NY. Following the filing of the action, and before the commencement of any substantive discovery by Plaintiffs, Plaintiffs' counsel served on every sued defendant demands for responses to both: (1) Plaintiffs' standard interrogatory and document production requests, and (2) Plaintiffs' contractor PID interrogatories and document production requests. Defense counsel made application to the Court requesting Plaintiffs be precluded from seeking overbroad discovery as to all sued defendants with no basis or projected PID. Extensive oral argument was held on this issue.
  - ❑ **Held:** Found in Defendants' favor and clarified interrogatory discovery requirements in 3<sup>rd</sup>-7<sup>th</sup> JDALs, and granted Defendants' application to preclude Plaintiffs' from seeking responses to *standard* interrogatory and document production requests prior to the production of evidence identifying a particular Defendant as a probable source of Decedent's exposure to asbestos, but ruled Defendants are required to respond to Plaintiffs' 'First Set of Product Identification Interrogatories & Document Requests' with respect to case specific work-sites, pursuant to Sec. VII(A)(2)(C) of the 3<sup>rd</sup>-7<sup>th</sup> JDAL CMO.
    - ❑ Held that Plaintiffs' 'First Set of Product Identification Interrogatories & Document Requests' must not deviate from the Exhibit A provided (effectively replaced 'Exhibit E' to the current CMO).

# PERSONAL JURISDICTION

## ***McInnis v A.O. Smith water Products, et al.***

**(Sup. Ct. of NY, Erie Co., Index No. 8007921/2024,  
Nov. 2024)**

- ❑ Background: Defendant valve manufacturer moved to dismiss under CPLR 3211 and 3212, asserting Court lacked personal jurisdiction over it as Plaintiff never testified he was exposed to the moving Defendant's products in NY.
  - ❑ Plaintiff's testimony was that he worked 'at an oil refinery and at some chemical plants' in NY but could not recall names of facilities. He asserted his identification of brands/products was the same at the unspecified locations in NY as in Canada (where he identified exposure to Defendant's products).
  - ❑ Plaintiff argued a *prima facie* showing as to long-arm jurisdiction was made under CPLR 302(a)(3), as his testimony was enough to establish that he repaired 'the same valve brands in NY' and was subjected to the same exposure from the valves as he was in Canada.
- ❑ Held: The Court granted Defendant's motion pursuant to CPLR 3211(a)(8). The Court ruled that the sole issue before it was whether Plaintiff's 'vague testimony regarding his work in NY is enough to draw a reasonable inference that he was exposed to asbestos from Defendant's valves in NY.'
  - ❑ The Court found that there was no evidence presented as to *where* Plaintiff worked in NY and that, while he testified that the 'pumps, valves and steam traps' he worked on in NY were the same ones he worked on in Canada, those could have been *any* of the brands he identified and there is no way to reasonably infer that the valves he worked on were Defendant's valves. Thus, Plaintiff failed to establish a *prima facie* case that he was injured by the Defendant in NY.



# CURRENT DOCKETS

- Current Trial Calendars- 3<sup>rd</sup>-8<sup>th</sup> JDALs
- Updates to Practices/Procedures
  - 8<sup>th</sup> JDAL-
    - Confidential Settlement Memoranda
    - MIL Procedures
  - 3<sup>rd</sup>/4<sup>th</sup>/6<sup>th</sup> JDAL-
    - Confidential Settlement Memoranda
    - MIL Procedures
- Outlook on future trial proceedings/practices

# COURT CONTACT INFORMATION

- **3<sup>rd</sup> JDAL, Justice Justin Corcoran, J.S.C.**
  - Court Attorneys: Jennifer Shatz ([jshatz@nycourts.gov](mailto:jshatz@nycourts.gov)) and Mark Canary ([mcanary@nycourts.gov](mailto:mcanary@nycourts.gov)).
  - Chambers Email: [corcoranchambers@nycourts.gov](mailto:corcoranchambers@nycourts.gov)
  - Secretary: Melissa Jeffers ([mxjeffer@nycourts.gov](mailto:mxjeffer@nycourts.gov))
- **4<sup>th</sup> JDAL, Justice Paul Davenport, J.S.C.**
  - Court Attorneys: Brett Eby ([beby@nycourts.gov](mailto:beby@nycourts.gov)), Mark Canary ([mcanary@nycourts.gov](mailto:mcanary@nycourts.gov)).
  - Chambers Email: [chamberspdavenport@nycourts.gov](mailto:chamberspdavenport@nycourts.gov)
  - Secretary: Emily Preyer-Blackney ([epreyer@nycourts.gov](mailto:epreyer@nycourts.gov))
- **5<sup>th</sup> JDAL, Justice James McClusky, J.S.C.**
  - Court Attorneys: Robert Slye ([rjslye@nycourts.gov](mailto:rjslye@nycourts.gov)) and Mark Canary ([mcanary@nycourts.gov](mailto:mcanary@nycourts.gov))
  - Secretary: Nicole Zirkler ([nzirkler@nycourts.gov](mailto:nzirkler@nycourts.gov))
- **6<sup>th</sup> JDAL, Justice Mark Masler, J.S.C.**
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- **7<sup>th</sup> JDAL, Justice Vincent Dinolfo, J.S.C.**
  - Court Attorneys: Benjamin Skomsky ([bskomsky@nycourts.gov](mailto:bskomsky@nycourts.gov)), Mark Canary ([mcanary@nycourts.gov](mailto:mcanary@nycourts.gov)).
  - Secretary: Donna Brett ([dbrett@nycourts.gov](mailto:dbrett@nycourts.gov))
- **8<sup>th</sup> JDAL, Justice Raymond Walter, J.S.C.**
  - Judge: ([rwalter@nycourts.gov](mailto:rwalter@nycourts.gov))
  - Court Attorney: Matthew Szalkowski, Esq. ([mszalkow@nycourts.gov](mailto:mszalkow@nycourts.gov))
  - Court Secretary: Ross Kostecky ([rkosteck@nycourts.gov](mailto:rkosteck@nycourts.gov))
  - Court Clerk: Elaine Xenos ([exenos@nycourts.gov](mailto:exenos@nycourts.gov))