

# Lost in Translation: Demystifying Consolidation in Multi-Party Litigation

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What does it mean when the court consolidates cases? When separate actions are filed by separate plaintiffs arising out of the same transaction or occurrence, the issue of consolidation is likely to be raised early on by one of the parties or the court. While the idea sounds simple enough, the wording of the statute itself and the related concepts of “relatedness” and “merger” often creates confusion and doubt amongst the parties and sometimes the court itself as to what exactly the legal and procedural effect of the consolidation order means and what was intended.

## Related Cases

When separate actions are filed in the same jurisdiction based on the same incident, the cases are usually first deemed to be “related.” Relatedness is an entirely separate concept from consolidation of actions. As a party becomes aware of a related case, the party should file and serve a Notice of Related Case.

If the jurisdiction where the cases are pending conducts Case Management Conferences, the notice of related case can be given in the Case Management Statement which specifically asks if there are any related cases. Once the cases are identified, they will be deemed related by the court. If the cases are in separate departments, the first case filed in time will become the lead case and the department where the lead case is pending will issue a transfer order to the department where the other case or cases are pending. The effect of the cases being deemed “related” is procedural in nature. The cases are now in the same department but have not yet been consolidated for trial or other purposes. When cases are related all parties to the related cases should be served with pleadings and discovery in the related cases.

## Consolidation

Code of Civil Procedure Section 1048(a) authorizes consolidation “when actions involving a common question of law or fact are pending before the court, it may order a joint hearing or trial of any or all the matters in issue in the actions; it may order all the actions consolidated and it may make such orders concerning proceedings therein as may tend to avoid unnecessary costs or delay.” The statute has been construed to contemplate two separate and distinct consolidation orders. It is this distinction which often causes the

most confusion because the parties and/or the court are not precise when using the term “consolidation.”

## A. Consolidation for Purposes of Trial Only

The California Supreme Court has explained Section 1048(a) authorizes the court when appropriate to “order a joint hearing or trial” or “to order all the actions consolidated.” (*Hamilton v. Asbestos Corp. Ltd.* (2000) 22 Cal. 4th 1127, 1147). The first type of consolidation, known as consolidation for trial, is the most common and usually what is intended when the parties and the court discuss consolidation. In a consolidation for trial, “the pleadings, verdicts, findings and judgments are kept separate; the actions are simply tried together for the sake of convenience and judicial economy.” (See *Sanchez v. Superior Court*, (1988) 203 Cal. App. 3d 1391, 1396).

## B. Complete Consolidation

The second type of consolidation authorized by Section 1048(a) is “to order all the actions consolidated.” (*Hamilton v. Asbestos Corp.*, 22 Cal. 4th at 1147). This type of consolidation is commonly referred to as complete consolidation or merger. In this type of consolidation, the pleadings are regarded as merged, one set of findings is made, and one

judgment is rendered. (See *Sanchez v. Superior Court*, 203 Cal. App. 3d at 1396). This type of consolidation is usually limited to circumstances where the parties in the cases to be consolidated are identical and the causes of action are capable of being merged. (*Ibid.*)

### Legal Effect of Complete Consolidation

As demonstrated in the California Supreme Court case *Hamilton v. Asbestos Corp. Ltd.*, supra, the distinction between the two types of consolidation can have significant legal effect. In *Hamilton*, the plaintiff Arthur Mitchell filed two separate actions arising out of asbestos related illness. The first action (*Mitchell 1*) dealt with allegations of asbestos-related lung disease, asbestosis. The second action (*Mitchell 2*) involved allegations of asbestos-related cancer, mesothelioma. As with most asbestos cases, multiple defendants involved in the manufacturing and selling of asbestos-containing products were named. One of the defendants named in both actions was Asbestos Corp. However, *plaintiff only served Asbestos Corp. with the complaint in the second action (Mitchell 2)*. Thus, Asbestos Corp. never appeared in the Mitchell 1.

The day after Asbestos Corp. filed its Answer in Mitchell 2, plaintiff moved to consolidate his two actions. Plaintiff's motion for consolidation did not specify any limitation of the consolidation for trial purposes only. The court's consolidation

order stated: "IT IS ORDERED that Action[s] Nos. 955576 and 975884 *are consolidated as Action No. 955576.*" (Italics added.). After pre-trial settlements, the case went to trial against Asbestos Corp. alone. The jury returned a verdict in favor of the plaintiff finding Asbestos Corp. 10% liable for plaintiff's asbestosis and mesothelioma. Asbestos Corp. appealed from the judgment on a statute of limitations theory. The court of appeal reversed the judgment in its entirety based on the statute of limitations in *Mitchell 2* and finding the court lacked personal jurisdiction over Asbestos Corp. in *Mitchell 1* because the complaint was never served and Asbestos Corp. never made an appearance.

The Supreme Court reversed the court of appeal on both the statute of limitations issue as well as the personal jurisdiction issue. Justice Mosk, writing for the majority, found the language of the court's consolidation order to be that of *complete consolidation* because the case numbers were merged into one singular case number. (*Hamilton v. Asbestos Ltd.*, 22 Cal. 4<sup>th</sup> at 1148-1149). Also relevant to the court's holding, was the fact Asbestos Corp. did not oppose the consolidation and participated in discovery in the consolidated action. (*Ibid.*). Thus, the court found personal jurisdiction in *Mitchell 1* based on the fact Asbestos Corp. had appeared in *Mitchell 2* because the cases had in the supreme court's opinion been completely consolidated.

### Take-Away

Be precise when moving the court for consolidation for trial purposes only. Make sure the court's order is clear as to whether the cases are consolidated for trial purposes only or completely merged into one single action with one judgment. In most instances, what the parties intend when asking for consolidation is consolidation for purposes of trial only. However, the court's order may not be precise which can lead to confusion particularly when there are multiple defendants and cross-complaints being filed in several different actions. As the *Hamilton* case illustrates, a defendant could be found liable for significant damages even though it was never served with a Complaint simply because the court's order used the term "consolidated" without further limitation.

### ABOUT THE AUTHOR

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