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CLIFFORD'S NOTES

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alc and asbestos have become synonymous. Thousands of mothers and women have disposed of full containers in fear that continued use of the potentially carcinogenic product may cause ovarian cancer or mesothelioma, and many have taken their cases to court for what the product maker knew.

The latest — and largest — verdict came down in mid-July for \$4.7 billion involving 22 women and their families who contracted ovarian cancer because of the asbestos in Johnson & Johnson's baby powder. The six-week trial resulted in \$550 million in compensatory damages and \$4.14 billion in punitive damages against the pharmaceutical giant. Plaintiffs, six of whom had died, alleged that the defendant knew of the talc contamination since at least the 1970s but failed to warn consumers. Plaintiffs' attorney argued Johnson & Johnson sent executives to Italy to intentionally remove language from Italian documents that stated that their talc mines contained asbestos.

Several previous trials that were heard for weeks before different juries in various states have returned verdicts for millions of dollars. What is at issue is whether talcum powder causes cancer from asbestos that cannot be separated from the talc. Geologically, talc and asbestos can form naturally alongside each other and, therefore, cross-contamination is very possible.

Talcum powder is considered a "cosmetic" rather than a "drug," meaning it is regulated by the Food and Drug Administration but does not require approval. Therefore, the FDA can punish a manufacturer that sells "adulterated" or "misbranded" cosmetics, but these products are not subject to rigorous testing protocols.

The nonprofit Cancer Prevention Coalition petitioned the FDA in 1994 and again in 2008 for talc warning labels. In a 2014 denial letter, the FDA said there was "no conclusive evidence" to establish causality, though it is plausible that talc "may elicit a foreign-body-type reaction and inflammatory response that, in some exposed women, may progress to epithelial cancers."

The debate over the hazards in talc actually began in the early 1970s when scientists discovered talc particles in ovarian tumors. Harvard researcher Daniel Cramer reported a link between talcum powder and ovarian cancer in 1982. He advised Johnson & Johnson, the multinational seller, to put a warning on its products.

At least 10 medical studies conducted as early as 1971 have linked talc to ovarian cancer. Reuters reported in 2006 that the World Health Organi-



TALC TALK

Missouri court overturns \$55M talc-cancer verdict

By **BOB CLIFFORD**

zation classified genital talc as a carcinogen. Reuters also reported in that 2016 story that a recent study of more than 4,000 women demonstrated that the risk of ovarian cancer was one-third higher among women who regularly powdered their genitals with talc.

Experts at the talc trials have testified that for decades the New Jersey-based Johnson & Johnson had known from testing that asbestos was in the talc mines they used, first in Italy and then in Vermont, yet the corporate giant withheld the information or any warnings from the public. In fact, the *Chicago Tribune* in September 2017 reported that trials have uncovered sealed documents from Johnson & Johnson revealing exposure to asbestos fibers in talc can cause ovarian cancer.

Early consumer talc cases rested on a mesothelioma theory — plaintiffs inhaled the deadly particles leading to lung cancer. A 2002 study published in the *Annals of Work Exposures and Health* found excess cases of mesothelioma and other asbestos-related lung diseases among talc miners in upstate New York. Johnson & Johnson's legal teams were successful on several of these cases. But then came the New Jersey case of Stephen Lanzo III where Johnson & Johnson was held responsible for \$25.9 million in compensatory damages and \$55 million in punitive damages for causing the plaintiff's mesothelioma through exposure to asbestos from Johnson & Johnson's talc prod-

ucts. France-based Imerys, the manufacturer's supplier, was ordered to pay \$36.1 million.

With divisions in medical equipment and supplies, consumer products and others, Johnson & Johnson boasted profits of \$16.5 billion in fiscal year 2016. Whether sellers of the product will be added as defendants is an issue being debated under the "professional vendor" theory of liability that holds that a seller assumes the same responsibility as the manufacturer when the seller is presumed to know of the defects and holds the product out to the public as its own.

Juries from coast to coast, including California and Missouri, have issued verdicts in ovarian cancer cases totaling more than \$720 million in damages. These decisions are on appeal or have been reversed.

So far, St. Louis jurors have upheld ovarian cancer claims in five different trials. Johnson & Johnson announced it plans to appeal the latest first multi-plaintiff verdict, but for some 9,000 additional plaintiffs who were exposed to the substance on a frequent basis awaiting their time to be heard, a trend is appearing in courts, if they are able to outlive the death knell of cancer. CL

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