

J&J Beats Pair Of Talcum Powder Ovarian Cancer Suits In NJ

By **Shayna Posses**

Law360, New York (September 2, 2016, 2:20 PM ET) -- A New Jersey judge on Friday tossed two suits brought by women alleging Johnson & Johnson's talc-based products caused them to develop ovarian cancer, holding that their experts didn't offer sufficient scientific proof establishing the connection between talc and the disease.



Atlantic County Judge Nelson C. Johnson granted Johnson & Johnson's summary judgment request after concluding that although Brandi Carl and Diana Balderrama's experts were qualified, their testimony suffered from a slew of problems. (Credit: Getty)

Atlantic County Judge Nelson C. Johnson granted J&J's summary judgment request after concluding that although Brandi Carl and Diana Balderrama's experts were qualified, testimony from Dr. Graham Colditz and Dr. Daniel Cramer suffered from a slew of problems, such as the "narrowness and shallowness" of the scientific inquiries and evidence, and noting that none of the women's witnesses even attempted to explain how the presence of talc in the ovaries causes ovarian cancer.

"Though both plaintiffs' experts are eminently qualified, their areas of scientific inquiry, reasoning, and methodology are slanted away from objective science and towards advocacy," the judge said. "It is the court's conclusion that the opinions expressed by plaintiffs' experts fail to demonstrate 'that the data or information used were soundly and reliably generated and are of a type reasonably relied upon by comparable experts.'"

The decision stems from requests by J&J and a talc producer called Imerys Talc America Inc. to bar the

women's expert witnesses from testifying at trial, contending that the plaintiffs' theory about the cause of the cancer were flawed and that there was no reliable scientific evidence to support their contentions, according to the opinion. The companies had also asked for summary judgment in the event that their efforts to bar testimony succeeded, the opinion said.

Carl and Balderrama countered that their experts are highly qualified because of their education, training and experience, which Judge Johnson agreed with Friday, going so far as to call Dr. Colditz, of the women's two principal witnesses on causation, "a brilliant scientist and dazzling witness."

But, the judge held, their impressive credentials don't change the fact that their methodology and analysis were pitted with gaps.

For one, the women's two key causation witnesses confined their analysis to smaller kinds of studies that can open the door to bias, while appearing skeptical of the larger studies J&J highlighted, the judge said.

The doctors also failed to meaningfully address other fields of scientific inquiry in support of their causation claims, including laboratory studies on talc and the biology of cancer, as well as the significant risk factors for ovarian cancer both women had, such as obesity and past use of intrauterine devices, the judge said.

However, Judge Nelson concluded, the biggest problem is their failure to offer a coherent explanation of how talc-based powder causes cancer in the ovaries. The cornerstone of their analysis is the idea of inflammation, namely that talc travels through the female anatomy, lodges in the ovaries and irritates cells, causing inflammation that eventually leads to cancer, according to the judge.

But the witness ignore the fact that another doctor admitted on cross-examination that he didn't observe inflammation in Carl's or Balderrama's tissue, Judge Nelson said.

Meanwhile, a doctor who testified for J&J offered persuasive evidence that talc doesn't cause cancer, noting that gene mutations cause cancer, but talc doesn't cause mutations, according to the judge.

Ultimately, the methodologies utilized by the women's experts appeared to be litigation-driven, rather than scientifically and objectively grounded, the judge held.

"As these proceedings drew to a close, two words reverberated in the court's thinking: 'narrow and shallow,'" Judge Nelson said. "It was almost as if counsel and the expert witnesses were saying, Look at this, and forget everything else science has to teach us."

Judge Nelson's decision comes on the heels of a Missouri state jury's \$55 million award to a woman in May who said she developed ovarian cancer after decades of using talc baby powder on her genitals. The verdict marked a second major defeat for the company, after a jury awarded a \$72 million verdict in a similar case in February.

Carol Goodrich, a spokeswoman for Johnson & Johnson Consumer, said in a Friday statement that they recognize that women and families affected by ovarian cancer are searching for answers and deeply sympathize with them.

"The court's decision today appropriately reflects the science and facts at issue in this litigation,"

Goodrich said. "Science, research, clinical evidence and decades of studies by medical experts around the world continue to support the safety of cosmetic talc."

An Imerys spokesperson echoed this in a Friday statement, saying the court reviewed approximately 100 treatises related to talc, cancer and related issues and heard seven days of testimony before concluding that the methodologies used by the plaintiffs' experts weren't consistent with sound scientific principles.

"Imerys sympathizes with women suffering from ovarian cancer and hopes that today's ruling will serve to focus the scientific community's efforts on finding the true causes for this terrible disease," the spokesperson said.

Richard Golomb, an attorney for the women, said in a Friday email that they disagree with the court's decision in excluding the two preeminent experts who have been researching the association between talc and ovarian cancer since 1982.

"We have begun the process of reviewing all legal avenues and fully expect an appeal to be filed next week," he said. "In the meantime, we look forward to continuing success while proceeding with additional trials in courts around the country that have consistently ruled that these experts are qualified and their methodology reliable."

Carl and Balderrama each filed suit in November 2014 in Atlantic County Superior Court, contending that a talc-based product manufacturer by J&J and Imerys caused them to develop ovarian cancer, according to the opinion.

In 2015, the state Supreme Court granted mutli-county litigation status to more than 100 suits over the talc products, including Carl's and Balderrama's actions, the opinion said.

The plaintiffs are represented by Richard Golomb and Ruben Honik of Golomb & Honik PC, Paul R. D'Amato of the D'Amato Law Firm, Ted G. Meadows and David B. Dearing of Beasley Allen Law Firm, Timothy W. Porter of Porter & Malouf and Michelle Parfitt of Ashcraft & Gerel LLP.

The defendants are represented by Gene M. Williams, Hunter K. Ahern and Mark C. Hegarty of Shook Hardy & Bacon LLP, Susan M. Sharko and Julie Tersigni of Drinker Biddle & Reath, Michael R. Klatt, Kenneth J. Ferguson and Ann Thornton Field of Gordon & Rees and Lorna A. Dotro of Coughlin Duffy LLP.

The suits are Brandi Carl v. Johnson & Johnson et al., suit number ATL-L-6546-14, and Diana Balderrama v. Johnson & Johnson et al., suit number ALT-L-6540-14, in the Superior Court of New Jersey Law Division, Atlantic County.

--Additional reporting by Brandon Lowrey. Editing by Patricia K. Cole.