

[Products Liability Law Daily Wrap Up, EXPERT EVIDENCE—HOUSEHOLD PRODUCTS—N.J. Super.: Consumers' experts could not establish how talcum powder could cause ovarian cancer, \(Sept. 7, 2016\)](#)

Products Liability Law Daily Wrap Up

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By John W. Scanlan, J.D.

Two consumers who developed ovarian cancer after using talcum powder could not bring suit against Johnson & Johnson and Imerys Talc America, Inc. because they could not explain how talc in the ovaries could cause ovarian cancer, the New Jersey state court handling multi-county litigation ruled in barring the testimony of their experts on causation and granting summary judgment to the two companies (*Carl v. Johnson & Johnson*, September 2, 2016, Johnson, N.).

The two lawsuits were filed separately in New Jersey court in 2014, and were subsequently designed as multi-county litigation. The two defendants moved to bar testimony by each of the consumers' expert witnesses, and also moved for summary judgment seeking dismissal if the motions to bar the expert testimony were granted. They argued that the consumers' theories on general and specific causation were flawed and there was no reliable scientific evidence supporting them. Five witnesses for the consumers and four witnesses for the companies testified at the *Kemp* hearing; the court found all nine highly qualified.

Expert testimony. The testimony of the consumers' two principal witnesses on causation was excluded. The court first observed generally that it was disappointed in the consumers' presentation, which was almost "as if counsel wished the court to wear blinders." Their two causation experts presented testimony that was "narrow and shallow," in that they were dismissive of any evidence other than epidemiological studies and also confined their analyses to evidence from small representative studies only. Importantly, they failed to present a coherent explanation to support their hypothesis for biologic plausibility, and neither explained how talcum powder caused cancer in the ovaries. While one expert testified that invasive serious cancer was the type most commonly associated with talc use, neither expert addressed why neither consumer was diagnosed with this condition. The consumers argued that inflammation was the root cause of all cancers, but nothing in their medical records or in the expert reports showed that the tissue samples taken from the two consumers were inflamed. In addition, the consumers argued that talc particles traveled naturally from the perineum to the ovaries, they did not explain why the ovaries were the only portion of the reproductive tract in which talc has purportedly caused cancer.

While Dr. Graham A. Colditz, a general causation expert for the consumers, was highly qualified and his testimony was relevant, there were significant gaps in his methodology and analysis. His report's discussion of biologic plausibility contained only 75 words, and the articles cited in an appendix to his report did not support his conclusion. His testimony did not support either general or specific causation. Finally, his opinion was not consistent with his past writings in which he did not find a substantial association between perineal talc use and ovarian cancer risk.

Similarly, there also was a large gap in the methodology of Dr. Daniel W. Cramer, an expert on general and specific causation for the consumers, in that he ignored laboratory research regarding the biology of cancer and the ameliorative effects of talc on cancer. His research was almost entirely focused on retrospective case-control studies, which are considered less reliable than prospective cohort studies, which he largely ignored. Further, he attempted to use epidemiology to prove specific causation, whereas epidemiology is concerned with populations and do not address the cause of a single individual's disease. The court found that his methodology, like Dr. Colditz's methodology, appeared to be "made for litigation." Both consumers had significant risk factors for ovarian cancer, but Dr. Cramer did not eliminate or even address these factors and had not attempted to postulate a plausible biological hypothesis for how talc causes ovarian cancer.

By contrast, the testimony of Dr. Lewis A. Chodosh, a physician and cancer researcher and an expert for the companies, made it apparent to the court that it was unlikely that a plausible hypothesis for the biological mechanism by which talc causes cancer could be made. He testified that talc is inert, talc has anti-cancer properties because it inhibits the formation of blood cells, talc induces cancer cells to apoptosis but not to normal cells, talc does not cause mutations in critical genes, and it was unclear whether chronic inflammation could induce cancer without a carcinogen. Along with the scientific studies he relied upon, his testimony, which was like "turning on the lights in a dark room," appeared to support a reasonable hypothesis that talc cannot cause cancer.

The cases are Nos. [ATL-L-6546-14](#) and [ATL-L-6540-14](#); 300 (MCL).

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Companies: Johnson & Johnson

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