

[Products Liability Law Daily Wrap Up, TOP STORY—HOUSEHOLD PRODUCTS—D. Del.: Johnson & Johnson loses emergency motion to transfer talc-related lawsuits to one court, \(May 13, 2019\)](#)

Products Liability Law Daily Wrap Up

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By Georgia D. Koutouzos, J.D.

The consumer products giant failed to establish an adequate basis for speeding up the decision on whether to transfer thousands of lawsuits to the federal bankruptcy court overseeing Imerys Talc America's Chapter 11 proceedings.

Finding that the company's desire to centralize its own state law litigation did not justify the issuance of an immediate, *ex parte* entry of relief, a Delaware federal bankruptcy judge has denied Johnson & Johnson's emergency motion to provisionally transfer 2,400 federal and state personal injury and wrongful death actions arising from cancers allegedly resulting from the use of Johnson & Johnson baby powder containing talc manufactured by the now-bankrupt Imerys Talc America, Inc. Briefing on Johnson & Johnson's underlying motion to transfer venue remains underway pursuant to an agreed-upon schedule calling for completion by May 23, 2019, however (*In re Imerys Talc America, Inc.*, May 9, 2019, Noreika, M.).

Johnson & Johnson (J&J) and its talc supplier, Imerys Talc America, Inc. are named in thousands of lawsuits all over the United States by individuals who allegedly developed mesothelioma and ovarian cancer after having been exposed to the talc that had been a primary ingredient in products like the popular Johnson's® Baby Powder. J&J alleged that Imerys supplied cosmetic talc to J&J for use in some of J&J's products and, anticipating its ultimate liability, Imerys filed for Chapter 11 bankruptcy protection.

Venue transfer motion. J&J then filed a motion with the bankruptcy court overseeing Imerys' reorganization seeking to fix venue in the bankruptcy court with respect to the personal injury and wrongful death claims against the companies in order to centralize the adjudication of claims impacting Imerys' bankruptcy estate and to ensure orderly and efficient resolution of those claims. J&J argued that because supply agreements between Imerys and J&J contain cross-contractual indemnifications triggered upon the filing of the claims without regard to findings on underlying liability, those claims affect the Imerys' bankruptcy estate.

Similarly, J&J contended that Imerys has claimed rights to J&J's insurance for expenses incurred in defending against the talc-related lawsuits and that the claimed shared insurance could increase or decrease the pool of assets available for Imerys' creditors. On that basis, the venue motion asserted that all individual state-law personal injury or wrongful death claims against J&J were "related to" Imerys' bankruptcy and, on that basis, the bankruptcy court should exercise jurisdiction over and order the transfer to itself of all 2,400 cases from district courts throughout the United States.

Removal. J&J also began removing cases pending in state courts to the federal district courts contemporaneously with the venue motion, after which the plaintiffs in many of those cases sought remand. Remand has been granted in some instances, while others have been stayed pending the bankruptcy court's decision on the motion.

Immediate, *ex parte* relief. After the court entered a stipulated briefing schedule on the venue motion, J&J filed an emergency provisional transfer motion, also requesting that the court enter its order on the emergency motion immediately and on an *ex parte* basis. The committee of tort claimants opposed immediate, *ex parte* relief, maintaining that the only emergency was of J&J's own making and that the relief requested in the emergency motion is properly addressed in the underlying venue motion. Agreeing with the committee and various other plaintiffs that J&J failed to satisfy the burden for immediate, *ex parte* relief, the bankruptcy court explained that

J&J did not show that it would be irreparably harmed. In addition, the consumer products giant is not a debtor and did not establish financial distress. Thus, there was no prejudice to hearing and deciding J&J's venue motion in due course.

Moreover, J&J could not show that it was without fault in having created the purported emergency that it claimed requires *ex parte* relief. The company has been defendant in the underlying state court litigation for years and, as such, is responsible for the multiplicity and timing of removal and the ensuing remand motions. Indeed, having chosen to remove the cases, J&J set in motion requests for remand to be filed within the time period prescribed by the statute. In sum, the company's desire to centralize its own state law litigation did not justify the finding of an emergency that necessitated an immediate, *ex parte* order.

Provisional relief. Although J&J argued that provisional transfer through a non-final order is relief that is commonly granted and is necessary to preserve time and resources, the company cited no statutory basis for the sought-after relief and the cases it cited in support of its motion did not support a non-debtor's transfer of 2,400 actions irrespective of the facts and circumstances of each case, even on a provisional basis.

J&J's emergency provisional transfer motion made no attempt to distinguish between the cases it identified for removal with respect to whether Imerys was a defendant or whether the allegations in the cases extended into the time period when J&J's venue motion claimed that the relevant relationship between J&J and Imerys began. Rather, the company sought provisional transfer of essentially every talc case pending against it, irrespective of the facts. Finally, the proposed provisional relief sought by J&J by virtue of its emergency provisional transfer motion simply was unworkable under the time constraints it would have imposed for the submission of a single response brief.

The case is No. [19-103-MN](#).

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Companies: Imerys Talc America, Inc.; Certain Talc; Johnson & Johnson; Johnson & Johnson Consumer Inc.

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