Products Liability Law Daily Wrap Up, JURY VERDICTS—HOUSEHOLD PRODUCTS—Ill. Cir.: Jury awards $45M to consumer's heirs in talcum powder asbestos case, (Apr. 24, 2024)

Products Liability Law Daily Wrap Up

By Pankhuri Bhatnagar, B.A. LL.B.

The failure of the product manufacturers to warn about or implement alternatives to their asbestos-containing carcinogenic products resulted in the consumer's illness and death, the jury found.

In an action brought against several companies by the daughter/estate of a consumer who died from mesothelioma allegedly caused by exposure to the companies' asbestos-containing talc products, a jury in Illinois decided in favor of the estate. The jury found that the products' original manufacturer/supplier and its successor entity were both 15 percent at fault, while the subsidiary which continued the hazardous product line was 70 percent at fault for the estate's alleged injuries (*Salcedo v. Avon*, Verdict; Oder, April 19, 2024, Sherlock, P.).

Background. Beginning at birth, an Illinois resident was dusted with talc products, including Johnson's Baby Powder, by her family members. Thereafter, she continued using these talc products on her person on a frequent and regular basis throughout much of her life. She later used the products on her six children and subsequent grandchildren until at least 2014. In 2020, she was diagnosed with malignant mesothelioma and died from the disease. Her daughter/estate brought a wrongful death and survival action against several companies, including Johnson & Johnson (J&J), Johnson & Johnson Holdco (NA) Inc., LTL Management LLC, and Kenvue, Inc. She alleged that the talc products manufactured, supplied, and/or sold by these companies contained asbestos; her mother's use of the products released visible talc dust and asbestos fibers into the air, which she inhaled; and such asbestos exposure resulted in her mesothelioma diagnosis. Since the products were used and purchased in Illinois from Illinois corporations (like Walgreens), the suit was properly brought before a circuit court in Illinois.

Parties. The complaint asserted that J&J designed, manufactured, marketed, distributed, and sold Johnson's Baby Powder from the 1890s to 1978, and continued to retain the product's trademark and operational control after that. During and after January 1979, J&J controlled and/or issued false or misleading statements to the public, government/regulatory bodies, and in courts about the safety and/or asbestos content of its talc products, according to the complaint. Anticipating litigation related to the injuries and harm caused by its products, J&J underwent a divisive merger and isolated the talc liabilities of Johnson & Johnson Consumer Inc. (Old JJCI) into a new company called LTL Management LLC, where LTL stood for Legacy Talc Liability. LTL served no business concern and was immediately put into a Chapter 11 bankruptcy in order to stay all pending litigation against J&J, foreclose jury trials, and reduce compensation owed to injured consumers. Meanwhile, all the productive assets of Old JJCI were transferred to a new entity of the same name (New JJCI). In 2023, the bankruptcy cases were dismissed as being made in bad faith and New JJCI again transferred its productive assets and business to another J&J subsidiary known as Kenvue, Inc. The complaint held New JJCI and Kenvue liable as alter-egos or successors-in-interest of J&J and Old JJCI but did not assert claims against LTL due to the stay, injunction, and/or bar orders imposed by the bankruptcy court.

Complaint allegations. The complaint alleged that (1) talc is an inorganic mineral which is regularly contaminated with asbestos that increases the risk of cancers such as mesothelioma; (2) a safer alternative to the talc products was cornstarch powder, which has no known health effects; (3) J&J's material safety data sheets did not convey its products' asbestos content; (4) Johnson's Baby Powder was advertised as a "clinically proven gentle and mild" product to be used every day as a symbol of freshness, cleanliness, and purity; (5) the companies knew that talc

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generally grew with tremolite and other asbestiform varieties of minerals; (6) they knew or should have known that the ordinary, intended, and/or foreseeable uses of their talc products released airborne dust that resulted in inhalation of asbestos fibers; (7) since the 1930s, J&J employees knew of scientific and medical literature linking asbestos exposure to cancer; (8) by 1956, J&J's consultant reported over 150 findings of tremolite in talc from the Italian mine used by J&J; (9) the manufacturer's marketing team acknowledged internally that talc was not safe for use around babies, contrary to their "Best for Baby" slogan; (10) the manufacturer intentionally rejected more-accurate preconcentration techniques of detecting asbestos content and instead encouraged the FDA to adopt weaker detection methods; (11) J&J engaged in a pattern of manipulating and destroying evidence to conceal the composition of its talc; (12) despite knowledge of the products' potential hazards, it failed to warn consumers about the possibility of developing fatal diseases from use of its products and failed to implement available substitutes; and (13) J&J failed to institute a litigation hold and records retention policy until at least 1997, meaning that there were no vintage samples of its talc or data about product chemistry to allow litigants to object to its previous reports.

Alleged damages. The daughter claimed that the companies' conduct was a direct, proximate, and producing cause of general and special damages, including the decedent's physical pain, mental anguish, past disfigurement, physical impairment, medical expenses, and untimely death, along with the loss of money, benefits, goods, services, society, love, care, guidance, and affection from her six children. As such, the estate sought compensatory, general, and special damages against all companies specified in the action.

Jury verdict. Following a trial, a jury decided in favor of the estate, finding that 15 percent of the fault was attributable to J&J, another 15 percent was attributable to Johnson & Johnson Holdco (NA) Inc., while the remaining 70 percent fault was attributable to Kenvue Inc., as the current owner of J&J productive assets and product lines. The jury listed itemized damages for the decedent's injuries, as well as the past and future loss of society and grief caused to her legal heirs, amounting to a total award of $45 million.

The case is No. 2020L4505 (Verdict; Oder).

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Companies: Johnson & Johnson; Johnson & Johnson Holdco [Na] Inc. f/k/a Johnson & Johnson Consumer Inc.; Kenvue Inc.; LTL Management LLC; Revlon, Inc.; Janssen Pharmaceuticals, Inc.

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