

\$37 Million Verdict in Talc Mesothelioma Lawsuit Underscores Potential Exposure for Talc Manufacturers and Retailers

By: Wesley Payne and Jonathan Woy

Product Liability Alert

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In a new phase of asbestos litigation, attorneys representing individuals who developed mesothelioma without any known industrial exposure to asbestos have set their sights on talcum powder manufacturers and talc mining companies. On April 5, 2018, a jury awarded \$37 million in compensatory damages in the second such trial nationwide. The jury will return on April 10, 2018 to consider whether punitive damages should be awarded.

The trial began in January 2018 in Middlesex, New Jersey. The plaintiffs, Stephen Lanzo III and his wife, argued that Mr. Lanzo, currently 45 years old, was exposed to asbestos in Johnson & Johnson baby powder from infancy through 2003. Mr. Lanzo testified that he used two to three large bottles of Johnson & Johnson baby powder per month before he was diagnosed with mesothelioma in 2016. In addition to Johnson & Johnson, the Lanzas sued the company that supplied the talc in Johnson & Johnson's baby powder, Imerys Talc America, Inc.

In a departure from most asbestos litigation to date, the Lanzas did not contend that Johnson & Johnson intentionally added asbestos to its product. Rather, they argued that asbestos naturally occurred in the talc, which was mined in Vermont and Italy. The Lanzas' materials science expert, William Longo, testified that he tested 32 samples, each taken from factory-sealed containers of Johnson & Johnson baby powder from over the decades. Longo testified that he was able to identify asbestos fibers in 18 of the 32 samples, though the concentration of asbestos fibers in each sample ranged from about 8,000 fibers per gram of talc to about 14 million fibers per gram of talc.

Johnson & Johnson and Imerys primarily contended that Johnson & Johnson baby powder never contained asbestos and Mr. Lanzo's mesothelioma was caused by asbestos released from pipe insulation in his prior residence and asbestos that was present in a school he attended. Johnson & Johnson presented evidence that it tested the talc it used in its baby powder over the years and never detected the presence of any asbestos fibers.

Johnson & Johnson challenged the testing performed by the Lanzas' materials science expert, arguing that he mistook non-asbestos "cleavage fragments" for asbestos fibers. Because the process of milling talc into talcum powder breaks the mineral fibers that makeup the talc into fragments, the milling process can distort the size of each fiber. The resulting fragments of the fibers are called cleavage fragments. The presence of cleavage fragments can make it difficult to distinguish asbestos mineral fibers from non-asbestos mineral fibers, because one of the methods used to do so relies on an analysis of the length and width of each fiber.

Ultimately, the jury found Johnson & Johnson 70% liable and Imerys 30% liable. The jury's award of \$37 million in compensatory damages serves as affirmation that claimed exposure to asbestos in talc can be a viable path to recovery and may encourage the filing of similar lawsuits against companies that mined talc, used it in products they manufactured or sold products that contained talc. The first talc asbestos trial, which took place in California in late 2017, resulted in a defense verdict for Johnson & Johnson and Imerys. A similar lawsuit is currently scheduled for trial in Philadelphia in December 2018.

If you have any questions or would like additional information, please contact Wesley Payne (paynew@whiteandwilliams.com; 215.864.7076) or Jonathan Woy (woyj@whiteandwilliams.com; 215.864.6354)

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