

\$417M Verdict Against Johnson's Baby Powder Gives Hope to Jersey Plaintiffs

Nearly 250 women have filed suit in New Jersey contending that using baby powder on their genitals caused their ovarian cancer. On Monday, they were given a shot of hope after a Los Angeles jury ordered Johnson & Johnson to pay \$417 million to a dying woman who used the company's talcum powder daily for decades.

The award, which included \$70 million in compensatory damages and \$347 million in punitive damages, was the largest sum yet in a series of baby powder verdicts against the Garden State pharmaceutical giant. A St. Louis jury in May awarded \$110 million in damages to a Virginia woman. In 2016, J&J was ordered to pay out a total of \$197 million in three other cases.

The suits pending in New Jersey are among an estimated 3,100 filed nationwide, and the number continues to increase, according to J&J's last annual report.

A spokeswoman for Johnson & Johnson Consumer Inc. said the company would appeal while it prepared for additional trials for one of its signature consumer products. It was first sold in 1894.

"Ovarian cancer is a devastating diagnosis and we deeply sympathize with the women and families impacted by this disease, said J&J's Carol Goodrich. "We will appeal today's verdict because we are guided by the science, which supports the safety of Johnson's Baby Powder."

J&J last year generated about \$72 billion in revenue, on drugs, medical devices, and consumer products. Baby Powder comprised a relatively small slice of its business. According to data compiled by Euromonitor International, J&J sold about \$325 million in talcum powder products worldwide in 2016.

Johnson & Johnson was ordered to pay a record \$417 million to Eva Echevarria, seen here in an undated photo. (Associated Press)

Lawyers for the Jersey plaintiffs heralded this week's verdict. But it was a little noticed decision by the New Jersey State Supreme Court, issued in late July, that may have a greater impact on their clients' fortunes in court, they said.

Two bellwether cases were put on hold in October 2016 when a state Superior Court judge in Atlantic County barred testimony by a pair of prominent scientists. Judge Nelson C. Johnson — who is better known as the author of the best-selling novel Boardwalk Empire — wrote a 33-page opinion that attacked the cancer experts' credibility, criticized the "narrowness and shallowness" of their methodology, and said the evidence couldn't conclusively prove that talcum powder caused the women's cancer. He threw out the suits.

One of those derided experts, Daniel W. Cramer, is a Harvard University professor who researches the epidemiology of ovarian cancer. Cramer, who in 1982 published the first study linking genital talc use and ovarian cancer, has recommended adding warning labels on baby powder. He testified during the Los Angeles trial.

On July 27, the New Jersey appellate court said the judge in Atlantic County had "inappropriately condemned" expert testimony in a similar case. The appellate court remanded that suit, against the manufacture of the acne drug Accutane, back to court.

“The decision is significant,” said Ted Meadows, an Alabama-based lawyer who represents ovarian cancer patients Brandi Carl, a nurse from Montgomery County, and Diana Balderrama, of New Jersey. “The issues in that appeal are almost identical in what we have in the talcum powder appeal that’s in front of same appellate court.”

“We believe the New Jersey decision was an outlier that will be reversed,” and the case can return to court, said Philadelphia lawyer Richard M. Golomb who, with Egg Harbor Township lawyer Paul D’Amato, is serving as co-counsel on the case.

The suits allege that baby powder is a carcinogen, and that when it migrates up the genitourinary tract it can cause long-term inflammation that can turn lethal. Because talcum powder is considered a cosmetic, the FDA cannot require that it carry a warning label. The Los Angeles plaintiff testified she would have stopped using the baby powder if Johnson & Johnson had warned of the risks.

“Most of the plaintiffs are either dead or dying,” said Meadows. “There’s no excuse to sell this stuff without a warning.”