UNITED STATES DISTRICT COURT OF THE DISTRICT OF NEW JERSEY

JAMES GARY ALBERTINE, JR., as surviving spouse of ANNA LEA ALBERTINE, Deceased, Plaintiff,	*	**MDL NO. 16-2738 (FLW)_(LHG)**
	*	**CIVIL ACTION NO. 3:16-cv-9605**
v.	*	
JOHNSON & JOHNSON, JOHNSON & JOHNSON CONSUMER COMPANIES, INC., and IMERYS TALC AMERICA, INC. f/k/a LUZENAC AMERICA, INC., Defendants	*	**JURY TRIAL DEMANDED**

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COMPLAINT

NOW INTO COURT, comes Plaintiff, James Gary Albertine, Jr., pursuant to Tenn. Code Ann. §20-5-106, as surviving spouse of Anna Lea "Anne" Albertine, Deceased, by and through his undersigned counsel, against Defendants Johnson & Johnson ("J&J"), Johnson & Johnson Consumer Companies, Inc. ("J&J Consumer"), and Imerys Talc America, Inc. f/k/a Luzenac America, Inc. (collectively "Defendants"). Plaintiff brings this action individually, on behalf of Anne Albertine, and on behalf of her four adult children pursuant to Tenn. Code Ann. § 20-5-110 and alleges as follows:

NATURE OF THE ACTION

1. This action arises out of Anna Lea Albertine's diagnosis of ovarian cancer and her death. Anne Albertine's cancer and death were directly and proximately caused by her regular and prolonged exposure to talcum powder, contained in Defendants' Johnson & Johnson Baby Powder (hereinafter "J&J Baby Powder"), in her perineum. Plaintiff's damages are a direct and proximate result of Defendants' and/or their corporate predecessors negligent, willful, and

wrongful conduct in connection with the design, development, manufacture, testing, packaging, promoting, marketing, distribution, labeling and/or sale of J&J Baby Powder.

JURISDICTION AND VENUE

2. This Court has subject matter jurisdiction over this action pursuant to 28 U.S.C. § 1332(d) because there is complete diversity between Plaintiff and Defendants, and the matter in controversy, exclusive of interest and costs, exceeds the sum or value of $75,000.00.

3. Venue is proper in this Court as the Joint Panel on Multidistrict Litigation transferred venue of all Talcum Powder Litigation to the District of New Jersey, MDL No. 2738, In re: Johnson & Johnson Talcum Powder Products Marketing, Sales Practices and Products Liability Litigation.

4. This Court has personal jurisdiction over Defendants because Defendants are authorized to conduct and do conduct business in the State of New Jersey. Defendants have marketed promoted, distributed and sold J&J Baby Powder in the State of New Jersey and Defendants have sufficient minimum contacts with this State and/or sufficiently avail themselves of the markets of this State through promotion, sales, distribution, and marketing within this State to render the exercise of jurisdiction by this Court permissible.

5. This suit is brought under the statutory and common law of the State of Tennessee, to recover damages and other relief, including the costs of suit and reasonable attorneys' and expert fees, for the injuries Decedent sustained as a result of the Defendants' and/or their corporate predecessors' negligent and wrongful conduct. Decedent purchased and used J&J Baby Powder for approximately thirty years in Shelby County, Tennessee.

PARTIES

6. Plaintiff James Gary Albertine, Jr. is the surviving spouse of decedent Anna Lea "Anne" Albertine, and brings this wrongful death action pursuant to T.C.A. §20-5-107 and all related statutes applicable thereto. Plaintiff, James Gary Albertine, Jr., resides in Shelby County, Tennessee, and was married to Anne Albertine at all times pertinent to the allegations herein, including at the time of Anne Albertine's use of the J&J Baby Powder, diagnosis with ovarian cancer, and death.

7. Decedent Anna Lea "Anne" Albertine was born in 1947 and used J&J Baby Powder daily in her perineal region for over thirty years. As a direct and proximate result of using the J&J Baby Powder, Anne Albertine was diagnosed with ovarian cancer in May of 2010 and ultimately died of ovarian cancer on January 29, 2015. Anne Albertine resided in Shelby County, Tennessee at the time of her diagnosis and death, and she purchased and used the J&J Baby Powder in Shelby County, Tennessee.

8. Defendant, Johnson & Johnson, is a New Jersey corporation with its principal place of business in the State of New Jersey. At all pertinent times, Johnson & Johnson was engaged in the business of manufacturing, marketing, testing, promoting, selling, and/or distributing J&J Baby Powder.

9. Johnson & Johnson may be served with process by serving its registered agent, M.H. Ullmann at One Johnson & Johnson Plaza, New Brunswick, New Jersey 08901-1241.

10. Defendant Johnson & Johnson Consumer Companies, Inc. is a New Jersey corporation with its principal place of business in the State of New Jersey. At all pertinent times, Johnson & Johnson Consumer Companies, Inc., was engaged in the business of manufacturing, marketing, testing, promoting, selling, and/or distributing J&J Baby Powder.

11. Johnson & Johnson Consumer Companies, Inc. may be served with process of this Court via service on its registered agent, Johnson & Johnson, located at One Johnson & Johnson Plaza, New Brunswick, New Jersey 08901-1241.

12. Defendants Johnson & Johnson and Johnson & Johnson Consumer Companies, Inc., have, at all pertinent times, engaged in the business of designing, developing, licensing, manufacturing, distributing, selling and/or marketing J&J Baby Powder.

13. At all pertinent times, Defendant Johnson & Johnson Consumer Companies, Inc., has been a wholly-owned subsidiary of Defendant Johnson & Johnson, under the complete dominion of and control of Defendant Johnson & Johnson. Hereinafter, unless otherwise delineated, these two entities shall be collectively referred to as the "Johnson & Johnson Defendants."

14. Defendant Imerys Talc America, Inc. f/k/a Luzenac America, Inc. ("Imerys Talc") is a Delaware corporation with its principal place of business in the State of California. At all pertinent times, Imerys Talc America, Inc. has maintained a registered agent in the State of Delaware. Imerys Talc may be served with process of this Court via service on its registered agent, Corporation Service Company, located at 2711 Centerville Road, Suite 400, Wilmington, Delaware 19808.

15. At all pertinent times, Imerys Talc has been in the business of mining and distributing talcum powder for use in talcum powder based products, including J&J Baby Powder. Imerys Talc is the successor or continuation of Luzenac America, Inc., and Imerys Talc is legally responsible for all liabilities incurred when it was known as Luzenac America, Inc.

FACTS COMMON TO ALL COUNTS

16. Talc is a magnesium trisilicate and is mined from the earth. Talc is an inorganic mineral. Defendant Imerys mined the talc contained in J&J Baby Powder.

17. Talc is the main substance in talcum powders. The Johnson & Johnson Defendants manufactured J&J Baby Powder. J&J Baby Powder is composed almost entirely of talc.

18. At all pertinent times, a feasible alternative to J&J Baby Powder has existed. Cornstarch is an organic carbohydrate that is quickly broken down by the body with no known health effects. Cornstarch powders have been sold and marketed for the same uses with nearly the same effectiveness.

19. Imerys Talc[1] has continually advertised and marketed talc as safe for human use.

20. Imerys Talc supplied customers with material safety data sheets for talc. These material safety data sheets are supposed to convey adequate health and warning information to its customers.

21. Historically, "Johnson's Baby Powder" has been a symbol of freshness, cleanliness, and purity. During the time in question, the Johnson & Johnson Defendants advertised and marketed this product as the beacon of "freshness" and "comfort," eliminating friction on the skin, absorbing "excess wetness" helping keep skin feeling dry and comfortable, and "clinically proven gentle and mild." The Johnson & Johnson Defendants compelled women through advertisements to dust themselves with this product to mask odors. The bottle of "Johnson's Baby Powder" specifically targets women by stating, "For you, use every day to help feel soft, fresh, and comfortable."

[1] All allegations regarding actions taken by Imerys Talc also include actions taken while that entity was known as Luzenac America, Inc.

22. Anne Albertine used Defendants' J&J Baby Powder to dust her perineum for feminine hygiene purposes. This was an intended and foreseeable use of the J&J Baby Powder based on the advertising, marketing, and labeling of the J&J Baby Powder.

23. In 1971, the first study was conducted that suggested an association between talc and ovarian cancer. This study was conducted by Dr. WJ Henderson and others in Cardiff, Wales.

24. In 1982, the first epidemiologic study was performed on talc powder use in the female genital area. This study was conducted by Dr. Daniel Cramer and others. This study found a 92% increased risk in ovarian cancer with women who reported genital talc use. Shortly after this study was published, Dr. Bruce Semple of Johnson & Johnson came and visited Dr. Cramer about this study. Dr. Cramer advised Dr. Semple that Johnson & Johnson should place a warning on its talcum powders about the ovarian cancer risks so that women can make an informed decision about their health.

25. Since 1982, there have been approximately twenty-two (22) additional epidemiologic studies providing data regarding the association of talc and ovarian cancer. Nearly all of these studies have reported an elevated risk for ovarian cancer associated with genital talc use in women.

26. In 1993, the United States National Toxicology Program published a study on the toxicity of non-asbestiform talc and found clear evidence of carcinogenic activity. Talc was found to be a carcinogen, with or without the presence of asbestos-like fibers.

27. In response to the United States National Toxicology Program's study, the Cosmetic Toiletry and Fragrance Association (CTFA) formed the Talc Interested Party Task Force (TIPTF). Johnson & Johnson, Johnson & Johnson Consumer Companies, Inc., and

Luzenac were members of the CTFA and were the primary actors and contributors of the TIPTF. The stated purpose of the TIPTF was to pool financial resources of these companies in an effort to collectively defend talc use at all costs and to prevent regulation of any type over this industry. The TIPTF hired scientists to perform biased research regarding the safety of talc, members of the TIPTF edited scientific reports of the scientists hired by this group prior to the submission of these scientific reports to governmental agencies, members of the TIPTF knowingly released false information about the safety of talc to the consuming public, and used political and economic influence on regulatory bodies regarding talc. All of these activities have been well coordinated and planned by these companies and organizations over the past four (4) decades in an effort to prevent regulation of talc and to create confusion to the consuming public about the true hazards of talc relative to ovarian cancer.

28. On November 10, 1994, the Cancer Prevention Coalition mailed a letter to then Johnson & Johnson C.E.O. Ralph Larson, informing his company that studies as far back as the 1960's "…show[ ] conclusively that the frequent use of talcum powder in the genital area pose[ ] a serious health risk of ovarian cancer." The letter cited a recent study by Dr. Bernard Harlow from Harvard Medical School confirming this fact and quoted a portion of the study where Dr. Harlow and his colleagues discouraged the use of talc in the female genital area. The letter further stated that 14,000 women per year die from ovarian cancer and that this type of cancer is very difficult to detect and has a low survival rate. The letter concluded by requesting that Johnson & Johnson withdraw talc products from the market because of the alternative of cornstarch powders, or at a minimum, place warning information on its talc-based body powders about the ovarian cancer risk they pose.

29. In 1996, the condom industry stopped dusting condoms with talc due to the health concerns of ovarian cancer.

30. In February 2006, the International Association for the Research of Cancer (IARC) part of the World Health Organization published a paper whereby they classified perineal use of talc based body powder as a "Group 2B" human carcinogen. IARC which is universally accepted as the international authority on cancer issues concluded that studies from around the world consistently found an increased risk of ovarian cancer in women from perineal use of talc. IARC found that between 16-52% of women in the world was using talc to dust their perineum and found an increased risk of ovarian cancer in women talc users ranging from 30-60%. IARC concluded with this "Evaluation": "There is limited evidence in humans for the carcinogenicity of perineal use of talc-based baby powder." By definition "limited evidence of carcinogenicity" means "a positive association has been observed between exposure to the agent and cancer for which a causal interpretation is considered by the Working Group to be credible, but chance, bias or confounding could not be ruled out with reasonable confidence."

31. In approximately 2006, the Canadian government under the Hazardous Products Act and associated Controlled Products Regulations classified talc as "D2A," "very toxic," "cancer causing" substance under its Workplace Hazardous Materials Information System (WHMIS). Asbestos is also classified as "D2A."

32. In 2006, Imerys Talc began placing a warning on its Material Safety Data Sheets (MSDS) it provided to the Johnson & Johnson Defendants regarding the talc it sold to them to be used in the J&J Baby Powder. These MSDSs not only provided the warning information about the IARC classification but also included warning information regarding "States Rights to

Know" and warning information about the Canadian Government's "D2A" classification of talc as well.

33. The Defendants had a duty to know and warn about the hazards associated with the use of J&J Baby Powder.

34. The Defendants failed to inform its customers and end users of J&J Baby Powder of a known catastrophic health hazard associated with the use of its products.

35. In addition, the Defendants procured and disseminated false, misleading, and biased information regarding the safety of J&J Baby Powder to the public and used influence over governmental and regulatory bodies regarding talc.

FACTUAL BAKCGROUND SPECIFIC TO ANNE ALBERTINE

36. Anna Lea "Anne" Albertine, Deceased, applied J&J Baby Powder daily to her perineum for feminine hygiene purposes for more than thirty years. This was an intended and foreseeable use of the product based on the advertising, marking, and labeling of J&J Baby Powder.

37. In May of 2010, Anne Albertine was diagnosed with ovarian cancer. On January 29, 2015, Anne Albertine died as a result of ovarian cancer.

38. As a direct and proximate result of the Defendants' calculated and reprehensible conduct, Anne Albertine developed ovarian cancer, which metastasized throughout her body, and required multiple surgeries and treatments for over five years of suffering, and ultimately resulting in her untimely death.

39. Plaintiff James Gary Albertine, Jr. is the surviving spouse of Anne Albertine.

40. Anne Albertine had four adult children at the time of her death, all of whom she spoke with daily and played a significant role in their lives.

41. Plaintiff did not discover and could not have reasonably discovered (1) the occasion, the manner and means by which a breach of duty occurred that produced Decedent's injury and death; and (2) the identity of the Defendants who breached the duty until the fall of 2016 when he first saw an advertisement that the prolonged use of J&J Baby Powder in the perineal region was linked to ovarian cancer.

ABATEMENT AND SURVIVAL OF ACTIONS

42. Plaintiff realleges and incorporates by reference all paragraphs of this Complaint as if fully set forth herein.

43. Plaintiff brings this claim as a person entitled to do so under the statutes of Tennessee for Anne Albertine's severe physical pain and suffering, mental pain and suffering, and all other related damages; Plaintiff's own related spousal damages; and Anne Albertine's four adult children's related parental damages. *See* Tenn. Code Ann. § 20-5-110[2], Tenn. Code Ann. § 20-5-113[3], and *Foster v. Jeffers*, [813 S.W.2d 449, 451 (Tenn. Ct. App. 1991)].

44. As a direct and proximate result of the conduct of the Defendants and the defective nature of the J&J Baby Powder as described above, Anne Albertine suffered damages, including but not limited to the following: bodily injuries resulting in pain and suffering, disability, disfigurement, mental anguish, loss of capacity of enjoyment of life, shortened life expectancy, expenses for hospitalization, medical and nursing surgeries and treatment, loss of earnings, funeral expenses, and death.

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[2] *See* Tenn. Code Ann. § 20-5-110(a): "A suit for the wrongful killing of the spouse may be brought in the name of the surviving spouse for the benefit of the surviving spouse and the children of the deceased, in the name of the administrator of the deceased spouse or in the name of the next of kin of the spouse."

[3] *See* Tenn. Code Ann. § 20-5-113: "Where a person's death is caused by the wrongful act, fault or omission of another and suit is brought for damages, as provided for by§§ 20-5-106 and 20-5-107, the party suing shall, if entitled to damages, have the right to recover for the mental and physical suffering, loss of time and necessary expenses resulting to the deceased from the personal injuries, and also the damages resulting to the parties for whose use and benefit the right of action survives from the death consequent upon the injuries received."

45. As a direct and proximate result of the conduct of the Defendants and the defective nature of the J&J Baby Powder as described above, James Gary Albertine, Jr. has suffered the loss of the pecuniary value of his wife, including but not limited to her loss of love, affection, and consortium.

46. As a direct and proximate result of the conduct of the Defendants and the defective nature of the J&J Baby Powder as described above, Tim Symons, Taylor Symons Cline, James Gary Albertine III, and Brent Albertine have suffered parental damages and the loss of the pecuniary value of their mother, including but not limited to their loss of love, society, affection and guidance as a parent.

FEDERAL STANDARDS AND REQUIREMENTS

47. Upon information and belief, the Defendants have or may have failed to comply with all federal standards and requirements applicable to the sale of J&J Baby Powder including, but not limited to, violations of various sections and subsections of the United States Code and the Code of Federal Regulations.

COUNT ONE- STRICT LIABILITY FOR FAILURE TO WARN (ALL DEFENDANTS)

48. Plaintiff realleges and incorporates by reference all paragraphs of this Complaint as if fully set forth herein.

49. At all pertinent times, Imerys Talc mined and sold talc to the Johnson & Johnson Defendants, which it knew that Johnson & Johnson was then packaging and selling to consumers as the J&J Baby Powder and it knew that consumers of the J&J Baby Powder were using it to powder their perineal regions.

50. At all pertinent times, Imerys Talc knew and/or should have known of the unreasonably dangerous and carcinogenic nature of the talc it was selling to the Johnson &

Johnson Defendants, especially when used in a woman's perineal regions, and it knew or should have known that Johnson & Johnson was not warning its customers of this danger.

51. At all pertinent times, the Johnson & Johnson Defendants were manufacturing, marketing, testing, promoting, selling and/or distributing J&J Baby Powder in the regular course of business.

52. At all pertinent times, Anne Albertine used the J&J Baby Powder to powder her perineal area, which is a reasonably foreseeable use.

53. At all pertinent times, all Defendants in this action knew or should have known that the use of talcum powder based products in the perineal area significantly increases the risk of ovarian cancer based upon scientific knowledge dating back to the 1960s.

54. At all pertinent times, including the time of sale and consumption, J&J Baby Powder, when put to the aforementioned reasonably foreseeable use, was in an unreasonably dangerous and defective condition because it failed to contain adequate and proper warnings and/or instructions regarding the increased risk of cancer associated with the use of the product by women to powder their perineal area. Defendants themselves failed to properly and adequately warn and instruct Anne Albertine, Deceased, as to the risks of J&J Baby Powder given her need for this information.

55. Had Anne Albertine, Deceased, received a warning that the use of J&J Baby Powder would have significantly increased her risk of cancer, she would not have used the same. As a proximate result of Defendants' design, manufacture, marketing, sale, and distribution of J&J Baby Powder, Anne Albertine suffered severe pain of mind and body for over five years and was diagnosed with a terminal disease that took her life. Plaintiff James Gary Albertine, Jr., as

decedent's surviving spouse, is entitled to recover funeral expenses, the pecuniary value of his wife's life and the loss of her love, affection, and consortium.

56. The development of ovarian cancer by Anne Albertine, Deceased, was the direct and proximate result of the unreasonably dangerous and defective condition of J&J Baby Powder at the time of sale and consumption, including its lack of warnings; Anne Albertine suffered pain of mind and body for over five years and was diagnosed with a terminal disease which took her life. Pursuant to the provisions of the Restatement (Second) of Torts and Tennessee law, Defendants are strictly liable to Plaintiff for all damages claimed in this case, including punitive damages.

57. The Defendants' product was defective because it failed to contain warnings and/or instructions, and breached express warranties and/or failed to conform to express factual representations upon which the Decedent justifiably relied in electing to use the J&J Baby Powder. The defect or defects made the J&J Baby Powder unreasonably dangerous to those persons, such as Anne Albertine, who could reasonably be expected to use and rely upon the product. As a result, the defect or defects were a producing cause of Anne Albertine's terminal diagnosis and subsequent loss of life.

58. The Defendants' product failed to contain, and continues to this day not to contain, adequate warnings and/or instructions regarding the increased risk of ovarian cancer with the use of the product by women. The Defendants continue to market, advertise, and expressly represent to the general public that it is safe for women to use their product regardless of application. These Defendants continue with these marketing and advertising campaigns despite having scientific knowledge that dates back to the 1960's that their product increases the risk of ovarian cancer in women when used in the perineal area.

COUNT TWO- STRICT LIABILITY FOR DEFECTIVE MANUFACTURE AND DESIGN (ALL DEFENDANTS)

59. Plaintiff realleges and incorporates by reference all paragraphs of this Complaint as if fully set forth herein.

60. Defendants' product was unreasonably defective in design and improperly manufactured when it was placed in the stream of commerce by Defendants and was unreasonably dangerous beyond that which could be contemplated by Anne Albertine.

61. Defendants' product creates risks to the health and safety of the consumers that are far more significant and devastating than the risks posed by other products on the market used for the same purposes. As outlined above, there has always been a feasible and alternative design——cornstarch.

62. Defendants' product is inherently dangerous and defective, unfit and unsafe for its intended and reasonably foreseeable use, and does not meet or perform to the expectations of the consumer.

63. Defendants have intentionally and recklessly designed, manufactured, marketed, labeled, sold and distributed the product with wanton and willful disregard for the rights and health of Anne Albertine, Deceased, and others, and with malice, placing their economic interests above the health and safety of Anne Albertine and others similarly situated.

64. As a proximate result of Defendants' defective design, manufacture, labeling, marketing, sale and distribution of the product, Anne Albertine was injured catastrophically and sustained severe and permanent pain, suffering, disability, impairment, loss of enjoyment of life, economic damages and death. Pursuant to the provisions of the Restatement (Second) of Torts

and Tennessee law, Defendants are strictly liable to Plaintiff for all damages claimed in this case, including punitive damages.

COUNT THREE- NEGLIGENCE
(IMERYS TALC)

65. Plaintiff realleges and incorporates by reference all paragraphs of this Complaint as if fully set forth herein.

66. At all pertinent times, Defendant had a duty to exercise reasonable care to consumers, including Anne Albertine, in the design, development, manufacture, testing, inspection, packaging, promotion, marketing, distribution, labeling and/or sale of its product.

67. At all pertinent times, Imerys Talc mined and sold talc to the Johnson & Johnson Defendants, which it knew and/or should have known, was then being packaged and sold to consumers as J&J Baby Powder by the Johnson & Johnson Defendants. Further, Imerys Talc knew and/or should have known that consumers of the J&J Baby Powder were using it to powder their perineal regions.

68. At all pertinent times, Imerys Talc knew or should have known that the use of talcum powder based products in the perineal area significantly increases the risk of ovarian cancer based upon scientific knowledge dating back to the 1960's.

69. At all pertinent times, Imerys Talc knew or should have known that Johnson & Johnson was not providing warnings to consumers on the J&J Baby Powder of the risk of ovarian cancer posed by talc contained therein.

70. At all pertinent times, Imerys Talc was negligent in providing talc to the Johnson & Johnson Defendants, when it knew or should have known that the talc would be used in the J&J Baby Powder, without adequately taking steps to ensure that ultimate consumers of the J&J

Baby Powder, including Decedent, received the information that Imerys Talc possessed on the carcinogenic properties of talc, including its risk of causing ovarian cancer.

71. As a direct and proximate result of Imerys Talc's negligence, Decedent purchased and used, as aforesaid, the J&J Baby Powder that directly and proximately caused Decedent to develop ovarian cancer. Decedent was caused to incur medical expenses and conscious pain and suffering for which Plaintiff may recover. Plaintiff may also recover for his own spousal damages for loss of a pecuniary life and Decedents' children's parental damages for loss of a pecuniary life, as well as punitive damages.

COUNT FOUR- NEGLIGENCE
(JOHNSON & JOHNSON DEFENDANTS)

72. Plaintiff realleges and incorporates by reference all paragraphs of this Complaint as if fully set forth herein.

73. The Johnson & Johnson Defendants were negligent in marketing, designing, manufacturing, producing, supplying, inspecting, testing, selling, labeling, and distributing the J&J Baby Powder in one or more of the following respects:

- In failing to warn Decedent of the hazards associated with the use of J&J Baby Powder;
- In failing to properly test their products to determine adequacy and effectiveness or safety measures, if any, prior to releasing the J&J Baby Powder for consumer use;
- In failing to properly test their products to determine the increased risk of ovarian cancer during the normal and/or intended use of J&J Baby Powder;
- In failing to inform ultimate users, such as Decedent, as to the safe and proper methods of handling and using J&J Baby Powder;
- In failing to remove J&J Baby Powder from the market when the Defendants knew or should have known the J&J Baby Powder was defective;
- In failing to instruct the ultimate users, such as Decedent, as to the methods for reducing the type of exposure to J&J Baby Powder which caused increased risk of ovarian cancer;

- In failing to inform the public in general and the Decedent in particular of the known dangers of using J&J Baby Powder for dusting the perineum;
- In failing to advise users how to prevent or reduce exposure that caused increased risk for ovarian cancer;
- In marketing and labeling J&J Baby Powder as safe for all uses despite knowledge to the contrary;
- In failing to act like a reasonably prudent company under similar circumstances;

Each and all of these acts and omissions, taken singularly or in combination, were a proximate cause of the Decedent's terminal diagnosis of ovarian cancer and subsequent loss of life.

74. At all pertinent times, the Johnson & Johnson Defendants knew or should have known that the J&J Baby Powder was unreasonably dangerous and defective when put to its reasonably anticipated use.

75. As a direct and proximate result of the Johnson & Johnson Defendants' negligence in one or more of the aforementioned ways, Decedent purchased and used, as aforesaid, the J&J Baby Powder that directly and proximately caused Decedent to develop ovarian cancer. Decedent was caused to incur medical expenses and conscious pain and suffering for which Plaintiff may recover. Plaintiff may also recover for his own spousal damages for loss of a pecuniary life and Decedents' children's parental damages for loss of a pecuniary life, as well as punitive damages.

COUNT FIVE- BREACH OF EXPRESS WARRANTY
(JOHNSON & JOHNSON DEFENDANTS)

76. Plaintiff realleges and incorporates by reference all paragraphs of this Complaint as if fully set forth herein.

77. The Johnson & Johnson Defendants expressly warranted, through direct-to-consumer marketing, advertisements, and labels, that the J&J Baby Powder was safe and effective for reasonably anticipated uses, including use by women in the perineal area.

78. J&J Baby Powder did not conform to these express representations because they cause serious injury when used by women in the perineal area in the form of ovarian cancer. Defendants' breaches constitute violations of Common Law principles and Tennessee statutory law.

79. The Defendants designed, manufactured, assembled, fabricated and/or distributed the product in question in a defective condition and therefore breached various express warranties. The Defendants, as sellers, were merchants with respect to the J&J Baby Powder they sold. In addition, these products were not fit for the ordinary purposes for which such goods are used.

80. As a direct and proximate result of the Defendants' breach of warranty, Decedent purchased and used, as aforesaid, the J&J Baby Powder that directly and proximately caused her to develop ovarian cancer and expire. Decedent was caused to incur medical expenses and conscious pain and suffering for which Plaintiff may recover. Plaintiff may also recover for his own spousal damages for loss of a pecuniary life and Decedents' children's parental damages for loss of a pecuniary life, as well as punitive damages.

COUNT SIX- BREACH OF IMPLIED WARRANTIES
(JOHNSON & JOHNSON DEFENDANTS)

81. Plaintiff realleges and incorporates by reference all paragraphs of this Complaint as if fully set forth herein.

82. At the time the Defendants manufactured, marketed, labeled, promoted, distributed and/or sold the J&J Baby Powder Defendants knew of the uses for which the product

was intended, including use by women in the perineal area, and impliedly warranted J&J Baby Powder to be of merchantable quality and safe for such use.

83. Defendants breached their implied warranties of the J&J Baby Powder sold to Decedent because they were not fit for their common, ordinary, and intended uses, including use by women in the perineal area.

84. As a direct, foreseeable and proximate result of the Defendants' breaches of implied warranties, Decedent purchased and used, as aforesaid, the J&J Baby Powder that directly and proximately caused Decedent to develop ovarian cancer. Decedent was caused to incur medical expenses and conscious pain and suffering for which Plaintiff may recover. Plaintiff may also recover for his own spousal damages for loss of a pecuniary life and Decedents' children's parental damages for loss of a pecuniary life, as well as punitive damages.

COUNT SEVEN- FRAUD
(JOHNSON & JOHNSON DEFENDANTS)

85. Plaintiff realleges and incorporates by reference all paragraphs of this Complaint as if fully set forth herein.

86. At all relevant times, the Johnson & Johnson Defendants intentionally, willfully, and/or recklessly, with the intent to deceive, misrepresented and/or concealed material facts to consumers and users, including Decedent.

87. At all relevant times, the Johnson & Johnson Defendants misrepresented and/or concealed material facts concerning the J&J Baby Powder to consumers, including the Decedent, with knowledge of the falsity of their misrepresentations.

88. At all relevant times, upon information and belief, the misrepresentations and concealments concerning J&J Baby Powder made by the Johnson & Johnson Defendants include, but are not limited to the following:

- The Johnson & Johnson Defendants falsely labeled and advertised J&J Baby Powder in the following ways, among others: "For you, use every day to help feel soft, fresh, and comfortable," "a sprinkle a day keeps the odor away," and "your body perspires in more places than just under your arms."

- The Johnson & Johnson Defendants, through the advertisements described above, knowingly misrepresented to Anne Albertine and the public that J&J Baby Powder was safe for use all over the body, including the perineal areas of women.

- The Johnson & Johnson Defendants intentionally failed to disclose that talc and the associated J&J Baby Powder, when used in the perineal area, increases the risk of ovarian cancer.

- The Johnson & Johnson Defendants intentionally failed to include adequate warnings with J&J Baby Powder regarding the potential and actual risks of using J&J Baby Powder in the perineal area on women and the nature, scope, severity, and duration of any serious injuries resulting therefrom.

- Despite knowing about the carcinogenic nature of talc and its likelihood to increase the risk of ovarian cancer in women, the Johnson & Johnson Defendants falsely marketed, advertised, labeled and sold J&J Baby Powder as safe for public consumption and usage, including for use by women to powder their perineal areas.

89. At all relevant times, the Johnson & Johnson Defendants actively, knowingly, and intentionally concealed and misrepresented these material facts to the consuming public with the intent to deceive the public and Decedent, and with the intent that the consumers would purchase and use J&J Baby Powder in the female perineal area.

90. At all relevant times, the consuming public, including Decedent, would not otherwise have purchased J&J Baby Powder and/or applied J&J Baby Powder in the perineal area if they had been informed of the risks associated with the use of J&J Baby Powder in the perineal area.

91. At all relevant times Decedent relied on the Johnson & Johnson Defendants' misrepresentations concerning the safety of J&J Baby Powder when purchasing the product and using it in her perineal area and her reliance was reasonable and justified.

92. As a direct, foreseeable and proximate result of the Johnson & Johnson Defendants' fraudulent conduct, Decedent purchased and used J&J Baby Powder in her perineal area. As a direct and proximate result of such use, Decedent developed ovarian cancer, and Decedent suffered pain of mind and body and was diagnosed with a terminal disease which took her life. Decedent was caused to incur medical expenses and conscious pain and suffering for which Plaintiff may recover. Plaintiff may also recover for his own spousal damages for loss of a pecuniary life and Decedents' children's parental damages for loss of a pecuniary life, as well as punitive damages.

COUNT EIGHT- CIVIL CONSPIRACY
(ALL DEFENDANTS)

93. Plaintiff realleges and incorporates by reference all paragraphs of this Complaint as if fully set forth herein.

94. Defendants and/or their predecessors-in-interest knowingly agreed, contrived, combined, confederated and conspired among themselves to cause the Decedent's terminal diagnosis and subsequent loss of life by exposing the Decedent to harmful and dangerous products. Defendants further knowingly agreed, contrived, confederated and conspired to deprive Decedent of the opportunity of informed free choice as to whether to use the J&J Baby Powder or to expose her to said dangers. Defendants committed the above described wrongs by willfully misrepresenting and suppressing the truth as to the risks and dangers associated with the use of and exposure to talc and thus J&J Baby Powder.

95. In furtherance of said conspiracies, Defendants performed the following overt acts:

- For many decades, Defendants, individually, jointly, and in conspiracy with each other, have been in possession of medical and scientific data, literature and test reports which clearly indicated that use of their talc/ J&J Baby Powder by women resulting from

ordinary and foreseeable use of such products were unreasonably dangerous, hazardous, deleterious to human health, carcinogenic, and potentially deadly;

- Despite the medical and scientific data, literature, and test reports possessed by and available to Defendants, Defendants individually, jointly, and in conspiracy with each other, fraudulently, willfully and maliciously withheld, concealed and suppressed said medical information regarding the increased risk of ovarian cancer from Decedent;

- In addition, on July 27, 2005 Defendants as part of the TIPTF corresponded and agreed to edit and delete portions of scientific papers being submitted on their behalf to the United States Toxicology Program in an attempt to prevent talc from being classified as a carcinogen;

- The Defendants through the TIPTF instituted a "defense strategy" to defend talc at all costs. Admittedly, the Defendants through the TIPTF used their influence over the NTP Subcommittee, and the threat of litigation against the NTP to prevent the NTP from classifying talc as a carcinogen on its 10th RoC. According to the Defendants, ". . . we believe these strategies paid- off";

- Caused to be released, published and disseminated medical and scientific data, literature, and test reports containing information and statements regarding the risks of ovarian cancer which Defendants knew were incorrect, incomplete, outdated, and misleading. Specifically, the Defendants through the TIPTF collectively agreed to release false information to the public regarding the safety of talc on July 1, 1992; July 8, 1992; and November 17, 1994. In a letter dated September 17, 1997, the Defendants were criticized by their own Toxicologist consultant for releasing this false information to the public, yet nothing was done by the Defendants to correct or redact this public release of knowingly false information;

- By these false and fraudulent representations, omissions, and concealments, Defendants intended to induce the Decedent to rely upon said false and fraudulent representations, omissions and concealments, and to continue to expose herself to the dangers inherent in the use of and exposure to talc/ J&J Baby Powder.

96. Decedent reasonably and in good faith relied upon the aforementioned fraudulent representations, omissions, and concealments made by Defendants regarding the nature of talc/ J&J Baby Powder.

97. As a direct, foreseeable and proximate result of the Defendants' fraudulent misrepresentations, omissions, and concealments regarding J&J Baby Powder and Decedent's reliance thereon, Decedent purchased and used, as aforesaid, J&J Baby Powder that directly and

proximately caused Decedent to develop ovarian cancer; Decedent suffered pain of mind and body and was diagnosed with a terminal disease which took her life. Decedent was caused to incur medical expenses and conscious pain and suffering for which Plaintiff may recover. Plaintiff may also recover for his own spousal damages for loss of a pecuniary life and Decedents' children's parental damages for loss of a pecuniary life, as well as punitive damages.

98. As a direct and proximate result of Anne Albertine's reliance, she sustained injuries, illness, and death, and was deprived of the opportunity of informed free choice in connection with the use and exposure of J&J Baby Powder.

COUNT NINE- CONCERT OF ACTION
(ALL DEFENDANTS)

90. Plaintiff realleges and incorporates by reference all paragraphs of this Complaint as if fully set forth herein.

100. At all pertinent times, all Defendants knew that J&J Baby Powder should contain warnings on the risk of ovarian cancer posed by women using the product to powder the perineal region, but purposefully sought to suppress such information and omit from talc based products so as not to negatively affect sales and maintain the profits of the Johnson & Johnson Defendants and Imerys Talc.

101. Additionally and/or alternatively, the Defendants aided and abetted each other in the negligence, gross negligence, and reckless misconduct. Pursuant to the Restatement (Second) of Torts Section 876, each of the Defendants is liable for the conduct of the other Defendants for whom they aided and abetted.

102. As a direct and proximate result of Defendants concerted action, Anne Albertine purchased and used, as aforesaid, J&J Baby Powder that directly and proximately caused her to develop ovarian cancer and die. Decedent was caused to incur medical expenses and conscious

pain and suffering for which Plaintiff may recover. Plaintiff may also recover for his own spousal damages for loss of a pecuniary life and Decedents' children's parental damages for loss of a pecuniary life, as well as punitive damages.

COUNT TEN- NEGLIGENT MISREPRESENTATION
(ALL DEFENDANTS)

103. Plaintiff realleges and incorporates by reference all paragraphs of this Complaint as if fully set forth herein.

104. Defendants had a duty to accurately and truthfully represent to the medical and healthcare community, Decedent, and the public, that talc/J&J Baby Powder had been tested and found to be safe and effective for use in the perineal area. The representations made by Defendants, in fact, were false and the products were not in fact safe for such use.

105. Defendants failed to exercise ordinary care in the representations concerning the talc/J&J Baby Powder while they were involved in their manufacture, sale, testing, quality assurance, quality control, and distribution in interstate commerce, because Defendants negligently misrepresented the truth as to the products' actual high risk of unreasonable, dangerous, adverse side effects.

106. Defendants breached their duty by representing that talc/J&J Baby Powder has no serious side effects.

107. As a foreseeable, direct and proximate result of the negligent misrepresentation of Defendants as set forth herein, Defendants knew, and had reason to know, that talc/J&J Baby Powder had been insufficiently tested, or had not been tested at all, and that they lacked adequate and accurate warnings, and that it created a high risk, and/or higher than acceptable risk, and/or higher than reported and represented risk, of adverse side effects.

108. As a proximate result of Defendants' conduct, Decedent suffered pain of mind and body and was diagnosed with a terminal disease which took her life. Decedent was caused to incur medical expenses and conscious pain and suffering for which Plaintiff may recover. Plaintiff may also recover for his own spousal damages for loss of a pecuniary life and Decedents' children's parental damages for loss of a pecuniary life, as well as punitive damages.

COUNT ELEVEN- VIOLATION OF TENNESSEE CONSUMER PROTECTION ACT (TENN. CODE ANN. §47-18-101, ET SEQ.) (JOHNSON & JOHNSON DEFENDANTS)

109. Plaintiff realleges and incorporates by reference all paragraphs of this Complaint as if fully set forth herein.

110. Anne Albertine purchased and used Defendants' J&J Baby Powder primarily for personal use and thereby suffered ascertainable losses as a result of Defendants' actions in violation of the consumer protection laws.

111. Had Defendants not engaged in the deceptive conduct described herein, Decedent would not have purchased and/or paid for Defendants' J&J Baby Powder, and would not have incurred related injuries and damages.

112. Defendants engaged in wrongful conduct while at the same time obtaining, under false pretenses, monetary gain from Decedent for J&J Baby Powder that would not have been paid had Defendants not engaged in unfair and deceptive conduct.

113. Defendants engaged in unfair methods of competition and deceptive acts or practices that were proscribed by the Tennessee Consumer Protection Act, including the following:

a. Tenn. Code Ann. § 47-18-104(b)(5) – Representing that goods or services have characteristics, ingredients, uses, benefits, or quantities that they do not have;

b. Tenn. Code Ann. § 47-18-104(b)(9) – Advertising goods or services with the intent not to sell them as advertised; and

c. Tenn. Code Ann. § 47-18-104(b)(21) – Using statements or illustrations in any advertisement which create a false impression of the usability of the goods or services offered, or which may otherwise misrepresent the goods or services in such a manner that later, on disclosure of the true facts, there is a likelihood that the buyer may be switched from the advertised goods or services to other goods or services.

114. Defendants intended for Decedent to rely on their misrepresentations and advertisements regarding the Products in order to achieve monetary gain from Decedent through her purchase of their J&J Baby Powder.

115. Decedent was injured by the cumulative and indivisible nature of Defendants' conduct. The cumulative effect of Defendants' conduct directed at Decedent and other consumers was to create demand for and sell J&J Baby Powder. Each aspect of Defendants' conduct combined to artificially create sales of J&J Baby Powder.

116. Defendants have a statutory duty to refrain from unfair or deceptive acts or trade practices in the design, labeling, development, manufacture, promotion, and sale of its J&J Baby Powder.

117. Had Defendants not engaged in the deceptive conduct described above, Decedent would not have purchased and/or paid for J&J Baby Powder, and would not have incurred related injuries and damages.

118. Defendants' intentional, deceptive, unconscionable, and fraudulent representations and material omissions to Decedent, physicians, and consumers, constituted unfair and deceptive acts and trade practices in violation of the Tennessee Consumer Protection Act.

119. Defendants have engaged in unfair competition and/or unfair or deceptive acts or trade practices, and/or have made false representations in violation of the Tennessee Consumer Protection Act.

120. Under these statutes, Defendants are the suppliers, manufacturers, advertisers, and sellers, who are subject to liability under such legislation for unfair, deceptive, fraudulent and unconscionable consumer sales practices.

121. Defendants violated the statutes that were enacted in this state to protect consumers against unfair, deceptive, fraudulent and unconscionable trade and business practices and false advertising, by knowingly and falsely representing that Defendants' J&J Baby Powder was fit to be used for the purpose for which it was intended, when in fact it was defective and dangerous, and by other acts alleged herein.

122. These representations were made in marketing and promotional materials.

123. The actions and omissions of Defendants alleged herein are uncured or incurable deceptive acts under the statutes enacted in Tennessee to protect consumers against unfair, deceptive, fraudulent and unconscionable trade and business practices and false advertising.

124. Defendants had actual knowledge of the defective and dangerous condition of Defendants' J&J Baby Powder and failed to take any action to cure such defective and dangerous conditions.

125. Decedent relied upon Defendants' misrepresentations and omissions in determining which product to use.

126. Defendants' deceptive, unconscionable or fraudulent representations and material omissions to Decedent and other consumers constituted deceptive acts and practices.

127. By reason of the unlawful acts engaged in by Defendants, and as a direct and proximate result thereof, Decedent, suffered ascertainable losses and damages.

128. As a direct and proximate result of Defendants' violations of Tennessee's consumer protection laws, Decedent suffered pain of mind and body and was diagnosed with a terminal disease which took her life. Decedent was caused to incur medical expenses and conscious pain and suffering for which Plaintiff may recover. Plaintiff may also recover for his own spousal damages for loss of a pecuniary life and Decedents' children's parental damages for loss of a pecuniary life, as well as punitive damages.

COUNT TWELVE- FRAUDULENT CONCEALMENT
(JOHNSON & JOHNSON DEFENDANTS)

129. Plaintiff realleges and incorporates by reference all paragraphs of this Complaint as if fully set forth herein.

130. Defendants owed consumers, including Decedent, a duty to fully and accurately disclose all material facts regarding J&J Baby Powder, not to conceal material defects related thereto, not to place these defective products into the stream of commerce, and to fully and accurately label product packaging. To the contrary, Defendants explicitly and/or implicitly represented that the Products were safe and effective.

131. Defendants actively and intentionally concealed and/or suppressed material facts, in whole or in part, to induce consumers, including Decedent, to purchase and use J&J Baby Powder and did so at her expense. Specifically:

a. Defendants have been aware of the positive association between feminine talc use and cancer demonstrated by epidemiology studies since at least 1982 and more than a dozen such published studies, including meta-analyses, have been published demonstrating similar results;

b. Defendants have been aware, for decades, of the propensity for talc particles to translocate from the perineum through the vaginal tract into the ovaries;

c. IARC, the recognized world authority of agent carcinogenicity, has determined that there is a credible causal connection between feminine talc use and ovarian cancer;

d. Johnson & Johnson's own paid consultant, Dr. Alfred Wehner, advised the company on multiple occasions, by at least 1997, that Johnson & Johnson's denial of a positive association between feminine talc use and ovarian cancer was "technically and factually incorrect"; and

e. Recent studies have established a statistically significant correlation between talcum powder use in the perineal area and ovarian cancer.

132. Defendants made the misrepresentations and/or omissions for the purpose of deceiving and defrauding Decedent and with the intention of having her act and rely on such misrepresentations and/or omissions.

133. Defendants knew that their concealments, misrepresentations and/or omissions were material, and that they were false, incomplete, misleading, deceptive, and deceitful when they were made. Alternatively, Defendants concealed information, and/or made the representations with such reckless disregard for the truth that knowledge of the falsity can be imputed to them.

134. Defendants profited, significantly, from their unethical and illegal conduct that caused Decedent to purchase and habitually use a dangerous and defective product.

135. Defendants' actions, and Decedent's justifiable reliance thereon, were substantial contributing factors in causing injury and incurrence of substantial damages.

136. As a direct and proximate result of Defendants' fraudulent concealment, Decedent suffered pain of mind and body and was diagnosed with a terminal disease which took her life. Decedent was caused to incur medical expenses and conscious pain and suffering for which Plaintiff may recover. Plaintiff may also recover for his own spousal damages for loss of a

pecuniary life and Decedents' children's parental damages for loss of a pecuniary life, as well as punitive damages.

COUNT THIRTEEN- PUNITIVE DAMAGES
(ALL DEFENDANTS)

137. Plaintiff realleges and incorporates by reference all paragraphs of this Complaint as if fully set forth herein.

138. Defendants have acted in a malicious, intentional, fraudulent and reckless manner as is evidenced by their actions, including but not limited to the following:

a. Defendants knew of the unreasonably high risk of cancer, including, but not limited to, ovarian and uterine cancer, posed by the talc/J&J Baby Powder before manufacturing, marketing, distributing and/or selling the Products, yet purposefully proceeded with such action;

b. Despite their knowledge of the high risk of cancer, including, but not limited to, ovarian and uterine cancer, associated with their product, Defendants affirmatively minimized this risk through marketing and promotional efforts and product labeling; and

c. Through the actions outlined above, Defendants expressed a reckless indifference to the safety of users of talc/J&J Baby Powder, including Decedent. Defendants' conduct, as described herein, knowing the dangers and risks of their products, yet concealing and/or omitting this information, in furtherance of their conspiracy and concerted action, thus demonstrating Defendants' evil motive or a reckless indifference to the safety of users of the Products.

TOLLING STATUE OF LIMITATIONS

139. Plaintiff realleges and incorporates by reference all paragraphs of this Complaint as if fully set forth herein.

140. Neither Plaintiff nor Decedent was aware at the time of Decedent's diagnosis and subsequent death that her ovarian cancer was caused by her use of Defendants' talc/J&J Baby Powder. Consequently, the discovery rule applies to this case and the statute of limitations has been tolled until the day that Plaintiff knew or had reason to know that Decedent's ovarian cancer was linked to her use of Defendants' talc/J&J Baby Powder.

141. Furthermore, the running of any statute of limitations has been equitably tolled by reason of Defendants' fraudulent concealment and conduct. Through their affirmative misrepresentations and omissions, Defendants actively concealed from Plaintiff and Decedent the true risks associated with talc/J&J Baby Powder.

142. As a result of Defendants' actions, Plaintiff, Decedent, and her prescribing physicians were unaware, and could not reasonably know or have learned through reasonable diligence that she had been exposed to the risks alleged herein and that those risks were the direct and proximate result of Defendants' acts and omissions.

143. Plaintiff did not discover and could not have reasonably discovered (1) the occasion, the manner and means by which a breach of duty occurred that produced Decedent's injury and death; and (2) the identity of the Defendants who breached the duty until the fall of 2016 when he first saw an advertisement that the prolonged use of J&J Baby Powder in the perineal region was linked to ovarian cancer.

144. Furthermore, Defendants are estopped from relying on any statute of limitations because of their concealment of the truth, quality and nature of their product. Defendants were under a duty to disclose the true character, quality and nature of talc/J&J Baby Powder because this was non-public information over which the Defendants had and continue to have exclusive control, and because the Defendants knew that this information was not available to Decedent and Plaintiff, her medical providers and/or her health facilities.

PRAYER FOR RELIEF

a. The injuries, death and damages suffered by Anne Albertine, include, but are not limited to the following: medical expenses, severe pain and suffering for over five years, loss of

enjoyment of life, mental anguish, emotional distress, funeral expenses, lost wages, physical impairment and disability, and death.

b. The injuries and damages suffered by James Gary Albertine, Jr. include but are not limited to the following: loss of the pecuniary value of his wife Anne Albertine, loss of her love, affection, and consortium.

c. The injuries and damages suffered by Anne Albertine's four adult children, Tim Symons, Taylor Symons Cline, James Gary Albertine III, and Brent Albertine, include but are not limited to the following: parental damages for the loss of the pecuniary value of their mother, loss of her love, society, affection and guidance as a parent.

d. Plaintiff is entitled to punitive damages for the malicious, intentional, fraudulent and reckless acts of the Defendants pursuant to Tenn. Code Ann. § 29-39-104.

WHEREFORE, Plaintiff prays for judgment against Defendants as follows:

1. That Plaintiff be awarded special damages for medical, hospital, and doctors' expenses incurred, according to proof;

2. That Plaintiff be awarded compensatory damages from the Defendants not to exceed 10 Million Dollars ($10,000,000.00);[4]

3. That Plaintiff be awarded punitive damages from the Defendants not to exceed 62 Million Dollars ($62,000,000.00);[5]

4. Awarding treble damages per Tenn. Code Ann. § 47-18-109(a)(3);

5. Awarding post judgment interest;

6. Awarding reasonable attorneys' fees per Tenn. Code Ann. § 47-18-109(e)(1);

[4] *See* Tenn. Code Ann. § 29-28-107: "Any complaint filed in a products liability action shall state an amount of such suit sought to be recovered from any defendant." Plaintiff reserves the right to amend this number.

[5] *Id.* Plaintiff reserves the right to amend this number.

7. Awarding Plaintiff the costs of these proceedings; and

8. Such other and further relief as this Court deems just and proper.

Respectfully submitted,

HUBER, SLACK, THOMAS & MARCELLE, LLP

/s/Logan S. Albertine
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ATTORNEYS FOR PLAINTIFF

JS 44 (Rev. 07/16)

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. *(SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)*

I. (a) PLAINTIFFS

James Gary Albertine, Jr., as surviving spouse of Anna Lea Albertine, Deceased

(b) County of Residence of First Listed Plaintiff Shelby County, TN
(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorneys *(Firm Name, Address, Email and Telephone Number)*
Logan Albertine, Stephen Huber, Charles Thomas, and Gina Palermo (Huber, Slack, Thomas & Marcelle, LLP, 1100 Poydras St. Suite 2200 New Orleans, LA 70163, Logan@huberslack.com, 504-274-2500)

DEFENDANTS

Johnson & Johnson, Johnson & Johnson Consumer Companies, Inc., and Imerys Talc America, Inc. f/k/a Luzenac America, Inc.

County of Residence of First Listed Defendant Middlesex County, NJ
(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

Attorneys *(If Known)*

II. BASIS OF JURISDICTION *(Place an "X" in One Box Only)*

- ☐ 1 U.S. Government Plaintiff
- ☐ 3 Federal Question *(U.S. Government Not a Party)*
- ☐ 2 U.S. Government Defendant
- ☒ 4 Diversity *(Indicate Citizenship of Parties in Item III)*

III. CITIZENSHIP OF PRINCIPAL PARTIES *(Place an "X" in One Box for Plaintiff and One Box for Defendant)*

(For Diversity Cases Only)

	PTF	DEF		PTF	DEF
Citizen of This State	☐ 1	☐ 1	Incorporated *or* Principal Place of Business In This State	☐ 4	☒ 4
Citizen of Another State	☒ 2	☐ 2	Incorporated *and* Principal Place of Business In Another State	☐ 5	☐ 5
Citizen or Subject of a Foreign Country	☐ 3	☐ 3	Foreign Nation	☐ 6	☐ 6

IV. NATURE OF SUIT *(Place an "X" in One Box Only)*

CONTRACT
- ☐ 110 Insurance
- ☐ 120 Marine
- ☐ 130 Miller Act
- ☐ 140 Negotiable Instrument
- ☐ 150 Recovery of Overpayment & Enforcement of Judgment
- ☐ 151 Medicare Act
- ☐ 152 Recovery of Defaulted Student Loans (Excludes Veterans)
- ☐ 153 Recovery of Overpayment of Veteran's Benefits
- ☐ 160 Stockholders' Suits
- ☐ 190 Other Contract
- ☐ 195 Contract Product Liability
- ☐ 196 Franchise

TORTS

PERSONAL INJURY
- ☐ 310 Airplane
- ☐ 315 Airplane Product Liability
- ☐ 320 Assault, Libel & Slander
- ☐ 330 Federal Employers' Liability
- ☐ 340 Marine
- ☐ 345 Marine Product Liability
- ☐ 350 Motor Vehicle
- ☐ 355 Motor Vehicle Product Liability
- ☐ 360 Other Personal Injury
- ☐ 362 Personal Injury - Medical Malpractice

PERSONAL INJURY
- ☒ 365 Personal Injury - Product Liability
- ☐ 367 Health Care/ Pharmaceutical Personal Injury Product Liability
- ☐ 368 Asbestos Personal Injury Product Liability

PERSONAL PROPERTY
- ☐ 370 Other Fraud
- ☐ 371 Truth in Lending
- ☐ 380 Other Personal Property Damage
- ☐ 385 Property Damage Product Liability

FORFEITURE/PENALTY
- ☐ 625 Drug Related Seizure of Property 21 USC 881
- ☐ 690 Other

LABOR
- ☐ 710 Fair Labor Standards Act
- ☐ 720 Labor/Management Relations
- ☐ 740 Railway Labor Act
- ☐ 751 Family and Medical Leave Act
- ☐ 790 Other Labor Litigation
- ☐ 791 Employee Retirement Income Security Act

IMMIGRATION
- ☐ 462 Naturalization Application
- ☐ 465 Other Immigration Actions

BANKRUPTCY
- ☐ 422 Appeal 28 USC 158
- ☐ 423 Withdrawal 28 USC 157

PROPERTY RIGHTS
- ☐ 820 Copyrights
- ☐ 830 Patent
- ☐ 840 Trademark

SOCIAL SECURITY
- ☐ 861 HIA (1395ff)
- ☐ 862 Black Lung (923)
- ☐ 863 DIWC/DIWW (405(g))
- ☐ 864 SSID Title XVI
- ☐ 865 RSI (405(g))

FEDERAL TAX SUITS
- ☐ 870 Taxes (U.S. Plaintiff or Defendant)
- ☐ 871 IRS—Third Party 26 USC 7609

OTHER STATUTES
- ☐ 375 False Claims Act
- ☐ 376 Qui Tam (31 USC 3729(a))
- ☐ 400 State Reapportionment
- ☐ 410 Antitrust
- ☐ 430 Banks and Banking
- ☐ 450 Commerce
- ☐ 460 Deportation
- ☐ 470 Racketeer Influenced and Corrupt Organizations
- ☐ 480 Consumer Credit
- ☐ 490 Cable/Sat TV
- ☐ 850 Securities/Commodities/ Exchange
- ☐ 890 Other Statutory Actions
- ☐ 891 Agricultural Acts
- ☐ 893 Environmental Matters
- ☐ 895 Freedom of Information Act
- ☐ 896 Arbitration
- ☐ 899 Administrative Procedure Act/Review or Appeal of Agency Decision
- ☐ 950 Constitutionality of State Statutes

REAL PROPERTY
- ☐ 210 Land Condemnation
- ☐ 220 Foreclosure
- ☐ 230 Rent Lease & Ejectment
- ☐ 240 Torts to Land
- ☐ 245 Tort Product Liability
- ☐ 290 All Other Real Property

CIVIL RIGHTS
- ☐ 440 Other Civil Rights
- ☐ 441 Voting
- ☐ 442 Employment
- ☐ 443 Housing/ Accommodations
- ☐ 445 Amer. w/Disabilities - Employment
- ☐ 446 Amer. w/Disabilities - Other
- ☐ 448 Education

PRISONER PETITIONS

Habeas Corpus:
- ☐ 463 Alien Detainee
- ☐ 510 Motions to Vacate Sentence
- ☐ 530 General
- ☐ 535 Death Penalty

Other:
- ☐ 540 Mandamus & Other
- ☐ 550 Civil Rights
- ☐ 555 Prison Condition
- ☐ 560 Civil Detainee - Conditions of Confinement

V. ORIGIN *(Place an "X" in One Box Only)*

- ☐ 1 Original Proceeding
- ☐ 2 Removed from State Court
- ☐ 3 Remanded from Appellate Court
- ☐ 4 Reinstated or Reopened
- ☐ 5 Transferred from Another District *(specify)*
- ☐ 6 Multidistrict Litigation - Transfer
- ☒ 8 Multidistrict Litigation - Direct File

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing ***(Do not cite jurisdictional statutes unless diversity)***:
28 U.S.C. § 1332(d)

Brief description of cause:
Diversity-- Products Liability and Fraud Suit against J&J et al. for talcum powder/J&J Baby Powder

VII. REQUESTED IN COMPLAINT:

☐ CHECK IF THIS IS A **CLASS ACTION** UNDER RULE 23, F.R.Cv.P.

DEMAND $ 72,000,000.00

CHECK YES only if demanded in complaint:
JURY DEMAND: ☒ Yes ☐ No

VIII. RELATED CASE(S) IF ANY

(See instructions): JUDGE (FLW)_(LHG) DOCKET NUMBER MDL NO. 16-2738

DATE 12/30/2016

SIGNATURE OF ATTORNEY OF RECORD /s/ Logan S. Albertine

FOR OFFICE USE ONLY

RECEIPT # AMOUNT APPLYING IFP JUDGE MAG. JUDGE

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INSTRUCTIONS FOR ATTORNEYS COMPLETING CIVIL COVER SHEET FORM JS 44

Authority For Civil Cover Sheet

The JS 44 civil cover sheet and the information contained herein neither replaces nor supplements the filings and service of pleading or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. Consequently, a civil cover sheet is submitted to the Clerk of Court for each civil complaint filed. The attorney filing a case should complete the form as follows:

I.(a) **Plaintiffs-Defendants.** Enter names (last, first, middle initial) of plaintiff and defendant. If the plaintiff or defendant is a government agency, use only the full name or standard abbreviations. If the plaintiff or defendant is an official within a government agency, identify first the agency and then the official, giving both name and title.

(b) **County of Residence.** For each civil case filed, except U.S. plaintiff cases, enter the name of the county where the first listed plaintiff resides at the time of filing. In U.S. plaintiff cases, enter the name of the county in which the first listed defendant resides at the time of filing. (NOTE: In land condemnation cases, the county of residence of the "defendant" is the location of the tract of land involved.)

(c) **Attorneys.** Enter the firm name, address, telephone number, and attorney of record. If there are several attorneys, list them on an attachment, noting in this section "(see attachment)".

II. **Jurisdiction.** The basis of jurisdiction is set forth under Rule 8(a), F.R.Cv.P., which requires that jurisdictions be shown in pleadings. Place an "X" in one of the boxes. If there is more than one basis of jurisdiction, precedence is given in the order shown below.
United States plaintiff. (1) Jurisdiction based on 28 U.S.C. 1345 and 1348. Suits by agencies and officers of the United States are included here.
United States defendant. (2) When the plaintiff is suing the United States, its officers or agencies, place an "X" in this box.
Federal question. (3) This refers to suits under 28 U.S.C. 1331, where jurisdiction arises under the Constitution of the United States, an amendment to the Constitution, an act of Congress or a treaty of the United States. In cases where the U.S. is a party, the U.S. plaintiff or defendant code takes precedence, and box 1 or 2 should be marked.
Diversity of citizenship. (4) This refers to suits under 28 U.S.C. 1332, where parties are citizens of different states. When Box 4 is checked, the citizenship of the different parties must be checked. (See Section III below**; NOTE: federal question actions take precedence over diversity cases.**)

III. **Residence (citizenship) of Principal Parties.** This section of the JS 44 is to be completed if diversity of citizenship was indicated above. Mark this section for each principal party.

IV. **Nature of Suit.** Place an "X" in the appropriate box. If the nature of suit cannot be determined, be sure the cause of action, in Section VI below, is sufficient to enable the deputy clerk or the statistical clerk(s) in the Administrative Office to determine the nature of suit. If the cause fits more than one nature of suit, select the most definitive.

V. **Origin.** Place an "X" in one of the seven boxes.
Original Proceedings. (1) Cases which originate in the United States district courts.
Removed from State Court. (2) Proceedings initiated in state courts may be removed to the district courts under Title 28 U.S.C., Section 1441. When the petition for removal is granted, check this box.
Remanded from Appellate Court. (3) Check this box for cases remanded to the district court for further action. Use the date of remand as the filing date.
Reinstated or Reopened. (4) Check this box for cases reinstated or reopened in the district court. Use the reopening date as the filing date.
Transferred from Another District. (5) For cases transferred under Title 28 U.S.C. Section 1404(a). Do not use this for within district transfers or multidistrict litigation transfers.
Multidistrict Litigation – Transfer. (6) Check this box when a multidistrict case is transferred into the district under authority of Title 28 U.S.C. Section 1407.
Multidistrict Litigation – Direct File. (8) Check this box when a multidistrict case is filed in the same district as the Master MDL docket.
PLEASE NOTE THAT THERE IS NOT AN ORIGIN CODE 7. Origin Code 7 was used for historical records and is no longer relevant due to changes in statue.

VI. **Cause of Action.** Report the civil statute directly related to the cause of action and give a brief description of the cause. **Do not cite jurisdictional statutes unless diversity.** Example: U.S. Civil Statute: 47 USC 553 Brief Description: Unauthorized reception of cable service

VII. **Requested in Complaint.** Class Action. Place an "X" in this box if you are filing a class action under Rule 23, F.R.Cv.P.
Demand. In this space enter the actual dollar amount being demanded or indicate other demand, such as a preliminary injunction.
Jury Demand. Check the appropriate box to indicate whether or not a jury is being demanded.

VIII. **Related Cases.** This section of the JS 44 is used to reference related pending cases, if any. If there are related pending cases, insert the docket numbers and the corresponding judge names for such cases.

Date and Attorney Signature. Date and sign the civil cover sheet.