BEFORE THE UNITED STATES JUDICIAL PANEL
ON MULTIDISTRICT LITIGATION

IN RE JOHNSON & JOHNSON "BABY POWDER" and "SHOWER TO SHOWER" MARKETING, SALES PRACTICES AND PRODUCTS LIABILITY LITIGATION	**MDL DOCKET NO. 16-71**

PLAINTIFF'S MOTION FOR CONSOLIDATION AND TRANSFER PURSUANT TO 28 U.S.C. § 1407

Plaintiff Tanashiska Lumas respectfully requests that the Judicial Panel on Multidistrict Litigation ("Panel") transfer the Related Actions listed below and, if filed, any tag-along actions, to the United States District Court for the Southern District of Illinois for pre-trial coordination.

1. The complaints in the Related Actions allege that Defendants Johnson & Johnson ("J&J); Johnson & Johnson Consumer Companies, Inc. ("J&J Consumer"); Imerys Talc America, Inc., f/k/a Luzenac America, Inc. ("Imerys"); and Personal Care Products Council f/k/a Cosmetic, Toiletry, and Fragrance Association ("PCPC"), (together, "Defendants") misrepresented the safety and reliability of Johnson & Johnson's talcum powder products (Johnson & Johnson Baby Powder and Shower to Shower; hereinafter the "Products") for personal, hygienic use.

2. The complaints allege violations of state consumer protection acts and causes of action based on breach of express and implied warranty, negligence, gross negligence, punitive damages, failure to warn, design and/or manufacturing defect, civil conspiracy, concert of action, aiding and abetting, negligent misrepresentation, survival, wrongful death, restitution or disgorgement based on unjust enrichment, loss of consortium, fraud and fraudulent concealment.

3. Plaintiff's case was filed in the Southern District of Illinois on July 1, 2016 against Defendants Johnson & Johnson and Johnson & Johnson Consumer Companies, Case No. 3:16-cv-00741. The Related Actions are other actions filed throughout the United States and include two class actions: *Mihalich v. Johnson & Johnson*; Case No. 3:14-cv-00600-DRH-SCW (S.D. Ill.) and *Estrada v. Johnson & Johnson*; Case No. 2:14-cv-01051-TLN-KJN (E. D. Cal.); and the following individual actions: *Chakalos v. Johnson & Johnson, et al.*; Case No. 3:14-cv-07079-FLW-LHG (D. N.J.); *Bors v. Johnson & Johnson, et al.*; Case No. 2:16-cv-02866-MAK (E.D. Penn.); *Robb v. Johnson & Johnson, et al.*; Case No. 5:16-cv-00620-D (W.D. Okl.); *Anderson v. Johnson & Johnson*; Case No. 3:16-cv-00447-JWD-EWD (M.D. La.); *Gould v. Johnson & Johnson*; Case No. 3:16-cv-03838 (N.D. Cal.); *Musgrove v. Johnson & Johnson*; Case No. 1:16-cv-06847 (N.D. Ill.); *Rich-Williams v. Johnson & Johnson*; Case No. 1:16-cv-00121-SA-DAS (N.D. Miss.); and *Kuhn v. Johnson & Johnson*; Case No. 1:16-cv-00055-KHS (M.D. Tenn.).

4. Transfer is appropriate as such will serve the convenience of the parties and witnesses and will promote the just and efficient conduct of these actions. Transfer and consolidation of all cases to one district pursuant to 28 U.S.C. § 1407 will eliminate duplicative discovery, prevent inconsistent rulings on a number of pre-trial issues (including class certification), and conserve judicial resources and the resources of the parties.

5. Plaintiff respectfully suggests that these proceedings be assigned to the Southern District of Illinois. The Southern District is particularly suited for transfer and consolidation of these actions. The Southern District of Illinois is geographically convenient and in close proximity to St. Louis, Missouri, the location of pending Missouri state court cases making this

location convenient for document recovery.[1] The Southern District of Illinois is also centrally located and a convenient travel location for both West and East Coast counsel.

6. Plaintiffs respectfully suggest that this MDL would be assigned to the Honorable David R. Herndon. Judge Herndon has years of experience handling complex MDLs. This Panel has praised Judge Herndon for his experience and ability to handle large-scale MDLs:

> [B]y selecting Judge David R. Herndon to preside over this matter, we are selecting a jurist with the willingness and ability to handle this litigation. Judge Herndon, an experienced MDL judge, has deftly presided over *In re: Yasmins and Yaz (drospirenon) Marketing Sales Practices*, 655 F. Supp. 2d 1343 (J.P.M.L. 2009), another large pharmaceutical products liability litigation.

In re: Pradaxa (Dabigatran Etexilate) Products liability Litigation, 883 F. Supp. 2d 1355, 1356 (2012). Judge Herndon has also been assigned to one of the related class-action cases, *Mihalich v. Johnson & Johnson* and is already familiar with the issues present in this case.

7. The Southern District of Illinois has the resources to efficiently manage the consolidated actions, and Judge David R. Herndon is well suited to manage this complex case.

For the foregoing reasons, Plaintiff respectfully requests that the Panel transfer the Related Action, and any future cases, to the United States District Court for the Southern District of Illinois for consolidation before Judge David R. Herndon.

Dated: July 15, 2016

Respectfully submitted,

By: /s/ *Don Barrett*
John "Don" Barrett

[1] The pending state court actions are *Swann, et al. v. Johnson & Johnson, et al.*, In the Circuit Court of St. Louis City, Case No. 1422-CC09326 (Mo. 2014); *Hogans, et al. v. Johnson & Johnson, et al.*, Case No. 1422-CC09012 (Mo. 2014); and *Ferrar, et al. v. Johnson & Johnson, et al.*, Case No. 1422-CC09964 (Mo. 2014). There is also a case pending before the Ninth Circuit, *Blaes v. Johnson &* Johnson, Case No. 16-2080 (Ninth Cir. filed May 3, 2016), but the Plaintiff in that case moved to voluntarily dismiss his claims on the eve of trial and the issues on appeal relate to whether or not dismissal was proper.

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BEFORE THE UNITED STATES JUDICIAL PANEL ON MULTIDISTRICT LITIGATION

IN RE JOHNSON & JOHNSON "BABY POWDER" and "SHOWER TO SHOWER" MARKETING, SALES PRACTICES AND PRODUCTS LIABILITY LITIGATION

MDL DOCKET NO. 16-71

PLAINTIFF'S BRIEF IN SUPPORT OF MOTION FOR CONSOLIDATION AND TRANSFER PURSUANT TO 28 U.S.C. § 1407

Pursuant to 28 U.S.C. § 1407 and Rule 7.2(a) of the Rules of Procedure of the Judicial Panel on Multidistrict Litigation, Plaintiff Tanashiska Lumas respectfully submits this memorandum of law in support of her motion for transfer of all currently filed federal cases in this litigation, and any subsequent "tag along" cases involving similar claims, to the United States District Court for the Southern District of Illinois.

Ms. Lumas was diagnosed with ovarian cancer in 2011 after using Defendants Johnson & Johnson and Johnson & Johnson Consumer Companies talcum powder products—Johnson's Baby Powder and Shower to Shower—for more than twenty (20) years. For decades, Defendants have targeted sales of their talcum powder products to women, advertising their products as safe while also promoting freshness and comfort. The unfortunate truth is that Defendants have been aware since as early as 1971 that their talcum powder products cause cancer in women who use their products in the genital area. Despite this awareness, Defendants continue to market their talcum powder products towards women and to date have failed to place any warnings on their talcum powder products. Ms. Lumas seeks damages including but not limited to pain and suffering, emotional distress, loss of enjoyment of life, medical expenses, out of pocket

expenses, lost earnings, and other economic and non-economic damages, and punitive damages from Defendants.

Plaintiff is already aware of numerous cases being filed on behalf of women who have been similarly injured by Defendants, and fully expects additional cases to be filed nationwide. Based on the numerous common questions of fact involved, the compelling need to establish uniform and consistent standards in conducting pretrial discovery and motion practice, and because the most logical and convenient location for these proceedings is the Southern District of Illinois, Ms. Lumas respectfully requests coordinated proceedings there before the Honorable David R. Herndon.

I. BACKGROUND

This motion for transfer involves at least 11 actions pending in 10 different jurisdictions across the United States asserting common factual allegations and involving overlapping claims and legal issues. Based on the extensive press coverage of Defendants' actions and the nationwide advertising that has come from plaintiff firms, Ms. Lumas expects many additional actions to be filed in the federal courts alleging similar claims.

A. Plaintiffs

The various plaintiffs in this litigation have all filed civil actions arising from injuries caused by Defendants' talcum powder products and Defendants' failure to warn of the harm of extended talcum powder use and talcum's cancer causing properties. The plaintiffs are women or wrongful death beneficiaries of women who have been diagnosed with cancer as a result of using Defendants' talcum powder products or consumers who were deceived by Defendants' omissions and representations that Defendants' talcum powder products were safe to use. Each of these pending federal cases presents a common core of facts, in that each (i) alleges that

plaintiffs were diagnosed with cancer after use of Defendants' talcum powder products and Defendants' failure to warn of talcum powder's carcinogenic qualities; (ii) asserts injury and damages arising from Defendants' wrongful conduct; and (iii) alleges the same or similar conduct by Defendants.

Indeed, the factual allegations in plaintiffs' complaints are nearly identical in numerous critical respects. Each plaintiff used Defendants' talcum powder products for multiple years and was diagnosed with cancer as a result of the use of Defendants' talcum powder products. Each Defendant knew, or should have known, that their talcum powder products are unreasonably dangerous when used by a woman in her genital area but have continued to design, manufacture, sell, distribute, market, promote, and supply their talcum powder products so as to maximize sales and profits at the expense of public health and safety in conscious disregard of the harm to the public and the plaintiffs. Plaintiffs in the at least 11 pending (as of July 13, 2016) federal actions are geographically diverse, residing in eight different states located across the country: Illinois, Louisiana, Mississippi, California, New Jersey, Pennsylvania, Oklahoma, and Tennessee. In addition, the plaintiffs in the Related Actions are represented by a regionally diverse group of law firms.

B. Defendants

Defendant Johnson & Johnson ("J&J) is a New Jersey corporation with its principal place of business in the State of New Jersey.

Defendant Johnson & Johnson Consumer Companies, Inc. ("J&J Consumer") is a New Jersey corporation with its principal place of business in the State of New Jersey.

Defendant Imerys Talc America, Inc., f/k/a Luzenac America, Inc. ("Imerys") is a Delaware corporation with its principal place of business in Georgia.

Defendant Personal Care Products Council f/k/a Cosmetic, Toiletry, and Fragrance Association ("PCPC") is a corporation under the laws of the District of Columbia with its principal place of business in the District of Columbia.

C. Status of the Actions

With the exception of the New Jersey and Eastern District of California cases, every other federal case has been filed in 2016.[1] Given the infancy of these cases, most of the plaintiffs have not completed (or even begun) discovery or are engaged in any other procedural posture that would move the matters along towards trial such that transfer would be unduly prejudicial or inefficient. The fact that all but two of these cases are at the same early procedural stage provides a good basis to coordinate them.

II. ARGUMENT

The Johnson & Johnson "Baby Powder" And "Shower To Shower" Litigation actions currently pending in numerous different federal districts meet the requirements for transfer pursuant to 28 U.S.C. § 1407, and therefore, transfer of the above referenced actions is warranted. Section 1407 authorizes the transfer of two or more civil actions, pending in different districts, for coordinated or consolidated pretrial proceedings, when (1) the "actions involv[e] one or more common questions of fact"; (2) transfer "will be for the convenience of parties and witnesses"; and (3) transfer "will promote the just and efficient conduct of such actions."

"The multidistrict litigation statute, 28 U.S.C. § 1407, was enacted as a means of conserving judicial resources in situations where multiple cases involving common questions of fact were filed in different districts." *Royster v. Food Lion (In re Food Lion)*, 73 F.3d 528, 531-32 (4th Cir. 1996). Two critical goals of Section 1407 are to promote efficiency and consistency.

[1] Plaintiff is aware of at least two state court actions in Missouri which have gone to trial.

Illinois Municipal Retirement Fund v. Citigroup, Inc., 391 F.3d 844, 852 (7th Cir. 2004). The statute "was [also] meant to 'assure uniform and expeditious treatment in the pretrial procedures in multidistrict litigation"' and "[w]ithout it, 'conflicting pretrial discovery demands for documents and witnesses' might 'disrupt the functions of the Federal courts.'" *In re Phenylpropanolamine Prod. Liab. Litig.*, 460 F.3d 1217, 1230 (9th Cir. 2006) (quoting H.R. Rep. No. 1130, 90th Cong., 2d Sess. 1 (1968), *reprinted in* 1968 U.S.C.C.A.N. 1898, 1899). The alternative to appropriate transfer is "multiplied delay, confusion, conflict, inordinate expense and inefficiency." *Id.* (quoting *In re Plumbing Fixture Cases*, 298 F. Supp. 484, 495 (J.P.M.L. 1968)).

These actions assert overlapping claims, based on multiple common factual allegations, and will involve common legal theories. Consolidated pretrial treatment under Section 1407 will assist the parties and the courts in avoiding duplicative and conflicting rulings on the common issues in dispute. Granting this motion will also serve the convenience of the parties and witnesses and promote the just and efficient resolution of the litigation.

The cases are well-suited for coordination, as this Panel has frequently ordered the multidistrict transfer of pharmaceutical and other product liability cases. *See In re: Yasmin and Yaz (Drospirenone) Marketing, Sales Practices and Products Liability Litigation*, MDL No. 2100 (J.P.M.L. Oct. 1, 2009); *In re: Pradaxa (Dabigatran Etexilate) Products liability Litigation*, MDL No. 2385 (J.P.M.L. Aug. 8, 2012); *In re Fluoroquinolone Prods. Liab. Litig.*, MDL No. 2642 (J.P.M.L. Aug. 17, 2015).

A. These Cases Involve Common Questions of Fact.

The first element of the Section 1407 transfer analysis is whether there are one or more common questions of fact. *See* 28 U.S.C. § 1407. The statute, however, does not require a

"complete identity or even [a] majority" of common questions of fact to justify transfer. *In re Zyprexa Prods. Liab. Litig.*, 314 F. Supp. 2d 1380, 1381 (J.P.M.L. 2004). Here there are multiple common issues among the Related Actions. Each complaint alleges that Defendants misrepresented the safety and reliability of their talcum powder products. Common questions of fact among the actions include:

a. The alleged misrepresentations by Defendants, as contained in the same advertising and promotional documents and materials cited in each action;

b. The actual and ultimate causes of plaintiffs' cancer;

c. Defendants' knowledge concerning cancer resulting from talcum powder use;

d. Which Defendants knew of the correlation between cancer and talcum powder use; and

e. Defendants' actions taken to conceal the risks related to talcum powder use from consumers.

Because the factual assertions in each of the actions are nearly identical, and many important legal issues in dispute will also be nearly identical, transfer and coordination or consolidation of these actions is highly appropriate. *See In re Factor VIII or IX Concentrate Blood Prods. Prod. Liab. Litig.*, 853 F. Supp. 454, 455 (J.P.M.L. 1993).

In addition, all of these actions rely upon similar legal theories of recovery. These theories include: misrepresentation, concealment, unfair business practices, and breach of consumer protection provisions of state law. While not every cause of action is asserted in every one of the cases, and applicable state law will vary, the lawsuits all share related underlying legal theories of liability. As the Panel has previously stated, "the presence of additional or differing legal theories is not significant when the actions still arise from a common factual core . . . ." *In re Oxycontin Antitrust Litig.*, 542 F. Supp. 2d 1359, 1360 (J.P.M.L. 2008). To the extent that there are any unique discovery issues among the cases, the transferee court can formulate a

pretrial program that allows for the case to proceed concurrently on a separate track along with the permitted discovery on common issues. *See In re Joseph F. Smith Patent Litigation*, 407 F. Supp. 1403, 1404 (J.P.M.L. 1976).

Because numerous common issues of fact exist among these cases, the pending actions satisfy the first element of the transfer analysis under Section 1407.

B. Transfer and Consolidation in the Southern District of Illinois Will Serve the Convenience of the Parties.

The convenience of the parties and prevention of duplicative discovery also favor transfer. *See* 28 U.S.C. § 1407. At present all but two of the cases are in their infancy. In fact, eight of the eleven cases have been filed in just the past three months. If these cases continue to proceed separately, there will be substantial duplicative discovery because of the many overlapping issues of fact and law. Multiple cases could involve the repetitive depositions of the same company representatives, other current and former employees, and expert witnesses, as well as production of the same records, and responses to duplicative interrogatories and document requests in jurisdictions around the country. *See, e.g., In re: Pilot Flying J Fuel Rebate Contract Litigation (No. 11)*, 11 F. Supp. 3d 1351, 1352 (J.P.M.L. 2014) ("Centralization will avoid repetitive depositions of Pilot's officers and employees and duplicative document discovery regarding the alleged scheme").

Absent transfer, the federal court system will be forced to administer - and Defendants will be compelled to defend - these related actions across multiple venues, all proceeding on potentially different pretrial schedules and subject to different judicial decision-making and local procedural requirements. Moreover, each plaintiff will be required to monitor and possibly participate in each of the other similar actions to ensure that Defendants do not provide inconsistent or misleading information.

None of the pending cases have progressed to the point where significant efficiencies will be forfeited through transfer to an MDL proceeding. This Panel has routinely recognized that consolidating litigation in one court benefits *both* plaintiffs and defendants. For example, pretrial transfer would reduce discovery delays and costs for plaintiffs, and permit plaintiffs' counsel to coordinate their efforts and share the pretrial workload. *In re Phenylpropanolamine (PPA) Prods. Liab. Litig.*, 173 F.Supp.2d 1377, 1379 (J.P.M.L. 2001) ("And it is most logical to assume that prudent counsel will combine their forces and apportion their workload in order to streamline the efforts of the parties and witnesses, their counsel and the judiciary, thereby effectuating an overall savings of cost and a minimum of inconvenience to all concerned."); *In re Baldwin-United Corp. Litigation*, 581 F. Supp. 739, 741 (J.P.M.L. 1984) (same). As for Defendants, expert depositions will be coordinated, document production will be centralized, and travel for its current and former employees will be minimized, since it will only have to appear in one location rather than multiple districts around the country.

While Ms. Lumas anticipates there will be hundreds, if not thousands, of additional case filings, even the current level of litigation would benefit from transfer and coordinated proceedings, given the allegations of these complaints. *See In re First Nat'l Collection Bureau, Inc., Tel. Consumer Prof. Act (TCPA) Litig.*, 11 F. Supp. 3d 1353, 1354 (J.P.M.L. 2014) ("Although there are relatively few parties and actions at present, efficiencies can be gained from having these actions proceed in a single district," such as "eliminat[ing] duplicative discovery; prevent[ing] inconsistent pretrial rulings . . . and conserv[ing] the resources of the parties, their counsel and the judiciary."); *In re Hyundai* & *Kia Fuel Econ. Litig.*, 923 F. Supp. 2d 1364, 1365 (J.P.M.L. 2013) (creating multidistrict litigation for less than 15 pending actions); *In re: Zurn Pex Plumbing Products Liability Litigation*, 572 F.Supp.2d 1380, 1381 (J.P.M.L. 2008) (granting

transfer and consolidation of three cases and six potential tag-alongs because of the "overlapping and, often, nearly identical factual allegations that will likely require duplicative discovery and motion practice.")

Centralizing these actions under Section 1407 will ensure streamlined resolution of this litigation to the overall benefit of the parties and the judiciary."); *In re Amoxicillin Patent* & *Antitrust Litig.*, 449 F. Supp. 601, 603 (J.P.M.L. 1978) (granting transfer and consolidation of three cases "[b]ecause of the presence of complex factual questions and the strong likelihood that discovery concerning these questions will be both complicated and time-consuming, we rule that transfer under Section 1407 is appropriate at the present time even though only three actions are presently involved.").

In sum, transfer of these actions would serve the convenience of the parties and eliminate duplicative discovery, saving the parties-and the courts-significant time, effort, and money.

C. Transfer Will Promote the Just and Efficient Conduct of These Actions

The Panel recognizes multiple factors as informing whether the just and efficient conduct of a litigation will be advanced by transfer, including: (i) avoidance of conflicting rulings in various cases; (ii) prevention of duplication of discovery on common issues; (iii) avoidance of conflicting and duplicative pretrial conferences; (iv) advancing judicial economy; and (v) reducing the burden on the parties by allowing division of workload among several attorneys. *See, e.g., In re: Endangered Species Act Section 4 Deadline Litig.*, 716 F.Supp.2d 1369, 1369 (J.P.M.L. 2010); *In re Bristol Bay, Alaska, Salmon Fishery Antitrust Litigation*, 424 F. Supp. 504, 506 (J.P.M.L. 1976).

All of these factors will be advanced by transfer here. At present, there are already numerous cases filed across the country against Defendants, and there will be certainly many

more filed. At least twelve different plaintiffs' firms from around the country already represent plaintiffs in these cases. Under this *status quo*, as many as 12 different federal judges will be ruling on the many common factual and legal issues presented in these cases. The presence of numerous counsel, plaintiffs, and courts currently involved in this litigation in almost every region of the country creates a clear risk of conflicting rulings, with the potential to generate significant confusion and conflict among the parties, as well as inconsistent obligations on Defendants.

By contrast, a single MDL judge coordinating pretrial discovery and ruling on pretrial motions in all of these federal cases at once will help reduce witness inconvenience, the cumulative burden on the courts, and the litigation's overall expense, as well as minimizing this potential for conflicting rulings. *In re: Xarelto (Rivaroxaban) Prods. Liab. Litig.*, 65 F. Supp. 3d 1402, 1405 (J.P.M.L. 2014) ("Issues concerning the development, manufacture, regulatory approval, labeling, and marketing of Xarelto thus are common to all actions. Centralization will eliminate duplicative discovery; prevent inconsistent pretrial rulings; and conserve the resources of the parties, their counsel and the judiciary."); *In re Tylenol (Acetaminophen) Mktg., Sales Practices & Prods. Liab. Litig.*, 936 F. Supp. 2d 1379, 1380 (J.P.M.L. 2013) ("Centralization will ... prevent inconsistent pretrial rulings (on Daubert issues and other matters), and conserve the resources of the parties, their counsel, and the judiciary."); *Bott v. Delphi Auto. LLP (In re Auto. Wire Harness Sys. Antitrust Litig.)*, 844 F. Supp. 2d 1367, 1367 (J.P.M.L. 2012) (same).

Transfer also will reduce the burden on the parties by allowing more efficient and centralized divisions of workload among the numerous attorneys already involved in this litigation, as well as those who join later. Plaintiffs themselves will reap efficiencies from being able to divide up the management and conduct of the litigation as part of a unified MDL process

through a plaintiffs' steering committee or similar mechanism, instead of each plaintiffs' firm separately litigating its own cases on distinct and parallel tracks. *In re Phenylpropanolamine (PPA) Prods. Liab. Litig.*, 173 F.Supp.2d at 1379; *In re Tylenol Mktg., Sales Pracs. and Prods. Liab. Litig.*, 936 F.Supp.2d at 1379 ("Centralization will ... conserve the resources of the parties, their counsel, and the judiciary."). Accordingly, transfer to a single district court is appropriate for the just and efficient resolution of these cases.

D. Plaintiffs Respectfully Suggest Transfer Of These Actions To The Southern District of Illinois

In determining the appropriate transferee venue, this Panel considers the ability of a district to provide an efficient ruling over the large number of cases expected to be filed.

Although many district courts would be suited for transfer, the Southern District of Illinois possesses unique characteristics which set it apart from others in consideration of the relative convenience of the parties and witnesses involved. The Southern District of Illinois, centrally located, would permit convenient travel for the parties and counsel as compared to travel to the East or West Coast. Further, the Southern District of Illinois is in close geographical proximity to all of the St. Louis, Missouri state court cases, [2] making this location convenient for document discovery. The courts of the Southern District are easily reached, as they are served by major air carriers from across the country.

The Southern District of Illinois also has the resources to provide an efficient disposition of these cases. According to judicial statistics for the twelve-month period ending March 31,

[2] The pending state court actions (which have been remanded from federal court) are *Swann, et al. v. Johnson & Johnson, et al.*, In the Circuit Court of St. Louis City, Case No. 1422-CC09326 (Mo. 2014); *Hogans, et al. v. Johnson & Johnson, et al.*, Case No. 1422-CC09012 (Mo. 2014); and *Ferrar, et al. v. Johnson & Johnson, et al.*, Case No. 1422-CC09964 (Mo. 2014). There is also a case pending before the Ninth Circuit, *Blaes v. Johnson &* Johnson, Case No. 16-2080 (Ninth Cir. filed May 3, 2016), but the Plaintiff in that case moved to voluntarily dismiss his claims on the eve of trial and the issues on appeal relate to whether or not dismissal was proper.

2014, civil cases proceeded to trial in 19 months in the Southern District of Illinois.[3] *See* http://www.uscourts.gov/statistics/table/c-5/federal-judicial-caseload-statistics/2014/03/31.

Plaintiffs respectfully suggest that these actions be assigned to the Honorable David R. Herndon. Judge Herndon has served as the Chief Judge for the Southern District of Illinois from 2007 until 2014. Judge Herndon has years of experience handling complex MDLs, having adjudicated two prior MDLs: *In re: Yasmin and Yaz (drospirenon) Marketing Sales Practices* (MDL-2100) and *In re: Pradaxa (Dabigatran Etexilate) Products liability Litigation* (MDL-2385). This Panel has praised Judge Herndon for his experience and ability to handle large-scale MDLs:

> [B]y selecting Judge David R. Herndon to preside over this matter, we are selecting a jurist with the willingness and ability to handle this litigation. Judge Herndon, an experienced MDL judge, has deftly presided over *In re: Yasmins and Yaz (drospirenon) Marketing Sales Practices*, 655 F. Supp. 2d 1343 (J.P.M.L. 2009), another large pharmaceutical products liability litigation.

In re: Pradaxa (Dabigatran Etexilate) Products liability Litigation, 883 F. Supp. 2d at 1356. In the *Praxada* MDL, Judge Herndon facilitated a global settlement in under 22 months from the date this Panel transfer the MDL to him, on August 8, 2012. Judge Herndon managed this settlement quickly and efficiently, despite presiding over 2,500 filed cases, entering 85 Case Management Orders, and holding over 28 status hearings. Similarly, The *Yaz* MDL was one of the largest mass tort litigations in history; however, Judge Herndon facilitated a mass settlement initiative in under 27 months from the date of this Panel's Transfer Order on October 1, 2009.

The issues present in the case are similarly complex to the issues which were resolved in the *Yaz* and *Praxada* MDLs. Further, Judge Herndon is already assigned to one of the related

[3] March 31, 2014 is the most recent available data for the Southern District of Illinois.

cases: *Mihalich v. Johnson & Johnson*., 3:14-cv-00600-DRH-SCW (S.D. Ill.). As such, he is familiar with the issues of this case and the other Related Actions. Judge Herndon's experience and familiarity with the claims in these cases especially favors transfer to him.

III. CONCLUSION

For the foregoing reasons and those articulated in their attendant motion, Plaintiffs respectfully request that the Panel transfer the Related Action, and any future cases, to the United States District Court for the Southern District of Illinois for consolidation before Judge David R. Herndon.

Dated: July 15, 2016

Respectfully submitted,

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BEFORE THE UNITED STATES JUDICIAL PANEL ON MULTIDISTRICT LITIGATION

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MDL DOCKET NO. 16-71

SCHEDULE OF ACTIONS

	Case Captions	Court	Division	Case Number	Judge
1	*Tod Alan Musgrove, individually and as personal representative of the Estate of Pamela N. Musgrove, Deceased v. Johnson & Johnson and Johnson & Johnson Consumer Companies, Inc.*	N.D. Ill.	Eastern	1:16-cv-06847-JWD-EWD	Matthew F. Kennelly
2	*Elouise Anderson v. Johnson & Johnson and Johnson & Johnson Consumer Companies, Inc.*	M.D. La.	Baton Rouge	3:16-cv-00447	John W. DeGravelles
3	*Ada Rich-Williams v. Johnson & Johnson and Johnson & Johnson Consumer Companies, Inc.*	N.D. Miss.	Aberdeen	1:16-cv-00121-SA-DAS	Sharion Aycock
4	*Tanashiska Lumas v. Johnson & Johnson and Johnson & Johnson Consumer Companies, Inc.*	S.D. Ill.	East St. Louis	3:16-cv-00741	Staci M. Yandle
5	*Patricia Kuhn v. Johnson & Johnson and Johnson & Johnson Consumer Companies, Inc.*	M.D. Tenn.	Columbia	1:16-cv-0055-KHS	Kevin H. Sharp
6	*Barbara Mihalich v. Johnson & Johnson and Johnson & Johnson Consumer Companies, Inc.*	S.D. Ill.	East St. Louis	3:14-cv-0600-DRH-SCW	David R. Herndon
7	*Mona Estrada v. Johnson & Johnson and Johnson &*	E.D. Cal.	Sacramento	2:14-cv-1051-TLN-	Troy L. Nunley

	Johnson Consumer Companies, Inc.			KJN	
8	*James Chakalos as Personal Representative on behalf of the Estate of Janice Chakalos v. Johnson & Johnson, Johnson & Johnson Consumer Companies, Inc., Imerys Talc America, Inc. f/k/a Luzenac America, Inc., John Does/Jane Does 1-30, and Unknown Businesses and/or Corporations A-Z*	D. N.J.	Trenton	3:14-cv-7079-FLW-LHG	Freda L. Wolfson
9	*Nancy Bors, Administrator of the Estate of Maureen Broderick Milliken, Deceased v. Johnson & Johnson, Johnson & Johnson Consumer Companies, Inc., Imerys Talc America, Inc. f/k/a Luzenac America, Inc., and Personal Care Products Council f/k/a Cosmetic, Toiletry, and Fragrance Association*	E.D. Penn.	Philadelphia	2:16-cv-2866-MAK	Mark A. Kearney
10	*Mary R. Robb, Melissa Ann Aguilar and Fredy Aguilar v. Johnson & Johnson, Johnson & Johnson Consumer Companies, Inc., Imerys Talc America, Inc. f/k/a Luzenac America, Inc., and Personal Care Products Council f/k/a Cosmetic, Toiletry and Fragrance Association*	W.D. Okl.	Oklahoma City	5:16-cv-0620-D	Timothy D. DeGiusti
11	*Dolores Gould v. Johnson & Johnson and Johnson & Johnson Consumer Companies, Inc.*	N.D. Cal.	San Francisco	3:16-cv-03838	Donna M. Ryu

I, Don Barrett, declare under penalty of perjury of the laws of the United States that the foregoing is true and correct.

Dated: July 15, 2016. Respectfully submitted,

/s/ Don Barrett
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Counsel for Plaintiff Tanashiska Lumas

BEFORE THE UNITED STATES JUDICIAL PANEL ON MULTIDISTRICT LITIGATION

IN RE JOHNSON & JOHNSON "BABY POWDER" and "SHOWER TO SHOWER" MARKETING, SALES PRACTICES AND PRODUCTS LIABILITY LITIGATION	**MDL DOCKET NO. 16-71**

PROOF OF SERVICE

In compliance with Rule 4.1(a) of the Rules of Procedure for the United States Judicial Panel on Multidistrict Litigation, I hereby certify that a copy of the foregoing Motion for Consolidation and Transfer, Brief in Support of Motion for Consolidation and Transfer, Schedule of Actions, Exhibits, and this Proof of Service were electronically filed with the Clerk of the JPML by using the CM/ECF and was served on all counsel or parties in manners indicated and addressed as follows:

Courtesy copies sent via UPS	
Defendants Johnson & Johnson and Johnson & Johnson Consumer Companies, Inc. One Johnson & Johnson Plaza New Brunswick, New Jersey 08901-1241 *Anderson v. Johnson & Johnson, and Johnson & Johnson Consumer Companies, Inc.*; Case No. 3:16-cv-00447-JWD-EWD (M.D. La.); *Gould v. Johnson & Johnson, and Johnson & Johnson Consumer Companies, Inc.*; Case No. 3:16-cv-03838 (N.D. Cal.); *Musgrove v. Johnson & Johnson, and Johnson & Johnson Consumer Companies, Inc.*; Case No. 1:16-cv-06847 (N.D. Ill.); *Rich-Williams v. Johnson & Johnson and Johnson & Johnson Consumer Companies, Inc.*; Case No. 1:16-cv-00121-SA-DAS (N.D. Miss.); *Lumas v. Johnson & Johnson, and Johnson & Johnson Consumer Companies, Inc.*; Case No. 3:16-cv-00741 (S.D. Ill.); *Bors v. Johnson & Johnson, et al.*; Case No. 2:16-cv-2866-MAK (E.D. Penn.)	Office of the Clerk U.S. District Court for the Middle District of Louisiana 777 Florida Street, Suite 139 Baton Rouge, LA 70801 *Anderson v. Johnson & Johnson, and Johnson & Johnson Consumer Companies, Inc.*; Case No. 3:16-cv-00447-JWD-EWD (M.D. La.)

Office of the Clerk U.S. District Court for the Northern District of California Phillip Burton Federal Building & U.S. Courthouse 450 Golden Gate Avenue San Francisco, CA 94102 *Gould v. Johnson & Johnson, and Johnson & Johnson Consumer Companies, Inc.*; Case No. 3:16-cv-03838 (N.D. Cal.)	Office of the Clerk U.S. District Court for the Northern District of Illinois Everett McKinley Dirksen U.S. Courthouse 219 South Dearborn Street Chicago, IL 60604 *Musgrove v. Johnson & Johnson, and Johnson & Johnson Consumer Companies, Inc.*; Case No. 1:16-cv-06847 (N.D. Ill.)
Office of the Clerk U.S. District Court for the Northern District of Mississippi Thomas G. Abernethy Federal Building 301 W. Commerce St. #13 Aberdeen, MS 39730 *Rich-Williams v. Johnson & Johnson and Johnson & Johnson Consumer Companies, Inc.*; Case No. 1:16-cv-00121-SA-DAS (N.D. Miss.)	Office of the Clerk U.S. District Court for the Southern District of Illinois 750 Missouri Avenue East St. Louis, IL 62201 *Lumas v. Johnson & Johnson, and Johnson & Johnson Consumer Companies, Inc.*; Case No. 3:16-cv-00741 (S.D. of IL) and *Mihalich v. Johnson & Johnson, and Johnson & Johnson Consumer Companies, Inc.*; Case No. 3:14-cv-0600 (S.D. Ill.)
Office of the Clerk U.S. District Court for the Eastern District of California Robert T. Matsui Federal Courthouse 501 I Street, Room 4-200 Sacramento, CA 95814 *Estrada v. Johnson & Johnson, and Johnson & Johnson Consumer Companies, Inc.*; Case No. 2:14-cv-1051-TLN-KJN (E.D. Cal.)	Office of the Clerk U.S. District Court for the District of New Jersey Clarkson S. Fisher Building & U.S. Courthouse 402 East State Street, Room 2020 Trenton, NJ 08608 *James Chakalos, Personal Representative on behalf of the Estate of Janice Chakalos v. Johnson & Johnson, et al.*; Case No. 3:14-cv-7079-FLW-LHG (D. N.J.)
Office of the Clerk U.S. District Court for the Eastern District of Pennsylvania James A. Byrne U.S. Courthouse 601 Market Street Philadelphia, PA 19106 *Bors v. Johnson & Johnson, et al.*; Case No. 2:16-cv-2866-MAK (E.D. Penn.)	Office of the Clerk U.S. District Court for the Western District of Oklahoma 200 NW 4th Street Oklahoma City, OK 73102 *Robb, et al. v. Johnson & Johnson, et al.*; Case No. 5:16-cv-0620-D (W.D. Okl.)
Defendant Imerys Talc America, Inc. f/k/a Luzenac America, Inc. c/o Corporation Service Company	Defendant Personal Care Products Council f/k/a Cosmetic, Toiletry and Fragrance Association

2711 Centerville Rd, Suite 400 Wilmington, Delaware 19808 *Nancy Bors, Administrator of the Estate of Maureen Broderick Milliken, Deceased v. Johnson & Johnson, et al.*; Case No. 2:16-cv-2866-MAK (E.D. Penn.)	1620 L Street, N.W., Suite 1200 Washington, D.C. 20036 *Nancy Bors, Administrator of the Estate of Maureen Broderick Milliken, Deceased v. Johnson & Johnson, et al.*; Case No. 2:16-cv-2866-MAK (E.D. Penn.)
Office of the Clerk U.S. District Court for the Middle District of Tennessee U.S. Courthouse & Post Office Building 815 South Garden Street Columbia, TN 38401 *Kuhn v. Johnson & Johnson*; Case No. 1:16-cv-00055-KHS (M.D. Tenn.)	Defendants Johnson & Johnson and Johnson & Johnson Consumer Companies, Inc. c/o CT Corporation System 800 S Gay St., Suite 2021 Knoxville, TN 37929 *Kuhn v. Johnson & Johnson*; Case No. 1:16-cv-00055-KHS (M.D. Tenn.)
Clerk of the Panel U.S. Judicial Panel on Multidistrict Litigation Thurgood Marshall Federal Judiciary Building One Columbus Circle, NE Room G-255, North Lobby Washington, DC 20002-8041	

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Counsel for Plaintiffs Elouise Anderson and Tod Alan Musgrove *Anderson v. Johnson & Johnson, and Johnson & Johnson Consumer Companies, Inc.*; Case No. 3:16-cv-00447-JWD-EWD (M.D. La.); *Musgrove v. Johnson & Johnson, and Johnson & Johnson Consumer Companies, Inc.*; Case No. 1:16-cv-06847 (N.D. Ill.)	
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Michael J. Kuharski KUHARSKI, LEVITZ & GIOVINAZZO 176 Hart Blvd Staten Island, NY 10301 Tel: 718-448-1600 Fax: 718-448-1699 mkuharski@klawnyc.com Counsel for Plaintiff James Chakalos *James Chakalos, Personal Representative on behalf of the Estate of Janice Chakalos v.*	Susan M. Sharko Julie Lynn Tersigni DRINKER, BIDDLE & REATH, LLP 600 Campus Drive Florham Park, NJ 07932-1047 Tel: 973-549-7650 Susan.sharko@dbr.com Julie.tersigni@dbr.com Counsel for Defendant Johnson & Johnson and Johnson & Johnson Consumer Companies, Inc.

Johnson & Johnson, et al.; Case No. 3:14-cv-7079-FLW-LHG (D. N.J.)	*James Chakalos, Personal Representative on behalf of the Estate of Janice Chakalos v. Johnson & Johnson, et al.*; Case No. 3:14-cv-7079-FLW-LHG (D. N.J.)
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Robb, et al. v. Johnson & Johnson, et al.; Case No. 5:16-cv-0620-D (W.D. Okl.)	

I, Don Barrett, declare under penalty of perjury of the laws of the United States that the foregoing is true and correct.

Dated: July 15, 2016.

Respectfully submitted,

/s/ Don Barrett

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Counsel for Plaintiff Tanashiska Lumas

Exhibit 1

US District Court Civil Docket

U.S. District - Illinois Northern
(Chicago)

1:16cv6847

Musgrove v. Johnson & Johnson et al

Date Filed:	06/29/2016		
Assigned To:	Honorable Matthew F. Kennelly	Class Code:	OPEN
Referred To:		Closed:	
Nature of suit:	Product Liability (365)	Statute:	28:1332
Cause:	Diversity-Product Liability	Jury Demand:	Plaintiff
Lead Docket:	None	Demand Amount:	$75,000
Other Docket:	None	NOS Description:	Product Liability
Jurisdiction:	Diversity		

Litigants	Attorneys
Tod Alan Musgrove Individually and as Personal Representative of the, deceased estate of Pamela Musgrove Plaintiff	David Andrew Golanty ATTORNEY TO BE NOTICED Boodell & Domanskis, Llc One North Franklin, Suite 1200 Chicago , IL 60606 USA (312) 938-4070 Email:Dgolanty@boodlaw.Com
Johnson & Johnson Defendant	
Johnson & Johnson Consumer Companies, Inc. Defendant	

Date	#	Proceeding Text	Source
06/29/2016	1	COMPLAINT filed by Tod Alan Musgrove, Tod Alan Musgrove as a Personal Representative of the Estate of Pamela N. Musgrove, deceased; Jury Demand. Filing fee $ 400, receipt number 0752-12102486. (Attachments: # 1 Civil Cover Sheet)(Golanty, David) (Entered: 06/29/2016)	
06/30/2016		CASE ASSIGNED to the Honorable Matthew F. Kennelly. Designated as Magistrate Judge the Honorable Sidney I. Schenkier. (jn,) (Entered: 06/30/2016)	
06/30/2016	2	ATTORNEY Appearance for Plaintiff Tod Alan Musgrove by David Andrew Golanty (Golanty, David) (Entered: 06/30/2016)	
06/30/2016	3	ATTORNEY Appearance for Plaintiff Tod Alan Musgrove by David Andrew Golanty appearance of Stewart M. Weltman (Golanty, David) (Entered: 06/30/2016)	

IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

TOD ALAN MUSGROVE, Individually and as Personal Representative of the Estate of PAMELA N. MUSGROVE, Deceased.

Plaintiff,

v.

JOHNSON & JOHNSON, and JOHNSON & JOHNSON CONSUMER COMPANIES, INC.,

Defendants.

Case Number: 1:16-cv-6847

JURY TRIAL DEMANDED

COMPLAINT

COMES NOW Plaintiff, Tod Alan Musgrove, individually and as the personal representative of the estate of Pamela N. Musgrove, deceased, by and through undersigned counsel, who brings this action against Defendants Johnson & Johnson ("J&J) and Johnson & Johnson Consumer Companies, Inc. ("J&J Consumer") as follows:

INTRODUCTION

1. This action arises out of Pamela N. Musgrove's diagnosis of uterine cancer and her subsequent death. Mrs. Musgrove's cancer and death were directly and proximately caused by her regular and prolonged exposure to talcum powder,

contained in Johnson & Johnson Baby Powder (hereinafter "J&J Baby Powder) and Shower to Shower. Plaintiff Tod Alan Musgrove brings this cause of action against Defendants for claims arising from the 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 the products known as J&J Baby Powder and Shower to Shower (hereinafter collectively referred to as "Products").

PARTIES

2. Mrs. Musgrove was born on June 14, 1965, and used J&J Baby Powder and Shower to Shower, the "Products," for nearly her entire life. As a direct and proximate result of using the Products, Mrs. Musgrove was diagnosed with uterine cancer in approximately 2012, and ultimately died of uterine cancer on June 29, 2014. Mrs. Musgrove resided in Lee County, Illinois at the time of her diagnosis and death, and she purchased and used the Products in Lee County, Illinois.

3. Plaintiff Tod Alan Musgrove resides in Lee County, Illinois, and was married to Mrs. Musgrove at all times pertinent to the allegations herein, including at the time of Mrs. Musgrove's use of the Products, diagnosis with uterine cancer, and death. On June 22, 2016, Mr. Musgrove was duly appointed as the Representative of the estate of his late wife in Lee County, Illinois.

4. Defendant, Johnson & Johnson ("J&J"), is a New Jersey corporation with its principal place of business in the State of New Jersey.

5. At all pertinent times, Johnson & Johnson was engaged in the business of manufacturing, marketing, testing, promoting, selling, and/or distributing the Products. At all pertinent times, Johnson & Johnson regularly transacted, solicited, and conducted business in all States of the United States, including the State of Illinois.

6. Defendant, Johnson & Johnson Consumer Companies, Inc. is a New Jersey corporation with its principal place of business in the State of New Jersey.

7. At all pertinent times, Johnson & Johnson Consumer Companies, Inc. was engaged in the business of manufacturing, marketing, testing, promoting, selling, and/or distributing the Products. At all pertinent times, Johnson & Johnson regularly transacted, solicited, and conducted business in all States of the United States, including the State of Illinois.

8. At all pertinent times, all Defendants were engaged in the research, development, manufacture, design, testing, sale and marketing of the Products, and introduced such products into interstate commerce with knowledge and intent that such products be sold in the State of Illinois.

JURISDICTION AND VENUE

9. This Court has original jurisdiction pursuant to 28 U.S.C. § 1332(d) because complete diversity exists between Plaintiff and Defendants, and the matter in controversy, exclusive of interest and costs, exceeds the sum or value of $75,000.

10. This Court has personal jurisdiction over Defendants because Defendants are authorized to conduct and do conduct business in the State of Illinois. Defendants have marketed, promoted, distributed, and sold the Products in the state of Illinois and Defendants have sufficient minimum contacts with this State and/or sufficiently avail themselves of the markets in this State through their promotion, sales, distribution and marketing within this State to render the exercise of jurisdiction by this Court permissible.

11. Venue is proper in this Court pursuant to 28 U.S.C. §§ 1391(a) and (b) because a substantial part of the events or omissions giving rise to Plaintiff's claims occurred in this judicial district. Venue is also proper under 18 U.S.C. § 1965(a) because Defendants transact substantial business in this District.

FACTS COMMON TO ALL COUNTS

A. Background: Talc as a Carcinogen and Defendants' Knowledge

12. Talc is a magnesium trisilicate and is mined from the earth. Talc is an inorganic mineral.

13. Talc is the main substance in talcum powders. The Johnson & Johnson Defendants manufactured the Products. The Products are composed almost entirely of talc.

14. At all pertinent times, a feasible alternative to the Products has existed. For example, 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 as the Products with nearly the same effectiveness.

15. 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 instructed 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."

16. During the time in question, the Johnson & Johnson Defendants advertised and marketed the product "Shower to Shower" as safe for use by women as evidenced in its slogan "A sprinkle a day keeps odor away", and through advertisements such as "Your body perspires in more places than just under your arms.

Use SHOWER to SHOWER to feel dry, fresh, and comfortable throughout the day." And "SHOWER to SHOWER can be used all over your body."

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

18. 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 his 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.

19. 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.

a. In 1983, a case-control study found a 150% increased risk of ovarian cancer for women who use talcum powder in the genital area. Hartge, P., *et al*. Talc and Ovarian Cancer. *JAMA*. 1983; 250(14):1844.

b. In 1988, a case control study of 188 women diagnosed with epithelial

ovarian cancer and 539 control women found that 52% of the cancer patients habitually used talcum powder on the genital area before their cancer diagnosis. The study showed a 50% increase in risk of ovarian cancer in women that used talcum powder on their genital area and a positive dose-response relationship. Whittemore AS, *et al*. Personal and environmental characteristics related to epithelial ovarian cancer. II. Exposures to talcum powder, tobacco, alcohol, and coffee. *Am. J. Epidemiol*. 1988 Dec; 128(6):1228-40.

c. A 1989 study looked at 235 women diagnosed with epithelial ovarian cancer and 451 controls, and found a 29% increased risk in ovarian cancer with women who reported genital talcum powder use more than once each week. Booth, M., *et al*. Risk factors for ovarian cancer: a case-control study. *Br J Cancer*. 1989 Oct; 60(4):592-8.

d. In 1992, a case-control study found a statistically significant 80% increased risk of ovarian cancer in women with more than 10,000 lifetime perineal applications of talc, demonstrating a positive dose-response relationship. Harlow BL, *et al.* Perineal exposure to talc and ovarian cancer risk. *Obstet Gynecol.* 1992 Jul; 80(1):19-26.

e. Another 1992 case-control study reported a 70% increased risk from genital talc use and a 379% increased risk of ovarian cancer of women

who used talc on sanitary napkins in their genital area. Rosenblatt, K.A. *et al.* Mineral fiber exposure and the development of ovarian cancer. *Gynecol Oncol*. 1992 Apr; 45(1):20-5.

f. In 1995, the largest study of its kind to date found a statistically significant 27% increased risk in ovarian cancer for women who regularly use talc in the abdominal or perineal area. Purdie, D., *et al.* Reproductive and other factors and risk of epithelial ovarian cancer: An Australian case-control study. Survey of Women's Health Study Group. *Int J Cancer*. 1995 Sep 15; 62(6):678-84.

g. In 1996, a case-control study found a statistically significant 97% increased risk of ovarian cancer in women who used what they described as a "moderate" or higher use of talc-based powders in their genital area. *See* Shushan, A., *et al*. Human menopausal gonadotropin and the risk of epithelial ovarian cancer. *Fertil. Steril.* 1996 Jan; 65(1):13-8.

h. In 1997, a case control study of 313 women with ovarian cancer and 422 without this disease found that the women with cancer were more likely to have applied talcum powder to their external genitalia area. Women using these products had a statistically significant 50% to 90% higher risk of developing ovarian cancer. Cook, LS, *et al.* Perineal powder exposure and the risk of ovarian cancer. *Am. J Epidemiol.* 1997 Mar 1; 145(5):459-65.

i. In 1997, a case-control study involving over 1,000 women found a statistically significant increased risk of 42% for ovarian cancer for women who applied talc via sanitary napkins to their perineal area. Chang, S, *et al.* Perineal talc exposure and risk of ovarian carcinoma. *Cancer*. 1997 Jun 15; 79(12):2396-401.

j. In 1998, a case-control study found a 149% increased risk of ovarian cancer in women who used talc-based powders on their perineal area. Godard, B., *et al.* Risk factors for familial and sporadic ovarian cancer among French Canadians: a case-control study. *Am J Obstet Gynecol*. 1998 Aug; 179(2):403-10.

k. Dr. Daniel Cramer conducted another case-control study in 1999, observing 563 women newly diagnosed with epithelial ovarian cancer and 523 women in a control. The study found a statistically significant 60% increased risk of ovarian cancer in women that used talc-based body powders on their perineal area and an 80% increase in risk for women with over 10,000 lifetime applications. Cramer, DW, *et al.* Genital talc exposure and risk of ovarian cancer. *Int J Cancer*. 1999 May 5; 81(3):351-56.

l. In 2000, a case-control study of over 2,000 women found a statistically significant 50% increased risk of ovarian cancer from genital talc use in

women. Ness, RB, *et al.* Factors related to inflammation of the ovarian epithelium and risk of ovarian cancer. *Epidemiology*. 2000 Mar; 11(2):111-7.

m. In 2004, a case-control study of nearly 1,400 women from 22 counties in Central California found a statistically significant 37% increased risk of epithelial ovarian cancer from women's genital talc use, and a 77% increased risk of serous invasive ovarian cancer from women's genital talc use. Importantly, this study also examined at women's use of cornstarch powders as an alternative to talc, and found no increased risk in ovarian cancer in women in the cornstarch group, further supporting the causal connection between genital talc use and ovarian cancer. Mills, PK, *et al*. Perineal talc exposure and epithelial ovarian cancer risk in the Central Valley of California. *Int J Cancer*. 2004 Nov 10; 112(3):458-64.

n. In 2008, a combined study of over 3,000 women from a New England-based case-control study found a general 36% statistically significant increased risk of epithelial ovarian cancer from genital talc use and a 60% increased risk of the serous invasive ovarian cancer subtype. The study also found a strong dose-response relationship between the cumulative talc exposure and incidence of ovarian cancer, adding further support to the causal relationship. Gates, MA, *et al.* Talc Use, Variants of the GSTM1,

GSTT1, and NAT2 Genes, and Risk of Epithelial Ovarian Cancer. *Cancer Epidemiol Biomarkers Prev*. 2008 Sep; 17(9):2436-44.

o. A 2009 case-control study of over 1,200 women found the risk of ovarian cancer increased significantly with increasing frequency and duration of talc use, with an overall statistically significant 53% increased risk of ovarian cancer from genital talc use. That increased risk rose dramatically, to 108%, in women with the longest duration and most frequent talc use. Wu, AH, *et al.* Markers of inflammation and risk of ovarian cancer in Los Angeles County. *Int. J Cancer*. 2009 Mar 15; 124(6):1409-15.

p. In 2011, another case-control study of over 2,000 women found a 27% increased risk of ovarian cancer from genital talc use. Rosenblatt, KA, *et al.* Genital powder exposure and the risk of epithelial ovarian cancer. *Cancer Causes Control*. 2011 May; 22(5):737-42.

q. In June of 2013, a pooled analysis of over 18,000 women in eight case-control studies found a 20% to 30% increased risk of women developing epithelial ovarian cancer from genital powder use. The study concluded by stating, "Because there are few modifiable risk factors for ovarian cancer, avoidance of genital powders may be a possible strategy to reduce ovarian cancer incidence." Terry, KL, *et al.* Genital powder use

and risk of ovarian cancer: a pooled analysis of 8,525 cases and 9,859 controls. *Cancer Prev Res (Phila)*. 2013 Aug; 6(8):811-21.

20. Researchers have also examined the link between endometrial cancer, a form of uterine cancer, and the application of talcum powder to the perineal area.

21. In 2010, one such study analyzed data from a 1976 cohort study of over 66,000 women, and found a statistically significant 21% increased risk of endometrial (uterine) cancer in postmenopausal women who had ever applied talcum powder in the perineal area. This risk rose to 24% for postmenopausal women who applied talc in the perineal area "regularly," defined as at least once a week. Karageorgi S., *et al.* (2010) Perineal use of talcum powder and endometrial cancer risk. *Cancer Epidemiol Biomarkers Prev*. 2010 May; 19:1269–1275.

22. 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.

23. 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, Inc., and Johnson & Johnson Consumer Companies, Inc. were members of the CTFA. 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 cancer.

24. 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 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 ovarian cancer risk they pose.

25. In 1996, the condom industry stopped dusting condoms with talc due to the growing health concerns.

26. In February of 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 were 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 body 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."

27. In approximately 2006, the Canadian government under The Hazardous Products Act and associated Controlled Products Regulations classified talc as a "D2A,"

"very toxic," 51 "cancer causing" substance under its Workplace Hazardous Materials Information System (WHMIS). Asbestos is also classified as "D2A".

28. In 2006, Imerys Talc began placing a warning on the Material Safety Data Sheets (MSDS) it provided to the Johnson & Johnson Defendants regarding the talc it sold to them to be used in the Products. 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.

29. Defendants had a duty to know and warn about the hazards associated with the use of the Products.

30. Defendants failed to inform customers and end users of the Products of a known catastrophic health hazard associated with the use of the Products.

31. In addition, Defendants procured and disseminated false, misleading, and biased information regarding the safety of the Products to the public and used influence over governmental and regulatory bodies regarding talc.

B. Mrs. Musgrove's Use of the Products

32. Mrs. Musgrove was born in 1965, and was a resident of Lee County, Illinois for the last twenty (20) years of her life.

33. Mrs. Musgrove was first exposed to talcum based products as an infant, and she continued the practice of applying talcum powder based products to her

perineal area, including the Products, on a daily basis for the rest of her life, exactly as instructed and advertised by the Johnson & Johnson Defendants.

34. There was never any indication, on the Products packaging or otherwise, that this normal use could and would cause her to develop uterine cancer.

35. Mrs. Musgrove was diagnosed with uterine cancer in or around 2012, and underwent a total hysterectomy and subsequent treatment.

36. Mrs. Musgrove died as a result of uterine cancer on June 29, 2014. She was only 49 years old.

37. As noted above, Plaintiff Tod Alan Musgrove is Mrs. Musgrove's surviving spouse and the personal representative of her estate.

COUNT ONE - STRICT LIABILITY
(FAILURE TO WARN)

38. Plaintiff incorporates by reference each of the preceding paragraphs as if fully set forth herein.

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

40. At all pertinent times, Mrs. Musgrove used the Products to powder her perineal area, which is a reasonably foreseeable use.

41. At all pertinent times, 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 cancer, including, but not limited to, ovarian and uterine cancer, based upon scientific knowledge dating back for decades.

42. At all pertinent times, including the time of sale and consumption, the Products, when put to the aforementioned reasonably foreseeable use, were in an unreasonably dangerous and defective condition because they failed to contain adequate and proper warnings and/or instructions regarding the increased risk of cancer, including, but not limited to, ovarian and uterine cancer, associated with the use of the Products by women to powder their perineal area. Defendants themselves failed to properly and adequately warn and instruct Mrs. Musgrove as to the risks and benefits of the Products given her need for this information.

43. Had Mrs. Musgrove received a warning that the use of the Products would significantly increase her risk of developing cancer, she would not have used them. As a proximate result of Defendants' design, manufacture, marketing, sale, and distribution of the Products, Mrs. Musgrove was injured catastrophically, and was caused severe pain, suffering, disability, impairment, loss of enjoyment of life, loss of care, comfort, economic damages, and death.

44. The development of uterine cancer by Mrs. Musgrove was the direct and proximate result of the unreasonably dangerous and defective condition of the Products at the time of sale and consumption, including their lack of warnings; Mrs. Musgrove

suffered injuries and damages including, but not limited to, physical and mental pain and suffering, medical expenses, and death.

45. Defendants' products were defective because they failed to contain warnings and/or instructions, and breached express warranties and/or failed to conform to express factual representations upon which Mrs. Musgrove justifiably relied in electing to use the Products. The defect or defects made the Products unreasonably dangerous to persons, such as Mrs. Musgrove, who could reasonably be expected to use and rely upon such products. As a result, the defect or defects were a producing cause of Mrs. Musgrove's injuries and damages.

46. Defendants' products failed to contain, and continue to this day not to contain, adequate warnings and/or instructions regarding the increased risk of cancer, including, but not limited to, ovarian and uterine cancer, with the use of their products by women. 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 products increase the risk of ovarian cancer in women when used in the perineal area.

47. Mrs. Musgrove sustained the following damages as a foreseeable, direct, and proximate result of Defendants' acts and/or omissions:

a. Economic losses including medical care and lost earnings; and

b. Noneconomic losses including physical and mental pain and suffering, emotional distress, inconvenience, loss of enjoyment and impairment of quality of life, past and future, and death.

COUNT TWO – STRICT LIABILITY
(DESIGN AND/OR MANUFACTURING DEFECT)

48. Plaintiff incorporates by reference each of the preceding paragraphs as if fully set forth herein.

49. Defendants engaged in the design, development, manufacture, marketing, sale, and distribution of the Products in a defective and unreasonably dangerous condition to consumers, including Mrs. Musgrove.

50. Defendants caused the Products to enter the stream of commerce and to be sold through various retailers, where Mrs. Musgrove purchased the Products.

51. The Products were expected to, and did, reach consumers, including Mrs. Musgrove, without change in the condition in which it was manufactured and sold by Defendants and/or otherwise released into the stream of commerce.

52. Mrs. Musgrove used the Products in a manner normally intended, recommended, promoted, and marketed by Defendants.

53. Products failed to perform safely when used by Mrs. Musgrove in a reasonably foreseeable manner, specifically increasing her of developing uterine cancer.

54. The propensity of talc fibers to translocate into the female reproductive system, including, but not limited to, the ovaries and endometrial lining of the uterus, thereby substantially increasing the risk of cancer, including, but not limited to, ovarian and uterine cancer, renders the Products unreasonably dangerous when used in the manner it was intended and to an extent beyond that would be contemplated by the ordinary consumer.

55. Importantly, the Products are an inessential cosmetic product that do not treat or cure any serious disease. Further, safer alternatives, including corn-starch based powders, have been readily available for decades.

56. Defendants have known, or should have known, that the Products are unreasonably dangerous when used by a woman in her perineal area but have continued to design, manufacture, sell, distribute, market, promote, and supply the Products so as to maximize sales and profits at the expense of public health and safety in conscious disregard of the foreseeable harm to the consuming public, including Mrs. Musgrove.

57. As a direct and proximate result of Defendants' conduct, including actions, omissions, and misrepresentations, Mrs. Musgrove sustained the following damages:

a. Economic losses including medical care and lost earnings; and

b. Noneconomic losses including physical and mental pain and

suffering, emotional distress, inconvenience, loss of enjoyment and impairment of quality of life, past and future, and death.

COUNT THREE-NEGLIGENCE

58. Plaintiff incorporates by reference each of the preceding paragraphs as if fully set forth herein.

59. The Johnson & Johnson Defendants were negligent in marketing, designing, manufacturing, producing, supplying, inspecting, testing, selling and/or distributing the Products in one or more of the following respects:

- In failing to warn Mrs. Musgrove of the hazards associated with the use of the Products;
- In failing to properly test their products to determine adequacy and effectiveness or safety measures, if any, prior to releasing the Products 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 the Products;
- In failing to inform ultimate users, such as Mrs. Musgrove as to the safe and proper methods of handling and using the Products;
- In failing to remove the Products from the market when Defendants knew or should have known the Products were defective;

- In failing to instruct the ultimate users, such as Mrs. Musgrove, as to the methods for reducing the type of exposure to the Products which caused increased risk of cancer, including, but not limited to, ovarian and uterine cancer;
- In failing to inform the public in general and Mrs. Musgrove in particular of the known dangers of using the Products for dusting the perineum;
- In failing to advise users how to prevent or reduce exposure that caused increased risk for cancer, including, but not limited to, ovarian and uterine cancer;
- In marketing and labeling the Products 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 injuries and damages sustained by Mrs. Musgrove.

60. At all pertinent times, the Johnson & Johnson Defendants knew or should have known that the Products were unreasonably dangerous and defective when put to their reasonably anticipated use.

61. Mrs. Musgrove sustained the following damages as a foreseeable, direct, and proximate result of Defendants' acts and/or omissions:

a. Economic losses including medical care and lost earnings; and

b. Noneconomic losses including physical and mental pain and suffering, emotional distress, inconvenience, and loss of enjoyment and impairment of quality of life, past and future, and death.

COUNT FOUR- BREACH OF EXPRESS WARRANTY

62. Plaintiff incorporates by reference each of the preceding paragraphs as if fully set forth herein.

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

64. The Products did not conform to these express representations because they cause serious injury when used by women in the perineal area in the form of cancer, including, but not limited to, ovarian and uterine cancer.

65. Mrs. Musgrove sustained the following damages as a foreseeable, direct, and proximate result of Defendants' acts and/or omissions:

a. Economic losses including medical care and lost earnings; and

b. Noneconomic losses including physical and mental pain and suffering, emotional distress, inconvenience, loss of enjoyment and impairment of quality of life, past and future, and death.

COUNT FIVE – BREACH OF IMPLIED WARRANTIES

66. Plaintiff incorporates by reference each of the preceding paragraphs as if fully set forth herein.

67. At the time the Defendants manufactured, marketed, labeled, promoted, distributed and/or sold the Products, the Johnson & Johnson Defendants knew of the uses for which the Products were intended, including use by women in the perineal area, and impliedly warranted the Products to be of merchantable quality and safe for such use.

68. Defendants breached their implied warranties of the Products sold to Mrs. Musgrove because they were not fit for their common, ordinary and intended uses, including use by women in the perineal area.

69. Mrs. Musgrove sustained the following damages as a foreseeable, direct, and proximate result of Defendants' acts and/or omissions:

a. Economic losses including medical care and lost earnings; and

b. Noneconomic losses including physical and mental pain and suffering, emotional distress, inconvenience, loss of enjoyment and impairment of quality of life, past and future, and death.

COUNT SIX – PUNITIVE DAMAGES

70. Plaintiff incorporates by reference each of the preceding paragraphs as if fully set forth herein.

71. Defendants have acted willfully, wantonly, with an evil motive, and recklessly in one or more of the following ways:

a. Defendants knew of the unreasonably high risk of cancer, including, but not limited to, ovarian and uterine cancer, posed by the Products 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 the Products, Defendants affirmatively minimized this risk through marketing and promotional efforts and product labeling;

c. Through the actions outlined above, Defendants expressed a reckless indifference to the safety of users of the Products, including Mrs. Musgrove. Defendants' conduct, as described herein, knowing the dangers and risks of the Products, yet concealing and/or omitting this information, in furtherance of their conspiracy and concerted action was outrageous because of Defendants' evil motive or a reckless indifference to the safety of users of the Products.

72. Mrs. Musgrove sustained the following damages as a foreseeable, direct, and proximate result of Defendants' acts and/or omissions:

a. Economic losses including medical care and lost earnings; and

b. Noneconomic losses including physical and mental pain and suffering, emotional distress, inconvenience, loss of enjoyment and impairment of quality of life, past and future, and death.

COUNT SEVEN – NEGLIGENT MISREPRESENTATION

73. Plaintiff incorporates by reference each of the preceding paragraphs as if fully set forth herein.

74. Defendants had a duty to accurately and truthfully represent to the medical and healthcare community, Mrs. Musgrove, and the public, that the Products 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.

75. Defendants failed to exercise ordinary care in the representations concerning the Products while they were involved in their manufacture, sale, testing, quality assurance, quality control, and distribution in interstate commerce, because Defendants negligently misrepresented the Products' high risk of unreasonable, dangerous, adverse side effects.

76. Defendants breached their duty in representing that the Products have no serious side effects.

77. 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 the Products 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, including, but not limited to, ovarian and uterine cancer.

78. Mrs. Musgrove sustained the following damages as a foreseeable, direct, and proximate result of Defendants' acts and/or omissions:

a. Economic losses including medical care and lost earnings; and

b. Noneconomic losses including physical and mental pain and suffering, emotional distress, inconvenience, loss of enjoyment and impairment of quality of life, past and future, and death.

COUNT EIGHT – FRAUDULENT CONCEALMENT

79. Plaintiff incorporates by reference each of the preceding paragraphs as if fully set forth herein.

80. Defendants owed consumers, including Mrs. Musgrove, a duty to fully and accurately disclose all material facts regarding the Products, 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.

81. Defendants actively and intentionally concealed and/or suppressed material facts, in whole or in part, to induce consumers, including Mrs. Musgrove, to purchase and use the Products 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; and

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."

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

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

83. 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.

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

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

86. Mrs. Musgrove sustained the following damages as a foreseeable, direct, and proximate result of Defendants' acts and/or omissions:

a. Economic losses including medical care and lost earnings; and

b. Noneconomic losses including physical and mental pain and suffering, emotional distress, inconvenience, loss of enjoyment and impairment of quality of life, past and future, death.

COUNT NINE – FRAUD
(INTENTIONAL MISREPRESENTATION)

87. Plaintiff incorporates by reference each of the preceding paragraphs as if fully set forth herein.

88. Defendants, who engaged in the development, manufacture, marketing, sale and distribution of personal hygiene products, including the Products, owed a duty to provide accurate and complete information regarding said products.

89. Defendants fraudulently misrepresented the use of the Products as safe and effective, specifically:

a. Johnson & Johnson's website calls it a "misconception" that talc in baby powder can be "absorbed into the body";

b. Johnson & Johnson print advertisements directed at adult women asserted that, because Johnson & Johnson Baby Powder is used on babies, women can "trust" that Johnson & Johnson will take "just as much care" of their skin;

c. Misleading consumers in advertisements that the talc in Johnson & Johnson Baby Powder is safe because it comes from "nature" and is "pure";

d. Johnson & Johnson, on its website, claims that "30 years of research by independent scientists, review boards and global authorities [] have concluded that talc can be used safely in personal care products," failing to mention the dozens of studies demonstrating a relationship between feminine talc use and ovarian cancer, as well as the decision by IARC to label feminine

talc powder use as "possibly carcinogenic"; and

e. On the Johnson & Johnson Baby Powder bottle, Defendants include a conspicuous warning to mothers to prevent babies from inhaling the powder and the inclusion of this lone warning implies to the consumer that Johnson & Johnson Baby Powder is safe in all other manners of use.

90. Defendants knew that these misrepresentations and/or omissions were material, and that they were false, incomplete, misleading, deceptive and deceitful when they were made.

91. Defendants made the misrepresentations and/or omissions for the purpose of deceiving and defrauding consumers, including Mrs. Musgrove, with the intention of having them act and rely on such misrepresentations and/or omissions.

92. Mrs. Musgrove relied, with reasonable justification, on the misrepresentations by Defendants, which induced her to purchase and use the Products on a regular basis for decades.

93. Defendants profited, significantly, from their unethical and illegal conduct that fraudulently induced Mrs. Musgrove, and millions of other consumers, to purchase a dangerous and defective product.

94. Defendants' actions, and Mrs. Musgrove's justifiable reliance thereon, were substantial contributing factors in causing injury and incurrence of substantial

damages.

95. As a foreseeable, direct, and proximate result of the aforementioned fraudulent misrepresentations by Defendants, Mrs. Musgrove sustained the following damages:

a. Economic losses including medical care and lost earnings; and

b. Noneconomic losses including physical and mental pain and suffering, emotional distress, inconvenience, loss of enjoyment and impairment of quality of life, past and future, and death.

COUNT TEN – VIOLATION OF ILLINOIS CONSUMER FRAUD AND DECEPTIVE BUSINESS PRACTICES ACT (815 ILCS 505/1, *et seq.*)

96. Plaintiff incorporates by reference each of the preceding paragraphs as if fully set forth herein.

97. Mrs. Musgrove purchased and used Defendants' Products primarily for personal use and thereby suffered ascertainable losses as a result of Defendants' actions in violation of the consumer protection laws.

98. Had Defendants not engaged in the deceptive conduct described herein, Mrs. Musgrove would not have purchased and/or paid for Defendants' product, and would not have incurred related injuries and damages.

99. Defendants engaged in wrongful conduct while at the same time obtaining, under false pretenses, monetary gain from Mrs. Musgrove for the Products

that would not have been paid had Defendants not engaged in unfair and deceptive conduct.

100. Defendants engaged in unfair methods of competition and deceptive acts or practices that were proscribed by law, including the following:

a. Representing that goods or services have characteristics, ingredients, uses, benefits, or quantities that they do not have;

b. Advertising goods or services with the intent not to sell them as advertised; and

c. Engaging in fraudulent or deceptive conduct that creates a likelihood of confusion or misunderstanding.

101. Defendants intended for Mrs. Musgrove to rely on their representations and advertisements regarding the Products in order to achieve monetary gain from Mrs. Musgrove through her purchase of the Products.

102. Mrs. Musgrove was injured by the cumulative and indivisible nature of Defendants' conduct. The cumulative effect of Defendants' conduct directed at Mrs. Musgrove and other consumers was to create demand for and sell the Products. Each aspect of Defendants' conduct combined to artificially create sales of the product.

103. 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 the Products.

104. Had Defendants not engaged in the deceptive conduct described above, Mrs. Musgrove would not have purchased and/or paid for the product, and would not have incurred related injuries and damages.

105. Defendants' intentional, deceptive, unconscionable, and fraudulent representations and material omissions to Mrs. Musgrove, physicians, and consumers, constituted unfair and deceptive acts and trade practices in violation of the Illinois Consumer Fraud Act.

106. Defendants' actions, as complained of herein, constitute unfair competition or unfair, unconscionable, deceptive or fraudulent acts, or trade practices in violation of the Illinois consumer protection statute.

107. Defendants have engaged in unfair competition or unfair or deceptive acts or trade practices, or have made false representations in violation of the Illinois Consumer Fraud Act.

108. 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.

109. Defendants violated the statutes that were enacted in these states to protect consumers against unfair, deceptive, fraudulent and unconscionable trade and business practices and false advertising, by knowingly and falsely representing that Defendants' the Products were 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. These representations were made in marketing and promotional materials.

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

111. Defendants had actual knowledge of the defective and dangerous condition of Defendants' product and failed to take any action to cure such defective and dangerous conditions.

112. Mrs. Musgrove relied upon Defendants' misrepresentations and omissions in determining which product to use.

113. Defendants' deceptive, unconscionable or fraudulent representations and material omissions to Mrs. Musgrove and other consumers constituted deceptive acts and practices.

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

115. As a direct and proximate result of Defendants' violations of the states' consumer protection laws, Mrs. Musgrove sustained the following damages:

a. Economic losses including medical care and lost earnings; and

b. Noneconomic losses including physical and mental pain and suffering, emotional distress, inconvenience, loss of enjoyment and impairment of quality of life, past and future, and death.

COUNT ELEVEN –WRONGFUL DEATH ACT (740 ILCS 180/0.01 *et seq.*)

116. Plaintiff incorporates by reference each of the preceding paragraphs as if fully set forth herein.

117. As a direct and proximate result of the conduct of Defendants and the defective nature of the Products as described above, Mrs. Musgrove suffered bodily injuries resulting in pain and suffering, disability, disfigurement, mental anguish, loss of capacity of the enjoyment of life, shortened life expectancy, expenses for hospitalization, medical and nursing treatment, loss of earnings, loss of ability to earn, funeral expenses and death.

118. Plaintiff brings this claim on his own behalf as the personal representative of the estate of Mrs. Musgrove under the Illinois Wrongful Death Statute, 740 ILCS 180/0.01 *et seq*.

119. As a direct and proximate cause of the conduct of Defendants, Plaintiff has incurred grief, sorrow, mental suffering, as well as hospital, nursing and medical expenses, funeral expenses, and estate administration expenses as a result of Mrs. Musgrove's death. Plaintiff brings this claim for these damages and for all pecuniary losses sustained.

COUNT TWELVE – SURVIVAL ACTION (755 ILCS 5/27-6)

120. Plaintiff incorporates by reference each of the preceding paragraphs as if fully set forth herein.

121. As a direct and proximate result of the aforementioned acts and omissions of Defendants and the defective nature of the Products, Mrs. Musgrove suffered serious injuries of a personal nature, including, but not limited to, great pain and suffering before her death, thereby subjecting Defendants to liability pursuant to 755 ILCS 5/27-6, commonly referred to as the Survival Statute.

122. This claim is brought by Plaintiff as the personal representative of the estate of Mrs. Musgrove.

TOLLING STATUE OF LIMITATIONS

123. Plaintiff incorporates by reference each of the preceding paragraphs as if fully set forth herein.

124. Mrs. Musgrove suffered an illness that had a latency period and did not arise until many years after exposure. Mrs. Musgrove was not aware at the time of her diagnosis or death that her uterine cancer and death were caused by her use of the Defendants' Products. Similarly, Plaintiff was not aware at the time of Mrs. Musgrove's diagnosis or death that her uterine cancer was caused by her use of the Defendants' Products. 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 Mrs. Musgrove's uterine cancer was linked to her use of Defendants' Products.

125. 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 Mrs. Musgrove the true risks associated with the Products.

126. As a result of Defendants' actions, Mrs. Musgrove 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.

127. Furthermore, Defendants are estopped from relying on any statute of limitations because of their concealment of the truth, quality and nature of the Products. Defendants were under a duty to disclose the true character, quality and nature of the Products 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 Mrs. Musgrove, her medical providers and/or her health facilities.

128. Defendants had the ability to and did spend enormous amounts of money in furtherance of their purpose of marketing and promoting a profitable product, notwithstanding the known or reasonably known risks. Mrs. Musgrove and medical

professionals could not have afforded and could not have possibly conducted studies to determine the nature, extent and identity of related health risks, and were forced to rely on Defendants' representations.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff demands judgment against Defendants on each of the above-referenced claims and causes of action, and as follows:

a. Awarding compensatory damages in excess of $75,000, including, but not limited to pain, suffering, emotional distress, loss of enjoyment of life, death and other non-economic damages in an amount to be determined at trial of this action;

b. Awarding economic damages in the form of medical expenses, out of pocket expenses, lost earnings, funeral expenses, and other economic damages in an amount to be determined at trial of this action;

c. Punitive and/or exemplary damages for the wanton, willful, fraudulent, reckless acts of the Defendants who demonstrated a complete disregard and reckless indifference for the safety and welfare of the general public and Mrs. Musgrove in an amount sufficient to punish Defendants and deter future similar conduct;

d. Prejudgment interest;

e. Postjudgment interest;

f. Awarding Plaintiff's reasonable attorneys' fees;

g. Awarding Plaintiff the costs of these proceedings; and

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

Dated: June 29, 2016

Respectfully submitted,

TOD ALAN MUSGROVE, Individually and as Personal Representative of the Estate of PAMELA N. MUSGROVE, Deceased.

By: */s/ David A. Golanty*
One of his attorneys

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Exhibit 2

US District Court Civil Docket

U.S. District - Louisiana Middle
(Baton Rouge)

3:16cv447

Anderson v. Johnson & Johnson et al

Date Filed: **07/01/2016**
Assigned To: **Judge John W. deGravelles**
Referred To: **Magistrate Judge Erin Wilder-Doomes**
Nature of suit: **Product Liability (365)**
Cause: **Diversity-Product Liability**
Lead Docket: **None**
Other Docket: **None**
Jurisdiction: **Diversity**

Class Code: **OPEN**
Closed:
Statute: **28:1332**
Jury Demand: **Plaintiff**
Demand Amount: **$0**
NOS Description: **Product Liability**

Litigants	Attorneys
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Johnson & Johnson Defendant	
Johnson & Johnson Consumer Companies, Inc. Defendant	

Date	#	Proceeding Text	Source
07/01/2016	1	COMPLAINT against Johnson & Johnson, Johnson & Johnson Consumer Companies, Inc. (Filing fee $ 400 receipt number 053N-1431679.), filed by Elouise Anderson. (Attachments: # 1 Attachment Civil Cover Sheet, # 2 Attachment Johnson & Johnson summons, # 3 Attachment Johnson & Johnson Consumer Companies, Inc. summons)(Klevorn, Amanda) (Entered: 07/01/2016)	
07/11/2016	2	ORDER: Status Report due by 8/25/2016. Scheduling Conference set for 9/8/2016 at 03:30 PM in chambers before Magistrate Judge Erin Wilder-Doomes. Signed by Magistrate Judge Erin Wilder-Doomes on 7/11/2016. (BLR) (Entered: 07/11/2016)	Events since last full update
07/12/2016	3	Summons Issued as to Johnson & Johnson Consumer Companies, Inc.. (NOTICE: Counsel shall print and serve both the summons and all attachments in accordance with Federal Rule of Civil Procedure 4.) (TNB) (Entered: 07/12/2016)	Events since last full update

IN THE UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF LOUISIANA

ELOUISE ANDERSON **Plaintiff,** **v.** **JOHNSON & JOHNSON, and JOHNSON & JOHNSON CONSUMER COMPANIES, INC.,** **Defendants.**	**Case Number:** **JURY TRIAL DEMANDED**

COMPLAINT

COMES NOW Plaintiff, Elouise Anderson, by and through undersigned counsel, who brings this action against Defendants Johnson & Johnson ("J&J) and Johnson & Johnson Consumer Companies, Inc. ("J&J Consumer") as follows:

INTRODUCTION

1. This action arises out of Plaintiff Elouise Anderson's diagnosis of ovarian cancer, which was 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) and Shower to Shower. Plaintiff brings this cause of action against Defendants for claims arising from the 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 the products known as J&J Baby Powder and Shower to Shower (hereinafter collectively referred to as "Products").

PARTIES

2. Plaintiff was born in 1952, and used J&J Baby Powder and Shower to Shower, the "Products," for approximately thirty five (35) years. As a direct and proximate result of using the Products, Plaintiff was diagnosed with ovarian cancer in approximately 2002. Plaintiff resides in Livingston Parish, Louisiana. Plaintiff also resided in Livingston Parish, Louisiana at the time of her diagnosis, and she purchased and used the Products in Livingston Parish, Louisiana.

3. Defendant, Johnson & Johnson ("J&J"), is a New Jersey corporation with its principal place of business in the State of New Jersey.

4. At all pertinent times, Johnson & Johnson was engaged in the business of manufacturing, marketing, testing, promoting, selling, and/or distributing the Products. At all pertinent times, Johnson & Johnson regularly transacted, solicited, and conducted business in all States of the United States, including the State of Louisiana.

5. Defendant, Johnson & Johnson Consumer Companies, Inc. is a New Jersey corporation with its principal place of business in the State of New Jersey.

6. At all pertinent times, Johnson & Johnson Consumer Companies, Inc. was engaged in the business of manufacturing, marketing, testing, promoting, selling,

and/or distributing the Products. At all pertinent times, Johnson & Johnson regularly transacted, solicited, and conducted business in all States of the United States, including the State of Louisiana.

7. At all pertinent times, all Defendants were engaged in the research, development, manufacture, design, testing, sale and marketing of the Products, and introduced such products into interstate commerce with knowledge and intent that such products be sold in the State of Louisiana.

JURISDICTION AND VENUE

8. This Court has original jurisdiction pursuant to 28 U.S.C. § 1332(d) because complete diversity exists between Plaintiff and Defendants, and the matter in controversy, exclusive of interest and costs, exceeds the sum or value of $75,000.

9. This Court has personal jurisdiction over Defendants because Defendants are authorized to conduct and do conduct business in the State of Louisiana. Defendants have marketed, promoted, distributed, and sold the Products in the state of Louisiana and Defendants have sufficient minimum contacts with this State and/or sufficiently avail themselves of the markets in this State through their promotion, sales, distribution and marketing within this State to render the exercise of jurisdiction by this Court permissible.

10. Venue is proper in this Court pursuant to 28 U.S.C. §§ 1391(a) and (b) because a substantial part of the events or omissions giving rise to Plaintiff's claims

occurred in this judicial district. Venue is also proper under 18 U.S.C. § 1965(a) because Defendants transact substantial business in this District.

FACTS COMMON TO ALL COUNTS

A. Background: Talc as a Carcinogen and Defendants' Knowledge

11. Talc is a magnesium trisilicate and is mined from the earth. Talc is an inorganic mineral.

12. Talc is the main substance in talcum powders. The Johnson & Johnson Defendants manufactured the Products. The Products are composed almost entirely of talc.

13. At all pertinent times, a feasible alternative to the Products has existed. For example, 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 as the Products with nearly the same effectiveness.

14. 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 instructed 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."

15. During the time in question, the Johnson & Johnson Defendants advertised and marketed the product "Shower to Shower" as safe for use by women as evidenced in its slogan "A sprinkle a day keeps odor away", and through advertisements such as "Your body perspires in more places than just under your arms. Use SHOWER to SHOWER to feel dry, fresh, and comfortable throughout the day." And "SHOWER to SHOWER can be used all over your body."

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

17. 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 his 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.

18. 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.

a. In 1983, a case control study found a 150% increased risk of ovarian cancer for women who use talcum powder in the genital area. Hartge, P., *et al*. Talc and Ovarian Cancer. *JAMA*. 1983; 250(14):1844.

b. In 1988, a case control study of 188 women diagnosed with epithelial ovarian cancer and 539 control women found that 52% of the cancer patients habitually used talcum powder on the genital area before their cancer diagnosis. The study showed a 50% increase in risk of ovarian cancer in women that used talcum powder on their genital area and a positive dose response relationship. Whittemore AS, *et al*. Personal and environmental characteristics related to epithelial ovarian cancer. II. Exposures to talcum powder, tobacco, alcohol, and coffee. *Am. J. Epidemiol*. 1988 Dec; 128(6):1228 40.

c. A 1989 study looked at 235 women diagnosed with epithelial ovarian cancer and 451 controls, and found a 29% increased risk in ovarian cancer with women who reported genital talcum powder use more than once each week. Booth, M., *et al*. Risk factors for ovarian cancer: a case control study. *Br J Cancer*. 1989 Oct; 60(4):592 8.

d. In 1992, a case control study found a statistically significant 80%

increased risk of ovarian cancer in women with more than 10,000 lifetime perineal applications of talc, demonstrating a positive dose response relationship. Harlow BL, *et al.* Perineal exposure to talc and ovarian cancer risk. *Obstet Gynecol.* 1992 Jul; 80(1):19 26.

e. Another 1992 case control study reported a 70% increased risk from genital talc use and a 379% increased risk of ovarian cancer of women who used talc on sanitary napkins in their genital area. Rosenblatt, K.A. *et al.* Mineral fiber exposure and the development of ovarian cancer. *Gynecol Oncol*. 1992 Apr; 45(1):20 5.

f. In 1995, the largest study of its kind to date found a statistically significant 27% increased risk in ovarian cancer for women who regularly use talc in the abdominal or perineal area. Purdie, D., *et al.* Reproductive and other factors and risk of epithelial ovarian cancer: An Australian case control study. Survey of Women's Health Study Group. *Int J Cancer*. 1995 Sep 15; 62(6):678 84.

g. In 1996, a case control study found a statistically significant 97% increased risk of ovarian cancer in women who used what they described as a "moderate" or higher use of talc based powders in their genital area. *See* Shushan, A., *et al*. Human menopausal gonadotropin and the risk of epithelial ovarian cancer. *Fertil. Steril.* 1996 Jan; 65(1):13 8.

h. In 1997, a case control study of 313 women with ovarian cancer and 422 without this disease found that the women with cancer were more likely to have applied talcum powder to their external genitalia area. Women using these products had a statistically significant 50% to 90% higher risk of developing ovarian cancer. Cook, LS, *et al.* Perineal powder exposure and the risk of ovarian cancer. *Am. J Epidemiol.* 1997 Mar 1; 145(5):459 65.

i. In 1997, a case control study involving over 1,000 women found a statistically significant increased risk of 42% for ovarian cancer for women who applied talc via sanitary napkins to their perineal area. Chang, S, *et al.* Perineal talc exposure and risk of ovarian carcinoma. *Cancer*. 1997 Jun 15; 79(12):2396 401.

j. In 1998, a case control study found a 149% increased risk of ovarian cancer in women who used talc based powders on their perineal area. Godard, B., *et al.* Risk factors for familial and sporadic ovarian cancer among French Canadians: a case control study. *Am J Obstet Gynecol*. 1998 Aug; 179(2):403 10.

k. Dr. Daniel Cramer conducted another case control study in 1999, observing 563 women newly diagnosed with epithelial ovarian cancer and 523 women in a control. The study found a statistically significant 60% increased risk of ovarian cancer in women that used talc based body

powders on their perineal area and an 80% increase in risk for women with over 10,000 lifetime applications. Cramer, DW, *et al.* Genital talc exposure and risk of ovarian cancer. *Int J Cancer*. 1999 May 5; 81(3):351 56.

l. In 2000, a case control study of over 2,000 women found a statistically significant 50% increased risk of ovarian cancer from genital talc use in women. Ness, RB, *et al.* Factors related to inflammation of the ovarian epithelium and risk of ovarian cancer. *Epidemiology*. 2000 Mar; 11(2):111 7.

m. In 2004, a case control study of nearly 1,400 women from 22 counties in Central California found a statistically significant 37% increased risk of epithelial ovarian cancer from women's genital talc use, and a 77% increased risk of serous invasive ovarian cancer from women's genital talc use. Importantly, this study also examined at women's use of cornstarch powders as an alternative to talc, and found no increased risk in ovarian cancer in women in the cornstarch group, further supporting the causal connection between genital talc use and ovarian cancer. Mills, PK, *et al*. Perineal talc exposure and epithelial ovarian cancer risk in the Central Valley of California. *Int J Cancer*. 2004 Nov 10; 112(3):458 64.

n. In 2008, a combined study of over 3,000 women from a New England

based case control study found a general 36% statistically significant increased risk of epithelial ovarian cancer from genital talc use and a 60% increased risk of the serous invasive ovarian cancer subtype. The study also found a strong dose response relationship between the cumulative talc exposure and incidence of ovarian cancer, adding further support to the causal relationship. Gates, MA, *et al.* Talc Use, Variants of the GSTM1, GSTT1, and NAT2 Genes, and Risk of Epithelial Ovarian Cancer. *Cancer Epidemiol Biomarkers Prev*. 2008 Sep; 17(9):2436 44.

o. A 2009 case control study of over 1,200 women found the risk of ovarian cancer increased significantly with increasing frequency and duration of talc use, with an overall statistically significant 53% increased risk of ovarian cancer from genital talc use. That increased risk rose dramatically, to 108%, in women with the longest duration and most frequent talc use. Wu, AH, *et al.* Markers of inflammation and risk of ovarian cancer in Los Angeles County. *Int. J Cancer*. 2009 Mar 15; 124(6):1409 15.

p. In 2011, another case control study of over 2,000 women found a 27% increased risk of ovarian cancer from genital talc use. Rosenblatt, KA, *et al.* Genital powder exposure and the risk of epithelial ovarian cancer. *Cancer Causes Control*. 2011 May; 22(5):737 42.

q. In June of 2013, a pooled analysis of over 18,000 women in eight case control studies found a 20% to 30% increased risk of women developing epithelial ovarian cancer from genital powder use. The study concluded by stating, "Because there are few modifiable risk factors for ovarian cancer, avoidance of genital powders may be a possible strategy to reduce ovarian cancer incidence." Terry, KL, *et al.* Genital powder use and risk of ovarian cancer: a pooled analysis of 8,525 cases and 9,859 controls. *Cancer Prev Res (Phila)*. 2013 Aug; 6(8):811 21.

19. 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.

20. 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, Inc., and Johnson & Johnson Consumer Companies, Inc. were members of the CTFA. 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 cancer.

21. 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 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 ovarian cancer risk they pose.

22. In 1996, the condom industry stopped dusting condoms with talc due to the growing health concerns.

23. In February of 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 were 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 body 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."

24. In approximately 2006, the Canadian government under The Hazardous Products Act and associated Controlled Products Regulations classified talc as a "D2A," "very toxic," 51 "cancer causing" substance under its Workplace Hazardous Materials Information System (WHMIS). Asbestos is also classified as "D2A".

25. In 2006, Imerys Talc began placing a warning on the Material Safety Data Sheets (MSDS) it provided to the Johnson & Johnson Defendants regarding the talc it

sold to them to be used in the Products. 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.

26. Defendants had a duty to know and warn about the hazards associated with the use of the Products.

27. Defendants failed to inform customers and end users of the Products of a known catastrophic health hazard associated with the use of the Products.

28. In addition, Defendants procured and disseminated false, misleading, and biased information regarding the safety of the Products to the public and used influence over governmental and regulatory bodies regarding talc.

B. Plaintiff's Use of the Products

29. Plaintiff was born in 1952, and is a resident of Livingston Parish, Louisiana.

30. Plaintiff began applying talcum powder to her perineal area when she was a young woman in her twenties.

31. Plaintiff continued to apply talcum powder to her perineal area on a daily basis for the next thirty five (35) years. She only stopped applying talcum powder in this manner when she retired in 2014.

32. There was never any indication, on the Products' packaging or otherwise, that this normal use could and would cause Plaintiff to develop ovarian cancer.

33. Plaintiff was diagnosed with ovarian cancer in or around 2002, and was required to undergo a complete hysterectomy.

34. Plaintiff is currently in remission from ovarian cancer, but lives with the constant fear of the cancer returning.

COUNT ONE - STRICT LIABILITY
(FAILURE TO WARN)

35. Plaintiff incorporates by reference each of the preceding paragraphs as if fully set forth herein.

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

37. At all pertinent times, Plaintiff used the Products to powder her perineal area, which is a reasonably foreseeable use.

38. At all pertinent times, 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 cancer, including, but not limited to, ovarian cancer, based upon scientific knowledge dating back for decades.

39. At all pertinent times, including the time of sale and consumption, the Products, when put to the aforementioned reasonably foreseeable use, were in an

unreasonably dangerous and defective condition because they failed to contain adequate and proper warnings and/or instructions regarding the increased risk of cancer, including, but not limited to, ovarian cancer, associated with the use of the Products by women to powder their perineal area. Defendants themselves failed to properly and adequately warn and instruct Plaintiff as to the risks and benefits of the Products given her need for this information.

40. Had Plaintiff received a warning that the use of the Products would significantly increase her risk of developing cancer, she would not have used them. As a proximate result of Defendants' design, manufacture, marketing, sale, and distribution of the Products, Plaintiff was injured catastrophically, and was caused severe pain, suffering, disability, impairment, loss of enjoyment of life, loss of care, comfort, and economic damages.

41. The development of ovarian cancer by Plaintiff was the direct and proximate result of the unreasonably dangerous and defective condition of the Products at the time of sale and consumption, including their lack of warnings; Plaintiff suffered injuries and damages including, but not limited to, physical and mental pain and suffering, and medical expenses.

42. Defendants' products were defective because they failed to contain warnings and/or instructions, and breached express warranties and/or failed to conform to express factual representations upon which Plaintiff justifiably relied in electing to

use the Products. The defect or defects made the Products unreasonably dangerous to persons, such as Plaintiff, who could reasonably be expected to use and rely upon such products. As a result, the defect or defects were a producing cause of Plaintiff's injuries and damages.

43. Defendants' products failed to contain, and continue to this day not to contain, adequate warnings and/or instructions regarding the increased risk of cancer, including, but not limited to, ovarian cancer, with the use of their products by women. 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 products increase the risk of ovarian cancer in women when used in the perineal area.

44. Plaintiff sustained the following damages as a foreseeable, direct, and proximate result of Defendants' acts and/or omissions:

a. Economic losses including medical care and lost earnings; and

b. Noneconomic losses including physical and mental pain and suffering, emotional distress, inconvenience, loss of enjoyment and impairment of quality of life, past and future.

COUNT TWO – STRICT LIABILITY
(DESIGN AND/OR MANUFACTURING DEFECT)

45. Plaintiff incorporates by reference each of the preceding paragraphs as if fully set forth herein.

46. Defendants engaged in the design, development, manufacture, marketing, sale, and distribution of the Products in a defective and unreasonably dangerous condition to consumers, including Plaintiff.

47. Defendants caused the Products to enter the stream of commerce and to be sold through various retailers, where Plaintiff purchased the Products.

48. The Products were expected to, and did, reach consumers, including Plaintiff, without change in the condition in which it was manufactured and sold by Defendants and/or otherwise released into the stream of commerce.

49. Plaintiff used the Products in a manner normally intended, recommended, promoted, and marketed by Defendants.

50. Products failed to perform safely when used by Plaintiff in a reasonably foreseeable manner, specifically increasing her of developing ovarian cancer.

51. The propensity of talc fibers to translocate into the female reproductive system, including, but not limited to, the ovaries and endometrial lining of the uterus, thereby substantially increasing the risk of cancer, including, but not limited to, ovarian cancer, renders the Products unreasonably dangerous when used in the manner it was intended and to an extent beyond that would be contemplated by the ordinary consumer.

52. Importantly, the Products are an inessential cosmetic product that do not treat or cure any serious disease. Further, safer alternatives, including corn starch based powders, have been readily available for decades.

53. Defendants have known, or should have known, that the Products are unreasonably dangerous when used by a woman in her perineal area but have continued to design, manufacture, sell, distribute, market, promote, and supply the Products so as to maximize sales and profits at the expense of public health and safety in conscious disregard of the foreseeable harm to the consuming public, including Plaintiff.

54. As a direct and proximate result of Defendants' conduct, including actions, omissions, and misrepresentations, Plaintiff sustained the following damages:

a. Economic losses including medical care and lost earnings; and

b. Noneconomic losses including physical and mental pain and suffering, emotional distress, inconvenience, loss of enjoyment and impairment of quality of life, past and future.

COUNT THREE-NEGLIGENCE

55. Plaintiff incorporates by reference each of the preceding paragraphs as if fully set forth herein.

56. The Johnson & Johnson Defendants were negligent in marketing, designing, manufacturing, producing, supplying, inspecting, testing, selling and/or distributing the Products in one or more of the following respects:

- In failing to warn Plaintiff of the hazards associated with the use of the Products;
- In failing to properly test their products to determine adequacy and effectiveness or safety measures, if any, prior to releasing the Products 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 the Products;
- In failing to inform ultimate users, such as Plaintiff as to the safe and proper methods of handling and using the Products;
- In failing to remove the Products from the market when Defendants knew or should have known the Products were defective;
- In failing to instruct the ultimate users, such as Plaintiff, as to the methods for reducing the type of exposure to the Products which caused increased risk of cancer, including, but not limited to, ovarian cancer;
- In failing to inform the public in general and Plaintiff in particular of the known dangers of using the Products for dusting the perineum;

- In failing to advise users how to prevent or reduce exposure that caused increased risk for cancer, including, but not limited to, ovarian cancer;
- In marketing and labeling the Products 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 injuries and damages sustained by Plaintiff.

57. At all pertinent times, the Johnson & Johnson Defendants knew or should have known that the Products were unreasonably dangerous and defective when put to their reasonably anticipated use.

58. Plaintiff sustained the following damages as a foreseeable, direct, and proximate result of Defendants' acts and/or omissions:

a. Economic losses including medical care and lost earnings; and

b. Noneconomic losses including physical and mental pain and suffering, emotional distress, inconvenience, and loss of enjoyment and impairment of quality of life, past and future.

COUNT FOUR- BREACH OF EXPRESS WARRANTY

59. Plaintiff incorporates by reference each of the preceding paragraphs as if fully set forth herein.

60. The Johnson & Johnson Defendants expressly warranted, through direct to consumer marketing, advertisements, and labels, that the Products were safe and effective for reasonably anticipated uses, including use by women in the perineal area.

61. The Products did not conform to these express representations because they cause serious injury when used by women in the perineal area in the form of cancer, including, but not limited to, ovarian cancer.

62. Plaintiff sustained the following damages as a foreseeable, direct, and proximate result of Defendants' acts and/or omissions:

a. Economic losses including medical care and lost earnings; and

b. Noneconomic losses including physical and mental pain and suffering, emotional distress, inconvenience, loss of enjoyment and impairment of quality of life, past and future.

COUNT FIVE – BREACH OF IMPLIED WARRANTIES

63. Plaintiff incorporates by reference each of the preceding paragraphs as if fully set forth herein.

64. At the time the Defendants manufactured, marketed, labeled, promoted, distributed and/or sold the Products, the Johnson & Johnson Defendants knew of the uses for which the Products were intended, including use by women in the perineal area, and impliedly warranted the Products to be of merchantable quality and safe for such use.

65. Defendants breached their implied warranties of the Products sold to Plaintiff because they were not fit for their common, ordinary and intended uses, including use by women in the perineal area.

66. Plaintiff sustained the following damages as a foreseeable, direct, and proximate result of Defendants' acts and/or omissions:

a. Economic losses including medical care and lost earnings; and

b. Noneconomic losses including physical and mental pain and suffering, emotional distress, inconvenience, loss of enjoyment and impairment of quality of life, past and future.

COUNT SIX – PUNITIVE DAMAGES

67. Plaintiff incorporates by reference each of the preceding paragraphs as if fully set forth herein.

68. Defendants have acted willfully, wantonly, with an evil motive, and recklessly in one or more of the following ways:

a. Defendants knew of the unreasonably high risk of cancer, including, but not limited to, ovarian cancer, posed by the Products 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 cancer, associated with the Products, Defendants affirmatively minimized this risk through marketing and promotional efforts and product labeling;

c. Through the actions outlined above, Defendants expressed a reckless indifference to the safety of users of the Products, including Plaintiff. Defendants' conduct, as described herein, knowing the dangers and risks of the Products, yet concealing and/or omitting this information, in furtherance of their conspiracy and concerted action was outrageous because of Defendants' evil motive or a reckless indifference to the safety of users of the Products.

69. Plaintiff sustained the following damages as a foreseeable, direct, and proximate result of Defendants' acts and/or omissions:

a. Economic losses including medical care and lost earnings; and

b. Noneconomic losses including physical and mental pain and suffering, emotional distress, inconvenience, loss of enjoyment and impairment of quality of life, past and future.

COUNT SEVEN – NEGLIGENT MISREPRESENTATION

70. Plaintiff incorporates by reference each of the preceding paragraphs as if fully set forth herein.

71. Defendants had a duty to accurately and truthfully represent to the medical and healthcare community, Plaintiff, and the public, that the Products 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.

72. Defendants failed to exercise ordinary care in the representations concerning the Products while they were involved in their manufacture, sale, testing, quality assurance, quality control, and distribution in interstate commerce, because

Defendants negligently misrepresented the Products' high risk of unreasonable, dangerous, adverse side effects.

73. Defendants breached their duty in representing that the Products have no serious side effects.

74. 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 the Products 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, including, but not limited to, ovarian cancer.

75. Plaintiff sustained the following damages as a foreseeable, direct, and proximate result of Defendants' acts and/or omissions:

a. Economic losses including medical care and lost earnings; and

b. Noneconomic losses including physical and mental pain and suffering, emotional distress, inconvenience, loss of enjoyment and impairment of quality of life, past and future.

COUNT EIGHT – FRAUDULENT CONCEALMENT

76. Plaintiff incorporates by reference each of the preceding paragraphs as if fully set forth herein.

77. Defendants owed consumers, including Plaintiff, a duty to fully and accurately disclose all material facts regarding the Products, 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.

78. Defendants actively and intentionally concealed and/or suppressed material facts, in whole or in part, to induce consumers, including Plaintiff, to purchase and use the Products 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; and

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."

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

80. 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.

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

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

83. Plaintiff sustained the following damages as a foreseeable, direct, and

proximate result of Defendants' acts and/or omissions:

a. Economic losses including medical care and lost earnings; and

b. Noneconomic losses including physical and mental pain and suffering, emotional distress, inconvenience, loss of enjoyment and impairment of quality of life, past and future.

COUNT NINE – FRAUD
(INTENTIONAL MISREPRESENTATION)

84. Plaintiff incorporates by reference each of the preceding paragraphs as if fully set forth herein.

85. Defendants, who engaged in the development, manufacture, marketing, sale and distribution of personal hygiene products, including the Products, owed a duty to provide accurate and complete information regarding said products.

86. Defendants fraudulently misrepresented the use of the Products as safe and effective, specifically:

a. Johnson & Johnson's website calls it a "misconception" that talc in baby powder can be "absorbed into the body";

b. Johnson & Johnson print advertisements directed at adult women asserted that, because Johnson & Johnson Baby Powder is used on babies, women can "trust" that Johnson & Johnson will take "just as much care" of their skin;

c. Misleading consumers in advertisements that the talc in Johnson & Johnson Baby Powder is safe because it comes from "nature" and is "pure";

d. Johnson & Johnson, on its website, claims that "30 years of research by independent scientists, review boards and global authorities [] have concluded that talc can be used safely in personal care products," failing to mention the dozens of studies demonstrating a relationship between feminine talc use and ovarian cancer, as well as the decision by IARC to label feminine talc powder use as "possibly carcinogenic"; and

e. On the Johnson & Johnson Baby Powder bottle, Defendants include a conspicuous warning to mothers to prevent babies from inhaling the powder and the inclusion of this lone warning implies to the consumer that Johnson & Johnson Baby Powder is safe in all other manners of use.

87. Defendants knew that these misrepresentations and/or omissions were material, and that they were false, incomplete, misleading, deceptive and deceitful when they were made.

88. Defendants made the misrepresentations and/or omissions for the purpose of deceiving and defrauding consumers, including Plaintiff, with the

intention of having them act and rely on such misrepresentations and/or omissions.

89. Plaintiff relied, with reasonable justification, on the misrepresentations by Defendants, which induced her to purchase and use the Products on a regular basis for decades.

90. Defendants profited, significantly, from their unethical and illegal conduct that fraudulently induced Plaintiff, and millions of other consumers, to purchase a dangerous and defective product.

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

92. As a foreseeable, direct, and proximate result of the aforementioned fraudulent misrepresentations by Defendants, Plaintiff sustained the following damages:

a. Economic losses including medical care and lost earnings; and

b. Noneconomic losses including physical and mental pain and suffering, emotional distress, inconvenience, loss of enjoyment and impairment of quality of life, past and future.

COUNT TEN – LOUISIANA PRODUCTS LIABILITY ACT (La. R.S. § 9:2800.51)

93. Plaintiff incorporates by reference each of the preceding paragraphs as if fully set forth herein.

94. At all times material to this action, Defendants were engaged in the business of designing, developing, manufacturing, testing, packaging, promoting, marketing, distributing, labeling, and/or selling the Products.

95. At all times material to this action, the Products were expected to reach, and did reach, consumers in the State of Louisiana and throughout the United States, including Plaintiff herein without substantial change in the condition in which they were sold.

96. At all times material to this action, the Products were designed, developed, manufactured, tested, packaged, promoted, marketed, distributed, labeled, and/or sold by Defendants in a defective and unreasonably dangerous condition at the time they were placed in the stream of commerce in ways which include, but are not limited to, one or more of the following particulars:

a. When placed in the stream of commerce, the Products contained manufacturing/design defects which rendered the Products unreasonably dangerous;

b. The Products' manufacturing/design defects occurred while the Products were in the possession and control of Defendants;

c. The Products' manufacturing/design defects existed before they left the control of Defendants.

97. The Products manufactured and/or designed by Defendants were defective in construction or composition in that, when they left the hands of Defendants, they deviated in a material way from Defendants' manufacturing performance standards and/or it differed from otherwise identical products manufactured to the same design formula. In particular, the Products were not safe, have numerous and serious side effects and cause severe and permanent injuries. The Products are unreasonably dangerous in construction or composition as provided by La. R.S. 9:2800.55.

98. The Products manufactured and/or designed by Defendants were defective in design in that, an alternative design exists that would prevent serious side effects and severe and permanent injury. For example, cornstarch is an organic carbohydrate that is quickly broken down by the body with no known health effects. Cornstarch based powders have been sold and marketed for the same uses as the Products with nearly the same effectiveness. The Products are unreasonably dangerous in design as provided by La. R.S. 9:2800.56.

99. The Products manufactured and/or supplied by Defendants were unreasonably dangerous because Defendants did not provide an adequate warning about the Products. At the time the Products left Defendants' control, they possessed a characteristic that may cause damage, and Defendants failed to use reasonable care to provide an adequate warning of such characteristic and its danger to users and

handlers of the product. The Products are not safe and have numerous and serious side effects including, but not limited to, causing ovarian cancer. The Products are unreasonably dangerous because of inadequate warning as provided by La. R.S. 9:2800.57.

100. The Products manufactured and/or designed by Defendants were unreasonably dangerous because they did not conform to an express warranty made by Defendants regarding the Products' safety and fitness for use. Defendants' express warranty regarding the Products induced Plaintiff to use the Products, and Plaintiff's damage was proximately caused because Defendants' express warranty was untrue. The Products are unreasonably dangerous because of nonconformity to express warranty as provided by La. R.S. 9:2800:58.

101. Plaintiff sustained the following damages as a foreseeable, direct, and proximate result of Defendants' acts and/or omissions:

a. Economic losses including medical care and lost earnings; and

b. Noneconomic losses including physical and mental pain and suffering, emotional distress, inconvenience, loss of enjoyment and impairment of quality of life, past and future.

COUNT ELEVEN – VIOLATION OF LOUISIANA UNFAIR TRADE PRACTICES AND CONSUMER PROTECTION LAW (La. R.S. § 51:1401 *et seq.)*

102. Plaintiff incorporates by reference each of the preceding paragraphs as if

fully set forth herein.

103. Plaintiff purchased and used Defendants' Products primarily for personal use and thereby suffered ascertainable losses as a result of Defendants' actions in violation of the consumer protection laws.

104. Had Defendants not engaged in the deceptive conduct described herein, Plaintiff would not have purchased and/or paid for Defendants' product, and would not have incurred related injuries and damages.

105. Defendants engaged in wrongful conduct while at the same time obtaining, under false pretenses, monetary gain from Plaintiff for the Products that would not have been paid had Defendants not engaged in unfair and deceptive conduct.

106. Defendants engaged in unfair methods of competition and deceptive acts or practices that were proscribed by law, including the following:

a. Representing that goods or services have characteristics, ingredients, uses, benefits, or quantities that they do not have;

b. Advertising goods or services with the intent not to sell them as advertised; and

c. Engaging in fraudulent or deceptive conduct that creates a likelihood of confusion or misunderstanding.

107. Defendants intended for Plaintiff to rely on their representations and

advertisements regarding the Products in order to achieve monetary gain from Plaintiff through her purchase of the Products.

108. Plaintiff was injured by the cumulative and indivisible nature of Defendants' conduct. The cumulative effect of Defendants' conduct directed at Plaintiff and other consumers was to create demand for and sell the Products. Each aspect of Defendants' conduct combined to artificially create sales of the product.

109. 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 the Products.

110. Had Defendants not engaged in the deceptive conduct described above, Plaintiff would not have purchased and/or paid for the product, and would not have incurred related injuries and damages.

111. Defendants' intentional, deceptive, unconscionable, and fraudulent representations and material omissions to Plaintiff, physicians, and consumers, constituted unfair and deceptive acts and trade practices in violation of La. R.S. § 51:1401 *et seq*.

112. Defendants' actions, as complained of herein, constitute unfair competition or unfair, unconscionable, deceptive or fraudulent acts, or trade practices in violation of the Louisiana consumer protection statute.

113. Defendants have engaged in unfair competition or unfair or deceptive

acts or trade practices, or have made false representations in violation of La. R.S. § 51:1401 *et seq*.

114. 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.

115. Defendants violated the statutes that were enacted in these states to protect consumers against unfair, deceptive, fraudulent and unconscionable trade and business practices and false advertising, by knowingly and falsely representing that Defendants' the Products were 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. These representations were made in marketing and promotional materials.

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

117. Defendants had actual knowledge of the defective and dangerous condition of Defendants' product and failed to take any action to cure such defective and dangerous conditions.

118. Plaintiff relied upon Defendants' misrepresentations and omissions in determining which product to use.

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

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

121. As a direct and proximate result of Defendants' violations of the states' consumer protection laws, Plaintiff sustained the following damages:

a. Economic losses including medical care and lost earnings; and

b. Noneconomic losses including physical and mental pain and suffering, emotional distress, inconvenience, loss of enjoyment and impairment of quality of life, past and future.

TOLLING STATUTE OF LIMITATIONS

122. Plaintiff incorporates by reference each of the preceding paragraphs as if fully set forth herein.

123. Plaintiff suffered an illness that had a latency period and did not arise until many years after exposure. Plaintiff was not aware at the time of her diagnosis that her ovarian cancer was caused by her use of the Defendants' Products. 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 her ovarian cancer was linked to her use of Defendants' Products.

124. 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 the true risks associated with the Products.

125. As a result of Defendants' actions, Plaintiff 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.

126. Furthermore, Defendants are estopped from relying on any statute of limitations because of their concealment of the truth, quality and nature of the Products. Defendants were under a duty to disclose the true character, quality and nature of the Products 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 Plaintiff, her medical providers and/or her health facilities.

127. Defendants had the ability to and did spend enormous amounts of money in furtherance of their purpose of marketing and promoting a profitable product, notwithstanding the known or reasonably known risks. Plaintiff and medical professionals could not have afforded and could not have possibly conducted studies to

determine the nature, extent and identity of related health risks, and were forced to rely on Defendants' representations.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff demands judgment against Defendants on each of the above referenced claims and causes of action, and as follows:

a. Awarding compensatory damages in excess of $75,000, including, but not limited to pain, suffering, emotional distress, loss of enjoyment of life, and other non economic damages in an amount to be determined at trial of this action;

b. Awarding economic damages in the form of medical expenses, out of pocket expenses, lost earnings, and other economic damages in an amount to be determined at trial of this action;

c. Punitive and/or exemplary damages for the wanton, willful, fraudulent, reckless acts of the Defendants who demonstrated a complete disregard and reckless indifference for the safety and welfare of the general public and Plaintiff in an amount sufficient to punish Defendants and deter future similar conduct;

d. Prejudgment interest;

e. Postjudgment interest;

f. Awarding Plaintiff's reasonable attorneys' fees;

g. Awarding Plaintiff the costs of these proceedings; and

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

Dated: July 1, 2016

Respectfully submitted,

/s/ Amanda K. Klevorn
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Exhibit 3

US District Court Civil Docket

U.S. District - Mississippi Northern
(Aberdeen Division)

1:16cv121

Rich-Williams v. Johnson & Johnson et al

Date Filed:	07/01/2016		
Assigned To:	District Judge Sharion Aycock	Class Code:	OPEN
Referred To:	Magistrate Judge David A. Sanders	Closed:	
Nature of suit:	Product Liability (365)	Statute:	28:1332
Cause:	Diversity-Personal Injury	Jury Demand:	Plaintiff
Lead Docket:	None	Demand Amount:	$0
Other Docket:	None	NOS Description:	Product Liability
Jurisdiction:	Diversity		

Litigants	Attorneys
Ada Rich-Williams Plaintiff	Richard Runft Barrett LEAD ATTORNEY;ATTORNEY TO BE NOTICED LAW OFFICES OF RICHARD L. BARRETT, PLLC 2086 Old Taylor Road Suite 1011 Oxford , MS 38655 USA (662) 380-5018 Fax: 8664305459 Email:Rrb@rrblawfirm.Net
Johnson & Johnson Defendant	
Johnson & Johnson Consumer Companies, Inc. Defendant	

Date	#	Proceeding Text	Source
07/01/2016	1	COMPLAINT, Jury Demand, Filing fee $ 400, receipt number 0537-1337947, filed by Ada Rich-Williams. (Attachments: # 1 Civil Cover Sheet) (jlm) (Entered: 07/05/2016)	
07/05/2016	2	Summons Issued as to Johnson & Johnson, Johnson & Johnson Consumer Companies, Inc.; emailed to attorney for service. (jlm)	
07/05/2016		NOTICE OF ASSIGNMENT. Case assigned to Judge Aycock and Magistrate Judge Sanders. (jlm)	

IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF MISSISSIPPI
ABERDEEN DIVISION

PLAINTIFF ADA RICH-WILLIAMS **Plaintiff,** **v.** **JOHNSON & JOHNSON, and JOHNSON & JOHNSON CONSUMER COMPANIES, INC.,** **Defendants.**	**Case Number:** **JURY TRIAL DEMANDED**

COMPLAINT

COMES NOW Plaintiff ADA RICH-WILLIAMS, by and through undersigned counsel, who brings this action against Defendants Johnson & Johnson ("J&J) and Johnson & Johnson Consumer Companies, Inc. ("J&J Consumer") as follows:

INTRODUCTION

1. This action arises out of Plaintiff's diagnosis of ovarian cancer in March 2008, which was directly and proximately caused by her regular and prolonged exposure to talcum powder, contained in Defendants' Johnson & Johnson Baby Powder and Shower to Shower products. Plaintiff brings this cause of action against Defendants for claims arising from the 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 the products known as J&J Baby Powder and Shower to Shower (hereinafter collectively referred to as "Products").

PARTIES

2. Plaintiff was born on July 19, 1957, and used J&J products almost daily for approximately twenty (20) years two or three times a week. As a direct and proximate result of using the Products, Plaintiff was diagnosed with ovarian cancer in March 2008. Plaintiff resides in Starkville, Oktibbeha County, Mississippi. Plaintiff also resided in Oktibbeha County, Mississippi at the time of her diagnosis, and she purchased and used the Products in Oktibbeha County, Mississippi.

3. Defendant, Johnson & Johnson, is a New Jersey corporation with its principal place of business located at One Johnson & Johnson Plaza, New Brunswick, New Jersey 08901-1241. At all pertinent times, Johnson & Johnson was engaged in the business of manufacturing, marketing, testing, promoting, selling, and/or distributing body powders containing talcum powder. At all pertinent times, Johnson & Johnson regularly transacted, solicited, and conducted business in the State of Mississippi, including the marketing, promoting, selling, and/or distribution of the Products. Johnson & Johnson may be served with process by serving its registered agent at One Johnson & Johnson Plaza, New Brunswick, New Jersey 08901-1241.

4. Johnson & Johnson Consumer Companies, Inc., is a corporation organized and existing under and by virtue of the laws of a state other than the State of Mississippi. Johnson & Johnson Consumer Companies, Inc., is doing business in the State of

Mississippi by virtue of the fact that it has committed a tort in whole or in part against a resident of the State of Mississippi in the State of Mississippi; and been involved in the manufacturing, developing, distributing, selling, marketing, and introducing Talcum Powder in interstate commerce and into the State of Mississippi either directly or indirectly through a third party or related entities and as a result thereof is doing business in the State of Mississippi. Johnson & Johnson Consumer Companies, Inc., is doing business in the State of Mississippi as stated above and as a result thereof may be served with process pursuant to the Mississippi Rules of Civil Procedure. Johnson & Johnson Consumer Companies, Inc.'s principal place of business is located at One Johnson & Johnson Plaza, New Brunswick, New Jersey 08901-1241.

5. At all pertinent times, all Defendants were engaged in the research, development, manufacture, design, testing, sale and marketing of the Products, and introduced such products into interstate commerce with knowledge and intent that such products be sold and/or used in the State of Mississippi.

JURISDICTION AND VENUE

6. This Court has original jurisdiction pursuant to 28 U.S.C. § 1332(d) because complete diversity exists between Plaintiff and Defendants, and the matter in controversy, exclusive of interest and costs, exceeds the sum or value of $75,000.

7. This Court has personal jurisdiction over Defendants because Defendants are authorized to conduct and do conduct business in the State of Mississippi. Defendants have marketed, promoted, distributed, and sold the Products in the State of

Mississippi and Defendants have sufficient minimum contacts with this State and/or sufficiently avail themselves of the markets in this State through their promotion, sales, distribution and marketing within this State to render the exercise of jurisdiction by this Court permissible.

8. Venue is proper in this Court pursuant to 28 U.S.C. §§ 1391(a) and (b) because a substantial part of the events or omissions giving rise to Plaintiff's claims occurred in this judicial district. Venue is also proper under 18 U.S.C. § 1965(a) because Defendants transact substantial business in this District.

FACTS COMMON TO ALL COUNTS

A. Background: Talc as a Carcinogen and Defendants' Knowledge

9. Talc is a magnesium trisilicate and is mined from the earth. Talc is an inorganic mineral.

10. Talc is the main substance in talcum powders. The Johnson & Johnson Defendants manufactured the Products. The Products are composed almost entirely of talc.

11. At all pertinent times, a feasible alternative to the Products has existed. For example, 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 as the Products with nearly the same effectiveness.

12. 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 instructed 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."

13. During the time in question, the Johnson & Johnson Defendants advertised and marketed the product "Shower to Shower" as safe for use by women as evidenced in its slogan "A sprinkle a day keeps odor away", and through advertisements such as "Your body perspires in more places than just under your arms. Use SHOWER to SHOWER to feel dry, fresh, and comfortable throughout the day." And "SHOWER to SHOWER can be used all over your body."

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

15. 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 his 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.

16. 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.

a. In 1983, a case-control study found a 150% increased risk of ovarian cancer for women who use talcum powder in the genital area. Hartge, P., *et al*. Talc and Ovarian Cancer. *JAMA*. 1983; 250(14):1844.

b. In 1988, a case control study of 188 women diagnosed with epithelial ovarian cancer and 539 control women found that 52% of the cancer patients habitually used talcum powder on the genital area before their cancer diagnosis. The study showed a 50% increase in risk of ovarian cancer in women that used talcum powder on their genital area and a positive dose-response relationship. Whittemore AS, *et al*. Personal and environmental characteristics related to epithelial ovarian cancer. II. Exposures to talcum powder, tobacco, alcohol, and coffee. *Am. J. Epidemiol*. 1988 Dec; 128(6):1228-40.

c. A 1989 study looked at 235 women diagnosed with epithelial ovarian cancer and 451 controls, and found a 29% increased risk in ovarian cancer with women who reported genital talcum powder use more than once each week. Booth, M., *et al*. Risk factors for ovarian cancer: a case-control study. *Br J Cancer*. 1989 Oct; 60(4):592-8.

d. In 1992, a case-control study found a statistically significant 80% increased risk of ovarian cancer in women with more than 10,000 lifetime perineal applications of talc, demonstrating a positive dose-response relationship. Harlow BL, *et al.* Perineal exposure to talc and ovarian cancer risk. *Obstet Gynecol.* 1992 Jul; 80(1):19-26.

e. Another 1992 case-control study reported a 70% increased risk from genital talc use and a 379% increased risk of ovarian cancer of women who used talc on sanitary napkins in their genital area. Rosenblatt, K.A. *et al.* Mineral fiber exposure and the development of ovarian cancer. *Gynecol Oncol*. 1992 Apr; 45(1):20-5.

f. In 1995, the largest study of its kind to date found a statistically significant 27% increased risk in ovarian cancer for women who regularly use talc in the abdominal or perineal area. Purdie, D., *et al.* Reproductive and other factors and risk of epithelial ovarian cancer: An Australian case-control study. Survey of Women's Health Study Group. *Int J Cancer*.

1995 Sep 15; 62(6):678-84.

g. In 1996, a case-control study found a statistically significant 97% increased risk of ovarian cancer in women who used what they described as a "moderate" or higher use of talc-based powders in their genital area. *See* Shushan, A., *et al*. Human menopausal gonadotropin and the risk of epithelial ovarian cancer. *Fertil. Steril.* 1996 Jan; 65(1):13-8.

h. In 1997, a case control study of 313 women with ovarian cancer and 422 without this disease found that the women with cancer were more likely to have applied talcum powder to their external genitalia area. Women using these products had a statistically significant 50% to 90% higher risk of developing ovarian cancer. Cook, LS, *et al.* Perineal powder exposure and the risk of ovarian cancer. *Am. J Epidemiol.* 1997 Mar 1; 145(5):459-65.

i. In 1997, a case-control study involving over 1,000 women found a statistically significant increased risk of 42% for ovarian cancer for women who applied talc via sanitary napkins to their perineal area. Chang, S, *et al.* Perineal talc exposure and risk of ovarian carcinoma. *Cancer*. 1997 Jun 15; 79(12):2396-401.

j. In 1998, a case-control study found a 149% increased risk of ovarian cancer in women who used talc-based powders on their perineal area. Godard, B., *et al.* Risk factors for familial and sporadic ovarian cancer

among French Canadians: a case-control study. *Am J Obstet Gynecol*. 1998 Aug; 179(2):403-10.

k. Dr. Daniel Cramer conducted another case-control study in 1999, observing 563 women newly diagnosed with epithelial ovarian cancer and 523 women in a control. The study found a statistically significant 60% increased risk of ovarian cancer in women that used talc-based body powders on their perineal area and an 80% increase in risk for women with over 10,000 lifetime applications. Cramer, DW, *et al.* Genital talc exposure and risk of ovarian cancer. *Int J Cancer*. 1999 May 5; 81(3):351-56.

l. In 2000, a case-control study of over 2,000 women found a statistically significant 50% increased risk of ovarian cancer from genital talc use in women. Ness, RB, *et al.* Factors related to inflammation of the ovarian epithelium and risk of ovarian cancer. *Epidemiology*. 2000 Mar; 11(2):111-7.

m. In 2004, a case-control study of nearly 1,400 women from 22 counties in Central California found a statistically significant 37% increased risk of epithelial ovarian cancer from women's genital talc use, and a 77% increased risk of serous invasive ovarian cancer from women's genital talc use. Importantly, this study also examined at women's use of

cornstarch powders as an alternative to talc, and found no increased risk in ovarian cancer in women in the cornstarch group, further supporting the causal connection between genital talc use and ovarian cancer. Mills, PK, *et al*. Perineal talc exposure and epithelial ovarian cancer risk in the Central Valley of California. *Int J Cancer*. 2004 Nov 10; 112(3):458-64.

n. In 2008, a combined study of over 3,000 women from a New England-based case-control study found a general 36% statistically significant increased risk of epithelial ovarian cancer from genital talc use and a 60% increased risk of the serous invasive ovarian cancer subtype. The study also found a strong dose-response relationship between the cumulative talc exposure and incidence of ovarian cancer, adding further support to the causal relationship. Gates, MA, *et al.* Talc Use, Variants of the GSTM1, GSTT1, and NAT2 Genes, and Risk of Epithelial Ovarian Cancer. *Cancer Epidemiol Biomarkers Prev*. 2008 Sep; 17(9):2436-44.

o. A 2009 case-control study of over 1,200 women found the risk of ovarian cancer increased significantly with increasing frequency and duration of talc use, with an overall statistically significant 53% increased risk of ovarian cancer from genital talc use. That increased risk rose dramatically, to 108%, in women with the longest duration and most frequent talc use. Wu, AH, *et al.* Markers of inflammation and risk of

ovarian cancer in Los Angeles County. *Int. J Cancer*. 2009 Mar 15; 124(6):1409-15.

p. In 2011, another case-control study of over 2,000 women found a 27% increased risk of ovarian cancer from genital talc use. Rosenblatt, KA, *et al.* Genital powder exposure and the risk of epithelial ovarian cancer. *Cancer Causes Control*. 2011 May; 22(5):737-42.

q. In June of 2013, a pooled analysis of over 18,000 women in eight case-control studies found a 20% to 30% increased risk of women developing epithelial ovarian cancer from genital powder use. The study concluded by stating, "Because there are few modifiable risk factors for ovarian cancer, avoidance of genital powders may be a possible strategy to reduce ovarian cancer incidence." Terry, KL, *et al.* Genital powder use and risk of ovarian cancer: a pooled analysis of 8,525 cases and 9,859 controls. *Cancer Prev Res (Phila)*. 2013 Aug; 6(8):811-21.

17. 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.

18. 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, Inc., and Johnson & Johnson Consumer

Companies, Inc. were members of the CTFA. 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 cancer.

19. 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 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 ovarian cancer risk they pose.

20. In 1996, the condom industry stopped dusting condoms with talc due to the growing health concerns.

21. In February of 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 were 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 body 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."

22. In approximately 2006, the Canadian government under The Hazardous Products Act and associated Controlled Products Regulations classified talc as a "D2A," "very toxic," 51 "cancer causing" substance under its Workplace Hazardous Materials Information System (WHMIS). Asbestos is also classified as "D2A".

23. In 2006, Imerys Talc began placing a warning on the Material Safety Data Sheets (MSDS) it provided to the Johnson & Johnson Defendants regarding the talc it sold to them to be used in the Products. 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.

24. Defendants had a duty to know and warn about the hazards associated with the use of the Products.

25. Defendants failed to inform customers and end users of the Products of a known catastrophic health hazard associated with the use of the Products.

26. In addition, Defendants procured and disseminated false, misleading, and biased information regarding the safety of the Products to the public and used influence over governmental and regulatory bodies regarding talc.

B. Plaintiff's Use of the Products

27. Plaintiff was born in 1957, and is a resident of Oktibbeha County, Mississippi.

28. Plaintiff's mother began using the J&J Powder and Shower to Shower when she was an infant, and Plaintiff then used the product daily herself until approximately the year 2000-2002.

29. There was never any indication, on the Products packaging or otherwise, that this normal use could and would cause her to develop ovarian cancer.

30. Plaintiff was diagnosed with ovarian cancer in or around March 2008, and underwent surgery to remove her cancer and her ovaries. Subsequently, Plaintiff had to undergo six rounds of chemotherapy.

31. Currently, Plaintiff's cancer is in remission, but Plaintiff continues to require follow-up examinations every six months.

COUNT ONE – PRODUCT LIABILITY - STRICT LIABILITY VIOLATION OF MS CODE § 11-1-63
(FAILURE TO WARN)

32. Plaintiff incorporates by reference each of the preceding paragraphs as if fully set forth herein.

33. At no time during Plaintiff's use of the subject J&J Products did Plaintiff (i) have knowledge of a condition of the product that was inconsistent with her safety; (ii) appreciate the danger in the condition; (iii) deliberately and voluntarily chose to expose herself to the danger in such a manner to register assent on the continuance of the dangerous condition.

34. At all times of the use of the Products by Plaintiff, the danger posed by the Products was neither known or is open and obvious to the Plaintiff or a reasonable consumer of the Products, nor should have been known or open and obvious to the Plaintiff or a reasonable consumer of the Products, taking into account the characteristics of, and the ordinary knowledge common to, the persons who ordinarily use or consume the product.

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

36. At the time the Product used by Plaintiff left the control of the defendants, Defendants knew or in light of reasonably available knowledge should have known about use of talcum powder based products in the perineal area increases the risk of cancer, including, but not limited to, ovarian cancer, based upon scientific knowledge dating back for decades and that the ordinary user or consumer would not realize its dangerous condition.

37. At all pertinent times, Plaintiff used the Products to powder her perineal area, which is a reasonably foreseeable use.

38. At all pertinent times, including the time of sale and consumption, the Products, when put to the aforementioned reasonably foreseeable use, were in an unreasonably dangerous and defective condition because they failed to contain

adequate and proper warnings and/or instructions regarding the increased risk of cancer, including, but not limited to, ovarian cancer, associated with the use of the Products by women to powder their perineal area. Defendants failed to properly and adequately warn and instruct Plaintiff as to the risks and benefits of the Products given her need for this information.

39. At all times relevant to this litigation, a reasonably prudent company in the same or similar circumstances of Defendants would have provided a proper warning with respect to the dangers of the use of talcum powder and the risk of cancer and that communicates sufficient information on the dangers and safe use of the Products, taking into account the characteristics of, and the ordinary knowledge common to an ordinary consumer who purchases talcum powder for personal use.

40. Had Plaintiff received a warning that the use of the Products would significantly increase her risk of developing cancer, she would not have used them. As a proximate result of Defendants' design, manufacture, marketing, sale, and distribution of the Products, Plaintiff was injured catastrophically, and was caused severe pain, suffering, disability, impairment, loss of enjoyment of life, loss of care, comfort, and economic damages.

41. The development of ovarian cancer by Plaintiff was the direct and proximate result of the unreasonably dangerous and defective condition of the Products at the time of sale and consumption, including their lack of warnings; Plaintiff suffered

injuries and damages including, but not limited to, physical and mental pain and suffering, and medical expenses.

42. Defendants' products were defective because they failed to contain warnings and/or instructions, and breached express warranties and/or failed to conform to express factual representations upon which Plaintiff justifiably relied in electing to use the Products.

43. The defects made the Products unreasonably dangerous to persons, such as Plaintiff, who could reasonably be expected to use and rely upon such products. As a result, the defect or defects were a producing cause of Plaintiff's injuries and damages.

44. 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 products increase the risk of ovarian cancer in women when used in the perineal area.

45. Plaintiff sustained the following damages as a foreseeable, direct, and proximate result of Defendants' acts and/or omissions:

a. Economic losses including, but not limited to, medical care and lost earnings; and

b. Noneconomic losses including, but not limited to, physical and mental pain and suffering, emotional distress, inconvenience, loss

of enjoyment and impairment of quality of life, past and future.

COUNT TWO – STRICT LIABILITY
(DESIGN AND/OR MANUFACTURING DEFECT)

46. Plaintiff incorporates by reference each of the preceding paragraphs as if fully set forth herein.

47. Defendants engaged in the design, development, manufacture, marketing, sale, and distribution of the Products in a defective and unreasonably dangerous condition to consumers, including Plaintiff.

48. Defendants caused the Products to enter the stream of commerce and to be sold through various retailers, where Plaintiff purchased the Products.

49. The Products were expected to, and did, reach consumers, including Plaintiff, without change in the condition in which it was manufactured and sold by Defendants and/or otherwise released into the stream of commerce.

50. Plaintiff used the Products in a manner normally intended, recommended, promoted, and marketed by Defendants.

51. Products failed to perform safely when used by Plaintiff in a reasonably foreseeable manner, specifically increasing her of developing ovarian cancer.

52. The propensity of talc fibers to translocate into the female reproductive system, including, but not limited to, the ovaries and endometrial lining of the uterus, thereby substantially increasing the risk of cancer, including, but not limited to,

ovarian cancer, renders the Products unreasonably dangerous when used in the manner it was intended and to an extent beyond that would be contemplated by the ordinary consumer.

53. Importantly, the Products are an inessential cosmetic product that do not treat or cure any serious disease.

54. Further, safer alternatives, including corn-starch based powders, have been readily available for decades and that would have to a reasonable probability prevented the harm without impairing the utility, usefulness, practicality or desirability of the product to users or consumers.

55. Defendants have known, or should have known, that the Products are unreasonably dangerous when used by a woman in her perineal area but have continued to design, manufacture, sell, distribute, market, promote, and supply the Products so as to maximize sales and profits at the expense of public health and safety in conscious disregard of the foreseeable harm to the consuming public, including Plaintiff.

56. As a direct and proximate result of Defendants' conduct, including actions, omissions, and misrepresentations, Plaintiff sustained the following damages:

a. Economic losses including, but not limited to, medical care and lost earnings; and

b. Noneconomic losses including, but not limited to, physical and

mental pain and suffering, emotional distress, inconvenience, loss of enjoyment and impairment of quality of life, past and future.

COUNT THREE-NEGLIGENCE

57. Plaintiff incorporates by reference each of the preceding paragraphs as if fully set forth herein.

58. The Johnson & Johnson Defendants were negligent in marketing, designing, manufacturing, producing, supplying, inspecting, testing, selling and/or distributing the Products in one or more of the following respects:

- In failing to warn Plaintiff of the hazards associated with the use of the Products;
- In failing to properly test their products to determine adequacy and effectiveness or safety measures, if any, prior to releasing the Products 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 the Products;
- In failing to inform ultimate users, such as Plaintiff as to the safe and proper methods of handling and using the Products;
- In failing to remove the Products from the market when Defendants knew or should have known the Products were defective;

- In failing to instruct the ultimate users, such as Plaintiff, as to the methods for reducing the type of exposure to the Products which caused increased risk of cancer, including, but not limited to, ovarian cancer;
- In failing to inform the public in general and Plaintiff in particular of the known dangers of using the Products for dusting the perineum;
- In failing to advise users how to prevent or reduce exposure that caused increased risk for cancer, including, but not limited to, ovarian cancer;
- In marketing and labeling the Products 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 injuries and damages sustained by Plaintiff.

59. At all pertinent times, the Johnson & Johnson Defendants knew or should have known that the Products were unreasonably dangerous and defective when put to their reasonably anticipated use.

60. Plaintiff sustained the following damages as a foreseeable, direct, and proximate result of Defendants' acts and/or omissions:

a. Economic losses including, but not limited to, medical care and lost earnings; and

b. Noneconomic losses including, but not limited to, physical and mental pain and suffering, emotional distress, inconvenience, and loss of enjoyment and impairment of quality of life, past and future.

COUNT FOUR- BREACH OF EXPRESS WARRANTY

61. Plaintiff incorporates by reference each of the preceding paragraphs as if fully set forth herein.

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

63. The Products did not conform to these express representations because they cause serious injury when used by women in the perineal area in the form of cancer, including, but not limited to, ovarian cancer.

64. Plaintiff sustained the following damages as a foreseeable, direct, and proximate result of Defendants' acts and/or omissions:

a. Economic losses including, but not limited to, medical care and lost earnings; and

b. Noneconomic losses including, but not limited to, physical and mental pain and suffering, emotional distress, inconvenience, loss of enjoyment and impairment of quality of life, past and future.

COUNT FIVE – BREACH OF IMPLIED WARRANTIES

65. Plaintiff incorporates by reference each of the preceding paragraphs as if fully set forth herein.

66. At the time the Defendants manufactured, marketed, labeled, promoted, distributed and/or sold the Products, the Johnson & Johnson Defendants knew of the uses for which the Products were intended, including use by women in the perineal area, and impliedly warranted the Products to be of merchantable quality and safe for such use.

67. Defendants breached their implied warranties of the Products sold to Plaintiff because they were not fit for their common, ordinary and intended uses, including use by women in the perineal area.

68. Plaintiff sustained the following damages as a foreseeable, direct, and proximate result of Defendants' acts and/or omissions:

a. Economic losses including, but not limited to, medical care and lost earnings; and

b. Noneconomic losses including, but not limited to, physical and mental pain and suffering, emotional distress, inconvenience, loss of enjoyment and impairment of quality of life, past and future.

COUNT SIX – NEGLIGENT MISREPRESENTATION

69. Plaintiff incorporates by reference each of the preceding paragraphs as if fully set forth herein.

70. Defendants had a duty to accurately and truthfully represent to the medical and healthcare community, Plaintiff, and the public, that the Products 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.

71. Defendants failed to exercise ordinary care in the representations concerning the Products while they were involved in their manufacture, sale, testing, quality assurance, quality control, and distribution in interstate commerce, because Defendants negligently misrepresented the Products' high risk of unreasonable, dangerous, adverse side effects.

72. Defendants breached their duty in representing that the Products have no serious side effects.

73. 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 the Products 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, including, but not limited to, ovarian cancer.

74. Plaintiff sustained the following damages as a foreseeable, direct, and

proximate result of Defendants' acts and/or omissions:

a. Economic losses including, but not limited to, medical care and lost earnings; and

b. Noneconomic losses including, but not limited to, physical and mental pain and suffering, emotional distress, inconvenience, loss of enjoyment and impairment of quality of life, past and future.

COUNT SEVEN – FRAUDULENT CONCEALMENT

75. Plaintiff incorporates by reference each of the preceding paragraphs as if fully set forth herein.

76. Defendants owed consumers, including Plaintiff, a duty to fully and accurately disclose all material facts regarding the Products, 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.

77. Defendants actively and intentionally concealed and/or suppressed material facts, in whole or in part, to induce consumers, including Plaintiff, to purchase and use the Products 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; and

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."

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

79. 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.

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

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

82. Plaintiff sustained the following damages as a foreseeable, direct, and proximate result of Defendants' acts and/or omissions:

a. Economic losses including medical care and lost earnings; and

b. Noneconomic losses including physical and mental pain and suffering, emotional distress, inconvenience, loss of enjoyment and impairment of quality of life, past and future.

COUNT EIGHT – FRAUD
(INTENTIONAL MISREPRESENTATION)

83. Plaintiff incorporates by reference each of the preceding paragraphs as if fully set forth herein.

84. Defendants, who engaged in the development, manufacture, marketing, sale and distribution of personal hygiene products, including the Products, owed a duty to provide accurate and complete information regarding said products.

85. Defendants fraudulently misrepresented the use of the Products as safe and effective, specifically:

a. Johnson & Johnson's website calls it a "misconception" that talc in baby powder can be "absorbed into the body";

b. Johnson & Johnson print advertisements directed at adult women asserted that, because Johnson & Johnson Baby Powder is used on babies, women can "trust" that Johnson & Johnson will take "just as much care" of their skin;

c. Misleading consumers in advertisements that the talc in Johnson & Johnson Baby Powder is safe because it comes from "nature" and is "pure";

d. Johnson & Johnson, on its website, claims that "30 years of research by independent scientists, review boards and global authorities [] have concluded that talc can be used safely in personal care products," failing to mention the dozens of studies demonstrating a relationship between feminine talc use and ovarian cancer, as well as the decision by IARC to label feminine

talc powder use as "possibly carcinogenic"; and

e. On the Johnson & Johnson Baby Powder bottle, Defendants include a conspicuous warning to mothers to prevent babies from inhaling the powder and the inclusion of this lone warning implies to the consumer that Johnson & Johnson Baby Powder is safe in all other manners of use.

86. Defendants knew that these misrepresentations and/or omissions were material, and that they were false, incomplete, misleading, deceptive and deceitful when they were made.

87. Defendants made the misrepresentations and/or omissions for the purpose of deceiving and defrauding consumers, including Plaintiff, with the intention of having them act and rely on such misrepresentations and/or omissions.

88. Plaintiff relied, with reasonable justification, on the misrepresentations by Defendants, which induced her to purchase and use the Products on a regular basis for decades.

89. Defendants profited, significantly, from their unethical and illegal conduct that fraudulently induced Plaintiff, and millions of other consumers, to purchase a dangerous and defective product.

90. Defendants' actions, and Plaintiff's justifiable reliance thereon, were substantial contributing factors in causing injury and incurrence of substantial

damages.

91. As a foreseeable, direct, and proximate result of the aforementioned fraudulent misrepresentations by Defendants, Plaintiff sustained the following damages:

a. Economic losses including medical care and lost earnings; and

b. Noneconomic losses including physical and mental pain and suffering, emotional distress, inconvenience, loss of enjoyment and impairment of quality of life, past and future.

COUNT NINE – PUNITIVE DAMAGES

92. Plaintiff incorporates by reference each of the preceding paragraphs as if fully set forth herein.

93. Defendants have acted willfully, wantonly, with an evil motive, and recklessly in one or more of the following ways:

a. Defendants knew of the unreasonably high risk of cancer, including, but not limited to, ovarian cancer, posed by the Products 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 cancer, associated with the Products, Defendants affirmatively minimized this risk through marketing and promotional efforts and product labeling;

c. Through the actions outlined above, Defendants expressed a reckless indifference to the safety of users of the Products, including Plaintiff. Defendants' conduct, as described herein, knowing the dangers and risks

of the Products, yet concealing and/or omitting this information, in furtherance of their conspiracy and concerted action was outrageous because of Defendants' evil motive or a reckless indifference to the safety of users of the Products.

94. Plaintiff sustained the following damages as a foreseeable, direct, and proximate result of Defendants' acts and/or omissions:

a. Economic losses including, but not limited to, medical care and lost earnings; and

b. Noneconomic losses including, but not limited to, physical and mental pain and suffering, emotional distress, inconvenience, loss of enjoyment and impairment of quality of life, past and future.

95. The imposition of punitive damages is warranted and necessary as Defendants acted with actual malice and/or gross negligence which evidences a willful, wanton or reckless disregard for the safety of Plaintiff and others, or committed actual fraud.

TOLLING STATUE OF LIMITATIONS

96. Plaintiff incorporates by reference each of the preceding paragraphs as if fully set forth herein.

97. Plaintiff suffered an illness that had a latency period and did not arise until many years after exposure. Plaintiff was not aware at the time of her diagnosis that her ovarian cancer was caused by her use of the Defendants' Products.

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 her ovarian cancer was linked to her use of Defendants' Products.

98. 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 the true risks associated with the Products.

99. As a result of Defendants' actions, Plaintiff 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.

100. Furthermore, Defendants are estopped from relying on any statute of limitations because of their concealment of the truth, quality and nature of the Products. Defendants were under a duty to disclose the true character, quality and nature of the Products 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 Plaintiff, her medical providers and/or her health facilities.

101. Defendants had the ability to and did spend enormous amounts of money in furtherance of their purpose of marketing and promoting a profitable product,

notwithstanding the known or reasonably known risks. Plaintiff and medical professionals could not have afforded and could not have possibly conducted studies to determine the nature, extent and identity of related health risks, and were forced to rely on Defendants' representations.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff demands judgment against Defendants on each of the above-referenced claims and causes of action, and as follows:

a. Awarding compensatory damages in excess of $75,000, including, but not limited to pain, suffering, emotional distress, loss of enjoyment of life, and other non-economic damages in an amount to be determined at trial of this action;

b. Awarding economic damages in the form of medical expenses, out of pocket expenses, lost earnings, and other economic damages in an amount to be determined at trial of this action;

c. Punitive and/or exemplary damages for the wanton, willful, fraudulent, reckless acts of the Defendants who demonstrated a complete disregard and reckless indifference for the safety and welfare of the general public and Plaintiff in an amount sufficient to punish Defendants and deter future similar conduct;

d. Pre-judgment interest;

e. Post-judgment interest;

f. Awarding Plaintiff's reasonable attorneys' fees;

g. Awarding Plaintiff the costs of these proceedings; and

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

Dated: July 1, 2016

Respectfully submitted,
ADA RICH-WILLIAMS

By: /s/ Richard R. Barrett

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Exhibit 4

US District Court Civil Docket

U.S. District - Illinois Southern
(East St. Louis)

3:16cv741

Lumas v. Johnson & Johnson et al

Date Filed:	07/01/2016		
Assigned To:		Class Code:	OPEN
Referred To:		Closed:	
Nature of suit:	Product Liability (365)	Statute:	28:1332
Cause:	Diversity-Product Liability	Jury Demand:	Plaintiff
Lead Docket:	None	Demand Amount:	$25,000,000,000
Other Docket:	None	NOS Description:	Product Liability
Jurisdiction:	Diversity		

Litigants	Attorneys
Tanashiska Lumas Plaintiff	John W. Barrett ATTORNEY TO BE NOTICED Barrett Law Group 404 Court Square North P.O. Box 927 Lexington , MS 39095 USA 662-834-2488 Email:Dbarrett@barrettlawgroup.Com
Johnson & Johnson Defendant	
Johnson & Johnson Consumer Companies, Inc. Defendant	

Date	#	Proceeding Text	Source
07/01/2016	1	COMPLAINT against Johnson & Johnson, Johnson & Johnson Consumer Companies, Inc. (Filing fee $ 400 receipt number 0754-2979374.), filed by Tanashiska Lumas. (Attachments: # 1 Civil Cover Sheet, # 2 Summons, # 3 Summons)(Barrett, John) (Entered: 07/01/2016)	
07/01/2016	2	EXHIBIT by Tanashiska Lumas. Exhibit to 1 Complaint, AMENDED Civil Cover Sheet. (Barrett, John) (Entered: 07/01/2016)	Events since last full update
07/05/2016	3	Notice of Judge Assignment. Chief Judge Michael J. Reagan and Magistrate Judge Philip M. Frazier assigned. All future documents must bear case number 16-741-MJR/PMF. If the parties consent to Magistrate Judge assignment, the consent form with instruction is attached for your convenience. (jaj) (Entered: 07/05/2016)	Events since last full update
07/05/2016	4	NOTICE OF ERRORS AND/OR DEFICIENCIES. See Local Rule 83.1(f). In all cases filed in, removed to, or transferred to this court, all attorneys, including government attorneys, shall file a written entry of appearance before addressing the court. Attorney Barrett does not have a Notice of Appearance on file in this case. A Notice of Appearance must be filed to comply with Local Rule 83.1(f).(jaj)THIS TEXT ENTRY IS AN ORDER OF THE COURT. NO FURTHER DOCUMENTATION WILL BE MAILED. (Entered: 07/05/2016)	Events since last full update
07/05/2016	5	Summons Issued as to Johnson & Johnson, Johnson & Johnson Consumer Companies, Inc.. (jaj) (Entered: 07/05/2016)	Events since last full update

07/06/2016	6	ORDER REASSIGNING CASE. Case reassigned to Judge Nancy J. Rosenstengel for all further proceedings. Chief Judge Michael J. Reagan no longer assigned to case. Signed by Chief Judge Michael J. Reagan on 07/06/16. (dkd) (Entered: 07/06/2016)	Events since last full update
07/06/2016	7	ORDER OF RECUSAL. Judge Nancy J. Rosenstengel recused. Case reassigned to Judge Staci M. Yandle for all further proceedings. All future filings in this case shall bear case number 16-cv-741-SMY-PMF. Signed by Judge Nancy J. Rosenstengel on 7/6/16. (drb) (Entered: 07/06/2016)	Events since last full update

IN THE UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF ILLINOIS
EAST ST. LOUIS DIVISION

TANASHISKA LUMAS,

Plaintiff,

v.

JOHNSON & JOHNSON, and JOHNSON & JOHNSON CONSUMER COMPANIES, INC.,

Defendants.

Case Number: 3:16-cv-741

JURY TRIAL DEMANDED

COMPLAINT

COMES NOW Plaintiff, Tanashiska Lumas, by and through undersigned counsel, who brings this action against Defendants Johnson & Johnson ("J&J") and Johnson & Johnson Consumer Companies, Inc. ("J&J Consumer") (collectively "Defendants") as follows:

INTRODUCTION

1. This action arises out of Plaintiff Tanashiska Lumas' diagnosis of ovarian cancer, which was 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") and Shower to Shower. Plaintiff brings this cause of action against Defendants for claims arising from the 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 the products known as J&J Baby Powder and Shower to Shower (hereinafter collectively referred to as "Products").

PARTIES

2. Plaintiff was born in 1976, and used J&J Baby Powder and Shower to Shower, the "Products," for most of her life. As a direct and proximate result of using the Products, Plaintiff was diagnosed with ovarian cancer in approximately 2011. Plaintiff resides in St. Clair County, Illinois. Plaintiff also resided in St. Clair County, Illinois at the time of her diagnosis, and she purchased and used the Products in St. Clair County, Illinois.

3. Defendant, Johnson & Johnson, is a New Jersey corporation with its principal place of business in the State of New Jersey.

4. At all pertinent times, Johnson & Johnson was engaged in the business of manufacturing, marketing, testing, promoting, selling, and/or distributing the Products. At all pertinent times, Johnson & Johnson regularly transacted, solicited, and conducted business in all States of the United States, including the State of Illinois.

5. Defendant, Johnson & Johnson Consumer Companies, Inc. is a New Jersey corporation with its principal place of business in the State of New Jersey.

6. At all pertinent times, Johnson & Johnson Consumer Companies, Inc. was engaged in the business of manufacturing, marketing, testing, promoting, selling, and/or distributing the Products. At all pertinent times, Johnson & Johnson regularly transacted, solicited, and conducted business in all States of the United States, including the State of Illinois.

7. At all pertinent times, all Defendants were engaged in the research, development, manufacture, design, testing, sale and marketing of the Products, and introduced such products

into interstate commerce with knowledge and intent that such products be sold in the State of Illinois.

JURISDICTION AND VENUE

8. This Court has original jurisdiction pursuant to 28 U.S.C. § 1332(d) because complete diversity exists between Plaintiff and Defendants, and the matter in controversy, exclusive of interest and costs, exceeds the sum or value of $75,000.

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

10. Venue is proper in this Court pursuant to 28 U.S.C. §§ 1391(a) and (b) because a substantial part of the events or omissions giving rise to Plaintiff's claims occurred in this judicial district. Venue is also proper under 18 U.S.C. § 1965(a) because Defendants transact substantial business in this District.

FACTS COMMON TO ALL COUNTS

A. Background: Talc as a Carcinogen and Defendants' Knowledge

11. Talc is a magnesium trisilicate and is mined from the earth. Talc is an inorganic mineral.

12. Talc is the main substance in talcum powders. The Defendants manufactured the Products. The Products are composed almost entirely of talc.

13. At all pertinent times, a feasible alternative to the Products has existed. For example, 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 as the Products with nearly the same effectiveness.

14. Historically, "Johnson's Baby Powder" has been a symbol of freshness, cleanliness, and purity. During the time in question, 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 instructed 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."

15. During the time in question, Defendants advertised and marketed the product "Shower to Shower" as safe for use by women as evidenced in its slogan "A sprinkle a day keeps odor away," and through advertisements such as "Your body perspires in more places than just under your arms. Use SHOWER to SHOWER to feel dry, fresh, and comfortable throughout the day." And "SHOWER to SHOWER can be used all over your body."

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

17. 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 his 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.

18. 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.

a. In 1983, a case-control study found a 150% increased risk of ovarian cancer for women who use talcum powder in the genital area. Hartge, P., *et al*. Talc and Ovarian Cancer. *JAMA*. 1983; 250(14):1844.

b. In 1988, a case control study of 188 women diagnosed with epithelial ovarian cancer and 539 control women found that 52% of the cancer patients habitually used talcum powder on the genital area before their cancer diagnosis. The study showed a 50% increase in risk of ovarian cancer in women that used talcum powder on their genital area and a positive dose-response relationship. Whittemore AS, *et al*. Personal and environmental characteristics related to epithelial ovarian cancer. II. Exposures to talcum powder, tobacco, alcohol, and coffee. *Am. J. Epidemiol*. 1988 Dec; 128(6):1228-40.

c. A 1989 study looked at 235 women diagnosed with epithelial ovarian cancer and 451 controls, and found a 29% increased risk in ovarian cancer with women who reported genital talcum powder use more than once each week. Booth, M., *et al*. Risk factors for ovarian cancer: a case-control study. *Br J Cancer*. 1989 Oct; 60(4):592-8.

d. In 1992, a case-control study found a statistically significant 80% increased risk of ovarian cancer in women with more than 10,000 lifetime perineal applications of talc, demonstrating a positive dose-response relationship. Harlow BL, *et al.* Perineal exposure to talc and ovarian cancer risk. *Obstet Gynecol.* 1992 Jul; 80(1):19-26.

e. Another 1992 case-control study reported a 70% increased risk from genital talc use and a 379% increased risk of ovarian cancer of women who used talc on sanitary napkins in their genital area. Rosenblatt, K.A. *et al.* Mineral fiber exposure and the development of ovarian cancer. *Gynecol Oncol*. 1992 Apr; 45(1):20-5.

f. In 1995, the largest study of its kind to date found a statistically significant 27% increased risk in ovarian cancer for women who regularly use talc in the abdominal or perineal area. Purdie, D., *et al.* Reproductive and other factors and risk of epithelial ovarian cancer: An Australian case-control study. Survey of Women's Health Study Group. *Int J Cancer*. 1995 Sep 15; 62(6):678-84.

g. In 1996, a case-control study found a statistically significant 97% increased risk of ovarian cancer in women who used what they described as a "moderate" or higher use of talc-based powders in their genital area. *See* Shushan, A., *et al.* Human menopausal gonadotropin and the risk of epithelial ovarian cancer. *Fertil. Steril.* 1996 Jan; 65(1):13-8.

h. In 1997, a case control study of 313 women with ovarian cancer and 422 without this disease found that the women with cancer were more likely to have applied talcum powder to their external genitalia area. Women using these products had

a statistically significant 50% to 90% higher risk of developing ovarian cancer. Cook, LS, *et al.* Perineal powder exposure and the risk of ovarian cancer. *Am. J Epidemiol.* 1997 Mar 1; 145(5):459-65.

i. In 1997, a case-control study involving over 1,000 women found a statistically significant increased risk of 42% for ovarian cancer for women who applied talc via sanitary napkins to their perineal area. Chang, S, *et al.* Perineal talc exposure and risk of ovarian carcinoma. *Cancer*. 1997 Jun 15; 79(12):2396-401.

j. In 1998, a case-control study found a 149% increased risk of ovarian cancer in women who used talc-based powders on their perineal area. Godard, B., *et al.* Risk factors for familial and sporadic ovarian cancer among French Canadians: a case-control study. *Am J Obstet Gynecol*. 1998 Aug; 179(2):403-10.

k. Dr. Daniel Cramer conducted another case-control study in 1999, observing 563 women newly diagnosed with epithelial ovarian cancer and 523 women in a control. The study found a statistically significant 60% increased risk of ovarian cancer in women that used talc-based body powders on their perineal area and an 80% increase in risk for women with over 10,000 lifetime applications. Cramer, DW, *et al.* Genital talc exposure and risk of ovarian cancer. *Int J Cancer*. 1999 May 5; 81(3):351-56.

l. In 2000, a case-control study of over 2,000 women found a statistically significant 50% increased risk of ovarian cancer from genital talc use in women. Ness, RB, *et al.* Factors related to inflammation of the ovarian epithelium and risk of ovarian cancer. *Epidemiology*. 2000 Mar; 11(2):111-7.

m. In 2004, a case-control study of nearly 1,400 women from 22 counties in

Central California found a statistically significant 37% increased risk of epithelial ovarian cancer from women's genital talc use, and a 77% increased risk of serous invasive ovarian cancer from women's genital talc use. Importantly, this study also examined women's use of cornstarch powders as an alternative to talc, and found no increased risk in ovarian cancer in women in the cornstarch group, further supporting the causal connection between genital talc use and ovarian cancer. Mills, PK, *et al*. Perineal talc exposure and epithelial ovarian cancer risk in the Central Valley of California. *Int J Cancer*. 2004 Nov 10; 112(3):458-64.

n. In 2008, a combined study of over 3,000 women from a New England-based case-control study found a general 36% statistically significant increased risk of epithelial ovarian cancer from genital talc use and a 60% increased risk of the serous invasive ovarian cancer subtype. The study also found a strong dose-response relationship between the cumulative talc exposure and incidence of ovarian cancer, adding further support to the causal relationship. Gates, MA, *et al.* Talc Use, Variants of the GSTM1, GSTT1, and NAT2 Genes, and Risk of Epithelial Ovarian Cancer. *Cancer Epidemiol Biomarkers Prev*. 2008 Sep; 17(9):2436-44.

o. A 2009 case-control study of over 1,200 women found the risk of ovarian cancer increased significantly with increasing frequency and duration of talc use, with an overall statistically significant 53% increased risk of ovarian cancer from genital talc use. That increased risk rose dramatically, to 108%, in women with the longest duration and most frequent talc use. Wu, AH, *et al.* Markers of

inflammation and risk of ovarian cancer in Los Angeles County. *Int. J Cancer*. 2009 Mar 15; 124(6):1409-15.

p. In 2011, another case-control study of over 2,000 women found a 27% increased risk of ovarian cancer from genital talc use. Rosenblatt, KA, *et al.* Genital powder exposure and the risk of epithelial ovarian cancer. *Cancer Causes Control*. 2011 May; 22(5):737-42.

q. In June of 2013, a pooled analysis of over 18,000 women in eight case-control studies found a 20% to 30% increased risk of women developing epithelial ovarian cancer from genital powder use. The study concluded by stating, "Because there are few modifiable risk factors for ovarian cancer, avoidance of genital powders may be a possible strategy to reduce ovarian cancer incidence." Terry, KL, *et al.* Genital powder use and risk of ovarian cancer: a pooled analysis of 8,525 cases and 9,859 controls. *Cancer Prev Res (Phila)*. 2013 Aug; 6(8):811-21.

19. 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.

20. 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). Defendants were members of the CTFA. 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 cancer.

21. 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 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 ovarian cancer risk they pose.

22. In 1996, the condom industry stopped dusting condoms with talc due to the growing health concerns.

23. In February of 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 were 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 body 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."

24. In approximately 2006, the Canadian government under The Hazardous Products Act and associated Controlled Products Regulations classified talc as a "D2A," "very toxic," 51 "cancer causing" substance under its Workplace Hazardous Materials Information System (WHMIS). Asbestos is also classified as "D2A".

25. In 2006, Imerys Talc began placing a warning on the Material Safety Data Sheets (MSDS) it provided to Defendants regarding the talc it sold to them to be used in the Products. 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.

26. Defendants had a duty to know and warn about the hazards associated with the use of the Products.

27. Defendants failed to inform customers and end users of the Products of a known catastrophic health hazard associated with the use of the Products.

28. In addition, Defendants procured and disseminated false, misleading, and biased information regarding the safety of the Products to the public and used influence over governmental and regulatory bodies regarding talc.

B. Plaintiff's Use of the Products

29. Plaintiff was born in 1976, and has been a resident of St. Clair County, Illinois her entire life.

30. Plaintiff first began applying talcum powder to her perineal area as a young girl in or around 1987. Plaintiff acquired the habit of applying talcum powder to her perineal area from her mother, who also applied talcum powder in the same manner for most of her life. Plaintiff's mother was also diagnosed with ovarian cancer, and passed away in May of 2016.

31. Plaintiff applied talcum powder to her perineal area on a daily basis for more than twenty (20) years prior to her diagnosis with ovarian cancer.

32. Plaintiff was diagnosed with ovarian cancer in or around 2011, and underwent surgery and subsequent treatment.

33. There was never any indication, on the Products' packaging or otherwise, that this normal use could and would cause Plaintiff to develop ovarian cancer.

34. Plaintiff is currently in remission from ovarian cancer, but lives with the constant fear of the cancer recurring.

COUNT ONE - STRICT LIABILITY
(FAILURE TO WARN)

35. Plaintiff incorporates by reference each of the preceding paragraphs as if fully set forth herein.

36. At all pertinent times, Defendants were manufacturing, marketing, testing, promoting, selling and/or distributing the Products in the regular course of business.

37. At all pertinent times, Plaintiff used the Products to powder her perineal area, which is a reasonably foreseeable use.

38. At all pertinent times, Defendants knew or should have known that the use of talcum powder based products in the perineal area significantly increases the risk of cancer, including, but not limited to, ovarian cancer, based upon scientific knowledge dating back for decades.

39. At all pertinent times, including the time of sale and consumption, the Products, when put to the aforementioned reasonably foreseeable use, were in an unreasonably dangerous and defective condition because they failed to contain adequate and proper warnings and/or instructions regarding the increased risk of cancer, including, but not limited to, ovarian cancer, associated with the use of the Products by women to powder their perineal area. Defendants themselves failed to properly and adequately warn and instruct Plaintiff as to the risks and benefits of the Products given her need for this information.

40. Had Plaintiff received a warning that the use of the Products would significantly increase her risk of developing cancer, she would not have used them. As a proximate result of Defendants' design, manufacture, marketing, sale, and distribution of the Products, Plaintiff was injured catastrophically, and was caused severe pain, suffering, disability, impairment, loss of enjoyment of life, loss of care, comfort, and economic damages.

41. The development of ovarian cancer by Plaintiff was the direct and proximate result of the unreasonably dangerous and defective condition of the Products at the time of sale and consumption, including their lack of warnings; Plaintiff suffered injuries and damages including, but not limited to, physical and mental pain and suffering, and medical expenses.

42. Defendants' products were defective because they failed to contain warnings and/or instructions, and breached express warranties and/or failed to conform to express factual representations upon which Plaintiff justifiably relied in electing to use the Products. The defect or defects made the Products unreasonably dangerous to persons, such as Plaintiff, who could reasonably be expected to use and rely upon such products. As a result, the defect or defects were a producing cause of Plaintiff's injuries and damages.

43. Defendants' products failed to contain, and continue to this day not to contain, adequate warnings and/or instructions regarding the increased risk of cancer, including, but not limited to, ovarian cancer, with the use of their products by women. 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. Defendants have continued these marketing and advertising campaigns despite having scientific knowledge that dates back to the 1960's that their products increase the risk of ovarian cancer in women when used in the perineal area.

44. Plaintiff sustained the following damages as a foreseeable, direct, and proximate result of Defendants' acts and/or omissions:

a. Economic losses including medical care and lost earnings; and

b. Noneconomic losses including physical and mental pain and suffering, emotional distress, inconvenience, loss of enjoyment and impairment of quality of life, past and future.

COUNT TWO – STRICT LIABILITY
(DESIGN AND/OR MANUFACTURING DEFECT)

45. Plaintiff incorporates by reference each of the preceding paragraphs as if fully set forth herein.

46. Defendants engaged in the design, development, manufacture, marketing, sale,

and distribution of the Products in a defective and unreasonably dangerous condition to consumers, including Plaintiff.

47. Defendants caused the Products to enter the stream of commerce and to be sold through various retailers, where Plaintiff purchased the Products.

48. The Products were expected to, and did, reach consumers, including Plaintiff, without change in the condition in which it was manufactured and sold by Defendants and/or otherwise released into the stream of commerce.

49. Plaintiff used the Products in a manner normally intended, recommended, promoted, and marketed by Defendants.

50. The Products failed to perform safely when used by Plaintiff in a reasonably foreseeable manner, specifically increasing her of developing ovarian cancer.

51. The propensity of talc fibers to translocate into the female reproductive system, including, but not limited to, the ovaries and endometrial lining of the uterus, thereby substantially increasing the risk of cancer, including, but not limited to, ovarian cancer, renders the Products unreasonably dangerous when used in the manner it was intended and to an extent beyond that would be contemplated by the ordinary consumer.

52. Importantly, the Products are an inessential cosmetic product that do not treat or cure any serious disease. Further, safer alternatives, including corn-starch based powders, have been readily available for decades.

53. Defendants have known, or should have known, that the Products are unreasonably dangerous when used by a woman in her perineal area but have continued to design, manufacture, sell, distribute, market, promote, and supply the Products so as to maximize sales and profits at the expense of public health and safety in conscious disregard of

the foreseeable harm to the consuming public, including Plaintiff.

54. As a direct and proximate result of Defendants' conduct, including actions, omissions, and misrepresentations, Plaintiff sustained the following damages:

a. Economic losses including medical care and lost earnings; and

b. Noneconomic losses including physical and mental pain and suffering, emotional distress, inconvenience, loss of enjoyment and impairment of quality of life, past and future.

COUNT THREE-NEGLIGENCE

55. Plaintiff incorporates by reference each of the preceding paragraphs as if fully set forth herein.

56. The Johnson & Johnson Defendants were negligent in marketing, designing, manufacturing, producing, supplying, inspecting, testing, selling and/or distributing the Products in one or more of the following respects:

- In failing to warn Plaintiff of the hazards associated with the use of the Products;
- In failing to properly test their products to determine adequacy and effectiveness or safety measures, if any, prior to releasing the Products 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 the Products;
- In failing to inform ultimate users, such as Plaintiff, as to the safe and proper methods of handling and using the Products;
- In failing to remove the Products from the market when Defendants knew or should have known the Products were defective;

- In failing to instruct the ultimate users, such as Plaintiff, as to the methods for reducing the type of exposure to the Products which caused increased risk of cancer, including, but not limited to, ovarian cancer;
- In failing to inform the public in general and Plaintiff in particular of the known dangers of using the Products for dusting the perineum;
- In failing to advise users how to prevent or reduce exposure that caused increased risk for cancer, including, but not limited to, ovarian cancer;
- In marketing and labeling the Products 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 injuries and damages sustained by Plaintiff.

57. At all pertinent times, Defendants knew or should have known that the Products were unreasonably dangerous and defective when put to their reasonably anticipated use.

58. Plaintiff sustained the following damages as a foreseeable, direct, and proximate result of Defendants' acts and/or omissions:

a. Economic losses including medical care and lost earnings; and

b. Noneconomic losses including physical and mental pain and suffering, emotional distress, inconvenience, and loss of enjoyment and impairment of quality of life, past and future.

COUNT FOUR- BREACH OF EXPRESS WARRANTY

59. Plaintiff incorporates by reference each of the preceding paragraphs as if fully set forth herein.

60. Defendants expressly warranted, through direct-to-consumer marketing, advertisements, and labels, that the Products were safe and effective for reasonably anticipated uses, including use by women in the perineal area.

61. The Products did not conform to these express representations because they cause serious injury when used by women in the perineal area in the form of cancer, including, but not limited to, ovarian cancer.

62. Plaintiff sustained the following damages as a foreseeable, direct, and proximate result of Defendants' acts and/or omissions:

a. Economic losses including medical care and lost earnings; and

b. Noneconomic losses including physical and mental pain and suffering, emotional distress, inconvenience, loss of enjoyment and impairment of quality of life, past and future.

COUNT FIVE – BREACH OF IMPLIED WARRANTIES

63. Plaintiff incorporates by reference each of the preceding paragraphs as if fully set forth herein.

64. At the time Defendants manufactured, marketed, labeled, promoted, distributed and/or sold the Products, Defendants knew of the uses for which the Products were intended, including use by women in the perineal area, and impliedly warranted the Products to be of merchantable quality and safe for such use.

65. Defendants breached their implied warranties of the Products sold to Plaintiff because they were not fit for their common, ordinary and intended uses, including use by women in the perineal area.

66. Plaintiff sustained the following damages as a foreseeable, direct, and proximate

result of Defendants' acts and/or omissions:

a. Economic losses including medical care and lost earnings; and

b. Noneconomic losses including physical and mental pain and suffering, emotional distress, inconvenience, loss of enjoyment and impairment of quality of life, past and future.

COUNT SIX – PUNITIVE DAMAGES

67. Plaintiff incorporates by reference each of the preceding paragraphs as if fully set forth herein.

68. Defendants have acted willfully, wantonly, with an evil motive, and recklessly in one or more of the following ways:

a. Defendants knew of the unreasonably high risk of cancer, including, but not limited to, ovarian cancer, posed by the Products 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 cancer, associated with the Products, 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 the Products, including Plaintiff. Defendants' conduct, as described herein, knowing the dangers and risks of the Products, yet concealing and/or omitting this information, in furtherance of their conspiracy and concerted action was outrageous because of Defendants' evil motive or a reckless indifference to the safety of users of the Products.

69. Plaintiff sustained the following damages as a foreseeable, direct, and proximate result of Defendants' acts and/or omissions:

a. Economic losses including medical care and lost earnings; and

b. Noneconomic losses including physical and mental pain and suffering, emotional distress, inconvenience, loss of enjoyment and impairment of quality of life, past and future.

COUNT SEVEN – NEGLIGENT MISREPRESENTATION

70. Plaintiff incorporates by reference each of the preceding paragraphs as if fully set forth herein.

71. Defendants had a duty to accurately and truthfully represent to the medical and healthcare community, Plaintiff, and the public, that the Products 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.

72. Defendants failed to exercise ordinary care in the representations concerning the Products while they were involved in their manufacture, sale, testing, quality assurance, quality control, and distribution in interstate commerce, because Defendants negligently misrepresented the Products' high risk of unreasonable, dangerous, adverse side effects.

73. Defendants breached their duty in representing that the Products have no serious side effects.

74. 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 the Products 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, including, but not limited to, ovarian cancer.

75. Plaintiff sustained the following damages as a foreseeable, direct, and proximate result of Defendants' acts and/or omissions:

a. Economic losses including medical care and lost earnings; and

b. Noneconomic losses including physical and mental pain and suffering, emotional distress, inconvenience, loss of enjoyment and impairment of quality of life, past and future.

COUNT EIGHT – FRAUDULENT CONCEALMENT

76. Plaintiff incorporates by reference each of the preceding paragraphs as if fully set forth herein.

77. Defendants owed consumers, including Plaintiff, a duty to fully and accurately disclose all material facts regarding the Products, 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.

78. Defendants actively and intentionally concealed and/or suppressed material facts, in whole or in part, to induce consumers, including Plaintiff, to purchase and use the Products 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; and

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

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

80. 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.

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

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

83. Plaintiff sustained the following damages as a foreseeable, direct, and proximate

result of Defendants' acts and/or omissions:

a. Economic losses including medical care and lost earnings; and

b. Noneconomic losses including physical and mental pain and suffering, emotional distress, inconvenience, loss of enjoyment and impairment of quality of life, past and future.

COUNT NINE – FRAUD
(INTENTIONAL MISREPRESENTATION)

84. Plaintiff incorporates by reference each of the preceding paragraphs as if fully set forth herein.

85. Defendants, who engaged in the development, manufacture, marketing, sale and distribution of personal hygiene products, including the Products, owed a duty to provide accurate and complete information regarding said products.

86. Defendants fraudulently misrepresented the use of the Products as safe and effective, specifically:

a. Johnson & Johnson's website calls it a "misperception" that talc in baby powder can be "absorbed into the body";

b. Johnson & Johnson print advertisements directed at adult women asserted that, because its Baby Powder is used on babies, women can "trust" that Johnson & Johnson will take "just as much care" of their skin;

c. Misleading consumers in advertisements that the talc in Johnson & Johnson Baby Powder is safe because it comes from "nature" and is "pure";

d. On its website, Johnson & Johnson claims that "30 years of research by

independent scientists, review boards and global authorities [] have concluded that talc can be used safely in personal care products," failing to mention the dozens of studies demonstrating a relationship between feminine talc use and ovarian cancer, as well as the decision by IARC to label feminine talc powder use as "possibly carcinogenic"; and

e. On the Johnson & Johnson Baby Powder bottle, Defendants include a conspicuous warning to mothers to prevent babies from inhaling the powder and the inclusion of this lone warning implies to the consumer that Johnson & Johnson Baby Powder is safe in all other manners of use.

87. Defendants knew that these misrepresentations and/or omissions were material, and that they were false, incomplete, misleading, deceptive and deceitful when they were made.

88. Defendants made the misrepresentations and/or omissions for the purpose of deceiving and defrauding consumers, including Plaintiff, with the intention of having them act and rely on such misrepresentations and/or omissions.

89. Plaintiff relied, with reasonable justification, on the misrepresentations by Defendants, which induced her to purchase and use the Products on a regular basis for decades.

90. Defendants profited, significantly, from their unethical and illegal conduct that fraudulently induced Plaintiff, and millions of other consumers, to purchase a dangerous and defective product.

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

92. As a foreseeable, direct, and proximate result of the aforementioned fraudulent misrepresentations by Defendants, Plaintiff sustained the following damages:

a. Economic losses including medical care and lost earnings; and

b. Noneconomic losses including physical and mental pain and suffering, emotional distress, inconvenience, loss of enjoyment and impairment of quality of life, past and future.

COUNT TEN – VIOLATION OF ILLINOIS CONSUMER FRAUD AND DECEPTIVE BUSINESS PRACTICES ACT (815 ILCS 505/1, *et seq*.)

93. Plaintiff incorporates by reference each of the preceding paragraphs as if fully set forth herein.

94. Plaintiff purchased and used Defendants' Products primarily for personal use and thereby suffered ascertainable losses as a result of Defendants' actions in violation of the consumer protection laws.

95. Had Defendants not engaged in the deceptive conduct described herein, Plaintiff would not have purchased and/or paid for Defendants' product, and would not have incurred related injuries and damages.

96. Defendants engaged in wrongful conduct while at the same time obtaining, under false pretenses, monetary gain from Plaintiff for the Products that would not have been paid had Defendants not engaged in unfair and deceptive conduct.

97. Defendants engaged in unfair methods of competition and deceptive acts or practices that were proscribed by law, including the following:

a. Representing that goods or services have characteristics, ingredients, uses, benefits, or quantities that they do not have;

b. Advertising goods or services with the intent not to sell them as advertised; and

c. Engaging in fraudulent or deceptive conduct that creates a likelihood of

confusion or misunderstanding.

98. Defendants intended for Plaintiff to rely on their representations and advertisements regarding the Products in order to achieve monetary gain from Plaintiff through her purchase of the Products.

99. Plaintiff was injured by the cumulative and indivisible nature of Defendants' conduct. The cumulative effect of Defendants' conduct directed at Plaintiff and other consumers was to create demand for and sell the Products. Each aspect of Defendants' conduct combined to artificially create sales of the product.

100. 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 the Products.

101. Had Defendants not engaged in the deceptive conduct described above, Plaintiff would not have purchased and/or paid for the product, and would not have incurred related injuries and damages.

102. Defendants' intentional, deceptive, unconscionable, and fraudulent representations and material omissions to Plaintiff, physicians, and consumers, constituted unfair and deceptive acts and trade practices in violation of the Illinois Consumer Fraud Act.

103. Defendants' actions, as complained of herein, constitute unfair competition or unfair, unconscionable, deceptive or fraudulent acts, or trade practices in violation of the Illinois consumer protection statute.

104. Defendants have engaged in unfair competition or unfair or deceptive acts or trade practices, or have made false representations in violation of the Illinois Consumer Fraud Act.

105. 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.

106. Defendants violated the statutes that were enacted in these states to protect consumers against unfair, deceptive, fraudulent and unconscionable trade and business practices and false advertising, by knowingly and falsely representing that Defendants' the Products were 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. These representations were made in marketing and promotional materials.

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

108. Defendants had actual knowledge of the defective and dangerous condition of Defendants' product and failed to take any action to cure such defective and dangerous conditions.

109. Plaintiff relied upon Defendants' misrepresentations and omissions in determining which product to use.

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

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

112. As a direct and proximate result of Defendants' violations of the states' consumer protection laws, Plaintiff sustained the following damages:

a. Economic losses including medical care and lost earnings; and

b. Noneconomic losses including physical and mental pain and suffering, emotional distress, inconvenience, loss of enjoyment and impairment of quality of life, past and future.

TOLLING STATUE OF LIMITATIONS

113. Plaintiff incorporates by reference each of the preceding paragraphs as if fully set forth herein.

114. Plaintiff suffered an illness that had a latency period and did not arise until many years after exposure. Plaintiff was not aware at the time of her diagnosis that her ovarian cancer was caused by her use of the Defendants' Products. 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 her ovarian cancer was linked to her use of Defendants' Products.

115. 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 the true risks associated with the Products.

116. As a result of Defendants' actions, Plaintiff 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.

117. Furthermore, Defendants are estopped from relying on any statute of limitations because of their concealment of the truth, quality and nature of the Products. Defendants were under a duty to disclose the true character, quality and nature of the Products 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 Plaintiff, her medical providers and/or her health facilities.

118. Defendants had the ability to and did spend enormous amounts of money in furtherance of their purpose of marketing and promoting a profitable product, notwithstanding the known or reasonably known risks. Plaintiff and medical professionals could not have afforded and could not have possibly conducted studies to determine the nature, extent and identity of related health risks, and were forced to rely on Defendants' representations.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff demands judgment against Defendants on each of the above-referenced claims and causes of action, and as follows:

a. Awarding compensatory damages in excess of $75,000, including, but not limited to pain, suffering, emotional distress, loss of enjoyment of life, and other non-economic damages in an amount to be determined at trial of this action;

b. Awarding economic damages in the form of medical expenses, out of pocket expenses, lost earnings, and other economic damages in an amount to be determined at trial of this action;

c. Punitive and/or exemplary damages for the wanton, willful, fraudulent, reckless acts of the Defendants who demonstrated a complete disregard and reckless indifference for the safety and welfare of the general public and Plaintiff in an amount sufficient to punish Defendants and deter future similar conduct;

d. Prejudgment interest;

e. Postjudgment interest;

f. Awarding Plaintiff's reasonable attorneys' fees;

g. Awarding Plaintiff the costs of these proceedings; and

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

Dated: July 1, 2016

Respectfully submitted,

By: /s/ *Don Barrett*
John "Don" Barrett
David McMullan, Jr. (*to be admitted*)
Katherine Barrett Riley (*to be admitted*)
Sterling Starns (*to be admitted*)
Cary Littlejohn (*to be admitted*)
Brandi Hamilton (*to be admitted*)
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Exhibit 5

U.S. District Court
Middle District of Tennessee (Columbia)
CIVIL DOCKET FOR CASE #: 1:16-cv-00055

Kuhn v. Johnson & Johnson et al
Assigned to: Chief Judge Kevin H. Sharp
Cause: 28:1332 Diversity-Personal Injury

Date Filed: 07/13/2016
Jury Demand: Plaintiff
Nature of Suit: 365 Personal Inj. Prod. Liability
Jurisdiction: Diversity

Plaintiff

Patricia Kuhn

represented by **Charles F. Barrett**
Neal & Harwell
150 Fourth Avenue, N
Suite 2000
Nashville, TN 37219
(615) 244-1713
Email: cbarrett@nealharwell.com
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

V.

Defendant

Johnson & Johnson

Defendant

Johnson & Johnson Consumer Companies, Inc.

Date Filed	#	Docket Text
07/13/2016	1	COMPLAINT against Johnson & Johnson, Johnson & Johnson Consumer Companies, Inc. (Filing fee PAID $400, Receipt number 0650-2241825), filed by Patricia Kuhn. (Attachments: # 1 Attachment Civil Cover Sheet, # 2 Attachment Summons)(hb) (Entered: 07/13/2016)
07/13/2016	2	NOTICE of Corporate Disclosure Statement filing requirement. (hb) (Entered: 07/13/2016)
07/13/2016	3	NOTICE/INFORMATION regarding Consent of the Parties to the Magistrate Judge. (hb) (Entered: 07/13/2016)

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF TENNESSEE
COLUMBIA DIVISION

PATRICIA KUHN,

Plaintiff,

v.

JOHNSON & JOHNSON, and JOHNSON & JOHNSON CONSUMER COMPANIES, INC.,

Defendants.

Civil No. _____

Jury Trial Demanded

COMPLAINT

COMES NOW Plaintiff, Patricia Kuhn, by and through undersigned counsel, who brings this action against Defendants Johnson & Johnson ("J&J) and Johnson & Johnson Consumer Companies, Inc. ("J&J Consumer") as follows:

INTRODUCTION

1. This action arises out of Plaintiff Patricia Kuhn's diagnosis of ovarian cancer, which was 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) and Shower to Shower. Plaintiff brings this cause of action against Defendants for claims arising from the 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 the products known as J&J Baby Powder and Shower to Shower (hereinafter collectively referred to as "Products").

PARTIES

2. Plaintiff is an individual, *sui juris*, and resides in Lawrence County, Tennessee at 801 N Military Street, Loretto, Tennessee 38469.

3. Plaintiff was born in 1944, and used J&J Baby Powder and Shower to Shower, the "Products," for nearly her entire life. As a direct and proximate result of using the Products, Plaintiff was diagnosed with ovarian cancer in approximately 2003. Plaintiff resided in Gray County, Texas at the time of her diagnosis.

4. Defendant, Johnson & Johnson ("J&J"), is a New Jersey corporation with its principal place of business in the State of New Jersey.

5. At all pertinent times, Johnson & Johnson was engaged in the business of manufacturing, marketing, testing, promoting, selling, and/or distributing the Products. At all pertinent times, Johnson & Johnson regularly transacted, solicited, and conducted business in all States of the United States, including the State of Tennessee.

6. Defendant, Johnson & Johnson Consumer Companies, Inc. is a New Jersey corporation with its principal place of business in the State of New Jersey.

7. At all pertinent times, Johnson & Johnson Consumer Companies, Inc. was engaged in the business of manufacturing, marketing, testing, promoting, selling, and/or distributing the Products. At all pertinent times, Johnson & Johnson regularly transacted, solicited, and conducted business in all States of the United States, including the State of Tennessee.

8. At all pertinent times, all Defendants were engaged in the research, development, manufacture, design, testing, sale and marketing of the Products, and introduced such products

into interstate commerce with knowledge and intent that such products be sold in the State of Tennessee.

JURISDICTION AND VENUE

9. This Court has original jurisdiction pursuant to 28 U.S.C. § 1332(d) because complete diversity exists between Plaintiff and Defendants, and the matter in controversy, exclusive of interest and costs, exceeds the sum or value of $75,000.

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

11. Venue is proper in this Court pursuant to 28 U.S.C. §§ 1391(a) and (b) because a substantial part of the events or omissions giving rise to Plaintiff's claims occurred in this judicial district. Venue is also proper under 18 U.S.C. § 1965(a) because Defendants transact substantial business in this District.

FACTS COMMON TO ALL COUNTS

A. Background: Talc as a Carcinogen and Defendants' Knowledge

12. Talc is a magnesium trisilicate and is mined from the earth. Talc is an inorganic mineral.

13. Talc is the main substance in talcum powders. The Johnson & Johnson Defendants manufactured the Products. The Products are composed almost entirely of talc.

14. At all pertinent times, a feasible alternative to the Products has existed. For example, 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 as the Products with nearly the same effectiveness.

15. 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 instructed 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."

16. During the time in question, the Johnson & Johnson Defendants advertised and marketed the product "Shower to Shower" as safe for use by women as evidenced in its slogan "A sprinkle a day keeps odor away", and through advertisements such as "Your body perspires in more places than just under your arms. Use SHOWER to SHOWER to feel dry, fresh, and comfortable throughout the day." And "SHOWER to SHOWER can be used all over your body."

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

18. 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 his 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.

19. 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.

a. In 1983, a case-control study found a 150% increased risk of ovarian cancer for women who use talcum powder in the genital area. Hartge, P., *et al*. Talc and Ovarian Cancer. *JAMA*. 1983; 250(14):1844.

b. In 1988, a case control study of 188 women diagnosed with epithelial ovarian cancer and 539 control women found that 52% of the cancer patients habitually used talcum powder on the genital area before their cancer diagnosis. The study showed a 50% increase in risk of ovarian cancer in women that used talcum powder on their genital area and a positive dose-response relationship. Whittemore AS, *et al*. Personal and environmental characteristics related to epithelial ovarian cancer. II. Exposures to talcum powder, tobacco, alcohol, and coffee. *Am. J. Epidemiol*. 1988 Dec; 128(6):1228-40.

c. A 1989 study looked at 235 women diagnosed with epithelial ovarian cancer and 451 controls, and found a 29% increased risk in ovarian cancer with women who reported genital talcum powder use more than once each week. Booth, M., *et al*. Risk factors for ovarian cancer: a case-control study. *Br J Cancer*. 1989 Oct;

60(4):592-8.

d. In 1992, a case-control study found a statistically significant 80% increased risk of ovarian cancer in women with more than 10,000 lifetime perineal applications of talc, demonstrating a positive dose-response relationship. Harlow BL, *et al.* Perineal exposure to talc and ovarian cancer risk. *Obstet Gynecol.* 1992 Jul; 80(1):19-26.

e. Another 1992 case-control study reported a 70% increased risk from genital talc use and a 379% increased risk of ovarian cancer of women who used talc on sanitary napkins in their genital area. Rosenblatt, K.A. *et al.* Mineral fiber exposure and the development of ovarian cancer. *Gynecol Oncol*. 1992 Apr; 45(1):20-5.

f. In 1995, the largest study of its kind to date found a statistically significant 27% increased risk in ovarian cancer for women who regularly use talc in the abdominal or perineal area. Purdie, D., *et al.* Reproductive and other factors and risk of epithelial ovarian cancer: An Australian case-control study. Survey of Women's Health Study Group. *Int J Cancer*. 1995 Sep 15; 62(6):678-84.

g. In 1996, a case-control study found a statistically significant 97% increased risk of ovarian cancer in women who used what they described as a "moderate" or higher use of talc-based powders in their genital area. *See* Shushan, A., *et al.* Human menopausal gonadotropin and the risk of epithelial ovarian cancer. *Fertil. Steril.* 1996 Jan; 65(1):13-8.

h. In 1997, a case control study of 313 women with ovarian cancer and 422 without this disease found that the women with cancer were more likely to have applied

talcum powder to their external genitalia area. Women using these products had a statistically significant 50% to 90% higher risk of developing ovarian cancer. Cook, LS, *et al.* Perineal powder exposure and the risk of ovarian cancer. *Am. J Epidemiol.* 1997 Mar 1; 145(5):459-65.

i. In 1997, a case-control study involving over 1,000 women found a statistically significant increased risk of 42% for ovarian cancer for women who applied talc via sanitary napkins to their perineal area. Chang, S, *et al.* Perineal talc exposure and risk of ovarian carcinoma. *Cancer*. 1997 Jun 15; 79(12):2396-401.

j. In 1998, a case-control study found a 149% increased risk of ovarian cancer in women who used talc-based powders on their perineal area. Godard, B., *et al.* Risk factors for familial and sporadic ovarian cancer among French Canadians: a case-control study. *Am J Obstet Gynecol*. 1998 Aug; 179(2):403-10.

k. Dr. Daniel Cramer conducted another case-control study in 1999, observing 563 women newly diagnosed with epithelial ovarian cancer and 523 women in a control. The study found a statistically significant 60% increased risk of ovarian cancer in women that used talc-based body powders on their perineal area and an 80% increase in risk for women with over 10,000 lifetime applications. Cramer, DW, *et al.* Genital talc exposure and risk of ovarian cancer. *Int J Cancer*. 1999 May 5; 81(3):351-56.

l. In 2000, a case-control study of over 2,000 women found a statistically significant 50% increased risk of ovarian cancer from genital talc use in women. Ness, RB, *et al.* Factors related to inflammation of the ovarian epithelium and risk of ovarian cancer. *Epidemiology*. 2000 Mar; 11(2):111-7.

m. In 2004, a case-control study of nearly 1,400 women from 22 counties in Central California found a statistically significant 37% increased risk of epithelial ovarian cancer from women's genital talc use, and a 77% increased risk of serious invasive ovarian cancer from women's genital talc use. Importantly, this study also examined at women's use of cornstarch powders as an alternative to talc, and found no increased risk in ovarian cancer in women in the cornstarch group, further supporting the causal connection between genital talc use and ovarian cancer. Mills, PK, *et al*. Perineal talc exposure and epithelial ovarian cancer risk in the Central Valley of California. *Int J Cancer*. 2004 Nov 10; 112(3):458-64.

n. In 2008, a combined study of over 3,000 women from a New England-based case-control study found a general 36% statistically significant increased risk of epithelial ovarian cancer from genital talc use and a 60% increased risk of the serous invasive ovarian cancer subtype. The study also found a strong dose-response relationship between the cumulative talc exposure and incidence of ovarian cancer, adding further support to the causal relationship. Gates, MA, *et al.* Talc Use, Variants of the GSTM1, GSTT1, and NAT2 Genes, and Risk of Epithelial Ovarian Cancer. *Cancer Epidemiol Biomarkers Prev*. 2008 Sep; 17(9):2436-44.

o. A 2009 case-control study of over 1,200 women found the risk of ovarian cancer increased significantly with increasing frequency and duration of talc use, with an overall statistically significant 53% increased risk of ovarian cancer from genital talc use. That increased risk rose dramatically, to 108%, in women with

the longest duration and most frequent talc use. Wu, AH, *et al.* Markers of inflammation and risk of ovarian cancer in Los Angeles County. *Int. J Cancer*. 2009 Mar 15; 124(6):1409-15.

p. In 2011, another case-control study of over 2,000 women found a 27% increased risk of ovarian cancer from genital talc use. Rosenblatt, KA, *et al.* Genital powder exposure and the risk of epithelial ovarian cancer. *Cancer Causes Control*. 2011 May; 22(5):737-42.

q. In June of 2013, a pooled analysis of over 18,000 women in eight case-control studies found a 20% to 30% increased risk of women developing epithelial ovarian cancer from genital powder use. The study concluded by stating, "Because there are few modifiable risk factors for ovarian cancer, avoidance of genital powders may be a possible strategy to reduce ovarian cancer incidence." Terry, KL, *et al.* Genital powder use and risk of ovarian cancer: a pooled analysis of 8,525 cases and 9,859 controls. *Cancer Prev Res (Phila)*. 2013 Aug; 6(8):811-21.

20. Researchers have also examined the link between endometrial cancer, a form of uterine cancer, and the application of talcum powder to the perineal area.

21. In 2010, one such study analyzed data from a 1976 cohort study of over 66,000 women, and found a statistically significant 21% increased risk of endometrial (uterine) cancer in postmenopausal women who had ever applied talcum powder in the perineal area. This risk rose to 24% for postmenopausal women who applied talc in the perineal area "regularly," defined as at least once a week. Karageorgi S., *et al.* (2010) Perineal use of talcum powder and endometrial cancer risk. *Cancer Epidemiol Biomarkers Prev*. 2010 May; 19:1269–1275.

22. 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.

23. 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, Inc., and Johnson & Johnson Consumer Companies, Inc. were members of the CTFA. 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 cancer.

24. 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 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 ovarian cancer risk they pose.

25. In 1996, the condom industry stopped dusting condoms with talc due to the growing health concerns.

26. In February of 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 were 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 body 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."

27. In approximately 2006, the Canadian government under The Hazardous Products Act and associated Controlled Products Regulations classified talc as a "D2A," "very toxic," 51 "cancer causing" substance under its Workplace Hazardous Materials Information System (WHMIS). Asbestos is also classified as "D2A".

28. In 2006, Imerys Talc began placing a warning on the Material Safety Data Sheets (MSDS) it provided to the Johnson & Johnson Defendants regarding the talc it sold to them to be used in the Products. 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.

29. Defendants had a duty to know and warn about the hazards associated with the use of the Products.

30. Defendants failed to inform customers and end users of the Products of a known catastrophic health hazard associated with the use of the Products.

31. In addition, Defendants procured and disseminated false, misleading, and biased information regarding the safety of the Products to the public and used influence over governmental and regulatory bodies regarding talc.

B. Plaintiff's Use of the Products

32. Plaintiff was born in 1944, and is a resident of Lawrence County, Tennessee.

33. Plaintiff began using the Product in 1951 after beginning her menstrual cycle at the instruction of her mother.

34. Plaintiff used the Product three times daily every day from her first menstrual cycle at 7 years of age. Plaintiff used the Product for many decades.

35. There was never any indication, on the Products packaging or otherwise, that this normal use could and would cause her to develop uterine cancer.

36. Plaintiff was diagnosed with Stage III ovarian cancer in or around 2003, and underwent hysterectomy surgery.

37. Plaintiff is currently Disabled and does not work.

COUNT ONE - STRICT LIABILITY
(FAILURE TO WARN)

38. Plaintiff incorporates by reference each of the preceding paragraphs as if fully set forth herein.

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

40. At all pertinent times, Plaintiff used the Products to powder her perineal area, which is a reasonably foreseeable use.

41. At all pertinent times, 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 cancer, including, but not limited to, ovarian and uterine cancer, based upon scientific knowledge dating back for decades.

42. At all pertinent times, including the time of sale and consumption, the Products, when put to the aforementioned reasonably foreseeable use, were in an unreasonably dangerous and defective condition because they failed to contain adequate and proper warnings and/or instructions regarding the increased risk of cancer, including, but not limited to, ovarian and uterine cancer, associated with the use of the Products by women to powder their perineal area. Defendants themselves failed to properly and adequately warn and instruct Plaintiff as to the risks and benefits of the Products given her need for this information.

43. Had Plaintiff received a warning that the use of the Products would significantly increase her risk of developing cancer, she would not have used them. As a proximate result of Defendants' design, manufacture, marketing, sale, and distribution of the Products, Plaintiff was

injured catastrophically, and was caused severe pain, suffering, disability, impairment, loss of enjoyment of life, loss of care, comfort, and economic damages.

44. The development of ovarian cancer by Plaintiff was the direct and proximate result of the unreasonably dangerous and defective condition of the Products at the time of sale and consumption, including their lack of warnings; Plaintiff suffered injuries and damages including, but not limited to, physical and mental pain and suffering, and medical expenses.

45. Defendants' products were defective because they failed to contain warnings and/or instructions, and breached express warranties and/or failed to conform to express factual representations upon which Plaintiff justifiably relied in electing to use the Products. The defect or defects made the Products unreasonably dangerous to persons, such as Plaintiff, who could reasonably be expected to use and rely upon such products. As a result, the defect or defects were a producing cause of Plaintiff's injuries and damages.

46. Defendants' products failed to contain, and continue to this day not to contain, adequate warnings and/or instructions regarding the increased risk of cancer, including, but not limited to, ovarian and uterine cancer, with the use of their products by women. 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 products increase the risk of cancer in women when used in the perineal area.

47. Plaintiff sustained the following damages as a foreseeable, direct, and proximate result of Defendants' acts and/or omissions:

a. Economic losses including medical care and lost earnings; and

b. Noneconomic losses including physical and mental pain and suffering,

emotional distress, inconvenience, loss of enjoyment and impairment of quality of life, past and future.

COUNT TWO – STRICT LIABILITY
(DESIGN AND/OR MANUFACTURING DEFECT)

48. Plaintiff incorporates by reference each of the preceding paragraphs as if fully set forth herein.

49. Defendants engaged in the design, development, manufacture, marketing, sale, and distribution of the Products in a defective and unreasonably dangerous condition to consumers, including Plaintiff.

50. Defendants caused the Products to enter the stream of commerce and to be sold through various retailers, where Plaintiff purchased the Products.

51. The Products were expected to, and did, reach consumers, including Plaintiff, without change in the condition in which it was manufactured and sold by Defendants and/or otherwise released into the stream of commerce.

52. Plaintiff used the Products in a manner normally intended, recommended, promoted, and marketed by Defendants.

53. Products failed to perform safely when used by Plaintiff in a reasonably foreseeable manner, specifically increasing her of developing ovarian cancer.

54. The propensity of talc fibers to translocate into the female reproductive system, including, but not limited to, the ovaries and endometrial lining of the uterus, thereby substantially increasing the risk of cancer, including, but not limited to, ovarian and uterine cancer, renders the Products unreasonably dangerous when used in the manner it was intended and to an extent beyond that would be contemplated by the ordinary consumer.

55. Importantly, the Products are an inessential cosmetic product that do not treat or

cure any serious disease. Further, safer alternatives, including corn-starch based powders, have been readily available for decades.

56. Defendants have known, or should have known, that the Products are unreasonably dangerous when used by a woman in her perineal area but have continued to design, manufacture, sell, distribute, market, promote, and supply the Products so as to maximize sales and profits at the expense of public health and safety in conscious disregard of the foreseeable harm to the consuming public, including Plaintiff.

57. As a direct and proximate result of Defendants' conduct, including actions, omissions, and misrepresentations, Plaintiff sustained the following damages:

a. Economic losses including medical care and lost earnings; and

b. Noneconomic losses including physical and mental pain and suffering, emotional distress, inconvenience, loss of enjoyment and impairment of quality of life, past and future.

COUNT THREE-NEGLIGENCE

58. Plaintiff incorporates by reference each of the preceding paragraphs as if fully set forth herein.

59. The Johnson & Johnson Defendants were negligent in marketing, designing, manufacturing, producing, supplying, inspecting, testing, selling and/or distributing the Products in one or more of the following respects:

- In failing to warn Plaintiff of the hazards associated with the use of the Products;
- In failing to properly test their products to determine adequacy and effectiveness or safety measures, if any, prior to releasing the Products 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 the Products;
- In failing to inform ultimate users, such as Plaintiff as to the safe and proper methods of handling and using the Products;
- In failing to remove the Products from the market when Defendants knew or should have known the Products were defective;
- In failing to instruct the ultimate users, such as Plaintiff, as to the methods for reducing the type of exposure to the Products which caused increased risk of cancer, including, but not limited to, ovarian and uterine cancer;
- In failing to inform the public in general and Plaintiff in particular of the known dangers of using the Products for dusting the perineum;
- In failing to advise users how to prevent or reduce exposure that caused increased risk for cancer, including, but not limited to, ovarian and uterine cancer;
- In marketing and labeling the Products as safe for all uses despite knowledge to the contrary; and
- 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 injuries and damages sustained by Plaintiff.

60. At all pertinent times, the Johnson & Johnson Defendants knew or should have known that the Products were unreasonably dangerous and defective when put to their reasonably anticipated use.

61. Plaintiff sustained the following damages as a foreseeable, direct, and proximate result of Defendants' acts and/or omissions:

a. Economic losses including medical care and lost earnings; and

b. Noneconomic losses including physical and mental pain and suffering, emotional distress, inconvenience, and loss of enjoyment and impairment of quality of life, past and future.

COUNT FOUR- BREACH OF EXPRESS WARRANTY

62. Plaintiff incorporates by reference each of the preceding paragraphs as if fully set forth herein.

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

64. The Products did not conform to these express representations because they cause serious injury when used by women in the perineal area in the form of cancer, including, but not limited to, ovarian and uterine cancer.

65. Plaintiff sustained the following damages as a foreseeable, direct, and proximate result of Defendants' acts and/or omissions:

a. Economic losses including medical care and lost earnings; and

b. Noneconomic losses including physical and mental pain and suffering, emotional distress, inconvenience, loss of enjoyment and impairment of quality of life, past and future.

COUNT FIVE – BREACH OF IMPLIED WARRANTIES

66. Plaintiff incorporates by reference each of the preceding paragraphs as if fully set forth herein.

67. At the time the Defendants manufactured, marketed, labeled, promoted, distributed and/or sold the Products, the Johnson & Johnson Defendants knew of the uses for which the Products were intended, including use by women in the perineal area, and impliedly warranted the Products to be of merchantable quality and safe for such use.

68. Defendants breached their implied warranties of the Products sold to Plaintiff because they were not fit for their common, ordinary and intended uses, including use by women in the perineal area.

69. Plaintiff sustained the following damages as a foreseeable, direct, and proximate result of Defendants' acts and/or omissions:

a. Economic losses including medical care and lost earnings; and

b. Noneconomic losses including physical and mental pain and suffering, emotional distress, inconvenience, loss of enjoyment and impairment of quality of life, past and future.

COUNT SIX – PUNITIVE DAMAGES

70. Plaintiff incorporates by reference each of the preceding paragraphs as if fully set forth herein.

71. Defendants have acted willfully, wantonly, with an evil motive, and recklessly in one or more of the following ways:

a. Defendants knew of the unreasonably high risk of cancer, including, but not limited to, ovarian and uterine cancer, posed by the Products 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 the Products, 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 the Products, including Plaintiff. Defendants' conduct, as described herein, knowing the dangers and risks of the Products, yet concealing and/or omitting this information, in furtherance of their conspiracy and concerted action was outrageous because of Defendants' evil motive or a reckless indifference to the safety of users of the Products.

72. Plaintiff sustained the following damages as a foreseeable, direct, and proximate result of Defendants' acts and/or omissions:

a. Economic losses including medical care and lost earnings; and

b. Noneconomic losses including physical and mental pain and suffering, emotional distress, inconvenience, loss of enjoyment and impairment of quality of life, past and future.

COUNT SEVEN – NEGLIGENT MISREPRESENTATION

73. Plaintiff incorporates by reference each of the preceding paragraphs as if fully set forth herein.

74. Defendants had a duty to accurately and truthfully represent to the medical and healthcare community, Plaintiff, and the public, that the Products 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.

75. Defendants failed to exercise ordinary care in the representations concerning the Products while they were involved in their manufacture, sale, testing, quality assurance, quality control, and distribution in interstate commerce, because Defendants negligently misrepresented the Products' high risk of unreasonable, dangerous, adverse side effects.

76. Defendants breached their duty in representing that the Products have no serious side effects.

77. 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 the Products 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, including, but not limited to, ovarian and uterine cancer.

78. Plaintiff sustained the following damages as a foreseeable, direct, and proximate result of Defendants' acts and/or omissions:

a. Economic losses including medical care and lost earnings; and

b. Noneconomic losses including physical and mental pain and suffering, emotional distress, inconvenience, loss of enjoyment and impairment of quality of life, past and future.

COUNT EIGHT – FRAUDULENT CONCEALMENT

79. Plaintiff incorporates by reference each of the preceding paragraphs as if fully set forth herein.

80. Defendants owed consumers, including Plaintiff, a duty to fully and accurately disclose all material facts regarding the Products, 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.

81. Defendants actively and intentionally concealed and/or suppressed material facts, in whole or in part, to induce consumers, including Plaintiff, to purchase and use the Products 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 uterine cancer.

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

83. 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.

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

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

86. Plaintiff sustained the following damages as a foreseeable, direct, and proximate result of Defendants' acts and/or omissions:

a. Economic losses including medical care and lost earnings; and

b. Noneconomic losses including physical and mental pain and suffering, emotional distress, inconvenience, loss of enjoyment and impairment of quality of life, past and future.

COUNT NINE – FRAUD

87. Plaintiff incorporates by reference each of the preceding paragraphs as if fully set forth herein.

88. Defendants, who engaged in the development, manufacture, marketing, sale and distribution of personal hygiene products, including the Products, owed a duty to provide accurate and complete information regarding said products.

89. Defendants fraudulently misrepresented the use of the Products as safe and effective, specifically:

a. Johnson & Johnson's website calls it a "misconception" that talc in baby powder can be "absorbed into the body";

b. Johnson & Johnson print advertisements directed at adult women asserted that, because Johnson & Johnson Baby Powder is used on

babies, women can "trust" that Johnson & Johnson will take "just as much care" of their skin;

c. Misleading consumers in advertisements that the talc in Johnson & Johnson Baby Powder is safe because it comes from "nature" and is "pure";

d. Johnson & Johnson, on its website, claims that "30 years of research by independent scientists, review boards and global authorities [] have concluded that talc can be used safely in personal care products," failing to mention the dozens of studies demonstrating a relationship between feminine talc use and ovarian cancer, as well as the decision by IARC to label feminine talc powder use as "possibly carcinogenic"; and

e. On the Johnson & Johnson Baby Powder bottle, Defendants include a conspicuous warning to mothers to prevent babies from inhaling the powder and the inclusion of this lone warning implies to the consumer that Johnson & Johnson Baby Powder is safe in all other manners of use.

90. Defendants knew that these misrepresentations and/or omissions were material, and that they were false, incomplete, misleading, deceptive and deceitful when they were made.

91. Defendants made the misrepresentations and/or omissions for the purpose of deceiving and defrauding consumers, including Plaintiff, with the intention of having them act and rely on such misrepresentations and/or omissions.

92. Plaintiff relied, with reasonable justification, on the misrepresentations by Defendants, which induced her to purchase and use the Products on a regular basis for decades.

93. Defendants profited, significantly, from their unethical and illegal conduct that

fraudulently induced Plaintiff, and millions of other consumers, to purchase a dangerous and defective product.

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

95. As a foreseeable, direct, and proximate result of the aforementioned fraudulent misrepresentations by Defendants, Plaintiff sustained the following damages:

a. Economic losses including medical care and lost earnings; and

b. Noneconomic losses including physical and mental pain and suffering, emotional distress, inconvenience, loss of enjoyment and impairment of quality of life, past and future.

TOLLING STATUE OF LIMITATIONS

96. Plaintiff incorporates by reference each of the preceding paragraphs as if fully set forth herein.

97. Plaintiff suffered an illness that had a latency period and did not arise until many years after exposure. Plaintiff was not aware at the time of her diagnosis that her ovarian cancer was caused by her use of the Defendants' Products. 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 her uterine cancer was linked to her use of Defendants' Products.

98. 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 the true risks associated with the Products.

99. As a result of Defendants' actions, Plaintiff 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.

100. Furthermore, Defendants are estopped from relying on any statute of limitations because of their concealment of the truth, quality and nature of the Products. Defendants were under a duty to disclose the true character, quality and nature of the Products 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 Plaintiff, her medical providers and/or her health facilities.

101. Defendants had the ability to and did spend enormous amounts of money in furtherance of their purpose of marketing and promoting a profitable product, notwithstanding the known or reasonably known risks. Plaintiff and medical professionals could not have afforded and could not have possibly conducted studies to determine the nature, extent and identity of related health risks, and were forced to rely on Defendants' representations.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff demands judgment against Defendants on each of the above-referenced claims and causes of action, and as follows:

a. Awarding compensatory damages in excess of $75,000, including, but not limited to pain, suffering, emotional distress, loss of enjoyment of life, and other non-economic damages in an amount to be determined at trial of this action;

b. Awarding economic damages in the form of medical expenses, out of pocket expenses, lost earnings, and other economic damages in an amount to be determined

at trial of this action;

c. Punitive and/or exemplary damages for the wanton, willful, fraudulent, reckless acts of the Defendants who demonstrated a complete disregard and reckless indifference for the safety and welfare of the general public and Plaintiff in an amount sufficient to punish Defendants and deter future similar conduct;

d. Prejudgment interest;

e. Postjudgment interest;

f. Awarding Plaintiff's reasonable attorneys' fees;

g. Awarding Plaintiff the costs of these proceedings; and

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

Dated: July 13, 2016

Respectfully submitted,

NEAL & HARWELL, PLC

/s/ *Charles Barrett*

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Exhibit 6

US District Court Civil Docket

U.S. District - Illinois Southern
(East St. Louis)

3:14cv600

Mihalich v. Johnson & Johnson et al

Date Filed:	**05/23/2014**		
Assigned To:	**Judge David R. Herndon**	**Class Code:**	**OPEN**
Referred To:	**Magistrate Judge Stephen C. Williams**	**Closed:**	
Nature of suit:	**Other Contract (190)**	**Statute:**	**28:1332**
Cause:	**Diversity-Other Contract**	**Jury Demand:**	**Plaintiff**
Lead Docket:	**None**	**Demand Amount:**	**$0**
Other Docket:	**None**	**NOS Description:**	**Other Contract**
Jurisdiction:	**Diversity**		

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Date	#	Proceeding Text	Source
05/23/2014	1	Case Opened. Filing Fee Due. Documents may now be electronically filed. Case number 14-cv-600-MJR-SCW must be placed on all documents prior to filing them electronically. (Attachments: # 1 Consent to Magistrate Judge)(drb) (Entered: 05/23/2014)	
05/23/2014	2	COMPLAINT against All Defendants (Filing fee $ 400 receipt number 0754-2296638.), filed by Barbara Mihalich.(Green, Kevin) (Entered: 05/23/2014)	
05/23/2014	3	NOTICE of Appearance by Kevin P. Green on behalf of Barbara Mihalich (Green, Kevin) (Entered: 05/23/2014)	
05/23/2014	4	NOTICE of Appearance by Thomas P. Rosenfeld on behalf of Barbara Mihalich (Rosenfeld, Thomas) (Entered: 05/23/2014)	
05/23/2014	5	NOTICE of Appearance by Mark C. Goldenberg on behalf of Barbara Mihalich (Goldenberg, Mark) (Entered: 05/23/2014)	
05/23/2014	6	Summons Issued as to Johnson & Johnson, Johnson & Johnson Consumer	

		Companies, Inc. (drb) (Entered: 05/23/2014)
05/28/2014	7	ORDER OF RECUSAL: Judge Michael J. Reagan recused. Case reassigned to Chief Judge David R. Herndon for all further proceedings. Signed by Judge Michael J. Reagan on 05/28/14. (dkd) (Entered: 05/28/2014)
06/26/2014	8	WAIVER OF SERVICE Returned Executed by Barbara Mihalich. All Defendants. (Green, Kevin) (Entered: 06/26/2014)
07/14/2014	9	MOTION to Appear Pro Hac Vice by AttorneyVictoria L. Weatherford $100 fee paid,receipt number 0754-2343841 by on behalf of Johnson & Johnson, Johnson & Johnson Consumer Companies, Inc.. (Weatherford, Victoria) (Entered: 07/14/2014)
07/15/2014	10	ORDER granting 9 Motion to Appear Pro Hac Vice by Attorney Victoria L. Weatherford on behalf of Johnson & Johnson, Johnson & Johnson Consumer Companies, Inc.. (trb)THIS TEXT ENTRY IS AN ORDER OF THE COURT. NO FURTHER DOCUMENTATION WILL BE MAILED. (Entered: 07/15/2014)
07/15/2014	11	MOTION to Appear Pro Hac Vice by AttorneyMatthew David Powers $100 fee paid,receipt number 0754-2345659 by on behalf of Johnson & Johnson, Johnson & Johnson Consumer Companies, Inc.. (Powers, Matthew) (Entered: 07/15/2014)
07/16/2014	12	ORDER granting 11 Attorney Matthew David Powers Motion to Appear Pro Hac Vice. (cds) THIS TEXT ENTRY IS AN ORDER OF THE COURT. NO FURTHER DOCUMENTATION WILL BE MAILED. (Entered: 07/16/2014)
07/17/2014	13	MOTION to Appear Pro Hac Vice by AttorneyRichard B. Goetz $100 fee paid,receipt number 0754-2347458 by on behalf of Johnson & Johnson, Johnson & Johnson Consumer Companies, Inc.. (Goetz, Richard) (Entered: 07/17/2014)
07/18/2014	14	ORDER GRANTING 13 MOTION to Appear Pro Hac Vice by Attorney Richard B. Goetz. (bkl) THIS TEXT ENTRY IS AN ORDER OF THE COURT. NO FURTHER DOCUMENTATION WILL BE MAILED. (Entered: 07/18/2014)
07/22/2014	15	Joint MOTION for Extension of Time to File Answer or Otherwise Plead, Joint MOTION for Extension of Time to File Response/Reply by Johnson & Johnson, Johnson & Johnson Consumer Companies, Inc.. (Ball, Dan) (Entered: 07/22/2014)
07/22/2014	16	ORDER granting 15 Motion for Extension of Time to Answer ; granting 15 Motion for Extension of Time to File Response/Reply. Defendants are granted an extension until August 11, 2014 to file their responsive pleading (a motion todismiss). Plaintiff is granted an extension until September 25, 2014 to file an opposition brief. Defendants are granted until October 9, 2014 to file a reply if the "exceptional circumstances" standard is satisfied.Signed by Chief Judge David R. Herndon on 7/22/2014. (mtm)THIS TEXT ENTRY IS AN ORDER OF THE COURT. NO FURTHER DOCUMENTATION WILL BE MAILED. (Entered: 07/22/2014)
08/11/2014	17	MOTION to Dismiss for Failure to State a Claim And Alternative Motion to Strike by Johnson & Johnson, Johnson & Johnson Consumer Companies, Inc.. Responses due by 9/15/2014 (Ball, Dan) Reinstated on 9/22/2014 pursuant to Order at Doc. 25 (anm). (Entered: 08/11/2014)
08/11/2014	18	MEMORANDUM in Support re 17 MOTION to Dismiss for Failure to State a Claim And Alternative Motion to Strike filed by Johnson & Johnson, Johnson & Johnson Consumer Companies, Inc.. (Ball, Dan) (Entered: 08/11/2014)
08/11/2014	19	MOTION for Hearing re 17 MOTION to Dismiss for Failure to State a Claim And Alternative Motion to Strike by Johnson & Johnson, Johnson & Johnson Consumer Companies, Inc.. (Ball, Dan) (Entered: 08/11/2014)
08/11/2014	20	Corporate Disclosure Statement by Johnson & Johnson, Johnson & Johnson Consumer Companies, Inc.. (Ball, Dan) (Entered: 08/11/2014)
08/12/2014	21	CJRA TRACK D assigned: Jury Trial set for presumtpive trial month August 2016, in East St. Louis Courthouse before Chief Judge David R. Herndon. (Attachments: # 1 Consent to Magistrate Judge)(cekf) (Entered: 08/12/2014)
08/13/2014	22	NOTICE OF ERRORS AND/OR DEFICIENCIES re 17 Motion to Dismiss for Failure to State a Claim filed by Johnson & Johnson, Johnson & Johnson Consumer Companies, Inc. This document requests multiple event relief but filer only selected motion to dismiss. In the future when filing multiple part motions, filer should select all event types requested. Please see ECF User Manual for further instruction. No further action is required of filer at this time.(lmb)THIS TEXT ENTRY IS AN ORDER OF THE COURT. NO FURTHER DOCUMENTATION WILL BE MAILED. (Entered: 08/13/2014)
09/08/2014	23	NOTICE of Scheduling and Discovery Conference: Scheduling/Discovery Conference set for 9/30/2014 at 2:30 PM via Telephone Conference before Magistrate Judge Stephen C. Williams. (amv) (Entered: 09/08/2014)
09/22/2014	24	ORDER DISMISSING CASE with prejudice. The Court DIRECTS the Clerk of the Court to enter judgment. Signed by Chief Judge David R. Herndon on 9/19/14. (lmp) (Entered: 09/22/2014)

09/22/2014	25	ORDER vacating 24 Order Dismissing Case. Signed by Chief Judge David R. Herndon on 9/22/14. (lmp)THIS TEXT ENTRY IS AN ORDER OF THE COURT. NO FURTHER DOCUMENTATION WILL BE MAILED. (Entered: 09/22/2014)
09/25/2014	26	RESPONSE to 17 Motion to Dismiss for Failure to State a Claim, filed by Barbara Mihalich. (Green, Kevin) (Entered: 09/25/2014)
09/30/2014	27	Minute Entry for proceedings held before Magistrate Judge Stephen C. Williams: Discovery Hearing held on 9/30/2014. Tom Rosenfeld for Plaintiffs. Dan Ball and Matt Powers for Defendant. Court adopts proposed scheduling order and reviews discovery dispute procedures. Status Conference set for 2/5/2015 at 9:00 AM via Telephone Conference before Magistrate Judge Stephen C. Williams. Instructions for placing the conference call are as follows: Call toll free 888-684-8852; when prompted enter Access Code 6049846; and when prompted enter Security Code 9467. (Court Reporter n/a.) (amv) THIS TEXT ENTRY IS AN ORDER OF THE COURT. NO FURTHER DOCUMENTATION WILL BE MAILED. (Entered: 09/30/2014)
10/01/2014	28	SCHEDULING ORDER: Discovery due by 4/8/2016. Dispositive Motions due by 4/22/2016. Signed by Magistrate Judge Stephen C. Williams on 10/1/14. (Attachments: # 1 Joint Report of the Parties)(amv) (Entered: 10/01/2014)
10/09/2014	29	REPLY to Response to Motion re 17 MOTION to Dismiss for Failure to State a Claim And Alternative Motion to Strike filed by Johnson & Johnson, Johnson & Johnson Consumer Companies, Inc.. (Ball, Dan) (Entered: 10/09/2014)
10/31/2014	30	NOTICE by Johnson & Johnson, Johnson & Johnson Consumer Companies, Inc. Notice of Withdrawal of Appearance of Victoria L. Weatherford as Counsel for Defendants (Weatherford, Victoria) (Entered: 10/31/2014)
11/13/2014	31	MOTION for Leave to File a Supplemental Brief Regarding Supplemental Authority in Support of Defendants' Motion to Dismiss Complaint and Alternative Motion to Strike by Johnson & Johnson, Johnson & Johnson Consumer Companies, Inc.. (Attachments: # 1 Exhibit A, # 2 Exhibit B, # 3 Exhibit C)(Ball, Dan) (Entered: 11/13/2014)
11/14/2014	32	ORDER granting 31 Motion for Leave to File a Supplemental Brief. Signed by Judge David R. Herndon on 11/14/14. (lmp)THIS TEXT ENTRY IS AN ORDER OF THE COURT. NO FURTHER DOCUMENTATION WILL BE MAILED. (Entered: 11/14/2014)
11/17/2014	33	RESPONSE to Defendants' Supplemental Authority filed by Barbara Mihalich. (Attachments: # 1 Exhibit 1)(Rosenfeld, Thomas) (Entered: 11/17/2014)
02/05/2015	34	Minute Entry for proceedings held before Magistrate Judge Stephen C. Williams: Status Conference held on 2/5/2015. Kevin Green for Plaintiffs. Matthew Powers & Dan Ball for Johnson & Johnson. Status Conference set for 6/12/2015 at 8:45 AM via Telephone Conference before Magistrate Judge Stephen C. Williams. Instructions for placing the conference call are as follows: Call toll free 888-684-8852; when prompted enter Access Code 6049846; and when prompted enter Security Code 9467. (Court Reporter n/a.) (amv) THIS TEXT ENTRY IS AN ORDER OF THE COURT. NO FURTHER DOCUMENTATION WILL BE MAILED. (Entered: 02/13/2015)
03/27/2015	35	MOTION for Leave to File a Supplemental Brief Regarding Supplemental Authority in Support of Defendants' Motion to Dismiss Complaint and Alternative Motion to Strike by Johnson & Johnson, Johnson & Johnson Consumer Companies, Inc.. (Attachments: # 1 Exhibit A, # 2 B)(Ball, Dan) (Entered: 03/27/2015)
05/13/2015	36	ORDER granting 35 Motion for Leave to File a Supplemental Brief Regarding Supplemental Authority in Support of Defendants' Motion to Dismiss Complaint and Alternative Motion to Strike. Signed by Judge David R. Herndon on 5/13/15. (lmp)THIS TEXT ENTRY IS AN ORDER OF THE COURT. NO FURTHER DOCUMENTATION WILL BE MAILED. (Entered: 05/13/2015)
05/15/2015	37	NOTICE of Appearance by Timothy J. Hasken on behalf of All Defendants (Hasken, Timothy) (Entered: 05/15/2015)
05/18/2015	38	RESPONSE to Defendants' Supplemental Authority filed by Barbara Mihalich. (Attachments: # 1 Exhibit 1)(Rosenfeld, Thomas) (Entered: 05/18/2015)
05/29/2015	39	Joint MOTION to Amend/Correct 28 Scheduling Order by Johnson & Johnson, Johnson & Johnson Consumer Companies, Inc.. (Ball, Dan) (Entered: 05/29/2015)
06/01/2015	40	Consent MOTION for Protective Order by Johnson & Johnson, Johnson & Johnson Consumer Companies, Inc.. (Ball, Dan) Modified on 6/2/2015 (slh). (Entered: 06/01/2015)
06/02/2015	41	NOTICE OF ERRORS AND/OR DEFICIENCIES re 40 Motion for Protective Order filed by Johnson & Johnson, Johnson & Johnson Consumer Companies, Inc.. See attached document for specifics (slh) (Entered: 06/02/2015)
06/09/2015	42	NOTICE of Hearing on Motion 39 Joint MOTION to Amend/Correct 28 Scheduling Order : Motion Hearing set for 6/17/2015 at 03:00 PM in Telephone Conference before Magistrate Judge Stephen C. Williams. Instructions for placing the conference call are as follows: Call toll free 888-684-8852; when prompted, enter Access Code 6049846; and when prompted again enter Security Code 9467.(anj)THIS TEXT ENTRY IS AN ORDER OF THE COURT. NO FURTHER DOCUMENTATION WILL BE MAILED. (Entered: 06/09/2015)

06/09/2015	43	NOTICE OF CANCELLATION of Hearing: Motion hearing set for 6/17 is cancelled as it was inadvertently set in the wrong case. (anj)THIS TEXT ENTRY IS AN ORDER OF THE COURT. NO FURTHER DOCUMENTATION WILL BE MAILED. (Entered: 06/09/2015)
06/15/2015	46	ORDER granting 39 Motion to Amend/Correct Scheduling Order. Signed by Magistrate Judge Stephen C. Williams on 6/15/15. (amv)THIS TEXT ENTRY IS AN ORDER OF THE COURT. NO FURTHER DOCUMENTATION WILL BE MAILED. (Entered: 06/17/2015)
06/16/2015	44	ORDER granting 40 Motion for Protective Order. Signed by Magistrate Judge Stephen C. Williams on 6/16/2015. (anj) (Entered: 06/16/2015)
06/17/2015	45	Minute Entry for proceedings held before Magistrate Judge Stephen C. Williams: Status Conference held on 6/17/2015. Kevin Green for Plaintiffs. Dan Ball, Matthew Powers, and Tim Hasken for Johnson & Johnson. Joint Motion to Amend Trial Schedule (doc. 39) is GRANTED. Parties proposed dates are adopted. New presumptive trial month is set for November 2016. Court discusses - and parties agree on - modifications to proposed protective order. Status Conference set for 10/23/2015 at 9:30 AM via Telephone Conference before Magistrate Judge Stephen C. Williams. Instructions for placing the conference call are as follows: Call toll free 888-684-8852; when prompted enter Access Code 6049846; and when prompted enter Security Code 9467. (Court Reporter n/a.) (amv) THIS TEXT ENTRY IS AN ORDER OF THE COURT. NO FURTHER DOCUMENTATION WILL BE MAILED. (Entered: 06/17/2015)
06/17/2015		Reset Hearings: Jury Trial set for month of 11/2016 at 9:00 AM in East St. Louis Courthouse before Judge David R. Herndon. (amv) (Entered: 06/17/2015)
07/21/2015	47	MOTION for Leave to File a Supplemental Letter Brief in Support of Plaintiff's Response to Defendants' Motion to Dismiss Complaint and Alternative Motion to Strike by Barbara Mihalich. (Attachments: # 1 Exhibit 1, # 2 Exhibit 2)(Green, Kevin) (Entered: 07/21/2015)
07/22/2015	48	ORDER granting 47 Motion for Leave to File a Supplemental Letter Brief in Support of Plaintiff's Response to Defendants' Motion to Dismiss Complaint and Alternative Motion to Strike. Signed by Judge David R. Herndon on 7/22/15. (lmp)THIS TEXT ENTRY IS AN ORDER OF THE COURT. NO FURTHER DOCUMENTATION WILL BE MAILED. (Entered: 07/22/2015)
07/23/2015	49	RESPONSE to 47 Motion for Leave to File, Supplemental Letter Brief filed by Johnson & Johnson, Johnson & Johnson Consumer Companies, Inc.. (Ball, Dan) (Entered: 07/23/2015)
07/30/2015	50	NOTICE of Appearance by Nathaniel R. Carroll on behalf of Barbara Mihalich (Carroll, Nathaniel) (Entered: 07/30/2015)
08/03/2015	51	NOTICE by Johnson & Johnson, Johnson & Johnson Consumer Companies, Inc. of Name Change of Defendant Johnson & Johnson Consumer Companies, Inc. (Hasken, Timothy) (Entered: 08/03/2015)
08/12/2015	52	MOTION to Appear Pro Hac Vice by Attorney Timothy G. Blood $100 fee paid,receipt number 0754-2695056 by on behalf of Barbara Mihalich. (Blood, Timothy) (Entered: 08/12/2015)
08/13/2015	53	ORDER granting 52 Motion to Appear Pro Hac Vice of Attorney Timothy G. Blood on behalf of Barbara Mihalich. (slh) THIS TEXT ENTRY IS AN ORDER OF THE COURT. NO FURTHER DOCUMENTATION WILL BE MAILED. (Entered: 08/13/2015)
09/14/2015	54	NOTICE of Appearance by Ann E. Callis on behalf of Barbara Mihalich (Callis, Ann) (Entered: 09/14/2015)
09/29/2015	55	Joint MOTION to Amend/Correct 28 Scheduling Order by Barbara Mihalich. (Green, Kevin) (Entered: 09/29/2015)
10/02/2015	56	ORDER granting 55 Motion to Amend/Correct. The Court adopts the proposed scheduling order set forth in parties' motion. New discovery deadline is October 7, 2016. Dispositive motion deadline is October 24, 2016. New presumptive trial month is February 2017. Signed by Magistrate Judge Stephen C. Williams on 10/2/2015. (anj)THIS TEXT ENTRY IS AN ORDER OF THE COURT. NO FURTHER DOCUMENTATION WILL BE MAILED. (Entered: 10/02/2015)
10/02/2015		Discovery due by 10/7/2016. Dispositive Motions due by 10/24/2016. Presumptive Trial month is February 2017. (anj) (Entered: 10/02/2015)
10/26/2015	57	Minute Entry for proceedings held before Magistrate Judge Stephen C. Williams: Status Conference held on 10/23/2015. Tom Rosenfeld and Kevin Green for Plaintiffs. Dan Ball and Matt Powers for Defendant. Status Conference set for 2/24/2016 at 9:00 AM in Telephone Conference before Magistrate Judge Stephen C. Williams. Instructions for placing the conference call are as follows: Call toll free 888-684-8852; when prompted enter Access Code 6049846; and when prompted enter Security Code 9467. (Court Reporter n/a.) (amv)THIS TEXT ENTRY IS AN ORDER OF THE COURT. NO FURTHER DOCUMENTATION WILL BE MAILED. (Entered: 10/26/2015)
12/28/2015	58	ORDER granting 17 Motion to Dismiss for Failure to State a Claim with leave to amend on or before January 22, 2016. Signed by Judge David R. Herndon on 12/23/15. (lmp) (Entered: 12/28/2015)

01/13/2016	59	Joint MOTION to Vacate Deadlines Temporarily by Barbara Mihalich. (Green, Kevin) (Entered: 01/13/2016)	
01/20/2016	60	ORDER granting 59 Motion to Vacate. Discovery deadlines will be reset at the February 24, 2016 conference. Motion to dismiss or to otherwise answer is due on February 22, 2016. Signed by Magistrate Judge Stephen C. Williams on 1/20/2016. (anj)THIS TEXT ENTRY IS AN ORDER OF THE COURT. NO FURTHER DOCUMENTATION WILL BE MAILED. (Entered: 01/20/2016)	
01/22/2016	61	AMENDED COMPLAINT against All Defendants, filed by Barbara Mihalich.(Green, Kevin) (Entered: 01/22/2016)	
02/22/2016	62	MOTION to Dismiss First Amended Complaint by Johnson & Johnson, Johnson & Johnson Consumer Companies, Inc.. Responses due by 3/28/2016 (Attachments: # 1 Exhibit A)(Ball, Dan) (Entered: 02/22/2016)	
02/22/2016	63	MOTION for Hearing re 62 MOTION to Dismiss First Amended Complaint by Johnson & Johnson, Johnson & Johnson Consumer Companies, Inc.. (Ball, Dan) (Entered: 02/22/2016)	
02/24/2016	64	Minute Entry for proceedings held before Magistrate Judge Stephen C. Williams: Status Conference held on 2/24/2016. Tom Rosenfeld for Plaintiffs. Dan Ball, Matt Powers and Tim Hasken for Defendants. Parties will continue discovery but request that Court wait to enter revised scheduling order until the Motion to Dismiss the Amended Complaint has been ruled on. Status Conference set for 5/19/2016 at 10:00 AM via Telephone Conference before Magistrate Judge Stephen C. Williams. Instructions for placing the conference call are as follows: Call toll free 888-684-8852; when prompted enter Access Code 6049846; and when prompted enter Security Code 9467. (Court Reporter Liberty Recording.) (amv) THIS TEXT ENTRY IS AN ORDER OF THE COURT. NO FURTHER DOCUMENTATION WILL BE MAILED. (Entered: 02/25/2016)	
03/01/2016	65	MOTION to Appear Pro Hac Vice by Attorney Paula R. Brown $200 fee paid,receipt number 0754-2875164 by on behalf of Barbara Mihalich. (Brown, Paula) (Entered: 03/01/2016)	
03/02/2016	66	ORDER granting 65 Motion to Appear Pro Hac Vice of Attorney Paula R. Brown on behalf of Barbara Mihalich. (slh) THIS TEXT ENTRY IS AN ORDER OF THE COURT. NO FURTHER DOCUMENTATION WILL BE MAILED. (Entered: 03/02/2016)	
03/28/2016	67	RESPONSE to Motion re 62 MOTION to Dismiss First Amended Complaint filed by Barbara Mihalich. (Attachments: # 1 Exhibit 1)(Green, Kevin) (Entered: 03/28/2016)	
04/14/2016	68	MEMORANDUM in Support re 62 MOTION to Dismiss First Amended Complaint filed by All Defendants. (Ball, Dan) (Entered: 04/14/2016)	
05/19/2016	69	Minute Entry for proceedings held before Magistrate Judge Stephen C. Williams: Status Conference held on 5/19/2016. Timothy Blood and Kevin Green for Plaintiff. Dan Ball and Matt Powers for Defendants. The court discusses discovery dispute procedure. Status Conference set for 8/1/2016 at 9:00 AM via Telephone Conference before Magistrate Judge Stephen C. Williams. Instructions for placing the conference call are as follows: Call toll free 888-684-8852; when prompted enter Access Code 6049846; and when prompted enter Security Code 9467. (Court Reporter n/a.) (amv)THIS TEXT ENTRY IS AN ORDER OF THE COURT. NO FURTHER DOCUMENTATION WILL BE MAILED. (Entered: 05/19/2016)	Events since last full update

IN THE UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF ILLINOIS

BARBARA MIHALICH, individually and on behalf of all others similarly situated,	)	
Plaintiff,	)	Case No. 3:14-cv-00600-MJR-SCW
v.	)	JURY TRIAL DEMANDED
JOHNSON & JOHNSON and JOHNSON & JOHNSON CONSUMER COMPANIES, INC.,	)	
Defendants.	)	

FIRST AMENDED CLASS ACTION COMPLAINT

Plaintiff Barbara Mihalich brings this action on behalf of herself and all others similarly situated against Defendants Johnson & Johnson ("J&J") and Johnson & Johnson Consumer Companies, Inc. ("J&J Consumer") (together, "Defendants") and states:

NATURE OF ACTION

1. Defendants manufacture, distribute, and market Johnson's® Baby Powder ("Baby Powder"). Johnson's® Baby Powder is comprised entirely of talc with a small amount of fragrance. Talc is a hydrous magnesium silicate, an inorganic material that is mined from the earth. Talc-based powders, such as the Baby Powder, are not safe. Use of Baby Powder by women in the genital area results in a significant increase in the risk of ovarian cancer – an extremely deadly form of cancer. Defendants never disclosed the risks of using Baby Powder. Plaintiff and the members of the Class reasonably expected the Baby Powder to be safe, but, as a result of Defendants' acts and omissions, they did not receive the product they thought they were purchasing.

2. Defendants have known about the safety risks of using Baby Powder but have not informed consumers of the risks. Instead, Defendants market the Baby Powder for use in the

very manner that can result in the increased risk of ovarian cancer. Defendants market the Baby Powder as a safe means of eliminating friction on the skin and absorbing moisture, while keeping skin cool and comfortable. Defendants market the Baby Powder for use on infants "after every bath and diaper change" and for women to "[u]se anytime you want skin to feel soft, fresh and comfortable."

3. Consumers reasonably expect the Baby Powder to be safe to use and Defendants omit this information from its labels, its website, and otherwise. In fact, the only warnings Defendants provide to consumers about the dangers of the Baby Powder is to keep the powder away from eyes, avoid inhalation of the powder, and use the powder externally. Defendants do not provide any other warnings about the Baby Powder.

4. Johnson's® Baby Powder is not safe. As numerous studies have confirmed, Johnson's® Baby Powder leads to a significant increased risk of ovarian cancer. Women who used talc-based powders to powder their genital area have a 33% increased risk of ovarian cancer compared to those women who never used the powders.

5. Moreover, there are other alternatives to the Baby Powder that are equally effective, but do not carry the cancer risk. These alternatives are made from corn starch, have the same uses as Baby Powder and are functionally the same.

6. In light of the potential catastrophic health consequences and Defendants' knowledge of those consequences, Defendants have, at a minimum, a duty to inform consumers of the safety risks. Indeed, Plaintiff and other consumers could not have known about the safety risks unless they were informed by Defendants. However, Defendants omit the information from its labeling and do not tell consumers about the dangers associated with the talc-based Johnson's® Baby Powder. Instead, Defendants continue to expressly and impliedly represent

that the product is safe and intended for women to use the Baby Powder in the very manner most likely to result in an increased risk of ovarian cancer.

7. As recently as May 12, 2014, Defendants issued the following statement: "We have no higher responsibility than the health and safety of consumers who rely on our products. It is important for consumers to know that the safety of cosmetic talc is supported by decades of scientific evidence and independent peer-reviewed studies."

8. As a result of Defendants' misrepresentations and omissions regarding the safety of Johnson's® Baby Powder, Plaintiff and the proposed Class have purchased a product which is potentially lethal, and Defendants have been able to sell the product for more than they otherwise would have had they properly informed consumers about the safety risks.

9. Plaintiff brings this action on behalf of herself and other similarly situated Illinois consumers who have purchased Johnson's® Baby Powder in Illinois seeking injunctive relief under the Illinois Consumer Fraud and Deceptive Business Practices Act, for violations of the Missouri Merchandising Practices Act, 815 ILCS 505/1, *et seq.* Plaintiff seeks injunctive relief to stop Defendants' deceptive and fraudulent commercial practices in order to protect Illinois consumers. Plaintiff is not claiming physical harm or seeking the recovery of personal injury or other monetary damages.

JURISDICTION AND VENUE

10. This Court has original jurisdiction pursuant to 28 U.S.C. §1332(d)(2). The matter in controversy, exclusive of interest and costs, exceeds the sum or value of $5,000,000 and is a class action in which there are in excess of 100 class members and the members of the Class are citizens of a state different from Defendants.

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

12. Venue is proper in this Court pursuant to 28 U.S.C. §§1391(a) and (b) because a substantial part of the events or omissions giving rise to Plaintiff's claims occurred while she resided in this judicial district. Venue is also proper under 18 U.S.C. §1965(a) because Defendants transact substantial business in this District.

PARTIES

13. Plaintiff resides in Madison County, Illinois. Plaintiff has been purchasing Johnson's® Baby Powder for personal use for decades, based in part on Defendants' brand name as a provider of trusted, safe products. On at least two or three occasions over the last five years, Plaintiff has purchased Johnson's® Baby Powder for personal use, including in the genital area. Plaintiff made these purchases at Schnucks and Walgreens in Granite City, Illinois. At all times, plaintiff believed Johnson's Baby Powder was safe for her intended use, which was also Defendants' intended use of the product. Prior to making her purchases, Plaintiff was exposed to and read the label for the Baby Powder, including a warning on the label not to inhale the powder because it can cause breathing problems, and directions to shake the Baby Powder onto the hands away from the face. Plaintiff has also viewed print advertisements for the Baby Powder. The advertising and labeling suggested the Baby Powder was safe, was to be used to soften skin, and was even safe for babies, but omitted material information about the safety of

the Baby Powder, and did not warn Plaintiff of the safety risks associated with using the Baby Powder. Plaintiff had a reasonable expectation that external use of the Baby Powder was safe. Most recently, she paid approximately $3.50 for the product. Plaintiff purchased the product believing it was safe to use on any external area of her body because Defendants never informed her otherwise. However, Plaintiff did not receive what she paid for – a safe product. Defendants knew the Baby Powder was unsafe for Plaintiff to use in the genital area, but did not inform Plaintiff of the safety risks and omitted this safety information from its labelling. Had Plaintiff known the truth about the risk associated with using Johnson's® Baby Powder, she would not have purchased the product. Had Defendants informed her of the safety risks, Plaintiff would have purchased an alternative product containing cornstarch instead of talc. As a result of her purchase of an unsafe product that she reasonably believed to be safe, Plaintiff suffered injury in fact and lost money. Plaintiff is not claiming physical harm or seeking the recovery of personal injury damages.

14. Defendant Johnson & Johnson ("J&J") is a New Jersey corporation with its principle place of business at One Johnson & Johnson Plaza, New Brunswick, New Jersey 08933. J&J is in the business of manufacturing and selling consumer products. J&J marketed, distributed, and sold Johnson's® Baby Powder products to hundreds of thousands of consumers in Illinois.

15. Defendant Johnson & Johnson Consumer Companies, Inc. is incorporated under the laws of the state of New Jersey. Defendant's corporate headquarters is located at 199 Grandview Road Skillman, New Jersey 08558. Johnson & Johnson Consumer Companies, Inc. operates as a subsidiary to Johnson & Johnson. Defendant researches, develops, manufactures, distributes, markets, and sells consumer products targeted at babies and mothers, including

Johnson's® Baby Powder. Defendant marketed, distributed, and sold Johnson's® Baby Powder products to hundreds of thousands of consumers in Illinois.

FACTUAL ALLEGATIONS

Johnson's® Baby Powder Advertisements Emphasize Its Use for Women and Babies

16. In 1893, Defendants developed Johnson's® Baby Powder. For decades Defendants have manufactured, distributed, marketed and sold Johnson's® Baby Powder as a daily use powder intended to eliminate friction on the skin and to absorb unwanted excess moisture for both babies and women.

17. Defendants have consistently marketed Johnson's® Baby Powder for use on women to maintain freshness and cleanliness. Historically, the Baby Powder label and advertising encouraged women to dust themselves with the Baby Powder daily to mask odors.

18. Although the label has changed over time, the message is the same: that the product is safe for use on women as well as babies. The Baby Powder label currently states that "Johnson's® Baby Powder is designed to gently absorb excess moisture helping skin feel comfortable. Our incredibly soft, hypoallergenic, dermatologist and allergy-tested formula glides over skin to leave it feeling delicately soft and dry while providing soothing relief." Defendants instruct consumers on the product labeling to "Shake powder directly into your hand, away from the face, before smoothing onto the skin."

19. Representative product packaging and labeling for Johnson's® Baby Powder appears as follows:

20. Through other marketing, including on their website for Johnson's® Baby Powder, Defendants similarly encouraged women to use the product daily. Defendants state that Johnson's® Baby Powder "keeps skin feeling soft, fresh and comfortable. It's a classic. Johnson's® Baby Powder helps eliminate friction while keeping skin cool and comfortable. It's made of millions of tiny slippery plates that glide over each other to help reduce the irritation caused by friction." Under a heading "How to Use," "For skin that feels soft, fresh and

comfortable, apply Johnson's® Baby Powder close to the body, away from the face. Shake powder into your hand and smooth onto skin." Under a heading "When to Use," Defendants recommend that consumer "Use anytime you want skin to feel soft, fresh and comfortable. For baby, use after every bath and diaper change."

Defendants Represent Johnson's® Baby Powder as a Safe and Trusted Product

21. Through other marketing, including on their website for Johnson's® Baby Powder, Defendants similarly encouraged women to use the product daily. Defendants state that Johnson's® Baby Powder "keeps skin feeling soft, fresh and comfortable. It's a classic. Johnson's® Baby Powder helps eliminate friction while keeping skin cool and comfortable. It's made of millions of tiny slippery plates that glide over each other to help reduce the irritation caused by friction." Under a heading "How to Use," "For skin that feels soft, fresh and comfortable, apply Johnson's® Baby Powder close to the body, away from the face. Shake powder into your hand and smooth onto skin." Under a heading "When to Use", Defendants recommend consumers "Use anytime you want skin to feel soft, fresh and comfortable. For baby, use after every bath and diaper change." Defendants' representations convey the message that the Baby Powder is appropriate for use by all consumers, including women. Defendants' misrepresentations further deceive consumers into believing that the Baby Powder can be used daily and all over the body.

22. Instead of providing proper warnings to consumers regarding the safety risks of using the Baby Powder, Defendants seek to convey an image as a safe and trusted family brand. Defendants have spent decades developing the brand as one to be trusted to provide safe products. For example, Defendants have a website, www.safetyandcarecommitment.com, devoted to "Our Safety & Care Commitment." According to Defendants, "safety is our legacy"

and "[y]ou have our commitment that every beauty and baby care product from the Johnson & Johnson Family of Consumer Companies is safe and effective when used as directed." Defendants market a "Five-Level Safety Assurance Process," which they describe as follows: "for decades, ours has been one of the most thorough and rigorous product testing processes in our industry – to ensure safety and quality of every single product we make." Defendants' so-called "Promise to Parents and their Babies" includes that "[w]hen you bring our baby care products into your home, you can be assured of our commitment to the safety of your family and families around the world." Additionally, on their website for Johnson's® Baby Powder, Defendants also state the product is "Clinically proven to be safe, gentle and mild." Nowhere do Defendants warn of the increased risk of ovarian cancer linked to the use of Johnson's® Baby Powder. Relying on these statements and Defendants' marketing and branding efforts, consumers, including Plaintiff, reasonably believe Defendants are a company that can be trusted to provide safe products, and that their Baby Powder product is in fact safe.

23. On May 12, 2014, Defendants issued the following statement: "We have no higher responsibility than the health and safety of consumers who rely on our products. It is important for consumers to know that the safety of cosmetic talc is supported by decades of scientific evidence and independent peer-reviewed studies." *See* Fox 32 Chicago, *Popular Baby Powder Allegedly Caused Cancer In Pro-Figure Skater* (May 12, 2014), *available at*: http://www.myfoxchicago.com/story/25497847/popular-baby-powder-allegedly-caused-cancer-in-pro-figure-skater.

24. Contrary to Defendants' image as one who sells safe products and despite Defendants' knowledge of the increased risk of ovarian cancer, nowhere do Defendants warn of

the increased risk of ovarian cancer linked to the use of Johnson's® Baby Powder. Instead, Defendants omit this information from their advertising and labeling.

Defendants Knew of the Increased Risk of Ovarian Cancer From Use of Johnson's® Baby Powder

25. Johnson's® Baby Powder is made entirely of talc and fragrance. Talc is a mineral composed of hydrated magnesium silicate that is mined from the earth. It is an inorganic material. Talc is used in to manufacture goods, such as paper making, plastic, paint and coatings, rubber, food, electric cable, ceramics, and cosmetics. In its loose form and as used in the Baby Powder, talc is known as "talcum powder."

26. As detailed below, beginning in at least 1982, Defendants were aware of several studies that demonstrated that women who used talc-based baby powder in the genital area had a significant increased risk of ovarian cancer. Since 1982, there have been 21 studies by doctors and scientists throughout the world (including 19 case-control studies, 1 cohort study, and 1 combined case-control and cohort study) that reported an elevated risk for ovarian cancer with genital talc use. The majority of these studies show a statistically significant increased risk of ovarian cancer.

27. However, Defendants do not warn or inform consumers anywhere, including on the product labeling or in its marketing or advertising for the product, that use of Johnson's® Baby Powder may be harmful to health, including significantly increasing the risk of ovarian cancer.

A. The Overwhelming Scientific and Medical Evidence

28. Research conducted as early as 1961 showed that particles similar to talc can translocate from the exterior genital area to the ovaries of women. *See* Egi, G.E. and Newton,

M., *The transport of carbon particles in the human female reproductive tract*, 12 Fertil. Steril. 151-155 (1961).

29. Because of the potential for transmission, researchers remained concerned about the carcinogenic nature of talc and the effects of talc use. A 1968 study concluded that "[a]ll of the 22 talcum products analyzed have a . . . fiber content . . . averaging 19%. The fibrous material was predominantly talc but contained minor amounts of tremolite, anthophyllite, and chrysotile [asbestos-like fibers] as these are often present in fibrous talc mineral deposits . . . . Unknown significant amounts of such materials in products that may be used without precautions may create an unsuspected problem." Cralley LJ, et al., *Fibrous and mineral content of cosmetic talcum products*, 29 Am. Ind. Hyg. Assoc. J. 350-354 (1968). In a 1976 follow up study, researchers concluded that "[t]he presence in these products of asbestiform anthophyllite and tremolite, chrysotile, and quartz indicates the need for a regulatory standard for cosmetic talc. . . . We also recommend that evaluation be made to determine the possible health hazards associated with the use of these products." Rohl AN, et al, *Consumer talcums and powders: mineral and chemical characterization*, 2 J. Toxicol. Environ. Health 255-284 (1976).

30. The first study to suggest a link between ovarian cancer and talc powder use was conducted in 1971. In that study, researchers found talc particles "deeply embedded" in 10 of 13 ovarian tumors, 12 of 21 cervical tumors, one primary carcinoma of the endometrium, and 5 of 12 "normal" ovaries from women with breast cancer. Henderson, W.J., et al., *Talc and carcinoma of the ovary and cervix*, 78 (3) J. Obstet. Gynaecol. Br. Commonw. 266-272 (1971).

31. The scientific evidence linking talc use and ovarian cancer continued to build. In 1982, Daniel Cramer of the Departments of Obstetrics, Gynecology, and Pathology, Boston Hospital for Women, Division of the Brigham and Women's Hospital, the Department of

Epidemiology, Harvard School of Public Health and the Department of Pathology, Massachusetts General Hospital, Harvard Medical School, conducted a case-control study which found that talc applied directly to the genital area around the time of ovulation leads to talc particles becoming deeply imbedded in the substance of the ovary causing foreign body reaction and growth of epithelial ovarian tissue. The study found a statistically significant 92% increased risk of ovarian cancer from genital talc use. This study proved an epidemiologic association between the use of cosmetic talc in genital hygiene and ovarian cancer. This study was funded by a grant from National Institutes of Health (NIH). Cramer, D.W., et al., *Ovarian cancer and talc: a case control study*, 50 Cancer 372-376 (1982). Soon after this study was published, Dr. Cramer was contacted and visited by Dr. Bruce Semple from J&J whereby Dr. Cramer advised Dr. Semple to place a warning on his company's talcbased body powders regarding the increased risk of ovarian cancer.

32. Since 1982, there have been 21 additional studies by different doctors and scientists throughout the world including 19 case-control studies, 1 cohort study, and 1 combined case-control and cohort study, which have provided epidemiologic data addressing the talc and ovarian cancer association. Nearly all of these studies have reported an elevated risk for ovarian cancer associated with perineum use of talcum powder and the majority of the studies show statistically significant elevations.

33. In 1983, Patricia Hartge and Robert Hoover of the National Cancer Institute and Linda Lester and Larry McGowan of the George Washington University Medical Center, performed a case-control study and found a 150% increased risk of ovarian cancer for women who use talcum powder in the genital area. Hartge, P. et al., *Talc and ovarian cancer*, JAMA 1983, 1844.

34. Similarly, in 1988, a case control study of 188 women diagnosed with epithelial ovarian cancer and 539 control women found that 52% of the cancer patients habitually used talcum powder on the perineum before their cancer diagnosis. The study showed a 40% increase in risk of ovarian cancer in women that used talcum powder on their perineum and a positive dose-response relationship. *See* Whittemore, A.S., et al., *Personal and environmental characteristics related to epithelial ovarian cancer. II. Exposures to talcum powder, tobacco, alcohol, and coffee*, Am. J. Epidemiol. 1228-1240 (1988).

35. Another case control study conducted in 1989 found similar results. The study looked at 235 women diagnosed with epithelial ovarian cancer and 451 controls and found a 29% increased risk in ovarian cancer with women who reported genital talcum powder use more than once per week. *See* Booth, M. et al., *Risk factors for ovarian cancer: a case-control study*, Br. J. Cancer, 592-598 (1989).

36. A case control study conducted in 1989 by Bernard Harlow, et al., of Harvard Medical School at Brigham and Women's Hospital, found an increased risk of ovarian cancer generally from genital talc use after bathing and found a statistically significant 180% increased risk of ovarian cancer from women that used talc-containing powders in combination with deodorizing powders on their perineum. This study also found positive dose-response relationship. Harlow, B.L. & Weiss, N.S., *A case-control study of borderline ovarian tumors: the influence of perineal exposure to talc*, Am. J. Epidemiol., 390-394 (1989).

37. In 1992, a case-control study was conducted by Karin Rosenblatt, et al., from the Department of Epidemiology, The Johns Hopkins School of Hygiene and Public Health and Department of Gynecology and Obstetrics. This study that found a 70% increased risk in women from genital talc use and found a 379% increased risk of ovarian cancer of women who used talc

on sanitary napkins in their genital area. Rosenblatt, K.A. et al., *Mineral fiber exposure and the development of ovarian cancer*, 45 (1) Gynecol. Oncol. 20-25 (1992).

38. Additionally, a 1992 case-control study conducted by Yong Chen, et al., of 112 diagnosed epithelial ovarian cancer cases and 224 age-matched community controls, found an elevated risk of 290% for ovarian cancer for women who applied talc-containing dusting powder to the lower abdomen and perineum for longer than 3 months. Yong Chen et al., *Risk Factors for Epithelial Ovarian Cancer in Beijing, China*, Int. J. Epidemiol., 23-29 (1992).

39. 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. The study found "some evidence of carcinogenic activity in male rats" and "clear evidence of carcinogenic activity in female rats." Accordingly, talc was found to be a carcinogen, with or without the presence of asbestos-like fibers. National Toxicology Program, *Toxicology and carcinogenesis studies of talc (CAS No 14807-96-6) in F344/N rats and B6C3F 1 mice (Inhalation studies)*, Technical Report Series No 421 (Sept. 1993).

40. In 1995, a case control study was conducted in Australia by David Purdie, et al., involving over 1600 women. This was the largest study of its kind to date. This study found a statistically significant 27% increased risk in ovarian cancer for women who regularly use talc in the region of the abdomen or perineum. Purdie, D., et al., *Reproductive and other factors and risk of epithelial ovarian cancer: an Australian case-control study. Survey of Women's Health Study Group*, 62 (6) Int. J. Cancer 678-684 (1995).

41. In 1996, a case-control study similarly found a statistically significant 97% increased risk of ovarian cancer in women who used talc-based powders in their genital area.

See Shushan, A., et al, *Human menopausal gonadotropin and the risk of epithelial ovarian cancer*, 65 (1) Fertil. Steril. 13-18 (1995).

42. In 1996, the condom industry stopped dusting condoms with talc due to the health concerns of ovarian cancer. "Concern about talc as an ovarian carcinogen goes back 50 years in the medical literature. By the 1970s, evidence was mounting that talc particles might migrate into a woman's fallopian tubes where they could cause scarring and irritation in the ovaries. Scientists believed in some cases that the scarring led to infertility or cancer." McCullough, Marie, *Women's health concerns prompt condom makers to stop using talc*, Jersey Journal (City Edition) (April 17, 1996).

43. In 1997, a case control study of 313 women with ovarian cancer and 422 without this disease found that the women with cancer were more likely to have applied talcum powder to their external genitalia area. Women using these products had a statistically significant 50% to 90% higher risk of developing ovarian cancer. *See* Cook, L.S., et al., *Perineal powder exposure and the risk of ovarian cancer*, Am. J Epidemiol. 145, 459-465 (1997).

44. In 1997, a case-control study was conducted by Stella Chang and Harvey Risch from the Department of Epidemiology and Public Health, Yale University School of Medicine which included over 1,000 women. The study found a statistically significant increased risk of 42% for ovarian cancer for women who applied talc via sanitary napkins to their perineum. The study indicated that "Commercial talc substitutes often replace talc with cornstarch. Furthermore, women may choose to powder or dust with cornstarch instead of talc. When cornstarch was assessed in relation to risk of ovarian carcinoma, no associations were found." The study concluded, "The results of this study appear to support the contention that talc exposure increases risk of ovarian carcinoma. Dusting with talcum powder is not an unusual

practice for women, and, given the heterogeneity of the etiology and course of ovarian carcinoma, any possible harmful practices, particularly those with little benefit, should be deliberated." Chang, S. & Risch, H.A., *Perineal talc exposure and risk of ovarian carcinoma*, 79 (12) Cancer 2396-2401 (1997).

45. In a 1998 case-control study conducted in Canada by Beatrice Godard, et al., a 149% increased risk of ovarian cancer was found in women who used talc-based powders on their perineum. Godard, B., et al., *Risk factors for familial and sporadic ovarian cancer among French Canadians: a case-control study*, 179 (2) Am. J. Obstet. Gynecol. 403-410 (1998).

46. Daniel Cramer from the Obstetrics-Gynecology Epidemiology Center, Department of Obstetrics and Gynecology, Brigham and Women's Hospital conducted another case-control study in 1999 of 563 women newly diagnosed with epithelial ovarian cancer and 523 control women. The study found a statistically significant 60% increased risk of ovarian cancer in women that used talc-based body powders on their perineum. "We conclude that there is a significant association between the use of talc in genital hygiene and risk of epithelial ovarian cancer that, when viewed in perspective of published data on this association, warrants more formal public health warnings." The study was funded by a grant from the National Cancer Institute (NCI). Cramer, D.W., et al, *Genital talc exposure and risk of ovarian cancer*, 81 (3) Int. J. Cancer 351-356 (1999).

47. In 2000, Roberta Ness, et al., from University of Pennsylvania, produced a case-control study of over 2,000 women. This study found a statistically significant 50% increased risk of ovarian cancer from genital talc use in women. The study also found that talc causes inflammation and that inflammation contributes to cancer cell development. Ness, R.B., et al.,

Factors related to inflammation of the ovarian epithelium and risk of ovarian cancer, 11 (2) Epidemiology 111-117 (2000).

48. Also in 2000, a prospective cohort study considered to be the most informative study to date, found a 40% increase in invasive serous cancers from women who applied talcum powder to their perineum. Gertig, D.M., et al., *Prospective study of talc use and ovarian cancer*, 92 J. Natl. Cancer Inst. 249-252 (2000).

49. In 2004, Paul Mills, Deborah Riordan, Rosemary Cress and Heather Young of Cancer Registry of Central California – Public Health Institute, Fresno, California; Fresno Medical Education Program, University of California, San Francisco, Fresno, California; California Cancer Registry, Sacramento, California; and the Department of Epidemiology and Biostatistics, George Washington University School of Public Health and Health Services, performed a case-control study of nearly 1400 women from 22 counties in Central California. This study found a statistically significant 37% increased risk of epithelial ovarian cancer from women's genital talc use. The study also found a 77% increased risk of serous invasive ovarian cancer from women's genital talc use. The study looked at women's use of cornstarch powders and found no increased risk in ovarian cancer in women who used these types of powders on the perineum as "Cornstarch is also not thought to exert the same toxicologic reaction in human tissue as does talc." This study concluded by stating that "users should exercise prudence in reducing or eliminating use. In this instance, the precautionary principle should be invoked, especially given that this is a serious form of cancer, usually associated with a poor prognosis, with no current effective screening tool, steady incidence rates during the last quarter century and no prospect for successful therapy. Unlike other forms of environmental exposures, talcum

powder use is easily avoidable." Mills, P.K., et al., *Perineal talc exposure and epithelial ovarian cancer risk in the Central Valley of California*, 112 Int. J. Cancer 458-64 (2004).

50. In 2007, Amber Buz'Zard and Benjamin Lau performed a study whereby they induced carcinogenesis by applying talc to normal human epithelial and granulosa ovarian cancer cell lines. Buz'Zard A.R., et al., *Pycnogenol reduces talc-induced neoplastic transformation in human ovarian cell cultures*, 21 (6) Phytother. Res. 579-586 (2007).

51. In 2008, Margaret Gates, of Channing Laboratory, Department of Medicine, Brigham and Women's Hospital and Harvard Medical School; Departments of Epidemiology and Biostatistics, Harvard School of Public Health; Obstetrics and Gynecology Epidemiology Center, Brigham and Women's Hospital, and Norris Cotton Cancer Center, Dartmouth-Hitchcock Medical Center, performed a combined study of over 3,000 women from a New England-based case-control study and a prospective Nurses' Health Study with additional cases and years of follow up from these studies (the "Gates Study"). This study was funded by the National Cancer Institute (NCI), and found a general 36% statistically significant increased risk of epithelial ovarian cancer from genital talc use. A 60% increased risk of the serous invasive subtype was also found.

52. Dr. Gates found a strong and positive dose-response relationship whereby increased risk was seen with higher talc usage in women. Dr. Gates commented about this study saying these latest results "provide additional support for a main effect of genital talc exposure on epithelial ovarian cancer." She also stated that "the finding of highly significant trends between increasing frequency of use and risk 'strengthens the evidence of an association, because most previous studies have not observed a dose response.'" It was concluded that, "We believe that women should be advised not to use talcum powder in the genital area, based on our

results and previous evidence supporting an association between genital talc use and ovarian cancer risk. Physicians should ask the patient about talc use history and should advise the patient to discontinue using talc in the genital area if the patient has not already stopped." Dr. Gates further stated that "An alternative to talc is cornstarch powder, which has not been shown to increase ovarian cancer risk, or to forgo genital powder use altogether." Gates, M.A., et al., *Talc Use, Variants of the GSTM1, GSTT1, and NAT2 Genes, and Risk of Epithelial Ovarian Cancer*, 17 (9) Cancer Epidemiology, Biomarkers & Prev. 2436-2444 (2008).

53. In May 2008, the CPC, joined by its chairman and numerous other physicians and chairs of public health and medical associations, submitted a citizen's petition "seeking a cancer warning on cosmetic talc products."[1] ***The petition sought to require all cosmetic talc products to bear labels with warnings*** such as, "Frequent application of talcum powder in the female genital area substantially increases the risk of ovarian cancer" or "Frequent talc application in the female genital area ***is responsible*** for major risks of ovarian cancer." (emphasis added). The petition cited numerous studies and publications and sought a hearing to present scientific evidence.

54. In October of 2008, Michael Thun, Vice-President of Epidemiology and Surveillance Research at the American Cancer Society commented on the Gates Study. He stated the dose-response relationship between talc and ovarian cancer had finally been satisfied

[1] The petition was submitted on behalf of: Samuel S. Epstein, M.D., Chairman, CPC, and Professor emeritus Occupational and Environmental Medicine, University of Illinois at Chicago School of Public Health; Peter Orris, M.D., Professor and Chief of Service, University of Illinois at Chicago Medical Center; Quentin Young, M.D., Chairman, Health and Medicine Policy Research Group, Chicago; Rosalie Bertell, Ph.D., International Association for Humanitarian Medicine, Scientific Advisor to the International Institute of Concern for Public Health, Toronto, and the International Science Oversight Board of the Organic Consumers Association, Washington, D.C.; and Ronnie Cummins, National Director of the Organic Consumers Association.

by this study. Dr. Thun said, "There are very few modifiable risk factors for ovarian cancer. The main one is the use of oral contraceptives, which has been clearly established to lower the risk for ovarian cancer. Others include tubal ligation, hysterectomy, and parity. Then there are factors that 'probably' increase the risk for ovarian cancer, and this is where talc fits in, alongside asbestos, postmenopausal hormone therapy, and radiation." Chustecka, Zosia & Lie, Desiree, *Talc Use in Genital Area Linked to Increased Risk for Ovarian Cancer*, Medscape Medical News (2008).

55. In 2008, Melissa Merritt, from the Australian Cancer Study (Ovarian Cancer) and Australian Ovarian Cancer Study Group, conducted a case-control study of over 3,000 women where a statistically significant 17% increased risk of ovarian cancer for women who used talc on their perineum was confirmed. This study also confirmed a statistically significant 21% increased risk of ovarian cancer of a serous subtype in women who used talc on their perineum. Merritt, M.A., et al., *Talcum powder, chronic pelvic inflammation and NSAIDs in relation to risk of epithelial ovarian cancer*, 122 (1) Int. J. Cancer 170-176 (2008).

56. In 2009, a case-control study of over 1,200 women found the risk of ovarian cancer increased significantly with increasing frequency and duration of talc use. The study found an overall statistically significant 53% increased risk of ovarian cancer from genital talc use. The study also found a 108% statistically significant increased risk of ovarian cancer in women with the longest duration and most frequent talc use. The study concluded by stating, "that risk of ovarian cancer is significantly associated with talc use and with a history of endometriosis, as has been found in recent studies." Wu, A.H., et al., *Markers of inflammation and risk of ovarian cancer in Los Angeles County*, 124 (6) Int. J. Cancer 1409-1415 (2009).

57. In 2011, Daniel Cramer of Brigham and Women's Hospital, Harvard Medical School, made public another case-control study of over 4,000 women. This study, which was funded by the National Cancer Institute (NCI), found a 200% to 300% increased risk of ovarian cancer for women who applied talc-based body powders to their perineum. This study found a strong dose-response relationship and explained why the dose-response has been under reported in prior studies. In commenting on this study, Dr. Cramer stated "I have always advised gynecologists, if they examine a woman and see that she is using talc in the vaginal area, tell her to stop . . . There are alternatives. This study strongly reinforces that advice."

58. In 2011, another case-control study of over 2,000 women found a 27% increased risk of ovarian cancer from genital talc use in women. Rosenblatt, K.A., et al., *Genital powder exposure and the risk of epithelial ovarian cancer*, 22 Cancer Causes Control 737-742 (2011).

59. In June of 2013, Kathryn Terry, et al., published a pooled analysis of over 18,000 women in eight case-control studies and found a 20% to 30% increased risk of women developing epithelial ovarian cancer from genital powder use. The study concluded by stating, "Because there are few modifiable risk factors for ovarian cancer, avoidance of genital powders may be a possible strategy to reduce ovarian cancer incidence." Terry, K.L., et al., *Genital Powder Use and Risk of Ovarian Cancer: A Pooled Analysis of 8,525 Cases and 9,859 Controls*, 6 (8) Cancer Prevention Research, 81-82 (2013).

60. In addition to the numerous case control studies over the last several decades, several meta-analyses were conducted on the topic of talcum powder use and ovarian cancer. A meta-analysis is a statistical technique that allows similar measures of the same illness and exposure from different studies to be combined to determine whether an association exists. All

analyses found a significant positive association between the use of talcum powder in the genital area and ovarian cancer.

61. In 1992, the National Cancer Institute sponsored the first meta-analysis conducted by Bernard Harlow and Daniel Cramer from Harvard Medical School at Brigham and Women's Hospital. This was the most comprehensive study to date whereby 235 cases with ovarian cancer were compared to 239 controls. Through personal interviews with these women Harlow and Cramer found that nearly 17% of the control group reported frequent talc application to the perineum. The study found "the most frequent method of talc exposure was use as a dusting powder directly to the perineum (genitals) . . . . Brand or generic 'baby powder' was used most frequently and was the category associated with a statistically significant risk for ovarian cancer." The study concluded that "a lifetime pattern of talc use may increase the risk for epithelial ovarian cancer," and that "[g]iven the poor prognosis for ovarian cancer, any potentially harmful exposures should be avoided, particularly those with limited benefits. For this reason, we discourage the use of talc in genital hygiene, particularly as a daily habit." Harlow, B.L. et al., *Perineal exposure to talc and ovarian cancer risk,* Obstet. Gynecol. 1992, 19-26. The summary odds ratio (and 95% confidence interval) was 1.3 (1.1, 1.6) indicating a statistically significant 30% increased risk of ovarian cancer from genital talc use.

62. In 1995, a second meta-analysis conducted by A. J. Gross and P. H. Berg included data from nine separate papers, which yielded a summary odds ratio (based upon the crude measures) of 1.27 (1.09, 1.48) – again a statistically significant 27% increased risk of ovarian cancer from genital talc use. *See* Gross, A.J. & Berg, P.H., *A meta-analytical approach examining the potential relationship between talc exposure and ovarian cancer,* 5 (2) J. Expo. Anal. Environ. Epidemiol. 181-195 (1995).

63. David Cramer performed the third meta-analysis in 1999 supported by the National Cancer Institute. It included all of the studies in the Gross and Berg meta-analysis plus four new studies as well as the odds ratio based upon a new series of 563 cases with ovarian cancer and 523 controls from Massachusetts and New Hampshire. The summary odds estimate was 1.39 (1.24, 1.49), again a statistically significant 39% increased risk of ovarian cancer from genital talc use.

64. In 2003, a fourth meta-analysis funded by the industry re-analyzed data from 16 studies published prior to 2003 and found a 33% increase in ovarian cancer risk among talc users. *See* Huncharek, M., et al., *Perineal application of cosmetic talc and risk of invasive epithelial ovarian cancer: a meta-analysis of 11,933 subjects from sixteen observational studies*, 23 Anticancer Res. 1955-60 (2003).

B. All Leading Authorities Agree on the Link Between Ovarian Cancer and Perineal Use of Talc Powder

65. In 2005, the Fifth Edition of "Myths & Facts about ovarian cancer. What you need to know," was published by Steven Piver, M.D., and Gamal Eltabbakh, M.D. This publication was partly sponsored by Glaxo Smith Kline. Dr. Piver is the Chair Emeritus of the Department of Gynecologic Oncology, and Founder and Director of the Gilda Radner Familial Ovarian Cancer Registry at Roswell Park Cancer Institute, Buffalo, New York. Dr. Eltabbakh is a tenured Professor of Obstetrics and Gynecology and Medicine, and Director of the Division of Gynecologic Oncology at the University of Vermont in Burlington, Vermont. In the section entitled "What Causes Ovarian Cancer?" it lists "Use of Talc (Baby Powder) in the Genital Area" as a risk factor for causing ovarian cancer and further states, "research has established that each has at least a small role" in causing cancer in women.

66. In February of 2006, the International Association for the Research of Cancer (IARC), part of the World Health Organization, published a paper whereby they classified genital use of talc-based body powder as a "Group 2B" possible 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 in ovarian cancer in women from perineal use of talc. IARC found that between 16-52% of women in the world were using talc to dust their perineum and found an increased risk of ovarian cancer in women talc users ranging from 30-60%.

67. IARC concluded with this "Evaluation": "There is limited evidence in humans for the carcinogenicity of perineal use of talc-based body 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." IARC concluded with this "Overall evaluation:" "Perineal use of talcbased body powder is possibly carcinogenic to humans (Group 2B)."

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

69. As of today, both the National Cancer Institute and American Cancer Society list genital talc use as a "risk factor" for ovarian cancer. Additionally, the Gilda Radner Familial Ovarian Cancer Registry, Roswell Park Center Institute, and the Department of Gynecologic Oncology University of Vermont publish a pamphlet entitled "Myths & Facts about ovarian

cancer: What you need to know." This pamphlet is given to all ovarian cancer patients at nearly every medical facility in the United States. In this pamphlet under "known" risk factors for ovarian cancer is "Use of Talc (Baby Powder) in the Genital Area." Similarly, on the Sanford Medical Center website for "patient information" regarding ovarian cancer it lists "Talcum powder dusted on the perineum" as a risk factor for contracting ovarian cancer.

C. Defendants Have Been Acutely Aware of the Dangers of the Baby Powder

70. As early as 1982, Defendants were acutely aware of the scientific evidence linking ovarian cancer and perineal use of talcum powder. In an August 12, 1982, New York Times article entitled "Talcum Company Calls Study on Cancer Link Inconclusive," Defendants admitted being aware of the 1982 Cramer study that concluded women were three times more likely to contract ovarian cancer after daily use of talcum powder in the genital area.

71. On November 10, 1994, the Cancer Prevention Coalition ("CPC") mailed a letter to then J&J's CEO, Ralph Larson, informing Defendants that studies as far back as 1960's "show[] conclusively that the frequent use of talcum powder in the genital area poses a serious risk of ovarian cancer." The letter cited a 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 Defendants 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.

72. On September 17, 1997, Alfred Wehner a toxicology consultant retained by Defendants, wrote a letter to Michael Chudkowski, manager of Pre-Clinical Toxicology at Johnson & Johnson Consumer Products, Inc., stating that on three separate occasions the Talc Interested Party Task Force (TIPTF) of the Cosmetic, Toiletry, and Fragrance Association (CTFA) which included Defendants and Luzenac (Defendants' supplier of talc), had released false information to the public about the safety of talc. Specifically addressing a November 17, 1994, statement released by the CTFA, Dr. Wehner said the following:

> The response statement dated November 17, 1994, is just as bad. The second sentence in the third paragraph reads: "The workshop concluded that, although some of these studies suggested a weak association might exist, when taken together the results of the studies are insufficient to demonstrate any real association." This statement is also inaccurate, to phrase it euphemistically. At that time there had been about 9 studies (more by now) published in the open literature that did show a statistically significant association between hygienic talc use and ovarian cancer. Anybody who denies this risks that the talc industry will be perceived by the public like it perceives the cigarette industry: denying the obvious in the face of all evidence to the contrary.
>
> The workshop did not conclude that "the results of the studies are insufficient to demonstrate any real association." As pointed out above, a "real" statistically significant association has been undeniably established independently by several investigators, which without doubt will be readily attested to by a number of reputable scientists/clinicians, including Bernard Harlow, Debra Novotny, Candace Sue Kasper Debra Heller, and others.

73. In 2006, Imerys began placing an ovarian cancer warning on its Material Safety Data Sheets (MSDS) it provides to Defendants. 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. Although Defendants admittedly received these MSDSs, they never passed this warning information on to the consumers. On September 26, 2012, the corporate

representative of Imerys testified in open court that his company exclusively supplied Defendants with talc used for its Baby Powder product and that ovarian cancer is a potential hazard associated with a women's perineal use of talc-based body powders, like Defendants' Baby Powder.

74. On October 19, 2012, Defendants' former in-house toxicologist and current consulting toxicologist, Dr. John Hopkins, testified on Defendants' behalf that Defendants "[are] and were aware of . . . all publications related to talc use and ovarian cancer."

75. On October 4, 2013, a jury in South Dakota Federal Court, in the case styled *Deane Berg v. Johnson & Johnson Consumer Companies, Inc.*, unanimously found that Johnson & Johnson Consumer Companies, Inc. caused the plaintiff's ovarian cancer and was negligent in failing to warn about cancer hazards on its talc-based body powders, specifically, Baby Powder and Shower to Shower.

Defendants Failed to Warn Consumers About the Risks of Using Johnson's® Baby Powder

76. Despite the overwhelming scientific and medical evidence regarding talc use and ovarian cancer that has developed over the past several decades, Defendants' knowledge of the increased risk of ovarian cancer, and their understanding that consumers thought and expected they were buying a safe product, Defendants did not warn consumers of these safety risks. The only safety warnings on the Baby Powder label are to "Keep powder away from child's face to avoid inhalation, which can cause breathing problems," and to "[a]void contact with eyes." The label also states: "SAFETY TIP: Keep out of reach of children. Do not use if quality seal is broken." Defendants provide similar warnings on their website: "For external use only. Keep out of reach of children. Close tightly after use. Do not use on broken skin. Avoid contact with

eyes. Keep powder away from child's face to avoid inhalation, which can cause breathing problems."

77. Although Defendants' do warn consumers on the product label to keep the product away from the face and avoid inhalation because it can cause breathing problems, none of Defendants' warnings on the product label or in other marketing informed Plaintiff and Class members that use of the product in the genital area, as was encouraged by Defendants, is unsafe as it can lead to an increased risk of ovarian cancer. Instead of informing consumers of the increased risk of ovarian cancer, Defendants continue to deceive consumers by encouraging women to use the Baby Powder in the very manner that can lead to the increased cancer risk and continue to represent on the labeling and other marketing that Johnson's® Baby Powder is "clinically proven mildness," "clinically proven to be safe, gentle and mild," and "that the safety of cosmetic talc is supported by decades of scientific evidence and independent peer-reviewed studies." Accordingly, based on Defendants' omissions about the safety of the Baby Powder, representations regarding appropriate use, and written warnings that say nothing about an increased use of ovarian cancer, consumers reasonably expect that the Baby Powder is safe to be used as marketed.

78. Plaintiff and Class members have been and will continue to be deceived or misled by Defendants' omissions and deceptive representations that Johnson's® Baby Powder is safe for women to use in the genital area. Plaintiff purchased and used Johnson's® Baby Powder reasonably believing that the product was safe. Because Johnson's® Baby Powder is advertised for use by women and does not instruct that the product may lead to an increased risk for ovarian cancer when used in the genital area, Defendants' omissions and representations were a material factor in influencing Plaintiff's decision to purchase Johnson's® Baby Powder. Plaintiff would

not have purchased Johnson's® Baby Powder had she known that Johnson's® Baby Powder was not safe and use of which could lead to an increased risk for ovarian cancer. Had Plaintiff been properly warned by Defendants, she would have either not purchased any baby powder product, or at the very least, purchased an alternative cornstarch based powder that, as discussed above, does not have the same increased risk of ovarian cancer as talc based powders. Plaintiff and Class members had a reasonable expectation that Johnson's® Baby Powder was safe.

79. That Johnson's® Baby Powder was safe for use by women when, in fact, it is not, is a material fact. Defendants understood that consumers, including Plaintiff, would attach importance to the existence and truth of the representations made in deciding whether to purchase its products and would consider such objective statements of fact material.

80. Despite Defendants' knowledge, Defendants failed to inform Plaintiff and the Class of material facts and misrepresented material facts in connection with the sale of Johnson's® Baby Powder with intent that others rely upon the concealment, suppression, omission, or misrepresentation of such material facts.

81. Defendants' omissions and representations constitute deception, fraud, false pretense, false promise, misrepresentation, omission, concealment and suppression of material information and a failure to inform Plaintiff and the Class of a material fact in connection with the sale of merchandise.

82. Plaintiff and the Class members purchased Johnson's® Baby Powder primarily for personal, family or household purposes.

83. As a result of Defendants' above-described representations and omissions, Plaintiff and the Class members have suffered an ascertainable loss of money by purchasing a

dangerous product they reasonably believed, based on Defendants' omissions and representations, were safe for use by women when, in fact, they are not.. The Baby Powder was intended to be used by Plaintiff and the Class members as a safe product that can be used daily all over the body. However, if used for that purpose, the Baby Powder can cause serious and even fatal health problems. Therefore, Plaintiff and the Class members did not receive what they paid for – a safe product. Plaintiff has suffered injury in fact and a loss of money in that she has been deprived of the benefit of her bargain and has spent money on Johnson's® Baby Powder when it contained serious risks, which were known to Defendants but undisclosed, concealed, and misrepresented by Defendants.

84. Defendants, by contrast, reaped and continue to reap enormous profits from their deceptive marketing and sale of Johnson's® Baby Powder. Because of Defendants' effective branding of the Baby Powder as safe for use by women through their omissions and deceptive representations, Defendants were able to charge more than they otherwise would have had they properly informed consumers that women who use Baby Powder in the genital area have a significant increased risk of ovarian cancer.

CLASS DEFINITION AND ALLEGATIONS

85. Plaintiff brings Count I of this action for injunctive relief under the Illinois Consumer Fraud and Deceptive Business Practices Act ("ICFA"), pursuant to Federal Rule of Civil Procedure 23(a) and (b)(2), on her own behalf and on behalf of a Class (the "ICFA Class"), defined as:

> All Illinois consumers who, within the three years preceding the filing of this Complaint, purchased Johnson's® Baby Powder in the State of Illinois.

86. Plaintiff brings Count II of this action for unjust enrichment pursuant to Federal Rule of Civil Procedure 23(a), (b)(2), and (b)(3) on her own behalf and on behalf of a Class (the "UE Class"), defined as:

> All Illinois consumers who, within the five years preceding the filing of this Complaint, purchased Johnson's® Baby Powder in the State of Illinois.[2]

87. Plaintiff is a member of the Classes she seeks to represent.

88. Excluded from the Classes are Defendants, their parents, subsidiaries, affiliates, officers and directors, those who purchased Johnson's® Baby Powder for the purpose of resale, and those who assert claims for personal injury.

89. Members of the Classes are so numerous and geographically dispersed that joinder of all Class members is impracticable. Plaintiff is informed and believes, and on that basis alleges, that the proposed Classes contain many thousands of members. The precise number of Class members is unknown to Plaintiff.

90. Common questions of law and fact exist as to all members of the Classes and predominate over questions affecting individual UE Class members. The common legal and factual questions include, but are not limited to, the following:

i. Whether Defendants knew or should have known that use of talcum powder can lead to an increased risk of ovarian cancer;

ii. Whether Defendants' affirmative representations and/or failure to disclose that use of talcum powder can lead to an increased risk of ovarian cancer constitutes the use or employment of any deception, fraud, false pretense, false promise, misrepresentation or the concealment, suppression or

[2] Unless otherwise noted, the ICFA Class and UE Class are collectively referred to as the "Class" or "Classes."

omission of any material fact, with intent that others rely upon the concealment, suppression or omission of such material fact, in the conduct of any trade or commerce;

iii. Whether Defendants' conduct constitutes a violation of the Illinois Consumer Fraud and Deceptive Business Practices Act, 815 ILCS 505/1, *et seq.;*

iv. Whether injunctive, declaratory, and/or or other equitable relief is warranted pursuant to the Illinois Consumer Fraud and Deceptive Business Practices Act;

v. Whether Plaintiff and the ICFA Class members are entitled to an award of punitive damages as permitted by the Illinois Consumer Fraud and Deceptive Business Practices Act;

vi. Whether Defendants have been unjustly enriched by its retention of profits from the sale of Johnsons® Baby Powder which it deceptively advertised, marketed, and sold;

vii. Whether Plaintiff and the UE Class members have sustained monetary loss and the proper measure of that loss; and

viii. Whether Plaintiff and the UE Class members are entitled to an award of compensatory damages.

91. The claims asserted by Plaintiff in this action are typical of the claims of the members of the Classes, as the claims arise from the same course of conduct by Defendants, and the relief sought is common. Plaintiff and Class members suffered uniform damages caused by their purchase of Johnson's® Baby Powder manufactured, marketed, and sold by Defendants.

92. Plaintiff will fairly and adequately represent and protect the interests of the members of the Classes. Plaintiff has retained counsel competent and experienced in both consumer protection and class litigation.

93. Defendants have acted or refused to act on grounds generally applicable to the ICFA Class thereby making final declaratory and/or injunctive relief with respect to the members of the ICFA Class as a whole appropriate.

94. A class action is superior to other available methods for the fair and efficient adjudication of this controversy. The expense and burden of individual litigation would make it impracticable or impossible for proposed UE Class members to prosecute their claims individually. It would thus be virtually impossible for the UE Class, on an individual basis, to obtain effective redress for the wrongs done to them. Furthermore, even if UE Class members could afford such individualized litigation, the court system could not. Individualized litigation would create the danger of inconsistent or contradictory judgments arising from the same set of facts. Individualized litigation would also increase the delay and expense to all parties and the court system from the issues raised by this action. By contrast, the class action device provides the benefits of adjudication of these issues in a single proceeding, economies of scale, and comprehensive supervision by a single court, and presents no unusual management difficulties under the circumstances here.

COUNT I
Violation of the Illinois Consumer Fraud and Deceptive Business Practice Act

95. Plaintiff hereby incorporates and adopts by reference each and every allegation set forth above.

96. Plaintiff seeks injunctive relief on behalf of the ICFA Class pursuant to Federal Rule of Civil Procedure 23(b)(2).

97. Johnsons® Baby Powder is "merchandise" pursuant to 815 ILCS § 505/1(b).

98. The advertising, offering for sale, sale, and/or distribution of Johnsons® Baby Powder constitutes "trade" or "commerce" pursuant to 815 ILCS § 505/1(f).

99. Plaintiff is a consumer pursuant to 815 ILCS § 505/1(e) because she purchased Johnsons® Baby Powder for her personal use or that of a member of her household.

100. Section 2 of the Illinois Consumer Fraud and Deceptive Business Practices Act, 815 ILCS 505/2, prohibits unfair methods of competition and unfair or deceptive acts or practices, including, but not limited to, "the use or employment of any deception, fraud, false pretense, false promise, misrepresentation or the concealment, suppression or omission of any material fact, with intent that others rely upon the concealment, suppression or omission of such material fact . . . in the conduct of any trade or commerce . . . whether any person has in fact been mislead, deceived or damaged thereby."

101. As set forth above, Defendants engaged in, *inter alia*, the following practices in transactions with Plaintiff and the ICFA Class in Illinois which were intended to result in, and did result in, the sale of the Johnson's® Baby Powder products:

i. Representing that the products have approval, characteristics, uses and benefits which they do not have.

ii. Representing that the products are of a particular standard, quality or grade when, in fact, they are of another.

iii. Advertising goods with intent not to sell them as advertised.

iv. Representing that the products have been supplied in accordance with a previous representation when they have not.

102. Defendants concealed, suppressed, and/or omitted material facts on the Johnson's® Baby Powder product labels and packages as described above when they knew, or should have known, that use of Johnson's® Baby Powder by women was not safe and could cause a significant increased risk of ovarian cancer.

103. Defendants further misrepresented material facts on the Johnson's® Baby Powder product labels and packages as described above by affirmatively stating that Johnson's® Baby Powder is clinically proven to be safe, gentle and mild.

104. Defendants' omissions and representations constitute deception, fraud, false pretense, false promise, misrepresentation or the concealment, suppression or omission of material facts in connection with the sale of merchandise in Illinois.

105. The acts and practices engaged in by Defendants, as set forth herein, constitute unfair, deceptive and/or fraudulent business practices in violation of 815 ILCS § 505/1 *et seq*.

106. The aforesaid unfair and deceptive acts and practices occurred in the course of conduct involving trade or commerce.

107. Defendants intended that Plaintiff and the ICFA Class rely on the aforesaid deceptive advertising, acts and practices.

108. As a direct and proximate result of the aforesaid violations of the Illinois Consumer Fraud and Deceptive Business Practices Act, Plaintiff and the ICFA Class have suffered an ascertainable loss of money and/or property.

109. Defendants continue to market, advertise, and sell Johnsons® Baby Powder without disclosure of its serious health risks, and, in fact, continue to misrepresent that the Baby Powder is safe, gentle and mild.

110. 815 ILCS § 505/10 permits the Court to enter injunctive relief to prevent Defendants' continued violation of the law by continuing to market, advertise, and sell Johnson's® Baby Powder with misrepresentations and omissions of material facts.

111. Defendants' conduct as aforesaid was and continues to be wanton, willful, outrageous, and in reckless indifference to the rights of Plaintiff and others similarly situated and, therefore, warrants the imposition of punitive damages.

112. Plaintiff has been forced to hire attorneys to enforce her rights under the Illinois Consumer Fraud and Deceptive Business Practices Act.

COUNT II
Unjust Enrichment

113. Plaintiff hereby incorporates and adopts by reference each and every allegation set forth above.

114. Plaintiff seeks relief on behalf of the UE Class pursuant to Federal Rule of Civil Procedure 23(b)(3).

115. Plaintiff and the UE Class members conferred a monetary benefit on Defendants when they paid for Johnsons® Baby Powder.

116. As set forth above, Defendants knowingly misrepresented and concealed material facts in connection with their marketing, advertising, and sales of Johnsons® Baby Powder.

117. Defendants have retained Plaintiff's and the UE Class members' purchase price despite their failure to adequately disclose the known safety risks of the Baby Powder.

118. As a result, Defendants are unjustly enriched at the expense of Plaintiff and the UE Class.

119. Under principles of equity and good conscience, Defendants should not be permitted to retain the money belonging to Plaintiff and the UE Class that Defendants gained

through deceptive and fraudulent material misrepresentations and omissions in the marketing, advertising, and selling of Johnsons® Baby Powder.

120. As a direct and proximate result of Defendants' conduct, Plaintiff and the UE Class members overpaid for the Johnsons® Baby Powder because they paid a price that was based on Defendants' material misrepresentations and concealments regarding the safety of the Baby Powder.

121. Accordingly, Plaintiff and the UE Class seek full disgorgement and restitution of the amounts Defendants have retained as a result of the unlawful and/or wrongful conduct alleged herein, an amount which will be proved at trial.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff, individually and on behalf of the Classes, seeks the following relief:

A. certification of the ICFA Class pursuant to Federal Rule of Civil Procedure 23(b)(2);

B. certification of the UE Class pursuant to Federal Rule of Civil Procedure 23(b)(3);

C. awarding Plaintiff and the ICFA Class injunctive relief as permitted by law or equity, including enjoining Defendants from continuing the unlawful practices as set forth herein, ordering Defendants to engage in a corrective advertising campaign, and directing Defendants to identify, with court supervision, victims of their conduct;

D. awarding punitive damages for the ICFA Class under the Illinois Consumer Fraud and Deceptive Business Practices Act in an amount to punish Defendants'

egregious conduct as set forth above and to deter Defendants and others from engaging in similar conduct;

E. awarding Plaintiff and the proposed UE Class members damages;

F. awarding attorneys' fees and costs; and

G. providing such further relief as may be just and proper.

DEMAND FOR JURY TRIAL

Plaintiff hereby demands a trial by jury as to all issues stated herein, and all issues so triable.

Respectfully submitted,

GOLDENBERG HELLER ANTOGNOLI & ROWLAND, P.C

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Exhibit 7

US District Court Civil Docket

U.S. District - California Eastern
(Sacramento)

2:14cv1051

Estrada v. Johnson & Johnson et al

Date Filed:	**04/28/2014**		
Assigned To:	**District Judge Troy L. Nunley**	**Class Code:**	**OPEN**
Referred To:	**Magistrate Judge Kendall J. Newman**	**Closed:**	
Nature of suit:	**Fraud (370)**	**Statute:**	**28:1332**
Cause:	**Diversity-(Citizenship)**	**Jury Demand:**	**Plaintiff**
Lead Docket:	**None**	**Demand Amount:**	**$5,000,000**
Other Docket:	**None**	**NOS Description:**	**Fraud**
Jurisdiction:	**Diversity**		

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Date	#	Proceeding Text	Source
04/28/2014	1	COMPLAINT Class Action Complaint against Johnson & Johnson, Johnson & Johnson Consumer Companies, Inc. by Mona Estrada. Attorney Blood, Timothy G. added. (Attachments: # 1 Exhibit A to Class Action Complaint, # 2 Exhibit B to Class Action Complaint, # 3 Civil Cover Sheet)(Blood, Timothy) (Entered: 04/28/2014)	
04/29/2014		RECEIPT number 0972-5301043 in the amount of $400.00 paid on 2014-04-28 by Blood, Timothy G. on behalf of Mona Estrada. (Meuleman, A) (Entered: 04/29/2014)	
04/29/2014	2	CIVIL NEW CASE DOCUMENTS ISSUED; (Attachments: # 1 Consent Form, # 2 VDRP) (Meuleman, A) (Entered: 04/29/2014)	

04/29/2014	3	SUMMONS ISSUED as to *Johnson & Johnson, Johnson & Johnson Consumer Companies, Inc. with answer to complaint due within 21 days. Attorney *Timothy G. Blood* *Blood Hurst & O'Reardon, LLP* *701 B Street, Suite 1700* *San Diego, CA 92101*. (Meuleman, A) (Entered: 04/29/2014)
05/09/2014	4	SUMMONS RETURNED EXECUTED: Johnson & Johnson served on 5/6/2014. (Blood, Timothy) Modified on 5/12/2014 (Manzer, C). (Entered: 05/09/2014)
05/14/2014	5	SUMMONS RETURNED EXECUTED: Johnson & Johnson Consumer Companies, Inc. served on 5/2/2014. (Blood, Timothy) Modified on 5/15/2014 (Manzer, C). (Entered: 05/14/2014)
05/20/2014	6	APPLICATION for W. Daniel "Dee" Miles, III for Admission to Practice Pro Hac Vice, ECF Registration and Consent to Electronic Service, and Proposed Order by Mona Estrada. (Blood, Timothy) (Entered: 05/20/2014)
05/20/2014		PAYMENT for Pro Hac Vice Application in the amount of $ 200, receipt number 0972-5336122. (Blood, Timothy) (Entered: 05/20/2014)
05/20/2014	7	CLERK'S NOTICE re 6 Application: Please DISREGARD filing - incorrect event used. Attorney will re-file using the correct event Application for Pro Hac Vice and Proposed Order event. Payment has been received for W. Daniel Miles, III to appear PHV (receipt# 0972-5336122). (Marrujo, C) (Entered: 05/20/2014)
05/20/2014	8	PRO HAC VICE APPLICATION and PROPOSED ORDER submitted by Mona Estrada for attorney W. Daniel "Dee" Miles, III to appear Pro Hac Vice. (Blood, Timothy) (Entered: 05/20/2014)
05/20/2014	9	PRO HAC VICE APPLICATION and PROPOSED ORDER submitted by Mona Estrada for attorney Charles Lance Gould to appear Pro Hac Vice. (Filing fee $ 200, receipt number 0972-5336202) (Blood, Timothy) (Entered: 05/20/2014)
05/20/2014	10	PRO HAC VICE APPLICATION and PROPOSED ORDER submitted by Mona Estrada for attorney Alison Douillard Hawthorne to appear Pro Hac Vice. (Filing fee $ 200, receipt number 0972-5336218) (Blood, Timothy) (Entered: 05/20/2014)
05/20/2014	11	JOINT STIPULATION Extending Defendants' Time to Respond to 1 Complaint. Attorney Powers, Matthew David added. (Attachments: # 1 Proof of Service)(Powers, Matthew) Modified on 5/21/2014 (Meuleman, A). (Entered: 05/20/2014)
05/20/2014	12	CERTIFICATION OF INTERESTED PARTIES by Johnson & Johnson, Johnson & Johnson Consumer Companies, Inc. re 11 Joint Stipulation. (Powers, Matthew) Modified on 5/21/2014 (Meuleman, A). (Entered: 05/20/2014)
05/22/2014	13	PRO HAC VICE ORDER signed by District Judge Troy L. Nunley on 5/21/14. Added attorney Charles Lance Gould, PHV for Mona Estrada. (Becknal, R) (Entered: 05/22/2014)
05/22/2014	14	PRO HAC VICE ORDER signed by District Judge Troy L. Nunley on 5/21/14. Added attorney Alison Douillard Hawthorne, PHV for Mona Estrada. (Becknal, R) (Entered: 05/22/2014)
05/22/2014	15	PRO HAC VICE ORDER signed by District Judge Troy L. Nunley on 5/21/14. Added attorney W. Daniel Miles, III, PHV for Mona Estrada. (Becknal, R) (Entered: 05/22/2014)
06/12/2014	16	STIPULATION and PROPOSED ORDER FOR EXTENSION OF TIME to respond to the anticipated Motion to Dismiss and/or Strike Complaint by Johnson & Johnson, Johnson & Johnson Consumer Companies, Inc. Attorney Weatherford, Victoria ADDED. (Weatherford, Victoria) Modified on 6/13/2014 (Michel, G). (Entered: 06/12/2014)
06/13/2014	17	STIPULATION and ORDER signed by District Judge Troy L. Nunley on 6/12/14 ORDERING that the deadline for Plaintiff to file her Opposition is CONTINUED to 7/31/2014, and 8/28/14 as the deadline for J&J to file its Reply. (Mena-Sanchez, L) (Entered: 06/13/2014)
06/20/2014	18	MOTION to DISMISS and/or STRIKE 1 COMPLAINT by defendants; MEMORANDUM of Points and Authorities in support thereof. Motion Hearing set for 9/11/2014 at 2:00 PM in Courtroom 2 (TLN) before District Judge Troy L. Nunley. (Attachments: # 1 Proposed Order, # 2 Proof of Service) (Powers, Matthew) Modified on 6/24/2014 (Becknal, R). (Entered: 06/20/2014)
06/30/2014	19	STIPULATION and PROPOSED ORDER Extending Time to Hold Rule 26(F) Conference and File Joint Status Report by Johnson & Johnson, Johnson & Johnson Consumer Companies, Inc. (Weatherford, Victoria) Modified on 7/2/2014 (Reader, L). (Entered: 06/30/2014)
07/02/2014	20	MINUTE ORDER issued by Judicial Assistant, D. Morrison for District Judge Troy L. Nunley on 07/02/2014: In light of the pending Motion to Dismiss set for hearing on 09/11/2014, the Court is deferring the parties filing of the Joint Status Report until 30 days after the ruling on the motion. The Stipulation filed on 06/30/2014 (ECF No. 19) is denied as moot. (TEXT ONLY ENTRY)(Morrison, D) (Entered: 07/02/2014)
07/31/2014	21	OPPOSITION by Mona Estrada to 18 Motion to Dismiss Motion to Strike Complaint. (Blood, Timothy) (Entered: 07/31/2014)
08/28/2014	22	REPLY by Johnson & Johnson, Johnson & Johnson Consumer Companies, Inc. to RESPONSE to 18 Motion to Dismiss Motion to Strike Complaint. (Powers, Matthew) (Entered:

		08/28/2014)
09/08/2014	23	MINUTE ORDER issued by Courtroom Deputy M. Krueger for District Judge Troy L. Nunley on 9/8/2014: On the Court's own motion, Defendants' Motion to Dismiss and/or Motion to Strike Complaint (ECF No. 18) is hereby SUBMITTED without oral argument. Accordingly, the hearing set for 9/11/2014 is VACATED. If the Court determines oral argument is necessary, it will be scheduled at a later date. (TEXT ONLY ENTRY) (Krueger, M) (Entered: 09/08/2014)
10/31/2014	24	NOTICE of Withdrawal of Victoria L. Weatherford as Counsel for Defendants by Johnson & Johnson, Johnson & Johnson Consumer Companies, Inc. (Weatherford, Victoria) Modified on 11/3/2014 (Mena-Sanchez, L). (Entered: 10/31/2014)
11/13/2014	25	NOTICE OF SUPPLEMENTAL AUTHORITY by Johnson & Johnson, Johnson & Johnson Consumer Companies, Inc. re 18 Motion to Dismiss Motion to Strike Complaint. (Attachments: # 1 Exhibit A, # 2 Exhibit B)(Powers, Matthew) Modified on 11/14/2014 (Kaminski, H). (Entered: 11/13/2014)
03/27/2015	26	ORDER signed by District Judge Troy L. Nunley on 3/26/2015 GRANTING defendants' 18 Motion to Dismiss 1 Complaint with leave to amend. Plaintiff to file an Amended Complaint within 30 days of entry of this Order. (Marciel, M) (Entered: 03/27/2015)
04/24/2015	27	FIRST AMENDED COMPLAINT against Johnson & Johnson, Johnson & Johnson Consumer Companies, Inc. by Mona Estrada. (Attachments: # 1 Exhibit A, # 2 Exhibit B) (Blood, Timothy) (Entered: 04/24/2015)
05/04/2015	28	JOINT STIPULATION Extending Defendant's Time to Respond to 27 First Amended Complaint by Johnson & Johnson, Johnson & Johnson Consumer Companies, Inc.. (Powers, Matthew) Modified on 5/6/2015 (Kastilahn, A). (Entered: 05/04/2015)
05/18/2015	29	MOTION to DISMISS and/or MOTION to STRIKE Plaintiff's First Amended Complaint. Motion Hearing set for 7/2/2015 at 02:00 PM in Courtroom 2 (TLN) before District Judge Troy L. Nunley. by Johnson & Johnson, Johnson & Johnson Consumer Companies, Inc. (Attachments: # 1 Proposed Order)(Powers, Matthew) Modified on 5/19/2015 (Kastilahn, A). (Entered: 05/18/2015)
06/08/2015	30	OPPOSITION by Mona Estrada to 29 Motion to Dismiss and/or Motion to Strike. (Blood, Timothy) Modified on 6/9/2015 (Mena-Sanchez, L). (Entered: 06/08/2015)
06/18/2015	31	REPLY by Johnson & Johnson, Johnson & Johnson Consumer Companies, Inc. in support of 29 Motion to Dismiss and/or Motion to Strike First Amended Complaint. (Powers, Matthew) (Entered: 06/18/2015)
06/25/2015	32	MINUTE ORDER issued by Courtroom Deputy M. Krueger for District Judge Troy L. Nunley on 6/25/2015: On the Court's own motion, Defendants' Motion to Dismiss and/or Strike (ECF No. 29) is hereby SUBMITTED without oral argument. Accordingly, the hearing set for 7/2/2015 is VACATED. If the Court determines oral argument is necessary, it will be scheduled at a later date. (TEXT ONLY ENTRY) (Krueger, M) (Entered: 06/25/2015)
09/22/2015	33	NOTICE OF SUPPLEMENTAL AUTHORITY in Support of 30 Opposition to Motion to Dismiss by Mona Estrada. (Blood, Timothy) (Entered: 09/22/2015)
09/23/2015	34	RESPONSE by Johnson & Johnson, Johnson & Johnson Consumer Companies, Inc. to 33 Notice of Supplemental Authority. (Powers, Matthew) (Entered: 09/23/2015)
12/28/2015	35	NOTICE of Change of Attorney Name by Paula M. Brown. Attorney Brown, Paula Michelle added. (Roach, Paula) Modified on 12/29/2015 (Jackson, T). (Entered: 12/28/2015)
12/28/2015	36	NOTICE of Supplemental Authority in Support of 30 Opposition to Motion by Mona Estrada. (Blood, Timothy) Modified on 12/29/2015 (Jackson, T). (Entered: 12/28/2015)

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Attorneys for Plaintiff and the Class

UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF CALIFORNIA – SACRAMENTO

MONA ESTRADA, On Behalf of Herself and All Others Similarly Situated,

Plaintiff,

v.

JOHNSON & JOHNSON and JOHNSON & JOHNSON CONSUMER COMPANIES, INC.,

Defendants.

Case No.: 2:14-cv-01051-TLN-KJN

CLASS ACTION

FIRST AMENDED CLASS ACTION COMPLAINT FOR:

1. **VIOLATION OF CONSUMERS LEGAL REMEDIES ACT, CIVIL CODE § 1750 *et seq.*;**
2. **VIOLATION OF THE UNFAIR COMPETITION LAW, BUSINESS AND PROFESSIONS CODE § 17200 *et seq.*;**
3. **NEGLIGENT MISREPRESENTATIONS; and**
4. **BREACH OF IMPLIED WARRANTY**

DEMAND FOR JURY TRIAL

Plaintiff Mona Estrada brings this action on behalf of herself and all others similarly situated against Defendants Johnson & Johnson ("J&J") and Johnson & Johnson Consumer Companies, Inc. ("J&J Consumer") (together, "Defendants") and states:

NATURE OF ACTION

1. Defendants manufacture, distribute, and market Johnson's® Baby Powder ("Baby Powder"). Johnson's® Baby Powder is comprised entirely of talc with a small amount of fragrance. Talc is a hydrous magnesium silicate, an inorganic material that is mined from the earth. Talc-based powders, such as the Baby Powder, are not safe. Use of Baby Powder by women in the genital area results in a significant increase in the risk of ovarian cancer – an extremely deadly form of cancer. Defendants never disclosed the risks of using Baby Powder and instead promoted it as safe. Plaintiff and the members of the Class reasonably expected the Baby Powder to be safe, but, as a result of Defendants' acts and omissions, they did not receive the product they thought they were purchasing.

2. Defendants have known about the safety risks of using Baby Powder but have not informed consumers of the risks. Instead, Defendants market the Baby Powder for use in the very manner that can result in the increased risk of ovarian cancer. Defendants market the Baby Powder as a safe means of eliminating friction on the skin and absorbing moisture, while keeping skin cool and comfortable.

3. Consumers reasonably expect the Baby Powder to be safe to use and Defendants omit this information from its labels, its website, and otherwise. In fact, the only warnings Defendants provide to consumers about the dangers of the Baby Powder is to keep the powder away from eyes, avoid inhalation of the powder, and use the powder externally. Defendants do not provide any other warnings about the Baby Powder.

4. Johnson's® Baby Powder is not safe. As numerous studies have confirmed, Johnson's® Baby Powder leads to a significant increased risk of ovarian cancer. Women who used talc-based powders to powder their genital area have a 33% increased risk of ovarian cancer compared to those women who never used the powders.

5. Moreover, there are other alternatives to the Baby Powder that are equally effective, but do not carry the cancer risk. These alternatives are made from corn starch, have the same uses as Baby Powder and are functionally the same.

6. In light of the potential catastrophic health consequences and Defendants' knowledge of those consequences, Defendants have, at a minimum, a duty to inform consumers of the safety risks. Indeed, Plaintiff and other consumers could not have known about the safety risks unless they were informed by Defendants. However, Defendants omit the information from its labelling and do not tell consumers about the dangers associated with the talc-based Johnson's® Baby Powder. Instead, Defendants continue to expressly and impliedly represent that the product is safe and intended for women to use the Baby Powder in the very manner most likely to result in an increased risk of ovarian cancer. As a result of Defendants' misrepresentations and omissions regarding the safety of Johnson's® Baby Powder, Plaintiff and the proposed Class have purchased a product that is potentially lethal and Defendants have been able to sell the product for more than they otherwise would have had they properly informed consumers about the safety risks.

7. Plaintiff brings this action on behalf of herself and other similarly situated consumers who have purchased Johnson's® Baby Powder to require Defendants to properly inform consumers regarding the health hazards of using Johnson's® Baby Powder and obtain redress for those who have purchased Johnson's® Baby Powder. Based on violations of state unfair competition laws and Defendants' negligent omissions and misrepresentations and breach of implied warranty, Plaintiff seeks injunctive and monetary relief for consumers who purchased Johnson's® Baby Powder. Plaintiff has suffered injury in fact and lost money as a result of the unfair business practices alleged in the form of the purchase price paid for Johnson's® Baby Powder.

JURISDICTION AND VENUE

8. This Court has original jurisdiction pursuant to 28 U.S.C. § 1332(d)(2). The matter in controversy, exclusive of interest and costs, exceeds the sum or value of $5,000,000 and is a class action in which there are in excess of 100 class members and many members of

the Class are citizens of a state different from Defendants.

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

10. Venue is proper in this Court pursuant to 28 U.S.C. §§ 1391(a) and (b) because a substantial part of the events or omissions giving rise to Plaintiff's claims occurred while he resided in this judicial district. Venue is also proper under 18 U.S.C. § 1965(a) because Defendants transact substantial business in this District.

PARTIES

11. Plaintiff Mona Estrada resides in Stockton, California. From about 1950 to sometime in 2013, Plaintiff purchased Johnson's® Baby Powder for personal use in the genital area. Prior to making her purchase, Plaintiff read the label for the Baby Powder. The label omitted material information about the safety of the Baby Powder and did not warn Plaintiff of the safety risks associated with using the Baby Powder. In reliance on the label described herein and above, and her reasonable expectation that external use of the product was safe, Plaintiff purchased Johnson's® Baby Powder. Most recently, she paid approximately $3.50 for the product. Plaintiff purchased the product believing it was safe to use on any external area of her body because Defendants never informed her otherwise. However, Plaintiff did not receive what she paid for – a safe product. Defendants knew the Baby Powder was unsafe for Plaintiff to use in the genital area, but did not inform Plaintiff of the safety risks and omitted this safety information from its labelling. Had Plaintiff known the truth about the safety of using Johnson's® Baby Powder, she would not have purchased the product. Plaintiff would have purchased an alternative product containing cornstarch instead of talc. As a result of her purchase of an unsafe product that she reasonably believed to be safe, Plaintiff suffered injury in fact and lost money. Plaintiff is not claiming physical harm or seeking the recovery of

personal injury damages.

12. Defendant Johnson & Johnson ("J&J") is a New Jersey corporation with its principle place of business at One Johnson & Johnson Plaza, New Brunswick, New Jersey 08933. J&J is in the business of manufacturing and selling consumer products. J&J marketed, distributed, and sold Johnson's® Baby Powder products to hundreds of thousands of consumers in the United States, including in California.

13. Defendant Johnson & Johnson Consumer Companies, Inc. is incorporated under the laws of the state of New Jersey. Defendant's corporate headquarters is located at 199 Grandview Road Skillman, New Jersey 08558. Johnson & Johnson Consumer Companies, Inc. operates as a subsidiary to Johnson & Johnson. Defendant researches, develops, manufactures, distributes, markets, and sells consumer products targeted at babies and mothers, including Johnson's® Baby Powder. Defendant marketed, distributed, and sold Johnson's® Baby Powder products to hundreds of thousands of consumers in the United States including in California.

FACTUAL ALLEGATIONS

Johnson's® Baby Powder Is Intended for Use by Women

14. In 1893, Defendants developed Johnson's® Baby Powder. For decades Defendants have manufactured, distributed, marketed and sold Johnson's® Baby Powder as a daily use powder intended to eliminate friction on the skin and to absorb unwanted excess moisture for both babies and women.

15. Defendants have consistently marketed Johnson's® Baby Powder for use by women to maintain freshness and cleanliness. Historically, the Baby Powder label and advertising encouraged women to dust themselves with the Baby Powder daily to mask odors.

16. Although the label has changed over time, the message is the same: that the product is safe for use on women as well as babies. The Baby Powder label currently states that "Johnson's® Baby Powder is designed to gently absorb excess moisture helping skin feel comfortable. Our incredibly soft, hypoallergenic, dermatologist and allergy-tested formula glides over skin to leave it feeling delicately soft and dry while providing soothing relief."

Defendants instruct consumers on the product labeling to "Shake powder directly into your hand, away from the face, before smoothing onto the skin."

17. Representative product packaging and labeling for Johnson's® Baby Powder appears as follows:

18. Through other marketing, including on their website for Johnson's® Baby Powder, Defendants similarly encouraged women to use the product daily. Defendants state that Johnson's® Baby Powder "keeps skin feeling soft, fresh and comfortable. It's a classic. Johnson's® Baby Powder helps eliminate friction while keeping skin cool and comfortable. It's made of millions of tiny slippery plates that glide over each other to help reduce the irritation caused by friction." Under a heading "How to Use," "For skin that feels soft, fresh and comfortable, apply Johnson's® Baby Powder close to the body, away from the face.

Shake powder into your hand and smooth onto skin." Under a heading "When to Use", Defendants recommend consumers "Use anytime you want skin to feel soft, fresh and comfortable. For baby, use after every bath and diaper change." Defendants' representations convey the message that the Baby Powder is appropriate for use by all consumers, including women. Defendants' misrepresentations further deceive consumers into believing that the Baby Powder can be used daily and all over the body.

19. Instead of providing proper warnings to consumers regarding the safety risks of using the Baby Powder, Defendants seek to convey an image as a safe and trusted family brand. Defendants have spent decades developing the brand as one to be trusted to provide safe products. For example, Defendants have a website, www.safetyandcarecommitment.com, devoted to "Our Safety & Care Commitment." According to Defendants, "safety is our legacy" and "[y]ou have our commitment that every beauty and baby care product from the Johnson & Johnson Family of Consumer Companies is safe and effective when used as directed." Defendants market a "Five-Level Safety Assurance Process," which they describe as follows: "for decades, ours has been one of the most thorough and rigorous product testing processes in our industry – to ensure safety and quality of every single product we make." Defendants' so-called "Promise to Parents and their Babies" includes that "[w]hen you bring our baby care products into your home, you can be assured of our commitment to the safety of your family and families around the world." Additionally, on their website for Johnson's® Baby Powder, Defendants also state the product is "Clinically proven to be safe, gentle and mild." Relying on these statements and Defendants' marketing and branding efforts, consumers, including Plaintiff, reasonably believe Defendants are a company that can be trusted to provide safe products, and that their Baby Powder product is in fact safe.

20. Contrary to Defendants' image as one who sells safe products and despite Defendants' knowledge of the increased risk of ovarian cancer, nowhere do Defendants warn of the increased risk of ovarian cancer linked to the use of Johnson's® Baby Powder. Instead, Defendants omit this information from their advertising and labelling.

21. Johnson's® Baby Powder is made entirely of talc and fragrance. Talc is a mineral composed of hydrated magnesium silicate that is mined from the earth. It is an inorganic material. Talc is used in to manufacture goods, such as paper making, plastic, paint and coatings, rubber, food, electric cable, ceramics, and cosmetics. In its loose form and as used in the Baby Powder, talc is known as "talcum powder."

22. As detailed below, beginning in at least 1982, Defendants were aware of several studies demonstrating that women who used talc-based baby powder in the genital area had a significant increased risk of ovarian cancer. Since 1982, there have been 21 studies by doctors and scientists throughout the world (including 19 case-control studies, 1 cohort study, and 1 combined case-control and cohort study) that reported an elevated risk for ovarian cancer with genital talc use. The majority of these studies show a statistically significant increased risk of ovarian cancer. Other alternative powder products that are cornstarch based instead of talc-based, do not pose a risk of ovarian cancer and are otherwise functionally the same as talc products.

23. Since Defendants have been aware of the safety risks associated with the talc-based Baby Powder, Defendants were required to inform consumers of those risks. However, Defendants fail to warn or inform consumers anywhere, including on the product labeling or in its marketing or advertising for the product, that use of Johnson's® Baby Powder may be unsafe and harmful to health, including significantly increasing the risk of ovarian cancer.

Defendants Knew of the Increased Risk of Ovarian Cancer From Use of Johnson's® Baby Powder

A. The Overwhelming Scientific and Medical Evidence

24. Research conducted as early as 1961 showed that particles similar to talc can translocate from the exterior genital area to the ovaries of women. *See* Egi, G.E. and Newton, M., *The transport of carbon particles in the human female reproductive tract*, 12 Fertil. Steril. 151-155 (1961).

25. Because of the potential for transmission, researchers remained concerned about the carcinogenic nature of talc and the effects of talc use. A 1968 study concluded that

"[a]ll of the 22 talcum products analyzed have a … fiber content ... averaging 19%. The fibrous material was predominantly talc but contained minor amounts of tremolite, anthophyllite, and chrysotile [asbestos-like fibers] as these are often present in fibrous talc mineral deposits . . . Unknown significant amounts of such materials in products that may be used without precautions may create an unsuspected problem." Cralley LJ, et al., *Fibrous and mineral content of cosmetic talcum products*, 29 Am. Ind. Hyg. Assoc. J. 350-354 (1968). In a 1976 follow up study, researchers concluded that "[t]he presence in these products of asbestiform anthophyllite and tremolite, chrysotile, and quartz indicates the need for a regulatory standard for cosmetic talc. . .We also recommend that evaluation be made to determine the possible health hazards associated with the use of these products." Rohl AN, et al, *Consumer talcums and powders: mineral and chemical characterization*, 2 J. Toxicol. Environ. Health 255-284 (1976).

26. The first study to suggest a link between ovarian cancer and talc powder use was conducted in 1971. In that study, researchers found talc particles "deeply embedded" in 10 of 13 ovarian tumors, 12 of 21 cervical tumors, one primary carcinoma of the endometrium, and 5 of 12 "normal" ovaries from women with breast cancer. Henderson, W.J., et al., *Talc and carcinoma of the ovary and cervix*, 78 (3) J. Obstet. Gynaecol. Br. Commonw. 266-272 (1971).

27. The scientific evidence linking talc use and ovarian cancer continued to build. In 1982, Daniel Cramer of the Departments of Obstetrics, Gynecology, and Pathology, Boston Hospital for Women, Division of the Brigham and Women's Hospital, the Department of Epidemiology, Harvard School of Public Health and the Department of Pathology, Massachusetts General Hospital, Harvard Medical School, conducted a case-control study which found that talc applied directly to the genital area around the time of ovulation leads to talc particles becoming deeply imbedded in the substance of the ovary causing foreign body reaction and growth of epithelial ovarian tissue. The study found a statistically significant 92% increased risk of ovarian cancer from genital talc use. This study proved an epidemiologic association between the use of cosmetic talc in genital hygiene and ovarian

cancer. This study was funded by a grant from National Institutes of Health (NIH). Cramer, D.W., et al., *Ovarian cancer and talc: a case control study*, 50 Cancer 372-376 (1982). Soon after this study was published, Dr. Cramer was contacted and visited by Dr. Bruce Semple from J&J whereby Dr. Cramer advised Dr. Semple to place a warning on his company's talc-based body powders regarding the increased risk of ovarian cancer.

28. Since 1982, there have been 21 additional studies by different doctors and scientists throughout the world, including 19 case-control studies, 1 cohort study, and 1 combined case-control and cohort study, which have provided epidemiologic data addressing the talc and ovarian cancer association. Nearly all of these studies have reported an elevated risk for ovarian cancer associated with perineum use of talcum powder and the majority of the studies show statistically significant elevations.

29. In 1983, Patricia Hartge and Robert Hoover of the National Cancer Institute and Linda Lester and Larry McGowan of the George Washington University Medical Center, performed a case-control study and found a 150% increased risk of ovarian cancer for women who use talcum powder in the genital area. Hartge, P. et al., *Talc and ovarian cancer*, JAMA 1983, 1844.

30. Similarly, in 1988, a case control study of 188 women diagnosed with epithelial ovarian cancer and 539 control women found that 52% of the cancer patients habitually used talcum powder on the perineum before their cancer diagnosis. The study showed a 40% increase in risk of ovarian cancer in women that used talcum powder on their perineum and a positive dose-response relationship. *See* Whittemore, A.S., et al., *Personal and environmental characteristics related to epithelial ovarian cancer. II. Exposures to talcum powder, tobacco, alcohol, and coffee*, Am. J. Epidemiol. 1228-1240 (1988).

31. Another case control study conducted in 1989 found similar results. The study looked at 235 women diagnosed with epithelial ovarian cancer and 451 controls and found a 29% increased risk in ovarian cancer with women who reported genital talcum powder use more than once per week. *See* Booth, M. et al., *Risk factors for ovarian cancer: a case-control study*, Br. J. Cancer, 592-598 (1989).

32. A case control study conducted in 1989 by Bernard Harlow, et al., of Harvard Medical School at Brigham and Women's Hospital, found an increased risk of ovarian cancer generally from genital talc use after bathing and found a statistically significant 180% increased risk of ovarian cancer from women that used talc-containing powders in combination with deodorizing powders on their perineum. This study also found positive dose-response relationship. Harlow, B.L. & Weiss, N.S., *A case-control study of borderline ovarian tumors: the influence of perineal exposure to talc,* Am. J. Epidemiol., 390-394 (1989).

33. In 1992, a case-control study was conducted by Karin Rosenblatt, et al., from the Department of Epidemiology, The Johns Hopkins School of Hygiene and Public Health and Department of Gynecology and Obstetrics. This study that found a 70% increased risk in women from genital talc use and found a 379% increased risk of ovarian cancer of women who used talc on sanitary napkins in their genital area. Rosenblatt, K.A. et al., *Mineral fiber exposure and the development of ovarian cancer*, 45 (1) Gynecol. Oncol. 20-25 (1992).

34. Additionally, a 1992 case-control study conducted by Yong Chen, et al., of 112 diagnosed epithelial ovarian cancer cases and 224 age-matched community controls, found an elevated risk of 290% for ovarian cancer for women who applied talc-containing dusting powder to the lower abdomen and perineum for longer than 3 months. Yong Chen et al., *Risk Factors for Epithelial Ovarian Cancer in Beijing, China*, Int. J. Epidemiol., 23-29 (1992).

35. 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. The study found "some evidence of carcinogenic activity in male rats" and "clear evidence of carcinogenic activity in female rats." Accordingly, talc was found to be a carcinogen, with or without the presence of asbestos-like fibers. National Toxicology Program, *Toxicology and carcinogenesis studies of talc (CAS No 14807-96-6) in F344/N rats and B6C3F 1 mice (Inhalation studies)*, Technical Report Series No 421 (Sept. 1993).

36. In 1995, a case control study was conducted in Australia by David Purdie, et al., involving over 1600 women. This was the largest study of its kind to date. This study found a statistically significant 27% increased risk in ovarian cancer for women who regularly

use talc in the region of the abdomen or perineum. Purdie, D., et al., *Reproductive and other factors and risk of epithelial ovarian cancer: an Australian case-control study. Survey of Women's Health Study Group*, 62 (6) Int. J. Cancer 678-684 (1995).

37. In 1996, a case-control study similarly found a statistically significant 97% increased risk of ovarian cancer in women who used talc-based powders in their genital area. *See* Shushan, A., et al, *Human menopausal gonadotropin and the risk of epithelial ovarian cancer*, 65 (1) Fertil. Steril. 13-18 (1995).

38. In 1996, the condom industry stopped dusting condoms with talc due to the health concerns of ovarian cancer. "Concern about talc as an ovarian carcinogen goes back 50 years in the medical literature. By the 1970s, evidence was mounting that talc particles might migrate into a woman's fallopian tubes where they could cause scarring and irritation in the ovaries. Scientists believed in some cases that the scarring led to infertility or cancer." McCullough, Marie, *Women's health concerns prompt condom makers to stop using talc*, Jersey Journal (City Edition) (April 17, 1996).

39. In 1997, a case control study of 313 women with ovarian cancer and 422 without this disease found that the women with cancer were more likely to have applied talcum powder to their external genitalia area. Women using these products had a statistically significant 50% to 90% higher risk of developing ovarian cancer. *See* Cook, L.S., et al., *Perineal powder exposure and the risk of ovarian cancer*, Am. J Epidemiol. 145, 459-465 (1997).

40. In 1997, a case-control study was conducted by Stella Chang and Harvey Risch from the Department of Epidemiology and Public Health, Yale University School of Medicine which included over 1,000 women. The study found a statistically significant increased risk of 42% for ovarian cancer for women who applied talc via sanitary napkins to their perineum. The study indicated that "Commercial talc substitutes often replace talc with cornstarch. Furthermore, women may choose to powder or dust with cornstarch instead of talc. When cornstarch was assessed in relation to risk of ovarian carcinoma, no associations were found." The study concluded, "The results of this study appear to support the contention that talc

exposure increases risk of ovarian carcinoma. Dusting with talcum powder is not an unusual practice for women, and, given the heterogeneity of the etiology and course of ovarian carcinoma, any possible harmful practices, particularly those with little benefit, should be deliberated." Chang, S. & Risch, H.A., *Perineal talc exposure and risk of ovarian carcinoma*, 79 (12) Cancer 2396-2401 (1997).

41. In a 1998 case-control study conducted in Canada by Beatrice Godard, et al., a 149% increased risk of ovarian cancer was found in women who used talc-based powders on their perineum. Godard, B., et al., *Risk factors for familial and sporadic ovarian cancer among French Canadians: a case-control study*, 179 (2) Am. J. Obstet. Gynecol. 403-410 (1998).

42. Daniel Cramer from the Obstetrics-Gynecology Epidemiology Center, Department of Obstetrics and Gynecology, Brigham and Women's Hospital conducted another case-control study in 1999 of 563 women newly diagnosed with epithelial ovarian cancer and 523 control women. The study found a statistically significant 60% increased risk of ovarian cancer in women that used talc-based body powders on their perineum. "We conclude that there is a significant association between the use of talc in genital hygiene and risk of epithelial ovarian cancer that, when viewed in perspective of published data on this association, warrants more formal public health warnings." The study was funded by a grant from the National Cancer Institute (NCI). Cramer, D.W., et al, *Genital talc exposure and risk of ovarian cancer*, 81 (3) Int. J. Cancer 351-356 (1999).

43. In 2000, Roberta Ness, et al., from University of Pennsylvania, produced a case-control study of over 2,000 women. This study found a statistically significant 50% increased risk of ovarian cancer from genital talc use in women. The study also found that talc causes inflammation and that inflammation contributes to cancer cell development. Ness, R.B., et al., *Factors related to inflammation of the ovarian epithelium and risk of ovarian cancer*, 11 (2) Epidemiology 111-117 (2000).

44. Also in 2000, a prospective cohort study considered to be the most informative study to date, found a 40% increase in invasive serous cancers from women who applied

talcum powder to their perineum. Gertig, D.M., et al., *Prospective study of talc use and ovarian cancer*, 92 J. Natl. Cancer Inst. 249-252 (2000).

45. In 2004, Paul Mills, Deborah Riordan, Rosemary Cress and Heather Young of Cancer Registry of Central California – Public Health Institute, Fresno, California; Fresno Medical Education Program, University of California, San Francisco, Fresno, California; California Cancer Registry, Sacramento, California; and the Department of Epidemiology and Biostatistics, George Washington University School of Public Health and Health Services, performed a case-control study of nearly 1400 women from 22 counties in Central California. This study found a statistically significant 37% increased risk of epithelial ovarian cancer from women's genital talc use. The study also found a 77% increased risk of serous invasive ovarian cancer from women's genital talc use. The study looked at women's use of cornstarch powders and found no increased risk in ovarian cancer in women who used these types of powders on the perineum as "Cornstarch is also not thought to exert the same toxicologic reaction in human tissue as does talc." This study concluded by stating, "… users should exercise prudence in reducing or eliminating use. In this instance, the precautionary principle should be invoked, especially given that this is a serious form of cancer, usually associated with a poor prognosis, with no current effective screening tool, steady incidence rates during the last quarter century and no prospect for successful therapy. Unlike other forms of environmental exposures, talcum powder use is easily avoidable." Mills, P.K., et al., *Perineal talc exposure and epithelial ovarian cancer risk in the Central Valley of California*, 112 Int. J. Cancer 458-64 (2004).

46. In 2007, Amber Buz'Zard and Benjamin Lau performed a study whereby they induced carcinogenesis by applying talc to normal human epithelial and granulosa ovarian cancer cell lines. Buz'Zard A.R., et al., *Pycnogenol reduces talc-induced neoplastic transformation in human ovarian cell cultures*, 21 (6) Phytother. Res. 579-586 (2007).

47. In 2008, Margaret Gates, of Channing Laboratory, Department of Medicine, Brigham and Women's Hospital and Harvard Medical School; Departments of Epidemiology and Biostatistics, Harvard School of Public Health; Obstetrics and Gynecology Epidemiology

Center, Brigham and Women's Hospital, and Norris Cotton Cancer Center, Dartmouth-Hitchcock Medical Center, performed a combined study of over 3,000 women from a New England-based case-control study and a prospective Nurses' Health Study with additional cases and years of follow up from these studies (the "Gates Study"). This study was funded by the National Cancer Institute (NCI), and found a general 36% statistically significant increased risk of epithelial ovarian cancer from genital talc use. A 60% increased risk of the serous invasive subtype was also found.

48. Dr. Gates found a strong and positive dose-response relationship whereby increased risk was seen with higher talc usage in women. Dr. Gates commented about this study, saying these latest results "provide additional support for a main effect of genital talc exposure on epithelial ovarian cancer." She also stated that "…the finding of highly significant trends between increasing frequency of use and risk 'strengthens the evidence of an association, because most previous studies have not observed a dose response.'" It was concluded that, "We believe that women should be advised not to use talcum powder in the genital area, based on our results and previous evidence supporting an association between genital talc use and ovarian cancer risk. Physicians should ask the patient about talc use history and should advise the patient to discontinue using talc in the genital area if the patient has not already stopped." Dr. Gates further stated that "An alternative to talc is cornstarch powder, which has not been shown to increase ovarian cancer risk, or to forgo genital powder use altogether." Gates, M.A., et al., *Talc Use, Variants of the GSTM1, GSTT1, and NAT2 Genes, and Risk of Epithelial Ovarian Cancer*, 17 (9) Cancer Epidemiology, Biomarkers & Prev. 2436-2444 (2008).

49. In May 2008, the CPC, joined by its chairman and numerous other physicians and chairs of public health and medical associations, submitted a citizen's petition "seeking a cancer warning on cosmetic talc products."[1] The petition sought to require all cosmetic talc

[1] The petition was submitted on behalf of: Samuel S. Epstein, M.D., Chairman, CPC, and Professor emeritus Occupational and Environmental Medicine, University of Illinois at Chicago School of Public Health; Peter Orris, M.D., Professor and Chief of Service, University of Illinois at Chicago Medical Center; Quentin Young, M.D., Chairman, Health and

products to bear labels with warnings such as, "Frequent application of talcum powder in the female genital area substantially increases the risk of ovarian cancer" or "Frequent talc application in the female genital area ***is responsible*** for major risks of ovarian cancer." (emphasis added). The petition cited numerous studies and publications and sought a hearing to present scientific evidence.

50. In October of 2008, Michael Thun, Vice-President of Epidemiology and Surveillance Research at the American Cancer Society commented on the Gates Study. He stated the dose-response relationship between talc and ovarian cancer had finally been satisfied by this study. Dr. Thun said, "There are very few modifiable risk factors for ovarian cancer. The main one is the use of oral contraceptives, which has been clearly established to lower the risk for ovarian cancer. Others include tubal ligation, hysterectomy, and parity. Then there are factors that 'probably' increase the risk for ovarian cancer, and this is where talc fits in, alongside asbestos, postmenopausal hormone therapy, and radiation." Chustecka, Zosia & Lie, Desiree, *Talc Use in Genital Area Linked to Increased Risk for Ovarian Cancer*, Medscape Medical News (2008).

51. In 2008, Melissa Merritt, from the Australian Cancer Study (Ovarian Cancer) and Australian Ovarian Cancer Study Group, conducted a case-control study of over 3,000 women, where a statistically significant 17% increased risk of ovarian cancer for women who used talc on their perineum was confirmed. This study also confirmed a statistically significant 21% increased risk of ovarian cancer of a serous subtype in women who used talc on their perineum. Merritt, M.A., et al., *Talcum powder, chronic pelvic inflammation and NSAIDs in relation to risk of epithelial ovarian cancer*, 122 (1) Int. J. Cancer 170-176 (2008).

52. In 2009, a case-control study of over 1,200 women found the risk of ovarian cancer increased significantly with increasing frequency and duration of talc use. The study found an overall statistically significant 53% increased risk of ovarian cancer from genital talc

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Medicine Policy Research Group, Chicago; Rosalie Bertell, Ph.D., International Association for Humanitarian Medicine, Scientific Advisor to the International Institute of Concern for Public Health, Toronto, and the International Science Oversight Board of the Organic Consumers Association, Washington, D.C.; and Ronnie Cummins, National Director of the Organic Consumers Association.

use. The study also found a 108% statistically significant increased risk of ovarian cancer in women with the longest duration and most frequent talc use. The study concluded by stating, "… that risk of ovarian cancer is significantly associated with talc use and with a history of endometriosis, as has been found in recent studies." Wu, A.H., et al., *Markers of inflammation and risk of ovarian cancer in Los Angeles County*, 124 (6) Int. J. Cancer 1409-1415 (2009).

53. In 2011, Daniel Cramer of Brigham and Women's Hospital, Harvard Medical School, made public another case-control study of over 4,000 women. This study, which was funded by the National Cancer Institute (NCI), found a 200% to 300% increased risk of ovarian cancer for women who applied talc-based body powders to their perineum. This study found a strong dose-response relationship and explained why the dose-response has been under reported in prior studies. In commenting on this study, Dr. Cramer stated "I have always advised gynecologists, if they examine a woman and see that she is using talc in the vaginal area, tell her to stop… There are alternatives. This study strongly reinforces that advice."

54. In 2011, another case-control study of over 2,000 women found a 27% increased risk of ovarian cancer from genital talc use in women. Rosenblatt, K.A., et al., *Genital powder exposure and the risk of epithelial ovarian cancer*, 22 Cancer Causes Control 737-742 (2011).

55. In June of 2013, Kathryn Terry, et al., published a pooled analysis of over 18,000 women in eight case-control studies and found a 20% to 30% increased risk of women developing epithelial ovarian cancer from genital powder use. The study concluded by stating, "Because there are few modifiable risk factors for ovarian cancer, avoidance of genital powders may be a possible strategy to reduce ovarian cancer incidence." Terry, K.L., et al., *Genital Powder Use and Risk of Ovarian Cancer: A Pooled Analysis of 8,525 Cases and 9,859 Controls*, 6 (8) Cancer Prevention Research, 81-82 (2013).

56. In addition to the numerous case control studies over the last several decades, several meta-analyses were conducted on the topic of talcum powder use and ovarian cancer. A meta-analysis is a statistical technique that allows similar measures of the same illness and

exposure from different studies to be combined to determine whether an association exists. All analyses found a significant positive association between the use of talcum powder in the genital area and ovarian cancer.

57. In 1992, the National Cancer Institute sponsored the first meta-analysis conducted by Bernard Harlow and Daniel Cramer from Harvard Medical School at Brigham and Women's Hospital. This was the most comprehensive study to date whereby 235 cases with ovarian cancer were compared to 239 controls. Through personal interviews with these women, Harlow and Cramer found that nearly 17% of the control group reported frequent talc application to the perineum. The study found "the most frequent method of talc exposure was use as a dusting powder directly to the perineum (genitals) … Brand or generic 'baby powder' was used most frequently and was the category associated with a statistically significant risk for ovarian cancer." The study concluded that "a lifetime pattern of talc use may increase the risk for epithelial ovarian cancer," and that "[g]iven the poor prognosis for ovarian cancer, any potentially harmful exposures should be avoided, particularly those with limited benefits. For this reason, we discourage the use of talc in genital hygiene, particularly as a daily habit." Harlow, B.L. et al., *Perineal exposure to talc and ovarian cancer risk*, Obstet. Gynecol. 1992, 19-26. The summary OR (and 95% confidence interval) was 1.3 (1.1, 1.6) indicating a statistically significant 30% increased risk of ovarian cancer from genital talc use.

58. In 1995, a second meta-analysis conducted by A. J. Gross and P. H. Berg included data from nine separate papers, which yielded a summary odds ratio (based upon the crude measures) of 1.27 (1.09, 1.48) – again a statistically significant 27% increased risk of ovarian cancer from genital talc use. *See* Gross, A.J. & Berg, P.H., *A meta-analytical approach examining the potential relationship between talc exposure and ovarian cancer*, 5 (2) J. Expo. Anal. Environ. Epidemiol. 181-195 (1995).

59. David Cramer performed the third meta-analysis in 1999 supported by the National Cancer Institute. It included all of the studies in the Gross and Berg meta-analysis plus four new studies as well as the OR based upon a new series of 563 cases with ovarian cancer and 523 controls from Massachusetts and New Hampshire. The summary odds

estimate was 1.39 (1.24, 1.49), again a statistically significant 39% increased risk of ovarian cancer from genital talc use.

60. In 2003, a fourth meta-analysis funded by the industry re-analyzed data from 16 studies published prior to 2003 and found a 33% increase in ovarian cancer risk among talc users. *See* Huncharek, M., et al., *Perineal application of cosmetic talc and risk of invasive epithelial ovarian cancer: a meta-analysis of 11,933 subjects from sixteen observational studies*, 23 Anticancer Res. 1955-60 (2003).

B. All Leading Authorities Agree on the Link Between Ovarian Cancer and Perineal Use of Talc Powder

61. In 2005, the Fifth Edition of "Myths & Facts about ovarian cancer. What you need to know," was published by Steven Piver, M.D., and Gamal Eltabbakh, M.D. This publication was partly sponsored by Glaxo Smith Kline. Dr. Piver is the Chair Emeritus of the Department of Gynecologic Oncology, and Founder and Director of the Gilda Radner Familial Ovarian Cancer Registry at Roswell Park Cancer Institute, Buffalo, New York. Dr. Eltabbakh is a tenured Professor of Obstetrics and Gynecology and Medicine, and Director of the Division of Gynecologic Oncology at the University of Vermont in Burlington, Vermont. In the section entitled "What Causes Ovarian Cancer?" it lists "Use of Talc (Baby Powder) in the Genital Area" as a risk factor for causing ovarian cancer and further states, "… research has established that each has at least a small role" in causing cancer in women.

62. In February of 2006, the International Association for the Research of Cancer (IARC) part of the World Health Organization published a paper whereby they classified genital use of talc-based body powder as a "Group 2B" possible 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 in ovarian cancer in women from perineal use of talc. IARC found that between 16-52% of women in the world were using talc to dust their perineum and found an increased risk of ovarian cancer in women talc users ranging from 30-60%.

63. IARC concluded with this "Evaluation": "There is limited evidence in humans for the carcinogenicity of perineal use of talc-based body 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." IARC concluded with this "Overall evaluation:" "Perineal use of talc-based body powder is possibly carcinogenic to humans (Group 2B)."

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

65. As of today, both the National Cancer Institute and American Cancer Society list genital talc use as a "risk factor" for ovarian cancer. Additionally, the Gilda Radner Familial Ovarian Cancer Registry, Roswell Park Center Institute, and the Department of Gynecologic Oncology University of Vermont publish a pamphlet entitled "Myths & Facts about ovarian cancer: What you need to know." This pamphlet is given to all ovarian cancer patients at nearly every medical facility in the United States. In this pamphlet under "known" risk factors for ovarian cancer is "Use of Talc (Baby Powder) in the Genital Area." Similarly, on the Sanford Medical Center website for "patient information" regarding ovarian cancer it lists "Talcum powder dusted on the perineum" as a risk factor for contracting ovarian cancer.

66. In 2005, the State of California passed the California Safe Cosmetics Act, which requires cosmetics manufacturers to disclose to the California Department of Public Health ("CDPH") all products containing chemicals known or suspected to cause cancer, birth defects, or other reproductive toxicity. The CDPH lists "talc-based body powders (perineal use of)" to their list of ingredients known or suspected to cause cancer, requiring registration. In its efforts to further conceal the safety issues associated with the Baby Powder, Defendants have never registered the Baby Powder to the CDPH and is in violation of the Act.

C. Defendants Have Been Acutely Aware of the Dangers of the Baby Powder

67. As early as 1982, Defendants were acutely aware of the scientific evidence linking ovarian cancer and perineal use of talcum powder. In an August 12, 1982, New York Times article entitled "Talcum Company Calls Study on Cancer Link Inconclusive," Defendants admitted being aware of the 1982 Cramer study that concluded women were three times more likely to contract ovarian cancer after daily use of talcum powder in the genital area.

68. On November 10, 1994, the Cancer Prevention Coalition ("CPC") mailed a letter to then J&J's CEO, Ralph Larson, informing Defendants that studies as far back as 1960's ". . . show[] conclusively that the frequent use of talcum powder in the genital area poses a serious risk of ovarian cancer." The letter cited a 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 Defendants 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.

69. On September 17, 1997, Alfred Wehner a toxicology consultant retained by Defendants, wrote a letter to Michael Chudkowski, manager of Pre-Clinical Toxicology at Johnson & Johnson Consumer Products, Inc., stating that on three separate occasions the Talc Interested Party Task Force (TIPTF) of the Cosmetic, Toiletry, and Fragrance Association (CTFA) which included Defendants and Luzenac (Defendants' supplier of talc), had released false information to the public about the safety of talc. Specifically addressing a November 17, 1994, statement released by the CTFA, Dr. Wehner said the following:

> The response statement dated November 17, 1994, is just as bad. The second sentence in the third paragraph reads: "The workshop concluded that, although some of these studies suggested a weak association might exist, when taken together the results of the studies are insufficient to demonstrate any real association." This statement is also inaccurate, to phrase it euphemistically. At

> that time there had been about 9 studies (more by now) published in the open literature that did show a statistically significant association between hygienic talc use and ovarian cancer. Anybody who denies this risks that the talc industry will be perceived by the public like it perceives the cigarette industry: denying the obvious in the face of all evidence to the contrary.
>
> The workshop did not conclude that "the results of the studies are insufficient to demonstrate any real association." As pointed out above, a "real" statistically significant association has been undeniably established independently by several investigators, which without doubt will be readily attested to by a number of reputable scientists/clinicians, including Bernard Harlow, Debra Novotny, Candace Sue Kasper Debra Heller, and others.

70. In 2006, Imerys began placing an ovarian cancer warning on its Material Safety Data Sheets (MSDS) it provides to Defendants. 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. Although Defendants admittedly received these MSDSs, they never passed this warning information on to the consumers. On September 26, 2012, the corporate representative of Imerys testified in open court that his company exclusively supplied Defendants with talc used for its Baby Powder product and that ovarian cancer is a potential hazard associated with a women's perineal use of talc-based body powders, like Defendants' Baby Powder.

71. On October 19, 2012 Defendants' former in-house toxicologist and current consulting toxicologist, Dr. John Hopkins, testified on Defendants' behalf that Defendants "[are] and were aware of…all publications related to talc use and ovarian cancer."

72. On October 4, 2013, a jury in South Dakota Federal Court, in the case styled *Deane Berg v. Johnson & Johnson Consumer Companies, Inc.*, unanimously found that Johnson & Johnson Consumer Companies, Inc. caused the plaintiff's ovarian cancer and was negligent in failing to warn about cancer hazards on its talc-based body powders, specifically, Baby Powder and Shower to Shower.

Defendants Failed to Warn Consumers About the Risks of Using Johnson's® Baby Powder

73. Despite the overwhelming scientific and medical evidence regarding talc use and ovarian cancer that has developed over the past several decades, Defendants' knowledge of the increased risk of ovarian cancer, and their understanding that consumers thought and expected they were buying a safe product, Defendants did not warn consumers of these safety risks. The only safety warnings on the Baby Powder label are to "Keep powder away from child's face to avoid inhalation, which can cause breathing problems," and to "[a]void contact with eyes." The label also states: "SAFETY TIP: Keep out of reach of children. Do not use if quality seal is broken." Defendants provide similar safety warnings on their website: "For external use only. Keep out of reach of children. Close tightly after use. Do not use on broken skin. Avoid contact with eyes. Keep powder away from child's face to avoid inhalation, which can cause breathing problems."

74. None of Defendants' warnings on the product label or in other marketing informs Plaintiff and Class members that use of the Baby Powder in the genital area, as was encouraged by Defendants, is unsafe as it can lead to an increased risk of ovarian cancer. Defendants have further concealed the safety issues by failing to report the sale of Baby Powder to the California Department of Public Health (even though it is known to contain cancer-causing chemicals), which maintains a publicly available and searchable database of cosmetics that contain cancer-causing chemicals. Instead of informing consumers of the increased risk of ovarian cancer, Defendants continue to deceive consumers by encouraging women to use the Baby Powder in the very manner that can lead to the increased cancer risk and represent on the labeling and other marketing that Johnson's® Baby Powder is "clinically proven mildness" and "clinically proven to be safe, gentle and mild." Accordingly, based on Defendants' omissions about the safety of the Baby Powder, representations regarding appropriate use, and written warnings that say nothing about an increased use of ovarian cancer, consumers reasonably expect that the Baby Powder is safe to be used as marketed.

75. Plaintiff and Class members have been and will continue to be deceived or misled by Defendants' omissions and deceptive representations that Johnson's® Baby Powder is safe for women to use in the genital area. Plaintiff purchased and used Johnson's® Baby Powder reasonably believing that the product was safe. Because Johnson's® Baby Powder is advertised for use by women and does not instruct that the product may lead to an increased risk for ovarian cancer when used in the genital area, Defendants' omissions and representations were a material factor in influencing Plaintiff's decision to purchase Johnson's® Baby Powder. Plaintiff would not have purchased Johnson's® Baby Powder had she known that Johnson's® Baby Powder was not safe and use of which could lead to an increased risk for ovarian cancer. Had Plaintiff been properly warned by Defendants, she would have either not purchased any baby powder product, or at the very least, purchased an alternative cornstarch based powder that, as discussed above, does not have the same increased risk of ovarian cancer as talc based powders. Plaintiff and Class members had a reasonable expectation that Johnson's® Baby Powder was safe.

76. As a result, Plaintiff and the Class members have been damaged in their purchases of Johnson's® Baby Powder and have been deceived into purchasing products that they reasonably believed, based on Defendants' omissions and representations, were safe for use by women when, in fact, they are not. The Baby Powder was intended to be used by Plaintiff and the Class members as a safe product that can be used daily all over the body. However, if used for that purpose, the Baby Powder can cause serious and even fatal health problems. Therefore, Plaintiff and the Class members did not receive what they paid for – a safe product.

77. Defendants, by contrast, reaped and continue to reap enormous profits from their deceptive marketing and sale of Johnson's® Baby Powder. Because of Defendants' effective branding of the Baby Powder as safe for use by women through their omissions and deceptive representations, Defendants were able to charge more than they otherwise would have had they properly informed consumers that women who use Baby Powder in the genital area have a significant increased risk of ovarian cancer.

CLASS DEFINITION AND ALLEGATIONS

78. Plaintiff brings this action on behalf of herself and all other similarly situated pursuant to Rule 23(a), (b)(2), and (b)(3)of the Federal Rules of Civil Procedure and seeks certification of the following Class:

> All persons who purchased Johnson's® Baby Powder in California and states with laws that do not conflict with the laws asserted here.

Excluded from the Class are Defendants, their parents, subsidiaries, affiliates, officers and directors, those who purchased Johnson's® Baby Powder for the purpose of resale, and those who assert claims for personal injury.

79. Members of the Class are so numerous and geographically dispersed that joinder of all Class members is impracticable. Plaintiff is informed and believes, and on that basis alleges, that the proposed Class contains many thousands of members. The precise number of Class members is unknown to Plaintiff.

80. Common questions of law and fact exist as to all members of the Class and predominate over questions affecting only individual Class members. The common legal and factual questions include, but are not limited to, the following:

i. Whether Defendants knew or should have known that use of talcum powder can lead to an increased risk of ovarian cancer;

ii. Whether Defendants had a duty to inform Plaintiff and Class members of the risks associated with certain uses of Johnson's® Baby Powder;

iii. Whether Defendants' representations concerning the safety and appropriate uses of Johnson's® Baby Powder were likely to deceive;

iv. Whether Defendants' alleged conduct violates public policy;

v. Whether the alleged conduct constitutes violations of the laws asserted herein;

vi. Whether Defendants engaged in false and misleading advertising;

vii. Whether Plaintiff and Class members have sustained monetary loss and the proper measure of that loss;

viii. Whether Plaintiff and Class members are entitled to restitution, disgorgement of Defendants' profits, declaratory and/or injunctive relief; and

ix. Whether Plaintiff and Class members are entitled to an award of compensatory damages.

81. The claims asserted by Plaintiff in this action are typical of the claims of the members of the Class, as the claims arise from the same course of conduct by Defendants, and the relief sought is common. Plaintiff and Class members suffered uniform damages caused by their purchase of Johnson's® Baby Powder manufactured, marketed, and sold by Defendants.

82. Plaintiff will fairly and adequately represent and protect the interests of the members of the Class. Plaintiff has retained counsel competent and experienced in both consumer protection and class litigation.

83. A class action is superior to other available methods for the fair and efficient adjudication of this controversy. The expense and burden of individual litigation would make it impracticable or impossible for proposed Class members to prosecute their claims individually. It would thus be virtually impossible for the Class, on an individual basis, to obtain effective redress for the wrongs done to them. Furthermore, even if Class members could afford such individualized litigation, the court system could not. Individualized litigation would create the danger of inconsistent or contradictory judgments arising from the same set of facts. Individualized litigation would also increase the delay and expense to all parties and the court system from the issues raised by this action. By contrast, the class action device provides the benefits of adjudication of these issues in a single proceeding, economies of scale, and comprehensive supervision by a single court, and presents no unusual management difficulties under the circumstances here.

84. In the alternative, the Class also may be certified because Defendants have acted or refused to act on grounds generally applicable to the Class thereby making final declaratory and/or injunctive relief with respect to the members of the Class as a whole appropriate.

COUNT I

Violation of the Consumers Legal Remedies Act

Civil Code § 1750, *et seq.*

85. Plaintiff seeks preliminary and permanent injunctive and equitable relief on behalf of the entire Class, on grounds generally applicable to the entire Class, to enjoin and prevent Defendants from engaging in the acts described, and requiring Defendants to provide full restitution to Plaintiff and Class members.

86. Unless a Class is certified, Defendants will retain monies that were taken from Plaintiff and Class members as a result of their conduct. Unless a Class-wide injunction is issued, Defendants will continue to commit the violations alleged, and the members of the Class and the general public will continue to be misled.

87. Plaintiff re-alleges and incorporates by reference the allegations contained in the paragraphs above as if fully set forth herein.

88. This cause of action is brought under the Consumers Legal Remedies Act, California Civil Code § 1750, *et seq.* (the "Act"). Plaintiff is a consumer as defined by California Civil Code § 1761(d). Johnson's® Baby Powder products are goods within the meaning of the Act.

89. Defendants violated and continues to violate the Act by engaging in the following practices proscribed by California Civil Code § 1770(a) in transactions with Plaintiff and the Class which were intended to result in, and did result in, the sale of the Johnson's® Baby Powder products:

> (5) Representing that [the Products] have . . . approval, characteristics, . . . uses [and] benefits . . . which [they do] not have . . . .
>
> * * *
>
> (7) Representing that [the Products] are of a particular standard, quality or grade . . . if [they are] of another.
>
> * * *
>
> (9) Advertising goods . . . with intent not to sell them as advertised.
>
> * * *
>
> (16) Representing that [the Products have] been supplied in accordance with a previous representation when [they have] not.

90. Defendants violated and continue to violate the Act by failing to disclose material facts on the Johnson's® Baby Powder product labels and packages as described above when they knew, or should have known, that use of Johnson's® Baby Powder by women was not safe and could cause a significant increased risk of ovarian cancer. Defendants further violated the Act by representing that the Johnson's® Baby Powder is clinically proven to be safe, gentle and mild.

91. Pursuant to § 1782(d) of the Act, Plaintiff and the Class seek a court order enjoining the above-described wrongful acts and practices of Defendants and for restitution and disgorgement.

92. Pursuant to § 1782 of the Act, Plaintiff notified Defendants in writing by certified mail of the particular violations of § 1770 of the Act and demanded that Defendants rectify the problems associated with the actions detailed above and give notice to all affected consumers of Defendants' intent to so act. Copies of the letters are attached hereto as Exhibit A. Defendants failed to rectify or agree to rectify the problems associated with the actions detailed above and give notice to all affected consumers within 30 days of the date of written notice pursuant to § 1782 of the Act. Therefore, Plaintiff further seeks actual, punitive and statutory damages, as appropriate.

93. Defendants' conduct is malicious, fraudulent and wanton, and provides misleading information.

94. Pursuant to § 1780(d) of the Act, attached hereto as Exhibit B is the affidavit showing that this action has been commenced in the proper forum.

COUNT II

Violation of Business & Professions Code § 17200, *et seq.*

95. Plaintiff re-alleges and incorporates by reference the allegations contained in the paragraphs above as if fully set forth herein.

96. As alleged herein, Plaintiff has suffered injury in fact and lost money or property as a result of Defendants' conduct because she purchased Johnson's® Baby Powder.

97. In the course of conducting business, Defendants committed unlawful business practices by, *inter alia*, omitting material facts concerning the safety of Johnson's® Baby Powder, making representations (which also constitute advertising within the meaning of § 17200) as set forth more fully herein, and violating Civil Code §§ 1572, 1573, 1709, 1711, 1770(a)(5), (7), (9) and (16) under the CLRA, Business & Professions Code §§ 17200, *et seq.*, 17500, *et seq.*, Health & Safety Code §§ 111700, 111765, and 111792, and the common law, including breach of implied warranty and negligent misrepresentation. Defendants' above-described wrongful acts and practices constitute actual and constructive fraud within the meaning of Civil Code §§ 1572 and 1573, as well as deceit, which is prohibited under Civil Code §§ 1709 and 1711.

98. Plaintiff and the Class reserve the right to allege other violations of law, which constitute other unlawful business acts or practices. Such conduct is ongoing and continues to this date.

99. Defendants' omissions, non-disclosures, acts, misrepresentations, and practices as alleged herein also constitute "unfair" business acts and practices within the meaning of Business and Professions Code § 17200, *et seq.*, in that their conduct is substantially injurious to consumers, offends public policy, and is immoral, unethical, oppressive, and unscrupulous as the gravity of the conduct outweighs any alleged benefits attributable to such conduct.

100. As stated in this complaint, Plaintiff alleges violations of consumer protection, unfair competition, and truth in advertising laws, resulting in harm to consumers. Plaintiff asserts violations of the public policy of engaging in false and misleading advertising, unfair competition and deceptive conduct towards consumers. This conduct constitutes violations of the unfair prong of Business & Professions Code § 17200, *et seq*.

101. There were reasonably available alternatives to further Defendants' legitimate business interests, other than the conduct described herein.

102. Defendants' nondisclosures and misleading statements, as more fully set forth above, are also false, misleading and/or likely to deceive the consuming public within the meaning of Business & Professions Code § 17200, *et seq*.

103. Defendants' labeling and packaging as described herein, also constitutes unfair, deceptive, untrue, and misleading advertising.

104. Defendants' conduct caused and continues to cause substantial injury to Plaintiff and the other Class members. Plaintiff has suffered injury in fact and has lost money as a result of Defendants' unfair conduct.

105. Plaintiff, on behalf of himself, and all other similarly situated California residents, seeks restitution of all money obtained from Plaintiff and the members of the Class collected as a result of unfair competition, an injunction prohibiting Defendants from continuing such practices, corrective advertising and all other relief this Court deems appropriate, consistent with Business & Professions Code § 17203.

COUNT III

Negligent Misrepresentation

106. Plaintiff re-alleges and incorporates by reference the allegations contained in the paragraphs above as if fully set forth herein.

107. Defendants have known or should have known, for decades, of the overwhelming scientific and medical evidence that use of talc-based products like Johnson's® Baby Powder in the genital area may lead to a significant increased risk of ovarian cancer. Because of this knowledge, Defendants had a duty to disclose the safety risks to Plaintiff and the other members of the Class. However, instead, Defendants misrepresented that the Baby Powder was clinically proven to be safe when they knew or should have known that there is an increased risk of ovarian cancer for women who use talc powders in the genital area.

108. Defendants intended that Plaintiff and the Class rely on its representations that the Baby Powder was safe for use. Had Plaintiff and the Class known that use of the Baby Powder in the genital area could lead to an increased risk of ovarian cancer, they would not have purchased the Baby Powder. As a result of Defendants' material misrepresentations, Plaintiff and the Class were damaged in the amount of the purchase price of the Baby Powder.

COUNT IV

Breach of Implied Warranty

109. Plaintiff re-alleges and incorporates by reference the allegations contained in the paragraphs above as if fully set forth herein.

110. The Uniform Commercial Code § 2-314 provides that, unless excluded or modified, a warranty that the goods shall be merchantable is implied in a contract for their sale if the seller is a merchant with respect to goods of that kind.

111. At all times, California and the following 48 states, including the District of Columbia, have codified and adopted the provisions the Uniform Commercial Code governing the implied warranty of merchantability: Ala. Code § 7-2-314; Alaska Stat. § 45.02.314; Ariz. Rev. Stat. Ann. § 47-2314; Ark. Code Ann § 4-2 314; Cal. Comm. Code § 2314; Colo. Rev. St § 4-2-314; Conn. Gen. Stat. Ann. § 42a-2-314; 6 Del. C. § 2-314; D.C. Code § 28:2-314; Fla. Stat. Ann § 672.314; Ga. Code. Ann. § 11-2-314; Haw. Rev. Stat. § 490:2-314; Id. Code § 28-2-314; Ill. Comp. Stat. Ann. Ch 810, 5/2-314; Ind. Code. Ann. § 26-1-2-314; Iowa Code Ann. § 554.2314; Kansas Stat. Ann. § 84-2-314; Ky. Rev. Stat. Ann § 355.2-314; La. Civ. Code Ann. Art. § 2520; 11 Maine Rev. Stat. Ann. § 2-314; Md. Code Ann. § 2-314; Mass. Gen. Laws. Ch. 106 § 2-314; Mich. Comp. Laws Ann. § 440.2.314; Minn. Stat. Ann § 336.2-314; Miss. Code. Ann. § 75-2-314; Missouri Rev. Stat § 400.2-314; Mont. Code. Ann § 30-2-314; Nev. Rev. Stat. U.C.C § 104.2314; N.H. Rev. Ann. § 382-A:2-314; N.J. Stat. Ann. § 12A:2-314; N.M. Stat. Ann § 55-2-314; N.Y. U.C.C. Law 2-314; N.C. Gen. Stat. Ann § 25-2-314; N.D. Stat. § 41-02-314; Ohio Rev. Code Ann. § 1302.27; Okla. Stat. § 2-314; Or. Rev. Stat. § 72.3140; Pa. Stat. Ann § 2314; R.I. Gen Laws § 6A-2-314; S.C. Code Ann. § 36-2-314; S.D. Stat. 57A-2-314; Tenn. Code Ann. § 47-2-314; Tex. Bus. & Com. Code Ann. § 2-314; Ut. Code Ann. § 70A-2-314; VA. Code § 8.2-314; Vt. Stat. Ann § 9A-2-314; W. VA. Code § 46-2-314; Wis. Stat. Ann § 402.314; and Wyo. Stat. § 34.1-2-314.

112. Johnson's® Baby Powder is a "good," as defined in the various states' commercial codes governing the implied warranty of merchantability.

113. As designers, manufacturers, licensors, producers, marketers, and sellers of Johnson's® Baby Powder, Defendants are "merchants" within the meaning of the various states' commercial codes governing the implied warranty of merchantability.

114. By placing Johnson's® Baby Powder in the stream of commerce, Defendants impliedly warranted that Johnson's® Baby Powder is reasonably safe, effective and adequately tested for intended use, *i.e.*, to be used as a daily use powder to eliminate friction on the skin and to absorb unwanted excess moisture for both babies and women, and that it was of merchantable quality.

115. As merchants of Johnson's® Baby Powder, Defendants knew that purchasers relied upon them to design, manufacture, license and sell Baby Powder that was reasonably safe, and in fact members of the public, including Plaintiff, reasonably relied upon the skill and judgment of Defendants and upon said implied warranties in purchasing and using Johnson's® Baby Powder.

116. Plaintiff and the Class members purchased Johnson's® Baby Powder for its intended purpose.

117. In breach of its implied warranty, Johnson's® Baby Powder is unsafe and not merchantable, in that it causes serious and even fatal health problems.

118. Johnson's® Baby Powder was not reasonably safe for its intended use when it left Defendants' control and entered the market.

119. The Johnson's® Baby Powder defects were not open or obvious to consumers, including Plaintiff and the Class, who could not have known about the nature of the risks associated with Johnson's® Baby Powder until after they purchased or used Johnson's® Baby Powder.

120. As a direct and proximate result of Defendants' breach of implied warranties, Plaintiff and Class members have sustained injuries by purchasing Johnson's® Baby Powder, which was not safe as represented, thus entitling Plaintiff to judgment and equitable relief against Defendants, as well as restitution, including all monies paid for Johnson's® Baby Powder and disgorgement of profits from Defendants received from sales of Johnson's® Baby

Powder, attorneys' fees, punitive damages, and costs, as set forth in the Prayer for Relief.

PRAYER FOR RELIEF

Wherefore, Plaintiff prays for a judgment:

A. Certifying the Class as requested herein;

B. Awarding Plaintiff and the proposed Class members actual damages;

C. Awarding Plaintiff and the proposed Class members punitive damages;

D. Awarding Plaintiff and the proposed Class members statutory damages;

E. Awarding restitution and disgorgement of Defendants' revenues to Plaintiff and the proposed Class members;

F. Awarding declaratory and injunctive relief as permitted by law or equity, including enjoining Defendants from continuing the unlawful practices as set forth herein, and directing Defendants to identify, with court supervision, victims of their conduct and pay them restitution and disgorgement of all monies acquired by Defendants by means of any act or practice declared by this Court to be wrongful;

G. Ordering Defendants to engage in a corrective advertising campaign;

H. Awarding attorneys' fees and costs; and

I. Providing such further relief as may be just and proper.

JURY DEMAND

Plaintiff demands a trial by jury on all issues so triable.

Dated: April 24, 2015

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LESLIE E. HURST (178432)
THOMAS J. O'REARDON II (247952)
PAULA M. ROACH (254142)

By: *s/ Timothy G. Blood*
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Attorneys for Plaintiff and the Class

CERTIFICATE OF SERVICE

I hereby certify that on April 24, 2015, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the e-mail addresses denoted on the Electronic Mail Notice List, and I hereby certify that I have mailed the foregoing document or paper via the United States Postal Service to the non-CM/ECF participants indicated on the Electronic Mail Notice List.

I certify under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed on April 24, 2015.

s/ Timothy G. Blood
TIMOTHY G. BLOOD

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EXHIBIT A

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Leslie E. Hurst
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April 28, 2014

VIA CERTIFIED MAIL (RETURN RECEIPT)
(RECEIPT NO. 7005 0390 0005 9156 2653)

Alex Gorsky, CEO
Johnson & Johnson
One Johnson & Johnson Plaza
New Brunswick, NJ 08933

Dear Mr. Gorsky:

We represent Mona Estrada ("Plaintiff") and all other consumers similarly situated in an action against Johnson & Johnson and Johnson & Johnson Consumer Companies, Inc. ("Defendants"), arising out of, *inter alia*, omissions and misrepresentations regarding the safety of using Johnson's® Baby Powder.

Plaintiff and others similarly situated purchased Johnson's® Baby Powder unaware of the fact that Defendants' omissions and representations were false and deceptive. The full claims, including the facts and circumstances surrounding these claims, are detailed in the Class Action Complaint, a copy of which is attached and incorporated by this reference.

These representations and omissions are false and misleading and constitute unfair methods of competition and unlawful, unfair, and fraudulent acts or practices, undertaken by defendants with the intent to result in the sale of Johnson's® Baby Powder to the consuming public. These practices constitute violations of the Consumers Legal Remedies Act, California Civil Code §1750 *et seq.* Specifically, Defendants' practices violate California Civil Code §1770(a) under, *inter alia*, the following subdivisions:

(5) Representing that goods or services have . . .approval, characteristics, . . . uses [or] benefits . . . which they do not have . . . .

* * *

(7) Representing that goods or services are of a particular standard, quality or grade . . . if they are of another.

* * *

(9) Advertising goods or services with intent not to sell them as advertised.

* * *

(16) Representing that the subject of a transaction has been supplied in accordance with a previous representation when it has not.

As detailed in the attached Complaint, Defendants' practices also violate California Business and Professions Code §17200 *et seq.*, and constitute negligent misrepresentations and a breach of implied warranty.

BLOOD HURST & O'REARDON | LLP

While the Complaint constitutes sufficient notice of the claims asserted, pursuant to California Civil Code §1782 and California Commercial Code §2607, we hereby demand on behalf of our client and all others similarly situated that Defendants immediately correct and rectify these violations by ceasing dissemination of false and misleading information as described in the enclosed Complaint, properly inform consumers of the potential dangers associated with using Johnson's® Baby Powder, obtain redress for those who have purchased Johnson's® Baby Powder, and initiating a corrective advertising campaign to re-educate consumers regarding the safe use of Johnson's® Baby Powder. In addition, Defendants must offer to refund the purchase price to all consumer purchasers of the product, plus provide reimbursement for interest, costs, and fees.

We await your response.

Sincerely,

Leslie Hurst

LESLIE E. HURST

LEH:jk

Enclosure

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Leslie E. Hurst
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April 28, 2014

VIA CERTIFIED MAIL (RETURN RECEIPT)
(RECEIPT NO. 7005 0390 0005 9156 2646)

William C. Weldon, President
Johnson & Johnson Consumer Companies, Inc.
199 Grandview Road
Skillman, NJ 08558

Dear Mr. Weldon:

We represent Mona Estrada ("Plaintiff") and all other consumers similarly situated in an action against Johnson & Johnson and Johnson & Johnson Consumer Companies, Inc. ("Defendants"), arising out of, *inter alia*, omissions and misrepresentations regarding the safety of using Johnson's® Baby Powder.

Plaintiff and others similarly situated purchased Johnson's® Baby Powder unaware of the fact that Defendants' omissions and representations were false and deceptive. The full claims, including the facts and circumstances surrounding these claims, are detailed in the Class Action Complaint, a copy of which is attached and incorporated by this reference.

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* * *

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* * *

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* * *

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As detailed in the attached Complaint, Defendants' practices also violate California Business and Professions Code §17200 *et seq.*, and constitute negligent misrepresentations and a breach of implied warranty.

BLOOD HURST & O'REARDON | LLP

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We await your response.

Sincerely,

Leslie Hurst

LESLIE E. HURST

LEH:jk

Enclosure

EXHIBIT B

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Attorneys for Plaintiff and the Class

UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF CALIFORNIA

MONA ESTRADA, On Behalf of Herself and All Others Similarly situated,

Plaintiff,

v.

JOHNSON & JOHNSON and JOHNSON & JOHNSON CONSUMER COMPANIES, INC.,

Defendants.

Case No.:

CLASS ACTION

AFFIDAVIT OF LESELIE E. HURST PURSUANT TO CALIFORNIA CIVIL CODE §1780(d)

I, LESLIE E. HURST, declare as follows:

1. I am an attorney duly licensed to practice before all of the courts of the State of California. I am a member of the law firm of Blood Hurst & O'Reardon LLP, one of the counsel of record for plaintiff in the above-entitled action.

2. Defendants Johnson & Johnson and Johnson & Johnson Consumer Companies, Inc. have done, and are doing, business in San Joaquin County. Such business includes the marketing and sale of Johnson's® Baby Powder. Furthermore, plaintiff Mona Estrada purchased Johnson's® Baby Powder in San Joaquin County.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed this 28th day of April, 2014, at San Diego, California.

Leslie Hurst

LESLIE E. HURST

Exhibit 8

US District Court Civil Docket

U.S. District - New Jersey
(Trenton)

3:14cv7079

Chakalos v. Johnson & Johnson et al

Date Filed:	11/11/2014
Assigned To:	Judge Freda L. Wolfson
Referred To:	Magistrate Judge Lois H. Goodman
Nature of suit:	TORTS - Personal Injury - Health Care/Pharmaceutical Personal Injury/Product Liability (367)
Cause:	Notice of Removal- Product Liability
Lead Docket:	None
Other Docket:	SOMERSET COUNTY SUPERIOR COURT OF NEW JERSEY, L 1449 14
Jurisdiction:	Diversity
Class Code:	OPEN
Closed:	
Statute:	28:1441
Jury Demand:	Both
Demand Amount:	$0
NOS Description:	TORTS - Personal Injury - Health Care/Pharmaceutical Personal Injury/Product Liability

Litigants	Attorneys
James Chakalos as Personal Representative on behalf of the Estate of Janice Chakalos Plaintiff	MICHAEL JAMES KUHARSKI LEAD ATTORNEY;ATTORNEY TO BE NOTICED KUHARSKI, LEVITZ & GIOVINAZZO, ESQS. 176 Hart Blvd Staten Island , NY 10301 USA 718-448-1600 Fax: 718-448-1699 Email:Mkuharski@klawnyc.Com
Johnson & Johnson Defendant	SUSAN M. SHARKO LEAD ATTORNEY;ATTORNEY TO BE NOTICED DRINKER, BIDDLE & REATH, LLP 600 Campus Drive Florham Park , NJ 07932-1047 USA 973-549-7650 Email:Susan.Sharko@dbr.Com JULIE LYNN TERSIGNI ATTORNEY TO BE NOTICED DRINKER BIDDLE & REATH LLP 600 Campus Drive Florham Park , NJ 07932 USA 973-549-7000 Email:Julie.Tersigni@dbr.Com
Johnson & Johnson Consumer Companies, Inc. Defendant	SUSAN M. SHARKO LEAD ATTORNEY;ATTORNEY TO BE NOTICED DRINKER, BIDDLE & REATH, LLP 600 Campus Drive Florham Park , NJ 07932-1047 USA 973-549-7650 Email:Susan.Sharko@dbr.Com

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Imerys Talc America, Inc.
formerly known as
LUZENAC AMERICA, INC.
Defendant

LORNA A. DOTRO
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Valeant Pharmaceuticals North America
[Term: 03/19/2015]
Defendant

Valeant Pharmaceuticals North America Llc
[Term: 03/19/2015]
Defendant

Valeant Pharmaceuticals International
[Term: 03/19/2015]
Defendant

Chattem, Inc.
[Term: 04/14/2015]
Defendant

MATTHEW THOMAS SALZMANN
LEAD ATTORNEY;ATTORNEY TO BE NOTICED
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Sanofi US Services Inc.
[Term: 02/18/2015]
Defendant

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Email:Robert.Sobelman@aporter.Com

John Does/Jane Does 1-30
Defendant

Unknown Businesses And/Or Corporations A-Z
Defendant

Date	#	Proceeding Text	Source
11/11/2014	1	NOTICE OF REMOVAL by CHATTEM, INC. from SOMERSET COUNTY SUPERIOR COURT OF NEW JERSEY, case number L 1449 14. (Filing and Admin fee $ 400 receipt number 6042156), filed by CHATTEM, INC.. (Attachments: # 1 Civil Cover Sheet, # 2 Exhibit A)(jjc) (Entered: 11/13/2014)	
11/11/2014	2	Corporate Disclosure Statement by CHATTEM, INC. identifying SANOFI SA as Corporate Parent. (jjc) (Entered: 11/13/2014)	
11/13/2014		CASE REFERRED to Arbitration. (jjc) (Entered: 11/13/2014)	
11/13/2014		CLERK'S QUALITY CONTROL MESSAGE - The Original State Court Complaint (Exhibit A 1) submitted by Matthew Salzmann on 11/11/2014 appears to have address information that does not match the court's records for this case. PLAINTIFF'S COUNSEL should refer to the court's website at www.njd.uscourts.gov for information and instructions on maintaining your account. (jjc) (Entered: 11/13/2014)	
11/13/2014	3	ANSWER to Complaint with JURY DEMAND by CHATTEM, INC..(SALZMANN, MATTHEW) (Entered: 11/13/2014)	
11/14/2014	4	NOTICE by CHATTEM, INC. re 1 Notice of Removal, Supplement to Notice of Removal (SALZMANN, MATTHEW) (Entered: 11/14/2014)	
11/24/2014	5	MOTION for Leave to Appear Pro Hac Vice as to Anand Agneshwar by CHATTEM, INC., SANOFI US SERVICES INC.. (Attachments: # 1 Certification of Matthew T. Salzmann, # 2 Certification of Anand Agneshwar, # 3 Text of Proposed Order)(SALZMANN, MATTHEW) (Entered: 11/24/2014)	
11/24/2014	6	ORDER SCHEDULING CONFERENCE: Initial Conference set for 1/23/2015 at 10:00 AM in Trenton - Courtroom 7E before Magistrate Judge Lois H. Goodman. Signed by Magistrate Judge Lois H. Goodman on 11/24/2014. (eaj) (Entered: 11/24/2014)	
11/24/2014		CLERK'S QUALITY CONTROL MESSAGE - The Certification of Anand Agneshwar submitted as an attachment to the Motion for Pro Hac 5 by Matthew Salzmann contains an improper signature. Only Registered Users are permitted to sign electronically filed documents with an s/. PLEASE RESUBMIT THE DOCUMENT WITH A PROPER ELECTRONIC OR SCANNED SIGNATURE. This submission will remain on the docket unless otherwise ordered by the court. (eaj) (Entered: 11/24/2014)	
11/24/2014		Set Deadlines as to 5 MOTION for Leave to Appear Pro Hac Vice as to Anand Agneshwar. Motion set for 1/5/2015 before Magistrate Judge Lois H. Goodman. The motion will be decided on the papers. No appearances required unless notified by the court. (eaj) (Entered: 11/24/2014)	
11/26/2014	7	Certification of Anand Agneshwar on behalf of CHATTEM, INC., SANOFI US SERVICES INC. Re 5 Motion for Leave to Appear,. (SALZMANN, MATTHEW) (Entered: 11/26/2014)	
12/01/2014	8	ANSWER to Complaint with JURY DEMAND by IMERYS TALC AMERICA, INC.. (Attachments: # 1 Corporate Disclosure (Re Complaint only))(DOTRO, LORNA) (Entered: 12/01/2014)	

12/01/2014	9	NOTICE by IMERYS TALC AMERICA, INC. re 1 Notice of Removal, Consent to Remove (DOTRO, LORNA) (Entered: 12/01/2014)
12/01/2014	10	NOTICE of Appearance by MARK K. SILVER on behalf of IMERYS TALC AMERICA, INC. (SILVER, MARK) (Entered: 12/01/2014)
12/01/2014	11	First MOTION Pro Hoc Vice Admission by JAMES CHAKALOS. (KUHARSKI, MICHAEL) (Entered: 12/01/2014)
12/01/2014	12	Second MOTION Pro Hoc Vice Admission by JAMES CHAKALOS. (KUHARSKI, MICHAEL) (Entered: 12/01/2014)
12/02/2014		CLERK'S QUALITY CONTROL MESSAGE - The Corporate Disclosure Statement 8 filed by Lorna Dotro on 12/1/2014 was submitted incorrectly as an Attachment to the Answer. PLEASE RESUBMIT THE Corporate Disclosure Statement USING the event Corporate Disclosure Statement. This submission will remain on the docket unless otherwise ordered by the court. (jjc) (Entered: 12/02/2014)
12/02/2014		CLERK'S QUALITY CONTROL MESSAGE - A Notice of Motion was not submitted with the Motion for Pro Hac Vice 11 and 12 submitted by Michael Kuharski on 12/1/2014. PLEASE SUBMIT THE MISSING DOCUMENT(S) ONLY. (jjc) (Entered: 12/02/2014)
12/02/2014	13	Corporate Disclosure Statement by IMERYS TALC AMERICA, INC. identifying IMERYS MINERALS HOLDING LIMITED (UK) as Corporate Parent.. (DOTRO, LORNA) (Entered: 12/02/2014)
12/02/2014	14	ORDER granting 5 Motion for Leave to Appear Pro Hac Vice as to Anand Agneshwar, Esq.. Signed by Judge Anne E. Thompson on 12/1/2014. (jjc) (Entered: 12/02/2014)
12/03/2014	15	ORDER granting 12 Motion for leave to appear pro hac vice as to Carmen S. Scott, Esq.. Signed by Magistrate Judge Lois H. Goodman on 12/3/2014. (jjc) (Entered: 12/03/2014)
12/03/2014	16	ORDER granting 11 Motion for leave to appear pro hac vice as to Meghan Johnson Carter, Esq. Signed by Magistrate Judge Lois H. Goodman on 12/3/2014. (jjc) (Entered: 12/03/2014)
12/03/2014	17	NOTICE of Appearance by ROBERT BENJAMIN SOBELMAN on behalf of CHATTEM, INC., SANOFI US SERVICES INC. (SOBELMAN, ROBERT) (Entered: 12/03/2014)
12/04/2014	18	MOTION Pro Hoc Vice Admission re 11 First MOTION Pro Hoc Vice Admission , MOTION for Leave to Appear Pro Hac Vice by JAMES CHAKALOS. (KUHARSKI, MICHAEL) (Entered: 12/04/2014)
12/04/2014	19	MOTION for Leave to Appear Pro Hac Vice by JAMES CHAKALOS. (KUHARSKI, MICHAEL) (Entered: 12/04/2014)
12/05/2014		Pro Hac Vice fee for Anand Agneshwar, Esq.: $ 150, receipt number TRE050256 (jjc) (Entered: 12/05/2014)
12/23/2014	20	MOTION for Leave to Appear Pro Hac Vice of Nancy M. Erfle, Esq. by IMERYS TALC AMERICA, INC.. (Attachments: # 1 Certification of Nancy M. Erfle, Esq. in Support of Application for Pro Hac Vice Admission, # 2 Certification of Lorna A. Dotro, Esq. in Support of Application for Pro Hac Vice Admission of Nancy M. Erfle, Esq., # 3 Text of Proposed Order)(DOTRO, LORNA) (Entered: 12/23/2014)
12/23/2014		Set Deadlines as to 20 MOTION for Leave to Appear Pro Hac Vice of Nancy M. Erfle, Esq.. Motion set for 1/20/2015 before Magistrate Judge Lois H. Goodman. The motion will be decided on the papers. No appearances required unless notified by the court. (eaj) (Entered: 12/23/2014)
12/23/2014	21	MOTION for Leave to Appear Pro Hac Vice of Ann Thornton Field, Esq. by IMERYS TALC AMERICA, INC.. (Attachments: # 1 Certification of Ann Thornton Field, Esq. in Support of Application for Pro Hac Vice Admission, # 2 Certification of Lorna A. Dotro, Esq. in Support of Application for Pro Hac Vice Admission of Ann Thornton Field, Esq., # 3 Text of Proposed Order)(DOTRO, LORNA) (Entered: 12/23/2014)
12/24/2014		Set Deadlines as to 21 MOTION for Leave to Appear Pro Hac Vice of Ann Thornton Field, Esq.. Motion set for 1/20/2015 before Magistrate Judge Lois H. Goodman. The motion will be decided on the papers. No appearances required unless notified by the court. (jjc) (Entered: 12/24/2014)
01/02/2015	22	MOTION for Leave to Appear Pro Hac Vice as to Paige H. Sharpe by CHATTEM, INC., SANOFI US SERVICES INC.. (Attachments: # 1 Certification of Matthew T. Salzmann, # 2 Certification of Paige H. Sharpe, # 3 Text of Proposed Order Granting Admission Pro Hac Vice to Paige H. Sharpe)(SALZMANN, MATTHEW) (Entered: 01/02/2015)
01/05/2015		Set Deadlines as to 22 MOTION for Leave to Appear Pro Hac Vice as to Paige H. Sharpe. Motion set for 2/2/2015 before Magistrate Judge Lois H. Goodman. The motion will be decided on the papers. No appearances required unless notified by the court. (jjc) (Entered: 01/05/2015)
01/05/2015	23	NOTICE of Appearance by MICHAEL JAMES KUHARSKI on behalf of JAMES CHAKALOS (KUHARSKI, MICHAEL) (Entered: 01/05/2015)

01/05/2015	24	NOTICE of Appearance by MICHAEL JAMES KUHARSKI on behalf of JAMES CHAKALOS (KUHARSKI, MICHAEL) (Entered: 01/05/2015)
01/05/2015		CLERK'S QUALITY CONTROL MESSAGE - The Notice for Pro hac vice to receive NEF 23 and 24 filed by Michael Kuharski on 1/5/2015 were submitted incorrectly as Notice of Appearances. PLEASE RESUBMIT THE Notice for Pro hac vice to receive NEF USING the event Notice for Pro hac vice to receive NEF. This submission will remain on the docket unless otherwise ordered by the court. (jjc) (Entered: 01/05/2015)
01/05/2015	25	Notice of Request by Pro Hac Vice Meghan Johnson Carter, Esq. to receive Notices of Electronic Filings. (KUHARSKI, MICHAEL) (Entered: 01/05/2015)
01/05/2015	26	Notice of Request by Pro Hac Vice Carmen S. Scott, Esq. to receive Notices of Electronic Filings. (KUHARSKI, MICHAEL) (Entered: 01/05/2015)
01/05/2015		CLERK'S QUALITY CONTROL MESSAGE - Please be advised that the Request for Electronic Notification of Pro Hac Vice Counsel submitted by Michael Kuharski on 1/5/2015 cannot be processed until pro hac counsel has been admitted and the application fee paid. Please review the Electronic Notification for Pro Hac Vice instructions on our website. Counsel is advised to resubmit the Request for Electronic Notification of Pro Hac Vice Counsel once payment has been recorded. This message is for informational purposes only. (jjc) (Entered: 01/05/2015)
01/05/2015	27	Notice of Request by Pro Hac Vice Meghan Johnson Carter, Esq. to receive Notices of Electronic Filings. (Pro Hac Vice fee $ 150 receipt number 0312-6131472.) (KUHARSKI, MICHAEL) (Entered: 01/05/2015)
01/05/2015	28	Notice of Request by Pro Hac Vice Carmen S. Scott, Esq. to receive Notices of Electronic Filings. (Pro Hac Vice fee $ 150 receipt number 0312-6131514.) (KUHARSKI, MICHAEL) (Entered: 01/05/2015)
01/06/2015		Pro Hac Vice counsel, CARMEN S. SCOTT, ESQ and MEGHAN JOHNSON CARTER, ESQ, has been added to receive Notices of Electronic Filing. Pursuant to L.Civ.R. 101.1, only local counsel are entitled to sign and file papers, enter appearances and receive payments on judgments, decrees or orders. (jjc) (Entered: 01/06/2015)
01/07/2015	29	ORDER granting 22 Motion for Leave to Appear Pro Hac Vice as to Paige H. Sharpe, Esq.. Signed by Magistrate Judge Anne E. Thompson on 1/6/2015. (jjc) Modified on 1/9/2015 (dm). (Entered: 01/07/2015)
01/09/2015	30	Letter from Defendant Imerys on behalf of all parties requesting adjournment of Scheduling Conference. (DOTRO, LORNA) (Entered: 01/09/2015)
01/09/2015	31	Request for Summons to be Issued by JAMES CHAKALOS as to JOHNSON & JOHNSON CONSUMER COMPANIES, INC.. (KUHARSKI, MICHAEL) (Entered: 01/09/2015)
01/09/2015	32	Request for Summons to be Issued by JAMES CHAKALOS as to JOHNSON & JOHNSON. (KUHARSKI, MICHAEL) (Entered: 01/09/2015)
01/09/2015	33	Request for Summons to be Issued by JAMES CHAKALOS as to SANOFI US SERVICES INC.. (KUHARSKI, MICHAEL) (Entered: 01/09/2015)
01/09/2015	34	Request for Summons to be Issued by JAMES CHAKALOS as to VALEANT PHARMACEUTICALS INTERNATIONAL. (KUHARSKI, MICHAEL) (Entered: 01/09/2015)
01/09/2015	35	Request for Summons to be Issued by JAMES CHAKALOS as to VALEANT PHARMACEUTICALS NORTH AMERICA LLC. (KUHARSKI, MICHAEL) (Entered: 01/09/2015)
01/09/2015	36	Request for Summons to be Issued by JAMES CHAKALOS as to VALEANT PHARMACEUTICALS NORTH AMERICA. (KUHARSKI, MICHAEL) (Entered: 01/09/2015)
01/09/2015	37	SUMMONS ISSUED as to JOHNSON & JOHNSON, JOHNSON & JOHNSON CONSUMER COMPANIES, INC., SANOFI US SERVICES INC., VALEANT PHARMACEUTICALS INTERNATIONAL, VALEANT PHARMACEUTICALS NORTH AMERICA, VALEANT PHARMACEUTICALS NORTH AMERICA LLC Attached is the official court Summons, please fill out Defendant and Plaintiffs attorney information and serve. Issued By *JAWEIA CAMPBELL* (jjc) (Entered: 01/09/2015)
01/14/2015		ATTENTION COUNSEL: The Initial Conference scheduled for 1/23/15 with Magistrate Judge Lois H. Goodman has been rescheduled to 3/4/15 at 9:30 a.m. (ij,) (Entered: 01/14/2015)
01/14/2015		Pro Hac Vice fee: as to Paige H. Sharpe $ 150, receipt number tre051626 (kas,) (Entered: 01/14/2015)
01/21/2015	38	ORDER granting 21 Motion for Leave to Appear Pro Hac Vice as to Ann Thornton, Esq.. Signed by Magistrate Judge Lois H. Goodman on 1/21/2015. (jjc) (Entered: 01/21/2015)
01/21/2015	39	ORDER granting 20 Motion for Leave to Appear Pro Hac Vice as to Nancy M. Erfle, Esq.. Signed by Magistrate Judge Lois H. Goodman on 1/21/2015. (jjc) (Entered: 01/21/2015)
01/23/2015	40	Notice of Request by Pro Hac Vice Nancy M. Erfle, Esq. to receive Notices of Electronic Filings. (Pro Hac Vice fee $ 150 receipt number 0312-6167573.) (DOTRO, LORNA) (Entered: 01/23/2015)

01/23/2015	41	Notice of Request by Pro Hac Vice Ann Thornton Field, Esq. to receive Notices of Electronic Filings for Pro Hac Vice Fees 150 Receipt number 0312016176 (DOTRO, LORNA) (Entered: 01/23/2015)
01/23/2015	42	Certification of Lorna A. Dotro, Esq. on behalf of IMERYS TALC AMERICA, INC. Re 39 Order on Motion for Leave to Appear. (DOTRO, LORNA) (Entered: 01/23/2015)
01/23/2015	43	Certification of Lorna A. Dotro, Esq. on behalf of IMERYS TALC AMERICA, INC. Re 38 Order on Motion for Leave to Appear. (DOTRO, LORNA) (Entered: 01/23/2015)
01/25/2015		Pro Hac Vice counsel, NANCY M. ERFLE and ANN THORNTON FIELD, has been added to receive Notices of Electronic Filing. Pursuant to L.Civ.R. 101.1, only local counsel are entitled to sign and file papers, enter appearances and receive payments on judgments, decrees or orders. (eaj) (Entered: 01/25/2015)
02/10/2015	44	STIPULATION of Dismissal without Prejudice as to Defendant Sanofi US Services Inc. by CHATTEM, INC., IMERYS TALC AMERICA, INC., SANOFI US SERVICES INC.. (SOBELMAN, ROBERT) (Entered: 02/10/2015)
02/10/2015		CLERK'S QUALITY CONTROL MESSAGE - The Proposed Order 44 submitted by Robert Sobelman on 2/10/2015 must be executed by a Judicial Officer before filing. Please forward to the appropriate Judicial Officer in accordance with his/her preferred practice as found on our website. This submission will remain on the docket unless otherwise ordered by the court. This message is for informational purposes only. (jjc) (Entered: 02/10/2015)
02/12/2015	45	Notice to be terminated and withdraw from Notices of Electronic filing as to case. Attorney ROBERT BENJAMIN SOBELMAN terminated. (SOBELMAN, ROBERT) (Entered: 02/12/2015)
02/12/2015	46	ANSWER to Complaint with JURY DEMAND by JOHNSON & JOHNSON, JOHNSON & JOHNSON CONSUMER COMPANIES, INC.. (Attachments: # 1 Corporate Disclosure (Re Complaint only), # 2 Certificate of Service)(SHARKO, SUSAN) (Entered: 02/12/2015)
02/12/2015		CLERK'S QUALITY CONTROL MESSAGE - The Corporate Disclosure Statement filed as an attachment to the Answer to the Complaint 46 on 2/12/2015 by Susan Sharko must be filed as a separate docket entry. Please resubmit the Corporate Disclosure Statement ONLY using the event Corporate Disclosure Statement. (eaj) (Entered: 02/12/2015)
02/12/2015	47	Corporate Disclosure Statement by JOHNSON & JOHNSON, JOHNSON & JOHNSON CONSUMER COMPANIES, INC.. (Attachments: # 1 Certificate of Service)(SHARKO, SUSAN) (Entered: 02/12/2015)
02/13/2015	48	AFFIDAVIT of Service for Summons and Complaint served on Elizabeth Carew on 1/22/15, filed by JAMES CHAKALOS. (KUHARSKI, MICHAEL) (Entered: 02/13/2015)
02/13/2015	49	AFFIDAVIT of Service for Summons and Complaint served on Elizabeth Carew on 1/22/15, filed by JAMES CHAKALOS. (KUHARSKI, MICHAEL) (Entered: 02/13/2015)
02/13/2015	50	AFFIDAVIT of Service for Summons and Complaint served on Doreen Haeselin on 1/21/15, filed by JAMES CHAKALOS. (KUHARSKI, MICHAEL) (Entered: 02/13/2015)
02/13/2015	51	AFFIDAVIT of Service for Summons and Complaint served on Christina Acevedo on 1/21/15, filed by JAMES CHAKALOS. (KUHARSKI, MICHAEL) (Entered: 02/13/2015)
02/13/2015	52	AFFIDAVIT of Service for Summons and Complaint served on Christina Acevedo on 1/21/15, filed by JAMES CHAKALOS. (KUHARSKI, MICHAEL) (Entered: 02/13/2015)
02/17/2015	53	STIPULATION AND ORDER of Dismissal. Signed by Judge Anne E. Thompson on 2/17/2015. (eaj) (Entered: 02/17/2015)
02/17/2015		***Civil Case Terminated. (eaj,) (Entered: 02/17/2015)
02/18/2015		CLERK'S QUALITY CONTROL MESSAGE - Case was closed in error. Please disregard. (eaj) (Entered: 02/18/2015)
02/19/2015	54	MOTION for Extension of Time to File Answer Defendant Valeant by JAMES CHAKALOS. (Attachments: # 1 proposed order)(KUHARSKI, MICHAEL) (Entered: 02/19/2015)
02/19/2015		Set Deadlines as to 54 MOTION for Extension of Time to File Answer Defendant Valeant. Motion set for 3/16/2015 before Magistrate Judge Lois H. Goodman. The motion will be decided on the papers. No appearances required unless notified by the court. (eaj,) (Entered: 02/19/2015)
02/20/2015	55	NOTICE of Appearance by KEVIN TIMOTHY SULLIVAN on behalf of CHATTEM, INC. (SULLIVAN, KEVIN) (Entered: 02/20/2015)
02/24/2015	56	Joint Discovery Plan by IMERYS TALC AMERICA, INC..(DOTRO, LORNA) (Entered: 02/24/2015)
02/24/2015	57	Letter from Lorna A. Dotro, Esq. on behalf of all parties regarding March 4, 2015 Initial Conference. (DOTRO, LORNA) (Entered: 02/24/2015)
02/24/2015		CLERK'S QUALITY CONTROL MESSAGE - Please be advised that Joint Discovery Plan 56 submitted by Lorna Dotro on 2/24/2015 is not filed pursuant to the Local Rules of this Court. This submission will remain on the docket unless otherwise ordered by the Court. This message is for informational purposes only. (eaj,) (Entered: 02/24/2015)

02/27/2015	58	Notice of Request by Pro Hac Vice Anand Agneshwar to receive Notices of Electronic Filings. (SULLIVAN, KEVIN) (Entered: 02/27/2015)
02/27/2015	59	Notice of Request by Pro Hac Vice Paige H. Sharpe to receive Notices of Electronic Filings. (SULLIVAN, KEVIN) (Entered: 02/27/2015)
03/01/2015		Pro Hac Vice counsel, PAIGE SHARPE and ANAND AGNESHWAR, has been added to receive Notices of Electronic Filing. Pursuant to L.Civ.R. 101.1, only local counsel are entitled to sign and file papers, enter appearances and receive payments on judgments, decrees or orders. (eaj) (Entered: 03/01/2015)
03/03/2015		ATTENTION COUNSEL: The Initial Conference scheduled for 3/4/15 with Magistrate Judge Lois H. Goodman has been rescheduled to 3/18/15 at 11:00 a.m. (ij,) (Entered: 03/03/2015)
03/11/2015	60	MOTION for Leave to Appear Pro Hac Vice Gene M. Williams by JOHNSON & JOHNSON, JOHNSON & JOHNSON CONSUMER COMPANIES, INC.. (Attachments: # 1 Certification Susan M. Sharko, # 2 Certification Gene M. Williams, # 3 Text of Proposed Order, # 4 Certificate of Service)(SHARKO, SUSAN) (Entered: 03/11/2015)
03/11/2015	61	MOTION for Leave to Appear Pro Hac Vice Kathleen Frazier by JOHNSON & JOHNSON, JOHNSON & JOHNSON CONSUMER COMPANIES, INC.. (Attachments: # 1 Certification Susan M. Sharko, # 2 Certification Kathleen Frazier, # 3 Text of Proposed Order, # 4 Certificate of Service)(SHARKO, SUSAN) (Entered: 03/11/2015)
03/11/2015	62	NOTICE of Appearance by JULIE LYNN TERSIGNI on behalf of JOHNSON & JOHNSON, JOHNSON & JOHNSON CONSUMER COMPANIES, INC. (Attachments: # 1 Certification of Service)(TERSIGNI, JULIE) (Entered: 03/11/2015)
03/12/2015		SetDeadlines as to 60 MOTION for Leave to Appear Pro Hac Vice Gene M. Williams, 61 MOTION for Leave to Appear Pro Hac Vice Kathleen Frazier. Motion set for 4/6/2015 before Magistrate Judge Lois H. Goodman. The motion will be decided on the papers. No appearances required unless notified by the court. (eaj) (Entered: 03/12/2015)
03/12/2015	63	ORDER granting 61 Motion for Leave to Appear Pro Hac Vice as to Kathleen Frazier, Esq. Signed by Magistrate Judge Lois H. Goodman on 3/12/2015. (eaj) (Entered: 03/12/2015)
03/12/2015	64	ORDER granting 60 Motion for Leave to Appear Pro Hac Vice as to Gene M. Williams. Signed by Magistrate Judge Lois H. Goodman on 3/12/2015. (eaj) (Entered: 03/12/2015)
03/18/2015		Text Minute Entry for proceedings held before Magistrate Judge Lois H. Goodman: Initial Pretrial Conference held on 3/18/2015. (ij,) (Entered: 03/19/2015)
03/19/2015	65	NOTICE AND ORDER of Voluntary Dismissal as to VALEANT PHARMACEUTICALS NORTH AMERICA LLC, VALEANT PHARMACEUTICALS INTERNATIONAL and VALEANT PHARMACEUTICALS NORTH AMERICA terminated.. Signed by Judge Anne E. Thompson on 3/18/2015. (eaj) (Entered: 03/19/2015)
03/19/2015		Pro Hac Vice fee: $ 150, receipt number NEW023404 Re Gene M. Williams (nr,) (Entered: 03/19/2015)
03/19/2015		Pro Hac Vice fee: $ 150, receipt number NEW023403 Re Kathleen Frazier (nr,) (Entered: 03/19/2015)
03/24/2015	66	MOTION for Leave to Appear Pro Hac Vice Lonny Levitz, Esq. by JAMES CHAKALOS. (KUHARSKI, MICHAEL) (Entered: 03/24/2015)
03/24/2015		Set Deadlines as to 66 MOTION for Leave to Appear Pro Hac Vice Lonny Levitz, Esq.. Motion set for 4/6/2015 before Magistrate Judge Lois H. Goodman. The motion will be decided on the papers. No appearances required unless notified by the court. (eaj) (Entered: 03/24/2015)
03/25/2015		RESET Deadlines as to 66 MOTION for Leave to Appear Pro Hac Vice Lonny Levitz, Esq.. Motion set for 4/20/2015 before Magistrate Judge Lois H. Goodman. The motion will be decided on the papers. No appearances required unless notified by the court. (eaj) (Entered: 03/25/2015)
03/27/2015	67	PRETRIAL SCHEDULING ORDER: Settlement Conference set for 2/10/2016 at 02:00 PM in Trenton - Courtroom 7E before Magistrate Judge Lois H. Goodman; Telephone Conference set for 6/16/2015 at 02:30 PM before Magistrate Judge Lois H. Goodman, Plaintiff is to initiate the call; Any Motion to Amend the Pleadings or Join New Parties due by 7/24/2015; Fact Discovery due by 11/30/2015; Dispositive Motions due by 6/24/2016. Signed by Magistrate Judge Lois H. Goodman on 3/27/2015. (eaj) (Entered: 03/27/2015)
04/14/2015	68	STIPULATION AND ORDER of Dismissal as to Defendant Chattem, Inc.. Signed by Judge Anne E. Thompson on 4/14/2015. (kas,) (Entered: 04/14/2015)
04/17/2015	69	NOTICE of Voluntary Dismissal by All Plaintiffs (KUHARSKI, MICHAEL) (Entered: 04/17/2015)
04/17/2015	70	NOTICE by JAMES CHAKALOS Status To The Court (KUHARSKI, MICHAEL) (Entered: 04/17/2015)
04/17/2015	71	NOTICE by JAMES CHAKALOS The Above Notice of Voluntary Dismissal by All Plaintiffs Was a

		Mistake (KUHARSKI, MICHAEL) (Entered: 04/17/2015)
04/20/2015		CLERK'S QUALITY CONTROL MESSAGE - The Notices 69 & 70 submitted by Michael Kuharski on 4/17/2015 appear to be duplicates. These submissions will remain on the docket unless otherwise ordered by the court. This message is for informational purposes only. (eaj) (Entered: 04/20/2015)
04/30/2015	72	DECLARATION Rule 26 Initial Disclosure by JAMES CHAKALOS. (KUHARSKI, MICHAEL) (Entered: 04/30/2015)
05/20/2015	73	AFFIDAVIT/Certification in support of discovery confidentiality order of Lorna A. Dotro by IMERYS TALC AMERICA, INC.. (Attachments: # 1 Declaration of Lorna A. Dotro, Esq. in support of Stipulate Protective Order, # 2 Text of Proposed Order)(DOTRO, LORNA) (Entered: 05/20/2015)
06/01/2015	74	ORDER granting 66 Motion for Leave to Appear Pro Hac Vice as to Lonny Levitz, Esq.. Signed by Magistrate Judge Lois H. Goodman on 6/1/2015. (eaj) (Entered: 06/01/2015)
06/12/2015	75	Letter from Status Conference Letter. (KUHARSKI, MICHAEL) (Entered: 06/12/2015)
06/16/2015	76	STIPULATED Discovery Confidentiality Order. Signed by Magistrate Judge Lois H. Goodman on 6/16/2015. (eaj) (Entered: 06/16/2015)
06/16/2015	77	TEXT ORDER setting a Telephone Conference Call for 9/16/15 at 9:30 a.m. with Magistrate Judge Lois H. Goodman. Counsel for Johnson & Johnson to initiate the call at that time. Ordered by Magistrate Judge Lois H. Goodman on 6/16/15. (ij,) (Entered: 06/16/2015)
06/16/2015		Text Minute Entry for proceedings held before Magistrate Judge Lois H. Goodman: Telephone Conference held on 6/16/2015. (ij,) (Entered: 06/17/2015)
07/09/2015	78	MOTION for Leave to Appear Pro Hac Vice Scott A. James by JOHNSON & JOHNSON, JOHNSON & JOHNSON CONSUMER COMPANIES, INC.. (Attachments: # 1 Certification of Susan M. Sharko In Support of Motion for Admission Pro Hac Vice, # 2 Certification of Scott A. James In Support of Motion for Admission Pro Hac Vice, # 3 Text of Proposed Order, # 4 Certificate of Service)(SHARKO, SUSAN) (Entered: 07/09/2015)
07/10/2015		Set Deadlines as to 78 MOTION for Leave to Appear Pro Hac Vice Scott A. James. Motion set for 8/3/2015 before Magistrate Judge Lois H. Goodman. The motion will be decided on the papers. No appearances required unless notified by the court. (kas,) (Entered: 07/10/2015)
07/17/2015	79	ORDER granting 78 Motion for Leave to Appear Pro Hac Vice as to Scott A. James. Signed by Magistrate Judge Lois H. Goodman on 7/17/2015. (eaj) (Entered: 07/17/2015)
07/28/2015		Pro Hac Vice fee: $ 150, receipt number NEW026811 Re Scott A. James (nr,) (Entered: 07/28/2015)
08/13/2015	80	MOTION for Leave to Appear Pro Hac Vice of Kenneth J. Ferguson, Esq. by IMERYS TALC AMERICA, INC.. (Attachments: # 1 Certification of Local Counsel, Lorna A. Dotro, Esq. in Support of Application for Pro Hac Vice Admission of Kenneth J. Ferguson, Esq., # 2 Certification of Kenneth J. Ferguson, Esq. In Support of Application for Pro Hac Vice Admission, # 3 Certificate of Service, # 4 Text of Proposed Order)(DOTRO, LORNA) (Entered: 08/13/2015)
08/13/2015	81	MOTION for Leave to Appear Pro Hac Vice of Michael R. Klatt, Esq. by IMERYS TALC AMERICA, INC.. (Attachments: # 1 Certification of Local Counsel, Lorna A. Dotro, Esq. in Support of Application for Pro Hac Vice Admission of Michael R. Klatt, Esq., # 2 Certification of Michael R. Klatt, Esq. in Support of Application for Pro Hac Vice Admission, # 3 Certificate of Service, # 4 Text of Proposed Order)(DOTRO, LORNA) (Entered: 08/13/2015)
08/13/2015		Set Deadlines as to 81 MOTION for Leave to Appear Pro Hac Vice of Michael R. Klatt, Esq., 80 MOTION for Leave to Appear Pro Hac Vice of Kenneth J. Ferguson, Esq.. Motion set for 9/21/2015 before Magistrate Judge Lois H. Goodman. The motion will be decided on the papers. No appearances required unless notified by the court. (eaj) (Entered: 08/13/2015)
08/14/2015		MOTIONS RESET PER CLERKS ERROR: RESET Deadlines as to 81 MOTION for Leave to Appear Pro Hac Vice of Michael R. Klatt, Esq., 80 MOTION for Leave to Appear Pro Hac Vice of Kenneth J. Ferguson, Esq.. Motion set for 9/8/2015 before Magistrate Judge Lois H. Goodman. The motion will be decided on the papers. No appearances required unless notified by the court. (eaj,) (Entered: 08/14/2015)
08/19/2015	82	ORDER granting 80 Motion for Leave to Appear Pro Hac Vice as to Kenneth J. Ferguson, Esq. Signed by Magistrate Judge Lois H. Goodman on 8/19/2015. (eaj) (Entered: 08/19/2015)
08/19/2015	83	ORDER granting 81 Motion for Leave to Appear Pro Hac Vice as to Michael R. Klatt, Esq.. Signed by Magistrate Judge Lois H. Goodman on 8/19/2015. (eaj) (Entered: 08/19/2015)
09/02/2015	84	ORDER Regarding Protocol for Document Format Production. Signed by Magistrate Judge Lois H. Goodman on 9/2/2015. (eaj) (Entered: 09/02/2015)
09/15/2015	85	Letter from Julie L. Tersigni on behalf of all parties regarding September 16, 2016 Status

		Conference. (TERSIGNI, JULIE) (Entered: 09/15/2015)	
09/16/2015		Text Minute Entry for proceedings held before Magistrate Judge Lois H. Goodman: Telephone Conference held on 9/16/2015. (ij,) (Entered: 09/17/2015)	
09/18/2015	86	AMENDED PRETRIAL SCHEDULING ORDER: Telephone Conference set for 12/9/2015 at 09:30 AM before Magistrate Judge Lois H. Goodman, Defendant Johnson & Johnson is to initiate the call; Fact Discovery due by 2/29/2016; Dispositive Motions due by 9/23/2016; Further Ordering that the Settlement conference will remain the same and will be conducted on 2/10/2016 at 2:00 PM. Signed by Magistrate Judge Lois H. Goodman on 9/18/2015. (eaj) (Main Document 86 replaced on 9/22/2015) (dm). (Entered: 09/18/2015)	
12/08/2015	87	Letter from Julie Tersigni to Judge Goodman re 12/9/15 Conference. (TERSIGNI, JULIE) (Entered: 12/08/2015)	
12/09/2015		Text Minute Entry for proceedings held before Magistrate Judge Lois H. Goodman: Telephone Conference held on 12/9/2015. (ij,) (Entered: 12/10/2015)	
01/07/2016	88	Letter from All Parties requesting rescheduling of Settlement Conference. (DOTRO, LORNA) (Entered: 01/07/2016)	
01/08/2016	89	LETTER ORDER Granting the adjournment of the Settlement Conference. Counsel will be notified of the new date. ALL other dates in the 9/18/2015 Order remain the same. No other dates will be extended absent of good cause. Signed by Magistrate Judge Lois H. Goodman on 1/8/2015. (km) (Entered: 01/08/2016)	
02/24/2016	90	TEXT ORDER setting a Conference Call for 3/8/16 at 2:00 p.m. with Magistrate Judge Lois H. Goodman. Plaintiff's counsel to initiate the call at that time. Settlement Conference set for 7/11/16 at 10:00 a.m. with Magistrate Judge Lois H. Goodman. All parties with settlement authority to be present in person. Ex parte settlement positions due 5 days before the scheduled conference. Ordered by Magistrate Judge Lois H. Goodman on 2/24/16. (ij,) (Entered: 02/24/2016)	
03/08/2016		Text Minute Entry for proceedings held before Magistrate Judge Lois H. Goodman: Telephone Conference held on 3/8/2016. (ij,) (Entered: 03/09/2016)	
03/14/2016		ATTENTION COUNSEL: Telephone Conference Call set for 6/14/16 at 2:30 p.m. with Magistrate Judge Lois H. Goodman. Plaintiff's counsel to initiate the call at that time. (ij,) (Entered: 03/14/2016)	
04/13/2016	91	MOTION for Leave to Appear Pro Hac Vice Iain L. Kennedy with Consent of Plaintiff by JOHNSON & JOHNSON, JOHNSON & JOHNSON CONSUMER COMPANIES, INC.. (Attachments: # 1 Certification Julie L. Tersigni, # 2 Certification Iain L. Kennedy, # 3 Text of Proposed Order, # 4 Certificate of Service)(TERSIGNI, JULIE) (Entered: 04/13/2016)	
04/13/2016		Set Deadlines as to 91 MOTION for Leave to Appear Pro Hac Vice Iain L. Kennedy with Consent of Plaintiff. Motion set for 5/16/2016 before Magistrate Judge Lois H. Goodman. Unless otherwise directed by the Court, this motion will be decided on the papers and no appearances are required. Note that this is an automatically generated message from the Clerk`s Office and does not supersede any previous or subsequent orders from the Court. (eaj) (Entered: 04/13/2016)	
04/19/2016	92	AMENDED PRETRIAL SCHEDULING ORDER: Affirmative expert reports to be served by 5/27/2016. Signed by Magistrate Judge Lois H. Goodman on 4/19/2016. (eaj) (Entered: 04/19/2016)	
04/27/2016	93	TEXT ORDER REASSIGNING CASE. Case reassigned to Judge Freda L. Wolfson for all further proceedings. Judge Anne E. Thompson no longer assigned to case. So Ordered by Chief Judge Jerome B. Simandle on 4/27/2016. (jjc) (Entered: 04/27/2016)	
05/06/2016	94	Letter from Michael J. Kuharski, Esq.. (KUHARSKI, MICHAEL) (Entered: 05/06/2016)	
05/09/2016	95	TEXT ORDER that any response to Plaintiff's letter dated 05/06/2016 94 should be filed by no later 05/12/2016. Ordered by Magistrate Judge Lois H. Goodman on 05/09/2016. (Gonzalez, P) (Entered: 05/09/2016)	
05/10/2016	96	Letter from Defendants in response to Plaintiff's request regarding discovery re 94 Letter. (DOTRO, LORNA) (Entered: 05/10/2016)	
05/12/2016	97	TEXT ORDER that by no later than 05/16/2016, Plaintiff is instructed to file any reply to Defendants' letter dated 05/11/2016 96 . Ordered by Magistrate Judge Lois H. Goodman on 5/12/16. (ij,) (Entered: 05/12/2016)	
05/16/2016	98	Letter from Michael J. Kuharski, Esq.. (KUHARSKI, MICHAEL) (Entered: 05/16/2016)	
05/26/2016	99	ORDER granting 91 Motion for Leave to Appear Pro Hac Vice as to Iain L. Kennedy. Signed by Magistrate Judge Lois H. Goodman on 5/26/2016. (eaj) (Entered: 05/26/2016)	
06/14/2016	--	Text Minute Entry for proceedings held before Magistrate Judge Lois H. Goodman: Telephone Conference held on 6/14/2016. (ij,) (Entered: 06/14/2016)	Events since last full update
06/14/2016	--	Pro Hac Vice fee: $ 150, receipt number NEW029922 Re Iain L. Kennedy (nr,) (Entered: 06/14/2016)	Events since last

			full update
06/17/2016	100	TEXT ORDER adjourning the Settlement Conference scheduled for 7/11/16 with Magistrate Judge Lois H. Goodman. Counsel is directed to submit a joint letter by 7/15/16 reporting on the status of request for samples. Ordered by Magistrate Judge Lois H. Goodman on 6/17/16. (ij,) (Entered: 06/17/2016)	Events since last full update

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY

JAMES CHAKALOS, as Personal Representative on behalf of the Estate of Janice Chakalos, Plaintiff, v. JOHNSON & JOHNSON et al., Defendants.	)	Case No. _____

NOTICE OF REMOVAL

Pursuant to 28 U.S.C. §§ 1332, 1441, and 1446, and any other applicable laws, Defendant Chattem, Inc. hereby gives notice of removal of this action, entitled *James Chakalos v. Johnson & Johnson et al.*, bearing Civil Action No. L-1449-14, from the Superior Court of New Jersey Law Division, Somerset County to the United States District Court for the District of New Jersey. As grounds for removal, Defendant Chattem, Inc. states as follows:

I. REMOVAL TO THIS JUDICIAL DISTRICT IS PROPER AND TIMELY

1. On November 5, 2014, Plaintiff James Chakalos, as Personal Representative of the Estate of Janice Chakalos, filed a Complaint against Defendant Chattem, Inc. in the Superior Court of New Jersey Law Division, Somerset County arising from alleged injuries suffered as a result of alleged use of talcum powder products. Pursuant to 28 U.S.C. § 1446(a), a true and legible copy of the Complaint is attached as Exhibit A.

2. This Notice of Removal is filed on behalf of Defendant Chattem, Inc. Defendants Johnson & Johnson, Johnson & Johnson Consumer Companies, Inc., Imerys Talc America, Inc. f/k/a Luzenac America, Inc., Valeant Pharmaceuticals North America, Valeant Pharmaceuticals

North America LLC, Valeant Pharmaceuticals International, and Sanofi US Services Inc. (the "Non-Removing Defendants") have not been served with the Summons and Complaint. Accordingly, the consent of the Non-Removing Defendants to this removal is not required. *See Brown v. Jevic*, 575 F.3d 322, 327 (3d Cir. 2009) ("[A] defendant who has not been served need not consent to removal.") (citing *Lewis v. Rego Co.*, 757 F.2d 66, 68-69 (3d Cir. 1985).

3. This Notice of Removal is timely filed pursuant to 28 U.S.C. § 1446(b). Defendant Chattem, Inc. has received a copy of, but has not yet been served with, the Complaint. Moreover, the Complaint was filed on November 5, 2014, which is less than thirty (30) days prior to the date of this Notice.

4. No further pleadings have been filed, and no proceedings have yet occurred in the Somerset County action.

5. Venue is proper in the District Court of New Jersey because the Superior Court of New Jersey Law Division, Somerset County, where this suit was originally filed, is within the District Court of New Jersey. 28 U.S.C. §§1441(a), 1446(a).

6. Defendant Chattem, Inc. bases removal on diversity jurisdiction pursuant to 28 U.S.C. §§ 1332, 1441, and 1446.

II. STATUTORY BASIS FOR JURISDICTION

7. Removal of this action is proper under 28 U.S.C. § 1441. The Court has original jurisdiction over this action pursuant to 28 U.S.C. § 1332(a) as it is a civil action between citizens of different states in which the amount in controversy exceeds the sum of $75,000.00, exclusive of interest and costs.

A. There Is Complete Diversity Between the Parties

8. Plaintiff James Chakalos and his decedent, Janice Chakalos, are citizens of the State of New York. *See* Ex. A ¶ 1.

9. Defendants are citizens of states other than New York. *Id.* ¶¶ 2-9.

10. Defendant Johnson & Johnson is a New Jersey corporation. *Id.* ¶ 2. On information and belief, Defendant Johnson & Johnson has its principal place of business in New Jersey. Defendant Johnson & Johnson is, therefore, a citizen of the State of New Jersey.

11. Defendant Johnson & Johnson Consumer Companies, Inc. is a New Jersey corporation. *Id.* ¶ 3. On information and belief, Defendant Johnson & Johnson Consumer Companies, Inc. has its principal place of business in New Jersey. Defendant Johnson & Johnson Consumer Companies, Inc. is, therefore, a citizen of the State of New Jersey.

12. Defendant Imerys Talc America, Inc. f/k/a Luzenac America, Inc. is a Delaware corporation with its principal place of business in Georgia. *Id.* ¶ 4. Defendant Imerys Talc America, Inc. f/k/a Luzenac America, Inc. is, therefore, a citizen of the States of Delaware and Georgia.

13. Defendant Valeant Pharmaceuticals North America is a Delaware corporation. *Id.* ¶ 5. On information and belief, Defendant Valeant Pharmaceuticals North America has its principal place of business outside of New York. Defendant Valeant Pharmaceuticals North America is, therefore, a citizen of the State of Delaware but not a citizen of the State of New York.

14. Defendant Valeant Pharmaceuticals North America LLC is a Delaware limited liability company. *Id.* ¶ 6. On information and belief, Defendant Valeant Pharmaceuticals North America LLC has its principal place of business in New Jersey. Defendant Valeant

Pharmaceuticals North America LLC is, therefore, a citizen of the States of Delaware and New Jersey.

15. Defendant Valeant Pharmaceuticals International is a Delaware corporation with its principal place of business in New Jersey. *Id.* ¶ 7. Defendant Valeant Pharmaceuticals International is, therefore, a citizen of the States of Delaware and New Jersey.

16. Defendant Chattem, Inc. is a Tennessee corporation. *Id.* ¶ 8. Defendant Chattem, Inc. has its principal place of business in Tennessee. Defendant Chattem, Inc. is, therefore, a citizen of the State of Tennessee.

17. Defendant Sanofi US Services Inc. is a Delaware corporation with its principal place of business in New Jersey. *Id.* ¶ 9. Defendant Sanofi US Services Inc. is, therefore, a citizen of the States of Delaware and New Jersey.

18. The citizenships of defendants sued under fictitious names, including John Does/Jane Does 1-30 and Unknown Businesses and/or Corporation A-Z, are disregarded. 28 U.S.C. § 1441(a).

19. Because Plaintiff is a citizen of New York and Defendants are citizens of New Jersey, Delaware, Georgia, and Tennessee, complete diversity of citizenship exists between Plaintiff and all Defendants. *See* 28 U.S.C. §§ 1332 and 1441.

B. The Amount in Controversy Requirement Is Met

20. Although the Complaint seeks unspecified compensatory damages, it is apparent from the Complaint that the amount in controversy here more likely than not exceeds $75,000.00. *Scioscia v. Target Corp.*, No. 08-2593, 2008 WL 2775710, at *2 (D.N.J. July 14, 2008) ("[T]he removing party . . . is required to prove that the amount-in-controversy is met by a preponderance of evidence.").

21. The Complaint alleges that Janice Chakalos's use of talcum powder products caused her to "develop[] ovarian cancer and suffer[] effects attendant thereto, including her premature death." *See* Ex. A ¶ 35. The Complaint further alleges that "[a]s a direct and proximate result of these injuries, Ms. Chakalos incurred medical expense, has endured pain and suffering and loss of enjoyment of life, and wrongful death. Additionally, Plaintiff seeks damages for loss of consortium[,] loss of decedent's value to her estate, and other damages as allowed by law." *Id.* Plaintiff seeks recovery on thirteen counts, *id.* ¶¶ 89-167, and requests twelve categories of damages, including treble, exemplary, and punitive damages, *id.* ¶ 168.

22. Given the nature and extent of Plaintiff's alleged injuries and damages, including a wrongful death claim and claim for punitive damages, the Complaint clearly places at issue more than $75,000.00, exclusive of interest and costs. *See Crawford v. Barr Pharm., Inc.*, No. 07-5778, 2008 WL 4117873, at *2 (D.N.J. Aug. 29, 2008) (the removing party carried its burden when the plaintiff did not allege a specific value to his claims but sought compensatory, punitive, and treble damages relating to his allegedly suffering serious physical and emotional injuries due to ingesting the defendants' products).

C. Removal Is Proper Because No Forum Defendant Has Been Served with Process

23. Pursuant to 28 U.S.C. § 1441(b), this action is removable because no party in interest properly joined and served as a defendant is a citizen of New Jersey, the state in which this action was brought (a "forum defendant"). *See* 28 U.S.C. § 1441(b) (providing that non-federal question cases "shall be removable only if none of the parties in interest properly joined ***and served*** as defendants is a citizen of the State in which the action is brought") (emphasis added).

24. While a plaintiff in some circumstances can invoke Section 1441(b) to prevent removal when it has sued a defendant that resides in the forum, the rule applies only when the forum defendant has been "properly joined and served." 28 U.S.C. §1441(b). Removal accordingly is proper where there is complete diversity and no forum defendant has yet been served.

25. Courts in the District of New Jersey have applied the statute's plain language to uphold removal before service of a forum defendant. For example, in *In re Plavix Product Liability & Marketing Litigation*, No. 3:13-cv-2418-FLW, 2014 WL 4954654 (D.N.J. Oct. 1, 2014), Judge Wolfson recently denied a motion to remand where, as here, the non-forum defendants removed cases to federal court before the forum defendant was served with the complaints. In so ruling, the court found "that, so long as a properly joined forum defendant has not been served, the Removal Defendant's removal of these cases is proper under [28 U.S.C.] § 1441(b)." *Id.* at *5. "[T]he courts that have reached the opposite conclusion . . . rely on putative congressional and legislative intent, rather than the plain and unambiguous language of § 1441(b)," but "courts should be leery of going beyond the text of a statute, particularly when such text is clear and unambiguous." *Id.*

26. Numerous other New Jersey courts have likewise affirmed removals before service based on the plain language of the removal statute. *See e.g.*, *Poznanovich v. AstraZeneca Pharm. LP*, No. 11-4001, 2011 WL 6180026, at *4 (D.N.J. Dec. 12, 2011) ("The Court finds that the language of the statute is plain, and, thus, adherence to the plain language is required."); *Thomson v. Novartis Pharm. Corp.*, No. 06-6280, 2007 WL 1521138, at *4 (D.N.J. May 22, 2007) ("Plaintiffs have not convinced the Court that permitting removal prior to the time of service would be 'demonstrably at odds' with Congressional intent or create such a 'bizarre'

outcome 'that Congress could not have intended it.'") (internal citations omitted); *Yocham v. Novartis Pharm. Corp.*, No. 07-1810, 2007 WL 2318493, at *3 (D.N.J. Aug. 13, 2007) ("[U]nder the plain reading of § 1441(b), removal was not prohibited because NPC (a resident of the forum state) had not been served when it removed this case to this Court."); *Ripley v. Eon Labs Inc.*, 622 F. Supp. 2d 137, 142 (D.N.J. 2007) ("The plain language of 28 U.S.C. § 1441(b), despite the numerous policy arguments against it, permits removal of this case from the Superior Court of New Jersey to this Court."); *Jaeger v. Schering Corp.*, No. 07-3465, 2007 WL 3170125, at *3 (D.N.J. Oct. 25, 2007) ("This limitation, however, only applies to a case in which an in-state defendant has been 'properly joined and served.'").

27. Chattem, Inc. acknowledges that other courts, including in the District of New Jersey, have reached the opposite conclusion. In *Williams v. Daiichi Sankyo, Inc.*, 13 F. Supp. 3d 426, 432 (D.N.J. 2014), the court found that "permitting these non-forum Defendants to remove before the Plaintiffs are actually capable of serving the forum Defendants violates the intention of the forum defendant rule by permitting gamesmanship." *See also In re Plavix*, 2014 WL 4954654, at *4 (citing additional cases). In a number of the cases, courts have remanded where the forum defendant removed before service. *See, e.g., Jones v. Johnson & Johnson*, No. 14-1379 (D.N.J. Aug. 14, 2014) (remanding a case where the removal was filed by forum defendant Johnson & Johnson); *Fields v. Organon USA Inc.*, No. 07-2922, 2007 WL 4365312, at *5 (D.N.J. Dec.12, 2007). Those cases are inapposite here where it is the non-forum defendant seeking removal. Moreover, decisions rejecting removal in this situation are contrary to the U.S. Supreme Court principle that "the authoritative statement is the statutory text, not the legislative history or any other extrinsic material." *In re Plavix*, 2014 WL 4954654, at *5 (quoting *Exxon Mobil Corp. v. Allapattah Servs., Inc.*, 545 U.S. 546, 568 (2005)).

28. Congress recently enacted legislation reaffirming that an action may be removed on the basis of diversity jurisdiction when a forum defendant is not properly joined or served at the time of removal. The Federal Courts Jurisdiction and Venue Clarification Act of 2011 amended the removal and remand procedures in 28 U.S.C. § 1441, but retained the key language in Section 1441(b) that bars removal only if any "of the parties in interest ***properly joined and served*** as defendants is a citizen of the State in which such action is brought." Federal Courts Jurisdiction and Venue Clarification Act of 2011, Pub. L. No. 112-63 § 103, 125 Stat. 758, 760 (2011) (emphasis added); *see also Munchel v. Wyeth LLC*, No. 12-906-LPS, 2013 WL 4050072, at *3-4 (D. Del. Sept. 11, 2012) ("The undersigned judge continues to adhere to the views [on the plain language of Section 1441(b)] . . . . [T]he amendment [of the removal statute] reinforces the conclusion that Congress intended for the plain language of the statute to be followed.").

29. In the present case, because Plaintiff has not served any forum defendant, any such defendant's alleged citizenship in New Jersey is not an impediment to removal under 28 U.S.C. § 1441(b).

III. NOTICE IS BEING SENT TO PLAINTIFF AND FILED IN STATE COURT

30. Pursuant to 28 U.S.C. § 1446(d), Defendant Chattem, Inc. shall give Plaintiff written notice of the filing of this Notice of Removal.

31. Pursuant to 28 U.S.C. § 1446(d) Defendant Chattem, Inc. will file a copy of this Notice of Removal with the Clerk of the Superior Court of New Jersey Law Division, Somerset County.

WHEREFORE, Defendant Chattem, Inc. hereby gives notice that the above-entitled state court action, formerly pending in the Superior Court of New Jersey Law Division, Somerset County has been removed to the United States District Court for the District of New Jersey.

November 11, 2014

Respectfully submitted,

/s/ Matthew Salzmann

Matthew Salzmann
ARNOLD & PORTER LLP
399 Park Avenue
New York, NY 10022-4690
Tel. No. (212) 715-1000
Fax No. (212) 715-1399

Attorney for Defendant Chattem, Inc.

CERTIFICATE OF SERVICE

I hereby certify that on this 11th day of November 2014, I electronically filed the foregoing Notice of Removal with the Clerk of the Court using the CM/ECF system and a true and correct copy of the foregoing was sent via FedEx to:

Michael J. Kuharski
KUHARSKI, LEVITZ & GIOVINAZZO
176 Hart Boulevard
Staten Island, NY 10301
Tel. No. (718) 448-1600
Fax No. (718) 448-1699

Cameron S. Scott
MOTLEY RICE, LLC
28 Bridgeside Boulevard
Mt. Pleasant, SC 29464
Tel. No. (843) 216-9000

Attorneys for Plaintiff James Chakalos

/s/ Matthew Salzmann
Matthew Salzmann

Attorney for Defendant Chattem, Inc.

JS 44 (Rev. 12/12)

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 r les 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 Chaka os, as Persona Representat ve on beha f of the Estate of Jan ce Chaka os

(b) County of Residence of First Listed Plaintiff out-of-state
(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorneys *(Firm Name, Address, Email and Telephone Number)*
M chae J. Kuharsk , Kuharsk , Lev tz & G ov nazzo, 176 Hart Bou evard, Staten Is and, NY 10301, mkuharsk @k awnyc.com, (718) 448-1600

DEFENDANTS
Johnson & Johnson (see a so attachment)

County of Residence of First Listed Defendant M dd esex County, NJ
(IN U.S. P)
NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

Attorneys *(If Known)*
For Defendant Chattem, Inc.: Matthew Sa zmann, Arno d & Porter LLP, 399 Park Avenue, New York, NY 10022-4690, matthew.sa zmann@aporter.com, (212) 715-1000

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

- ☐ 1 U.S. Government Plaintiff
- ☐ 3 Federal Question *(U.S)*
- ☐ 2 U.S. Government Defendant
- ☒ 4 Diversity *(Indicate Citizenship of Parties in Item III)*

III. CITIZENSHIP OF PRINCIPAL PARTIES *(Pl (F) and One Box for Defendant)*

	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
- ☐ 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 - Em
- ☐ 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

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, 1441, 1446
Brief description of cause:
Product ab ty awsu t a eg ng njur es resu t ng from use of ta cum powder products

VII. REQUESTED IN COMPLAINT: ☐ CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P. **DEMAND $** CHECK YES only if demanded in complaint: **JURY DEMAND:** ☒ Yes ☐ No

VIII. RELATED CASE(S) IF ANY *(S):* JUDGE _____ DOCKET NUMBER _____

DATE 11/11/2014

SIG /s/ Matthew Sa zmann

FOR OFFICE USE ONLY

RECEIPT # _____ AMOUNT _____ APPLYING IFP _____ JUDGE _____ MAG. JUDGE _____

JS 44 Reverse (Rev. 12/12)

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. (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 six 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. (6) Check this box when a multidistrict case is transferred into the district under authority of Title 28 U.S.C. Section 1407. When this box is checked, do not check (5) a .

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.

Civil Cover Sheet Attachment

Additional Defendants:

Johnson & Johnson Consumer Companies, Inc.
Imerys Talc America, Inc. f/k/a Luzenac America, Inc.
Valeant Pharmaceuticals North America
Valeant Pharmaceuticals North America LLC
Valeant Pharmaceuticals International
Chattem, Inc.
Sanofi US Services Inc.
John Does/Jane Does 1-30
Unknown Businesses and/or Corporations A-Z

Exhibit A

KUHARSKI, LEVITZ & GIOVINAZZO
176 Hart Boulevard
Staten Island, NY 10301
(718) 448-1600
(718) 448-1699 (fax)
Attorneys for Plaintiffs

James Chakalos, as Personal Representative on behalf of the Estate of Janice Chakalos,

Plaintiff,

v.

Johnson & Johnson, Johnson & Johnson Consumer Companies, Inc., Imerys Talc America, Inc., f/k/a Luzenac America, Inc., Valeant Pharmaceuticals North America, Valeant Pharmaceuticals North America LLC, Valeant Pharmaceuticals International, Chattem, Inc., Sanofi US Services Inc., John Does/Jane Does 1-30 and Unknown Businesses and/or Corporations A-Z,

Defendants.

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION, SOMERSET COUNTY

Civil Action No. L-1449-14

COMPLAINT AND JURY DEMAND

COMPLAINT
(Jury Trial Requested)

COMES NOW, the Plaintiff, by and through undersigned counsel, and files his Complaint against the Defendants, Johnson & Johnson, Johnson & Johnson Consumer Companies, Inc., Imerys Talc America, Inc., f/k/a Luzenac America, Inc., Valeant Pharmaceuticals North America, Valeant Pharmaceuticals North America LLC, Defendant Valeant Pharmaceuticals International, Chattem, Inc., Sanofi US Services Inc. , John Does/Jane Does 1-30, and Unknown Businesses and/or Corporations A-Z, and would show this Honorable Court the following in support thereof:

I. Parties

1. The Plaintiff, James Chakalos, is a resident of New York, currently residing at 171 Brehaut Avenue, Staten Island, New York 10307. Decedent, Janice Chakalos, was also a resident of New York when she used Defendants' products, when she was diagnosed with Ovarian Cancer and at the time of her death. Mr. Chakalos was married to Ms. Chakalos when she used Defendants' products, when she was diagnosed with Ovarian Cancer and at the time of her death. Mr. Chakalos is the personal representative for Ms. Chakalos estate.

2. The Defendant, Johnson & Johnson, is a New Jersey corporation that is licensed and conducts substantial business in this State. Johnson & Johnson may be served with process of this Court via service on its registered agent, Steven M. Rosenberg, located at One Johnson & Johnson Plaza, New Brunswick, New Jersey 08933.

3. The Defendant, Johnson & Johnson Consumer Companies, Inc., is a New Jersey corporation that is licensed and conducts substantial business in this State. Johnson & Johnson Consumer Companies, Inc. may be served with process of this Court via service on its registered agent, Johnson & Johnson, Office of the Corporate Secretary, One J&J Plaza, New Brunswick, New Jersey 08933.

4. The Defendant Imerys Talc America, Inc. f/k/a Luzenac America, Inc. is a Delaware corporation, with its principal place of business in the State of Georgia that conducts substantial business in this State. Imerys Talc America, Inc. may be served with process of this Court via service on its registered agent, Corporation Service Company, located at 830 Bear Tavern Road, West Trenton, New Jersey 08628.

5. Defendant Valeant Pharmaceuticals North America is a Delaware corporation, with its principal place of business. Valeant Pharmaceuticals North America may be served with process of this Court via service on its registered agent, The Corporation Trust Company, 820 Bear Tavern Road, West Trenton, New Jersey 08628.

6. Defendant Valeant Pharmaceuticals North America LLC is a foreign limited liability company registered in Delaware that is licensed and conducts substantial business in this state. Defendant can be served with process of this Court via service on its registered agent, The Corporation Trust Company, 820 Bear Tavern Road, West Trenton, New Jersey 08628.

7. Defendant Valeant Pharmaceuticals International is a Delaware corporation, with its principal place of business in the State of New Jersey. Valeant Pharmaceuticals International may be served with process of this Court via service on its registered agent, The Corporation Trust Company, 820 Bear Tavern Road, West Trenton, New Jersey 08628.

8. Chattem, Inc., a Sanofi Company is a Tennessee corporation. Chattem, Inc. may be served with process of this Court via service on its registered agent, Corporation service Company, 830 Bear Tavern Road, West Trenton, New Jersey, 08628. In the alternative, Chattem, Inc. may be served via Theordore K Whitfield Jr., 1715 W 38th Street, Chattanooga, TN 37409-1248.

9. Sanofi US Services Inc. f/k/a Sanofi-Aventis U.S. Inc. a/k/a Sanofi US is a Delaware corporation headquartered in Bridgewater, New Jeersey that is licensed and conducts substantial business in this State. Sanofi US can be served with process of this Court via service on its registered agent, Corporation Service Company, 830 Bear Tavern

Road, Trenton, New Jersey 08268.

10. Defendants John Does/Jane Does 1-30 are those persons, agents, employees, and/or representatives of Defendants whose conduct as described herein caused or contributed to the damages of the Plaintiff, all of whose names and legal identities are unknown to the Plaintiff at this time, but will be substituted by amendment when ascertained, individually and jointly.

11. Defendants Unknown Businesses and/or Corporations A-Z are unknown entities whose conduct as described herein caused or contributed to the damages of the Plaintiff, all of whose names and legal identities are unknown to the Plaintiff at this time, but will be substituted by amendment when ascertained, individually and jointly.

II. JURISDICTION AND VENUE

12. This is an action for damages that exceeds the jurisdictional limits of this Court.

13. Venue in this action properly lies in New Jersey in that multiple defendants including Defendant Johnson & Johnson, Defendant Johnson & Johnson Consumer Companies, Inc., Defendant Valeant Pharmaceuticals International and Sanofi US Services Inc. are domestic corporations or have their principal place of business in New Jersey.

III. FACTS

14. Talc is a magnesium trisilicate and is mined from the earth. Talc is an inorganic mineral. The Defendant Imerys Talc America, Inc. f/k/a Luzenac America, Inc., mined the talc at issue in this case. Luzenac America, Inc was a subsidiary of the Rio Tinto group until 2011 when it was sold to Imerys Talc America, Inc.

15. Talc is the main substance in talcum powders. Defendants, Johnson & Johnson and Johnson & Johnson Consumer Companies, Inc., manufactured products that are in issue

in this case namely, "Johnson's Baby Powder" and "Shower to Shower". Chattem, Inc manufactured "GoldBond". All of these products are composed of almost entirely talc.

Defendants Market Talc Products as Safe

16. In 1893, Defendants developed Johnson's Baby Powder as a daily use powder intended to eliminate friction on the skin and to absorb unwanted excess moisture for both babies and women.

17. Johnson registered the term "Shower to Shower" as its trademark for talcum powder on March 28, 1966. After its first use of the "Shower to Shower" trademark, Johnson test-marketed its talcum powder in New Orleans and Indianapolis in late 1966. Marketing was extended to New England, the Middle and South Atlantic States and New York in May 1967. Since July 1967, distribution has been nationwide. *See Johnson & Johnson v. Colgate-Palmolive Co.*, 345 F.Supp 1216 (D. N.J. 1972).

18. Valeant Consumer Products, a division of Valeant Pharmaceuticals North America currently markets and sells "Shower to Shower" which is composed of almost entirely talc. Upon information and belief, Valeant Consumer Products acquired rights from Johnson and Johnson for "Shower to Shower" on September 28, 2012.

19. Chattem, Inc. manufacturers, markets and sells various "Gold Bond" body powders and advertises them as the "Powder with the Power." The main inactive ingredient in Gold Bond medicated powders is talc.

20. Sanofi f/k/a Sanofi-Aventis is the parent company of Chattem, Inc., the manufacturer and distributer of Gold Bond powders. Sanofi completed acquisition of Chattem, Inc. on March 11, 2010.

21. Chattem, Inc. is the U.S. consumer healthcare division of Sanofi.

22. At all times relevant herein, a feasible alternative to the Defendants' products have existed. Cornstarch is an organic carbohydrate that is quickly broken down by the body. Cornstarch powders have been sold and marketed for the same uses with nearly same effectiveness. In fact, Defendants Sanofi and Chattem Inc. sell talc-free Gold Bond formulas, yet continued to market talc containing powders as safe. Johnson's Baby Powder also comes in a cornstarch formula.

23. Imerys Talc f/k/a/ Luzenac America, Inc. has continually advertised and marketed talc as safe for human use.

24. Imerys Talc f/k/a/ Luzenac America, Inc. supplies 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.

25. Since Baby Powder's introduction, Defendants have consistently marketed it for use on women to maintain freshness and cleanliness. Historically, the Baby Powder label and advertising encouraged women to dust themselves with the Baby Powder daily to mask odors.

26. Traditionally, "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 its 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 Defendants compelled women through advertisements to dust themselves with its 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."

27. Although the label has changed over time, the message is the same: that the product is safe for use on woman as well as babies. The Baby Powder label currently states that "Johnson's Baby Powder is designed to gently absorb excess moisture helping skin feel comfortable. Our incredibly soft, hypoallergenic, dermatologist and allergy-tested formula glides over skin to leave it feeling delicately soft and dry while providing soothing relief." Defendants instruct consumers on the product labeling to "Shake powder directly into your hand, away from the face, before smoothing on the skin."

28. Through other marketing, including on their website for Johnson's Baby Powder, Defendants similarly encouraged women to use the product daily. Defendants state that Johnson's Baby powder "keeps skin feeling soft, fresh and comfortable. It's a classic. Johnson's Baby Powder helps eliminate friction while keeping skin cool and comfortable. It's made of millions of tiny slippery plates that glide over each other to help reduce the irritation caused by friction." Under a heading "How to Use," "For that skin that feels soft, fresh and comfortable, apply Johnson's Baby Powder close to the body, away from the face. Shake the powder into your hand and smooth onto skin." Under a heading "When to use," Defendants recommend that consumers "Use anytime you want skin to feel soft, fresh and comfortable. For baby, use after every bath and diaper change."

29. Defendants seek to convey an image as safe and trusted family brand. For example, on their website for Johnson's Baby Powder, Defendants state the product is "Clinically proven to be safe, gentle and mild."

30. Defendants also have a website, www.safetyandcarecommitment.com devoted to "Our Safety & Care commitment." According to Defendants, "safety is our legacy" and "[y]ou

have our commitment that every beauty and baby care product from the Johnson & Johnson Family of Consumer Companies is safe and effective when used as directed." Defendants market a "Five-Level Safety Assurance Process," which they describe as follows: "for decades, ours has been one of the most thorough and rigorous product testing processes in our industry –to ensure safety and quality of every single product we make." Defendants' so-called "Promise to Parents and their Babies" includes that "[w]hen you bring our baby care products into your home, you can be assured of our commitment to the safety of your family and families around the world."

31. The website also touts the safety of talc stating that "[f]ew ingredients have demonstrated the same performance, mildness and safety profile as cosmetic talc". Nowhere do Defendants warn of the increased risk of ovarian cancer linked to the use of Johnson's® Baby Powder.

32. On May 12, 2014, the Johnson & Johnson Defendants issued the following statement: "We have no higher responsibility than the health and safety of consumers who rely on our products. It is important for consumers to know that the safety of cosmetic talc is supported by decades of scientific evidence and independent peer-reviewed studies." *See* Fox 32 Chicago, *Popular Baby Powder Allegedly Caused Cancer In Pro-Figure Skater* (May 12, 2014), *available at*: http://www.myfoxchicago.com/story/25497847/popular-baby-powder-allegedly-caused-cancerin-pro-figure-skater.

33. During the time in question, the Johnson & Johnson Defendants also advertised and marketed its product "Shower to Shower" as safe for use by women as evidenced in its slogan "A sprinkle a day keeps odor away", and through advertisements such as "Your body perspires in more places than just under your arms. Use SHOWER to SHOWER

to feel, dry, fresh and comfortable throughout the day" and "SHOWER to SHOWER can be used all over your body."

34. During the time in question Defendant, Chattem, Inc. advertised and marketed its product "Gold Bond" as safe for use. Such advertising included "After shower, bath or exercise, simply apply Gold Bond Medicated Body Powder for lasting deodorant protection and that cool, refreshing feeling. You'll understand right away why people have trusted Gold Bond Powder to provide genuine medicated relief since 1908. Gold Bond Medicated Body Powder does what it says: Cools. Absorbs. Relieves. Works."

Plaintiff Used Defendants' Products believing they were safe

35. Ms. Chakalos used "Johnson's Baby Powder", "Shower to Shower" and "GoldBond Powder" (hereinafter "the PRODUCTS") to dust her perineum for feminine hygiene purposes from her childhood until approximately 2011 as she believed they were safe. This was an intended and foreseeable use of the Defendants' products based on the advertising, marketing, and labeling of the products by the Defendants. Ms. Chakalos developed ovarian cancer and suffered effects attendant thereto, including her premature death, as a direct and proximate result of the unreasonably dangerous and defective nature of talcum powder and Defendants' wrongful and negligent conduct in the research, development, testing, manufacture, production, promotion, distribution, marketing, and sale of talcum powder. As a direct and proximate result of these injuries, Ms. Chakalos incurred medical expenses, has endured pain and suffering and loss of enjoyment of life, and wrongful death. Additionally, Mr. Chakalos seeks damages for loss of consortium loss of decedent's value to her estate, and other damages as allowed by law.

36. In or around November 2010, Ms. Chakalos was diagnosed with ovarian cancer. At the time of her diagnosis Ms. Chakalos was sixty three (63) years old and did not have any risks factors, genetic or otherwise, for the disease.

37. After entering hospice care for ovarian cancer, Ms. Chakalos passed away on November 15, 2012.

Defendants Knew of the Increased Risk of Ovarian Cancer From Use of Talcum Powder in the genital area

38. As detailed below, beginning in at least 1982, Defendants were aware of several studies that demonstrated that women who used talc-based baby powder in the genital area had a significant increased risk of ovarian cancer. Since 1982, there have been 21 studies by doctors and scientists throughout the world (including 19 case-control studies, 1 cohort study, and 1 combined case-control and cohort study) that reported an elevated risk for ovarian cancer with genital talc use. The majority of these studies show a statistically significant increased risk of ovarian cancer.

39. However, Defendants do not warn or inform consumers anywhere, including on the product labeling or in its marketing or advertising for the product, that use of their products may be harmful to health, including significantly increasing the risk of ovarian cancer.

Scientific Evidence linking Talcum Powder to Ovarian Cancer

40. Research done as early as 1961 has shown that particles, similar to talc, can translocate from the exterior genital area to the ovaries in women. Egi GE, Newton M. "The transport of carbon particles in the human female reproductive tract." *Fertility Sterility* 12:151-155, 1961.

41. Because of the potential for transmission, researchers remained concerned about the carcinogenic nature of talc and the effects of talc use. In 1968, a study concluded that

"[a]ll of the 22 talcum products analyzed have a … fiber content… averaging 19%. The fibrous material was predominantly talc but contained minor amounts of tremolite, anthophyllite, and chrysotile [asbestos-like fibers] as these are often present in fibrous talc mineral deposits…. Unknown significant amounts of such materials in products that may be used without precautions may create and unsuspected problem". Cralley LJ, Key MM, Groth DH, Lainhart WS, Ligo, RM. "Fibrous and mineral content of cosmetic talcum products." *Am Industrial Hygiene Assoc J.* 29:350-354, 1968. In a 1976 follow up study concluded that "[t]he presence in these products of asbestiform anthophyllite and tremolite, chrysotile, and quartz indicates the need for a regulatory standard for cosmetic talc…. We also recommend that evaluation be made to determine the possible health hazards associated with the use of these products." Rohl AN, et al, "Consumer talcums and powders: mineral and chemical characterization." *J Toxicol Environ Health* 2:255-284, 1976.

42. In 1971, the first study was conducted that suggested an association between talc and ovarian cancer. This study was conducted by WJ Henderson and others in Cardiff, Wales. That study found talc particles "deeply embedded" in 10 of 13 ovarian tumors, 12 of 21 cervical tumors, one primary carcinoma of the endometrium and 5 of 12 "normal" ovaries from women with breast cancer. Henderson, W.J., et al. "Talc and carcinoma of the ovary and cervix", 78(3) J. Obstet, Gynaecol. Br. Commonw. 266-272, 1971.

43. The scientific evidence linking talc use and ovarian cancer continued to build. In 1982, the first epidemiologic study was performed by Dr. Daniel Cramer et al. on talc powder use in the female genital area. This National Institutes of Health (NIH) funded case-control study found a statistically significant 92% increased risk in ovarian cancer with

women who reported genital talc use. Additinoally, it found that talc application directly to the genital area around the time of ovulation might lead to talc particles becoming deeply imbedded in the substance of the ovary and perhaps causing foreign body reaction capable of causing growth of epithelial ovarian tissue. This study proved an epidemiologic association between the use of cosmetic talc in genital hygiene and ovarian cancer. Cramer OW, Welch WR, Scully RE, Wojciechowski CA. "Ovarian cancer and talc: a case control study." *Cancer* 50: 372-376, 1982.

44. In 1983, Partricia Hartge and Robert Hoover of the National Cancer Institute and Linda Lester and Larry McGowan of the George Washing University Medical Center, performed a case-control interview study regarding ovarian cancer. Although no association was proven due to the small sample size, the study found an "excess relative risk" of 2.5 (95% CI=0.7 to 10.0) of ovarian cancer for women who use talcum powder in the genital area. Hartge P, et al. "Talc and ovarian cancer." Letter JAMA 250: 1844, 1983

45. In 1988, a case control study of 188 women diagnosed with epithelial ovarian cancer and 539 control women found that 52% of the cancer patients habitually used talcum powder on the perineum before their cancer diagnosis. The study showed that women using talc daily on their perineum had 1.45 times the risk of ovarian cancer then women that did not use talc daily, showing a positive dose-response relationship. *See* Whittemore AS, et al., "Personal and environmental characteristics related to epithelial ovarian cancer. II. Exposures talcum powder, tobacco, alcohol, and coffee." *Am J Epidemiol* 1128:1228-1240, 1988.

46. A case control study conducted in 1989 found similar results. The study looked at 235 women diagnosed with epithelial ovarian cancer and 451 controls and found an increased

risk in ovarian cancer with women who reported genital talcum powder use more than once per week. Booth, M. et al., "Risk factors for ovarian cancer: a case-control study," *Br. J. Cancer*, 592-598, 1989.

47. Another case control study conducted in 1989 by Bernard Harlow, et al., of Harvard Medical School at Brigham and Women's Hospital, found an increased risk of ovarian cancer generally from genital talc use after bathing and found a statistically significant increased risk of ovarian cancer from women that used talc-containing powders in combination with deodorizing powders on their perineum. This study also found positive dose-response relationship. Harlow, B.L. & Weiss, N.S., "A case-control study of borderline ovarian tumors: the influence of perineal exposure to talc", Am. J. Epidemiol., 390-394 (1989).

48. A 1992 study, also by Dr. Harlow, found that frequent and long term talc use directly on the genital area during ovulation increased a woman's risk of ovarian cancer threefold. The study also found "[t]he most frequent method of talc exposure was use as a dusting powder directly to the perineum (genitals) Brand or generic 'baby powder' was used most frequently and was the category associated with a statistically significant risk for ovarian cancer." This study looked at 235 ovarian cancer cases and compared to 239 controls. This study concluded that "given the poor prognosis for ovarian cancer, any potentially harmful exposures should be avoided, particularly those with limited benefits. For this reason, we discourage the use of talc in genital hygiene, particularly as a daily habit." Harlow BL, Cramer DW, Bell DA, Welch WR. "Perineal exposure to talc and ovarian cancer risk." *Obstet Gynecol* 80: 19-26, 1992.

49. Also in 1992, a case-control study was conducted by Karin Rosenblatt, et. al., from the Department of Epidemiology of John's Hopkins School of Hygiene and Public Health. This study showed that the development of ovarian cancer may be associated with genital fiber exposure (especially talc on sanitary napkins) finding a relative risk of 4.8 for talc use on sanitary napkins. Rosenblatt KA, Szklo M, Rosenshein NB. "Mineral fiber exposure and the development of ovarian cancer." *Gynecol Onco/* 45:20-25, 1992.

50. Additionally, a another 1992 case-control study conducted by Yong Chen, et al., of 112 diagnosed epithelial ovarian cancer cases and 224 age-matched community controls, found an elevated risk for ovarian cancer for women who applied talc-containing dusting powder to the lower abdomen and perineum for longer than 3 months. Yong Chen et al., "Risk Factors for Epithelial Ovarian Cancer in Beijing, China", Int. J. Epidemiol., 23-29 (1992).

51. 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. The study found "some evidence of carcinogenic activity in male rats" and "clear evidence of carcinogenic activity in female rats." Talc was found to be a carcinogen, with or without the presence of asbestos-like fibers. National Toxicology Program. "Toxicology and carcinogenesis studies of talc (CAS No 14807-96-6) in F344/N rats and B6C3F 1 mice (Inhalation studies)." *Technical Report Series No 421,* September 1993.

52. In 1995, a case control study was conducted in Australia by David Purdie, et al., involving over 1600 women. This was the largest study of its kind to date. This study found a statistically significant 27% increased risk in ovarian cancer for women who regularly use talc in the region of the abdomen or perineum. Purdie, D., et al., "Reproductive and other

factors and risk of epithelial ovarian cancer: an Australian case-control study. Survey of Women's Health Study Group", 62 (6) Int. J. Cancer 678-684 (1995).

53. In 1996, a case-control study similarly found a statistically significant increased risk of ovarian cancer in women who used talc-based powders in their genital area. *See* Shushan, A., et al, "Human menopausal gonadotropin and the risk of epithelial ovarian cancer", 65 (1) Fertil. Steril. 13-18 (1995).

54. In 1996, the condom industry stopped dusting condoms with talc due to the health concerns of ovarian cancer. "Concern about talc as an ovarian carcinogen goes back 50 years in the medical literature. By the 1970s, evidence was mounting that talc particles might migrate into a woman's fallopian tubes where they could cause scarring and irritation in the ovaries. Scientists believed in some cases that the scarring led to infertility or cancer." McCullough, Marie, "Women's health concerns prompt condom makers to stop using talc", Knight Ridder, Tribune News Service, January 10, 1996.

55. In 1997, a case-control study of 313 women with ovarian cancer and 422 without this disease found that the women with cancer were more likely to have applied talcum powder to their external genitalia area. Women using these products had a statistically signfiicant 50% to 90% higher risk of developing ovarian cancer. Cook LS, Kamb ML, Weiss NS. "Perineal powder exposure and the risk of ovarian cancer". *Am J Epidemiol*, 145: 459-465 (1997).

56. In 1997, a case-control study was conducted by Stella Chang and Harvey Risch from the Department of Epidemiology and Public Health, Yale University School of Medicine which included over 1,000 women. The study found a statistically significant increased risk for ovarian cancer for women who applied talc via sanitary napkins to their perineum.

The study indicated that "Commercial talc substitutes often replace talc with cornstarch. Furthermore, women may choose to powder or dust with cornstarch instead of talc. When cornstarch was assessed in relation to risk of ovarian carcinoma, no associations were found." The study concluded, "The results of this study appear to support the contention that talc exposure increases risk of ovarian carcinoma. Dusting with talcum powder is not an unusual practice for women, and, given the heterogeneity of the etiology and course of ovarian carcinoma, any possible harmful practices, particularly those with little benefit, should be deliberated." Chang, S. & Risch, H.A., "Perineal talc exposure and risk of ovarian carcinoma", 79 (12) Cancer 2396-2401 (1997).

57. In a 1998 case-control study conducted in Canada by Beatrice Godard, et al., an increased risk of ovarian cancer was found in women who used talc-based powders on their perineum. Godard, B., et al., *Risk factors for familial and sporadic ovarian cancer among French Canadians: a case-control study*, 179 (2) Am. J. Obstet. Gynecol. 403-410 (1998).

58. In 1999, Dr. Cramer conducted funded case-control study of 563 women newly diagnosed with epithelial ovarian cancer and 523 control women. The study found a statistically significant 60% increased risk of ovarian cancer in women that used talc-based body powders on their perineum. "We conclude that there is a significant association between the use of talc in genital hygiene and risk of epithelial ovarian cancer that, when viewed in perspective of published data on this association, warrants more formal public health warnings." The study was funded by a grant from the National Cancer Institute (NCI). Cramer, D.W., et al, "Genital talc exposure and risk of ovarian cancer", 81(3) Int. J. Cancer 351-356 (1999).

59. In 2000, Roberta Ness, et al., from University of Pennsylvania, produced a case control study of over 2,000 women. This study found a statistically significant 50% increased risk of ovarian cancer from genital talc use in women. The study also found that talc causes inflammation and that inflammation contributes to cancer cell development. Ness, R.B., et al., "Factors related to inflammation of the ovarian epithelium and risk of ovarian cancer", 11 (2) Epidemiology 111-117 (2000).

60. Also in 2000, a prospective cohort study, considered to be the most informative study to date, found a 40% increase in invasive serous cancers from women who applied talcum powder to their perineum. Getrg DM, et al. Prospective study of talc use and ovarian cancer. *J Natl Cancer Inst;* 2000: 92: 249-252.

61. In 2003, a meta-analysis was conducted which re-analyzed data from 16 studies published prior to 2003 found a 33% increase in ovarian cancer risk among talc users. Huncharek M, et al. "Perineal application of cosmetic talc and risk of invasive epithelial ovarian cancer: a meta-analysis of 11,933 subjects from sixteen observational studies". *Anticancer Res.*, 23: 1955-60 (2003).

62. In 2004, a case-control study of nearly 1400 women from 22 counties was performed in Central California. This study found a statistically significant 37% increased risk of epithelial ovarian cancer from women's genital talc use. The study also found a 77% increased risk of serous invasive ovarian cancer from women's genital talc use. The study looked at women's use of cornstarch powders and found no increased risk in ovarian cancer in women who used these types of powders on the perineum as "Cornstarch is also not thought to exert the same toxicologic reaction in human tissue as does talc." This study concluded by stating that "users should exercise prudence in reducing or eliminating use.

In this instance, the precautionary principle should be invoked, especially given that this is a serious form of cancer, usually associated with a poor prognosis, with no current effective screening tool, steady incidence rates during the last quarter century and no prospect for successful therapy. Unlike other forms of environmental exposures, talcum powder use is easily avoidable." Mills, P.K., et al., "Perineal talc exposure and epithelial ovarian cancer risk in the Central Valley of California", 112 Int. J. Cancer 458-64 (2004).

63. Interestingly, this study also found a 54% increased risk in ovarian cancer from talc use in women who had not undergone a tubal ligation, whereas the study found no impact on women who had their tubes tied. Because it had been found in previous studies that talc particles migrate up the fallopian tubes in women this finding provided strong evidence to support the idea that talc is a carcinogen. *Id.*

64. In 2008, Margaret Gates performed a combined study of over 3,000 women from a New England-based case-control study and a prospective Nurses' Health Study with additional cases and years of follow up from these studies (the "Gates Study"). This study was funded by the National Cancer Institute (NCI), and found a general 36% statistically significant increased risk of epithelial ovarian cancer from genital talc use. A 60% increased risk of the serous invasive subtype was also found. Dr. Gates found a strong and positive dose-response relationship whereby increased risk was seen with higher talc usage in women. Dr. Gates stated that these latest results "provide additional support for a main effect of genital talc exposure on epithelial ovarian cancer." She also stated that "the finding of highly significant trends between increasing frequency of use and risk 'strengthens the evidence of an association, because most previous studies have not observed a dose response.'" It was concluded that, "We believe that women should be advised not to use

talcum powder in the genital area, based on our results and previous evidence supporting an association between genital talc use and ovarian cancer risk. Physicians should ask the patient about talc use history and should advise the patient to discontinue using talc in the genital area if the patient has not already stopped." Dr. Gates further stated that "An alternative to talc is cornstarch powder, which has not been shown to increase ovarian cancer risk, or to forgo genital powder use altogether." Gates, M.A., et al., "Talc Use, Variants of the GSTM1, GSTT1, and NAT2 Genes, and Risk of Epithelial Ovarian Cancer", 17 (9) Cancer Epidemiology, Biomarkers & Prev. 2436-2444 (2008).

65. In October of 2008, Michael Thun, Vice-President of Epidemiology and Surveillance Research at the American Cancer Society commented on the Gates Study. He stated the dose-response relationship between talc and ovarian cancer had finally been satisfied by this study. Dr. Thun said, "There are very few modifiable risk factors for ovarian cancer. The main one is the use of oral contraceptives, which has been clearly established to lower the risk for ovarian cancer. Others include tubal ligation, hysterectomy, and parity. Then there are factors that 'probably' increase the risk for ovarian cancer, and this is where talc fits in, alongside asbestos, postmenopausal hormone therapy, and radiation." Chustecka, Zosia & Lie, Desiree, "Talc Use in Genital Area Linked to Increased Risk for Ovarian Cancer", Medscape Medical News (2008).

66. In 2008, Melissa Merritt, from the Australian Cancer Study (Ovarian Cancer) and Australian Ovarian Cancer Study Group, conducted a case-control study of over 3,000 women where a statistically significant increased risk of ovarian cancer for women who used talc on their perineum was confirmed. This study also confirmed a statistically significant increased risk of ovarian cancer of a serous subtype in women who used talc on

their perineum. Merritt, M.A., et al., "Talcum powder, chronic pelvic inflammation and NSAIDs in relation to risk of epithelial ovarian cancer", 122 (1) Int. J. Cancer 170-176 (2008).

67. In 2009, a case-control study of over 1,200 women found the risk of ovarian cancer increased significantly with increasing frequency and duration of talc use. The study found an overall statistically significant 53% increased risk of ovarian cancer from genital talc use. The study also found a 108% statistically significant increased risk of ovarian cancer in women with the longest duration and most frequent talc use. The study concluded by stating, "that risk of ovarian cancer is significantly associated with talc use and with a history of endometriosis, as has been found in recent studies." Wu, A.H., et al., "Markers of inflammation and risk of ovarian cancer in Los Angeles County", 124 (6) Int. J. Cancer 1409-1415 (2009).

68. Additionally, various meta-analyses have been conducted that found positive associations between the use of talcum powder in the genital area and ovarian cancer. Harlow, B.L. et al., *Perineal exposure to talc and ovarian cancer risk*, Obstet. Gynecol, 19-26 (1992); Gross, A.J. & Berg, P.H., *A meta-analytical approach examining the potential relationship between talc exposure and ovarian cancer*, 5 (2) J. Expo. Anal. Environ. Epidemiol. 181-195 (1995). Huncharek, M., et al., "Perineal application of cosmetic talc and risk of invasive epithelial ovarian cancer: a meta-analysis of 11,933 subjects from sixteen observational studies", 23 Anticancer Res. 1955-60 (2003).

Leading Authorities Agree on the Link Between Ovarian Cancer and Perineal Use of Talc Powder

69. On November 17, 1994, the Cancer Prevention Coalition joined by Chair and National Advisor of the Ovarian Cancer Early Detection and Prevention Foundation along with

members of the (OCEDPF) filed a "Citizen Petition Seeking Carcinogenic Labeling on All Cosmetic Talc Products" stating that research dating back to 1961 had shown that cosmetic grade talc could translocate to the ovaries in women and increase the risk of developing ovarian cancer. This petition was submitted to the Commissioner of the Food and Drug Administration under the Federal Food, Drug, and Cosmetic Act. The agency action requested was that the FDA take the following action: "(1) Immediately require cosmetic talcum powder products to bear labels with a warning such as "Talcum powder causes cancer in laboratory animals. Frequent talc application in the female genital area increases the risk of ovarian cancer".

70. In February of 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 increase risk in ovarian cancer in women from perineal use of talc. IARC found that between 16-52% of women in the world were using talc to dust their perineum and found increase risk of ovarian cancer in women talc users ranging from 30-60%. IARC concluded with this "Overall evaluation" : "Perineal use of talc-based body powder is possibly carcinogenic to humans (Group 2B)."

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

72. In May 2008, the CPC, joined by its chairman and numerous other physicians and chairs of public health and medical associations, submitted a citizen's petition "seeking a cancer warning on cosmetic talc products.[1]" ***The petition sought to require all cosmetic talc products to bear labels with warnings*** such as, "Frequent application of talcum powder in the female genital area substantially increases the risk of ovarian cancer" or "Frequent talc application in the female genital area ***is responsible*** for major risks of ovarian cancer." (emphasis added). The petition cited numerous studies and publications and sought a hearing to present scientific evidence.

73. As of today, both the National Cancer Institute and American Cancer Society list genital talc use as a "risk factor" for ovarian cancer.

Defendants Awareness of the Dangers of Talcum Powder

74. Upon information and belief, shortly after Dr. Cramer's 1982 study was published, Dr. Bruce Semple of Johnson & Johnson contacted and visited Dr. Cramer about his 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.

75. The Johnson & Johnson Defendants publicly recognized the studies linking the use of its product to ovarian cancer. On August 12, 1982, in a New York Times article entitled "Talcum Company Calls Study on Cancer Link Inconclusive" the Defendants admitted

[1] The petition was submitted on behalf of: Samuel S. Epstein, M.D., Chairman, CPC, and Professor emeritus Occupational and Environmental Medicine, University of Illinois at Chicago School of Public Health; Peter Orris, M.D., Professor and Chief of Service, University of Illinois at Chicago Medical Center; Quentin Young, M.D., Chairman, Health and Medicine Policy Research Group, Chicago; Rosalie Bertell, Ph.D., International Association for Humanitarian Medicine, Scientific Advisor to the International Institute of Concern for Public Health, Toronto, and the International Science Oversight Board of the Organic Consumers Association, Washington, D.C.; and Ronnie Cummins, National Director of the Organic Consumers Association.

being aware of the 1982 Cramer et al. article that concluded women were three (3) times more likely to contract ovarian cancer after daily use of their talcum powder in the genital area.

76. In 1992, after these various studies, the Personal Care Products Council f/k/a Cosmetic, Toiletry and Fragrance Association (CTFA) created the Talc Interested Party Task Force to defend the talc industry and help with publication relations and talking points for press releases regarding the connection between talc and ovarian cancer. Defendants Johnson & Johnson, Luzenac and Sanofi are members of this organization. Upon information and belief, this organization lobbied various organizations including the National Toxicology Program to prevent talc from being labeled as a carcinogen.

77. On November 10, 1994, the Cancer Prevention Coalition ("CPC") mailed a letter to then J&J's CEO, Ralph Larson, informing Defendants that studies as far back as 1960's "show[] conclusively that the frequent use of talcum powder in the genital area poses a serious risk of ovarian cancer." The letter cited a 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 Defendants 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

78. On September 17, 1997, Alfred Wehner a toxicology consultant retained by Defendants, wrote a letter to Michael Chudkowski, manager of Pre-Clinical Toxicology at Johnson &

Johnson Consumer Products, Inc., stating that on three separate occasions the Talc Interested Party Task Force (TIPTF) of the Cosmetic, Toiletry, and Fragrance Association (CTFA) which included Johnson & Johnson Defendants, Luzenac and Sanofi, had released false information to the public about the safety of talc. Specifically addressing a November 17, 1994, statement released by the CTFA, Dr. Wehner said the following:

> The response statement dated November 17, 1994, is just as bad. The second sentence in the third paragraph reads: "The workshop concluded that, although some of these studies suggested a weak association might exist, when taken together the results of the studies are insufficient to demonstrate any real association." This statement is also inaccurate, to phrase it euphemistically. At that time there had been about 9 studies (more by now) published in the open literature that did show a statistically significant association between hygienic talc use and ovarian cancer. Anybody who denies this risks that the talc industry will be perceived by the public like it perceives the cigarette industry: denying the obvious in the face of all evidence to the contrary.
>
> The workshop did not conclude that "the results of the studies are insufficient to demonstrate any real association." As pointed out above, a "real" statistically significant association has been undeniably established independently by several investigators, which without doubt will be readily attested to by a number of reputable scientists/clinicians, including Bernard Harlow, Debra Novotny, Candace Sue Kasper, Debra Heller, and others.

79. In 2002, E. Edward Kavanaugh, The President of The Cosmetic, Toiletry, and Fragrance Association (CTFA), wrote a letter to Dr. Kenneth Olden, Director of the National Toxicology Program (NTP) and National Institute of Environmental Health Sciences, U.S. Department of Health and Human Services, in an attempt to stop the NTP from listing cosmetic talc as a carcinogen in an upcoming report. The NTP had already nominated cosmetic talc for this classification. Upon information and belief, in this letter the CTFA admitted that talc was "toxic", that "some talc particles... can reach the human ovaries", and acknowledge and agreed that prior epidemiologic studies have concluded that talc increases the risk of ovarian cancer in women.

80. In 2006, Imerys began placing an ovarian cancer warning on its Material Safety Data Sheets (MSDS) it provides to its talc customers, including various Defendants. 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. At the very least, the Johnson & Johnson Defendants would have received these MSDSs. None of the Defendants passed this warning information on to the consumers. On September 26, 2012, the corporate representative of Imerys testified in open court that his company exclusively supplied the Johnson & Johnson Defendants with talc used for its Baby Powder product and that ovarian cancer is a potential hazard associated with a women's perineal use of talc-based body powders, like Defendants' Baby Powder.

81. On October 19, 2012, Johnson & Johnson Defendants' former in-house toxicologist and current consulting toxicologist, Dr. John Hopkins, testified on Defendants' behalf that Defendants "[are] and were aware of . . . all publications related to talc use and ovarian cancer."

Defendants Failed to Warn Consumers and the Public about the Risks of Using Talcum Powder

82. The Defendants had a duty to know and warn about the hazards associated with the use of its products.

83. Despite the mounting scientific and medical evidence regarding talc use and ovarian cancer that has developed over the past several decades, none of Defendants' warnings on the product label or in other marketing informed Plaintiffs that use of the product in the genital area, as was encouraged by Defendants, could lead to an increased risk of ovarian cancer. For example, the only warnings on the Baby Powder label are to "Keep powder

away from child's face to avoid inhalation, which can cause breathing problems," and to "[a]void contact with eyes." The label also states: "SAFETY TIP: Keep out of reach of children. Do not use if quality seal is broken." Defendants provide similar warnings on their website: "For external use only. Keep out of reach of children. Close tightly after use. Do not use on broken skin. Avoid contact with eyes. Keep powder away from child's face to avoid inhalation, which can cause breathing problems."

84. The Johnson & Johnson Defendants continue to represent on the labeling and other marketing that Johnson's® Baby Powder is "clinically proven mildness," "clinically proven to be safe, gentle and mild," and "that the safety of cosmetic talc is supported by decades of scientific evidence and independent peer reviewed studies."

85. The Defendants failed to inform its customers and end users of its products of a known catastrophic health hazard associated with the use of its products.

86. In addition, the Defendants procured and disseminated false, misleading, and biased information regarding the safety of its products to the public.

87. As a result of the Defendants calculated and reprehensible conduct the Plaintiff was injured and suffered damages namely ovarian cancer which has required multiple surgeries and treatments.

88. Defendants had the ability to and did spend enormous amounts of money in furtherance of their purpose of marketing and promoting a profitable drug, notwithstanding the known or reasonably known risks. Plaintiffs and medical professionals could not have afforded and could not have possibly conducted studies to determine the nature, extent and identity of related health risks, and were forced to rely on Defendants' representations.

Causes of Action-Theories of Recovery

COUNT ONE - STRICT LIABILITY – FAILURE TO WARN
(All Defendants)

89. Plaintiffs incorporate by reference all other paragraphs of this Complaint as if fully set forth herein.

90. At all pertinent times, Imerys Talc f/k/a Luzenac America, Inc mined and sold talc to the Johnson & Johnson Defendants, which it knew was then packaging and selling to consumers as Johnson's Baby Powder and "Shower to Shower", and it knew that consumers of these products were using it to powder their perineal regions.

91. At all pertinent times, Imerys Talc knew 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 women's perineal region, and it know or should have known that Johnson & Johnson was not warning its consumers of this danger.

92. At all pertinent times, the Johnson & Johnson Defendants, the Valeant Defendants, Sanofi and Chattem, Inc. were manufacturing, marketing, testing, promotion, selling and/or distributing the PRODUCTS in the regular course of business.

93. At all pertinent times, Ms. Chakalos used the PRODUCTS to powder her perineal area, which is a reasonably foreseeable use and in a manner normally intended by the Defendants.

94. 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 1960's.

95. At all pertinent times, including the time of sale and consumption, the PRODUCTS, when put to the aforementioned reasonably foreseeable use, were in an unreasonably dangerous

and defective condition because they failed to contain adequate and proper warnings and/or instructions regarding the increased risk of ovarian cancer associated with the use of the PRODUCTS by women to powder their perineal area. Defendants themselves failed to properly and adequately warn and instruct Plaintiffs as to the risks and benefits of the PRODUCTS given Plaintiffs need for this information. Had Ms. Chakalos received a warning that the use of the PRODUCTS in her genital area or on sanitary napkins would have significantly increased her risk of ovarian cancer, she would not have used the PRODUCTS in that manner. Her use of the PRODUCTS was a substantial factor in her development of ovarian cancer. As a proximate result of Defendants' design, manufacture, marketing, sale and distribution of the PRODUCTS, Plaintiffs have been injured catastrophically, and have been caused severe pain, suffering, disability, impairment, loss of enjoyment of life, loss of care, comfort, economic damages and death.

96. The development of ovarian cancer by the Plaintiffs was the direct and proximate result of the unreasonably dangerous and defective condition of the PRODUCTS at the time of sale and consumption, including their lack of warnings; Plaintiffs have suffered injuries and damages including but not limited to conscious pain and suffering of Plaintiffs, medical expenses and death.

97. The Defendants' products were defective because they failed to contain warnings and/or instructions, and breached express warranties and/or failed to conform to express factual representations upon which the Plaintiffs justifiably relied in electing to use the products. The defect or defects made the products unreasonably dangerous to those persons, such as Plaintiff, who could reasonably be expected to use and rely upon such products. As a result, the defect or defects were a producing cause of the Plaintiff's injuries and damages.

98. Defendants' products failed to contain, and continue to this day not to contain adequate warnings and/or instructions regarding the increased risk of ovarian cancer with the use of their products by women. The PRODUCTS also do not carry any warning advising that women avoid powder in the genital/perineum area or that it is unsafe to use the powders on sanitary napkins or feminine products. The Defendants continue to market, advertise, and expressly represent to the general public that talcum powders are safe for women to use regardless of application area. These Defendants continue with these marketing and advertising campaigns despite having scientific knowledge that dates back to the 1960's that their products increase the risk of ovarian cancer in women when used in the perineal area.

99. Alternatively, if his honorable Court finds that the Defendants did not have a duty to warn when Ms. Chakalos began using the product or at each time she purchased thereafter, they had a post-sale duty to warn, perhaps through advertising or public announcements, as the science developed and the danger of ovarian cancer from using talc products became clear.

WHEREFORE, Plaintiffs pray for judgment against Defendants for compensatory, treble and punitive damages, together with interest, costs of suit, attorneys' fees and such further and other relief as the Court deems just and appropriate.

COUNT TWO - STRICT LIABILITY – DEFECTIVE DESIGN
(Johnson & Johnson Defendants, Valeant Defendants, Sanofi and Chattem, Inc.)

100. Plaintiffs incorporate by reference all other paragraphs of this Complaint as if fully set forth herein.

101. At all pertinent times, the Johnson & Johnson Defendants, the Valeant Defendants, Sanofi and Chattem, Inc. were responsible for designing, developing, manufacturing, marketing, testing, packaging promoting, marketing, labeling, selling and/or distributing the

PRODUCTS in the regular course of business.

102. The PRODUCTS are defective and unreasonably dangerous to consumers as the utility of the PRODUCTS do not outweigh the danger of developing ovarian cancer.

103. The PRODUCTS are defective in their design or formulation in that they are not reasonably fit, suitable or safe for their intended purpose (including for use in the genital area or on the perineum) and their foreseeable risks including ovarian cancer exceed the benefits associated with their design and formulation.

104. At all pertinent times, Ms. Chakalos used the PRODUCTS to powder her perineal area and her sanitary napkins, which is a reasonably foreseeable use and in a manner normally intended by the Defendants.

105. 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 1960's.

106. At all pertinent times, the PRODUCTS were expected to reach, and did reach consumers in the State of New York, and throughout the United States, without substantial change in the condition in which it was sold.

107. At all times material to this action, the PRODUCTS were designed, developed, manufactured, tested, packaged, promoted, marketed, distributed, labeled and/or sold by Defendants in a defective and unreasonably dangerous condition at the time it was placed in the stream of commerce in ways which include but are not limited to the following:

a. When placed in the stream of commerce, the PRODCUTS contained unreasonably dangerous design defects and were not reasonably safe as intended to be used

including dusting the perineum, subjecting Plaintiffs to risks that exceeded the benefits of the subject product.

b. When placed in the stream of commerce, the PRODUCTS were defective in design and formulation, specifically that the PRODUCTS contained Talc, making the use the PRODUCTS more dangerous than an ordinary consumer would expect, and more dangerous than other risks associated with the other non-talc options on the market.

c. The subject product's design defects existed before it left the control of the Defendants;

d. The PRODUCTS were insufficiently tested;

e. The PRODUCTS caused harmful side effects including ovarian cancer that outweighed any potential utility of deodorizing, preventing chaffing or other possible benefits; and

f. The PRODUCTS were not accompanied by adequate instructions and/or warnings to fully apprise consumers, including Plaintiffs herein, of the full nature and extent of the risks and side effects associated with its use, thereby rendering Defendants liable to Plaintiffs.

108. As a result, the defect or defects were a producing cause of the Plaintiff's injuries and damages. Therefore, the Defendants are liable under the Doctrine of Strict Liability in Tort.

109. 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 products increase the risk of ovarian cancer in women when used in the perineal area.

110. In addition, at the time the subject product left the control of the Defendants, there were practical and feasible alternative designs including cornstarch based powders that would have prevented and/or significantly reduced the risk of Plaintiff's injuries without impairing the reasonably anticipated or intended function of the product. These safer alternative designs were economically and technologically feasible, and would have prevented or significantly reduced the risk of Plaintiff's injuries without substantially impairing the product's utility.

111. As a direct and proximate result of the PRODUCTS' defective design, Plaintiff suffered severe and permanent physical injuries including death. Plaintiff endured substantial pain and suffering. She incurred significant expenses for medical care and treatment. The Plaintiffs seek actual and punitive damages from the Defendants as alleged herein.

WHEREFORE, Plaintiffs pray for judgment against Defendants for compensatory, treble and punitive damages, together with interest, costs of suit, attorneys' fees and such further and other relief as the Court deems just and appropriate.

COUNT THREE –NEGLIGENCE
(As to Imerys Talc)

112. The Plaintiffs incorporate by reference all other paragraphs of this Complaint as if fully set forth herein.

113. At all pertinent times, Defendants had a duty to exercise reasonable care to consumers, including Plaintiffs herein, in the design, development, manufacture, testing, inspection, packaging, promotion, marketing, distribution, labeling and/or sale of the PRODUCTS.

114. 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 the PRODUCTS by the Johnson and Johnson Defendants. Further, Imerys Talc knew and/or should have known that consumers of the PRODUCTS were using it to powder their perineal regions.

115. 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 1960s.

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

117. 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 PRODUCTS, without adequately taking steps to ensure that ultimate consumers of the PRODUCTS, including Decedent, received the information that Imerys Talc possessed on the carcinogenic properties of talc, including its risk of causing ovarian cancer.

118. As a direct and proximate result of Imery's Talc's negligence Plaintiff purchased and used the PRODUCTS that caused Plaintiff to develop ovarian cancer; Plaintiff incurred medical bills, conscious pain and suffering, and death; Plaintiffs were caused to sustain damages as a direct and proximate result including untimely death, funeral and burial costs, as well as the loss of his wife's services, companionship, comfort, instruction, guidance, counsel, training and support.

WHEREFORE, Plaintiffs pray for judgment against Defendants for compensatory, treble and punitive damages, together with interest, costs of suit, attorneys' fees and such further and other relief as the Court deems just and appropriate.

COUNT FOUR – NEGLIGENCE
(Johnson & Johnson Defendants, Valeant Defendants, Sanofi and Chattem, Inc.)

119. Plaintiffs hereby incorporate by reference each of the preceding paragraphs as if fully set forth herein.

120. The Johnson & Johnson Defendants, the Valeant Defendants, Sanofi and Chattem, Inc. were negligent in marketing, designing, manufacturing, packaging, labeling, supplying, inspecting, testing selling and/or distributing the PRODUCTS in the following ways, each of which was a proximate cause of Plaintiff's injuries and damages:

a. In failing to warn Plaintiff of the hazards associated with the use of their product, including the risk of ovarian cancer when the product is used in the genital area, in the perineal area or on sanitary napkins.

b. In failing to properly test their products to determine adequacy and effectiveness or safety measures, if any, prior to releasing these products for consumer use;

c. In failing to properly test their products to determine the increased risk of ovarian cancer during the normal and/or intended use of the products;

d. In failing to inform ultimate users, such as Plaintiff as to the safe and proper methods of handling and using their products;

e. In failing to remove their products from the market or adding proper warnings when the Defendants knew or should have known their products were defective;

f. In failing to instruct the ultimate users, such as Plaintiff, as to the methods for reducing the type of exposure to the Defendants' products which caused increased risk in ovarian cancer;

g. In failing to inform the public in general and the Plaintiff in particular of the known dangers of using the Defendants' products for dusting the perineum;

h. In failing to advise users how to prevent or reduce exposure that caused increase risk for ovarian cancer;

i. Marketing and labeling their product as safe for all uses despite knowledge to the contrary;

j. In failing to act like a reasonably prudent company under similar circumstances

121. Each and all of these acts and omissions, taken singularly or in combination, were a proximate cause of the injuries and damages sustained by Plaintiff.

122. At all pertinent times, the Defendants knew or should have known that the PRODUCTS were unreasonably dangerous and defective when put to their reasonably anticipated use.

123. As a direct and proximate result of Defendants' negligence Plaintiff purchased and used the PRODUCTS that caused Plaintiff to develop ovarian cancer; Plaintiff incurred medical bills, conscious pain and suffering, and death; Plaintiffs were caused to sustain damages as a direct and proximate result including untimely death, funeral and burial costs, as well as the loss of his wife's services, companionship, comfort, instruction, guidance, counsel, training and support.

WHEREFORE, Plaintiffs pray for judgment against Defendants for compensatory, treble and punitive damages, together with interest, costs of suit, attorneys' fees and such further and other relief as the Court deems just and appropriate.

COUNT FIVE - BREACH OF EXPRESS WARRANTY
(Johnson & Johnson Defendants, Valeant Defendants, Sanofi and Chattem, Inc.)

124. Plaintiffs hereby incorporate by reference each of the preceding paragraphs as if fully set forth herein.

125. The Johnson & Johnson Defendants, the Valeant Defendants, Sanofi and Chattem, Inc. expressly warranted, through direct-to-consumer marketing, advertisements, and labels, that the PRODUCTS were safe and effective for reasonably anticipated uses, including use by women in the perineal area and on sanitary napkins.

126. Ms. Chakalos saw these advertisements, including television commercials, and believed the product was safe and effective to use in her perineal area.

127. The PRODUCTS did not conform to these express representations in violation of N.Y. U.C.C. Law 2-313, *et seq.* and New York common law because they cause serious injury when used by women in the perineal area in the form of ovarian cancer and were not fit for the ordinary purpose for which the PRODUCTS were sold.

128. As a direct and proximate result of Defendants' breach of warranty, Plaintiff purchased and used, as aforesaid, the PRODUCTS that directly and proximately caused Plaintiff to develop ovarian cancer.

WHEREFORE, Plaintiffs pray for judgment against Defendants for compensatory, treble and punitive damages, together with interest, costs of suit, attorneys' fees and such further and other relief as the Court deems just and appropriate.

COUNT SIX - BREACH OF IMPLIED WARRANTY
(Johnson & Johnson Defendants, Valeant Defendants, Sanofi and Chattem, Inc.)

129. Plaintiffs hereby incorporate by reference each of the preceding paragraphs as if fully set forth herein.

130. At the time the Johnson & Johnson Defendants, the Valeant Defendants, Sanofi and Chattem, Inc. designed, manufactured, assembled, fabricated, labeled, packaged, sold and/or distributed the PRODUCTS, the Defendants knew of the uses for which the PRODUCTS were intended, including use by women in the perineal area, and impliedly warranted the PRODUCTS to be of merchantable quality and safe for such use.

131. The Defendants, as sellers, were merchants with respect to the products which they sold.

132. Defendants sold these products in a defective condition and therefore breached an implied warranty of fitness and an implied warranty of merchantability. Additionally, Defendants breached their implied warranties of the PRODUCTS sold to Plaintiff because the PRODUCTS were not fit for their common, ordinary and intended uses, included use by women in the perineal area.

133. Therefore the Defendants have breached the implied warranty of merchantability as well as the implied warranty of fitness for a particular purpose as stated N.Y. U.C.C. Law §§ 2-314, *et seq.* under New York common law. Such breach by the Defendants was a proximate cause of the injuries and damages sustained by Plaintiff.

134. As a direct and proximate result of Defendants' breach of implied warranty, Plaintiff purchased and used the PRODUCTS that caused Plaintiff to develop ovarian cancer; Plaintiff incurred medical bills, conscious pain and suffering, and death; Plaintiffs were caused to sustain damages as a direct and proximate result including untimely death,

funeral and burial costs, as well as the loss of his wife's services, companionship, comfort, instruction, guidance, counsel, training and support.

WHEREFORE, Plaintiffs pray for judgment against Defendants for compensatory, treble and punitive damages, together with interest, costs of suit, attorneys' fees and such further and other relief as the Court deems just and appropriate.

COUNT SEVEN - CIVIL CONSPIRACY
(All Defendants)

135. All of the allegations contained in the previous paragraphs are re-alleged herein.

136. Defendants and/or their predecessors-in- interest knowingly agreed, contrived, combined, confederated and conspired among themselves to cause Plaintiff injuries, disease, and/or illnesses by exposing Plaintiff to harmful and dangerous products. Defendants further knowingly agreed, contrived, confederated and conspired to deprive Plaintiff of the opportunity of informed free choice as to whether to use said products 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 Defendants' products.

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

a. 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 products by women resulting from ordinary and foreseeable use of the above described products were unreasonable dangerous, hazardous, deleterious to human health, carcinogenic, and potentially deadly;

b. 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:

i. withheld, concealed and suppressed said medical information regarding the increased risk of ovarian cancer from Plaintiff (as set out in the "Facts" section of this pleading); In addition, on July 27, 2005 the Johnson and Johnson 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;

ii. the Johnson and Johnson 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";

iii. 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.

c. By these false and fraudulent representations, omissions, and concealments, Defendants intended to induce the Plaintiff 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 Defendants' products.

138. Plaintiff Decedent reasonably and in good faith relied upon false and fraudulent representations, omissions, and concealments made by Defendants regarding the nature of their products.

139. As a direct and proximate result of Plaintiff's reliance, Plaintiff has sustained damages including injuries, illnesses and death and has was deprived of the opportunity of informed free choice in connection with the use of exposure to Defendants' products.

WHEREFORE, Plaintiffs pray for judgment against Defendants for compensatory, treble and punitive damages, together with interest, costs of suit, attorneys' fees and such further and other relief as the Court deems just and appropriate.

COUNT EIGHT – CONCERT OF ACTION
(All Defendants)

140. Plaintiffs hereby incorporate by reference each of the preceding paragraphs as if fully set forth herein.

141. At all pertinent times, Defendants, and the Personal care and Products Council (PCPC) knew that the PRODUCTS 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 Defendants.

142. 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 abetting.

WHEREFORE, Plaintiffs pray for judgment against Defendants for compensatory, treble and punitive damages, together with interest, costs of suit, attorneys' fees and such further and other relief as the Court deems just and appropriate.

COUNT NINE- GROSS NEGLIGENCE
(All Defendants)

143. Plaintiffs hereby incorporate by reference each of the preceding paragraphs as if fully set forth herein.

144. The Defendants' conduct was in conscious disregard for the rights, safety and welfare of the Plaintiff. The Defendants acted with willful and wanton disregard for the safety of the Plaintiff. The Defendants' conduct constitutes gross negligence. Defendants' gross negligence was a proximate cause of Plaintiff's injuries, and as such the Defendants are liable for exemplary and punitive damages.

145. The Johnson and Johnson Defendants have a pattern and practice of this type of conduct. Specifically, these Defendants built their company on the credo, "We believe our first responsibility is to the doctors, nurses, and patients, to mothers and fathers and all others who use our products and services." The Defendants placed emphasis on shareholders believing that if they take care of everything the ethical and correct way

profits will follow. However, over the past few decades, the Defendants have sharply deviated from their original credo, and instituted a corporate pattern and practice of placing profits over the health and well-being of its customers as evidence in the Propulsid litigation, Ortho Evra litigation, 2006 Pennsylvania Tylenol litigation, 2006 TMAP investigation, and 2007 violation of the Foreign Corrupt Practices Act.

146. The above listed evidence indicates a pattern and practice of Johnson & Johnson Defendants to place corporate profits over health and well-being of its customers. Such a pattern and practice has been followed by the Defendants regarding "Johnson's Baby Powder" and "Shower to Shower".

WHEREFORE, Plaintiffs pray for judgment against Defendants for compensatory, treble and punitive damages, together with interest, costs of suit, attorneys' fees and such further and other relief as the Court deems just and appropriate.

COUNT TEN – NEGLIGENT MISREPRESENTATION
(All Defendants)

147. Plaintiffs hereby incorporate by reference each of the preceding paragraphs as if fully set forth herein.

148. Defendants had a duty to accurately and truthfully represent to the medical and healthcare community, Plaintiffs and the public that the products 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.

149. Defendants failed to exercise ordinary care in the representations concerning the PRODUCTS while they were involved in their manufacture, sale, testing, quality assurance, quality control, and distribution in interstate commerce, because Defendants

negligently misrepresented the PRODUCTS' high risk of unreasonable, dangerous, adverse side effects, including the risk of ovarian cancer.

150. Defendants breached their duty in representing that the PRODUCTS have no serious side effects.

151. 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 the PRODUCTS 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.

152. As a direct and proximate result of Defendants' conduct, Plaintiffs have been injured and sustained severe pain, suffering, loss of enjoyment of life, loss of care and comfort, economic damages and death.

WHEREFORE, Plaintiffs pray for judgment against Defendants for compensatory, treble and punitive damages, together with interest, costs of suit, attorneys' fees and such further and other relief as the Court deems just and appropriate.

COUNT ELEVEN – WRONGFUL DEATH
(All Defendants)

153. Plaintiff repeats, reiterates, and realleges each and every allegation contained in paragraphs "1" through "26", inclusive, with the same force and effect as if fully and completely set forth herein.

154. As a result of the negligence, carelessness, and recklessness of the defendants, their servants, agents, and/or employees, in the medical services rendered, and lack of informed consent to the plaintiff's decedent, Janice Chakolas, said plaintiff's decedent sustained grievous personal injuries which resulted in her death.

155. Defendants were otherwise negligent.

156. Plaintiff's decedent, Janice Chakolas, is survived by her husband, plaintiff James Chakolas, and children, Frank C. Wolsky next of kin.

157. In connection with the injuries sustained by the plaintiff's decedent, and her resulting death, plaintiff's decedent's next of kin and plaintiff's decedent's estate have necessarily incurred, or become obligated to pay various medical and funeral and related expenses in connection with the medical treatment and the funeral of the plaintiff's decedent, and have and will necessarily incur expenses in the settlement of the estate of the plaintiff's decedent, in various amounts.

158. As a result of the negligent acts of the defendants resulting in the wrongful death of the plaintiff's decedent, decedent's next of kin have been deprived of the support, maintenance, services, guidance, communion, protection, and intellectual, moral, spiritual and physical training of the plaintiff's decedent, Janice Chakolas, amongst other losses.

159. That by reason of the foregoing, the plaintiff's decedent's next of kin have been damaged in an amount to be determined.

WHEREFORE, Plaintiffs pray for judgment against Defendants for compensatory, treble and punitive damages, together with interest, costs of suit, attorneys' fees and such further and other relief as the Court deems just and appropriate.

COUNT TWELVE – LOSS OF CONSORTIUM
(All Defendants)

160. Plaintiffs hereby incorporate by reference each of the preceding paragraphs as if fully set forth herein.

161. Plaintiff, James D. Chakalos, has been at all times relevant to this complaint, and until her death, the husband of Plaintiff Janice Chakalos.

162. As a result of the injuries suffered by his wife, including but not limited to ovarian cancer and death, Plaintiff, has and will in the future suffer the loss of the usual services and consortium of his wife.

WHEREFORE, Plaintiffs pray for judgment against Defendants for compensatory, treble and punitive damages, together with interest, costs of suit, attorneys' fees and such further and other relief as the Court deems just and appropriate.

COUNT THIRTEEN – PUNITIVE DAMAGES
(all Defendants)

163. Plaintiffs incorporate by reference all preceding paragraphs as if fully set forth herein.

164. The Defendants have acted willfully, wantonly, with an evil motive, and recklessly

165. in one or more of the following ways:

a. Defendants knew of the unreasonably high risk of ovarian cancer posed by the PRODUCTS before manufacturing, marketing, distributing and/or selling the PRODUCTS, yet purposefully proceeded with such action;

b. Despite their knowledge of the high risk of ovarian cancer associated with the PRODUCTS, Defendants affirmatively minimized this risk through marketing and promotional efforts and product labeling;

c. Through the actions outlined above, Defendants expressed a reckless indifference to the safety of users of the PRODUCTS, including Plaintiffs, Defendants' conduct, as described herein, knowing the dangers and risks of the PRODUCTS, yet concealing and/or omitting this information, in furtherance of their conspiracy and concerted action was outrageous because of Defendants' evil motive or a reckless indifference to the safety of users of the PRODUCTS.

166. As a direct and proximate result of the willful, wanton, evilly motivated and/or reckless conduct of the Defendants, the Plaintiffs have sustained damages as set forth above.

167. All of the Defendants have been or should have been aware for nearly forty (40) years of independent scientific studies linking the use of their products to the increased risk

of ovarian cancer in women when used 1n the perineal area. Despite this overwhelming body of evidence all of the Defendants have failed to inform their consumers of this known hazard. As such, all of the Defendants should be liable for punitive damages to the Plaintiff.

WHEREFORE, Plaintiff prays for a judgment for punitive damages against all Defendants in a fair and reasonable amount sufficient to punish Defendants and deter them and others from engaging in similar conduct in the future, costs expended herein, and such further and other relief as the Court deems just and appropriate.

Damages

168. Plaintiffs respectfully requests the following damages be considered separately and individually for the purpose of determining the sum of money that will fairly and reasonably compensate Plaintiff:

a. Medical Expenses;

b. Pain and Suffering;

c. Mental Anguish, Anxiety, and Discomfort of Ms. Chakalos;

d. Physical Impairment;

e. Loss of Enjoyment of Life;

f. Pre and post judgment interest;

g. Wrongful death

h. Loss of consortium

i. Exemplary and Punitive Damages;

j. Treble damages;

k. Reasonable and necessary attorneys fees; and

l. Such other relief to which Plaintiff may be justly entitled.

WHEREFORE, PREMISES CONSIDERED, the Plaintiff demands judgment of and from the Defendants in an amount within the jurisdictional limits of this Honorable Court for compensatory damages against all Defendants, actual damages; consequential damages; exemplary damages, jointly and severally against all Defendants; interest on damages (pre-and post-judgment) in accordance with the law; Plaintiff's reasonable attorney's fees, as well as costs of court and all other costs incurred; and such other and further relief as the Court may deem just and proper.

DEMAND FOR JURY TRIAL

The Plaintiffs hereby demand a trial by jury on all Counts and as to all issues.

Date: October 31, 2014

Respectfully submitted,

KUHARSKI, LEVITZ & GIOVINAZZO

By: _____
MICHAEL J. KUHARSKI
For the Firm

MOTLEY RICE, LLC
Carmen S. Scott*
28 Bridgeside Blvd.
Mt. Pleasant, SC 29464
Telephone: (843) 216-9000

*Application for admission *pro hac vice* to be filed

Attorneys for Plaintiffs

CERTIFICATION PURSUANT TO LOCAL RULE 11.2

The undersigned attorney for Plaintiffs certifies that the matter in controversy is not the subject of any other action pending in any Court or of a pending arbitration or administrative proceeding.

I certify that the foregoing statement made by me is true to the best of my knowledge, information and belief. I am aware that if the foregoing statement made by me is willfully false, I am subject to punishment.

Date: October 31, 2014

Respectfully submitted,

KUHARSKI, LEVITZ & GIOVINAZZO

By: _____
MICHAEL J. KUHARSKI
For the Firm
Attorneys for Plaintiffs

Exhibit 9

US District Court Civil Docket

U.S. District - Pennsylvania Eastern
(Philadelphia)

2:16cv2866

Bors v. Johnson & Johnson et al

Date Filed:	06/09/2016		
Assigned To:	Honorable MARK A. KEARNEY	Class Code:	OPEN
Referred To:		Closed:	
Nature of suit:	TORTS - Personal Injury - Health Care/Pharmaceutical Personal Injury/Product Liability (367)	Statute:	28:1332
		Jury Demand:	Plaintiff
Cause:	Diversity-Product Liability	Demand Amount:	$0
Lead Docket:	None	NOS Description:	TORTS - Personal Injury - Health Care/Pharmaceutical Personal Injury/Product Liability
Other Docket:	None		
Jurisdiction:	Diversity		

Litigants	Attorneys
Nancy Bors ADMINISTRATOR OF THE ESTATE OF MAUREEN BRODERICK MILLIKEN, DECEASED Plaintiff	BRIAN J. MCCORMICK , JR. LEAD ATTORNEY;ATTORNEY TO BE NOTICED ROSS FELLER CASEY LLP 1650 Market Street Suite 3450 Philadelphia , PA 19103 USA 215-231-3740 Email:Bmccormick@rossfellercasey.Com
Johnson & Johnson Defendant	
Johnson & Johnson Consumer Companies, Inc. Defendant	
Imerys Talc America, Inc. formerly known as LUZENAC AMERICA, INC. Defendant	
Personal Care Products Council formerly known as COSMETIC, TOILETRY, AND FRAGRANCE ASSOCIATION Defendant	

Date	#	Proceeding Text	Source
06/09/2016	1	COMPLAINT against IMERYS TALC AMERICA, INC., JOHNSON & JOHNSON, JOHNSON & JOHNSON CONSUMER COMPANIES, INC., PERSONAL CARE PRODUCTS COUNCIL (Filing fee $ 400 receipt number PPE141803), filed by NANCY BORS. (Attachments: # 1 Civil Cover Sheet, # 2 Case Management Track Form, # 3 Designation Form)(jmv,) (Entered: 06/10/2016)	
06/09/2016		Summons Issued as to IMERYS TALC AMERICA, INC., JOHNSON & JOHNSON, JOHNSON & JOHNSON CONSUMER COMPANIES, INC., PERSONAL CARE PRODUCTS COUNCIL. Forwarded To: 4 Origs mailed to counsel on 6/10/16 (jmv,) (Entered: 06/10/2016)	

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

Nancy Bors, Administrator of the Estate of Maureen Broderick Milliken, Deceased,	:	
	:	Civil A. No. _____
Plaintiff,	:	
v.	:	
JOHNSON & JOHNSON; JOHNSON & JOHNSON CONSUMER COMPANIES, INC.; IMERYS TALC AMERICA, INC. f/k/a LUZENAC AMERICA, INC. PERSONAL CARE PRODUCTS COUNCIL f/k/a COSMETIC, TOILETRY, AND FRAGRANCE ASSOCIATION,	:	
Defendants.	:	

COMPLAINT

Plaintiff Nancy Bors, individually and as Administrator of the Estate of Maureen Broderick Milliken, deceased, by and through undersigned counsel, files this Complaint against Defendants Johnson & Johnson, Johnson & Johnson Consumer Companies, Inc., Imerys Talc America, Inc. f/k/a Luzenac America, Inc., and Personal Care Products Council f/k/a Cosmetic, Toiletry, and Fragrance Association, alleging the following upon information and belief (including investigation made by and through Plaintiff's counsel), except those allegations that pertain to Plaintiff, which are based on personal knowledge.

I. Introduction

1. This action arises out of Maureen Broderick Milliken's diagnosis of ovarian cancer and her demise therefrom, which was directly and proximately caused by her regular and prolonged use of talcum powder containing product known as Johnson & Johnson Baby Powder (hereinafter

"J&J Baby Powder") in the perineal area. 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.

II. Venue and Jurisdiction

2. This is an action for damages that exceeds the jurisdictional minimum of this Court.

3. Jurisdiction in this case is based on diversity jurisdiction pursuant to 28 U.S.C. § 1332. Plaintiff is a citizen of the Commonwealth of Pennsylvania and Defendants are completely diverse corporate citizens of other states. The amount in controversy exceeds $75,000.00.

4. Venue is proper pursuant to 28 U.S.C. § 1391(a)(2) because a substantial part of the events giving rise to Plaintiff's claims occurred within this judicial district.

5. This suit is brought under the statutory and common law of the Commonwealth of Pennsylvania, to recover damages and other relief, including the costs of suit and reasonable attorneys' and expert fees, for the injuries Plaintiff sustained as a result of the Defendants' and/or their corporate predecessors' negligent and wrongful conduct in connection with the design, development, formulation, manufacturing, testing, packaging, promoting, marketing, distributing, labeling and/or sale of J&J Baby Powder.

III. Parties

6. Maureen Broderick Milliken was born on August 10, 1955, and used J&J Baby Powder for nearly her entire life. As a direct and proximate result of using J&J Baby Powder, Maureen Broderick Milliken died of ovarian cancer on June 11, 2014.

7. Plaintiff Nancy Bors is an adult and citizen of the Commonwealth of Pennsylvania, residing at 1816 Lukens Ave., Willow Grove, Pennsylvania 19090.

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. At all pertinent times, Johnson & Johnson regularly transacted, solicited, and conducted business in the Commonwealth of Pennsylvania, including the marketing, promoting, selling, and/or distribution of 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. At all pertinent times, Johnson & Johnson Consumer Companies, Inc., regularly transacted, solicited, and conducted business in the Commonwealth of Pennsylvania, including the marketing, promoting selling, and/or distribution of 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, marketing, and/or introducing into interstate commerce, and into the Commonwealth of Pennsylvania, either directly or indirectly through third parties or related entities, 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" or "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 America, Inc. 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 America, Inc. is legally responsible for all liabilities incurred when it was known as Luzenac America, Inc.

16. Defendant Personal Care Products Counsel ("PCPC") f/k/a Cosmetic, Toiletry, and Fragrance Association ("CTFA") is a corporation organized under the laws of the District of Columbia, with its principal place of business in the District of Columbia. Cosmetic, Toiletry, and Fragrance Association n/k/a Personal Care Products Council Foundation does not maintain a registered agent and, therefore, may be served with process of this Court via service at its principal place of business located at Personal Care Products Council, 1620 L Street, N.W., Suite 1200, Washington, District of Columbia 20036. PCPC is the successor or continuation of CTFA and PCPC is legally responsible for all liabilities incurred when it was known as CTFA.

IV. General Factual Background

17. 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.

18. 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.

19. At all times 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.

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

21. Imerys Talc supplies 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.

22. 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.

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 his 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 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 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 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 body 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 a "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. 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.

V. Factual Background Specific to Ms. Milliken

36. Maureen Broderick Milliken, deceased, used J&J Baby Powder for feminine hygiene purposes for much of her attenuated life. This was an intended and foreseeable use of the product based on the advertising, marketing, and labeling of J&J Baby Powder.

37. In 2014, Maureen Broderick Milliken died of ovarian cancer. She was fifty-eight (58) years old.

38. As a direct and proximate result of the Defendants' calculated and reprehensible conduct, Maureen Broderick Milliken developed ovarian cancer, which required surgeries and treatments, and ultimately resulted in her untimely demise.

39. Plaintiff Nancy Bors is the Administrator of the Estate of Maureen Broderick Milliken as defined under 42 Pa. C.S.A. § 8301 *et seq*.

VI. Federal Standards and Requirements

40. 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.

VII. Claims Against Defendants

COUNT ONE – PRODUCT LIABILITY – FAILURE TO WARN (IMERYS TALC AND JOHNSON & JOHNSON DEFENDANTS)

41. Plaintiff incorporates by reference all other paragraphs of this Complaint as if fully set forth herein.

42. 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 J&J Baby Powder and it knew that consumers of J&J Baby Powder were using it to powder their perineal regions.

43. 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 consumers of this danger.

44. 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.

45. At all pertinent times, Maureen Broderick Milliken, deceased, used J&J Baby Powder to powder her perineal area, which is a reasonably foreseeable use. She also used J&J Baby Powder professionally as a Registered Nurse which is a reasonable foreseeable use.

46. 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 cancer based upon scientific knowledge dating back to the 1960s.

47. At all pertinent times, including the time of sale and consumption, J&J Baby Powder, when put to the aforementioned reasonably foreseeable uses, 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 Maureen Broderick Milliken, deceased, as to the risks of J&J Baby Powder given her need for this information.

48. Had Maureen Broderick Milliken, 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, Maureen Broderick Milliken was injured catastrophically, suffering severe pain, disability, impairment, loss of enjoyment of life, loss of care, comfort, economic damages, and death.

49. The development of ovarian cancer by Maureen Broderick Milliken, 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; Maureen Broderick Milliken, suffered injuries and damages, including but not limited to conscious pain and suffering, medical expenses, and death.

50. The Defendants' products were defective because they failed to contain warnings and/or instructions, and breached express warranties and/or failed to conform to other express factual representation upon which Maureen Broderick Milliken justifiably relied in electing to use the product. The defect or defects made the products unreasonably dangerous to those persons, such as Maureen Broderick Milliken, who could reasonably be expected to use and rely upon the product. As a result, the defect or defects were a producing cause of the injuries and damages of the Deceased and Maureen Broderick Milliken.

51. The Defendants' product failed to contain, and continue to this day not to contain, adequate warnings and/or instructions regarding the increased risk of 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 products increase the risk of cancer in women when used in the perineal area. Therefore, the Defendants are liable to Plaintiff for their wrongful conduct under the doctrine of Strict Liability pursuant to §402A of the Restatement (second) of Torts.

WHEREFORE, Plaintiff prays for judgment against Imerys Talc and the Johnson & Johnson Defendants in a fair and reasonable sum in excess of $75,000.00 together with costs expended herein and such further and other relief as the Court deems just and appropriate.

COUNT TWO – PRODUCTS LIABILITY -
DEFECTIVE MANUFACTURE AND DESIGN
(IMERYS TALC AND JOHNSON & JOHNSON DEFENDANTS)

52. Plaintiff realleges and incorporates by reference every allegation of this Complaint as if each were set forth fully and completely herein.

53. Defendants' product was defectively and improperly manufactured, rendering the product deficient and unreasonably dangerous and hazardous to Maureen Broderick Milliken, deceased.

54. 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 consumers.

55. The product at issue 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 therapeutic purposes. There is a feasible and reasonable alternative design.

56. 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 Maureen Broderick Milliken, deceased, and others, and with malice, placing their economic interests above the health and safety of Maureen Broderick Milliken and others similarly situated.

57. As a proximate result of Defendants' design, manufacture, labeling, marketing, sale and distribution of the product, Maureen Broderick Milliken was injured catastrophically and sustained severe and permanent pain, suffering, disability, impairment, loss of enjoyment of life, loss of care, comfort, economic damages, and death.

58. Defendants are strictly liable in tort to Plaintiff for their wrongful conduct pursuant to 402A of the Restatement (second) of Torts.

WHEREFORE, Plaintiff demands judgment against Defendants of compensatory damages, punitive damages, interest, attorneys' fees, costs of suit, and such further relief as the Court deems equitable and just.

COUNT THREE – PRODUCTS LIABILITY – NEGLIGENCE
(IMERYS TALC)

59. Plaintiff hereby incorporates by reference each of the preceding paragraphs as if fully set forth herein.

60. At all pertinent times, Defendants had a duty to exercise reasonable care to consumers, including Maureen Broderick Milliken, deceased, in the design, development, manufacture, testing, inspection, packaging, promotion, marketing, distribution, labeling and/or sale of J&J Baby Powder.

61. At all pertinent times, Imerys Talc mined and sold talc to the Johnson & Johnson Defendants, which it knew 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 or should have known that consumers of J&J Baby Powder were using it to powder their perineal regions.

62. 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 cancer based upon scientific knowledge dating back to the 1960s.

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

64. 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 J&J Baby Powder, without adequately taking steps to ensure that ultimate consumers of J&J Baby Powder, including Maureen Broderick Milliken, deceased, received the information that Imerys Talc possessed on the carcinogenic properties of talc, including its risk of causing cancer.

65. Defendants breached their duty of reasonable care to Maureen Broderick Milliken , and therefore Plaintiff, in that they negligently designed, developed, manufactured, tested, inspected, packaged, promoted, marketed, distributed, labeled, and/or sold the subject product.

66. As a direct and proximate result of Imerys Talc's negligence, Maureen Broderick Milliken purchased and used, as aforesaid, J&J Baby Powder that directly and proximately caused her to develop ovarian cancer and die; Plaintiff was caused to incur medical bills and conscious pain and suffering before death.

WHEREFORE, Plaintiff prays for judgment against Imerys Talc in a fair and reasonable sum in excess of $75,000.00, together with costs expended herein and such further and other relief as the Court deems just and appropriate.

COUNT FOUR – PRODUCTS LIABILITY– NEGLIGENCE
(JOHNSON & JOHNSON DEFENDANTS)

67. Plaintiff hereby incorporates by reference each of the preceding paragraphs as if fully set forth herein.

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

- In failing to warn Maureen Broderick Milliken 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 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 Maureen Broderick Milliken 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 J&J Baby Powder was defective;
- In failing to instruct the ultimate users, such as Maureen Broderick Milliken, as to the methods for reducing the type of exposure to J&J Baby Powder which caused increased risk of cancer;
- In failing to inform the public in general and Maureen Broderick Milliken 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 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 injuries and death of Maureen Broderick Milliken, and thus the injuries and damages of Plaintiff.

69. At all pertinent times, the Johnson & Johnson Defendants knew or should have known that J&J Baby Powder is unreasonably dangerous and defective when put to their reasonably anticipated uses.

70. As a direct and proximate result of the Johnson & Johnson Defendants' negligence in one or more of the aforementioned ways, Maureen Broderick Milliken purchased and used, as aforesaid, J&J Baby Powder that directly and proximately caused her to develop ovarian cancer and die; Maureen Broderick Milliken was caused to incur medical bills and conscious pain and suffering for which Plaintiff may recover.

WHEREFORE, Plaintiff prays for judgment against the Johnson & Johnson Defendants in a fair and reasonable sum in excess of $75,000.00, together with costs expended herein and such further and other relief as the Court deems just and appropriate.

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

71. Plaintiff incorporates by reference each of the preceding paragraphs as if fully set forth herein.

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

73. J&J Baby Powder did not conform to these express representations because it causes serious injury when used by women in the perineal area in the form of gynecological cancer. Defendants' breaches constitute violations of Common Law principles and 13 Pa.C.S.A. § 2313.

74. As a direct and proximate result of the Defendants' breach of warranty, Maureen Broderick Milliken purchased and used, as aforesaid, J&J Baby Powder that directly and proximately caused her to develop ovarian cancer and expire; Maureen Broderick Milliken was caused to incur medical bills and conscious pain and suffering for which Plaintiff may recover.

75. Defendants designed, manufactured, assembled, fabricated and/or distributed the products in question in a defective condition and therefore breached an implied warranty of fitness and an implied warranty of merchantability, in addition to various express warranties. The Defendants, as sellers, were merchants with respect to the products which they sold. In addition, these products were not fit for the ordinary purposes for which such goods are used. The Defendants also had reason to know of the particular purpose for which this product would be used, as well as the knowledge that persons such as Plaintiff would rely on the seller's skill to furnish suitable products.

76. Therefore, the Defendants have breached the implied warranty of merchantability as well as the implied warranty of fitness for a particular purpose, in addition to various express warranties. Such breach or breaches of implied and express warranties by the Defendants was a proximate cause of the injuries and death of Maureen Broderick Milliken and the damages sustained by Plaintiff.

WHEREFORE, Plaintiff prays for judgment against the Johnson & Johnson Defendants in a fair and reasonable sum in excess of $75,000.00, together with costs expended herein and such further and other relief as the Court deems just and appropriate.

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

77. Plaintiff incorporates by reference each of the preceding paragraphs as if fully set forth herein.

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

79. Defendants breached their implied warranties of J&J Baby Powder sold to Maureen Broderick Milliken because they were not fit for their common, ordinary and intended uses, including use by women in the perineal area, in violation of Common Law principles, 13 Pa. C.S.A.§2725(A); 42 Pa. C.S.A. 5525(2) and Pa. C.S.A.§2314.

80. As a direct, foreseeable and proximate result of the Defendants' breaches of implied warranties, Maureen Broderick Milliken purchased and used, as aforesaid, J&J Baby Powder that directly and proximately caused her to develop ovarian cancer and die; Maureen Broderick Milliken was caused to incur medical bills and conscious pain and suffering for which Plaintiff may recover.

WHEREFORE, Plaintiff prays for judgment against the Johnson & Johnson Defendants in a fair and reasonable sum in excess of $75,000.00, together with costs expended herein and such further and other relief as the Court deems just and appropriate.

COUNT SEVEN - WRONGFUL DEATH
(ALL DEFENDANTS)

81. Plaintiff incorporates by reference each of the preceding paragraphs as if fully set forth herein.

82. As a direct and proximate result of the conduct of the Defendants and the defective nature of J&J Baby Powder as described above, Maureen Broderick Milliken suffered bodily injuries resulting in pain and suffering, disability, disfigurement, mental anguish, loss of capacity of the enjoyment of life, shortened life expectancy, expenses for hospitalization, medical and nursing treatment, loss of earnings, loss of ability to earn, funeral expenses and death.

83. Plaintiff brings this claim on their own behalf as persons entitled to do so under the Pennsylvania Wrongful Death Statute, 42 Pa. C.S. § 8301 *et seq.*, as the personal representatives of the deceased.

84. As a direct and proximate cause of the conduct of Defendants, Plaintiff has incurred hospital, nursing and medical expenses, and estate administration expenses as a result of Maureen Broderick Milliken's death. Plaintiff brings this claim for these damages and for all pecuniary losses sustained.

85. **WHEREFORE**, Plaintiff prays for judgment against the Johnson & Johnson Defendants in a fair and reasonable sum, together with costs expended herein and such further and other relief as the Court deems just and appropriate.

COUNT EIGHT - SURVIVAL
(ALL DEFENDANTS)

86. Plaintiff incorporates by reference each of the preceding paragraphs as if fully set forth herein.

87. As a direct and proximate result of the conduct of Defendants, Maureen Broderick Milliken and her sister, Plaintiff, until the time of her death, suffered a disintegration and deterioration of the family unit and the relationships existing therein, resulting in enhanced anguish, depression and other symptoms of psychological stress and disorder. This claim is brought by Plaintiff as the personal representative of Maureen Broderick Milliken under 42 Pa. C.S. § 8302, et seq.

COUNT NINE -- PUNITIVE DAMAGES UNDER COMMON LAW
(ALL DEFENDANTS)

88. Plaintiff incorporates by reference all preceding paragraphs as if fully set forth herein.

89. Plaintiff is entitled to punitive damages because Defendants' wrongful acts and/or omissions were wanton or in conscious disregard of the rights of others. Defendants misled both the medical community and the public at large, including Maureen Broderick Milliken, deceased, by making false representations about the safety and utility of J&J Baby Powder and by failing to provide adequate instructions concerning their use.

90. The Defendants have acted willfully, wantonly, with an evil motive, and recklessly in one or more of the following ways:

91. Defendants knew of the unreasonably high risk of cancer posed by J&J Baby Powder before manufacturing, marketing, distributing and/or selling J&J Baby Powder, yet purposefully proceeded with such action;

- Despite their knowledge of the high risk of cancer associated with J&J Baby Powder, Defendants affirmatively minimized this risk through marketing and promotional efforts and product labeling;
- Through the actions outlined above, Defendants expressed a reckless indifference to the safety of users of J&J Baby Powder and the Maureen Broderick Milliken, deceased. Defendants' conduct, as described herein, knowing the dangers and risks of J&J Baby Powder, yet concealing and/or omitting this information, in furtherance of their conspiracy and concerted action was outrageous because of Defendants' evil motive or a reckless indifference to the safety of users of J&J Baby Powder

92. The Defendants' conduct was a conscious disregard for the rights, safety and welfare of Maureen Broderick Milliken, deceased. The Defendants acted with willful and wanton disregard for the safety of the Maureen Broderick Milliken, deceased. The Defendants' conduct constitutes gross negligence. Defendants' gross negligence was a proximate cause of Maureen Broderick Milliken's death and Plaintiff's injuries and damages, and as such the Defendants are liable for exemplary and punitive damages.

93. Defendants Johnson & Johnson and Johnson & Johnson Consumer

Companies, Inc. have a pattern and practice of this type of conduct. Specifically, these Defendants built their company on the credo, "We believe our first responsibility is to the doctors, nurses, and patients, to mothers and fathers and all others who use our products and services." The Defendants placed emphasis on shareholders believing that if they take care of everything the ethical and correct way profits will follow. However, over the past few decades, the Defendants have sharply deviated from their original credo, and instituted a corporate pattern and practice of placing profits over the health and well-being of its customers as evidence in the Propulsid litigation, Ortho Evra litigation, 2006 Pennsylvania Tylenol litigation, 2006 TMAP investigation, and 2007 violation of the Foreign Corrupt Practices Act.

94. The above listed evidence indicates a pattern and practice of the Defendants, Johnson & Johnson and Johnson & Johnson Consumer Companies, Inc., to place corporate profits over health and well-being of its customers. Such a pattern and practice has been followed by the Defendants regarding "Johnson's Baby Powder."

95. All of the Defendants have been aware for nearly forty (40) years of independent scientific studies linking the use of their products to the increased risk of gynecological cancer in women when used in the perineal area. Despite this overwhelming body of evidence all of the Defendants have failed to inform their consumers of this known hazard. As such, all of the Defendants should be liable for punitive damages to the Plaintiff.

96. As a direct and proximate result of the willful, wanton, evilly motivated and/or reckless conduct of the Defendants, the Plaintiff has sustained damages as set forth above.

WHEREFORE, Plaintiff prays for judgment for punitive damages against all Defendants, each of them, in a fair and reasonable amount sufficient to punish Defendants and

deter them and others from engaging in similar conduct in the future, costs expended herein, and such further and other relief as the Court deems just and appropriate.

COUNT TEN – VIOLATIONS OF CONSUMER PROTECTION LAWS
(IMERYS TALC AND JOHNSON & JOHNSON DEFENDANTS)

97. Plaintiff realleges each and every allegation of this Complaint as if each were set forth fully and completely herein.

98. Maureen Broderick Milliken, deceased, purchased and used Defendants' J&J Baby Powder primarily for personal use and thereby suffered ascertainable losses, including death, as a result of Defendants' actions in violation of the consumer protection laws.

99. Had Defendants not engaged in the deceptive conduct described herein, Maureen Broderick Milliken would not have purchased and/or paid for Defendants' product, and would not have incurred related medical costs and injury.

100. Defendants engaged in wrongful conduct while at the same time obtaining, under false pretenses, moneys from Maureen Broderick Milliken and Plaintiff for J&J Baby Powder that would not have been paid had Defendants not engaged in unfair and deceptive conduct.

101. Defendants engaged in unfair methods of competition and deceptive acts or practices that were proscribed by law, including the following:

- Representing that goods or services have characteristics, ingredients, uses, benefits, or quantities that they do not have;
- Advertising goods or services with the intent not to sell them as advertised; and
- Engaging in fraudulent or deceptive conduct that creates a likelihood of confusion or misunderstanding.

102. Maureen Broderick Milliken and Plaintiff were injured by the cumulative and indivisible nature of Defendants' conduct. The cumulative effect of Defendants' conduct directed at

Maureen Broderick Milliken, 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 the product.

103. 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 J&J Baby Powder.

104. Had Defendants not engaged in the deceptive conduct described above, Maureen Broderick Milliken and Plaintiff would not have purchased and/or paid for the product, and would not have incurred related medical costs and death.

105. Defendants' deceptive, unconscionable, or fraudulent representations and material omissions to Maureen Broderick Milliken and Plaintiff, physicians and consumers constituted unfair and deceptive acts and trade practices in violation of the state consumer protection statutes listed.

106. Defendants' actions, as complained of herein, constitute unfair competition or unfair, unconscionable, deceptive or fraudulent acts, or trade practices in violation of state consumer protection statutes, as listed below.

107. Defendants have engaged in unfair competition or unfair or deceptive acts or trade practices or have made false representations in violation of 73 Pa. Stat. §§201-1, et seq.

108. 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.

109. Defendants violated the statutes that were enacted in these states 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. These representations were made in marketing and promotional materials.

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

111. Defendants had actual knowledge of the defective and dangerous condition of Defendants' product and failed to take any action to cure such defective and dangerous conditions.

112. Maureen Broderick Milliken and Plaintiff relied upon Defendants' misrepresentations and omissions in determining which product to use.

113. Defendants' deceptive, unconscionable or fraudulent representations and material omissions to Maureen Broderick Milliken and other consumers constituted deceptive acts and practices.

114. By reason of the unlawful acts engaged in by Defendants, and as a direct and proximate result thereof, Maureen Broderick Milliken and Plaintiff, suffered ascertainable losses and damages.

115. As a direct and proximate result of Defendants' violations of the states' consumer protection laws, Plaintiff has sustained economic losses and other damages and is entitled to statutory and compensatory damages in an amount to be proven at trial.

WHEREFORE, Plaintiff demands judgment against Defendants, and each of them, individually, jointly, severally and in the alternative, and requests restitution and disgorgement of profits, together with interest, cost of suit, attorneys' fees, and all such other and further relief as this Court deems just and proper.

COUNT ELEVEN – NEGLIGENT MISREPRESENTATION
(ALL DEFENDANTS)

116. Plaintiff realleges each and every allegation of this Complaint as if each were set forth fully and completely herein.

117. Defendants had a duty to accurately and truthfully represent to the medical and healthcare community, Maureen Broderick Milliken, Plaintiff, and the public, that 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.

118. Defendants failed to exercise ordinary care in the representations concerning 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 J&J Baby Powder's high risk of unreasonable, dangerous, adverse side effects.

119. Defendants breached their duty in representing that J&J Baby Powder has no serious side effects.

120. 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 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.

121. As a proximate result of Defendants' conduct, Maureen Broderick Milliken was injured and sustained severe and permanent pain, suffering, disability, impairment, loss of enjoyment of life, loss of care and comfort, economic damages, and death, and Plaintiff is entitled to damages therefor.

WHEREFORE, Plaintiff demands judgment against Defendants, and each of them, individually, jointly, severally and in the alternative, requests compensatory damages, punitive damages, together with interest, costs of suit, attorneys' fees, and such further relief as the Court deems equitable and just.

COUNT TWELVE - CIVIL CONSPIRACY
(ALL DEFENDANTS)

122. Plaintiff repeats and realleges each of the preceding paragraphs of this Complaint as if set forth at length herein.

123. Defendants and/or their predecessors-in-interest knowingly agreed, contrived, combined, confederated and conspired among themselves to cause injuries, disease, and/or illnesses and death by exposing Maureen Broderick Milliken to harmful and dangerous products. Defendants further knowingly agreed, contrived, confederated and conspired to deprive Maureen Broderick Milliken and Plaintiff of the opportunity of informed free choice as to whether to use J&J Baby Powder or to expose Maureen Broderick Milliken 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 the J&J Baby Powder.

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

(a). 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 when used in an ordinary and foreseeable fashion by women, J&J Baby Powder was unreasonably dangerous, hazardous, deleterious to human health, carcinogenic, and potentially deadly;

(b). 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 cancer from Plaintiff (as set out in the "Facts" section of this pleading); 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 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.

(c). By these false and fraudulent representations, omissions, and concealments, Defendants intended to induce Maureen Broderick Milliken, deceased, 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 J&J Baby Powder.

125. Maureen Broderick Milliken, deceased, and Plaintiff, reasonably and in good faith relied upon the aforementioned fraudulent representations, omissions, and concealments made by Defendants regarding the nature of J&J Baby Powder.

126. As a direct and proximate result of the aforementioned fraudulent representations, omissions, and concealments made by Defendants regarding the nature of J&J Baby Powder and Plaintiff's reliance thereon, Maureen Broderick Milliken and Plaintiff purchased and used, as aforesaid, J&J Baby Powder that directly and proximately caused Maureen Broderick Milliken to develop cancer; Maureen Broderick Milliken was caused to incur medical bills, lost wages, conscious pain and suffering, and death, for which Plaintiff may recover.

127. As a direct and proximate result of Maureen Broderick Milliken's reliance, she sustained injuries, illnesses, and death, and was deprived of the opportunity of informed free choice in connection with the use and exposure to J&J Baby Powder.

WHEREFORE, Plaintiff prays for judgment against all Defendants, each of them, in a fair and reasonable sum in excess of $75,000.00, together with costs expended herein and such further and other relief as the Court deems just and appropriate.

COUNT THIRTEEN – ACTING IN CONCERT
(ALL DEFENDANTS)

128. Plaintiff incorporates by reference each of the preceding paragraphs as if fully set forth herein.

129. At all pertinent times, Imerys Talc, Johnson & Johnson Defendants, and the Personal Care Products Council f/k/a Cosmetic, Toiletry, and Fragrance Association (PCPC) knew that J&J Baby Powder should contain warnings on the risk of gynecological cancer posed by women using the product to powder the perineal region, but purposefully sought to suppress such information and omit such information from talc based products so as not to negatively affect sales and maintain the profits of the Johnson & Johnson Defendant, Imerys Talc, and the members of the PCPC.

130. 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.

131. As a direct and proximate result of Defendants concerted action, Maureen Broderick Milliken purchased and used, as aforesaid, J&J Baby Powder that directly and proximately caused her to develop ovarian cancer and die; Maureen Broderick Milliken was caused to incur medical bills and conscious pain and suffering, for which Plaintiff may recover.

WHEREFORE, Plaintiff prays for judgment against all Defendants, each of them, in a fair and reasonable sum in excess of $75,000.00, together with costs expended herein and such further and other relief as the Court deems just and appropriate.

COUNT FOURTEEN – AIDING AND ABETTING
(DEFENDANT PERSONAL CARE PRODUCTS COUNCIL)

132. Plaintiff repeats and realleges each of the preceding paragraphs of this Complaint as if set forth at length herein.

133. Upon information and belief, Defendant Personal Care Products Council f/k/a Cosmetic, Toiletries, and Fragrance Council knowingly and willfully aided and abetted the fraudulent marketing and sales described herein.

134. Defendant PCPC aided and abetted this fraudulent scheme by providing substantial assistance to Defendants, Imerys and Johnson & Johnson. This substantial assistance included, among other things, the "Facts" section of this pleading and the facts set forth above.

135. Without Defendant PCPC's substantial assistance, involvement and participation; the fraudulent scheme would not have been possible.

136. Maureen Broderick Milliken suffered serious injury and pecuniary losses as a proximate result of the aiding and abetting of Defendant PCPC, including but not limited to the loss of her life.

WHEREFORE, Plaintiff prays for judgment against all Defendants, each of them, in a fair and reasonable sum in excess of $75,000.00, together with costs expended herein and such further and other relief as the Court deems just and appropriate.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff respectfully requests the following damages be considered separately and individually for the purpose of determining the sum of money that will fairly and reasonably compensate Plaintiff:

(a). Severe impairment to Maureen Broderick Milliken's ovaries and reproductive system;

(b). Medical expenses;

(c). Pain and suffering;

(d). Mental anguish, anxiety, and discomfort;

(e). Lost wages and income;

(f). Fear of cancer or other related diseases;

(g). Physical impairment;

(h). Physical disfigurement;

(i). Loss of enjoyment of life;

(j). Death;

(k). Pre and post judgment interest;

(l). Exemplary and punitive damages in an amount to be determined at trial;

(m). Treble damages;

(n). General damages;

(o). Reasonable and necessary attorneys' fees and other disbursements and expenses of this action; and,

(p). Such other relief to which Plaintiff may be justly entitled.

DEMAND FOR JURY TRIAL

Demand is hereby made for trial by jury.

Respectfully submitted,

ROSS FELLER CASEY, LLP

/s/ Robert Ross
Robert Ross, Esquire

/s/ Joel J. Feller
Joel J. Feller, Esquire

/s/ Matthew A. Casey
Matthew A. Casey, Esquire

/s/ Brian J. McCormick, Jr.
Brian J. McCormick, Jr., Esquire

/s/ Mark A. Hoffman
Mark A. Hoffman, Esquire

/s/ Dena R. Young
Dena R. Young, Esquire

/s/ Scott S. Berger
Scott S. Berger, Esquire
One Liberty Place
1650 Market Street, Suite 3450
Philadelphia, PA 19103
Tel.: (215) 574-2000
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bmccormick@rossfellercasey.com
mhoffman@rossfellercasey.com
dyoung@rossfellercasey.com
sberger@rossfellercasey.com

Attorneys for Plaintiff

Dated: June 9, 2016

JS 44 (Rev 12/12)

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

Nancy Bors, Administrator of the Estate of Maureen Broderick Milliken,Deceased

(b) County of Residence of First Listed Plaintiff Montgomery Co., PA
(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorneys *(Firm Name, Address, and Telephone Number)*

See attached

DEFENDANTS

See attached

County of Residence of First Listed Defendant Middlesex Co., 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

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

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

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

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
- ☐ 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

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

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

Brief description of cause:
Product defect resulting in serious personal injury and death

VII. REQUESTED IN COMPLAINT:

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

DEMAND $ 75,000.00

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

VIII. RELATED CASE(S) IF ANY

(See instructions): JUDGE _____ DOCKET NUMBER _____

DATE 06/09/2016

SIGNATURE OF ATTORNEY OF RECORD

FOR OFFICE USE ONLY

RECEIPT # _____ AMOUNT _____ APPLYING IFP _____ JUDGE _____ MAG. JUDGE _____

Bors v. Johnson and Johnson, et al.
PLAINTIFF'S ATTORNEYS

Robert Ross, Esquire
Joel J. Feller, Esquire
Matthew A. Casey, Esquire
Brian J. McCormick, Jr., Esquire
Mark A. Hoffman, Esquire
Dena R Young, Esquire
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Bors v. Johnson and Johnson, et al.
DEFENDANTS

JOHNSON & JOHNSON
One Johnson & Johnson Plaza
New Brunswick, NJ 08933

JOHNSON & JOHNSON CONSUMER
COMPANIES, INC.
One Johnson & Johnson Plaza
New Brunswick, NJ 08933

IMERYS TALC AMERICA, INC.
F/K/A LUZENAC AMERICA, INC.
Serve:
CSC-Lawyers Incorporating Service Company
Registered Agent
221 Bolivar
Jefferson City, MO 65101

PERSONAL CARE PRODUCTS COUNCIL
F/K/A COSMETIC, TOILETRY, AND
FRAGRANCE ASSOCIATION (CTFA)
1620 L Street, N.W., Suite 1200
Washington, DC 20036

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

CASE MANAGEMENT TRACK DESIGNATION FORM

Nancy Bors, Administrator of the Estate of Maureen Broderick Milliken, deceased V. Johnson & Johnson, et al.	:	CIVIL ACTION NO.

In accordance with the Civil Justice Expense and Delay Reduction Plan of this court, counsel for plaintiff shall complete a Case Management Track Designation Form in all civil cases at the time of filing the complaint and serve a copy on all defendants. (See § 1:03 of the plan set forth on the reverse side of this form.) In the event that a defendant does not agree with the plaintiff regarding said designation, that defendant shall, with its first appearance, submit to the clerk of court and serve on the plaintiff and all other parties, a Case Management Track Designation Form specifying the track to which that defendant believes the case should be assigned.

SELECT ONE OF THE FOLLOWING CASE MANAGEMENT TRACKS:

(a) Habeas Corpus – Cases brought under 28 U.S.C. § 2241 through § 2255. ( )

(b) Social Security – Cases requesting review of a decision of the Secretary of Health and Human Services denying plaintiff Social Security Benefits. ( )

(c) Arbitration – Cases required to be designated for arbitration under Local Civil Rule 53.2. ( )

(d) Asbestos – Cases involving claims for personal injury or property damage from exposure to asbestos. ( )

(e) Special Management – Cases that do not fall into tracks (a) through (d) that are commonly referred to as complex and that need special or intense management by the court. (See reverse side of this form for a detailed explanation of special management cases.) ( )

(f) Standard Management – Cases that do not fall into any one of the other tracks. (XX)

June 9, 2016	Brian J. McCormick, Jr.	Plaintiff
Date	**Attorney-at-law**	**Attorney for**
215-574-2000	215-574-3080	bmccormick@rossfellercasey.com
Telephone	**FAX Number**	**E-Mail Address**

(Civ. 660) 10/02

UNITED STATES DISTRICT COURT

FOR THE EASTERN DISTRICT OF PENNSYLVANIA — DESIGNATION FORM to be used by counsel to indicate the category of the case for the purpose of assignment to appropriate calendar.

Address of Plaintiff: 1816 Lukens Avenue, Willow Grove, PA 19090

Address of Defendant: One Johnson and Johnson Plaza, New Brunswick, NJ 08933

Place of Accident, Incident or Transaction: Montgomery County, PA

(Use Reverse Side For Additional Space)

Does this civil action involve a nongovernmental corporate party with any parent corporation and any publicly held corporation owning 10% or more of its stock?

(Attach two copies of the Disclosure Statement Form in accordance with Fed.R.Civ.P. 7.1(a)) Yes☐ No☒

Does this case involve multidistrict litigation possibilities? Yes☐ No☒

RELATED CASE, IF ANY:

Case Number: _____ Judge _____ Date Terminated: _____

Civil cases are deemed related when yes is answered to any of the following questions:

1. Is this case related to property included in an earlier numbered suit pending or within one year previously terminated action in this court? Yes☐ No☒
2. Does this case involve the same issue of fact or grow out of the same transaction as a prior suit pending or within one year previously terminated action in this court? Yes☐ No☒
3. Does this case involve the validity or infringement of a patent already in suit or any earlier numbered case pending or within one year previously terminated action in this court? Yes☐ No☒
4. Is this case a second or successive habeas corpus, social security appeal, or pro se civil rights case filed by the same individual? Yes☐ No☒

CIVIL: (Place ✔ in ONE CATEGORY ONLY)

A. *Federal Question Cases*:

1. ☐ Indemnity Contract, Marine Contract, and All Other Contracts
2. ☐ FELA
3. ☐ Jones Act-Personal Injury
4. ☐ Antitrust
5. ☐ Patent
6. ☐ Labor-Management Relations
7. ☐ Civil Rights
8. ☐ Habeas Corpus
9. ☐ Securities Act(s) Cases
10. ☐ Social Security Review Cases
11. ☐ All other Federal Question Cases
    (Please specify) _____

B. *Diversity Jurisdiction Cases*:

1. ☐ Insurance Contract and Other Contracts
2. ☐ Airplane Personal Injury
3. ☐ Assault, Defamation
4. ☐ Marine Personal Injury
5. ☐ Motor Vehicle Personal Injury
6. ☒ Other Personal Injury (Please specify)
7. ☐ Products Liability
8. ☐ Products Liability — Asbestos
9. ☐ All other Diversity Cases
   (Please specify) Healthcare/ Pharmaceutical Personal Injury

ARBITRATION CERTIFICATION

(Check Appropriate Category)

I, Brian J. McCormick, Jr., counsel of record do hereby certify:

☒ Pursuant to Local Civil Rule 53.2, Section 3(c)(2), that to the best of my knowledge and belief, the damages recoverable in this civil action case exceed the sum of $150,000.00 exclusive of interest and costs;

☐ Relief other than monetary damages is sought.

DATE: June 9, 2016 _____ Attorney-at-Law

PA 81437 Attorney I.D.#

NOTE: A trial de novo will be a trial by jury only if there has been compliance with F.R.C.P. 38.

I certify that, to my knowledge, the within case is not related to any case now pending or within one year previously terminated action in this court except as noted above.

DATE: June 9, 2016 _____ Attorney-at-Law

PA 81437 Attorney I.D.#

CIV. 609 (5/2012)

Exhibit 10

US District Court Civil Docket

U.S. District - Oklahoma Western
(Oklahoma City)

5:16cv620

Robb et al v. Johnson & Johnson et al

Date Filed: 06/08/2016
Assigned To: Honorable Timothy D. DeGiusti
Referred To:
Nature of suit: Product Liability (365)
Cause: Petition for Removal- Personal Injury
Lead Docket: None
Other Docket: Dist. Ct. of Oklahoma Co., CJ-16-02532
Jurisdiction: Diversity

Class Code: OPEN
Closed:
Statute: 28:1441
Jury Demand: Both
Demand Amount: $0
NOS Description: Product Liability

Litigants	Attorneys
Mary R Robb Plaintiff	Matthew J Sill LEAD ATTORNEY;ATTORNEY TO BE NOTICED Sill Law Group 14005 N Eastern Ave Edmond , OK 73013 USA 405-509-6300 Fax: 405-509-6268 Email:Matt@sill-Law.Com
Melissa Ann Aguilar Plaintiff	Matthew J Sill LEAD ATTORNEY;ATTORNEY TO BE NOTICED Sill Law Group 14005 N Eastern Ave Edmond , OK 73013 USA 405-509-6300 Fax: 405-509-6268 Email:Matt@sill-Law.Com
Fredy Aguilar Husband and Wife Plaintiff	Matthew J Sill LEAD ATTORNEY;ATTORNEY TO BE NOTICED Sill Law Group 14005 N Eastern Ave Edmond , OK 73013 USA 405-509-6300 Fax: 405-509-6268 Email:Matt@sill-Law.Com
Johnson & Johnson Defendant	Sarah J Timberlake LEAD ATTORNEY;ATTORNEY TO BE NOTICED Abowitz Timberlake & Dahnke PC P O Box 1937 Oklahoma City , OK 73101 USA 405-236-4645 Fax: 405-239-2843

	Email:Stimberlake@dsda.Com Scott A James ATTORNEY TO BE NOTICED Shook Hardy & Bacon-HOUSTON 600 Travis St Suite 3400 Houston , TX 77002-2926 USA 713-227-8008 Fax: 713-227-9508 Email:Sjames@shb.Com
Johnson & Johnson Consumer Companies Inc Defendant	Sarah J Timberlake LEAD ATTORNEY;ATTORNEY TO BE NOTICED Abowitz Timberlake & Dahnke PC P O Box 1937 Oklahoma City , OK 73101 USA 405-236-4645 Fax: 405-239-2843 Email:Stimberlake@dsda.Com Scott A James ATTORNEY TO BE NOTICED Shook Hardy & Bacon-HOUSTON 600 Travis St Suite 3400 Houston , TX 77002-2926 USA 713-227-8008 Fax: 713-227-9508 Email:Sjames@shb.Com
Imerys Talc America Inc formerly known as Luzenac America Inc Defendant	Mary Quinn-Cooper ATTORNEY TO BE NOTICED McAfee & Taft-TULSA 1717 S Boulder Ave Suite 900 Tulsa , OK 74119 USA 918-574-3065 Fax: 918-388-5654 Email:Maryquinn.Cooper@mcafeetaft.Com Nancy M Erfle ATTORNEY TO BE NOTICED Gordon & Rees LLP - PORTLAND 121 Sw Morrison St Suite 1575 Portland , OR 97204 USA 503-222-1075 Fax: 503-613-3600 Email:Nerfle@gordonrees.Com Vani R Singhal ATTORNEY TO BE NOTICED McAfee & Taft-TULSA 1717 S Boulder Ave Suite 900 Tulsa , OK 74119 USA 918-587-3055 Fax: 918-388-5654 Email:Vani.Singhal@mcafeetaft.Com
Personal Care Products Council formerly known as Cosmetic Toiletry and Fragrance Association Defendant	Jason A Ryan ATTORNEY TO BE NOTICED Ryan Whaley Coldiron Shandy PC 119 N Robinson St Suite 900 Oklahoma City , OK 73102 USA 405-239-6040 Fax: 405-239-6766 Email:Jryan@ryanwhaley.Com

Phillip G Whaley
ATTORNEY TO BE NOTICED
Ryan Whaley Coldiron Shandy PC
119 N Robinson St Suite 900
Oklahoma City , OK 73102
USA
405-239-6040
Fax: 405-239-6766
Email:Pwhaley@ryanwhaley.Com

Date	#	Proceeding Text	Source
06/08/2016	1	NOTICE OF REMOVAL from District Court of Oklahoma County, case number CJ-2016-2532 filed by Johnson & Johnson, Johnson & Johnson Consumer Companies Inc. (Attachments: # 1 Exhibit 1 - Summons and Petition, # 2 Exhibit 2 - Imerys Talc America Inc's Consent to Removal, # 3 Exhibit 3 - PCPC's Consent to Removal, # 4 Exhibit 4 - Docket Sheet, # 5 Civil Cover Sheet)(jb) (Entered: 06/08/2016)	
06/08/2016	2	Receipt for Money Received from Johnson & Johnson, Johnson & Johnson Consumer Companies Inc in the amount of $400.00, receipt number OKW500054385 regarding 1 Notice of Removal, (jb) (Entered: 06/08/2016)	
06/09/2016	3	ENTRY of Appearance by Sarah J Timberlake on behalf of Johnson & Johnson, Johnson & Johnson Consumer Companies Inc (Timberlake, Sarah) (Entered: 06/09/2016)	
06/09/2016	4	MOTION for Leave to Appear Pro Hac Vice by Johnson & Johnson, Johnson & Johnson Consumer Companies Inc. (Attachments: # 1 Exhibit Request for Admission Pro Hac Vice)(Timberlake, Sarah) (Entered: 06/09/2016)	
06/09/2016	5	Receipt for Money Received from Johnson & Johnson, Johnson & Johnson Consumer Companies Inc in the amount of $50.00, receipt number OKW500054396 regarding 4 MOTION for Leave to Appear Pro Hac Vice (jb) (Entered: 06/09/2016)	
06/09/2016	6	NOTICE to Take Deposition of MARY R. ROBB by All Plaintiffs. (Sill, Matthew) (Entered: 06/09/2016)	
06/09/2016	7	NOTICE to Take Deposition of MELISSA ANN AGUILAR by All Plaintiffs. (Sill, Matthew) (Entered: 06/09/2016)	
06/09/2016	8	AMENDED DOCUMENT by All Plaintiffs. Amendment to 7 Notice to Take Deposition MELISSA ANN AGUILAR. (Sill, Matthew) (Entered: 06/09/2016)	
06/13/2016	9	ENTRY of Appearance by Jason A Ryan on behalf of Personal Care Products Council (Ryan, Jason) (Entered: 06/13/2016)	
06/13/2016	10	UNOPPOSED MOTION for Extension of Time to File Answer or Otherwise Plead to Petition Originally Filed in State Court by Personal Care Products Council. (Ryan, Jason) (Entered: 06/13/2016)	
06/13/2016	11	ENTRY of Appearance by Phillip G Whaley on behalf of Personal Care Products Council (Whaley, Phillip) (Entered: 06/13/2016)	
06/13/2016	12	ORDER granting 4 Motion to Appear Pro Hac Vice of Scott A. James. Signed by Honorable Timothy D. DeGiusti on 6/13/2016. (mb) (Entered: 06/13/2016)	
06/13/2016	13	ORDER granting 10 Motion for Extension of Time to Answer Personal Care Products Council answer due 6/29/2016.. Signed by Honorable Timothy D. DeGiusti on 6/13/2016. (mb) (Entered: 06/13/2016)	
06/14/2016	14	ENTRY of Appearance by Mary Quinn-Cooper on behalf of Imerys Talc America Inc (Quinn-Cooper, Mary) (Entered: 06/14/2016)	
06/14/2016	15	ENTRY of Appearance by Vani R Singhal on behalf of Imerys Talc America Inc (Singhal, Vani) (Entered: 06/14/2016)	
06/14/2016	16	UNOPPOSED MOTION for Extension of Time to File Answer or Otherwise Respond to Plaintiffs' Petition by Imerys Talc America Inc. (Attachments: # 1 Exhibit 1 - Proof of Service) (Singhal, Vani) (Entered: 06/14/2016)	
06/15/2016	17	ENTRY of Appearance by Scott A James on behalf of Johnson & Johnson, Johnson & Johnson Consumer Companies Inc (James, Scott) (Entered: 06/15/2016)	
06/15/2016	18	MOTION to Dismiss Plaintiffs' Civil Conspiracy and Fraud Claims and Supporting Brief by Johnson & Johnson, Johnson & Johnson Consumer Companies Inc. (Timberlake, Sarah) (Entered: 06/15/2016)	
06/15/2016	19	ANSWER to Complaint with Jury Demand by Johnson & Johnson, Johnson & Johnson Consumer Companies Inc.(Timberlake, Sarah) (Entered: 06/15/2016)	
06/15/2016	20	MOTION to Sever by Johnson & Johnson, Johnson & Johnson Consumer	

		Companies Inc. (Timberlake, Sarah) (Entered: 06/15/2016)	
06/16/2016	21	ORDER granting 16 Motion for Extension of Time to Answer Imerys Talc America Inc answer due 6/29/2016.. Signed by Honorable Timothy D. DeGiusti on 6/16/2016. (mb) (Entered: 06/16/2016)	
06/22/2016	22	UNOPPOSED MOTION for Leave to Appear Pro Hac Vice for Nancy Erfle Filing fee $ 50, receipt number 1087-2306939 by Imerys Talc America Inc. (Attachments: # 1 Exhibit 1) (Singhal, Vani) (Entered: 06/22/2016)	
06/22/2016	23	UNOPPOSED MOTION for Leave to Appear Pro Hac Vice for Nancy Erfle by Imerys Talc America Inc. (Attachments: # 1 Exhibit 1)(Singhal, Vani) (Entered: 06/22/2016)	
06/28/2016	24	ORDER granting 22 Motion to Appear Pro Hac Vice of Nancy M. Erfle. Signed by Honorable Timothy D. DeGiusti on 6/28/2016. (mb) (Entered: 06/28/2016)	
06/29/2016	25	UNOPPOSED MOTION for Extension of Time to Answer or Otherwise Plead to Petition Originally Filed in State Court by Personal Care Products Council. (Ryan, Jason) (Entered: 06/29/2016)	
06/29/2016	26	MOTION to Dismiss for Lack of Jurisdiction and Opening Brief In Support by Imerys Talc America Inc. (Attachments: # 1 Exhibit 1: Affidavit of Patrick Joseph Downey)(Singhal, Vani) (Entered: 06/29/2016)	
07/01/2016	27	ORDER granting 25 Motion for Extension of Time to Answer or Otherwise Plead. Answer due 7/13/2016. Signed by Honorable Timothy D. DeGiusti on 7/1/2016. (mb) (Entered: 07/01/2016)	
07/05/2016	28	ENTRY of Appearance by Nancy M Erfle on behalf of Imerys Talc America Inc (Erfle, Nancy) (Entered: 07/05/2016)	
07/06/2016	29	MOTION for Extension of Time to File Response/Reply as to 20 MOTION to Sever , 18 MOTION to Dismiss Plaintiffs' Civil Conspiracy and Fraud Claims and Supporting Brief by All Plaintiffs. (Attachments: # 1 Attachment Proposed Order)(Sill, Matthew) (Entered: 07/06/2016)	
07/08/2016	30	ORDER granting 29 Motion for Extension of Time to File Response/Reply re 20 MOTION to Sever , 18 MOTION to Dismiss Plaintiffs' Civil Conspiracy and Fraud Claims and Supporting Brief Responses due by 7/21/2016. Signed by Honorable Timothy D. DeGiusti on 7/8/2016. (mb) (Entered: 07/08/2016)	
07/11/2016	31	NOTICE (other) by Johnson & Johnson, Johnson & Johnson Consumer Companies Inc (Timberlake, Sarah) (Entered: 07/11/2016)	Events since last full update
07/12/2016	32	NOTICE of Change of Address by Vani R Singhal (Singhal, Vani) (Entered: 07/12/2016)	Events since last full update
07/12/2016	33	NOTICE of Change of Address by Mary Quinn-Cooper (Quinn-Cooper, Mary) (Entered: 07/12/2016)	Events since last full update

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF OKLAHOMA

MARY R. ROBB; MELISSA ANN AGUILAR; and FREDY AGUILAR, Husband and Wife, **Plaintiffs,** **v.** **JOHNSON & JOHNSON; JOHNSON & JOHNSON CONSUMER COMPANIES, INC.; IMERYS TALC AMERICA, INC., F/K/A LUZENAC AMERICA, INC.; and PERSONAL CARE PRODUCTS COUNCIL F/K/A COSMETIC, TOILETRY AND FRAGRANCE ASSOCIATION (CTFA),** **Defendants.**	**Civil Action No.** CIV-16-620-D

NOTICE OF REMOVAL

Without submitting to the jurisdiction of this Court and without waiving any available defenses, Defendants Johnson & Johnson, Johnson & Johnson Consumer Companies, Inc., n/k/a Johnson & Johnson Consumer Inc., (collectively referred to as "Removing Defendants"), by counsel, and pursuant to 28 U.S.C. §§ 1332, 1441, and 1446, hereby remove this action from the District Court of Oklahoma County, State of Oklahoma to the United States District Court for the Western District of Oklahoma. Removal is warranted under 28 U.S.C. § 1441(b) because this is a diversity action over which the Court has original jurisdiction under 28 U.S.C. § 1332. In support of this Notice of Removal, Removing Defendants state as follows:

1. On or about May 18, 2016, Plaintiffs Mary R. Robb, Melissa Ann Aguilar, and Fredy Aguilar commenced this action against Removing Defendants, Imerys Talc America, Inc., f/k/a Luzenac America, Inc., and Personal Care Products Council, f/k/a Cosmetic, Toiletry, and Fragrance Association, by filing a Petition in the District Court of Oklahoma County, in the State of Oklahoma, bearing case number CJ-2016-2532. A true and correct copy of the Petition is attached hereto as **Exhibit 1**.

2. Plaintiffs Mary R. Robb and Melissa Ann Aguilar allege that they regularly dusted their perineal areas with Johnson & Johnson's Baby Powder and Shower-to-Shower products. These products contain talcum powder, which Plaintiffs claim proximately caused Mary R. Robb and Melissa Ann Aguilar to develop ovarian cancer. *See* Petition ¶¶ 1- 2, 40.

3. Plaintiff Fredy Aguilar alleges a loss of consortium claim for the alleged injuries to Melissa Ann Aguilar. *See* Petition ¶¶ 84-85.

I. REMOVAL IS PROPER BECAUSE THIS COURT HAS SUBJECT-MATTER JURISDICTION PURSUANT TO 28 U.S.C. §§ 1332 AND 1441.

4. This Court has subject-matter jurisdiction over this case pursuant to 28 U.S.C. §§ 1332 and 1441 because this is a civil action in which the amount in controversy exceeds the sum of $75,000, exclusive of costs and interest, and is between citizens of different States.

A. There is Complete Diversity Of Citizenship between the Parties.

5. The Petition alleges that Plaintiff Mary R. Robb is a resident and citizen of Oklahoma. *See* Petition ¶ 1. Accordingly, Plaintiff Mary R. Robb is a citizen of the State of Oklahoma for purposes of determining diversity of citizenship.

6. The Petition alleges that Plaintiffs Melissa Ann Aguilar and Fredy Aguilar, husband and wife, are residents and citizens of Oklahoma. *See* Petition ¶ 2. Accordingly, Plaintiffs Melissa Ann Aguilar and Fredy Aguilar are citizens of the State of Oklahoma for purposes of determining diversity of citizenship.

7. Defendant Johnson & Johnson is, and was at the time Plaintiffs commenced this action, a corporation organized and existing under the laws of the State of New Jersey, with its principal place of business in New Jersey. Accordingly, for purposes of diversity jurisdiction, it is a citizen of New Jersey. *See* 28 U.S.C. § 1332(c)(1) ("a corporation shall be deemed to be a citizen of every State . . . by which it has been incorporated and of the State where it has its principal place of business . . . ."). Johnson & Johnson was served with this lawsuit on May 19, 2016.

8. Defendant Johnson & Johnson Consumer Companies, Inc., n/k/a Johnson & Johnson Consumer Inc. is, and was at the time Plaintiffs commenced this action, a corporation organized and existing under the laws of the State of New Jersey, with its principal place of business in New Jersey. Accordingly, for purposes of diversity jurisdiction, it is a citizen of New Jersey. *See* 28 U.S.C. § 1332(c)(1). Johnson & Johnson Consumer Companies, Inc. was served with this lawsuit on May 19, 2016.

9. Defendant Imerys Talc America, Inc., f/k/a Luzenac America, Inc. is, and was at the time Plaintiff commenced this action, a corporation organized and existing under the laws of Delaware with its principal place of business in California. Accordingly, for purposes of diversity jurisdiction, it is a citizen of Delaware and California. *See* 28 U.S.C. § 1332(c)(1). Upon information and belief, Imerys Talc America, Inc., f/k/a Luzenac America, Inc. was served with this lawsuit on May 23, 2016. Imerys has consented to the removal of this action. *See* Imerys Consent to Removal, attached hereto as **Exhibit 2**.

10. Defendant Personal Care Products Council, f/k/a Cosmetic, Toiletry, and Fragrance Association, is, and was at the time Plaintiff commenced this action, a corporation organized under the laws of the District of Columbia with its principal place of business in the District of Columbia. Accordingly, for purposes of diversity jurisdiction, it is a citizen of the District of Columbia. *See* 28 U.S.C. § 1332(c)(1). Upon information and belief, Personal Care Products Council was served with this lawsuit on May 24, 2016. Personal Care Products Council has consented to the removal of this action. *See* PCPC Consent to Removal, attached hereto as **Exhibit 3**.

11. Accordingly, this action involves "citizens of different States." *See* 28 U.S.C. § 1332(a)(1)-(2). Because Plaintiffs are Oklahoma citizens and no defendant properly joined and served is a citizen of the State of Oklahoma, removal of this action is proper under 28 U.S.C. § 1441(b).

B. <u>The Amount-in-Controversy Requirement Is Satisfied.</u>

12. The amount-in-controversy requirement for diversity jurisdiction is satisfied in this case because Plaintiffs' Petition seeks damages "in an amount in excess of $75,000 for each Plaintiff." Petition, p. 20, Prayer For Relief ¶ 1. Thus, it is clear from the face of Plaintiffs' Petition that the "matter in controversy exceeds the sum or value of $75,000, exclusive of interest and costs." *See* 28 U.S.C. § 1332(a).

13. Though Removing Defendants are not liable to Plaintiffs in any way, Plaintiffs' Petition seeks damages for past and future medical treatment, pain and suffering, mental and emotional anguish, disability, and disfigurement. *See* Petition, Prayer For Relief, p. 20. Plaintiffs claim that, as a result of their ovarian cancers, they have been "injured catastrophically" and been caused severe and permanent pain, suffering, disability, impairment, loss of enjoyment of life, loss of care and comfort, incurred medical expenses and lost wages. *See, e.g.*, Petition ¶¶ 43, 44, 55, 59, 63, 82. In addition to compensatory damages, Plaintiffs seek punitive damages and attorneys' fees and litigation costs. *See* Petition ¶¶ 74-76; Prayer For Relief, p. 21.

14. Given the nature and extent of damages alleged by Plaintiffs, and considering their requests for relief, it is clear that the finder of fact could conclude that Plaintiffs are entitled to damages in excess of $75,000.

15. As the 10th Circuit Court of Appeals has noted, "[t]he amount in controversy is ordinarily determined by the allegations of the complaint, or, where they are not dispositive, by the allegations in the notice of removal." *Laughlin v. Kmart Corp.*, 50 F.3d 871, 873 (10th Cir.) (internal citation omitted), *cert. denied*, 516 U.S. 863 (1995). In 2014, the United States Supreme Court clarified that "a defendant's notice of removal

need include only a plausible allegation that the amount in controversy exceeds the jurisdictional threshold." *Dart Cherokee Basin Operating Co., LLC v. Owens*, 135 S. Ct. 547, 554 (2014).

16. It is widely recognized that claims for personal injuries like those asserted here facially meet the $75,000 jurisdictional threshold. *See, e.g.*, *Yocham v. Novartis Pharms. Corp.*, No. 07-1810 (JBS), 2007 U.S. Dist. LEXIS 58938, at *7-8 (D.N.J. Aug. 13, 2007) ("it appears from the face of the Complaint that the amount in controversy exceeds $75,000" because "[i]n her Complaint, Plaintiff alleges, among other things, damages relating to having experienced a 'life threatening' skin condition . . . which resulted in hospitalization . . . [and] Plaintiff also seeks compensatory damages for past, present, and future pain and suffering, lost earnings, past and future medical expenses and punitive damages") (internal quotation marks and citation omitted); *In re Yasmin & Yaz (Drospirenone) Mktg., Sales Practices & Prods. Liab. Litig.*, 692 F. Supp. 2d 1025, 1040 (S.D. Ill. 2010) ("Given the severe and ongoing nature of the injuries alleged, the Court finds that it is plausible and supported by the preponderance of the evidence that the amount in controversy has been established."); *Butzberger v. Novartis Pharm. Corp.*, No. 06-80700-CIV-RYSKAMP/VITUNAC, 2006 U.S. Dist. LEXIS 85576, at *8 (S.D. Fla. Nov. 27, 2006) ("federal jurisdiction exists where plaintiffs allege personal injuries caused by prescription medications, even where, as here, they do not expressly provide an[] amount in controversy"); *In re Rezulin Prods. Liab. Litig.*, 133 F. Supp. 2d 272, 296 (S.D.N.Y. 2001) (finding that a complaint alleging various injuries from taking a prescription drug "obviously asserts a claim exceeding $75,000"); *Smith v. Wyeth, Inc.*,

488 F. Supp. 2d 625, 630-31 (W.D. Ky. 2007) (similar); *Bailey v. J.B. Hunt Transp., Inc.*, No. 06-240, 2007 WL 764286, *6 (E.D. Pa. Mar. 8, 2007) (amount-in-controversy requirement satisfied where complaint alleged a "litany of serious, permanent injuries," "surgeries and treatments," and "the allegedly permanent impairment of [the] ability to enjoy life's activities").

17. In determining the amount in controversy, the Court should also consider Plaintiffs' demand for punitive damages (contained in Count Eight, Compl. ¶¶ 74-76). *See Flowers v. EZPawn Okla., Inc.*, 307 F. Supp. 2d 1191, 1198 (N.D. Okla. 2004) ("When both actual and punitive damages are recoverable, punitive damages are properly considered in determining whether the jurisdictional amount has been satisfied.") (citing *Bell v. Preferred Life Assurance Soc'y*, 320 U.S. 238, 240 (1943)). Based upon the allegations in Plaintiffs' Petition, the jurisdictional amount in controversy is clearly met. *See e.g., McPhail v. Deere and Co.*, 529 F.3d 947, 957 (10th Cir. 2008) (stating that, with regard to punitive damages, "[F]or actions found by a jury to exhibit 'reckless disregard,' the jury has the discretion to award any amount up to $100,000 or the amount awarded in actual damages, whichever is greater.") (citing 23 O.S. § 9.1).[1]

18. Thus, it is facially apparent from Plaintiffs' Petition that the amount in controversy exceeds $75,000, exclusive of interests and costs.

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[1] If the Court were to conclude that proof introduced at trial warranted a punitive damage jury instruction, then under 23 O.S. § 9.1, the jury would have discretion to award punitive damages from one of three statutory categories: Category 1: an amount up to $100,000 or the amount of the actual damages awarded; Category 2: the greatest of $500,000, twice the amount of actual damages awarded, or the increased financial benefit derived by the defendant as a direct result of *(cont'd)*

II. REMOVING DEFENDANTS HAVE SATISFIED THE PROCEDURAL REQUIREMENTS FOR REMOVAL.

19. This removal is timely. The Removing Defendants are filing this notice within 30 days of May 19, 2016, the date that Plaintiffs served Removing Defendants. *See* 28 U.S. C. § 1446(b)(2)(B).

20. Pursuant to 28 U.S.C. § 1446(b)(2)(A), only defendants that have been properly joined and served must join in or consent to the removal of the action.

21. Upon information and belief, Defendant Imerys Talc America, Inc., f/k/a Luzenac America, Inc. was served with this lawsuit on May 23, 2016. Imerys consents to the removal of this action. *See* Imerys Consent to Removal, attached hereto as **Exhibit 2**.

22. Upon information and belief, Personal Care Products Council was served with this lawsuit on May 24, 2016. Personal Care Products Council consents to the removal of this action. *See* PCPC Consent to Removal, attached hereto as **Exhibit 3.**

23. Pursuant to 28 U.S.C. § 1446(a), a copy of all process and pleadings served upon Removing Defendants to date is attached. *See* Summons to Johnson & Johnson, Summons to Johnson & Johnson Consumer Companies, Inc., and Petition, attached hereto as **Exhibit 1.**

24. Pursuant to Local Civil Rule 81.2, a copy of the state court docket sheet is attached hereto as **Exhibit 4**.

(cont'd from previous page)
the conduct causing the injury; or Category 3: any amount the jury deems appropriate, without regard to the limitations set forth in Category 1 and 2. *See* 23 O.S. § 9.1.

25. The District Court of Oklahoma County, State of Oklahoma, is located within the United States District Court for the Western District of Oklahoma. *See* 28 U.S.C. §§ 116, 1441(a).

26. No previous application has been made for the relief requested herein.

27. Pursuant to 28 U.S.C. § 1446(d), a copy of this Notice of Removal is being served upon counsel for Plaintiff and a copy is being filed with the Clerk of the District Court of Oklahoma County, State of Oklahoma.

WHEREFORE, Removing Defendants respectfully remove this action from the District Court of Oklahoma County, State of Oklahoma, bearing Case Number CJ-2016-2532, to this Court.

Respectfully submitted,

s/ Sarah J. Timberlake
Sarah J. Timberlake
Abowitz, Timberlake & Dahnke, P.C.
The Hightower Building, Tenth Floor
105 North Hudson
Oklahoma City, OK 73102
Telephone: (405) 236-4645
Facsimile: (405) 239-2843
E-mail: sjt@abowitzlaw.com
Attorneys for Defendants Johnson & Johnson and Johnson & Johnson Consumer Inc., formerly known as Johnson & Johnson Consumer Companies, Inc.

CERTIFICATION OF SERVICE

I hereby certify that on the 8th day of June, 2016, I electronically transmitted the attached document to the Clerk of Court using the ECF System for filing. Based on the records currently on file, the Clerk of Court will transmit a Notice of Electronic Filing to the following ECF registrants:

Matthew J. Sill
Christopher J. Bergin
Katie Griffin
14005 N. Eastern Ave.
Edmond, OK 73013
Telephone: (405) 509-6300
Facsimile: (405) 509-6268
E-mail: matt@sill-law.com
Attorneys for Plaintiffs

s/ Sarah J. Timberlake
Sarah J. Timberlake

IN THE DISTRICT COURT OF OKLAHOMA COUNTY
STATE OF OKLAHOMA

MARY R. ROBB; MELISSA ANN AGUILAR; and FREDY AGUILAR, Husband and Wife,	)	
Plaintiffs,	)	
v.	)	Case No. CJ - 2016 - 2532
JOHNSON & JOHNSON; JOHNSON & JOHNSON CONSUMER COMPANIES, INC.; IMERYS TALC AMERICA, INC. F/K/A LUZENAC AMERICA, INC.; and PERSONAL CARE PRODUCTS COUNCIL F/K/A COSMETIC, TOILETRY AND FRAGRANCE ASSOCIATION (CTFA);	)	
Defendants.	)	

SUMMONS

To the Above-Named Defendant:

JOHNSON & JOHNSON
Steven M. Rosenberg, Registered Agent
One Johnson & Johnson Plaza
New Brunswick, NJ 08933

You have been sued by the above-named plaintiff, and you are directed to file a written answer to the attached Petition in the Court at the above address within twenty (20) days after service of this summons upon you, exclusive of the day of service. Within the same time, a copy of your answer must be delivered or mailed to the attorney for the plaintiff.

Unless you answer the Petition within the time stated, judgment will be rendered against you with costs of the action.

Issued this 18 day of May, 2016.

(SEAL)

COURT CLERK

By: _____

Attorney for Plaintiffs
Matthew J. Sill, OBA #21547
14005 N. Eastern Avenue, Edmond, OK 73013
405/509-6300 • 405/509-6268 - Facsimile

EXHIBIT
1

This Summons was served on _____ _____

(Date of Service) Signature of Person Serving Summons

YOU MAY SEEK THE ADVICE OF ANY ATTORNEY ON ANY MATTER CONNECTED WITH THIS SUIT OR YOUR ANSWER. SUCH ATTORNEY SHOULD BE CONSULTED IMMEDIATELY SO THAT AN ANSWER MAY BE FILED WITHIN THE TIME LIMIT STATED IN THE SUMMONS.

CERTIFICATE OF SERVICE BY MAIL

I certify that I mailed copies of the foregoing Summons with a copy of the Petition attached to the following named defendant at the address shown by certified mail, return receipt requested, on the _____ day of _____, 20_____, and receipt thereof on the dates shown:

Defendant:

Address where served: _____

Date Receipted: _____

(SEAL)

By:_____

RETURN OF SERVICE

Personal Service

I certify that I received the foregoing Summons on the _____ day of _____, 20_____, and that I delivered a copy of said Summons with a copy of the Petition attached to each of the following named defendants personally in _____ County at the address and on the date set forth opposite each name, to wit:

Name of Defendant	Address	Date of Service
_____	_____	_____

_____

By:_____

Corporation Return

Received this Summons this _____ day of _____, 20____, and as commanded therein, I summoned the within _____ named defendant, as follows to wit:

_____

_____

, a corporation, on the _____ day of _____, 20____, by delivering a true and correct copy of the within Summons hereof with endorsements thereon and a copy of the Petition, to _____, he being the _____ of the corporation, and the _____, President, Vice-President, Secretary, Treasurer or other chief, officer not being found in said county.

_____

By:_____

IN THE DISTRICT COURT OF OKLAHOMA COUNTY
STATE OF OKLAHOMA

MARY R. ROBB; MELISSA ANN AGUILAR; and FREDY AGUILAR, Husband and Wife,

Plaintiffs,

v.

JOHNSON & JOHNSON; JOHNSON & JOHNSON CONSUMER COMPANIES, INC.; IMERYS TALC AMERICA, INC. F/K/A LUZENAC AMERICA, INC.; and PERSONAL CARE PRODUCTS COUNCIL F/K/A COSMETIC, TOILETRY AND FRAGRANCE ASSOCIATION (CTFA);

Defendants.

Case No. CJ - 2016 - 2532

SUMMONS

To the Above-Named Defendant: JOHNSON & JOHNSON CONSUMER COMPANIES, INC.
Steven M. Rosenberg, Registered Agent
One Johnson & Johnson Plaza
New Brunswick, NJ 08933

You have been sued by the above-named plaintiff, and you are directed to file a written answer to the attached Petition in the Court at the above address within twenty (20) days after service of this summons upon you, exclusive of the day of service. Within the same time, a copy of your answer must be delivered or mailed to the attorney for the plaintiff.

Unless you answer the Petition within the time stated, judgment will be rendered against you with costs of the action.

Issued this 18 day of May, 2016.

(SEAL)

COURT CLERK

By: _____

Attorney for Plaintiffs
Matthew J. Sill, OBA #21547
14005 N. Eastern Avenue, Edmond, OK 73013
405/509-6300 • 405/509-6268 - Facsimile

This Summons was served on _____

(Date of Service) Signature of Person Serving Summons

YOU MAY SEEK THE ADVICE OF ANY ATTORNEY ON ANY MATTER CONNECTED WITH THIS SUIT OR YOUR ANSWER. SUCH ATTORNEY SHOULD BE CONSULTED IMMEDIATELY SO THAT AN ANSWER MAY BE FILED WITHIN THE TIME LIMIT STATED IN THE SUMMONS.

CERTIFICATE OF SERVICE BY MAIL

I certify that I mailed copies of the foregoing Summons with a copy of the Petition attached to the following named defendant at the address shown by certified mail, return receipt requested, on the _____ day of _____, 20_____, and receipt thereof on the dates shown:

Defendant:

Address where served: _____

Date Receipted: _____

(SEAL)

By:_____

RETURN OF SERVICE

Personal Service

I certify that I received the foregoing Summons on the _____ day of _____, 20_____, and that I delivered a copy of said Summons with a copy of the Petition attached to each of the following named defendants personally in _____ County at the address and on the date set forth opposite each name, to wit:

Name of Defendant	Address	Date of Service
_____	_____	_____

_____

By:_____

Corporation Return

Received this Summons this _____ day of _____, 20____, and as commanded therein, I summoned the within _____ named defendant, as follows to wit:

_____

_____

, a corporation, on the _____ day of _____, 20____, by delivering a true and correct copy of the within Summons hereof with endorsements thereon and a copy of the Petition, to _____, he being the _____ of the corporation, and the _____, President, Vice-President, Secretary, Treasurer or other chief, officer not being found in said county.

_____

By:_____

FILED IN DISTRICT COURT
OKLAHOMA COUNTY
MAY 18 2016
TIM RHODES
COURT CLERK
92

IN THE DISTRICT COURT OF OKLAHOMA COUNTY
STATE OF OKLAHOMA

MARY R. ROBB; MELISSA ANN AGUILAR; and FREDY AGUILAR, Husband and Wife,

Plaintiffs,

v.

JOHNSON & JOHNSON; JOHNSON & JOHNSON CONSUMER COMPANIES, INC.; IMERYS TALC AMERICA, INC. F/K/A LUZENAC AMERICA, INC.; and PERSONAL CARE PRODUCTS COUNCIL F/K/A COSMETIC, TOILETRY AND FRAGRANCE ASSOCIATION (CTFA);

Defendants.

Case No. CJ - 2016 - 2532

Date Served: 5/19/16
Company Served: JAJ/JJCI
(Certified) CT Personal Reg. Mail FEDEX NP
Date Rec'd by Law Dept: 5/24/16
Entered into TeamConnect: (Yes) No
Matter ID #: 20160012393

PETITION

COME NOW Plaintiffs, by and through undersigned counsel, and for their cause of action against Defendants JOHNSON & JOHNSON; JOHNSON & JOHNSON CONSUMER COMPANIES, INC.; IMERYS TALC AMERICA, INC., f/k/a LUZENAC AMERICA, INC.; PERSONAL CARE PRODUCTS COUNCIL f/k/a COSMETIC, TOILETRY, AND FRAGRANCE ASSOCIATION (CTFA), alleging the following upon information and belief (including investigation made by and through Plaintiffs' counsel), except those allegations that pertain to Plaintiffs, which are based on personal knowledge:

PARTIES

1. Plaintiff MARY R. ROBB is a citizen of Oklahoma City, Oklahoma County, Oklahoma. At all pertinent times, including from approximately 1973 to 2015, Plaintiff MARY R.

ROBB purchased and applied talcum powder (hereinafter "the PRODUCTS") in Oklahoma City, Oklahoma. On or about February 1, 2016, Plaintiff MARY R. ROBB was diagnosed with ovarian cancer, which developed in the State of Oklahoma. Plaintiff developed ovarian cancer, and suffered effects attendant thereto, as a direct and proximate result of the unreasonably dangerous and defective nature of talcum powder and Defendants' wrongful and negligent conduct in the research, development, testing, manufacture, production, promotion, distribution, marketing, and sale of talcum powder. As a direct and proximate result of these injuries, Plaintiff MARY R. ROBB has incurred and will incur medical expenses in the future, has endured and will endure pain and suffering and loss of enjoyment of life, and Plaintiff has other wise been damaged in a personal and pecuniary nature. At all pertinent times, Plaintiff applied talcum powder in the State of Oklahoma.

2. Plaintiffs MELISSA ANN AGUILAR and FREDY AGUILAR, husband and wife, are citizens of Oklahoma City, Oklahoma County, Oklahoma. At all pertinent times, including from approximately 2000 to 2015, Plaintiff MELISSA ANN AGUILAR purchased and applied talcum powder in Oklahoma City, Oklahoma. In February, 2016, Plaintiff MELISSA ANN AGUILAR was diagnosed with ovarian cancer, which developed in the State of Oklahoma. Plaintiff developed ovarian cancer, and suffered effects attendant thereto, as a direct and proximate result of the unreasonably dangerous and defective nature of talcum powder and Defendants' wrongful and negligent conduct in the research, development, testing, manufacture, production, promotion, distribution, marketing, and sale of talcum powder. As a direct and proximate result of these injuries, Plaintiff MELISSA ANN AGUILAR has incurred and will incur medical expenses in the future, has endured and will endure pain and suffering and loss of enjoyment of life, and Plaintiff has other wise been damaged in a personal and pecuniary nature. At all pertinent times, Plaintiff applied talcum powder in the State of Oklahoma.

3. The Defendant, JOHNSON & JOHNSON, is a New Jersey corporation with its principal place of business in the State of New Jersey.

4. At all pertinent times, JOHNSON & JOHNSON was engaged in the business of manufacturing, marketing, testing, promoting, selling, and/or distributing the PRODUCTS. At all pertinent times, JOHNSON & JOHNSON regularly transacted, solicited and conducted business in all states of the United States, including the State of Oklahoma.

5. The Defendant, JOHNSON & JOHNSON CONSUMER COMPANIES, INC., is a New Jersey corporation with its principal place of business in the State of New Jersey.

6. At all pertinent times, JOHNSON & JOHNSON CONSUMER COMPANIES, INC. was engaged in the business of manufacturing, marketing, testing, promoting, selling, and/or distributing the PRODUCTS. At all pertinent times, JOHNSON & JOHNSON regularly transacted, solicited, and conducted business in all states of the United States, including the State of Oklahoma.

7. The Defendant, IMERYS TALC AMERICA, INC., f/k/a LUZENAC AMERICA, INC., is a Delaware corporation with its principal place of business in the State of California.

8. At all pertinent times, IMERYS TALC AMERICA, INC., f/k/a LUZENAC AMERICA, INC., has been in the business of mining and distributing talcum powder for use in talcum powder based products, including the PRODUCTS. IMERYS TALC is the successor or continuation of LUZENAC AMERICA, INC., and IMERYS TALC AMERICA, INC. is legally responsible for all liabilities incurred when it was known as LUZENAC AMERICA, INC.

9. The Defendant, PERSONAL CARE PRODUCTS COUNSEL ("PCPC"), F/K/A COSMETIC, TOILETRY, AND FRAGRANCE ASSOCIATION ("CTFA"), is a corporation organized under the laws of the District of Columbia, with its principal place of business in the District of Columbia.

10. PCPC is the successor or continuation of CTFA and PCPC is legally responsible for all liabilities incurred when it was known as CTFA.

11. At all pertinent times, all Defendants were engaged in the research, development, manufacture, design, testing, sale and marketing of PRODUCTS, and introduced such products into interstate commerce with knowledge and intent that such products be sold in the State of Oklahoma.

12. Upon information and belief, at all times herein mentioned, the employees of Defendant, its subsidiaries, affiliates, and other related entities, as well as the employees of the Defendant's subsidiaries, affiliates, and other related entities, were the agents, servants and employees of Defendant, and at all relevant times, were acting within the purpose and scope of said agency and employment. Whenever reference in this Complaint is made to any act or transaction of Defendant, such allocations shall be deemed to mean that the principals, officers, employees, agents, and/or representatives of the Defendants committed, knew of, performed, authorized, ratified and/or directed such transaction on behalf of Defendant while actively engaged in the scope of their duties.

VENUE

13. Venue is proper in this Court because Plaintiffs were first exposed in Oklahoma City, Oklahoma, as this is where, at all pertinent times, they purchased, ingested and were exposed to the product at issue.

ALLEGATIONS COMMON TO ALL COUNTS

14. Talc is a magnesium trisilicate and is mined from the earth. Talc is an inorganic mineral. The Defendant, IMERYS TALC AMERICA, INC., f/k/a LUZENAC AMERICA, INC., mined the talc contained in the PRODUCTS.

15. Talc is the main substance in talcum powders. The JOHNSON & JOHNSON Defendants manufactured the PRODUCTS.

16. At all pertinent times, a feasible alternative to the PRODUCTS 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.

17. IMERYS TALC has continually advertised and marketed talc as safe for human use.

18. IMERYS TALC supplies 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.

19. 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 influenced and caused 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."

20. During the time in questions, the JOHNSON & JOHNSON Defendants advertised and marketed the product "Shower to Shower" as safe for use by women as evidenced in its slogan "A sprinkle a day keeps odor away", and through advertisements such as "Your body perspires in more places than just under your arms. Use SHOWER to SHOWER to feel dry, fresh, and comfortable throughout the day." And "SHOWER to SHOWER can be used all over your body."

21. The Plaintiffs used the PRODUCTS to dust their perineum for feminine hygiene purposes. This was an intended and foreseeable use of the PRODUCTS based on the advertising, marketing, and labeling of the PRODUCTS.

22. In 1971, a 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.

23. In 1982, an 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 his 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.

24. Since 1982, there have been more than twenty (20) 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.

25. 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.

26. 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, Inc., 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.

27. 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 ovarian cancer risks they pose.

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

29. 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 were 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 body 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."

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

31. 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 PRODUCTS. These MSDS' 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.

32. The Defendants had a duty to know and warn about the hazards associated with the use of the PRODUCTS.

33. The Defendants failed to inform its customers and end users of the PRODUCTS of a known catastrophic health hazard associated with the use of its products.

34. In addition, the Defendants procured and disseminated false, misleading, and biased information regarding the safety of the PRODUCTS to the public and used influence over governmental and regulatory bodies regarding talc.

35. As a direct and proximate result of the Defendants' calculated and reprehensible conduct, Plaintiffs were injured and suffered damages, namely ovarian cancer, which required surgeries and treatments.

COUNT ONE – STRICT LIABILITY FOR FAILURE TO WARN
(Imerys Talc and Johnson & Johnson Defendants)

36. Plaintiffs incorporate by reference all other paragraphs of this Complaint as if fully set forth herein.

37. 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 PRODUCTS and it knew that consumers of the PRODUCTS were using it to powder their perineal regions.

38. 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 consumers of this danger.

39. At all pertinent times, the JOHNSON & JOHNSON Defendants were manufacturing, marketing, testing, promoting, selling and/or distributing the PRODUCTS in the regular course of business.

40. At all pertinent times, Plaintiffs used the PRODUCTS to powder their perineal area, which is a reasonably foreseeable use.

41. 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 1960's.

42. At all pertinent times, including the time of sale and consumption, the PRODUCTS, when put to the aforementioned reasonably foreseeable use, were in an unreasonably dangerous and defective condition because they failed to contain adequate and proper warnings and/or instructions regarding the increased risk of ovarian cancer associated with the use of the PRODUCTS by women to powder their perineal area. Defendants themselves failed to properly and adequately warn and instruct Plaintiffs as to the risks and benefits of the PRODUCTS given Plaintiffs' need for this information.

43. Had the Plaintiffs received a warning that the use of the PRODUCTS would have significantly increased their risk of ovarian cancer, they would not have used the same. As a proximate result of Defendants' design, manufacture, marketing, sale, and distribution of the PRODUCTS, Plaintiffs have been injured catastrophically, and have been caused severe and permanent pain, suffering, disability, impairment, loss of enjoyment of life, loss of care, comfort, and economic damages.

44. The development of ovarian cancer by the Plaintiffs was the direct and proximate result of the unreasonably dangerous and defective condition of the PRODUCTS at the time of sale and consumption, including their lack of warnings; Plaintiffs have suffered injuries and damages including but not limited to conscious pain and suffering of Plaintiffs, medical expenses and lost wages.

45. The Defendants' PRODUCTS were defective because they failed to contain warnings and/or instructions, and breached express warranties and/or failed to conform to express factual representations upon which the Plaintiffs justifiably relied in electing to use the PRODUCTS. The defect or defects made the PRODUCTS unreasonably dangerous to those persons, such as Plaintiffs, who could reasonably be expected to use and rely upon such PRODUCTS. As a result, the defect or defects were a producing cause of the Plaintiffs' injuries and damages.

46. The Defendants' PRODUCTS failed to contain, and continue to this day not to contain, adequate warnings and/or instructions regarding the increased risk of ovarian cancer with the use of their PRODUCTS by women. The Defendants continue to market, advertise, and expressly represent to the general public that it is safe for women to use their PRODUCTS 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 PRODUCTS increase the risk of ovarian cancer in women when used in the perineal area.

COUNT TWO – STRICT LIABILITY FOR PRODUCT DEFECTIVE BY DESIGN
(As to Defendant Johnson & Johnson)

47. Plaintiffs reallege and incorporate by reference every allegation of this Complaint as if each were set forth fully and completely herein.

48. The talc manufactured and placed in the stream of commerce by JOHNSON & JOHNSON was defective and unreasonably dangerous by reason of defective design. There is and was no medical purpose or benefit, and no lasting benefit whatsoever, from use of the talcum powder manufactured, promoted and sold by JOHNSON & JOHNSON. There is and was, however, great risk of bodily harm and death caused by the product, beyond the contemplation of the purchasers, including 1973 through 2016. Risk greatly exceeded any benefit. Thus, the design of the product, apart from and in addition to presence of inadequate warnings discussed in Count One, rendered it

defective and unreasonably dangerous. The product was defective at the time it was manufactured and sold by Defendant JOHNSON & JOHNSON.

COUNTY THREE – NEGLIGENCE
(Imerys Talc)

49. Plaintiffs reallege and incorporate by reference every allegation of this Complaint as if each were set forth fully and completely herein.

50. At all pertinent times, Defendants had a duty to exercise reasonable care to consumers, including Plaintiffs herein, in the design, development, manufacture, testing, inspection, packing, promotion, marketing, distribution, labeling and/or sale of the PRODUCTS.

51. 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 the PRODUCTS by the JOHNSON & JOHNSON Defendants. Further, IMERYS TALC knew and/or should have known that consumers of the PRODUCTS were using it to powder their perineal regions.

52. 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.

53. At all pertinent times, IMERYS TALC knew or should have known that JOHNSON & Johnson was not providing warnings to consumers of the PRODUCTS of the risk of ovarian cancer posed by talc contained therein.

54. 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 PRODUCTS, without adequately taking steps to ensure that ultimate consumers of the

PRODUCTS received the information that IMERYS TALC possessed on the carcinogenic properties of talc, including its risk of causing ovarian cancer.

55. As a direct and proximate result of IMERYS TALC'S negligence, Plaintiffs purchased and used, as aforesaid, the PRODUCTS that directly and proximately caused Plaintiffs to develop ovarian cancer; Plaintiffs were caused to incur medical bills, lost wages and conscious pain and suffering.

COUNT FOUR – NEGLIGENCE
(Johnson & Johnson Defendants)

56. Plaintiffs hereby incorporate by reference each of the preceding paragraphs as if fully set forth herein.

57. The JOHNSON & JOHNSON Defendants were negligent in marketing, designing, manufacturing, producing, supplying, inspecting, testing, selling and/or distributing the PRODUCTS in one or more of the following respects:

a) In failing to warn Plaintiffs of the hazards associated with the use of the PRODUCTS;

b) In failing to properly test their products to determine adequacy and effectiveness or safety measures, if any, prior to releasing the PRODUCTS for consumer use;

c) In failing to properly test their products to determine the increased risk of ovarian cancer during the normal and/or intended use of the PRODUCTS;

d) In failing to inform ultimate users, such as Plaintiffs as to the safe and proper methods of handling and using the PRODUCTS;

e) In failing to remove the PRODUCTS from the market when the Defendants knew or should have known the PRODUCTS were defective;

f) In failing to instruct the ultimate users, such as Plaintiffs, as to the methods for reducing the type of exposure to the PRODUCTS which caused increased risk of ovarian cancer;

g) In failing to inform the public in general and the Plaintiffs in particular of the known dangers of using the PRODUCTS for dusting the perineum;

h) In failing to advise users how to prevent or reduce exposure that caused increased risk for ovarian cancer;

i) In marketing and labeling the PRODUCTS as safe for all uses despite knowledge to the contrary.

j) 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 injuries and damages sustained by Plaintiffs.

58. At all pertinent times the JOHNSON & JOHNSON Defendants knew or should have known that the PRODUCTS were unreasonably dangerous and defective when put to their reasonably anticipated use.

59. As a direct and proximate result of the JOHNSON & JOHNSON Defendants' negligence in one or more of the aforementioned ways, Plaintiffs purchased and used, as aforesaid, the PRODUCTS that directly and proximately caused each Plaintiff to develop ovarian cancer; Plaintiffs were caused to incur medical bills, lost wages, and conscious pain and suffering.

COUNT FIVE – BREACH OF EXPRESS WARRANTY
(Johnson & Johnson Defendants)

60. Plaintiffs hereby incorporate by reference each of the preceding paragraphs as if fully set forth herein.

61. The JOHNSON & JOHNSON Defendants expressly warranted, through direct-to-consumer marketing, advertisements, and labels, that the PRODUCTS were safe and effective for reasonably anticipated uses, including use by women in the perineal area.

62. The PRODUCTS 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.

63. As a direct and proximate result of the Defendants' breach of warranty, Plaintiffs purchased and used, as aforesaid, the PRODUCTS that directly and proximately caused each Plaintiff to develop ovarian cancer; Plaintiffs were caused to incur medical bills, lost wage s, and conscious pain and suffering.

COUNT SIX – BREACH OF IMPLIED WARRANTIES
(Johnson & Johnson Defendants)

64. Plaintiffs incorporate by reference each of the preceding paragraphs as if fully set forth herein.

65. At the time the Defendants manufactured, marketed, labeled, promoted, distributed and/or sold the PRODUCTS, the JOHNSON & JOHNSON Defendants knew of the uses for which the PRODUCTS were intended, including use by women in the perineal area, and impliedly warranted the PRODUCTS TO BE OF MERCHANTABLE QUALITY AND SAFE FOR SUCH USE.

66. Defendants breached their implied warranties of the PRODUCTS sold to Plaintiffs because they were not fit for their common, ordinary and intended uses, including use by women in the perineal area.

67. As a direct, foreseeable and proximate result of the Defendants' breaches of implied warranties, Plaintiffs purchased and used, as aforesaid, the PRODUCTS that directly and

proximately caused each Plaintiff to develop ovarian cancer; Plaintiffs were caused to incur medical bills, lost wages, and conscious pain and suffering.

COUNT SEVEN – CIVIL CONSPIRACY
(All Defendants)

68. Plaintiffs incorporate by reference all preceding paragraphs as if fully set forth herein.

69. Defendants and/or their predecessors-in-interest knowingly agreed, contrived, combined, confederated and conspired among themselves to cause Plaintiffs' injuries, disease, and/or illnesses by exposing the Plaintiffs to harmful and dangerous PRODUCTS. Defendants further knowingly agreed, contrived, confederated and conspired to deprive the Plaintiffs of the opportunity of informed free choice as to whether to use the PRODUCTS or to expose them 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 the PRODUCTS.

70. Said conspiracies and actions violate Oklahoma Antitrust Reform Act, 79 OS 201, *et seq.*

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

a) 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 PRODUCTS by women resulting from ordinary and foreseeable use of the PRODUCTS were unreasonably dangerous, hazardous, deleterious to human health, carcinogenic, and potentially deadly;

b) 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:

i.) Withheld, concealed and suppressed said medical information regarding the increased risk of ovarian cancer from Plaintiff and Decedent (as set out in the "Facts" section of this pleading); in addition, on July 27, 2005, Defendants as part of the TIPTF corresponded and agreed to edit and delete portions of scientific papers bseing submitted on their behalf to the United States Toxicology Program in an attempt to prevent talc from being classified as a carcinogen;

ii.) 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";

iii.) 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.

c) By these false and fraudulent representations, omissions, and concealments, Defendants intended to induce the Plaintiffs to rely upon said false and fraudulent representations, omissions and concealments, and to continue to expose themselves to the dangers inherent in the use of and exposure to the PRODUCTS.

72. Plaintiffs reasonably and in good faith relied upon the aforementioned fraudulent representations, omissions and concealments made by Defendants regarding the nature of the PRODUCTS.

73. As a direct, foreseeable and proximate result of the Defendants' breaches of implied warranties, Plaintiffs purchased and used, as aforesaid, the PRODUCTS that directly and proximately caused each Plaintiff to develop ovarian cancer; Plaintiffs were caused to incur medical bills, lost wages, and conscious pain and suffering.

COUNT EIGHT – PUNITIVE DAMAGES
(All Defendants)

74. Plaintiffs incorporate by reference all preceding paragraphs as if fully set forth herein.

75. The Defendants have acted willfully, wantonly, with an evil motive, and recklessly in one or more of the following ways:

a) Defendants knew of the unreasonably high risk of ovarian cancer posed by the PRODUCTS before manufacturing, marketing, distributing and/or selling the PRODUCTS, yet purposefully proceeded with such action;

b) Despite their knowledge of the high risk of ovarian cancer associated with the PRODUCTS, Defendants affirmatively minimized this risk through marketing and promotional efforts and product labeling;

c) Through the actions outlined above, Defendants expressed a reckless indifference to the safety of users of the PRODUCTS, including Plaintiffs. Defendants' conduct, as described herein, knowing the dangers and risks of the PRODUCTS, yet concealing and/or omitting this information, in furtherance of their conspiracy and concerted action was outrageous because of Defendants' evil motive or a reckless indifference or the safety of users of the PRODUCTS.

76. As a direct and proximate result of the willful, wanton, evilly motivated and/or reckless conduct of the Defendants, the Plaintiffs have sustained damages as set forth above.

COUNT NINE – NEGLIGENT MISREPRESENTATION
(All Defendants)

77. Plaintiffs reallege each and every allegation of this Complaint as if each were set forth fully and completely herein.

78. Defendants had a duty to accurately and truthfully represent to the medical and healthcare community, Plaintiffs, and the public, that the PRODUCTS 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.

79. Defendants failed to exercise ordinary care in the representations concerning the PRODUCTS while they were involved in their manufacture, sale, testing, quality assurance, quality control, and distribution in interstate commerce, because Defendants negligently misrepresented the PRODUCTS' high risk of unreasonable, dangerous, adverse side effects.

80. Defendants breached their duty in representing that the PRODUCTS have no serious side effects.

81. 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 the PRODUCTS 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.

82. As a proximate result of Defendants' conduct, Plaintiffs have been injured and sustained severe and permanent pain, suffering, disability, impairment, loss of enjoyment of life, loss of care and comfort, and economic damages.

COUNT TEN – LOSS OF CONSORTIUM
(Against All Defendants)

83. Plaintiffs repeat and incorporate by reference all other paragraphs of this Complaint as if fully set forth herein.

84. At all times herein mentioned, Plaintiffs MELISSA ANN AGUILAR and FREDY AGUILAR were, and are, legally married as husband and wife.

85. As a direct and proximate result of the aforementioned conduct of the Defendants, and as a result of the injuries and damages to Plaintiff, Plaintiff FREDY AGUILAR has been deprived of the love, companionship, comfort, affection, society, solace or moral support, protection, loss of enjoyment of sexual relations, and loss of physical assistance in the operation and maintenance of the home, of his wife, Plaintiff MELISSA ANN AGUILAR, and has thereby sustained, and will continue to sustain damages.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs seek judgment in their favor as follows:

1. Awarding actual damages to Plaintiffs incidental to the purchase and use of the PRODUCTS in an amount in excess of $75,000 for each Plaintiff to be determined at trial;

2. Awarding the past and future costs of treatment for Plaintiffs' injuries caused by the PRODUCTS;

3. Awarding injunctive relief, including disgorgement of all profits made from and monies paid for the PRODUCTS;

4. Awarding damages for Plaintiffs' physical pain and suffering;

5. Awarding damages for Plaintiff's' mental and emotional anguish;

6. Awarding pre-judgment and post-judgment interest to Plaintiffs;

7. Awarding damages for disability and disfigurement

8. Awarding the costs and expenses of this litigation to Plaintiffs;

9. Awarding reasonable attorneys' fees and costs to Plaintiffs as provided by law; and

10. For such further relief as this Court deems necessary, just and proper.

JURY DEMAND

Plaintiff hereby requests a trial by jury.

DATED: This 18th day of May, 2016.

Respectfully submitted,

ATTORNEY LIEN CLAIMED

MATTHEW J. SILL

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New Brunswick, NJ 08933

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF OKLAHOMA

MARY R. ROBB; MELISSA ANN AGUILAR; and FREDY AGUILAR, Husband and Wife, **Plaintiffs,** **v.** **JOHNSON & JOHNSON; JOHNSON & JOHNSON CONSUMER COMPANIES, INC.; IMERYS TALC AMERICA, INC., F/K/A LUZENAC AMERICA, INC.; and PERSONAL CARE PRODUCTS COUNCIL F/K/A COSMETIC, TOILETRY AND FRAGRANCE ASSOCIATION (CTFA),** **Defendants.**	**Civil Action No. _____**

DEFENDANT IMERYS TALC AMERICA, INC.'S CONSENT TO REMOVAL

Defendant Imerys Talc America, Inc., f/k/a Luzenac America, Inc., with full reservation of any and all rights and defenses, hereby consents to removal of the above-captioned action, which was originally filed in the District Court of Oklahoma County, State of Oklahoma (Case No. CJ-2016-2532) to this Court.

Respectfully submitted,

By /s/ Nancy M. Erfle (by permission)
Nancy M. Erfle
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EXHIBIT
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IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF OKLAHOMA

MARY R. ROBB; MELISSA ANN AGUILAR; and FREDY AGUILAR, Husband and Wife, **Plaintiffs,** **v.** **JOHNSON & JOHNSON; JOHNSON & JOHNSON CONSUMER COMPANIES, INC.; IMERYS TALC AMERICA, INC., F/K/A LUZENAC AMERICA, INC.; and PERSONAL CARE PRODUCTS COUNCIL F/K/A COSMETIC, TOILETRY AND FRAGRANCE ASSOCIATION (CTFA),** **Defendants.**	**Civil Action No. _____**

DEFENDANT PERSONAL CARE PRODUCTS COUNCIL'S CONSENT TO REMOVAL

Defendant Personal Care Products Council, f/k/a Cosmetic, Toiletry, and Fragrance Association, with full reservation of any and all rights and defenses, hereby consents to removal of the above-captioned action, which was originally filed in the District Court of Oklahoma County, State of Oklahoma (Case No. CJ-2016-2532) to this Court.

Respectfully submitted,

By /s/ Sarah Izfar (by permission)
Thomas T. Locke
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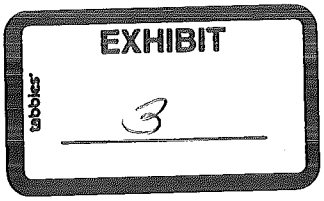

OKLAHOMA
State Courts Network

IN THE DISTRICT COURT IN AND FOR OKLAHOMA COUNTY, OKLAHOMA

Mary Robb; Melissa Ann Aguilar, and Fredy Aguilar, Husband and Wife Plaintiffs, v. Johnson & Johnson; Johnson & Johnson Consumer Companies Inc; Imerys Talc America Inc, fka Luzenac America Inc; Personal Care Products, Council, fka Cosmetic Toiletry and Fragrance Association (CTFA); Defendants.	**No. CJ-2016-2532** **(Civil relief more than $10,000: PRODUCT LIABILITY)** Filed: 05/18/2016 Judge: Dixon, Bryan C.

PARTIES

Aguilar, Fredy, Plaintiff
Aguilar, Melissa Ann, Plaintiff
Imerys Talc America Inc, Defendant
Johnson & Johnson, Defendant
Johnson & Johnson Consumer Companies Inc, Defendant
Personal Care Products, Council, Defendant
Robb, Mary, Plaintiff

ATTORNEYS

Attorney	Represented Parties
SILL, MATTHEW J. (Bar #21547) 14005 N EASTERN AVENUE EDMOND, OK 73013	Aguilar, Fredy Aguilar, Melissa Ann Robb, Mary

EVENTS

None

EXHIBIT
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ISSUES

For cases filed before 1/1/2000, ancillary issues may not appear except in the docket.

Issue # 1. Issue: PRODUCT LIABILITY (PROD)
Filed By: Robb, Mary
Filed Date: 05/18/2016

Party Name	Disposition Information
	Pending.

DOCKET

Date	Code	Description	Count	Party	Amount
05-18-2016	TEXT	CIVIL RELIEF MORE THAN $10,000 INITIAL FILING.	1		
05-18-2016	PROD	PRODUCT LIABILITY			
05-18-2016	DMFE	DISPUTE MEDIATION FEE			$ 2.00
05-18-2016	PFE1	PETITION			$ 163.00
05-18-2016	PFE7	LAW LIBRARY FEE			$ 6.00
05-18-2016	OCISR	OKLAHOMA COURT INFORMATION SYSTEM REVOLVING FUND			$ 25.00
05-18-2016	OCJC	OKLAHOMA COUNCIL ON JUDICIAL COMPLAINTS REVOLVING FUND			$ 1.55
05-18-2016	OCASA	OKLAHOMA COURT APPOINTED SPECIAL ADVOCATES			$ 5.00
05-18-2016	SSFCHSCPC	SHERIFF'S SERVICE FEE FOR COURTHOUSE SECURITY PER BOARD OF COUNTY COMMISSIONER			$ 10.00
05-18-2016	CCADMINCSF	COURT CLERK ADMINISTRATIVE FEE ON COURTHOUSE SECURITY PER BOARD OF COUNTY COMMISSIONER			$ 1.00
05-18-2016	CCADMIN0155	COURT CLERK ADMINISTRATIVE FEE ON $1.55 COLLECTION			$ 0.16
05-18-2016	SJFIS	STATE JUDICIAL REVOLVING FUND - INTERPRETER AND TRANSLATOR SERVICES			$ 0.45
05-18-2016	CCADMIN04	COURT CLERK ADMINISTRATIVE FEE ON COLLECTIONS			$ 0.50
05-18-2016	LTF	LENGTHY TRIAL FUND			$ 10.00
05-18-2016	SMF	SUMMONS FEEX4			$ 20.00

05-18-2016	P	PETITION Document Available (#1033146317) TIFF PDF
05-18-2016	TEXT	OCIS HAS AUTOMATICALLY ASSIGNED JUDGE DIXON, BRYAN C. TO THIS CASE.
05-18-2016	ACCOUNT	RECEIPT # 2016-3873127 ON 05/18/2016. PAYOR:SILL LAW TOTAL AMOUNT PAID: $244.66. LINE ITEMS: CJ-2016-2532: $183.00 ON AC01 CLERK FEES. CJ-2016-2532: $6.00 ON AC23 LAW LIBRARY FEE. CJ-2016-2532: $1.66 ON AC31 COURT CLERK REVOLVING FUND. CJ-2016-2532: $5.00 ON AC58 OKLAHOMA COURT APPOINTED SPECIAL ADVOCATES. CJ-2016-2532: $1.55 ON AC59 COUNCIL ON JUDICIAL COMPLAINTS REVOLVING FUND. CJ-2016-2532: $2.00 ON AC64 DISPUTE MEDIATION FEES. CJ-2016-2532: $0.45 ON AC65 STATE JUDICIAL REVOLVING FUND, INTERPRETER SVCS. CJ-2016-2532: $25.00 ON AC79 OCIS REVOLVING FUND. CJ-2016-2532: $10.00 ON AC81 LENGTHY TRIAL FUND. CJ-2016-2532: $10.00 ON AC88 SHERIFF'S SERVICE FEE FOR COURT HOUSE SECURITY.

JS 44 (Rev. 11/15)

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

MARY R. ROBB; MELISSA ANN AGUILAR; and FREDY AGUILAR, Husband and Wife

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

(c) Attorneys *(Firm Name, Address, and Telephone Number)*
Matthew J. Sill, Christopher J. Bergin, Katie Griffin
14005 N. Eastern Ave., Edmond, OK 73013
(405) 509-6300

DEFENDANTS

JOHNSON & JOHNSON; JOHNSON & JOHNSON CONSUMER COMPANIES, INC.; IMERYS TALC AMERICA, INC., F/K/A LUZENAC AMERICA, INC., ET AL.

County of Residence of First Listed Defendant _____
(IN U.S. PLAINTIFF CASES ONLY)

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

Attorneys *(If Known)*
Sarah J. Timberlake (Attorney for Johnson & Johnson Defendants)
Abowitz, Timberlake & Dahnke
105 N. Hudson, 10th Floor, OKC, OK 73102 (405) 236-4645

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

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

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

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

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

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

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

Brief description of cause:
Personal injury, product liability, negligence, breach of warranty, civil conspiracy

VII. REQUESTED IN COMPLAINT:

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

DEMAND $

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

VIII. RELATED CASE(S) IF ANY

(See instructions): JUDGE _____ DOCKET NUMBER _____

DATE 6-9-16

SIGNATURE OF ATTORNEY OF RECORD

FOR OFFICE USE ONLY

RECEIPT # _____ AMOUNT _____ APPLYING IFP _____ JUDGE _____ MAG. JUDGE _____

Exhibit 11

US District Court Civil Docket

U.S. District - California Northern
(Oakland)

4:16cv3838

Gould v. Johnson & Johnson et al

Date Filed:	07/08/2016		
Assigned To:	Magistrate Judge Donna M. Ryu	Class Code:	OPEN
Referred To:		Closed:	
Nature of suit:	Product Liability (365)	Statute:	28:1332
Cause:	Diversity-Product Liability	Jury Demand:	Plaintiff
Lead Docket:	None	Demand Amount:	$0
Other Docket:	None	NOS Description:	Product Liability
Jurisdiction:	Diversity		

Litigants	Attorneys
Dolores Gould Plaintiff	Ben F. Pierce Gore ATTORNEY TO BE NOTICED Pratt & Associates 1871 The Alameda Suite 425 San Jose , CA 95126 USA (408)369-0800 Fax: 408-369-0752 Email:Pgore@prattattorneys.Com
Johnson & Johnson Defendant	
Johnson & Johnson Consumer Companies, Inc. Defendant	

Date	#	Proceeding Text	Source
07/08/2016	1	COMPLAINT against All Defendants (Filing fee $ 400, receipt number 0971-10592844.). Filed byDolores Gould. (Attachments: # 1 Civil Cover Sheet Civil Case Cover Sheet, # 2 Summons Summons)(Gore, Ben) (Filed on 7/8/2016) Modified on 7/11/2016 (vlkS, COURT STAFF). (Entered: 07/08/2016)	
07/08/2016	2	Case assigned to Magistrate Judge Donna M. Ryu. Counsel for plaintiff or the removing party is responsible for serving the Complaint or Notice of Removal, Summons and the assigned judge's standing orders and all other new case documents upon the opposing parties. For information, visit E-Filing A New Civil Case at http://cand.uscourts.gov/ecf/caseopening.Standing orders can be downloaded from the court's web page at www.cand.uscourts.gov/judges. Upon receipt, the summons will be issued and returned electronically. Counsel is required to send chambers a copy of the initiating documents pursuant to L.R. 5-1(e)(7). A scheduling order will be sent by Notice of Electronic Filing (NEF) within two business days. (sv, COURT STAFF) (Filed on 7/8/2016) (Entered: 07/08/2016)	
07/11/2016	3	Initial Case Management Scheduling Order with ADR Deadlines: Case Management Statement due by 10/12/2016. Case Management Conference set for 10/19/2016 01:30 PM. (vlkS, COURT STAFF) (Filed on 7/11/2016) (Entered: 07/11/2016)	
07/11/2016	4	Summons Issued as to Johnson & Johnson, Johnson & Johnson Consumer Companies, Inc.. (vlkS, COURT STAFF) (Filed on 7/11/2016) (Entered: 07/11/2016)	

Ben F. Pierce Gore (SBN 128515)
PRATT & ASSOCIATES
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San Jose, CA 95126
Telephone: (408) 429-6506
Facsimile: (408) 369-0752
pgore@prattattorneys.com

Attorney for Plaintiff

IN THE UNITED STATES DISTRICT COURT

FOR THE NORTHERN DISTRICT OF CALIFORNIA

SAN FRANCISCO DIVISION

DOLORES GOULD, Plaintiff, vs. JOHNSON & JOHNSON, and JOHNSON & JOHNSON CONSUMER COMPANIES, INC., Defendants.	Case No. **COMPLAINT** **JURY TRIAL DEMANDED**

I. COMPLAINT

Plaintiff Dolores Gould, by and through undersigned counsel, brings this action against Defendants Johnson & Johnson ("J&J) and Johnson & Johnson Consumer Companies, Inc. ("J&J Consumer") as follows:

II. INTRODUCTION

1. This action arises out of Plaintiff Dolores Gould's diagnosis of uterine cancer, which was 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") and Shower to Shower. Plaintiff brings this cause of action against Defendants for claims arising from the 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 the products known as J&J Baby Powder and Shower to Shower (hereinafter collectively referred to as "Products").

III. PARTIES

2. Plaintiff was born in 1975, and used J&J Baby Powder and Shower to Shower, the "Products," for nearly her entire life. As a direct and proximate result of using the Products, Plaintiff was diagnosed with uterine cancer in 2006. Plaintiff resides in Oakley, in Contra Costa County, California. Plaintiff resided at the Great Lakes Naval Station, Great Lakes, Illinois at the time of her diagnosis.

3. Defendant, Johnson & Johnson ("J&J"), is a New Jersey corporation with its principal place of business in the State of New Jersey.

4. At all pertinent times, Johnson & Johnson was engaged in the business of manufacturing, marketing, testing, promoting, selling, and/or distributing the Products. At all pertinent times, Johnson & Johnson regularly transacted, solicited, and conducted business in all States of the United States, including the State of California.

5. Defendant, Johnson & Johnson Consumer Companies, Inc. is a New Jersey corporation with its principal place of business in the State of New Jersey.

6. At all pertinent times, Johnson & Johnson Consumer Companies, Inc. was engaged in the business of manufacturing, marketing, testing, promoting, selling, and/or distributing the Products. At all pertinent times, Johnson & Johnson regularly transacted, solicited, and conducted business in all States of the United States, including the State of California.

7. At all pertinent times, all Defendants were engaged in the research, development, manufacture, design, testing, sale and marketing of the Products, and introduced such products into interstate commerce with knowledge and intent that such products be sold in the State of California.

IV. JURISDICTION AND VENUE

8. This Court has original jurisdiction pursuant to 28 U.S.C. § 1332(d) because complete diversity exists between Plaintiff and Defendants, and the matter in controversy, exclusive of interest and costs, exceeds the sum or value of $75,000.

9. This Court has personal jurisdiction over Defendants because Defendants are authorized to conduct and do conduct business in the State of California. Defendants have marketed, promoted, distributed, and sold the Products in the state of California and Defendants have sufficient minimum contacts with this State and/or sufficiently avail themselves of the markets in this State through their promotion, sales, distribution and marketing within this State to render the exercise of jurisdiction by this Court permissible.

10. Venue is proper in this Court pursuant to 28 U.S.C. §§ 1391(a) and (b) because a substantial part of the events or omissions giving rise to Plaintiff's claims occurred in this judicial district. Venue is also proper under 18 U.S.C. § 1965(a) because Defendants transact substantial business in this District.

V. FACTS COMMON TO ALL COUNTS

A. Background: Talc as a Carcinogen and Defendants' Knowledge

11. Talc is a magnesium trisilicate and is mined from the earth. Talc is an inorganic mineral.

12. Talc is the main substance in talcum powders. The Johnson & Johnson Defendants manufactured the Products. The Products are composed almost entirely of talc.

13. At all pertinent times, a feasible alternative to the Products has existed. For example, 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 as the Products with nearly the same effectiveness.

14. 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 instructed 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."

15. During the time in question, the Johnson & Johnson Defendants advertised and marketed the product "Shower to Shower" as safe for use by women as evidenced in its slogan "A sprinkle a day keeps odor away", and through advertisements such as "Your body perspires in more places than just under your arms. Use SHOWER to SHOWER to feel dry, fresh, and comfortable throughout the day." And "SHOWER to SHOWER can be used all over your body."

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

17. 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 his 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.

18. 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.

a. In 1983, a case-control study found a 150% increased risk of ovarian cancer for women who use talcum powder in the genital area. Hartge, P., *et al*. Talc and Ovarian Cancer. *JAMA*. 1983; 250(14):1844.

b. In 1988, a case control study of 188 women diagnosed with epithelial ovarian cancer and 539 control women found that 52% of the cancer patients habitually used talcum powder on the genital area before their cancer diagnosis. The study showed a 50% increase in risk of ovarian cancer in women that used talcum powder on their genital area and a positive dose-response relationship. Whittemore AS, *et al*. Personal and environmental characteristics related to epithelial ovarian cancer. II. Exposures to talcum powder, tobacco, alcohol, and coffee. *Am. J. Epidemiol*. 1988 Dec; 128(6):1228-40.

c. A 1989 study looked at 235 women diagnosed with epithelial ovarian cancer and 451 controls, and found a 29% increased risk in ovarian cancer with women who reported genital talcum powder use more than once each week. Booth, M., *et al*. Risk factors for ovarian cancer: a case-control study. *Br J Cancer*. 1989 Oct; 60(4):592-8.

d. In 1992, a case-control study found a statistically significant 80% increased risk of ovarian cancer in women with more than 10,000 lifetime perineal applications of talc, demonstrating a positive dose-response relationship. Harlow BL, *et al.* Perineal exposure to talc and ovarian cancer risk. *Obstet Gynecol.* 1992 Jul; 80(1):19-26.

e. Another 1992 case-control study reported a 70% increased risk from genital talc use and a 379% increased risk of ovarian cancer of women who used talc on sanitary napkins in their genital area. Rosenblatt, K.A. *et al.* Mineral fiber exposure and the development of ovarian cancer. *Gynecol Oncol*. 1992 Apr; 45(1):20-5.

f. In 1995, the largest study of its kind to date found a statistically significant 27% increased risk in ovarian cancer for women who regularly use talc in the abdominal or perineal area. Purdie, D., *et al.* Reproductive and other factors and risk of epithelial ovarian cancer: An Australian case-control study. Survey of Women's Health Study Group. *Int J Cancer*. 1995 Sep 15; 62(6):678-84.

g. In 1996, a case-control study found a statistically significant 97% increased risk of ovarian cancer in women who used what they described as a "moderate" or higher use of talc-based powders in their genital area. *See* Shushan, A., *et al*. Human menopausal gonadotropin and the risk of epithelial ovarian cancer. *Fertil. Steril.* 1996 Jan; 65(1):13-8.

h. In 1997, a case control study of 313 women with ovarian cancer and 422 without this disease found that the women with cancer were more likely to have applied talcum powder to their external genitalia area. Women using these products had a statistically significant 50% to 90% higher risk of developing ovarian cancer. Cook, LS, *et al.* Perineal powder exposure and the risk of ovarian cancer. *Am. J Epidemiol.* 1997 Mar 1; 145(5):459-65.

i. In 1997, a case-control study involving over 1,000 women found a statistically significant increased risk of 42% for ovarian cancer for women who applied talc via

sanitary napkins to their perineal area. Chang, S, *et al.* Perineal talc exposure and risk of ovarian carcinoma. *Cancer*. 1997 Jun 15; 79(12):2396-401.

j. In 1998, a case-control study found a 149% increased risk of ovarian cancer in women who used talc-based powders on their perineal area. Godard, B., *et al.* Risk factors for familial and sporadic ovarian cancer among French Canadians: a case-control study. *Am J Obstet Gynecol*. 1998 Aug; 179(2):403-10.

k. Dr. Daniel Cramer conducted another case-control study in 1999, observing 563 women newly diagnosed with epithelial ovarian cancer and 523 women in a control. The study found a statistically significant 60% increased risk of ovarian cancer in women that used talc-based body powders on their perineal area and an 80% increase in risk for women with over 10,000 lifetime applications. Cramer, DW, *et al.* Genital talc exposure and risk of ovarian cancer. *Int J Cancer*. 1999 May 5; 81(3):351-56.

l. In 2000, a case-control study of over 2,000 women found a statistically significant 50% increased risk of ovarian cancer from genital talc use in women. Ness, RB, *et al.* Factors related to inflammation of the ovarian epithelium and risk of ovarian cancer. *Epidemiology*. 2000 Mar; 11(2):111-7.

m. In 2004, a case-control study of nearly 1,400 women from 22 counties in Central California found a statistically significant 37% increased risk of epithelial ovarian cancer from women's genital talc use, and a 77% increased risk of serous invasive ovarian cancer from women's genital talc use. Importantly, this study also examined at women's use of cornstarch powders as an alternative to talc, and found no increased risk in ovarian cancer in women in the cornstarch group, further supporting the causal connection between genital talc use and ovarian cancer. Mills, PK, *et al*. Perineal talc exposure and epithelial ovarian cancer risk in the Central Valley of California. *Int J Cancer*. 2004 Nov 10; 112(3):458-64.

n. In 2008, a combined study of over 3,000 women from a New England-based case-control study found a general 36% statistically significant increased risk of epithelial ovarian cancer from genital talc use and a 60% increased risk of the serous invasive ovarian cancer subtype. The study also found a strong dose-response relationship between the cumulative talc exposure and

incidence of ovarian cancer, adding further support to the causal relationship. Gates, MA, *et al.* Talc Use, Variants of the GSTM1, GSTT1, and NAT2 Genes, and Risk of Epithelial Ovarian Cancer. *Cancer Epidemiol Biomarkers Prev*. 2008 Sep; 17(9):2436-44.

o. A 2009 case-control study of over 1,200 women found the risk of ovarian cancer increased significantly with increasing frequency and duration of talc use, with an overall statistically significant 53% increased risk of ovarian cancer from genital talc use. That increased risk rose dramatically, to 108%, in women with the longest duration and most frequent talc use. Wu, AH, *et al.* Markers of inflammation and risk of ovarian cancer in Los Angeles County. *Int. J Cancer*. 2009 Mar 15; 124(6):1409-15.

p. In 2011, another case-control study of over 2,000 women found a 27% increased risk of ovarian cancer from genital talc use. Rosenblatt, KA, *et al.* Genital powder exposure and the risk of epithelial ovarian cancer. *Cancer Causes Control*. 2011 May; 22(5):737-42.

q. In June of 2013, a pooled analysis of over 18,000 women in eight case-control studies found a 20% to 30% increased risk of women developing epithelial ovarian cancer from genital powder use. The study concluded by stating, "Because there are few modifiable risk factors for ovarian cancer, avoidance of genital powders may be a possible strategy to reduce ovarian cancer incidence." Terry, KL, *et al.* Genital powder use and risk of ovarian cancer: a pooled analysis of 8,525 cases and 9,859 controls. *Cancer Prev Res (Phila)*. 2013 Aug; 6(8):811-21.

19. Researchers have also examined the link between endometrial cancer, a form of uterine cancer, and the application of talcum powder to the perineal area.

20. In 2010, one such study analyzed data from a 1976 cohort study of over 66,000 women, and found a statistically significant 21% increased risk of endometrial (uterine) cancer in postmenopausal women who had ever applied talcum powder in the perineal area. This risk rose to 24% for postmenopausal women who applied talc in the perineal area "regularly," defined as at least once a week. Karageorgi S., *et al.* (2010) Perineal use of talcum powder and endometrial cancer risk. *Cancer Epidemiol Biomarkers Prev*. 2010 May; 19:1269–1275.

21. 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.

22. 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, Inc., and Johnson & Johnson Consumer Companies, Inc. were members of the CTFA. 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 cancer.

23. 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 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 ovarian cancer risk they pose.

24. In 1996, the condom industry stopped dusting condoms with talc due to the growing health concerns.

25. In February of 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 were 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 body 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."

26. In approximately 2006, the Canadian government under The Hazardous Products Act and associated Controlled Products Regulations classified talc as a "D2A," "very toxic," 51 "cancer causing" substance under its Workplace Hazardous Materials Information System (WHMIS). Asbestos is also classified as "D2A".

27. In 2006, Imerys Talc began placing a warning on the Material Safety Data Sheets (MSDS) it provided to the Johnson & Johnson Defendants regarding the talc it sold to them to be used in the Products. 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.

28. Defendants had a duty to know and warn about the hazards associated with the use of the Products.

29. Defendants failed to inform customers and end users of the Products of a known catastrophic health hazard associated with the use of the Products.

30. In addition, Defendants procured and disseminated false, misleading, and biased information regarding the safety of the Products to the public and used influence over governmental and regulatory bodies regarding talc.

B. Plaintiff's Use of the Products

31. Plaintiff was born in 1975, and is a resident of Contra Costa County, California.

32. When Plaintiff was an infant, her mother used Shower to Shower, and applied J&J Baby Powder to Plaintiff. As she grew up, Plaintiff liked the smell and feel of the Products, and used them continuously until she entered the military at the Great Lakes Naval Station.

33. Plaintiff continued to use the Products following her discharge from the Navy.

34. There was never any indication, on the Products packaging or otherwise, that this normal use could and would cause her to develop uterine cancer.

35. Plaintiff was diagnosed with uterine cancer in 2006.

36. In 2007, Plaintiff underwent surgical removal of her uterus, ovaries and fallopian tubes.

37. Plaintiff's uterine cancer has been in remission since 2007.

COUNT ONE - STRICT LIABILITY
(FAILURE TO WARN)

38. Plaintiff incorporates by reference each of the preceding paragraphs as if fully set forth herein.

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

40. At all pertinent times, Plaintiff used the Products to powder her perineal area, which is a reasonably foreseeable use.

41. At all pertinent times, 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 cancer, including, but not limited to, ovarian and uterine cancer, based upon scientific knowledge dating back for decades.

42. At all pertinent times, including the time of sale and consumption, the Products, when put to the aforementioned reasonably foreseeable use, were in an unreasonably dangerous and defective condition because they failed to contain adequate and proper warnings and/or instructions regarding the increased risk of cancer, including, but not limited to, ovarian and uterine cancer, associated with the use of the Products by women to powder their perineal area. Defendants themselves failed to properly and adequately warn and instruct Plaintiff as to the risks and benefits of the Products given her need for this information.

43. Had Plaintiff received a warning that the use of the Products would significantly increase her risk of developing cancer, she would not have used them. As a proximate result of Defendants' design, manufacture, marketing, sale, and distribution of the Products, Plaintiff was injured catastrophically, and was caused severe pain, suffering, disability, impairment, loss of enjoyment of life, loss of care, comfort, and economic damages.

44. The development of uterine cancer by Plaintiff was the direct and proximate result of the unreasonably dangerous and defective condition of the Products at the time of sale and consumption, including their lack of warnings; Plaintiff suffered injuries and damages including, but not limited to, physical and mental pain and suffering, and medical expenses.

45. Defendants' products were defective because they failed to contain warnings and/or instructions, and breached express warranties and/or failed to conform to express factual representations upon which Plaintiff justifiably relied in electing to use the Products. The defect or defects made the Products unreasonably dangerous to persons, such as Plaintiff, who could reasonably be expected to use and rely upon such products. As a result, the defect or defects were a producing cause of Plaintiff's injuries and damages.

46. Defendants' products failed to contain, and continue to this day not to contain, adequate warnings and/or instructions regarding the increased risk of cancer, including, but not limited to, ovarian and uterine cancer, with the use of their products by women. 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 products increase the risk of cancer in women when used in the perineal area.

47. Plaintiff sustained the following damages as a foreseeable, direct, and proximate result of Defendants' acts and/or omissions:

a. Economic losses including medical care and lost earnings; and

b. Noneconomic losses including physical and mental pain and suffering, emotional distress, inconvenience, loss of enjoyment and impairment of quality of life, past and future.

COUNT TWO – STRICT LIABILITY
(DESIGN AND/OR MANUFACTURING DEFECT)

48. Plaintiff incorporates by reference each of the preceding paragraphs as if fully set forth herein.

49. Defendants engaged in the design, development, manufacture, marketing, sale, and distribution of the Products in a defective and unreasonably dangerous condition to consumers, including Plaintiff.

50. Defendants caused the Products to enter the stream of commerce and to be sold through various retailers, where Plaintiff purchased the Products.

51. The Products were expected to, and did, reach consumers, including Plaintiff, without change in the condition in which it was manufactured and sold by Defendants and/or otherwise released into the stream of commerce.

52. Plaintiff used the Products in a manner normally intended, recommended, promoted, and marketed by Defendants.

53. Products failed to perform safely when used by Plaintiff in a reasonably foreseeable manner, specifically increasing her of developing uterine cancer.

54. The propensity of talc fibers to translocate into the female reproductive system, including, but not limited to, the ovaries and endometrial lining of the uterus, thereby substantially increasing the risk of cancer, including, but not limited to, ovarian and uterine cancer, renders the Products unreasonably dangerous when used in the manner it was intended and to an extent beyond that would be contemplated by the ordinary consumer.

55. Importantly, the Products are an inessential cosmetic product that do not treat or cure any serious disease. Further, safer alternatives, including corn-starch based powders, have been readily available for decades.

56. Defendants have known, or should have known, that the Products are unreasonably dangerous when used by a woman in her perineal area but have continued to design, manufacture, sell, distribute, market, promote, and supply the Products so as to maximize sales and profits at the expense of public health and safety in conscious disregard of the foreseeable harm to the consuming public, including Plaintiff.

57. As a direct and proximate result of Defendants' conduct, including actions, omissions, and misrepresentations, Plaintiff sustained the following damages:

a. Economic losses including medical care and lost earnings; and

b. Noneconomic losses including physical and mental pain and suffering, emotional distress, inconvenience, loss of enjoyment and impairment of quality of life, past and future.

COUNT THREE-NEGLIGENCE

58. Plaintiff incorporates by reference each of the preceding paragraphs as if fully set forth herein.

59. The Johnson & Johnson Defendants were negligent in marketing, designing, manufacturing, producing, supplying, inspecting, testing, selling and/or distributing the Products in one or more of the following respects:

- In failing to warn Plaintiff of the hazards associated with the use of the Products;
- In failing to properly test their products to determine adequacy and effectiveness or safety measures, if any, prior to releasing the Products 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 the Products;
- In failing to inform ultimate users, such as Plaintiff as to the safe and proper methods of handling and using the Products;
- In failing to remove the Products from the market when Defendants knew or should have known the Products were defective;

- In failing to instruct the ultimate users, such as Plaintiff, as to the methods for reducing the type of exposure to the Products which caused increased risk of cancer, including, but not limited to, ovarian and uterine cancer;
- In failing to inform the public in general and Plaintiff in particular of the known dangers of using the Products for dusting the perineum;
- In failing to advise users how to prevent or reduce exposure that caused increased risk for cancer, including, but not limited to, ovarian and uterine cancer;
- In marketing and labeling the Products 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 injuries and damages sustained by Plaintiff.

60. At all pertinent times, the Johnson & Johnson Defendants knew or should have known that the Products were unreasonably dangerous and defective when put to their reasonably anticipated use.

61. Plaintiff sustained the following damages as a foreseeable, direct, and proximate result of Defendants' acts and/or omissions:

a. Economic losses including medical care and lost earnings; and

b. Noneconomic losses including physical and mental pain and suffering, emotional distress, inconvenience, and loss of enjoyment and impairment of quality of life, past and future.

COUNT FOUR- BREACH OF EXPRESS WARRANTY

62. Plaintiff incorporates by reference each of the preceding paragraphs as if fully set forth herein.

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

64. The Products did not conform to these express representations because they cause serious injury when used by women in the perineal area in the form of cancer, including, but not limited to, ovarian and uterine cancer.

65. Plaintiff sustained the following damages as a foreseeable, direct, and proximate result of Defendants' acts and/or omissions:

a. Economic losses including medical care and lost earnings; and

b. Noneconomic losses including physical and mental pain and suffering, emotional distress, inconvenience, loss of enjoyment and impairment of quality of life, past and future.

COUNT FIVE – BREACH OF IMPLIED WARRANTIES

66. Plaintiff incorporates by reference each of the preceding paragraphs as if fully set forth herein.

67. At the time the Defendants manufactured, marketed, labeled, promoted, distributed and/or sold the Products, the Johnson & Johnson Defendants knew of the uses for which the Products were intended, including use by women in the perineal area, and impliedly warranted the Products to be of merchantable quality and safe for such use.

68. Defendants breached their implied warranties of the Products sold to Plaintiff because they were not fit for their common, ordinary and intended uses, including use by women in the perineal area.

69. Plaintiff sustained the following damages as a foreseeable, direct, and proximate result of Defendants' acts and/or omissions:

a. Economic losses including medical care and lost earnings; and

b. Noneconomic losses including physical and mental pain and suffering, emotional distress, inconvenience, loss of enjoyment and impairment of quality of life, past and future.

COUNT SIX – PUNITIVE DAMAGES

70. Plaintiff incorporates by reference each of the preceding paragraphs as if fully set forth herein.

71. Defendants have acted willfully, wantonly, with an evil motive, and recklessly in one or more of the following ways:

a. Defendants knew of the unreasonably high risk of cancer, including, but not limited to, ovarian and uterine cancer, posed by the Products 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 the Products, Defendants affirmatively minimized this risk through marketing and promotional efforts and product labeling;

c. Through the actions outlined above, Defendants expressed a reckless indifference to the safety of users of the Products, including Plaintiff. Defendants' conduct, as described herein, knowing the dangers and risks of the Products, yet concealing and/or omitting this information, in furtherance of their conspiracy and concerted action was outrageous because of Defendants' evil motive or a reckless indifference to the safety of users of the Products.

72. Plaintiff sustained the following damages as a foreseeable, direct, and proximate result of Defendants' acts and/or omissions:

a. Economic losses including medical care and lost earnings; and

b. Noneconomic losses including physical and mental pain and suffering, emotional distress, inconvenience, loss of enjoyment and impairment of quality of life, past and future.

COUNT SEVEN – NEGLIGENT MISREPRESENTATION

73. Plaintiff incorporates by reference each of the preceding paragraphs as if fully set forth herein.

74. Defendants had a duty to accurately and truthfully represent to the medical and healthcare community, Plaintiff, and the public, that the Products 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.

75. Defendants failed to exercise ordinary care in the representations concerning the Products while they were involved in their manufacture, sale, testing, quality assurance, quality

control, and distribution in interstate commerce, because Defendants negligently misrepresented the Products' high risk of unreasonable, dangerous, adverse side effects.

76. Defendants breached their duty in representing that the Products have no serious side effects.

77. 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 the Products 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, including, but not limited to, ovarian and uterine cancer.

78. Plaintiff sustained the following damages as a foreseeable, direct, and proximate result of Defendants' acts and/or omissions:

a. Economic losses including medical care and lost earnings; and

b. Noneconomic losses including physical and mental pain and suffering, emotional distress, inconvenience, loss of enjoyment and impairment of quality of life, past and future.

COUNT EIGHT – FRAUDULENT CONCEALMENT

79. Plaintiff incorporates by reference each of the preceding paragraphs as if fully set forth herein.

80. Defendants owed consumers, including Plaintiff, a duty to fully and accurately disclose all material facts regarding the Products, 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.

81. Defendants actively and intentionally concealed and/or suppressed material facts, in whole or in part, to induce consumers, including Plaintiff, to purchase and use the Products 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; and

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."

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

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

83. 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.

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

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

86. Plaintiff sustained the following damages as a foreseeable, direct, and proximate result of Defendants' acts and/or omissions:

a. Economic losses including medical care and lost earnings; and

b. Noneconomic losses including physical and mental pain and suffering,

emotional distress, inconvenience, loss of enjoyment and impairment of quality of life, past and future.

COUNT NINE – FRAUD
(INTENTIONAL MISREPRESENTATION)

87. Plaintiff incorporates by reference each of the preceding paragraphs as if fully set forth herein.

88. Defendants, who engaged in the development, manufacture, marketing, sale and distribution of personal hygiene products, including the Products, owed a duty to provide accurate and complete information regarding said products.

89. Defendants fraudulently misrepresented the use of the Products as safe and effective, specifically:

a. Johnson & Johnson's website calls it a "misconception" that talc in baby powder can be "absorbed into the body";

b. Johnson & Johnson print advertisements directed at adult women asserted that, because Johnson & Johnson Baby Powder is used on babies, women can "trust" that Johnson & Johnson will take "just as much care" of their skin;

c. Misleading consumers in advertisements that the talc in Johnson & Johnson Baby Powder is safe because it comes from "nature" and is "pure";

d. Johnson & Johnson, on its website, claims that "30 years of research by independent scientists, review boards and global authorities [] have concluded that talc can be used safely in personal care products," failing to mention the dozens of studies demonstrating a relationship between feminine talc use and ovarian cancer, as well as the decision by IARC to label feminine talc powder use as "possibly carcinogenic"; and

e. On the Johnson & Johnson Baby Powder bottle, Defendants include a conspicuous warning to mothers to prevent babies from inhaling the powder and the inclusion of this lone warning implies to the consumer that Johnson & Johnson Baby Powder is safe in all other manners of use.

90. Defendants knew that these misrepresentations and/or omissions were material, and that they were false, incomplete, misleading, deceptive and deceitful when they were made.

91. Defendants made the misrepresentations and/or omissions for the purpose of deceiving and defrauding consumers, including Plaintiff, with the intention of having them act and rely on such misrepresentations and/or omissions.

92. Plaintiff relied, with reasonable justification, on the misrepresentations by Defendants, which induced her to purchase and use the Products on a regular basis for decades.

93. Defendants profited, significantly, from their unethical and illegal conduct that fraudulently induced Plaintiff, and millions of other consumers, to purchase a dangerous and defective product.

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

95. As a foreseeable, direct, and proximate result of the aforementioned fraudulent misrepresentations by Defendants, Plaintiff sustained the following damages:

a. Economic losses including medical care and lost earnings; and

b. Noneconomic losses including physical and mental pain and suffering, emotional distress, inconvenience, loss of enjoyment and impairment of quality of life, past and future.

COUNT TEN – VIOLATION OF THE UCL

96. Plaintiff incorporates by reference each of the preceding paragraphs as if fully set forth herein.

97. California's UCL prohibits any "unlawful, unfair, or fraudulent" business practice. Cal. Bus. & Prof. Code. § 17200. Defendants' misrepresentations and omissions described herein are "unlawful, unfair and fraudulent" under California law.

98. Plaintiff purchased and used the Johnson & Johnson Defendants' Products primarily for personal use and thereby suffered ascertainable losses as a result of Defendants' actions in violation of the UCL.

99. Had Defendants not engaged in the deceptive conduct described herein, Plaintiff would not have purchased and/or paid for Defendants' Products, and would not have incurred related injuries and damages.

100. Defendants engaged in wrongful conduct while at the same time obtaining, under false pretenses, monetary gain from Plaintiff for the Products that would not have been paid had Defendants not engaged in fraudulent conduct.

101. Defendants engaged in fraudulent methods of competition and deceptive acts or practices that were proscribed by law, including the following:

a. Representing that goods or services have characteristics, ingredients, uses, benefits, or quantities that they do not have;

b. Advertising goods or services with the intent not to sell them as advertised; and

c. Engaging in fraudulent conduct that creates a likelihood of confusion or misunderstanding.

102. Defendants intended for Plaintiff to rely on their representations and advertisements regarding the Products in order to achieve monetary gain from Plaintiff through her purchase of the Products.

103. Plaintiff was injured by the cumulative and indivisible nature of Defendants' conduct. The cumulative effect of Defendants' conduct directed at Plaintiff and other consumers was to create demand for and sell the Products. Each aspect of Defendants' conduct combined to artificially create sales of the Products.

104. 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 the Products.

105. Had Defendants not engaged in the deceptive conduct described above, Plaintiff would not have purchased and/or paid for the product, and would not have incurred related injuries and damages.

106. Defendants' intentional, deceptive, unconscionable, and fraudulent representations and material omissions to Plaintiff, physicians, and consumers, constituted unfair and deceptive acts and trade practices in violation of Cal. Bus. & Prof. Code. § 17200.

107. Defendants' actions, as complained of herein, constitute unfair competition or unfair, unconscionable, deceptive or fraudulent acts, or trade practices in violation of Cal. Bus. & Prof. Code. § 17200.

108. Defendants have engaged in unfair competition or unfair or deceptive acts or trade practices, or have made false representations in violation of Cal. Bus. & Prof. Code. § 17200.

109. Defendants are the suppliers, manufacturers, advertisers, and sellers of the Products, and are subject to liability under Cal. Bus. & Prof. Code. § 17200 for unfair, deceptive, fraudulent and unconscionable consumer sales practices.

110. Defendants violated Cal. Bus. & Prof. Code. § 17200, by knowingly and falsely representing that Defendants' Products were fit to be used for the purpose for which they were intended, when in fact the Products were and are defective and dangerous, and by other acts alleged herein. These representations were made in marketing and promotional materials.

111. Defendants had actual knowledge of the defective and dangerous condition of Defendants' Products, and failed to take any action to cure such defective and dangerous conditions.

112. Plaintiff relied upon Defendants' misrepresentations and omissions in determining which Products to use.

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

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

115. As a direct and proximate result of Defendants' violations of Cal. Bus. & Prof. Code. § 17200, Plaintiff sustained the following damages:

a. Economic losses including medical care and lost earnings; and

b. Noneconomic losses including physical and mental pain and suffering, emotional distress, inconvenience, loss of enjoyment and impairment of quality of life, past and future.

COUNT ELEVEN – RESTITUTION OR DISGORGEMENT BASED ON UNJUST ENRICHMENT

116. Plaintiff incorporates by reference each of the preceding paragraphs as if fully set forth herein.

117. As a result of the Johnson & Johnson Defendants' unlawful, fraudulent and misleading labeling, advertising, marketing and sales of the Products described herein, Defendants were unjustly enriched at the expense of Plaintiff.

118. Defendants sold their Products to Plaintiff as described herein, and profited therefrom. It would be against equity and good conscience to permit Defendants to retain the ill-gotten benefits Defendants received from Plaintiff, in light of the fact that the Products were not what Defendants purported them to be. Thus, it would be unjust and inequitable for Defendants to retain the benefit without restitution or disgorgement to Plaintiff of monies paid to Defendants for the Products.

COUNT TWELVE - CONSUMER LEGAL REMEDIES ACT

119. Plaintiff incorporates by reference each of the preceding paragraphs as if fully set forth herein.

120. This cause of action is brought under the Consumers Legal Remedies Act, California Civil Code §§ 1750, et seq.

121. Plaintiff presently seeks only injunctive relief under this cause of action. Plaintiff will amend this cause of action to seek damages after giving the notice required by Cal. Civ. Code § 1782.

122. Plaintiff is a "consumer" within the meaning of Civil Code § 1761(d).

123. Defendants' sales of their Products constitute "transactions" within the meaning of Civil Code § 1761(e). The Products purchased by Plaintiff constitute "goods" under Civil Code § 1761(a).

124. As described above, Defendants' representations to Plaintiff were false, in violation of the CLRA. Defendants' conduct violated, among others, (1) Civil Code § 1770(a)(5), which prohibits "[r]epresenting that goods or services have sponsorship, approval, characteristics, ingredients, uses, benefits, or quantities which they do not have or that a person has a sponsorship, approval, status, affiliation, or connection which he or she does not have"; (2) Civil Code § 1770(a)(7), which prohibits "[r]epresenting that goods or services are of a particular standard, quality, or grade, or that goods are of a particular style or model, if they are of another"; and (3)

Civil Code § 1770(a)(9), which prohibits "[a]dvertising goods or services with intent not to sell them as advertised."

125. The violations of the CLRA by Defendants were willful, oppressive, and fraudulent.

126. Pursuant to Cal. Civ. Code § 1782(a)(2), Plaintiff is entitled to an order enjoining the above-described acts and practices.

COUNT 13 – FALSE ADVERTISING LAW

127. Plaintiff incorporates by reference each of the preceding paragraphs as if fully set forth herein.

128. This cause of action is brought under California's False Advertising Law, California Business & Professions Code §§ 17500, et seq.

129. The FAL prohibits the dissemination of any advertising which is untrue or misleading, and which is known, or which by the exercise of reasonable care should be known, to be untrue or misleading. Cal. Bus. & Prof. Code § 17500.

130. The Johnson & Johnson Defendants engaged in a scheme of offering the Products described herein for sale to Plaintiff by way of advertising, product packaging and labeling, and other promotional materials. Defendants misrepresented the true contents and nature of Defendants' Products.

131. As explained herein, Defendants advertised, and continue to advertise, its Products in a manner that was, and is, untrue and misleading.

132. Defendants knew or should have known that their advertisements were and are misleading or likely to mislead for the reasons set forth above.

133. Defendants' advertisements and inducements were made within California and come within the definition of advertising as contained in Business and Professions Code §17500, et seq.

134. Defendants' Product packaging and labeling, and promotional materials, were intended as inducements to purchase Defendants' Products, and are statements disseminated by Defendants to Plaintiff.

135. Defendants' advertisements induced Plaintiff to purchase Defendants' Products, as described herein.

136. Plaintiff suffered injuries in fact and losses of money or property as a result of Defendants' acts and practices, which violate §§ 17500, et seq.

TOLLING OF STATUTE OF LIMITATIONS

137. Plaintiff incorporates by reference each of the preceding paragraphs as if fully set forth herein.

138. Plaintiff suffered an illness that had a latency period and did not arise until many years after exposure. Plaintiff was not aware at the time of her diagnosis that her uterine cancer was caused by her use of the Defendants' Products. 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 her uterine cancer was linked to her use of Defendants' Products.

139. 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 the true risks associated with the Products.

140. As a result of Defendants' actions, Plaintiff 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.

141. Furthermore, Defendants are estopped from relying on any statute of limitations because of their concealment of the truth, quality and nature of the Products. Defendants were under a duty to disclose the true character, quality and nature of the Products 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 Plaintiff, her medical providers and/or her health facilities.

142. Defendants had the ability to and did spend enormous amounts of money in furtherance of their purpose of marketing and promoting a profitable product, notwithstanding the known or reasonably known risks. Plaintiff and medical professionals could not have afforded and

could not have possibly conducted studies to determine the nature, extent and identity of related health risks, and were forced to rely on Defendants' representations.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff demands judgment against Defendants on each of the above-referenced claims and causes of action, and as follows:

a. Awarding compensatory damages in excess of $75,000, including, but not limited to pain, suffering, emotional distress, loss of enjoyment of life, and other non-economic damages in an amount to be determined at trial of this action;

b. Awarding economic damages in the form of medical expenses, out of pocket expenses, lost earnings, and other economic damages in an amount to be determined at trial of this action;

c. Punitive and/or exemplary damages for the wanton, willful, fraudulent, reckless acts of the Defendants who demonstrated a complete disregard and reckless indifference for the safety and welfare of the general public and Plaintiff in an amount sufficient to punish Defendants and deter future similar conduct;

d. For an order requiring Defendants to immediately cease and desist from all fraudulent, deceptive, unlawful, and illegal conduct described above;

e. Prejudgment interest;

f. Postjudgment interest;

g. Awarding Plaintiff's reasonable attorneys' fees;

h. Awarding Plaintiff the costs of these proceedings; and

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

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Dated: July 8, 2016

By: /s/ Pierce Gore

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