

**IN THE UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY**

**IN RE: JOHNSON & JOHNSON
TALCUM POWDER PRODUCTS
MARKETING, SALES PRACTICES
AND LIABILITY LITIGATIONS**

Master Docket No. 3:16-md-2738 (FLW)

MDL 2738

Honorable Freda L. Wolfson

This document relates to:

Mihalich v. Johnson & Johnson, et al.,
S.D. Illinois, C.A. No. 3:14-00600

Case No.: 3:16-cv-6695 (FLW)

Estrada v. Johnson & Johnson, et al.,
E.D. California, C.A. No. 2:14-01051

Case No. 3:16-cv-7492 (FLW)

**JOINT REPORT REGARDING CONSUMER CLASS CASES
FOR FEBRUARY 22, 2017 STATUS CONFERENCE**

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In advance of the February 22, 2017 status conference, the Consumer Class Plaintiffs and Johnson & Johnson Defendants jointly write to update the Court on the progress of the Consumer Class Cases. This report is intended to supplement the information provided to the Court in the concurrently filed Proposed Joint Agenda and Report for February 22, 2017 Status Conference by the PSC, Johnson & Johnson Defendants, Imerys Talc America, Inc., and Personal Care Products Council (ECF No. 114) (“Agenda and Report”). The Consumer Class Plaintiffs are working closely with the personal injury plaintiffs, so much of the Agenda and Report applies to the class actions.

1. Pending Motions

On December 22, 2016, the Johnson & Johnson Defendants filed a motion to dismiss in the *Estrada* case. Plaintiff filed her opposition on January 23, 2017, and the Johnson & Johnson Defendants filed their reply brief on February 6, 2017. The motion is fully briefed. There is no hearing for oral argument currently set for this motion. No other motions are pending with regard to the Consumer Class Cases.

2. Status of Discovery

In an effort to avoid duplication between the Consumer Class Cases and personal injury cases, Class Counsel has jointly participated in the discovery efforts ongoing with regard to the Johnson & Johnson Defendants as outlined in the Agenda and Report. Consumer Class Plaintiffs have made an effort to include their requested discovery in the written discovery currently the subject of meet and confer discussions with the Johnson & Johnson Defendants. However, depending on the outcome of that discovery, Consumer Class Plaintiffs may have some unique discovery that they will address through separate requests.

3. Pending Consumer Class Cases

Estrada v. Johnson & Johnson et al., No. 3:16-cv-7492, and *Mihalich v. Johnson & Johnson et al.*, No. 3:16-cv-6695, remain the only two Consumer Class Cases filed in the MDL. The parties are not aware of any other related consumer class actions.

4. Staging of Discovery

A. Plaintiffs' Position

In further support of Plaintiffs' position as stated in the Agenda and Report, Consumer Class Plaintiffs do not believe that discovery should be staged. While there is certainly overlap between the Consumer Class Cases and the personal injury cases, resolution of the issue outlined by Defendants as being central to all cases – “whether the use of cosmetic grade talc in the perineal area can cause cancer of the reproductive system” – is not necessarily determinative of the Consumer Class Cases. The relevant question in the Consumer Class Cases is whether Johnson & Johnson's alleged misrepresentations and omissions were likely to mislead a reasonable consumer. Plaintiffs need only show that misrepresentation, omissions and concealment of a potential risk of ovarian cancer is material to a reasonable consumer, especially since talc is merely a cosmetic product.

B. The Johnson & Johnson Defendants' Position

The Johnson & Johnson Defendants' position on discovery is set out more fully in the Agenda and Report, filed concurrently herewith. As set out in that letter, scientific and medical causation issues are an important initial topic for discovery, and focusing on those issues at this time is appropriate for the reasons set out in the Agenda and Report. Although the Consumer Class Cases will likely involve other issues as well, the Johnson & Johnson Defendants disagree with Plaintiffs' assertion that “Plaintiffs need only show that

misrepresentations, omissions and concealment of a potential risk of ovarian cancer is material to a reasonable consumer.” What Plaintiffs will ultimately “need to show” for their Consumer Class claims is, in part, the subject of a pending motion to dismiss in the *Estrada* case (Case No. 3:16-cv-7492, ECF No. 47), and will also depend on, among other things, the substantive law(s) that apply to the putative class members’ claims. The Johnson & Johnson Defendants contend that whether, and to what extent, additional discovery is needed related to the Consumer Class Cases (beyond the discovery already addressed in the Agenda and Report) should be determined after the Court has resolved the pending motion to dismiss in the *Estrada* case.

Respectfully submitted,

Dated: February 17, 2017

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Dated: February 17, 2017

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of the foregoing was electronically filed with the United States District Court, Southern District of Illinois, via the Court's CM/ECF filing system, which will send notification of such filing to counsel of record, on February 17, 2017.

s/ Timothy G. Blood

TIMOTHY G. BLOOD