

**CIRCUIT COURT OF THE COUNTY OF ST. LOUIS  
STATE OF MISSOURI**

MICHAEL BLAES,

Plaintiff,

v.

JOHNSON & JOHNSON

**Serve:** Steven M. Rosenberg  
Registered Agent  
One Johnson & Johnson Plaza  
New Brunswick, NJ 08933

and

JOHNSON & JOHNSON CONSUMER  
COMPANIES, INC.

**Serve:** Person in Charge  
One Johnson & Johnson Plaza  
New Brunswick, NJ 08933

and

IMERYS TALC AMERICA, INC., f/k/a  
LUZENAC AMERICA, INC.

**Serve:** CSC-Lawyers Incorporating Service  
Company  
Registered Agent  
221 Bolivar  
Jefferson City, MO 65101

and

PERSONAL CARE PRODUCTS COUNCIL,  
f/k/a COSMETIC, TOILETRY, AND  
FRAGRANCE ASSOCIATION

**Serve:** Person In Charge  
1101 17<sup>th</sup> Street N.W.  
Washington, D.C. 20036

and

Case No.

Division:

**JURY TRIAL DEMANDED**

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SCHNUCKS, INC.

**Serve:** Terry E. Schnuck  
Registered Agent  
12921 Enterprise Way, BX 4400  
Bridgeton, MO 63044

and

SCHNUCKS SUPERMARKETS, INC.

**Serve:** Terry E. Schnuck  
Registered Agent  
12921 Enterprise Way, BX 4400  
Bridgeton, MO 63044

and

SCHNUCKS FOOD & DRUGS, INC.

**Serve:** Terry E. Schnuck  
Registered Agent  
12921 Enterprise Way, BX 4400  
Bridgeton, MO 63044

and

SCHNUCK SUPER CENTERS, INC.

**Serve:** Terry E. Schnuck  
Registered Agent  
12921 Enterprise Way, BX 4400  
Bridgeton, MO 63044

and

WALGREEN CO.

**Serve:** The Prentice-Hall Corporation  
System, Inc.  
221 Bolivar Street  
Jefferson City, MO 65101

Defendants.

**PETITION**

COMES NOW Plaintiff Michael Blaes, by and through his undersigned counsel, and for his 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, Schnucks, Inc., Schnucks Supermarkets, Inc., Schnucks Food & Drugs, Inc., Schnucks Super Centers, Inc., and Walgreen Co., states the following:

### **INTRODUCTION**

1. This action arises out of the January 12, 2011, death of Shawn Blaes. Ms. Blaes died prematurely from ovarian cancer, which was directly and proximately caused by her regular and prolonged use of talcum powder containing products known as Johnson & Johnson Baby Powder and Shower to Shower (hereinafter “the PRODUCTS”) in the perineal area. Plaintiff Michael Blaes was the lawful spouse of decedent, Shawn Blaes, at the time of her death, and has standing to pursue this action pursuant to RSMo § 537.080, *et seq.*, commonly known as the Missouri Wrongful Death Act.

### **PARTIES, JURISDICTION, and VENUE**

2. Plaintiff Michael Blaes is an adult and citizen of the State of Missouri. He was the lawful spouse of the decedent, Shawn Blaes, at the time of her premature death on January 12, 2011.

3. Defendant Johnson & Johnson is a New Jersey corporation with its principle 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 the PRODUCTS. At all pertinent times, Johnson & Johnson regularly transacted, solicited, and

conducted business in the State of Missouri, including the marketing, promoting, selling, and/or distribution of the PRODUCTS.

4. Defendant Johnson & Johnson Consumer Companies, Inc. is a New Jersey corporation with its principle 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 the PRODUCTS. At all pertinent times, Johnson & Johnson Consumer Companies, Inc. regularly transacted, solicited, and conducted business in the State of Missouri, including the marketing, promoting, selling, and/or distribution of the PRODUCTS.

5. Defendants Johnson & Johnson and Johnson & Johnson Consumer Companies, Inc. have, at all pertinent times, conducted continuous and systematic business in the State of Missouri and placed the PRODUCTS in the stream of commerce with the knowledge and intent that they be sold in the State of Missouri, and be consumed by Missouri citizens and residents.

6. 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, and the agent and alter ego of Defendant Johnson & Johnson. Hereinafter, unless otherwise delineated, these two entities shall be collectively referred to as the "Johnson & Johnson Defendants."

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

the State of California. At all pertinent times, Imerys Talc has maintained a registered agent in the State of Missouri. 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 the PRODUCTS. Imerys Talc is the successor or continuation of Luzenac America, Inc., and Imerys Talc is legally responsible for all liabilities incurred when it was known as Luzenac America, Inc.

8. Defendant Personal Care Products Counsel Foundation ("PCPC"), f/k/a Cosmetic, Toiletry, and Fragrance Association ("CTFA") is a corporation organized under the laws of the District of Columbia, with its principle place of business in the District of Columbia. PCPCA is the successor or continuation of CTFA, and PCPA is legally responsible for all liabilities incurred when it was known as CTFA.

9. Defendant Schnucks, Inc. is a Missouri corporation with its principle place of business in the State of Missouri. At all pertinent times, Schnucks, Inc. has engaged in the business of selling, distributing, and marketing the PRODUCTS.

10. Defendant Schnucks Supermarkets, Inc. is a Missouri corporation with its principle place of business in the State of Missouri. At all pertinent times, Schnucks Supermarkets, Inc. has engaged in the business of selling, distributing, and marketing the PRODUCTS.

11. Defendant Schnucks Food & Drugs, Inc. is a Missouri corporation with its principle place of business in the State of Missouri. At all pertinent

times, Schnucks Food & Drugs, Inc. has engaged in the business of selling, distributing, and marketing the PRODUCTS.

12. Defendant Schnucks Super Centers, Inc. is a Missouri corporation with its principle place of business in the State of Missouri. At all pertinent times, Schnucks Super Centers, Inc. has engaged in the business of selling, distributing, and marketing the PRODUCTS.

13. At all pertinent times, Defendants Schnucks, Inc., Schnucks Supermarkets, Inc., Schnucks Food & Drugs, Inc., and Schnucks Super Centers, Inc. acted collectively and as the agents/alter ego of each other, and hereinafter shall be collectively referred to as "Schnucks."

14. Defendant Walgreen Co. ("Walgreens") is an Illinois corporation with its principle place of business in the State of Illinois, and it maintains a registered agent in the State of Missouri. At all pertinent times, Walgreens has engaged in the business of selling, distributing and marketing the PRODUCTS.

15. Venue is proper in this Court pursuant to RSMo § 508.010. The decedent was first exposed to the substance at issue in the County of St. Louis, State of Missouri because this is where she first applied the PRODUCTS at issue to her perineal area.

#### **ALLEGATIONS COMMON TO ALL COUNTS**

16. Talc is a magnesium trisilicate and is mined from the earth. Talc is an inorganic mineral. Imerys Talc mined the talc contained in the PRODUCTS.

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

18. 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.

19. Imerys Talc<sup>1</sup> has continually advertised and marketed talc as safe for human use.

20. 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.

21. Historically, "Johnson's Baby Powder" has been a symbol of freshness, cleanliness, and purity. During the time in question, the Johnson & Johnson Defendants, advertised and marketed this product as the beacon of "freshness" and "comfort", eliminating friction on the skin, absorbing "excess wetness" helping to 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."

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<sup>1</sup> All allegations regarding actions taken by Imerys Talc also include actions taken while that entity was known as Luzenac America, Inc.

22. 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."

23. The Decedent, Shawn Blaes, used the PRODUCTS to dust her perineum for feminine hygiene purposes from approximately 1972 to 2011. This was an intended and foreseeable use of the PRODUCTS based on the advertising, marketing, and labeling of the PRODUCTS.

24. In 1972, Decedent was living in St. Louis County where she first used the PRODUCTS, and she used the PRODUCTS continuously thereafter until 2011. Throughout the course of using the PRODUCTS, she purchased them from various retail stores owned and operated by Schnucks and Walgreens.

25. In October of 2008, the Decedent was diagnosed with ovarian cancer. At the time of her diagnosis the Decedent was forty-seven (47) years old and did not have any risk factors, genetic or otherwise, for the disease.

26. 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.



27. 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.

28. 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.

29. 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.

30. In response to the United States National Toxicology Program's study, the Cosmetic Toiletry and Fragrancy Association (CTFA) formed the Talc Interested Party Task Force (TIPTF). The Johnson & Johnson Defendants and Imerys Talc 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.

31. 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 the ovarian cancer risk they pose.

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

33. 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."

34. 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".

35. 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 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.

36. The Defendants had a duty to know and warn about the hazards associated with the use of the PRODUCTS.

37. 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.

38. 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.

39. As a direct and proximate result of the Defendants’ calculated and reprehensible conduct the Plaintiff was injured and suffered damages, and the Decedent was injured, suffered damages, and ultimately died from ovarian cancer, which required surgeries and treatments.

**COUNT I – STRICT LIABILITY FOR FAILURE TO WARN**  
**(Imerys Talc, Johnson & Johnson Defendants, Schnucks, and Walgreens)**

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

41. 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.

42. 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.

43. 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.

44. At all pertinent times, Schnucks was marketing, promoting, and selling the PRODUCTS in the regular course of business.

45. At all pertinent times, Walgreens was marketing, promoting, and selling the PRODUCTS in the regular course of business.

46. At all pertinent times, Decedent purchased the PRODUCTS from various retail stores owned and operated by Schnucks and Walgreens.

47. At all pertinent times, Decedent used the PRODUCTS to powder her perineal area, which is a reasonably foreseeable use.

48. At all pertinent times, all the Defendants in this action knew or should have known that the use of talcum powder based products in the

perineal area significantly increases the risk of ovarian cancer based upon scientific knowledge dating back to the 1960s.

49. 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 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.

50. Had the Decedent received a warning that the use of the PRODUCTS would have significantly increased her risk of ovarian cancer, she would not have used the same.

51. The development of ovarian cancer and directly and proximately related January 12, 2011, premature death of Decedent 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; Decedent was caused to incur medical bills, lost wages, and conscious pain and suffering prior to her death; Plaintiff was caused to sustain damages as a direct and proximate result of the untimely death of his wife, including funeral and burial costs, as well as the loss of his wife's services, companionship, comfort, instruction, guidance, counsel, training and support.

WHEREFORE, Plaintiff prays for judgment against Imerys Talc, the Johnson & Johnson Defendants, Schnucks, and Walgreens in a fair and

reasonable sum in excess of \$25,000.00, together with costs expended herein and such further and other relief as the Court deems just and appropriate.

**COUNT II – NEGLIGENCE**  
**(Imerys Talc)**

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

53. 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 the PRODUCTS by the Johnson and Johnson Defendants. Further, Imerys Talc knew or should have known that consumers of the PRODUCTS were using it to powder their perineal regions.

54. 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.

55. 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.

56. 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.

57. As a direct and proximate result of Imerys Talc's negligence, Decedent purchased and used, as aforesaid, the PRODUCTS that directly and proximately caused her to develop ovarian cancer and prematurely die on January 12, 2011; Decedent was caused to incur medical bills, lost wages, and conscious pain and suffering prior to her death; Plaintiff was caused to sustain damages as a direct and proximate result of the untimely death of his wife, including funeral and burial costs, as well as the loss of his wife's services, companionship, comfort, instruction, guidance, counsel, training and support.

WHEREFORE, Plaintiff prays for judgment against Imerys Talc in a fair and reasonable sum in excess of \$25,000.00, together with costs expended herein and such further and other relief as the Court deems just and appropriate.

**COUNT III – NEGLIGENCE**  
**(Johnson & Johnson Defendants)**

58. Plaintiff hereby 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:

- a. In failing to warn the Decedent and Plaintiff 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 the Decedent, 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 the Decedent, 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 Decedent and Plaintiff 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 increase risk for ovarian cancer;
- i. In marketing and labeling the PRODUCTS as safe for all uses despite knowledge to the contrary; and,
- j. In failing to act like a reasonably prudent company under similar circumstances.

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. As a direct and proximate result of the Johnson & Johnson Defendants' negligence in one or more of the aforementioned ways, Decedent purchased and used, as aforesaid, the PRODUCTS that directly and

proximately caused her to develop ovarian cancer and prematurely die on January 12, 2011; Decedent was caused to incur medical bills, lost wages, and conscious pain and suffering prior to her death; Plaintiff was caused to sustain damages as a direct and proximate result of the untimely death of his wife, including funeral and burial costs, as well as the loss of his wife's services, companionship, comfort, instruction, guidance, counsel, training and support.

WHEREFORE, Plaintiff prays for judgment against the Johnson & Johnson Defendants in a fair and reasonable sum in excess of \$25,000.00, together with costs expended herein and such further and other relief as the Court deems just and appropriate.

**COUNT IV – NEGLIGENCE**  
**(Schnucks and Walgreens)**

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

63. At all pertinent times, Schnucks and Walgreens knew or should have known that the use of talcum powder based products, including the PRODUCTS, in the perineal area significantly increases the risk of ovarian cancer based upon scientific knowledge dating back to the 1960s.

64. At all pertinent times, Schnucks and Walgreens knew or should have known that users of the PRODUCTS, including Decedent, were using them to powder their perineal region.

65. At all pertinent times, Schnucks and Walgreens knew or should have known that the PRODUCTS contained no warnings regarding the risk of

ovarian cancer posed to women using the PRODUCTS to powder their perineal region.

66. Schnucks and Walgreens were negligent in selling and marketing the products in one or more of the following ways:

- a. In failing to warn the Decedent of the hazards associated with the use of the PRODUCTS;
- b. By selling and marketing a product that it knew did not contain a warning of a significant danger of which it was aware;
- c. In failing to advise users how to prevent or reduce exposure that caused an increased risk of ovarian cancer;
- d. In advertising and marketing the PRODUCTS to women with knowledge of that the PRODUCTS posed a significant risk of ovarian cancer and knowledge that the PRODUCTS did not contain warnings to that effect; and,
- e. In advertising and marketing the PRODUCTS to women without adequate warnings while knowing that the manufacturers of the PRODUCTS and suppliers of talc were trying to suppress information regarding the risk of cancer posed by the use of the PRODUCTS.

67. As a direct and proximate result of Schnucks and Walgreens negligence in one or more of the aforementioned ways, Decedent purchased and used, as aforesaid, the PRODUCTS that directly and proximately caused her to develop ovarian cancer and prematurely die on January 12, 2011; Decedent was caused to incur medical bills, lost wages, and conscious pain and suffering prior to her death; Plaintiff was caused to sustain damages as a direct and proximate result of the untimely death of his wife, including funeral and burial costs, as well as the loss of his wife's services, companionship, comfort, instruction, guidance, counsel, training and support.

WHEREFORE, Plaintiff prays for judgment against Schnucks and Walgreens in a fair and reasonable sum in excess of \$25,000.00, together with costs expended herein and such further and other relief as the Court deems just and appropriate.

**COUNT V – BREACH OF EXPRESS WARRANTY**  
**(Johnson & Johnson Defendants)**

68. 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.

69. 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.

70. As a direct and proximate result of the Defendants' breach of warranty, Decedent purchased and used, as aforesaid, the PRODUCTS that directly and proximately caused her to develop ovarian cancer and prematurely die on January 12, 2011; Decedent was caused to incur medical bills, lost wages, and conscious pain and suffering prior to her death; Plaintiff was caused to sustain damages as a direct and proximate result of the untimely death of his wife, including funeral and burial costs, as well as the loss of his wife's services, companionship, comfort, instruction, guidance, counsel, training and support.

WHEREFORE, Plaintiff prays for judgment against the Johnson & Johnson Defendants in a fair and reasonable sum in excess of \$25,000.00,

together with costs expended herein and such further and other relief as the Court deems just and appropriate.

**COUNT VI – BREACH OF IMPLIED WARRANTIES**  
**(Johnson & Johnson Defendants, Schnucks, and Walgreens)**

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

72. At the time the Defendants manufactured, marketed, labeled, promoted, distributed and/or sold the PRODUCTS, the Johnson & Johnson Defendants, Schnucks and Walgreens 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.

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

74. As a direct, foreseeable and proximate result of the Defendants' breaches of implied warranties, Decedent purchased and used, as aforesaid, the PRODUCTS that directly and proximately caused her to develop ovarian cancer and prematurely die on January 12, 2011; Decedent was caused to incur medical bills, lost wages, and conscious pain and suffering prior to her death; Plaintiff was caused to sustain damages as a direct and proximate result of the untimely death of his wife, including funeral and burial costs, as well as the loss of his wife's services, companionship, comfort, instruction, guidance, counsel, training and support.

WHEREFORE, Plaintiff prays for judgment against the Johnson & Johnson Defendants, Schnucks and Walgreens in a fair and reasonable sum in excess of \$25,000.00, together with costs expended herein and such further and other relief as the Court deems just and appropriate.

**COUNT VII – CIVIL CONSPIRACY**  
**(All Defendants)**

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

76. Defendants and/or their predecessors-in-interest knowingly agreed, contrived, combined, confederated and conspired among themselves to cause Decedent's injuries, disease, and/or illnesses by exposing the Decedent to harmful and dangerous products. Defendants further knowingly agreed, contrived, confederated and conspired to deprive the Decedent and Plaintiff of the opportunity of informed free choice as to whether to use the PRODUCTS or to expose the Decedent 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.

77. 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, 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 TPTF 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 Defendants through the TPTF instituted a "defense strategy" to defend talc at all costs. Admittedly, the Defendants through the TPTF 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 TPTF 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 and Decedent to rely upon said false and fraudulent representations, omissions and concealments, and to

costs expended herein and such further and other relief as the Court deems just and appropriate.

**COUNT VII – PUNITIVE DAMAGES**  
**(All Defendants)**

84. Plaintiff incorporates by reference all preceding paragraphs as if fully set forth herein.

85. 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 and the Decedent. 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.

86. As a direct and proximate result of the willful, wanton, evilly motivated and/or reckless conduct of the Defendants, the Decedent and Plaintiff have sustained damages as set forth above.

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



I certify and attest that the above is a true copy of the original record of the Court in case number 14SL-CC00058 as it appears on file in my office.



Issued

1/31/2014

**JOAN M. GILMER**, Circuit Clerk  
St. Louis County Circuit Court

By

Cassidy Dobson  
Deputy Clerk