

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION**

ALME KENNEDY,)	
)	
Plaintiff,)	
)	
v.)	CASE NO.
)	
JOHNSON & JOHNSON, JOHNSON & JOHNSON CONSUMER, INC., and IMERYS TALC AMERICA, INC.)	
)	
Defendants)	JURY TRIAL DEMANDED

PLAINTIFF’S ORIGINAL COMPLAINT AND JURY DEMAND

Plaintiff ALME KENNEDY hereby files the instant Original Complaint and Jury Demand against Defendants JOHNSON & JOHNSON, JOHNSON & JOHNSON CONSUMER, INC., and IMERYS TALC AMERICA, INC. and states as follows:

PARTIES

1. Plaintiff Alme Kennedy is a citizen and resident of St. Augustine, Florida and is the husband of Decedent Naomi Kennedy.

2. Defendant Johnson & Johnson is a New Jersey corporation licensed to do business in the state of California with its principal place of business in the State of New Jersey. It may be served by delivering the summons and a copy of the complaint to its President, Alex Gorsky or any other person authorized to

receive service of process, at 1 Johnson & Johnson Plaza, New Brunswick, New Jersey 08933.

3. Defendant Johnson & Johnson Consumer, Inc. is a New Jersey corporation licensed to do business in the state of California with its principal place of business in the State of New Jersey. It may be served by delivering the summons and a copy of the complaint to its President, Alex Gorsky or any other person authorized to receive service of process, at 1 Johnson & Johnson Plaza, New Brunswick, New Jersey 08933.

4. Defendant Imerys Talc America, Inc. (“IMERYS”) is a Delaware corporation with its principal place of business in San Jose, California. IMERYS is the successor or continuation of Luzenac America, Inc., and IMERYS is legally responsible for all liabilities incurred when it was known as Luzenac America, Inc. At all relevant times, IMERYS has been in the business of mining and distributing talcum powder for use in talcum powder based products, including the PRODUCTS. IMERYS may be served by delivering the summons and a copy of the complaint to CT Corporation System, 818 West Seventh Street, Suite 930, Los Angeles, California 90017

JURISDICTION AND VENUE

5. This Court has personal jurisdiction over Defendants because the causes of action asserted herein arose out of the Defendants’ contacts with this

state, because, at all relevant times, they designed, manufactured, sold, distributed, promoted and placed into the stream of commerce in Georgia the talcum powder at issue in this case. Defendants also conducted business in the State of Georgia and the causes of action asserted herein arose from and are connected to purposeful acts taken by Defendants in Georgia. Defendants' contacts with Georgia were continuous and systematic.

6. Pursuant to 28 U.S.C. §1332, this Court has jurisdiction over this case because it is a lawsuit between parties of diverse citizenship and the amount in controversy exceeds \$75,000. Venue is proper in this Court because the causes of action asserted herein arose in Cobb County, Georgia, where Decedent was diagnosed with ovarian cancer, where she received treatment for her ovarian cancer and where she ultimately died.

7. All conditions precedent to Plaintiff's' right to recover the relief sought herein have occurred or have been performed.

FACTS COMMON TO ALL COUNTS

Defendants and the sale of talcum powder

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

9. Talc is the main substance in talcum powders. Defendants JOHNSON & JOHNSON and JOHNSON & JOHNSON CONSUMER

COMPANIES, INC. (referred to collectively as the “JOHNSON & JOHNSON DEFENDANTS”) manufactured and distributed the PRODUCTS, which are composed almost entirely of talc.

10. At all times 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. Defendants have continually advertised and marketed talc as safe for human use.

Johnson & Johnson’s baby powder products are intended for use by women like Naomi Kennedy

11. Upon information and belief, 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.

12. Upon information and belief, 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 convinced 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. Upon information and belief, 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. Upon information and belief, through other marketing, including on their website for Johnson’s® Baby Powder, the JOHNSON & JOHNSON DEFENDANTS similarly encouraged women to use the product daily. The JOHNSON & JOHNSON 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,” they state that “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”, the JOHNSON & JOHNSON DEFENDANTS recommend consumers “Use anytime you want skin to feel soft, fresh and comfortable. For baby, use after every bath and diaper change.” On their website for Johnson’s® Baby Powder, the JOHNSON & JOHNSON DEFENDANTS also state the product is “Clinically proven to be safe, gentle and mild.”

15. Upon information and belief, the JOHNSON & JOHNSON DEFENDANTS seek to convey an image of the PRODUCTS as a safe and trusted family brand. For example, the JOHNSON & JOHNSON DEFENDANTS have a website, www.safetyandcarecommitment.com, devoted to “Our Safety & Care Commitment.” According to the JOHNSON & JOHNSON 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.” The JOHNSON & JOHNSON 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.” The JOHNSON & JOHNSON 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.” Nowhere do they warn of the increased risk of ovarian cancer linked to the use of Johnson’s® Baby Powder.

16. Johnson’s® Baby Powder and Shower to Shower 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.”

17. IMERYYS is and was the sole supplier of talc for use in the PRODUCTS. IMERYYS was aware that the JOHNSON & JOHNSON DEFENDANTS intended to sell the PRODUCTS at large, national retailers throughout the United States, including Georgia. By selling its talc to the JOHNSON & JOHNSON DEFENDANTS, IMERYYS intended to serve the national market for talcum powder products, including the Georgia market. Given its knowledge of the JOHNSON & JOHNSON DEFENDANTS’ nationwide distribution network, IMERYYS intended for its talc to be sold to consumers nationwide and to consumers within Georgia.

Overwhelming scientific and medical evidence has established a causal link between talcum baby powder and ovarian cancer

18. Upon information and belief, 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).

19. Upon information and belief, 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).

20. Upon information and belief, 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).

21. Upon information and belief, 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.

22. Upon information and belief, 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

23. Upon information and belief, 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* 1883, 1884.

24. Upon information and belief, 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).

25. Upon information and belief 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).

26. Upon information and belief, 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).

27. Upon information and belief, 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 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).

28. Additionally, upon information and belief, 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).

29. Upon information and belief, 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).

30. Upon information and belief, 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). The JOHNSON & JOHNSON DEFENDANTS 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.

31. Upon information and belief, 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).

32. Upon information and belief, 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).

33. Upon information and belief, 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).

34. Upon information and belief, 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).*

35. Upon information and belief, 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).

36. Upon information and belief, 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).

37. Upon information and belief, 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 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).

38. Upon information and belief, 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).

39. Upon information and belief, 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).

40. Upon information and belief, 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).

41. Upon information and belief, 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).

42. Upon information and belief, 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.

43. Upon information and belief, 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).

44. Upon information and belief, 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.

45. Upon information and belief, in October 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).

46. Upon information and belief, 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).

47. Upon information and belief, 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).

48. Upon information and belief, 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."

49. Upon information and belief, 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).

50. Upon information and belief, in June 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).

51. Upon information and belief, in or around November 2015, Daniel Cramer and others published a study of more than 2000 women that found a 33% increased risk of developing epithelial ovarian cancer among women who used talc-based baby powder. The study also found a trend for increased risk by talc-years. The authors concluded that the study’s findings “present[ed] a good case for talc carcinogenicity.” Cramer, D., et. al., *Ovarian cancer and talc*, *Epidemiology* (2015).

52. Upon information and belief, in May 2016, Joellen Schildkraut and others published a study, supported by the National Cancer Institute, of nearly 600 African American women. The study found a 44% increased risk of developing

epithelial ovarian cancer among women who used talc-based baby powder. The study also found a dose-response relationship for duration of use and the number of lifetime applications. Schildkraut, J, et. al., *Association between Baby Powder Use and Ovarian Cancer: the African American Cancer Epidemiology Study*, *Cancer Epidemiology BioMarkers & Prevention*, May 2016.

53. In addition to the numerous case control studies over the last several decades, upon information and belief, 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.

54. Upon information and belief, 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.

55. Upon information and belief, 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).

56. Upon information and belief, 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.

57. Upon information and belief, 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).*

58. Upon information and belief, in February 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%. 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).”

59. Upon information and belief, 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”.

60. Upon information and belief, in 2008, the Cancer Prevention Coalition submitted a “Petition Seeking a Cancer Warning on Cosmetic Talc Products” to the FDA. The petition requested that the FDA immediately require cosmetic talcum powder products to bear labels with a prominent warning that frequent talc application in the female genital area is responsible for major risks of ovarian cancer.

61. Upon information and belief, in 2013, Cancer Prevention Research published a study that showed that women who used talcum powder in their groin

area had a 20 to 30 percent greater risk of developing ovarian cancer than women who did not use talc products in that area

62. Upon information and belief, currently 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.

**Defendants have been aware for decades
of the dangers of talcum baby powder**

63. Upon information and belief, 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.

64. Upon information and belief, on November 10, 1994, the Cancer Prevention Coalition (“CPC”) mailed a letter to Johnson & Johnson’s then-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.

65. Upon information and belief, 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, 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.

66. Upon information and belief, in 2006, IMERYYS 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 IMERYYS 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.

67. Upon information and belief, on October 19, 2012 Johnson & Johnson's former in-house toxicologist and current consulting toxicologist, Dr. John Hopkins, testified that the JOHNSON & JOHNSON DEFENDANTS "[are] and were aware of...all publications related to talc use and ovarian cancer."

68. 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, Johnson's Baby Powder and Shower to Shower.

69. On February 22, 2016, a jury in Missouri state court, in the case styled *Jacqueline Fox v. Johnson & Johnson Consumer Companies, Inc., et. al.* found that the JOHNSON & JOHNSON DEFENDANTS caused the plaintiff's ovarian cancer and was negligent in failing to warn about cancer hazards on its talc-based body powders, specifically, Johnson's Baby Powder and Shower to Shower, and awarded \$72 million in damages.

70. On May 2, 2016, a jury in Missouri state court, in the case styled *Gloria Ristesund v. Johnson & Johnson Consumer Companies, Inc., et. al.* found that the JOHNSON & JOHNSON DEFENDANTS caused the plaintiff's ovarian cancer and was negligent in failing to warn about cancer hazards on its talc-based body powders, specifically, Johnson's Baby Powder and Shower to Shower, and awarded \$55 million in damages.

71. On October 27, 2016, a jury in Missouri state court, in the case styled *Deborah Giannecchini v. Johnson & Johnson Consumer Companies, Inc., et. al.* found that the JOHNSON & JOHNSON DEFENDANTS and IMERYYS caused the plaintiff's ovarian cancer and was negligent in failing to warn about cancer hazards on its talc-based body powders, specifically, Johnson's Baby Powder and Shower to Shower, and awarded \$70 million in damages.

Defendants failed to provide proper warnings for the use of talcum baby powder

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

73. The Defendants failed to inform their customers and end users of the PRODUCTS of a known catastrophic health hazard associated with the use of the PRODUCTS. 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.

Decedent Naomi Kennedy and her use of talcum baby powder

74. Decedent Naomi Kennedy used the PRODUCTS to dust her perineum for feminine hygiene purposes for many years. This was an intended and foreseeable use of the PRODUCTS based on the advertising, marketing, and labeling of the PRODUCTS.

75. Decedent was diagnosed with ovarian cancer in September 2010. At the time of her diagnosis, Decedent was sixty-one (61) years old. Decedent died of ovarian cancer on November 19, 2014 in Cobb County, Georgia at the age of sixty-eight (68). The cause of death was listed as “ovarian carcinoma.”

CAUSES OF ACTION

**FIRST CAUSE OF ACTION: STRICT LIABILITY
FOR FAILURE TO WARN**

(Against all Defendants)

76. Plaintiff repeats and re-alleges each and every allegation contained in Paragraphs 1 through 75, inclusive, and makes them a part hereof by reference.

77. At all pertinent times, IMERYYS mined and sold talc to the JOHNSON & JOHNSON DEFENDANTS, who it knew were then packaging and selling to consumers as the main ingredient of the PRODUCTS. IMERYYS further knew that consumers of the PRODUCTS were using it to powder their perineal regions.

78. At all pertinent times, IMERYYS knew and/or should have known of the unreasonably dangerous and carcinogenic nature of the talc used in the PRODUCTS, especially when used in a woman's perineal regions. IMERYYS knew or should have known that the JOHNSON & JOHNSON DEFENDANTS were not warning consumers of the PRODUCTS of this danger.

79. The talc supplied by IMERYYS to the JOHNSON & JOHNSON DEFENDANTS was inherently dangerous and defective at the time it left IMERYYS's control. Moreover, the talc was not materially changed during the manufacturing process that resulted in the PRODUCTS.

80. At all pertinent times, the JOHNSON & JOHNSON DEFENDANTS manufactured, marketed, tested, promoted, sold and/or distributed the PRODUCTS to consumers, including Decedent, in the regular course of business.

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

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

83. At all pertinent times, including the time of sale and consumption of the PRODUCTS by Decedent, 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 Decedent and other consumers regarding the risks and benefits of the PRODUCTS despite their obvious need for this important information.

84. Had 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 PRODUCTS. As a proximate result of Defendants' design, manufacture, marketing, sale, and distribution of the PRODUCTS and the talc contained therein, Decedent was injured catastrophically and incurred significant medical expenses prior to her death, suffered severe pain, suffering, disability, mental anguish, physical impairment and loss of enjoyment of life prior to her death and subsequently died from ovarian cancer in November 2014. The development of ovarian cancer by Decedent was the direct and proximate result of the unreasonably dangerous and defective condition of the PRODUCTS at the time of their sale and consumption, including their lack of warnings.

85. The 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 the Decedent justifiably relied in electing to use the PRODUCTS. The defect or defects made the PRODUCTS unreasonably dangerous to those persons, such as Decedent, who could reasonably be expected to use and rely upon such products. As a result, the defect or defects were a producing cause of Decedent's ovarian, cancer, her resulting death, and the damages claimed herein.

86. The 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. Defendants continue to market, advertise, and expressly represent to the general public that the PRODUCTS are safe for women to use regardless of application. 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.

87. For the foregoing reasons, Defendants are strictly liable to Plaintiff under the theory of product liability as set forth in §§402A and 402B of the Restatement of Torts 2d without regard to negligence or gross negligence.

SECOND CAUSE OF ACTION: STRICT LIABILITY -- DESIGN DEFECT

(Against all Defendants)

88. Plaintiff repeats and re-alleges each and every allegation contained in Paragraphs 1 through 75, inclusive, and makes them a part hereof by reference.

89. At all pertinent times, IMERYYS mined and sold talc to the JOHNSON & JOHNSON DEFENDANTS, who it knew were then packaging and selling to consumers as the main ingredient of the PRODUCTS. IMERYYS further knew that consumers of the PRODUCTS were using it to powder their perineal regions.

90. At all pertinent times, IMERYYS knew and/or should have known of the unreasonably dangerous and carcinogenic nature of the talc used in the PRODUCTS, especially when used in a woman's perineal regions. The talc supplied by IMERYYS to the JOHNSON & JOHNSON DEFENDANTS was inherently dangerous and defective at the time it left IMERYYS's control. Moreover, the talc was not materially changed during the manufacturing process that resulted in the PRODUCTS.

91. At all pertinent times, the JOHNSON & JOHNSON DEFENDANTS manufactured, marketed, tested, promoted, sold and/or distributed the PRODUCTS to consumers, including Decedent, in the regular course of business. The PRODUCTS were in substantially the same condition when used by Decedent as when they left the possession of Defendants. The Products were used by Decedent

in a manner that was intended and foreseeable to Defendants.

92. The PRODUCTS were defective because they failed to perform as safely as an ordinary consumer would expect when used in the intended and reasonably foreseeable manner. This defect made the PRODUCTS unreasonably dangerous to those persons, such as Decedent, who could reasonably be expected to use and rely upon such products. As a result, the defect or defects were a producing cause of, and substantial factor in, the Decedent's injuries and damages.

93. The PRODUCTS were also defective because, on balance, the benefits of their design are outweighed by the risk of danger inherent in their design. Moreover, a safer alternative design of the PRODUCTS existed. Specifically, 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 as the PRODUCTS.

94. The foregoing defects made the PRODUCTS unreasonably dangerous to those persons, such as Decedent, who could reasonably be expected to use and rely upon such products. As a result, the defect or defects were a producing cause of Decedent's ovarian cancer, her resulting death, and the damages claimed herein.

95. For the foregoing reasons, Defendants are strictly liable to Plaintiff under Georgia law without regard to negligence or gross negligence. For the

foregoing reasons, Defendants are strictly liable to Plaintiff under the theory of product liability as set forth in §§402A and 402B of the Restatement of Torts 2d without regard to negligence or gross negligence.

THIRD CAUSE OF ACTION: NEGLIGENCE

(Against all Defendants)

96. Plaintiff repeats and re-alleges each and every allegation contained in Paragraphs 1 through 75 inclusive, and makes them a part hereof by reference.

97. 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 Decedent 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 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 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 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 Decedent and Plaintiff.

98. The foregoing acts of negligence were a producing cause of Decedent's ovarian cancer and the damages claimed herein.

FOURTH CAUSE OF ACTION: BREACH OF EXPRESS WARRANTIES

(Against Johnson & Johnson Defendants)

99. Plaintiff repeats and re-alleges each and every allegation contained in Paragraphs 1 through 75, inclusive, and makes them a part hereof by reference.

100. 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.

101. The PRODUCTS did not conform to these express representations because they cause ovarian cancer when used by women in the perineal area.

102. As a direct and proximate result of the JOHNSON & JOHNSON DEFENDANTS breach of express warranties, Decedent purchased and used, as intended and directed, the PRODUCTS. Decedent's use of the PRODUCTS was a direct and proximate cause of Decedent's ovarian cancer and the damages claimed herein.

FIFTH CAUSE OF ACTION: BREACH OF IMPLIED WARRANTIES

(Against Johnson & Johnson Defendants)

103. Plaintiff repeats and re-alleges each and every allegation contained in Paragraphs 1 through 75, inclusive, and makes them a part hereof by reference.

104. At the time the JOHNSON & JOHNSON DEFENDANTS

manufactured, marketed, labeled, promoted, distributed and/or sold the PRODUCTS, they knew or should have known the uses for which the PRODUCTS were intended. The JOHNSON & JOHNSON DEFENDANTS had reason to know that Decedent was relying on the skill and judgment of the JOHNSON & JOHNSON DEFENDANTS to select or furnish suitable products. The PRODUCTS supplied by the JOHNSON & JOHNSON DEFENDANTS were unfit for the particular purpose for which they were purchased.

105. The JOHNSON & JOHNSON DEFENDANTS breached the implied warranties of fitness and merchantability under O.C.G.A. §§ 11-2-314, 11-2-315 because the PRODUCTS were not fit for their common, ordinary and intended uses, including use by women in the perineal area and the PRODUCTS were not of fair or average quality within the description.

106. As a direct and proximate result of the JOHNSON & JOHNSON DEFENDANTS breach of implied warranties, Decedent purchased and used, as intended and directed, the PRODUCTS. Decedent's use of the PRODUCTS directly and proximately caused her to develop ovarian cancer and suffer the damages identified herein. The lack of fitness for the PRODUCTS' purpose was a legal and proximate cause of Decedent's ovarian cancer and the damages claimed herein.

SIXTH CAUSE OF ACTION: FRAUD

(Against all Defendants)

107. Plaintiff repeats and re-alleges each and every allegation contained in Paragraphs 1 through 75, inclusive, and makes them a part hereof by reference.

108. Defendants falsely represented to the public in general, and to Decedent in particular, that the PRODUCTS were safe for their intended use. These statements were false. As set forth above, the PRODUCTS were not safe for their intended use and were instead defective and unreasonably dangerous.

109. Defendants falsely represented to the public in general, and to Decedent in particular, that the PRODUCTS were free from serious side effects. These statements were false. As set forth above, the PRODUCTS expose users to a serious risk of ovarian cancer.

110. Defendants' false statements were made with knowledge of their falsity and with the intent that they be relied upon by the consuming public, including Decedent. Decedent justifiably and foreseeably relied upon Defendants' false statements by purchasing the PRODUCTS and using them for feminine hygiene purposes over an extended time period. Had Decedent known the true facts, and the falsity of the statements made by Defendants, she would not have purchased the PRODUCTS and used them in the manner that she did. She therefore would not have contracted ovarian cancer and suffered the injuries and

damages set forth herein.

111. Decedent's ovarian cancer and the damages claimed herein were a direct and proximate result of Defendants' acts of fraud identified above.

SEVENTH CAUSE OF ACTION: NEGLIGENT MISREPRESENTATION

(Against all Defendants)

112. Plaintiff repeats and re-alleges each and every allegation contained in Paragraphs 1 through 75, inclusive, and makes them a part hereof by reference.

113. Defendants represented to the public in general, and to Decedent in particular, that the PRODUCTS were safe for their intended use. These statements were false. As set forth above, the PRODUCTS were not safe for their intended use and were instead defective and unreasonably dangerous.

114. Defendants represented to the public in general, and to Decedent in particular, that the PRODUCTS were free from serious side effects. These statements were false. As set forth above, the PRODUCTS expose users to a serious risk of ovarian cancer.

115. Defendants' statements were made as positive assertions of fact with no reasonable grounds for believing them to be true. Defendants intended that their representations be relied upon by the consuming public, including Decedent. Decedent justifiably and foreseeably relied upon Defendants' false statements by purchasing the PRODUCTS and using them for feminine hygiene purposes over an

extended time period. Had Decedent known the true facts, and the falsity of the statements made by Defendants, she would not have purchased the PRODUCTS and used them in the manner that she did. She therefore would not have contracted ovarian cancer and suffered the injuries and damages set forth herein.

116. Decedent's ovarian cancer and the damages claimed herein were a direct and proximate result of Defendants' acts of negligent misrepresentation identified above.

EIGHTH CAUSE OF ACTION: FRAUDULENT CONCEALMENT

(Against all Defendants)

117. Plaintiff repeats and re-alleges each and every allegation contained in Paragraphs 1 through 75, inclusive, and makes them a part hereof by reference.

118. Defendants intentionally omitted, suppressed and concealed material facts regarding the PRODUCTS, including the fact that use of the PRODUCTS for feminine hygiene purposes could lead to ovarian cancer. Defendants were under a legal duty to disclose these facts. Moreover, Defendants supplied other information regarding the PRODUCTS which was likely to, and did, deceive Decedent because of Defendants' failure to communicate other facts.

119. As a direct and proximate result of Defendants' acts of fraudulent concealment, Decedent purchased the PRODUCTS and using them for feminine hygiene purposes over an extended time period. Had Decedent known the true

facts, she would not have purchased the PRODUCTS and used them in the manner that she did. She therefore would not have contracted ovarian cancer and suffered the injuries and damages set forth herein.

120. Decedent's ovarian cancer and the damages claimed herein were a direct and proximate result of Defendants' acts of fraudulent concealment identified above.

NINTH CAUSE OF ACTION: WRONGFUL DEATH

121. Plaintiff repeats and re-alleges each and every allegation contained in Paragraphs 1 through 75, inclusive, and makes them a part hereof by reference.

122. Plaintiff is the husband of, and the statutory beneficiary of Decedent under O.C.G.A. § 51-41-2(a). Plaintiff hereby seeks an award of damages for the full value of Decedent's life. Because Decedent's death was caused by the willful acts and omissions of defendants and/or Defendants' gross negligence, Plaintiffs are entitled to, and hereby seek, exemplary damages in an amount to be determined by the trier of fact.

TENTH CAUSE OF ACTION: PUNITIVE DAMAGES

123. Plaintiff repeats and re-alleges each and every allegation contained in Paragraphs 1 through 75, inclusive, and makes them a part hereof by reference.

124. Defendants acted with malice in that they were aware of the extreme degree of risk posed by the defective condition of the PRODUCTS considering the

probability and magnitude of the potential harm to others and yet continued to manufacture and sell the PRODUCTS with a willful, conscious and callous disregard for the rights, safety and welfare of others, including Decedent. The foregoing conduct of Defendants was ratified by managerial employees of Defendants and/or was carried out with the consent of their officers, directors and/or managing agents.

125. The acts, omissions and conduct of Defendants as alleged above were fraudulent, willful and malicious and were done with a conscious disregard for the rights of Decedent and other users of the PRODUCTS. Defendants' acts and omissions were motivated solely by greed and were intended to increase Defendants' profits from the manufacture and sale of the PRODUCTS to an unsuspecting public. Defendants' unconscionable and outrageous conduct justifies an award of exemplary and punitive damages against each Defendant in an amount sufficient to punish Defendants and to deter such conduct in the future.

**DELAYED DISCOVERY, TOLLING
AND FRAUDULENT CONCEALMENT**

126. Plaintiff repeats and re-alleges each and every allegation contained in Paragraphs 1 through 75, inclusive, and makes them a part hereof by reference.

127. Decedent suffered from a disease with a long latency period that does not arise until many years after exposure to talc-based products. Decedent's disease did not distinctly manifest as having been caused by her exposure to the

PRODUCTS until Plaintiffs were made aware in 2016 of the link between talcum baby powder and ovarian cancer. The discovery rule therefore applies to this case and the statute of limitations was tolled until Plaintiffs knew or had reason to know in the exercise of reasonable diligence that Decedent's ovarian cancer was linked to her use of the PRODUCTS.

128. In addition, the running of the applicable statute of limitations has been tolled by reason of Defendants' fraud and fraudulent concealment of the link between talcum powder and ovarian cancer

129. Defendants are estopped from relying on the statute of limitations because they were under an affirmative duty to disclose the true dangers of the PRODUCTS as a result of their superior knowledge, the public statements they made regarding the PRODUCTS and their knowledge that the true information regarding the PRODUCTS was otherwise unavailable to Plaintiffs.

130. Finally, any claims belonging to Decedent's estate are tolled under O.C.G.A. § 9-3-92.

DAMAGES

135. **Punitive, Exemplary, and Other Damages.** Defendants showed a complete indifference to or conscious disregard for the safety of others. Specifically, Defendants were conscious (from the knowledge of surrounding circumstances and existing conditions) that their conduct or failure to act would

naturally or probably result in injury. Plaintiffs therefore seek recovery of punitive, exemplary and any other additional damages that the law allows under the causes of action asserted above.

136. **Actual Damages.** The wrongful acts of Defendants set forth above were a legal cause of Plaintiffs' injuries and damages. Plaintiff seeks all actual damages available under Georgia law including, without limitation: (a) Compensatory damages in an amount supported by the evidence at trial; (b) The full value of the life of the Decedent consisting of the economic value of the Decedent's life and the intangible value of Decedent's life including, but not limited to, Decedent's society, advice, example, and counsel; and (c) Punitive damages.

137. **Attorneys' fees.** Defendants' actions as outlined herein evidence bad faith and have caused Plaintiff unnecessary trouble and expense. The Defendants should therefore be required to pay Plaintiff's attorney's fees, costs and expenses of this case as provided by Georgia law.

WHEREFORE, PREMISES CONSIDERED, Plaintiff prays that Defendants be cited to appear and answer, that the Court set this case for jury trial, that judgment be entered against Defendants for the damages set forth herein as well as pre-judgment and post-judgment interest and costs of suit and that the Court grant Plaintiff such other and further relief to which he may be justly entitled.

Respectfully Submitted,

/s/ Glenn Loewenthal

Glenn Loewenthal
Georgia State Bar No. 455707
Attorney for Plaintiff

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DEMAND FOR JURY TRIAL

Plaintiff hereby demands a trial by jury.

/s/ Glenn Loewenthal

Glenn Loewenthal

CIVIL COVER SHEET

The JS44 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 is required for the use of the Clerk of Court for the purpose of initiating the civil docket record. (SEE INSTRUCTIONS ATTACHED)

I. (a) PLAINTIFF(S)

DEFENDANT(S)

(b) COUNTY OF RESIDENCE OF FIRST LISTED PLAINTIFF (EXCEPT IN U.S. PLAINTIFF CASES)

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

(c) ATTORNEYS (FIRM NAME, ADDRESS, TELEPHONE NUMBER, AND E-MAIL ADDRESS)

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)

Table with columns for PLF and DEF, and rows for citizenship categories: 1 CITIZEN OF THIS STATE, 2 CITIZEN OF ANOTHER STATE, 3 CITIZEN OR SUBJECT OF A FOREIGN COUNTRY, 4 INCORPORATED OR PRINCIPAL PLACE OF BUSINESS IN THIS STATE, 5 INCORPORATED AND PRINCIPAL PLACE OF BUSINESS IN ANOTHER STATE, 6 FOREIGN NATION.

IV. 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 ANOTHER DISTRICT (Specify District), 6 MULTIDISTRICT LITIGATION, 7 FROM MAGISTRATE JUDGE JUDGMENT, 8 APPEAL TO DISTRICT JUDGE

V. CAUSE OF ACTION

(CITE THE U.S. CIVIL STATUTE UNDER WHICH YOU ARE FILING AND WRITE A BRIEF STATEMENT OF CAUSE - DO NOT CITE JURISDICTIONAL STATUTES UNLESS DIVERSITY)

(IF COMPLEX, CHECK REASON BELOW)

- 1. Unusually large number of parties.
2. Unusually large number of claims or defenses.
3. Factual issues are exceptionally complex
4. Greater than normal volume of evidence.
5. Extended discovery period is needed.
6. Problems locating or preserving evidence
7. Pending parallel investigations or actions by government.
8. Multiple use of experts.
9. Need for discovery outside United States boundaries.
10. Existence of highly technical issues and proof.

CONTINUED ON REVERSE

FOR OFFICE USE ONLY

RECEIPT #, AMOUNT \$, APPLYING IFP, MAG. JUDGE (IFP), JUDGE, MAG. JUDGE (Referral), NATURE OF SUIT, CAUSE OF ACTION

VI. NATURE OF SUIT (PLACE AN "X" IN ONE BOX ONLY)

CONTRACT - "0" MONTHS DISCOVERY TRACK

- 150 RECOVERY OF OVERPAYMENT & ENFORCEMENT OF JUDGMENT
- 152 RECOVERY OF DEFAULTED STUDENT LOANS (Excl. Veterans)
- 153 RECOVERY OF OVERPAYMENT OF VETERAN'S BENEFITS

CONTRACT - "4" MONTHS DISCOVERY TRACK

- 110 INSURANCE
- 120 MARINE
- 130 MILLER ACT
- 140 NEGOTIABLE INSTRUMENT
- 151 MEDICARE ACT
- 160 STOCKHOLDERS' SUITS
- 190 OTHER CONTRACT
- 195 CONTRACT PRODUCT LIABILITY
- 196 FRANCHISE

REAL PROPERTY - "4" MONTHS DISCOVERY TRACK

- 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 - "4" MONTHS DISCOVERY TRACK

- 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
- 365 PERSONAL INJURY - PRODUCT LIABILITY
- 368 ASBESTOS PERSONAL INJURY PRODUCT LIABILITY

TORTS - PERSONAL PROPERTY - "4" MONTHS DISCOVERY TRACK

- 370 OTHER FRAUD
- 371 TRUTH IN LENDING
- 380 OTHER PERSONAL PROPERTY DAMAGE
- 385 PROPERTY DAMAGE PRODUCT LIABILITY

BANKRUPTCY - "0" MONTHS DISCOVERY TRACK

- 422 APPEAL 28 USC 158
- 423 WITHDRAWAL 28 USC 157

CIVIL RIGHTS - "4" MONTHS DISCOVERY TRACK

- 441 VOTING
- 442 EMPLOYMENT
- 443 HOUSING/ ACCOMMODATIONS
- 444 WELFARE
- 440 OTHER CIVIL RIGHTS
- 445 AMERICANS with DISABILITIES - Employment
- 446 AMERICANS with DISABILITIES - Other

IMMIGRATION - "0" MONTHS DISCOVERY TRACK

- 462 NATURALIZATION APPLICATION
- 463 HABEAS CORPUS- Alien Detainee
- 465 OTHER IMMIGRATION ACTIONS

PRISONER PETITIONS - "0" MONTHS DISCOVERY TRACK

- 510 MOTIONS TO VACATE SENTENCE
- 530 HABEAS CORPUS
- 535 HABEAS CORPUS DEATH PENALTY
- 540 MANDAMUS & OTHER
- 550 CIVIL RIGHTS - Filed Pro se
- 555 PRISON CONDITION(S) - Filed Pro se

PRISONER PETITIONS - "4" MONTHS DISCOVERY TRACK

- 550 CIVIL RIGHTS - Filed by Counsel
- 555 PRISON CONDITION(S) - Filed by Counsel

FORFEITURE/PENALTY - "4" MONTHS DISCOVERY TRACK

- 610 AGRICULTURE
- 620 FOOD & DRUG
- 625 DRUG RELATED SEIZURE OF PROPERTY 21 USC 881
- 630 LIQUOR LAWS
- 640 R.R. & TRUCK
- 650 AIRLINE REGS.
- 660 OCCUPATIONAL SAFETY / HEALTH
- 690 OTHER

LABOR - "4" MONTHS DISCOVERY TRACK

- 710 FAIR LABOR STANDARDS ACT
- 720 LABOR/MGMT. RELATIONS
- 730 LABOR/MGMT. REPORTING & DISCLOSURE ACT
- 740 RAILWAY LABOR ACT
- 790 OTHER LABOR LITIGATION
- 791 EEMPL. RET. INC. SECURITY ACT

PROPERTY RIGHTS - "4" MONTHS DISCOVERY TRACK

- 820 COPYRIGHTS
- 840 TRADEMARK

PROPERTY RIGHTS - "8" MONTHS DISCOVERY TRACK

- 830 PATENT

SOCIAL SECURITY - "0" MONTHS DISCOVERY TRACK

- 861 HIA (1395ff)
- 862 BLACK LUNG (923)
- 863 DIWC (405(g))
- 863 DIWW (405(g))
- 864 SSID TITLE XVI
- 865 RSI (405(g))

FEDERAL TAX SUITS - "4" MONTHS DISCOVERY TRACK

- 870 TAXES (U.S. Plaintiff or Defendant)
- 871 IRS - THIRD PARTY 26 USC 7609

OTHER STATUTES - "4" MONTHS DISCOVERY TRACK

- 400 STATE REAPPORTIONMENT
- 430 BANKS AND BANKING
- 450 COMMERCE/ICC RATES/ETC.
- 460 DEPORTATION
- 470 RACKETEER INFLUENCED AND CORRUPT ORGANIZATIONS
- 480 CONSUMER CREDIT
- 490 CABLE/SATELLITE TV
- 810 SELECTIVE SERVICE
- 875 CUSTOMER CHALLENGE 12 USC 3410
- 891 AGRICULTURAL ACTS
- 892 ECONOMIC STABILIZATION ACT
- 893 ENVIRONMENTAL MATTERS
- 894 ENERGY ALLOCATION ACT
- 895 FREEDOM OF INFORMATION ACT
- 900 APPEAL OF FEE DETERMINATION UNDER EQUAL ACCESS TO JUSTICE
- 950 CONSTITUTIONALITY OF STATE STATUTES
- 890 OTHER STATUTORY ACTIONS

OTHER STATUTES - "8" MONTHS DISCOVERY TRACK

- 410 ANTI TRUST
- 850 SECURITIES / COMMODITIES / EXCHANGE

OTHER STATUTES - "0" MONTHS DISCOVERY TRACK

- ARBITRATION (Confirm / Vacate / Order / Modify)

(Note: Mark underlying Nature of Suit as well)

*** PLEASE NOTE DISCOVERY TRACK FOR EACH CASE TYPE. SEE LOCAL RULE 26.3**

VII. REQUESTED IN COMPLAINT:

CHECK IF CLASS ACTION UNDER F.R.Civ.P. 23 DEMAND \$ _____

JURY DEMAND YES NO (CHECK YES ONLY IF DEMANDED IN COMPLAINT)

VIII. RELATED/REFILED CASE(S) IF ANY

JUDGE _____ DOCKET NO. _____

CIVIL CASES ARE DEEMED RELATED IF THE PENDING CASE INVOLVES: (CHECK APPROPRIATE BOX)

1. PROPERTY INCLUDED IN AN EARLIER NUMBERED PENDING SUIT.
2. SAME ISSUE OF FACT OR ARISES OUT OF THE SAME EVENT OR TRANSACTION INCLUDED IN AN EARLIER NUMBERED PENDING SUIT.
3. VALIDITY OR INFRINGEMENT OF THE SAME PATENT, COPYRIGHT OR TRADEMARK INCLUDED IN AN EARLIER NUMBERED PENDING SUIT.
4. APPEALS ARISING OUT OF THE SAME BANKRUPTCY CASE AND ANY CASE RELATED THERETO WHICH HAVE BEEN DECIDED BY THE SAME BANKRUPTCY JUDGE.
5. REPETITIVE CASES FILED BY PRO SE LITIGANTS.
6. COMPANION OR RELATED CASE TO CASE(S) BEING SIMULTANEOUSLY FILED (INCLUDE ABBREVIATED STYLE OF OTHER CASE(S)):

7. EITHER SAME OR ALL OF THE PARTIES AND ISSUES IN THIS CASE WERE PREVIOUSLY INVOLVED IN CASE NO. _____, WHICH WAS DISMISSED. This case IS IS NOT (check one box) SUBSTANTIALLY THE SAME CASE.

SIGNATURE OF ATTORNEY OF RECORD

DATE