

**UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF MISSOURI**

DOLORES CERRONE-KENNEDY	)	
and JOSH KENNEDY,	)	
	)	
Plaintiffs,	)	
	)	
v.	)	Case No.:
	)	
JOHNSON & JOHNSON,	)	
JOHNSON & JOHNSON CONSUMER	)	<b><u>JURY TRIAL DEMANDED</u></b>
COMPANIES, INC.,	)	
IMERY'S TALC AMERICA, INC. F/K/A	)	
LUZENAC AMERICA, INC.,	)	
PERSONAL CARE PRODUCTS COUNCIL	)	
FOUNDATION, F/K/A COSMETIC,	)	
TOILETRY, AND FRAGRANCE	)	
ASSOCIATION,	)	
	)	
Defendants.	)	

**COMPLAINT**

Plaintiffs Delores Cerrone-Kennedy and Josh Kennedy, for their Complaint against Defendants Johnson & Johnson, Johnson & Johnson Consumer Companies, Inc., Imerys Talc America, Inc., and Personal Care Products Council Foundation, allege:

**Nature of Case**

1. Johnson & Johnson's Baby Powder and Shower-to-Shower products (the "Products") have been on shelves for decades and heavily marketed towards women as safe, hygienic products that keep women's bodies fresh, clean, and odorless. But these Products are far more dangerous than helpful. And Johnson & Johnson knew it.

2. The main ingredient in these Products is talcum powder, widely known to be a human carcinogen when ingested. At least 20 scientific studies have found increased rates of ovarian cancer among women using talc for hygienic purposes. One study identified the use of talc-based products in the perineal area as the cause of approximately 10% of ovarian cancer cases in the United States.

3. Despite knowing the dangers associated with use of these Products, Defendants did not warn customers not to use the Products in the perineal regions; instead, Defendants directly targeted women to use them in this fashion to increase profits.

4. Plaintiff Delores Cerrone-Kennedy, a lifelong user of Defendants' Baby Powder, was diagnosed with ovarian cancer in 2011. Plaintiffs bring this action to recover damages as a result of Ms. Cerrone-Kennedy ongoing ovarian cancer, which was directly and proximately caused by Defendants' wrongful conduct given the unreasonably dangerous and defective nature of talcum powder.

### **The Parties**

5. Plaintiff Delores Cerrone-Kennedy is a citizen of Platte County, Missouri. Since early childhood, Ms. Cerrone-Kennedy (and/or Ms. Cerrone-Kennedy's mother) has applied Johnson & Johnson Baby Powder and/or Shower to Shower (the "Products") to her perineal area every day. She routinely applied these Products after she bathed, and doused her underwear in it multiple times throughout the day. Ms. Cerrone-Kennedy purchased and used these Products in Missouri.

6. On or about May 16, 2011, Ms. Cerrone-Kennedy was diagnosed with ovarian cancer, which developed in Missouri. She has undergone surgery and treatment at St. Luke's Medical Center in Kansas City, Missouri, to eradicate the cancer.

7. Plaintiff Josh Kennedy is a citizen of Platte County, Missouri. He has been married to Ms. Cerrone-Kennedy since September 14, 2002.

8. Defendant Johnson & Johnson is a New Jersey corporation with its principal place of business in New Jersey.

9. Defendant Johnson & Johnson Consumer Companies, Inc. is a New Jersey corporation with its principal place of business in New Jersey (Johnson & Johnson and Johnson & Johnson Consumer Companies, Inc. are collectively referred to as the "J&J Defendants").

10. The J&J Defendants manufactured the Products, which consisted almost entirely of talc.

11. Defendant Imerys Talc America, Inc., f/k/a Luzenac America, Inc., is a Delaware corporation with its principal place of business in California. 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.

12. Defendant Imerys Talc mined the talc contained in the Products.

13. Defendant Personal Care Products Council ("PCPC"), f/k/a Cosmetic, Toiletry, and Fragrance Association ("CTFA"), is a corporation organized in the District of

Columbia, with its principal place of business in the District of Columbia. PCPC is the successor or continuation of CTFA and PCPC is legally responsible for all liabilities incurred when it was known as CTFA.

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

### **Jurisdiction and Venue**

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

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

17. Venue is proper in this Court under 28 U.S.C. §§ 1391(b)(2) because a substantial part of the events or omissions giving rise to Plaintiff's claims occurred in this judicial district.

## Facts

18. The Products are comprised of a significant amount of talc, a naturally occurring mineral that contains magnesium, silicon, oxygen, and hydrogen. When the talc is crushed, it becomes a fine, white powder that has been used in feminine hygiene products for its ability to absorb moisture and prevent chafing and rashes.

19. The J&J Defendants marketed the Products to women, like Ms. Cerrone-Kennedy, for decades urging them to powder their perineal areas daily and douse their underwear in talc to keep themselves clean and to dissipate vaginal odors.

20. In fact, the J&J Defendants continually promoted their Products as symbols of freshness, cleanliness, and purity. For example, they marketed the Products:

- a. as “Gentle and mild”;
- b. for everyday use to help feel “soft, fresh and comfortable”; and
- c. promising that a “sprinkle a day keeps odor away.”

21. The J&J Defendants knew the increased risk of ovarian cancer from the use of the Products for decades. For example:

- a. In 1971, a study conducted by Dr. WJ Henderson and others in Cardiff, Wales, suggested an association between talc and ovarian cancer.
- b. Since 1982, there have been more than 20 other epidemiologic studies finding an increased risk in ovarian cancer with women who reported genital talc use.
- c. In 1982, an epidemiologic study conducted by Dr. Daniel Cramer and others found a 92% increased risk in ovarian cancer with women who reported genital talc use. Dr. Cramer advised the J&J Defendants to put a warning on its Products about the ovarian cancer risk, but they refused.

- d. In 1993, a study published by the United States National Toxicology Program found talc to be a carcinogen, with or without the presence of asbestos-like fibers. In response, the CFTA formed the Talc Interested Party Task Force, of which Defendants were all members. The purpose of the task force was to pool resources to defend talc. The task force's scientists performed biased research, released false information to consumers, and used political and economic influence over regulatory bodies.
- e. On November 10, 1994, the Cancer Prevention Coalition informed Johnson & Johnson's C.E.O. via letter that studies as far back as the 1960's "show conclusively that the frequent use of talcum powder in the genital area pose a serious health risk of ovarian cancer." The letter, which cited a study conducted by Dr. Bernard Harlow from Harvard Medical School, requested that Johnson & Johnson withdraw its Products from the market, or, at a minimum, put a warning on them about ovarian cancer. The company, however, refused again.
- f. In 1996, the condom industry stopped dusting condoms with talc due to the health concerns of ovarian cancer.
- g. In February 2006, the International Association for the Research of Cancer published a paper classifying perineal use of talc baby powder as a human carcinogen.
- h. In approximately 2006, the Canadian government classified talc as a very toxic, "cancer causing" substance.
- i. And in 2006, Imerys Talc put a warning on the Material Safety Data Sheets that it provided to the J&J Defendants regarding the talc it sold to them to be used in their Products.

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

23. Defendants, though, failed to inform the end-users of their Products, including Ms. Cerrone-Kennedy, of the known catastrophic health hazard from their use.

24. In fact, Defendants actively undertook to hide the truth, not only from government regulators, but from the public.

25. They did so because they were more concerned about sales than the lives of their customers. One internal Johnson & Johnson document discusses how the increased awareness of health risks associated with its Products was leading to a decline in talc use. In response, Defendants did not consider changing the Products to replace the talc with a safer product (non-talc based feminine hygiene products have been on the market for years); but instead identified those segments of the female population most likely to use talc in their genital area and targeted them with advertising.

26. Defendant Imerys Talc continually advertised and marketed talc as safe for human use.

27. Sadly, Ms. Cerrone-Kennedy and her family believed the hype. As an infant, her mother coated her perineal regions in Baby Powder. As a child, Ms. Cerrone-Kennedy's mother instructed her to use Baby Powder on her entire body including her genital area and put it in her underwear every day to keep odor away. This was precisely the use Defendants advertised, marketed, labeled, and targeted women to use their Products.

28. At the age of 17, Ms. Cerrone-Kennedy joined the military and while serving she received her nursing degree. After leaving the service, Ms. Cerrone-Kennedy worked as a labor and delivery nurse before moving into administrative and managerial positions overseeing nursing staff for various hospitals and healthcare facilities.

29. She has worked her entire life and raised two children and four step-children. Her life was adventurous and fast-paced until she got ovarian cancer.

30. In May of 2011, at the age of 47, Ms. Cerrone-Kennedy was diagnosed with stage 3 serous ovarian cancer.

31. She has fought the disease every day since.

32. Ms. Cerrone-Kennedy underwent surgery in 2011 where over 1500 cc's of cancerous fluid were removed from her body. The surgeon removed half of the tumor, ordered three rounds of chemotherapy and then performed a second surgery to get the rest of the tumor. Following the second surgery, Ms. Cerrone-Kennedy endured another six rounds of chemotherapy. Although currently in remission, Ms. Cerrone-Kennedy's doctors have told her that it has an 80% reoccurrence rate with a 50% chance of survival. It has been conveyed to her that the cancer will come back in full force; it is only a matter of when.

33. The cancer has decimated her body and horrifically altered her mind. Ms. Cerrone-Kennedy not only suffers from incurable ovarian cancer, but the strong medications have led to a host of additional physical ailments. Ms. Cerrone-Kennedy now also suffers from tremors, neuropathy, osteoarthritis, chemo brain, and a loss of her short term memory.

34. At the young age of 52, Ms. Cerrone-Kennedy is no longer able to operate a motor vehicle and cannot leave the house by herself.

35. Despite multiple attempts to re-enter the workforce, Ms. Cerrone-Kennedy's body and mind are no longer physically capable. She has been effectively homebound because of the toll the cancer has taken on her body.



36. As a direct and proximate result of Defendants' calculated and reprehensible conduct, Plaintiffs were injured and suffered damages.

**Count I – Strict Liability for Failure to Warn  
(Against all Defendants)**

37. Plaintiffs incorporate by reference the above paragraphs as if fully set forth herein.

38. At all pertinent times, defendant Imerys Talc mined and sold talc to the J&J Defendants, which defendant Imerys Talc knew that they were 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.

39. At all pertinent times, defendant Imerys Talc knew and/or should have known of the unreasonably dangerous and carcinogenic nature of the talc it was selling to the J&J Defendants, especially when used in a woman's perineal region. And, it knew or should have known that Johnson & Johnson was not warning its consumers of this danger.

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

41. At all pertinent times, Ms. Cerrone-Kennedy used the Products to powder her perineal area, which is a reasonably foreseeable use.

42. 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 increased the risk of ovarian cancer based upon scientific knowledge dating back to the 1960s.

43. At all pertinent times, including the time of sale and consumption, the Products, when put to their 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 Ms. Cerrone-Kennedy as to the risks and benefits of the Products, given Ms. Cerrone-Kennedy's need for this information.

44. Had Ms. Cerrone-Kennedy received a warning that the use of the Products would have significantly increased her risk of ovarian cancer, she would not have used them.

45. In fact, the day Ms. Cerrone-Kennedy learned of the link between the use of J&J Defendants' Products, she stopped using them entirely.

46. As a proximate result of Defendants' design, manufacture, marketing, sale, and distribution of the Products, Ms. Cerrone-Kennedy has been injured catastrophically, and has been caused severe and permanent pain, suffering, disability, impairment, loss of enjoyment of life, loss of care, comfort, and economic damages.

47. The development of ovarian cancer by Ms. Cerrone-Kennedy 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; Ms. Cerrone-Kennedy has suffered injuries and damages including but not limited to conscious pain and suffering of Plaintiffs, medical expenses and lost wages.

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

49. The Defendants' Products failed to contain adequate warnings and/or instructions regarding the increased risk of ovarian cancer with the use of their products by women. The Defendants continued to market, advertise, and expressly represent to the general public that it was safe for women to use their Products despite having scientific knowledge that dates back to the 1960's that their Products increased the risk of ovarian cancer in women when used in the perineal area.

WHEREFORE, Plaintiffs request judgment against all Defendants for compensatory and punitive damages in a fair and reasonable sum, together with costs and expenses expended herein, and such further relief as the Court deems equitable and just.

**Count II – Negligence**  
**(Against Defendant Imerys Talc)**

50. Plaintiffs incorporate by reference paragraphs 1-36 as if fully set forth herein.

51. At all pertinent times, defendant Imerys Talc had a duty to exercise reasonable care to consumers, including Ms. Cerrone-Kennedy, in the design, development,

manufacture, testing, inspection, packaging, promotion, marketing, distribution, labeling, and/or sale of the Products.

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

53. At all pertinent times, defendant 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 on scientific knowledge dating back to the 1960s.

54. At all pertinent times, defendant Imerys Talc knew or should have known that the J&J Defendants were not providing warnings to consumers of the Products of the increased risk of ovarian cancer from the use of the talc sold by defendant Imerys Talc.

55. At all pertinent times, defendant Imerys Talc was negligent in providing talc to the J&J 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 Ms. Cerrone-Kennedy, received the information that defendant Imerys Talc possessed on the carcinogenic properties of talc, including its risk of causing ovarian cancer.

56. As a direct and proximate result of defendant Imerys Talc's negligence, Ms. Cerrone-Kennedy purchased and used the Products that directly and proximately caused her to develop ovarian cancer; incurred medical bills, lost wages, and/or conscious pain and suffering; and sustained damages as a direct and proximate result.

WHEREFORE, Plaintiffs request judgment against Imerys Talc for compensatory and punitive damages in a fair and reasonable sum, together with costs and expenses expended herein, and such further relief as the Court deems equitable and just.

**Count III – Negligence  
(Against J&J Defendants)**

57. Plaintiffs incorporate by reference paragraphs 1-36 as if fully set forth herein.

58. The J&J 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 Ms. Cerrone-Kennedy 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 Ms. Cerrone-Kennedy, as to the safe and proper methods of handling and using the Products;
- e. In failing to remove the Products from the market when Defendants knew or should have known the Products were defective;

- f. In failing to instruct the ultimate users, such as Ms. Cerrone-Kennedy, as to the methods for reducing the type of exposure to the Products that caused increased risk of ovarian cancer;
- g. In failing to inform the public in general and Ms. Cerrone-Kennedy 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; and
- 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 Ms. Cerrone-Kennedy.

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

60. As a direct and proximate result of the J&J Defendants' negligence in one or more of the aforementioned ways, Ms. Cerrone-Kennedy purchased and used, as aforesaid, the Products that directly and proximately caused her to develop ovarian cancer; incur medical bills and lost wages; and suffer conscious pain and suffering.

WHEREFORE, Plaintiffs request judgment against the J&J Defendants for compensatory and punitive damages in a fair and reasonable sum, together with costs and expenses expended herein, and further relief as the Court deems equitable and just.

**Count IV – Breach of Express Warranty  
(Against J&J Defendants)**

61. Plaintiffs incorporate by reference paragraphs 1-36 as if fully set forth herein.

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

63. The Products did not conform to these express representations because they caused ovarian cancer when used by women in the perineal area.

64. As a direct and proximate result of the J&J Defendants' breach of warranty, Ms. Cerrone-Kennedy purchased and used the Products that directly and proximately caused her to develop ovarian cancer; incur medical bills and lost wages; and suffer conscious pain and suffering.

WHEREFORE, Plaintiffs request judgment against the J&J Defendants in a fair and reasonable sum, together with costs and expenses expended herein, and such further relief as the Court deems equitable and just.

**Count V – Breach of Implied Warranties  
(Against J&J Defendants)**

65. Plaintiffs incorporate by reference paragraphs 1-36 as if fully set forth herein.

66. At all relevant times the J&J Defendants knew of the uses for which the Products were intended, including use by women in the perineal area, and impliedly warranted the Products to be of merchantable quality and safe for such use.

67. The J&J Defendants breached their implied warranties of the Products sold to Ms. Cerrone-Kennedy because they were not fit for their common, ordinary, and intended uses, including use by women in the perineal area.

68. As a direct, foreseeable and proximate result of the Defendants' breaches of implied warranties, Ms. Cerrone-Kennedy purchased and used the Products that directly and proximately caused her to develop ovarian cancer; incur medical bills and lost wages; and suffer conscious pain and suffering.

WHEREFORE, Plaintiffs request judgment against the J&J Defendants in a fair and reasonable sum, together with costs and expenses expended herein, and such further relief as the Court deems equitable and just.

**Count VI – Civil Conspiracy  
(Against All Defendants)**

69. Plaintiffs incorporate by reference paragraphs 1-36 as if fully set forth herein.

70. Defendants and/or their predecessors-in-interest knowingly agreed, contrived, combined, confederated and conspired among themselves to cause Ms. Cerrone-Kennedy's injuries, disease, and/or illness by exposing her to harmful and dangerous Products. Defendants further knowingly agreed, contrived, confederated, and conspired to deprive Ms. Cerrone-Kennedy of the opportunity of informed free choice as to whether to use the Products or to expose herself to this danger. 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.



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

- a. For many decades, Defendants, individually, jointly, and in conspiracy with each other, have possessed medical and scientific data, literature and test reports that clearly indicated that use of their Products by women resulting from ordinary and foreseeable use of the Products were unreasonably dangerous, hazardous, deleterious to human health, carcinogenic, and potentially deadly;
- b. Despite the medical and scientific data, literature, and test reports possessed by and available to Defendants, Defendants individually, jointly, and in conspiracy with each other, fraudulently, willfully, and maliciously:
  - i. Withheld, concealed, and suppressed medical information regarding the increased risk of ovarian cancer from Ms. Cerrone-Kennedy; in addition, on July 27, 2005, Defendants as part of the TIPTF corresponded and agreed to edit and delete portions of scientific papers being submitted on their behalf to the United States Toxicology Program in an attempt to prevent talc from being classified as a carcinogen;
  - ii. Through the TIPTF instituted a “defense strategy” to defend talc at all costs. Admittedly, Defendants through the TIPTF used their influence over the NTP Subcommittee, and the threat of litigation against the NTP to prevent the NTP from classifying talc as a carcinogen on its 10th RoC. According to Defendants, “we believe these strategies paid-off”; and
  - 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 that Defendants knew were incorrect, incomplete, outdated, and misleading. Specifically, Defendants through the TIPTF collectively agreed to release false information to the public regarding the safety of talc on July 1, 1992; July 8, 1992; and November 17, 1994. In a letter dated September 17, 1997, Defendants were criticized by their own Toxicologist consultant for releasing this false information to the public, yet nothing was done by Defendants to correct or redact this public release of knowingly false information; and
- c. Defendants intended to induce Ms. Cerrone-Kennedy to rely on their false and fraudulent representations, omissions, and concealments, and to continue to expose herself to the dangers inherent in the use of and exposure to the Products.

72. At all relevant times, defendant Imerys Talc, the J&J Defendants, and defendant PCPC knew that the Products should contain warnings of the risk of ovarian cancer posed by women using the Products to powder the perineal region, but purposefully suppressed such information so as not to negatively affect sales and maintain the profits of the J&J Defendants, defendant Imerys Talc, and the members of the PCPC. Ms. Cerrone-Kennedy reasonably relied in good faith on Defendants' fraudulent representations, omissions, and concealments regarding the nature of the Products.

73. As a direct, foreseeable, and proximate result of Defendants' conduct, Ms. Cerrone-Kennedy purchased and used the Products that directly and proximately caused her to develop ovarian cancer; incur medical bills and lost wages; and suffer conscious pain and suffering.

WHEREFORE, Plaintiffs request judgment against all Defendants for compensatory and punitive damages in a fair and reasonable sum, together with costs and expenses expended herein, and such further relief as the Court deems equitable and just.

**Count VII – Concert of Action  
(Against Defendant Personal Care Products Council)**

74. Plaintiffs incorporate by reference paragraphs 1-36 and 71 as if fully set forth herein.

75. On information and belief, defendant Personal Care Products Council f/k/a Cosmetic, Toiletries, and Fragrance Council, knowingly and willfully aided and abetted the fraudulent marketing and sales of the Products.

76. PCPC aided and abetted this fraudulent scheme by providing substantial assistance to defendant Imerys and the J&J Defendants. This substantial assistance included, among other things, the "Facts" section of this pleading and the facts set forth in Paragraph 71.

77. Without PCPC's substantial assistance, involvement, and participation, the fraudulent scheme would not have been possible.

78. Plaintiffs suffered serious injury and pecuniary losses as a proximate result of the aiding and abetting of defendant PCPC, including but not limited to Ms. Cerrone-Kennedy's ovarian cancer.

WHEREFORE, Plaintiffs request judgment against defendant Personal Care Products Council for compensatory and punitive damages in a fair and reasonable sum, together with costs and expenses expended herein, and such further relief as the Court deems equitable and just.

**Count VIII – Negligent Misrepresentation  
(Against All Defendants)**

79. Plaintiffs incorporate by reference paragraphs 1-36 as if fully set forth herein.

80. Defendants had a duty to accurately and truthfully represent to the medical and healthcare community, Plaintiffs and the public, whether the Products had been tested and found to be safe and effective for use in the perineal area. The representations in this regard made by Defendants, in fact, were false.

81. Defendants failed to exercise ordinary care in their representations concerning the Products while they were involved in their manufacture, sale, testing, quality assurance,

quality control, and distribution in interstate commerce because Defendants negligently misrepresented the Products' high risk of unreasonable, dangerous, adverse side effects.

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

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

84. As a proximate result of Defendants' conduct, Ms. Cerrone-Kennedy has been injured and sustained severe and permanent pain, suffering, disability, impairment, loss of enjoyment of life, loss of care and comfort, and economic damages.

WHEREFORE, Plaintiffs request judgment against Defendants, individually and jointly and severally, for compensatory and punitive damages, together with interest, costs and expenses of suit, attorneys' fees, and such further relief as the Court deems equitable and just.

**Count IX – Loss of Consortium  
(Against All Defendants)**

85. Plaintiffs incorporate by reference paragraphs 1-36 as if fully set forth herein.

86. Mr. Kennedy sustained damage as a direct result of the damages suffered by his wife.

87. Subsequent to Ms. Cerrone-Kennedy's diagnosis of ovarian cancer, she was unable to perform the necessary duties as a spouse and the work and service usually performed in the care, maintenance, and management of the family home.

88. As a proximate result thereof, Mr. Kennedy was deprived of the consortium of his spouse, including the performance of duties, all to his damage in an amount presently unknown but that will be proved at the time of trial.

89. As a direct and proximate result of the acts of Defendants, and the severe injuries caused thereby to Ms. Cerrone-Kennedy, Mr. Kennedy has suffered, and will continue to suffer, loss of consortium, companionship, love and affection from his spouse, and has suffered severe mental and emotional distress and nervousness as a result thereof.

WHEREFORE, Plaintiffs request judgment against all Defendants for a fair and reasonable sum, together with costs and expenses expended herein, and such further relief as the Court deems equitable and just.

**Allegations Supporting Punitive Damages  
(Against All Defendants)**

90. 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 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; and

- c. Through the actions outlined above, Defendants expressed a reckless indifference to the safety of users of the Products, including Ms. Kennedy. Defendants' conduct, 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.

91. As a direct and proximate result of the willful, wanton, evilly motivated, and/or reckless conduct of the Defendants, Plaintiffs are entitled to punitive damages in an amount to be determined at trial.

Dated: July 21, 2016

Respectfully Submitted,

/s/ Richard M. Paul III  
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JS 44 (Rev 09/10)

**UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF MISSOURI****CIVIL COVER SHEET**

This automated JS-44 conforms generally to the manual JS-44 approved by the Judicial Conference of the United States in September 1974. The data is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. The information contained herein neither replaces nor supplements the filing and service of pleadings or other papers as required by law. This form is authorized for use only in the Western District of Missouri.

**The completed cover sheet must be saved as a pdf document and filed as an attachment to the Complaint or Notice of Removal.**

**Plaintiff(s):****First Listed Plaintiff:**

DELORES CERRONE-KENNEDY ;  
1 Citizen of This State;  
**County of Residence:** Platte County

**Additional Plaintiff(s):**

JOSH KENNEDY ;  
1 Citizen of This State;

**Defendant(s):****First Listed Defendant:**

JOHNSON & JOHNSON ;  
5 Incorporated and Principal Place of Business in Another State; New Jersey  
**County of Residence:** Outside This District

**Additional Defendants(s):**

JOHNSON & JOHNSON CONSUMER COMPANIES, INC. ;  
5 Incorporated and Principal Place of Business in Another State; New Jersey

IMERY'S TALC AMERICA, INC. F/K/A LUZENAC AMERICA, INC. ;  
5 Incorporated and Principal Place of Business in Another State; California

PERSONAL CARE PRODUCTS COUNCIL f/k/a COSMETIC, TOILETRY,  
AND FRAGRANCE ASSOCIATION ;  
5 Incorporated and Principal Place of Business in Another State; DC

**County Where Claim For Relief Arose:** Platte County

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**Basis of Jurisdiction:** 4. Diversity of Citizenship

**Citizenship of Principal Parties (Diversity Cases Only)**

**Plaintiff:** 1 Citizen of This State

**Defendant:** 5 Incorporated and Principal Place of Business in Another State

**Origin:** 1. Original Proceeding

**Nature of Suit:** 367 Health Care/Pharmaceutical Product Liability

**Cause of Action:** Negligence; Breach of Warranty

**Requested in Complaint**

**Class Action:** Not filed as a Class Action

**Monetary Demand (in Thousands):** >\$75,000

**Jury Demand:** Yes

**Related Cases:** Is NOT a refiling of a previously dismissed action

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**Signature:** s/ Richard M. Paul III

**Date:** 7/21/2016

If any of this information is incorrect, please close this window and go back to the Civil Cover Sheet Input form to make the correction and generate the updated JS44. Once corrected, print this form, sign and date it, and submit it with your new civil action.