

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF LOUISIANA**

**RUBY MARIE BREAUX, IN HER
CAPACITY AS COURT APPOINTED
TUTRIX OF THE FOUR MINOR
CHILDREN: IMD, McLD, EGD and MPD**

CIVIL ACTION NO.

JUDGE:

Plaintiffs

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MAGISTRATE:

v.

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**JOHNSON & JOHNSON, JOHNSON
& JOHNSON CONSUMER
COMPANIES, INC., and IMERYS
TALC AMERICA, INC. F/K/A LUZENAC
AMERICA, INC., and PERSONAL
CARE PRODUCTS COUNCIL (PCPC) F/K/A
COSMETIC, TOILETRY, AND
FRAGRANCE ASSOCIATION (CTFA)**
Defendants

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JURY TRIAL DEMANDED

COMPLAINT

NOW INTO COURT, comes Plaintiff, **RUBY MARIE BREAUX, IN HER CAPACITY AS COURT APPOINTED TUTRIX OF THE FOUR SURVIVING MINOR CHILDREN OF CHRISTINA LYN THIBODEAUX-DOUCET (DECEDENT): IMD, McLD, EGD and MPD** (hereinafter: “Plaintiff” or “Tutrix”) by and through undersigned counsel, who bring this action against Defendants Johnson & Johnson (“J&J”), Johnson & Johnson Consumer Companies, Inc. (“J&J Consumer”), Imerys Talc America, Inc. f/k/a Luzenac America, Inc., and Personal Care Products Council f/k/a Cosmetic, Toiletry, and Fragrance Association (CTFA), and respectfully alleges the following:

INTRODUCTION

1. This action arises out of Decedent, Christina Lyn Thibeaux-Doucet’ s, diagnosis of ovarian cancer and subsequent death on July 16, 2014, which was directly and proximately caused by her regular and prolonged exposure to talcum powder in Defendants’ Johnson & Johnson Baby Powder. All claims in this action are a direct and proximate result of Defendants’ and/or their corporate predecessors’ negligent, willful, and wrongful conduct in connection with the design, development, manufacture, testing, packaging, promoting, marketing, distribution,

labeling, and/or sale of the product known as Johnson & Johnson Baby Powder (hereinafter “J&J Baby Powder”). Plaintiff seeks recovery of wrongful death and survival damages on behalf of the surviving minor children of Decedent, Christina Lyn Thibodeaux-Doucet, as a result of developing ovarian cancer, which was directly and proximately caused by such wrongful conduct by Defendants, the unreasonably dangerous and defective nature of talcum powder, and the attendant effects of developing ovarian cancer.

PARTIES, JURISDICTION, AND VENUE

2. Plaintiff, **RUBY MARIE BREAU**X, a resident and domiciliary of Morgan City, St. Mary Parish, Louisiana, is the maternal grandmother of the Decedent, Christina Lyn Thibodeaux-Doucet, and the duly appointed Tutrix of her four surviving minor children: **IMD, McLD, EGD AND MPD**

3. At the time of her death, Christina Lyn Thibodeaux-Doucet was a divorced, single mother and a citizen and domiciliary of Patterson, St. Mary Parish, Louisiana. Decedent was born in Morgan City, St. Mary Parish, Louisiana and lived in St. Mary Parish, Louisiana for all thirty nine years of her life. During her entire domicile in St. Mary Parish, Louisiana, Ms. Doucet used Defendants’ J&J Baby Powder daily in her perineal region and was a resident of St. Mary Parish, Louisiana when she developed ovarian cancer, suffered the effects attendant thereto, and ultimately died in her home located at 711 Kem Street in Patterson, St. Mary Parish, Louisiana on July 16, 2014 as a direct and proximate result of the unreasonably dangerous and defective nature of talcum powder in Defendants’ J&J Baby Powder and Defendants’ wrongful and negligent conduct in the research, development, testing, manufacture, production, promotion, distribution, marketing, and sale of talcum powder. As a direct and proximate result of these

injuries, Ms. Doucet endured severe pain and suffering and loss of enjoyment of life in addition to other damages of a personal and pecuniary nature, and eventually suffered wrongful death.

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

5. At all pertinent times, Johnson & Johnson was engaged in the business of manufacturing, marking, testing, selling, and/or distributing J&J Baby Powder. At all pertinent times, Johnson & Johnson regularly transacted, solicited, and conducted business in all States of the United States, including the State of Louisiana.

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

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

8. The Defendant, Imerys Talc American, Inc., f/k/a Luzenac America, Inc., is a Delaware corporation with its principal place of business in the State of California.

9. At all pertinent times, Imerys Talc America, Inc., f/k/a Luzenac America, Inc., has been in the business of mining and distributing talcum powder for use in talcum powder based products, including J&J Baby Powder. Imerys Talc is the successor or continuation of Luzenac America, Inc., and Imerys Talc America, Inc. is legally responsible for all liabilities incurred when it was known as Luzenc America, Inc.

10. The Defendant, Personal Care Products Counsel (“PCPC”), f/k/a Cosmetic, Toiletry, and Fragrance Association (“CTFA”), is a corporation organized under the laws of the District of Columbia, with its principal place of business in the District of Columbia.

11. PCPC is the successor or continuation of CTFA and PCPC is legally responsible for all liabilities incurred when it was known as CTFA.

12. At all pertinent times, all Defendants were engaged in the research, development, manufacture, design, testing, sale, and marketing of J&J Baby Powder, and introduced such product into interstate commerce with knowledge and intent that such product be sold in the State of Louisiana.

13. Suit is brought under this Court’s diversity jurisdiction pursuant to 28 U.S.C. 1331 et. seq. Supplemental jurisdiction is also invoked pursuant to 28 U.S.C. 1367 as to all matters cognizable under the Louisiana Constitution and the laws of the State of Louisiana, specifically including Louisiana Civil Code Articles 2315, 2315.1 and 2315.2 (wrongful death and survival); Louisiana Civil Code Articles 2520 (redhibition); Louisiana Civil Code Articles 1953 and 1958 (fraud); *Contra Non Valentem* (the “Discovery Rule”); Louisiana Revised Statutes 51:1401 and 51:1409 (unfair trade and consumer protection); and Louisiana Revised Statutes 9:2800 (Louisiana Products Liability Act).

14. Venue is proper in this Court because Decedent, Christina Lyn Thidodeaux-Doucet, purchased and was exposed to talcum powder through J&J Baby Powder in St. Mary Parish, Louisiana and continued to use the J&J Baby Powder daily in her perineal region for nearly four decades in Louisiana.

ALLEGATIONS COMMON TO ALL COUNTS

15. Talc is a magnesium trisilicate and is mined from the earth. Talc is an inorganic mineral. Defendant Imerys mined the talc contained in J&J Baby Powder.

16. Talc is the main substance in talcum powders. The Johnson & Johnson Defendants manufactured J&J Baby Powder. J&J Baby Powder is composed almost entirely of talc.

17. At all pertinent times, a feasible alternative to J&J Baby Powder has existed. Cornstarch is an organic carbohydrate that is quickly broken down by the body with no known health effects. Cornstarch powders have been sold and marketed for the same uses with nearly the same effectiveness.

18. Imerys Talc¹ has continually advertised and marketed talc as safe for human use.

19. Imerys Talc supplied customers with material safety data sheets for talc. These material safety data sheets are supposed to convey adequate health and warning information to its customers.

20. Historically, “Johnson’s Baby Powder” has been a symbol of freshness, cleanliness, and purity. During the time in question, the Johnson & Johnson Defendants advertised and marketed this product as the beacon of “freshness” and “comfort,” eliminating friction on the skin, absorbing “excess wetness” helping keep skin feeling dry and comfortable, and “clinically proven gentle and mild.” The Johnson & Johnson Defendants compelled women through advertisements to dust themselves with this product to mask odors. The bottle of “Johnson’s Baby Powder” specifically targets women by stating, “For you, use every day to help feel soft, fresh, and comfortable.”

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

21. The Decedent used Defendants' J&J Baby Powder to dust her perineal region for feminine hygiene purposes. This was an intended and foreseeable use of the J&J Baby Powder based on the advertising, marketing, and labeling of the J&J Baby Powder.

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

23. In 1982, the first epidemiologic study was performed on talc powder use in the female genital area. This study was conducted by Dr. Daniel Cramer and others. This study found a 92% increased risk in ovarian cancer with women who reported genital talc use. Shortly after this study was published, Dr. Bruce Semple of Johnson & Johnson came and visited Dr. Cramer about this study. Dr. Cramer advised Dr. Semple that Johnson & Johnson should place a warning on its talcum powders about the ovarian cancer risks so that women can make an informed decision about their health.

24. Since 1982, there have been approximately twenty-two (22) additional epidemiologic studies providing data regarding the association of talc and ovarian cancer. Nearly all of these studies have reported an elevated risk for ovarian cancer associated with genital talc use in women.

25. In 1993, the United States National Toxicology Program published a study on the toxicity of non-asbestiform talc and found clear evidence of carcinogenic activity. Talc was found to be a carcinogen, with or without the presence of asbestos-like fibers.

26. In response to the United States National Toxicology Program's study, the Cosmetic Toiletry and Fragrance Association (CTFA) formed the Talc Interested Party Task Force (TIPTF). Johnson & Johnson, Johnson & Johnson Consumer Companies, Inc., and

Luzenac were members of the CTFA and were the primary actors and contributors of the TIPTF. The stated purpose of the TIPTF was to pool financial resources of these companies in an effort to collectively defend talc use at all costs and to prevent regulation of any type over this industry. The TIPTF hired scientists to perform biased research regarding the safety of talc, members of the TIPTF edited scientific reports of the scientists hired by this group prior to the submission of these scientific reports to governmental agencies, members of the TIPTF knowingly released false information about the safety of talc to the consuming public, and used political and economic influence on regulatory bodies regarding talc. All of these activities have been well coordinated and planned by these companies and organizations over the past four (4) decades in an effort to prevent regulation of talc and to create confusion to the consuming public about the true hazards of talc relative to ovarian cancer.

27. On November 10, 1994, the Cancer Prevention Coalition mailed a letter to then Johnson & Johnson C.E.O. Ralph Larson, informing his company that studies as far back as the 1960's "...show[] conclusively that the frequent use of talcum powder in the genital area pose[] a serious health risk of ovarian cancer." The letter cited a recent study by Dr. Bernard Harlow from Harvard Medical School confirming this fact and quoted a portion of the study where Dr. Harlow and his colleagues discouraged the use of talc in the female genital area. The letter further stated that 14,000 women per year die from ovarian cancer and that this type of cancer is very difficult to detect and has a low survival rate. The letter concluded by requesting that Johnson & Johnson withdraw talc products from the market because of the alternative of cornstarch powders, or at a minimum, place warning information on its talc-based body powders about the ovarian cancer risk they pose.

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

29. In February 2006, the International Association for the Research of Cancer (IARC) part of the World Health Organization published a paper whereby they classified perineal use of talc based body powder as a “Group 2B” human carcinogen. IARC which is universally accepted as the international authority on cancer issues concluded that studies from around the world consistently found an increased risk of ovarian cancer in women from perineal use of talc. IARC found that between 16-52% of women in the world was using talc to dust their perineum and found an increased risk of ovarian cancer in women talc users ranging from 30-60%. IARC concluded with this “Evaluation”: “There is limited evidence in humans for the carcinogenicity of perineal use of talc-based baby powder.” By definition “limited evidence of carcinogenicity” means “a positive association has been observed between exposure to the agent and cancer for which a causal interpretation is considered by the Working Group to be credible, but chance, bias or confounding could not be ruled out with reasonable confidence.”

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

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

32. The Defendants had a duty to know and warn about the hazards associated with the use of J&J Baby Powder.

33. The Defendants failed to inform its customers and end users of J&J Baby Powder of a known catastrophic health hazard associated with the use of its products.

34. In addition, the Defendants procured and disseminated false, misleading, and biased information regarding the safety of J&J Baby Powder to the public and used influence over governmental and regulatory bodies regarding talc.

35. As a direct and proximate result of the Defendants’ calculated and reprehensible conduct, Decedent was injured and suffered damages, namely ovarian cancer, which required surgeries and treatments and later lead to her death. Plaintiffs have sustained loss of care, comfort, and economic damages.

FACTUAL BAKCGROUND OF DECEDENT CHRISTINA THIODEAUX-DOUCET

36. Christina Lyn Thibodeaux-Doucet, Decedent, was born on June 11, 1975 in Morgan City, St. Mary Parish; Louisiana was exposed to or applied J&J Baby Powder daily to her perineal region for freshness as an infant and for feminine hygiene purposes from her early teenage years until her death in 2014. This was an intended and foreseeable use of the product based on the advertising, marking, and labeling of J&J Baby Powder.

37. Plaintiff’s decedent, used or applied J&J Baby Powder daily to her perineal region for approximately 39 years in St. Mary Parish, LA.

38. In November 2011, Christina Lyn Thibodeaux-Doucet was diagnosed with ovarian cancer. On July 16, 2014, Christina died as a result of ovarian cancer.

39. As a direct and proximate result of the Defendants' calculated and reprehensible conduct, Christina Doucet developed ovarian cancer, which metastasized into her kidneys, and required multiple surgeries and treatments for over two years of suffering, and ultimately resulting in her untimely death at age 39.

40. Christina Thibodeaux-Doucet had four minor biological children at the time of her death, IMD, McLD, EGD AND MPD all of whom resided with and were supported by her and as to whom she had a very close and loving relationship and played a critical role in their nurture, guidance and development.

41. Plaintiffs did not discover and could not have reasonably discovered (1) the occasion, the manner and means by which a breach of duty occurred that produced Decedent's injury and death; and (2) the identity of the Defendants who breached the duty until the fall of 2016 when Decedent's father, Kurt Thibodeaux, Sr., first heard about an advertisement advising that the prolonged use of J&J Baby Powder in the perineal region was linked to ovarian cancer.

FEDERAL STANDARDS AND REQUIREMENTS

42. Upon information and belief, the Defendants have or may have failed to comply with all federal standards and requirements applicable to the sale of J&J Baby Powder including, but not limited to, violations of various sections and subsections of the United States Code and the Code of Federal Regulations.

COUNT ONE- STRICT LIABILITY FOR FAILURE TO WARN **(Imerys Talc and Johnson & Johnson Defendants)**

43. Plaintiffs incorporate by reference all other paragraphs of this Complaint as if fully set forth herein.

44. At all pertinent times, Imerys Talc mined and sold talc to Johnson & Johnson Defendants, which it knew that Johnson & Johnson was then packaging and selling to consumers

as J&J Baby Powder and it knew that consumers of the J&J Baby Powder were using it to powder their perineal regions.

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

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

47. At all pertinent times, Decedent used J&J Baby Powder to powder her perineal region, which is a reasonably foreseeable use.

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

49. At all pertinent times, including the time of sale and consumption, J&J Baby Powder, when put to the aforementioned reasonably foreseeable use, as in an unreasonably dangerous and defective condition because it failed to contain adequate and proper warnings and/or instructions regarding the increased risk of ovarian cancer associated with the use of J&J Baby Powder by women to powder their perineal region. Defendants themselves failed to properly and adequately warn and instruct the public, including Decedent as to the risks and benefits of the J&J Baby Powder given the public's need for this information.

50. Had the Decedent received a warning that the use of J&J Baby Powder would have significantly increased their risk of ovarian cancer, she would not have used the same. As a

proximate result of Defendants' design, manufacture, marketing, sale and distribution of J&J Baby Powder, Decedent was injured catastrophically, and has been caused severe and permanent pain, suffering, disability, impairment, loss of enjoyment of life and wrongful death. Plaintiffs have sustained loss of care, comfort, and economic damages.

51. The development of ovarian cancer by the Decedent was the direct and proximate result of the unreasonably dangerous and defective condition of J&J Baby Powder at the time of sale and consumption, including its lack of warnings; Decedent suffered injuries and damages including but not limited to conscious pain and suffering, medical expenses and wrongful death. Plaintiff has suffered loss of care, comfort and economic damages.

52. The Defendants' product as defective because it failed to contain warnings and/or instructions, and breached express warranties and/or failed to conform to express factual representations upon which the Decedent justifiably relied in electing to use J&J Baby Powder. The defect or defects made the product unreasonably dangerous to those persons, such as Decedent, who could reasonably be expected to use and rely upon such product. As a result, the defect or defects were a producing cause of the Decedent's injuries and damages.

53. The Defendants' products failed to contain, and continue to this day not to contain, adequate warnings and/or instructions regarding the increased risk of ovarian cancer with the use of J&J Baby Powder by women. The Defendants continue to market, advertise, and expressly represent to the general public that it is safe for women to use their product regardless of application. These Defendants continue with these marketing and advertising campaigns despite having scientific knowledge that dates back to the 1960s that J&J Baby Powder increases the risk of ovarian cancer in women when used in the perineal region.

COUNT TWO- STRICT LIABILITY FOR DEFECTIVE
MANUFACTURE AND DESIGN
(All Defendants)

54. Plaintiffs reallege and incorporate by reference all paragraphs of this Complaint as if fully set forth herein.

55. Defendants' product was unreasonably defective in design and improperly manufactured when it was placed in the stream of commerce by Defendants and was unreasonably dangerous beyond that which could be contemplated by Decedent.

56. Defendants' product creates risks to the health and safety of the consumers that are far more significant and devastating than the risks posed by other products on the market used for the same purposes. As outlined above, there has always been a feasible and alternative design—cornstarch.

57. Defendants' product is inherently dangerous and defective, unfit and unsafe for its intended and reasonably foreseeable use, and does not meet or perform to the expectations of the consumer.

58. Defendants have intentionally and recklessly designed, manufactured, marketed, labeled, sold and distributed talc/ J&J Baby Powder with wanton and willful disregard for the rights and health of Decedent, and others, and with malice, placing their economic interests above the health and safety of Decedent and others similarly situated.

59. As a proximate result of Defendants' defective design, manufacture, labeling, marketing, sale and distribution of the product, Decedent purchased and used, as aforesaid, the J&J Baby Powder that directly and proximately caused Decedent to develop ovarian cancer. Decedent was caused to incur medical expenses, conscious pain and suffering, and death.

Plaintiffs were caused to sustain loss of care and comfort and economic damages as a direct and proximate result.

COUNT THREE- NEGLIGENCE
(Imerys Talc)

60. Plaintiffs reallege and incorporate by reference all paragraphs of this Complaint as if fully set forth herein.

61. At all pertinent times, Defendant had a duty to exercise reasonable care to consumers, including Decedent, in the design, development, manufacture, testing, inspection, packaging, promotion, marketing, distribution, labeling and/or sale of its product.

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

63. At all pertinent times, Imerys Talc knew or should have known that the use of talcum powder based products in the perineal region significantly increases the risk of ovarian cancer based upon scientific knowledge dating back to the 1960's.

64. At all pertinent times, Imerys Talc knew or should have known that Johnson & Johnson was not providing warnings to consumers on the J&J Baby Powder of the risk of ovarian cancer posed by talc contained therein.

65. At all pertinent times, Imerys Talc was negligent in providing talc to the Johnson & Johnson Defendants, when it knew or should have known that the talc would be used in the J&J Baby Powder, without adequately taking steps to ensure that ultimate consumers of the J&J

Baby Powder, including Decedent, received the information that Imerys Talc possessed on the carcinogenic properties of talc, including its risk of causing ovarian cancer.

66. As a direct and proximate result of Imerys Talc's negligence, Decedent purchased and used, as aforesaid, the J&J Baby Powder that directly and proximately caused Decedent to develop ovarian cancer. Decedent was caused to incur medical expenses, conscious pain and suffering, and death. Plaintiffs were caused to sustain loss of care and comfort and economic damages as a direct and proximate result.

COUNT FOUR- NEGLIGENCE
(Johnson & Johnson Defendants)

67. Plaintiffs reallege and incorporate by reference all paragraphs of this Complaint as if fully set forth herein.

68. The Johnson & Johnson Defendants were negligent in marketing, designing, manufacturing, producing, supplying, inspecting, testing, selling, labeling, and distributing the J&J Baby Powder in one or more of the following respects:

- In failing to warn Decedent of the hazards associated with the use of J&J Baby Powder;
- In failing to properly test their products to determine adequacy and effectiveness or safety measures, if any, prior to releasing the J&J Baby Powder for consumer use;
- In failing to properly test their products to determine the increased risk of ovarian cancer during the normal and/or intended use of J&J Baby Powder;
- In failing to inform ultimate users, such as Decedent, as to the safe and proper methods of handling and using J&J Baby Powder;
- In failing to remove J&J Baby Powder from the market when the Defendants knew or should have known the J&J Baby Powder was defective;
- In failing to instruct the ultimate users, such as Decedent, as to the methods for reducing the type of exposure to J&J Baby Powder which caused increased risk of ovarian cancer;
- In failing to inform the public in general and the Decedent in particular of the known dangers of using J&J Baby Powder for dusting the perineal region;

- In failing to advise users how to prevent or reduce exposure that caused increased risk for ovarian cancer;
- In marketing and labeling J&J Baby Powder as safe for all uses despite knowledge to the contrary;
- In failing to act like a reasonably prudent company under similar circumstances;

Each and all of these acts and omissions, taken singularly or in combination, were a proximate cause of the Decedent's terminal diagnosis of ovarian cancer and subsequent loss of life.

69. At all pertinent times, the Johnson & Johnson Defendants knew or should have known that the J&J Baby Powder was unreasonably dangerous and defective when put to its reasonably anticipated use.

70. As a direct and proximate result of the Johnson & Johnson Defendants' negligence in one or more of the aforementioned ways, Decedent purchased and used, as aforesaid, the J&J Baby Powder that directly and proximately caused Decedent to develop ovarian cancer. Decedent was caused to incur medical expenses, conscious pain and suffering, and death. Plaintiffs were caused to sustain loss of care and comfort and economic damages as a direct and proximate result.

COUNT FIVE- BREACH OF EXPRESS WARRANTY
(Johnson & Johnson Defendants)

71. Plaintiffs reallege and incorporate by reference all paragraphs of this Complaint as if fully set forth herein.

72. The Johnson & Johnson Defendants expressly warranted, through direct-to-consumer marketing, advertisements, and labels, that the J&J Baby Powder was safe and effective for reasonably anticipated uses, including use by women in the perineal region.

73. J&J Baby Powder did not conform to these express representations because they cause serious injury when used by women in the perineal region in the form of ovarian cancer.

74. As a direct and proximate result of the Defendants' breach of warranty, Decedent purchased and used, as aforesaid, the J&J Baby Powder that directly and proximately caused her to develop ovarian cancer. Decedent was caused to incur medical expenses, conscious pain and suffering, and death. Plaintiffs were caused to sustain loss of care and comfort and economic damages as a direct and proximate result.

COUNT SIX- BREACH OF IMPLIED WARRANTIES
(Johnson & Johnson Defendants)

75. Plaintiffs reallege and incorporate by reference all paragraphs of this Complaint as if fully set forth herein.

76. At the time the Defendants manufactured, marketed, labeled, promoted, distributed and/or sold the J&J Baby Powder, Defendants knew of the uses for which the product was intended, including use by women in the perineal region, and impliedly warranted J&J Baby Powder to be of merchantable quality and safe for such use.

77. Defendants breached their implied warranties of the J&J Baby Powder sold to Decedent because they were not fit for their common, ordinary, and intended uses, including use by women in the perineal region.

78. As a direct, foreseeable and proximate result of the Defendants' breaches of implied warranties, Decedent purchased and used, as aforesaid, the J&J Baby Powder that directly and proximately caused Decedent to develop ovarian cancer. Decedent was caused to incur medical expenses, conscious pain and suffering, and death. Plaintiffs were caused to sustain loss of care and comfort and economic damages as a direct and proximate result.

COUNT SEVEN- CIVIL CONSPIRACY
(All Defendants)

79. Plaintiffs reallege and incorporate by reference all paragraphs of this Complaint as if fully set forth herein.

80. Defendants and/or their predecessors-in-interest knowingly agreed, contrived, combined, confederated and conspired among themselves to cause the Decedent's terminal diagnosis and subsequent loss of life by exposing the Decedent to harmful and dangerous products. Defendants further knowingly agreed, contrived, confederated and conspired to deprive Decedent of the opportunity of informed free choice as to whether to use the J&J Baby Powder or to expose her to said dangers. Defendants committed the above described wrongs by willfully misrepresenting and suppressing the truth as to the risks and dangers associated with the use of and exposure to talc and thus J&J Baby Powder.

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

- For many decades, Defendants, individually, jointly, and in conspiracy with each other, have been in possession of medical and scientific data, literature and test reports which clearly indicated that use of their talc/ J&J Baby Powder by women resulting from ordinary and foreseeable use of such products were unreasonably dangerous, hazardous, deleterious to human health, carcinogenic, and potentially deadly;
- Despite the medical and scientific data, literature, and test reports possessed by and available to Defendants, Defendants individually, jointly, and in conspiracy with each other, fraudulently, willfully and maliciously withheld, concealed and suppressed said medical information regarding the increased risk of ovarian cancer from Decedent;
- In addition, on July 27, 2005 Defendants as part of the TIPTF corresponded and agreed to edit and delete portions of scientific papers being submitted on their behalf to the United States Toxicology Program in an attempt to prevent talc from being classified as a carcinogen;
- The Defendants through the TIPTF instituted a "defense strategy" to defend talc at all costs. Admittedly, the Defendants through the TIPTF used their influence over the NTP Subcommittee, and the threat of litigation against the NTP to prevent the NTP from

classifying talc as a carcinogen on its 10th RoC. According to the Defendants, “. . . we believe these strategies paid- off”;

- Caused to be released, published and disseminated medical and scientific data, literature, and test reports containing information and statements regarding the risks of ovarian cancer which Defendants knew were incorrect, incomplete, outdated, and misleading. Specifically, the Defendants through the TIPTF collectively agreed to release false information to the public regarding the safety of talc on July 1, 1992; July 8, 1992; and November 17, 1994. In a letter dated September 17, 1997, the Defendants were criticized by their own Toxicologist consultant for releasing this false information to the public, yet nothing was done by the Defendants to correct or redact this public release of knowingly false information;
- By these false and fraudulent representations, omissions, and concealments, Defendants intended to induce the Decedent to rely upon said false and fraudulent representations, omissions and concealments, and to continue to expose herself to the dangers inherent in the use of and exposure to talc/ J&J Baby Powder.

82. Decedent reasonably and in good faith relied upon the aforementioned fraudulent representations, omissions, and concealments made by Defendants regarding the nature of talc/ J&J Baby Powder.

83. As a direct, foreseeable and proximate result of the Defendants’ fraudulent misrepresentations, omissions, and concealments regarding J&J Baby Powder and Decedent’s reliance thereon, Decedent purchased and used, as aforesaid, J&J Baby Powder that directly and proximately caused Decedent to develop ovarian cancer. Decedent was caused to incur medical expenses, conscious pain and suffering, and death. Plaintiffs were caused to sustain loss of care and comfort and economic damages as a direct and proximate result.

COUNT EIGHT- CONCERT OF ACTION
(All Defendants)

84. Plaintiffs reallege and incorporate by reference all paragraphs of this Complaint as if fully set forth herein.

85. At all pertinent times, all Defendants knew that J&J Baby Powder should contain warnings on the risk of ovarian cancer posed by women using the product to powder the perineal

region, but purposefully sought to suppress such information and omit from talc based products so as not to negatively affect sales and maintain the profits of the Johnson & Johnson Defendants, Imerys Talc, and the members of the PCPC.

86. Additionally and/or alternatively, the Defendants knowingly and willingly aided and abetted each other in the negligence, gross negligence, and reckless misconduct. Particularly, without Defendant PCPC's substantial assistance, involvement and participation, the fraudulent scheme would not have been possible.

87. As a direct and proximate result of Defendants concerted action, Decedent purchased and used, as aforesaid, J&J Baby Powder that directly and proximately caused her to develop ovarian cancer. Decedent was caused to incur medical expenses, conscious pain and suffering, and death. Plaintiffs were caused to sustain loss of care and comfort and economic damages as a direct and proximate result.

COUNT NINE- NEGLIGENCE MISREPRESENTATION
(All Defendants)

88. Plaintiffs reallege and incorporate by reference all paragraphs of this Complaint as if fully set forth herein.

89. Defendants had a duty to accurately and truthfully represent to the medical and healthcare community, Decedent, and the public, that talc/ J&J Baby Powder had been tested and found to be safe and effective for use in the perineal region. The representations made by Defendants, in fact, were false and the products were not in fact safe for such use.

90. Defendants failed to exercise ordinary care in the representations concerning the talc/ J&J Baby Powder while they were involved in their manufacture, sale, testing, quality assurance, quality control, and distribution in interstate commerce, because Defendants

negligently misrepresented the truth as to the products' actual high risk of unreasonable, dangerous, adverse side effects.

91. Defendants breached their duty by representing that their products had no serious side effects.

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

93. As a proximate result of Defendants' conduct, Decedent has been injured and sustained severe and permanent pain, suffering, disability, impairment, loss of enjoyment of life and eventual death. Plaintiffs suffered loss of care and comfort, and economic damages.

COUNT TEN- FRAUD
(All Defendants)

94. Plaintiffs reallege and incorporate by reference all paragraphs of this Complaint as if fully set forth herein.

95. At all pertinent times, Imerys Talc, the Johnson & Johnson Defendants, and the PCPC knew that talc/ J&J Baby Powder should contain warnings on the risk of ovarian cancer posed by women using the product to powder the perineal region, but purposefully sought to suppress such information and omit from talc based products so as not to negatively affect sales and maintain the Johnson & Johnson Defendants, Imerys Talc, and the members of the PCPC.

96. Defendants' intentionally, willfully, and/or recklessly, with the intent to deceive, misrepresented and/or concealed material facts to consumers and users, including Decedent.

97. At all pertinent times, upon information and belief, misrepresentations and concealments concerning J&J Baby Powder made by Defendants include, but are not limited to the following:

- The Johnson & Johnson Defendants falsely labeled and advertised J&J Baby Powder in the following ways, among others: “For you, use every day to help feel soft, fresh, and comfortable,” “a sprinkle a day keeps the odor away,” and “your body perspires in more places than just under your arms.”
- The Johnson & Johnson Defendants, through the advertisements described above, knowingly misrepresented to Decedent and the public that J&J Baby Powder was safe for use all over the body, including the perineal regions of women.
- The Johnson & Johnson Defendants intentionally failed to disclose that talc and the associated J&J Baby Powder, when used in the perineal region, increases the risk of ovarian cancer.
- The Johnson & Johnson Defendants intentionally failed to include adequate warnings with J&J Baby Powder regarding the potential and actual risks of using J&J Baby Powder in the perineal region on women and the nature, scope, severity, and duration of any serious injuries resulting therefrom.
- Despite knowing about the carcinogenic nature of talc and its likelihood to increase the risk of ovarian cancer in women, the Johnson & Johnson Defendants falsely marketed, advertised, labeled and sold J&J Baby Powder as safe for public consumption and usage, including for use by women to powder their perineal regions.

98. At all pertinent times, all Defendants actively, knowingly, and intentionally concealed and misrepresented material facts to the consuming public with the intent to deceive the public and Decedent, and with the intent that the consumers would purchase and use talc/J&J Baby Powder in the female perineal region.

99. At all pertinent times, the consuming public, including Decedent, would not otherwise have purchased J&J Baby Powder and/or applied J&J Baby Powder in the perineal region if they had been informed of the risks associated with the use of J&J Baby Powder in the perineal region.

100. At all pertinent times Decedent relied on Defendants' misrepresentations concerning the safety of talc/ J&J Baby Powder when purchasing the product and using it in her perineal region and her reliance was in good faith and was reasonable and justified.

101. Defendants' fraudulent conduct, which continues to this day, violates Louisiana Civil Code Article 1953, which states that "[f]raud is a misrepresentation or a suppression of the truth made with the intention either to obtain an unjust advantage for one party or to cause a loss or inconvenience to the other. Fraud may also result from silence of inaction."

102. Under Louisiana law, any silence and inaction constitutes fraud, being that the Defendants had the intent to deceive Decedent and increase profits despite their knowledge that its products were unreasonably dangerous and were being used by consumers in a catastrophic manner.

103. As a direct, foreseeable and proximate result of Defendants' fraudulent conduct, Decedent purchased and used J&J Baby Powder in her perineal region. As a direct and proximate result of such use, Decedent developed ovarian cancer, sustained severe and permanent pain, suffering, disability, impairment, loss of enjoyment of life and eventual death. Plaintiffs suffered loss of care and comfort, and economic damages.

104. As a result of Defendants' fraudulent conduct, Plaintiffs specifically demand damages and attorney fees pursuant to Louisiana Civil Code Article 1958.

COUNT ELEVEN- LOUISIANA PRODUCTS LIABILITY ACT
(Johnson & Johnson Defendants)

105. Plaintiffs reallege and incorporate by reference each of the preceding paragraphs as if fully set forth herein.

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

107. At all times pertinent hereto, J&J Baby Powder was expected to reach, and did reach, consumers in the State of Louisiana and throughout the United States, including Decedent herein, without substantial change in the condition in which they were sold.

108. At all times material hereto, J&J Baby Powder was designed, developed, marketed, manufactured, tested, packaged, promoted, marketed, labeled, and/or sold by Defendants in a defective and unreasonably dangerous condition at the time it were placed in the stream of commerce in the following non-exclusive particulars:

- a. When placed in the stream of commerce, the J&J Baby Powder contained manufacturing and design defects which rendered the J&J Baby Powder unreasonably dangerous;
- b. The product's manufacturing and design defects occurred while the product was in the sole possession and control of Defendants;
- c. The product's manufacturing and design defects existed before they left the control of the Defendants.

109. The J&J Baby Powder manufactured and/or designed by Defendants was defective in construction or composition in that, when it left the hands of Defendants, it deviated in a material way from Defendants' manufacturing performance standards and/or differed from otherwise identical products manufactured in the same design formula. In particular, J&J Baby Powder is not safe, has numerous and serious side effects and poses severe and fatal harm. J&J

Baby Powder is unreasonably dangerous in construction and/or composition as provided by La. R.S. 9:2800.55.

110. The J&J Baby Powder manufactured and/or designed by Defendants was defective in design in that an alternative design existed/exists that would prevent serious side effects and severe and permanent harm. For example, cornstarch is an organic carbohydrate that is quickly broken down by the body with no unknown health effects. Cornstarch based powders have been sold and marketed for the same uses as talc/ J&J Baby Powder with substantially the same effectiveness. The J&J Baby Powder is unreasonably dangerous in design as defined in La. R.S. 9:2800.56.

111. The J&J Baby Powder manufactured and/or supplied by Defendants was unreasonably dangerous because Defendants did not provide adequate warning about it. At the time the J&J Baby Powder left Defendants' control, it possessed a characteristic that can cause damage when used for its intended use (in the perineal region), and Defendants failed to use reasonable care to provide an adequate warning of the dangerous characteristic and its dangers to users and handlers of the J&J Baby Powder. J&J baby Powder is not safe and has numerous and serious side effects including, but not limited to, causing ovarian and uterine cancers. J&J Baby Powder is unreasonably dangerous because of inadequate warning as provided by La. R.S. 9:2800.57.

112. The J&J Baby Powder manufactured and/or designed by Defendants is unreasonably dangerous because it did not conform to an express warranty made by Defendants regarding its safety and fitness for use. Defendants' express warranty regarding the J&J Baby Powder induced Decedent to use the product, and Decedent's and Plaintiffs' harm was proximately caused because Defendants' express warranty was untrue. J&J Baby Powder is

unreasonably dangerous because of nonconformity to express warranty as provided by La. R.S. 9:2800.58.

113. Plaintiffs specifically demand general and special damages pursuant to La. R.S. 9:2800.51 et. seq.

COUNT TWELVE- REDHIBITION
(Johnson & Johnson Defendants)

114. Plaintiffs reallege each and every allegation of this Complaint as if each were set forth fully herein.

115. At all pertinent times, including the time of sale and consumption, the J&J Baby Powder when put to its intended or reasonably foreseeable use, was in an unreasonably dangerous and defective condition because it failed to contain adequate and proper warning and/or instructions regarding the increased risk of ovarian cancer associated with the use of the J&J Baby Powder by women to powder their perineal region.

116. The unreasonably dangerous nature of the J&J Baby Powder creates a breach of the warranty against redhibitory defects, or vices, of things sold pursuant to Louisiana Civil Code Article 2520, which states: “[a] defect is redhibitory when it renders the thing useless, or its use so inconvenient that it must be presumed that a buyer would not have bought the thing had he known of the defect.”

117. Had the Decedent known that the use of the J&J Baby Powder would have significantly increased her risk of ovarian cancer, she would not have used the same. As a direct and proximate result of the redhibitory vices of J&J Baby Powder, Decedent was injured catastrophically, and has been caused severe and permanent pain, suffering, disability, impairment, loss of enjoyment of life, and wrongful death. Plaintiffs suffered loss of care, comfort, and economic damages.

118. Due to redhibitory vices of J&J Baby Powder, Plaintiffs specifically demand damages and attorney fees pursuant to Louisiana Civil Code Article 2545.

COUNT THIRTEEN- UNFAIR AND DECEPTIVE TRADE PRACTICES
(All Defendants)

119. Plaintiffs reallege each and every allegation of this Complaint as if each were set forth fully herein.

120. Defendants and/or their predecessors-in-interest knowingly agreed, contrived, combined, confederated and conspired among themselves to cause Decedent's injuries, disease, and death by exposing the Decedent to a harmful and dangerous product. Defendants further knowingly agreed, contrived, confederated, and conspired to deprive the Decedent of the opportunity of informed free choice as to whether to the J&J Baby Powder or to expose her to said dangers. Defendants committed the above described wrongs by willfully misrepresenting and suppressing the truth as to the risks and dangers associated with the use of and exposure to J&J Baby Powder.

121. At all pertinent times, Imerys Talc, Johnson & Johnson Defendants, and the PCPC knew that J&J Baby Powder should contain warnings on the risk of ovarian cancer posed by women using the product to powder the perineal region, but purposefully sought to suppress such information and omit warnings from talc based products so as not to negatively affect sales and maintain the profits of the Johnson & Johnson Defendants, Imerys Talc, and the members of the PCPC.

122. The actions of Defendants violate Louisiana Revised Statute 51:1405, which prohibits unfair or deceptive acts or practices in the conduct of any trade or commerce.

123. Because of the unfair and deceptive practices knowingly used by the Defendants, Plaintiffs specifically demand treble damages pursuant to Louisiana Revised Statute 51:1409.

COUNT FOURTEEN- PUNITIVE DAMAGES
(All Defendants)

124. Plaintiff realleges and incorporates by reference all paragraphs of this Complaint as if fully set forth herein.

125. Defendants have acted in a maliciously, wantonly and recklessly manner, and demonstrated a conscious indifference and utter disregard of the health, safety and rights of others, by acting with an improper motive or vindictiveness and with intentional misconduct, such actions representing a high degree of immortality and showing wanton dishonesty as to imply a criminal indifference to civil obligations, in one or more of the following ways:

- a. Defendants knew of the unreasonably high risk of cancer, including, but not limited to, ovarian and uterine cancer, posed by the talc/J&J Baby Powder before manufacturing, marketing, distributing and/or selling the Products, yet purposefully proceeded with such action;
- b. Despite their knowledge of the high risk of cancer, including, but not limited to, ovarian and uterine cancer, associated with their product, 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 talc/J&J Baby Powder, including Decedent. Defendants' conduct, as described herein, knowing the dangers and risks of their products, yet concealing and/or omitting this information, in furtherance of their conspiracy and concerted action, thus demonstrating Defendants' evil motive or a reckless indifference to the safety of users of the Products.

126. As a direct and proximate result of the willful, wanton, malicious, and/or reckless conduct of the Defendants, an award of punitive damages is warranted.

TOLLING OF PRESCRIPTION

125. Plaintiffs reallege each and every allegation of this Complaint as if each were set forth fully herein.

126. Decedent suffered and died from an illness that has a latency period and does not arise until many years after exposure. Plaintiffs' tortious injury did not distinctly manifest itself until they were made aware that Decedent's ovarian cancer could be caused by her use of the Defendants' products. Consequently, the discovery rule/ *contra non valentem* applies to this case and prescription has been tolled until the day that Plaintiffs knew or had reason to know that Decedent's ovarian cancer was linked to her use of the Defendants' products.

127. Furthermore, the running of any prescription period or statute of limitation has been equitably tolled by reason of Defendants' fraudulent concealment and conduct. Through their affirmative misrepresentations and omissions, Defendants actively concealed from Plaintiffs the true risks associated with talc/ J&J Baby Powder.

128. As a result of Defendants' actions, Decedent and her physicians were unaware, and could not reasonably know or have learned through reasonable diligence that Decedent had been exposed to the risks alleged herein and that those risks were the direct and proximate result of Defendants' acts and omissions.

129. Furthermore, Defendants are estopped from relying on any prescription or statute of limitations defense because of their concealment of the true quality and nature of the talc/ J&J Baby Powder. Defendants were under a duty to disclose the true character, quality and nature of the talc/ J&J Baby Powder because this was non-public information which the Defendants had and continue to have exclusive control, and because the Defendants knew that this information was not available to Decedent, her medical providers and/or her health facilities.

130. Defendants had the ability to and did spend enormous amounts of money in furtherance of their purpose of marketing and promoting a profitable product, notwithstanding the known or reasonably known risks. Decedent and her medical professionals could not have afforded and could not have possibly conducted studies to determine the nature, extent and identity of the related health risks, and were forced to rely on Defendants' representations.

SURVIVAL AND WRONGFUL DEATH ACTIONS

131. Defendants are indebted jointly, severally, and in solido, to **PLAINTIFFS, RUBY MARIE BREAUX IN HER CAPACITY AS COURT APPOINTED TUTRIX OF THE FOUR MINOR CHILDREN: IMD, McLD, EGD and MPD** for Christina Thibodeaux-Doucet' s survival damages, including but not limited to her mental and physical pain and suffering, mental anguish, loss of enjoyment of life, and disability prior to her death, pursuant to Louisiana Civil Code Article 2315.1A(1).

132. Defendants are indebted jointly, severally, and in solido, to **PLAINTIFFS, RUBY MARIE BREAUX IN HER CAPACITY AS COURT APPOINTED TUTRIX OF THE FOUR MINOR CHILDREN: IMD, McLD, EGD and MPD** for each of their wrongful death claims and damages, including but not limited to their loss of consortium, grief and mental anguish, loss of support and services, loss of love and affection, and loss of guidance and moral support of their mother Christina Lyn Thibodeaux-Doucet. Moreover, Plaintiffs are entitled to all of Christina Doucet' s past and future earnings and earning capacity, medical expenses, funeral expenses, and all other general and equitable relief determined at a trial on the merits, for the wrongful death of Christina Thibodeaux-Doucet pursuant to Louisiana Civil Code Article 2315.2A(1).

133. Plaintiffs are entitled to and hereby demand trial by jury.

WHEREFORE, Plaintiffs demand judgment against all Defendants, individually, jointly, severally and *in solido* and requests compensatory, statutory, and punitive damages, together with prejudgment interest, post-judgment interest, all costs of these proceedings, attorneys' fees, and such other further relief as the Court deems equitable and just.

Respectfully submitted,

DOMENGEAUX WRIGHT ROY & EDWARDS, LLC

s/Elwood C. Stevens, Jr.

JAMES PARKERSON ROY (Bar No. 11,511)

ELWOOD C. STEVENS, JR. (Bar No. 12,459)

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Fax: (337) 232-8213

jimr@wrightroy.com

elwoods@wrightroy.com

**ATTORNEYS FOR PLAINTIFFS,
RUBY MARIE BREAUX, TUTRIX AND THE FOUR
MINOR CHILDREN OF DECEDENT, CHRISTINA
THIBODEAUX-DOUCET: IMD, McLD, EGD AND
MPD**

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

I. (a) PLAINTIFFS

Ruby Marie Breaux, in her capacity as court appointed tutrix of the four minor children: IMD, McLD, EGD and MPD

(b) County of Residence of First Listed Plaintiff St. Mary Parish

(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorneys (Firm Name, Address, and Telephone Number)

Elwood C. Stevens, Jr., Domengeaux Wright Roy & Edwards, LLC,
P. O. Box 3668, Lafayette, LA 70502-3668, 1-800-375-6186

DEFENDANTS

Johnson & Johnson, Johnson & Johnson Consumer Inc., Imerys Talc America, Inc., f/k/a Luzenac America, Inc., and Personal Care Products Council f/k/a Cosmetic, Toiletry, And Fragrance Association

County of Residence of First Listed Defendant Middlesex County, NJ

(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

Attorneys (If Known)

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- ☐ 1 U.S. Government Plaintiff
- ☐ 2 U.S. Government Defendant
- ☐ 3 Federal Question
(U.S. Government Not a Party)
- ☒ 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)

- | | PTF | DEF | | PTF | DEF |
|---|---------------------------------------|----------------------------|---|----------------------------|---------------------------------------|
| Citizen of This State | <input checked="" type="checkbox"/> 1 | <input type="checkbox"/> 1 | Incorporated or Principal Place of Business In This State | <input type="checkbox"/> 4 | <input type="checkbox"/> 4 |
| Citizen of Another State | <input type="checkbox"/> 2 | <input type="checkbox"/> 2 | Incorporated and Principal Place of Business In Another State | <input type="checkbox"/> 5 | <input checked="" type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 | <input type="checkbox"/> 3 | Foreign Nation | <input type="checkbox"/> 6 | <input type="checkbox"/> 6 |

IV. NATURE OF SUIT (Place an "X" in One Box Only)

Click here for: [Nature of Suit Code Descriptions.](#)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excludes Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury <input type="checkbox"/> 362 Personal Injury - Medical Malpractice PERSONAL INJURY <input type="checkbox"/> 365 Personal Injury - Product Liability <input checked="" type="checkbox"/> 367 Health Care/Pharmaceutical Personal Injury Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 690 Other LABOR <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Management Relations <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 751 Family and Medical Leave Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Employee Retirement Income Security Act IMMIGRATION <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 465 Other Immigration Actions	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 835 Patent - Abbreviated New Drug Application <input type="checkbox"/> 840 Trademark SOCIAL SECURITY <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	<input type="checkbox"/> 375 False Claims Act <input type="checkbox"/> 376 Qui Tam (31 USC 3729(a)) <input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 896 Arbitration <input type="checkbox"/> 899 Administrative Procedure Act/Review or Appeal of Agency Decision <input type="checkbox"/> 950 Constitutionality of State Statutes
REAL PROPERTY <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	CIVIL RIGHTS <input type="checkbox"/> 440 Other Civil Rights <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 448 Education PRISONER PETITIONS Habeas Corpus: <input type="checkbox"/> 463 Alien Detainee <input type="checkbox"/> 510 Motions to Vacate Sentence <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty Other: <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition <input type="checkbox"/> 560 Civil Detainee - Conditions of Confinement			

V. ORIGIN (Place an "X" in One Box Only)

- ☒ 1 Original Proceeding ☐ 2 Removed from State Court ☐ 3 Remanded from Appellate Court ☐ 4 Reinstated or Reopened ☐ 5 Transferred from Another District (specify) ☐ 6 Multidistrict Litigation - Transfer ☐ 8 Multidistrict Litigation - Direct File

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):

28 U.S.C § 1332 & 1391

Brief description of cause:

Product Liability and Diversity

VII. REQUESTED IN COMPLAINT:

☐ CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P. DEMAND \$

CHECK YES only if demanded in complaint:

JURY DEMAND: ☒ Yes ☐ No

VIII. RELATED CASE(S) IF ANY

(See instructions):

JUDGE FREDA L. WOLFSON

DOCKET NUMBER MDL NO. 2738, NJ USDC

DATE

09/08/2017

SIGNATURE OF ATTORNEY OF RECORD

/s/ Elwood C. Stevens, Jr.

FOR OFFICE USE ONLY

RECEIPT #

AMOUNT

APPLYING IFP

JUDGE

MAG. JUDGE

INSTRUCTIONS FOR ATTORNEYS COMPLETING CIVIL COVER SHEET FORM JS 44

Authority For Civil Cover Sheet

The JS 44 civil cover sheet and the information contained herein neither replaces nor supplements the filings and service of pleading or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. Consequently, a civil cover sheet is submitted to the Clerk of Court for each civil complaint filed. The attorney filing a case should complete the form as follows:

- I.(a) Plaintiffs-Defendants.** Enter names (last, first, middle initial) of plaintiff and defendant. If the plaintiff or defendant is a government agency, use only the full name or standard abbreviations. If the plaintiff or defendant is an official within a government agency, identify first the agency and then the official, giving both name and title.
 - (b) County of Residence.** For each civil case filed, except U.S. plaintiff cases, enter the name of the county where the first listed plaintiff resides at the time of filing. In U.S. plaintiff cases, enter the name of the county in which the first listed defendant resides at the time of filing. (NOTE: In land condemnation cases, the county of residence of the "defendant" is the location of the tract of land involved.)
 - (c) Attorneys.** Enter the firm name, address, telephone number, and attorney of record. If there are several attorneys, list them on an attachment, noting in this section "(see attachment)".
- II. Jurisdiction.** The basis of jurisdiction is set forth under Rule 8(a), F.R.Cv.P., which requires that jurisdictions be shown in pleadings. Place an "X" in one of the boxes. If there is more than one basis of jurisdiction, precedence is given in the order shown below.
- United States plaintiff. (1) Jurisdiction based on 28 U.S.C. 1345 and 1348. Suits by agencies and officers of the United States are included here.
- United States defendant. (2) When the plaintiff is suing the United States, its officers or agencies, place an "X" in this box.
- Federal question. (3) This refers to suits under 28 U.S.C. 1331, where jurisdiction arises under the Constitution of the United States, an amendment to the Constitution, an act of Congress or a treaty of the United States. In cases where the U.S. is a party, the U.S. plaintiff or defendant code takes precedence, and box 1 or 2 should be marked.
- Diversity of citizenship. (4) This refers to suits under 28 U.S.C. 1332, where parties are citizens of different states. When Box 4 is checked, the citizenship of the different parties must be checked. (See Section III below; **NOTE: federal question actions take precedence over diversity cases.**)
- III. Residence (citizenship) of Principal Parties.** This section of the JS 44 is to be completed if diversity of citizenship was indicated above. Mark this section for each principal party.
- IV. Nature of Suit.** Place an "X" in the appropriate box. If there are multiple nature of suit codes associated with the case, pick the nature of suit code that is most applicable. Click here for: [Nature of Suit Code Descriptions](#).
- V. Origin.** Place an "X" in one of the seven boxes.
- Original Proceedings. (1) Cases which originate in the United States district courts.
- Removed from State Court. (2) Proceedings initiated in state courts may be removed to the district courts under Title 28 U.S.C., Section 1441. When the petition for removal is granted, check this box.
- Remanded from Appellate Court. (3) Check this box for cases remanded to the district court for further action. Use the date of remand as the filing date.
- Reinstated or Reopened. (4) Check this box for cases reinstated or reopened in the district court. Use the reopening date as the filing date.
- Transferred from Another District. (5) For cases transferred under Title 28 U.S.C. Section 1404(a). Do not use this for within district transfers or multidistrict litigation transfers.
- Multidistrict Litigation – Transfer. (6) Check this box when a multidistrict case is transferred into the district under authority of Title 28 U.S.C. Section 1407.
- Multidistrict Litigation – Direct File. (8) Check this box when a multidistrict case is filed in the same district as the Master MDL docket.
- PLEASE NOTE THAT THERE IS NOT AN ORIGIN CODE 7.** Origin Code 7 was used for historical records and is no longer relevant due to changes in statute.
- VI. Cause of Action.** Report the civil statute directly related to the cause of action and give a brief description of the cause. **Do not cite jurisdictional statutes unless diversity.** Example: U.S. Civil Statute: 47 USC 553 Brief Description: Unauthorized reception of cable service
- VII. Requested in Complaint.** Class Action. Place an "X" in this box if you are filing a class action under Rule 23, F.R.Cv.P.
- Demand. In this space enter the actual dollar amount being demanded or indicate other demand, such as a preliminary injunction.
- Jury Demand. Check the appropriate box to indicate whether or not a jury is being demanded.
- VIII. Related Cases.** This section of the JS 44 is used to reference related pending cases, if any. If there are related pending cases, insert the docket numbers and the corresponding judge names for such cases.

Date and Attorney Signature. Date and sign the civil cover sheet.