UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF LOUISIANA
SHREVEPORT DIVISION

ROBERT M. BUFFINGTON, Individually and as Executor of the Estate of Sally B. Hudson,	**CIVIL ACTION NO.:**
	DIVISION:
Plaintiff,	**JUDGE:**
v.	**MAGISTRATE JUDGE:**
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 (CTFA),	**JURY DEMAND**
Defendants.	

COMPLAINT

COMES NOW Plaintiff, Robert M. Buffington, individually and as Executor of the Estate of Sally B. Hudson, by and through undersigned counsel, who brings this action against Defendants Johnson & Johnson, Johnson & Johnson Consumer Inc. (hereinafter collectively referred to as "Johnson & Johnson Defendants"), Imerys Talc America, Inc. f/k/a Luzenac America, Inc., and Personal Care Products Council f/k/a Cosmetic, Toiletry, and Fragrance Association (hereinafter collectively referred to as "Defendants") as follows:

NATURE OF THE CASE

1. This case arises out of the Defendants' negligent, willful, and wrongful conduct in connection with researching, designing, developing, testing, assembling, manufacturing, packaging, promoting, marketing, distributing, supplying and/or selling talcum powder products, namely Johnson & Johnson's Baby Powder and Shower to Shower (hereinafter the "Products"),

which was the direct and proximate cause of Decedent Sally B. Hudson' ovarian cancer and death.

PARTIES

2. Decedent Sally B. Hudson (hereinafter "Decedent") was a citizen and resident of Shreveport, Louisiana at all times relevant to the allegations in this Complaint. At pertinent times, including from approximately 1980 to 2016, Decedent purchased and applied the Products in Louisiana. As a direct and proximate result of using the Products, Decedent was diagnosed with ovarian cancer on or about October 14, 2015. On April 16, 2017, Decedent died of ovarian cancer.

3. Plaintiff Robert M. Buffington, surviving child of Decedent and Executor of Decedent's Estate, is a citizen and resident of Shreveport, Louisiana.

4. Defendant, Johnson & Johnson, is a New Jersey corporation with a principal place of business located at One Johnson & Johnson Plaza, New Brunswick, New Jersey 08933.

5. At all relevant times, Johnson & Johnson was engaged in the business of manufacturing, formulating, marketing, testing, promoting, selling, and/or distributing the Products. 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. Defendant Johnson & Johnson Consumer Inc. f/k/a Johnson & Johnson Consumer Companies, Inc. is a New Jersey corporation with its principal place of business located at One Johnson & Johnson Plaza, New Brunswick, New Jersey 08933.

7. At all relevant times, upon information and belief, Johnson & Johnson Consumer Inc. was engaged in the business of manufacturing, formulating, marketing, testing, promoting, selling, and/or distributing the Products. At all pertinent times, Johnson & Johnson Consumer

Inc. regularly transacted, solicited, and conducted business in all States of the United States, including the State of Louisiana.

8. At all relevant times, Defendants Johnson & Johnson and Johnson & Johnson Consumer Inc. have engaged in the research, development, formulation, manufacture, design, testing, licensing, sale, distribution, marketing and/or introducing into interstate commerce, either directly or indirectly through third parties or related entities, the Products.

9. Defendant Johnson & Johnson Consumer, Inc. is and has been at all relevant times a wholly-owned subsidiary of Defendant Johnson & Johnson, under the complete dominion of and control of Defendant Johnson & Johnson.

10. Defendant Imerys Talc America, Inc., f/k/a Luzenac America, Inc, ("Imerys Talc") is a Delaware corporation with its principal place of business located at 1732 North First Street, Suite 450, San Jose, California 95112.

11. At all relevant times, upon information and belief, Imerys Talc has been engaged in the business of mining and distributing talc for use in talcum powder-based products, including the Products. Imerys Talc is the successor or continuation of Luzenac America, Inc. Imerys Talc is legally responsible for all liabilities incurred by the company when it was known as Luzenac America, Inc.

12. Defendant Personal Care Products Council ("PCPC"), f/k/a Cosmetic, Toiletry, and Fragrance Association ("CTFA"), is a corporation organized under the laws of the District of Columbia, with a principal place of business in the District of Columbia. At all relevant times, upon information and belief, PCPC was a national trade association representing the personal care and cosmetic industry. At all relevant times, upon information and belief, Imerys Talc and

Johnson & Johnson have been active members of PCPC. PCPC is the successor or continuation of CTFA, and is legally responsible for all liabilities incurred when it was known as CTFA.

JURISDICTION AND VENUE

13. This Court has jurisdiction over this action pursuant to 28 U.S.C. § 1332, because the amount in controversy as to Plaintiff exceeds $75,000.00, exclusive of interest and costs, and because there is complete diversity of citizenship between Plaintiff and Defendants.

14. This Court has personal jurisdiction over Defendants because they have done substantial business in the State of Louisiana, have committed a tort in whole or in part in the State of Louisiana, have substantial and continuing contact with the State of Louisiana, and derive substantial revenue from goods used and consumed in the State of Louisiana. Defendants have sufficient minimum contacts with this State and/or sufficiently avail themselves of the markets of this State through their promotion, sales, distribution and marketing within this State to render the exercise of jurisdiction by this Court permissible.

15. Venue is proper in this jurisdiction pursuant to 28 U.S.C. § 1391, because a substantial part of the events or omissions giving rise to Plaintiff's claim occurred in this District, and because Defendants conducted substantial business in this District.

GENERAL FACTUAL ALLEGATIONS

16. Talc is a magnesium silicate, an inorganic material that is mined from the earth. The talc used in the Products is mined by Defendant Imerys Talc.

17. Talc is the main substance in talcum powders. The Johnson & Johnson Defendants manufactured the Products, namely Johnson's Baby Powder and Shower-to-Shower. The Products are composed almost entirely of talc with a small amount of fragrance.

18. At all relevant and material times herein, a feasible alternative to talc existed. Cornstarch powders have been sold and marketed for the same uses with nearly the same effectiveness.

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

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

21. Consumers expect the Products to be safe to use. In fact, the only warnings that Defendants provide to consumers regarding the Products are to keep the powder away from eyes, avoid inhalation of the powder, and use the powder externally. Defendants do not provide any other warnings about the Products.

22. The Products are not safe. Numerous studies have confirmed that talcum powder, such as the Products, significantly increases the risk of ovarian cancer in women who use talc-based powder to powder their genital area. Indeed, women who use the powder in their genital area have a 33% increased risk of ovarian cancer compared to those women who do not use the powders.

23. Despite the serious and life-threatening consequences and Defendants' knowledge of such, Defendants failed to advise consumers of the risks associated with talc-based powders, such as the Products. Instead, Defendants continue to expressly and impliedly represent that the Products are safe and are intended for use by women in their perineal areas.

24. The Johnson & Johnson Defendants market the Johnson's Baby Powder as a means of eliminating friction on the skin and absorbing moisture, while keeping skin cool and

comfortable. The Johnson & Johnson Defendants market Johnson's Baby Powder for women to use "anytime you want skin to feel soft, fresh and comfortable."

25. Johnson's Baby Powder has historically been a symbol of freshness, cleanliness, and purity. The Johnson & Johnson Defendants advertised and marketed Johnson's Baby Powder as being 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 it to mask odors. The Johnson's Baby Powder bottle specifically targets women by stating, "For you, use every day to help feel soft, fresh, and comfortable."

26. During the time in question, the Johnson & Johnson Defendants advertised and marketed the product "Shower to Shower" as safe for use by women as evidenced in its slogan "A sprinkle a day keeps odor away", and through advertisements such as "Your body perspires in more places than just under your arms. Use SHOWER TO SHOWER to feel dry, fresh, and comfortable throughout the day." And "SHOWER TO SHOWER" can be used all over your body."

27. Numerous medical studies and publications have shown a link between talc and ovarian cancer. In 1971, Dr. WJ Henderson of Cardiff, Wales conducted the first study that suggested an association between talc and ovarian cancer.

28. In 1982, the first epidemiologic study was performed on talc powder use in the female genital area. 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 met with one of the authors of this study, Dr. Cramer. Dr. Cramer advised Dr. Semple

that Johnson & Johnson should place a warning on its talcum powders about the risks of ovarian cancer so that women can make an informed decision about their health.

29. Since 1982, there have been approximately twenty-two (22) additional epidemiologic studies providing data regarding the association of talc and ovarian cancer. Almost all of these studies have found an increased risk of ovarian cancer in women who use talc in their perineal areas.

30. 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.

31. In response to this study, the CTFA formed the Talc Interested Party Task Force ("TIPTF"). The Johnson & Johnson Defendants and Luzenac (now known as Defendant Imerys Talc) were members of the CTFA and were the primary actors and contributors of the TIPTF. The stated purpose of the TIPTF was to pool financial resources of these companies in an effort to collectively defend talc at all cost and to prevent regulations any type of his industry. The TIPTF hired scientist 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 submission of these scientific reports to governmental agencies, the members of the TIPTF knowingly released false information about the safety of talc to the consuming public, and used political and economic influence over 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.

32. In 1994, the Cancer Prevention Coalition mailed a letter to then Johnson & Johnson C.E.O., Ralph Larson, informing his company that studies as far back as 1960's "…show[ ] conclusively that the frequent use of talcum powder in the genital area pose[ ] a serious health risk of ovarian cancer." The letter cited a recent study by Dr. Bernard Harlow from Harvard Medical School confirming this fact and quoted a portion of the study were Dr. Harlow and his colleagues discourage 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 and Johnson withdrawal 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.

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

34. In February of 2006, the International Association for the Research of Cancer ("IARC") part of the World Health Organization published a paper whereby they classified perineal use of talc based body powder as a "Group 2B" human carcinogen. IARC, which is universally accepted as the international authority on cancer issues, concluded that studies from around the world consistently found an increased risk of ovarian cancer in women from perineal use of talc. IARC found that between 16-52% of women in the world were using talc to dust their perineal regions and found an increased risk of ovarian cancer in women talc users ranging from 30-60%. IARC concluded with this "Evaluation": "There is limited evidence in humans for the carcinogenicity of perineal use of talc-based body powder." By definition "Limited evidence of carcinogenicity" means "a positive association has been observed between exposure

to the agent and cancer for which a causal interpretation is considered by the Working Group to be credible, but chance, bias or confounding could not be ruled out with reasonable confidence."

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

36. In 2006, Imerys Talc began placing a warning on its Material Safety Data Sheets for its talc, which it provided to the Johnson & Johnson Defendants. Not only did these Material Safety Data Sheets provide warning information about the IARC classification, but they also included warning information regarding "States Rights to Know" and warning information about the Canadian Government's "D2A" classification of talc.

37. All of the Defendants had a duty to known and warn about the hazards associated with the use of talc-based powders, such as the Products.

38. Defendants failed to inform their customers and consumers of a known catastrophic health hazard associated with the use of the Products.

39. Additionally, the Defendants procured and disseminated false, misleading, and biased information regarding the safety of talc-based products to the public and used influence over governmental and regulatory bodies regarding talc.

CASE SPECIFIC FACTUAL BACKGROUND

40. Decedent was born in 1965. Decedent used the Products to dust her perineum for feminine hygiene purposes daily from approximately 1980 to 2016.

41. Decedent would not have elected to use the Products if she knew of the true risks associated with the Products. In other words, Decedent would not have elected to use the Products if she knew of the true risks of ovarian cancer associated with the use of the Products.

42. On or about October 14, 2015, Decedent was diagnosed with ovarian cancer. Decedent suffered from ovarian cancer because the Products were negligently and defectively designed when they left Defendants' control, and Defendants knew that the Products caused an increased risk of ovarian cancer. Defendants did not disclose these facts to Decedent.

43. On April 16, 2017, Decedent died of ovarian cancer.

44. Through no fault of her own, Decedent developed ovarian cancer. The ovarian cancer caused pain and suffering, mental anguish, and financial loss and caused permanent injury to Decedent, including but not limited to death.

45. As a direct and proximate result of the use of the Products, Decedent suffered serious and dangerous side effects including ovarian cancer, as well as other severe and personal injuries which are permanent and lasting in nature, including but not limited to death.

46. As a direct and proximate result of Defendants' conduct, Decedent has suffered and incurred damages, including medical expenses and other economic and non-economic damages.

47. As a direct and proximate result of Defendants' conduct, Plaintiff has suffered and incurred damages, including but not limited to loss of consortium, loss of service, loss of society, loss of support and mental anguish.

COUNT I: WRONGFUL DEATH

48. Plaintiff hereby incorporates by reference the allegations of this Complaint contained in each of the preceding and succeeding paragraphs as if fully stated herein.

49. Plaintiff, as a surviving child of Decedent and as the Executor of Decedent's Estate, brings this claim on behalf of himself and on behalf of Decedent's Estate.

50. As a direct and proximate result of the Defendants' conduct and the defective nature of the Products as outlined herein, Decedent suffered bodily injury resulting in pain and suffering, disability, disfigurement, mental anguish, loss of capacity, loss of enjoyment of life, shortened life expectancy, expenses for hospitalization, medical treatment, loss of earnings, loss of ability to earn, funeral expenses, and death.

51. As a direct and proximate cause of the conduct of Defendants, Plaintiff has incurred hospital, nursing, and medical expenses, and estate administration expenses as a result of Decedent's death. Plaintiff has also suffered damages including but not limited to mental anguish, loss of consortium, service, support and society.

COUNT II: SURVIVAL ACTION

52. Plaintiff hereby incorporates by reference the allegations of this Complaint contained in each of the preceding and succeeding paragraphs as if fully stated herein.

53. Plaintiff, as a surviving child of Decedent and as the Executor of Decedent's Estate, brings this claim on behalf of himself and on behalf of Decedent's Estate.

54. As a direct and proximate result of the Defendants' conduct and the defective nature of the Products as outlined herein, Decedent suffered bodily injury resulting in pain and suffering, disability, disfigurement, mental anguish, loss of capacity, loss of enjoyment of life, shortened life expectancy, expenses for hospitalization, medical treatment, loss of earnings, loss of ability to earn, funeral expenses, and death.

55. As a direct and proximate cause of the Defendants' conduct, Plaintiff brings this action against Defendants to recover all damages caused to Decedent, pursuant to La. Civ. Code Art. 2315.1.

COUNT III: STRICT PRODUCTS LIABILITY- FAILURE TO WARN

56. Plaintiff hereby incorporates by reference the allegations of this Complaint contained in each of the preceding paragraphs as if fully stated herein.

57. At all times relevant and material hereto, Imerys Talc mined and sold talc to the Johnson & Johnson Defendants, with knowledge that the Johnson & Johnson Defendants then packaged and sold the talc to consumers as the Products and that consumers were using the Products to powder their perineal regions, as reasonably anticipated.

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

59. At all times relevant and material hereto, the Johnson & Johnson Defendants engaged in the business of designing, researching, developing, manufacturing, testing, packaging, promoting, marketing, distributing, labeling, disseminating and/or selling the Products throughout the United States, and those that were used by Decedent.

60. At all times relevant and material hereto, Defendants knew or should have known that its consumers, including Decedent, used the Products to dust their perineal area and that such use was reasonably foreseeable.

61. At all times relevant and material hereto, Defendants knew or should have known that the use of talcum powder based products by women in their perineal area significantly increases the risk of ovarian cancer.

62. At all times relevant and material hereto, including the time of the sale and consumption, the Products 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 perineal use of the Products. Defendants failed to properly and adequately warn and instruct consumers, including Decedent, of the risks and benefits of the Products despite the desperate need for this information.

63. At all times relevant and material hereto, Decedent used the Products to powder her perineal area.

64. The Decedent would not have used the Products had she been warned that the use of the Products in her perineal area significantly increased her risk of ovarian cancer.

65. As a direct and proximate result of Defendants' design, manufacturing, packaging, promoting, marketing, distributing, labeling, disseminating and/or selling the Products, Decedent was caused to suffer severe pain, disability, impairment, loss of enjoyment of life, loss of care, comfort, and economic damages and death.

66. Decedent developed ovarian cancer as a 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.

67. Defendants' Products were defective because they failed to contain warnings and/or instructions, and breached expressed warranties and/or failed to conform to express factual representations, upon which Decedent justifiably relied in electing to use the Products.

The defect or defects made the Products unreasonably dangerous to consumers, including Decedent, who could reasonably be expected to use and rely upon such Products. As a result, the defect or defects were a proximate cause of Decedent's injuries and damages.

68. Defendants' Products failed to contain, and continue to this day not to contain, adequate warnings and/or instructions regarding the increased risk of cancer with the use of their products by women. Defendants continue to market, advertise, and expressly represent to the general public that it is safe for women to use the Products regardless of application.

69. As a foreseeable, direct, and proximate result of Defendants' actions and/or omissions, Decedent sustained economic losses, including medical care and lost earnings, and noneconomic losses, including physical and mental pain, loss of enjoyment of life.

COUNT IV: STRICT LIABILITY – DEFECTIVE DESIGN

70. Plaintiff hereby incorporates by reference the allegations of this Complaint contained in each of the preceding paragraphs as if fully stated herein.

71. At all times relevant and material hereto, Defendants owed a duty of reasonable care to consumers, including the Decedent, to design a reasonably safe product. Furthermore, Defendants had a continuing duty to provide consumers, including Decedent, with warnings and other relevant information and data regarding the risks and dangers associated with the design of the Products, as it became or could have become available to Defendants.

72. Defendants failed to exercise reasonable care in the design of the Products because as designed, the Products were capable of causing serious personal injuries, such as those suffered by the Decedent, during their reasonably foreseeable use.

73. As designed, the Products were unreasonably dangerous for their reasonably foreseeable use, such as women using them to dust their perineal areas.

74. In addition, the powder was dangerous to the extent beyond that which could be reasonably contemplated by Decedent, and any benefit of the Products was far outweighed by the serious and undisclosed risks of their use.

75. Furthermore, other feasible alternatives exist, such as cornstarch, which perform the same function without the increased life-threatening risks and costs associated with talcum powder.

76. Defendants have known or should have known that the Products were unreasonably dangerous when used by a women in her perineal area but have continued to design, manufacture, sell, distribute, market, promote, and supply the Products with conscious disregard of the foreseeable harm to the consuming public, including Decedent.

77. As a direct and proximate result of Defendants' conduct, Decedent suffered economic losses, including medical care and lost earnings, and noneconomic losses, including physical and mental pain, and loss of enjoyment of life.

COUNT III: NEGLIGENCE

78. Plaintiff hereby incorporates by reference the allegations of this Complaint contained in each of the preceding paragraphs as if fully stated herein.

79. Defendants had a duty to exercise reasonable care in the designing, developing, researching, manufacturing, marketing, supplying, promoting, packaging, selling, and distributing the Products into the stream of commerce, including but not limited to a duty to assure that the product would not cause users to suffer unreasonable and dangerous adverse effects, and to properly warn of all risks.

80. Defendants failed to exercise ordinary care in the designing, developing, researching, manufacturing, marketing, supplying, promoting, packaging, sale, testing, quality

assurance, quality control, and distribution of talcum powder into interstate commerce in that Defendants knew or should have known that using talcum powder could cause significant bodily harm, including ovarian cancer, and was therefore not safe for consumer use.

81. Defendants' negligent actions and/or omissions, include but are not limited to the following:

a. Failing to properly warn consumers of the hazards associated with using the Products;

b. Failing to property test the Products to determine the adequacy and effectiveness or safety measures, if any, before releasing the Products to market;

c. Failing to properly test the Products to determine the increased risk of ovarian cancer during the normal and/or intended use of the Products;

d. Failing to inform ultimate users, such as Decedent, as to the safe and proper methods of handling and using the Products;

e. Failing to remove the Products from the market when the Defendants knew or should have known the Products were defective;

f. Failing to instruct the ultimate users, such as Decedent, as to the methods for reducing the type of exposure to the Products which caused increased risk of ovarian cancer;

g. Failing to inform the public in general and Decedent of the known dangers of using the Products in the perineal area;

h. Failing to advise users how to prevent or reduce exposure that caused increased risk of ovarian cancer;

i. Marketing and labeling and advertising the Products as safe for all uses despite knowledge to the contrary;

j. 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 suffered by Decedent.

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

83. As a direct and proximate result of the actions and inactions of Defendants as set forth above, Decedent purchased and used the Products and suffered economic losses, including medical care and lost earnings, and noneconomic losses, including physical and mental pain, and loss of enjoyment of life.

COUNT V: NEGLIGENCE – FAILURE TO WARN

84. Plaintiff hereby incorporates by reference the allegations of this Complaint contained in each of the preceding paragraphs as if fully stated herein.

85. At all times relevant and material hereto, Defendants engaged in the business of designing, researching, developing, manufacturing, testing, packaging, promoting, marketing, distributing, labeling, disseminating and/or selling the Products within the State of Louisiana and throughout the United States, and those used by the Decedent.

86. At all times relevant and material hereto, Defendants owed a duty of reasonable care to adequately warn of the risks associated with the use of the Products to its consumers, including the Decedent. Furthermore, Defendants had a continuing duty to provide consumers, including the Decedent, with relevant information and data regarding the risks and dangers associated with the use of talcum powder in womens' perineal area.

87. Defendants knew or reasonably should have known that the Products were defective and unreasonably dangerous when they left the possession of the Defendants in that the warnings provided to users of the Products regarding the risks associated with their use were incorrect, inadequate and misleading to consumers in the following respects:

a. The Products were unaccompanied by proper warning regarding all possible side effects associated with its use and the comparative severity and incidence of such adverse effects;

b. The Products were unaccompanied by proper warnings regarding the increased risk of ovarian cancer caused by talcum powder and Defendants continued to aggressively promote the Products even after it knew or should have known of the risk of ovarian cancer and death from the product;

c. Defendants failed to warn that there were other feasible Products available that did not have the same risks as talcum powder;

88. By failing to warn Decedent of the adverse health risks associated with the Products, Defendants breached their duty to Decedent of reasonable care and safety.

89. Defendants knew or should have known that the warnings and other relevant information and data that they distributed regarding the risks of ovarian cancer, other injuries and death associated with the use of the Products were materially inadequate.

90. Decedent did not have the same knowledge as Defendants, and no adequate warning or other relevant information and data was communicated to Decedent.

91. Defendants knew or should have known that consumers, including Decedent, would foreseeably and needlessly suffer injury and/or death as a result of Defendants' failures as they would not be aware of the unreasonably dangerous risks and side effects.

92. Accordingly, through both omission and affirmative misstatements, Defendants failed to warn and misled consumers about the risk and benefit balance of the Products, resulting in the injury to Decedent.

93. As a direct and proximate result of the actions and inactions of the Defendants as set forth above, Decedent was exposed to the Products and suffered the injuries and damages set forth hereinabove.

COUNT VI: NEGLIGENCE MISREPRESENTATION

94. Plaintiff hereby incorporates by reference the allegations of this Complaint contained in each of the preceding paragraphs as if fully stated herein.

95. Defendants had a duty to accurately and truthfully represent to the medical and healthcare community, Decedent, and the public, that the Products had been tested and found to be safe and effective for use in the perineal area. The representations made by Defendants were false.

96. Defendants failed to exercise ordinary care in the 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.

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

98. Defendants negligently represented to Decedent the safety and effectiveness of the Products and failed to include adverse information, including adverse information regarding the safety and effectiveness for use in the perineal area. The representations made by Defendants, in fact, were false.

99. The misrepresentations and/or material omissions made by or perpetuated by Defendants are as follows:

a. Defendants represented through the labeling, advertising, marketing materials, publications, notice letters, and regulatory submissions that the Products have been tested and found to be safe and effective; and

b. Defendants failed to conduce sufficient testing which, if properly performed would have shown that the Products have serious side effects, and warn users of the risks;

c. Defendants represented that the Products have no serious side effects;

d. Warn Decedent that use of the Products in a woman's perineal area carried an increased risk of ovarian cancer.

100. Defendants made the foregoing misrepresentations and omissions with the intent that Decedent and the consuming public would rely upon such information or the absence of such information in selecting the Products.

101. Decedent justifiably relied on and/or was induced by the misrepresentations by Defendants, and relied upon the absence of safety information, which Defendants failed to disclose, to her detriment.

102. As a direct and proximate result of the actions and inactions of the Defendants as set forth above, Decedent purchased and used the Products and suffered economic losses, including medical care and lost earnings, and noneconomic losses, including physical and mental pain, and loss of enjoyment of life and death.

COUNT VII: BREACH OF EXPRESS WARRANTY

103. Plaintiff hereby incorporates by reference the allegations of this Complaint contained in each of the preceding paragraphs as if fully stated herein.

104. At all times relevant and material hereto, Defendants engaged in the business of designing, researching, developing, manufacturing, testing, packaging, promoting, marketing, distributing, labeling, disseminating and/or selling the Products within the State of Louisiana and throughout the United States, and those used by Decedent.

105. Defendants expressly warranted, through direct-to-consumer marketing, advertising, and labeling, that the Products were safe and effective for reasonably anticipated uses, including use by women in the perineal area.

106. Defendants expressly represented and/or warranted to consumers, including Decedent, that the Products:

a. Were safe and fit for the use intended;

b. Were well tested;

c. Were of merchantable quality;

d. Any side effects they did produce were accurately reflected in the warnings.

107. The Products did not conform to the Defendants' representations and/or warranties because the Products cause serious injury when used by women in the perineal region in the form of ovarian cancer.

108. Such failures to conform to the representations and/or warranties made by Defendants constituted a material breach of express warranties made to Decedent concerning the Products.

109. Defendants breached these express warranties in that Defendants knew or should have known that, in fact, said representations and warranties were false, misleading and untrue in

that the Products were unsafe in light of the risks of life-threatening side effects associated with its use, including but not limited to ovarian cancer.

110. As a direct, foreseeable, and proximate result of the Defendants' breaches of express warranties, Decedent suffered grievous bodily injury and consequential economic and other losses, as described above, when Decedent used the Products, in reasonable reliance upon such express warranties, resulting in Decedent's injuries.

111. As a direct and proximate result of the express representations and warranties made by the Defendants as set forth above, Decedent suffered economic losses, including medical care and lost earnings, and noneconomic losses, including physical and mental pain, and loss of enjoyment of life and death.

COUNT VIII: BREACH OF IMPLIED WARRANTY

112. Plaintiff hereby incorporates by reference the allegations of this Complaint contained in each of the preceding paragraphs as if fully stated herein.

113. At all times relevant and material hereto, Defendants engaged in the business of designing, researching, developing, manufacturing, testing, packaging, promoting, marketing, distributing, labeling, disseminating and/or selling the Products within the State of Louisiana and throughout the United States, and those used by the Decedent.

114. Defendants impliedly warranted that the Products, which they manufacture and/or distributed and sold, and which Decedent purchased and used, to be of merchantable quality and fit for the common, ordinary, and intended uses for which the Products were sold, including for use by women in their perineal area.

115. Defendants breached their implied warranties of the Products because the aforementioned representations and warranties were false, misleading, and inaccurate in that the

Products were unsafe, unreasonably dangerous, improper, not of merchantable quality, defective, and not fit for its common, ordinary, and intended use.

116. Decedent reasonably relied upon the Defendants' implied warranty of merchantability of fitness for a particular use and purpose.

117. Decedent reasonably relied upon the skill and judgment of Defendants as to whether the Products were of merchantable quality and safe and fit for its intended use.

118. The Products were injected into the stream of commerce by the Defendants in a defective, unsafe, and inherently dangerous condition and the Products and materials were expected to and did reach consumers, including Decedent, without substantial change in the condition in which they were sold.

119. Defendants breached the aforesaid implied warranties, as the Products were not fit for intended purposes and uses.

120. As a direct, foreseeable, and proximate result of the Defendants' breaches of implied warranties, Decedent purchased and used the Products and suffered economic losses, including medical care and lost earnings, and noneconomic losses, including physical and mental pain, and loss of enjoyment of life and death.

COUNT IX: CIVIL CONSPIRACY

121. Plaintiff hereby incorporates by reference the allegations of this Complaint contained in each of the preceding paragraphs as if fully stated herein.

122. Defendants and/or their predecessors-in-interest knowingly agreed, contrived, combined, confederated and conspired among themselves to cause the Decedent's injuries, disease, and/or illness by exposing the Decedent to harmful and dangerous the Products. Defendants further knowingly agreed, contrived, confederated and conspired to deprive the

Decedent of the opportunity of informed free choice as to whether to use the Products 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 the Products.

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

a. For many decades, Defendants, individually, jointly, and in conspiracy with each other, have been in possession of medical and scientific data, literature and test reports which clearly indicated that use of the 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 said medical information regarding the increased risk of ovarian cancer from the 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;

ii. 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";

iii. Caused to be released, published and disseminated medical and scientific data, literature, and test reports containing information and statements regarding the risks of ovarian cancer which Defendants knew were incorrect, incomplete, outdated, and misleading. Specifically, the Defendants through the 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 the Defendants to correct or redact this public release of knowingly false information.

c. By these false and fraudulent representations, omissions, and concealments, Defendants intended to induce the 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 the Products.

124. Decedent reasonably and in good faith relied upon the aforementioned fraudulent representations, omissions, and concealments made by Defendants regarding the nature of the Products.

125. As a direct, foreseeable and proximate result of the Defendants' breaches of implied warranties, the Decedent purchased and used, as aforesaid, the Products that directly and proximately caused Decedent to develop ovarian cancer and to incur medical bills, lost wages, and conscious pain and suffering and death.

COUNT X: CONCERT OF ACTION

126. Plaintiff hereby incorporates by reference the allegations of this Complaint contained in each of the preceding paragraphs as if fully stated herein.

127. At all times relevant and material hereto, Defendants knew that the Products should contain warnings on the risk of ovarian cancer posed by women using the Products to powder their perineal regions, 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 Imerys Talc, the Johnson & Johnson Defendants, and the members of the PCPC.

128. As a direct, foreseeable and proximate result of the Defendants' breaches of implied warranties, Decedent purchased and used the Products which directly and proximately caused the Decedent to develop ovarian cancer and to suffer economic losses, including medical care and lost earnings, and noneconomic losses, including physical and mental pain, and loss of enjoyment of life and death.

COUNT XI: FRAUD AND DECEIT

129. Plaintiff hereby incorporates by reference the allegations of this Complaint contained in each of the preceding paragraphs as if fully stated herein.

130. At all times relevant and material hereto, Defendants engaged in the business of designing, researching, developing, manufacturing, testing, packaging, promoting, marketing, distributing, labeling, disseminating and/or selling the Products within the State of Louisiana and throughout the United States, and those used by Decedent.

131. Defendants, having undertaken the manufacturing, marketing, dispensing, distribution and promotion of the Products described herein, owed a duty to provide accurate and complete information regarding these Products.

132. Defendants knew or should have known that the Products were unreasonably dangerous and defective, and caused serious injuries, such as ovarian cancer.

133. Despite their knowledge, Defendants made untrue, deceptive, and/or misleading representations of material facts, and omitted and/or concealed material facts from the public, including Decedent, concerning the use and safety of the Products.

134. Defendants' practices relating to their promotion of the Products created and/or reinforced a false impression as to their safety.

135. Defendants' practice of promoting the Products placed and continues to place women who use the Products to dust their perineal regions at risk for serious injury resulting from its potentially life-threatening side effects.

136. Defendants' statements and omissions were made with the intent that Decedent would rely on them.

137. Decedent did, in fact, rely on Defendants' statements and omissions regarding the Products.

138. As a direct and proximate result of the implied representations and warranties made by Defendants as set forth above, Decedent used the Products and suffered serious injuries and damages as set forth above.

COUNT XII: LOUISIANA PRODUCTS LIABILITY ACT

139. Plaintiff hereby incorporates by reference the allegations of this Complaint contained in each of the preceding paragraphs as if fully stated herein.

140. At all times material and relevant hereto, Defendants were engaged in the business of designing, developing, manufacturing, testing, packaging, promoting, marketing, distributing, labeling, and/or selling the Products.

141. At all times material and relevant hereto, the Products were expected to reach and did reach consumers in the State of Louisiana and throughout the United States, including Decedent, without substantial change in the condition in which they were sold.

142. At all times material and relevant hereto, the Products were designed, developed, manufactured, tested, packaged, promoted, marketed, distributed, labeled, and/or sold by Defendants in a defective and unreasonably dangerous condition at the time they were placed in the stream of commerce in ways which include, but are not limited to, the following:

a. When placed in the stream of commerce, the Products contained manufacturing/design defects which rendered the Products unreasonably dangerous;

b. The Products' manufacturing/design defects occurred while the Products were in the possession and control of Defendants;

c. The Products' manufacturing/design defects existed before they left the control of Defendants.

143. The Products manufactured and/or designed by Defendants were defective in construction or composition in that, when they left the hands of Defendants, they deviated in a material way from Defendants' manufacturing performance standards and/or it differed from otherwise identical products manufactured to the same design formula. In particular, the Products were not safe, have numerous and serious side effects and cause severe and permanent injuries. The Products are unreasonably dangerous in construction or composition as provided by La. R.S. 9:2800.55.

144. The Products manufactured and/or designed by Defendants were defective in design in that, an alternative design exists that would prevent serious side effects and severe and permanent injury. For example, cornstarch is an organic carbohydrate that is quickly broken down by the body with no known health effects. Cornstarch-based powders have been sold and marketed for the same uses as the Products with nearly the same effectiveness. The Products are unreasonably dangerous in design as provided by La. R.S. 9:2800.56.

145. The Products manufactured and/or supplied by Defendants were unreasonably dangerous because Defendants did not provide an adequate warning about the Products. At the time the Products left Defendants' control, they possessed a characteristic that may cause damage, and Defendants failed to use reasonable care to provide an adequate warning of such characteristic and its danger to users and handlers of the Products. The Products are not safe and have numerous and serious side effects including causing ovarian cancer. The Products are unreasonably dangerous because of inadequate warning as provided by La. R.S. 9:2800.57.

146. The Products manufactured and/or designed by Defendants were unreasonably dangerous because they did not conform to an express warranty made by Defendants regarding the Products' safety and fitness for use. Defendants' express warranty regarding the Products

induced Decedent to use the Products, and Decedent's damage was proximately caused because Defendants' express warranty was untrue. The Products are unreasonably dangerous because of nonconformity to express warranty as provided by La. R.S. 9:2800.58.

147. As a direct and proximate result of the Defendants' actions and/or omissions, Decedent developed ovarian cancer and suffered economic losses, including medical care and lost earnings, and noneconomic losses, including physical and mental pain, and loss of enjoyment of life.

COUNT XIII: VIOLATION OF LOUISIANA UNFAIR TRADE PRACTICES AND CONSUMER PROTECTION LAW

148. Plaintiff hereby incorporates by reference the allegations of this Complaint contained in each of the preceding paragraphs as if fully stated herein.

149. Decedent purchased and used Defendants' Products primarily for personal use and thereby suffered ascertainable losses as a result of Defendants' actions in violation of La. R.S. § 51:1401 *et seq*.

150. Had Defendants not engaged in the deceptive conduct described herein, Decedent would not have purchased and/or paid for Defendants' product and would not have incurred related injuries and damages.

151. Defendants engaged in wrongful conduct while at the same time obtaining, under false pretenses, monetary gain from Decedent for the Products that would not have been paid had Defendants not engaged in unfair and deceptive conduct.

152. Defendants engaged in unfair methods of competition and deceptive acts or practices that were proscribed by law, including:

a. Representing that goods or services have characteristics, ingredients, uses, benefits, or quantities that they do not have'

b. Advertising goods or services with the intent not to sell them as advertised; and

c. Engaging in fraudulent or deceptive conduct that creates a likelihood of confusion or misunderstanding.

153. Defendants intended for Decedent to rely on their representations and advertisements regarding the Products in order to achieve monetary gain from Decedent through her purchase of the Products.

154. Decedent was injured by the cumulative and indivisible nature of Defendants' conduct. The cumulative effect of Defendants' conduct directed at Decedent and other consumers was to create demand for and sell the Products. Each aspect of Defendants' conduct combined to artificially create sales of the Products.

155. Defendants have a statutory duty to refrain from unfair or deceptive acts or trade practices in the design, labeling, development, manufacture, promotion, and sale of the Products.

156. Had Defendants not engaged in the deceptive conduct described herein, Decedent would not have purchased and/or paid for the Products, and would not have sustained the damages described herein.

157. Defendants' intentional, deceptive, unconscionable, and fraudulent representations and material omissions to consumers, including Decedent, constituted unfair and deceptive acts and trade practices in violation of La. R.S. § 51:1401 *et seq*.

158. Defendants' actions constitute unfair competition or unfair, unconscionable, deceptive or fraudulent acts, or trade practices in violation of the Louisiana consumer protection statute.

159. Defendants have engaged in unfair competition or unfair or deceptive acts or trade practices, or have made false representations in violation of La. R.S. § 51:1401 *et seq*.

160. Pursuant to La. R.S. § 51:1401 *et seq*., Defendants are the suppliers, manufacturers, advertisers, and sellers, who are subject to liability under such legislation for unfair, deceptive, fraudulent and unconscionable consumer sales practices.

161. Defendants violated the consumer protection statutes by knowingly and falsely representing in marketing and promotional materials that the Products were fit to be used for the purpose for which they were intended, when the Products were in fact defective and dangerous.

162. Defendants' actions and/or omissions are deceptive trade acts.

163. Defendants had actual knowledge of the defective and dangerous condition of the Products and failed to take any action to cure such defects or dangerous conditions.

164. Decedent relied upon Defendants' misrepresentations and omissions in determining which product to use.

165. Defendants' deceptive, unconscionable or fraudulent representations and material omissions to consumers, including Decedent, constitute deceptive acts and practices.

166. As a direct and proximate result of the unlawful acts or omissions of Defendants, Decedent suffered economic losses, including medical care and lost earnings, and noneconomic losses, including physical and mental pain, and loss of enjoyment of life and death.

COUNT XIII: PUNITIVE DAMAGES

167. Plaintiff hereby incorporates by reference the allegations of this Complaint contained in each of the preceding paragraphs as if fully stated herein.

168. Defendants have acted willfully, wantonly, with an evil motive, and recklessly in one or more of the following ways:

a. Defendants knew of the unreasonable risk of cancer posed by the Products before manufacturing, marketing, distributing and/or selling the Products, yet purposefully proceeded with such actions;

b. Despite their knowledge of the unreasonable risk of ovarian cancer associated with the Products, Defendants affirmatively minimized this risk through marketing and promotional efforts and product labeling.

169. As a direct and proximate result of the Defendants' acts and/or omissions, Decedent used the Products and suffered serious injuries and damages as set forth above.

170. Defendants' conduct was committed with knowing, conscious and deliberate disregard for the rights and safety of consumers, including the Decedent, thereby entitling Decedent to punitive damages in an amount appropriate to punish the Defendants and deter them from similar conduct in the future.

PRAYER FOR RELIEF

Plaintiff respectfully requests judgment against Defendants on each of the above counts as follows:

a. Compensatory damages in excess of the jurisdictional amount, including, but not limited to pain, suffering, emotional distress, loss of enjoyment of life, and other non-economic damages in an amount to be determined at the trial of this action;

b. Economic damages in the form of medical expenses, out of pocket expenses, lost earnings and other economic damages, including, but not limited to, all damages sustained as a result of the injury in an amount to be determined at trial of this action;

c. Punitive and exemplary damages for the wanton, willful, fraudulent, and reckless acts of Defendants who demonstrated a complete disregard and reckless indifference for

the safety and welfare of the general public and Decedent, in an amount sufficient to punish Defendants and deter future similar conduct;

d. Pre-judgment and post-judgment interest as provided by law;

e. Plaintiff's attorney fees;

f. Plaintiff's costs of the proceedings; and

g. Such other relief as this Court deems just and proper.

DEMAND FOR JURY TRIAL

Plaintiff hereby demands a trial by jury on all Counts and as to all issues and allegations presented herein.

DATED: April 16, 2018

Respectfully submitted,

/s/ Caroline Thomas White
Stephen B. Murray (#9858)
Arthur M. Murray (#27694)
Caroline Thomas White (#36051)
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E-mail: cthomas@murray-lawfirm.com

Attorneys for Plaintiff

JS 44 (Rev 06/17)

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

Robert M. Buffington

(b) County of Residence of First Listed Plaintiff Caddo Parish, LA
(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorneys *(Firm Name, Address, and Telephone Number)*
Caroline White, Stephen Murray, Sr., Arthur Murray, MURRAY LAW FIRM, 650 Poydras St., Ste. 2150, New Orleans, LA 70130, (504) 5258100

DEFENDANTS

Johnson & Johnson, Johnson & Johnson Consumer Inc., Imerys Talc America, Inc., and Personal Care Products Council

County of Residence of First Listed Defendant Middlesex, 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
- ☐ 3 Federal Question *(U.S. Government Not a Party)*
- ☐ 2 U S Government Defendant
- ☒ 4 Diversity *(Indicate Citizenship of Parties in Item III)*

III. CITIZENSHIP OF PRINCIPAL PARTIES *(Place an "X" in One Box for Plaintiff and One Box for Defendant)*
(For Diversity Cases Only)

	PTF	DEF		PTF	DEF
Citizen of This State	☒ 1	☐ 1	Incorporated *or* Principal Place of Business In This State	☐ 4	☐ 4
Citizen of Another State	☐ 2	☐ 2	Incorporated *and* Principal Place of Business In Another State	☐ 5	☒ 5
Citizen or Subject of a Foreign Country	☐ 3	☐ 3	Foreign Nation	☐ 6	☐ 6

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

Click here for: Nature of Suit Code Descriptions.

CONTRACT
- ☐ 110 Insurance
- ☐ 120 Marine
- ☐ 130 Miller Act
- ☐ 140 Negotiable Instrument
- ☐ 150 Recovery of Overpayment & Enforcement of Judgment
- ☐ 151 Medicare Act
- ☐ 152 Recovery of Defaulted Student Loans (Excludes Veterans)
- ☐ 153 Recovery of Overpayment of Veteran's Benefits
- ☐ 160 Stockholders' Suits
- ☐ 190 Other Contract
- ☐ 195 Contract Product Liability
- ☐ 196 Franchise

REAL PROPERTY
- ☐ 210 Land Condemnation
- ☐ 220 Foreclosure
- ☐ 230 Rent Lease & Ejectment
- ☐ 240 Torts to Land
- ☐ 245 Tort Product Liability
- ☐ 290 All Other Real Property

TORTS

PERSONAL INJURY
- ☐ 310 Airplane
- ☐ 315 Airplane Product Liability
- ☐ 320 Assault, Libel & Slander
- ☐ 330 Federal Employers' Liability
- ☐ 340 Marine
- ☐ 345 Marine Product Liability
- ☐ 350 Motor Vehicle
- ☐ 355 Motor Vehicle Product Liability
- ☐ 360 Other Personal Injury
- ☐ 362 Personal Injury - Medical Malpractice

PERSONAL INJURY
- ☐ 365 Personal Injury - Product Liability
- ☒ 367 Health Care/ Pharmaceutical Personal Injury Product Liability
- ☐ 368 Asbestos Personal Injury Product Liability

PERSONAL PROPERTY
- ☐ 370 Other Fraud
- ☐ 371 Truth in Lending
- ☐ 380 Other Personal Property Damage
- ☐ 385 Property Damage Product Liability

CIVIL RIGHTS
- ☐ 440 Other Civil Rights
- ☐ 441 Voting
- ☐ 442 Employment
- ☐ 443 Housing/ Accommodations
- ☐ 445 Amer w/Disabilities - Employment
- ☐ 446 Amer w/Disabilities - Other
- ☐ 448 Education

PRISONER PETITIONS

Habeas Corpus:
- ☐ 463 Alien Detainee
- ☐ 510 Motions to Vacate Sentence
- ☐ 530 General
- ☐ 535 Death Penalty

Other:
- ☐ 540 Mandamus & Other
- ☐ 550 Civil Rights
- ☐ 555 Prison Condition
- ☐ 560 Civil Detainee - Conditions of Confinement

FORFEITURE/PENALTY
- ☐ 625 Drug Related Seizure of Property 21 USC 881
- ☐ 690 Other

LABOR
- ☐ 710 Fair Labor Standards Act
- ☐ 720 Labor/Management Relations
- ☐ 740 Railway Labor Act
- ☐ 751 Family and Medical Leave Act
- ☐ 790 Other Labor Litigation
- ☐ 791 Employee Retirement Income Security Act

IMMIGRATION
- ☐ 462 Naturalization Application
- ☐ 465 Other Immigration Actions

BANKRUPTCY
- ☐ 422 Appeal 28 USC 158
- ☐ 423 Withdrawal 28 USC 157

PROPERTY RIGHTS
- ☐ 820 Copyrights
- ☐ 830 Patent
- ☐ 835 Patent - Abbreviated New Drug Application
- ☐ 840 Trademark

SOCIAL SECURITY
- ☐ 861 HIA (1395ff)
- ☐ 862 Black Lung (923)
- ☐ 863 DIWC/DIWW (405(g))
- ☐ 864 SSID Title XVI
- ☐ 865 RSI (405(g))

FEDERAL TAX SUITS
- ☐ 870 Taxes (U S Plaintiff or Defendant)
- ☐ 871 IRS—Third Party 26 USC 7609

OTHER STATUTES
- ☐ 375 False Claims Act
- ☐ 376 Qui Tam (31 USC 3729(a))
- ☐ 400 State Reapportionment
- ☐ 410 Antitrust
- ☐ 430 Banks and Banking
- ☐ 450 Commerce
- ☐ 460 Deportation
- ☐ 470 Racketeer Influenced and Corrupt Organizations
- ☐ 480 Consumer Credit
- ☐ 490 Cable/Sat TV
- ☐ 850 Securities/Commodities/ Exchange
- ☐ 890 Other Statutory Actions
- ☐ 891 Agricultural Acts
- ☐ 893 Environmental Matters
- ☐ 895 Freedom of Information Act
- ☐ 896 Arbitration
- ☐ 899 Administrative Procedure Act/Review or Appeal of Agency Decision
- ☐ 950 Constitutionality of State Statutes

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 USC 1332

Brief description of cause:
Personal injury due to defective product.

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 Hon. Freda L. Wolfson DOCKET NUMBER 16-MD-2738

DATE 04/16/2018

SIGNATURE OF ATTORNEY OF RECORD Caroline Thomas White

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 statue.

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.