UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY

IN RE: JOHNSON & JOHNSON TALCUM POWDER PRODUCTS MARKETING, SALES PRACTICES, AND PRODUCTS LIABILITY LITIGATION This document relates to: AUSTIN, ET AL. v. JOHNSON & JOHNSON, ET AL., C.A. No. 3:23-cv-22364 (E.D. Pennsylvania)	**MDL No. 2738**

MOTION TO REMAND CASE TO THE PHILADELPHIA COURT OF COMMON PLEAS

TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD, PLEASE TAKE NOTICE that Plaintiffs hereby respectfully move this Court pursuant to Case Management Order No. 1 to remand this case to the Philadelphia Court of Common Pleas for further proceedings.

As set forth in the concurrently-filed Memorandum of Law in support, defendants Johnson & Johnson, Johnson & Johnson Consumer Inc., Johnson & Johnson Holdco Inc., Janssen Pharmaceuticals, Inc., Kenvue Inc., and LTL Management, LLC (collectively referred to as the "Defendants") improperly removed this action in violation of 28 U.S.C. § 1447(c) on October 26, 2023. The Judicial Panel on Multidistrict Litigation transferred this action to this Court on November 15, 2023, as part of the In re Talcum Powder MDL. Plaintiffs seek prompt remand of this action to the Pennsylvania Court of Common Pleas.

Plaintiffs' motion to remand should be granted because (1) complete diversity of citizenship is lacking, as Plaintiffs and Defendants are citizens of the same states and Plaintiffs' claims against Janssen are recognized as meritorious under prevailing Pennsylvania law and, therefore, Janssen was not fraudulently joined in this action and (2) Plaintiffs claims have been properly joined.

This Court, in recognition that the Third Circuit has not addressed the issue of fraudulent misjoinder, has followed the majority of courts within this District and others and held that, "the issue of misjoinder should be resolved by the state court as a matter of removal jurisprudence." *In re Plavix Product Liability and Marketing Litigation*, MDL No. 3:13-cv-2418-FLW, 2014 WL 4954654, *10 (D.N.J. Oct. 1, 2014) (Wolfson, J.) (citing *Kaufman v. Allstate Ins. Co*., No. 07–6160, 2010 WL 2674130, at *8 (D.N.J. June 30, 2010) ("The Court, without guidance from the Third Circuit, and noting other district courts' reluctance to embrace the *Tapscott* doctrine finds that this issue would be better decided in state court, the court in which the parties were originally joined."); *Belmont Condo. Ass'n, Inc. v. Arrowpoint Capital Corp*., No. 11–02900, 2011 WL 6721775, at *7 (D.N.J. Dec. 20, 2011) ("This Court declines to include procedural misjoinder as an alternative ground for fraudulent joinder."); see also *In re Paulsboro Derailment Cases*, No. 13–5583, 2014 WL 197818, at *3–7 (D.N.J. Jan.13, 2014); *Prudential Ins. Co. of Am. v. Barclays Bank PLC*, No. 12–5854, 2013 WL 221995, at *10 n. 13 (D.N.J. Jan.22, 2013) ("The Third Circuit has never approved extending the doctrine to attack the joinder of Plaintiffs, and some courts refuse to do so.") report and recommendation adopted, No. 12–05854, 2013 WL 1890279 (D.N.J. May 6, 2013); *Reuter v. Medtronics, Inc*., No. 10–3019, 2010 WL 4628439, at *5–6 (D.N.J. Nov.5, 2010) ("Even assuming fraudulent misjoinder in its most expansive form was accepted in this Circuit (which it clearly is not), it would not apply here.") report and recommendation adopted, No. 10–3019, 2010 WL 4902662 (D.N.J. Nov. 23, 2010)).

Plaintiffs make this Motion based on the accompanying Memorandum, all pleadings and exhibits on file and any oral argument, if any, in this matter.

Dated: December 11, 2023

Respectfully submitted,

/s/ Tayjes M. Shah
Tayjes M. Shah (01750)
THE MILLER FIRM, LLC
The Sherman Building
108 Railroad Avenue
Orange, Virginia 22960
Ph: (540) 672-4224
Fax: (540) 672-3055
E-Mail: tshah@millerfirmllc.com

Attorneys for Plaintiffs

CERTIFICATE OF SERVICE

I hereby certify that the foregoing document has been filed electronically on the court's ECF system and is available for viewing and downloading from the ECF system. All counsel of record listed on the Court's CM/ECF system are to be served by the Court via Notice of Electronic Filing (NEF).

By: *Tayjes M. Shah*

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY

IN RE: JOHNSON & JOHNSON TALCUM POWDER PRODUCTS MARKETING, SALES PRACTICES, AND PRODUCTS LIABILITY LITIGATION This document relates to: AUSTIN, ET AL. v. JOHNSON & JOHNSON, ET AL., C.A. No. 3:23-cv-22364 (E.D. Pennsylvania)	**MDL No. 2738** Hearing Date: Courtroom: 5E

MEMORANDUM IN SUPPORT OF MOTION TO REMAND

Pursuant to 28 U.S.C. §1447(c) and for the reasons that follow, this action should be remanded to the Philadelphia Court of Common Pleas, Pennsylvania, for lack of subject matter jurisdiction.

I. FACTUAL BACKGROUND

On September 6, 2023, Plaintiffs filed their Complaint against the Johnson & Johnson, Johnson & Johnson Consumer Inc., Johnson & Johnson Holdco Inc., Janssen Pharmaceuticals, Inc., Kenvue Inc., and LTL Management, LLC (defendants are collectively referred to as "Defendants") in the Philadelphia Court of Common Pleas. *See, generally*, Complaint, **Exhibit A**. Plaintiffs' Complaint alleges that the Plaintiffs regularly applied the PRODUCTS to their perineal region, causing them to be diagnosed with Ovarian Cancer. *See*, Complaint at ¶ 5 - 111. It is undisputed that both Janssen and J&J are not diverse from the properly joined Plaintiffs. *See*, Complaint at ¶ 5 and 32. Nor can it be disputed at this stage that Defendants' wrongful and fraudulent conduct, caused Plaintiffs Ovarian Cancer. *See*, Complaint at ¶¶ 5 - 111. Nor is it disputed that a Superior Court Judge of New Jersey has already denied a motion by J&J to dismiss Janssen, Holdco, and Kenvue on the very grounds that J&J removed this case to the MDL. See Order, **Exhibit B**.

For decades, the defendants have either known or should have known that regular use of talc powder in a woman's perineal region causes Ovarian Cancer. In 1971, the first study was conducted that suggested an association between talc use and Ovarian Cancer. *See*, Complaint at ¶ 137. In 1982, the first epidemiological study was performed on talc powder use in the female genital (perineal) region. *See*, Complaint at ¶ 138. Since 1982, there have been approximately twenty-two additional epidemiologic studies providing data regarding the association of talc and Ovarian Cancer. Complaint at ¶ 139. Nearly all of these studies have reported an elevated risk of Ovarian Cancer associated with genital talc use in women. Indeed, in or about February, 2006, the International Agency for Research on Cancer (IARC), the specialized cancer agency of the World Health Organization, published a paper whereby they classified perineal use of talc-based body powder as a "Group 2B" human carcinogen. *See*, Complaint at ¶ 149; n. 8 [IARC, "Perineal use of talc-based body powder (Group 2B)" available at http://monographs.iarc.fr/ENG/Monographs/PDFs/93-talc.pdf.]

Despite decades of studies showing a clear connection between perineal talc use and Ovarian Cancer, the defendants failed to adequately warn consumers, including Plaintiffs, of the risk of developing Ovarian Cancer after perineal use of the Products. Indeed, the defendants marketed, labeled, and/or sold the Products directly to consumers, such as Plaintiffs, without any warning of the known or knowable carcinogenic dangers posed by the Products; rather, the Products were marketed, labeled, and/or sold to consumers, such as Plaintiffs, as a symbol of "freshness" and "comfort," absorbing "excess wetness," and "clinically proven to be gentle and mild.". *See*, Complaint at ¶134.

Plaintiffs' Complaint devotes hundreds of paragraphs to defendants' specific conduct giving rise to the defendants liability and levies specific allegations against all the defendants for

Strict Liability Failure to Adequately Warn (*see*, Complaint at ¶¶ 166), Negligence (*see*, Complaint at ¶¶ 192), and Negligent Misrepresentation (*see*, Complaint at ¶¶ 226).Nonetheless, on October 26, 2023, the J&J unilaterally and improperly removed this action to this Court. In support of removal, the J&J simply *assume*, on their own, that Plaintiffs do not have "any chance" of recovery against J&J or Janssen on any of these claims. This argument misses the mark and has no basis.

III. ARGUMENT

Plaintiffs' motion to remand should be granted because (1) complete diversity of citizenship is lacking, as Plaintiffs and Defendants are not diverse and Plaintiffs' claims against J&J and Janssen are recognized as meritorious under prevailing Pennsylvania law, and (2) Plaintiffs claims have been properly joined.

A. Standard For Remand Under 28 U.S.C. § 1447(c)

The exercise of removal jurisdiction is governed by 28 U.S.C. § 1441; cases may be remanded under § 1447(c) for (1) lack of district court subject matter jurisdiction or (2) a defect in the removal procedure. *Baldy v. First Niagara Pavilion, C.C.R.L., LLC,* 149 F. Supp. 3d 551, 555–56 (W.D. Pa. 2015) [citing *PAS v. Travelers Ins. Co.*, 7 F.3d 349, 352 (3d Cir.1993)]. The party seeking removal bears the burden to establish federal jurisdiction. *Steel Valley Auth. v. Union Switch & Signal Div.*, 809 F.2d 1006, 1010 (3d Cir.1987); *Dukes v. U.S. Healthcare, Inc.*, 57 F.3d 350, 359 (3d Cir.1995). It is well-settled that the statute is strictly construed, requiring remand to state court if any doubt exists over whether removal was proper. *Baldy*, 149 F. Supp. 3d at 555–56; *Abels v. State Farm Fire & Casualty Co.*, 770 F.2d 26, 29 (3d Cir.1985). Any doubt shall be resolved in favor of remand. *Brown v. Jevic*, 575 F.3d 322, 326 (3d Cir.2009).

When a defendant attempts to argue that the forum defendant was "fraudulently joined",

the defendant carries a "heavy burden" of persuasion; and removability is determined by reference to Plaintiffs' initial pleading in state court, with all doubts resolved in favor of remand. *Tamera Rothschild Esq. v. Lancer Ins. Co.*, No. CV 15-1072, 2016 WL 1237353, at *4 (W.D. Pa. Mar. 30, 2016). Plaintiffs' motives are "irrelevant"; and removal will be upheld only if "there is no reasonable basis in fact or colorable ground supporting the claim against the joined defendant, or no real intention in good faith to prosecute." *Id*. A defendant removing a case for "fraudulent joinder" must present "clear and convincing" **evidence** of fraudulent joinder. *DiMichelle v. Sears & Roebuck Co.*, No. CIV. A. 97-6470, 1997 WL 793589, at *2 (E.D. Pa. Dec. 5, 1997) [citing *Nobers v. Crucible, Inc.* 602 F.Supp. 703, 705–06 (W.D.Pa.1985)]. In other words, the J&J Defendants must show, by clear and convincing **evidence**, that "there is no reasonable basis in fact or colorable ground supporting the claim against the joined defendant, or no real intention in good faith to prosecute the action against the defendant or seek a joint judgement." *Id*. Indeed, this is a very low bar; if there is **any possibility** that a Pennsylvania court would find that a complaint states a cause of action against J&J or Janssen, the action must be remanded. On matters of substantive law, "[i]f there is even a possibility that a state court would find that a plaintiff's complaint states a cause of action against any one of the resident defendants, the federal court must find that joinder was proper and remand the case to state court." *In re Diet Drugs (Phentermine, Fenfluramine, Dexfenfluramine) Prod. Liab. Litig.*, 352 F. Supp. 2d 533, 537 (E.D. Pa. 2004) [citing *Boyer v. Snap-on Tools Corp.*, 913 F.2d 108, 111 (3d Cir.1990)]. Any uncertainties as to the current state of controlling substantive law should be held in favor of the plaintiff. *In re Avandia Mktg., Sales Practices & Prod. Liab. Litig.*, 624 F. Supp. 2d 396, 412 (E.D. Pa. 2009).

Defendant's procedurally misjoined arguments must also fail because the Third Circuit

has not adopted the rule that fraudulent misjoinder of Plaintiffs can support removal of an action filed in state court. Only one Circuit Court has adopted that doctrine, which has been severely criticized. In 1996, the Eleventh Circuit ruled in *Tapscott v. MS Dealer Service Corporation* that federal courts can consider the fraudulent or "egregious" misjoinder of a plaintiff when evaluating the propriety of removal. *Tapscott v. MS Dealer Serv. Corp*., 77 F.3d 1353, 1360 (11th Cir. 1996), abrogated by Cohen v. Off. Depot, Inc., 204 F.3d 1069 (11th Cir. 2000). But the *Tapscott* Court held that mere misjoinder under Fed. R. Civ. P. 20 does not support removal: "We do not hold that mere misjoinder is fraudulent joinder, but we do agree with the district court that Appellants' attempt to join these parties is so egregious as to constitute fraudulent joinder." *Id*.

I. Diversity of Jurisdiction Does Not Exist From All Properly Joined Plaintiffs

It is J&J' duty to show, by clear and convincing **evidence**, that "there is no reasonable basis in fact or colorable ground supporting the claim against the joined defendant, or no real intention in good faith to prosecute the action against the defendant or seek a joint judgement." . *DiMichelle v. Sears & Roebuck Co.*, No. CIV. A. 97-6470, 1997 WL 793589, at *2 (E.D. Pa. Dec. 5, 1997) [citing *Nobers v. Crucible, Inc.* 602 F.Supp. 703, 705–06 (W.D.Pa.1985)].

J&J has put forth no evidence of fraudulent joinder and instead erroneously claimed that Plaintiffs have not set forth any allegations against any defendant except for J&J. Such an argument is nonsense.

Plaintiffs' Complaint is full of over 250 paragraphs of allegations against all the listed defendants, including J&J and Janssen. *See copy of Complaint*. Indeed, the complaint alleges that all of the defendants' actions caused Plaintiffs to develop ovarian cancer and that the defendants continue to this day to "conceal their knowledge of the PRODUCTS' unreasonably dangerous

risks from consumers and the medical community." Complaint at ¶ 4. That the defendants "failed to adequately inform plaintiffs, consumers, and the medical community about the known risks of Ovarian Cancer associated with perineal use of the PRODUCTS." *Id.*

Because the complaint is replete with allegations agaisnt all of the defendants, Plaintiffs have properly named and do intent to prosecute all of the Defendants.

II. Plaintiffs' Claims Are Related and Arise Out of the Same Series of Transactions and Occurrences and There are Questions of Law and Fact Common to All Plaintiffs

Plaintiffs allege that the same product, Talcum powder, manufactured by the same defendants, caused the same disease. Such claims are properly joined in one complaint under Pennsylvania law. Pennsylvania Rule of Civil Procedure 2229(a) describes when claims of plaintiffs may be joined in one action:

> Persons may join as plaintiffs who assert any right to relief jointly, severally, separately or in the alternative, in respect of or arising out of the same transaction, occurrence, or series of transactions or occurrences if any common question of law or fact affecting the rights to relief of all such persons will arise in the action.

Pa. R.C.P. 2229(a). Rule 2229 is to be liberally construed in order to "[p]revent a multiplicity of suits, and expedite the final determination of litigation by inclusion in one suit of all parties directly interested in the controversy despite technical objections previously existing in many situations. It also recognizes the economy of a procedure under which several demands arising out of the same occurrence may be tried together, thus avoiding the reiteration of the evidence relating to facts common to the several demands." *Siranovich v. Butkovich*, 76 A.2d 640, 643 (Pa. 1950) (Rule 2229 adapted from Federal Rule 20).

Pennsylvania courts have interpreted the "same transaction or occurrence" test articulated in Rule 2229 broadly so as to achieve these policy goals. The Pennsylvania Supreme Court has

held that the "same transaction or occurrence" gives rise to claims when they arise from "a common factual background or common factual or legal questions." *Stokes v. Loyal Order of Moose Lodge No*. 696, 466 A.2d 1341, 1344-45 (Pa. 1983). The term "transaction" has itself been broadly defined to include "any act as affecting legal rights or obligations," embracing "an entire occurrence out of which a legal right springs or on which a legal obligation is predicated." *Hineline*, 586 A.2d at 457. Thus, the comments to Rule 2229 confirm that plaintiffs may be joined together when the claims stated arise from a common set of facts, so long as a question of law or fact is common to all: "This joinder is permitted although the causes of action are 1) several; 2) separate or independent; or 3) in the alternative." *Buchanan*, 1975 WL 16967, at n.3 (quoting comments to Rule 2229).

Likewise, Rule 20(a) joinder of plaintiffs is properly used for the efficient adjudication of toxic tort and product liability cases where "all of the Plaintiffs' claims rely upon the same theory that direct…exposure to" an environmental toxin "caused their injuries." *Pallano v. AES Corportation*, No. CV N09C-11-021 JRJ, 2016 WL 97496, at *2 (Del. Super. Ct. Jan. 4, 2016). *Pallano* held that 24 plaintiffs in a multi-plaintiff complaint were properly joined despite defendants' objections that the exposures occurred at different times and the injuries were not identical. *Id.* Joinder was proper because Plaintiffs' injuries were caused by the same series of Defendants' bad acts that resulted in Plaintiffs' toxic exposures; and had overlapping expert testimony related to causation and damages. *Id.* Not only did the Court determine the joinder of the 25 plaintiffs was proper under Rule 20, the Court found joinder was proper for trial under Rule 42. *Id; See also Campbell v. Boston Scientific Corp.*, 882 F.3d 70 (4th Cir. 2018) (Finding sufficient "common questions of fact" to support joinder in a failure-to-warn case where plaintiffs suffered similar injuries from a medical device implanted by different doctors at

different times but "shared expert witnesses and relied on much of the same evidence from [corporate] documents."); *Egnayem v. Boston Scientific Corp.*, 873 F. 3d 1304, 1310-11 (11th Cir. 2017) (holding that the trial court did not abuse its discretion in consolidating four cases as any differences in plaintiffs' medical histories, treatments, dates of use, exposure lengths, and causation issues were insufficient to prevent consolidation because the plaintiffs all brought the same claims based largely on the same liability theory).

Joinder is proper even where exposure to a toxic product caused injury in different states where at essence:

> plaintiffs' complaint raises common questions of law or fact regarding injuries alleged from use of the same product and arising from the same design, testing, development, labeling, packaging, distribution, marketing, and sales practices for that product. Also, because plaintiffs' allegations relate to defendants' design, manufacture, testing, and promotion of Risperidone—occurrences common as to all plaintiffs—their claims also arise out of the same transaction or occurrence, or series thereof. That is so even if the end-of-the-line exposures occurred in different states and under the supervision of different medical professionals. Thus, joinder of all sixty-four plaintiffs' claims under Rule 20(a) is proper.

Gracey v. Janssen Pharms., Inc., No. 4:15-CV-407 CEJ, 2015 WL 2066242, at *4 (E.D. Mo. May 4, 2015); *Ingham v. Johnson & Johnson*, 608 S.W.3d 663, 682 (Mo. Ct. App. 2020) (Joinder proper where "[p]laintiffs' claims against Defendants arose out of the same occurrence: each Plaintiff used Defendants' Products. Their Petition alleged they each developed ovarian cancer because of Defendants' wrongful conduct in manufacturing, marketing, testing, promoting, selling, and distributing the Products.").

Here, likewise all of the Plaintiffs allege that Defendants failed to warn of the risks of ovarian disease associated with the use of talcum powder. Defendants concealed and continue to conceal their knowledge of talcum powder's unreasonably dangerous risks from Plaintiffs to advance their financial gains.

As such, Plaintiffs used the same products and were diagnosed with the same medical condition of ovarian cancer. Plaintiffs' claims thus undoubtedly arise out of the same series of occurrences and share common questions of law and fact.

CONCLUSION

For the foregoing reasons, Plaintiffs respectfully request that this Court GRANT Plaintiffs' Motion to Remand.

Dated: December 11, 2023

Respectfully submitted,

/s/ Tayjes M. Shah

Tayjes M. Shah (01750)
THE MILLER FIRM, LLC
The Sherman Building
108 Railroad Avenue
Orange, Virginia 22960
Ph: (540) 672-4224
Fax: (540) 672-3055
E-Mail: tshah@millerfirmllc.com

Attorneys for Plaintiffs

CERTIFICATE OF SERVICE

I hereby certify that the foregoing document has been filed electronically on the court's ECF system and is available for viewing and downloading from the ECF system. All counsel of record listed on the Court's CM/ECF system are to be served by the Court via Notice of Electronic Filing (NEF).

By: *Tayjes M. Shah*

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY

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[PROPOSED] ORDER

AND NOW, this _____ day of _____, 2023, upon consideration of Plaintiffs' Motion to Remand this case to the Philadelphia Court of Common Pleas, it is hereby ORDERED that the motion is **GRANTED**.

BY THE COURT

_____
Hon. Michael A. Shipp
United States District Judge

Exhibit A

THE MILLER FIRM, LLC
Tayjes M. Shah (Identification No.: 307899)
The Sherman Building
108 Railroad Avenue
Orange, Virginia 22960
Tel: (540) 672–4224
Fax: (540) 672–3055
E–Mail: tshah@millerfirmllc.com

ATTORNEYS FOR PLAINTIFF

COURT OF COMMON PLEAS
PHILADELPHIA COUNTY

NATALIE AUSTIN, NEXT OF KIN TO NORMA D. WOODS WHITE, DECEASED,

EMANUEL AVERY, NEXT OF KIN TO SONIQIA BROWN, DECEASED,

BARRY BARTON, NEXT OF KIN TO TWILLA BARTON, DECEASED,

VICKIE A. BOSTON,

RODNEY BOYD, NEXT OF KIN TO ANN M. BOYD, DECEASED,

NANCY CALVILLO,

BRENDA CAMPBELL,

ELIZABETH CHAPMAN,

SHAILEE COUCH,

CONSTANCE M. DEGNITZ, NEXT OF KIN TO KARLA GROLEAU, DECEASED,

BRENDA DEMBY,

SHARON DOSS,

HOLLY DUDLEY,

MATTHEW ERMIS, NEXT OF KIN TO CHARLISA GRACE, DECEASED,

ROSE FLEMING,

PAUL GAGNE, NEXT OF KIN TO FLEURETTE WITALISZ, DECEASED,

TAMARA GETTIG, NEXT OF KIN TO FAY GETTIG, DECEASED,

LORETTA GRAHAME,

JUDY GRATES,

DEBRA HARPER,

GREGORY HAYES, NEXT OF KIN TO JEANEE HAYES, DECEASED,

GOLDIE HENSON-HULL,

ERIC HOLMES, NEXT OF KIN TO BRENDA THOMPSON, DECEASED,

TRISH A. JACKMAN,

DEREK KNOX, NEXT OF KIN TO EVELYN M. HOLLEY, DECEASED,

CONSETTA LICAUSI, NEXT OF KIN TO KAREN B. BRACKENBURY, DECEASED,

EMIL LONG, NEXT OF KIN TO PATTI LONG, DECEASED,

ANDREA MARSHALL, NEXT OF KIN TO ELMA CROOKS, DECEASED,

DIANE MARTINEZ,

RHONDA MATTHEWS,

JOAN MCDEVITT,

SHARON M. MONETTE,

JESSIKA A. OFFICER,

BARBARA OLSON,

NICOLE PACE,

JOEL PREME, NEXT OF KIN TO MARIE T. PREME, DECEASED,

RETTA L. PRINGLE,

ROBERT PULLEN, NEXT OF KIN TO ZULA MORRISON, DECEASED,

JOSEPH REPICH, NEXT OF KIN TO RITA REPICH, DECEASED,

ALICE RICE,

ALBERTO RIVERA, NEXT OF KIN TO WILHELMINA HINDS, DECEASED,

MELYSSA SAWYER, NEXT OF KIN TO DARLENE KOSKO, DECEASED,

RUBY J. SCARBROUGH,

MICHAEL SHERIFF, NEXT OF KIN TO PEGGY D. SHERIFF, DECEASED,

TERRY SKULSKI AND GEORGE SKULSKI,

CHARLES SMITH, NEXT OF KIN TO CARMEN SMITH, DECEASED,

CAROLE B. STANLEY AND WILFORD STANLEY,

KIM STUDWELL,

REBECCA WADE, NEXT OF KIN TO JANICE J. KECK, DECEASED,

SIDNEY WATTS, NEXT OF KIN TO BETTY JEAN WATTS, DECEASED,

KIA WILLIAMS, NEXT OF KIN TO EVELYN ASHE, DECEASED,

ANGELA WILSON,

ALAN FITZPATRICK, NEXT OF KIN TO NANCY M. FITZPATRICK, DECEASED.

Plaintiffs,

v.

Case No.

DEMAND FOR A JURY TRIAL

JOHNSON & JOHNSON

JOHNSON & JOHNSON CONSUMER INC. F/K/A JOHNSON & JOHNSON CONSUMER COMPANIES, INC.

JOHNSON & JOHNSON HOLDCO (NA) INC., f/k/a Johnson & Johnson Consumer Inc.,

KENVUE INC.,

JANSSEN PHARMACEUTICALS, INC.,

LTL Management, LLC,

Defendants.

COMPLAINT

NOTICE TO PLEAD

You have been sued in court. If you wish to defend against the claims set forth in the following pages, you must take action within twenty (20) days after this complaint and notice are served, by entering a written appearance personally or by attorney and filing in writing with the court your defenses or objections to the claims set forth against you. You are warned that if you fail to do so the case may proceed without you and a judgment may be entered against you by the court without further notice for any money claimed in

the complaint or for any other claim or relief requested by the plaintiff. You may lose money or property or other rights important to you.

YOU SHOULD TAKE THIS PAPER TO YOUR LAWYER AT ONCE. IF YOU DO NOT HAVE A LAWYER, GO TO OR TELEPHONE THE OFFICE SET FORTH BELOW. THIS OFFICE CAN PROVIDE YOU WITH INFORMATION ABOUT HIRING A LAWYER. IF YOU CANNOT AFFORD TO HIRE A LAWYER, THIS OFFICE MAY BE ABLE TO PROVIDE YOU WITH INFORMATION ABOUT AGENCIES THAT MAY OFFER LEGAL SERVICES TO ELIGIBLE PERSONS AT A REDUCED FEE OR NO FEE.

Pennsylvania Lawyer Referral Service: (717) 238 6807

PLAINTIFFS' COMPLAINT AND DEMAND FOR JURY TRIAL

Plaintiffs, by undersigned counsel, hereby submit this Complaint against the above-captioned Defendants for equitable relief, monetary restitution, and/or compensatory and punitive damages. Plaintiffs make the following allegations based upon personal knowledge, and upon information and belief, as well as her attorneys' investigative efforts, regarding talcum powder and its connection to Ovarian Cancer.

STATEMENT OF THE CASE

1. This is a products liability action against the above-named Defendants (hereinafter, collectively referred to as "Defendants") because plaintiffs, suffered from the severe effects of Ovarian Cancer caused by Johnson & Johnson's baby powder and Shower-to-Shower products which were manufactured, mined, distributed, and/or marketed by Defendants (hereinafter, the "PRODUCTS"). Defendants' PRODUCTS each contain known carcinogens, such as, talc and elements that naturally occur with talc: asbestos, asbestiform fibers, arsenic, heavy metals, and

other elements. Plaintiffs herein used or was exposed for decades to the PRODUCTS containing dangerous talc, asbestos fibers, asbestiform fibers, and heavy metals, and developed devastating ovarian cancer.

2. Plaintiffs, through this action, seeks recovery for damages 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 the PRODUCTS and talcum powder, and the attendant effects of developing ovarian cancer.

3. At all pertinent times, all Defendants were engaged in the research, development, manufacture, design, testing, packaging, distribution, sale, advertising, promotion, and marketing of Johnson & Johnson Baby Powder and Shower to Shower, and introduced the PRODUCTS into interstate commerce with knowledge and intent that they be sold in the Commonwealth of Pennsylvania, including Philadelphia County, where the PRODUCTS were indeed sold (subjecting Defendants to the specific personal jurisdiction of Pennsylvania's Courts of Common Pleas).

4. Defendants concealed and continue to conceal their knowledge of the PRODUCTS' unreasonably dangerous risks from consumers and the medical community. Specifically, Defendants failed to adequately inform plaintiffs, consumers, and the medical community about the known risks of Ovarian Cancer associated with perineal use of the PRODUCTS.

PARTIES, JURISDICTION, AND VENUE

5. Natalie Austin lives in Bradfordwoods, Pennsylvania.

6. Natalie Austin is the daughter of Norma D. Woods White that passed away from cancer on May 7, 2012. Ms. Woods White used Defendants PRODUCTS from 1950 – 2012. She was diagnosied with ovarian cancer in 2010.

7. Emanuel Avery lives in Mt. Clemens, MI.

8. Emanuel Avery is the son of Soniqia Brown that passed away from cancer on January 31, 2009. Ms. Brown used Defendants PRODUCTS from 2000 – 2009 and was diagnosed with cancer in 2008.

9. Barry Barton lives in Kissee Mills, MO.

10. Mr. Barton was the husband to Twilla Barton that passed away from cancer on November 23, 2005. Ms. Barton used Defendants PRODUCTS from 1952 – 2005 and was diagnosed with cancer in 2003.

11. Vicki A. Boston lives in Loretto, TN, and used Defendants PRODUCTS from 1986 – 2014 and was diagnosed with cancer in 2015.

12. Rodney Boyd lives in Fife Lake, MI.

13. Mr. Boyd was the husband to Mrs. Boyd that passed away from cancer on May 30, 2018. Mrs. Boyd used Defendants PRODUCTS from 1976 – 2018 and was diagnosed with cancer in 2018.

14. Nancy Calvillo lives in Albuquerque, NM.

15. Ms. Calvillo used Defendants PRODUCTS from 1957 – 2020 and was diagnosed with cancer in 1997.

16. Brenda Campbell lives in Flint, MI.

17. Ms. Campbell used Defendants PRODUCTS from 1953 – 2008 and was diagnosed with cancer in 2008.

18. Elizabeth Chapman lives in Peyton, CO.

19. Ms. Chapman used Defendants PRODUCTS from 1963 – 1970 and was diagnosed with cancer in 2005.

20. Shailee Couch lives in Ewa Beach, HI.

21. Ms. Couch used Defendants PRODUCTS from 1988 – 2020 and was diagnosed with cancer in 2021.

22. Constance M. Degnitz lives in Porterfield, WI.

23. Ms. Degnitz is the mother of Ms. Groleau that passed away from cancer on December 29. 2002. Ms. Groleau used Defendants PRODUCTS from 1982 – 2002 and was diagnosed with cancer in 2002.

24. Brenda Demby lives at Chesnee, SC.

25. Ms. Demby used Defendants PRODUCTS from 1992 – 2000 and was diagnosed with cancer in 2000.

26. Sharon Doss lives at Parsons, TN.

27. Ms. Doss used Defendants PRODUCTS from 1966 – 1996 and was diagnosed with cancer in 1998.

28. Holly Dudley lives in Apopka, FL.

29. Ms. Dudley used Defendants PRODUCTS from 1977 – 2007 and was diagnosed with cancer in 1999.

30. Matthew Ermis lives in Federal Way, WA.

31. Mr. Ermis is the son of Charlisa Grace that passed away on February 3, 2018 after she was diagnosed with cancer in 1996. Ms. Grace used Defendants PRODUCTS from 1960 – 2017.

32. Alan Fitzpatrick lives at Fair Lawn, NJ.

33. Mr. Fitzpatrick was the spouse of Nancy Fitzpatrick that passed away on October 27, 2021 after she was diagnosed with cancer in 2017. Ms. Fitzpatrick used Defendants PRODUCTS from 1970 – 2019.

34. Paul Gagne lives at Haverhill, MA.

35. Paul Gagne is the son of Fleurette Witalisz whom passed away on December 23, 2016 after she was diagnosed with cancer in 2016. Ms. Witalisz used Defendants PRODUCTS from 1960 – 2016.

36. Rose Fleming lives at Arlington, SC.

37. Ms. Fleming used Defendants PRODUCTS from 1990 – 2016 and was diagnosed with cancer in 2005.

38. Tamara Gettig lives at Kalispell, MT.

39. Ms. Gettig is the daughter of Fay Gettig whom passed away in 2019 after she was diagnosed with cancer in 2019. Ms. Gettig used Defendants PRODUCTS from 1953 – 2019.

40. Loretta Grahame lives in Roanoke, VA.

41. Ms. Grahame used Defendants PRODUCTS from 1990 – 2020 and was diagnosed with cancer in 2021.

42. Judy Grates lives in Sallisaw, OK.

43. Ms. Grates used Defendants PRODUCTS from 1968 – 2020 and was diagnosed with cancer in 2021.

44. Debra Harper lives in Lakewood, IL.

45. Ms. Harper used Defendants PRODUCTS from 1980 – 2006 and was diagnosed with cancer in 2006.

46. Gregory Hayes lives in Pikeville, KY.

47. Gregory Hayes was the spouse of Jeanne Hayes whom passed away on February 19. 2012, after she was diagnosed with cancer in 2007. Mrs. Hayes used Defendants PRODUCTS from 1988 – 2012.

48. Goldie Henson-Hull lives in Odin, IL.

49. Ms. Henson-Hull used Defendants PRODUCTS from 1970 – 2000 and was diagnosed with cancer in 1998.

50. Eric Holmes lives in Kansas City, MO.

51. Eric Holmes is the son of Brenda Thompson whom passed away on October 23, 2010, after she was diagnosed with cancer in 2010. Mrs. Thompson used Defendants PRODUCTS from 1970 – 2010.

52. Trish A. Jackman lives in Helena, MT.

53. Ms. Jackman used Defendants PRODUCTS from 1990 – 2010 and was diagnosed with cancer in 2010.

54. Derek Knox lives in Durham, NC.

55. Derek Knox is the son of Evelyn M. Holley whom passed away on April 21, 2021, after she was diagnosed with cancer in 2020. Mrs. Holley used Defendants PRODUCTS from 1990 – 2020.

56. Consetta Licausi lives in Naples, FL.

57. Consetta Licausi is the spouse of Karen Brackenbury whom passed away on December 5, 2011, after she was diagnosed with cancer in 2005. Mrs. Brackenbury used Defendants PRODUCTS from 1965 – 2011.

58. Emil Long lives in Cape Coral, FL.

59. Emil Long is the spouse of Patti Long whom passed away on November 16, 2015, after she was diagnosed with cancer in 2012. Mrs. Long used Defendants PRODUCTS from 1960 – 2012.

60. Andrea Marshall lives in Tuscaloosa, AL.

61. Andrea Marshall is the daughter of Elma Crooks whom passed away on June 25, 2020, after she was diagnosed with cancer in 2019. Mrs. Crooks used Defendants PRODUCTS from 1949 – 2019.

62. Diane Martinez lives in Melrose, NM.

63. Ms. Martinez used Defendants PRODUCTS from 1989 – 2004 and was diagnosed with cancer in 2004.

64. Rhonda Matthews lives in Biloxi, MS.

65. Ms. Matthews used Defendants PRODUCTS from 1965 – 2006 and was diagnosed with cancer in 2001.

66. Joann McDevitt lives in Shreveport, LA.

67. Ms. McDevitt used Defendants PRODUCTS from 1980 – 2020 and was diagnosed with cancer in 2020.

68. Sharon Monette lives in Farmersville Station, NY.

69. Ms. Monette used Defendants PRODUCTS from 1978 – 2018 and was diagnosed with cancer in 2020.

70. Jessika A. Officer lives in McComb, MS.

71. Ms. Officer used Defendants PRODUCTS from 1996 – 2020 and was diagnosed with cancer in 2020.

72. Barbara Olson lives in Columbus, NE.

73. Ms. Olson used Defendants PRODUCTS from 1960 – 2005 and was diagnosed with cancer in 2005.

74. Nicole Pace lives in Starkville, MS.

75. Ms. Pace used Defendants PRODUCTS from 1983 – 2019 and was diagnosed with cancer in 2019.

76. Joel Preme lives in Brooklyn, NY.

77. Joel Preme is the son of Marie T. Preme whom passed away on March 3, 2014, after she was diagnosed with cancer in 2011. Mrs. Preme used Defendants PRODUCTS from 1976 – 2014.

78. Retta L. Pringle lives in Okeechobee, FL.

79. Ms. Pringle used Defendants PRODUCTS from 1960 – 2021 and was diagnosed with cancer in 2007.

80. Robert Pullen lives in Waldorf, MD.

81. Robert Pullen is the son of Zula M. Morrison whom passed away on March 6, 2011, after she was diagnosed with cancer in 2009. Mrs. Morrison used Defendants PRODUCTS from 1983 – 2006.

82. Joseph Repich lives in Berlin Center, OH.

83. Mr. Repich is the son of Rita Repich whom passed away on August 6, 2014, after she was diagnosed with cancer in 2014. Mrs. Repich used Defendants PRODUCTS from 1980 – 2014.

84. Alice Rice lives in Lyman, SC.

85. Ms. Rice used Defendants PRODUCTS from 1990 – 2005 and was diagnosed with cancer in 2005.

86. Alberto Rivera lives in Poinciana, FL.

87. Mr. Rivera is the son of Wilhelmina Hinds whom passed away on November 20, 2020, after she was diagnosed with cancer in 2019. Mrs. Hinds used Defendants PRODUCTS from 1986 – 2020.

88. Melyssa Sawyer lives in Fayetteville, TN.

89. Ms. Sawyer is the daughter of Darlene Kosko whom passed away on July 15, 2021, after she was diagnosed with cancer in 2017. Mrs. Kosko used Defendants PRODUCTS from 1951 – 2016.

90. Ruby Scarbrough lives in Strawberry Plains, TN.

91. Ms. Scarbrough used Defendants PRODUCTS from 1949 – 2017 and was diagnosed with cancer in 2017.

92. Michael Sheriff lives in Greenville, SC.

93. Mr. Sheriff is the spouse of Peggy D. Sheriff whom passed away on March 7, 2016, after she was diagnosed with cancer in 2012. Mrs. Sheriff used Defendants PRODUCTS from 2000 – 2016.

94. Terry Skulski and George Skulski live in Columbus, OH.

95. George Skulski is the spouse of Terry Skulski for all relevant times.

96. Ms. Skulski used Defendants PRODUCTS from 1970 – 2011 and was diagnosed with cancer in 2011.

97. Charles Smith lives in Middle Village, NY.

98. Mr. Smith is the spouse of Carmen Smith whom passed away in February 2012, after she was diagnosed with cancer in 2003. Mrs. Smith used Defendants PRODUCTS from 1973 – 2012.

99. Carole B. Stanley and Wilford Stanley live in Hattiesburg, MS.

100. Wilford Stanly is the spouse of Carole Stanley for all relevant times.

101. Ms. Stanley used Defendants PRODUCTS from 1946 – 2015 and was diagnosed with cancer in 1997.

102. Kim Studwell lives in Hopkins, SC.

103. Ms. Studwell used Defendants PRODUCTS from 1993 – 2013 and was diagnosed with cancer in 2021.

104. Rebecca Wade lives in Sandusky, OH.

105. Ms. Wade is the daughter of Janice J. Keck whom passed away on December 3, 2020, after she was diagnosed with cancer in 2018. Mrs. Keck used Defendants PRODUCTS from 1960 – 2018.

106. Sidney Watts lives in Medina, NY.

107. Mr. Watts is the spouse of Betty J. Watts whom passed away on March 27, 2014, after she was diagnosed with cancer in 2004. Mrs. Watts used Defendants PRODUCTS from 1980 – 2013.

108. Kia Williams lives in Colorado Springs, CO.

109. Ms. Williams is the daughter of Evelyn Ashe whom passed away on March 24, 2017, after she was diagnosed with cancer in 2009. Mrs. Ashe used Defendants PRODUCTS from 1980 – 2013.

110. Angela Wilson lives in Trenton, SC.

111. Ms. Wilson used Defendants PRODUCTS from 1985 – 2018 and was diagnosed with cancer in 2018.

112. All fo the above Plaintiffs regularly used Defendants' PRODUCTS in their perineal region every day and suffered from severe physical, economic, and emotional injuries as a result of her use of Defendants' PRODUCTS, including but not limited to Ovarian Cancer diagnosed in September 2020.

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

114. At all relevant times, Johnson & Johnson was engaged in the business of manufacturing, marketing, testing, promoting, selling, and/or distributing the PRODUCTS. At all relevant times, Johnson & Johnson regularly transacted, solicited, and conducted business in the Commonwealth of Pennsylvania.

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

116. At all relevant times, defendant Johnson & Johnson Consumer, Inc.was engaged in the business of manufacturing, marketing, testing, promoting, selling, and/or distributing the PRODUCTS. At all relevant times, Johnson & Johnson Consumer, Inc. regularly transacted, solicited, and conducted business in the Commonwealth of Pennsylvania.

117. Defendants Johnson & Johnson and Johnson & Johnson Consumer, Inc. are collectively referred to herein as the ("Johnson & Johnson Defendants" or "J&J").

118. At all times relevant hereto, Defendants were in the business of researching, designing, formulating, compounding, testing, manufacturing, producing, processing, assembling, inspecting, distributing, marketing, labeling, promoting, packaging and/or advertising Johnson & Johnson's baby powder and Shower-to-Shower products.

119. At all times relevant hereto, Defendants had offices in Pennsylvania and/or regularly solicited and transacted business[1] in the Commonwealth of Pennsylvania and Philadelphia County. In addition, the Defendants reasonably expected that their PRODUCTS would be used or consumed in Pennsylvania and Philadelphia County.

120. This is an action for damages which exceeds fifty thousand dollars ($50,000).

121. Plaintiffs have timely filed this lawsuit within two years of discovering their cause of action as defined and require by Pennsylvania 42 Pa. Cons. State. § 5524(2).

122. Venue of this case is proper in Philadelphia County because Defendants regularly conduct business in Philadelphia County.

123. At all times relevant hereto, Defendants had offices in Pennsylvania and/or regularly solicited and transacted business in the Commonwealth of Pennsylvania and Philadelphia County. In addition, the Defendants reasonably expected that their Products would be used or consumed in Pennsylvania and Philadelphia County.

124. All of the Defendants regularly conduct substantial business in Philadelphia.

125. This is a complex product liability tort case. This Court is renowned for its ability and resources to handle complex tort litigation dockets in an organized and efficient fashion. No other county in Pennsylvania is better suited to handle such claims.

126. Pursuant to Pa. R.C.P. 1006(c) in actions alleging joint and several liability against two or more defendants, venue is proper if it is proper as to any of the defendants. In this case,

[1] Pursuant to 42 Pa. Const. Stat § 5322, Defendants have transacted business in Pennsylvania and Philadelphia County by directly, or indirectly through an agent, doing a series of similar acts for the purpose of thereby realizing pecuniary benefit, doing a single act for the purpose of thereby realizing pecuniary benefit, shipping merchandise directly or indirectly into Pennsylvania and Philadelphia County, accepting election or appointment or exercise of powers as a director or officer of a corporation, making application to any government unit for any certificate, license, permit, registration or similar instrument or authorization or exercising any such instrumentation or authorization, committing any violation within the jurisdiction of Pennsylvania of any statute, home rule charter, local ordinance or resolution, or rule or regulation promulgated thereunder by any government unit or any order of court of other government unit.

Plaintiff alleges joint and several liability on more than two defendants. Philadelphia County is the proper venue for a number of these defendants. Therefore, venue is proper on all defendants.

127. General and/or specific personal jurisdiction is proper as to Defendants for the reasons stated below.

128. Jurisdiction is proper as to the Johnson & Johnson Defendants because: 1) Johnson & Johnson regularly employs hundreds of employees in Pennsylvania and maintains significant contacts with Pennsylvania (*see, e.g.*, *Bristol-Myers Squibb Co. v. Superior Court*, 377 P.3d 874 (Cal. 2016); 2) Johnson & Johnson Consumer Inc. consented to jurisdiction in Pennsylvania by registering to do business in Pennsylvania. *See*, *e.g.*, *Bors v. Johnson & Johnson*, No. CV 16-2866, 2016 WL 517286 at *1 (E.D. Pa. Sept. 20, 2016); 3) Johnson & Johnson maintains regular and significant contacts in Pennsylvania, including but not limited to the sale of its dangerous talc PRODUCTS to consumers in Pennsylvania; 4) Johnson & Johnson Defendants' acts or omissions outside of Pennsylvania caused harm, and tortious injury to Plaintiffs in Pennsylvania; and; 5) Johnson & Johnson Defendants caused the PRODUCTS to travel through Pennsylvania.

BACKGROUND

129. Talc is a magnesium trisilicate that is mined from the earth. Talc is an inorganic mineral. The Defendant, Imerys Talc mined the talc contained in the PRODUCTS.

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

131. At all relevant times, a feasible alternative to the PRODUCTS has existed. Cornstarch is an organic carbohydrate that is quickly broken down by the body with no known health effects. Cornstarch powders have been sold and marketed for the same uses with nearly the same effectiveness as the PRODUCTS.

132. At all relevant times, Imerys Talc mined the talc contained in the PRODUCTS.

133. At all relevant times, Imerys Talc supplied its customers, including the Johnson & Johnson Defendants, with Material Safety Data Sheets ("MSDS") for talc, which were supposed to convey adequate health and warning information to its customers.

134. 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 a symbol of "freshness" and "comfort," eliminating friction on the skin, absorbing "excess wetness" to keep skin feeling dry and comfortable, and "clinically proven gentle and mild." The Johnson & Johnson Defendants compelled women through advertisements to dust themselves with this product to mask odors. The bottle of "Johnson's Baby Powder" specifically targets women, stating: "For you, use every day to help feel soft, fresh, and comfortable."[2]

135. At all relevant times, the Johnson & Johnson Defendants advertised and marketed their "Shower to Shower" product 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."

136. Plaintiffs used the PRODUCTS to dust their perineum for feminine hygiene purposes. This was an intended and foreseeable use of the PRODUCTS based on the advertising, marketing, and labeling of the PRODUCTS.

137. 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.

[2] Retailer Wal-Mart lists the labels for Johnson's Baby Powder, http://www.walmart.com/ip/Johnson-s-Baby-Powder-22-oz/10294007.

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

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

140. In 1993, the United States National Toxicology Program published a study on the toxicity of non-asbestos form talc and found clear evidence of carcinogenic activity. Talc was found to be a carcinogen, with or without the presence of asbestos-like fibers.[3]

141. In response to the United States National Toxicology Program's study, the Cosmetic Toiletry and Fragrance Association (CTFA), now known as the PCPC, formed the Talc Interested Party Task Force (TIPTF). Johnson & Johnson, Inc., Johnson & Johnson Consumer Companies, Inc., and Luzenac—now known as Imerys Talc—were members of the CTFA. J&J and Imerys were the primary actors and contributors of the TIPTF. The stated purpose of TIPTF was to pool financial resources of these companies in order to collectively defend talc use at all

[3] Inhalation Toxicology Research Institute Annual Report, 1993 – 1994, https://www.google.com/url?sa=t&rct=j&q=&esrc=s&source=web&cd=5&ved=0CEEQFjAE&url=http%3A%2F%2Fwww.dtic.mil%2Fget-tr-doc%2Fpdf%3FAD%3DADA292037&ei=XX4IVMfxPIblsASfyIKwCA&usg=AFQjCNGnPtuTJc4YRHp3v0VFPJlOV2yH2w&sig2=WTznSlZK9GojkDadkub0Sw&bvm=bv.74649129,d.cWc&cad=rja.

costs and to prevent regulation of any type over this industry. TIPTF hired scientists to perform biased research regarding the safety of talc. TIPTF members, including Johnson & Johnson, and Luzenac, then had these scientific reports edited prior to the submissions of these scientific reports to governmental agencies. In addition, J&J and Imerys Talc, members of 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. These activities were conducted by these companies and organizations over the past four decades in an effort to prevent regulation of talc and to create confusion to the consuming public about the true hazards of talc and its association to ovarian cancer.

142. At all times relevant, PCPC coordinated the defense of talc and acted as a mouthpiece for the members of the TIPTF, including the Johnson & Johnson Defendants and IMERYS. Upon information and belief, PCPC was funded by the annual dues of its members including the Johnson & Johnson Defendants and Imery Talc.

143. Since approximately 1973, the Cosmetic Ingredient Review ("CIR") has reviewed the safety of ingredients used in the cosmetic and personal care products industry. Although Defendants have, at all relevant times, promoted CIR as an independent, regulatory body, CIR is an organization within and wholly funded by PCPC. In fact, CIR shares the same office space with PCPC and its employees are paid by PCPC.

144. Over the years, CIR has reviewed thousands of ingredients used in the cosmetics industry, but has only found 12 ingredients to be "unsafe for use in cosmetics." In contrast, CIR has deemed approximately 1800 ingredients to be "safe as used."

145. Even though PCPC knew of the safety concerns surrounding talc for almost three decades, the CIR did not begin to review talc until after the first lawsuit alleging a link between

talc use and ovarian cancer was filed. Upon information and belief, during the CIR review process, Defendants influenced the scientists working on the review and ultimately edited the reviews in a biased manner. Not surprisingly, when CIR published its final report in 2015, it found talc to be safe as used in cosmetics.

146. On November 19, 1994, the Cancer Prevention Coalition sent a letter to then Johnson & Johnson C.E.O. Ralph Larsen, urging him to substitute cornstarch for talcum powder products and to label its products with a warning on cancer risks.[4]

147. In 1996, the FDA requested that the condom industry stop dusting condoms with talc due to the health concerns that studies linked talc to ovarian cancer. Upon this request, all U.S. manufacturers discontinued the use of talc in its condom manufacturing process to reduce the potential health hazards to women.[5]

148. In 1990, the U.S. Food and Drug Administration (FDA) asked manufacturers to voluntarily stop putting talc on surgical gloves because mounting scientific evidence showed that it caused adhesions in surgical patients.[6]

149. In February 2006, the International Agency for Research on Cancer (IARC), the specialized cancer agency of the World Health Organization, published a paper whereby they classified perineal use of talc-based body powder as a "Group 2B" human carcinogen.[7] IARC, which is universally accepted as the international authority on cancer issues, concluded that studies

[4] Petition Seeking a Cancer Warning on Cosmetic Talc PRODUCTS, May 13, 2008 http://www.preventcancer.com/publications/pdf/FINAL_CitPetTalcOvCa_may138.pdf.

[5] "A Women's Campaign Against Talc on Condoms," *Philly*.com, http://articles.philly.com/1996-01-08/living/25652370_1_talc-condoms-ovarian-cancer.

[6] *Id.*

[7] IARC, "Perineal use of talc-based body powder (Group 2B)," *available at* http://monographs.iarc.fr/ENG/Monographs/PDFs/93-talc.pdf.

from around the world consistently found an increased risk of ovarian cancer in women who used talc in perineal areas. IARC determined that between 16-52% of women worldwide used talc to dust their perineum and found an increased risk of ovarian cancer in women talc users ranging from 30-60%.

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

151. In 2006, Imerys Talc began placing a warning on the MSDS it provided to the Johnson & Johnson Defendants regarding the talc it sold to them for use in the PRODUCTS. The 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. Although the Johnson & Johnson Defendants admittedly received these MSDs, they never passed this warning information on to consumers.

152. On September 26, 2012, the corporate representative for Imerys testified in open court that his company exclusively supplied the Johnson & Johnson Defendants with talc used for its baby powder products and that ovarian cancer is a potential hazard associated with women's perineal use of talc-based body powders, such as the PRODUCTS. Despite this, the Johnson & Johnson defendants, continue to mislead consumers, maintaining that talc is safe for personal use[8].

[8] *See, e.g.*, http://www.safetyandcarecommitment.com/ingredient-info/other/talc ("talc can be used safely in personal care products"; We want to assure women and caregivers who use our talc products that numerous studies support its safety, and these include assessments by external experts in addition to our company testing. Many research papers and epidemiology studies have specifically evaluated talc and perineal use and these studies have found talc to be safe")

153. In 2008, the Cancer Prevention Coalition submitted a "Petition Seeking a Cancer Warning on Cosmetic Talc PRODUCTS" to the FDA. The petition requested that the FDA immediately require cosmetic talcum powder products to bear labels with a prominent warning that frequent talc application in the female genital area is responsible for major risks of ovarian cancer.[9]

154. In 2013, Cancer Prevention Research published a study that showed that women who used talcum powder in their groin area had a 20 to 30 percent greater risk of developing ovarian cancer than women who did not use talc products in that area.[10]

155. Presently, the National Cancer Institute[11] and the American Cancer Society[12] list genital talc use as a "risk factor" for ovarian cancer.

156. The Gilda Radner Familial Ovarian Cancer Registry, Roswell Park Center Institute, and the Department of Gynecologic Oncology University of Vermont publish a pamphlet entitled, "Myths & Facts about ovarian cancer: What you need to know." In this pamphlet, under "known" risk factors for ovarian cancer, it lists: "Use of Talc (Baby Powder) in the Genital Area."[13]

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[9] Cancer Prevention Coalition "Petition Seeking a Cancer Warning on Cosmetic Talc PRODUCTS" submitted to the FDA on May 13, 2008, http://www.organicconsumers.org/articles/article_12517.cfm

[10] "Genital powder use and risk of ovarian cancer: a pooled analysis of 8,525 cases and 9,859 controls," *Cancer Prevention Research*, June 2013, http://cancerpreventionresearch.aacrjournals.org/content/early/2013/06/12/1940-6207.CAPR-13-0037.short.

[11] National Cancer Institute, Ovarian Cancer Prevention, http://www.cancer.gov/cancertopics/pdq/prevention/ovarian/Patient/page3

[12] American Cancer Society, Risk Factors for Ovarian Cancer, http://www.cancer.org/cancer/ovariancancer/detailedguide/ovarian-cancer-risk-factors

[13] Myths and Facts About Ovarian Cancer, http://imaging.ubmmedica.com/cancernetwork/forpatients/pdfs/7_M&F%20Ovarian%20Cancer.pdf.

157. On December 5, 2018, Health Canada released a "Dear Healthcare Professional Letter" stating that "exposure to the perineal area from the use of certain products containing talc is a possible cause of ovarian cancer."[14]

158. In May of 2020, after losing Daubert in the Talc MDL, Johnson & Johnson announced that it would stop selling talcum-based baby powder in the United States and Canada.

159. Upon information and belief, in or about 2021, the Canadian government, under The Canadian Environmental Protection Act, 1999 determined that peritoneal talc exposure is indicative of a causal relationship with ovarian cancer.

160. At all pertinent times, all Defendants in this action knew or should have known that the use of talcum powder based products in the perineal area significantly increases the risk of ovarian cancer based upon scientific knowledge dating back to the 1960s. At all pertinent times, including the time of sale and consumption, the PRODUCTS, when put to the aforementioned reasonably foreseeable use, were in an unreasonably dangerous and defective condition because they failed to contain adequate and proper warnings and/or instructions regarding the increased risk of ovarian cancer associated with their use by women to powder their perineal area.

161. All of the Defendants failed to inform its customers and end users of the PRODUCTS of a known catastrophic health hazard associated with the use of its PRODUCTS.

162. All of the Defendants procured and disseminated false, misleading, and biased information regarding the safety of the PRODUCTS to the public and used influence over governmental and regulatory bodies regarding talc.

[14] Government of Canada
http://healthycanadians.gc.ca/recall-alert-rappel-avis/hc-sc/2018/68320a-eng.php

163. As a direct and proximate result of the Defendants' calculated and reprehensible conduct, Plaintiffs were injured and suffered damages which required surgeries and treatments.

JOINT AND SEVERAL LIABILITY

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

165. Defendants each individually, *in solido*, and/or jointly engaged in the following wrongful conduct, directly and proximately causing Plaintiffs' injuries as alleged herein.

COUNT I – STRICT LIABILITY FAILURE TO ADEQUATELY WARN

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

167. At all relevant times, the Johnson & Johnson Defendants were engaged in the business of manufacturing, marketing, testing, promoting, selling and/or distributing, and otherwise introducing into the stream of interstate commerce, including Philadelphia and Pennsylvania, the PRODUCTS.

168. At all relevant times, the Johnson & Johnson Defendants knew or should have known that the use of the PRODUCTS in the female perineal area significantly increased the risk of ovarian cancer in women based upon scientific knowledge dating back until at least 1971, and had a duty to warn Plaintiffs of the known or knowable risks of ovarian cancer posed by the PRODUCTS.

169. At all relevant times, the PRODUCTS, manufactured and supplied by the Johnson & Johnson Defendants, were defective and unreasonably dangerous because, despite the Johnson & Johnson Defendants' knowledge that its PRODUCTS were carcinogenic and could lead to an

increased risk of ovarian cancer when applied to the female perineal area, a reasonably foreseeable use of the PRODUCTS, the Johnson & Johnson Defendants failed to provide adequate warning or instruction to consumers, including consumers such as Plaintiffs regarding the increased risk of ovarian cancer when the PRODUCTS are applied to the female perineal area.

170. At all relevant times, Plaintiffs used the PRODUCTS to powder their perineal area, a use that was reasonably foreseeable and for which the PRODUCTS were supplied.

171. Had Plaintiffs received warning and/or instruction from the Johnson & Johnson Defendants regarding the increased risk of ovarian cancer associated with the PRODUCTS when applied to the perineal area, Plaintiffs would not have used the PRODUCTS in this manner.

172. Due to the absence of any warning or instruction by the Johnson & Johnson Defendants as to the significant health and safety risks posed by the PRODUCTS as described herein, Plaintiff was unaware that the PRODUCTS created an increased risk of ovarian cancer, as this danger was not known to the general public.

173. Plaintiffs relied upon the skill, superior knowledge and judgement of Defendants.

174. As a direct and proximate result of Johnson & Johnson Defendants' failure to warn consumers, including Plaintiffs, of the increased risk of ovarian cancer associated with the PRODUCTS when applied to the perineal area, despite their actual knowledge of this material fact, Ms. Plaintiffs developed ovarian cancer and was injured catastrophically and was caused severe and permanent pain, suffering, disability, impairment, loss of enjoyment of life, loss of care, comfort, and economic damages due to ovarian cancer.

175. Defendants, as manufacturers, distributors, sellers, and/or advertisers of the PRODUCTS, are held to the level of knowledge of experts in the field.

176. Given the above, and given the Johnson & Johnson Defendants' significant contacts with Pennsylvania, it is reasonable and foreseeable that the Johnson & Johnson Defendants would be haled to court in Pennsylvania.

177. WHEREFORE, Plaintiffs demand judgment against the Johnson & Johnson Defendants for compensatory and punitive damages in excess of the jurisdictional minimum of this Court, together with interest, costs of suit, attorneys' fees, and all such other relief, as this Court deems proper.

COUNT II – STRICT LIABILITY MANUFACTURING DEFECT AND DESIGN DEFECT

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

179. At all relevant times, the Johnson & Johnson Defendants were engaged in the business of manufacturing, formulating, creating, designing, testing, labeling, packaging, supplying, marketing, promoting, selling, advertising, and otherwise introducing the PRODUCTS into the stream of interstate commerce, including Pennsylvania, which they sold and distributed throughout the United States and in Philadelphia and Pennsylvania.

180. At all relevant times, the PRODUCTS were expected to and did reach Plaintiffs without a substantial change in condition.

181. At all relevant times, the PRODUCTS were defectively and improperly manufactured and designed by the Johnson & Johnson Defendants in that, when the PRODUCTS left the hands of the Johnson & Johnson Defendants, the foreseeable risks of the PRODUCTS far outweighed the benefits associated with their design and formulation.

182. At all relevant times, the PRODUCTS were defectively manufactured and designed by the Johnson & Johnson Defendants in that their design and formulation is more dangerous than an ordinary consumer would expect when used in an intended and reasonably foreseeable manner.

183. At all relevant times, the PRODUCTS created significant risks to the health and safety of consumers that far outweigh the risks posed by other products on the market used for the same therapeutic purpose.

184. At all relevant times, a reasonable and safer alternative design existed, which could have feasibly been employed by the Johnson & Johnson Defendants to manufacture a product with the same therapeutic purpose as the PRODUCTS. Despite knowledge of this reasonable and safer alternative design, the Johnson & Johnson Defendants failed to alter the PRODUCTS' design and formulation. The magnitude of the danger created by the PRODUCTS far outweighs the costs associated with using an alternative, safer design.

185. At all relevant times, the PRODUCTS were insufficiently tested, i.e., they caused harmful side effects that outweighed any potential utility.

186. J&J knew or should have known that the ultimate users or consumers of the Products would not, and could not, inspect them or otherwise investigate so as to discover the latent defects described above.

187. Plaintiffs relied upon the skill, superior knowledge and judgement of Defendants.

188. J&J's actions described above were performed willfully, intentionally and with reckless disregard for the rights of Plaintiffs and the public.

189. As a direct and proximate result of the defective design and manufacture of the PRODUCTS, Plaintiffs developed ovarian cancer and has been injured catastrophically and have

been caused severe and permanent pain, suffering, disability, impairment, loss of enjoyment of life, loss of care, comfort, and economic damages.

190. Given the above, and given the Johnson & Johnson Defendants' significant contacts with Pennsylvania, it is reasonable and foreseeable that the Johnson & Johnson Defendants would be haled to court in Pennsylvania.

191. WHEREFORE, Plaintiffs demand judgment against the Johnson & Johnson Defendants for compensatory and punitive damages in excess of the jurisdictional minimum of this Court, together with interest, costs of suit, attorneys' fees, and all such other relief, as this Court deems proper.

COUNT III – NEGLIGENCE

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

193. At all relevant times, the Johnson & Johnson Defendants breached their duty to Plaintiffs and were otherwise negligent in marketing, designing, manufacturing, producing, supplying, inspecting, testing, selling and/or distributing the PRODUCTS in one or more of the following respects:

a. In failing to warn Plaintiffs of the hazards associated with the use of the PRODUCTS;

b. In failing to properly test their products to determine adequacy and effectiveness or safety measures, if any, prior to releasing the PRODUCTS for consumer use;

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

d. In failing to inform ultimate users, such as Plaintiffs, as to the safe and proper methods of handling and using the PRODUCTS;

e. In failing to remove the PRODUCTS from the market when the Defendants knew or should have known the PRODUCTS were defective;

f. In failing to instruct the ultimate users, such as Plaintiffs, as to the methods for reducing the type of exposure to the PRODUCTS which caused increased risk of ovarian cancer;

g. In failing to inform the public in general and Plaintiffs in particular of the known dangers of using the PRODUCTS for dusting the perineum;

h. In failing to advise users how to prevent or reduce exposure that caused an increased risk for ovarian cancer;

i. In marketing and labeling the PRODUCTS as safe for all uses despite knowledge to the contrary;

j. In failing to act like a reasonably prudent company under similar circumstances;

k. In failing to use a safer alternative to talc in the PRODUCTS, such as cornstarch.

Each and all of these acts and omissions, taken singularly or in combination, were a proximate cause of the injuries and damages sustained by Plaintiffs.

194. At all relevant times, the Johnson & Johnson Defendants knew or should have known that the PRODUCTS were unreasonably dangerous and defective when put to their reasonably anticipated use.

195. Plaintiffs relied upon the skill, superior knowledge and judgement of Defendants.

196. As a direct and proximate result of the Johnson & Johnson Defendants' negligence, Plaintiffs purchased and used the PRODUCTS that directly and proximately caused her to develop ovarian cancer. As a direct and proximate result, Plaintiffs was caused to incur medical bills, lost wages, conscious pain, and suffering.

197. Given the above, and given the Johnson & Johnson Defendants' significant contacts with Pennsylvania, it is reasonable and foreseeable that the Johnson & Johnson Defendants would be haled to court in Pennsylvania.

198. WHEREFORE, Plaintiffs demand judgment against the Johnson & Johnson Defendants for compensatory and punitive damages in excess of the jurisdictional minimum of

this Court, together with interest, costs of suit, attorneys' fees, and all such other relief, as this Court deems proper.

COUNT IV – BREACH OF EXPRESS WARRANTY

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

200. At all relevant times, the Johnson & Johnson Defendants knew or should have known that the PRODUCTS were unreasonably dangerous and defective when put to their reasonably anticipated use.

201. At all relevant times, the Johnson & Johnson Defendants expressly warranted, through direct-to-consumer marketing, advertisements, and labels, that the PRODUCTS were safe and effective for reasonably anticipated uses, including use by women in their perineal area. Although the label has changed over time, the message has been the same: that the product is safe for use on women as well as babies. At least as of 2014, the baby powder label stated that "Johnson's® Baby Powder is designed to gently absorb excess moisture helping skin feel comfortable. Our incredibly soft, hypoallergenic, dermatologist and allergy-tested formula glides over skin to leave it feeling delicately soft and dry while providing soothing relief." The Johnson & Johnson Defendants instruct consumers on the product labeling to "Shake powder directly into your hand, away from the face, before smoothing onto the skin."

202. Through other marketing, including on their website for Johnson's® Baby Powder, Defendants similarly encouraged women to use the product daily. Defendants state that Johnson's® Baby Powder "keeps skin feeling soft, fresh and comfortable. It's a classic. Johnson's® Baby Powder helps eliminate friction while keeping skin cool and comfortable. It's

made of millions of tiny slippery plates that glide over each other to help reduce the irritation caused by friction." Under a heading "How to Use," "For skin that feels soft, fresh and comfortable, apply Johnson's® Baby Powder close to the body, away from the face. Shake powder into your hand and smooth onto skin." Under a heading "When to Use", the Johnson & Johnson Defendants recommend that the consumer "Use anytime you want skin to feel soft, fresh and comfortable. For baby, use after every bath and diaper change." On their website for Johnson's® Baby Powder, Defendants also state the product is "Clinically proven to be safe, gentle and mild."

203. In February or March, 2016, after a St. Louis Jury rendered a $72 million dollar verdict against Johnson & Johnson, including punitive damages, Johnson & Johnson published a web page directed at consumers misleadingly assuring them of the safety of talc titled "Our Safety & Care Commitment"[15] and touted the safety of talc, stating, *inter alia*:

a. "Decades of Safety: Our confidence in using talc reflects more than 30 years of research by independent scientists, review boards and global authorities, which have concluded that talc can be used safely in personal care products. Various government agencies and other bodies also have examined talc to determine the potential for any safety risks, and none have concluded that there are safety risks. In fact, no regulatory agency has ever required a change in labeling to reflect any safety risk from talc powder products."

b. "Our Position on Talc: At Johnson & Johnson Consumer Inc., our confidence in using talc is based on a long history of safe use and more than 30 years of research by independent researchers, scientific review boards and global regulatory authorities. Various agencies and governmental bodies have examined whether talc is a carcinogen, and none have concluded that it is. With over 100 years of use, few ingredients have the same demonstrated performance, mildness and safety profile as cosmetic talc."

c. "We want to assure women and caregivers who use our talc products that numerous studies support its safety, and these include assessments by external experts in addition to our company testing. Many research papers and epidemiology studies have specifically evaluated talc and perineal use and these studies have found talc to be safe"

[15] *See*, http://www.safetyandcarecommitment.com/ingredient-info/other/talc

204. Even more recently, in May 2020, Johnson & Johnson published a statement, after lossing Daubert Motions in the Talcum Powder MDL that it was removing talc based powders from North America. Misleadingly, Johnson & Johnson claimed that its decision was based, in part, on "misinformation around the safety of the product."[16]

205. At all relevant times, even up until present day, the Johnson & Johnson Defendant's representations relating to talc is that the PRODUCTS are safe for personal use, including in the perineal region.

206. At all relevant times, the PRODUCTS did not conform to these express representations because they cause serious injury, including ovarian cancer, when used by women in the perineal area.

207. As a direct and proximate result of the Johnson & Johnson Defendants' breach of warranty, Plaintiffs purchased and used the PRODUCTS that directly and proximately caused her to develop ovarian cancer. Plaintiffs was caused to incur medical bills, lost wages, and conscious pain, and suffering.

208. Given the above, and given the Johnson & Johnson Defendants' extensive contacts with Pennsylvania, it is reasonable and foreseeable that the Johnson & Johnson Defendants would be haled to court in Pennsylvania.

209. WHEREFORE, Plaintiffs demand judgment against the Johnson & Johnson Defendants for compensatory and punitive damages in excess of the jurisdictional minimum of this Court, together with interest, costs of suit, attorneys' fees, and all such other relief, as this Court deems proper.

COUNT V – BREACH OF IMPLIED WARRANTIES

[16]Last access on May 7, 2021: https://www.jnj.com/our-company/johnson-johnson-consumer-health-announces-discontinuation-of-talc-based-johnsons-baby-powder-in-u-s-and-canada

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

211. At the time the Defendants manufactured, marketed, labeled, promoted, distributed and/or sold the PRODUCTS, the Johnson & Johnson Defendants knew of the uses for which the PRODUCTS were intended, including use by women in the perineal area. With this knowledge, they impliedly warranted the PRODUCTS to be of merchantable quality and safe for such use.

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

213. As a direct and proximate result of the Johnson & Johnson Defendants' breach of implied warranties, Plaintiffs purchased and used the PRODUCTS that directly and proximately caused her to develop ovarian cancer. As a result, Plaintiffs where caused to incur medical bills, lost wages, conscious pain, and suffering.

214. Given the above, and given the Johnson & Johnson Defendants' significant contacts with Pennsylvania, it is reasonable and foreseeable that the Johnson & Johnson Defendants would be haled to court in Pennsylvania.

215. WHEREFORE, Plaintiffs demand judgment against the Johnson & Johnson Defendants for compensatory and punitive damages in excess of the jurisdictional minimum of this Court, together with interest, costs of suit, attorneys' fees, and all such other relief, as this Court deems proper.

COUNT VI – FRAUD, FRAUDULENT MISREPRESENTATION, AND INTENTIONAL CONCEALMENT

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

217. At all relevant times, the Johnson & Johnson Defendants intentionally, willfully, and/or recklessly, with the intent to deceive, misrepresented and/or concealed material facts to consumers and users, including Plaintiffs.

218. At all relevant times, the Johnson & Johnson Defendants misrepresented and/or concealed material facts concerning the PRODUCTS to consumers, including Plaintiffs, with knowledge of the falsity of their misrepresentations.

219. At all relevant times, upon information and belief, the misrepresentations and concealments concerning the PRODUCTS made by the Johnson & Johnson Defendants include, but are not limited to the following:

a. The Johnson & Johnson Defendants falsely labeled and advertised the PRODUCTS 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," "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."

b. The Johnson & Johnson Defendants falsely advertised the PRODUCT SHOWER to SHOWER to be applied "all over," and in particular, urges women to use it to "Soothe Your Skin: Sprinkle on problem areas to soothe skin that has been irritated from friction. Apply after a bikini wax to help reduce irritation and discomfort."

c. The Johnson & Johnson Defendants, through the advertisements described above, knowingly misrepresented to Plaintiffs and the public that the PRODUCTS were safe for use all over the body, including the perineal areas of women.

d. The Johnson & Johnson Defendants intentionally failed to disclose that talc and the associated PRODUCTS, when used in the perineal area, increase the risk of ovarian cancer.

e. The Johnson & Johnson Defendants intentionally failed to include adequate warnings with the PRODUCTS regarding the potential and actual risks of using the PRODUCTS in the perineal area on women and the nature, scope, severity,

and duration of any serious injuries resulting therefrom. [17]

f. 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 the PRODUCTS as safe for public consumption and usage, including for use by women to powder their perineal areas.

220. At all relevant times, the Johnson & Johnson Defendants actively, knowingly, and intentionally concealed and misrepresented these material facts to the consuming public with the intent to deceive the public, including Plaintiffs, and with the intent that the consumers would purchase and use the PRODUCTS in the female perineal area, and Plaintiffs did regularly apply the PRODUCTS to their perineal region over a number of years.

221. At all relevant times, the consuming public, including Plaintiffs, would not otherwise have purchased the PRODUCTS and/or applied the PRODUCTS in the perineal area if they had been informed of the risks associated with the use of the PRODUCTS in the perineal area.

222. At all relevant times, Plaintiffs relied on the Johnson & Johnson Defendants' misrepresentations concerning the safety of the PRODUCTS when purchasing the PRODUCTS and using them in their perineal area, and their reliance was reasonable and justified.

223. As a direct, foreseeable and proximate result of the Johnson & Johnson Defendants' fraudulent conduct, Plaintiffs purchased and used the PRODUCTS in their perineal area. As a direct and proximate result of such use, Plaintiffs developed ovarian cancer, and Plaintiffs where caused to incur medical bills, lost wages, conscious pain, and suffering.

[17] Household PRODUCTS Database, Label for Johnson's Baby Powder, Original, http://householdproducts.nlm.nih.gov/cgi-bin/household/brands?tbl=brands&id=10001040

224. Given the above, and given the Johnson & Johnson Defendants' significant contacts with Pennsylvania, it is reasonable and foreseeable that the Johnson & Johnson Defendants would be haled to court in Pennsylvania.

225. WHEREFORE, Plaintiffs demand judgment against the Johnson & Johnson Defendants for compensatory and punitive damages in excess of the jurisdictional minimum of this Court, together with interest, costs of suit, attorneys' fees, and all such other relief, as this Court deems proper.

COUNT VII – NEGLIGENT MISREPRESENTATION

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

227. As a direct, foreseeable and proximate result of the Defendants' fraudulent conduct, Plaintiffs purchased and used the PRODUCTS in their perineal area. As a direct and proximate result of such use, Plaintiffs developed ovarian cancer, and Plaintiffs where caused to incur medical bills, lost wages, and conscious pain and suffering.

228. Defendants had a duty to accurately and truthfully represent to the medical and healthcare community, the public, and Plaintiffs, the truth about the PRODUCTS' safety and efficacy when used in the perineal area. However, the representations and/or omissions made by Defendants, in fact, were false.

229. 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 and/or omitted the PRODUCTS' high risk of unreasonable, dangerous, adverse side effects.

230. Defendants breached their duty in representing that the PRODUCTS were safe for use in the perineal areas of women and/or omitting the known or knowable inherently dangerous carcinogenic nature of the PRODUCTS when used in the perineal area.

231. At all relevant times, upon information and belief, the misrepresentations, omissions and concealments concerning the PRODUCTS made by the Defendants include, but are not limited to the following:

a. The Johnson & Johnson Defendants labeled and advertised the PRODUCTS 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;" "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."

b. The Johnson & Johnson Defendants advertised the product SHOWER to SHOWER to be applied "all over," and in particular, urged women to use it to "Soothe Your Skin: Sprinkle on problem areas to soothe skin that has been irritated from friction. Apply after a bikini wax to help reduce irritation and discomfort."

c. Defendants, through the advertisements described above, among others, misrepresented to consumers, including Plaintiffs, that the PRODUCTS were safe for use all over the body, including the female perineal area.

d. Despite actual knowledge of the health risks of the PRODUCTS, the Defendants failed to disclose to the consumers and Plaintiffs, through adequate warnings, representations, labeling, or otherwise, that the PRODUCTS were inherently dangerous and carcinogenic in nature, which poses serious health risks to consumers, including Plaintiffs.

e. Despite actual knowledge that the use of the PRODUCTS in the perineal area created a significantly increased risk of ovarian cancer, the Defendants failed to disclose to consumers and the Plaintiffs, through adequate warnings, representations, labeling, or otherwise, that material fact.

f. 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 the PRODUCTS as safe for public consumption and usage, including for use by women to powder their perineal areas.

232. At all relevant times, Defendants failed to exercise reasonable care in ascertaining or sharing information regarding the safe use of PRODUCTS, failed to disclose facts indicating that the PRODUCTS were inherently dangerous and carcinogenic in nature, and otherwise failed to exercise reasonable care in communicating the information concerning the PRODUCTS to Plaintiffs and/or concealed relevant facts that were known to them.

233. At all relevant times, Plaintiffs where not aware of the falsity of the foregoing misrepresentations, nor was she aware that material facts concerning talc and the PRODUCTS had been concealed or omitted by Defendants. In reasonable reliance upon the Defendants' misrepresentations and/or omissions, Plaintiffs was induced to and did purchase the PRODUCTS and did use the PRODUCTS on their perineal area. If the Defendants had disclosed true and accurate material facts concerning the risks of the use of the PRODUCTS, in particular the risk of developing ovarian cancer from using the PRODUCTS in the female perineal area, Plaintiffs would not have purchased and/or received the PRODUCTS and/or used the PRODUCTS in that manner.

234. Plaintiffs's reliance upon the Defendants' misrepresentations and/or omissions was justified and reasonable because, among other reasons, those misrepresentations and/or omissions were made by individuals and entities who were in a position to know the material facts concerning the PRODUCTS and the association between the PRODUCTS and the incidence of ovarian cancer, while Plaintiffs was not in a position to know these material facts, and because Defendants failed to warn or otherwise provide notice to the consuming public as to the risks of the PRODUCTS, thereby inducing Plaintiffs to use the PRODUCTS in lieu of safer alternatives and in ways that created unreasonably dangerous risks to her health. At all relevant times, the

Defendants' corporate officers, directors, and/or managing agents knew of and ratified the acts of the Defendants, as alleged herein.

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

236. Given the above, it is reasonable and foreseeable that the Defendants would be haled to court in Pennsylvania.

237. WHEREFORE, Plaintiffs demand judgment against all Defendants for compensatory and punitive damages in excess of the jurisdictional minimum of this Court, together with interest, costs of suit, attorneys' fees, and all such other relief, as this Court deems proper.

COUNT VII – LOSS OF CONSORTIUM

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

239. As a direct and proximate result of Defendants' liability producing conduct as set forth herein, Plaintiffs have in the past and will in the future be deprived of the care, comfort, companionship, affection, support, and society of their mother/spouse/sister, and due to her death and the permanent economic and non-economic injuries she has sustained.

240. WHEREFORE, Plaintiffs demand judgment against all Defendants for compensatory and punitive damages in excess of the jurisdictional minimum of this Court, together with interest, costs of suit, attorneys' fees, and all such other relief, as this Court deems proper.

COUNT VIII – WRONGFUL DEATH

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

242. As a direct and proximate result of the acts and/or omissions of Defendants as set forth herein, the decedent used the PRODUCTS in their perineal areas. Subsequent to such use, decedent developed ovarian cancer, suffered substantial pain and suffering, both physical and emotional in nature, and subsequently died.

243. Plaintiffs, on behalf of themselves and all of decedent's next of kin or successors-in-interest are also entitled to recover punitive damages and damages for substantial pain and suffering caused to decedent from the acts and/or omissions of Defendants as fully set forth herein, including without limitations, punitive damages.

244. As a direct and proximate result of Defendants' conduct, Plaintiffs and decedent have been injured and sustained severe and permanent pain, suffering, disability, impairment, loss of enjoyment of life, loss of care and comfort, and economic damages.

245. WHEREFORE, Plaintiffs demand judgment against all Defendants for compensatory and punitive damages, together with interest, costs of suit, attorneys' fees, and all such other relief, as this Court deems proper.

COUNT IX – SURVIVAL ACTION

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

247. As a direct and proximate result of the acts and/or omissions of Defendants as set forth herein, the decedent named in this action used the PRODUCTS in their perineal area. Subsequent to such use, decedent developed ovarian cancer, suffered substantial pain and suffering, both physical and emotional in nature, and subsequently died.

248. Plaintiffs, on behalf of themselves and all of the next of kin or successors-in-interest of decedents, are entitled to recover damages as decedent would have if they were living, as a result of acts and/or omissions of Defendants.

249. Plaintiffs, on behalf of themselves and all of decedent's next of kin or successors-in-interest are also entitled to recover punitive damages and damages for substantial pain and suffering caused to decedent from the acts and/or omissions of Defendants as fully set forth herein, including without limitations, punitive damages.

250. As a direct and proximate result of Defendants' conduct, Plaintiffs and decedent have been injured and sustained severe and permanent pain, suffering, disability, impairment, loss of enjoyment of life, loss of care and comfort, and economic damages.

251. WHEREFORE, Plaintiffs demand judgment against all Defendants for compensatory and punitive damages, together with interest, costs of suit, attorneys' fees, and all such other relief, as this Court deems proper.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays for judgment against all Defendants as follows:

(1) Judgment for Plaintiff against Defendants;

(2) For medical and related expenses, according to proof;

(3) For loss of earnings and/or earning capacity, according to proof;

(4) For exemplary or punitive damages, according to proof;

(5) For treble damages;

(6) For mental and physical suffering, according to proof;

(7) For Plaintiff's cost of suit herein;

(8) For disgorgement of profits, according to proof;

(9) Default judgment as a sanction for the bad faith destruction of evidence, if any, and

according to proof, if any;

(10) For such other and further relief as this court may deem just and proper, including prejudgment interest.

DEMAND FOR JURY TRIAL

Plaintiffs demand a jury trial on all claims so triable in this action.

Dated: September 6, 2023

Respectfully submitted,

/s/ Tayjes M. Shah
Tayjes M. Shah, Esq. (Identification No.: 307899)
The Miller Firm, LLC
108 Railroad Avenue
Orange, VA 22960
Phone: (540) 672-4224
Fax: (540) 672-3055

Attorney for Plaintiff

Exhibit B

SEP 27 2023

JOHN C. PORTO, P.J.Cv.

PREPARED BY THE COURT

KEVIN NESKO, individually and as Personal Representative of the Estate of BRIDGET NESKO, Plaintiffs, **V.** **JOHNSON & JOHNSON;** **JOHNSON & JOHNSON HOLDCO (NA) INC.,** f/k/a Johnson & Johnson Consumer Inc., individually and successor in interest to Johnson & Johnson subsidiary "Old JJCI"; **KENVUE INC.,** individually and as successor in interest to Johnson & Johnson Consumer Inc.; **JANSSEN PHARMACEUTICALS, INC.,** individually and as successor in interest to Johnson & Johnson subsidiaries named Johnson & Johnson Consumer Inc., both prior to and after its 2021 restructurings and colloquially known as "Old JJCI" and "New JJCI"; **JOHN DOE CORPORATIONS 1-50;** Defendants.	SUPERIOR COURT OF NEW JERSEY LAW DIVISION: ATLANTIC COUNTY Docket No: ATL-L-000741-23 CIVIL ACTION CASE NO. 300 TALC-BASED POWDER PRODUCTION LITIGATION **ORDER**

THIS MATTER having come before the Court on the following Defendants Motion to Dismiss: Kenvue Inc.'s, and the Court having reviewed the moving and opposition papers, as well as conducting oral argument, and for good cause shown:

IT IS ON THIS 27th day of September, 2023, ordered:

The Defendants' Motion to Dismiss is DENIED for reasons stated in the corresponding Memorandum of Decision; and

IT IS FURTHER ORDERED that a copy of the within Order shall be served on all counsel within seven (7) days of it's receipt by movant's counsel.

John C. Porto, P.J.Cv.

Prepared by the Court

KEVIN NESKO, individually and as Personal Representative of the Estate of BRIDGET NESKO, Plaintiff, vs. JOHNSON & JOHNSON; JOHNSON & JOHNSON HOLDCO (NA) INC., f/k/a Johnson & Johnson Consumer Inc., individually and successor in interest to Johnson & Johnson subsidiary "Old JJCI"; KENVUE INC., individually and as successor in interest to Johnson & Johnson Consumer Inc.; JANSSEN PHARMACEUTICALS, INC., individually and as successor in interest to Johnson & Johnson subsidiaries named Johnson & Johnson Consumer Inc., both prior to and after its 2021 restructurings and colloquially known as "Old JJCI" and "New JJCI"; PERSONAL CARE PRODUCTS COUNCIL f/k/a Cosmetic, Toiletry and Fragrance Association; JOHN DOE CORPORATIONS 1-50; Defendants	: SUPERIOR COURT OF NEW JERSEY : LAW DIVISION - ATLANTIC COUNTY : DOCKET NO.: ATL-L-741-23 Talc-Based Powder Products Litigation Case No: 300 : CIVIL ACTION : DECISION on Defendants' Motion to Dismiss

Decided on: September 27, 2023

Christopher M. Placitella, Esquire for Plaintiff
Cohen, Placitella & Roth, P.C.

Susan M. Sharko, Esquire For Defendants, Kenvue Inc., Janssen Pharmaceuticals, Inc., and Johnson & Johnson Holdco (NA) Inc.
Faegre Drinker Biddle & Reath LLP

Porto, P.J.Cv.

Plaintiff filed the Complaint on April 26, 2023. Co-Defendants Kenvue Inc. ("Kenvue") filed its motion to dismiss the Complaint for failure to state a claim on May 11, 2023. On May 12, 2023, Kenvue filed an amended motion to dismiss the Complaint. Kenvue, Janssen Pharmaceuticals, Inc. ("Janssen"), and Johnson & Johnson Holdco (NA) Inc. ("Holdco") (collectively "Defendants") moved for the dismissal of the Complaint pursuant to Rule 4:6-2(e) on May 16, 2023[1]. Plaintiff opposed the motion on July 13, 2023. Defendants filed their reply on July 27, 2023. Oral argument was conducted on September 13, 2023.

The court examined the legal sufficiency of the facts alleged in the Complaint and determined a fundament of the various causes of a cause of action was pleaded by the Plaintiff.

Nature of Motion and Procedural History

The full procedural history is well known by the parties and counsel. However, the court provides a general procedural summary for context based upon the relevant allegations from the Complaint as well as from the Declaration of John K. Kim in support of First day Pleadings.

Plaintiff alleges Plaintiff's Decedent was exposed to asbestos containing talc powder "PRODUCTS[2]" on a regular and frequent basis while using baby powder on herself or while being in the vicinity of someone using or having talcum baby powder applied to his or her person. As a direct and proximate result of Plaintiff's Decedent's exposure to and inhalation and ingestion of dust particles and fibers, Plaintiff's Decedent was diagnosed with ovarian cancer on or around April 26, 2021 and as a result of her ovarian cancer passed away on November 28, 2022.

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[1] In correspondence dated May 12, 2023, Defendants' counsel wrote the relief sought in this motion also applied to the 55 new plaintiff filings of Richard Golomb, Esq.

[2] In paragraph 6 of the Complaint, Plaintiff defines the term "Products" in the Complaint as follows: "PRODUCTS" is defined by talc products utilized by Plaintiff's Decedent, including Johnson's Baby Powder.

Holdco is a New Jersey corporation with its principal place of business in the State of New Jersey. Kenvue is a Delaware corporation with its principal place of business in the State of New Jersey. Janssen is a New Jersey Corporation with its principal place of business in the State of New Jersey.

In the Complaint, Plaintiff alleges at all relevant times, upon information and belief, Defendants, or their predecessors, were engaged in the business of manufacturing, formulating, marketing, testing, promoting, selling and/or distributing the asbestos-containing products to which Plaintiff's Decedent was exposed. Plaintiff further alleges, at all relevant times, Defendants, or their predecessors, regularly transacted, solicited, and conducted business in all fifty States of the United States.

Specifically, in paragraph 20 of the Complaint, the Plaintiff alleges the Defendants:

> are either (a) corporations organized under the laws of the various states of the United States of America that were and are doing business in the State of New Jersey that mined, milled, manufactured, sold, supplied, distributed, purchased, and/or marketed asbestos-containing PRODUCTS to which Plaintiff's Decedent was exposed; or (b) are a successor in interest of such corporations described in clause "(a)" which the law holds responsible and liable for injuries and harm caused by their predecessor(s) or by their predecessor's asbestos-containing product lines it or they acquired which, as a consequence, renders them liable under law to the Plaintiff's Decedent for the injuries and damages that are the subject of this suit.

In October 2021, Old JJCI underwent a corporate restructuring under Texas state corporation and business law. Old JJCI split itself into two separate entities

through a device referred to as a "divisive merger[3]". Plaintiff alleges the corporate restructuring was designed and undertaken with the intent to isolate the talc liabilities of Old JJCI into a newly invented company created by J&J called "LTL Management LLC" ("LTL"). "LTL" is an acronym for "Legacy Talc Liability." Following the divisional merger, LTL was put into a Chapter 11 Bankruptcy wherein LTL and other J&J entities sought the protection of the Bankruptcy Code to obtain a stay of all pending litigation and construct an aggregate resolution of its outstanding present and future asbestos liabilities.

As part of the corporate restructuring, Old JJCI ceased to exist, and two new entities were created: LTL and New JJCI[4]. Plaintiff alleges all of the productive assets of Old JJCI, including those used to manufacture and market J&J Baby Powder, were transferred to a new corporate entity named "Johnson & Johnson Consumer Inc." ("New JJCI"). Upon receipt of the Old JJCI's operating assets, Plaintiff alleges "New JJCI… continued to sell J&J Baby Powder, as did Old JJCI previously before when J&J itself directly marketed the product line through an internal division[5]." LTL "was allocated certain of Old JJCI's assets and became solely responsible for the talc-related liabilities of Old JJCI[6]." "New JJCI was allocated all other assets of Old JJCI and became solely responsible for all other liabilities of Old JJCI[7]."

In referencing the Kim Declaration, the Plaintiff notes all talc-related liabilities were transferred to LTL, and "New JJCI operated its business following the 2021 corporate restructuring. This included the manufacture and sale of a broad range of products used in the baby care, beauty, oral care, wound care and women's

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[3] To the extent this court references said merger, the court refers to it as a "divisional merger".
[4] See Kim Decl. ¶ 24.
[5] See Complaint paragraph 34.
[6] See Kim Decl. ¶ 24.
[7] Id.

health care fields, as well as over-the-counter pharmaceutical products (collectively, the 'Consumer Business')[8]." The Defendants assert New JJCI did not sell any talc-based Johnson's Baby Powder in North America, as that product was discontinued before New JJCI was formed.

According to the Plaintiff, "[o]ver the objection of tens of thousands of personal injury and wrongful death tort plaintiffs, the Bankruptcy Court presiding over LTL's 2021 bankruptcy case, stayed and enjoined prosecution of all litigation against not only the Debtor LTL but all cosmetic talc injury related litigation involving J&J and New JJCI[9]." On appeal before the United States Court of Appeals for the Third Circuit, on January 30, 2023, that court dismissed the LTL Bankruptcy 2021 case[10]. "LTL's efforts to obtain re-argument before the Third Circuit panel hearing its appeal or an *en banc* hearing were denied[11]." Following the Bankruptcy Court's dismissal order, on April 4, 2023, "LTL filed a second Chapter 11 petition for bankruptcy protection in the same court seeking the same relief as in the dismissed case[12]."

Thereafter, New JJCI changed its name to Johnson & Johnson Holdco (NA) Inc. ("Holdco")[13]. Plaintiff alleges during the time the Third Circuit Court of Appeals was considering the propriety of LTL's bankruptcy filing, New JJCI began the process of moving its assets and business to yet another J&J subsidiary, Kenvue by transfers through JJCI's direct parent, Janssen. Holdco transferred its consumer business assets to Janssen, which transferred those assets to Kenvue. Plaintiff further alleges while Mr. Kim's Declaration does not expressly state who the parent

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[8] See Kim Decl. ¶ 26.
[9] See Complaint paragraph 35.
[10] In re LTL Management, LLC, 64 F.4th 84, 95-96 (3d Cir. 2023).
[11] See Complaint paragraph 37.
[12] See Complaint paragraph 38.
[13] See Complaint paragraph 40.

entity is, "a careful examination of the affidavit demonstrates Janssen is the parent entity of Defendant New JJCI[14]."

Plaintiff now filed this Complaint to name Holdco, Janssen, and Kenvue as Defendants. Plaintiff alleges all assets associated with the production and sale of Johnson & Johnson Consumer Inc.'s ("Old JJCI") cosmetic talc products were transferred to Holdco, Janssen, and Kenvue and focus on the Defendants' corporate activities after the divisional merger.

Based upon a fair reading of the Complaint, Plaintiff's causes of action are brought, in part, under the New Jersey Products Liability Act ("PLA"), N.J.S.A. 2A:58C-1, et seq., New Jersey's Punitive Damages Act, N.J.S.A. 2A:15-5.9 et al. and New Jersey's common law. As alleged in the Complaint, "both Holdco and Janssen are successors to Old JJCI and responsible for the contractual undertakings and tortious conduct of Old JJCI[15]." Similarly with regard to Kenvue; "Kenvue is responsible, individually, and as successor to all predecessor entities involved in the manufacturing, marketing, and sale of the asbestos-containing talc PRODUCTS to which the Plaintiff's Decedent was exposed[16]."

Contentions[17]

Defendants

In support of this motion, Defendants look to the divisional merger and argue:

1. Holdco never held any talc-based liabilities; those liabilities were transferred exclusively to LTL. As the Third Circuit explained, the corporate restructuring under Texas law "allocated LTL responsibility for essentially all liabilities of Old Consumer tied to talc-related claims."

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[14] See Complaint paragraph 41.
[15] See Complaint paragraph 42.
[16] See Complaint paragraph 49.
[17] The contentions are general summaries from the briefs and arguments of counsel.

2. Aside from Texas law, the general rule in New Jersey is that when a company acquires assets, it is "not liable for the debts and liabilities of the transferor[18]." Defendants contend Plaintiff appears to invoke the so-called "product line" exception to that general rule. Defendants argue as a matter of law, said exception is not applicable to "an asset purchaser that discontinues the product line[19]." Defendants argue their clients did not continue selling talc-based Johnson's Baby Powder in the United States; said sales were discontinued in 2020 before Holdco was initially formed.

According to Defendants' attorney, their clients were named as defendants "not because of a sincere view that they hold any liabilities, but simply as an attempt to circumvent the automatic bankruptcy stay[20]."

Defendants' Reply

In their reply, Defendants' counsel provided an additional analysis regarding the divisional merger and further refuted the Plaintiff's arguments regarding successor liability.

Plaintiff

Plaintiff opposed the motion and argues under New Jersey law, the Defendants are liable for Old JJCI's talc-related liabilities. Under New Jersey law, when a corporate entity undergoes a "corporate reorganization," a "viable restructured entity" cannot escape direct liability for the harm caused by a product just because the original manufacturer had made it before the reorganization[21]. Moreover, Plaintiff's attorney contends this court does not need to consider Texas law in the analysis for this motion; the court needs to look only to New Jersey law.

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[18] Ramirez v. Amsted Indus. Inc., 86 N.J. 332, 340 (1981).
[19] Lefever v. K.P. Hovnanian Enterprises, Inc., 160 N.J. 307, 326 n.4 (1999).
[20] During oral argument on September 13, 2023, this court was informed LTL is no longer in Bankruptcy, but an appeal is pending.
[21] Arevalo v. Saginaw Mach. Sys., Inc., 344 N.J. Super. 490, 497-98 (App. Div. 2001).

Plaintiff argues the Defendants look at a single moment in time, the divisional merger, to argue there is no responsibility for Old JJCI's talc-related liabilities under New Jersey's successor liability doctrines. Plaintiff's attorney disagrees and asserts the Texas Business Code relied upon by the Defendants, Texas Bus. Orgs. Code Ann. § 10.008, does not immunize the Defendants for liabilities imposed under other laws, such as New Jersey's in this case. According to the Plaintiff's attorney, Texas Law does not allow a corporation that was not assigned liabilities in the merger to evade liability when required under the laws of other states and cited from the Third Circuit Court's decision in In re LTL Mgmt., LLC, 64 F.4th at 95-96 to that effect:

> When the original entity does not survive the merger, it allocates its property, liabilities, and obligations among the new entities according to a plan of merger and, on implementation, its separate existence ends. Id. §§ 10.003, 10.008(a)(1). Except as otherwise provided by law or contract, no entity created in the merger is "liable for the debt or other obligation" allocated to any other new entity. Id. § 10.008(a)(4). In simplified terms, the merger splits a legal entity into two, divides its assets and liabilities between the two new entities, and terminates the original entity.

According to the Plaintiff's allegations, the Defendants are directly liable under New Jersey law as a result of the divisional merger as well as successor liability because the connection between Old JJCI and the Defendants here is "clear and obvious". Plaintiff asserts in their brief the Defendants are Old JJCI "albeit reconstituted" and are directly responsible for Old JJCI's talc-related liabilities.

Plaintiff also alleges Defendants continue to profit from Old JJCI's goodwill and the "Johnson's®" iconic brand pointing out Kenvue recently raised billions for J&J through an initial public offering of a small percentage of its shares (with the rest still being held by J&J) and Kenvue's disclosures to the Securities & Exchange Commission ("SEC"), admitted in the SEC filing that it continues to manufacture

and sell Johnson's® Baby Powder outside the United States. Plaintiff further alleges the Defendants continued Old JJCI's business, acquired its assets, and traded on Old JJCI's goodwill, by invoking the 125-year-old brand to sell Johnson's® Baby Powder, including, as Kenvue has purportedly admitted, the talc-based formulation overseas.

The Plaintiff also asserts successor liability flows from Old JJCI's talc-related liabilities because as a general rule, "where one company sells or otherwise transfers all its assets to another company the latter is not liable for the debts and liabilities of the transferor, including those arising out of the latter's tortious conduct.[22]"

Discussion

Defendants seek to have the Plaintiff's Complaint dismissed pursuant to R. 4:4-62(e). That rule provides in relevant part, "[e]very defense, legal or equitable, in law or fact, to a claim for relief in any complaint, counterclaim, cross-claim, or third-party complaint shall be asserted in the answer thereto, except that the following defenses, unless otherwise provided by R. 4:6-3, may at the option of the pleader be made by motion, with briefs: (e) failure to state a claim upon which relief can be granted…." Accordingly, in ruling on such a motion, the applicable standard is well known:

> a reviewing court 'searches the complaint in depth and with liberality to ascertain whether the fundament of a cause of action may be gleaned even from an obscure statement of claim, opportunity being given to amend if necessary.' At this preliminary stage of the litigation the Court is not concerned with the ability of plaintiffs to prove the allegation contained in the complaint. For purposes of analysis plaintiffs are entitled to every reasonable inference of fact. The examination of a complaint's allegations of fact required by the aforestated

[22] McKee v. Harris-Seybold Co., Div. of Harris-Intertype Corp., 109 N.J. Super. 555, 561 (Law. Div. 1970), aff'd, 118 N.J. Super. 480 (App. Div. 1972). This court notes McKee was criticized by Ramirez, 86 N.J. 332 and is not the current standard in determining successor liability.

> principles should be one that is at once painstaking and undertaken with a generous and hospitable approach.
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> [Printing Mart-Morristown v. Sharp Elecs. Corp., 116 N.J. 739, 746 (1989) (internal citations omitted).]

It is well-established that a plaintiff is not required to prove its factual allegations at the motion-to-dismiss stage. See, e.g., Leon v. Rite Aid Corp., 340 N.J. Super. 462, 472 (App. Div. 2001). This court is required to search the complaint "in depth and with liberality to ascertain whether the fundament of a cause of action may be gleaned even from an obscure statement of claim, opportunity being given to amend if necessary." Di Cristofaro v. Laurel Grove Memorial Park, 43 N.J. Super. 244, 252 (App. Div. 1957) "[T]he test for determining the adequacy of a pleading [is] whether a cause of action is 'suggested' by the facts." Velantzas v. Colgate-Palmolive Co., 109 N.J. 189, 192 (1988). The plaintiff receives the benefit of all reasonable inferences. Seidenberg v. Summit Bank, 348 N.J. Super. 243, 249-50 (App. Div. 2002). However, "[a] pleading should be dismissed if it states no basis for relief and discovery would not provide one." Rezem Fam. Assocs., LP v. Borough of Millstone, 423 N.J. Super. 103, 113 (App. Div. 2011).

Conflict of Laws-Tex. Bus. Orgs. Code Ann. § 10.008

This specific litigation was designated by the New Jersey Supreme Court as a Multicounty Litigation and received centralized management in Atlantic County[23], New Jersey. Although it appears, there may be a dispute among counsel as to whether New Jersey law applies, this court finds New Jersey law applies because New Jersey has the most significant relationship to the occurrence and of the parties as found in In re Accutane, 235 N.J. 229, 264-65 (2018).

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[23] Atlantic County and Cape May County comprise Vicinage One. Plaintiff does assert "[v]enue is proper in this County pursuant to Rule 4:3-2 in that Defendants do substantial business in Atlantic County, New Jersey." See paragraph 25 of the Complaint.

For completeness, even if Accutane was not applicable, this court did not find there is a conflict between the laws of the two states as the Texas business statute permits other state law to govern organization liability post-merger. This court finds its support from the Third Circuit's decision as that count pointed out that the Texas divisional merger statute allows the parties to a merger to assign assets to one or more corporations surviving the divisional merger under Tex. Bus. Orgs. Code Ann. §10.008(a)(2)(C), and under Tex. Bus. Orgs. Code Ann. § 10.008(a)(3). The Statutes permit the parties to a merger to assign liabilities to one or more of the surviving corporations.

However in that same regard, this court finds the Texas Code does not contemplate that a corporation that was not assigned liabilities in the merger to evade liability when required under the laws of other states. This statutory exception was specifically referenced by the Third Circuit Court of Appeals as it discussed the Corporate Restructuring and Divisional Merger and the Texas Business Organization Code §§ 10.001 et seq.:

> When the original entity does not survive the merger, it allocates its property, liabilities, and obligations among the new entities according to a plan of merger and, on implementation, its separate existence ends. Id. §§ 10.003, 10.008(a)(1). Except as otherwise provided by law or contract, no entity created in the merger is "liable for the debt or other obligation" allocated to any other new entity. Id. § 10.008(a)(4). (Emphasis added.).
>
> [LTL Mgmt., LLC, 64 F.4th at 95.]

Accordingly, this court finds the Texas statutes provides that following the divisional merger, and as otherwise provided by law, successor liability of the entity created in the merger is determined in this instance by New Jersey law. Since there is no conflict of laws present, the court looks to New Jersey law regarding successor liability based upon the allegations contained in the Amended Complaint.

Successor Liability

The general rule on successor liability in this state is, "where one company sells or otherwise transfers all its assets to another company the latter is not liable for the debts and liabilities of the transferor, including those arising out of the latter's tortious conduct." Ramirez, 86 N.J. at 340 (citations omitted.). However, the Ramirez Court noted there were four exceptions to that general rule: (1) the purchasing corporation expressly or impliedly agreed to assume such debts and liabilities; (2) the transaction amounts to a consolidation or merger of the seller and purchaser; (3) the purchasing corporation is merely a continuation of the selling corporation, or (4) the transaction is entered into fraudulently in order to escape responsibility for such debts and liabilities. Id. at 340-41.

In Ramirez, the New Jersey Supreme Court adopted the following test for determining successor corporation liability in the product line exception as "where,… the successor corporation acquires all or substantially all the assets of the predecessor corporation for cash and continues essentially the same manufacturing operation as the predecessor corporation the successor remains liable for the product liability claims of its predecessor." Ramirez, 86 N.J. at 335. According to the Court, "the focus in cases involving corporate successor liability for injuries caused by defective products should be on the successor's continuation of the actual manufacturing operation and not on commonality of ownership and management between the predecessor's and successor's corporate entities,…." Id. at 347. Upon its review of this decision, this court does not find that the lack of any source of any remedy was the dispositive impetus for any potential liability for corporate successor[24] liability because the Supreme Court said, "[w]hat is most important,

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[24] "In Ramirez the successor corporation was the only viable corporate entity plaintiff could sue for his injuries; his remedies against the original manufacturer and an intermediate corporation had been destroyed by the successor's acquisition of all the business assets of its predecessors, which subsequently dissolved." Nieves, 86 N.J. at 364.

however, is that there was continuity in the manufacturing of the… product line throughout the history of these asset acquisitions." Ramirez, 86 N.J. at 350.

Nieves v. Bruno Sherman Corp., 86 N.J. 361 (1981) was also decided on the same day as Ramirez. The issue in that case was "whether the Ramirez standard may be extended to impose liability on an intermediate successor corporation, one that acquired all the business assets from the original manufacturer and thereafter transferred those assets to its successor and discontinued the offending product line, all several years before plaintiff's accident occurred." Id. at 364. The Court held, "the Ramirez rationale is not necessarily so limited as to visit liability upon only the current, viable manufacturer of the product line. In certain situations both the current successor corporation and the intermediate manufacturer may be responsible under Ramirez." Id. at 365.

In Lefever, 160 N.J. at 310, the Supreme Court framed the issue as "whether the product-line exception is applicable when the successor has purchased the predecessor's assets at a bankruptcy sale." The bankrupt "was not the manufacturer of the defective product, but rather an intermediary owner of the product line against whom no claim had been made by the injured party." Id. at 310-11. The Court found that it was not "unfair to impose liability on the successor manufacturers of the Lull forklift" because the successor "trad[ed] on the good will generated by a long-standing customer base." Id. at 326. As an aside, in footnote 4 of the opinion, the Court discussed fairness being the guiding principle for the imposition of punitive damages on a successor. Although the Plaintiff did plead a cause of action seeking punitive damages, in the present case, this court is not considering the merits and is looking at the Complaint only in the manner required by Printing Mart.

The Ramirez holding regarding successor liability was again applied to Arevalo, 344 N.J. Super. 490, and Bussell v. Dewalt Products Corp., 259 N.J. Super. 499 (App. Div. 1992). This court finds the Ramirez holding is applicable here.

In accordance with the above principles, the court accepts all of the Plaintiffs' allegations as true. The Complaint alleges product liability and other stated causes of action against the named Defendants as successor corporations of Old JJCI regarding talc liability and asserts damages against such successors as a result of the death of the Plaintiff's Decedent from ovarian cancer. In paragraph 20 of the Complaint, Plaintiff alleges the Defendants:

> are either (a) corporations organized under the laws of the various states of the United States of America that were and are doing business in the State of New Jersey that mined, milled, manufactured, sold, supplied, distributed, purchased, and/or marketed asbestos-containing PRODUCTS to which Plaintiff's Decedent was exposed; or (b) are a successor in interest of such corporations described in clause "(a)" which the law holds responsible and liable for injuries and harm caused by their predecessor(s) or by their predecessor's asbestos-containing product lines it or they acquired which, as a consequence, renders them liable under law to the Plaintiff's Decedent for the injuries and damages that are the subject of this suit.

The Plaintiff asserts, under New Jersey law, the talc-related liabilities follow the talc-related manufacturing assets and operations to the named Defendants. Since the Defendants allegedly took over the Old JJCI business, Plaintiff argues the named Defendants stand in the shoes of Old JJCI and bear the same liabilities as that prior entity in successor liability. This court finds that is clearly alleged in the Complaint.

Following the divisional merger, Old JJCI no longer existed and New JJCI was formed and allegedly became what Plaintiff refers to as a "new hat" of Old JJCI. Plaintiff alleges New JJCI/Holdco, and later Janssen and Kenvue, continued operating the business in the same manner as Old JJCI. According to Plaintiff, the Defendants and Old JJCI are no different: "they function the same, manufacture the same product, have the same leadership and ownership (with the caveat that J&J has

since orchestrated the sale of a de minimis number of shares of Kenvue to the public), and use the same Johnson's® Baby Powder brand and manufacturing assets." See Plaintiff's brief at pg. 17. Plaintiff further alleges the "Defendants admit these companies are vertically integrated within the same corporate structure." Ibid. Additionally, Plaintiff alleges "there was no change in ownership or management after the merger, and according to Plaintiff, Johnson & Johnson is the corporate parent of New JJCI, Janssen, and Kenvue. Plaintiff also contends that while Kenvue sold a fraction of its shares in an IPO to raise funds for J&J, "that does not change the fact that it is still a J&J company through and through." Ibid. Plaintiff also contends Kenvue "held itself out to investors as Old JJCI" to the SEC by its use of terminology showing "Kenvue has held and continues to hold itself out as Old JJCI, and that that has been the plan all along." Id. at 17-18.

The Plaintiff alleges the Defendants continue to "manufacture and s[ell] both talc and cornstarch-based Johnson's® Baby Powder, and the "Defendants continue to enjoy and profit from Old JJCI's goodwill." Id. at pg. 21. Plaintiff also alleges Kenvue admitted the "Defendants have kept on selling the talc-based Baby Powder outside the United States and expect that such sales will continue through 2023." Ibid. For that reason, Plaintiff argues, "[t]here is no basis in law to distinguish between sales inside and outside the United States and little to recommend for creating an artificial distinction that gives multi-national corporations, such as the …Defendants, an undue advantage and undermine the justifications for strict products liability and the product line exception as expressed by the Supreme Court in Ramirez and its progeny." Id. at pg. 22.

The Plaintiff asserted twenty one counts and alleged various causes of action as well as punitive damages premised on successor liability[25] in the Complaint.

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[25] Count I - Strict Liability-Failure to Warn (Against Johnson & Johnson Defendants), Count II – Strict Liability –Defective Manufacture and Design (Against Johnson & Johnson Defendants), Count III- Breach of Express Warranties

When this court searched the Plaintiff's 105 page Complaint in the required "painstaking" and "generous and hospitable approach" a fundament of the various causes of action was gleaned; said named Defendants may be found liable under those causes of action for Old JJCI's talc-related liabilities under New Jersey law and its successor liability case law. The court finds the Defendants rely upon factual assertions that may or may not "bear fruit" in later proceedings and it should be noted that this court does not take any position in that regard. At this time, this court's obligation is to determine whether the Complaint pleads a cause of action and the court finds that it does under New Jersey law.

Conclusion

Accordingly, based on the above analysis, the Defendants' motion to dismiss the Plaintiff's Complaint is denied.

John C. Porto, P.J.Cv.

(Against Johnson & Johnson Defendants), Count IV – Breach of Implied Warranty of Merchantability (Against The Johnson & Johnson Defendants), Count V – Breach of Implied Warranty of Fitness for a Particular Purpose (Against Johnson & Johnson Defendants), Count VI - Negligence (Against Johnson & Johnson Defendants), Count VIII – Negligent Misrepresentation (Against Johnson & Johnson Defendants), Count IX – Intentional Misrepresentation (Against Johnson & Johnson Defendants), Count X – Negligent Manipulation of Industry Standards (Against the All Defendants), Count XI - Fraud (Against Johnson & Johnson Defendants), Count XIII – Violation of Consumer Protection Laws (Against Johnson & Johnson Defendants), Count XIV – Fraudulent Concealment (Against Johnson & Johnson Defendants), Count XVI – Civil Conspiracy (Against All Defendants), Count XVII– Concerted Action (All Defendants), Count XX - Loss of Consortium/Per Quod (Against All Defendants), Count XXI - Wrongful Death Act Claims (Against All Defendants), Count XXII - Punitive Damages under common law, Punitive Damages Act (N.J.S.A 2A:15-6.9, et seq.) and Products Liability Act (N.J.S.A. 2A:58C-1 et seq.) (Against All Defendants).