

Case Linking Talc, Mesothelioma Dropped on Eve of Seattle Trial

BY AMANDA BRONSTAD

Plaintiff's lawyers who allege that baby powder caused a woman's mesothelioma have voluntarily dismissed their case against Johnson & Johnson less than a month before a scheduled trial.

In the case—which would have been the third of its kind to go to trial—the plaintiff linked the New Jersey conglomerate's ubiquitous product to mesothelioma, a deadly form of lung cancer. The first trial ended last November in a defense verdict in Los Angeles Superior Court, and a second trial began last month in Middlesex County, New Jersey, Superior Court.

Darron Berquist, managing attorney of The Lanier Law Firm's asbestos litigation practice in New York, and lawyers at Weinstein Couture in Seattle filed a motion for voluntary dismissal on Feb. 22 on behalf of plaintiff Jody Ratcliff, who brought her lawsuit in 2016. King County Superior Court Judge John Erlick in Kent, Washington, held a hearing on Feb. 8 on Johnson & Johnson's summary judgment motion but had yet to rule.

The case was set to go to trial on March 12.

Johnson & Johnson attorney Peter Bicks of Orrick, Herrington & Sutcliffe in New York, said that the dismissal, when combined with the defense verdict in California and a Nov. 17 summary judgment ruling in another



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California case, confirms what “50 years of independent testing,” including by the U.S. Food and Drug Administration, have shown: “Johnson & Johnson's baby powder is safe and does not contain asbestos. Plaintiff's counsel was smart to drop the case because the judge was onto their ‘junk science’ and was less than a day away from making critical rulings they feared.”

Orrick and Seattle's Bennett Bigelow & Leedom represented Johnson & Johnson in the case.

Mark Linder, of The Lanier Law Firm in Houston, provided this statement for the plaintiff's team: “J&J talc had and has asbestos in it. We have no doubt about that, or that the science supports asbestos disease. There are lots of reasons to dismiss cases, and J&J's PR machine has

not been exposed to our attorney-client reasons for the dismissal.”

Johnson & Johnson has challenged the scientific evidence behind the talcum powder cases, both involving ovarian cancer and mesothelioma. In 2016, Atlantic City, New Jersey, Judge Nelson Johnson granted summary judgment to Johnson & Johnson in an ovarian cancer case after criticizing the “made-for-litigation” methods of two plaintiffs’ experts. And, in another ovarian cancer case, Superior Court Judge Maren Nelson in Los Angeles reversed a \$417 million verdict last year after concluding that plaintiff’s attorneys had failed to provide evidence that talcum powder caused their client’s ovarian cancer.

Those lawsuits are among thousands that have alleged Johnson & Johnson’s talcum powder products caused women to get ovarian cancer. Several have ended in eight-digit verdicts for plaintiffs.

In the mesothelioma cases, however, verdicts against other companies have been much smaller. Johnson & Johnson has insisted that its baby powder never contained asbestos, a known carcinogen. In the Seattle case, Johnson & Johnson cited testing done by the Harvard School of Public Health and Mount Sinai Medical Center, and the FDA’s own conclusion, showing that its talc products didn’t contain asbestos. Its lawyers also cited the “litigation-driven analysis” of one of the plaintiff’s experts, who “conducted their tests on talc products obtained by other plaintiffs’ lawyers from a hodgepodge of sources, including purchases from unknown internet collectors.” Plaintiff lawyers responded with studies of their own and complained that Johnson & Johnson had limited their discovery.

At the hearing, Erlick, who already granted summary judgment to most of the 62 other defendants in the case, raised questions about

one plaintiff’s expert’s report that relied on 32 samples of baby powder, some of which were purchased on eBay. That expert, William Longo, is a plaintiffs’ expert in the New Jersey and California trials.

The judge also questioned statute of limitations issues in the case. The plaintiff initially was diagnosed with peritoneal mesothelioma, which generally hasn’t been tied to asbestos. But Erlick said her lawyers now insisted that the disease was linked to asbestos, raising statute of limitations issues.

“Well, you’re making my job very easy because I’m going to grant the defendant’s motion on summary judgment on statute of limitations,” he said.

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