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Phone: +1 646 783 7100 | Fax: +1 646 783 7161 | customerservice@law360.com

J&J Can't Shed \$4.7B Talc Verdict In Missouri

By **Emily Field**

Law360 (December 19, 2018, 8:29 PM EST) -- A Missouri state judge on Wednesday declined to nix the \$4.69 billion verdict in favor of 22 women in the first trial over claims that asbestos in Johnson & Johnson's talcum powder causes ovarian cancer, saying substantial evidence at trial supports the award.

St. Louis Circuit Court Judge Rex Burlison said that the jury's \$550 million compensatory damages award was "fair and reasonable" compensation for the injuries and damages that the women showed **at trial**. As for the punitive damage awards, which totaled \$4.14 billion, the judge said that due process was followed.

"First, substantial evidence was adduced at trial of particularly reprehensible conduct on the part of defendants, including that defendants knew of the presence of asbestos in products that they knowingly targeted for sale to mothers and babies, knew of the damage their products caused and misrepresented the safety of these products for decades," the judge said. "Second, defendants' actions caused significant physical harm and potential harm, including ovarian cancer in plaintiffs or plaintiffs' decedents."

Additionally, the judge denied J&J's request for a new, separate trial, saying that the company hadn't shown the good cause required for a new trial under Missouri court rules.

"The same judge has denied similar motions on prior verdicts in his court that were ultimately overturned by the appellate courts," J&J said in a statement. "We are confident this verdict will also be overturned on appeal. We plan to file our notice of appeal in the coming weeks."

The judge also rejected the company's argument that the women didn't show reliable expert evidence on what caused their cancer.

"The evidence presented at trial includes the testimony of plaintiffs' expert witnesses, evidence of the testing of the products at issue, including defendants' own testing, defendants' correspondence and the testimony of defendants' own corporate representative and chief medical officer," the judge said.

The July verdict was not the first one for plaintiffs in the many cases alleging a link between J&J talc, asbestos and cancer, but it is by far the largest one, and the roughly \$213 million awarded per plaintiff ranks with the largest talc verdicts handed down, including a \$417 million verdict in California that was later tossed by the trial judge, a \$117 million verdict against J&J and its talc supplier in New Jersey, and a \$110 million verdict in St. Louis.

The jury in the instant case unanimously held both J&J and J&J Consumer liable for strict liability and negligence as to all of the plaintiffs' injuries. In compensatory damages, the jury generally awarded each woman suing on her own \$25 million, and generally awarded women who sued with their husbands \$12.5 million each, totaling \$550 million.

"Judge Burlison's well-reasoned decision recites the science, evidence, and the law in upholding an important judgment that delivers justice to 22 victims of an insidious cancer," Mark Lanier of Lanier Law Firm, counsel for the women, said in a statement. "We look forward to arguing this same evidence and science to the appellate courts."

The plaintiffs, including named plaintiff Gail Ingham, are represented by Mark Lanier of Lanier Law Firm.

At trial, J&J was represented by Peter Bicks, Morton Dubin and Lisa Simpson of Orrick Herrington & Sutcliffe LLP and HeplerBroom LLC. Imerys Talc America was represented by Jane Bockus of Dykema Cox Smith and Kenneth Ferguson of Gordon & Rees LLP.

The case is Ingham v. Johnson & Johnson et al., case number 1522-CC10417, in the 22nd Judicial Circuit of Missouri.

--Additional reporting by Daniel Siegal. Editing by Bruce Goldman.

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