

## Talcum Powder Ovarian Cancer Claims Take a Hit in NJ

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In April and May 2016, a *Missouri* court awarded \$72 million and \$55 million, respectively, for claims against **Johnson & Johnson** for ovarian cancer linked to its talcum powder products. At that time, over 100 other cases were pending in Missouri, along with a growing number of cases in other states. The New Jersey Supreme Court had already ruled that the cases should be consolidated in a Multicounty Litigation (MCL), under Judge Nelson C. Johnson. However, unlike the judge in Missouri, who sent the cases to the jury, Judge Johnson disqualified the same expert witnesses used in those winning cases, ruling that, although the experts were “eminently qualified” to give testimony, the evidence was not grounded in “objective science.”

New Jersey has long applied a flexible standard related to the use of expert witnesses in mass tort matters. That standard, originally based on *Rubanick v. Witco Chemical Corp.*, 125 N.J. 421 (1991) and *Landrigan v. Celotex Corp.*, 127 N.J. 404 (1992), and supported further in the case of *Kemp v. State*, 174 N.J. 412 (2002), leaves interpretation of novel causation theories to the jury. In *Rubanick*, the court held that a new or novel scientific theory “may be found to be scientifically reliable if it is based on a sound, adequately founded scientific methodology involving data and information of the type reasonably relied on by experts in the scientific field.” Judge Johnson decided the talcum powder causation theory was unreliable, even though the experts had been engaged in researching the link with ovarian cancer since 1982. Considering the experts’ qualifications were not in doubt and the theories, whether novel or not, were based on decades of published research, New Jersey precedent would suggest that the expert opinions should have gone to the jury. Here, the decision to bar these experts appears to be more grounded in the rigorous analysis adopted by the U.S. Supreme Court in *Daubert v. Merrell Dow Pharmaceuticals*, 509 U.S. 579 (1993), rather than in the more progressive standard employed by the New Jersey courts.

Meanwhile, the number of claims of ovarian cancer linked to Johnson & Johnson’s talcum powder products continue to grow. The U.S. Judicial Panel on Multidistrict Litigation (JPML) has agreed to hear arguments in September 2016, for a federal Multidistrict Litigation (MDL) for these cases. If the MDL is granted, it will be interesting to see if, and how, the New Jersey decisions will affect the treatment of the federal bellwether cases.

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