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Science vs. Settle: A Johnson & Johnson Case Study

Executive Summary

Johnson & Johnson (J&J) revolutionized the baby product industry in 1894 with the introduction of baby powder. The product help turn the company into a trusted household name—mothers swore by the product and its scent soon became known as “baby smell” because of the strong association between infants and baby powder. In fact, blind tests show that the scent of baby powder is more recognizable than chocolate.¹

Beginning in 1971, talc-based products began to come under scrutiny over a possible link between asbestos found in talcum powder and ovarian cancer due to the discovery of talc particles in ovarian tumors. As a result, J&J has been put to the test in the courts of law and public opinion as litigators attempted link their talc-based baby powder and Shower to Shower product directly to cancer.

Nearly 40 years of government and non-government research has found no conclusive link between the mineral and cancer, yet plaintiffs have issued thousands of lawsuits against the company. Mass tort lawyers have used misinformation campaigns—targeted to those with ovarian cancer and mesothelioma primarily through television advertisements—to encourage individuals to file suit against J&J.

To date, more than 20,000 cases have been filed against J&J.² However, J&J has had every verdict that it appealed overturned and remains steadfast in its confidence in its product’s safety, citing research by the company and third-party analyses that have not identified a link between talc and cancer.

Due to the high volume of television and internet advertisements associated with the litigation, consumer demand within the U.S. and Canadian markets for talc-based baby powder has plummeted. In May 2020, J&J announced that it would discontinue the sale and production of its baby powder in North American markets, citing the decreased demand as a result of targeted misinformation and litigation as the core reasons. The product will still be sold in markets around the world, where consumer demand for talc-based baby powder remains high.

“The Baby Company” is born

Talc, the world’s softest mineral, is a naturally occurring mineral composed of magnesium, silicon, oxygen, and hydrogen.³ Dating back to Ancient Egypt, talc has been used for personal use in products including face, body, and baby powders; cosmetics; deodorant; toothpaste; chewing gum; and more.⁴ Its first use in toiletry and baby products came in 1894, when J&J first introduced its talcum powder-based baby powder.⁵

Johnson’s Baby Powder was initially marketed as a product to relieve diaper rash and babies’ skin irritation, but the product saw increased popularity when adults began using it to keep their own skin dry. The brand’s baby powder launched J&J’s reputation as “The Baby Company,” becoming a household name for trusted, safe products for infants and parents alike.

Skewed litigation takes aim at talc

The first studies connecting talc and cancer were published in 1971, when researchers—with financial support from Tenovus Cancer Care, a U.K.-based charity committed to ensuring fewer people get cancer—used an extraction-replication method to examine tissue from patients with cervical and ovarian cancers.⁶⁷ Talc particles were found embedded in the tumor tissue, and researchers drew an association between the particles and asbestos, despite the study failing to show asbestos fibers in the tissue. According to the results, given the size of the particles that were analyzed in the 1971 study, talc particles were difficult to distinguish from asbestos fibers.

A subsequent 1971 study conducted by researchers at Mount Sinai Medical Center concluded that asbestos-tainted talc was responsible for cancer and preempted the FDA to open an inquiry into J&J's baby powder. The FDA's own examinations found no evidence of talc in the company's baby powder samples.⁸

Despite the lack of conclusive evidence, researchers continued to search for a link between talc and cancer, producing statistical studies throughout the 1980s and 1990s alleging that talc could be a carcinogen. The studies gave legs to future litigation, and in 2014, J&J began facing lawsuits that alleged that asbestos-contaminated baby powder had caused cancer.

Early lawsuits generally alleged that talc contained carcinogenic properties and caused ovarian cancer, while more recent lawsuits have claimed that talc, when contaminated with asbestos, causes ovarian cancer or mesothelioma.⁹ Experts have concluded that the switch in litigation tactics is derived from the weak link between talc and cancer.¹⁰ By focusing on asbestos—a naturally occurring carcinogenic mineral that has been found in proximity to talc in mining operations—plaintiffs were able to make a stronger case to jurors that the products directly caused cancer. Plaintiffs have argued that J&J has been aware of the connection between talc and cancer since the 1970s and has failed to warn consumers of the risk. However, the company maintains the safety of the product, pulling from decades of research and analysis as proof.

A study published in the *Journal of the American Medical Association* followed more than 250,000 women for 11 years and found no ovarian cancer risk associated with talcum powder use.¹¹ Another study, conducted by the Nurses' Health, followed more than 78,000 women for 24 years and found no increase in ovarian cancer when comparing talc users to non-talc users. As such, the Food and Drug Administration (FDA), after extensive review, has found insufficient scientific evidence linking talc to cancer, and in 2014 rejected a request to mandate "that products containing talc warn that frequent application can cause women to develop ovarian cancer."¹² The American Cancer Society (ACS) outlines risk for ovarian cancer increasing with age, family history, and pregnancy history, and has stated that studies linking talc and ovarian cancer as "potentially biased."¹³ Further, the National Cancer Institute's Physician Data Query Editorial Board concluded that science does not support a link between talc exposure and ovarian cancer.

Over the past 40 years, J&J conducted thousands of tests that have repeatedly concluded that its consumer talc products, including baby powder, do not contain asbestos. When a routine 2019 FDA test of J&J's baby powder showed trace amounts of asbestos fibers, the company immediately recalled the entire lot in order to ensure consumer safety while it investigated the cause of the detection. The FDA test results showed that while 43 samples were negative for asbestos contamination, nine tested positive. The asbestos-positive samples were then tested by two third-party laboratories, neither of which detected asbestos contamination.¹⁴

Unproven claims marketed as truth

Despite the evidence that talc does not cause cancer, plaintiffs have used mass marketing campaigns—specifically television advertisements—to make that connection. Class-action lawsuit advertisements have

predominately featured women affected by ovarian cancer in an effort to recruit clients. Many ads purposefully mislead viewers, with misidentified doctors telling viewers about the studies that link talc and cancer.¹⁵ As studies have conclusively found, there is no such link. According to data, law firms have spent an estimated \$63 million on tv ads intended to recruit individuals with cancer who have ever used talc-based products, including J&J's Baby Powder, to file suit.

These litigation advertisements and resulting class-action lawsuits have been heavily saturated in the United States, where demand for talc-based products like baby powder have drastically declined. Notably, despite thousands of lawsuits against J&J, all verdicts against the company that have been appealed have been overturned.¹⁶ Many cases were initially dismissed for lack of substantial evidence.¹⁷

Discontinuation of Johnson's Baby Powder in U.S. and Canada

Despite J&J getting all verdicts overturned on appeal, the misinformation campaign and resulting lawsuits against the talc-based products and the company itself have left a lasting impact on the company. The public has been left questioning the safety and truth about talc, and as a result, has largely moved away from J&J's talc-based baby powder. The decrease in demand has been so great that baby powder represented less than one percent of the company's U.S. Consumer Health Business.¹⁸ All told, the company has seen a 20 percent sales decrease in its baby line products since 2011.¹⁹

As a result of the dwindling demand and sales, in May 2020, J&J announced that it would discontinue the production and sale of Baby Powder in the U.S. and Canada. The company stated that the discontinuation was part of a cancellation of approximately 100 SKUs as part of efforts to prioritize high-demand products in response to COVID-19.²⁰

However, the company blamed the decreased demand for its baby powder on "misinformation around the safety of the product and a constant barrage of litigation advertising."²¹ J&J maintains the product's safety and vowed to continue to defend the product and its safety in the courtroom. The company's baby powder—in both its talc-based and cornstarch-based forms—will continue to be sold in countries around the world where there remains a demand for the products.²²

Science versus settle

J&J's May 2020 decision to discontinue the sale of talc-based baby powder in North America is representative of the "science vs. settle" mentality that is prevalent within U.S. courtrooms. Despite conclusive evidence and analysis by major government and non-government agencies finding that there is no link between talc and cancer, thousands of lawsuits have been levied against the company alleging that such a link exists.

J&J maintains that the company will continue to defend the product in courtrooms. However, the company's decision to pull the product in question, after years of defending its name and spending millions in advertising and litigation, is seen by some as a preparatory move to globally settle the nearly 20,000 pending cases against it.²³

The J&J baby powder scenario is a classic example of the potential harm that an unchecked mass tort industry can wreak. Despite its product's safety being independently and objectively verified, the company is now forced to choose between spending millions of dollars in legal fees to defend the manufacture and sale of the product, or reaching settlements that reward mass tort lawyers for recruiting enough plaintiffs that judges ignore the science in front of them.

The mass tort industry has created and fostered an environment where independent science is ignored in favor and economic coercion flourishes. When judges and jurors are able to ignore the conclusive research or government agencies like the Food and Drug Administration and independent organizations like the American Cancer Society and instead base decisions off of emotional arguments and inconclusive evidence, the question must be asked: Who benefits from this? There is only one benefactor of the mass tort industry, and it is not consumers or the plaintiffs, many of whom never see financial settlements. Instead, trial bar lawyers benefit, as they line their pockets and continue to recruit more "victims" to perpetuate the cycle. Johnson & Johnson is the latest victim of the unchecked mass tort industry, but unless judges, jurors, consumers, and researchers return to a belief in independent, accurate science, it will not be the last.

Endnotes

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