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J&J Hit With \$37M Asbestos Talc Verdict In NJ

By **Bill Wichert**

Law360 (April 5, 2018, 3:34 PM EDT) -- A New Jersey state jury on Thursday slammed Johnson & Johnson and its talc supplier with a verdict of \$37 million in compensatory damages over claims a man developed mesothelioma after using the pharmaceutical giant's asbestos-containing talcum powder over several decades.



Johnson & Johnson and its talc supplier were hit Thursday with a \$37 million compensatory damages judgment after a trial on a man's claims that he was exposed to asbestos through the company's products. (AP)

On their first full day of deliberations in the more-than-two-month trial, jurors sided with plaintiff Stephen Lanzo III and his wife, finding that the company's products, including its baby powder, contained asbestos and that Lanzo's exposure to the toxic mineral in the products between 1972 and 2003 played a substantial role in his contracting the deadly disease.

The jury awarded compensatory damages of \$30 million to Lanzo and \$7 million to his wife, Kendra. Johnson & Johnson was ascribed 70 percent of the blame and its talc supplier, Imerys Talc America Inc., 30 percent.

Superior Court Judge Ana C. Viscomi instructed the jurors to return on Tuesday for a punitive damages trial in the matter.

Counsel for the parties declined to comment at the New Brunswick courthouse after the verdict was handed down.

Johnson & Johnson later told Law360 on Thursday in a statement, "While we are disappointed with this decision, the jury has further deliberations to conduct in this trial and we will reserve additional comment until the case is fully completed."

The trial marks the second one of its kind in the country after J&J and Imerys prevailed in November in a California state trial over a woman's allegations that they were liable for her terminal mesothelioma.

Lanzo and his wife, who is also a plaintiff in the case, have alleged that his decadeslong exposure to

J&J's talcum powder products — starting when his mother applied baby powder to him as an infant in the 1970s — contributed to him developing mesothelioma, a cancer of the lung.

In reaching their verdict, jurors concluded that Lanzo was exposed to asbestos from using J&J's baby powder and/or Shower to Shower powder between 1972 and 2003, and that such exposure was a substantial factor in causing his illness.

The jury found that the defendants manufactured, sold or distributed a product that lacked an adequate warning from 1972 to 2003, and that J&J manufactured, sold or distributed a product that was defectively designed during that time period.

The jury determined that the defendants had not proven that the risk of harm from their products was not knowable at the time they were manufactured, sold or distributed in those years.

Jurors also found that J&J did not prove that, when the company's products left its control during that time frame, there was no practical and technically feasible alternative design that would have prevented Lanzo's disease without substantially impairing the functions of the products.

Lanzo attorney Moshe Maimon of Levy Konigsberg LLP told jurors on Wednesday in his closing argument that such an alternative design involved using cornstarch, and said "the evidence is overwhelming" that Lanzo was exposed to asbestos between 1972 and 2003 by using J&J's baby powder and Shower to Shower.

Maimon also stressed the pain and suffering faced by the Lanzos as they have dealt with an "unthinkable death sentence" for a father of three who had lived an active, enjoyable life before the disease began ravaging him.

"His whole world was turned upside down," Maimon said.

But J&J and Imerys maintained during the trial that the talcum powder products did not contain asbestos.

J&J attorney Mike Brock of Kirkland & Ellis LLP argued Monday during his closing argument that the testing J&J and others did on its talc never turned up asbestos in either J&J's talc mines or its products on store shelves.

"The testing was done in a reliable way, the testing consistently shows there is no asbestos in talc," Brock told the jury.

As for what caused Lanzo's mesothelioma, Brock pointed to documents showing there was asbestos in Lanzo's high school, and testimony from his family members and the plaintiff himself about asbestos pipes that were in the basement and laundry room of Lanzo's family home for some years.

During the first part of his closing argument on Tuesday, Maimon asserted that the company's talcum powder contained asbestos for years, though the business hid that fact from consumers and regulators by using tests it knew wouldn't detect the toxic mineral.

Maimon added Wednesday that the burden of proof required in the matter is that the talc products were a substantial factor in causing Lanzo's disease, not the sole cause. He said there can be "many substantial contributing factors" in causing an injury.

"The fact that there may have been other independent or contributing causes does not relieve a defendant of liability," Maimon said.

The Lanzos are represented by Moshe Maimon of Levy Konigsberg LLP, and Joseph Satterley and Denyse F. Clancy of Kazan McClain Satterley & Greenwood.

J&J is represented by Mike Brock and Kimberly Branscome of Kirkland & Ellis LLP and Jack N. Frost Jr. of Drinker Biddle & Reath LLP.

Imerys is represented by John C. McMeekin II and Eric K. Falk of Rawle & Henderson LLP and Scott A.

Elder of Alston & Bird LLP.

The case is Lanzo et al. v. Cyprus Amax Minerals Co. et al., case number L-7385-16, in the Superior Court of the State of New Jersey, County of Middlesex.

--Additional reporting by Daniel Siegal. Editing by Jack Karp.

Update: This story has been updated with more information about the case, the verdict and a statement from Johnson & Johnson.

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