

Missouri Court of Appeals Reduces \$4.69 Billion Talc Verdict as a Result of Personal Jurisdiction Challenge

JUNE 26, 2020

On June 23, 2020, the Missouri Court of Appeals cut the damages award from \$4.69 billion to approximately \$2.12 billion in the 22-plaintiff talc product liability case, *Robert Ingham, et al. v. Johnson & Johnson, et al.* The court rejected most of the ten points Johnson & Johnson (J&J) and Johnson & Johnson Consumer Companies Inc. (JJCI) raised on appeal, but said the trial court erred in finding personal jurisdiction over J&J and JJCI as to certain claims.

The defendants challenged personal jurisdiction on the claims of the 17 non-resident plaintiffs, each of whom claimed they purchased and applied the defendants' products in their home states and developed ovarian cancer in their home states. Specifically, 15 non-resident plaintiffs testified they used JJCI's "Shimmer" and Johnson's Baby Powder, while the remaining two non-resident plaintiffs testified they used only Johnson's Baby Powder. The court analyzed: (1) whether JJCI was subject to specific jurisdiction in Missouri for the non-resident plaintiffs' claims; and (2) whether JJCI's contacts in Missouri should be imputed to J&J by alter ego or agency principles for purposes of the personal jurisdiction analysis.

The appellate court reversed the trial court's judgment entered against J&J as to the claims of the 17 non-resident plaintiffs because the plaintiffs failed to establish an alter ego relationship or agency. (Op. at 32-37.) Regarding JJCI, the court found the exercise of personal jurisdiction was proper over claims of the 15 non-resident plaintiffs who purchased JJCI's "Shimmer" product because "JJCI contracted with [a Missouri company] to manufacture, package, and label Shimmer." (Op. at 25.) The court, however, found no specific jurisdiction over the claims of the two non-resident plaintiffs who used only Johnson's Baby Powder and reversed the trial court's judgment entered against JJCI as to these claims. The court noted that JJCI executed a manufacturing and supply agreement with a Missouri company to manufacture, package, and label that product, but the Missouri company assigned its duties to a Georgia manufacturing facility. (Op. at 28-29.) The court explained "contracting with an out-of-state party *alone* cannot automatically establish sufficient minimum contacts," and found the record could not support the plaintiffs' assertions that a Missouri company directed or controlled the manufacture of baby powder in Georgia. (Op. at 29-31.)

The court rejected several arguments advanced by the defendants that the award of punitive damages was not warranted, and found that the evidence introduced at trial showed clear and convincing evidence that the defendants engaged in conduct that was "outrageous." (Op. at 66.) But the court reduced the actual and punitive damages awards to align with its personal jurisdiction analysis. Finding that a judgment entered without personal jurisdiction over a party is void, the court reduced JJCI's liability to \$500 million in actual damages (\$25 million

multiplied by 20 plaintiffs) and \$900 million in punitive damages to reflect the trial court’s ratio of punitive damages to actual damages. (Op. at 77-78.) The court found that J&J was jointly and severally liable for \$125 million of the actual damages corresponding to the five Missouri plaintiffs, and reduced J&J’s punitive damages award to \$715,909,091. For J&J, this amounts to a punitive damages ratio of 5.72:1. (Op. at 78.) The court noted, “[b]ecause Defendants are large, multi-billion dollar corporations, we believe a large amount of punitive damages is necessary to have a deterrent effect in this case.” (Op. at 80.)

The court also rejected J&J and JJCI’s challenge of the trial court’s denial of its motion to sever. While noting that Missouri courts have adopted a “broad policy favoring permissive joinder,” and that the plaintiffs’ claims were not identical and in fact had a “host of differentiating characteristics,” the court explained that the existence of facts unique to each plaintiff did not preclude joinder. (Op. at 8-9.) The court went on to offer that the plaintiffs’ claims arose out of the same occurrence (each plaintiff used the defendants’ products), and they asserted the same causes of action with the same relevant evidence at issue. (Op. at 9.) After finding that joinder was proper, the court went on to reject the defendants’ several arguments that they were prejudiced by the trial court’s denial of their motion to sever. Notably, the court found that any dangers of prejudice arising from trying the cases of 22 plaintiffs with different product usage, personal histories, and risk factors while applying the laws of multiple different states were “adequately addressed by the trial court’s instructions to the jury to consider each Plaintiff’s claim separately.” (Op. at 14.)

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