

# Johnson & Johnson Asks Missouri Supreme Court to Review \$2.1 Billion Ruling

AUGUST 21, 2020

On August 12, 2020, Johnson & Johnson (J&J) requested review by the Missouri Supreme Court of a lower appellate court's upholding \$2.1 billion of the \$4.7 billion jury verdict in favor of 22 women who alleged J&J's talc powder caused their cancer.

## Background

In July 2018, a St. Louis jury awarded \$4.69 billion to 22 women who alleged that J&J's talcum powder caused the development of their ovarian cancer. J&J subsequently appealed, and [oral arguments](#) took place in April 2020. The parties' oral arguments focused on three issues: (1) whether the trial court's authorization of a single mass trial of 22 different plaintiffs from various states violated due process and the Missouri civil rules; (2) whether the Missouri state court had personal jurisdiction over the claims of the 17 non-resident plaintiffs; and (3) whether J&J was entitled to a new trial due to plaintiffs' attorney's statements about jury instructions during closing arguments.

In June 2020, the Eastern District of Missouri Appellate Court [reduced the damages award](#) from \$4.69 billion to approximately \$2.12 billion. The appellate court rejected numerous arguments by J&J seeking reversal of the verdict, but ruled that the trial court erred in finding personal jurisdiction over J&J as to certain claims. Specifically, the appellate court rejected J&J's personal jurisdiction arguments as to 15 of the 17 non-resident plaintiffs on the grounds that they had all used J&J's Missouri-made "Shimmer" product. However, the appellate court found no personal jurisdiction over the claims of two of the 17 non-Missouri resident plaintiffs, as they never claimed to use this Missouri-made product, and reversed the trial court's judgment entered against J&J as to those claims. Commensurate with this ruling, the appellate court significantly reduced the actual and punitive damages awards.

J&J proceeded to file a motion for rehearing and application for transfer to the Missouri Supreme Court. On July 28, 2020, the Missouri Court of Appeals for the Eastern District denied both requested forms of relief, issuing single sentence orders. Under Missouri law, once the appellate court denied J&J's application for transfer, J&J was permitted to file an application for transfer directly to the Supreme Court of Missouri.

## J&J's Request for Review

Accordingly, on August 12, 2020, J&J filed a 14-page application for transfer to the Supreme Court of Missouri, reiterating many of the same points it made during appeal.

J&J argued that a trial of 22 women with ovarian cancer “inherently gives the jury the strong, but false, impression that their talc use caused their cancer,” such that the trial was unfairly prejudicial to J&J. J&J likewise claimed that the jury did not—and could not—separately assess each plaintiff’s individual claims, as evidenced by the jury’s issuance of identical liability verdicts and award of identical compensatory damages amounts to each plaintiff group. While noting the Missouri Legislature’s recent recognition of the prejudice inherent in mass trials by barring joinder in cases similar to this, J&J recognized that this new law only applies prospectively and does not apply here.

J&J further alleged that plaintiffs’ counsel’s misstatement of the standard governing causation during closing arguments misled the jury. And while the parties had agreed that the “but for” legal standard applied to plaintiffs’ claims, plaintiffs’ counsel argued during his closing that the “but for” standard was not the law and that J&J “made [it] up.” Although the Missouri standard jury instructions used in the case do not include the words “but for,” J&J argued that Missouri law did require the plaintiffs to prove they would not have developed cancer “but for” their alleged exposure to J&J’s talc, and J&J’s counsel should have been able to tell the jury the plaintiffs had not meet their burden.

J&J also asserted that the Missouri state court did not have personal jurisdiction over any of the non-resident plaintiffs, and that the appellate court’s opinion as to personal jurisdiction conflicts with Missouri case law. J&J argued that the court “should not allow specific jurisdiction to expand to include any place where a company engages a third party in connection with some part of the manufacturing or distribution process when all of the defendants’ relevant actions and corporate decisions occurred out of state.”

Finally, J&J disputed the punitive damages award, claiming that the appellate court failed to consider undisputed evidence of causation, including the decades of independent epidemiological studies that do not support finding a causal link between talc use and ovarian cancer; that FDA repeatedly found no health warnings warranted; and that no regulatory body has accepted the testing protocol plaintiffs advocated. J&J likewise argued that the high punitive damages award (with high punitive-compensatory damage ratios) violated due process. J&J claimed that the appellate court incorrectly calculated the punitive ratios and that the punitive damages award unconstitutionally punishes J&J for “purported harms to nonparties and acts in other jurisdictions.”

The Missouri Supreme Court has no formal deadline for deciding whether to review this case.

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