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Beasley helps family of Jackie Fox win talcum powder case

ANDREW J. YAWN AND MARY BOWERMAN

MONTGOMERY ADVERTISER/USA TODAY NETWORK

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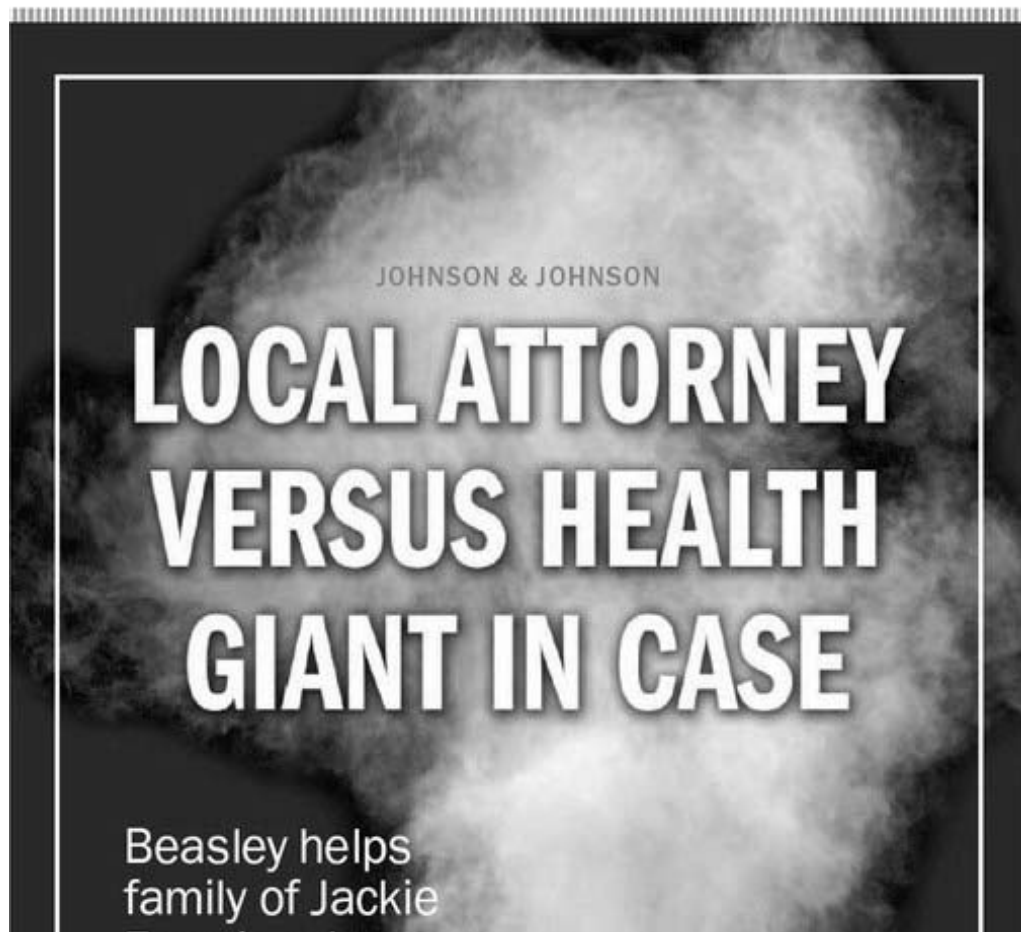
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Johnson

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friend, who is a nurse, and told her (Dexter) was acting funny. She said, 'You need to go to the doctor,' and the ultimate diagnosis was stage 3 ovarian cancer."

After her cancer diagnosis, Fox, who lived in Birmingham, filed a lawsuit against Johnson & Johnson through Beasley. The lawsuit has since grown to include 64 other women also suing the company for what they said was a failure to inform consumers about the dangers of talc, the only ingredient in Johnson & Johnson's non-cornstarch baby powder besides fragrance.

Fox died from the cancer in October 2015, Beasley said. Fox's son, Marvin Salter of Jacksonville, Florida, took over the claim after his mother's death, two years after her cancer diagnosis.

Before her death, Fox testified to using Johnson & Johnson baby powder and the company's ShowertoShower powder — which also contains talc — everyday.

"She was a lifetime user and testified that she was," Beasley said. "Her son also testified that he knew she was a lifetime user and had seen her using it growing up."

During the trial, Beasley argued that the company was aware of the possible risk of using products containing talc for feminine hygienic use.

As an example, Beasley used a series of internal memos paid company medical consultant Alfred Wehner sent to then Johnson & Johnson Preclinical Toxicology Manager Michael Chudkowski in 1997.

In one memo, Wehner advised the company to stop denying the results from "several investigators" finding talc in ovarian tissue.

"At that time there had been about nine studies (more by now) published in the open literature that did show a statistically significant association between hygienic talc use and ovarian cancer. Anybody who denies this risks that the talc industry will be perceived by the public like it perceives the cigarette industry: denying the obvious in the face of all evidence to the contrary," Wehner's memo reads.

"During the course of the trial — first let me make this clear: These internal documents had never been seen by anybody at the FDA, any other group of scientists, doctors or media people. Anybody," Beasley said. "This jury saw them, read them and (the documents) really indicted Johnson & Johnson of extremely callous, reckless, intentional conduct that had to hurt people."

The prosecution also cited several studies possibly linking talc to ovarian cancer when used as a feminine hygiene product.

Primarily, studies by Brigham and Women's Hospital Dr. Daniel Cramer, director of OB/GYN Epidemiology Center, were cited.

Dr. Cramer first found an association between ovarian cancer and talc in 1982. In a statement released Wednesday, Dr. Cramer said 20 studies have since been made. In what he called a "highly significant finding," Dr. Cramer said the studies can be combined to show "a 30 percent increase overall in the risk for ovarian cancer associated with regular use of talc in the genital area."

"Our most recent study demonstrates a substantially greater risk in women who used the product on a daily basis for more than 20 years, particularly for serious ovarian cancer arising pre-menopausally. I'm confident that the scientific evidence supporting an association will continue to mount and that this latest legal decision will raise awareness of this issue among women," Dr. Cramer said in the statement.

Fox's affected cells were also sent to Harvard University pathologist Dr. John Godleski during the trial. Beasley said Godleski found talc in Fox's ovarian cells, however, Godleski did not immediately respond to a request for comment to confirm.

To Beasley, the primary problem was not the possibility of talc being carcinogenic. It was that Johnson & Johnson failed to warn anybody despite several opportunities.

For instance, the International Research Agency on cancer lists perineal use of talc-based body powder as a group 2b carcinogen (possible carcinogen).

However, this is where some debate arises.

Talc has still not been conclusively linked to ovarian cancer. The American Cancer Society only lists talc that contains asbestos as a carcinogen.

Even Dr. Cramer's 2014 study concludes that risks ovarian cancer from genital talc use varies among women, and hormones such as estrogen or prolactin could play a role. In addition, a 2009 study — led by University of Melbourne (Australia) Professor Dorota Gertig and including Dr. Cramer — concluded that there was no overall association with everyday talc use and ovarian cancer.

"We did not observe an overall association with ever use of talc and epithelial ovarian cancer. There was also no elevation in risk among daily users of perineal talc, and no

trend was seen with increasing frequency of use. Talc use on sanitary napkins was inversely related to ovarian cancer, but the association was statistically nonsignificant," the conclusion reads.

Eva Chalas, chief of Gynecologic Oncology and Director of Clinical Cancer Services at Winthrop-University Hospital said "it's hard to directly link ovarian cancer to talc."

"The information on talc powder came out many years ago when they saw talc incorporated in tissue of women with ovarian cancer," Chalas said in a phone interview with *USA Today*. She said concerns over talc led many doctors to advise mothers to stop using talcum powder on their babies, and to discontinue use for feminine hygiene.

She said it's important to note that in the past talcum powder contained talc that contained asbestos, but modern powder does not. While both Beasley and a 2009-10 U.S. Food and Drug Administration study both confirmed that Johnson & Johnson baby powder contains no asbestos, Beasley said there is enough evidence to prove a link between pure talc and ovarian cancer.

"It causes an inflammation and causes a cell to become cancerous," Beasley said. "We proved that 1,500 people die each year, because of the connection between talc and ovarian cancer."

Beasley said this is the first claim case to result in monetary compensation. The next plaintiff's claim case is scheduled for April.

Since the settlement, Beasley said he has been contacted by 6,250 families who also want to file suit against Johnson & Johnson.

"They've been taught to use it and taught it was safe," Beasley said of the powder's widespread use.

Carol Goodrich, a Johnson & Johnson spokeswoman, said the company stands by the talc used in all "global products" and they are "evaluating" their legal options.

"The recent U.S. verdict goes against decades of sound science proving the safety of talc as a cosmetic ingredient in multiple products, and while we sympathize with the family of the plaintiff, we strongly disagree with the outcome," Goodrich said in a statement.

Johnson & Johnson now only sells two types of powder containing talc: the company's classic baby powder and Johnson & Johnson Shower to Shower.

All other types are cornstarch powder and are labeled as such.

Chalas said when it comes to using products on the genitals it's better to be safe than sorry.

"People should be careful about what they apply to their genitals, but in terms of ovarian cancer, the majority of women who develop ovarian do so from other risk factors including — age, genetic predisposition, reproductive issues and whether they were on birth control," Chalas said.

Nora Freeman Engstrom, a Stanford University law professor, told AP the decision "doesn't bode well" for the company, which is facing 1,200 still-pending lawsuits.

The company is expected to appeal the verdict.

Jere Beasley at his law firm, Beasley Allen on Jan.

26, 2009.

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