

Prudencio v. Johnson & Johnson

When it came time for Joseph D. Satterly to explain to a jury how asbestos got into his client Christina Prudencio's body, he had chemical and photographic evidence showing it came from Johnson & Johnson's talcum baby powder.

Prudencio is a preschool teacher who discovered on her 34th birthday in 2020 that she had mesothelioma. That particular cancer is considered to be a "signal disease" for exposure to asbestos, Satterly said. So an important question for the jury in her lawsuit was deciding how she was exposed to asbestos. Prudencio v. Johnson & Johnson, RG20061303 (Alameda Super. Ct., filed May 11, 2020).

One very important piece of evidence in the case was a report from a contract lab for the Food and Drug Administration that in October 2019 found and photographed a specific type of asbestos known as chrysotile asbestos in some samples of off-the-shelf baby powders. The lab also found mica in the talcum powder, which is not considered harmful.

Satterly said that since the report of the contract

lab's discovery, "all the mesothelioma cases since that time have been plaintiff's verdicts."

Another crucial piece of evidence in the trial was a

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tissue sample taken during surgery from near the site of Prudencio's cancer. It too contained chrysotile asbestos and mica.

"The exact type of asbestos found in Johnson & Johnson baby powder was documented, and photographed, in her tissue," Satterly said. He also put on the stand three experts who analyzed J&J baby powder. "I think the key to the case was, No. 1, she had no alternative exposure to asbestos, and No. 2, we had a fingerprint match of the talc in her body."

A defense expert offered the opinion that the plaintiff's cancer stemmed from her own genes.

"It was a fun cross-examination," Satterly said. He pointed out the expert was not a geneticist and had never done a genetic test like the one in this case. Nor had she published about talc or asbestos. "It was her first trial ever testifying in an asbestos case. They got her through one of these litigation services."

Defense attorneys Morton D. Dubin, Kevin Hynes and Shaila R. Diwan did not respond to a request to comment on the verdict.

On August 19 last year, the jury returned a verdict of just under \$26.6 million, including \$20 million for pain and suffering and \$100,000 in punitive damages. The case is now on appeal.

But in October, Johnson & Johnson executed what he and others call a "Texas Two-Step." The company created a subsidiary in Texas to hold all talc liabilities and then put the subsidiary into bankruptcy in North Carolina. That stayed any further activity in all baby powder litigation against J&J.

The bankruptcy case was



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transferred to New Jersey, and a judge there is set to rule in March on whether the bankruptcy should be dismissed as filed in bad faith, Satterly said. In re: LTL Management LLC, 3:21-bk-30589 (Bankr. D.N.J., filed Oct. 14, 2021).

"Johnson & Johnson is worth \$450 billion. They're not bankrupt," he said.

- DON DEBENEDICTIS

Case Info

CASE NAME: PRUDENCIO V. JOHNSON & JOHNSON

TYPE OF CASE: PRODUCT LIABILITY – ASBESTOS

COURT: ALAMEDA

JUDGE(S): SUPERIOR COURT JUDGE STEPHEN D. KAUS

PLAINTIFFS ATTORNEY: KAZAN, MCCLAIN, SATTERLEY & GREENWOOD LLP, JOSEPH D. SATTERLEY, IAN W. RIVAMONTE

DEFENSE ATTORNEYS: KING & SPALDING LLP, KEVIN HYNES, MORTON D. DUBIN II, SHAILA R. DIWAN