

## 1st Georgia Case Over Cancer Links to Baby Powder Opens in Fulton County

Fulton County State Court Judge Jane Morrison is presiding over a wrongful death case against Johnson & Johnson on claims that decadelong use of its talcum baby powder by Diane Brower led to her 2016 death from ovarian cancer.

The first Georgia trial over whether Johnson & Johnson's talc-based baby powder causes ovarian cancer opened Tuesday as jury selection began in a Fulton County courtroom.

Fulton County State Court Judge Jane Morrison is presiding over the case, brought on behalf of the 12-year-old granddaughter of Atlanta-area resident Diane Brower.

Brower, who had adopted her granddaughter when the child was 9, died of ovarian cancer in 2016 when she was 65. The lawsuit claims she began using baby powder in 1963 after seeing it advertised in a teen magazine when she was 12 and continued to use the product twice daily for more than two decades. She was diagnosed with Stage III ovarian cancer in 2013.

Brower sued Johnson & Johnson and its major talc supplier, Imerys Talc America, shortly before she died, said Ted Meadows, a partner at Beasley Allen in Birmingham and co-lead attorney in the case. "She, like many women, started using baby powder as a child. What we see in most of our clients is that they were taught by their mothers ... to use baby powder for feminine hygiene," Meadows said.

In pretrial hearings, Morrison rejected Johnson & Johnson's efforts to exclude testimony from three medical experts about the links between baby powder and ovarian cancer. The experts include a board-certified pharmacologist, toxicologist and regulatory experts; a Harvard University pathology professor; and the director of gynecologic oncology research at Holy Cross Hospital in Maryland.

The suit seeks unspecified damages, including punitive damages on claims that include wrongful death, product liability, negligence, a failure to warn, fraudulent civil conspiracy and fraudulently misrepresenting the use of baby powder as "safe and effective."

Imerys, which lists its principal place of business as Roswell, Georgia, filed for bankruptcy protection last April and, while Johnson & Johnson faces trial, civil actions against Imerys are stayed, Meadows said.

Meadows is co-counsel with partner Leigh O'Dell, who is co-lead counsel in multidistrict baby powder litigation in the U.S. District Court in New Jersey.

Jack Dodson of Nashville's Dickinson Wright, **Alexander Denton** of Atlanta's **The Robbins Firm**, and Allen Smith of The Smith Law Firm in Mississippi are also counsel on the case.

Ileana Martinez and Leslie Suson at Atlanta's Thompson Hine are Georgia counsel for Johnson & Johnson in the Brower case. Martinez declined to comment.

The Brower trial is the latest in a series of cases around the country against Johnson & Johnson over whether alleged impurities in its baby powder and Shower-to-Shower products resulted in ovarian cancer in thousands of women who used the products for feminine hygiene.

The Brower suit claims that Johnson & Johnson talcum powder products were adulterated with other elements, including asbestos, fibrous talc, silica, and heavy metals that included nickel, cobalt, arsenic, cadmium, mercury, and chromium. The suit also contends that added fragrance also contained carcinogenic chemicals.

Plaintiffs lawyers across the country have maintained that dozens of studies show as much as a 30% increase in ovarian cancer because talc particles could migrate to women's ovaries as a result of genital use and lead to the growth of malignant cells.

An estimated 14,600 lawsuits, including thousands of cases in federal multidistrict litigation in New Jersey, contend that Johnson & Johnson knew for decades that its talcum powder products increased cancer risk in women but withheld that information and, instead, continued to advertise to women to promote hygienic use.

The Brower suit claims that in 2006, Imerys supplied Johnson & Johnson with material and safety data sheets warning that "perineal application of baby powder could possibly be linked to ovarian cancer."

Meadows has tried multiple talc-ovarian cancer trials in Missouri and California since 2016. Juries in those cases have collectively awarded ovarian cancer victims and their families more than \$5.3 billion in compensatory and punitive damages against Johnson & Johnson.

But in 2017, Los Angeles Superior Court Judge Maren Nelson tossed out a \$417 million verdict because of insufficient evidence at trial and "serious misconduct" by the jury, a ruling affirmed by a California appeals court in June.

That same month, a Missouri appeals court also overturned a \$72 million talc verdict on jurisdictional grounds because the plaintiff lived in California.

In Georgia, Meadows has six talc cancer cases waiting in the wings in Gwinnett County, at least two on behalf of women who have died. At least four more cases have surfaced in federal court in the Northern and Southern districts of Georgia as Johnson & Johnson has battled to transfer cases out of state courts. It wants to consolidate them in federal bankruptcy court in Delaware, where Imerys is currently in Chapter 11 proceedings.

Meadows said he pursued the litigation in Fulton County state court because he believed the case could be tried more quickly there. "That's important to us because of the nature of the disease," he said. "When the Brower case was originally filed, she was still alive."

Johnson & Johnson twice tried to remove the Brower case to federal court. In 2017, U.S. District Senior Judge Orinda Evans remanded the case to Fulton state court. But after Imerys sought bankruptcy protection last April, Johnson & Johnson attempted a second time to shift the Brower case back to federal court, delaying a scheduled July trial.

Johnson & Johnson lawyers simultaneously attempted to transfer 2,400 pending state court claims to federal courts across the country. In remanding the Brower case to state court a second time, U.S. District Judge Eleanor Ross cited her colleague, U.S. District Judge Leigh Martin May, who had issued a similar remand ruling in several talc-cancer cases pending in her court.

May said Johnson & Johnson had “embarked on a systematic state-wide campaign to remove all state court claims pending against them to the federal district courts where the state court actions were pending, including some that were on the eve of a specially set trial.”