

Litigators of the Week: The Skadden and Nelson Mullins Team that Landed a Win for J&J in the First In-Person Talc Trial of the Pandemic

Jurors in St. Clair County, Illinois gave the company a complete defense win even though the judge overseeing the trial held the company and a key witness in contempt.

By [Ross Todd](#)
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It's tough enough going up against a sympathetic plaintiff in a venue known for being unfriendly to corporate defendants under normal circumstances. **Allison Brown** of **Skadden, Arps, Slate, Meagher & Flom** and **Michael Brown** of **Nelson Mullins Riley & Scarborough** faced all that then some in defending Johnson & Johnson from a \$50 million lawsuit from the family of an Illinois woman who died of a rare form of ovarian cancer.

The three-week trial in Circuit Court in St. Clair County, Illinois, was the first in the series of cases claiming talc in J&J's baby powder causes cancer to push off in-person since the onset of the pandemic. Late in the trial, the defense team had to cope with both the company and a key defense witness, J&J's vice president of women's health, Dr. Susan Nicholson, being held [in contempt](#). Nicholson didn't return to court in person to finish her cross-examination, citing a health emergency, leading the judge to strike her testimony and issue an adverse inference to the jury.

The [defense verdict](#) the joint Skadden-Nelson Mullins team brought home, under those circumstances, has landed Brown and Brown Litigator of the Week honors.

Litigation Daily: Who was your client and what was at stake?

Allison Brown: We represent Johnson & Johnson. This case was brought by the estate of a woman who died of ovarian cancer in 2016. The heirs of the decedent's estate claimed her use of Johnson's Baby Powder for feminine hygiene decades ago caused her rare ovarian cancer. They sought \$50 million in damages. **Who all was on your team and how did you divide the work?**

Michael Brown: Alli and I have tried and won three talc cases together now, so we have a pretty good system for dividing up witnesses and our teams work really well



Allison Brown of Skadden, left, and Michael Brown of Nelson Mullins, right. Courtesy photos

together. We know each other's strengths and weaknesses and no matter what we always have each other's back. The superstar lawyers and paralegals helping us on this case were: **Paul Cotler, Ericka Downie, Ben Halperin, Mark Hegarty, Trish Koester, Julieta Kosiba, Alex Leibovitz, Stephanie Martin, Leianne McEvoy, Kate Mullaley, Maria Penuela, Jason Rankin, Joshua Schoch, and Kayla Quintana.** We could not have won this case without all of their hard work. One of the highlights of the trial was when we all got to go to a Cardinals game together and take a break from the trial craziness.

This is the first of these talc suits to go to trial since the onset of the pandemic, right? What was the courtroom setup like? And how were the dynamics different than earlier talc trials you've handled together?

Allison Brown: Right, this was the first J&J in-person talc trial since the pandemic. I've tried two virtual cases during the pandemic and it was a relief to get back into a real live courtroom. Our trial took place completely in-person in Belleville, Illinois, which is about 25 minutes outside of the City of St. Louis, a COVID hotspot right now. In fact,

during our trial, St. Louis, where we were staying, instituted a mask mandate. The courtroom was pretty small and windowless. We conducted voir dire with everyone in masks, but once we seated a jury of 12, plus 5 alternates, we no longer wore masks. The judge would not allow anyone on the jury or in the courtroom who had not been vaccinated, but inside the courtroom we were not socially distanced. I am usually not too worried about getting close to the jury or a witness, but I was definitely more cognizant of where I was standing and how it might make other people feel from a COVID perspective. **The Circuit Court of St. Clair County, Illinois, has a plaintiff-friendly reputation. When you're representing a large corporation like J&J in a case with a sympathetic plaintiff, do you approach trial any differently here than you would elsewhere?**

Michael Brown: It is no secret that lots of people don't like big corporations, especially corporations accused of causing serious harm to an individual. That's why jury selection is critical in a case like ours. Some potential jurors have such strongly held views that they won't ever be willing or able to listen to the evidence. Our job is to find out who they are and make them comfortable enough to admit their bias in a room full of strangers. Even once we seat a jury of folks who say they can put aside any pre-existing opinions and judge the case on the evidence presented in the courtroom, we are still hyper-conscious of being corporate lawyers representing a big corporation. There are certain things plaintiff's lawyers can say and do in a courtroom that we can't. We are always mindful of the fact that there is a dying or deceased person on the other side of our case and that affects everything we do in the courtroom.

This was also the first talc case to go to trial since Health Canada published its Talc Screening Assessment finding "a consistent and statistically significant positive association between perineal exposure to talc and ovarian cancer" in human studies in the peer-reviewed literature. How did the defense team address the Canadian regulatory agency's finding and the plaintiff's lawyers' use of it?

Allison Brown: I told our jurors in my opening statement that I expected we'd be hearing a lot about Health Canada during the trial and we sure did. The Health Canada Assessment was front and center of the plaintiff's case here. But Health Canada looked at the same science and the same data as our own United States public health authorities and not a single United States public health authority has concluded, as Health Canada has, that talc can cause ovarian cancer. In fact, as recently as three weeks ago, the National Cancer Institute confirmed there is "inadequate evidence" that perineal talc exposure increases a woman's risk of ovarian cancer. What's more, and perhaps

most troubling, is the Health Canada Assessment cites to United States plaintiffs' litigation expert reports as support for its conclusions. We took on Health Canada directly during the trial and exposed the numerous serious flaws in its analysis.

Explain what happened with your witness, Dr. Nicholson, and the adverse inference the court issued after holding her and the company in contempt. How did you address that situation with jurors?

Allison Brown: This was a very tough situation. Our company witness, a well-respected J&J physician, experienced a medical emergency that prevented her from returning to Illinois to complete the remaining 1 hour of her cross-examination. We offered to complete her testimony via Zoom, but the court denied our request. We also offered to provide the court with additional documentation and testimony regarding her medical situation, which was similarly denied. We ended up with the judge instructing the jury that our witness "refused" to return to complete her testimony, that the jury should assume her testimony would have been unfavorable to us, and that the court was holding both J&J and our witness in contempt. Ouch. It hurt. Plus, the court allowed the plaintiff's lawyers to argue in closing that our witness failed to appear because her cross-examination was going so well for them, but the court denied our request to respond to those allegations in our own closing. It's hard to explain how much we felt our hands were tied in getting the truth of this difficult situation to our jurors.

What does your coming docket of talc cases look like?

Michael Brown: We're both headed back to St. Louis in September for another ovarian cancer trial.

What will you remember most about handling this matter?

Allison Brown and Michael Brown: Wow, a lot of memorable things happened in this case! But, what we'll probably remember most is our jury. These were some of the most attentive and dedicated folks we have ever had the privilege of appearing before. This jurisdiction does not excuse jurors for financial hardships, so there were a number of folks on our jury who were giving up paychecks to hear our case. When we learned of the financial hardship this was causing for some jurors, we asked the court, with plaintiff's consent, to excuse them. The court called the jurors in one at a time and offered to let them go. Every single juror refused the offer and asked to continue serving. After the verdict, when the court thanked the jurors for their service, a number of jurors were in tears. This was a special jury. We'll remember them the most.