

Against All Odds

Litigator of the Year Allison Brown of Skadden, Arps, Slate, Meagher & Flom

BY
ROSS
TODD

“Going to trial isn’t always the best way to win for your clients.”
—Allison Brown of Skadden

IN TERMS OF LEVEL OF DIFFICULTY, WHAT ALLISON

Brown of Skadden, Arps, Slate, Meagher & Flom did at closing arguments for Johnson & Johnson in Belleville, Illinois, in July 2021 was off the charts.

For one, she and her co-lead counsel, Michael Brown of Nelson Mullins Riley & Scarborough, faced a sympathetic opponent. The family of a woman who died in 2016 claimed her use of Johnson & Johnson’s baby powder caused a rare form of ovarian cancer. The heirs were seeking \$50 million.

On top of that, Brown was trying the case across the Mississippi River from St. Louis, Missouri, where jurors previously hit her client with a \$4.7 billion verdict in a similar case involving multiple plaintiffs. Attorneys flooded local media with advertisements seeking other potential plaintiffs.



Allison Brown

RYLAND WEST/ALM

Beyond that, Brown had to play catch-up. Late in the trial, the judge overseeing the case held the company and a key defense witness, J&J’s vice president of women’s health, Dr. Susan Nicholson, in contempt after she didn’t return in person to finish her cross-examination, citing a health emergency. The

judge struck Nicholson’s testimony, told jurors she “refused” to return to court, and that they should assume her testimony would have been damaging to J&J. Brown was barred from telling jurors anything about her witness’s absence beyond the fact that she hadn’t returned and the court had issued its order.

Still, during her closing Brown carefully walked jurors through the science and evidence, including a conclusion from the National Cancer Institute from just weeks before trial that there is “inadequate evidence” that perineal talc exposure increases a woman’s risk of ovarian cancer. Despite everything lined up against Brown and her client, the jury returned a complete defense verdict.

J&J turned to Brown and her trial team again in September 2021 when facing claims from multiple plaintiffs seeking a total of \$1 billion across the river in St. Louis. Two women claimed the company’s baby powder caused their ovarian cancer. The heirs of a third woman pinned her 2015 death on the company. After 18 days of trial, jurors deliberated just one hour before returning another defense verdict.

Shortly thereafter, Brown’s work shifted from the trial courts to a new venue for her as she took on the role of special counsel in the bankruptcy of LTL Management, a subsidiary of Johnson & Johnson formed with the aim of resolving more than 38,000 talc claims. Plaintiffs lawyers sought to dismiss the bankruptcy, claiming it was filed in bad faith. In the run-up to a weeklong trial on the talc claimants’ motion to dismiss before U.S. Bankruptcy Chief Judge Michael Kaplan in February 2022, Brown defended depositions of about 20 high-level company executives. In front of Kaplan, she helped build the case that the company’s bankruptcy filing was not made in bad faith by showing that after a decade in the courts just dozens of the tens of thousands of talc cases facing J&J made it through trial. Kaplan denied the talc claimants’ motion to dismiss in February. An appeal of that decision was pending at the Third Circuit at press time.

“I think there are a lot of times when it makes sense to put your evidence and put your case on in front of the jury,” Brown says. “But I think if you truly are going to be the best advocate for your client, there are many instances where there are other more efficient, more effective ways to resolve litigation disputes.” ■