

Skadden's Allison Brown On J&J's Talc Trial Win In Mo.

By **Emily Field**

Law360 (November 17, 2021, 4:01 PM EST) -- Earlier this fall, Allison "Alli" Brown of Skadden Arps Slate Meagher & Flom LLP scored a win for Johnson & Johnson in a multiplaintiff trial in Missouri state court over claims that the company's talc product caused three women's ovarian cancer.

The September case was the first time that a trial with more than one plaintiff had been held over J&J's talc in the Show-Me State since the U.S. Supreme Court declined to review the company's challenge to those types of trials. In this interview with Law360, Brown discusses the challenges of defending a client in a multiplaintiff case — as well as a surprise phone call she received from an unlikely source just before trial.

This interview has been edited for length and clarity.



Allison Brown

Is there a difference between preparing for trial with one plaintiff versus multiple plaintiffs? And if so, how did you approach the case differently?

In my view, there's a huge difference between a single plaintiff trial and a multiplaintiff trial. Multiplaintiff trials are very prejudicial to defendants — that's why defendants almost never prevail in trial. And there are a number of different reasons why that's the case.

But perhaps the most significant in my mind is that plaintiffs have the opportunity to argue a ready-made causation case, meaning they can stand up in front of the jury and say, without any scientific support or evidence, that the only thing these three or four or however many plaintiffs have in common is that they used the same product and they have the same disease.

We spent a lot of time strategizing about how to even overcome the structural challenge from the beginning of the case that, in my mind, tipped the scales in favor of the plaintiff before we even stood up and opened our mouths in court. In the end, we decided that we would embrace the nature of the structure of the trial, whether it was a multiplaintiff or a single plaintiff trial, and use that to underscore our basic arguments for the jury.

The actual expert testimony here, and what the scientific truth is, is that each one of the cancers that were at issue is caused by different molecular pathways being activated. There are different mechanisms at action that cause each one of the different types of cancers. They are treated differently.

They form in different parts of the body, and kind of brushing them all together and claiming that they somehow were the same thing really belied the science here and the truth about what little we do know about how ovarian cancer develops and what causes it.

What were some key moments during the trial, in your opinion?

From the beginning, it was an unusual trial in terms of the circumstances in the world that were happening when the trial took place. This was a trial that took place in person during the beginning of the surge in COVID cases.

The jury was seated out of the jury box, six feet apart and into the gallery. The lawyers were behind the bar and the witnesses the podium, and the jurors were masked throughout the trial. That created a little bit of a challenge for everyone, because part of our job is to try to be responsive to the jury, even though they can't tell us what they're thinking or what they're feeling during the trial.

I think the most interesting thing that happened was that prior to trial, we received a phone call from the ex-husband of a plaintiff [who had passed away]. The gentleman informed us that he had heard of the case in the media and he was moved to find the lawyers representing Johnson & Johnson to tell them that the allegations that were made in the lawsuit were not true. Mike Brown [of Nelson Mullins Riley & Scarborough LLP] and I have tried a number of [talc and other] cases, and never in our careers have we received a phone call like this, really out of the blue. It was from a gentleman who stood to benefit from the lawsuit. And yet he felt that what was going on in the courtroom was wrong.

He told us that during the time period he was married to the plaintiff, they didn't have talcum powder in the house. He did the grocery shopping and he never bought it. He shared a bathroom and he never saw it. He felt that the allegations were not truthful, and so to his absolute credit as somebody who could have received money as a beneficiary, he raised his hand and stood up and said this is wrong and not the truth.

Did he testify in the trial?

He testified via video.

Was there anything else about the trial that stood out?

I think one of the things that was most significant and really speaks volumes to the strength of the evidence in this case on behalf of Johnson & Johnson's story is the fact that despite it being a multiplaintiff trial, the jury deliberated for less than an hour. I think that swiftness and decisiveness and unanimity of the jury really is evidence of how strong the science is for the safety of the product.

--Editing by Alanna Weissman and Orlando Lorenzo.