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Missouri Court Slated to Oversee Fifth Talcum Powder Trial in April; Case is Another Defense Pick

ST. LOUIS — The Missouri court that has overseen four talcum powder trials in just one year is scheduled to preside over a fifth trial scheduled to begin on April 10, sources told HarrisMartin Publishing.

During this trial setting, a Missouri 22nd Judicial Circuit Court for St. Louis City jury will hear the claims of Lois Slempp, who contends that she developed ovarian cancer as a result of using talcum powder products.

The trial setting comes just one month after jurors — for the first time in a Missouri talcum powder trial — reached a defense verdict in favor of the Johnson & Johnson defendants, rejecting the claims of Nora Daniels, who said her Stage II(b) ovarian cancer was caused by use of talcum powder products. The first three trials ended in plaintiff verdicts that totaled nearly \$200 million.

Slempp contends that she has Stage III(c) ovarian cancer and has had a recurrence and metastasis to her liver.

Slempp, like the Daniels case, is a defense pick, but sources told HarrisMartin that they are advancing Slempp's claims to trial based on her declining health.

In January, the court rejected the plaintiffs' attempts to try Slempp's claims before those of Daniels.

"Chemotherapy has weakened the lining of her heart and muscle, which resulted in a heart attack several weeks ago," the plaintiffs explained in their Dec. 2016 motion. "She is not currently fit for a resection of the liver metastasis due to the cardiac problems. She is undergoing additional rounds of chemotherapy in an effort to slow the metastasis."

As such, the plaintiffs asked the court to advance the claims of Slempp for the February trial setting since "she is unlikely to see her day in court, whereas Ms. Daniels' health makes her claim feasible for a future trial setting."

The plaintiffs added in their motion that both cases had been fully worked up.

In its opposition brief, Johnson & Johnson argued that the plaintiffs' motion was another attempt to "thwart any fairness initially envisioned" by the court when it implemented a system in which the plaintiffs and defendants alternatively select individual cases to try.

Part of these efforts, according to the defendants, is to "repeatedly" non-suiting the defense pick cases shortly before trial.

"...Plaintiffs' counsel at two recent hearings has already alerted the Court to Ms. Slempp's health circumstances

and asked the Court to advance Ms. Slempp's claim or have a multi-plaintiff trial in February 2017," the opposition brief stated. "The Court has previously rejected Plaintiffs' proposal because, pursuant to a long-established procedure, the February 2017 trial has always been a single-Plaintiff defense-pick trial. Plaintiffs have presented no law or new facts as a basis to disregard the established system of picking trial plaintiffs. The February 2017 trial plaintiff is set to be picked by Defendants, and Defendants have chosen Plaintiff Daniels. It is simply not fair to Defendants or to Plaintiff Daniels to discard this system and proceed with the claims of Plaintiff Slempp in February."

Imerys Talc also filed an opposition to the plaintiff efforts, saying the "alleged deteriorating health is not sufficient justification to rewrite the rules at the 11th hour."

Counsel for the plaintiffs are James G. Onder, W. Wylie Blair, Michael J. Quillin, and Stephanie L. Rados of Onder, Shelton, O'Leary & Peterson LLC in St. Louis; R. Allen Smith Jr. of the Smith Law Firm in Ridgeland, Miss.; and Timothy W. Porter, Patrick C. Malouf, and John T. Givens of Porter & Malouf in Jackson, Miss.; Ted G. Meadows of Beasley, Allen, Crow, Methvin, Portis & Miles, P.C., in Montgomery, Ala.

Johnson & Johnson is represented by Beth A. Bauer of HeplerBroom LLC in Edwardsville, Ill.; Gerard T. Noce of HeplerBroom LLC in St. Louis; Mark C. Hegarty of Shook, Hardy & Bacon LLP in Kansas City, Mo.; and Gene M. Williams, Scott A. James, and Hunter K. Ahern of Shook, Hardy & Bacon's Houston office.

Swann, et al. v. Johnson & Johnson, et al., No. 1422-CC09326-01 (Mo. Cir. Ct., St. Louis City).

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HarrisMartin Publishing - 30 Washington Avenue, Suite D-3, Haddonfield, NJ 08033
(610) 647-5500 - www.harrismartin.com - service@harrismartin.com