

Recent Trial Results

Gordon & Rees Team Scores Big Win in First Talc Trial

February 2016

Gordon & Rees Portland partner **Nancy Erfle** and Austin partners **Mike Klatt** and **Leslie Benitez** obtained a defense verdict on all claims for their client, the world's leading talc mining company ("Client"), on February 22 in St. Louis (Missouri) City Court after a 3 ½ week jury trial and five hours of deliberation. Also assisting in Client's defense in St. Louis during trial was a multi-office team comprised of Austin partner **Ken Ferguson**, Philadelphia partner **Ann Field**, San Francisco partner **Andrew Cary**, Portland senior counsel **Samantha Gamboa**, Austin associate **Brad Bush**, and paralegals **Natalie Nelson** (Portland) and **Valerie French** (Austin). Austin senior counsel **Lina Garcia** and associate **Jennifer Foster**, and paralegals **Rick Schisler** (Portland) and **Bernadette Plefka** (Philadelphia) also provided critical remote support for the trial team.

The plaintiff, a personal representative of his mother's estate, alleged that she died from ovarian cancer caused by her lifetime use of Johnson & Johnson's Baby Powder and Shower-to-Shower body powder products, both of which contain talc mined and manufactured by Client. The jury found Client not at fault for strict liability failure to warn, negligence, conspiracy, and wrongful death. Co-defendants Johnson & Johnson Consumer Company, Inc. (which markets, sells, and distributes the products) and its holding company Johnson & Johnson were each found liable on the same four causes of action and for punitive damages. Compensatory damages of \$10 million and punitive damages of \$62 million were awarded against the two defendants.

The trial was the first of more than 1,000 cases nationwide alleging that Johnson & Johnson body powder products, when used by women in the external genital area, cause ovarian cancer. Agencies and organizations including the Food & Drug Administration, the Centers for Disease Control, and the Cosmetic Ingredient Review expert panel have found that cosmetic grade talc is safe for personal use. Moreover, a broad range of medical and scientific organizations, including the National Cancer Institute, the American Society of Clinical Oncologists, the American Congress of Obstetricians and Gynecologists, the National Toxicology Program, the Occupational Health & Safety Administration, and the American Conference of Governmental Industrial Hygienists either have failed to find that cosmetic grade talc is cancer-causing generally or that it presents a risk factor for ovarian cancer specifically.

Gordon & Rees Team Score Another Big Win in Second Talc Trial

May 2016

Gordon & Rees Portland partner **Nancy Erfle** and Austin partners **Ken Ferguson** and **Leslie Benitez** obtained a defense verdict on all claims for their client, the world's leading talc mining company ("Client"), on May 2 in St. Louis (Missouri) City Court after a three and half week jury trial and nine hours of deliberation. Also assisting in Client's defense in St. Louis during trial was a multi-office team comprised of Austin partner **Mike Klatt**, San Francisco partner **Andrew Cary**, Portland associate **Jessica Osborne**, Austin associate **Brad Bush**, and paralegals **Rick Schisler** (Portland) and **Valerie French** (Austin). Erfle, Klatt, and Benitez led a Gordon & Rees trial team that obtained a similar defense verdict for Client on February 22 in the first talc case tried there.

The plaintiff in this trial, a South Dakota woman, alleged her ovarian cancer was caused by her decades-long use of Johnson & Johnson's Baby Powder, which contains talc mined and manufactured by Client. The jury found Client not liable for negligence and conspiracy. Plaintiff abandoned a strict liability cause of action against Client during closing argument because her counsel claimed he had not sufficiently proved that claim at trial. Co-defendants Johnson & Johnson Consumer Company, Inc. (which markets, sells, and distributes the product) and its holding company Johnson & Johnson were each found liable again and this time the jury awarded compensatory damages of \$5 million and punitive damages of \$50 million against those two defendants. Three of the twelve jurors sided with Johnson & Johnson. "I just thought there was a lack of evidence," said juror Kayla McGuire, but other jurors had "latched onto a few emotional statements."

City of St. Louis courts currently are ranked #4 on the American Tort Reform Association's list of U.S. "judicial hellholes."

The trial was the second of more than 1,000 cases nationwide alleging that Johnson & Johnson body powder products, when used by women in the external genital area, cause ovarian cancer. Agencies and organizations including the Food & Drug Administration, the Centers for Disease Control, and the Cosmetic Ingredient Review expert panel have found that cosmetic grade talc is safe for personal use. Moreover, a broad range of governmental and professional medical and scientific organizations, including the National Cancer Institute, the American Society of Clinical Oncologists, the American Congress of Obstetricians and Gynecologists, the National Toxicology Program, the Occupational Health & Safety Administration, and the American Conference of Governmental Industrial Hygienists, either have failed to find that cosmetic grade talc is cancer-causing generally or that it is a risk factor for ovarian cancer specifically.

Gordon & Rees Team Scores Third Trial Win in National Talc Ovarian Cancer Litigation

March 2017

Gordon & Rees Philadelphia partner **Ann Thornton Field** and Austin partners **Mike Klatt** and **Leslie Benitez** obtained a 12-0 defense verdict on all claims for their client, the world's leading talc mining company ("Client"), on Friday, March 3 in St. Louis (Missouri) Circuit Court after a three and half week jury trial and seven hours of deliberation. Also assisting in Client's defense in St. Louis during trial was a multi-office team comprised of Austin associates **Brad Bush** and **Jenn Foster**, Portland senior counsel **Kjersten Turpen**, and paralegal **Natalie Nelson**. Portland partner **Nancy Erfle**, and Austin partners **Klatt, Benitez, and Ken Ferguson** led previous Gordon & Rees trial teams that obtained similar defense verdicts for Client in February and April last year in the first two talc cases tried there and with Field, dismissal of the first two scheduled trials in New Jersey after a successful two-week "Kemp" (Daubert) hearing in which the court excluded plaintiffs' two general causation experts from testifying and granted summary judgment for defendants.

The plaintiff in the current trial, a Tennessee woman, alleged her ovarian cancer was caused by her decades-long use of Johnson & Johnson's Baby Powder and Shower-to-Shower products, which in later years contained talc mined and manufactured by Client. The jury found Client not liable for negligence, concealment, and punitive damages. Co-defendants Johnson & Johnson Consumer Company, Inc. (which markets, sells, and distributes the body powder products) and its holding company Johnson & Johnson were also found not liable in the latest trial after three previous losses in the St. Louis trials.

City of St. Louis courts currently are ranked #1 on the American Tort Reform Association's list of U.S. "judicial hellholes."

The trial was the fourth of more than 5,000 cases nationwide alleging that Johnson & Johnson body powder products, when used by women in the external genital area, cause ovarian cancer. Agencies and organizations including the Food & Drug Administration, the Centers for Disease Control, and the Cosmetic Ingredient Review expert panel have found that cosmetic grade talc is safe for personal use. Moreover, a broad range of governmental and professional medical and scientific organizations, including the National Cancer Institute, the American Society of Clinical Oncologists, the American Congress of Obstetricians and Gynecologists, the National Toxicology Program, the Occupational Health & Safety Administration, and the American Conference of Governmental Industrial Hygienists, either have failed to find that cosmetic grade talc is cancer-causing generally or that it is a risk factor for ovarian cancer specifically.

Gordon & Rees Team Secures Complete Defense Verdict in Mesothelioma Case After Three-Week Trial

December 2016

A multi-office team of Gordon & Rees partners **James A. Lowery** of Dallas and **Robert A. Rich** of Oakland, with associate **Brian Roth** of Chicago, secured a complete defense verdict after a three-week trial for their client, Hennessy Industries, Inc., in a hotly contested trial in Cedar Rapids, Iowa.

In this wrongful death action brought by his widow, it was alleged that the 68-year-old decedent, a career automotive mechanic instructor at a community college, had been exposed to asbestos released when he and others used AMMCO brake arcing machines on asbestos brakes. As a result of the exposure, plaintiff alleged that decedent developed and subsequently died from pleural mesothelioma. Hennessy was the only remaining defendant at trial. The plaintiff called experts Dr. Arnold Brody (cell biology), Dr. Edwin Holstein (occupational medicine), and Dr. John Maddox (pathology).

The client maintained that it was not negligent and did not fail to warn, highlighting Hennessy's good corporate conduct when it first learned of the potential hazards of asbestos: (1) testing; (2) re-engineering; and (3) warning. Hennessy further maintained that decedent's mesothelioma was the result of exposure to large quantities of asbestos-containing phenolic resins he encountered while working at a manufacturing plant earlier in his career, some of which contained more potent crocidolite asbestos fibers. Hennessy called experts Dr. Raymond Harbison (toxicology) and Dr. Victor Roggli (pathology).

At the close of the plaintiff's case, the court granted Hennessy's motion for directed verdict on the plaintiff's punitive damages claim, and that issue never reached the jury. During closing arguments, the plaintiff's counsel asked the jury for more than \$8 million in compensatory damages.

After approximately four and one-half hours of deliberation, the jury unanimously concluded that Hennessy was not at fault for negligence and found in its favor. Therefore, the jury did not have to address whether exposure from using AMMCO brake arcing machines was a substantial factor in causing the decedent's mesothelioma. The jury also did not have to apportion fault among other resolved parties not present at trial (Gordon & Rees attorneys were successful in arguing that 18 entities should be included on the verdict form for apportionment, in the event the jury got that far).

Gordon & Rees Team Obtains Total Defense Verdict for Brake Equipment Manufacturer in Products Liability Case

March 2017

Gordon & Rees partners **James A. Lowery** (Dallas) and **Robert A. Rich** (Oakland), with associate **Brian Roth** (Chicago), obtained a total defense verdict after a hard-fought trial for their client, Hennessy Industries, Inc., in Madison County, Illinois.

In this living mesothelioma case, the 65-year-old plaintiff testified to working with and around an AMMCO brake arcing machine at various locations throughout his career as an automotive shop instructor. The plaintiff testified to using the machine more than 700 times on asbestos-containing brakes at one location alone from 1976 to 1985. As a result of the exposure, the plaintiff alleged that he developed peritoneal and pleural mesothelioma, which was diagnosed in 2013. The plaintiff had been living with the disease for four years at the time of trial. Hennessy was the only remaining defendant at trial. The plaintiffs called Dr. Arnold Brody (cell biologist), Dr. Arthur Frank (occupational medicine), Dr. Gregory Kalemkerian (treating oncologist), Dr. William Longo (materials scientist), and Dr. Karen Tabak (economist).

Hennessy maintained that it was not negligent and did not fail to warn. Hennessy offered evidence that once it learned of the potential hazards of overexposure to asbestos once OSHA was enacted in 1972, it acted immediately and responsibly in testing its grinder; re-engineering a more efficient dust collection system (even though the old system met OSHA's standards) and offering it as a retrofit; and warned on its grinder, on its dust collection system, in its instructions and manuals, and through its 175-person salesforce. Hennessy called experts Dennis Bridge (industrial hygienist) and Dr. Michael Graham (pathologist).

At the beginning of trial, Judge Stephen A. Stobbs granted Hennessy's motion for application of Michigan law on damages issues, but ruled that Illinois law governed liability issues. Judge Stobbs's ruling on the choice-of-law should prove critical in future cases in the nation's busiest asbestos docket. The result of the ruling in this case, however, was that Hennessy was precluded under Illinois law from offering evidence of alternative causation/exposures, but that Michigan's non-economic damages caps and punitive damages bar would apply unless the plaintiffs obtained a gross negligence finding against Hennessy.

In opening statement, the plaintiffs' counsel told the jury, the plaintiffs would be asking for \$10 million. In closing argument, they asked for \$10 million, plus \$6—representing one dollar for each act of Hennessy's alleged gross negligence.

After less than three hours of deliberation, the jury unanimously concluded that Hennessy was not at fault for negligence, answering the first question on the verdict form as follows: "QUESTION NO. 1: Was Hennessy Industries negligent? Answer: No." All 12 jurors signed the verdict form..