

From: HarrisMartin's Talcum Powder Litigation Report Publication

Date: February 2, 2018

www.harrismartin.com

J&J Defendants Oppose Consolidated Motion to Remand in 6 La. Cases, Say Plaintiffs Have ‘No Reasonable Possibility’ of Recovering Against In-State Defendant

NEWARK, N.J. — Talcum powder defendants have opposed a consolidated motion to remand filed in six Louisiana cases pending in the multidistrict litigation proceedings, maintaining that the plaintiffs’ claims against an in-state defendant have “no reasonable possibility of success.”

In a Jan. 11 consolidated motion to remand, plaintiffs in six Louisiana talcum powder cases asked the U.S. District Court for the District of New Jersey to send their cases back to state court, arguing that the MDL Court has already weighed in on the jurisdictional dispute in a similar case and found in favor of the plaintiffs.

Plaintiffs originally filed their cases in Louisiana state court, contending that they had been harmed by the use of regular perineal application of talcum powder products manufactured by the defendants. Among the defendants named in the complaints were Johnson & Johnson, Johnson & Johnson Consumer Inc., and K&B Louisiana Corp.

K&B Louisiana Corp. does business as Rite Aid Corp., the motion explained, and is based in East Baton Rouge Parish, La.

The defendants removed the cases on grounds that K&B was improperly joined, “despite the fact that K&B is clearly a corporate citizen of Louisiana,” the plaintiffs explained.

As such, the plaintiffs moved to remand the claims. In support of their motion, the plaintiffs pointed to the court’s October 2017 decision in *McBride*, in which the MDL Court remanded a similar Louisiana suit after finding that the plaintiff had successfully pleaded claims against the in-state defendant.

In the *McBride* decision, the MDL Court opined that the plaintiff had alleged that the in-state entity repackaged and rebranded the talcum powder products and sold them as their own, satisfying the definition of a “manufacturer” under the Louisiana Products Liability Act. For more on the *McBride* decision, see the October 2017 issue of HarrisMartin’s Talcum Powder Litigation Report.

The plaintiffs maintained in their consolidated motion that the facts in the *McBride* matter are “almost identical,” and that all of the arguments the defendants are advancing against remand in the instant proceedings are arguments that were rejected in *McBride*.

“Plaintiff alleged a sufficient causal connection between Plaintiff’s injuries and the products she purchased at and from K&B under both strict liability and negligence claims in Louisiana,” the consolidation motion argued.

“...Plaintiff’s allegations show an actual intention to proceed against the Louisiana Defendant (K&B), and are not frivolous, and therefore, Plaintiff did not fraudulently join the Louisiana Defendant.”

In an opposition motion filed Jan. 22, however, the defendants maintained that the plaintiffs have “no reasonable possibility” of success against K&B, noting that the plaintiffs do not allege that K&B manufactured the allegedly defective products.

The removing defendants also argued that the facts in the underlying cases and those in McBride do, in fact, differ in that the “record evidence not only addresses -- but conclusively refutes -- plaintiffs’ conclusory allegations on this score.”

“Accordingly,” the defendants said, “McBride does not govern, and there is no reasonable basis for finding that the in-state retailer qualifies as a manufacturer under Louisiana law.”

The plaintiffs in the six cases additionally fail to allege that K&B was aware, or should have been aware, that the Baby Powder or Shower-to-Shower products were defective, the defendants said.

“And while Louisiana law once presumed that certain professional vendors had knowledge of alleged defects in the products they sold, an indispensable predicate for applying this theory of liability is that the seller held itself out as the manufacturer of the product in question, which cannot possibly be satisfied in these cases...,” the opposition brief said.

The plaintiffs are represented by Lindsey A. Cheek, Christopher Fransen, and Rubi L. Brown of the Cheek Law Firm in New Orleans; Damon R. Pourciau of Pourciau Law Firm in Kenner, La.; and Scott M. Galante of Galante & Bivalacqua in New Orleans.

The defendants are represented by Susan M. Sharko of Drinker Biddle & Reath in Florham Park, N.J.; Gene M. Williams of Shook, Hardy & Bacon, in Houston; and John H. Beisner of Skadden, Arps, Slate, Meagher & Flom in Washington, D.C.

In Re: Johnson & Johnson Talcum Powder Products Marketing, Sales Practices and Products Liability Litigation, MDL No. 2738; Peck, No. 17-12665; Comardelle, No. 17-13365; Mouton, No. 17-12674; Lightfoot, No. 17-13361; Aikens, No. 17-12675; Sansone, No. 17-12673 (D. N.J.).

Documents are Available Call (800) 496-4319 or Search www.harrismartin.com Motion Ref# TALC-1802-09 Opposition Ref# TALC-1802-10

Copyright Note: This article was reproduced from the HarrisMartin Publishing Web site at www.harrismartin.com. While dissemination of this article via e-mail, fax or regular mail -- provided it has not been altered in any fashion -- is permitted, dissemination of multiple articles through any medium is prohibited without express consent from HarrisMartin.

