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J&J Aims to Wipe Out \$417M Talc Verdict, Citing 'Passion and Prejudice' of Jurors

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Johnson & Johnson has filed motions asking a Los Angeles trial court to discard a [record \\$417 million verdict](#) in a talcum powder products liability case.

In its court papers J&J said a new trial was needed partly because of alleged misconduct of jurors in the deliberations room. The verdict was handed up on a 9-3 vote.

A Sept. 15 [motion for new trial](#) cites "jury misconduct" and "irregularities in the proceedings" among the list of reasons for overturning the verdict—the largest so far to come out of lawsuits alleging Johnson & Johnson's baby powder caused women to get ovarian cancer.

"The jury's misconduct confirms the need for a new trial on all issues," wrote Johnson & Johnson attorney Bart Williams, a partner at Proskauer Rose in Los Angeles in the motion, which includes declarations from two of the three jurors who sided with Johnson & Johnson, including the foreman. "It shows that passion and prejudice tainted the verdict."

The motion provides an inside glimpse into the normally secretive discussions that go on in the jury room: By Friday night, jurors were at an impasse following two days of deliberations and "passions were running high." One juror even turned her chair away from the table and began writing a letter to the judge, stating "she no longer wanted to participate," according to the foreman's declaration. Another angry juror "said we had no choice but to reach a verdict," according to the declaration of a second juror.

By Monday morning, the jury had reached a vote for the plaintiff but—in violation of the jury's instructions and Johnson & Johnson's due process rights, the motion says—the three holdouts were left out of the discussions over damages. One juror siding with the plaintiff "angrily said that those of us who had favored the defense should not participate in the discussion of damages," according to the second juror's declaration.

The nine other jurors then proceeded to include improper costs into their calculation of \$70 million in noneconomic damages, such as attorney fees and taxes—then based the amount on Johnson &

Johnson's net worth, according to the motion and the two juror declarations.

Apart from what transpired in the jury room, Johnson & Johnson also argued that the award, which also included \$347 million in punitive damages, was excessive. It blamed plaintiffs attorneys' statements during the trial, improper evidence and an expert whose findings should have been excluded.

"The size of the verdict, contrasted with the serious deficiencies in the evidence offered at trial, raise a broader concern about runaway juries imposing staggering liability based on speculative science—a concern that is amplified by the fact that this is only one of more than a thousand talc-related cases pending nationwide," Williams wrote. "The verdict is seriously flawed in so many respects that it cries out for this court's intervention."

In addition to a motion for new trial, Johnson & Johnson on Sept. 15 filed a [motion for judgment notwithstanding the verdict](#) that argued there was not enough evidence at trial to demonstrate that Eva Echeverria's use of talcum powder caused her to be diagnosed with ovarian cancer in 2007 or that Johnson & Johnson failed to warn about known risks. The evidence at trial also failed to support malice on the part of any of its executives, the motion says.

A Johnson & Johnson spokeswoman did not respond to a request for comment.

Plaintiffs attorney Mark Robinson, of Robinson Calcagnie Inc. in Newport Beach, California, declined to comment beyond stating, "We're looking at their brief and our response is due Monday." He previously credited the jury's punitive damages award to [his team's presentation](#) of internal documents dating back to 1964 that showed Johnson & Johnson knew its product had health risks.

The Aug. 21 verdict is the latest to come out of the talcum powder litigation, which involves thousands of women with claims primarily in Missouri, New Jersey and California. Previous verdicts, all in Missouri, have totaled \$300 million in awards, the highest of which was [\\$110 million](#).

At the start of the California trial, Williams [objected numerous times](#) during plaintiffs attorney Allen Smith's opening statement. He even moved for a mistrial based on how Smith, of The Smith Law Firm in Ridgeland, Mississippi, described the California standard for negligent failure to warn, one of two causes of action in the case.

In its motion for new trial, Johnson & Johnson said those same misstatements likely confused the jury.

"While that argument may appeal to a jury's sympathies that companies should, out of an abundance of caution, provide warnings for any possible risk, it is not the law," Williams wrote.

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