

**UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY**

**IN RE JOHNSON & JOHNSON TALCUM
POWDER PRODUCTS MARKETING, SALES
PRACTICES, AND PRODUCTS LIABILITY
LITIGATION**

**MDL NO. 16-2738 (FLW) (LHG)
JUDGE FREDA L. WOLFSON
MAG. JUDGE LOIS H. GOODMAN**

VALARIE ELLIS,

COMPLAINT AND JURY DEMAND

Plaintiff,

Civil Action No.: 3:18-cv-3472

v.

JOHNSON & JOHNSON, INC., JOHNSON &
JOHNSON CONSUMER, INC., AND IMERYS
TALC AMERICA, INC. F/K/A LUZENAC
AMERICA, INC.

DIRECT FILED ACTION

Defendants.

SHORT FORM COMPLAINT AND JURY DEMAND

The Plaintiff(s) named below file(s) this *Short Form Complaint and Demand for Jury Trial* against Defendants named below by and through the undersigned counsel. Plaintiff(s) incorporate(s) by reference the allegations contained in *Plaintiffs' Master Long Form Complaint* in *In re: Talcum Powder Products Marketing, Sales Practices, and Products Liability Litigation*, MDL No. 2738 in the United States District Court for the District of New Jersey. Plaintiff(s) file(s) this Short Form Complaint as permitted by Case Management Order No. 1 of this Court.

In addition to those causes of action contained in *Plaintiffs' Master Long Form Complaint*, where certain claims require specific pleadings and/or amendments, Plaintiff(s) shall add and include them herein.

IDENTIFICATION OF PARTIES

Identification of Plaintiff(s)

1. Name of individual injured due to the use of talcum powder product(s): Valarie Ellis.
2. At the time of the filing of the specific case, Plaintiff(s) is/are a citizen of Johnson County,
KS.
3. Consortium Claim(s): The following individual(s) allege damages for loss of consortium:
_____.
4. Survival and/or Wrongful Death Claims:

Name and residence of Decedent Plaintiff when she suffered the talcum powder
product(s) related death: _____

5. Plaintiff/Decedent was born on 1959 and died on _____.
6. Plaintiff is filing this case in a representative capacity as the _____ of the _____
_____, having been duly appointed as the _____
_____ by the _____ Court of _____
_____.
7. As a result of using talcum powder products, Plaintiff/Decedent suffered personal and
economic injur(ies) that are alleged to have been caused by the use of the products
identified in Paragraph 16 below, but not limited to, the following:

X _____ injury to herself

_____ injury to the person represented

_____ wrongful death
_____ survivorship action
 X economic loss
_____ loss of services
_____ loss of consortium
_____ other:_____

Identification of Defendants

8. Plaintiff(s)/Decedent Plaintiff(s) is/are suing the following Defendant(s) (please check all that apply)¹

- ☒ Johnson & Johnson
☒ Johnson & Johnson Consumer Inc.
☒ Imerys Talc America, Inc. (“Imerys Talc”)
☐ Personal Care Products Council (“PCPC”)

Additional Defendants:

- ☐ Other(s) Defendant(s) (please specify):_____

JURISDICTION & VENUE

Jurisdiction:

9. Jurisdiction in this Short Form Complaint is based on:

- ☒ Diversity of Citizenship

¹ If additional Counts and/or Counts directed to other Defendants are alleged by the specific Plaintiff(s) as to whom this *Short Form Complaint* applies, the specific facts supporting these allegations must be pleaded by the Plaintiff(s) in a manner complying with the requirements of the Federal Rules of Civil Procedure, and the Defendants against whom they are alleged must be specifically identified on a separate sheet of paper attached to this *Short Form Complaint*.

☐ Other (The basis of any additional ground for jurisdiction must be pled in sufficient detail as required by the applicable Federal Rules of Civil Procedure). _____

Venue:

10. District Court(s) and Division (if any) in which venue was proper where you might have otherwise filed this Short Form Complaint absent the direct filing Order entered by this Court and to where remand could be ordered by the Judicial Panel for trial: United States District Court for the District Court of Kansas.

CASE SPECIFIC FACTS

11. Plaintiff(s) currently reside(s) in (City, State): Lenexa, KS.
12. At the time of the Plaintiff's/Decedent's diagnosis with a talcum powder product(s) injury, Plaintiff/Decedent resided in (City, State): Lenexa, KS.
13. The Plaintiff/Decedent was diagnosed with a talcum powder product(s) injury in (City, State): Kansas City, KS. on or about June 2006.
14. To the best of Plaintiff's knowledge, Plaintiff/Decedent began using talcum powder product(s) on or about the following date: 1978 and continued the use of talcum powder product(s) through about the following date: 2015.
15. The Plaintiff/Decedent purchased talcum powder product(s) in the following State(s): Pennsylvania, Colorado, Kansas, California, Nevada, New York, Maryland, Virginia, and Missouri.
16. Plaintiff/Decedent used the following talcum powder products:

☒ Johnson & Johnson's Baby Powder

☐ Shower to Shower

CAUSES OF ACTION

17. Plaintiff(s) hereby adopt(s) and incorporate(s) by reference the *Master Long Form Complaint and Jury Demand* as if fully set forth herein.

18. The following claims and allegations asserted in the *Master Long Form Complaint and Jury Demand* are herein adopted by reference by Plaintiff(s):

- ☒ Count I: Products Liability – Strict Liability – Failure to Warn (Against Imerys Talc)
- ☒ Count II: Products Liability – Strict Liability – Failure to Warn (Against the Johnson & Johnson Defendants)
- ☒ Count III: Products Liability – Strict Liability – Defective Manufacturer and Design (Against Imerys Talc)
- ☒ Count IV: Products Liability – Strict Liability – Defendant Manufacturer and Design (Against the Johnson & Johnson Defendants)
- ☒ Count V: Breach of Express Warranties (Against the Johnson & Johnson Defendants)
- ☒ Count VI: Breach of Implied Warranty of Merchantability (Against the Johnson & Johnson Defendants)
- ☒ Count VII: Breach of Implied Warranty of Fitness for a Particular Purpose (Against the Johnson & Johnson Defendants)
- ☒ Count VIII: Negligence (Against Imerys Talc)
- ☒ Count IX: Negligence (Against the Johnson & Johnson Defendants)
- ☐ Count X: Negligence (Against PCPC)

- ☒ Count XI: Negligent Misrepresentation (Against the Johnson & Johnson Defendants)
- ☒ Count XII: Fraud (Against the Johnson & Johnson Defendants)
- ☐ Count XIII: Fraud (Against PCPC)
- ☒ Count XIV: Violation of State Consumer Protection Laws of the State(s) of Pennsylvania, Colorado, Kansas, California, Nevada, New York, Maryland, Virginia and Missouri (Against the Johnson & Johnson Defendants)
- ☒ Count XV: Fraudulent Concealment (Against Imerys Talc)
- ☒ Count XVI: Fraudulent Concealment (Against the Johnson & Johnson Defendants)
- ☐ Count XVII: Fraudulent Concealment (Against PCPC)
- ☒ Count XVIII: Civil Conspiracy (Against All Defendants)
- ☐ Count XIX: Loss of Consortium (Against All Defendants)
- ☒ Count XX: Punitive Damages (Against All Defendants)
- ☒ Count XXI: Discovery Rule and Tolling (Against All Defendants)
- ☒ Count XXII: Wrongful Death (Against All Defendants)
- ☒ Count XXIII: Survival Action (Against All Defendants)

Furthermore, Plaintiff(s) assert(s) the following additional theories and/or State Causes of Action against Defendant(s) identified in Paragraph nine (9) above. If Plaintiff(s) includes

additional theories of recovery, to the extent they require specificity in pleadings, the specific facts and allegations supporting these theories must be pled by Plaintiff(s) in a manner complying with the requirements of the Federal Rules of Civil Procedure.

WHEREFORE, Plaintiff(s) pray(s) for relief and judgment against Defendants of compensatory damages, punitive damages, interest, costs of suit, and such further relief as the Court deems equitable and just, and as set forth in the Master Long Form Complaint as appropriate.

JURY DEMAND

Plaintiff(s) hereby demand a trial by jury as to all claims in this action.

Respectfully Submitted by,

ONDERLAW, LLC

By: /s/ William W. Blair
James G. Onder, #38049
William W. Blair, #58196
Stephanie L. Rados, #65117
110 E. Lockwood, 2nd Floor
St. Louis, MO 63119
314-963-9000 telephone
314-963-1700 facsimile
onder@onderlaw.com
blair@onderlaw.com
rados@onderlaw.com

Counsel for Plaintiff(s)

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

I. (a) PLAINTIFFS Valarie Ellis	DEFENDANTS Johnson & Johnson, Inc, et al.
(b) County of Residence of First Listed Plaintiff <u>Johnson County, KS.</u> (EXCEPT IN U.S. PLAINTIFF CASES)	County of Residence of First Listed Defendant <u>Middlesex County, NJ</u> (IN U.S. PLAINTIFF CASES ONLY)
(c) Attorneys (Firm Name, Address, Email and Telephone Number) James Onder, Stephanie Rados, OnderLaw, LLC, 110 E. Lockwood Ave., St. Louis, MO 63119, 314-963-9000	NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED. Attorneys (If Known)

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)	III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)																								
☐ 1 U.S. Government Plaintiff ☐ 2 U.S. Government Defendant ☐ 3 Federal Question (U.S. Government Not a Party) ☒ 4 Diversity (Indicate Citizenship of Parties in Item III)	<table> <tr> <th></th> <th>PTF</th> <th>DEF</th> <th></th> <th>PTF</th> <th>DEF</th> </tr> <tr> <td>Citizen of This State</td> <td>☐ 1</td> <td>☐ 1</td> <td>Incorporated or Principal Place of Business In This State</td> <td>☐ 4</td> <td>☒ 4</td> </tr> <tr> <td>Citizen of Another State</td> <td>☒ 2</td> <td>☐ 2</td> <td>Incorporated and Principal Place of Business In Another State</td> <td>☐ 5</td> <td>☐ 5</td> </tr> <tr> <td>Citizen or Subject of a Foreign Country</td> <td>☐ 3</td> <td>☐ 3</td> <td>Foreign Nation</td> <td>☐ 6</td> <td>☐ 6</td> </tr> </table>		PTF	DEF		PTF	DEF	Citizen of This State	☐ 1	☐ 1	Incorporated or Principal Place of Business In This State	☐ 4	☒ 4	Citizen of Another State	☒ 2	☐ 2	Incorporated and Principal Place of Business In Another State	☐ 5	☐ 5	Citizen or Subject of a Foreign Country	☐ 3	☐ 3	Foreign Nation	☐ 6	☐ 6
	PTF	DEF		PTF	DEF																				
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IV. NATURE OF SUIT (Place an "X" in One Box Only)									
CONTRACT ☐ 110 Insurance ☐ 120 Marine ☐ 130 Miller Act ☐ 140 Negotiable Instrument ☐ 150 Recovery of Overpayment & Enforcement of Judgment ☐ 151 Medicare Act ☐ 152 Recovery of Defaulted Student Loans (Excludes Veterans) ☐ 153 Recovery of Overpayment of Veteran's Benefits ☐ 160 Stockholders' Suits ☐ 190 Other Contract ☐ 195 Contract Product Liability ☐ 196 Franchise	TORTS <table> <tr> <th>PERSONAL INJURY</th> <th>PERSONAL INJURY</th> </tr> <tr> <td> ☐ 310 Airplane ☐ 315 Airplane Product Liability ☐ 320 Assault, Libel & Slander ☐ 330 Federal Employers' Liability ☐ 340 Marine ☐ 345 Marine Product Liability ☐ 350 Motor Vehicle ☐ 355 Motor Vehicle Product Liability ☐ 360 Other Personal Injury ☐ 362 Personal Injury - Medical Malpractice </td> <td> ☐ 365 Personal Injury - Product Liability ☒ 367 Health Care/ Pharmaceutical Personal Injury Product Liability ☐ 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY ☐ 370 Other Fraud ☐ 371 Truth in Lending ☐ 380 Other Personal Property Damage ☐ 385 Property Damage Product Liability </td> </tr> </table>	PERSONAL INJURY	PERSONAL INJURY	☐ 310 Airplane ☐ 315 Airplane Product Liability ☐ 320 Assault, Libel & Slander ☐ 330 Federal Employers' Liability ☐ 340 Marine ☐ 345 Marine Product Liability ☐ 350 Motor Vehicle ☐ 355 Motor Vehicle Product Liability ☐ 360 Other Personal Injury ☐ 362 Personal Injury - Medical Malpractice	☐ 365 Personal Injury - Product Liability ☒ 367 Health Care/ Pharmaceutical Personal Injury Product Liability ☐ 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY ☐ 370 Other Fraud ☐ 371 Truth in Lending ☐ 380 Other Personal Property Damage ☐ 385 Property Damage Product Liability				
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REAL PROPERTY ☐ 210 Land Condemnation ☐ 220 Foreclosure ☐ 230 Rent Lease & Ejectment ☐ 240 Torts to Land ☐ 245 Tort Product Liability ☐ 290 All Other Real Property	<table> <tr> <th>CIVIL RIGHTS</th> <th>PRISONER PETITIONS</th> </tr> <tr> <td> ☐ 440 Other Civil Rights ☐ 441 Voting ☐ 442 Employment ☐ 443 Housing/ Accommodations ☐ 445 Amer. w/Disabilities - Employment ☐ 446 Amer. w/Disabilities - Other ☐ 448 Education </td> <td> Habeas Corpus: ☐ 463 Alien Detainee ☐ 510 Motions to Vacate Sentence ☐ 530 General ☐ 535 Death Penalty Other: ☐ 540 Mandamus & Other ☐ 550 Civil Rights ☐ 555 Prison Condition ☐ 560 Civil Detainee - Conditions of Confinement </td> </tr> </table>	CIVIL RIGHTS	PRISONER PETITIONS	☐ 440 Other Civil Rights ☐ 441 Voting ☐ 442 Employment ☐ 443 Housing/ Accommodations ☐ 445 Amer. w/Disabilities - Employment ☐ 446 Amer. w/Disabilities - Other ☐ 448 Education	Habeas Corpus: ☐ 463 Alien Detainee ☐ 510 Motions to Vacate Sentence ☐ 530 General ☐ 535 Death Penalty Other: ☐ 540 Mandamus & Other ☐ 550 Civil Rights ☐ 555 Prison Condition ☐ 560 Civil Detainee - Conditions of Confinement				
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	FORFEITURE/PENALTY ☐ 625 Drug Related Seizure of Property 21 USC 881 ☐ 690 Other LABOR ☐ 710 Fair Labor Standards Act ☐ 720 Labor/Management Relations ☐ 740 Railway Labor Act ☐ 751 Family and Medical Leave Act ☐ 790 Other Labor Litigation ☐ 791 Employee Retirement Income Security Act IMMIGRATION ☐ 462 Naturalization Application ☐ 465 Other Immigration Actions								
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V. ORIGIN (Place an "X" in One Box Only)
☐ 1 Original Proceeding ☐ 2 Removed from State Court ☐ 3 Remanded from Appellate Court ☐ 4 Reinstated or Reopened ☐ 5 Transferred from Another District (specify) ☐ 6 Multidistrict Litigation - Transfer ☒ 8 Multidistrict Litigation - Direct File

VI. CAUSE OF ACTION	Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity): <u>28 USC § 1332</u>
	Brief description of cause: <u>Product Liability</u>

VII. REQUESTED IN COMPLAINT:	☐ CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P.	DEMAND \$ <u>75,000.00</u>	CHECK YES only if demanded in complaint: JURY DEMAND: ☒ Yes ☐ No
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VIII. RELATED CASE(S) IF ANY	(See instructions): JUDGE _____ DOCKET NUMBER _____
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DATE 03/12/2018	SIGNATURE OF ATTORNEY OF RECORD /s/ William W. Blair
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FOR OFFICE USE ONLY				
RECEIPT # _____	AMOUNT _____	APPLYING IFP _____	JUDGE _____	MAG. JUDGE _____