

Litigators of the Week: How New Lawyers Broke J&J's Losing Streak in Talc Trials

By Amanda Bronstad

March 9, 2017

Bart Williams and Manuel Cachán were preparing to defend Johnson & Johnson against its fourth trial over talcum powder's health risks when, five minutes into his oral argument, plaintiffs' lawyer Allen Smith fainted. Smith ended up returning for the trial, but not before Williams and Cachán, both Los Angeles partners at Proskauer Rose, asked to start the trial again.

"You can't help but have sympathy for somebody who collapses in front of you," said Williams.

In fact, his team asked for a new jury – and, boy, did they ever get one.

On March 3, following a month of trial, the Missouri jury found that Johnson & Johnson wasn't liable for a Tennessee woman's ovarian cancer. Nora Daniels, 56, had claimed her 2013 diagnosis was caused by her 36 years of using Johnson & Johnson's baby powder. It was the first defense win in the talcum powder litigation for Johnson & Johnson, which was hit with verdicts of \$55 million, \$70 million and \$72 million last year from jurors in the same St. Louis courthouse.



L-R Bart Williams and Manuel Cachán

It was also the first time that Williams and Cachán, retained just two months prior to the trial, handled a talcum powder trial. Johnson & Johnson previously was represented by Nelson Mullins Riley & Scarborough and Shook, Hardy & Bacon, its national coordinating counsel for the talc litigation.

The Proskauer duo was joined by Kimberly Dunne, a Sidley Austin partner in Los Angeles and another new attorney for the defense. From

the start, the new legal team had to contend with dozens of studies published over 30 years that plaintiffs' attorneys used to show a link between talc powder use and ovarian cancer. Johnson & Johnson, along with several nationwide tort reform groups, have blamed Missouri's rules on expert testimony for allowing those studies into trial. Most of the 1,700 women suing the New Jersey-based pharmaceutical firm over talc claims have filed their cases in Missouri.

In past trials, Johnson & Johnson countered those studies with evidence that influential groups like the U.S. Centers for Disease Control and Prevention found talc to be safe.

Those studies and evidence came up again in this trial, which involved the same plaintiffs' team led by Smith, of The Smith Law Firm in Ridgeland, Mississippi, and Ted Meadows, a principal at Beasley, Allen, Crow, Methvin, Portis & Miles in Montgomery, Alabama. But this time, Williams wanted the jury to understand that the plaintiffs' studies showed a correlation, not a cause, between talcum powder and cancer.

"There are a number of epidemiological studies of a certain sort, the type called case control

studies, where you ask women who've had cancer to look back on their lives and answer a series of questions about what they ate, drank and put in their bodies," he said. "Those show a correlation between using talc and ovarian cancer, but not a cause."

In contrast, no connection was found in studies that tracked a person's medical condition throughout her life, and in research on animals and human cells, he said.

The Johnson & Johnson team also brought in a new expert this time: Dr. Warner Huh, an obstetrician-gynecologist at the University of Alabama Hospital. Unlike the outside experts Johnson & Johnson used in previous trials, Huh had limited experience in the courtroom. But his testimony resonated with jurors.

"They got the impression that he's the type of person who cares about this," said Cachán, who spoke with jurors after the verdict. "And if he sincerely believed it, he'd be warning a lot of women. The fact that he wasn't carried a lot of weight with them."

Contact **Amanda Bronstad** at abronstad@alm.com.