



November 1, 2019

VIA ELECTRONIC MAIL

All Counsel of Record

Re: *Johnson & Johnson Talcum Powder Products, Marketing, Sales Practices and Products Liability Litigation*
Case No. 3:16-md-02738-FLW-LHG

Dear Counsel:

By Orders of the Honorable Freda L. Wolfson, U.S.D.J. dated August 30, 2017 (D.I. 536) and September 11, 2017 (D.I. 704), I was appointed as Special Master for the purpose of overseeing discovery disputes that may arise in the above-captioned multi-district litigation (“MDL”). This MDL contains product liability cases in which Plaintiffs allege that certain Johnson & Johnson products containing talcum powder (the “Products”) have been the cause of ovarian cancer for thousands of women who have used the Products.¹

This dispute relates to the recent recall of certain of Johnson & Johnson (“J&J”) talcum powder by the FDA after the determination that certain of the Products contain asbestos. Both the PSC and J&J have submitted proposed orders regarding the procedure for preserving and testing samples relating to this recall. I am in receipt of and have analyzed J&J’s letter of October 25, 2019 and attachments, the PSC’s letter of October 31, 2019 and attachments, as well as various email communications between the parties. In addition, I reviewed the January 31, 2018 Order and an email sent on behalf of Chief Judge Freda L. Wolfson, U.S.D.J to the parties on October 31, 2019. Subsequently, on October 31, 2019, I held a telephone conference with the parties.

I conclude that the interests of the parties are adequately protected by the terms of the order presented by J&J on October 25, 2019. J&J’s proposed order provides for the safeguarding of the recalled product. I find that the proposed order provides for product testing. Further, it provides an opportunity for independent testing and it is consistent with the protocol for product testing that was adopted for historical samples in the prior order and stipulation dated January 31, 2018.

¹ I do not provide a detailed factual and procedural background, as I write for the benefit of the Court and the parties, all being familiar with the facts of this case.

All Counsel of Record
November 1, 2019
Page 2

Thus, I am simultaneously herewith entering J&J's proposed order (the "Order"). I am entering the terms of that order on a going forward basis with respect to the product subject to the recall and the testing. The Order is being entered without prejudice to the PSC making subsequent requests for relevant discovery as to the recall process and the testing of the recalled product.

Very truly yours,

[REDACTED]

[REDACTED]

cc:

[REDACTED]
[REDACTED]

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

IN RE JOHNSON & JOHNSON)
)
TALCUM POWDER PRODUCTS)
)
MARKETING, SALES PRACTICES,) MDL NO. 16-2738 (FLW) (LHG)
)
AND PRODUCTS LIABILITY)
)
LITIGATION)

**SUPPLEMENT TO THE JANUARY 31, 2018 AGREED ORDER AND
STIPULATION REGARDING THE JOHNSON & JOHNSON
DEFENDANTS' PRODUCTION OF TALCUM POWDER
PRODUCTS AND TALC SAMPLES**

WHEREAS, on October 18, 2019, Lot #22318RB of Johnson's® Baby Powder was voluntarily recalled ("Recall");

WHEREAS, the J&J defendants have identified samples of Johnson's® Baby Powder and milled talc relating to the voluntary Recall that have been retained in the ordinary course of business and have represented that portions of such samples are being tested in accordance with ordinary business practices following a product recall ("Recall Investigation");

WHEREAS, any remaining portions of such samples¹ (“Recall Samples”) should be handled pursuant to the January 31, 2018 Agreed Order and Stipulation Regarding the Johnson & Johnson Defendants’ Production of Talcum Powder Products and Talc Samples (“Agreed Order”);²

IT IS THEREFORE ORDERED AS FOLLOWS:

1. The J&J defendants shall notify plaintiffs if they determine that testing in connection with the Recall Investigation would deplete any sample being tested such that additional material would not be available to plaintiffs for testing, at which time the parties shall promptly meet and confer to discuss an appropriate manner for handling, and raise any disputed issues with this Court;

2. The J&J defendants shall provide this Court with an inventory of Recall Samples in their possession, custody and control (“Recall Inventory”) within ten (10) days of completing the testing portion of the Recall Investigation;

3. The Recall Inventory to be filed with this Court shall supplement the inventories of historical Talcum Powder Product samples filed with the Agreed Order, and the samples listed on the Recall Inventory shall be subject to the representations, qualifications, provisions and conditions of the Agreed Order, except as to scheduling provisions and as otherwise stated herein;

¹ Excluding 10 grams that must be retained pursuant to legal requirements.

² All terms used herein shall have the same meaning as defined in the Agreed Order.

4. All Recall Samples shall be delivered to the Laboratory within ten (10) days of the submission of the Recall Inventory;

5. The J&J defendants shall provide plaintiffs with an inventory of Johnson's® Baby Powder from Lot #22318RB that has been returned in connection with the voluntary Recall ("Return Samples");

6. A preliminary inventory of Return Samples will be provided within thirty (30) days of the entry of this Supplement to the Agreed Order and supplemented periodically as additional bottles of Johnson's® Baby Powder from Lot #22318RB are returned;

7. The parties shall meet and confer to discuss whether Return Samples will be divided for testing, and if so, an appropriate protocol for the selection of such samples. Any disputed issues with respect to the Return Samples shall be raised with this Court; and

8. If the parties agree to divide Return Samples, they shall be handled pursuant to the Agreed Order.

SO ORDERED, this 1st day of November, 2019.

