

# Daily Journal

FEBRUARY 19, 2020

## Top Verdicts

The largest and most significant verdicts and appellate reversals in California

### TOP DEFENSE VERDICTS

## Weirick et al. v. Brenntag North America Inc. et al.

**A**mong the factors working against Johnson & Johnson Services, Inc. defending a mesothelioma case, one of the most difficult was the sympathy everyone in the court felt for Carolyn Weirick.

She took Johnson & Johnson to court after being diagnosed with mesothelioma, cancer commonly associated with asbestos exposure. Her case alleged, like others, Johnson & Johnson's talc powder contained asbestos fibers. *Weirick et al. v. Brenntag North America Inc. et al.*, BC656425 (L.A. Super. Ct., filed April 4, 2017).

John L. Ewald, a former Orrick Herrington & Sutcliffe partner now with King & Spalding, led the defense for Johnson & Johnson. He said putting aside that emotion was difficult but vital for jurors to understand the science the defense relied on.

"We really had to communicate to the jury that this was something that was essentially an internal cause, not an external cause, and that you can't really ultimately identify the specific cause," Ewald said. "That can be difficult I think for anyone really, not just jurors, to process."

The case's first appearance in court resulted in a mistrial in 2018. Ewald said retrying in 2019 brought up new expert opinions that "changed the dynamic of the second trial." His defense argued there was no way to pinpoint exactly how Weirick contracted mesothelioma. Ewald said evidence consistently pointed to a lack of correlation between Johnson & Johnson talc powder and Weirick's type of cancer.

"I think we really embraced the science and also tried to explain as best we could



JOHN L. EWALD

the testing," Ewald said. "The microscopy of asbestos analysis is very detailed, ... but we tried our best to really explain in what way we thought plaintiffs were confusing what they were seeing on the microscope as asbestos when in fact it wasn't and how that would happen."

David Greenstone, a shareholder at Simon Greenstone Panatier PC that represented Weirick, said the firm successfully litigated plaintiff verdicts against Johnson & Johnson leading up to Weirick's trial. He said though cases can go either way, it's impossible to know why jurors sided with Johnson & Johnson in this case.

"I'm not certain what it is that made the jury in that case decide to go against us

*case* INFO

**Product liability**  
**Los Angeles County**  
**Superior Court Judge Cary H. Nishimoto**

**Defense lawyers:**  
 King & Spalding LLP, John L. Ewald; Orrick, Herrington & Sutcliffe LLP, Warrington S. Parker

**Plaintiffs' lawyers:**  
 Simon, Greenstone & Panatier PC, Jay E. Stuemke, Leah Kagan

when a very recent jury had just gone for us," Greenstone said. "I will say that Johnson & Johnson, one of their big defenses in all of these cases, including Weirick, was that the plaintiff's experts are the only ones that have ever found asbestos in Johnson's baby powder. ... And that's not accurate."

In December, Greenstone said the firm filed a motion for a new trial based on evidence showing the FDA found evidence of asbestos in Johnson & Johnson talc powder. He said this news derailed a core argument in the company's defense and warranted a new trial. The judge denied the motion Jan. 29, but Greenstone said they plan to appeal the judge's decision.

— Nicole Tyau