

## An Exploration of Justice in the Context of Ethical Guidelines

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*An appellate court in Missouri has decided to uphold a 2.1 billion dollar judgment against Johnson & Johnson (J&J) over the presence of asbestos in their baby powder, despite being unable to directly link the asbestos to the development of ovarian cancer in J&J consumers. By exploring the meaning of 'justice,' this paper will defend the court's decision that J&J owes its consumers punitive damages for the physical and emotional distress caused by exposure to asbestos. This paper will draw comparisons between the case in question and the Anderson v WR. Grace and Beatrice Foods case from A Civil Action, by Jonathan Harr, to reinforce the ways ethics should be considered in litigation involving public health risks.*

In June 2020, the appellate court of Missouri upheld a 2.1 billion dollar judgment against Johnson & Johnson (J&J), a company that manufactures and sells healthcare-related products, in *Ingham v Johnson and Johnson*. A class action suit was filed by a group of women who claimed that the use of J&J's baby powder in the genital region contributed to the development of ovarian cancer due to the ingredient asbestos, which is a known carcinogen. However, a study from the *Journal of the American Medical Association* (JAMA) highlights that the chances of women developing ovarian cancer that is linked to Johnson & Johnson's Baby Powder are not compelling, as the risk-ratio between the women exposed to the baby powder and those not exposed to the baby powder was below 2 (in other words, the studies failed to show that, as a legal matter, it was more likely than not that levels of asbestos in J&J's led to plaintiffs' cancers).<sup>192</sup> Despite this research, the court upheld the multi-billion dollar verdict against J&J, reinforcing that the verdict against J&J is both fair and just. According to the legal dictionary, justice can be defined as one of three things including "fairness, moral rightness, and a scheme or system of law in which every person receives his/her/their due from the system, including all

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192 Gianna Melillo, "JAMA Study Finds No Significant Link Between Talc Powder, Ovarian Cancer", *American Journal of Managed Care*, (January 2020).



rights, both natural and legal.”<sup>193</sup> Although these definitions seem different from one another, at their core they all indicate a goal of protection from various threats. Consumers’ safety and security were threatened by J&J, and this breach of trust damages the informal agreement of trust between consumers and manufacturers. Through this understanding, the verdict of the case was, indeed, “just.”

The concept of justice is crucial in justifying the appellate court’s ruling. The appellate court was upholding the standard and goal of justice by reinforcing protection for consumers from being taken advantage of. It is important for the law not only to create order, but to set precedents that will ensure the safety of the people who are governed by it. While courts should use reliable scientific evidence and expert testimony to make an informed decision, which is demonstrated in the following cases, it’s important that the evidence is considered within the context of justice so that decisions can support the greater good.

First of all, multiple labs were able to confirm the presence of asbestos. A representative from the Materials Analytical Sciences lab surveyed containers of baby powder to check for traces of asbestos and found that twenty of the thirty-six containers randomly sampled did contain asbestos. Although the defendants attempted to invalidate these claims based on the procedures the lab used during testing, the court found the evidence to be reliable. In addition to these findings, other experts testified that there was asbestos in J&J’s baby powder after reading nearly 1,400 studies conducted by the FDA and several other sources<sup>194</sup>.

The verdict of the J&J case can be compared to the similar *Anderson v. WR. Grace and Beatrice Foods* in 1986. Similar to J&J’s behavior, the defendant Grace and Beatrice Foods in the Woburn, MA case allowed civilians to use municipal water wells that were negligently contaminated with trichloroethylene (TCE). Children in Woburn developed leukemia, in unexplainably high numbers. While we do not know if the TCE caused these cancers, there is no doubt that Grace helped pollute the wells, and was very slow to acknowledge this. J&J has also been less forthcoming than Grace; they even went so far as to try to prevent the publication of medical literature on the topic. For instance, when Mount Sinai School of Medicine

193 “Justice”, dictionary.law.com, <https://dictionary.law.com/Default.aspx?selected=1086&bold=>

194 *Ingham v. Johnson & Johnson*, 608 S.W.3d 663 (Mo. Ct. App. 2020).



published findings of asbestos in J&J's baby powder, J&J requested that the literature be removed from materials that were being made public, and pressured them to take back the results of their studies. Extensive evidence proved there were multiple attempts on J&J's part to conceal the health risks of their products from consumers. Similarly, in the Woburn case the defendant Grace did not disclose the fact that they were dumping dangerous substances into wells of municipal water G and H outside of their factory and put consumers at an unknown risk. Cheeseman, Grace and Beatrice Foods' lawyer, had said that TCE was kept in the plant's paint shop so it could be used to clean machinery, but then eventually admitted that the company had dumped cleaning solvents into a drainage ditch behind the plant.<sup>195</sup> In both of these cases, the defendants posed physical threats to their consumers while concealing the safety hazards of their behavior to the public. Under the definition of justice, this was immoral and unethical. Upon exposure to these details, the consumers of J&J, like the families in Woburn, experienced emotional stress due to concerns regarding their wellbeing.

In addition to the fact that the presence of asbestos in the baby powder was confirmed, it should also be reiterated that asbestos is a known carcinogen. According to expert testimony, "...asbestos causes or significantly contributes to causing ovarian cancer... because it is microscopic in size, can travel throughout the bloodstream and the body, and can be found in every organ in the body, including the ovaries."<sup>196</sup> This notion is corroborated by the International Agency for Research on Cancer ("IARC"), the American Cancer Society, the U.S. Department of Health and Human Services, the Environmental Protection Agency, and the National Cancer Institute. Additionally, the EPA has "...classified asbestos as Group A, human carcinogen."<sup>197</sup> Similar to the J&J case, the TCE in the water wells of Woburn was found to be a harmful chemical. According to the Minnesota Department of Health, TCE can affect both immune and reproductive systems, liver, kidneys, the central nervous system, and fetal development during pregnancy.<sup>198</sup> In addition to the burden of their physical

195 Harr, Jonathan. *A Civil Action*. Firsted. New York: Random House, 1995.

196 *Ingham v. Johnson & Johnson*, 608 S.W.3d 663 (Mo. Ct. App. 2020).

197 "Learn About Asbestos", Environmental Protection Agency, last modified February 3, 2021, <https://www.epa.gov/asbestos/learn-about-asbestos#asbestos>.

198 "Trichloroethylene and Your Health", Minnesota Department of Health, <https://www.health.state.mn.us/communities/environment/hazardous/topics/tce.html#health>



conditions, the women may also be concerned about other aspects, such as what the implications of their diagnoses will mean for their families, careers, and social life. It is unfair for J&J to threaten consumers and compromise their health and safety without paying them damages.

Although the *JAMA* research claims that there was not a great difference between women who were and were not exposed to J&J baby powder and their risks of developing cancer, one can not say that any amount of asbestos should be considered “safe.” While the risk of cancer in women exposed to J&J baby powder only increased by 8% compared to those who were not, there is no way to prove that the exposure was not a contributor to the development of ovarian cancer, even if it was not the one main cause. Experts have stated that they believe that asbestos could facilitate the development of cancer that would have occurred from pre-existing conditions and perhaps even make cancer more aggressive against treatment. The EPA has stated that “[i]n general, the greater the exposure to asbestos, the greater the chance of developing harmful health effects.”<sup>4</sup> One of the doctors at the trial testified that the more bottles of baby powder a woman was exposed to, the higher chance she had of being exposed to asbestos which implies that over time, the plaintiffs had a high likelihood of being exposed to asbestos, due to the frequency with which they used the powder. Similarly, the risk of developing an illness was correlated with the amounts of exposure to TCE in the Woburn case. Even though the TCE was not directly linked to the development of leukemia, it was a contributor that may have facilitated or triggered pre-existing health conditions in children. In both the J&J case and in the Woburn case, the company’s actions may well have been catalysts for the development of the illnesses they are believed to have induced.

The expert testimony representing J&J would say that the verdict was unjust because general causation, which addresses whether or not a substance can cause an illness, could not be established and it is not “more likely than not” that the asbestos had caused cancer, as required by the legal standard. However, this employs an unfair understanding of what justice means in cases of this nature. Based on the insufficient causal relationship, the concept of justice would be limited to palpable evidence and hard, concrete claims of physical damage. This is not a sufficient definition of justice because it excludes emotional burdens, threats posed to plaintiffs by defendants, and overall allows people to take advantage of others, which



favors companies over individuals. This is extremely unjust because consumers are being taken advantage of and deceived about the safety of the products they are using. This could harm many people as individuals have their own respective preferences and pre-existing conditions. Justice should protect consumers from all threats, including both emotional and physical. It should not come as a shock to consumers that the products they are purchasing contain dangerous substances. Rather, the presence of toxins should be disclosed in advance so that each consumer can make the best decision for themselves.

The similarities in behavior between J&J in *Ingham v Johnson and Johnson* and Grace and Beatrice Foods in *Anderson v WR. Grace and Beatrice Foods* are very clear. Both defendants violated public trust by not being transparent about posing threats to health and safety, causing an undue burden of emotional and physical threats and stress. Since the public had to suffer under the conditions that J&J put upon them unknowingly, the verdict of the Missouri appeals case was just. It is unjust and immoral to purposefully deceive consumers about health threats. This breaks consumer trust and the implied social contract a company has with the public. The distress caused by the knowledge that the baby powder contains asbestos, in addition to the development of ovarian cancer, justifies the need for J&J to pay damages.



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