

Litigators of the Week: How Orrick and Weil Lawyers Teamed Up to Blow Talc Plaintiff Away

By Jenna Greene
March 29, 2019

Our winners this week are Weil Gotshal & Manges partner Allison Brown and Orrick Herrington & Sutcliffe partner Morton Dubin for a slam-dunk victory before a jury. The two teamed up on behalf of Johnson & Johnson in the latest trial over asbestos-related claims in baby powder.

J&J to date has had a mixed record of success on such claims—and a handful of wins, but also several hung juries and some punishing plaintiffs verdicts.

Not this time.

After a four week trial in New Jersey state court, the jury took less than 30 minutes to find for the defense.

Have Brown and Dubin hit on a formula for success that will tip the scales in J&J's favor for good? They discussed the win with Lit Daily.

Who is your client and what was at stake?

Morty Dubin: Our clients are Johnson & Johnson and Johnson & Johnson Consumer Inc. J&J and JJCI are facing a large number of personal injury lawsuits around the country alleging that trace asbestos contamination of Johnson's Baby Powder caused plaintiffs' mesothelioma or ovarian cancer. In addition to the large litigation impact, this is a deeply personal issue for the men and women of Johnson & Johnson who have worked hard to ensure the safety of this iconic product for over 100 years.

How did you get involved in the case?

Alli Brown: Morty and I have been involved in this litigation on behalf of J&J in a number of different capacities for some time now. We've both successfully tried similar cases in which plaintiffs alleged baby powder caused their mesothelioma.

Morty was one of the trial counsel in the **Herford case** in California, which resulted in the first defense verdict for the company and I was one of the trial counsel in the **Henry case** in New Jersey, which resulted in a defense verdict in October 2018. We both respect each other a



lot and get along very well. We were thrilled to have the chance to try a case together.

What was the lay of the land going into trial? How has J&J fared in talc trials to date?

Dubin: A number of cases with similar allegations have been tried to verdict in courtrooms around the country. Three of these cases have resulted in verdicts for J&J, including the Herford and Henry cases that we tried, and five cases have resulted in mistrials.

During the course of our trial, a jury in California returned a verdict for plaintiffs. All of the verdicts in favor of plaintiffs are being appealed. J&J continues to vigorously defend these cases in trials throughout the country.

What did you learn from prior verdicts that went for and against the company? And how did you incorporate that into your strategy?

Dubin: Jurors are smart enough to understand critical scientific issues. Plaintiffs' counsel suffer when they attempt to over simplify the case to the point where they are blatantly trying to misrepresent documents for their prejudicial impact, rather than presenting an honest scientific case.

We made a deliberate strategic decision to trust the jury to understand important distinctions in the scientific evidence. The speed with which they returned a defense verdict makes clear they did.

Who was opposing counsel? Did they assert any novel theories?

Brown: Plaintiffs were represented by Joseph Cotilletta, Mark Linder and Monica Cooper from The Lanier Law Firm, one of the premier plaintiffs' law firms in the country. These plaintiffs' lawyers used many of the same theories and same expert witnesses they have used in the past. For the most part, we anticipated the way they would try the case and were not surprised by how the trial unfolded.

How did you work together in litigating the case?

Dubin: Well, first of all we were helped enormously by our two incredibly talented trial teams. The Orrick team consisted of associate Kevin Hynes, paralegal Chuck Rasmussen Goodwin, and trial technology manager, Trudy Harris.

The Weil team consisted of associates Jed Winer, Emily Pincoff, Luna Barrington, Rachel Farnsworth, Marihug Cedeño, Sara Lonks, Richard Heaslip, and Nathan Bu, as well as paralegals Lamia Sampson and Stephanie Martin.

These folks were instrumental in creating a seamless working environment between our two firms and we all have a lot of fun working together.

In terms of the division of labor, we decided I would address the issue of what was in the Baby Powder and Alli would address the issue of whether what was in the Baby Powder could have caused mesothelioma and specifically whether it could have caused Mr. Rimondi's mesothelioma. It was a natural division of labor and one that worked well.

What were some of the high points at trial?

Brown: There were a lot of high points over the course of this trial. I think we generally left court every day feeling pretty good about how the evidence went in.

Morty's cross of plaintiffs' only expert witness who claims to have found asbestos in some bottles of baby powder was particularly memorable. Morty confronted this witness with some of his own previously undisclosed test results that showed no asbestos in baby powder.

It was a dramatic moment in the courtroom when this expert was forced to concede he had previously given false testimony about the existence of these negative test results.

Dubin: We also had some fun with plaintiffs' experts regarding our alternative asbestos exposure evidence.

Plaintiffs' only case specific causation expert offered the opinion that the plaintiff had no competing asbestos exposures and that baby powder alone had caused his mesothelioma.

The day Alli confronted her with a life-size Google map, showing that plaintiff lived, worked and went to school less than two kilometers from an asbestos cement factory for 32 years was a good day.

Did you make any unconventional strategic choices?

Dubin: Most trial teams have one lawyer handle the openings and closings. Here we decided to split both the openings and the closings. We thought it was important for each of us to develop a relationship with the jury and we trust each other enough that we felt comfortable dividing things up this way.

We also have different courtroom styles and we liked the idea of blending them together. In the end, we were obviously happy with this somewhat unconventional decision.

The jury deliberated for just half an hour. What did you think of that?

Brown: I hadn't even left counsel table yet. Morty had just run out to grab a cup of coffee and we were getting ready to argue some motions when the officer entered the courtroom and announced the jury had a verdict.

I think at first we were a little shocked. But the speed of the verdict is not surprising given the strength of the science supporting the defense.

This was a jury that was paying close attention during the course of the entire four week trial. They took copious notes, some of them going through multiple notebooks, they asked questions and paid careful attention. These jurors had clearly been weighing the evidence throughout the course of the trial and were confident enough in their decision to deliver such a swift and unanimous verdict.

Does it feel to you like this case could signal a turning of the tide for J&J?

Dubin and Brown: It should. What is happening to J&J is not right and not supported by the science. We hope to see more swift and unanimous defense verdicts in the near future.

