

Johnson & Johnson & Asbestos

Sandra Rigberg

Jane Dmochowski, ENV5 301, Fall 2021

Abstract:

Asbestos is a toxic mineral known to cause a variety of cancers, including ovarian cancer and mesothelioma. In 2018, investigations revealed Johnson & Johnson's (J&J) talcum Baby Powder and Shower to Shower talc periodically tested positive for trace amounts of asbestos from at least 1971 to the early 2000s and J&J was aware, yet the products remained on the market. Now, J&J faces tens of thousands of lawsuits from cancer victims and their families, alleging that their cancers were caused by the asbestos-contaminated talcum powder (Levine & Spector, 2021). J&J is now considering a bankruptcy maneuver known as the "Texas two-step" which would block all the lawsuits and remove any liability from J&J. This case study will examine how J&J was able to sell asbestos-contaminated products for over 30 years, the related legal processes, and the many different stakeholders involved.

Background: Asbestos & Johnson & Johnson Basics

- Asbestos particles never dissolve once inhaled
- Asbestos causes lung cancer, ovarian cancer, laryngeal cancer and mesothelioma
 - Mesothelioma: 80% cases from asbestos, incurable, almost always fatal
- Asbestos is basically undetectable
 - Cannot be smelled, tasted, seen
 - Effects take up to 50 years to manifest
- See diagram below for more health impacts



Figure 2: Image of Johnson & Johnson's Baby Powder and its packaging, copied from (Johnson & Johnson)

J&J is now facing an estimated 38,000 lawsuits brought by ovarian cancer patients and 430 brought by mesothelioma patients. J&J is now attempting to use a legal loophole made possible under the Texas Business Organizations Code, referred to as the "Texas Two-Step"

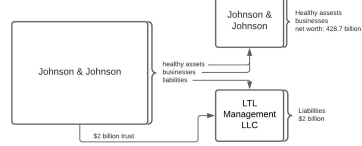
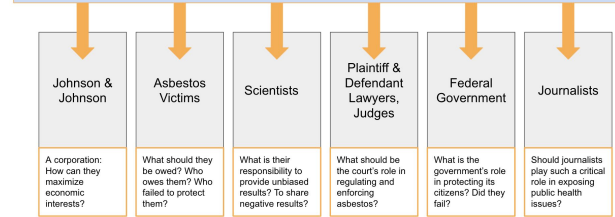


Figure 4: How the assets of J&J are divided during the Texas Two-Step, data from (Chavez, Kirincic, & Scates, 2021). LTL would then file for bankruptcy, which would limit payout

Conclusion: This case study raises the question of who is responsible for protecting the American public against toxic substances. Asbestos victims need public support to drive congressional attention and place enough pressure on the government to block the Texas Two-Step that so many companies have used to get out from under their legal liabilities. Additionally, the federal government must take more proactive approaches to regulating toxic substances and creating uniform testing processes, so that there are not more victims in the future.

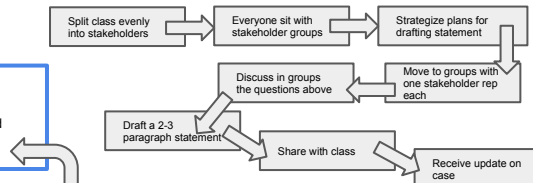
STAKEHOLDERS



- Primary Learning Objectives: Students will...**
- understand what happened with J&J's contaminated Baby Powder.
 - understand what asbestos is and its impacts.
 - understand regulations surrounding asbestos, and how regulatory bodies and the government play a role.
- Secondary Learning Objectives: Students will...**
- assess what role the stakeholders should play in this case and who has the responsibility to regulate substances like asbestos.
 - understand the importance of every stakeholder
 - think about how the U.S.'s political and legal framework could be changed to better protect citizens.
- Pre Class Questions**
- What are the health impacts of asbestos? How long do they take to develop?
 - How does the Texas Two-Step work, and why is J&J attempting it?
 - Who are the different stakeholders in this case study?
 - What approach does the U.S. government take when regulating toxic substances?
 - What were J&J's strategies to deal with the asbestos found in their Baby Powder, as discussed in the 1975 memo? Were they effective?

In-Class Statement Questions & Activity:

- Who should be held most responsible for this case study? Why?
- Who should be responsible for ensuring the victims receive proper compensation?
- Are any interventions needed? Who are the key players?
- Moving forward, what steps, if any, should be taken by each stakeholder to ensure this does not happen again?
- What are the key takeaways from this case?



1975 confidential memo from J&J's research directors to baby products division managers:

Called for J&J to "initiate studies only as dictated by confrontation", stating that, so far, their "philosophy" allowed them to "hold in check" any data questioning the safety of their talc products and "minimize the risk of possible self-generation of scientific data which may be politically or scientifically embarrassing" (Management, 1975). J&J also strongly and successfully promoted self-policing as an alternative to regulation

Investigations by Reuters & the New York Times of J&J Internal Documents revealed:

J&J's talc powder tested positive for asbestos periodically as far back as 1957 until the early 2000s.

J&J was aware & denied claims.

J&J instead developed strategies on how to deal with it.

What can FDA do?

- create specific safety standards for food or medicines (not cosmetics)
- take action against a cosmetic manufacturer if the cosmetic contains a harmful contaminant or is improperly labeled
- take action against a cosmetic manufacturer if the cosmetic is improperly labeled and/or handled

Asbestos regulations usually fall under the umbrellas of the EPA, OSHA, and CPSC BUT... body powder is categorized as a "cosmetic product", and therefore falls under the Food and Drug Administration's (FDA) jurisdiction

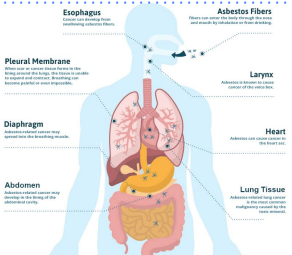
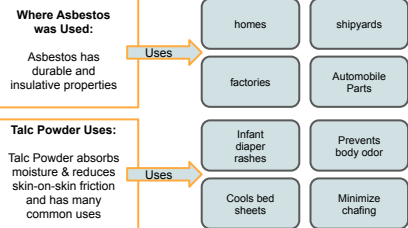


Figure 1: This image shows the multiple negative impacts of asbestos on human health, copied from (King, 2021)



Most other industrialized countries have completely banned asbestos, but not U.S.



Throughout 1970s, Environmental Protection Agency (EPA) & Consumer Product Safety Commission passed multiple, product specific asbestos bans

OSHA tried to create asbestos standard for general industry, but unsuccessful due to industry retaliation

Change in the regulatory process required to create new standards, requiring all subsequent proposed standards to undergo two risk analyses: one at the current substance exposure level and one at the proposed substance exposure level

Supreme Court ruling on Benzene

regulatory bodies continually faced obstacles trying to justify and pass asbestos regulations, unable to prove their technological and economic feasibility

Despite the efforts of regulatory bodies, however, asbestos is still not banned in the U.S.

Figure 3: Summary timeline of asbestos regulation in the U.S., Data are from (Lemen & Landrigan, 2017)

References

- Asbestos Exposure and Cancer Risk Fact Sheet. (n.d.). Retrieved October 31, 2021, from <https://www.asbestos.com/health-effects/asbestos-exposure/>
- Chavez, S. (2021, October 16). J&J baby powder claims spur bankruptcy despite \$25 billion in cash. Retrieved October 31, 2021, from <https://www.washingtonpost.com/business/2021/10/16/johnson-johnson-baby-powder-bankruptcy-claims-25-billion-cash-2021-10-16/>
- King, D. (2021, September 13). Asbestos Exposure: Occupations, Products & the Common Health Risks. Retrieved November 16, 2021, from <https://www.asbestos.com/health-effects/asbestos-exposure/>
- Johnson & Johnson confirms no asbestos in Johnson's Baby Powder. (2019, December 03). Retrieved from <https://www.cpsc.com/2019/12/03/johnson-johnson-confirms-no-asbestos-in-johnsons-baby-powder.html>
- Lahav, J. (2021, October 26). Is Asbestos Banned in the United States? Retrieved October 31, 2021, from <https://www.asbestos.com/mesothelioma-lawyer/legislation/haw/>
- Levine, D. & Spector, M. (2021, October 15). J&J pays talc liabilities into bankruptcy. Retrieved October 31, 2021, from <https://www.reuters.com/business/healthcare-pharmaceuticals/j-j-pays-talc-claims-files-bankruptcy-protection-2021-10-14/>