

Johnson & Johnson's Legal Challenges Mount

By Peter Lotus

[Johnson & Johnson](#) is facing lawsuits from more than 100,000 plaintiffs over its product safety and marketing tactics, has taken the aggressive strategy of battling many of the cases in court. And it is losing. A lot.

Juries and judges have ordered the health-products giant to pay billions of dollars in several recent trials over claims that J&J's signature baby powder and certain drugs and medical devices injured people, and that its marketing practices fueled the opioid-addiction epidemic.

The latest: A Philadelphia jury [awarded \\$8 billion in punitive damages](#) last week to a man claiming his use of J&J's antipsychotic Risperdal when he was a boy caused abnormal breast enlargement. J&J has said it properly disclosed the drug's risks and benefits, and plans to appeal the verdict.

In August, an Oklahoma judge ordered J&J to pay \$572 million to the state for [contributing to the opioid-addiction crisis](#), a judgment the company is appealing. Last year, a St. Louis jury found that J&J should pay \$4.7 billion to 22 women and their families who [alleged the company's baby powder caused ovarian cancer](#). J&J has said the talcum powder is safe and doesn't cause cancer; the company is appealing the decision.

The New Brunswick, N.J., company faced lawsuits from at least 103,300 people or entities in U.S. courts at the middle of this year, up from the 8,580 plaintiffs pending in October 2011, according to a Wall Street Journal review of J&J's securities filings.

J&J discloses the number of plaintiffs for the most significant of its product-liability cases in its filings.

The number of talc-lawsuit plaintiffs surged to 15,500 as of June 30, from 1,400 in early 2016, the Journal analysis found. Plaintiffs in personal-injury lawsuits over J&J's pelvic mesh devices for women have declined from a peak of more than 55,000 pending in 2017 but still number about 24,800. J&J is challenging many of the lawsuits, rather than quickly settling, according to lawyers on both sides. "Their natural reflex is to fight and delay, drag it out as long as they can,"

said Andy Birchfield, an attorney with Beasley Allen in Montgomery, Ala., who has sued J&J over baby powder and other products.

The Risperdal damages and some other awards are likely to be reduced by judges, and possibly overturned, on appeal. Yet the losses signal J&J may ultimately have to pay a costly sum to resolve the lawsuits. The opioid litigation alone could cost J&J \$5 billion to \$10 billion to settle, Wells Fargo analysts have estimated.

J&J has won its share of trials. The company has argued science supports the safety of its products and that its increasing caseload is a product of aggressive plaintiffs' lawyers eyeing the company's big pockets. It is in the company's best interest, its outside lawyers said, to deter more lawsuits lacking merit by avoiding premature settlements now.

J&J is approaching the litigation "with an eye to managing this onslaught overall, and not creating false incentives for lawyers to file even more claims that are marginal at best," said John Beisner, a partner with Skadden, Arps, Slate, Meagher & Flom LLP who is defending J&J in litigation over talc and some other products.

J&J may be following in the footsteps of [Merck & Co.](#), which took to trial a number of lawsuits alleging its Vioxx painkiller caused heart attacks and strokes, said Nora Freeman Engstrom, a law professor at Stanford Law School who studies personal-injury litigation. Merck won more verdicts than it lost and ultimately agreed in 2007 to settle nearly all of the lawsuits for \$4.85 billion, lower than analysts initially expected. Yet a key difference, Ms. Engstrom said, is that J&J is battling litigation on a large scale for multiple products.

Concerns about J&J's litigation risk have weighed on its stock, which is down 12% since its 52-week high in December, through Monday. In comparison, over that span, the S&P 500 is up about 10% and the index's health-care members are down 3%. Some analysts said J&J's slide reflects investors' expectations that J&J might have to spend from \$20 billion to \$50 billion to resolve all of the litigation. J&J had \$81.6 billion in revenue last year; the company is expected to report its third-quarter results Tuesday.

In August, Moody's Investors Service changed its outlook for J&J's bond rating to negative from stable, citing uncertainty over the outcome of litigation.

Attention-getting verdicts also are hurting the company's reputation for trustworthiness, amassed from decades of careful marketing to parents and its famous handling of a Tylenol scare. Recent legal losses have dropped J&J to 57th out of 58 companies in a pharmaceutical reputation index developed by Alva Group, which bases its scores on mentions in the news, social media and analyst reports. J&J was in the index's top 10 in 2014.

A J&J spokesman said the company's reputation remains strong because it has developed high-quality consumer products and treatments for cancer and HIV. He said the company's victories at trial and reversals of losses on appeal don't garner the same level of attention as high-dollar trial losses.

The company's wins include two talc trials last week in which California juries sided with the company. And it has settled others.

In March, J&J and partner [Bayer](#) AG said they agreed to pay \$775 million to [resolve most claims that their blood thinner Xarelto causes excessive bleeding](#). The companies had won several Xarelto trials and didn't admit liability in the settlement. This month, J&J agreed to pay \$20.4 million to [settle opioid lawsuits filed by two Ohio counties](#), avoiding a trial. Some lawyers said the longer litigation continues, the easier the cases become for plaintiffs to win because more documentation is unearthed and plaintiffs' lawyers can refine their strategies based on earlier trials.

"The cases only get better for plaintiffs, not worse," said Richard Golomb, a Philadelphia attorney representing women who have sued over J&J's baby powder.

J&J, however, has a reason for holding out on a large talc settlement. It has asked a federal judge in New Jersey overseeing pretrial proceedings for a majority of the talc suits to [exclude testimony from the plaintiffs' expert witnesses](#) who claim talc causes cancer. Plaintiffs' lawyers said the testimony should be allowed.

If the judge sides with J&J, it could effectively wipe out most of the talc lawsuits; a decision is expected in the coming months.