Here's the Strategy Behind Miami Lawyers' \$9 Million Win Against Johnson & Johnson

by Raychel Lean

Marc P. Kunen and Jose L. Becerra of The Ferraro Law Firm in Miami have secured a \$9 million jury verdict for an 82-year-old woman suffering from terminal cancer, which she claimed stemmed from exposure to asbestos in Johnson & Johnson's cosmetic talcum powder.

The case is one in a string of similar lawsuits across the U.S. and resulted in the second loss of

Case: Blanca Moure-Cabrera v. Johnson & Johnson Consumer and Johnson & Johnson

Case No.: 19-000727-CA42

Description: Products liability

Filing date: Jan. 9, 2019

Verdict date: Feb. 27, 2020

Judge: Miami-Dade Circuit Judge Jose

Rodriguez

Plaintiffs attorneys: Marc Kunen and Jose Becerra, The Ferraro Law Firm, Miami

Defense attorneys: Ryan Cobbs, Carlton Fields, West Palm Beach; Melvin Bailey and Ursula Henninger, King & Spalding, Austin and Charlotte

Verdict amount: \$9 million



Marc P. Kunen and Jose L. Becerra, The Ferraro Law Firm. Photo: J. Albert Diaz/ALM.

2020 for the New Jersey-based pharmaceutical giant.

Kunen's client Blanca Moure-Cabrera had regularly used the defendant's baby powder since age 21, when she moved to South Florida from Cuba in 1959. And she was still using it in August 2018 when she was diagnosed with peritoneal mesothelioma—a cancer that forms in the lining around the abdomen. The disease is terminal and linked to the digestion of toxic asbestos fibers.

Moure-Cabrera sued in January 2019, alleging she inhaled those toxic fibers through the baby

powder, which is commonly used to help prevent diaper rash on babies, and used by some adults to prevent odors, sweating or chafing.

"For over half a century she was using baby powder on herself, and she has two kids she used it on them, so it was a lot of use over the years," Kunen said.

Moure-Cabrera's lawsuit accused Johnson & Johnson of negligence and strict liability.

Johnson & Johnson has denied any links between its products and cancer, claiming there is no asbestos in its products. The defendant's website points to at least eight trials in which juries have not found a link between its products and asbestos exposure. The Securities and Exchange Commission and the Department of Justice are investigating.

Defense attorneys Ryan Cobbs of Carlton Fields in West Palm Beach and Melvin Bailey and Ursula Henninger of King and Spalding's Austin and Charlotte offices did not respond to requests for comment by deadline.

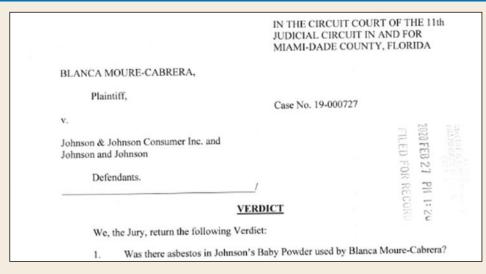
Kunen and Becerra enlisted three medical experts to bolster their claims—a lab scientist, an epidemiologist and a pulmonologist/pathologist, who explained to jurors how asbestos fibers in baby powder gets into the body, and how it caused the plaintiff's disease.

In an Engle progeny-esque twist, the plaintiffs team were able to use internal documents to demonstrate that, since the 1970s, executives at Johnson & Johnson knew that there were trace amounts of asbestos in talc obtained from Italy and Vermont but didn't tell customers. The documents also revealed different testing methods the company used.

"I think that was helpful to support some of the medical and scientific opinions some of our experts had, as we used different Johnson & Johnson documents where similar things were being discussed," Kunen said.

The biggest challenge for the plaintiff was deciding how much information on asbestos and mesothelioma was too much for jurors.

Kunen's takeaway: "Simplify everything, and try not to get in



the weeds on too many aspects of the medicine and the science."

'Her hero'

Plaintiff Moure-Cabrera took to the stand, telling jurors about how cancer changed her life. Before getting sick, she had worked as a special education teacher for Miami-Dade County after obtaining her degree in education from Cuba. After raising her two sons as a single mom, Moure-Cabrera obtained a degree in special education from Barry University in Miami Shores, and a master's degree in guidance counseling from St. Thomas University in Miami Gardens.

"She deals with pain on a daily basis. She's taking pain medication every day and has lost a lot of weight," Kunen said. "What she was describing on the stand is she's unrecognizable from how she used to look, so it's affected her mentally."

Kunen said Moure-Cabrera used to be particularly outgoing, often spending time with friends she'd made through decades of teaching in Homestead. But now, she dislikes being seen in public.

One of Moure-Cabrera's sons has moved in with her and told jurors how roles have reversed.

"He helps bathe her from time to time, gets her dressed. Whatever she needs, he gets it," Kunen said. "He's been at every single doctor's appointment, so he's been her hero."

It took jurors just 45 minutes to find that there was asbestos in the baby powder the plaintiff used, and to find the defendant negligent in causing her cancer. They awarded \$3 million in past medical expenses and \$6 million in past and future pain and suffering.

Although the verdict is a win for the plaintiff, Kunen said the inescapable truth is that Moure-Cabrera will die of her illness.

Johnson & Johnson still faces thousands of lawsuits over alleged asbestos contamination across the country. The defense in this case has not made a filing in response to the verdict.

Raychel Lean reports on South Florida litigation for the Daily Business Review. Send an email to rlean@alm.com, or follow her on Twitter via @raychellean.