

III. Appeals Court Upholds \$45M Talc Verdict Against J&J

By **Hailey Konnath**

Law360 (July 10, 2026, 10:24 PM EDT) -- A split Illinois state appeals court on Friday refused to disturb a jury's verdict awarding \$45 million to the family of a woman who developed mesothelioma and died after using Johnson & Johnson's talc baby powder for decades, ruling that her case warranted both wrongful death and shortened life damages.

The Appellate Court of Illinois First District panel majority upheld the wrongful death and personal injury verdict in favor of the family of Theresa Garcia, who died in 2020 at age 53. It also said the jury was correct in finding that Johnson & Johnson Holdco Inc. and Kenvue Inc. can be held liable as successors to J&J's former consumer products business. J&J created Holdco to isolate its growing talc liability claims, and it also spun off its consumer healthcare products, including baby powder, into Kenvue.

Writing for the majority, Illinois Appellate Judge Michael B. Hyman shot down J&J's arguments that the trial court shouldn't have allowed damages under the Survival Act, erred in several evidentiary rulings and also shouldn't have applied the prejudgment interest statute to what it characterized as future damages.

"The trial court correctly instructed the jury on damages for Garcia's claim brought under the Survival Act and successor liability, and its evidentiary rulings did not deprive Johnson & Johnson of a fair trial," Judge Hyman said. "The injury at issue is not Garcia's death itself but the injury she experienced before death."

Judge Aurelia Pucinski concurred with Judge Hyman's opinion.

However, Judge Celia Gamrath dissented in part, saying she disagreed with the majority's "recognition of shortened life expectancy damages after Garcia's death."

"Here, the jury awarded \$30 million in survival damages for 30 years of life Garcia never lived, in addition to \$12 million for her wrongful death," Judge Gamrath said. "The majority's decision will now turn shortened life expectancy damages into a routine component of every survival action paired with a wrongful death claim."

The judge added that if Illinois is to "adopt this sweeping expansion of survival recovery, it should come from our supreme court or the general assembly."

Lisa Shirley of Dean Omar Branham Shirley LLP, counsel for the family, on Friday called it "an important victory for our client and for families seeking accountability from corporations that attempt to avoid responsibility through corporate restructuring."

"The appellate court carefully considered each of Johnson & Johnson's arguments and affirmed the judgment in its entirety," Shirley said in a statement.

Dean Omar noted in the firm's statement that the decision "also carries broader significance because Johnson & Johnson has repeatedly maintained that adverse talc verdicts rarely survive appellate review."

Trey Branham, another lawyer at the firm, said the court's decision stands in "direct contrast" to the

company's assertions.

"We believe this decision sends a powerful message that jury findings in these asbestos cases will be upheld when they are supported by the evidence and the law," Branham said in the statement.

Johnson & Johnson didn't immediately respond to a request for comment late Friday.

Garcia died six months after being diagnosed with mesothelioma. She had used the baby powder on herself, her children and her grandchildren for most of her life, according to her suit. Garcia was the one who first sued, and her daughter took over as a representative of her estate after her death.

Her family claimed that J&J knew of the dangers of asbestos as early as the 1930s and that while Garcia was using the company's talc products, J&J "regularly and repeatedly" received information that the talc in its baby powder contained it. Yet it never placed any sort of label on its products indicating there could be asbestos fibers present, never disclosed or reported to the public that the powder could cause fatal diseases with prolonged use and failed to develop and fully implement a safer alternative to talc in its baby powder, the suit said, even when other companies used cornstarch.

After a four-week trial, the jury found that Garcia's yearslong exposure to asbestos fibers in Johnson's Baby Powder led to her mesothelioma. It awarded **\$45 million to Garcia's children**, \$30 million of which was awarded under the Survival Act.

Each of Garcia's six children was awarded \$2 million for past and future loss of their mother and for past and future grief, sorrow and mental suffering. In addition, jurors awarded \$30 million for Garcia's shortened life expectancy, \$1 million for her pain and suffering, \$1 million for her emotional distress, \$500,000 for her loss of a normal life and \$500,000 for her disfigurement.

Cook County Circuit Judge Patrick Sherlock **rejected J&J's request** for judgment or a new trial in October 2024, finding that none of the company's posttrial evidentiary or jury instruction challenges constitute an error prejudicial enough to hit restart. And although the jury should not have filled out a verdict form allowing it to award separate amounts for each of Garcia's children, "the court simply cannot conclude that its mistaken use of the proposed verdict form resulted in prejudicial error" since case precedent holds otherwise, the judge said at the time.

In Friday's majority opinion, Judge Hyman agreed with Judge Sherlock.

"The Survival Act bars recovery for harms never sustained during life, but it does not extinguish injuries already suffered where death later occurs," he said. "The relevant inquiry is whether the injury accrued during the decedent's lifetime. Here, it did."

He added, "Garcia experienced and sued for that injury before her death; the Survival Act permits her estate to continue the claim."

Judge Hyman also disagreed with J&J's argument that the damages award constitutes double recovery.

"Double recovery occurs when the same injury is compensated twice," he said. "That is not what happened here because the Survival Act and Wrongful Death Act compensate different injuries suffered by different claimants."

Illinois Appellate Judges Michael B. Hyman, Aurelia Pucinski and Celia Gamrath sat on the panel for the First District.

Garcia's family is represented by Christian Luciano Santiago of Vogelzang Law PC, David L. Franklin and Christopher M. Walling of Massey & Gail LLP and Lisa W. Shirley, Rebecca Cucu and Lina Chagoya of Dean Omar Branham Shirley LLP.

Kenvue Inc. and Johnson & Johnson Holdco (NA) Inc. are represented by Michael A. Scodro, Brett E. Legner, Timothy B. Leake and Anastasiya K. Lobacheva of Mayer Brown LLP and H. Patrick Morris and David F. Fanning of Johnson & Bell Ltd.

The case is Stephanie Salcedo v. Cyprus Amax Minerals Co. et al., case numbers 1-24-2199 and 1-24-2273, in the Appellate Court of Illinois' First District.

--Additional reporting by Lauraann Wood. Editing by Linda Voorhis.