



FALL 2020

DUSTING OFF THE TRUTH

Ovarian cancer + talc-based products.

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GOLDENBERGLAW 
PRODUCTS LIABILITY & PERSONAL INJURY ATTORNEYS

WE'LL SEE YOU
AGAIN SOON

BUSINESS INTERRUPTED: THE SMALL BUSINESS CRISIS.

While many small businesses carry property insurance coverage, which includes a coverage provision for business interruption and profits lost, insurance carriers are largely denying claims for losses related to COVID-19. Carriers are often arguing COVID-19 did not cause physical damage to trigger coverage. However, the definition of physical damage is not always clear. At the least, small business owners pay for property insurance to cover losses to their business. Now insurers across the country are denying responsibility to cover these losses.

What is at stake here is enormous, and the American economy will no doubt be impacted by whether carriers are required to cover their insureds for COVID-19 related losses. Business owners are now forced to go to the courts to get determinations on their denied claims. To discuss a business interruption policy, please contact GoldenbergLaw Partner Laura Pittner at lpittner@goldenberglaw.com.

BY THE NUMBERS

110,000

Researchers at Harvard estimated that nearly 110,000 small businesses across the country had decided to shut down permanently between early March and early May, based on data collected in weekly surveys by Alignable, a social media network for small-business owners.

44%

Small businesses account for 44 percent of all U.S. economic activity, according to the S.B.A.

\$610
BILLION

Property/casualty insurance consists primarily of auto, homeowners and commercial insurance. Net premiums written for the sector totaled \$618.0 billion in 2018.



STUART GOLDENBERG
SENIOR PARTNER

*"Manufacturers of products
have a duty to their users to design
safe products."*

Safe design is not an accident.

WHAT MAKES A PRODUCT'S DESIGN DEFECTIVE?

*"An ounce
of prevention
is worth a
pound of cure."*

BENJAMIN FRANKLIN

A young man is cleaning up near a machine when he is captured in its moving parts. He suffers a severe traumatic brain injury when he is just trying to do his job. He will never work again, care for his child or even care for himself without constant supervision. Had this machine been properly designed and guarded, that tragic event would have never occurred, and he would be fine today.

Manufacturers of products have a duty to their users to design safe products. This starts with safety built into the design. This is true whether that product is a saw that kicks back, a medical device that fails, or even a household appliance that starts a fire. This means anticipating the typical uses of the product and designing away hazards if possible.

In every product case we handle, the question is the same: Was a "safety design pyramid" utilized in the design processes? If not, the product is likely to be defective and unreasonably dangerous. The safety design pyramid requires that a manufacturer's engineers perform a risk/hazard analysis to identify the hazards, then try to: (1) first, design them away (2) guard against them or (3) if neither design nor guarding is feasible, then to warn about the hazards.

In the case of our young client who was injured by a machine, a safety guard was never placed around rotating equipment with lots of moving parts. It was an honor for us to hold the manufacturer of that machine accountable for designing an unsafe product. Safe design is not an accident.



TRUST GONE WRONG.

“Just a sprinkle a day keeps the odor away” is what Johnson & Johnson (J&J) has told women across the nation since the 1980s, encouraging them to use the company’s talc-based baby powder for genital dusting. If the slogan alone doesn’t ruffle your feathers, consider that the company has been warned about the link between its talc-based products and ovarian cancer since the 1970s and its own internal documents show it has been aware of the presence of asbestos – a known carcinogen to humans – in the products for decades.

Studies dating back to 1971 have evidenced a potential link between talc-based baby powder and ovarian cancer. Specifically, researchers have found that ovarian cancer can be caused by long-term irritation of the ovaries due to the presence of talcum fibers within ovarian tissue. Some studies have found that women who regularly use talc-based products for genital dusting have over three times the risk for developing ovarian cancer compared to non-talc users.

To this day, J&J has never warned consumers about the increased risk of ovarian cancer associated with its talc-based products. However, recent developments in the talcum powder litigation have increasingly put J&J in a precarious legal position.

Talcum Powder Recall

In October 2019, J&J announced its first ever recall of talc-based products after FDA testing found trace amounts of asbestos in the products. As a result, the company recalled over 33,000 bottles of talc-based baby powder. Asbestos exposure is highly toxic and commonly linked to mesothelioma and cancers of the lung, larynx, and ovary. Talc is often mined from deposits that can contain asbestos.

Consolidation of Talcum Powder Litigation

Thousands of lawsuits have been filed claiming that J&J’s talc-based products contain asbestos and cause ovarian cancer and mesothelioma. In October 2016, a multidistrict litigation (MDL) was formed by the U.S. Judicial Panel on Multidistrict Litigation and now contains more than 16,000 talcum powder cases. The MDL is overseen by U.S. District Judge Freda L. Wolfson in the United States District Court for the District of New Jersey.

Daubert Ruling

In April 2020, Judge Wolfson ruled that five expert witnesses for the plaintiffs can testify before juries in the MDL’s upcoming bellwether trials. This is the first ruling on the reliability of the plaintiffs’ expert witnesses in the talcum powder MDL. The ruling allowed the experts to testify that epidemiological studies show J&J’s talc-based products can contribute to the development of ovarian cancer and that J&J’s talc-based products contain asbestos.

Johnson & Johnson Discontinuing Sales in U.S. and Canada:

In May 2020, J&J discontinued sales of its talc-based baby powder products in the United States and Canada. J&J claimed that this was a “commercial decision” due to a 60% decline in sales since 2017. However, the decision came shortly after Judge Wolfson’s Daubert ruling all but affirmed bellwether trials will be heard in the near future. The company also faces increasing pressure from state and federal investigations into the safety of its talc-based products.

Bellwether Trials

Judge Wolfson’s ruling paves the way for upcoming bellwether trials in the talcum powder litigation. In bellwether trials, specific individual plaintiffs are chosen from within the much larger group of all plaintiffs with filed cases. The idea behind the bellwether process is for these individual representative cases to be tried and serve as “bellwethers” for other plaintiffs’ trials, giving plaintiffs and defendants critical information regarding the litigation as a whole and allowing for more accurate valuation of the entire group’s claims. Bellwether trials in the MDL before Judge Wolfson are likely to begin sometime in 2021. ■

MY JOURNEY OF RECOVERY TO HEALING

A few years ago, I was notified by a manufacturer that I had received contaminated medical supplies. The use of these medical supplies resulted in a significant and life-changing infection, physical damage, and disability to me. It would take me years to regain a level of functionality and recovery. The impact to my life was felt physically, emotionally, and financially.

I was hospitalized with a life-threatening infection that caused catastrophic damage to my joints and my body. Multiple treatments, therapy and surgeries led to complications, which only increased the physical, emotional, and financial issues I faced. I struggled with depression and anger, often feeling alone and having no one to turn to. A family friend recommended I contact GoldenbergLaw. He felt this law firm would be a good fit for my type of case. I contacted GoldenbergLaw immediately, and they scheduled an intake interview and a meeting based on my availability.

The meeting went well, and Mr. Goldenberg and Mr. Lauricella answered all of my questions and even answered some questions I did not even think to ask. I left the meeting that day feeling like I found a dedicated team that really cared about me and what I was going through. They made themselves available to me at any hour and provided a supportive environment that allowed me to focus on my upcoming surgeries and the long road to recovery.

My team at GoldebergLaw was thorough. They took the time to explain the process and set realistic expectations for my case. They explained that the case process was slow and tedious at times because they needed to obtain information and medical records, they needed to understand the timeline, and they needed to engage experts to build the best possible case. I was in contact with them on a monthly basis (more frequently if I needed to be) providing them with updates on my recovery process and all of the medical appointments, therapy, and surgeries that were scheduled.

As my case progressed I faced many challenges emotionally, physically, and financially. The support I received from my team at GoldenbergLaw allowed me to focus on what was important: dealing with the physical challenges and the adaptations I would need to make in my life in order to pursue a full recovery.

The firm's dedication to my case and the collective expertise they brought on my behalf resulted in a positive outcome.

This result allowed me to rebuild my life and to find new ways to thrive despite the ongoing challenges I would continue to face. Even after my case had resolved, my GoldenbergLaw team continued to remain in contact with me. They checked on me and my progress and continued to support me on my road to recovery.

My experience with everyone at GoldenbergLaw was truly amazing. So much so that when a friend reached out and asked if I knew an attorney who could help her I did not hesitate to recommend the GoldenbergLaw firm. I am confident that they will do everything they can to help her reach a similar result.

“The justice system is the backbone of any functioning society.”

BEN STELLPFLUG
ASSOCIATE ATTORNEY

GoldenbergLaw’s Associate Attorney, Ben Stellpflug, was drawn to the law through his belief that the justice system is the backbone of any functioning society and his desire to help clients pursue and achieve justice. Ben focused on business during his undergraduate years, but did not feel called to pursue a career in the corporate world.

Ben graduated from Mitchell Hamline School of Law in Saint Paul, Minnesota and was sworn in as an attorney in November 2019.

THE
GLAW

5

GET TO
KNOW
BEN

1. What inspired you to become an attorney?

The justice system is the backbone of any functioning society. Despite its flaws, I have always wanted a seat at that table--a chance to help clients pursue and achieve justice.

2. What brought you to work at GoldenbergLaw?

I focused on business in undergrad, but the corporate world did not appeal to me as much as I got older. I interviewed for a legal assistant position with the firm in 2012 after graduating from college, and the rest is history.

3. What is your work history at GoldenbergLaw?

I started as a legal assistant in 2012, and my work was focused on complex cases and large mass torts such as Medtronic Infuse and Testosterone therapies. I was able to gain the ability to work up complex cases and handle large cases at a young age.

4. What do you enjoy most about working at GoldenbergLaw?

The culture at the firm is outstanding. I enjoy working towards a common goal with everyone at GoldenbergLaw.

5. Share something unique about yourself?

I love learning new things and meeting new people. Relationships have always been the most important thing in my life.



What should you
know about talc?

g^{law}

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AREAS OF EXPERTISE

Products Liability
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Defective Medical Devices
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Catastrophic Injury
Insurance Disputes