

OPINION SUMMARY
MISSOURI COURT OF APPEALS EASTERN DISTRICT

DIVISION TWO

ROBERT INGHAM, ET AL.,) No. ED107476
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Respondent,) Appeal from the Circuit Court of
) the City of St. Louis
vs.)
) Honorable Rex M. Burlison
JOHNSON & JOHNSON, ET AL.,)
)
Appellant.) Filed: June 23, 2020

Johnson & Johnson (“J&J”) and Johnson & Johnson Consumer Companies Inc. (“JJCI”) (collectively, “Defendants”) appeal the trial court’s judgment after a jury verdict for Gail L. Ingham and twenty-one other plaintiffs (collectively, “Plaintiffs”) on their product liability claims. Defendants bring ten points on appeal. In their first point, Defendants argue the trial court erred in denying their motion for severance. In their second point, Defendants argue the trial court erred in overruling their objection to a statement made by Plaintiffs’ counsel during closing argument. In their third point, Defendants argue the trial court erred in finding they were subject to personal jurisdiction in Missouri on the claims of those seventeen Plaintiffs not residing in Missouri (the “Non-Resident Plaintiffs”). In their fourth through seventh points, Defendants challenge the admissibility of various expert testimony. In their eighth point, Defendants argue the trial court erred in denying their motion for directed verdict because Plaintiffs failed to make a submissible case for causation. In their ninth point, Defendants argue the trial court erred in denying their motion for directed verdict because Plaintiffs failed to make a submissible case for punitive damages. Last, Defendants argue the trial court erred in denying their motion to vacate or remit the jury’s punitive damages award.

REVERSED IN PART AND AFFIRMED IN PART AS MODIFIED.

DIVISION II HOLDS: The trial court did not err in denying Defendants’ motion for severance. Although there are obvious differences among Plaintiffs’ claims, those claims arose out of a series of occurrences (i.e., using the Products) and at least one common question of law or fact will arise in resolving those claims (e.g., whether Defendants negligently manufactured and produced the Products, whether their testing was deficient, or whether their warnings were inadequate). Any dangers of prejudice arising from joinder were adequately addressed by the trial court’s instructions to the jury to consider each Plaintiff’s claim separately.

The trial court similarly did not err in overruling Defendants’ objection to a statement made by Plaintiffs’ counsel during closing argument. The trial court has wide discretion to allow Plaintiffs’ counsel to fairly respond to Defendants’ counsel’s argument. Regardless, the trial court properly instructed the jury, and we presume the jury will follow the trial court’s instructions “even to the extent that doing so might require the jury to ignore specific argument

of counsel in conflict.” *Minze v. Mo. Dep’t of Public Safety*, 541 S.W.3d 575, 583 (Mo. App. W.D. 2017) (citing *Peterson v. Progressive Contractors, Inc.*, 399 S.W.3d 850, 861 (Mo. App. W.D. 2013)).

The trial court did not err in finding Defendants were subject to personal jurisdiction in Missouri on the claims of the five Missouri Plaintiffs. The trial court also did not err in finding JJCI was subject to personal jurisdiction in Missouri on the claims of fifteen Non-Resident Plaintiffs who testified they used Shower to Shower Shimmer Effects (“Shimmer”), which was manufactured, packaged, and labeled in Missouri. However, the trial court erred in finding JJCI was subject to personal jurisdiction on the claims of two Non-Resident Plaintiffs, Allan Koman on behalf of Annette Koman and Marcia Owens, who denied using Shimmer and testified they only used Johnson’s Baby Powder. The record is devoid of evidence JJCI engaged in any activities related to Johnson’s Baby Powder, beyond the executing of contracts with a Missouri-based corporation, in Missouri. Contracting with an out-of-state party alone cannot automatically establish sufficient minimum contacts in the out-of-state party’s home forum. *Burger King Corp. v. Rudzewicz*, 471 U.S. 462, 478 (1985). The trial court also erred in finding J&J was subject to personal jurisdiction on the claims of all seventeen Non-Resident Plaintiffs because Plaintiffs failed to plead and prove all elements of agency.

The trial court did not abuse its discretion in admitting the challenged expert testimony of Dr. Longo, Dr. Madigan, Dr. Egilman, or Dr. Felsher. Each of their testimonies met the standards of admissibility under section 490.065.

The evidence, when viewed in the light most favorable to the verdict, reveals Plaintiffs made a submissible case for causation. Plaintiffs presented testimony from several experts that asbestos causes ovarian cancer and asbestos-containing talc causes ovarian cancer; the talc in Johnson’s Baby Powder contained asbestos; and exposure to asbestos-containing talc from Defendants’ Products specifically caused Plaintiffs’ ovarian cancer. Based on the evidence Plaintiffs adduced at trial, a jury could have reasonably found Defendants’ Products caused Plaintiffs injuries.

The evidence, when viewed in the light most favorable to the verdict, also reveals Plaintiffs made a submissible case for punitive damages. According to Plaintiffs’ evidence, Defendants knew their products contained asbestos for several decades and knew of the potential safety hazards caused by the presence of asbestos in cosmetic talc products. Plaintiffs’ evidence further showed Defendants worked tirelessly to ensure the industry adopted testing protocols not sensitive enough to detect asbestos in every talc sample to protect their own interests. The jury, exercising its “right to determine credibility, weigh the evidence and draw justifiable inferences of fact,” could have reasonably concluded it was highly probable Defendants’ conduct “was outrageous because of evil motive or reckless indifference” based on this evidence. *Peters v. Gen. Motors Corp.*, 200 S.W.3d 1, 25 (Mo. App. W.D. 2006) (quoting *Lopez-Vizcaino v. Action Bail Bonds, Inc.*, 3 S.W.3d 891, 893 (Mo. App. W.D. 1999)).

The punitive damages awards assessed against Defendants are not grossly excessive considering Defendants’ actions of knowingly selling Products that contained asbestos to consumers. However, because “any judgment entered without personal jurisdiction over a party is void,” the actual and punitive damages awards against Defendants must be proportionally reduced to reflect the trial court lacked personal jurisdiction over JJCI on the claims of two Non-Resident Plaintiffs and J&J on the claims of all seventeen Non-Resident Plaintiffs. See *Focus Bank v. Scott*, 504 S.W.3d 904, 907 (Mo. App. S.D. 2016); *Ogilvie v. Fotomat Corp.*, 641 F.2d 581, 586-87 (8th

Cir. 1981); *Senn v. Manchester Bank of St. Louis*, 583 S.W.2d 119, 138-39 (Mo. banc 1979). We enter judgment for \$500 million in actual damages against JJCI and \$125 million in actual damages against J&J jointly and severally with JJCI. We further enter judgment for \$900 million in punitive damages against JJCI and \$715,909,091 in punitive damages against J&J, rounded to the nearest dollar amount.

Accordingly, the judgment against JJCI is reversed in part on the claims of two Non-Resident Plaintiffs, Allan Koman on behalf of Annette Koman and Marcia Owens, for lack of personal jurisdiction. The judgment against J&J is reversed in part as to all seventeen Non-Resident Plaintiffs for lack of personal jurisdiction.

Because no further adjudication is necessary, this Court may give such judgment as ought to be given under Rule 84.14. *City of De Soto v. Nixon*, 476 S.W.3d 282, 291 (Mo. banc 2016); *see also* Rule 84.14. This Court enters judgment under Rule 84.14 against JJCI for \$500 million in actual damages and J&J for \$125 million jointly and severally with JJCI to reflect the proportional loss of the two Non-Resident Plaintiffs from JJCI's actual damages award and the proportional loss of the seventeen Non-Resident Plaintiffs from J&J's actual damages award. We further enter judgment under Rule 84.14 against JJCI for \$900 million in punitive damages and against J&J for \$715,909,091 in punitive damages to reflect the proportional loss of the two Non-Resident Plaintiffs from JJCI's punitive damages award and the proportional loss of the seventeen Non-Resident Plaintiffs from J&J's punitive damages award. In all other respects, the judgment is affirmed as modified.

Opinion by: Philip M. Hess, P.J.
Kurt S. Odenwald, J. and Lisa P. Page, J. concur.

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THIS SUMMARY IS NOT PART OF THE OPINION OF THE COURT. IT HAS BEEN PREPARED FOR THE CONVENIENCE OF THE READER AND SHOULD NOT BE QUOTED OR CITED.
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