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Henderson v. Taylor-Seidenbach, Inc.

Court of Appeal of Louisiana, Fourth Circuit

November 16, 2026, Decided

NO. 2026-CA-0208 CONSOLIDATED WITH: NO. 2026-CA-0209

Reporter
2026 La. App. LEXIS 2457 *; 2026 LX 786770; 2026-0208 (La.App.4 Cir. 11/16/26)

JEANNINE HENDERSON VERSUS TAYLOR-SEIDENBACH, INC., ET AL.;CONSOLIDATED WITH: JEANNINE HENDERSON VERSUS TAYLOR-SEIDENBACH, INC., ET AL.

Notice: THIS DECISION IS NOT FINAL UNTIL EXPIRATION OF THE FOURTEEN DAY REHEARING PERIOD.

Prior History: **[*1]** APPEAL FROM CIVIL DISTRICT COURT, ORLEANS PARISH. NO. 2022-10279, DIVISION "L-6". Honorable Kern A. Reese, Judge.

Disposition: AFFIRMED.

Core Terms

asbestos, mesothelioma, trial court, exposure, causation, powder, disease, ***talc***, general damages, fiber, baby, jnov, pain, crocidolite, lung, chrysotile, deliberate, medical expenses, exposure to ***asbestos***, substantial factor, jury instructions, expose, dose, ***asbestos*** case, award damages, talcum powder, ***asbestos*** exposure, cosmetic, appellate court, tremolite

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Judges: Court composed of Chief Judge Roland L. Belsome, Judge Sandra Cabrina Jenkins, Judge Karen K. Herman.

Opinion by: Karen K. Herman

Opinion

[Pg 1] This is a mesothelioma case resulting in a jury verdict rendered in favor of Joshua and Justin Henderson (collectively "Plaintiffs") and against Defendants, Johnson & Johnson and Pecos River ***Talc***, LLC (collectively "J&J"), in their wrongful death and survival action stemming from the death of their mother, Jeannine Henderson ("Mrs. Henderson"). The trial court signed a judgment in accordance with the jury verdict on July 16, 2025. On October 16, 2025, the trial court denied J&J's Motion for Judgment Notwithstanding the Verdict ("JNOV") and granted Plaintiffs' Motion for Partial JNOV increasing the jury's award. J&J filed this consolidated appeal. For the reasons set forth below, we affirm.

STATEMENT [*2] OF FACTS AND PROCEDURAL HISTORY

In November of 2021, Mrs. Henderson was diagnosed with mesothelioma resulting from her exposure to ***asbestos***. She passed away in February of 2024. Prior to her death, Mrs. Henderson filed a petition for damages against various defendants. Through a series of amended petitions, J&J was named as a defendant, wherein it was alleged that J&J sold ***asbestos***-containing talcum powders to which [Pg 2] Mrs. Henderson was exposed. Mrs. Henderson alleged that she used J&J talcum powders, particularly Johnson's Baby Powder and Shower-to-Shower, from the 1950's to at least 2020. It was further alleged that J&J knew its talcum powder products contained ***asbestos*** fibers that its users would inevitably inhale, and that relatively low cumulative doses of exposure causes mesothelioma. Following Mrs. Henderson's death, her sons amended the petition to assert a survival and wrongful death claim. The matter proceeded to trial against J&J.

Following a nine-week trial, the jury awarded $255,000.00 in general damages on the survival action plus $2,570,206.09 in medical expenses. Joshua and Justin were awarded $90,000.00 each on their wrongful death claims.[1] The trial court entered **[*3]** a judgment in accord with the jury verdict on June 16, 2025. Plaintiffs filed a Motion for Partial JNOV seeking an increase in damages. J&J opposed the motion and filed a Motion for JNOV as to the jury's determination on causation.

Judgment was rendered on October 16, 2025, denying J&J's Motion for JNOV. In granting Plaintiffs' Motion for Partial JNOV, the trial court increased the general damage award on the survival action to $4,500,000.00. The award for medical expenses remained the same. The damage award on Joshua and Justin's wrongful death action was increased to $1,000,000.00 each. J&J's timely appeal followed.

[Pg 3] ***Trial testimony***

Mark R. Bailey ("Mr. Bailey") qualified as an expert in the field of geology, mineralogy, naturally occurring ***asbestos***, testing and identifying ***asbestos***, minerals exploration and mining, and microscopy. Testifying on behalf of plaintiffs, Mr. Bailey stated that ***asbestos*** has been reported as a common occurrence in ***talc*** for decades. He further stated that chrysotile ***asbestos***, anthophyllite ***asbestos***, and tremolite ***asbestos*** have been found in J&J Baby Powder and Shower-to-Shower. He testified that the ***talc*** mines in Vermont and Italy, where J&J sourced **[*4]** their ***talc***, routinely contained ***asbestos*** that went into their cosmetic talcum power products. Mr. Bailey stated that, at least in 1971, J&J knew that the geology of the area supported ***asbestos***. On cross-examination, Mr. Bailey acknowledged that he has never tested any ***talc*** from the Vermont or Italian mines to determine whether ***asbestos*** was present.

Arnold R. Brody, Ph.D. ("Dr. Brody") testified on behalf of Plaintiffs. He was qualified as an expert in cellular and molecular biology, experimental pathology, ***asbestos*** and the mechanisms of how it causes disease. He explained that all ***asbestos*** varieties cause mesothelioma, but some are more potent than others. Dr. Brody testified that there is a long latency period for mesothelioma once a person is exposed.

Dr. Brody testified that whenever an individual is exposed to ***asbestos***, that ***asbestos*** contributes to the development of disease. He further stated that breathing in ***asbestos*** fibers below background level[2] "for most people" should not contribute to the development of mesothelioma. He qualified that statement by explaining it is not necessarily safe for everyone; some people might be more susceptible.

[Pg 4] Dr. Brody was asked to assume **[*5]** that Mrs. Henderson, who was born in 1954, used J&J Baby Powder nearly daily almost her entire life until maybe a year or so before she got sick in 2021, and, further, that she regularly used J&J's Shower-to-Shower for many years. He was also asked to assume that there were amounts of ***asbestos*** that were present in most of the bottles of the J&J talcum powder products Mrs. Henderson used. Dr. Brody was questioned whether that was the type of exposure from a pathological view that can cause mesothelioma. Dr. Brody responded, "[a]sbestos exposure on a regular basis like that, sure."

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[1] The jury apportioned 47% fault to J&J.

[2] Background level is generally considered a safe level of exposure to ***asbestos***.

Dr. Brody testified that he was familiar with a study from the National Cancer Institute, which found that J&J Baby Powder could induce mesothelioma. He explained that the National Cancer Institute was doing injection studies with different kinds of particles to see if they cause mesothelioma, and one of the ones that did was J&J Baby Powder.

Dr. Brody explained that whenever an individual is exposed to ***asbestos***, that dose contributes to the development of the disease. He explained that "dose response" means the more you are exposed to ***asbestos***, the more likely you are to get the disease. He stated as follows: **[*6]**

> [w]hen a person gets an ***asbestos*** disease, since the lung is not discriminating, whatever the person is exposed to from whatever sources make that person's dose. It's that dose that causes the person's disease. Fibers from each of the exposures will be doing the same thing.

Dr. Brody acknowledged that Mrs. Henderson lived on the West Bank of the Mississippi River, where the Johns-Manville plant and other industrial sites were located. He was aware that the area was designated an EPA ***asbestos*** Superfund site and was determined to have the highest rate of mesothelioma in any county in [Pg 5] the United States.[3] However, Dr. Brody could not comment on what exposure Mrs. Henderson may have had from living in the affected area.

David Madigan, Ph.D ("Dr. Madigan") was tendered as an expert in statistics and epidemiology. Testifying on behalf of Plaintiffs, Dr. Madigan explained that he relied on a study conducted by Dr. William Longo ("Dr. Longo"), wherein he tested fifty containers of J&J Baby Powder. The products came directly from J&J's museum, covering a few decades. Dr. Longo found that thirty-six out of fifty containers contained ***asbestos***. Considering that Mrs. Henderson was a lifetime user **[*7]** of J&J ***talc*** products, and calculating that Mrs. Henderson used one hundred containers in her lifetime, Dr. Madigan opined that the chance that she was exposed to ***asbestos*** from J&J ***talc*** would be 99.99 %. Out of one hundred containers, 95% probably contained ***asbestos***.

Dr. Madigan explained that his calculations as a statistician were made using Dr. Longo's data. He did not perform his own testing of the product and did not consult with any other experts.

Dr. Steven Haber ("Dr. Haber") was tendered as an expert in pulmonary and internal medicine, occupational and environmental lung disease specifically related to ***asbestos***, ***asbestos*** related diseases including mesothelioma and general and specific causation of ***asbestos*** related disease.

Dr. Haber interviewed Mrs. Henderson and reviewed her medical records. He reported that in November of 2021 Mrs. Henderson started experiencing [Pg 6] shortness of breath and chest pains. She reported losing weight. A chest x-ray showed a pleural effusion, which is a fluid collection outside of the lung, compressing the lung. She was diagnosed with malignant mesothelioma.

She was not a candidate for surgery. She was started on immunotherapy to slow the progression **[*8]** of the disease but her condition worsened. The tumor started to eat into the laryngeal nerve causing her tremendous hoarseness. By April of 2023, she was having tremendous amounts of pain. Her cancer had eaten into or through the ribs, the chest wall, and the nerves. She had to discontinue the immunotherapy because she could not tolerate the pain that the treatment caused. A CT scan in October of 2023 showed that the cancer had spread to other areas.

In November of 2023, Mrs. Henderson was told her condition was terminal, and she was placed on hospice. Dr. Haber stated that Mrs. Henderson was given multiple pain medications that were five to ten times more powerful than morphine in additional to fentanyl patches, which is fifty to one hundred times more powerful than morphine. Mrs. Henderson was still in tremendous pain.

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[3] It is undisputed that Johns-Manville operated a plant on the West Bank that manufactured cement pipe and other materials that contained up to 60 % ***asbestos*** (including chrysotile and crocidolite). ***Asbestos***-containing aggregate material was distributed to the community for use as driveways and sidewalks. The material was designated by the Environmental Protection Agency ("EPA") as an immediate threat and it was later remediated. The plant operated from 1929 to 1975. Mrs. Henderson lived approximately 4.7 miles from the plant.

By 2024, Mrs. Henderson was bedridden and her condition was deteriorating. She was placed on oxygen and given antianxiety medications. He stated that as the tumor ate away at her lungs, she would feel like she was suffocating. She passed away on February 2, 2024. Her cause of death was mesothelioma. Mrs. Henderson's videotaped deposition taken shortly before her death **[*9]** was played for the jury.

A post-mortem tissue sample performed by Dr. William Longo ("Dr. Longo") on Mrs. Henderson's lungs identified chrysotile ***asbestos***, plated ***talc*** and tremolite ***asbestos***. It did not find any commercial ***asbestos*** such as crocidolite. He further acknowledged that a tissue digestion performed by Dr. Victor Roggli for [Pg 7] J&J found crocidolite ***asbestos*** in her lung. Dr. Haber considered this to represent an additional exposure that added to Mrs. Henderson's cumulative dose.[4]

Dr. Haber understood that Mrs. Henderson used J&J Baby Powder, Shower-to-Shower, and other brands of talcum powder on a near daily basis for almost all of her life. He explained that she routinely powdered her bed sheets and pillows with talcum powder. She used it on her two children. As a young child she played around by putting it on the floor. Dr. Haber testified that ***asbestos*** in powdered form is the worst because it is already respirable or friable. He explained that the worst exposure would be in the home because it is an enclosed space. Moreover, it will spread throughout the home and it will stay in the air for a long time.

Dr. Haber opined that based on everything he reviewed, J&J Baby Powder **[*10]** and Shower-to-Shower can cause mesothelioma because it is "a product that contained ***asbestos***." He considered Mrs. Henderson's exposure to ***asbestos*** in the talcum powder products which she used from the 1950's to approximately 2020 to be a substantial factor in causing mesothelioma.

In forming his opinion Dr. Haber relied on a number of published case studies regarding cosmetic ***talc*** users developing mesothelioma. He also considered a July 20, 1972 promulgation by the Food and Drug Administration ("FDA") concluding that "[t]he amounts of ***asbestos*** fibers dispersed by the use of cosmetic ***talc*** contain more than trace amounts of this contaminant, ***asbestos***, exceed the standards promulgated for occupational exposure."

Dr. Haber was asked to review documents contained in J&J's files. In a July 11, 1977 document directed to medical professionals, J&J advised that their ***talc*** [Pg 8] "never has been found to contain ***asbestos*** and Johnson's Baby Powder is 97 percent ***talc***." However, Dr. Haber confirmed that in a July of 1971 company document, a J&J scientist reported that Dr. Arthur Langer ("Dr. Langer") with Mt. Sinai School of Environmental Science reported that his electron microscopy of J&J Baby **[*11]** Powder identified the presence of chrysotile ***asbestos***.

On cross-examination, Dr. Haber acknowledged that it was possible that Mrs. Henderson had other ***asbestos*** exposures from living in an area on the West Bank of the Mississippi River that was designated as an EPA remediation site in the 1990's. He was also aware that Mrs. Henderson may have been exposed to ***asbestos*** when she worked at BellSouth, or from take-home or bystander exposure through her husband's job as a bus driver. He stated, however, that if she did have those other exposures, it would have added to her cumulative dose. As he explained, one source does not exonerate the other.

Joshua Henderson ("Joshua") Joshua was born January 11, 1989. He testified that the family's use of J&J Baby Powder was extensive, explaining that it was around the house quite a bit when he was growing up. He stated that they all used it and no one gave it a second thought.

Joshua testified that he was still living at home, along with his father and Justin, when his mother got sick. His father had been diagnosed with cancer in 2018; he went completely blind in the beginning of 2021. His mother's diagnosis in November of 2021was life-changing news. **[*12]** His father's condition was an extra stressor on his mother.

Joshua stated that his mother was "everything." She was a teacher, nurse, spiritual adviser, and advocate. She was a very active and independent woman — a [Pg 9] "super woman." Joshua explained when she first complained of shortness of breath, she was outside power washing the house.

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[4] Dr. Haber explained that dose amount means "all of the doses of ***asbestos*** that you had contributed to that total amount."

Joshua testified that he would go to work feeling sick, knowing that she was home confined to bed. He knew that being on oxygen was like a handicap for his mother. Joshua would sit with his mother at night and talk — like they were making up for time they would not have later. When she was no longer able to talk, she would talk less and listen more. Joshua said he felt helpless and that it hurt to see her in so much pain over the course of almost two years.

Joshua got married in September of 2023. Mrs. Henderson was too sick to attend the wedding. He remembered when his mother picked out the suit she was planning to wear to the wedding. Joshua explained that the wedding was a big deal for her; missing it made her very sad. Joshua had a Zoom link created so Mrs. Henderson could watch the wedding.

Justin Henderson ("Justin") testified that he was aware **[*13]** that his mother used J&J Baby Powder when she was a child. He also described how he and Joshua played with it. Justin explained that there was a lot of use with J&J Baby Powder inside the house. His mother would tell them "put it in your shoes, because "they're funky."

Justin explained that forming integrity inside of him and his brother was something he will always think of when he thinks of his mother. Justin described her as very patient, loving, and very slow to anger. She was a beautiful mother, very hard-working and diligent. Also, Justin explained that bringing her sons up in faith was very important to his mother. From the start of her illness to the very end, she leaned on her faith. She never wanted to give up.

[Pg 10] His mother's diagnosis was the biggest impact on Justin's life. Watching her go from being so independent to having to rely on family members was troubling. When she got really sick, Justin took a leave from teaching and coaching to help take care of her. Justin explained that he "just really wanted to be with her at the end. So, I just wanted to make sure she was taken care of, anything that she needed, I could do for her."

Justin further explained that it was **[*14]** a pleasure to be able to take care of his mother, although it was a mental strain watching her deteriorate. He felt like "some parts of me probably will never be the same."

Tasha Tyler, R.N. ("Ms. Tyler"), Mrs. Henderson's case manager for her hospice care, testified at trial. Ms. Tyler stated that Mrs. Henderson started hospice care in the beginning of November. Before that, she was being cared for by her sons and her sister, Yvette.

Ms. Tyler testified that she could feel the tumor on Mrs. Henderson's ribcage. She also stated that Mrs. Henderson was probably on the largest amount of narcotics she had seen with a patient. Despite being on oxycodone and large doses of fentanyl patches, Mrs. Henderson had breakthrough pain two to three times a day. Mrs. Henderson was trying to get by without morphine. Ms. Tyler explained that Mrs. Henderson had a strong will to live, and she did not want to be completely sedated with morphine. She believed that Mrs. Henderson was not accepting her terminal diagnosis.

Ms. Tyler testified that by January, Mrs. Henderson's condition had deteriorated. Mrs. Henderson had labored breathing and was barely able to speak. She also was having increased pain. Mrs. **[*15]** Henderson's husband was placed in a nursing home due to his own medical issues. Ms. Tyler explained that made Mrs. [Pg 11] Henderson sad. Mr. Henderson was later brought home in order to tell Mrs. Henderson goodbye before she passed.

Ms. Tyler stated that Mrs. Henderson did not want to pass away at home. She was sent to inpatient hospice where she died in February. Ms. Tyler testified that watching Mrs. Henderson suffer, and not be able to alleviate her pain, affected her deeply. She decided to quit bedside hospice.

Dr. Edwin Kuffner, M.D. ("Dr. Kuffner"), the chief medical officer for consumer health products for J&J, and also an emergency medicine physician and medical toxicologist, was called to testify by Plaintiffs. He was not called as a medical expert.

Dr. Kuffner reiterated J&J's position that cosmetic ***talc*** should not contain ***asbestos***. He acknowledged that certain scientific testing, going back many years, has identified low levels of tremolite in J&J talcum powder products. He stated, however, that tremolite is not the same as tremolite ***asbestos***.

Dr. Kuffner identified a J&J document from July 9, 1971, reflecting notes from a meeting with Dr. Langer. He acknowledged that Dr. Langer **[*16]** reported finding chrysotile fibers in J&J Baby Powder. Specifically, Dr. Langer noted the presence of

some very fine fibers which he identified as chrysotile ***asbestos*** by the typical tubular appearance of the fiber. Dr. Kuffner testified that after receiving Dr. Langer's claims, J&J "did a full investigation, got other experts to look at the sample, the same sample, and didn't conclude that it contained ***asbestos***." He explained that J&J concluded that Dr. Langer was wrong in saying that chrysotile ***asbestos*** was present.

Dr. Kuffner identified a July 29, 1971 letter from Dr. Wilson Nashed, a scientist with J&J, wherein he stated that ***talc*** used in J&J Baby Powder obtained [Pg 12] from a selected mine in Vermont[5] "consists mainly of platy ***talc*** with only trace amounts of fibrous minerals (tremolite/actinolite). It is free of chrysotile fibers which may be called 'pure ***asbestos'*** by the layman." He testified that findings of "fibrous materials" is not ***asbestos***. Dr. Kuffner explained that the term fibrous is used in different ways.

Dr. John Hopkins ("Dr. Hopkins"). Plaintiff introduced the video deposition of Dr. Hopkins, the corporate representative of J&J. At the time of the deposition, Dr. Hopkins **[*17]** was no longer employed by J&J.

Dr. Hopkins testified that J&J was aware that ***asbestos*** is a known carcinogen and considered there to be no known safe level for ***asbestos*** in cosmetic ***talc***. He confirmed that J&J told the public that ***asbestos*** had never been detected in J&J Baby Powder or Shower-to-Shower.

Dr. Hopkins acknowledged that J&J performed testing to determine whether ***asbestos*** particles could be removed from ***talc*** through a cleansing or flotation process.[6] J&J acknowledged that their flotation process was never able to remove all ***asbestos*** to the extent it was present.

Dr. Christy Barlow ("Dr. Barlow") testified on behalf of J&J and was qualified as an expert in research science in the field of particle inhalation and its effects on the human body, and human health risk assessment. After considering Mrs. Henderson's exposure factors from her personal use of talcum powders, Dr. Barlow concluded that Mrs. Henderson was not at an increased risk of developing mesothelioma from using the J&J talcum powders. She explained that Mrs. [Pg 13] Henderson's exposure levels to the J&J products were below or consistent with the ambient background levels, *i.e.*, to levels at which there is no significant **[*18]** risk of developing mesothelioma.

Regarding her potential exposure to ***asbestos*** in the West Bank area, Dr. Barlow relied on Dr. Roggli's findings that Mrs. Henderson had crocidolite ***asbestos*** in her lungs. She also considered that the EPA documented crocidolite ***asbestos*** in the soil and driveways in the areas around the Johns-Manville plant, noting that crocidolite is more potent and less common in its use than chrysotile. Dr. Barlow determined that Mrs. Henderson's exposure to crocidolite on the West Bank was a substantial factor in connection with her development of mesothelioma. Finally, considering that J&J talcum powders have never contained crocidolite, she opined that J&J talcum powders did not contribute to her disease.

Dr. Victor L. Roggli ("Dr. Roggli") testified as a defense witness, qualified as an expert in the fields of general causation of mesothelioma, specific causation of mesothelioma, ***asbestos*** and lung pathology, and fiber burden analysis. He stated that he performed a fiber burden analysis on Mrs. Henderson's lungs, finding four ***talc*** fibers, which was within background range of ***talc*** values that would have come from a commercial ***talc*** product. He also identified crocidolite **[*19]** ***asbestos***, which is rare in the general population.

Dr. Roggli stated that it was well known that Johns-Manville made cement pipe containing crocidolite and chrysotile ***asbestos*** at its plant on the West Bank and that scrap material was used in driveways and playgrounds. Thus, people living in the area were exposed to both types of ***asbestos***. He explained that crocidolite does not break down and will stay in the lungs for a long time. It is [Pg 14] more potent and more dangerous. He testified that chrysotile tends to break down into smaller fibers and does not cause disease.

Dr. Roggli opined that the crocidolite ***asbestos*** in Mrs. Henderson's lungs came from the Johns-Manville plant. He considered that the chrysotile fibers could have come from the Johns-Manville scrap or from cosmetic ***talc*** but, either way, none of the

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[5] Dr. Kuffner acknowledged that the sample identified by Dr. Langer as containing chrysotile ***asbestos*** also came from the Vermont mines.

[6] In the testing, the flotation process was performed after ***talc*** was spiked with ***asbestos***.

chrysotile fibers found were above background levels. Moreover, Dr. Roggli testified that the chrysotile fibers found by Dr. Longo in Mrs. Henderson's lungs were shorter than five microns in length. He explained that there's no evidence that these short fibers are pathogenic in terms that they would cause disease.

Dr. Gregory Diette ("Dr. Diette") qualified as an expert witness **[*20]** for J&J in the field of pulmonary medicine, epidemiology, public health, and general and specific causation of ***asbestos***-related diseases.

Based on the relevant studies that he reviewed, Dr. Diette determined that the use of cosmetic ***talc*** does not increase the risk of developing mesothelioma. Disagreeing with Plaintiffs' medical experts, Dr. Diette opined that crocidolite ***asbestos*** (from her exposure to living in the West Bank neighborhood) rather than the J&J cosmetic ***talc*** caused Mrs. Henderson's mesothelioma

Dr. Diette acknowledged that tissue digestions of Mrs. Henderson's lungs revealed chrysotile and tremolite fibers as well as crocidolite ***asbestos***. However, he stated that he did not have enough information to explain if the other ***asbestos*** fibers did or did not play a role in this case. He noted that crocidolite ***asbestos*** is more potent than chrysotile fibers and more likely to cause disease, and that crocidolite has not been found in J&J ***talc***.

[Pg 15] Dr. Diette testified that the existence of the crocidolite ***asbestos*** that was dumped within the West Bank EPA Superfund site was significant to the existence of mesothelioma deaths in the area. He agreed that ***asbestos*** in a deteriorating **[*21]** state becoming friable creates an imminent risk to people living in the area. On cross-examination, Dr. Diette testified that he had not seen any air quality sampling, which showed that the friable material actually released ***asbestos*** into the air anywhere near Mrs. Henderson.

ANALYSIS

Assignments of Error

On appeal, J&J asserts the following assignments of error:

> 1. The trial court erred by allowing Plaintiffs to proceed under pre-LPLA [Louisiana Products Liability Act] law without showing that Mrs. Henderson's exposures to Johnson's Baby Powder prior to the effective date of the LPLA would have been sufficient to cause her injuries absent additional, post-LPLA exposures.
>
> 2. The trial court erred in instructing the jury. It provided a charge on causation that substituted the but-for causation requirement with one-sided statements not suited for a jury charge, thereby allowing Plaintiffs to prevail without competent evidence of causation. The court further erred by providing a coercive "dynamite" charge when the jury deadlocked on causation and by later giving an even more one-sided instruction on causation to the deadlocked jury.
>
> 3. The trial court erred in taking the question of damages **[*22]** away from the jury, first by pre-filling the amount of medical expenses on the verdict form and then by overriding the jury's determination of noneconomic damages through a judgment notwithstanding the verdict, which increased the damages awards fifteen-fold.

We address each assignment of error in turn.

Assignment of Error No. 1: The trial court erred by allowing Plaintiffs to present non-LPLA claims.

J&J argues that the LPLA, La. R.S. 9:2900.5, applies to all of Plaintiffs' claims. They submit that the statute, enacted in 1988, limits the available theories [Pg 16] of recovery in products liability cases by abrogating pre-LPLA claims for strict liability and negligence. *La. R.S. 9:2800.52* provides that "[t]his Chapter establishes the exclusive theories of liability for manufacturers for damage caused by their products. A claimant may not recover from a manufacturer for damage caused by a product on the basis of any theory of liability that is not set forth in this Chapter." Section 2800.54(B) specifies that a product is unreasonably dangerous if and only if: (1) it is unreasonably dangerous in construction or composition; (2) it is unreasonably dangerous in

design; (3) it is unreasonably dangerous due to inadequate warning about the product; **[*23]** or (4) it is unreasonably dangerous because it does not conform to an express warranty of the manufacturer about the product.

J&J argues that Plaintiffs failed to meet their burden of proof that Mrs. Henderson's exposures prior to September 1988 were significant enough to cause mesothelioma without further exposures. Plaintiffs counter, asserting that sufficient evidence was presented at trial, through the testimony of Dr. Haber, that Mrs. Henderson's pre-LPLA exposures to J&J products were substantial factors in causing her mesothelioma.

In *Austin v. Abney Mills, Inc., 2001-1598, p. 25 (La. 9/4/02), 824 So.2d 1137, 54*, adopting the rationale set forth in *Cole v. Celotex, 599 So.2d 1058 (La. 1992)*, the Louisiana Supreme Court held, that "the 'significant tortious exposure' theory for determining when a cause of action accrued in a long-latency occupational disease case in which the plaintiff suffers from an illness or disease *is when the exposures are 'significant and such exposures later result in the manifestation of damages ....'*" (emphasis added). The *Austin* Court further explained that the "tortious exposures are significant when ***asbestos*** dust has so [Pg 17] damaged the body that the fibrogenic effects of its inhalation will progress independently of further exposure." (quoting *Abadie v Metropolitan Life Ins. Co., 2000-0344 (La. App. 5 Cir. 3/28/01), 784 So.2d 46*). *Id.* Thus, the Court concluded **[*24]** that "in order to establish when the tort cause of action accrued in a long-latency occupational disease case, wherein the plaintiff suffers from the disease, the plaintiff must present evidence that the exposures were "significant and such exposures later result[ed] in the manifestation of damages ...." *Cole, 599 So.2d at 1066*." *Id.* at p. 26

Regarding the retroactive application of any new statute — in this case, the LPLA — the Supreme Court has held:

> If a party acquires a right to assert a cause of action prior to a change in the law, that right is a vested property right, protected by the due process guarantees. If retroactive application of the law would divest that party of such a vested right, then retroactive application could be constitutionally impermissible. *Cole v. Celotex, 599 So.2d at 1061*. "Once a party's cause of action accrues, it becomes a vested property right that may not constitutionally be divested." *Cole v. Celotex, 599 So.2d at 1063* (citing *Crier v. Whitecloud, 496 So.2d 305, 308 (La. 1986)*; *Faucheaux v. Alton Ochsner Med. Found. Hosp. & Clinic, 470 So.2d 878, 879 (La.1985)*; *Lott v. Haley, 370 So.2d 521, 524 (La. 1979)*; *Burmaster v. Gravity Drainage Dist. No. 2, 366 So.2d 1381, 1387 (La. 1978)*; *Marcel v. Louisiana State Dep't of Public Health, 492 So.2d 103, 109-10 (La. App. 1st Cir.)*, writ denied, *494 So.2d 334 (La.1986)*). Therefore, "statutes enacted after the acquisition of such a vested property right ... cannot be retroactively applied so as to divest the plaintiff of his vested right in his cause of action because such a retroactive application would contravene the due process guaranties." *Cole v. Celotex, 599 So.2d at 1063* (quoting *Faucheaux v. Alton Ochsner Med. Found. Hosp. & Clinic, 470 So.2d 878, 879 (La. 1985)*). **[*25]**

Walls v. Am. Optical Corp., 98-0455, p. 8 (La. 9/8/99), 740 So.2d 1262, 1268-69.

J&J contends that there was no testimony demonstrating that Mrs. Henderson's exposures before September 1988 were significant enough to cause mesothelioma without further exposure. J&J points out that Mrs. Henderson [Pg 18] developed mesothelioma more than thirty years after the enactment of the LPLA. It is argued that no witness, including Dr. Haber, testified that Mrs. Henderson's exposures to ***asbestos*** for the thirty years prior to the enactment of the LPLA were so significant that those exposures alone would have caused her mesothelioma. J&J points out that Dr. Haber testified that Mrs. Henderson's post-LPLA exposures were substantial factors in the development of the disease. We find no merit in this argument.

The evidence presented at trial demonstrated that Mrs. Henderson was a lifelong daily user of J&J talcum powder products. After interviewing Mrs. Henderson and reviewing her medical records, Dr. Haber opined that her exposure to ***asbestos*** in the talcum powder products that she used from the 1950's to approximately 2020, was a substantial factor in causing her mesothelioma. He further opined that if she did have other exposures, it would have added to her cumulative dose. As **[*26]** he stated, one source does not exonerate the other. Dr. Haber further explained that "with ***asbestos***, if you got exposed forty years ago, that risk doesn't disappear." Further, "there is no known dose below which there is no risk." Regarding Mrs. Henderson, Dr. Haber testified that her exposure to the J&J talcum powder products were substantial and significant in causing her mesothelioma.

Considering the above, we find no merit in J&J's argument that the LPLA applies to all of Plaintiffs' claims. After a thorough review of the record, we find that Plaintiffs presented sufficient evidence that Mrs. Henderson had substantial tortious exposure

— with each exposure having a cumulative effect — prior to the enactment of the LPLA sufficient to satisfy her evidentiary burden. Thus, we find no merit in J&J's first assignment of error.

[Pg 19] ***Assignment of Error No. 2: The trial court's jury instructions were incorrect and prejudicial***.

"Jury instructions are reviewed under a manifest error standard of review." *Danna v. Ritz-Carlton Hotel Co., LLC, 2020-0116, p. 22 (La. App. 4 Cir. 3/24/21) 365 So.3d 679, 696* (citing *Fireman' s Fund Ins. Co. v. R.S. Homes, LLC, 2019-0621, pp. 3-4 (La. App. 4 Cir. 3/25/20), 294 So.3d 54, 59*). La. C.C.P. art. 1792(B) requires a trial court to instruct the jury on the law applicable to the cause submitted to them.

"Trial courts are given broad discretion in formulating jury instructions and **[*27]** a trial court judgment should not be reversed so long as the charge correctly states the substance of the law." *Adams v. Rhodia, Inc., 2007-2110, p. 6 (La. 5/21/08), 983 So.2d 798, 804*. "Adequate jury instructions are those which fairly and reasonably point out the issues and which provide correct principles of law for the jury to apply to those issues." *Id.* In reviewing jury instructions, the determinative question is whether the jury instructions misled the jury to the extent that it was prevented from dispensing justice. *Id.*, at p. 7.

J&J raises five errors in connection with the jury instructions as detailed below.

1). The trial court omitted the but-for causation requirement which applies in ***asbestos*** cases.

Relying on *Rando v. Anco Insulations, Inc., 2008-1163 (La. 5/22/09), 16 So.3d 1065*, J&J asserts that under Louisiana Supreme Court precedent, the traditional but-for standard of causation applies here. J&J submits that the jury was improperly instructed that "[i]n an ***asbestos*** case, an exposure has to be a substantial contributing factor of the decedent's disease. A substantial contributing factor is one that is not merely trivial." Additionally, the trial court instructed:

> [Pg 20] In order to constitute a substantial contributing factor, exposure to a product supplied or used by a particular defendant does not have to **[*28]** be the sole cause of the decedent's injury. In fact, plaintiffs in ***asbestos*** cases generally have been exposed to wide variety of products containing ***asbestos***. In such a case, the courts apply the doctrine of concurrent causation, which proceeds from the assumption that more than one defendant substantially contributed to the decedent's injury.

We find no merit in J&J's assertion that the trial court erred in failing to instruct the jury on the but-for standard. In referring to the but-for standard, the Court in *Rando* cited *Dixie Drive It Yourself System v. American Beverage Co., 242 La. 471, 137 So.2d 298 (1962)*. However, we note that *Dixie Drive It Yourself System* involved an automobile accident case, not an ***asbestos*** case. The *Rando* Court went on to recognize that "Louisiana courts have employed a 'substantial factor' test to determine whether exposure to a particular ***asbestos***-containing product was a cause-in-fact of a plaintiff's ***asbestos***-related disease." *Rando*, 2008-1163, p. 35, 16 So.3d at 1091. More specifically, the Court stated:

> Thus, in an ***asbestos*** case, "the claimant must show ... he had significant exposure to the product complained of to the extent that it was a substantial factor in bringing about his injury." ***Asbestos*** *v. Bordelon, Inc., 96-0525 (La. App. 4 Cir.10/21/98), 726 So.2d 926, 948*; *Vodanovich v. A.P. Green Industries, Inc., 03-1079 (La. App. 4 Cir. 3/3/04), 869 So.2d 930, 933*. Mesothelioma can develop after fairly short exposures to ***asbestos***. *Egan v. Kaiser Alum. & Chem. Corp., 94-1939 (La. App. 4 Cir. 5/22/96), 677 So.2d 1027*. Simply because a plaintiff suffered ***asbestos*** exposure **[*29]** while working only a short period for an employer and he had longer exposure working for others, it cannot be said the relatively short ***asbestos*** exposure was not a substantial factor in causing his mesothelioma. *Id., 677 So.2d at 1035*.

Id. at p. 36.

The "substantial factor" test was reiterated in *Allen v Eagle, Inc., 2022-0622, p. 5 (La. App. 4 Cir. 2/24/23), 358 So.3d 928, 931*(quoting *Oddo v. **Asbestos** Corp. [Pg 21] Ltd., 2014-0004, pp. 10-11 (La. App. 4 Cir. 8/20/15), 173 So.3d 1192, 1203*), as follows:

> The applicable law in ***asbestos*** cases is well-settled. To prove liability of a manufacturer or professional vendor of an ***asbestos***-containing product, the plaintiff must show "he had sufficient exposure to the product complained of to the extent that it was a substantial factor in bringing about his injury." *Rando v. Anco Insulations, Inc., 2008-1163, 2008-1169, p. 35*

> *(La. 5/22/09), 16 So.3d 1065, 1091*(citing ***Asbestos*** *v. Bordelon, Inc., 96-0525, p. 30 (La. App. 4 Cir. 10/21/98), 726 So.2d 926, 948*; *Vodanovich v. A.P. Green Industries, Inc., 2003-1079, p. 4 (La. App. 4 Cir. 3/3/04), 869 So.2d 930, 933*). This standard of proof, developed by Louisiana courts over years of ***asbestos*** litigation, is known as the "substantial factor" test. *Id.* Stated differently, the plaintiff must prove, by a preponderance of the evidence that: (1) his exposure to the defendant's ***asbestos*** product was significant; and (2) that this exposure caused or was a substantial factor in bringing about his mesothelioma (or other ***asbestos***-related disease). *Robertson v. Doug Ashy Bldg. Materials, Inc., 2010-1551, p. 19 (La. App. 1 Cir. 10/4/11), 77 So.3d 360, 372* (citing *Rando*, 2008-1163, 2008-1169, p. 38, 16 So.3d at 1092).

Considering the well-settled jurisprudence in ***asbestos*** cases as set forth above, we find no error in the trial court's failure to give an instruction **[*30]** on the but-for standard of causation. The record demonstrates that the jury was properly instructed on the substantial factor test.

2). The trial court's increased risk instruction was a misstatement of law.

J&J argues that the trial court erred in instructing the jury that "[u]nder Louisiana law, a substantial factor in causing harm need not be the only causative factor: it need only increase the risk of harm." J&J submits that the increased risk test is not the law in ***asbestos*** cases. Rather, it is applied in medical malpractice cases. We disagree.

While the doctrine is often applied in medical malpractice cases, it is not limited to those actions. In *Hennegan v. Cooper/T. Smith Stevedoring Co., 2002-0282, p. 7 (La. App. 4 Cir 12/30/02), 837 So.2d 96, 102*, a mesothelioma action [Pg 22] brought against a barge owner and alleged manufacturers of ***asbestos***-containing products, this Court recognized that "[a] substantial factor need not be the only causative factor; it need only increase the risk of harm." The jury instruction in this case included this same language.

We recognize that the jurisprudence relating to the substantial factor test in ***asbestos*** cases does not generally include the increased risk of harm language. However, we do not find that this language conflicts with or expands on **[*31]** the substantial factor test. Moreover, we do not consider its inclusion in the jury instructions to be clearly wrong or one-sided in favor of Plaintiffs, as J&J asserts.

3). The jury instructions were collectively unbalanced.

J&J acknowledges that the trial court gave a proper instruction, *i.e.*, J&J's conduct need not be the only cause. However, J&J contends that by repeating the causation instruction four times, the trial court erred by unduly emphasizing the point. We find no merit in this argument. A reading of the causation instruction as a whole demonstrates no error. Rather, the instructions thoroughly and fairly explained when a defendant's conduct is a substantial contributing factor in bringing about a plaintiff's injuries in an ***asbestos*** exposure case. The fact that the same concept was repeated does not demonstrate error.

J&J next argues that the instructions included "tangential remarks" that all but dictated that the jury should find causation. Specifically, J&J takes issue with the following instructions: "Medical science has proven a casual relationship between ***asbestos*** exposure and mesothelioma above background levels," and that "every non-trivial exposure to ***asbestos*** contributes **[*32]** to and constitutes a cause of mesothelioma." J&J posits that these statements are derived from mere discussion in previous opinions and are inappropriate for use in jury instructions.

[Pg 23] Plaintiffs counter, asserting that the above instructions are drawn directly from Louisiana precedent and are proper in concurrent causation cases. We agree.

In discussing the substantial factor test this Court, in *Pete v Boland Marine and Mfg. Co., LLC, 2021-0626, p. 18 (La. App. 4 Cir. 1/5/23), 356 So.3d 1147, 1160*, specifically stated:

> Medical Science has proven that a causal relationship between ***asbestos*** exposure and mesothelioma above background levels. Thus, ***asbestos*** exposure is a causative factor in producing the disease. *McAskill v. American Marine Holding Company, 2007-1445, p. 7 (La. App 4th Cir. 3/4/09), 9 So.3d 264, 268*. It is also established that mesothelioma can develop after a fairly short exposure to ***asbestos***, and that every "non-trivial" exposure to ***asbestos*** contributes to and constitutes a cause of mesothelioma. *See* *Rando v. Anco Insulations Inc., 2008-1163, p. 35 (La. 5/22/09), 16 So.3d 1065, 1091*.

In *Landry v. Avondale Indus., Inc. 2012-0950, p. 6 (La. App. 4 Cir. 3/6/13), 111 So.3d 508, 511*, we held:

> It is scientifically proven, and legislatively recognized, that a causal relationship exists between ***asbestos*** exposure and the occurrence of mesothelioma. In *Hennegan v. Cooper/T. Smith Stevedoring Co., 02-0282 (La. App. 4 Cir 12/30/02), 837 So.2d 96*, this court acknowledged that brief exposures to ***asbestos*** may cause mesothelioma in persons decades later and that *every non-trivial exposure to* ***asbestos*** *contributes to and constitutes a cause of mesothelioma* ***[*33]*** . This theory has been embraced in the Supreme Court's decision in *Rando v. Anco Insulations, Inc., 08-1163, 08-1169 (La. 5/22/09), 16 So.3d 1065*. (emphasis added).

Considering the above, and based on our review of the jury instructions as a whole, we find that the instructions at issue here adequately provided the correct principles of law on causation. Additionally, we recognize that the jury heard conflicting expert testimony related to Mrs. Henderson's alleged exposure to ***asbestos*** from the J&J products. Nevertheless, the jury found in favor of Plaintiffs on the issue of causation. In that respect, we find that the evidence presented was sufficient for the jury to conclude that Mrs. Henderson's exposure to ***asbestos*** in [Pg 24] the J&J products was a substantial contributing factor in her development of mesothelioma.

4). The trial court gave an improper "dynamite" instruction.

J&J argues that when the jury reported after only one hour of deliberations that it could not reach a verdict, the court gave an improper dynamite or *Allen*[7] charge to break a deadlock.

The record demonstrates that within an hour into its deliberation, the jury informed the trial court that they were at an impasse,[8] at which point the trial judge re-read the concluding paragraph of the jury charge. **[*34]** The trial judge then instructed, in pertinent part:

> Y'all haven't done an hour yet. Okay. So — And I know it's late in the day, and I cannot begin to tell you how much I appreciate all of you serving all these many weeks.
>
> But one thing we have to do now is we have to have a verdict. Those folks and these folks have been waiting for this day for years, and this is it. This is what they've worked so hard for .... And now it's up to you.
>
> So, I want you to go back. I want you to have a frank discussion.
>
> And I know you aren't going to want to hear this, but you can come back tomorrow and keep deliberating.
>
> But, and then the law provides for certain things I need to tell you at certain points in time to try to get a verdict.
>
> But, this is your first blush. You're only at one hour. You've got to talk some more. So, I read the charge to you and what your charge is as jurors.
>
> And everybody — You know, I don't know if you want to go around the room and everybody give their opinion as to why they feel like they feel. But do whatever you have to do to organize your discussion and have a logical, rational, frank discussion. All right?

[Pg 25] J&J also argues that the trial court threatened marathon deliberations **[*35]** by telling the jury that he once had a jury trial that did not come back until midnight. J&J maintains that it was reversible error to tell the jury that they had to have a verdict, when a mistrial is always an option.

Plaintiffs' counter, asserting that the trial court's comments to the jury were permissible encouragement, telling them to keep deliberating and have a frank discussion. Plaintiffs further note that the trial court did not inform the jury that it would be unwilling to grant a mistrial if necessary.

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[7] *Allen v. United States, 164 U.S. 492, 17 S.Ct. 154, 41 L.Ed. 528 (1896)*.

[8] The jury also asked to see certain trial exhibits, which were provided.

In *State v. Bracken, 2024-00375 (La. 6/27/25), 413 So.3d 429*, the Louisiana Supreme Court held that allowing the use of a modern modified *Allen* charge, "would give Louisiana courts the benefit of encouraging deliberation and efficient judicial resolution." *Id at p. 6, 413 So.3d at 433*. The Court instructed that the proper analysis on review is "whether any charge given was coercive under the totality of the circumstances." *Id.*

Upon review of the record, we first find that the additional instructions to the jury did not imply that the trial court would not accept a mistrial. As the trial court explained in discussions with trial counsel, "If I have to give an *Allen* charge, I'll do that. I've done it before. And sometimes it works; sometimes it doesn't. If It doesn't, **[*36]** if it results in a mistrial, then so be it."

Additionally, we do not consider the trial court's comments to the jury to be coercive. The trial court noted that the jury had only deliberated for an hour. The jury was then instructed to go back, keep deliberating, and have frank discussions. At that point, the jury was told that the trial court would re-read part of the general instruction on the burden of proof "just to try to focus your attention on what's [Pg 26] important." In discussions with counsel, the trial court explained its reasoning as follows:

> Yesterday the jury got the case at 3:30 and they were dismissed at 5:30. They had only deliberated for an hour when they came back and were stuck at six to six. One-hour deliberation is totally insufficient. They had not had an opportunity to express their relative views, their perception, their interpretation of the evidence. They hadn't done any of that. So, when they got back this morning, the Court had to do something to focus their perspective.

For the reasons stated above, we find that the trial court did not err in instructing the jury to continue deliberating.

5) The trial court gave additional instructions without notice during **[*37]** deliberations that further prejudiced J&J.

J&J asserts that the trial court erred when it read additional "one sided" causation instructions to the jury without notice to the parties. We find no merit in this assertion.

The record demonstrates that after retiring to deliberate, the jury had a question on whether substantial factor meant an increased harm by 50.001 percent or just any increase in harm. The jury returned to the courtroom, and the trial court explained that it could only read from the instructions that were given. In response to their specific questions, the trial court clarified that "[e]very fact has to be proven by a preponderance of the evidence." The trial court then proceeded to read the jury instruction that explained the concept of substantial contributing factor in an ***asbestos*** case. This was not an additional instruction that required notice to the parties pursuant to *La. C.C.P. art. 1796*.[9] In sum, we find that rereading a portion of the original instruction in response to the jury's question was [Pg 27] not error. Moreover, as detailed above, we have determined the trial court's instructions correctly provided the law on causation applicable in this ***asbestos*** litigation.

Assignment [*38] of Error No. 3: The trial court erred by taking the issue of damages away from the jury, first by pre-filling the amount of medical expenses on the verdict form and then by increasing the jury's award of general damages.

1.) The trial court wrongfully dictated the amount of medical expenses.

J&J argues that the trial court pre-filled the jury verdict form with $2,570,206.09 in medical expenses, when J&J did not stipulate to the amount. J&J maintains that it merely agreed to waive the formal requirement for admitting a summary pursuant to *La. C.E. art. 1006*.[10] Plaintiffs counter, asserting that J&J stipulated to the amount.

The record demonstrates that the trial court asked if J&J stipulated to the amount of medical expenses that Plaintiffs placed on the verdict form. Counsel for J&J stated, "I believe we stipulated to it." The trial court then responded, "Okay. All right. Ya'll stipulated to it." No further discussion was had on the medical expenses.

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[9] *La. C.C.P. art, 1796* provides that "A. If the jury, after retiring for deliberation, desires to receive information on any point of law, they shall be conducted to the courtroom. B. After giving notice to the parties, the court may give the appropriate instructions.

[10] *La. C.E. art. 1006* allows for the introduction of a summary of otherwise admissible voluminous documents.

When the entry of the amount of medical expenses on the verdict form was raised again the following day, counsel for J&J objected, stating that it was not stipulated to. J&J maintains that it was only agreed that Dr. Haber could use the summary of the medical **[*39]** expenses in his testimony. The trial court rejected J&J's argument, stating that the amount would be added to the verdict form. J&J objected to the ruling.

[Pg 28] J&J argues that this error deprives J&J of its right to have the jury determine the reasonable amount of Mrs. Henderson's medical expenses. We find no merit in J&J's argument. At trial, Dr. Haber was shown a listing of the medical expenses. He testified that the medical bills were reasonable and necessary in treatment of Mrs. Henderson's mesothelioma. Dr. Haber further stated that the amounts charged were consistent with medical practice. J&J voiced no challenge. In response to Dr. Haber's testimony, J&J did not dispute the authenticity, necessity, or reasonableness of the medical expenses. Accordingly, we find no error on the part of the trial court in pre-filling the amount of medical expenses on the verdict form.

2.) The trial court improperly increased the jury's award of general damages.

As stated above, the trial court granted Plaintiffs' Motion for Partial JNOV as to the general damage awards. Mrs. Henderson's award was increased from $ 255,000.00 to $4,500,000.00. The awards to Joshua and Justin were increased from **[*40]** $90,000.00 each to $1,000,000.00 each. The percentages of liability remained the same.

J&J maintains that the jury heard extensive testimony from Dr. Haber and from the fact witnesses regarding Mrs. Henderson's injuries. Joshua and Justin also described the relationship they had with their mother. Additionally, the jury heard conflicting expert testimony on the issue of causation. Considering the above, J&J argues that it was within the jury's prerogative to accept or reject the testimony in whole or in part, and that the trial court erred by usurping the jury's discretion in awarding general damages.

[Pg 29] In *Lirette v. Adams, 2023-0527, pp. 15-16 (La. 4 Cir. 7/10/24), 399 So.3d 468, 481-82*, we reiterated the well-established standard of review for JNOV, as follows:

> "The motion for a judgment notwithstanding the verdict may be granted on the issue of liability or on the issue of damages or on both issues." La. C.C.P. art. 1811(F). "[T]he Louisiana Supreme Court [has] explained that appellate review of a [district] court's ruling on a motion for judgment notwithstanding the verdict entails a two-part test." *Gniady v. Ochsner Clinic Foundation, 23-0215, p. 35 (La. App. 4 Cir. 12/28/23), 382 So.3d 378, 400* (citing *Davis v. Wal-Mart Stores, Inc., 00-0445, p. 5 (La. 11/28/00), 774 So.2d 84, 89*). "First, the appellate court applies the same criteria that the [district] court did in deciding whether or not to grant the motion." *Id.* "In particular, a motion for judgment **[*41]** notwithstanding the verdict should be granted 'when the facts and inferences point so strongly and overwhelmingly in favor of one party that the court believes that reasonable jurors could not arrive at a contrary verdict.'" *Id. at pp. 35-36, 382 So.3d at 400* (quoting *Davis, 00-0445, p. 4, 774 So.2d at 89*). "However, '[t]he motion should be granted only when the evidence points so strongly in favor of the moving party that reasonable [people] could not reach different conclusions, not merely when there is a preponderance of evidence for the mover.'" *Id. at p. 36, 382 So.3d at 400-01*. "If 'reasonable and fair-minded [people] in the exercise of impartial judgment might reach different conclusions,' then the [district] court should deny the motion." *Id. at p. 36, 382 So.3d at 401*. "In determining whether to grant a motion for judgment notwithstanding the verdict, 'the court should not evaluate the credibility of the witnesses and all reasonable inferences or factual questions should be resolved in favor of the non-moving party.'" *Id.*
>
> "Second, if the appellate court determines that the [district] court correctly applied these criteria to the jury verdict, then the appellate court reviews the [district] court's decision for manifest error." *Id.* (citing *Davis, 00-0445, p. 5, 774 So.2d at 89*). "Thus, in reviewing a [district] court's grant or denial of a motion **[*42]** for judgment notwithstanding the verdict, an appellate court applies the manifest error standard of review." *Id.* (citing *Darbone v. State, 01-1196, p. 12 (La. App. 3 Cir. 2/6/02), 815 So.2d 943, 952*).
>
> Louisiana jurisprudence has held that "[a] JNOV is a procedural device authorized by *La. C.C.P. art. 1811*, by which the [district] court may correct an erroneous jury verdict by modifying the jury's finding of fault or damages, or both." *Salama v. State, 15-1992, p. 3 (La. App. 1 Cir. 1/5/17), 211 So.3d 396, 399* (citing *Bourg v. Cajun Cutters, Inc., 14-0210, p. 5 (La. App. 1st Cir. 5/7/15), 174 So.3d 56, 61*). Furthermore, "[w]hen a JNOV is granted on the issue of quantum ... [Pg 30] the [district] court must next determine the proper amount of damages to be awarded." *Id. at p. 4, 211 So.3d at 399* (emphasis

added) (citing *Falcon v. Louisiana Dept. of Transp., 13-1404, p. 15 (La. App. 1 Cir. 12/19/14), 168 So.3d 476, 488*). "The [district] court is not constrained as courts of appeal are to raising or lowering the award to the lowest or highest point that is reasonably within the discretion afforded the court. *Id. at p. 4, 211 So.3d at 399-400* (citing *Hanchett v. State, ex rel. Dept. of Transp. & Dev., 06-1678, p. 11 (La. App. 1st Cir. 11/7/07), 977 So.2d 78, 84*). "This is because a trial judge is in a better position to make a damage assessment than an appellate court, since the trial judge hears the testimony, views the evidence and is able to evaluate witnesses' credibility." *Hanchett, 06-1678, p. 11, 977 So.2d at 84-85*. "[A]fter granting a JNOV on the damage award, the [district] court replaces the jury as the trier of fact and makes an independent assessment of the damages and awards what it determines to be the proper amount of compensation under the **[*43]** facts of the case." *Salama, 15-1992, p. 4, 211 So.3d at 400* (first citing *Falcon, 13-1404, p. 15, 168 So.3d at 488*; and then citing *Hanchett, 06-1678, p. 11, 977 So.2d at 85*).

Considering the JNOV as to damages in the present case, the trial court recognized that it was "incumbent upon the Court to look at the damages in the case and see if no reasonable jury, as argued, could come to that." In granting the motion in favor of Plaintiffs, the trial court explained its reasoning as follows:

> And this case was special. Ms. Jeannine Henderson was a striking woman. First thing that came to mind as I deliberated over this, was that she found out that she had mesothelioma because she was pressure washing her house at age 71 and got short of breath, and went in and said, I need to go to the doctor. I think I'm coming down with something. They removed a substantial amount of fluid from her lungs, when she did go to the doctors, and she was diagnosed with mesothelioma. She did everything she could medical treatment wise to try to abate it. She didn't understand why it was afflicting her. She didn't think it was fair. And as it progressed, it got more and more painful. I recall the testimony of Ms. Tyler, particularly at the end of her long and arduous journey through the process, she was on four Fentanyl patches, **[*44]** morphine, oxycodone and Dilaudid, all at the same time, which was mind boggling to me how one human being could be subject to that and still be alive. I mean, just we hear about people overdosing on Fentanyl every day and everything else.
>
> And I also listened to the testimony of Mr. Justin Henderson and Mr. Joshua Henderson and their relationship with their mother, and obviously it was a very close relationship. She was their mother, [Pg 31] confessor, their confidant, their counselor, their cheerleader, their jack-of-al1-trades who could fix anything.
>
> . . .
>
> I am going to grant this Motion For Judgment Notwithstanding a Verdict. And it's incumbent upon the Court to place itself in the shoes of the jury based upon what the evidence showed and solely on that for damages for Ms. Jeannine Henderson, and for general damages, pain and suffering, mental anguish and distress, loss of enjoyment of life. I am going to the upper end of the spectrum, $4.5 million for the wrongfu1 death actions. For her sons, who lost everything I just said that she was to them, $1 million each.

Applying the criteria set forth above to the particular facts and evidence presented in this litigation, we find that the **[*45]** trial court properly granted the JNOV on the issue of damages. As the jurisprudence has established, upon granting the JNOV, the trial court replaces the jury as the trier of fact and makes an independent assessment of the damages. *See Lirette, 2023-0527, p. 17, 399 So.3d at 482* (citations omitted). Here, it is evident from the record that the trial court thoroughly reviewed the evidence presented by Plaintiffs, considering Mrs. Henderson's severe pain and suffering as well as the loss sustained by Joshua and Justin, and determined that the evidence did not support the jury's findings on damages. Based upon our review, we find no error in the trial court's ruling. Having determined that the trial court properly granted the JNOV in favor of Plaintiffs, we turn next to a review of the amount of damages awarded.

Much discretion is left to the trier of fact in the assessment of general damages. *See La. C.C. art. 2324.1*. However, this discretion is not unfettered. *Pete v. Boland Marine and Mfg. Co., L.L.C., 2023-00170, p. 5 (La. 10/20/23), 379 So.3d 636, 641*.

In *Stauder v. Shell Oil Co., 2022-0593, pp. 4-5 (La. App. 4 Cir. 6/3/24), 409 So.3d 1, 4, writ denied, 2024-00860 (La. 4/23/25), 406 So. 3d 1175 ("Stauder II")*, [Pg 32] we restated the abuse of discretion standard advanced in *Pete* for the review of general damage awards as follows:

The *Pete* Court recently altered the well-settled abuse of discretion standard of review in damage award cases. It determined that "some **[*46]** measure of objectivity" needed to be "incorporated into the determination of an award's reasonableness, so that there is some standard for comparison" due to the "inherently subjective nature of the abuse of discretion standard." *Pete [v. Boland Marine & Mfg. Co., LLC, 23-00170, p. 2 (La. 10/20/23), 379 So. 3d 636, 639*]. Thus, the Louisiana Supreme Court held that appellate courts "must consider relevant prior general damage awards as guidance in determining whether a trier of fact's award is an abuse of discretion." *Id.* "[R]eview of prior awards is not the only factor to be considered in evaluating whether a general damage award is an abuse of discretion; it is a starting point. No two cases will be identical." *Id., 23-00170, p. 9, 379 So. 3d at 643*.

Deciding whether the trier of fact abused its discretion remains the initial inquiry, but to evaluate the issue, appellate courts are "to include a consideration of prior awards in similar cases, as well as the particular facts and circumstances of the case under review." *Id., 23-00170, p. 10, 379 So.3d at 644*. "'It is only when the award is, in either direction, beyond that which a reasonable trier of fact could assess for the effects of the particular injury to the particular plaintiff under the particular circumstances that the appellate court should increase or reduce the award.'" *Id., 23-00170, p. 9, 379 So. 3d at 643* (quoting *Youn, 623 So.2d 1257 at 1261*).

[*47] We begin our analysis of the damage awards in the present case with a closer review of the Supreme Court's pronouncements in the *Pete* case. Mr. Pete brought an action for damages alleging that he developed mesothelioma through his work as a longshoreman as well as from take-home exposure from his father's contaminated work clothes. A jury awarded Mr. Pete $9,800,00.00 in general damages. The award was affirmed on appeal. *Pete v. Boland Marine & Mfg. Co., 2021-0626, p. 26 (La. App. 4 Cir. 1/5/23), 356 So.3d 1147, 1164*. The Supreme granted certiorari on the issue of quantum. Considering the record, along with a review of prior awards in similar cases, the Court reduced the general damage award to $5,000,000.00. *Pete, 2023-00170, p. 19, 379 So.3d at 650*.

[Pg 33] In its review of similar mesothelioma cases, the Supreme Court considered the following:

• *Stauder v. Shell Oil Co., 2022-0593 (La. App. 4 Cir. 2/15/23), 382 So.3d 138* ("*Stauder I*"). A jury awarded general damages of $2,750,000.00 to each of the decedent's adult daughters as a result of his death from mesothelioma. The award was affirmed on appeal. No appeal was taken from the survival damage award of $4,851,034.31.[11]

• *Berry v. Anaco Insulations, 52,671 (La. App. 2 Cir. 5/22/19), 273 So.3d 595*. General damages of $3,000,000.00 were awarded to a woman who contracted mesothelioma from take-home exposure. The general damage award was not raised on appeal.

• *Lege v. Union Carbide Corp., 2020-0252 (La. App. 4 Cir. 4/1/21), 365 So.3d 617* as clarified on reh'g, *2020-0252 (La. App. 4 Cir. 5/12/21), 366 So.3d 75*. General damage award of $4,500,000.00 to a plaintiff who died two years after being diagnosed with mesothelioma was affirmed on appeal. The award of $500,000.00 each to Mr. Lege's two adult children was also affirmed.[12]

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[11] In ***Stauder v. Shell Oil Co., 2023-00619 (La. 1/17/24), 376 So.3d 837***, the Louisiana Supreme Court subsequently vacated this Court's decision in *Stauder I* and ordered the Court to reconsider its ruling in light of *Pete*. On remand, the jury award to the two adult children was affirmed. *Stauder II*, 2022-0593, p. 9, 409 So.3d at 6. In *Stauder II*, this Court recognized that the award to the two adult children was substantially greater than other jurisprudential awards. However, the Court held, "[w]e do not find that the wrongful death awards under the unique facts presented at trial are beyond what a reasonable trier of fact would award considering the testimony adduced at trial detailing the devasting effects Mr. Stauder's extended and debilitating illness and resulting death has had on both of his daughters." *Stauder II*, 2022-0593, p. 8, 409 So.3d at 6.

[12] We note that in considering the general damage award, the Court in *Lege* considered the case of *Terrance v Dow Chem. Co., 2006-2234, p. 3 (La. App. 1 Cir. 9/14/07), 971 So.2d 1058*, where the jury awarded $5,000,000.00 in general damages to a plaintiff who died four months after being diagnosed with mesothelioma.

• *Bagwell v. Union Carbide Corp., 2019-0414 (La. App. 4 Cir. 12/11/19), 364 So.3d 378, writ granted, decision rev'd, 20-01242 (La. 1/12/21), 308 So.3d 289*. General damages of $1,450,000.00 were awarded to a 57-year-old man who developed mesothelioma and died three years later.[13]

• *Craft v. Ports Am. Gulfport, Inc., 2018-0814, (La. App. 4 Cir. 5/8/19), 273 So.3d 517*. General damage award of $1,600,000.00 to an 82-year-old man who died from mesothelioma was affirmed on appeal.

• [Pg 34] *Williams v. Placid Oil Co., 2016-839, (La. App. 3 Cir. 8/2/17), 224 So.3d 1101*. General damage award of $3,000,000.00 **[*48]** to a wife who developed mesothelioma from take-home exposure and $750,000.00 each to the decedent's major children was affirmed on appeal. The $3,000,000.00 award on the survival damages was not raised on appeal.

• *Oddo*, 2014-0004, p. 40, 173 So.3d at 1217. Award of $2,301,393.15 in damages and medical expenses for an 81-year-old man who died two months after developing mesothelioma; was affirmed on appeal.

• *White v. Entergy Gulf States Louisiana, L.L.C., 2013-1608 (La. App. 1 Cir. 11/10/14), 167 So.3d 764*. General damage award of $3,800,000.00 to the decedent who lived less than six weeks after his mesothelioma diagnosis was affirmed on appeal.

Upon our review of the record, and considering the relevant prior general damage awards as directed by the Court in *Pete*, we find that the trial court made a proper independent assessment in determining that the jury's damage award was not reasonable in light of the evidence. The trial court's reasoning reflects that the details surrounding Mrs. Henderson's death, and how it impacted her sons, was thoroughly considered. Specifically, the trial court stated:

> And this case was special. Ms. Jeannine Henderson was a striking woman. First thing that came to mind as I deliberated over this, was that she found out that she had mesothelioma because she was pressure **[*49]** washing her house at age 71 and got short of breath, and went in and said, I need to go to the doctor. I think I'm coming down with something. They removed a substantial amount of fluid from her lungs, when she did go to the doctors, and she was diagnosed with mesothelioma. She did everything she could medical treatment wise to try to abate it. She didn't understand why it was afflicting her. She didn't think it was fair. And as it progressed, it got more and more painful. I recall the testimony of Ms. Tyler, particularly at the end of her 1ong and arduous journey through the process, she was on four Fentanyl patches, morphine, oxycodone and Dilaudid all at the same time, which was mind boggling to me how one human being could be subject to that and still be alive. I mean, just we hear about people overdosing on Fentanyl every day and everything else.
>
> And I also listened to the testimony of Mr. Justin Henderson and Mr. Joshua Henderson and their relationship with their mother, and obviously it was a very close relationship. She was their mother, [Pg 35] confessor, their confidant, their counselor, their cheerleader, their jack-of-al1-trades who could fix anything. I recall that very **[*50]** vividly.

Additionally, as we consider the Supreme Court's holdings in *Pete*, and the pertinent damage awards reviewed therein, we conclude that the trial court did not abuse its discretion in increasing the jury's award of damages. The immense pain and suffering that Mrs. Henderson endured is undisputable. She fought through painful procedures and lived with almost daily pain in spite of being administered high doses of pain medications. As Ms. Tyler testified, Mrs. Henderson had a very strong will to live, and she was unable to accept that her condition was terminal.

It is also evident that Joshua and Justin were both devastated by their mother's death. Their testimony clearly demonstrated that they had an extremely close and loving relationship with their mother. They praised her in the way she raised them in faith; they described her as a super woman. Joshua and Justin each assisted in taking care of their mother, attending to all of the household chores that she would have normally performed. Joshua described her disappointment and sadness at missing his

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[13] The jury awarded $750,000.00 in general damages and the court of appeal, finding the award to be an abuse of discretion, increased the award to $1,450,000.00. On rehearing, the court of appeal affirmed the trial court's determination of liability; however, it concluded that the jury's verdict was internally inconsistent and granted a new trial. The Supreme Court reversed and reinstated the court of appeal's original judgment on the merits.

wedding, a day she had long looked forward to. During the latter stages of her illness, both sons spoke of wanting to spend as much **[*51]** time with their mother as they could before her death.

DECREE

For the foregoing reasons, we affirm the June 16, 2025 Judgment rendered in accordance with the jury verdict. We affirm the Judgment rendered on October 16, 2025, denying J&J's Motion for JNOV and granting Plaintiffs' Motion for Partial JNOV, to increase the general damage award on Mrs. Henderson's survival [Pg 36] action to $4,500,000.00 and increasing Joshua and Justin's wrongful death award to $1,000,000.00 each.

AFFIRMED

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