STATE OF SOUTH CAROLINA COUNTY OF RICHLAND **MICHAEL L. PERRY** and **LONNIE L. LONG,** Plaintiffs, v. **AMERICAN INTERNATIONAL INDUSTRIES,** *et al.,* Defendants.	IN THE COURT OF COMMON PLEAS FOR THE FIFTH JUDICIAL CIRCUIT **C/A NO. 2023-CP-40-04072** *In Re:* Asbestos Personal Injury Litigation Coordinated Docket **ORDER ON REMAND FROM THE SOUTH CAROLINA COURT OF APPEALS REGARDING DEFENDANTS JOHNSON & JOHNSON'S MOTION TO RECONSIDER OR TO ALTER AND AMEND THIS COURT'S DECEMBER 11, 2024 ORDER**

BACKGROUND

Plaintiffs filed this action against multiple defendants, including the J&J Defendants and Defendant AII. The trial began on August 5, 2024. After the close of Plaintiffs' case on the legal claims, the J&J Defendants moved for a directed verdict. This Court denied that motion. After the defense rested, J&J Defendants again moved for directed verdict. This Court again denied J&J Defendants' motion. On August 15, 2024, the jury returned a verdict against the J&J Defendants on Plaintiffs' claims for negligence and strict liability for selling defective products. The jury awarded Plaintiffs a total of $32,656,250 in actual damages. The jury also found that the J&J Defendants' conduct was willful, wanton, or reckless. The jury found for the J&J Defendants on Plaintiffs' fraudulent misrepresentation cause of action. The J&J Defendants then argued the verdict already reflected a punitive damages award, and argued punitive damages were unjustified and should not be considered. This Court rejected those arguments. After punitive damages arguments by counsel and this Court's charge, the jury returned a verdict of $30,000,000 in punitive damages against J&J. This Court then discharged the jury and granted joint requests for

leave to file post-trial motions within ten days. This Court also permitted Plaintiffs to make additional filings regarding their claim of successor liability. The Plaintiffs submitted its brief on the successor liability issue on August 23, 2024, to which they attached additional evidence.

On August 26, 2024, Defendants Johnson & Johnson filed a 90-page post-trial motion for JNOV, new trial absolute based on errors of law, new trial absolute based on the thirteenth juror doctrine, and new trial *nisi remittitur*. Additionally, J&J moved for set-off, for the production of settlement documents, and for a stay of execution on the judgment. J&J also briefed the issue of successor liability, which by agreement was reserved for a hearing and ruling by this Court post-trial, inasmuch as successor liability is an equitable matter, which is not submitted to the jury. A comprehensive post-trial hearing was conducted on September 24, 2024. As is this Court's custom, preliminary rulings on these matters were made from the bench. For some issues this Court's decision was not fully resolved. The parties were asked to submit proposed orders, and to separately submit proposed orders on successor liability. Between September 30, 2024, and late November, the parties submitted proposed orders for this Court's review. On December 11, 2024, this Court issued an 86-page Order disposing of all above set forth matters. On December 23, 2024, the J&J Defendants filed a Motion to Reconsider. On January 10, 2025, before this Court had an opportunity to receive a reply to Defendants' motion from Plaintiffs, Defendants J&J appealed this case to the South Carolina Court of Appeals. As a result, this Court no longer had jurisdiction to act upon J&J's motion. On January 13, 2025, Appellants J&J filed with the Court of Appeals a Motion for a Limited Remand to allow this Court to consider J&J's December 23, 2024, Motion to Reconsider and to Alter or Amend. On January 30, 2025, the Court of Appeals remanded this matter to this Court for the limited purpose of considering J&J's motion. On February 21, 2025, Plaintiffs' filed a Response to J&J's Motion to Reconsider and to Alter or Amend. Although

Defendants J&J's Motion for Reconsideration focuses on successor liability, the punitive damages phase of the trial, and the verdict form, it also rehashes many of the pre-trial, trial, and post-trial rulings by this Court. Some perspective from this trial court judge as to the complicated pre-trial, trial, and post-trial activities in this matter may be helpful for the appellate review of this case.

This Court conducted lengthy pre-trial hearings in this matter in order to facilitate pre-trial discovery, as well as an orderly trial of this case. I reviewed tens of thousands of pages of documents, testimony under oath, business records, learned treatises, and numerous detailed briefings by these parties. Additionally, as is my practice, I conducted an extensive pre-trial hearing on all remaining discovery disputes, all outstanding motions for summary judgment, motions to dismiss, and motions *in limine* regarding jury selection and juror *voir dire*. Further, I attempted to resolve all issues regarding admission of testimony, exhibits, expert qualification, and the like, so that the trial could move smoothly. Moreover, I examined and ruled upon the use at trial of demonstrative materials in aid of opening statements or other presentations of evidence, and I requested an outline from each party of the witnesses to be presented each day.

Two weeks were allotted for the trial of this case, a more than adequate time-frame given that the Johnson & Johnson entities and AII, who was in default, were the only two trial Defendants. Despite these efforts on this Court's part, this trial presented difficulties right off the bat. The Defendants were not cooperative with this Court with their list of witnesses. Additionally, they attempted to revisit many pre-trial rulings and/or agreements by the parties as to the scope of experts, designation of witnesses, and designation of agreed upon documents and exhibits. Each day of trial, I conducted hearings before the 9:30 AM hour for the commencement of trial, and many times, after I dismissed the jury, generally between 5:00 PM and 5:30 PM, I conducted other hearings on disputed matters in an attempt to move the trial along. The Defendants continued to

decline to give an outline of their trial witnesses so that this Court could properly allocate time, but attempted to blame this Court for their inability to present experts and other witnesses they previously designated. Ultimately, Defendants Johnson & Johnson announced it would not present a substantive defense case, but would rest at the end of Plaintiffs' case. J&J contended that this decision was necessitated by the pre-trial rulings of this Court, which they claimed unfairly limited the testimony of their experts. This Court emphasized that none of their witnesses were excluded, and that they were free to offer any previously identified witnesses. My previously issued post-trial order explains in detail the limitations I placed on Defendants' experts consistent with the trial court's duty to "gatekeep" in its qualification of experts. As the trial moved toward presentation to the jury for deliberation, Defendants Johnson & Johnson attempted to change this Court's normal practice for bifurcation of damages. State law now requires bifurcation, and this Court handles bifurcation as follows.[1] In the Plaintiffs' and Defendants' presentation of their case regarding actual damages, there is no mention of a request for punitive damages. On the verdict form in the actual damages part of the trial, there is a question which directs the jury, if they find liability, to answer the following query:

> **WILLFUL, WANTON OR RECKLESS CONDUCT**
>
> If you answered "Yes" to Questions 1, 2, 5, or 6, please answer this question as to any Defendant for which you answered "Yes." We, the jury, find by clear and convincing evidence that the conduct of the following Defendants was willful, wanton, or reckless:
>
> Johnson & Johnson
> _____ Yes
> _____ No
>
> AII
> _____ Yes
> _____ No

Pre-trial, J&J moved that the trial be bifurcated and I granted this motion. I announced that the case would be bifurcated, and that there would be separation between the actual and punitive

[1] The provisions of S.C. Code Ann. § 15-32-520 mandate that bifurcation in which punitive damages are sought by Plaintiff must be granted if requested by any Defendant against whom punitive damages are sought.

damages phases of the trial. The verdict form asked the jury to determine whether they found Defendants' conduct to be willful, wanton or reckless, only if it found Defendants' conduct to be negligent and/or if the jury found that either Defendant engaged in fraudulent misrepresentation. Only if the questions were answered "yes" would we proceed to a punitive damages phase, and the jury would then be instructed as to how to conduct their deliberations. But suddenly, J&J objected to the previously ruled upon verdict form regarding bifurcation, and contended that the jury needed to be instructed during the actual damages part of the case about punitive damages. This is just an example of Defendants' conduct in endlessly revisiting settled rulings and, many times, agreed upon matters.

Now, under the guise of "issue preservation" the Defendants have asked the Court of Appeals to remand this matter for yet another round of hearings and rulings.

One of the contentions that is made in the motion is that this Court should include specific rulings on each of J&J's arguments or insert language stating that this Court considered and rejected any arguments not expressly addressed in the Order.

I do not believe that I am required to endlessly reframe my post-trial rulings to meet Defendants' request for answers to the additional questions they have framed. I am sensitive to the issue of preservation and accommodate it in all of my trials, as I did here. Johnson & Johnson's appellate counsel, led by C. Mitchell Brown, are top-notch and I do not criticize them in any way. Their client J&J decided, perhaps even before this trial began, that its primary defense would be aimed at attacking the trial court's rulings rather than presenting a substantive defense case. Appellate counsel is simply trying to play clean-up. I have tried to facilitate the preservation of Defendants J&J's disagreements with this Court's rulings. I do not think I am required to endlessly "doomscroll" my rulings in order to preserve Defendants' citations of trial judge error. This "issue

preservation" activity post-trial is no substitute for the presentation of a substantive defense during the trial of this matter; that was trial counsel's choice. Trial counsel had the responsibility in the first instance to preserve its positions. What I do not believe I am required to do is revisit my rulings again and again. I unreservedly respect the constitutional authority of the Court of Appeals and the South Carolina Supreme Court to review my rulings as a trial judge. I would not have had a job as an appellate judge for twenty-seven years if trial judges always got it right. If the appellate courts find error in my rulings, I will respect and follow those rulings, as I always have. Our appellate courts are second to none in their ability to faithfully discharge their responsibilities.

RULING ON THE MERITS

I have carefully considered the Defendants' Motion to Reconsider of December 3, 2024, and Plaintiffs' Response filed February 21, 2025. I believe the Plaintiffs' filing is a fair and accurate summary of the rulings I have made, and therefore, I have utilized it as well as Defendants' Motion to Reconsider to craft the Order of this Court.

LEGAL STANDARD

Rule 59(e) of the *South Carolina Rules of Civil Procedure* allows a party to move for an order altering or amending a judgment or order entered by the court. The decision to grant or deny a Rule 59(e), SCRCP, motion is within the sound discretion of the trial judge. *See Sullivan v. Hawker Beechcraft Corp.*, 397 S.C. 143, 723 S.E.2d 835 (App. 2012), *reh'g denied, cert dismissed.* A motion to alter or amend is typically granted only where the moving party shows that there is a clear factual error to be corrected. *See Doe v. Doe*, 324 S.C. 492, 478 S.E.2d 854 (Ct. App. 1996). As the federal courts have recognized, "reconsideration of a judgment after its entry is an extraordinary remedy which should be used sparingly." *Pacific Ins. Co. v. American Nat. Fire Ins. Co.*, 148 F.3d 396 (4th Cir. 1998).

A party's mere disagreement with how the trial court applied the pertinent standard when making its decision does not support a motion to alter or amend. *See Hutchinson v. Staton,* 994 F.2d 1076, 1083 (4th Cir. 1993). The South Carolina Supreme Court has explained that "[a] party *may* wish to file such a motion when she believes the court has misunderstood, failed to fully consider, or perhaps failed to rule on an argument or issue, and the party wishes for the court to reconsider or rule on it." *Elam v. S.C. Dep't of Transp.*, 361 S.C. 9, 24, 602 S.E.2d 772, 780 (2004). Moreover, a party cannot use a motion to alter or amend a judgment to present to the trial court an issue that the party could have raised prior to judgment but did not. *Collins Music Co., Inc. v. IGT*, 353 S.C. 559, 579 S.E.2d 524 (Ct. App. 2002); *Mailsource, LLC v. MA. Bailey & Associates, Inc.*, 356 S.C. 370, 374, 588 S.E.2d 639, 641 (Ct. App. 2003).

The J&J Defendants' Motion to Reconsider fails to show this Court has misunderstood, failed to fully consider, or failed to rule on an argument or issue. J&J Defendants' motion largely rehashes the same arguments J&J Defendants advanced in support of its post-trial motions, which this Court thoroughly considered, discussed, and partially rejected and partially adopted in its Order. No adequate reason has been presented to alter or amend this Court's rulings, with one minor exception explained in Section III.

ANALYSIS

I. SUCCESSOR LIABILITY

In its December 11, 2024 Order, this Court found (1) the successor liability issue in this case was governed by South Carolina law and (2) that Defendants Johnson & Johnson Holdco (NA) Inc. ("Holdco") and Defendant Kenvue, Inc. ("Kenvue") were successors in interest to Johnson & Johnson Consumer Products, Inc. ("Old JJCI") and Johnson & Johnson. The J&J

Defendants object to this finding and allege that this Court overlooked and/or did not expressly address certain argument related to the issue of successor liability:

A. Project Plato

The J&J Defendants contend that it was improper for this Court to include in its Order statements regarding the purpose of Project Plato, statements identifying the entities created as a result of Project Plato, and statements regarding the post-Project Plato manufacture of JBP. The J&J Defendants argue that these statements are erroneous and factually unsupported. Contrary to the J&J Defendants' argument, Plaintiffs presented evidence supporting these statements. Defendants have failed to state why the evidence submitted by Plaintiffs should not have been considered by this Court or why the statements made in support of a finding of successor liability are factually incorrect. Further, this Court thoroughly addressed these issues in its Order on pages 8-9. This Court's conclusion on the successor liability issue was not factually erroneous. The J&J Defendants simply disagree with this Court's ruling.

B. Defendants' "after the fact" objection to successor liability being heard by this Court only.

The J&J Defendants argue that they did not agree on how and when the successor liability issue would be addressed. This is not only inaccurate, it has been waived. First, in the J&J Defendants' memorandum entitled *Mode of Trial Motion Regarding Successor Liability and Amalgamation*, filed on August 3, 2024, the J&J Defendants argued that this Court should decide the issue of successor liability, as opposed to the jury, because it is an equitable issue.[2] Plaintiffs agreed with the J&J Defendants.[3] This Court agreed to conduct separate proceedings by this Court only. Second, this Court, in accordance with argument from the J&J Defendants' counsel,

[2] J&J Defendants' *Mode of Trial Motion Regarding Successor Liability and Amalgamation*, filed 8/3/24, at pgs. 1-2.
[3] Trial Transcript (hereinafter referred to as "TT") Day I, 8/5/24, at 10:2-11.

informed the parties that it would rule on the issue of successor liability after impaneling the jury. Counsel for Defendants J&J agreed, stating "[a]ll of the successor liability issues are after that".[4] At the hearing on the J&J Defendants' post-trial motions, this Court again noted the parties' agreement "to defer and consider" the successor liability issues "before we closed out the post-trial."[5] While there were objections throughout trial to the admission of evidence that may have been relevant to the successor liability issue as well as issues before the jury, the J&J Defendants did not object to this Court determining the successor liability issue post-jury verdict.

C. Punitive damage verdict is against J&J only.

The J&J Defendants now argue that the jury's verdict of willful, wanton, or reckless conduct was as to Johnson & Johnson only.[6] However at trial, the J&J Defendants, speaking through trial counsel, agreed they should be grouped together on the verdict form.[7] When the verdict was read in open court, the J&J Defendants did not object to the claimed error which they now assert. Thus, they have waived any challenge to errors on the verdict form. See *Limehouse v. S. Ry. Co.*, 216 S.C. 424, 430, 58 S.E.2d 685, 688 (1950) ("It is well established that where a verdict is objectionable as to form, the party who desires to complain should call that fact to the [c]ourt's attention when the verdict is published. Otherwise, the right to do so is waived.").

Further, while the J&J Defendants filed a total of eight pages of objections to this Court's final Jury Charges and Related Final Court Verdict Form and Plaintiffs' Proposed Verdict Form, not once did they object to the willful, wanton, and reckless interrogatory only listing "Johnson &

[4] TT Day I, 8/5/24, 17:18-25.
[5] Hearing on Post-Trial Motions, Vol. II, 9/25/24, at 162:16-19.
[6] Verdict Form, Ct Ex. 4, 8/19/24, at pg. 3.
[7] TT Day VI, 8/13/24, 1775:14-20.

Johnson."[8] Throughout trial, the J&J Defendants presented a group defense. The jury's verdict was against the "J&J Entities," and this Court's reference to that fact was not in error.

D. Successor liability governed by South Carolina law.

The J&J Defendants argue that this Court erroneously determined that the successor liability issue was governed by South Carolina law and not Texas law. The J&J Defendants simply disagree with my ruling on this issue, which I thoroughly addressed in my Order.[9]

E. Pecos River should be substitute for all other J&J entities.

The J&J Defendants contend that ruling on the issue of successor liability was unnecessary because Johnson & Johnson and newly created entity Pecos River are still in existence and can pay the judgment. The trial of this matter began on August 5, 2024. The J&J Defendants only filed a motion for substitution—requesting the substitution of Pecos River for LLT Management—after the entry of the verdict on August 15, 2024. Thus, this Court had no knowledge of the existence of Pecos River nor its ability to pay any verdict until after the entry of the jury's verdict. Consequently, it cannot be said that a ruling on the issue of successor liability was unnecessary because LLT—the entity that the J&J Defendants told this Court would be responsible for any verdict rendered against the J&J Defendants—then ceased to exist. Given the frequent name changes, bankruptcies, and other corporate maneuvers of J&J and its related entities, all designed to avoid liability to talc plaintiffs, Plaintiffs' successor liability claims are necessary to ensure that solvent, responsible entities are available respond to the verdict. J&J does not get to dictate whether Plaintiffs' successor liability claims are "unnecessary," especially when they failed to establish any requirement that the predecessor no longer exist before the issue of successor liability becomes

[8] *See* J&J Defendants' Objections to this Court's Final Jury Charges and Related Final Court Verdict Form, filed 8/14/24; *and* J&J Defendants' Objections to Plaintiffs' Proposed Verdict Form, filed 8/12/24.
[9] Order on Defendants Johnson & Johnson; LLT Management, LLC; Johnson & Johnson Holdco (NA) Inc.; and Kenvue, Inc.'s Post-Trial Motions, filed 12/11/24, at pgs. 13-16.

ripe for ruling. *See Simmons v. Mark Lift Indus.*, 366 S.C. 308, 332, 622 S.E.2d 213, 225-226 (S.C. 2005).

F. Mere Continuation Theory

This Court did not err in finding successor liability under the mere continuation exception. In my Order, I addressed each of the elements for application of the mere continuation exception as expressed in *Nationwide Mutual Insurance Company v. Eagle Window & Door, Inc.*, 424 S.C. 256, 269-70, 818 S.E.2d 447, 454-55 (S.C. 2018). Importantly, this Court included specific evidence demonstrating the commonality among officers, directors, **and** shareholders. My Order specifically found:

> The business of Old JJCI continued without interruption in New JJCI via Holdco and Kenvue. The shareholders of Old JJCI became shareholder[s] of Holdco/Kenvue. The companies shared employees, including members of their leadership teams and board of directors. The majority of the individual[s] on Kenvue's current Board of Directors got their start at Johnson & Johnson or Old JJCI. Kenvue has even admitted in official documents that it is the same company as Old JJCI.[10]

This is not an instance where this Court misapplied the law. The J&J Defendants simply disagree with this Court's findings.

G. *Kincaid* Citation

This Court did not conflate the doctrine of successor liability and piercing the corporate veil. As support for this position, the J&J Defendants point only to this Court's reference to *Kincaid v. Landing Development Corp.*, 289 S.C. 89, 344 S.E.2d 869 (Ct. App. 1986). I did so only in reference to the commonality between shareholders, officers, and directors and a "blurred corporate distinction amongst the entities involved[.]"[11] The reference to *Kincaid* was not improper

[10] Order, filed 12/11/24, at pgs. 17-18.
[11] Order, filed 12/11/24, at pg. 20.

and does not suggest that this Court improperly conflated the doctrines of successor liability and piercing the corporate veil.

H. Fraud exception for successor liability.

This Court did not err in finding that the fraud exception for successor liability applied. On this point, the J&J Defendants point to the creation dates for Kenvue and the cessation of sales of JBP. All of which are irrelevant. The issue of successor liability focuses on liability for the harms caused. That harm is not lessened simply because the Defendants created another entity. Again, this is not an issue of misapplication of facts. As this Court noted:

> Johnson & Johnson, Holdco, and Kenvue, along with other entities, have intermingled and blurred corporate interests, entities, and activities such that there is no legal distinction between the corporation involved in the consumer products business.[12]

The J&J Defendants simply disagree with this Court's ruling.

I. Blurred Corporate Distinction

As above, the J&J Defendants disagree with this Court's finding they "blurred corporate distinction between the entities involved in the consumer product business." This Court considered the J&J Defendants' evidence contradicting the evidence submitted by Plaintiffs on this issue. J&J simply disagrees with this Court's ruling.

II. PUNITIVE DAMAGES

A. Strict Liability

Plaintiffs' case against the J&J Defendants was not based solely on the theory of strict liability. The imposition of punitive damages, based on the evidence submitted, is proper as to Plaintiffs' remaining causes of action, excluding loss of consortium. As noted in Plaintiffs' Response In Opposition to J&J Defendants' Post-Trial Motions, Plaintiffs did not seek to recover

[12] Order, filed 12/11/24, at pg. 18.

punitive damages as it relates to their strict liability claim or loss of consortium claims. It is the J&J Defendants, not this Court, who misunderstand the purpose and propriety of punitive damages. There is no foundation to argue that this Court awarded punitive damages in this case for strict liability.

B. Loss of Consortium

Plaintiffs did not seek to recover punitive damages as it relates to Plaintiff Lonnie Long's loss of consortium claim. It is the J&J Defendants, not this Court, who misunderstand the purpose and propriety of punitive damages. There is no foundation to argue that this Court awarded punitive damages in this case for loss of consortium.

C. Deterrence

The South Carolina Court of Appeals recently wrote that "[t]he purposes of punitive damages are to punish the wrongdoer and deter the wrongdoer and others from engaging in similar reckless, willful, wanton, or malicious conduct in the future." *Portrait Homes-South Carolina, LLC v. Pennsylvania Nat'l Mut. Casualty Ins. Co., et al*., 442 S.C. 515, 587, 900 S.E.2d 245, 284 (Ct. App. 2023) (*quoting Clark v. Cantrell*, 339 S.C. 369, 378-379, 529 S.E.2d 528, 533 (2000)). Additionally, punitive damages "serve to vindicate a private right of the injured party[.]" *Id.* Plaintiffs' evidence established that talc-based JBP is *still available* for purchase online,[13] plus J&J continues to sell other formulas of JBP and thousands of other consumer products. Punitive damages serve the valid purposes of both punishing J&J and deterring J&J and others from selling personal care products that cause serious bodily harm and death.

[13] Mongon, CEO Kenvue Depo., *Naranjo v. Kenvue*, 8/14/23, 55:3-12.

D. Comparative Fault

The J&J Defendants argue that it is unconstitutional to award punitive damages based on a comparative fault scheme that does not allow the jury to apportion fault between tortfeasors. The J&J Defendants raised this issue in their post-trial motions. Plaintiffs addressed this issue in their response. This Court did not award punitive damages based on a comparative fault scheme. Punitive damages in this case were awarded pursuant to S.C. Code Ann. § 15-32-520, which does not require apportionment of fault among joint tortfeasors. While "the defendant's degree of culpability" is one of many factors the jury **may** consider in arriving at the amount of punitive damages to award, its "apportionment of fault" is reflected in the punitive damages award . . . specific to [that] defendant." S.C. Code Ann. § 15-32-520(G). Further, "each defendant is liable only for the amount of the award made against that defendant." *Id.* Thus, there is no danger that J&J would be liable for an unsupported portion of the punitive damages award.

E. Punitive Damage Instructions

Contrary to the J&J Defendants' position, this Court addressed their contentions of errors in the punitive damage's instruction. "The substance of the law is what must be instructed to the jury, not any particular verbiage." *State v. Marin*, 415 S.C. 475, 482, 783 S.E.2d 808, 812 (2016). My Order concluded that "[t]he punitive damages instruction explained the nature, purpose, and basis for the punitive damages award."[14]

By determining that the punitive damages instruction was proper, this Court thereby concluded there was no error in the punitive damages instruction and rejected the J&J Defendants' arguments on this issue. The J&J Defendants have given this Court no reason to revisit this ruling.

[14] Order, filed 12/11/24, at pg. 35.

F. *Mitchell v. Fortis* Review

The J&J Defendants contend that this Court erred in its due process review under *Mitchell v. Fortis Ins. Co.*, 385 S.C. 570, 686 S.E.2d 176 (2009). Notably, the J&J Defendants do not contend that this Court misunderstood, failed to fully consider, or failed to rule on their argument regarding the *Mitchell v. Fortis* guidelines. They simply disagree with this Court's conclusions. A party's mere disagreement with how the trial court applied the pertinent standard when making its decision does not support a motion to alter or amend.[15] This Court addressed each of the *Mitchell v. Fortis* factors and the evidence supporting those factors.

The J&J Defendants contend this Court erred in its review of the punitive damages award. Again, the J&J Defendants do not assert that this Court misunderstood, failed to fully consider, or failed to rule on any of their arguments against the imposition of punitive damages. They simply disagree with this Court's conclusions. A party's mere disagreement with how the trial court applied the pertinent standard when making its decision does not support a motion to alter or amend. *See Hutchinson,* 994 F.2d at 1083. Additionally, this Court addressed and dismissed the J&J Defendants' arguments regarding Plaintiffs' counsel's closing argument. As above, they simply disagree with this Court's ruling and disagreement is an improper basis to alter or amend this Court's judgment.

III. OTHER J&J OBJECTIONS

A. Dr. Longo's Testimony

While the majority of the J&J Defendants' bases for requesting this Court alter and/or amend its Order are simply a rehashing of their arguments against entry of the jury's verdict or a mere disagreement with this Court's ruling on their post-trial motions, this Court will make one

[15] *See Hutchinson v. Staton,* 994 F.2d 1076, 1083 (4th Cir. 1993).

minor change to a sentence on page 6 of its Order, filed December 11, 2024, regarding the type of asbestos fibers Plaintiffs' expert Dr. Longo identified in brakes. The statement will be amended to refer to winchite only, instead of winchite and tremolite, and to accurately read:

> *The jury then heard, uncontradicted, that Dr. Longo has never found winchite in any of his testing of brakes.*[16]

This minor alternation has no bearing on this Court's other findings, legal conclusions, and rulings on the J&J Defendants' post-trial motions.

B. Dr. Haber and Dr. Madigan's Testimony on Proximate Cause

Contrary to J&J's contentions, this Court's Order does not misstate the evidence on proximate cause. Dr. Haber testified as an expert for Plaintiffs on issues regarding proximate cause. The statement in this Court's Order regarding Dr. Haber's testimony was an accurate short summary of his testimony, including his references to talc exposure studies, and his ultimate opinion that "the fiber per cc levels of exposure or a range of exposures from Johnson's Baby Powder" is "between .1 to 4 fibers per cc."[17] Similarly, Dr. Haber referenced a talc exposure study "looking at people that used it for 40 years, .38 to 5.18 fiber . . . per cc years[.]"[18] Dr. Haber later confirmed that these numbers would apply to Michael Perry as he used the product for 40 years.[19] No alteration is necessary.

This Court's statement regarding Dr. Madigan's conclusions regarding Michael Perry's dose of asbestos from JBP was correct based on Dr. Madigan's prior calculations, even though those calculations were not specific to Michael Perry. Dr. Madigan testified that he did a dose calculation immediately prior to this trial for someone who applied Johnson's Baby Powder twice

[16] This Court has today, February 28, 2025, filed an Amended Order reflecting this ruling.
[17] TT Day II, 8/6/24, at 414:12-18.
[18] *Id.* at 414:2-6.
[19] *Id.* at 426:8-14.

a day for 30 years.[20] Relying on the Gardner paper, a peer reviewed and published study, Dr. Madigan testified that "there is an estimate of the fibers per cc of asbestos that a person was exposed to by using talc for one minute. And it's 1.9 fibers per cc."[21] He further testified that this was the equivalent to .35 fiber years.[22] It is clear from the similarities between the specific individual in Dr. Madigan's calculations and Michael Perry, that the dose calculation would be the same or similar. No alteration is necessary.

IV. STAY

The J&J Defendants seemingly request this Court alter or amend its decision as to the bond amount. This is simply a rehashing of the arguments the J&J Defendants made in their post-trial motion to stay execution of judgment. The amount of the bond is within this Court's discretion and can either be in the full amount of the judgment or some lesser amount according to a statutory formula. This Court exercised its discretion and protected the judgment in this case from the J&J Defendants' constant corporate changes by setting a bond that covers the full amount of the judgment. The J&J Defendants have failed to demonstrate that this Court's setting of the bond at the full amount of the judgment was a clear factual error, or that this Court has misunderstood, failed to fully consider their argument, or failed to rule on the issue. The J&J Defendants' motions as to this issue should be denied.

[20] TT Day III, 8/7/24 at 802:24-803:9.
[21] *Id.* at 803:14-17.
[22] *Id.* at 803:22-24.

CONCLUSION

Motions to Reconsider, Alter or Amend a trial court's final Order must be premised on an error of fact or law made by the court. Mere disagreement with the court's decisions is no a sufficient basis for such a motion. This Order corrects the one minor factual error contained in the December 11, 2024, Order of this Court. With respect to all other matters raised by J&J, for the reasons stated above, Defendants' Motion to Reconsider, and/or to Alter or Amend is **DENIED**.

AND IT IS SO ORDERED.

[JUDGE'S ELECTRONIC SIGNATURE PAGE TO FOLLOW]

Richland Common Pleas

Case Caption: Michael L Perry , plaintiff, et al vs American International Industries , defendant, et al

Case Number: 2023CP4004072

Type: Order/Other

So Ordered

Jean H. Toal