

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

Jean Hoefer Toal, Circuit Court Judge

Appellate Case No. 2024-001550
Lower Court Case No. 2023-CP-40-04072

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SC Court of Appeals

Michael L. Perry and Lonnie L. Long, Respondents,

v.

American International Industries, Atlas Turner Inc., Avon Products, Inc., Barretts Minerals Inc., BlockDrug Company, Inc., Brenntag North America, Inc., Brenntag Specialties, LLC, Bristol-Myers Squibb Company, Buy-Low General Merchandise, Inc., C&S Wholesale Grocers, LLC, Calvin Klein Inc., Chanel Inc., Charles B. Chrystal Company, Inc., Chattem, Inc., Colgate-Palmolive Company, Color Techniques, Inc., Cosmetic Specialties, Inc., Coty Inc., CVS Health Corporation, CVS Pharmacy, Inc., EDC Drug Stores, Inc., Estee Lauder Inc., Estee Lauder International, Inc., The Estee Lauder Companies Inc., Food Lion, LLC, Genuine Parts Company, Glamour Industries Co., Himmel Management Co. LLC, Himmel Media LLC, Honeywell International, Inc., Idelle Labs, Ltd., IMI Fabi (Diana) LLC, IMI Fabi (USA) Inc., IMI Fabi, LLC, Janssen Pharmaceuticals, Inc., Johnson & Johnson, Johnson & Johnson Holdco (NA) Inc., Kenvue Inc.; L'Oreal USA, Inc., L'Oreal USA Products, Inc., LLT Management LLC, Long's Drugstores of South Carolina, Inc., LTL Management LLC, Minerals Technologies Inc., The Neslemur Company, Piggly Wiggly, LLC, Pneumo Abex LLC, Presperse Corporation, The Procter & Gamble Company, PTI Royston, LLC, PTI Union LLC, Ralph Lauren Corporation, Rite Aid of South Carolina, Inc., Shulton, Inc., Specialty Minerals Inc., Sumitomo Corporation of Americas, Union Carbide Corporation, Vi-Jon, LLC; Walgreen Co., Walmart Inc., Defendants,

Of which American International Industries is the Appellant.

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INDEX

INDEX.....	i
 ORDERS AND JUDGMENTS	
Final order on A-I-I’s post-trial motions filed on December 11, 2024	01
Order granting default against A-I-I filed on October 3, 2023	05
Order denying A-I-I’s motion to set aside default filed on November 2, 2023	48
Order granting plaintiff’s first motion to amend complaint filed on November 21, 2023.....	53
Order granting plaintiff’s second motion to amend complaint filed on February 1, 2024.....	55
Order granting plaintiff’s motion for protective order filed on May 29, 2024	57
Order denying A-I-I’s petition for a writ of certiorari filed August 13, 2024.....	61
Jury Verdict filed on August 19, 2024	63
 PLEADINGS	
Initial summons and complaint filed August 4, 2023	67
Plaintiffs’ notice and motion for default against A-I-I filed on September 26, 2023, with Ms. McVey’s affidavit and Exhibit A (Affidavit of Service of A-I-I).....	174
A-I-I’s answer filed on September 29, 2023	179
A-I-I motion to set aside default filed on October 10, 2023, with accompanying affidavits	223
Plaintiffs’ status report regarding A-I-I default filed on October 23, 2023.....	264
A-I-I’s amended motion to set aside default filed on October 24, 2024, with accompanying affidavits	268
Plaintiffs’ motion to amend summons and complaint filed on November 9, 2023	293
Plaintiffs’ first amended summons and complaint filed on November 30, 2023.....	295
A-I-I’s answer to Plaintiffs’ first amended complaint filed on December 8, 2023	402

Plaintiffs’ second motion to amend complaint filed on January 31, 2024.....	445
Plaintiffs’ second amended summons and complaint filed on February 1, 2024	447
A-I-I’s answer to Plaintiffs’ second amended complaint filed on February 16, 2024	579
A-I-I’s motion for a protective order filed on April 24, 2024.....	627
Plaintiffs’ motion for a protective order and to quash A-I-I’s subpoena for employee records filed on May 9, 2024.....	639
Plaintiffs’ motion for a protective order from A-I-I’s expert discovery filed on May 22, 2024	641
A-I-I’s response to Plaintiffs’ motion for protective order filed on May 24, 2024.....	645
A-I-I’s proffered motion for summary judgment filed on June 11, 2024	656
A-I-I’s petition for a writ of certiorari filed on June 28, 2024.....	681
Plaintiffs’ return to A-I-I’s petition for writ of certiorari filed on July 8, 2024	711
A-I-I’s reply to Plaintiffs’ return to A-I-I’s petition for writ of certiorari filed on July 17, 2024.....	731
A-I-I’s motion for stay pending ruling on cert petition filed on July 29, 2024.....	748
A-I-I’s motion for directed verdict filed on August 13, 2024.....	762
A-I-I’s motion for JNOV and for new trial filed on August 26, 2024	772
A-I-I’s motion to vacate and set aside default judgment filed on August 26, 2024.....	810
Plaintiffs’ response to A-I-I’s motion for JNOV and for new trial filed on September 13, 2024	828
Plaintiffs’ response to A-I-I’s motion to vacate and set aside default with designated exhibits filed on September 13, 2024	864
TRANSCRIPTS	
Motion to set aside default hearing, October 25, 2023	915
Pre-trial hearing, July 30, 2024.....	937

TRIAL TRANSCRIPT

Opening statement by Rachel A. Gross (Plaintiffs) 988

Opening statement by Kim Bueno (Johnson & Johnson Defendants).....1028

PLAINTIFFS' CASE IN CHIEF

TESTIMONY

Arnold R. Brody, Ph.D.

Direct Examination on Voir Dire by Benjamin H. Adams.....1068

Direct Examination by Benjamin H. Adams.....1077

Cross Examination by Kim Bueno 1105

Redirect Examination by Benjamin H. Adams 1112

Steven E. Haber, M.D.

Direct Examination by Benjamin H. Adams.....1119

Cross Examination by Kim Bueno 1219

Redirect Examination by Benjamin H. Adams 1283

John Hopkins, Ph.D. (via videotape)

Direct Examination by Christopher Panatier 1304

Barry C. Gibney, D.O.

Direct Examination by Rachel A. Gross 1397

Cross Examination by Kim Bueno 1420

Cross Examination by Stephanie G. Flynn 1430

Redirect Examination by Rachel A. Gross 1433

Recross Examination by Kim Bueno.....1441

David Madigan, Ph.D.

Direct Examination by Rachel A. Gross 1443

Cross Examination by Kim Bueno 1478

Redirect Examination by Rachel A. Gross 1499

William E. Longo, Ph.D.

Direct Examination by Benjamin H. Adams.....1503

Cross Examination by Kim Bueno 1576

Redirect Examination by Benjamin H. Adams 1664

John Hopkins, Ph.D. (via videotape)

Examination by Mr. Bicks 1683

Edwin Kuffner, M.D.

Direct Examination by Benjamin H. Adams.....1794

Cross Examination by Kim Bueno	1858
Steven W. Mann. (via videotape)	
Examination by Mr. Block.....	1932
Lonnie Long	
Direct Examination by Rachel A. Gross	2117
Cross Examination by Kim Bueno	2126
Redirect Examination by Rachel A. Gross	2137
Robert W. Johnson	
Direct Examination by Benjamin H. Adams.....	2140
Cross Examination by Stephanie G. Flynn	2155
Michael Perry	
Direct Examination by Rachel A. Gross	2179
Cross Examination by Kim Bueno	2201
Plaintiffs Rest.....	2233
Motion for directed verdict	2234
Ruling by the Court.....	2238
Defense rests	2240
Renewed motion for directed verdict.....	2241
Ruling by the Court.....	2241
Closing argument by Benjamin H. Adams (Plaintiffs)	2251
Closing argument by Stephanie G. Flynn (A-I-I)	2334
Closing argument by Kim Bueno (Johnson & Johnson Defendants)	2337
Rebuttal closing argument by Benjamin H. Adams (Plaintiffs).....	2401
Jury charge	2417
Verdict	2475
PUNITIVE DAMAGES PHASE	
Jury charge	2489

Closing argument by Benjamin H. Adams (Plaintiffs)	2496
Closing argument by Stephanie G. Flynn (A-I-I)	2501
Closing argument by Kim Bueno (Johnson & Johnson Defendants)	2506
Rebuttal closing argument by Benjamin H. Adams (Plaintiffs).....	2511
Verdict on punitive damages	2516
Post-trial motions hearing, September 24 – 25, 2024.....	2517

OTHER MATERIALS

Exhibit 1 to Plaintiffs’ Master Exhibits in Support of their Responses to Motions for Summary Judgment (Deposition of Michael Perry excerpts)	2578
Exhibit 124 to Plaintiffs’ Master Exhibits in Support of their Responses to Motions for Summary Judgment (Declaration of Dr. Steven E. Haber, M.D., F.A.C.P., F.C.C.P., in <i>Chapman v. Avon Products, Inc.</i>).....	2585
Exhibit 156 to Plaintiffs’ Master Exhibits in Support of their Responses to Motions for Summary Judgment (Anderson “Petrogenesis and Timing of Talc Formation in the Ruby Range, Southwestern Montana,” Econ. Geol. Vol. 85, 585-600, 588 (1990)).....	2643
Exhibit 157 to Plaintiffs’ Master Exhibits in Support of their Responses to Motions for Summary Judgment (James, “Precambrian Geology and Bedded Iron Deposits of Southwestern Ruby Range, Montana,” USGS 1495).....	2660
Exhibit 159 to Plaintiffs’ Master Exhibits in Support of their Responses to Motions for Summary Judgment (Memorandum from Lisa Bithell Kirk, Sr. Geochemist to Darin Lindsey and John Parks of Barretts Minerals).....	2669
Exhibit 194 to Plaintiffs’ Master Exhibits in Support of their Responses to Motions for Summary Judgment (Trial Testimony of Dr. William Longo in <i>Plant v. Avon Products, Inc.</i> , with attached Ex. 3804).....	2677
Exhibit 238 to Plaintiffs’ Master Exhibits in Support of their Responses to Motions for Summary Judgment (Mark W. Rigler, Ph.D., Report re Jennifer Chamberlain).....	2691

1 Q. And if we look at what Dr. Wehner wrote that
2 was submitted to the NTP, it says here above the
3 "Summary and Conclusions," can you see it at the center
4 of the screen?

5 A. Yes.

6 Q. And Dr. Wehner writes, "The aspect ratio of
7 their fibers is believed to be mainly responsible for
8 the carcinogenicity of asbestos fibers."

9 Do you see that?

10 A. Yes.

11 Q. And then Dr. Wehner writes in this submission
12 that was submitted to the National Toxicology Program,
13 "Cosmetic talc does not contain fibers."

14 You see that?

15 A. Yes, I see it.

16 Q. Okay. So while Johnson & Johnson was paying
17 Dr. Wehner, he wrote a paper that was submitted to the
18 National Toxicology Program that said that cosmetic
19 talc does not contain fibers; correct?

20 A. Yes, that's what it says.

21 Q. And there's no disclosure in Dr. Wehner's
22 biography here about him being paid by
23 Johnson & Johnson; correct?

24 If you look at --

25 A. What I'm looking at doesn't seem to address

1 it.

2 Q. And he cites to a prior publication that he
3 did in 2002 on cosmetic talc; correct? Third
4 paragraph?

5 A. Yeah, hold on. All right. So listed his
6 times when he was at Battelle that go through 1989, and
7 then there's this other paragraph just saying that he
8 recently published this peer-reviewed in the Journal of
9 Regulatory, yes.

10 Q. Dr. Wehner, again, did not disclose his
11 funding that he received from Johnson & Johnson to the
12 National Toxicology Program; true or not true?

13 A. Yeah, I don't see it, so I guess that's
14 correct.

15 Q. Sir, you actually knew from Dr. Wehner that
16 he considered the NTP to be his opponents; correct?

17 A. I can't remember him saying that.

18 Q. You knew that Dr. Wehner viewed the NTP's
19 process of evaluating the carcinogenicity of talc to be
20 a battlefield?

21 A. I don't recall that.

22 Q. You knew that Dr. Wehner considered himself
23 to be in Johnson & Johnson's camp; right?

24 A. Yeah, I considered him a scientist and an
25 academic that, you know, we consult with who had a long

1 history of involvement in issues with talc, so ...

2 Q. And you talked to Dr. Wehner all the time;
3 right?

4 A. No, actually, I didn't talk to him very often
5 that I recall.

6 Q. He wrote you letters; right?

7 A. Yeah, I don't recall how many. It's been a
8 long time.

9 Q. Dr. Wehner wrote you a letter dated
10 October 13th, 2004; correct?

11 A. Yes.

12 Q. And you had a conference call with him before
13 he wrote you the letter; correct?

14 A. I guess. I don't remember.

15 Q. He said, "I enjoyed our interesting and
16 productive conference call."

17 That's what he wrote to you; right?

18 A. Okay. So there we go, yes.

19 Q. And he wrote to you, "On the subject of
20 purported carcinogenicity of talc, NTP obviously has
21 chosen epidemiological studies as the principal
22 battlefield."

23 Is that what he wrote?

24 A. Yes.

25 Q. And then he wrote to you, "This, of course,

1 requires maximum efforts to repulse this attack."

2 Is that what --

3 A. He's using the military words, okay.

4 Q. He's using military words; correct?

5 A. Yes.

6 Q. And he wrote, "I believe such efforts are
7 already underway in our camp."

8 Do you see that?

9 A. Uh-huh.

10 Q. Did I read that correctly?

11 A. Yes.

12 Q. "In our camp" refers to you, Dr. Wehner,
13 other people at Johnson & Johnson, and Luzenac;
14 correct?

15 A. I guess my comment here would be that his --
16 whatever his choice of words is, you know, it's
17 science. He could submit it, the NTP can examine all
18 his literature, examine his paper. They can reject it
19 or whatever. So however he might view it, which is not
20 necessarily how I view it, he says it. I can't change
21 his words.

22 Q. And then Dr. Wehner says to you in his
23 letter, "However, we should not leave the choice of
24 battlefields entirely to our opponents."

25 Do you see that?

1 A. Yep.

2 Q. Mr. Zazenski from Luzenac was copied on this
3 same letter that refers to opponents and battles;
4 correct?

5 A. Yes. He was copied on the letter, yes.

6 Q. And you knew that Dr. Wehner had said these
7 things in this letter of October of 2004; right?

8 A. They're in this document, yes.

9 Q. You continued to be in charge of paying the
10 same Dr. Wehner until at least May of 2006 --

11 A. Yes.

12 Q. -- correct, when you wrote your boss Joan
13 Caselvieri and said that you had decided in May 2006
14 not to renew his contract; correct?

15 A. Yes.

16 Q. Let me just ask you, Dr. Mann, did
17 Johnson & Johnson and its talc supplier Luzenac have an
18 insider in the NTP who was telling your company what
19 the NTP was thinking about the talc issue?

20 A. I am unaware of that.

21 Q. Are you saying that no one told you that
22 Luzenac and Johnson & Johnson had an NTP insider?

23 A. I think Rich referred to intelligence. I
24 don't know what he means by that. I don't have anybody
25 inside there. I am not aware that J&J did either, so I

1 can't comment to what he's referring to.

2 Q. Do you see the email that Mr. Zazenski from
3 Luzenac sent you on January 12th, 2005?

4 A. Yes.

5 Q. Okay. And he says to you, "Steve, FYI, we
6 just learned yesterday from a NTP insider the following
7 intelligence on the talc nominations."

8 Do you see that?

9 A. Yep, that's what he said.

10 Q. Did you -- in early 2005, do you admit that
11 the work you were doing on the NTP issue was part of
12 Johnson & Johnson's worldwide project to defend talc?

13 A. I mean, we're always going to defend our
14 products that we believe are safe. If that's --

15 Q. Did Johnson & Johnson have an active project
16 in February of 2005 to defend talc?

17 A. Yeah, I don't -- we were trying to pull
18 together the literature to share with NTP, and if
19 possible, also with IARC. So if that's worldwide, then
20 yes.

21 Q. And then Mr. Predale responds to the email
22 that we just read about the project active to defend
23 talc.

24 Do you see that Mr. Predale then gives a
25 response?

1 A. Yes, "Dear Corrina," right.

2 Q. And he says, "Dear Corrina," and he says,
3 "The talc issue is being lead primarily from our tox
4 folks under the direction of Joan Caselvieri. Steve
5 Mann is the day-to-day person leading the effort."

6 Do you see that?

7 A. Yes. And I would comment that what Rob
8 Predale necessarily thinks isn't necessarily correct.

9 Q. Okay. And you're on the email chain;
10 correct?

11 A. Yeah, I know.

12 Q. Dr. Mann, do you submit that you were working
13 to assure a good outcome with NTP by working with
14 Washington, D.C. lawyers?

15 A. I was working to get all the good science
16 into their hands of the agency.

17 Q. And then you wrote, "I have been working on
18 several fronts to assure a good outcome, including both
19 working with the CTFA Talc Interested Party Task Force,
20 and independently with our major supplier Luzenac and
21 their Washington, D.C. legal team."

22 Do you see that?

23 A. Yes. Good science should get a good outcome.

24 Q. The words that you used in this email was
25 that you were "working to assure a good outcome."

1 Did you use those words?

2 A. I wrote those words.

3 Q. And you said that you were working with a
4 Washington, D.C. legal team; right?

5 A. Yeah, that was Luzenac's. They were working
6 with the a legal firm.

7 Q. Did you ever on behalf of Johnson & Johnson
8 or Johnson & Johnson Consumer pay scientists through
9 this Washington, D.C. legal team?

10 A. Not intentionally, no.

11 Q. You wouldn't do that intentionally?

12 A. No. I would say we -- you know, we had, you
13 know, consulting work going on with other academics and
14 so I don't know where this legal team goes and gets
15 involved or what. This is Luzenac and involved them,
16 and that's how I remember it.

17 Q. Let's go to Exhibit 33, please. Exhibit 33
18 is an email from someone named Ridge Hall from a law
19 firm called Crowell & Moring.

20 Do you know that person?

21 A. Yeah. I mean, I think he spoke to me as a
22 part of that legal firm, which I think was the one we
23 were just talking about with Luzenac.

24 Q. Okay. And Ridge Hall from Crowell, the
25 Crowell law firm wrote you about the NTP talc matter on

1 February 28th, 2005; correct?

2 A. Uh-huh.

3 Q. Yes?

4 A. Yes, he wrote it.

5 Q. He also wrote Rich Zazenski from Luzenac;
6 correct?

7 A. Yeah.

8 Q. All right. And he is writing about two
9 scientists, one named Huncharek and the other named
10 Muscat; correct?

11 A. Right.

12 Q. And he is talking about a retainer letter
13 with Huncharek and Muscat, correct, in the first
14 sentence?

15 A. Uh-huh, yes.

16 Q. You know that scientists Huncharek and Muscat
17 were being paid money in part by Johnson & Johnson to
18 do work relating to talc and cancer; correct?

19 A. We were paying -- we were helping support or
20 fund Luzenac to work with them, yes.

21 Q. You know that Ridgeway Hall was a lawyer for
22 the law firm Crowell & Moring located in Washington,
23 D.C.; true?

24 A. Yes, of course.

25 Q. And Mr. Hall writes in this email to you, "To

1 maximize the effectiveness of our use of the attorney
2 work product privileges for their work, I will plan to
3 send them a Crowell & Moring check in that amount to be
4 reimbursed to us by Luzenac and Johnson & Johnson in
5 whatever proportions you agree on."

6 Did I read that correctly?

7 A. That's what it says, yeah. Again, I don't
8 know how it played out in the end as to who paid what,
9 when, and where.

10 Q. And looking at Exhibit 33A, it is an email
11 from the lawyer, Ridgeway Hall at Crowell & Moring to
12 you dated February 1st, 2005; correct?

13 A. Yes, February 1st, 2005.

14 Q. It says, "Dear Steve, it was a pleasure
15 speaking with you this morning"; correct?

16 A. Yes.

17 Q. You did speak to a lawyer from Crowell &
18 Moring from Washington; correct?

19 A. Not that I recall, but that's what it says.

20 Q. Then he writes in the second paragraph, "As I
21 mentioned during our discussion this morning, our plan
22 is for Crowell & Moring to retain Huncharek and Muscat
23 so as to preserve the benefit of the attorney work
24 product privilege which is helpful in protecting
25 confidentiality."

1 Do you see that?

2 A. Yes, and I didn't understand too much what
3 they were talking about then, and I still don't.

4 Q. Well, you know that the payments to Doctors
5 Huncharek and Muscat were paid by Crowell & Moring, and
6 that Johnson & Johnson reimbursed Crowell & Moring;
7 correct?

8 A. Yeah. Again, I don't recall specifically how
9 that went down.

10 Q. You approved those payments, didn't you?

11 A. I don't recall.

12 Q. Please look at Exhibit 34.

13 A. Okay.

14 Q. You approved payments to Crowell & Moring
15 that were used for Dr. Huncharek and Muscat; correct?

16 A. Yeah, again, I don't recall.

17 Q. And the description is -- it says,
18 "Crowell & Moring."

19 That's the DC law firm, the Washington law
20 firm; correct?

21 A. Yes.

22 Q. And the Steve Mann, that's you; correct?

23 A. Yes, it is.

24 Q. And the description is "Talc Studies"; right?

25 A. Yes.

1 Q. And Huncharek and Muscat were doing talc
2 studies; correct?

3 A. Yes, they were doing.

4 Q. And it says, "Payment justification: Payment
5 to Crowell & Moring for studies performed by
6 Dr. Huncharek and Muscat."

7 You see that?

8 A. Yes.

9 Q. So Crowell & Moring was the middleman between
10 Johnson & Johnson's payments and the scientists;
11 correct?

12 A. Again, I don't recall this. I don't recall
13 approving them. I don't recall this aspect of it. I
14 remember discussions of the designs of the study, and
15 what the intentions were, but all of this, I just don't
16 recall it.

17 Q. And it lists here, do you see this 16,275
18 U.S. dollars, fees for services? Is that what the
19 document says?

20 A. That's what the document says.

21 Q. And it says, "Supplier Name:
22 Crowell & Moring, LLP."

23 Do you see that?

24 A. Yes.

25 Q. And they were located in Washington, D.C.;

1 right?

2 A. Yes.

3 Q. And the approvals -- and now I'm looking at
4 this document, which was produced by -- now looking at
5 this document, do you agree that you approved the
6 payments?

7 A. It says "approvals" here. I don't see my
8 name.

9 Q. Well, your name is at the top; right?

10 A. I know, but I'm looking at this chart where
11 it says "Approved" and "Date" and has Predale and
12 Gaetan and Camille and --

13 Q. And the reason why Predale is listed as
14 approving this is because a supervisor was added
15 because the amount is over the user's approval limit.

16 Do you see that?

17 A. Okay.

18 Q. Isn't it true, Dr. Mann, as the direct result
19 of your efforts, the NTP made the decision to withdraw
20 its proposal to list talc as a carcinogen?

21 A. I would not draw that conclusion. I was
22 getting science to them.

23 Q. Let's look at Exhibit 35 and see what you
24 wrote back at the time. And this email, the subject is
25 "NTP Withdraws Talc Nomination"; right?

1 A. Yep, that's what it says.

2 Q. And what you wrote to this group in part is,
3 "Great news. NTP has withdrawn talc from consideration
4 for listing on the 12th Report on Carcinogens."

5 Do you see that?

6 A. Yes.

7 Q. And it says, "Talc was the only material
8 withdrawn."

9 Do you see that?

10 A. Yes.

11 Q. So we looked before, the NTP had proposed
12 listing over 20 materials as carcinogens.

13 Remember that?

14 A. Yes.

15 Q. And the only one that the NTP withdrew was
16 talc; right?

17 A. Appears to be.

18 Q. And you wrote "This is a direct result of our
19 efforts in coordination with Luzenac and CTFA. We did
20 it," exclamation point.

21 Is that what you wrote?

22 A. Yes, that's what I wrote.

23 Q. And you were also sharing credit with others
24 on this email; correct?

25 A. Yes. It seems that way, yes.

1 Q. Okay. Al Wehner is on this email; right?

2 And Dr. Al Wehner helped do it; right?

3 A. Yeah. Again, I can't say that I'm unhappy
4 that getting good science to them may have influenced
5 them. Not necessarily my intent. My intent was just
6 to get good science to them. What they do with it is
7 their choice.

8 Q. And in this email where you wrote "It was a
9 direct result of our efforts," you sent the email to
10 Johnson & Johnson's lawyer, John O'Shaughnessy;
11 correct?

12 A. If he's on the list there, yes.

13 Q. You sent this email to Nancy Musco; correct?

14 A. Yep. All these people that are on the list.

15 Q. Okay. You sent this email to Mark Monseau,
16 the person who was the one who sent you the Forensic
17 Analytical testing; right?

18 A. Yes.

19 Q. And this was no small feat, to get talc
20 removed from the listing by the NTP, was it?

21 A. Again, I can only speak to what we were sent
22 out. I have no idea what other factors they were
23 taking into account, other submissions they may have
24 gotten. Like I said, I won't deny that we were -- that
25 I would be pleased that they were not going to pursue

1 it because we have always felt that it was safe and
2 asbestos-free. So that's not something I would
3 actually be surprised at, but ...

4 Q. In response to -- so in response to your
5 email where you stated, "This is a direct result of our
6 efforts," and that, "We did it," Mr. John O'Shaughnessy
7 responded to your email; correct?

8 A. Did he?

9 Q. Yes. And the lawyer -- the lawyer
10 Mr. O'Shaughnessy writes, "This is no small feat,"
11 exclamation point; correct?

12 A. That's what he wrote, yes.

13 Q. All right. So, sir, when the NTP withdrew
14 talc during the talc evaluation process, you were told
15 by your superiors that this was one of your
16 accomplishments; correct?

17 A. Yeah. Are we still using the other book? I
18 put it away and got the third one out.

19 Q. Let me just repeat my question.

20 Do you recall that when the NTP withdrew
21 talc, that your superiors told you this was one of your
22 accomplishments?

23 A. Yeah. I recall that from the last thing we
24 just saw, yeah.

25 Q. Do you see it's an email from Kathleen Wille

1 to you, Dr. Steven Mann, copying your boss, Joan
2 Casalsvieri?

3 A. Okay. From Kathleen Wille. Okay.

4 Q. And Kathleen Wille has responded to your
5 email where you wrote "We did it"; right?

6 A. I guess, yes.

7 Q. Well, you can see directly below is your
8 email where you said "We did it"; correct?

9 A. Yes.

10 Q. Okay. And Kathleen Wille responds to you;
11 correct?

12 A. Yes.

13 Q. And she says, "This is very cool. Make sure
14 it gets added to your accomplishments."

15 Do you see that?

16 A. Yes.

17 Q. Okay. And then --

18 A. Hold on. Wait a minute.

19 Q. And then you responded to Ms. Wille, and you
20 said, "Yes, very cool," exclamation point.

21 Do you see that?

22 A. Yes.

23 Q. And you wrote, "That represents about a
24 year-and-a-half of behind-the-scenes work for me."

25 Do you see that?

1 A. Yes.

2 Q. And that's true that you worked for a
3 year-and-a-half behind the scenes on defending talc in
4 the NTP process; correct?

5 A. Again, "behind the scenes" to me is, you
6 know, getting the literature through to CTFA and
7 getting it into the different agencies. That's what
8 I'm thinking.

9 Q. Miss Wille says in the email below, "In the
10 meantime, we still have the IARC issue. Yuck."
11 Do you see that?

12 A. Yeah, I see that.

13 Q. And do you see Exhibit 36A is a fax from Rich
14 Zazenski from Luzenac to Bill Ashton at
15 Johnson & Johnson?

16 A. Yes, right.

17 Q. Okay and do you see there's a note on the fax
18 that says "Confidential"?

19 A. Bill, I see that.

20 Q. And Mr. Zazenski writes "Bill" -- and he's
21 talking about IARC; correct?

22 A. Right.

23 Q. It says -- he's talking about IARC, "They
24 reviewed talc and concluded there was inadequate
25 evidence to classify talc as a potential human

1 carcinogen."

2 Do you see that?

3 A. Yes. Okay.

4 Q. But then Mr. Zazenski tells Mr. Ashton, "In
5 1986, they also concluded that talc containing
6 abestiform fibers was a known human carcinogen."

7 Do you see that?

8 A. Yes, I see that.

9 Q. And did you know when you worked at J&J
10 Consumer that IARC had determined that talc containing
11 abestiform fibers was a known human carcinogen?

12 A. If it had abestiform, you know, asbestos in
13 it, yeah, it would be.

14 Q. And you knew when you worked at J&J Consumer
15 that if talc had asbestos in it, that it was
16 carcinogenic; correct?

17 A. Yeah, no known safe levels for asbestos if it
18 it's there.

19 Q. Now, when IARC began to look into talc,
20 again, in the 2000s, and to look at talc that did not
21 contain asbestos, you recommended that
22 Johnson & Johnson fund a war room having to do with
23 those meetings; correct?

24 A. Again, I don't recall saying that.

25 Q. Let's go to Exhibit 37. And Exhibit 37 is an

1 email from you, Steven Mann, to your boss, Joan
2 Casalsvieri, dated October 14th, 2005; correct?

3 A. Yes.

4 Q. And the subject is "IARC Talc Review";
5 correct?

6 A. Yep.

7 Q. All right. And what you wrote here was, "We
8 continue to try to figure out what IARC is up to
9 regarding talc."

10 Do you see that?

11 A. Yes.

12 Q. All right. And then the next sentence you
13 wrote, "CTFA is seeking our support for the cost of
14 having observers near the one-week meeting. Cost would
15 be travel/hotel/war room."

16 Is that what you wrote?

17 A. Yep.

18 Q. Okay. But -- and then it says that you
19 recommend we do it; right?

20 A. Yeah.

21 Q. And, you know, that the IARC review process
22 was supposed to be independent from industry
23 involvement or influence; correct?

24 A. Yeah. And I don't think we're saying
25 otherwise. I think this is, you know, getting near the

1 meeting so that you can -- I don't recall whether we're
2 allowed to be in, you know, the room so to speak to
3 listen to it, you know, just so we know what's being
4 discussed, that sort of thing.

5 Q. Okay. And you know that drafts that the IARC
6 group might have for its findings about talc were
7 certainly not supposed to be shared with industry;
8 correct?

9 A. I don't know. I'm not all that familiar with
10 IARC procedures, them being largely European. I'm more
11 familiar with, you know, cosmetics and FDA and that
12 sort of thing.

13 Q. Dr. Mann, is mesothelioma a cancer?

14 A. Yes.

15 Q. Does carcinogen mean cancer causing?

16 A. Yes.

17 Q. And this is another email to your boss Joan
18 Casalsvieri; correct?

19 A. Yes.

20 Q. And the subject of your email is "IARC Talc";
21 correct?

22 A. Yes.

23 Q. And you wrote, "Joan, I was just
24 communicating the fact that our belief that we would
25 see a draft before the meeting is not going to happen."

1 Do you see that?

2 A. Yes.

3 Q. And you wrote later on, on the page, "Things
4 are going to be very intense for me from now and
5 between February 7th to 14th," and you refer to daily
6 debriefings.

7 Do you see that?

8 A. Yes.

9 Q. Yes. And it says you were working very
10 closely with Luzenac, the supplier; correct?

11 A. Yeah. I'm trying to read through this
12 instead of piecemeal.

13 Q. So this email to your boss, Joan Caselvieri,
14 you said that you did not think that Johnson & Johnson
15 was going to be able to get any draft from IARC;
16 correct?

17 A. Right. Or anybody, not just
18 Johnson & Johnson.

19 Q. You also wrote, "Rich is going to check with
20 his people to see if they want to have their corporate
21 legal speak to our legal person about getting one
22 message clear should IARC rule unfavorably."

23 Do you see that?

24 A. Yes.

25 Q. And it says, "Legal would be John

1 O'Shaughnessy, J&J corporate."

2 Is that what you wrote?

3 A. Yes, that's what I wrote.

4 Q. Was John O'Shaughnessy the person for
5 Johnson & Johnson corporate that decided what the
6 public was told about the safety of talc?

7 A. I do not know.

8 Q. Okay. Now, the truth is that
9 Johnson & Johnson did find a way to get a draft of
10 IARC's report about talc; right?

11 A. I don't recall, and I don't recall if it
12 would have been only us. I don't recall getting the
13 draft.

14 Q. And IARC was working on a document regarding
15 talc not containing asbestos fibers called a Monograph;
16 correct?

17 A. Yeah, they called it Monographs, yes.

18 Q. And you were being sent here from Luzenac
19 sections, draft sections, of the IARC Monograph in
20 February of 2006; correct?

21 Do you see where it says "IARC Monograph
22 Draft 2, Sections 2.1 and 5.2"?

23 A. I see that, yes.

24 Q. So Johnson & Johnson was sent a draft of the
25 IARC Monograph; correct?

1 A. Yeah. Again, I don't recall these things.

2 Q. And the IARC meeting was taking place at that
3 time in Lyon, France; correct?

4 A. I don't recall, but I assume that's correct.

5 Q. The Hilton in Lyon, France, was the war room
6 for Johnson & Johnson and other members of the talc and
7 mineral industry that was located near the IARC
8 meeting; correct?

9 A. I don't know that. I don't remember who was
10 there. I wasn't there.

11 Q. And Mr. Ralph Godell was a lawyer for
12 Luzenac; correct?

13 A. Again, I don't know. I don't recall the
14 name.

15 Q. Mr. Godell -- it says, this document says
16 "Attention: Mr. Ralph Godell," and then it says,
17 "Subject: IARC 93 Monograph IARC Draft."

18 Do you see that?

19 A. Uh-huh. Yes.

20 Q. And someone wrote, "Please scan and
21 distribute to support group ASAP"; correct?

22 A. Somebody did, yeah.

23 Q. And do you see that there's a sentence -- or
24 do you see that on the previous Page 4, there's a
25 discussion about a study called "Rubino 1976"?

1 A. Okay.

2 Q. Okay. And have you ever heard of Rubino?

3 A. I don't recall, no.

4 Q. Do you know anything about Johnson & Johnson
5 making any payments to Dr. Rubino?

6 A. No. I don't recall any, no.

7 Q. Okay. No one ever told you anything about
8 Johnson & Johnson's relationship with Dr. Rubino;
9 correct?

10 A. Not that I recall.

11 Q. And do you see that there's a sentence that I
12 have highlighted on the screen which says, "In a few
13 instances, talc samples from the area showed small
14 amounts of tremolite when examined by x-ray
15 diffraction, but no other types of amphibolic asbestos
16 or chrysotile were detected in any amount."

17 Do you see that typed sentence?

18 A. I see the sentence, yes.

19 Q. And -- and someone marked up this draft and
20 crossed out "other types of." Do you see that someone
21 did that?

22 A. Yeah.

23 Q. So that the sentence would now read, "Small
24 amounts of tremolite when examined by the x-ray
25 diffraction, but no amphibolic asbestos," and then it

1 goes on.

2 Do you see that?

3 A. Yeah, I could see what's there.

4 Q. Okay. So you sent this marked -- do you know
5 who marked up this draft?

6 A. No, I do not.

7 Q. You forward this draft to others at
8 Johnson & Johnson; right?

9 A. I don't recall.

10 Q. Who was the person for Johnson & Johnson
11 corporate that you sent the IARC draft to?

12 A. John O'Shaughnessy.

13 Q. And you did not send the IARC draft to anyone
14 else at Johnson & Johnson corporate, did you?

15 A. Apparently not.

16 Q. Okay. Do you see that it is an email that
17 was sent to you, "S. Mann, Steven Mann at
18 Johnson & Johnson Consumer"?

19 A. Yes, it looks like it.

20 Q. Okay.

21 A. I don't recall it.

22 Q. All right. And it says, "Dear all, please
23 find attached the minutes of our February 14, 2006,
24 teleconference on the IARC meeting outcome."

25 Do you see that?

1 A. Yes.

2 Q. And if you go to the attachment, there are
3 minutes attached; correct?

4 A. Okay.

5 Q. All right. And if you look at the minutes,
6 it talks about a teleconference meeting that took place
7 on February 14th, 2006; correct?

8 A. Yes.

9 Q. And it lists you as having attended that
10 meeting; correct?

11 A. It says that, yes.

12 Q. And it lists you as the only person from
13 Johnson & Johnson who attended that meeting; correct?

14 A. A talc conference, yeah. I guess I don't
15 recall it.

16 Q. And it lists Crowell & Moring, which is that
17 Washington D.C. law firm that you worked with on the
18 NTP matter; correct?

19 A. That was Luzenac's, yes.

20 Q. And we saw they emailed with you as well;
21 correct?

22 A. Who's "they"?

23 Q. Ridge Hall -- Ridgeway Hall. We saw he
24 emailed you?

25 A. Yes, right.

1 Q. And if you look at the minutes of the meeting
2 where it lists you in attendance, do you see it lists
3 Lyon Op's room?

4 You see that?

5 A. Yeah.

6 Q. So were some of the people actually in the
7 war room and you were on the phone?

8 A. I don't recall anything about this call.

9 Q. And then it says, "Warmest thanks to
10 Drs. Gunter Oberdorster and Joshua Muscat who both
11 played a key role in the defense of the talc dossier in
12 their respective subgroups."

13 Do you see that?

14 A. Yes, I see that.

15 Q. And do you remember that those were the
16 observers that Johnson & Johnson had at the meeting?

17 A. I don't. I do not recall that or who we had
18 there, if anyone.

19 Q. So Oberdorster and Muscat were saying for the
20 key role they played in the defense of the talc
21 dossier; correct?

22 A. That's what it says, yeah; but I don't know
23 what role they played.

24 Q. I mean, do you recall that you were thankful
25 that Joshua Muscat stretched the definition of what an

1 observer should have been doing in the IARC meetings?

2 A. I don't recall anything about this; these
3 people, what their roles were. I don't recall anything
4 about this IARC.

5 Q. Okay. Let's look at Exhibit 41. And this is
6 an email from you, and you sent this email on
7 February 16th, 2006, to others at J&J including
8 Mr. John O'Shaughnessy; correct?

9 A. Yep.

10 Q. And the words you used in this email on
11 February 16th, 2006, was that "Dr. Oberdorster and
12 Muscat were our observers."

13 Do you see that?

14 A. Yes. I see that what they are, yep.

15 Q. And you wrote, "Thankfully, Joshua Muscat
16 stretched the definition of observer and help provide
17 much needed clarification and additional information
18 and had a positive impact on the process."

19 See that?

20 A. Yeah.

21 Q. And so you knew that J&J's observer,
22 Dr. Joshua Muscat, stretched the definition of observer
23 at the IARC meetings; correct?

24 A. I don't recall any of this.

25 Q. Well, you know that the observers weren't

1 supposed to have any impact on the IARC process?

2 A. Yeah, I'm not really familiar with the IARC
3 process, so -- and I don't recall right now at all.

4 Q. Now, do you recall that ultimately IARC
5 concluded in 2006 that talc without any asbestos was
6 still possibly carcinogenic to humans?

7 A. I don't recall when they made a ruling 'cause
8 I think I may have been gone by then because I don't
9 recall what they ultimately ended up saying.

10 Q. All right. It says, "Both talc and titanium
11 dioxide are 2B, possibly carcinogenic to humans."

12 Do you see that?

13 A. Yes, I do.

14 Q. So 2B is a rating by IARC in terms of
15 assessing the carcinogenicity of a substance; right?

16 A. Yeah. I recall that it's their lowest rating
17 above insufficient evidence. It's "possibly," so,
18 yeah.

19 Q. You reported to J&J corporate on March 2nd,
20 2016, to Mr. Caldwell that IARC had determined that
21 talc had been determined by IARC to be possibly
22 carcinogenic to humans; correct?

23 A. Yes. I believe that's IARC's classification,
24 yeah.

25 Q. And then you wrote, "Colleen is aware."

1 Do you see that?

2 A. Yeah, I don't recall who Colleen is.

3 Q. All right. You said, "PR is aware."

4 That's public relations; right?

5 A. Uh-huh.

6 Q. And you wrote, "Legal is aware."

7 That would be Mr. O'Shaughnessy; correct?

8 A. Yeah, I don't know who I'm referring to
9 there.

10 Q. You wrote in this email about IARC's
11 conclusions, "We will defend against this."

12 Is that what you wrote?

13 A. Yeah.

14 Q. And at this time, when you learned that IARC
15 had categorized talc not containing any asbestos as
16 possibly carcinogenic, you knew that Johnson's Baby
17 Powder was being used on babies and on people's bodies;
18 correct?

19 A. It always has been.

20 Q. And when you said, "We will defend against
21 this," did you mean that Johnson & Johnson would try to
22 apply political pressure against IARC?

23 A. No, it's not -- please let me answer.
24 Scientifically, when you have a mixture of case studies
25 where some show a slight effect and some don't, there

1 are so many other reasons that it could look that way.
2 So it can be memory recall. It can be other
3 confounding factors.

4 So I think our general understanding is -- of
5 the literature is that it's a mixed response and -- but
6 that's not inconsistent with IARC calling it a 2B,
7 because they're just saying "possibly." And that's
8 probably because they know that these studies are not
9 causally related. They're just associations, and those
10 types of study are very subjective to bias and
11 confounding.

12 Q. Dr. Mann, if anyone had suggested to you that
13 political pressure be applied to IARC, would you have
14 spoken up against it?

15 A. Yes, and no one ever did.

16 Q. And -- but you did receive emails suggesting
17 just that, didn't you, sir?

18 A. I don't recall those.

19 Q. It's an email from Rich Zazenksi from
20 Johnson & Johnson's talc supplier Luzenac dated
21 February 27th, 2006.

22 A. Yes.

23 Q. And do you see that email is to you?

24 A. Yes, I see that.

25 Q. And the subject of the email is "Very

1 Important," exclamation point, "Luzenac letter to
2 IARC."

3 You see that being the subject in part?

4 A. Yes.

5 Q. And sensitivity, it's labeled "Confidential";
6 right?

7 A. That's Rich Zazenski, yes.

8 Q. And it's an email to you; right?

9 A. Looks like it.

10 Q. And it talks about -- it says "the IARC
11 website update occurred some time between 9:00 and
12 9:30 a.m. Eastern."

13 Do you see that?

14 A. Yes.

15 Q. And Mr. Zazenski says to you, "Rest assured
16 we (I) will explore all possible avenues of challenge,
17 not necessarily expecting a retraction but to see what
18 sort of political heat with financial ramifications
19 that could and should be brought down upon IARC and a
20 WHO. This review was a travesty of scientific
21 integrity."

22 Is that what Mr. Zazenski wrote to you?

23 A. That's what Richard Zazenski wrote.

24 Q. Dr. Mann, you worked with Mr. Zazenski from
25 Luzenac for three or four years on both the NTP and

1 IARC talc matters; true?

2 A. I worked with him. I don't recall the
3 duration.

4 Q. You worked with him on a regular basis on
5 talc matters; correct?

6 A. Pretty regular he would call me.

7 Q. And you said that no one suggested to you
8 that political pressure be applied to IARC. That's
9 exactly what's being suggested in this email; correct?

10 A. Yes. Rich can be -- boast, and it's not
11 gonna -- and I'm not doing that.

12 Q. Okay. Well, he said that the IARC talc
13 website was updated and you were disappointed that that
14 happened; right?

15 A. I don't even remember it.

16 Q. Well, if you go to the email below, in
17 regards to the Luzenac's letter to IARC, you wrote,
18 "Doesn't seem to have helped as website went up this
19 morning."

20 Is that what it says? Is that what you
21 wrote?

22 A. Yeah, it seems to be a comment on the fact.

23 Q. And now they're saying that IARC made clear
24 in the conclusions from the 2006 meetings was that talc
25 containing asbestos can cause cancer; correct?

1 A. Yeah. Again, asbestos is, you know, there's
2 no known safe level. So if it has asbestos in it,
3 that's a problem.

4 Q. Okay. And you knew that when you worked at
5 J&J Consumer; correct?

6 A. Knew what?

7 Q. What you just said to me.

8 A. Yes. That -- right, that asbestos there's no
9 known safe level, but our product does not have it.

10 Q. So these are excerpts from IARC's Monograph
11 called Volume 93?

12 A. Uh-huh.

13 Q. Carbon black, titanium dioxide, and talc.
14 Do you see that?

15 A. Yes.

16 Q. And do you see this publication represents
17 the views and expert opinions of an IARC working group?

18 A. Right.

19 Q. Right? And it says, "Which met in Lyon
20 February 7th to 14th, 2006."

21 Do you see that?

22 A. Yes.

23 Q. So this pertains to the meetings that we
24 looked at in previous emails; correct?

25 A. Right. This was published in 2010.

1 Q. And on Page 39, in regards to this IARC
2 working group that met in February of 2006, do you see
3 it says, quote, "The present working group also decided
4 to expand the name of the group-1 agent from talc
5 containing abestiform fibers to talc containing
6 asbestos or other abestiform fibers."

7 Do you see that?

8 A. Yes.

9 Q. And it says, "No update was undertaken for
10 this group-1 agent."

11 Do you see that?

12 A. Yes.

13 Q. Okay. So when you were working at
14 Johnson & Johnson Consumer, you understood that talc
15 containing asbestos was the highest level of
16 carcinogen; correct?

17 A. Again, I recognize, and I think that the
18 scientific community recognized that asbestos is a
19 carcinogen.

20 Q. When you worked at J&J Consumer, you knew
21 that if there was any asbestos in talc, that that talc
22 could cause cancer; correct?

23 A. Yeah. I would just say there's no known --
24 no known safe levels for asbestos.

25 Q. Dr. Mann, the work you put into the NTP --

1 we're getting on down the road to completion.

2 You may proceed.

3 MS. MCVEY: Thank you, Your Honor.

4 (Whereupon video deposition of Dr.
5 Steven Mann was played.)

6 BY MR. BLOCK:

7 Q. -- and IARC talc reviews was to protect
8 Johnson & Johnson business; correct?

9 A. No. It was to get all the science to the
10 agencies. That's why I do it.

11 Q. Dr. Mann, do you admit that you listed your
12 work on NTP and IARC as accomplishments by you to
13 protect Johnson & Johnson's business, yes or no?

14 A. I didn't list it. Some other people said
15 that.

16 Q. All right. And on September 30, 2005, you
17 wrote an email to your boss, Joan Caselvieri; correct?

18 A. Yes.

19 Q. And you were sharing your accomplishments
20 with your direct superior at J&J Consumer for purposes
21 of your annual performance review; correct?

22 A. Is that what it was for?

23 Q. Why else would you write an email to your
24 direct superior listing your accomplishments?

25 A. Because she asked me to.

1 Q. So in this email to your direct superior at
2 J&J Consumer, Joan Caselvieri, the subject of your
3 email on September 30th, 2005, is "Accomplishments";
4 correct?

5 A. Yes.

6 Q. And No. 2, you list "Leadership to protect
7 current business: Work with
8 CTFA/Luzenac/Crowell & Moring law firm on talc, NTP,
9 and IARC reviews."

10 Were those your words?

11 A. Yes.

12 Q. Okay. You wrote that your work on NTP and
13 IARC was leadership to protect current business and you
14 specifically listed your work with Crowell & Moring the
15 law firm; correct?

16 A. Yes, I listed it.

17 Q. Okay. And was this after you left
18 Johnson & Johnson that you then emailed these
19 accomplishments to yourself at a private email address?

20 A. Interesting. The date, as I recall it,
21 that's my last day.

22 Q. And at the same time, when you worked at J&J
23 Consumer, you did consider Johnson's Baby Powder that
24 contained talc to be a sacred cow; right?

25 A. Yeah, it's a well-known brand.

1 Q. And you knew that there were was never a
2 warning about asbestos or cancer on Johnson's Baby
3 Powder when you worked for J&J Consumer; correct?

4 A. Yes. We would not put a warning on a product
5 that we didn't believe it was required.

6 MS. MCVEY: Your Honor, that concludes the
7 plaintiff's designations.

8 THE COURT: Very good.

9 (Whereupon video deposition of Dr.
10 Steven Mann was played.)

11 **A. My name is Steven Mann. I currently reside**
12 **in Furlong, Pennsylvania, which is near Doylestown in**
13 **Pennsylvania.**

14 Q. And are you retired from Johnson & Johnson
15 Consumer, Inc., Dr. Mann?

16 A. Yes, I am.

17 Q. And when is it that you retired from the
18 company?

19 A. In June 2006.

20 Q. And since June 2006, have you been studying
21 issues regarding toxicology?

22 A. No, actually, no. I have kind of gone off in
23 a completely different direction.

24 Q. So, Dr. Mann, it sounds like would it be fair
25 to say since your retirement from Johnson & Johnson

1 Consumer, you have not spent any time studying issues
2 of talc powder?

3 A. No, not at all.

4 Q. Now, you were recently served with a subpoena
5 in this litigation; is that right?

6 A. Yes.

7 Q. And had you ever been served personally at
8 your home with a subpoena before?

9 A. No, I have not.

10 Q. Have you ever been deposed before prior to
11 today?

12 A. No.

13 Q. Were you a little nervous about the process?

14 A. Yes.

15 Q. Did Johnson & Johnson, your former employer,
16 offer you legal counsel to represent you in this
17 deposition?

18 A. Yes.

19 Q. And for better or worse, did you get stuck
20 with me, Dr. Mann?

21 A. Yes.

22 Q. In testifying here, Dr. Mann, would it be
23 fair to say that we were asking you to recall events
24 that took place 15, 20, 25 years ago?

25 A. Yes.

1 Q. Is your memory of that time period perfect?

2 A. Totally not.

3 Q. Are you trying your best?

4 A. I am -- I am trying to give as best as I can.

5 Q. And we are here today to continue the
6 deposition that we started earlier this week; is that
7 right?

8 A. That is correct.

9 Q. And you have already provided several hours
10 of testimony in answering questions that counsel for
11 plaintiff asked you earlier this week; right?

12 A. Yes, that is correct.

13 Q. And in answering those questions, Dr. Mann,
14 were you telling the truth?

15 A. Best as I can recall.

16 Q. And is it your plan here today, as we
17 conclude your deposition, to continue to tell the
18 truth?

19 A. Yes.

20 Q. Are you making stuff up to protect your
21 pension or your healthcare?

22 A. No.

23 Q. When you worked at Johnson & Johnson Consumer
24 for about five years, did you try to hide asbestos in
25 Johnson's Baby Powder?

1 A. No.

2 Q. Do you, Dr. Mann, have training and
3 experience on how to test talc for asbestos?

4 A. No, not at all.

5 Q. As I understand it, your specialty is not in
6 testing talc for asbestos; is that fair?

7 A. No. Sorry. Not in analytical chemistry or
8 quality assurance, no.

9 Q. Now, Dr. Mann, in terms of the time period
10 that you worked at Johnson & Johnson Consumer, tell us,
11 remind our jurors, what that time period was again?

12 A. From July of 2001 until June of 2006.

13 Q. And can you tell us during that approximately
14 five-year time period, was the primary focus of your
15 job Johnson's Baby Powder?

16 A. No.

17 Q. Tell us, if you would, what the primary focus
18 of your job was during that five-year period.

19 A. Yeah. When I arrived, my primary focus was
20 on new product development and to, you know -- we had
21 hired some people to look at new products more, and
22 also to facilitate interactions with our trade
23 associations.

24 And also we had an interest -- and I
25 personally had an interest -- in further developing

1 alternatives to animal testing. So I spent a
2 considerable amount of time advising and working with
3 two organizations, one is the Center for Alternatives
4 to Animal Testing at Johns Hopkins University, and
5 other organization called the Institute for In Vitro
6 Sciences.

7 So we were looking at those, so I spent a lot
8 of time in that area of science. So it was really
9 primarily focused on preclinical assessments of new
10 products and issues with talc that I would facilitate
11 or seek expert advice to, you know, address whatever
12 questions came to me.

13 Q. You mentioned new product, Dr. Mann. At the
14 time that you were working with Consumer for the
15 five-year period of time, would you consider Johnson's
16 Baby Powder to be a new product?

17 A. No, no. It's a hundred years or more old.

18 Q. And was it your understanding at the time you
19 arrived at Consumer in 2001, that a number of different
20 scientists had spent decades reviewing the safety of
21 Johnson's Baby Powder?

22 A. Yes, absolutely.

23 Q. I want to take look at another document,
24 Dr. Mann. I'm going to direct you, Doctor, to an
25 exhibit counsel used earlier this week with you,

1 Exhibit 23, and I'll put that up again so you can see
2 it as well.

3 So this is -- Exhibit 23, Dr. Mann, is here
4 up on your screen, and this is an email from
5 October 26th, 2005.

6 Do you see that?

7 A. Yes.

8 Q. And counsel showed you part of this paragraph
9 talking about RJ Lee Group.

10 Do you recall those questions?

11 A. Yes.

12 Q. And what happened was counsel asked you this:
13 "Bill insisted this lab conduct the work," and he
14 skipped over this part of the sentence and said,
15 "specially for anything having to do with asbestos."

16 Do you remember those questions?

17 A. Yes.

18 Q. Do you think if you really want to understand
19 what's going on in an old email from 15 years ago, you
20 should read the whole thing?

21 A. Yes.

22 Q. So let's look at what that entire sentence
23 says. "Bill insisted this lab conduct the work as they
24 had been properly trained to determine all the mineral
25 types that might be involved, and especially anything

1 having to do with asbestos."

2 Do you see that?

3 A. Yes.

4 Q. Okay. What was your understanding when you
5 worked there of the qualifications of the RJ Lee Group?

6 A. My understanding from Bill is that they were,
7 you know, experts, maybe world experts on analysis of
8 talc and asbestos.

9 Q. You go on, and the rest of that paragraph
10 says, "Bill was adamant that to avoid false results as
11 the analysis involves microscopic examination, only
12 RJ Lee be used"; right?

13 A. Yes.

14 Q. Based on what you recall about the time
15 period that you worked at Johnson & Johnson Consumer,
16 did the company also rely on outside experts when it
17 came to monitoring the safety of its baby powder?

18 A. Yes.

19 Q. You were asked some questions, Dr. Mann,
20 early in the deposition last week about coming -- when
21 you started your position at Johnson & Johnson, and
22 some questions about what was left in your office.

23 Do you remember those questions?

24 A. Yes. I remember about some documents being
25 either left or shown to me or -- yeah.

1 Q. So let me reorient you, Dr. Mann. You were
2 shown this email, Plaintiff's Exhibit 2, earlier this
3 week.

4 A. Yes, okay.

5 Q. And this email, January 2002, that's 19 years
6 ago; right, sir?

7 A. Yes.

8 Q. And counsel directed you to the beginning of
9 this email chain and asked you some questions about
10 this sentence: "These approximately five -- Mike
11 Chudkowski left all the talc/cornstarch CPSC files in
12 my office when he retired. These five boxes seemed to
13 be full of toxicology data."

14 Do you see that?

15 A. Yes, I remember.

16 Q. And then later on in the chain you note up
17 top that you also have five binders that Mike
18 Chudkowski left in your office; right?

19 A. Yes.

20 Q. In sitting here today in February of 2021, do
21 you have a memory of what in the world was contained in
22 this stuff that was left in your office?

23 A. No. I don't remember what was in there other
24 than had to do with talc.

25 Q. Did counsel show you any evidence in this

1 email that somebody directed you to read and analyze
2 everything in these binders and boxes?

3 A. No. I don't recall anybody doing that.

4 Q. And one of the things that Lorena Telofski
5 says to you, that, "There's a need to maintain ongoing
6 vigilance regarding our powders."

7 Do you see that?

8 A. Yes.

9 Q. Okay. And during that time period that you
10 were at Johnson & Johnson Consumer, did you have an
11 understanding that you and your colleagues were working
12 to maintain ongoing vigilance regarding
13 Johnson & Johnson's powder product?

14 A. Yes, right.

15 Q. Would it be fair, Dr. Mann, to suggest that
16 because you don't have memory of what was in these
17 binders from 19 years ago, that nobody at
18 Johnson & Johnson was monitoring Johnson's Baby Powder
19 for safety?

20 A. No.

21 Q. Let's take a look at Tab -- the binder we
22 were just in, and if we can look at Tab 1, please. And
23 we'll mark this as Defense Exhibit 2.

24 What we've marked as -- Dr. Mann, as Defense
25 Exhibit 2 is an email chain from April 5, 2004.

1 Do you see that?

2 A. Yes. 2:29 p.m.

3 Q. Yes.

4 A. Yes.

5 Q. Got it.

6 A. Yes.

7 Q. And to orient us -- and we'll switch to
8 Page 2, and get a handle on what's going on in this
9 email. The subject of the email is "Baby Powder
10 Safety."

11 See that?

12 A. Yes.

13 Q. Okay. And this is an email from April 2nd,
14 2004, and it says, "Hi Rachel, can you please forward
15 this request to Steve Mann. We are looking for any
16 documentation available regarding the safety of talc
17 used in baby powders."

18 Do you see that?

19 A. Yes.

20 Q. And, in fact, the email ultimately gets
21 forwarded to you with a request for information about
22 the safety of talc used in baby powder; right?

23 A. Yes.

24 Q. And if we turn back to the first page of the
25 email and we look at your response up at the top, you

1 say, "They want safety information, but I told them
2 that fills a file cabinet, so we need to know the
3 issue, and we can provide some more supporting
4 documents, but not all of them"; right?

5 A. Yes.

6 Q. Do you have a memory, Dr. Mann, during the
7 time period that you worked at Johnson & Johnson of
8 having access to a file cabinet of safety data as it
9 related to Johnson's Baby Powder?

10 A. That's -- yeah, there probably was files.
11 Vaguely, yes.

12 Q. And did you -- according to this email, the
13 safety information regarding baby powder filled a
14 filing cabinet in 2004; right?

15 A. Yeah. That's what it says, yes.

16 Q. And then go to Tab 2, Dr. Mann, in that same
17 binder, and we'll mark this email as Defense Exhibit 3.

18 And this is an email from April 25, 2004, and
19 tell me when you see that.

20 A. At 5:02 p.m.

21 Q. Right.

22 A. Yes.

23 Q. And this is another email concerning the same
24 request for information about baby powder safety.

25 Do you see that?

1 A. Yes.

2 Q. And I want to direct you to an email from
3 Rachel Mueller to Steve Lemeaux copying you.

4 Do you see that?

5 A. Yes.

6 Q. Okay. And the email begins, "I spoke with
7 Steve Mann this morning WRT with respect to the safety
8 of the talc used in our baby powder."

9 You see that?

10 A. Uh-huh, yes.

11 Q. Okay. And under Point No. 1, Rachel writes,
12 "The safety information available to Steve Mann is
13 plentiful, over ten years' worth of data from what I
14 understand from our conversation this morning."

15 Do you see that?

16 A. Yes.

17 Q. Does that refresh you, Dr. Mann, in terms of
18 the access you had at the time to historical safety
19 data concerning Johnson's Baby Powder?

20 A. Yes, to a degree.

21 Q. Dr. Mann, you don't have a -- is it fair to
22 say you don't have a specific recollection of what the
23 data was that's described in the sentence in Exhibit 3;
24 correct?

25 A. No, I do not.

1 Q. Did these emails, though, Dr. Mann, Defense
2 Exhibit 2 that we just looked at and Defense Exhibit 3,
3 do these emails refresh you about having access to
4 information when people had questions?

5 A. Yes.

6 Q. What you told your colleagues in April of
7 2004 was that the information available to you was
8 plentiful; right?

9 A. That's what it says, yes.

10 Q. And so to orient us, this is Exhibit 3, and
11 this is an email from you to Ms. Telofski that says,
12 "I'd like to tell CTFA that we're okay with forwarding
13 that lit review to NTP. Do you have a suggestion on a
14 sentence that addresses the fact that our source of
15 talc never had asbestos in it?"

16 Do you see that?

17 A. Yes, I remember that -- being asked that.

18 Q. And you were also shown, Dr. Mann,
19 Plaintiff's Exhibit 3A, which addresses the same issue.
20 And this is an email -- it's an email from you to
21 Ms. Loretz, February 2002, and what you say is that,
22 "As we discussed, J&J talc never had asbestos issues,
23 but it's problematic to discuss any particular
24 company's issues in the document."

25 Do you see that?

1 A. Yes.

2 Q. And does that sentence help you to understand
3 what you were referring to in Exhibit 3 when you
4 said -- when you were asking for a suggestion to
5 address the fact that "our source of talc never had
6 asbestos"?

7 A. Yes, it does.

8 Q. And explain to us what your memory is of what
9 your question was in Exhibit 3 when you emailed
10 Ms. Telofski regarding a sentence about "our source of
11 talc never had asbestos"?

12 A. I believe it was just whether it was
13 representative of the entire industry or just what we
14 can support from testing our own product in that we,
15 you know, couldn't generalize that to the entire
16 industry but can only speak for our own product.

17 Q. And as you state in Exhibit 3, were you
18 concerned about attempting to address any -- somebody
19 else's -- another company's issues in this document you
20 all were preparing?

21 A. Right. Correct. Because we do our own
22 analysis; we don't analyze their products.

23 Q. And so in discussing with Ms. Telofski your
24 concerns about a sentence that "our talc never had
25 asbestos in it," did you have a concern about the

1 safety of Johnson's Baby Powder?

2 A. No. I've never had a concern about the
3 safety of our product, no.

4 Q. And then what was the concern that you had in
5 these two emails, Exhibit 3 and Exhibit 3A?

6 A. Just how to communicate that to the CTFA, to
7 the NTP.

8 Q. Based on your knowledge, Dr. Mann, during the
9 time period that you worked at Johnson & Johnson
10 Consumer, was Johnson's Baby Powder tested for the
11 presence of asbestos?

12 A. Yes.

13 Q. Was it your job during the five years you
14 were in the toxicology department to review ordinary
15 course testing of Johnson's Baby Powder for asbestos?

16 A. No, it was not.

17 Q. Did you have an understanding during the time
18 period that you worked there that there were other
19 people in other departments at the company who were
20 doing just that?

21 A. Yes.

22 Q. And counsel asked you a number of questions
23 earlier this week about where were the doctors looking
24 at Johnson's Baby Powder.

25 Do you remember those questions?

1 A. Yes.

2 Q. And did you have an understanding when you
3 worked at Johnson & Johnson that there were a number of
4 different doctors and scientists meeting regularly,
5 speaking regularly regarding issues of talc safety?

6 A. Yes.

7 Q. How did it inform the statements you made
8 that Johnson's Baby Powder was asbestos-free?

9 A. It gave me great confidence that, you know,
10 the highest medical executives had been aware of these
11 issues for decades and had been looking at them in
12 detail. And so that gave me confidence in making those
13 statements, yes.

14 Q. When you were making statements that
15 Johnson's Baby Powder didn't have asbestos, were you
16 just making that up?

17 A. No.

18 Q. Where did your information that Johnson's
19 Baby Powder didn't have asbestos come from?

20 A. From documents like this, from speaking with
21 Bill Ashton, from speaking with Johns Hopkins, and
22 other people who were experts who had a long history
23 with that product.

24 Q. Dr. Mann, you were shown this document, which
25 was Exhibit 12 to your deposition, a fax from

1 February 24, 2004, from Mark Monseau in corporate
2 communications to you regarding asbestos.

3 Do you see that?

4 A. Yes.

5 Q. And do you recall counsel's questions about
6 this fax and the information that followed?

7 A. Yes.

8 Q. Okay. And what the fax cover sheet to you
9 from Mr. Mark Monseau says is that, "Last week we were
10 contacted by a reporter at a Sacramento television
11 station who wanted to get our reaction to a test they
12 performed on Johnson's Baby Powder. She has since sent
13 me the attached cover letter and lab results, which
14 Sarah Colamarino suggested I share with you."

15 Do you see that?

16 A. Yes.

17 Q. And if we turn to the next page, we see a
18 letter KCRA-TV 3 letterhead; right?

19 A. Yes.

20 Q. Okay. And is it to Mark Monseau; right?

21 A. Yes.

22 Q. From Millicent Ozdaglar at KCRA-TV 3;
23 correct?

24 A. Yes.

25 Q. And what this individual says is, "Thanks for

1 taking my call last week regarding KCRA-TV 3's special
2 report on asbestos"; right?

3 A. Yes.

4 Q. And they say, "This is a working story with
5 no air date. Our reporter/anchor Dave Walker is
6 investigating the existence of harmful levels of
7 asbestos in our community. One of the elements of the
8 story takes a look at asbestos in household products
9 and building materials."

10 Do you see that?

11 A. Yes.

12 Q. Okay. "One of the items tested by Hayward
13 Laboratory was Johnson's Baby Powder which tested at
14 above normal levels for asbestos."

15 Do you see that?

16 A. Yes, I see that.

17 Q. "I am enclosing a copy of the test and
18 results for you to look over. If you could please give
19 me a call once you have reviewed the material, I would
20 like to talk about the results with you"; correct?

21 A. Yes.

22 Q. That's what it says?

23 A. Yes, that's what it says.

24 Q. Now, couple things here, Dr. Mann. This
25 letter from this person, the special projects producer

1 at KCRA-TV 3 says that Johnson's Baby Powder had tested
2 at above normal levels for asbestos.

3 A. Yes.

4 Q. And what was your reaction to getting this
5 fax like in 2004?

6 A. It was alarming.

7 Q. Was this information consistent with
8 discussions you had had with experts like Dr. Bill
9 Ashton, Mr. Ashton, and Dr. John Hopkins?

10 A. No, it was not consistent.

11 Q. Were you concerned when you got this fax from
12 the special projects review, sir?

13 A. Yes.

14 Q. Did you, Dr. Mann, take this fax and letter
15 from the special projects producer seriously?

16 A. Yes.

17 Q. Let's take a look at some of the things you
18 did in response, Dr. Mann. This is a document that you
19 were shown this week, Exhibit 14, and it's an email
20 from John Hopkins to you, the very same day as the fax
21 and letter from the special producer; right?

22 A. Yes, that is correct.

23 Q. Okay. And do you recall reaching out to John
24 Hopkins after you received this fax from the TV
25 station?

1 A. Yes, I do.

2 Q. Okay. And why is it that you would have
3 reached out to John Hopkins?

4 A. 'Cause he's my -- one of my expert
5 consultants on any issues related to talc.

6 Q. And Dr. Hopkins' email to you starts out to
7 you by saying, "As an afterthought."

8 Do you see that?

9 A. Yes.

10 Q. Does that refresh you that Dr. Hopkins was
11 following up on a prior conversation that you had had?

12 A. Yes, yes.

13 Q. And he says, "I would make a suggestion that
14 it is important to ensure compliance of the current
15 talc with the CTFA specification"; right?

16 A. Yes.

17 Q. Okay. And as it relates to that
18 specification, did you reach out to somebody else as
19 well?

20 A. Yes, to Bill Ashton.

21 Q. And you wrote a note, actually, on this email
22 for Mr. Ashton; is that right?

23 A. Yes.

24 Q. Okay. And you wrote, "Bill, do you agree
25 with this suggestion about the CTFA? I didn't know

1 there was a CTFA specification, Steve"; right?

2 A. Yes, I did.

3 Q. Now, first of all, having reached out to
4 Dr. Hopkins, do you recall why you also reached out to
5 Dr. Ashton?

6 A. I don't recall if John had suggested I do
7 that, but that would be probably my next person I would
8 have reached out to.

9 Q. And -- sorry.

10 A. I was going to say particularly 'cause it's
11 related to analytical and mineralogy and that sort of
12 thing, yeah.

13 Q. And, in fact, does Dr. Hopkins in his email
14 say, "I know Bill Ashton would want to help, and it's
15 okay to call at home. In fact, he would expect to be
16 involved if his mineral expertise could be of value."

17 A. Yeah. There it is, yeah.

18 Q. As it relates to the CTFA specification, do
19 you recall being asked some questions about the CTFA
20 earlier this week?

21 A. Yes.

22 Q. Are you qualified to read and interpret a
23 methodology for testing talc for asbestos?

24 A. No, I'm not.

25 Q. Was it part of your job when you were at

1 Johnson & Johnson to know about the details of the way
2 in which Johnson's Baby Powder was tested for asbestos?

3 A. No, it would not. That would be analytical
4 and quality assurance.

5 Q. Did the fact that you didn't know the name of
6 the specification the talc was being tested according
7 to, does that mean that nobody at Johnson & Johnson
8 knew that?

9 A. No.

10 Q. Let's take a look at -- now, one more thing
11 before we leave this document, Exhibit 14. This email
12 from Dr. Hopkins, it takes place the same day as you
13 get the fax regarding the TV station; right?

14 A. Yes.

15 Q. This is not something that sort of sat on
16 your desk for a period of time; right?

17 A. No, no, it was not.

18 Q. Do you recall responding to this fax with a
19 sense of urgency?

20 A. Yes.

21 Q. Are you -- are you with me, Dr. Mann?
22 Defense Exhibit 6, which appears to be a printed copy
23 of an email with some handwritten notes on it.

24 Do you see that?

25 A. Yes.

1 Q. Okay. And this is another email from
2 Dr. Hopkins to you on the same day in February 2004;
3 right?

4 A. Yes.

5 Q. Okay. And one of the things -- if we go back
6 to what was Plaintiff's Exhibit 14 -- that Dr. Hopkins
7 suggested to you was that "a certificate such as from
8 an independent source like RJ Lee is an easier way of
9 dealing with nonexperts, i.e., the media, than talking
10 about the various kinds of mineralogy of talc."

11 Do you see that?

12 A. Yes, I see that.

13 Q. And then in what we have marked as Defense's
14 Exhibit 6, Dr. Hopkins sends an email to you that says,
15 "Steve, as discussed, address of RJ Lee, Regards,
16 John."

17 Do you see that?

18 A. Yes.

19 Q. And he essentially forward you an older email
20 that has contact information for the RJ Lee Group;
21 correct?

22 A. Yes.

23 Q. Okay. And if you look at the note next to
24 that, the RJ Lee Group, it says, "Senior microscopist,
25 Bill Powers."

1 Do you see that?

2 A. Yes.

3 Q. Is that your handwriting, Dr. Mann?

4 A. It looks to be, yes.

5 Q. And, in fact, there's quite a bit of your
6 handwriting covering this page; is that right?

7 A. Yes, it is my handwriting.

8 Q. Bottom line, Dr. Mann, what are these
9 handwritten notes telling you about how you responded
10 to getting this TV station vetted?

11 A. That I was doing everything I could to track
12 down the sample and to get further analysis to validate
13 whether this number that was on the fax is valid.

14 Q. One of the things, if we go back to the
15 special project producer letter, which was Exhibit 12,
16 one of the things he says is "Give me a call once you
17 review the material"; right?

18 A. Yes.

19 Q. And based on your memory, did folks at
20 Johnson & Johnson try to do just that, which is give
21 the special project producer a call about the fax he
22 had sent?

23 A. Yes, I recall that Sarah called several
24 times, and I believe that she had a response from the
25 station saying that they were going to try to get the

1 information we were requesting.

2 Q. And, in fact, if we take a look at what was
3 Exhibit 16 to your deposition, it's a letter from now
4 March 9th, 2004, regarding the Forensic Analytical
5 report.

6 Do you see that?

7 A. Yes.

8 Q. This is about a little over a week after the
9 fax from KCRA-TV 3 comes to you; right?

10 A. Yes.

11 Q. And did -- the author of the letter is the
12 manager of bulk materials analysis, William Powers;
13 right?

14 A. Yes.

15 Q. And what Mr. Powers from RJ Lee tells
16 Mr. Ashton in March of 2004, is, "There is no
17 supporting evidence to show what was found."

18 Do you see that?

19 A. Yes, yes.

20 Q. Okay. Do you recall ever seeing any evidence
21 to support this -- any additional evidence to support
22 this fax that was marked as Exhibit 12?

23 A. No, I did not.

24 Q. Did you see a shred of documentation that
25 would suggest that this two- or three-page fax from a

1 TV station was legitimate?

2 A. No, I did not.

3 Q. Now, Dr. Mann, there was some suggestion
4 earlier this week that you guys should have called the
5 lab directly.

6 Do you remember those questions?

7 A. Yes, I do.

8 Q. Do you remember being asked questions about,
9 well, my goodness, you guys didn't call up Forensic
10 Analytical.

11 Do you remember all that?

12 A. Yes, I do.

13 Q. Now, Johnson & Johnson was not the client of
14 Forensic Analytical; right?

15 A. No.

16 Q. Johnson & Johnson had no relationship with
17 Forensic Analytical; correct?

18 A. Not that I'm aware of.

19 Q. When -- when the special project producer
20 emailed or sent a letter to Johnson & Johnson, he
21 didn't say, I give you authority to talk about these
22 results with the laboratory we've contracted with;
23 right?

24 A. No.

25 Q. He doesn't say, please go ahead and call the

1 lab; you have my permission to talk about these
2 results; right?

3 A. Correct.

4 Q. In fact, what he says is, why don't you call
5 me, and call me at the TV station once you have a
6 chance to look at this; right?

7 A. Yes.

8 Q. Right. You didn't see any confidentiality
9 disclosure or waiver form or anything that would
10 suggest to you that if Johnson & Johnson called up this
11 lab, they would have said a word to Johnson & Johnson
12 about testing that they did for a totally different
13 client; right?

14 A. No, I did not.

15 Q. Now, when the TV station says, call me after
16 you look at this stuff, did you guys do that?

17 A. Yes, I believe so. I believe Sarah did that,
18 Sarah Colamarino.

19 Q. Let's take a look at what was marked as
20 Exhibit 17 to your deposition. And Exhibit 17 to your
21 deposition, this was an email, which is a chain that
22 starts with you, Dr. Mann, on April 6th, whatever time,
23 in 2004.

24 Do you see this?

25 A. Yes, I do.

1 Q. Okay. And you start this email here to Sarah
2 Colamarino and John O'Shaughnessy, and you say, "I have
3 not received the talc sample from the reporter or the
4 label information they told Sarah they would send";
5 right?

6 A. Yes.

7 Q. And is that consistent with your recollection
8 that at some point this TV station promised they would
9 send a sample?

10 A. Yes.

11 Q. "It's been a long time, so I'm doubtful we're
12 going to see it."

13 A. Yes.

14 Q. And you were asked some questions about the
15 final sentence of this email where you say, "I'm afraid
16 they might surprise us down the road if they decide to
17 run a story."

18 Do you remember that?

19 A. Yes, I do.

20 Q. What was -- what was more important to you,
21 Dr. Mann, getting to the bottom of this alleged finding
22 or worrying about a story on a TV station?

23 A. No, to get the sample and to get analysis and
24 validate if our talc actually did have asbestos.

25 That's what's my concern is.

1 Q. Is it a fair reading of that sentence in your
2 email to suggest that the only thing you cared about
3 was making sure that this TV station didn't run a
4 story?

5 A. No, it is not.

6 Q. Were you, in fact, Dr. Mann, focused on
7 trying to get to the bottom of these allegations?

8 A. Yes. I was trying to get a sample, trying to
9 follow up, trying to determine if there was any
10 validity to this fax that came in.

11 Q. And if we skip up a little bit on this email
12 to Sarah Colamarino's email from 5:05 the next day, she
13 says, "I have contacted the reporter three times for
14 the sample"; right?

15 A. Yes, that's what it says.

16 Q. And even though Mark Monseau says it doesn't
17 seem like anybody's pushing the story, Sarah Colamarino
18 responds she's going to try to talk to these people for
19 the fourth time; right?

20 A. Yes. That's what it says, yes.

21 Q. What information do you know from this email,
22 Dr. Mann, about whether or not the TV station indicated
23 it would send a sample of talc?

24 A. Yeah, they said they would, and she's
25 expecting it.

1 Q. And based on this email, what information do
2 you know about how many times your colleague tried to
3 contact the people at the TV station?

4 A. Appears to be four.

5 Q. Despite calling the TV station three times,
6 were you or your colleague ever able to get any
7 information from KCRA-TV 3 that would allow you to
8 validate the information they claim to have in this
9 fax?

10 A. No, I did not.

11 Q. Do you -- based on the information you have,
12 do you consider this TV fax to be a confirmed
13 scientific finding?

14 A. No, I do not.

15 Q. Do you have any information, Dr. Mann, about
16 whether -- do you have any reason to believe, Dr. Mann,
17 that this TV show ever aired with this working story
18 with no air date, do you have any information that that
19 was even a real story?

20 A. I am unaware of that.

21 Q. Did you ever see any responsive
22 correspondence from KCRA-TV regarding your request?

23 A. Not that I recall, no.

24 Q. Is Exhibit 12 the last letter from the
25 special projects producer and the two-page fax, all of

1 the information you ever saw regarding these alleged
2 findings?

3 A. That is correct.

4 Q. You were shown, Dr. Mann, Exhibit 4 to your
5 deposition earlier this week. It is a letter on
6 letterhead titled "Mehaffy Weber" dated March 16th,
7 1998, and directed to Mr. John O'Shaughnessy, assistant
8 general counsel at Johnson & Johnson.

9 Do you see that?

10 A. Yes. 1998, yes.

11 Q. Now, 1998 was at least three years before you
12 came to Johnson & Johnson Consumer.

13 A. Yeah, I came in '85.

14 Q. This letter --

15 A. Oh, sorry. You're speaking of consumer
16 products. Sorry, no, I came in 2001. I misspoke.

17 Q. Thanks, Dr. Mann.

18 And this letter, this Exhibit 4 letter, it
19 was not relayed to you; correct?

20 A. I do not believe so, no.

21 Q. This letter is from Ann Marie Hatcher. Have
22 you ever heard of that individual?

23 A. Not that I recall.

24 Q. It's regarding a lawsuit. Do you see the
25 information about the lawsuit?

1 A. Yes.

2 Q. And prior to counsel for the plaintiff
3 showing you this letter marked as Exhibit 4 earlier
4 this week, you had never seen it before; correct?

5 A. No. I do not recall seeing it, no.

6 Q. The letter is addressed to
7 Johnson & Johnson's lawyer, Mr. O'Shaughnessy.
8 See that?

9 A. Yes.

10 Q. And it starts, "On Thursday, March 12th,
11 1998, and Monday, March 16th, 1998, I spoke with
12 Dr. Alice Blount about the possibility of retaining her
13 as an expert in the above entitled case."

14 Do you see that?

15 A. Yes, I do.

16 Q. And it talks about how Dr. Blount has written
17 extensively on talc and asbestos contamination.

18 See that?

19 A. Yes, I see that.

20 Q. Counsel showed you on this: "She stated
21 that, in her opinion, commercial talcum powder
22 preparations, including Johnson's Baby Powder, contain
23 trace amounts of asbestos."

24 Do you remember seeing that sentence about
25 trace asbestos?

1 A. Okay.

2 Q. Do you recall questions regarding Dr.
3 Blount's statement that Johnson's Baby Powder contains
4 trace amounts of asbestos?

5 A. Yes. I remember some questions, yes.

6 Q. And the part, though -- and you don't know
7 anything about testing Dr. Blount did or did not do on
8 Johnson's Baby Powder; is that right, Dr. Mann?

9 A. No, I do not.

10 Q. "In addition, Dr. Blount stated that she did
11 not think that whatever amount of asbestos that might
12 be present in baby powder was harmful, that the concern
13 about talc was blown out of proportion, and that she
14 has a very high opinion of the Johnson & Johnson Baby
15 Powder."

16 Do you see that?

17 A. I see that, yes.

18 Q. And in fairness, when counsel showed you this
19 letter last week, he didn't show you that part of the
20 paragraph; right?

21 A. Yes. I don't recall that, no.

22 Q. I'm going to mark -- if we take a look at
23 Tab 10, I'm going to mark this as Defense Exhibit 8,
24 and this, Dr. Mann, was an email that you were shown
25 when plaintiff counsel was questioning you, but it was

1 missing the attachment, so I'm going to mark as
2 Defense 8 the complete email and attachment. It's an
3 email from October 2005. We're on Defense 8.

4 Do you see that?

5 A. Yes.

6 Q. And it was Tab 10 in your binder, if you want
7 your hard copy.

8 A. Yeah, I just turned to it, but I'll look at
9 the screen.

10 Q. Terrific. All right. So we're going to
11 switch gears here a little bit, Dr. Mann, and we're
12 going -- I'm sorry.

13 We're going to switch gears a little bit, and
14 we're going to talk about IARC for a short period of
15 time. Okay?

16 Do you recall being asked some questions
17 about IARC earlier this week when counsel was
18 questioning you?

19 A. Yes, I recall that.

20 Q. Okay. So we're going to talk about Defense
21 Exhibit 8 in a moment. We will start with it,
22 actually. So you were shown this email, Dr. Mann,
23 earlier this week, and it's an email from you titled
24 "Science and Practice of Carcinogen Identification."

25 That's the attachment, sorry.

1 The subject is "IARC Talc Review"; right?

2 A. Yes, yes.

3 Q. And you were asked some questions about a war
4 room. Do you remember those questions?

5 A. Yes.

6 Q. Okay. And your email here says that, "We
7 continue to try to figure out what IARC is up to
8 regarding talc"; right?

9 A. Yes.

10 Q. Anything wrong with a company wanting to be
11 engaged in a regulatory product about -- regulatory
12 process about its product?

13 A. No. We would like to know, be informed, yes.

14 Q. "CTFA is seeking our support for the cost of
15 having observers near the one-week meeting."

16 You see that?

17 A. Yes, I see that.

18 Q. "Cost would be travel/hotel/war room";
19 correct?

20 A. Yes.

21 Q. And you remember being asked some questions
22 about this war room?

23 A. Yes. I recall that, yeah.

24 Q. If you look down on this email, you get a
25 little more detail about what the purpose of this war

1 room was; right? Let's take a look at the bottom at
2 the email from Linda Loretz on October 14th, 2005.

3 Do you see that?

4 A. Yes. From Linda, yes.

5 Q. Okay. So she starts her email saying,
6 "Update on the upcoming talc review by IARC"; right?

7 A. Yes, that's right.

8 Q. And in the second paragraph, she notes that
9 "Invitations have gone out from IARC to potential
10 working group members and invited specialists";
11 correct?

12 A. Yes.

13 Q. And then she says, "The industry groups for
14 three materials are each planning to nominate two
15 observers."

16 Do you see that?

17 A. Yes, I see that.

18 Q. If we continue on in this email, Linda
19 writes, "In addition to sponsoring the observers, there
20 are plans to put together a searchable bibliography CD
21 with PDF files of published articles. Luzenac is
22 taking the lead. And to operate at full -- war room at
23 a hotel near the IARC facility to serve as a meeting
24 and communications site where observers can go to
25 research issues."

1 Do you see that?

2 A. Yes, I see that.

3 Q. And does that, Dr. Mann, provide you
4 information about what the purpose of this war room
5 that was being set up was going to be?

6 A. Yes, very much like for the NTP, to make sure
7 that they have all the literature and the science.

8 Q. And you were asked -- and one of the
9 observers was Dr. Muscat; right?

10 A. Yes.

11 Q. And one of the things that is attached to
12 this email that we've marked as Defense Exhibit 8 is a
13 document titled "The Science and Practice of Carcinogen
14 Identification and Evaluation."

15 Do you see that as being attached here?

16 A. Right. Right.

17 Q. And it starts out by saying that,
18 "Understanding how cancer develops, creates
19 opportunities for cancer prevention or early detection,
20 and an important part of the effort, this effort is to
21 identify agents and exposures that cause cancer";
22 right?

23 A. Yes.

24 Q. "The IARC Monograph includes a critical
25 review of the pertinent peer-reviewed scientific

1 literature as the basis for an evaluation of the weight
2 of the evidence that an agent may be carcinogenic to
3 humans"; right?

4 A. Yes.

5 Q. And did you understand that to be, in part,
6 the focus of the IARC, trying to figure out what causes
7 cancer so we can prevent it?

8 A. Yes.

9 Q. And in this multipage document that was
10 attached to your email, there is a description of the
11 process of how the group of scientists come together to
12 issue these IARC Monographs; right?

13 A. Yes. The process, yes.

14 Q. And the document also gives us some
15 information about the role of observers in the IARC
16 process; correct? If we look at the Page 1273, I'm
17 going to direct you to the third column.

18 A. Yes, I see it.

19 Q. And do you recall some questions that counsel
20 asked you about the IARC observers?

21 A. Yes. I recall the questions, yes.

22 Q. And do you remember, in fact, counsel asked
23 you this, "You know, the observers weren't supposed to
24 have any impact on the IARC process?"

25 Do you remember being asked that question?

1 A. Yes.

2 Q. Now, you were asked some questions on this
3 observer -- and when it came to IARC's review of talc,
4 the CTFA sponsored an observer, didn't they?

5 A. That seems to be the case. I don't recall
6 specifically.

7 Q. And let's take a look at Tab 11, which we'll
8 mark as Defense Exhibit 9. And do you recall a series
9 of questions, Dr. Mann, about a draft of the IARC
10 Monograph?

11 A. Vaguely.

12 Q. It was a long day, huh?

13 A. Yes, it was.

14 Q. Okay. Well, I want to show you this email
15 quickly, and we'll wrap up with the IARC and give you a
16 break, but this is an email that has an email chain
17 regarding industry observers and a conference call that
18 was scheduled.

19 Do you see that?

20 A. Yes.

21 Q. And if you turn to the second page, we get
22 some information about the agenda for that conference
23 call, if you look at the email dated January 17th,
24 2006.

25 Do you see that?

1 A. Yes.

2 Q. And one of the things that's on the agenda
3 for this conference call among the IARC observers
4 states that, "The next conference call on January 27th
5 primarily is for the observers and any scientific
6 issues they may have or want to discuss, including
7 draft written IARC Monographs sections, if available."

8 Do you see that?

9 A. Yes.

10 Q. Okay. And then if we turn back to the first
11 page of this email, again email communication among the
12 observers, and look at the second paragraph, "We
13 anxiously await the release of the working draft of
14 Monograph 93 prepared by IARC staff. The working draft
15 is expected to be the focal point for one or more of
16 these teleconferences."

17 Do you see that, Dr. Mann?

18 A. Yes, I see that.

19 Q. Okay. And when you said -- and this is what
20 counsel was asking you about. You forwarded this to
21 someone at the CTFA, and you said, "When I get that
22 draft, I'll share it with you"; right?

23 A. Yes.

24 Q. Do you believe that you did anything wrong,
25 Dr. Mann, by informing the CTFA that you would share

1 the draft once it was released?

2 A. No, I did not.

3 Q. You understood, Dr. Mann, that IARC reviewed
4 talc not containing abestiform fibers and issued a
5 Monograph in 2010; correct?

6 A. I'm aware they did that.

7 Q. Right. The IARC process is flawed in that
8 they don't have a truly open process; right?

9 A. Yes.

10 Q. That's what she said. "We have consulted our
11 experts on the overall interpretation of the science
12 and believed the evidence is weak."

13 Do you see that?

14 A. Yes, I do.

15 Q. You conclude this email with the statement,
16 "We will defends against this."

17 Do you see that?

18 A. Yes, I see that.

19 Q. What I want to start talking to you about
20 right now is a consultant named Dr. Al Wehner.

21 Do you have any recollection of working with
22 him during the time period you were at
23 Johnson & Johnson?

24 A. Yeah, a bit.

25 Q. And how is it that you came to learn about

1 Dr. Wehner during the time period that you worked at
2 Johnson & Johnson?

3 A. Well, I'm not sure who exactly told me about
4 him, but he was sort of like one of the three main
5 consultants, between John Hopkins and Bill Ashton and
6 Al Wehner.

7 Q. During the time period that you worked at
8 Johnson & Johnson, did you look to Dr. Wehner as an
9 expert on issues concerning talc and talcum powder?

10 A. Yes.

11 Q. Did Dr. Wehner perform a number of different
12 projects for Johnson & Johnson during the time period
13 that he consulted for the company?

14 A. Yeah. I don't recall exactly what they were,
15 no.

16 Q. We're going to mark this as Defense
17 Exhibit 13, Dr. Wehner's 1994 publication. Did
18 Johnson & Johnson, to your recollection, Dr. Mann, pay
19 Dr. Wehner a consultant fee to assist the company in
20 studying issues of talc safety?

21 A. Based on these time frames, I wouldn't know
22 for sure, but I would assume so.

23 Q. I want to look at what was marked as
24 Plaintiff's Exhibit 10. This was an email that
25 attached another article that Dr. Wehner wrote. You

1 see his name here?

2 This title was "Cosmetic talc should not be
3 listed as a carcinogen, comments on NTP's deliberations
4 to list talc as a carcinogen."

5 Do you see that?

6 A. Yes. I see the title, yes.

7 Q. And what does -- and you can read it -- but
8 what does Dr. Wehner say in Footnote 2 of this paper?

9 A. "This review was conducted independently and
10 the opinions expressed in it are solely those of the
11 author."

12 Q. And if we look at the acknowledgments on this
13 paper, tell us who, if anyone, Dr. Wehner acknowledges
14 here.

15 A. Dr. John Hopkins in the UK for his review.

16 Q. Is there any reference in this published
17 paper of Dr. Wehner that Johnson & Johnson paid
18 Dr. Wehner to write this 2002 published paper entitled
19 "Cosmetic talc should not be listed as a carcinogen"?

20 A. He does not list that as an acknowledgment.

21 Q. And, you know, counsel asked you a lot of
22 questions about this paper.

23 Do you remember that?

24 A. Again, many, many questions.

25 Q. Yeah. And every time he referred to this

1 paper, he asked you something like this, "I want to ask
2 you some questions about this paper that
3 Johnson & Johnson paid Dr. Wehner to write."

4 Do you remember those questions?

5 A. I remember the question.

6 Q. And looking at this paper, though, is there
7 any indication in the paper itself that
8 Johnson & Johnson did what counsel asked you, which is
9 pay Dr. Wehner to write this?

10 A. He doesn't make any acknowledgment of that.

11 Q. Let's take a look at something else that --
12 let's go back to Defense Exhibit 17, if you could, the
13 copies of some of those invoices. And if you turn
14 to -- then remember if you go to the next page, what we
15 see is handwriting that says "Al Wehner, talc"; right?

16 A. Right, yes.

17 Q. We go to the next page, there is some
18 handwriting; right?

19 A. Yes.

20 Q. Okay. And do you recall the plaintiff's
21 lawyer asking you questions about what appears to be
22 the number 50,000 at the top?

23 A. Yes. I remember questions, yes.

24 Q. Is there any indication on this piece of
25 paper what that \$50,000 or 50,000 refers to?

1 A. No.

2 Q. Can you even read the word after it?

3 A. No.

4 Q. And do you remember counsel for plaintiffs
5 suggesting to you that that handwriting, that you don't
6 know what it means, has to do with the September 19,
7 2002, invoice?

8 A. I seem to recall questions about what that
9 fee was related to, yes.

10 Q. Do you recall questions suggesting that the
11 handwritten 50,000 number related to Dr. Wehner's
12 September 19, 2002, invoice?

13 A. Yes.

14 Q. Is there any information in Plaintiff's
15 Exhibit 9 that would suggest to you that this
16 handwriting has anything to do with Dr. Wehner's
17 September 19, 2002, invoice?

18 A. No, there's nothing about a date.

19 Q. And is it true -- and, in fact, nothing about
20 payment either; right? I mean, if you look at the
21 50,000, is there any indication that that is a dollar
22 figure that was paid to somebody?

23 A. No, I don't know what it is. Yeah, there is
24 no indication what that money refers to.

25 Q. In the collection of invoices I put together

1 as Defense 17, we're looking at an invoice from
2 October 22nd, 2002.

3 Do you see that, Doctor?

4 A. Yes.

5 Q. Okay. And it's a letter from Dr. Wehner to
6 you; correct?

7 A. Yes.

8 Q. And Dr. Wehner says to you, "Thank you again
9 for the renewal and updating of the BEC's agreement
10 with J&J."

11 Do you see that?

12 A. Yes.

13 Q. Okay. BEC, that's the name of Dr. Wehner's
14 consulting company Biomedical and Environmental
15 Consultants; right?

16 A. Yes.

17 Q. Okay. And he says, "I'm enclosing an invoice
18 for the reprint and professional services for
19 September"; right?

20 A. Yes.

21 Q. And plaintiff's counsel showed you this email
22 from September suggesting that Dr. Wehner got paid
23 50,000 in September of 2002; right?

24 A. Yes. I think that's what the implication
25 was, yes.

1 Q. Now, is this an invoice -- Dr. Mann, who was
2 this invoice sent to? Can you see up at the top who it
3 went to?

4 A. Yes, to me. Sorry.

5 Q. Okay. Yeah. And what was the actual amount
6 of money that Dr. Wehner invoiced Johnson & Johnson for
7 his professional services in September of 2002?

8 A. Yes, it says September fee was \$1,260.37.

9 Q. The September fee, I'm sorry, was what,
10 Doctor?

11 A. 1,260.37.

12 Q. Yep. And so we have professional service
13 fees of how much money?

14 A. \$1,000.

15 Q. And are there also some expenses Dr. Wehner
16 includes?

17 A. Yes, for reprints and mailing.

18 Q. Any indication on this invoice that in
19 September of 2002 Dr. Wehner was paid 50,000 by
20 Johnson & Johnson?

21 A. No.

22 Q. And so when counsel repeatedly asked you
23 questions like this one, "I want to ask you questions
24 about the paper that Johnson & Johnson paid Dr. Wehner
25 to write," have you seen any evidence of that?

1 A. No.

2 Q. And you were asked --

3 MS. MCVEY: Your Honor, we're moving on to a
4 new section, I believe. Would this would be a good
5 time for a lunch break or should we continue?

6 THE COURT: Approach for a minute.

7 **(Whereupon a bench conference was held.)**

8 THE COURT: How much longer?

9 MR. COWAN: Thirty-four minutes, I'm told.

10 It's up to you. I mean, we can continue, I
11 just ...

12 THE COURT: She's got 34 more minutes.

13 MS. MCVEY: Do you want to ask them? I know
14 we defer to jurors, so do you want to ask them.

15 THE COURT: I will just ask them.

16 MR. COWAN: Okay. Okay.

17 THE COURT: Ladies and gentlemen of the jury,
18 Madam Foreman, I ask you to kind of look at your juror
19 colleagues. They've got about 30 more minutes to go on
20 this thing, and I am wondering if we'd rather take a
21 lunch break now or finish this up? Whatever suits
22 y'all.

23 JURY FOREMAN: We're hungry. I'm hungry.

24 THE COURT: Okay. Good. Let's take our
25 break for lunch. Let's be back at -- how about quarter

1 THE COURT: All right. Thank you, ma'am.

2 Ladies and gentlemen of the jury, upon -- the
3 plaintiff's case will continue. There's more -- or
4 some more of Mr. Mann to be played, and then we'll move
5 on to the next witness.

6 So, plaintiffs, you may proceed.

7 **(Whereupon video deposition of Dr.**
8 **Steven Mann was played.)**

9 Q. And you were asked some questions about the
10 company's work with Drs. Huncharek and Muscat in
11 connection with the NTP's submission.

12 Do you remember that?

13 A. Yes.

14 Q. Were you trying to work with the law firm
15 Crowell & Moring to hide Johnson & Johnson's
16 involvement with Drs. Huncharek and Muscat?

17 A. No.

18 Q. Were you trying to work with a law firm to
19 keep information out of the public domain about
20 Johnson & Johnson's involvement?

21 A. No.

22 Q. You were asked, Dr. Mann, some questions
23 about some emails you wrote referring to baby powder as
24 a "sacred cow."

25 Do you remember that?

1 A. Yes. Yes.

2 Q. Fair to say baby powder is a well-known
3 product; would you agree?

4 A. Yes.

5 Q. Okay. What did you mean when you used the
6 term "sacred cow"?

7 A. That it was a very long-standing product, a
8 very well-known brand for Johnson & Johnson because of
9 that long history.

10 Q. Did you work to conceal asbestos in Johnson's
11 Baby Powder because it was a well-known product?

12 A. No, I did not.

13 Q. Are you aware of anybody at Johnson & Johnson
14 who worked to conceal asbestos in baby powder because
15 it was a product that people know about?

16 A. I'm unaware of that, no.

17 Q. And you were asked some questions in
18 Plaintiffs' Exhibit 12(b) about an email -- another one
19 of the emails referring to "sacred cow."

20 A. Yes.

21 Q. You were shown this email, this was
22 Plaintiffs' 12(b), and this is an email. Counsel was
23 asking you about the fact that you realize talc and
24 baby fragrances are somewhat sacred; right?

25 Do you see that?

1 A. Yeah, in the context of the fragrance, yeah.

2 Q. In your role in the toxicology department at
3 Johnson & Johnson, did you ever compromise baby powder
4 safety because you thought that the product was sacred?

5 A. No, I did not.

6 Q. And in fact, in terms of -- just tell us, do
7 you have a memory of what all this discussion is about,
8 in terms of baby powder being sacred?

9 A. Yeah. In this context, again, I think they
10 were -- the supplier was changing and there were some
11 implications that they might want to tweak the
12 fragrance, and so I think what I was saying whenever I
13 used that term was that, you know, it's just a really
14 well-known brand, that fragrance is very distinctive
15 and associated with babies and with that product, and
16 just sort of saying, no, don't -- don't change those
17 things, you know, without very careful thinking.

18 Q. Does this email, in which you refer to the
19 fragrance and the powder as sacred, have anything to do
20 with testing talc for asbestos?

21 A. No. No.

22 Q. And based on what Mr. Sterchele was telling
23 you here, did this issue of reformulating the fragrance
24 have anything to do with a safety concern?

25 A. No.

1 Q. Dr. Mann, during the time period that you
2 worked at Johnson & Johnson, what was your
3 understanding in terms of number of people and
4 departments that were monitoring Johnson's Baby Powder
5 for safety?

6 A. Many people. Medical, scientific affairs,
7 QA. Tox is one of them, you know.

8 Q. Did you have an understanding that
9 Johnson & Johnson was also working with outside experts
10 during the time period that you were working at the
11 company?

12 A. Yes.

13 Q. And did you rely on the information that you
14 received from your colleagues and from the
15 Johnson & Johnson's outside experts during the time
16 period that you worked there?

17 A. Yes.

18 Q. Dr. Mann, you have been very patient through
19 all of these questions; and, at this point, I don't
20 have any more questions for you, so thank you very
21 much.

22 Dr. Mann, are you ready to continue?

23 A. Yes.

24 Q. So just so everyone understands, you were
25 employed by J&J Consumer from June of 2001 to?

1 A. July.

2 Q. Okay. So it was July of 2001 to the end of
3 June 2006; correct?

4 A. Correct.

5 Q. All right. And the only position you held at
6 J&J Consumer was director of toxicology; right?

7 A. Correct.

8 Q. All right. And you were the person in charge
9 of talc safety when you worked at J&J Consumer;
10 correct?

11 A. Toxicology. Safety goes beyond just that,
12 includes, you know, purity, et cetera.

13 Q. Let me ask you if you gave the following
14 testimony this past Monday under oath on February 15th.

15 "QUESTION: Okay. Just to be clear,
16 Dr. Mann, during this February and March 2004
17 time period, you were the person in charge of
18 the safety of talc at J&J and J&J Consumer;
19 correct?

20 Your answer was, "Yes."

21 Was that testimony true when you gave it?

22 A. Yes. As best I understood it then, I felt
23 that was a correct and truthful answer, yes.

24 Q. And you had responsibility for the safety of
25 talc during the entire time period in which you were

1 the director of toxicology from 2001 to 2006; true?

2 Please answer the question.

3 A. Yeah, I do not think I correctly understood
4 the breadth of what you meant by "safety," because I
5 consider purity issues to be also part of safety, and
6 those are covered by other people.

7 So I did not understand that as being me
8 being responsible for all aspects of safety; so I don't
9 know how to explain it any better than that.

10 As I understood it then, I answered it that
11 way. As I understood it now, as we've been through
12 this, I understand that you mean something much more
13 broader than that.

14 Q. Dr. Mann, you know that in 2004, you were
15 listed as the person at Johnson & Johnson Consumer that
16 was in charge of safety of talc; correct?

17 A. I called myself as half director of
18 toxicology. And that is a role -- and I don't know
19 how -- I don't know how to fix this or to correct it or
20 to say, you know, yes, I answered yes then, but as we
21 speak now, I understand that it's broader than that.
22 And I mean, I don't know -- I don't know how to.

23 Q. Do you see that it's an email you're copied
24 on on April 28th, 2004?

25 A. Yes.

1 Q. And do you see it attaches a document dated
2 March 15th, 2004, entitled "Global Regulatory Affairs"?

3 Do you see that?

4 A. Yes, I do.

5 Q. Do you see that "issues" are listed and
6 "talc" is listed there?

7 A. Yes.

8 Q. All right. And do you see the contact for
9 talc is listed as "Mann." That's you, Steven Mann;
10 correct?

11 A. Yes, yes.

12 Q. And it doesn't list anyone else from
13 Johnson & Johnson Consumer, does it?

14 A. That's correct, yes.

15 Q. And under your name is listed "safety";
16 correct?

17 A. Yes.

18 Q. Dr. Mann, even though you are listed as the
19 person in charge of talc safety in that document we
20 looked at, you were not told to make talc a primary
21 focus of your job; is that correct?

22 A. My primary role was new products development.

23 Q. Okay. And you -- in fact, you had not worked
24 on any talc issues when you started at J&J Consumer in
25 2001; correct? You had never worked with talc issues

1 your entire life when you started at J&J Consumer in
2 summer of 2001; correct?

3 A. Right.

4 Q. Okay. And you were asked by your lawyer
5 about the boxes of files regarding talc that were left
6 by Mr. Chudkowski with Ms. Musco that you picked up
7 sometime in early 2002.

8 Do you remember that?

9 A. Yes.

10 Q. And you don't know what was in those boxes;
11 correct?

12 A. Yes. I mean, things related to talc. That's
13 all.

14 Q. Well, you never read any of the papers in
15 those boxes; correct?

16 A. I didn't actually follow through, yes, no.

17 Q. Did you read more than 10 pages from those
18 boxes?

19 A. I scanned them. I didn't read them all the
20 way through, no.

21 Q. And there was also five binders from
22 Mr. Chudkowski left that you took possession of;
23 correct?

24 A. Yeah, I guess. I don't remember exactly what
25 I did with them, but yes, I remember him telling me

1 about them, yes.

2 Q. And you did not read any of the pages in
3 those binders either; correct?

4 A. Again, read, no. Scan, possibly.

5 Q. And even after Mr. Chudkowski emailed you and
6 told you that all the information he knew about talc
7 was left in his file, you still didn't read the
8 information; correct?

9 A. No. I may have scanned it. I didn't read
10 it. I didn't feel I needed to.

11 Q. In 2001, you never reviewed a single test
12 document where talc was tested for asbestos; correct?

13 A. As best I recall in 2001, no.

14 Q. And in 2002, you never reviewed any testing
15 of talc for asbestos; correct?

16 A. Again, it's a very long time. I do not
17 remember that.

18 Q. In fact, the only testing of talc for
19 asbestos that you specifically recall ever reviewing
20 while you worked at J&J Consumer was the testing you
21 received in February 2004 from Forensic Analytical;
22 correct?

23 A. Yes. As best I recall, yes.

24 Q. So the only testing that you specifically
25 recall reviewing while you worked at J&J Consumer where

1 talc was tested for asbestos, the result in the report
2 was that there was asbestos in Johnson's Baby Powder?

3 A. In that fax, yes, that's what it says.

4 Q. And when you say "in that fax," you're
5 talking about the laboratory result from Forensic
6 Analytical; correct?

7 A. Yes.

8 Q. And we're looking at Exhibit 12, and you can
9 see that these are laboratory results from Forensic
10 Analytical; correct?

11 A. Yes.

12 Q. You knew when you received the Forensic
13 Analytical testing in February of 2004 that the testing
14 was not done by a TV station; correct?

15 A. Correct.

16 Q. You knew that the testing was done by a
17 Forensic Analytical laboratory; correct?

18 A. Yes.

19 Q. You knew that there was a title on top of the
20 lab report that said, "Transmission Electron
21 Microscopy"; correct?

22 A. Yes.

23 Q. And you read the words "Johnson's Baby
24 Powder" on that testing; correct?

25 A. Yes.

1 Q. Yes. And you saw that the testing reported
2 the presence of asbestos and was signed by Mark Floyd;
3 correct?

4 A. That's what that table says, yes.

5 Q. Okay. And that's what the test results say;
6 right?

7 A. That's what that test result says, yes.

8 Q. Okay. Now -- and you admit when you received
9 this testing, you were alarmed; right?

10 A. Yes, if this was true, that was alarming.

11 Q. You admit you were concerned; right?

12 A. If this was true, I was concerned, yes.

13 Q. And you said today that you did everything
14 you could to track down the container, the date code,
15 the lot number.

16 Do you remember giving that testimony earlier
17 today?

18 A. Yes.

19 Q. Now, sir, Johnson & Johnson and
20 Johnson & Johnson Consumer you know never contacted the
21 lab; correct?

22 A. We did not contact the lab directly. We went
23 back through the source --

24 Q. Okay.

25 A. -- which I believe is what I said before.

1 Q. The lab report was sent to Johnson & Johnson;
2 correct?

3 A. Yes.

4 Q. So you knew when you received this lab report
5 that the testing was not confidential; correct?

6 A. Yeah, I don't see anything on there that says
7 it's confidential in any way, so, no.

8 Q. And did you not contact the lab because you
9 thought that it was confidential, that there was
10 something confidential?

11 A. No, we just chose the path to go back through
12 the people who were interacting with them to ask them
13 to get certain information.

14 Q. And a few times today, he was called
15 Dr. Ashton mistakenly.

16 Do you remember that?

17 A. I didn't know that he was not a doctor. I
18 thought he was.

19 Q. So Bill Ashton, when you went to him with the
20 Forensic Analytical testing, assured you that Johnson's
21 Baby Powder never contained asbestos; correct?

22 A. Yes, he had told me that many times.

23 Q. And it's been your testimony here today that
24 testing for asbestos is not a toxicology function.

25 It's not something in the area of toxicology. That's

1 your view; right?

2 A. Correct. Not testing, correct.

3 Q. But you know that another person you say you
4 relied upon for the issue of asbestos in talc was
5 Dr. John Hopkins; correct?

6 A. Yes.

7 Q. Dr. John Hopkins was a toxicologist like you;
8 correct?

9 A. Correct.

10 Q. And yet Dr. Hopkins was another person you
11 relied upon who told you that Johnson's Baby Powder
12 never contained asbestos; correct?

13 A. Yes.

14 Q. Yes. And you just accepted as true
15 everything that Bill Ashton told you; correct?

16 A. Yes. I had no reason to doubt it.

17 Q. And you just accepted as true everything
18 Dr. John Hopkins told you, didn't you?

19 A. Again, I had no reason to doubt him.

20 Q. And you did absolutely nothing to
21 independently verify anything that Bill Ashton or
22 Dr. John Hopkins told you about Johnson's Baby Powder
23 and asbestos; correct?

24 A. I wouldn't have the expertise to address
25 that.

1 Q. Now, you said today that -- well, testing of
2 talc for asbestos is something that is in the area of
3 the analytical department or the quality assurance
4 department at Johnson & Johnson Consumer; correct?

5 A. Yes.

6 Q. And are one of those or both of those
7 departments in Skillman, New Jersey?

8 A. It would be wherever the product is
9 manufactured.

10 Q. Okay. Was the analytical department of
11 Johnson & Johnson Consumer at Skillman, New Jersey,
12 where you worked?

13 A. I don't believe so. But to tell you the
14 truth, I'm not sure where it was because I didn't
15 interact directly with them. Took phone calls, and --
16 I don't recall -- I may have known at the time, but I
17 don't recall where they were at the time.

18 Q. Today you said you relied upon people at the
19 Johnson & Johnson Consumer analytical department --

20 A. Yes.

21 Q. -- regarding the testing of asbestos;
22 correct?

23 A. Yes.

24 Q. But you don't even know where the J&J
25 Consumer analytical department was located; correct?

1 A. I don't recall.

2 Q. Did you speak to someone from J&J Consumer's
3 analytical department more than one time about the
4 issue of asbestos in talc?

5 A. I don't recall.

6 Q. How about J&J's quality assurance department,
7 where is that located?

8 A. I know we have some quality assurance there
9 'cause I knew some of the people. I don't know if
10 there were different parts of it or, you know, assigned
11 to different products in places where it would be
12 manufactured, I would assume.

13 Again, I'm not -- you know, I don't know all
14 these other departments. We were pretty decentralized.
15 At least when I was there.

16 Q. Did you speak to someone in J&J Consumer's
17 quality assurance department about the testing of talc
18 for asbestos on more than one occasion?

19 A. I don't recall. I don't recall.

20 Q. You never took the time to learn anything
21 about the methods Johnson & Johnson or
22 Johnson & Johnson Consumer was using to test talc for
23 asbestos; correct?

24 A. No, not my responsibility, no.

25 Q. Yet you told the CTFA that

1 Johnson & Johnson's talc never had asbestos issues;
2 correct?

3 A. 'Cause that's what I was told by people who
4 were my superiors, and I accepted that as true.

5 Q. You -- well, what superiors of yours ever
6 told you that Johnson's Baby Powder never contained
7 asbestos?

8 A. Rachel.

9 Q. So that's Dr. Rachel Grossman; correct?

10 A. Yes.

11 Q. And she was a dermatologist; correct?

12 A. Yes.

13 Q. And it is your testimony that Dr. Rachel
14 Grossman, the dermatologist, told that you Johnson's
15 Baby Powder never contained asbestos?

16 A. Yes. You just asked me if any superior had
17 told me that, and that's yes. That's not the only
18 person that told me that.

19 Q. Other than dermatologist Dr. Rachel Grossman,
20 please identify any other superior at Johnson & Johnson
21 or Johnson & Johnson Consumer that ever told you that
22 Johnson's Baby Powder never contained asbestos?

23 A. Yeah, superior other than Rachel, I can't
24 recall. Again, I said I -- I relied on her and Bill
25 Ashton, and I relied on John Hopkins and also on Al

1 Wehner.

2 Q. Did you ever ask anyone at Johnson & Johnson
3 or Johnson & Johnson Consumer to show you any documents
4 identifying asbestos in J&J's talc?

5 A. I don't recall.

6 Q. You don't recall either way whether you would
7 have asked that question during the years 2001 to 2016?

8 A. I don't recall if I asked anybody.

9 Q. Did you ever make any effort to review the
10 published literature regarding the asbestos content of
11 talc?

12 A. I don't recall.

13 Q. The presence of asbestos in talc certainly
14 would be something important in determining toxicity;
15 would you agree?

16 A. Yes.

17 Q. Yet you don't recall whether you ever even
18 reviewed the published literature regarding asbestos
19 content of talc when you worked at J&J Consumer;
20 correct?

21 A. I only talked with people in my own company
22 about Johnson & Johnson talc.

23 Q. First of all, it says that "Dr. Blount, a
24 geologist and mineralogist" --

25 Do you see that?

1 A. Yes, I do.

2 Q. And that that type of science is not a health
3 science; correct?

4 A. Mineralogy, no.

5 Q. As stated in this article about Dr. Blount,
6 "She agreed to consult in the case if we desired her to
7 do so, but stated that, in her opinion, commercial
8 talcum powder preparations, including Johnson & Johnson
9 Baby Powder, contain trace amounts of asbestos."

10 Do you see that?

11 A. Yes.

12 Q. Okay. And you did not know that information
13 until this deposition; correct?

14 A. Yeah, I do not recall seeing it before.

15 Q. It wasn't shown to you when you worked at
16 Johnson & Johnson; correct?

17 A. I do not recall that.

18 Q. So in terms of acceptable limits, let me ask
19 you this question, Dr. Mann: You admit that there is
20 no acceptable limit of asbestos in talcum powder, and
21 that was your view when you worked at J&J Consumer;
22 correct?

23 A. Correct. There is no known safe level of
24 asbestos.

25 Q. Now, as someone who had responsibility for

1 the safety of talc at Johnson & Johnson Consumer, did
2 you know what an abestiform mineral was?

3 A. Again, I always knew it had asbestos in it.
4 The mineralogy, no, I did not.

5 Q. So in this test report, it says "Examination
6 of Johnson & Johnson's Baby Powder."

7 Do you see the title?

8 A. Uh-huh, yes.

9 Q. And it says, "two samples of
10 Johnson & Johnson Baby Powder."

11 Do you see that at the top?

12 A. Yes. Samples of Johnson & Johnson Baby
13 Powder, yes.

14 Q. And it says, "which correspond to the sample
15 examined by Professor Seymour Z. Lewin of New York
16 University on behalf of the FDA."

17 Do you see that?

18 A. Yes.

19 Q. And it says, "The testing was done by x-ray
20 diffraction, light microscopy, transmission electron
21 microscopy, and electron diffraction to determine
22 whether they contain abestiform minerals."

23 Do you see that?

24 A. Yes.

25 Q. Were you told that there were no abestiform

1 minerals in Johnson's Baby Powder?

2 A. No. The only terms I heard was no asbestos.

3 Q. Okay. You were told by Bill Ashton and

4 Dr. John Hopkins that the only thing that was in

5 Johnson's Baby Powder was talc and fragrance; correct?

6 A. That's -- yes, I believe that -- there was no
7 asbestos.

8 Q. And do you see Exhibit 45 to your deposition
9 has your words from September 30th, 2005, in an email.

10 Do you see that?

11 A. Yeah, my email, yes.

12 Q. Okay. And you were writing your boss, Joan
13 Casalsvieri; correct?

14 A. Yes.

15 Q. And you were listing your accomplishments;
16 correct?

17 A. Yes.

18 Q. And one of your accomplishments that you
19 wrote states, "Leadership to protect current business:
20 Work with CTFA/Luzenac/Crowell & Moring law firm on
21 talc, NTP and IARC reviews."

22 Did you write those words on September 30th,
23 2005 to your boss, Joan Casalsvieri?

24 A. Yes, that's what the memo says, yes.

25 Q. And you were being truthful when you wrote

1 that email to your boss, Joan Caselvieri?

2 A. Yes. I mean, again, it's how you phrase
3 things to different people.

4 Q. Were you being truthful when you made that
5 statement to your boss, Joan Caselvieri, on
6 September 30th, 2005?

7 A. Yes.

8 Q. And you did that work to protect
9 Johnson & Johnson's business because you knew that
10 Johnson's Baby Powder was a primary link to the
11 positive Johnson & Johnson name in the public mind;
12 correct?

13 A. Again, it's not why I did the work. Yes, I
14 do recognize that it's a well-known brand and I did the
15 work to get the best science to the agencies; and, that
16 being the case, hopefully the resolution would be
17 positive.

18 Q. Sir, not just a well-known brand. You admit
19 that Johnson's Baby Powder -- that it was your view
20 that Johnson's Baby Powder was a primary link to the
21 positive Johnson & Johnson name in the public mind.

22 Those were your words back on October 29th,
23 2004; correct?

24 A. Yes, it's there. Yes, it's there. Yes.

25 Q. You believe that Johnson's Baby Powder was a

1 "sacred cow"; correct?

2 A. Well-known brand. Yes, that was a word that
3 I used.

4 Q. Sir, but back in 2003, it was your view that
5 the talc that was put in the baby powder was considered
6 sacred; correct?

7 A. Yeah, I just -- yes, it's all one -- one
8 thing.

9 Q. Dr. Mann, why was it sacred for
10 Johnson & Johnson to use talc in the baby powder,
11 rather than cornstarch?

12 A. Yeah, it's really the brand.

13 Q. And it was your view that the Johnson's Baby
14 Powder brand was created in part by the fact that it
15 used talc; correct?

16 A. Yeah. I mean, that's the product. It's a
17 bottled talc and fragrance.

18 Q. And you were asked a number of questions
19 about studies that were done about talc and cancer
20 today.

21 Do you recall that?

22 A. Yes.

23 Q. While you worked at Johnson & Johnson
24 Consumer, you admit that you knew if talc had asbestos
25 in it, it could cause cancer; correct?

1 A. No known safe level of asbestos.

2 Q. Your view while you worked at J&J Consumer is
3 that there were no known safe level of asbestos;
4 correct?

5 A. Correct.

6 Q. And before you even started working at J&J
7 Consumer, it was textbook knowledge to you that
8 asbestos could cause mesothelioma; correct?

9 A. Yes. It was well known to textbook
10 information that asbestos causes -- can cause
11 mesothelioma, yes.

12 Q. And that was well known to you while you
13 worked at J&J Consumer; correct?

14 A. Yes, from many years before, I just knew that
15 as textbook.

16 Q. And you also knew while you worked at J&J
17 Consumer that mesothelioma was a deadly cancer;
18 correct?

19 A. Many cancers are deadly.

20 Q. You knew while you worked at J&J Consumer
21 that mesothelioma was a cancer that could cause death;
22 correct?

23 A. Yes.

24 Q. Now, you were asked about J&J's work with
25 what you called "outside experts."

1 Do you remember those questions?

2 A. Yes.

3 Q. You were asked about Dr. Wehner and some
4 other outside experts, as you referred to them as, in
5 the questioning by Johnson & Johnson's lawyer.

6 Do you remember that?

7 A. Yes.

8 Q. And you were just referring to some
9 communications you had with Dr. Rachel Grossman, who
10 was a dermatologist; correct?

11 A. My boss, yes.

12 Q. And this letter refers to a Dr. Judith K.
13 Jones, who submitted a document to the national
14 toxicology program.

15 Do you see her name there, Dr. Judith Jones?

16 A. Yes, I do.

17 Q. And you see it's June 3rd, 2004, this is an
18 email you sent to Linda Loretz from CTFA that mentions
19 Judith Jones.

20 Do you see that?

21 A. Yes, I do.

22 Q. And it wasn't a scientist that recommended
23 Judith Jones to you, it was John O'Shaughnessy, a
24 lawyer; correct?

25 A. That's what this says, yeah.

1 Q. Okay. And you wrote, "Do you have contact
2 information for Judith Jones? John O'Shaugnassey
3 thinks we should use her again."

4 You see that?

5 A. Yes, I see those words, yes.

6 Q. And if we go lower down the email chain, we
7 actually see an email from the lawyer from
8 Johnson & Johnson corporate, John O'Shaugnassey, and
9 that email is to a number of people on June 3rd, 2004,
10 including you; correct?

11 A. Yes, I'm copied on it, yes.

12 Q. All right. Just to be clear, we have a
13 lawyer from Johnson & Johnson emailing you, Dr. Steven
14 Mann, and also emailing a public relations person,
15 Sarah Colamarino; correct?

16 A. Yes.

17 Q. And the lawyer, John O'Shaugnassey, is
18 telling the scientists from Johnson & Johnson that they
19 should use Dr. Judith Jones; correct?

20 Can you see the email, sir?

21 A. I can see it down to where it says, "She's
22 right in DC, John."

23 Q. And Linda Loretz emails you on June 2nd,
24 2004, and she sends you an email, and one of the things
25 she's asking about -- or talking about in the email is

1 the asbestos issue.

2 Do you see that?

3 A. Yes.

4 Q. All right. And then if we go up, we see it's
5 an email from you to a group of people, and that group
6 of people includes your boss, Joan Casaltvieri; correct?

7 A. Yes, she's my boss, or was, yeah.

8 Q. Okay. And that email includes
9 Johnson & Johnson's lawyer, John O'Shaugnassey;
10 correct?

11 A. Yes.

12 Q. All right. And you discussed, in your email
13 to this group, about Dr. Wehner, "submitted his
14 position document to me, but I told Linda to expect a
15 copy from Dr. Wehner."

16 Do you see that?

17 A. Yes. Yes. Okay.

18 Q. And --

19 A. This was his position paper that we were
20 talking about, I assume?

21 Q. Right. Mr. O'Shaugnassey,
22 Johnson & Johnson's lawyer, writes, "Steven, Dr. Judith
23 Jones was not on the NTP committee, rather she was a
24 presenter we asked to become involved. She is an
25 epidemiologist, and I'm sure would work with us again.

1 She's right in DC."

2 Do you see that?

3 A. Yes, I do.

4 Q. All right. So it was the lawyer, John
5 O'Shaugnassey, who recommended that you use Dr. Judith
6 Jones as an epidemiologist in the national toxicology
7 program proceeding on talc; correct?

8 A. It's saying that she would work with us again
9 and she's an epidemiologist, yes.

10 Q. Okay. And was it a regular occurrence that
11 the lawyer, Mr. John O'Shaugnassey, would recommend
12 which scientist that you should use?

13 A. I don't recall.

14 Q. And what was Mr. O'Shaugnassey's role in the
15 process?

16 A. I don't recall.

17 Q. And I just want to clarify a point in your
18 testimony earlier. Was it your testimony that --
19 looking at Exhibit 5, that Johnson & Johnson provided
20 the U.S. government with the key showing the sample
21 identification for Dr. Blount's article from 1991?

22 A. I don't recall.

23 Q. Dr. Mann, I want to ask you about the
24 material safety data sheets that you were asked about
25 by Johnson & Johnson's lawyer. Okay?

1 A. Okay.

2 Q. In your statement on the MSDS that you
3 provided your co-worker at Johnson & Johnson Consumer,
4 it states, "This product contains no detectable
5 abestiform minerals."

6 Do you see that?

7 A. Uh-huh.

8 Q. Did you know what an abestiform mineral was
9 when you worked at J&J Consumer?

10 A. Again, as I said, I didn't know the different
11 types of asbestos. Just as asbestos. And I'm -- even
12 assuming that this wording may have been there before
13 and I'm just validating that, you know, nothing's
14 changed and we would just stay with what's here.

15 Q. You told the CTFA that Johnson's Baby Powder
16 never contained asbestos; right?

17 A. Yes.

18 Q. You worked with Johnson & Johnson to tell the
19 federal government that Johnson's Baby Powder never
20 contained asbestos; correct?

21 A. Yes.

22 Q. You worked with Johnson & Johnson to tell
23 IARC that Johnson's Baby Powder never contained
24 asbestos; right?

25 A. Yes.

1 Q. You told people who you supervised at
2 Johnson & Johnson that Johnson's Baby Powder never
3 contained asbestos; correct?

4 A. Probably.

5 Q. And in your words, you told everyone that
6 Johnson's Baby Powder never contained asbestos; right?

7 A. That is what I believed.

8 Q. Dr. Mann, you told everyone that Johnson's
9 Baby Powder never contained asbestos, even though the
10 only test report you ever looked at reported asbestos
11 being present in Johnson's Baby Powder; true?

12 A. Yes. I tell everyone that it's never
13 contained asbestos because that report was never
14 validated.

15 Q. Dr. Mann, you cannot identify a single thing
16 that was done wrong by Forensic Analytical in its test
17 report that you reviewed showing asbestos in Johnson's
18 Baby Powder; true?

19 A. I don't have information to even make that
20 judgment.

21 Q. Okay. And no one ever told you anything that
22 Forensic Analytical did wrong in its testing that
23 reported asbestos in Johnson's Baby Powder; correct?

24 A. They didn't tell us anything.

25 MS. MCVEY: Your Honor, that's the conclusion

1 of Steve Mann's video deposition.

2 THE COURT: Very good. Call your next
3 witness.

4 MS. GROSS: Your Honor, plaintiffs next call
5 Lonnie Long.

6 THE COURT: Very good. Mr. Long, come around
7 and be sworn.

8 THE CLERK: Do you solemnly swear the
9 testimony you're about to give in this action shall be
10 the truth, the whole truth, and nothing but the truth,
11 so help you God?

12 THE WITNESS: I do.

13 THE CLERK: Thank you, sir. Please have a
14 seat in the witness stand and state your full name for
15 the record.

16 THE WITNESS: It's Lonnie Long. And what did
17 you need me to say?

18 THE COURT: Mr. Long, you have a very gentle
19 voice, so be sure you're speaking into the microphone.
20 The jury is very close to you, but it's still necessary
21 for you to speak in that microphone so everyone can
22 hear you. Thank you so much.

23

24 /////

25 /////

1 **DIRECT EXAMINATION**

2 BY MS. GROSS:

3 Q. Hey, Lonnie.

4 A. Hello.

5 Q. Go ahead and introduce yourself to everyone
6 while I get this mic situated.

7 A. I'm Lonnie Long, and Michael Perry is my
8 partner. We live in Charleston, South Carolina.

9 Q. Have you ever done anything like testifying
10 in court before?

11 A. No.

12 Q. A little nervous?

13 A. Yeah.

14 Q. We're going to take it nice and slow.
15 Everyone here is very nice. Okay?

16 You are married to Michael; correct?

17 A. Yes.

18 Q. When did you and Michael first meet?

19 A. Probably 2003, we met online and then we went
20 to a date at T-BONES for some wings, and then the next
21 time, I took him fishing at what they call Bird Key.

22 It's an island off the ocean and you can only get to it
23 by boat. So we went fishing there and had a good time.

24 Q. How was your first date getting those wings?

25 A. What was that?

1 Q. How was the first date when y'all got those
2 wings?

3 A. It was good.

4 Q. Tell us about it.

5 A. Well, I got the Chernobyl, so that was kind
6 of not good.

7 Q. How long have you and Michael been together?

8 A. About 20 plus years.

9 Q. We have some photos I want us to take a look
10 at here and just talk about. Okay?

11 A. Okay.

12 Q. So we see here, this first one is of a cow.
13 It's been premarked as Exhibit 604-10. I don't --

14 MS. GROSS: There's no objection; correct?

15 MS. BUENO: No objection.

16 MS. GROSS: Thanks.

17 BY MS. GROSS:

18 Q. Tell us about the first house you and Michael
19 lived in together.

20 A. Okay. I had built a house on Johns Island
21 back in '98, so when I met Michael, he -- he came to
22 the farm, and I had a few horses and Michael bought
23 this cow here and he wanted to breed it to -- to have
24 little babies and stuff like that. You know, stuff
25 like that.

1 Q. Did you and Michael have a lot of families on
2 the farm?

3 A. We did. We had a lot of animals.

4 Q. Tell us about them.

5 A. Chickens. Chickens. Miniature donkeys,
6 horses, ducks. Just a lot of animals.

7 Q. So the next photo I want to take a look at is
8 what's been premarked as Exhibit 604-11.

9 A. Yeah.

10 Q. Tell us a little bit about what's happening
11 here.

12 A. Well, that's Mike's aunt, and they're best
13 buddies. That's his mom's sister. And then her
14 husband, Gary, and then these two pirates here.

15 We were going to dinner on a pirate ship and
16 so they wanted to take a picture, and so we got a
17 picture of them with us.

18 Q. What are some things you and Michael like to
19 do together?

20 A. Fish. We go to -- we go to the beach and
21 sword fish a lot, and go to the beach and just hang
22 out. We'll get a bucket of chicken and go out there
23 and just have a good time.

24 And working the farm, we had a lot of things
25 to do, so it took up a lot of time, too.

1 Q. What did y'all do when you were working on
2 the farm, taking care of everything?

3 A. Well, we fed the horses every morning early,
4 and then we would a lot of times wash them down if we
5 rode them. And then they took shots and dewormer,
6 stuff like that. Just a lot of work. Keeping the
7 fields cut, stuff like that.

8 Q. Do you and Michael celebrate the holidays?

9 A. We do.

10 Q. Tell us a little bit about that.

11 A. Well, Michael loves to decorate. I mean, he
12 goes overboard sometimes. Can't really see it here,
13 but there is a ton of stuff in the backyard. So he
14 loves to decorate for the holidays.

15 Q. So just for the record, what we premarked as
16 Exhibit 604-12, tell us -- you alluded to it, but tell
17 us a little bit about what we're looking at here.

18 A. Well, this is Christmas, before Christmas,
19 and usually everybody in the neighborhood decorates
20 about two weeks before Christmas; but this is, like,
21 November, right -- the day after Thanksgiving, because
22 he's ready to get started.

23 Q. What does the backyard look like right now?

24 A. Right there, he -- he constructed a big PVC
25 pipe and then brought the lights all the way down, and

1 stuff like that, and so ...

2 Q. What else do you guys do for Christmas?

3 A. We just have a big dinner and ham, turkey,
4 and, you know, just normal Christmas stuff. And then
5 he would bake these cookies. A lot of times the kids
6 next door would come over and then Mike would let them
7 decorate the cookies themselves.

8 Q. So what has been premarked as Exhibit 604-13,
9 did Michael make these cookies?

10 A. He did.

11 Q. Does he like to bake?

12 A. Oh, he loves to bake. He's good at baking
13 sweets and stuff like that.

14 Q. Take us to just a Friday night at home with
15 Michael, just a regular weekend. What does that look
16 like for y'all?

17 A. Well, a lot of times Michael would work
18 pretty hard at the hotel, so when he got home on
19 Friday, we'd probably order pizza or go to McDonald's
20 or something like that, and just kind of hang at the
21 house and watch TV and movies and just stuff like that.

22 Q. What else? Give us some specific examples.

23 A. Like we watched all the episodes of M*A*S*H,
24 like, three times. We'd go through it every night.
25 That was our normal thing. So just stuff like that.

1 It varied, depending on whether we were tired or not,
2 stuff like that.

3 Q. Do you guys have a favorite movie?

4 A. Mike does. I mean, he watches it every day.

5 Q. What is it?

6 A. Blue Thunder and Jaws.

7 Q. Solid choices. Solid choices.

8 Speaking of Jaws, what we've premarked as
9 Exhibit 604-14, not quite a shark, but what are we
10 looking at here in this photo?

11 A. This was our honeymoon after we got married
12 in Canada. So we went to Hawaii and got our pictures
13 taken with these dolphins. They would come up to you,
14 you could pet them and everything like that. We had a
15 good time.

16 We stayed about, I think a week and then we
17 rode around the island itself, the big island, and went
18 to the black sand beach and just had a great time. It
19 was fun.

20 Q. Do you and Michael like to travel?

21 A. We do. We do. We like to travel.

22 Q. What's your favorite place?

23 A. Dominican Republic. We go there. It's nice.

24 Q. Just for the record, what we premarked as
25 Exhibit 604-15, Lonnie, tell us where y'all are in this

1 photo.

2 A. We're in Marathon, down in the Keys. This
3 was after his diagnosis, so we rented a place down in
4 Marathon, and we did some fishing. And Michael loves
5 the Keys because he did a lot of sailing there when he
6 was younger, and he just -- he loves the Keys, so we
7 went down there, spent our time there fishing and stuff
8 like that.

9 Q. Couple questions left. We're really close to
10 being done. Okay?

11 A. Okay.

12 Q. Why did you fall in love with Michael?

13 A. You know, when I met him, it was little bit
14 of low self-esteem, low depression, stuff like that was
15 going on with me, and Michael was kind of like my
16 savior.

17 I mean, he just -- I would talk to him about
18 things and he would tell me, you know, think about it
19 this way, don't get so upset about somebody saying
20 this, and he just -- he cares about everybody. And
21 that's what I needed. I needed somebody to show me the
22 strength to -- to keep going through that depression
23 and stuff like that.

24 Q. What are some things Michael does for you
25 since then to show you how he feels about you?

1 A. Cards. Sometimes he'll, you know, cook
2 dinner, and special dinner. He knows I like spaghetti
3 and stuff like that, so he'll make that special dinner.
4 A lot of times he's tired, you know, from work. So
5 just a lot of stuff, lot of different things.

6 Q. Okay. So take a look at what we put up here.
7 We premarked as Exhibit 604-16 through 18. This is my
8 favorite. What are we looking at here?

9 A. These are cards for our anniversary, and, you
10 know, just -- sometimes just thank you cards. You
11 know, sometimes he might have had a bad day or
12 something like that, so we just would do cards, and
13 sometimes do cards with pictures on them, stuff like
14 that.

15 Q. Are these cards you gave him?

16 A. I did.

17 Q. Okay. Why do you think you and Michael are a
18 good match?

19 A. Well, it's almost like opposites attract.
20 He's a very strong will, and I'm a little bit reserved,
21 shy. And he kind of gives me that strength to just --
22 I don't like crowds and so he'll push me to do things,
23 to overcome the fears. And that's what he does a lot
24 of.

25 Q. Awesome.

1 This one's 604-19. I told you I was going to
2 do this.

3 A. I know. So when Michael --

4 Q. What are we looking at here?

5 A. So when Michael got sick, he wanted to go
6 down to the Keys. So after chemo and radiation and all
7 that, he felt a little bit better. I drew this picture
8 to make him happy. It's us and it's our dogs on the
9 Seven Mile Bridge. There's some divers down there and
10 some lobsters and a fishing boat. We're going to go
11 fishing, just something that meant something from my
12 heart to -- to show him we're going to -- we're going
13 to have a good time. We're going to get down there as
14 soon as we can.

15 So it's just stuff like that.

16 Q. You know what Michael's prognosis is; right?

17 A. I do.

18 Q. Before he got sick, what were some of your
19 future plans that you had with Michael?

20 A. Well, we wanted to retire either where we
21 were now and just enjoy life, and Michael thought about
22 maybe getting a sailboat, just sailing around and --
23 because he loves to sail. And, you know, we didn't
24 have far to go for that retirement, maybe 10 years,
25 just things like that. Just a lot of good things.

1 Q. One more question.

2 Have any of those plans that you had changed
3 since he got sick?

4 A. A lot. He -- a lot, yeah. We discussed a
5 lot of what -- how we're going to fight this and how
6 we're going to get through it, and I want to make him
7 as happy as possible and that's my main concern right
8 now.

9 Q. Okay.

10 A. So ...

11 MS. GROSS: I don't have anything further.
12 You did great.

13 Pass the witness.

14

15 **CROSS-EXAMINATION**

16 BY MS. BUENO:

17 Q. Good afternoon, Mr. Long.

18 A. Good afternoon.

19 Q. Are you able to hear me okay?

20 A. I am.

21 Q. You and I met about exactly a month ago in
22 Charleston when I took your deposition; is that right?

23 A. That's right.

24 Q. It's nice to see you again.

25 A. You too.

1 Q. I'm going to ask you some questions that we
2 discussed about a month ago.

3 A. Okay.

4 Q. Just so the jury can hear some of your
5 answers as well.

6 A. Okay.

7 Q. When your husband was diagnosed with
8 mesothelioma last summer, you did some online research
9 about mesothelioma at that time; right?

10 A. Yes.

11 Q. And during that online searching, you read
12 some things about asbestos in Johnson's Baby Powder;
13 right?

14 A. Yes.

15 Q. And that is when you started to believe that
16 talcum powder was to blame for Mr. Perry's
17 mesothelioma; correct?

18 A. No. We met with a doctor, and then a doctor
19 showed us the scans of his lung and asked us, have you
20 been around any asbestos?

21 Q. Right.

22 A. Stuff like that.

23 Q. And after Mr. Perry's diagnosis, the two of
24 you did a search of your house to see if you had any
25 products with talcum powder; right?

1 A. Yes.

2 Q. And during that search, you found five
3 different talc bottles; correct?

4 A. Correct.

5 MS. BUENO: I'll ask, if we can, to pull up
6 Slide No. 5.

7 BY MS. BUENO:

8 Q. This is one of the bottles that you found in
9 your home with Mr. Perry at the time of his diagnosis;
10 is that correct?

11 A. Correct.

12 Q. And you were there when you and Mr. Perry
13 found this bottle in a dive bag; right?

14 A. Right. Right.

15 Q. And that's a dive bag that Mr. Perry had used
16 when he went scuba diving; right?

17 A. Right.

18 Q. That dive bag was in your garage area?

19 A. Right.

20 MS. BUENO: Could we go to Slide 9, please.

21 BY MS. BUENO:

22 Q. This is another bottle that was found during
23 that search; is that correct?

24 A. It was found, but I wasn't with Michael when
25 he found this.

1 Q. And that was my question. You don't know
2 exactly where this bottle was found, you were not there
3 at the time; correct?

4 A. I was not there, no.

5 Q. And we see in the bottom right, it's hard to
6 see on the slide, but there's a date on that one that
7 says 2004. Are you familiar with that?

8 A. Okay.

9 MS. BUENO: And, Your Honor, at this time,
10 I -- I seek to admit those two photos into evidence.
11 The first one is DX28 and the second one is DX29.

12 THE COURT: Objection?

13 MS. GROSS: No.

14 THE COURT: Admitted.

15 **(Whereupon Defendants' Exhibits DX28 and**
16 **DX29 were admitted into evidence.)**

17 BY MS. BUENO:

18 Q. When you and Mr. Perry were doing your home
19 search, you also found bottles of Gold Bond and
20 Clubman; correct?

21 A. Correct.

22 Q. And you don't have photos of those bottles?

23 A. No, I don't.

24 Q. Now, the Gold Bond bottle was located in one
25 of the drawers of your bathroom in your home; correct?

1 A. You know, a lot of times, I would -- I would
2 probably be at work, Michael was searching around, so
3 that's -- I don't know where he found them.

4 Q. Now, when you found it, it was in one of the
5 drawers of your bathroom. In fact, the third drawer;
6 correct?

7 A. That was when we lived on the farm. These --
8 these were located in our house that we're in now.

9 Q. Could you speak up a little bit?

10 A. I said these were located in our house that
11 we live in now.

12 Q. Right. And so I'm going to ask -- I'm going
13 to give you a copy of your testimony, but we also have
14 it -- oops -- on a slide, which will be helpful, too.

15 MS. BUENO: So I'll ask to bring up Slide 12,
16 if we can.

17 BY MS. BUENO:

18 Q. On July 11th of 2024, do you remember me
19 asking you, "Okay. So tell me about the Gold Bond
20 bottle that you found. Where was it located?

21 "ANSWER: It was in one of the drawers.

22 The new house has pretty much the same setup.

23 But we have the medicine in one drawer, like

24 cold medicine and toothbrushes and then

25 washcloths, and then on the third -- I think

1 the third drawer had the Gold Bond and baby
2 powder, stuff like that."

3 Were you asked that question and did you give
4 that answer, Mr. Long?

5 A. I was asked a question about where the baby
6 powders were in our house where we lived in previously,
7 and that's where I was stating those drawers were and
8 stuff like that.

9 Q. The Gold Bond bottle that you and Mr. Perry
10 discovered in your home was in the third drawer; is
11 that correct?

12 A. Yes.

13 Q. And you remember it was yellow with a red
14 top?

15 A. I just know Gold Bond. That's all I
16 remember.

17 MS. BUENO: Could we turn to Slide 14.

18 BY MS. BUENO:

19 Q. On that day, July 11th, did I say to you:
20 "QUESTION: And what color was the Gold
21 Bond bottle?

22 "ANSWER: Yellow and a red top, I think.

23 "QUESTION: Was the bottle full or empty?

24 "ANSWER: I think it was three-quarters
25 full."

1 A. Okay.

2 Q. Were you asked those questions? Did you give
3 those answers?

4 A. I did.

5 Q. Now, the Clubman bottle, that was also in the
6 third drawer of your bathroom?

7 A. Yes.

8 Q. And that was green and white with a man with
9 a cane and a hat; correct?

10 A. Correct.

11 Q. And that bottle that you found during the
12 search of your home was about half full; correct?

13 A. Yeah, I think so.

14 Q. And you don't know the manufacturing date of
15 the Gold Bond or the Clubman bottles; correct?

16 A. I do not.

17 MS. BUENO: Could you turn to Slide 18,
18 please.

19 BY MS. BUENO:

20 Q. This is a photo of an Avon Deep Woods talc
21 bottle that was also found in your home; is that
22 correct?

23 A. Right.

24 Q. And this was a bottle that was in a box
25 upstairs?

1 A. Uh-huh.

2 Q. Is that correct?

3 A. Correct.

4 Q. And you took a photo of that bottle as well
5 and provided it; correct?

6 A. Michael did, yes.

7 MS. BUENO: And I now seek to offer into
8 evidence DX30.

9 MS. GROSS: No objection, Your Honor.

10 THE COURT: Admitted.

11 **(Whereupon, Defendants' Exhibit DX30 was**
12 **admitted into evidence.)**

13 BY MS. BUENO:

14 Q. So now, do you know where those five bottles
15 are today? The two Johnson's Baby Powder, the Clubman,
16 the Gold Bond, and the Avon bottles.

17 A. I do not. I think Michael mailed them
18 somewhere. I don't know where it would be.

19 Q. I want to talk to you now about when
20 Mr. Perry stopped using talcum powder.

21 A. Okay.

22 Q. You remember at the time of Mr. Perry's
23 diagnosis in 2023 that he made a decision to stop using
24 talcum powder; correct?

25 A. Yes.

1 Q. And before that mesothelioma diagnosis, you
2 don't know of any conversation or decision by Mr. Perry
3 to stop using talc; true?

4 A. Well, I think he had mentioned something at
5 the oyster roast that somebody had said. I just wasn't
6 around. I was doing the frogmore stew and the oysters,
7 and he was talking with other people, so I don't know.

8 MS. BUENO: Let's pull up Slide 21, please.

9 BY MS. BUENO:

10 Q. And so my question to you on July 11th was:

11 "QUESTION: And so before that, are you
12 aware of any conversations or decisions to stop
13 using talc before the diagnosis of
14 mesothelioma?

15 "ANSWER: No."

16 Were you asked that question, and did you
17 give that answer?

18 A. Yeah, I guess so.

19 Q. And you don't remember hearing any
20 discussions about talcum powder at an oyster roast in
21 your home; correct?

22 A. No. It's something Michael had mentioned to
23 me; but, like I said, I wasn't around him when he was
24 talking to whoever he was talking to.

25 Q. And based on your personal knowledge,

1 Mr. Perry continued to use Johnson's Baby Powder up
2 through the time he was diagnosed with mesothelioma in
3 June of 2023; correct?

4 A. I don't think so. I think he stopped in
5 2019.

6 MS. BUENO: Could you pull up Slide 23,
7 please.

8 BY MS. BUENO:

9 Q. Okay.

10 "QUESTION: So Mr. Perry, based on your
11 best knowledge, continued to use Johnson's Baby
12 Powder up through the time he was diagnosed
13 with mesothelioma?

14 "ANSWER: Yes."

15 Were you asked that question, and did you
16 give that answer?

17 A. Yes. I did.

18 Q. And Mr. Perry was diagnosed in June of 2023;
19 correct?

20 A. Correct.

21 Q. And the last memory that you have of
22 Mr. Perry using Johnson's Baby Powder was actually the
23 same week he was diagnosed with mesothelioma; correct?

24 A. I don't know. I mean, I was so nervous
25 talking to you, so I don't remember what I said. And

1 you're showing me what I'm saying and I agree with it.

2 Q. Now, Mr. Perry has a close relationship with
3 his father; is that correct?

4 A. It's strained.

5 Q. He talks to his father every day?

6 A. Sometimes.

7 Q. And he also has a close relationship with his
8 sister, doesn't he?

9 A. Somewhat.

10 Q. And so if someone were to say that Mr. Perry
11 and his sister had been estranged or hadn't spoken in
12 20 years, that would be untrue; right?

13 A. They've been estranged. I don't know that
14 he's talked to her for a while. She had texted me when
15 his dad came down for Christmas to tell me thank you
16 for taking care of his dad.

17 MS. BUENO: Could you pull up Slide 30,
18 please.

19 "QUESTION: Now, I have seen something to
20 indicate that Mr. Perry and his sister were
21 estranged and hadn't spoken in 20 years.

22 "ANSWER: No, that's not true."

23 A. Well, I mean, they've spoken in 20 years, but
24 it's not a good situation for him and his sister.

25 Q. It is true that no doctor has told you or

1 Mr. Perry that his mesothelioma was caused by talcum
2 powder; correct?

3 A. Correct.

4 Q. And you have no memory of a discussion with
5 any of Mr. Perry's medical doctors about the cause of
6 his mesothelioma; true?

7 A. They had mentioned things, but no -- nobody
8 has said, this is what caused it.

9 MS. BUENO: I thank you for your time. I
10 know it's not easy to be here.

11 THE WITNESS: Okay.

12 MS. BUENO: Thank you.

13 Nothing further, Your Honor.

14 THE COURT: Thank you.

15 Redirect?

16

17 **REDIRECT EXAMINATION**

18 BY MS. GROSS:

19 Q. We're almost done.

20 You were just asked a whole bunch of
21 questions about what you testified to in your
22 deposition, shown some stuff; right?

23 A. Right.

24 Q. You said you were really nervous; right?

25 A. Yes.

1 Q. You tried to tell us that you thought it was
2 2019, when you guys left the farm, was the last time
3 that Michael used powder; is that right?

4 A. Right.

5 Q. Okay. Tell us why that's your memory.

6 A. I think he had talked to somebody that said
7 that they thought that there was asbestos in the
8 powder, but I don't know if it was a nurse or somebody
9 like that. He was talking to somebody at the oyster
10 roast, but I didn't hear the conversation.

11 Q. So when you were shown all your deposition
12 quotes, did you do your best to remember all those
13 dates?

14 A. I did my best. I did my best.

15 MS. BUENO: All right. I don't have any
16 further questions for you. Thank you.

17 THE WITNESS: Thank you.

18 THE COURT: Lonnie, thank you very much for
19 your testimony. You may step down.

20 THE WITNESS: Thank you.

21 THE COURT: Call your next witness.

22 MS. MCVEY: Your Honor, we have a stipulation
23 to publish.

24 THE COURT: Very good.

25 MR. ADAMS: Can we get the ELMO? Thank you.

1 Plaintiffs and Defendants Johnson & Johnson
2 and LLT Management, LLC, stipulate that the plaintiffs'
3 total current economic loss is \$3,329,973.05 as a
4 result of Michael Perry's mesothelioma.

5 Your Honor, I don't know if -- obviously, I
6 defer to the Court. I don't know if this is an
7 appropriate time to let the jury know what a
8 stipulation is or anything, but we want wanted to read
9 that.

10 THE COURT: You got -- keep it up there on
11 the screen.

12 MR. ADAMS: All right.

13 THE COURT: Ladies and gentlemen of the jury,
14 this is a stipulation agreed to by Johnson & Johnson
15 and the plaintiff as to Mr. Perry's economic loss
16 damages. You'll hear more in my instructions to you
17 later on about what kind of damages are involved in
18 this case, but one part is his economic loss damages,
19 and Johnson & Johnson and the plaintiff have stipulated
20 this amount in that regard.

21 MR. ADAMS: Thank you, Your Honor. Oh, and
22 Your Honor, it's also been admitted into evidence, if
23 anyone wants to take a look at it, as Exhibit 357.

24 THE COURT: Very good. Thank you so much.

25 All right. Call your next witness,

1 THE COURT: I am not going to get into Perry
2 right now. We're going to do this right now. Okay?

3 MS. FLYNN: I understand.

4 THE COURT: All right. Bring in the jury.

5 (The following proceedings were held in
6 the presence of the jury.)

7 THE BAILIFF: The jurors are seated, Your
8 Honor.

9 THE COURT: All right. Thank you, ma'am.
10 All right. Plaintiff, you may continue.

11 MR. ADAMS: Thank you, Your Honor.

12

13 **DIRECT EXAMINATION**

14 BY MR. ADAMS:

15 Q. Mr. Johnson, are you able to hear me?

16 THE COURT: Say it -- it was muted.

17 BY MR. ADAMS:

18 Q. Mr. Johnson, can you hear me now?

19 MR. ADAMS: I swear we tested it during
20 break.

21 BY MR. ADAMS:

22 Q. Mr. Johnson, can you hear me now?

23 A. I can hear you clearly now.

24 Q. Thank you so much.

25 Can you tell us your name?

1 A. My name is Robert W. Johnson.

2 Q. What kind of an expert are you?

3 THE COURT: Whoa, whoa. All right.

4 Mr. Johnson, this is Judge Toal. The clerk
5 will administer the oath. You know exactly where we
6 going.

7 Mr. Clerk.

8 THE CLERK: Yes, judge.

9 **You do solemnly swear the testimony you're**
10 **about to give in this action shall be the truth, the**
11 **whole truth, and nothing but the truth, so help you**
12 **God?**

13 THE WITNESS: I do, sir.

14 THE CLERK: Thank you, sir. Please state
15 your full name for the record.

16 THE WITNESS: My name is Robert W. Johnson,
17 R-O-B-E-R-T, J-O-H-N-S-O-N.

18 THE COURT: Mr. Adams.

19 MR. ADAMS: Thank you, Your Honor.

20

21 **DIRECT EXAMINATION**

22 BY MR. ADAMS:

23 Q. Mr. Johnson, what kind of an expert are you?

24 A. I am a forensic economist.

25 Q. What is a forensic economist?

1 A. A forensic economist is an economist who uses
2 the standard techniques of finance, statistics, and
3 accounting, all designed to assist the jury or judge
4 when they go to place dollar values on damages in a
5 case.

6 We use case law and jury instructions to give
7 us our left field and right field foul lines to tell us
8 this is supposed to be in the calculation and other
9 stuff is supposed to be left out.

10 Q. I'm going to ask you a few questions about
11 your background and then we'll get into some of these
12 slides that we have.

13 Can you tell the jury about your academic
14 background?

15 A. Sure. I have a bachelor's degree in business
16 administration with a major in economics from the
17 Baruch College of the City University of New York.

18 I have a master's degree in business
19 administration with a major in finance and investments
20 from Stanford University Graduate School of Business,
21 plus postgraduate training with the Strategic Planning
22 Institute and the American Management Association.

23 Q. Can you tell us about your professional work
24 history?

25 A. Well, I worked on Wall Street as an

1 investment banker for the firm of Donaldson, Lufkin
2 & Jenrette. Our clients were the top 100 financial
3 institutions, plus all 50 states retirement systems,
4 you know, from Tennessee to Washington D.C., to
5 California. And I did mergers and acquisitions there.

6 I worked for American Express Investment
7 Management Company, and we managed 7- to \$800 million
8 of people's retirement income.

9 I ran mergers and acquisitions for a division
10 of Singer Corporation.

11 And I worked for FMC Corporation as director
12 of capital budgeting, which simply meant anytime we
13 purchased a piece of equipment that cost more than
14 \$1 million, I needed to do all of the cost
15 justification so we could be reimbursed by the federal
16 government.

17 Q. Have you written any articles or books on the
18 topics you're going to testify about today?

19 A. Yes. I have had articles published in the
20 American Bar Journal, the American Journal for Trial
21 Advocacy.

22 I've coauthored a book for lawyers co-op,
23 Bancroft-Whitney.

24 I have been quoted in the Wall Street
25 Journal, New York Times, Washington Post, Washington

1 Examiner, and CBS Good Morning America.

2 Q. When you testify in cases like this, have you
3 testified for both plaintiffs and defendants?

4 A. Yes. I'd say through my career, I'm retained
5 slightly better than 50 percent of the time by
6 plaintiffs. As they work their way through the
7 litigation process, cases start to settle, so when they
8 get to depositions, it's up to 75 percent plaintiff.
9 By the time we get to trial, almost all of my defense
10 cases have settled, so now it's 95 percent plaintiff,
11 but I have no control over that.

12 Q. Do you change any of your calculations or
13 methodologies based on who retains you?

14 A. No, I do not, sir.

15 Q. Are you fully prepared to give an expert
16 opinion about Michael Perry's economic loss in this
17 case?

18 A. I am, sir.

19 MR. ADAMS: Your Honor, we would offer
20 Mr. Johnson as an expert in forensic economics.

21 THE COURT: All right. Any objection?

22 MS. FLYNN: No objection.

23 THE COURT: All right.

24 All right. Ladies and gentlemen of the jury,
25 by means -- by reason of his training, education, and

1 experience, Robert W. Johnson is qualified as an expert
2 in the field of economics; and, therefore, may express
3 opinions to you about matters related to the economics
4 in connection with the loss of Michael Perry.

5 You may proceed.

6 MR. ADAMS: Thank you, Your Honor.

7 BY MR. ADAMS:

8 Q. Mr. Johnson, this slide says that "forensic
9 economics converts economic harm suffered into
10 dollars."

11 Can you tell us what that means?

12 A. Sure. Basically what that means is there's
13 two kinds of damages. There's those that we call soft
14 damages: Pain, suffering, et cetera.

15 But I'm talking about -- my area is limited
16 to qualifying the economic loss of earnings, value of
17 Social Security, and the value of household services.

18 Q. You said "earnings," like lost wages? Is
19 that what you're referring to?

20 A. Yes, yes, yes.

21 Q. Social Security losses and then household
22 services?

23 A. Correct, sir.

24 Q. And you're not here to put any dollar value
25 on Michael's pain and suffering or any of the other

1 noneconomic damages in the case; do I have that right?

2 A. That is correct, sir.

3 Q. This looks like this slide is a little cut
4 off. What are we looking at here? I think it says
5 "financial fuel"?

6 A. Oh, yes. What that slide basically says is
7 as a forensic economist, my job is to put the correct
8 amount of financial fuel in the plane that's going to
9 take the injured person on the journey for the rest of
10 their life.

11 One of the unique aspects of forensic
12 economics is that I have to understand that litigation,
13 there's no mid-air refueling like you have in a
14 military operation. You know, it's like flying from
15 California to Hawaii. There's no place to land
16 80 percent of the way out to refuel.

17 So I have to understand, I have only one
18 opportunity to put that correct amount of financial
19 fuel in the plane that's going to take the injured
20 person on the journey for the rest of their life.

21 Q. What was your task in this case?

22 A. My task in this case was to use standard
23 methods of economic analysis used and relied upon by
24 forensic economists to calculate Mr. Perry's lost
25 earnings capacity, his future lost Social Security

1 income, and the future value of his household services.

2 Q. And can you tell us what the components of
3 present value are?

4 A. Sure. There are two basic components of
5 present value. They're the growth rate and the
6 interest rate.

7 The growth rate accounts for the impact of
8 inflation or wage growth over time, because we do have
9 those in the United States, and I need to adjust for
10 that.

11 The second part is the interest rate that I
12 need to include because while we're talking about
13 future losses, the money is not going to be awarded in
14 the future. It's going to be awarded today. So I have
15 to decide how much money needs to be set aside today
16 that will grow with interest to match those future
17 losses as they occur in the future, matching the timing
18 of them, but at the end of the damage period, all the
19 money that was set aside is completely used up, there's
20 nothing left over, no excess.

21 Q. What does this complicated looking slide tell
22 us?

23 A. Okay. Is that the one with all the lines on
24 it that has "interest, inflation"?

25 Q. It is.

1 A. Okay. I cannot see it, but I know the one
2 you're speaking of, yeah. That basically shows what we
3 have experienced here in the United States.

4 The red line is the inflation rate line, the
5 consumer price index, CPI, the dotted line is the
6 medical inflation rate, and the black line is wage
7 growth rate.

8 And we use that historic average over this
9 long period of time for projective purposes. I know I
10 can't take a short-term view and say, look, I'm only
11 going out 10 or 20 years. Let me just use that last 10
12 or 20. You can look at the slide and see 1950 to '70
13 doesn't look like '70 to '90, or '90 to 2010. That's
14 why we've got to take in all the data and get the
15 statistical average.

16 Q. I'm going to skip ahead a little bit,
17 Mr. Johnson, just because we have a stipulation on the
18 record and I want to just sort of get to your final
19 conclusions here, if we can do it.

20 A. Sure.

21 Q. What are the components of present value?

22 A. The components are the wage growth rate, and
23 your -- growth rates and your interest rates. And for
24 wages, we use the historic average that was in that
25 chart of that black line, which is 3.96 percent. When

1 we have anything that's growing with inflation, that's
2 3.54 percent.

3 The other components of present value are the
4 interest rate on U.S. government zero coupon bonds.
5 And we use a bond for each year of the future. It's
6 called a sort of a ladder portfolio. So we have a bond
7 that matures in one year, a second bond that matures in
8 two years, and so on. It's like an escalator ladder,
9 covering the whole entire damages period, so it matures
10 and pays off the full amount at that time.

11 Q. You talked about expected income, Social
12 Security income, and household services. Can you tell
13 us a little bit more about that framework for economic
14 damages?

15 A. Yes, that's the standard framework that we
16 utilize for calculating the damages in this case.
17 We're going to look at his work-life capacity, time
18 period in the workforce that he could have earned. We
19 look at, basically, his earnings history, No. 1, to
20 start with, on that part, for Mr. Perry, and then we'll
21 add whatever employer paid for his benefits that he
22 would have had the capacity to get also, and then
23 counting the number of years in the workforce, that
24 gives us our number, we adjust for growth, and then
25 reduce to present value.

1 Q. We have Mr. Perry's earning history up here.
2 I don't know if you're able to see it, but can you tell
3 us about Mr. Perry's earning history?

4 A. Yes. His earnings history, basically we can
5 see in 2019, he had 106,000; 2020, 111,000; 2021,
6 141,000; and in 2022, the year of his injury, it was
7 142,000; and in 2023, partial year, up to the last day
8 worked, \$113,932. We're going to use the 142,222 as
9 our basis for the last full year on that part.

10 Q. Mr. Johnson, have you assumed that, one,
11 starting October 27th, 2023, Mr. Perry would have
12 earned wages of \$148,820 per year? Have you -- have
13 you assumed that?

14 A. Yes, I have, sir.

15 Q. Have you assumed, No. 2, that he would have
16 received fringe benefits equal to 8.95 percent of
17 wages?

18 A. Yes. Employer-based fringe benefits, yes.

19 Q. And, three, that he would have worked until
20 at least age 67?

21 A. Yes, sir.

22 Q. And why have you made those assumptions?

23 A. Well, No. 1, we started off with 148,000,
24 because we know he made 142,000 and change in 2022.
25 We're going to add just the national average wage

1 growth rate, which then brings it up to 148,000.

2 Although his history shows a higher wage growth, we're
3 just going to keep him at national average.

4 And we're going to add to that, based on his
5 employer, the standard fringe benefit package, the
6 health plan, 7.5 percent, and Medicare, brings it to
7 8.95 percent.

8 We're going to grow that out to age 67 when
9 he would have been able to collect full Social
10 Security. That's when most people try to retire. That
11 would have given us a figure of about 2.7 million, but
12 we only need to set aside 2.7, because we've got the
13 compounding effect of the interest rate on the money
14 that would set aside today.

15 So if we set aside only \$2,102,586 today,
16 that would grow to the 2.7 million all the way out he
17 would have earned between October of 2023 all the way
18 to 2036.

19 Q. And so the total for Mr. Perry's lost income
20 is \$2,102,586?

21 A. That is correct, sir. Reduced to present
22 value such that on his 67th birthday, that bank account
23 goes to 0. There's nothing left.

24 Q. What is the next area of economic damages
25 that you assessed for Mr. Perry?

1 A. This would be his lost Social Security
2 income.

3 Q. And can you tell us how you calculated that?

4 A. Well, based on his data from, historically,
5 his itemized statement of earnings in the Social
6 Security Administration, his Social Security would be
7 approximately \$2,977 per month starting in 2036,
8 growing all the way out to the end of his statistical
9 life expectancy in 2049. That's \$35,724 per year.

10 We're going to grow that with that wage --
11 with that inflation rate of approximately 3.5 percent,
12 which would go up to 835,000, but we only need to set
13 aside today, because we're going to invest it in the
14 government bonds, \$365,185 to cover that loss.
15 Starting from 2036 to 2049, age -- 79.2 years of age,
16 sir.

17 Q. And you started in 2036 because that would
18 have been the estimated date when Mr. Perry would have
19 retired?

20 A. Correct. We started counting when he would
21 have been able to collect full Social Security.

22 Q. Okay. And that total number, you said, was
23 \$365,185?

24 A. That is correct, sir.

25 Q. What's the final area of economic damages

1 that you analyzed for Mr. Perry?

2 A. The value of household services.

3 Q. What is that?

4 A. Based on the information -- I'm sorry, sir.

5 Q. Sorry. You froze and then I interrupted you.

6 What is household services?

7 A. Household services are those chores that you
8 do around the house, where -- the cooking, cleaning
9 repair work. You don't get a 1099, you don't get a
10 W-2, but they do have economic value.

11 So the way we value that in economics is we
12 look at the replacement wage for somebody who would
13 come in and do that chore. So if you're doing some
14 cooking, what does it cost to have somebody come and
15 cook? If you're repairing a leaky faucet, what does it
16 cost to have somebody to come and repair that leaky
17 faucet?

18 It's the wage, not the cost because the cost
19 is always more than the wage; but, in economics, we're
20 going to take the more conservative view and just look
21 at the wages.

22 The statistical average for a married male,
23 employed, who then is retired, because when you're
24 retired you tend to do more around the house, it
25 averages out about \$43.60 per day.

1 We're going to start counting that loss from
2 September of 2023, and household services continued
3 beyond your work -- your work life, but we're not going
4 to take it to the end of his life expectancy at 79.
5 We're going to stop two years prior. It's our standard
6 not to have somebody vacuuming up to the day they die.

7 So when we look at that over that time
8 period, growing it with wage growth, that amounts to
9 \$622,237. We're going to reduce that down to present
10 value, using the interest rates on the government
11 bonds, to only \$351,582.

12 Q. Mr. Johnson, can you summarize your
13 conclusions and what Mr. Perry's total economic loss is
14 in this case?

15 Oh, let me -- sorry, before we do that, one
16 of the things you haven't included in this total number
17 is Mr. Perry's medical bills; right?

18 A. That's correct. We have not included any
19 past medical expenses at all.

20 Q. Thank you.

21 Okay. Can you summarize your conclusions for
22 the jury?

23 A. Sure. The three areas of economic damages I
24 calculated, reduced to present value, are his expected
25 lost future earnings capacity of -- expected income of

1 \$2,102,586; the value of future lost Social Security
2 income, \$365,185; and the value of household services,
3 \$351,582; for a grand total of \$2,819,353, of which a
4 total of 26,396 is past from this time we started
5 counting up to today.

6 Q. Mr. Johnson, have all of the opinions that
7 you have given today been within a reasonable degree of
8 economic certainty?

9 A. Yes, they have, sir.

10 MR. ADAMS: Thank you so much for your time.
11 Pass the witness.

12 THE COURT: All right. Cross-examination,
13 Ms. Flynn.

14

15 **CROSS-EXAMINATION**

16 BY MS. FLYNN:

17 Q. I don't have a microphone, so hopefully
18 everybody can hear me okay. I can talk low sometimes,
19 so raise your hands if not.

20 TRIAL TECH: Can you spread it so the shared
21 screen is shown there?

22 BY MS. FLYNN:

23 Q. Mr. Johnson, can you hear me okay?

24 A. I can hear you and see you, ma'am.

25 Q. Fantastic. My name is Stephanie Flynn. We

1 have not had the opportunity to meet before, but I
2 appreciate your being here today to be able to talk to
3 us a little bit about this. If I'm correct, that all
4 your income, sir, is derived from litigation services,
5 you're doing today; is that correct?

6 A. That is correct. Ma'am. Yes.

7 Q. And that's at a rate of \$975 per hour?

8 A. That is correct, ma'am.

9 Q. What I wanted to do is talk to you about some
10 of your assumption that litigation went into the
11 calculations that you have made here for us today. You
12 have made a number of assumptions is that right?

13 A. Correct.

14 Q. And some of those assumptions that you've
15 have used for your calculations were provided to you by
16 plaintiff's attorneys?

17 A. Correct.

18 Q. And at least the time of your depositions in
19 this case, back on July 24th, you had never spoken with
20 either Mr. Perry or Mr. Long is that right?

21 A. That is correct.

22 Q. I saw in looking at the numbers that you
23 provided, that you have relied upon a single year's
24 worth of earning, the 2022 earnings; is that right?

25 A. No. We looked at historically his earnings

1 history. So we knew what his growth rate was in the
2 past, as I mentioned. But we took the most relevant
3 starting point of what had he done in 2022.

4 Q. Correct. That was my point. He made a total
5 of 142,000, I believe, in 2022; correct? And that's
6 the highest wages that had he ever earned in his
7 lifetime; is that right?

8 A. I don't know what he had made in his prior
9 years in terms of his lifetime, ma'am, I just go
10 specifically to those years.

11 Q. And that's gross earnings; correct? That's
12 before taxes or anything else is taken out; is that
13 right?

14 A. That's correct.

15 Q. That's not what Mr. Perry's actually taking
16 home in his pocket?

17 A. No. He's probably -- he could take home more
18 or less on that part. I don't know what he may set
19 aside for retirement. That wouldn't be involved there,
20 but in your state, everything is done a pretax basis,
21 by rule, and I have to follow that rule.

22 Q. And, Mr. Johnson, do you understand that
23 Mr. Perry works in the service industry, the hotel
24 industry?

25 A. That is correct, ma'am, I do.

1 Q. And would you agree with me, in the past
2 five years, his wages have never stayed the same;
3 they've always changed to some degree?

4 A. I think everybody's has, yes.

5 Q. And you've not studied employment trends in
6 the service industry; is that right?

7 A. Not broadly, but it depends where you are.
8 But looking at his earnings, the fact when you look at
9 his earnings history, and you see that 2019, it was
10 106, and then 2020 goes up. It was the start of the
11 pandemic. Most hospitality folks were reeling
12 terribly. Then in 2021, in the end of sort of the
13 pandemic, it goes up even more. So whatever he was
14 doing, whatever skills he has, the marketplace says,
15 he's worth it.

16 Q. And it's obvious there's no way to predict
17 how the service is going to do in the future?

18 A. I think it will be around. I can't give you
19 specifics, but I think it will still be there.

20 Q. Mr. Johnson, have you examined what his wages
21 were beyond the last five years, in other words, the
22 five years --

23 A. No, ma'am.

24 Q. -- before that?

25 A. No, ma'am.

1 Q. Would you be surprised they were as high as
2 114 in 2004 and then dropped to 82,000 in 2006?

3 A. No, I don't know what the reason could have
4 been, but I'm just looking at the last couple years.
5 He's obviously on an upward trend, and the numbers
6 you've given me just say he -- if you average them,
7 that's a really strong wage growth rate, ma'am.

8 Q. Would it be better to take five years and
9 average those out rather than cherry-pick a single
10 year, the highest year, in order to project his wage
11 growth?

12 A. No, ma'am, there's no cherry-picking here.
13 If the trend is going up, even though it may sort of
14 dip, it's not an escalator. That's the trend. To do
15 the average would be to short change, and I don't do
16 that.

17 Q. So you would not count it out that
18 Mr. Perry's wages could certainly go down in some
19 future years?

20 A. Oh, of course, everybody's wages could go
21 down. But the trend line is it's going up. And it's
22 going up a lot faster than the 4 percent I gave him in
23 the future.

24 Q. Mr. Johnson, I did want to talk to you about
25 the 2022 earnings that you used to calculate the lost

1 wages for 2023. You understand that Mr. Perry had a
2 partial year in 2023; is that right?

3 A. That is correct, ma'am.

4 Q. So he worked up until October 27th?

5 A. That is correct.

6 Q. So in your report, you calculated a wage loss
7 for the remainder of that year, meaning what he would
8 have made in November and December of that year to
9 equal the 2022 total.

10 A. What I did was, for 2023, I took the 2022
11 wage, I just grew it by the national average wage
12 growth rate, which is far less -- about half of what
13 his historic wage growth rate would be, which took it
14 up to 148,000. Then I deducted what he actually made,
15 113,932, so that's how I got that 34,888 as the amount
16 of loss for that remaining portion of the year.

17 Q. So that first ten months -- let me go back
18 now. He made one 113,000 for the first ten months;
19 correct?

20 A. Correct.

21 Q. So if you divided that by 10 to see what he
22 was making per month, that comes to 11,000, a little
23 over \$11,000. Would you agree?

24 A. Correct.

25 Q. And if you continued those numbers through --

1 throughout the end of 2023, you might get another
2 \$22,000 or so in change?

3 A. If you assumed that his earnings were always
4 smooth and even throughout the year, there was no
5 bonuses or anything like that, but go ahead, yeah.

6 Q. Instead, I understand what you did is you
7 added another \$34,000 for November and December to get
8 him to the 2023 wage to make it roughly what he made in
9 2022?

10 A. Yeah, no. I said I made him a little bit
11 more because his projection on average was going up,
12 and the hospitality industry sometimes in the -- in
13 those last months can be pretty significant, but I just
14 gave him that level growth rate. But if you think it
15 should have been \$11,000 less, then the jury can take
16 out the \$11,000.

17 Q. And my point was \$34,000 for two months is
18 17,000-dollars per month. If he was making that every
19 month for that year, he would have made over \$200,000.

20 A. I think your arithmetic is correct, but
21 obviously, I didn't do that. I just looked at what he
22 made in the prior year on that part, and I looked at
23 his historic growth rate, you know, and that is the
24 standard way we would do the analysis.

25 I'm not assuming he gets paid the same amount

1 each month on that part. That's -- that's not what I
2 assume.

3 Q. Understood.

4 You've assumed, have you not, that Mr. Perry
5 would work until age 67 I believe we saw.

6 A. That he had the capacity to, yes, ma'am.

7 Q. And as I understand it, you use that age
8 because that's when he would be able to get full Social
9 Security; is that correct?

10 A. That is correct, ma'am.

11 Q. That's not linked to his ability to work
12 until that age; is that right?

13 A. No, he could work till age 80. There's no
14 mandatory retirement age anymore in the United States.

15 Q. And there are government statistics, are
16 there not, that reflect what a person's actual work
17 life expectancy is for males based on age and
18 education. Are you familiar with those tables?

19 A. No, there are no government statistics.
20 There are statics by economists who try to calculate
21 it, but that's not a government statistic at all.
22 That's their estimate of what -- how they calculate.
23 And there are a whole bunch of different ways that
24 other economists have tried to calculate, but it's not
25 a U.S. government statistic, no, ma'am.

1 Q. Have you examined those work life tables I'm
2 talking about?

3 A. I don't know which ones. There's a bunch of
4 them. So if you can identify which ones, I can maybe
5 comment.

6 MS. FLYNN: If you can turn on the ELMO just
7 briefly.

8 BY MS. FLYNN:

9 Q. What I got here I'm going to center there for
10 you, is what I'm talking about. Have you seen these
11 before?

12 A. I've seen that book, yes, ma'am. But I don't
13 know which work -- there's a bunch different work life
14 tables in there made by different economists, so
15 there's no one blessed number or statistic.

16 Q. And work life tables basically look at the
17 behavior of people in Mr. Perry's situation, like his
18 age, his gender, his education, and they say this is
19 the average, this is about where those people tend to
20 retire.

21 Would you agree with that?

22 A. No, that's not -- that is one economist's
23 attempt to make a calculation. For example, some of
24 them say, well, what's the average age that people
25 retire? I get that a lot. I do a lot of railroad

1 work, and I say what's the average age they retire from
2 the railroad?

3 But the fact that there are a tremendous
4 amount of people that retire from the railroad and go
5 work another job. Did they retire from the workforce,
6 no, but for the railroad that says that's when they
7 retired on that part.

8 That's different than there's another study
9 that talks about when somebody is going to calculate
10 their work life on that part, what they do is what's
11 called a Marco model. It basically says, hey, how old
12 are you today? Let's say you're 40. And you get
13 injured, and you have a contract for \$100,000 for one
14 year. And they say, okay, everybody who is 40, doesn't
15 make it to 41 on that part.

16 So it's like, 99.7 percent make it, but that
17 three-tenths don't make it, so they deduct that
18 three-tenths, and they say, I don't owe you 100,000; I
19 owe you 99,700. Then they go on to say, oh, you know,
20 I got to adjust for labor force participation. How
21 many people who are males your age want to work?

22 Even though you have a contract and you were
23 going to work they say, no, I've got to deduct for how
24 many people don't want to work, and I also got to
25 deduct for unemployment. And so, that's about another

1 75 percent that would qualify in that area. So now
2 they take 75 percent of that 90,000 and you're down to
3 around 174 -- about 74, 75,000. That's how they
4 calculate work life under that scenario, you know.

5 But that's not capacity, ma'am. Capacity is
6 like this cup. This is a 4-ounce cup. Now, I drank
7 the water that's in the cup, but if I crush the cup and
8 break the cup, even though I only put 2 ounces of water
9 in there, if I took away its capacity, if I want to be
10 fair, forthright, and truthful I can't give you a
11 2-ounce cup. I took away 4 ounces.

12 So my task to calculate lost earning
13 capacity. I stop when he would be able to collect full
14 Social Security. If the jury believes that he would
15 have worked one year less, they can deduct one year off
16 of that number, which would be about 150, 55,000.

17 Q. I understand.

18 A. If they came to one year more, they can add
19 it. That's all.

20 Q. I think we got a little off the rails there.
21 I understand. My point was there are economists who
22 looked into work life expectancy, and for people like
23 -- like Mr. Perry, and they take an age and education
24 into consideration, and might suggest his age would be
25 lower than 67.

1 A. They -- they -- they might. But it's, you
2 know, it's -- I'm going to leave it to the trier of
3 fact as it goes to work ethic. That's the No. 1
4 reason.

5 Q. I apologize. I did not mean to interrupt
6 you.

7 You weren't here a little bit earlier, but
8 Mr. Long testified just a few minutes ago and said that
9 Mr. Perry -- he and Mr. Perry hoped he might retire in
10 ten years. And that would certainly reduce his loss of
11 future earnings if he decided to do something like
12 that.

13 A. Sure, but it wouldn't -- it wouldn't -- hold
14 on. If he did retire, but he will always would have
15 the capacity to go back to work. So it's always about
16 the loss of that capacity. The cup, it doesn't matter
17 whether I put 2 ounces or 3 ounces, once I took away
18 its capacity, it's gone. And that's it.

19 So I always have the right and the ability to
20 work more or work less. But at this stage, it's the
21 loss of earnings capacity. And as you said, Mr. Long
22 said it was a hope, and so I'm not going to go on a
23 hope. I'm going to talk about what he had the capacity
24 to do even though there's no mandatory retirement age.

25 Q. And retirement age of 67, that assumes a

1 normal or average life expectancy; is that correct?

2 A. No -- no, no, no. I mean, that 67 is when he
3 would have been able to collect full Social Security.
4 Now, would his probability of being alive been greater
5 than 67, yes.

6 Q. My point being that you would agree that a
7 person's medical history and condition can impact a
8 person's life expectancy; correct?

9 A. Of course.

10 Q. And lifestyle choices can affect a person's
11 life expectancy?

12 A. Yeah, but that's kind of all baked into the
13 number in terms of life, life expectancy.

14 Q. His life expectancy particularly is not
15 something you've done or are qualified to do?

16 A. Well, no. I'm not a life expectancy expert.
17 But in the life expectancy statistics, they already
18 include all forms of mental and physical ailments. So
19 this is not a life expectancy for the folks we just
20 watched over in Paris in the Olympics. It's for all of
21 us with all of our health challenges.

22 Q. Mr. Johnson, I wanted to talk to you just
23 briefly about one of the forms that you use in your
24 business. I am going to use the ELMO again just to pop
25 this up right here. This -- let's see.

1 Do you recognize this form right here?

2 A. Yes, I do, ma'am.

3 Q. Is this a form that you have people fill out
4 or some of these attorneys fill out when you're ready
5 to do a economic loss calculation?

6 A. Yeah. We try to get them to fill out the
7 form that's as close to what they want to do. We don't
8 always get them to fill out the proper form, but we'll
9 take the information on whatever form they fill out,
10 ma'am.

11 Q. Okay. What I want to do, look at the -- if
12 you look at the bottom, I've already highlighted it,
13 you see in this little section here, you got annual
14 income for 2022, then you got employer paid fringe
15 benefits with nothing checked there; is that correct?

16 A. I have nothing checked, but I do have stuff
17 highlighted ma'am, yes.

18 Q. And those highlightings were what I meant.
19 The information about fringe benefits was given to you
20 orally as I understand; is that right?

21 A. That's correct. Except on the W-2s, ma'am,
22 that's correct.

23 Q. And you have included fringe benefits in your
24 calculations even though those were not marked on this
25 form?

1 A. No, but they're on his W-2.

2 Q. And I believe you calculated both health
3 insurance and Medicare by using a percentage of
4 Mr. Perry's earnings; is that right?

5 A. That is the standard method, yes, ma'am.

6 Q. And in other words, I understand 7.5 percent
7 is for the healthcare plan, and 1.45 is for the
8 Medicare?

9 A. That is also correct, ma'am.

10 Q. Paystubs or itemized statements of earnings
11 and so forth have fringe benefits like healthcare
12 reflected on them, don't they?

13 A. Many times, no.

14 Q. But you never asked for Mr. Perry's paystubs
15 or for any specific information that would have
16 reflected exactly how much healthcare fringe benefit he
17 was receiving. You've used --

18 A. No, that's not true.

19 Q. You've used the statistics --

20 A. Excuse me, ma'am. If you go back to the form
21 you put on the ELMO, you will see there where we do
22 have the paystubs.

23 Q. Excuse me, what did you say?

24 A. If you go back to the form that you have on
25 there, you will see, I think it's on the left-hand

1 side, it does add for paystubs.

2 Q. Correct. And did you use that -- but you
3 didn't use that information in calculating this. You
4 used an 8.95 percent as a national average in order to
5 calculate.

6 A. Well, it wasn't on the paystub as to the
7 fringe benefit package, ma'am.

8 Q. And my point being --

9 A. So I -- I -- so, we did -- we did ask, and
10 we don't have specific paystubs, but the pay -- the
11 information as to fringe benefits is not on the
12 paystub.

13 Q. And you never asked anybody else to acquire
14 that information?

15 A. We did inquire, yes, ma'am, we did.

16 Q. But this -- this 1.45 percent for Medicare as
17 fringe benefit, that has nothing to do with whether
18 he's working or not, does it?

19 A. Oh, yeah, this was -- the employer paid for
20 fringe benefits or what the employer contributes on
21 your behalf, in that sense, that is their part of the
22 contract you have with your employer. Just like an
23 employer's contribution to Social Security. But we've
24 calculated that separately would also be there.

25 So there's a health plan, and then there's

1 the 1.45 percent. Typically, the health plan we use
2 the national average because we don't have the exact
3 number from the employer, but we almost never get that.
4 We're always forced to use the national average as our
5 best estimate, ma'am.

6 Q. And that's what his employer is giving to
7 Medicare. When you turn 65, you get Medicare. Whether
8 he's --

9 A. Ma'am, I'm not a Medicare expert. I just
10 know if you're a -- what they call now a -- one of
11 those employees who works just for cash on that part,
12 you don't get Medicare. Your employer is not
13 compensating you for that. So that's part of the
14 compensation package that you earn for your labor when
15 you're an employee. If you're not an employee or if
16 you're self-employed, you don't get -- nobody's paying
17 you for that.

18 Q. I wanted to talk to you just a little bit
19 about some of your assumptions as it relates to
20 household services. You have used a date as I
21 understand it of loss of September 1, 2023; is that
22 correct?

23 A. That is correct.

24 Q. That was a date given to you by Mr. Perry's
25 attorneys?

1 A. Correct. That's when they asked me to start
2 counting the months.

3 Q. And that's the date that you have used to
4 start tallying the losses of household services from
5 that time forward?

6 A. That is correct, ma'am.

7 Q. And I've got the form. It was completed for
8 household services here. You've got the first half of
9 the page is checked as to those being some of the
10 household services that the Perry -- Mr. Perry has
11 engaged in; is that correct?

12 A. That is my understanding, ma'am, yes.

13 Q. And it captures things like cooking or
14 cleaning, taking care of vehicles, things of the like?

15 A. Shopping, cleaning services, yes, ma'am.

16 Q. And Mr. Perry is the one who was working in
17 this relationship. Do you understand that Mr. Long was
18 not working?

19 A. You know, ma'am, I'm not doing a loss for
20 Mr. Long. I didn't look at what Mr. Long did.

21 Q. You've used tables to come up with figures to
22 include in your calculation considering that Mr. Perry
23 was working and Mr. Long was not.

24 A. I looked at Mr. -- what Mr. Perry did;
25 correct. Yes, ma'am.

1 Q. But you have not considered the extent to
2 which Mr. Perry was actually contributing to each of
3 those tasks. In other words, I have seen forms used by
4 economists, they say I have done ten hours of cooking
5 per week or one hour of cooking per week, and you can
6 estimate things out that way; correct?

7 A. You know, I have always asked if there was a
8 diary checklist chore sheet or time card reflecting
9 each chore, the time spent on each chore. I have been
10 doing this 40 years. Nobody punches a clock and has
11 ever given me any of that. So what I have to defer to,
12 as most economists do, is a statistical national
13 average.

14 The trier of fact, the jury will hear what
15 Mr. Perry did. They will decide whether he was above
16 average, increase the number I gave him, or below
17 average, shrink it. All I can do is give them the
18 statistical average and let them adjust it as they see
19 fit.

20 Q. Mr. Johnson, you've certainly had people do
21 those types of forms in the past, haven't you, in
22 connection with your economic calculations?

23 A. I have never had a specific form give me the
24 number of hours and the time spent. I have had some
25 people say, well, yeah, I cook. Well, how often did

1 you cook? How long? How many -- you don't get the
2 details. I need that other part to make a custom
3 calculation. I haven't had it yet.

4 Q. I understand people might have difficulty
5 doing that, but I have certainly seen forms where you
6 can at least give an estimate and maybe get an
7 accurate --

8 A. Ma'am, I don't know what you've seen. All I
9 know is what comes across my desk.

10 Q. The tables that you used --

11 THE COURT: All right. Ms. Flynn, approach.

12 **(Whereupon a bench conference was held.)**

13 THE COURT: We still have to get Mr. Perry
14 through today, this is not productive. I don't know
15 what you're trying to do, but this is not productive.
16 And I didn't impose any time limits, but I'm going to
17 tell you, I want you to wind it up. We still have
18 Mr. Perry left to go. This is not fair to the
19 plaintiff at all.

20 MR. ADAMS: May I say --

21 THE COURT: No. And you don't need to do
22 anything about redirect examination. We need to move
23 this on and get to Mr. Perry.

24 BY MS. FLYNN:

25 Q. Mr. Johnson, we are almost done. I just have

1 a couple more questions to ask for you, and then I will
2 let you go so we can move this thing along. Okay?

3 A. All right.

4 Q. Your -- finally, your care calculations as of
5 September 1st, 2023, that's -- you understand that's
6 before Mr. Perry stopped working, correct, on
7 October 27th?

8 A. Correct.

9 Q. And your calculations assume Mr. Perry was
10 immediately incapacitated from performing any household
11 services as of that date moving forward.

12 A. No. What we did was -- since we were given
13 the assumption that he had suffered some diminution in
14 his ability to perform household services, but we
15 didn't know what percentage of diminution due to the
16 effects of the disease.

17 Q. So your household services --

18 A. So I have -- hold up, hold up, hold up,
19 ma'am. I have a choice. I can either speculate on a
20 number, which I'm not going to do, or I can give the
21 trier of fact, the jury, the 100 percent level and then
22 tell them, oh, depending upon between September 1 and
23 whenever his premature date of death is, you decide
24 what percentage deficit in household services he
25 suffered.

1 If you think it's 10 percent for that time
2 period, give him 10 percent. If it's 50 percent, give
3 him 50 percent, whatever that is.

4 Obviously, on the premature date of death,
5 therefore, it's obviously 100 percent. So that's what
6 we chose. We're not assuming he was 100 percent.
7 We're letting -- we're giving the trier of fact the
8 100 percent number so that they have an easy arithmetic
9 adjustment if they use that method.

10 Q. I understand. I appreciate your answer and
11 that was where I was going with that.

12 The last thing I wanted to ask was, you have
13 used the safest investment rate of return, U.S.
14 treasury zero coupon bonds, in order to project future
15 earnings; is that right?

16 A. Not the projected discount for present value,
17 ma'am.

18 Q. And, certainly, you would agree that if
19 Mr. Perry elected to be more aggressive with that
20 money, he could certainly have a potential to grow it
21 much more substantially?

22 A. You know, obviously, anybody can do what they
23 want, but as the forensic economist, the standard I
24 have to go back to is the standard that we all utilize
25 from the U.S. Supreme Court, that an injured person is

1 entitled to a risk-free, which means default-free,
2 investment.

3 It may be less, but everything else -- as a
4 former registered representative licensed by the
5 Securities and Exchange Commission, when you go past
6 the government bond, you don't guarantee you're going
7 to make money, you don't even guarantee you're going to
8 get what you invested back, that is not what I would
9 call a prudent investment.

10 Q. Mr. Johnson, you have not discussed with
11 Mr. Perry what investment vehicle he would prefer to
12 use or invest in; is that right?

13 A. That is correct, ma'am, I have not.

14 MS. FLYNN: Mr. Johnson, I appreciate your
15 time and your patience with me. That's all the
16 questions that I have.

17 THE WITNESS: Sure.

18 THE COURT: Any redirect?

19 MR. ADAMS: No, Your Honor.

20 THE COURT: Very good. Mr. Johnson, thank
21 you so very much for your testimony in this matter.
22 You are discharged.

23 THE WITNESS: Thank you for accommodating me,
24 Your Honor.

25 THE COURT: Yes, sir.

1 the line, I'm sure you'll be object and see what they
2 do. So far I think they are fine.

3 Okay. Anything else?

4 MS. MCVEY: That's it.

5 THE COURT: Bring me the jury.

6 (Discussion was held off the record.)

7 **(The following proceedings were held in**
8 **the presence of the jury.)**

9 THE BAILIFF: The jurors are seated, Your
10 Honor.

11 THE COURT: All right. Thank you, ma'am.
12 Ms. Queener and Mrs. Carson, I hope those are what you
13 need. I instructed the bailiff to give them to you and
14 then I forgot whether I signed them or not. If you
15 need them signed, let me know before you leave.

16 JUROR: It's signed.

17 THE COURT: The plaintiff.

18 MS. GROSS: Plaintiff's call as their next
19 witness, Your Honor, Michael Perry.

20 THE COURT: Mr. Perry come down and be sworn.

21 **THE CLERK: You do solemnly swear the**
22 **testimony you're about to give in this action shall be**
23 **the truth, the whole truth, and nothing but the truth,**
24 **so help you God.**

25 THE WITNESS: I do.

1 THE CLERK: Thank you. Please have a seat on
2 the witness stand and state your full name for the
3 record.

4 THE WITNESS: My name is Michael Lawrence
5 Perry.

6

7

DIRECT EXAMINATION

8 BY MS. GROSS:

9 Q. Breathe. You're okay. All right.

10 Go ahead and introduce yourself to everybody.

11 A. Once again, my name is Michael Perry.

12 Q. Tell everybody a little bit about yourself.

13 THE COURT: Ma'am, he needs to be sworn.

14 Mr. Perry, you stay right where you are.

15 Mr. Clerk, will you please read the oath. He
16 doesn't need to stand just read the oath.

17 THE CLERK: Your Honor, I already swore him
18 in.

19 THE COURT: Oh, you did? Where was I? All
20 right.

21 Mr. Perry, go right ahead. Making the mood
22 lighter just a bit.

23 THE WITNESS: You did. Thank you, Your
24 Honor.

25 /////

1 BY MS. GROSS:

2 Q. All right. Now, that's all squared away,
3 tell everybody a little bit about yourself. How old
4 you are. Where you're from. Where you live. Just a
5 little bit of stuff like that.

6 A. I'm 54 years old. I'm from Johns Islands,
7 South Carolina, which is just right outside across the
8 river from Charleston.

9 Q. What have you done for work your entire life?

10 A. I live and breathe hospitality. I love
11 spreading the glow of hospitality and being a part of
12 someone's adventure, someone's vacation, someone's
13 life-changing event, like a wedding.

14 Q. Did you work -- where did you work?

15 A. I worked for a No. 3 world luxury hotel in
16 Charleston, South Carolina, the Market Pavilion Hotel
17 and Grill 225.

18 Q. We all met Lonnie earlier and heard him talk
19 about how he hoped you'd retire in about ten years.
20 Did you hear that?

21 A. Well, that was wishful thinking.

22 Q. That's exactly where I'm going.

23 A. That was never going to happen. I love
24 hospitality. I get up in the morning, and there's
25 nothing more than I wanted to do than go in and make

1 that magic touch to someone's adventure.

2 Q. Let me ask you a question. Are you the kind
3 of guy who was going to work until the day he could
4 retire and then be like, I'm done?

5 A. No.

6 Q. Okay. When you were working at the hotel in
7 Charleston, did you get health insurance?

8 A. I did.

9 Q. Did you bring this lawsuit, Michael, because
10 you have some trouble taking out the trash?

11 A. I did not.

12 Q. Did you bring this lawsuit because you have
13 some trouble cleaning the house?

14 A. I did not.

15 Q. All right. Where did you originally grow up?
16 Sort of take us through that before you ended up in
17 South Carolina.

18 A. I was born in raised in Central Illinois in
19 Springfield. Springfield, Illinois.

20 Q. How did you make your way here?

21 A. I made my way to South Carolina kind of a
22 roundabout way. After my adventures in the Florida
23 Keys and the Bahamas, I went through Hurricane Andrew.
24 It frightened the heck out of me, and I came up to
25 Charleston. It was southern. It was on the water. It

1 was beautiful. And I met the love of my life.

2 Q. Let's start today by talking a little bit
3 about your life before you got sick.

4 A. Sure.

5 Q. Okay. Tell us -- just give us a flavor for
6 your life before you got sick. What was your favorite
7 part of your day?

8 A. My favorite personal part of my day was when
9 I could come in the door, pay all of the love and
10 attention to our babies, see Lonnie, catch up a little
11 bit, and then Lonnie and I would, if we were on the
12 farm, it -- would go outside, start taking care of the
13 animals. I loved getting to know the personalities of
14 each one of our babies out there.

15 Lonnie and I would go fishing. We -- our
16 favorite type of fishing was always shark fishing. You
17 couldn't tell from those pictures, but Lonnie and I
18 were very, very competitive; and, in this case, Lonnie
19 beat me for largest fish. That wasn't my bait. That
20 was actually a fish I caught.

21 Q. We're going to -- I don't even have to ask
22 you about the photo anymore. We're going to get to it
23 later, I suspect, but tell the jury who the babies are.

24 A. I have two Havanese dogs that are eight and
25 ten pounds, they are just a little ball of fur and joy.

1 And they each have very, very distinctive
2 personalities. And our male dog, Abraham, is certainly
3 Lonnie's pride and joy. And Kesia, which is our
4 female, she is my shadow, she is.

5 Q. She's the cutest. We're going to get there.
6 Cutest one, don't worry.

7 Sticking with the time before you got sick,
8 okay, tell us a little bit about some things you were
9 just looking forward to doing in your life.

10 A. Well, you know, it started off in the early
11 years of Lonnie and I still dating that I always had
12 this desire to retire down in the Florida Keys on a
13 sailboat chasing sunsets; and, you know, Lonnie thought
14 that was the neatest thing.

15 So all of our adventures were talking about
16 sunset, simple life, catching our own dinner with, you
17 know, fishing, and then just enjoying each other for
18 the rest of our lives.

19 Q. Did you use talc powder?

20 A. I have used talcum powder since my earliest
21 recollection of 1974.

22 Q. And that's when you were about how old?

23 A. Four or five years old.

24 Q. What talcum powder did you use the most?

25 A. Johnson & Johnson Baby Powder.

1 Q. Why -- why did you use Johnson's Baby Powder
2 the most?

3 A. We were not a family of large means. So
4 Johnson's Baby Powder we trusted. It was a family --
5 it was a family brand. We connected with that whole
6 family concept. It was safe. It was good for babies.

7 And in the end, it betrayed me.

8 Q. Were you close with your family growing up?

9 A. Say that again.

10 Q. Were you close with your family growing up?

11 A. Yes. We were a very tight-knit family. I
12 was closest with my mother.

13 Q. We've got a photo up here. It's been marked
14 as Exhibit 604-3. Who's this lady in this photo?

15 A. That is my mother while I was sitting on top
16 of Kiss Me, I'm Irish.

17 Q. Lucky horse name. Tell us a little bit about
18 your relationship with your mother.

19 A. My mother growing up was my best friend. I
20 could tell her anything. She knew when something was
21 wrong. We had -- I like to call it -- we called it as
22 a family court, where my sister and I, younger, would
23 run in talk to mom, she'd solve all the world's
24 problems, and then we'd come out with everything being
25 fine.

1 But mom, I could talk to her about anything,
2 and it was always a non-judgmental opportunity for mom
3 to let me hear myself speak and hope that I find my way
4 the right way.

5 Q. Okay. Who taught you how to use Johnson's
6 Baby Powder?

7 A. My mother. We were a creature of habit. It
8 was our culture. And from my earliest recollection, I
9 used the products the exact same way as my mother did.
10 And if you would take my mother and pull her aside away
11 from me, we would describe it exactly the same.

12 Q. Would your mother also use Johnson's Baby
13 Powder?

14 A. Did my mother use it?

15 Q. Yes.

16 A. Absolutely she used that, and Shower to
17 Shower.

18 Q. And did you ever use your mom's Shower to
19 Shower?

20 A. I did.

21 Q. Tell us a little bit about that.

22 A. During my younger youth, my mom -- sometimes
23 it was just easier when she was powdering her up, to
24 powder me up with the same product. If we were out of
25 Johnson & Johnson Baby Powder, Johnson & Johnson Shower

1 to Shower did just fine. So we used that. But the
2 primary go to always was Johnson's Baby Powder.

3 Q. How often did your mother use Johnson's Baby
4 Powder on you?

5 A. Every single day. Multiple times a day, if
6 there was a second bathing.

7 Q. That was going to be my next question. Tell
8 us a little bit about when she would use the Johnson's
9 Baby Powder on you.

10 A. Growing up in the original house that I was
11 born into, in the interest of time, I took a shower
12 with my mother. As soon as the water was shut off, mom
13 would immediately wrap a towel around me, wrap a towel
14 around her, and she would whisper in my ear calling me
15 her little piece of toast. And then the powder process
16 started after I was dry, and then I would sit on the
17 commode or the edge of the tub while my mom continued
18 powdering her body. And then we would exit the
19 bathroom across the hall into the bedroom where I
20 shared a bedroom with my mom and dad, and we would get
21 dressed. And then I would go off to either day care or
22 school.

23 Q. What was the powdering process that you
24 remember that your mom did on you?

25 A. She would pour the powder into her hand, and

1 rub it from my high neck down my torso, under my arms,
2 all the way down my trunk of my body, into my
3 genitalia, buttocks, back, and that was that process.
4 And that continued with me into my adulthood.

5 Q. Meaning did you -- let me ask it this way.
6 Did you continue that same process on yourself as you
7 got older?

8 A. Yes, absolutely.

9 Q. All right. As you grew up and got older, did
10 you remain close to your mom?

11 A. Absolutely.

12 Q. Would you guys ever go visit one another when
13 y'all lived in different states?

14 A. Absolutely.

15 Q. She ever come visit you here in
16 South Carolina?

17 A. Absolutely.

18 Q. What are some things y'all like to do for fun
19 when she came to visit you here in South Carolina?

20 A. Uh-huh. My mom was -- shared my -- my sense
21 of love for history, and so we would take an
22 opportunity to enjoy the rich Charleston history,
23 looking at the museum homes, the ghost tours, the
24 culinary, some of the other cultural aspects in the
25 plays, the theater, and so forth; but, most of the

1 time, mom enjoyed spending time as I explored my
2 culinary side making food and deserts for her.

3 Q. When she would come visit you, would she ever
4 bring her cosmetics or her beauty products with her?

5 A. Absolutely.

6 Q. Did you ever see her use them when she would
7 come visit you at your house?

8 A. Absolutely.

9 Q. What did you see her use?

10 A. Certainly the Johnson's Baby Powder.

11 Johnson & Johnson Shower to Shower. And then she had
12 some, I refer to them as bandy products, which were the
13 scented like perfume powders.

14 Q. Let's switch over to you using the powder on
15 yourself as you got older. Okay?

16 A. Yes.

17 Q. All right. You said the first time you
18 remember the Johnson's Baby Powder being used on
19 yourself was in about 1974; right?

20 A. Correct.

21 Q. When -- let me ask it this way: Can you just
22 sort of walk us through the timeline from the first
23 time you really remember using Johnson's Baby Powder on
24 yourself to the last?

25 A. Okay.

1 Q. Go ahead.

2 A. So we -- just so I understand, restate your
3 question one more time.

4 Q. Can you walk us through the timeline of your
5 life of when you used Johnson's Baby Powder on
6 yourself.

7 A. Right. So my mom would use the powder on me
8 until I was old enough to be able to do that myself.
9 But underneath mom's watchful eye, I would powder
10 myself. Once we moved into our second home, which is
11 the home that I spent most of my years in, I would do
12 all of that powdering in the bathroom.

13 And then always have time to go in there and
14 talk with mom before school. And that's when mom was
15 doing her morning prep.

16 Q. Did you continue to use Johnson's Baby Powder
17 throughout your adulthood when you ended up in
18 South Carolina?

19 A. Correct. So after I left the family home,
20 graduated from college, ended up moving to the Keys,
21 nothing had changed. I continued using those products
22 as I did in 1974. The only thing that changed was my
23 frequent use of it. Because being in the hot,
24 humidity, salt water, in the ocean, out of the ocean,
25 so forth, I consumed a lot more Johnson & Johnson

1 products than I did in my younger years.

2 Q. When is about the last year you remember
3 using Johnson's Baby Powder on yourself?

4 A. It was 2019.

5 Q. How do you remember that so clearly?

6 A. Lonnie's earlier testimony, he spoke about
7 the oyster roast. During that oyster roast, we had
8 100, 100-plus people there. Lonnie was cooking. I was
9 walking around being more social. We had some friends
10 that were in the medical field that were over.

11 MS. BUENO: Objection, Your Honor.

12 THE COURT: What is the basis of the
13 objection?

14 MS. BUENO: This is a subject to a pretrial
15 motion that we discussed with the Court.

16 THE COURT: Approach.

17 **(A discussion was held at the bench,**
18 **not reported.)**

19 MS. BUENO: We had a pretrial motion related
20 to hearsay statements related to medical professionals
21 and an oyster roast. Plaintiff indicated they are not
22 going to illicit that testimony hearsay from medical
23 professionals at a --

24 THE COURT: I think he's just dating the
25 time.

1 MS. MCVEY: She opened the door to this. She
2 asked a lot about how long he used the powder, when she
3 got Lonnie to say he used talc on his feet.

4 THE COURT: She brought up the oyster roast.

5 MS. MCVEY: She did.

6 MS. BUENO: The oyster --

7 THE COURT: The point is this sounds like a
8 throat cleaning exercise more than anything else.

9 MS. GROSS: I'm just asking for the year.

10 MS. BUENO: Sure.

11 THE COURT: Mr. Perry --

12 THE WITNESS: Yes, ma'am.

13 THE COURT: It's certainly all right to set
14 the scene for when it came to you that you would not
15 use Johnson's Baby Powder anymore, and apparently this
16 oyster roast was when that occurred. Just don't get
17 into a bunch of medical advice.

18 THE WITNESS: There wasn't any.

19 THE COURT: Okay. Very good. You may
20 proceed.

21 MS. GROSS: Thank you, Your Honor.

22 BY MS. GROSS:

23 Q. Just tell me the year. When was the last
24 year?

25 A. It was 2019.

1 Q. All right. Up until that point in time,
2 throughout your life, can you give us a sense for how
3 often you were using Johnson's Baby Powder on yourself?

4 A. Into my adult, I would use the
5 Johnson & Johnson's Baby Powder a minimum of two times
6 a day. Sometimes it could be a third and depending
7 on -- especially this time of year, July and August, it
8 could be really a fourth time, right before I would go
9 to bed.

10 Q. How often do you shower?

11 A. This time of year, three times a day. And
12 that was -- that was pre me getting sick, and working
13 on the farm.

14 Q. When you would apply the Johnson's Baby
15 Powder yourself, how would you do it?

16 A. I would shake it into my hand and fill the
17 palm of my hand full, a heaping full of powder, and
18 then start at my neck and work my way down, just like
19 my mom showed me almost 50 years ago.

20 Q. Okay. Why did you continue to buy Johnson's
21 Baby Powder as an adult?

22 A. I enjoyed the product. I trusted them. They
23 were part of our household culture. That's all I knew.
24 And, you know, as a family, we were very, very
25 conscious and very loyal, and Johnson & Johnson being

1 the family brands. It was that trust that we had.

2 Q. Understanding all that, about how many
3 bottles per year would you say you purchased of
4 Johnson's Baby Powder throughout your life on average?

5 A. No less than 10 per year.

6 Q. We heard a little bit about it this morning
7 with Lonnie, but have you ever found any bottles of
8 Johnson's Baby Powder in your house?

9 A. Yes, we have.

10 Q. So take a look at what we've pre -- well, we
11 marked it, as well, as 611-1 through 2. Is this one of
12 the bottles you found in your home?

13 A. It was.

14 Q. Where did you find this bottle?

15 A. It actually was found in my sailing bag. I
16 know that there was some talk about diving bag. It was
17 my sailing bag from when I was in the Florida Keys.

18 Q. When you see "Purest Protection" on the
19 front, do you see that?

20 A. Uh-huh.

21 Q. When you see "Purest Protection" on this
22 bottle of Johnson's Baby Powder you used, what does
23 that mean to you?

24 A. I -- I look at it as synonymous, pure is
25 safe. It's -- it is absolutely safe to use.

1 Q. Okay. On the back it's kind of hard to see
2 because it's embossed into the bottle, but do you see
3 under "Adults" where it says, "Use every day to feel
4 soft, fresh, and comfortable"?

5 A. Yes, I do.

6 Q. What does that mean to you when you see that
7 on the bottle of Johnson's Baby Powder you used?

8 A. I looked at -- I bathed in this product, and
9 when I read those words, I -- I sit here going, it is
10 safe for me to use it as often as I want to use it.

11 Q. Take a look at this next photo. Did you find
12 any other bottles of Johnson's Baby Powder in your
13 house?

14 A. I did.

15 Q. All right. Is this that bottle?

16 A. It is.

17 Q. So for the record, what we've marked as 611-3
18 through 4, where did you find this second bottle of
19 Johnson's Baby Powder in your home?

20 A. So when we packed up from our home, the farm
21 as we refer to it as, we had products in the barn, we
22 had products in the shop, we had products in the house,
23 and we had products in suitcases. We consolidated all
24 of those products into one place.

25 And so we had a lot. A lot of products.

1 Q. When you see "Clinically proven mildness" on
2 the front of this bottle, what does that mean to you?

3 A. When I see "Clinically proven," to me, it
4 means that scientifically, it's safe. It's clinically
5 proven. Someone has looked over it and said that this
6 is okay. This is safe. And -- and the promise that
7 you could use it on your baby told me that the most
8 tenderest of skin, it was going to be safe for.

9 Q. Were you ever in the Boy Scouts?

10 A. I was.

11 Q. Is this a photo of you?

12 A. It is.

13 Q. So for the record, what we've marked as
14 604-4, tell us a little bit about your time in the Boy
15 Scouts.

16 A. So I rose up through the entire ranks of the
17 Boy Scouts to Eagle. I enjoyed summer camp. I used
18 Johnson & Johnson products in my sleeping bag. Being
19 on campouts, you would always have the campfires, you'd
20 always smell smoke. I had -- hated the smell of smoke,
21 so I would squirt the product down into my sleeping bag
22 so I could smell something other than the burning of
23 the fire.

24 Q. Did you ever play any sports growing up?

25 A. I did.

1 Q. Is this a photo of you?

2 A. It is.

3 Q. So what we've marked as 604-5, tell us a
4 little bit about your time playing hockey.

5 A. So I played hockey -- this picture, I think I
6 was maybe around five years old, maybe a little bit
7 older than that.

8 I absolutely enjoyed hockey until they made
9 it optional to no longer wear a helmet and face mask,
10 and I enjoyed my teeth so much that I quit. And -- but
11 I used the Johnson & Johnson Baby Powder in my gear, my
12 gear bag, on my shoulder pads, on my leg, and leg pads
13 as well, so ...

14 Q. Did you play any other sports besides hockey?

15 A. I swam.

16 Q. Did you ever use Johnson's Baby Powder while
17 you were swimming?

18 A. I did. So I would always sprinkle
19 Johnson & Johnson Baby Powder into my swim cap, and
20 then I would stretch out the swim cap and pour it over
21 the top of my head right before I jumped in the water.

22 And then after I get out of the water after
23 practice, shower, and then I would, excuse me, powder
24 up with Johnson & Johnson powders.

25 Q. We're showing what we've marked as 604-6.

1 What are we looking at here?

2 A. It's the Midnight Dragon. So when I was
3 doing my sailing adventures through the Keys, in the
4 Bahamas, the Dry Torturas, people would rent my
5 services for their vacations.

6 Q. Did you ever use Johnson's Baby Powder while
7 living on this boat? We talked a little bit about it
8 already, but tell us a little bit more.

9 A. So, yes, I would use the products sometimes
10 even more so, because when you had passengers on the
11 boat, if they were in the water, you were in the water,
12 for those that are in the ocean when the water dries
13 off, your skin is very, very itchy. Sometimes, for me,
14 it was very uncomfortable, so I used a tremendous
15 amount of talc products on my skin to -- it being the
16 Johnson & Johnson on my skin, to keep my shirt from
17 sticking to me.

18 Q. I want to talk a little bit about you and
19 Lonnie. We're looking at a photo that we've marked as
20 604-7. Tell us a little bit about you and Lonnie.

21 A. Lonnie is my absolute oxygen.

22 Q. How long have you two been together?

23 A. We've been together over 20 years. And like
24 I said, he's my oxygen. He's my everything. I wake up
25 every morning ...

1 Q. Go ahead.

2 A. So blessed that I met him.

3 Q. Let me ask you this quick question while we
4 keep talking about you and Lonnie. Was there a reason
5 why you used so much Johnson & Johnson Baby Powder on
6 your skin throughout your life?

7 A. Yes.

8 Q. What was it?

9 A. One of it -- and the biggest part is, I am
10 allergic to deodorant, so for me to stay fresh was
11 very, very important to me. And so, I was always
12 self-aware of -- of that, of the need to stay fresh.

13 Q. I asked Lonnie this question. I want to ask
14 you the same one: What's an ordinary regular day like
15 for and you Lonnie before you got sick? What did y'all
16 do for fun?

17 A. Lonnie and I -- it was always going to be
18 something outside. Lonnie and I would do a lot of
19 fishing. I talked about nighttime fishing, fishing for
20 shark.

21 Lonnie loves -- even though he's retired,
22 loves real estate. So we would drive around, looking,
23 talking about things. His father was an architect.
24 He's show me the number of homes that his father
25 designed and built and Lonnie had a part into. So it

1 was always an adventure of either fishing, real estate.

2 But at nighttime, I know Lonnie was
3 struggling a little bit. I think he talked about
4 watching M*A*S*H, Murder She Wrote, Svengoolie, SciFi
5 movies. So yeah.

6 Q. We talked with Lonnie about Christmas this
7 morning, so let's talk about a different holiday. Tell
8 us how y'all would celebrate Halloween.

9 A. So Lonnie and I were never able to have
10 children of our own, and I had so much love to give, so
11 I would borrow the neighbor kids for an afternoon. I
12 would bake six cupcakes for each kid, chocolate
13 cupcakes.

14 I would decorate -- so the cupcakes you see
15 on the left-hand side is the finished product of what
16 they were supposed to look like, and then imagine five
17 and six-year-olds that had their own little station
18 with their own little icing and their own little
19 eyeballs, come up with their own little six monsters,
20 and then they would take their cupcakes home.

21 Q. Who takes you to your doctors' appointments?

22 A. Lonnie does.

23 Q. Has he ever missed a single one?

24 A. No.

25 Q. Why did Lonnie leave today after he

1 testified?

2 Happy slide.

3 A. Right.

4 Q. Did he have a hard time?

5 A. Lonnie's very protective of me. And he
6 didn't want to see me hurt or attacked, and so he left.

7 Q. I just have a couple more questions for you,
8 okay?

9 A. Uh-huh.

10 Q. If, on any of the Johnson's Baby Powder
11 bottles you ever used, you had seen the word cancer or
12 death, what would you have done?

13 A. I would never have brought them into my
14 house, never.

15 Q. If you had seen something on the containers
16 of Johnson's Baby Powder you used that said danger on
17 it, what would you have done?

18 A. I would not have -- I would not have even
19 bought the products.

20 Q. If you had seen something on the containers
21 of Johnson's Baby Powder that you used that just had a
22 skull and crossbones on it or a poison logo or
23 whatever, even if it didn't have words, what would you
24 have done?

25 A. It would certainly have been a pause to look

1 further; but, knowing me, I would have absolutely
2 walked away from that.

3 Q. Final question: Who is this?

4 A. That is Kesia. That is my baby.

5 Q. Yeah.

6 MS. GROSS: All right. I don't have any
7 further questions for you right now.

8 So for now, Your Honor, I pass the witness.

9 THE COURT: Very good.

10 Ms. Bueno.

11 MS. BUENO: Thank you.

12

13 **CROSS-EXAMINATION**

14 BY MS. BUENO:

15 Q. Good afternoon, Mr. Perry.

16 A. Good afternoon.

17 Q. I heard you say that Lonnie left because he
18 didn't want to see you hurt or attacked.

19 A. That is correct.

20 Q. And I hope you understand that my job here is
21 to ask some questions about the claims you brought, but
22 I have no intention to attack or hurt you.

23 A. I appreciate that.

24 Q. You started using talcum powder, your first
25 memory, in 1974 you told us; is that right?

1 A. That is when I remember it being used. But I
2 do know that my mother used it to diaper me.

3 Q. And the last time you remember ever putting
4 any talcum powder product on was 2019; correct?

5 A. That is correct.

6 Q. And you mentioned one of the reasons that you
7 used talcum powder through your life was because you
8 are, indeed, allergic to deodorant; correct?

9 A. That is correct.

10 Q. Is there a specific ingredient in the
11 deodorant you're allergic to?

12 A. I don't recall. My diagnosis was so early in
13 my youth that I don't recall, and -- and it was
14 something that I never had it reverified.

15 MS. BUENO: Could we pull up Slide 2, please.

16 BY MS. BUENO:

17 Q. The jury has seen this before and I believe
18 you have, too, as you've been in the courtroom; is that
19 right, Mr. Perry?

20 A. That is correct.

21 Q. And I want to talk through this slide and
22 some of the brands that are included here. I
23 understand that the bottles may have changed over time.
24 But I have tried to compile a set of all of the talcum
25 powder brands that you have testified about related to

1 your talc use over time.

2 Can we start with the two that you used the
3 most, which you have told us are Johnson's Baby Powder
4 and Clubman talc; is that correct?

5 A. That is correct.

6 Q. You bought 10 or more bottles of Johnson's
7 Baby Powder each year; correct?

8 A. That is correct.

9 Q. And you purchased a similar amount of Clubman
10 talc, 10 bottles per year; right?

11 A. That is correct.

12 Q. And Calvin Klein Obsession, which is on the
13 left-hand side of this slide at the bottom, was a
14 product you started using in the 1990s; true?

15 A. Correct.

16 Q. And you would have purchased several bottles
17 a year, less than about six bottles a year; right?

18 A. That is correct.

19 Q. And you also used Old Spice talc with your
20 father back when you went fishing in the '80s; true?

21 A. That is correct.

22 Q. And you started using Ammen's, a medicated
23 talc, in the 1990s; correct?

24 A. That is correct.

25 Q. And you used Ammen's all the way up into the

1 2000s; right?

2 A. That is correct.

3 Q. And the Ralph Lauren talc that we see up
4 there, you started using that in the 1990s; correct?

5 A. That is correct.

6 Q. And you used several bottles of that Ralph
7 Lauren's talc a year; true?

8 A. That is correct.

9 Q. And that would have continued, that Ralph
10 Lauren Polo, that would have continued up until about
11 2019; true?

12 A. Using -- I'm sorry, the -- repeat that, I'm
13 sorry.

14 Q. The Ralph Lauren, you continued using until
15 about 2019?

16 A. Somewhere about there, but yes.

17 Q. And the Drakkar Noir, which is the bottom
18 left on the left-hand side of the slide, you started
19 using that in the 1990s; correct?

20 A. That is correct.

21 Q. And I think you told us that was one of your
22 favorites; right?

23 A. Actually, Ralph Lauren was my No. 1, and
24 Drakkar would have been a No. 2.

25 Q. And the Drakkar, you purchased six or more

1 bottles of the Drakkar Noir each year; right?

2 A. Somewhere around there, yes.

3 Q. Okay. And the Stetson, which is also on the
4 left-hand side in the bottom row, that wasn't one of
5 your favorites; right? But that was one you were
6 gifted and had used sometimes?

7 A. It had to be used, correct.

8 Q. The Gold Bond, which is also on the left with
9 the yellow bottle, that was one that you used mainly in
10 your shoes, from about 1990s until 2019; right?

11 A. That is correct. But mainly in the shoes,
12 but as I put into my deposition, it was on my face,
13 hands when I had to work on the boat.

14 Q. Okay. Thank you for clarifying.

15 And you purchased several bottles of Gold
16 Bond a year, correct, during those years?

17 A. That is correct.

18 Q. And that would have been all the way from the
19 1990s until 2019; right?

20 A. Yes.

21 Q. And another talc that you used once you met
22 Lonnie was one called Equate, which is the second from
23 the left at the top on the left part of the slide;
24 right?

25 A. That is correct.

1 Q. And you used Equate powder starting in the
2 early 2000s, and stopped using it in 2019; correct?

3 A. That is correct.

4 Q. Now, let's go to the right-hand slide here.
5 This is what we've called secondhand exposure because
6 these are the talcum powder products that your mom
7 used, that you claim you were around her when she was
8 using; correct?

9 A. That is correct.

10 Q. So the Avon products, which are there at the
11 bottom in the middle, those were some of the products
12 that she used; correct?

13 A. Yes. But if I may, the bottle at the top
14 right with the red top that says "Lady Skater." I have
15 no recollection of that. I have no idea what the name
16 of that bottle is. But it is not one of my mother's
17 products.

18 MS. BUENO: Can we go to Slide 14.

19 BY MS. BUENO:

20 Q. This is one that we had created based on your
21 prior testimony, and I think the one you mentioned is
22 the top with the red top.

23 A. The Birds of Paradise.

24 Q. The second from the right; correct?

25 A. The Birds of Paradise that I remember had

1 many, many colors and hues, greens and reds. I just
2 have never seen that bottle. So now that I see Birds
3 of Paradise, although the bottle doesn't say it, I just
4 want to point -- yeah, point that out.

5 Q. So I'm so glad you did; and, like I said,
6 these bottles may not be the exact ones you remember.
7 I tried to do the best we could with putting this
8 together.

9 A. I understand.

10 Q. But based on what you're seeing here, does
11 this accurately reflect that you recall your mother
12 using Shower to Shower, Johnson's Baby Powder, Avon
13 Cotillion, Birds of Paradise, Skin So Soft, Soft Musk,
14 Topaz, as well as Cashmere Bouquet, White Linen, and
15 Chanel No. 5?

16 A. That is correct.

17 Q. And this is the talc that you saw your mother
18 using when you were in the bathroom when she was
19 powdering herself; is that correct?

20 A. That is correct.

21 Q. Now, you have told us that you used talcum
22 powder multiple times a day, every single day from 1974
23 to 2019; correct?

24 A. That is correct.

25 Q. Okay.

1 MS. BUENO: And you can take that down for
2 now. Thank you.

3 BY MS. BUENO:

4 Q. Throughout your life, you told us you
5 showered multiple times a day.

6 A. Uh-huh.

7 Q. Yes?

8 A. Yes, ma'am.

9 Q. And you said two, sometimes three times a
10 day?

11 A. Or more, but yes.

12 Q. Or four. And you used four or more heaping
13 tablespoons of talcum powder every time you used it;
14 right?

15 A. Yeah. The heaping tablespoons was -- was --
16 I think during the -- the deposition, they wanted some
17 scientific -- you can measure. I have big hands and so
18 however much that held, that was it. So heaping
19 tablespoons, palm, it is what it is.

20 Q. So a large amount in your palm --

21 A. It was.

22 Q. -- correct?

23 And every day, up to four times a day?

24 A. That is correct.

25 Q. All right. I wanted to talk a little bit

1 more about when you stopped using talcum powder.

2 A. Okay.

3 Q. The last time you remember ever putting
4 talcum powder on your body, you said was 2019; correct?

5 A. That is correct.

6 Q. And -- and this is a personal question, but I
7 have to ask. So if you're allergic to deodorant, did
8 you choose to use something else in the last five years
9 since that time?

10 A. I am au natural.

11 Q. Thank you.

12 So from 2019, up until today, you have not
13 used any type of -- of talcum powder or any deodorant?

14 A. I find the need to shower often more of an
15 issue because I am self-aware and I -- I don't want --
16 I would be horrified if Lonnie ever said, gosh, you
17 stink.

18 Q. And just -- this was a big deal for you after
19 using four heaping handfuls of talc every day of your
20 life for 45 years to just stop cold turkey. That was a
21 major moment in your life back in 2019; is that true?

22 A. I was scared to death.

23 Q. Yeah. And you stopped using the Clubman talc
24 abruptly in 2019; correct?

25 A. I stopped -- after -- I want to be careful.

1 Q. You may say what you said.

2 A. After I had some awareness that there was
3 issues with talc products and cancer, I looked at the
4 products that I had, and I learned that all of those
5 products you had on the screen had talc in it.

6 Q. And to be clear, at that time, you heard that
7 Clubman was hazardous; that was what you overheard?

8 A. I had -- I -- I don't want to be -- I don't
9 want to get in trouble here.

10 Q. Well, let me -- let me just ask this -- we'll
11 pull up Slide 20 -- when you were asked about when --
12 "Do you know if Clubman powder contained talc at the
13 time of your oyster roast party." You answered, "I
14 wasn't aware until I heard the word 'talc' and
15 'hazardous'"; correct?

16 A. That is correct.

17 Q. Okay. Now, you stopped using Johnson's Baby
18 Powder not because of the oyster roast, but because you
19 sold the farm and you just didn't need it anymore;
20 right?

21 A. That is not correct. Talc was talc and it
22 was clear on those bottles, talc. And so when we
23 started looking -- I say "we." When I started looking
24 and I was seeing the word "talc," Ms. Bueno, it scared
25 the hell out of me.

1 MS. BUENO: Could we go to Slide 21.

2 BY MS. BUENO:

3 Q. So when you were asked under oath in October:

4 "QUESTION: When did you last use
5 Johnson's Baby Powder?

6 You answered:

7 "ANSWER: 2019."

8 The next question was:

9 "QUESTION: And why did you stop using it?

10 "ANSWER: We had sold the farm and had
11 made the process of moving into the forever
12 home.

13 "QUESTION: You just didn't need it
14 anymore basically?

15 "ANSWER: Well, yeah. I mean, our
16 outside -- outside movements had changed; our
17 lives had changed to be more simplistic. I
18 wasn't -- we just didn't need to have all that
19 going on."

20 Were you asked those questions, and did you
21 give those answers?

22 A. I did, but can I -- if I would be able to
23 clarify. 2019, we sold the farm. 2019 was the oyster
24 roast. 2019 was a lot of learning.

25 So yes, those are my words; and, yes, I did

1 testify to that.

2 Q. And after your mesothelioma diagnosis,
3 four years later, right, I mean, so we're talking from
4 the time you stopped using talc to the time you were
5 diagnosed in summer of 2023, that was four years.

6 A. That is correct.

7 Q. And you found some bottles of talc at your
8 home at that time after your diagnosis; correct?

9 A. At our forever home, our retirement home,
10 when we were going through the tons of boxes that we
11 hadn't unpacked, and we unpacked a bathroom box and
12 then we unpacked another box that we found other stuff
13 in it, we found a lot of different products, correct.

14 Q. And so to be clear --

15 MS. BUENO: We'll pull up Slide 22, if we
16 could.

17 BY MS. BUENO:

18 Q. We've already seen this today. This is the
19 2004 bottle that you identified in your home; correct?

20 A. That is correct.

21 Q. And you took a picture of this; correct?

22 A. That is correct.

23 MS. BUENO: And then if you go to the next
24 slide, 23.

25 /////

1 BY MS. BUENO:

2 Q. This is the bottle that you found in what you
3 told us is your sailing bag; right?

4 A. That is correct.

5 Q. What Mr. Long said was the diving bag;
6 correct?

7 A. That is correct.

8 Q. And you heard him say that that was out in
9 the garage; correct?

10 A. That's where I had kept at, yes.

11 Q. But you actually recall finding both of these
12 bottles in the closet of your home; correct?

13 A. Well, we -- this particular bottle was found
14 in my sailing bag. The other bottle that we just had
15 the previous slide was in boxes. And like I -- I said
16 a little bit earlier, we had, you know, products in the
17 bathroom, we had products in the barn, we had
18 products -- all of that, and so I -- I don't remember
19 where the previous bottle actually came from, but it
20 was -- it made the move with us.

21 MS. BUENO: Could we turn to Slide 24.

22 BY MS. BUENO:

23 Q. At your deposition, were you asked about
24 those particular two pictures and said:

25 "QUESTION: Do you recall if both of those

1 bottles were found in the same box or if they
2 were in a different box?

3 "ANSWER: They were in the same box.

4 "QUESTION: Do you recall where that box
5 was when you found it?

6 "ANSWER: It was in our baby nursery
7 closet."

8 Were you asked that question, and did you
9 give that answer?

10 A. That -- that is my testimony.

11 Q. And at the time of that deposition, you
12 testified that those were the only two bottles that you
13 had found at that time; correct?

14 A. Well, I said -- I think if you look further
15 in the deposition, I said we had several other boxes to
16 go through. And, then, I can't remember what attorney
17 asked the question, when do you think you can find that
18 out, go through the rest of the boxes?

19 And then I -- I don't want to put words in my
20 mouth, but I committed that within the next couple
21 weeks, and during that period of time, Lonnie and I
22 started going through boxes and then we found more
23 products. The Clubman bottle was another one, the Avon
24 was the fourth one. So yeah, that kind of was the full
25 circle.

1 Q. And you found a Gold Bond bottle as well;
2 correct?

3 A. I believe so.

4 Q. All right. So Gold Bond, Clubman, Avon. Do
5 you know the dates on those bottles?

6 A. The Clubman bottle, we sent to counsel. The
7 Avon bottle, I have no idea, because that dates back to
8 my childhood.

9 Q. And what about the Gold Bond bottle, do you
10 know what the date was on that?

11 A. I do not.

12 Q. Okay. And you don't know the date on the
13 Clubman bottle?

14 A. Well, I don't. But that bottle still exists.

15 Q. Okay. And you heard -- all right. And the
16 Avon bottle, you said was from your childhood.

17 The bottle that they saw, the old-looking
18 bottle that you said was in your sailing bag, do you
19 know the date on that?

20 A. I do not.

21 Q. And if that was from the 1970s manufacturer,
22 would you have reason to doubt that?

23 A. I would have -- repeat that question.

24 Q. If that bottle that we saw was from the 1970s
25 and let's pull it up, just so -- so we're very clear on

1 which one we are in. I'm trying to go quickly, but I
2 don't want to skip important things.

3 MS. BUENO: Exhibit -- I'm sorry, Slide 23,
4 which is Exhibit DX28.

5 BY MS. BUENO:

6 Q. This is the bottle.

7 A. Uh-huh.

8 Q. Is it possible that you had a bottle in your
9 home that dated back to the 1970s?

10 A. I don't believe so.

11 Q. When did you buy this bottle?

12 A. Ma'am, I do not know.

13 Q. Okay. I'm going to switch gears now.

14 MS. BUENO: You can take that down. Thank
15 you.

16 BY MS. BUENO:

17 Q. One of the ways that you believe you were
18 exposed to asbestos is working on brakes when you were
19 a teenager; correct?

20 A. That is correct.

21 Q. And back in those days, you regularly changed
22 the brakes on a 1979 Honda Accord and a 1976 Chevy
23 pickup, if I remember correctly?

24 A. That is correct.

25 Q. Okay. And this was when you were about 15 to

1 18 years old, from 1984 to 1987; correct?

2 A. That is correct.

3 Q. And the jury has already seen and will have
4 with them a affidavit that you signed. I'm going to
5 bring it up real quick just to get you to recognize it
6 for us. We've marked it for the record as DX12007.

7 MS. BUENO: Could I have the ELMO, please?

8 BY MS. BUENO:

9 Q. You recognize this work history affidavit as
10 one that you signed; is that correct, Mr. Perry?

11 A. That is my signature.

12 Q. And it looks like you signed this affidavit
13 on August the 2nd of 2023; correct?

14 A. That is correct.

15 Q. And like I said, the jury's already seen some
16 of this and this will be an exhibit, so we don't need
17 to go through all of the details, but let me ask you
18 about a few of the things that are included.

19 Is it true that you estimate that you
20 installed six dozen brakes on those two vehicles over
21 that three-year period?

22 A. It was my recollection. It was a long time
23 ago. It could be less, it could be somewhere around
24 there. It was a long time ago.

25 Q. But I think your prior testimony was more

1 than six dozen; correct?

2 A. It was a number, a big number.

3 Q. And the typical brake change took over a
4 couple of hours each time; true?

5 A. Yes. My father and I had -- we had to work
6 out our differences of opinions, and so what could have
7 been a very quick process turned in to be a very long
8 process because he would have his opinion, I would have
9 mine, he would walk away from me, let me flounder, and
10 come to reality that sometimes Dad is right.

11 Q. And the asbestos brake products that you used
12 released visible dust when you used them; correct?

13 A. Well, there was a black residue that was
14 present.

15 Q. And that was like a dark-colored cloud of
16 dust that was present; correct?

17 A. It was.

18 Q. And you breathed in that dust?

19 A. I tried not to.

20 Q. But you did breathe it in?

21 A. I'm right there, but -- yeah, I was not
22 making an intention to -- to inhale the -- the cloud.

23 MS. BUENO: Slide 28, please.

24 BY MS. BUENO:

25 Q. When you were asked about this and

1 questioned, when you would either blow that air -- blow
2 that out with your mouth or the compressed air, what
3 did the air look like around you -- I'm sorry, did I
4 say 28? Yeah. Okay. It would be a haze. A haze of
5 what? Of that residue. So it would be a dark color
6 cloud. Was it dust? Yes.

7 And you breathed in that dust? I think I
8 don't have that on the slide, the next part of it. But
9 that would have been something that you would have
10 breathed in? Do you want me to --

11 A. I don't -- if you have that slide, I would
12 like to see it.

13 Q. Yeah. I just need to find it.

14 THE COURT: His thing is not showing that?

15 THE WITNESS: It is. It just is incomplete.

16 MS. BUENO: I cut it off. So I'm going to
17 pull it up now. I need to pull out page 120 to show
18 the witness, Your Honor.

19 THE COURT: All right.

20 MS. BUENO: And I just want to make sure I
21 get this right. If I could have the ELMO, please.

22 BY MS. BUENO:

23 Q. The question here on line 18 of page 120:

24 "QUESTION: When you're either removing
25 the old brakes or installing the new brakes,

1 did you breathe that dust?

2 "ANSWER: Absolutely."

3 Was that the question you were asked and did
4 you give that answer?

5 A. Those would have been -- if that's what my
6 testimony is, then that's what I said.

7 Q. And you believe that you were breathing in
8 asbestos fibers when you were doing this brake work;
9 correct?

10 A. No, that is not true.

11 Q. I'm turning to your affidavit.

12 A. Let me -- if I may, you asked -- reask that
13 question slowly because that's not what I believed in
14 1985.

15 Q. Now.

16 A. Now, it's different.

17 Q. You believe -- now you believe you were
18 breathing asbestos fibers when you were doing that
19 brake work; correct?

20 A. As I have been educated, I understand
21 differently, but in 1985, '86 and '87, I had no idea.

22 Q. Absolutely.

23 A. Okay.

24 Q. Absolutely. And that's what I mean. I'm
25 just drawing your attention to Paragraph 7 of your

1 affidavit.

2 A. That is my -- that is my signature.

3 Q. Yes. And it states, "The removal and use of
4 the above described products caused asbestos fibers to
5 be released when the products were removed."

6 This is now your belief, correct?

7 A. That is what I signed.

8 Q. I want to talk a little bit about your
9 family. And back up a little bit.

10 A. Okay.

11 Q. You talked about your mother. You also grew
12 up with your father and your sister in Illinois;
13 correct?

14 A. That is correct.

15 Q. And I don't -- I think we heard earlier that
16 your mother passed away of lung cancer; is that
17 correct?

18 A. Small cell carcinoma.

19 Q. And she previously had uterine cancer that
20 was discovered when you were born; correct?

21 A. That is correct.

22 Q. She did not have ovarian cancer; correct?

23 A. I have no medical opinion that I could answer
24 that. I was -- it was kind of weird in our family,
25 where topics like that weren't discussed with my sister

1 and I. So, I always remembered it as uterine cancer.

2 Q. And your father currently has late stage
3 prostate cancer?

4 A. That is correct.

5 MS. BUENO: I think I have a little bit more
6 time. I don't want to go over. Do I have --

7 MS. MCVEY: My timer is different, but I will
8 defer to y'all.

9 THE COURT: Don't use it just because you got
10 it.

11 MS. BUENO: Oh, no, no, no. I just want to
12 just finish a couple more things, Your Honor. I'm
13 almost done.

14 THE COURT: Yes, ma'am.

15 BY MS. BUENO:

16 Q. And you have not spoken to your father in six
17 years; is that correct?

18 A. That's not correct. I've spoken to my
19 father, but our conversation is always very, very
20 superficial: Hi, how are you? How was golf? How was
21 dinner? What did you have? Talk to you tomorrow.

22 Q. And when you were testifying and asked when
23 is the last time you saw your father, you said six
24 years ago. Was that correct?

25 A. That is correct. Now, since then, I saw my

1 father this past Christmas, because I wasn't sure I was
2 going to live to see another Christmas.

3 Q. And your sister, you haven't spoken with her
4 in over 20 years?

5 A. My sister and I have not spoken for about
6 that period of time. I spoke to her a little over a
7 decade ago, which was something to refer to -- about my
8 father's health, and then she reached out to Lonnie at
9 Christmastime, thanking him for hosting my father for
10 Christmas.

11 Q. You're aware that there's about 31 references
12 in your medical records to a paternal grandfather
13 having mesothelioma; correct?

14 A. Yes. May I address that?

15 Q. Yeah. Did your -- did your paternal
16 grandfather have mesothelioma, Mr. Perry?

17 A. He did not. The attending physician -- and
18 he admitted to it, that -- thought that there was a
19 direct connection with smoking and mesothelioma. Only
20 after getting education from my oncologist, did he
21 correct his wrong -- of his understanding. So when I
22 saw that, I immediately went back to his lack of
23 knowledge of what caused mesothelioma. So yes, I -- I
24 do know that it's there.

25 Q. Okay. I have a few more questions.

1 A. Sure.

2 Q. I just have few more minutes.

3 A. I understand.

4 Q. After your doctor informed you about your
5 diagnosis, you recall a conversation where she told
6 you: If you're going to go online and look for
7 answers, do it at the National Institute of Health
8 website; correct?

9 A. That is correct.

10 Q. And you remember your doctor telling you
11 don't go anywhere else, just go here and you can get
12 answers that way; correct?

13 A. That is correct.

14 Q. And you looked on that NIH website, based on
15 your doctor's recommendations; correct?

16 A. I went very, very briefly. What I read
17 scared the hell out of me. My doctor warned me
18 about -- that it could emotionally do more harm and
19 scare me. And so when I read just a little bit about
20 it, I said, I have more things to worry about and I'll
21 just talk to my doctor.

22 Q. And you agree that in that National Institute
23 of Health website that you reviewed, there was nothing
24 in there about Johnson's Baby Powder or cosmetic talc
25 causing mesothelioma; right?

1 A. I didn't make it past the first scroll. And
2 there was multiple options to click, and so I have no
3 idea what's there. I didn't read anything. But then
4 again, it was a very quick read.

5 Q. Last question: You agree with me that none
6 of your treating physicians have ever told you that
7 your use of Johnson's Baby Powder caused your
8 mesothelioma; correct?

9 A. They never mentioned the brand
10 Johnson & Johnson.

11 Q. And in fact, none of your treating physicians
12 have said cosmetic talc caused -- caused your
13 mesothelioma?

14 A. When --

15 Q. Your treating physicians, Mr. Perry.

16 A. The treating physicians did not.

17 MS. BUENO: Thank you. That's -- that's --
18 that's my question.

19 THE WITNESS: Okay.

20 MS. GROSS: Can he --

21 THE COURT: Well, let him complete his
22 answer.

23 THE WITNESS: But NUSC spent -- their staff
24 spent a tremendous amount of time -- I use the word
25 "contact tracing" -- trying to understand where my

1 exposure came from. And then when we started talking
2 about talc, then they asked a tremendous amount of
3 questions, but none of my treating physicians were in
4 the room. This is just people inside the cancer
5 institute, trying to figure out where I had been.

6 BY MS. BUENO:

7 Q. Trying to figure out what your asbestos
8 exposure could have been.

9 A. Where did I come up with mesothelioma, yes.

10 MS. BUENO: Yes, yes. I thank you for your
11 time.

12 THE WITNESS: Thank you.

13 MS. BUENO: I appreciate it very much.

14 THE COURT: Ms. Gross.

15 MS. GROSS: Very briefly, Your Honor.

16 THE COURT: Please.

17

18 **DIRECT EXAMINATION**

19 BY MS. GROSS:

20 Q. Mr. Perry, when the lawyer for
21 Johnson & Johnson started asking you questions, you
22 said, "I know my mother used it on me while she was
23 diapering me," and then you didn't really get to finish
24 your answer.

25 Do you remember that?

1 A. I mean, yeah, I -- I knew it was always real,
2 that if I was using it at the age of four and five, I
3 was -- it was being used on me as a diapering baby. It
4 didn't just start at the age of five.

5 Q. You were also shown a whole bunch of photos
6 by the lawyer for Johnson & Johnson of other talc
7 products that you used.

8 Do you remember all that?

9 A. Yes.

10 Q. Which one did you use the most?

11 A. Johnson & Johnson Baby Powder.

12 Q. Is it even close?

13 A. Is it what?

14 Q. Is it even close?

15 A. Of other uses?

16 Q. Yes.

17 A. Absolutely not.

18 Q. You also found a bottle dated -- or had the
19 date 2004 on the back; right?

20 A. That is correct.

21 Q. Was 2004 the last year you bought Johnson's
22 Baby Powder?

23 A. It was not.

24 Q. When's the last year you remember buying
25 Johnson's Baby Powder?

1 A. It would have been 2018, 2019.

2 Q. Couple more, then I'm done. I promise.

3 You've been here almost every day --

4 A. Uh-huh.

5 Q. -- during this trial; right?

6 A. That is correct.

7 Q. Were you here when Dr. Gibney was here
8 testifying?

9 A. I was.

10 Q. Were you here when I asked Dr. Gibney if it
11 was appropriate for a company to hide a known
12 carcinogen in products from doctors and hospitals such
13 as himself?

14 A. I was here for that.

15 Q. Do you remember what his answer was?

16 A. It's unethical.

17 Q. Last question: Do you remember when the
18 lawyer for Johnson & Johnson stood up and the first
19 thing she told you was, I'm not going to attack you?

20 A. That is correct.

21 Q. Remember that?

22 Do you know why she asked you about a
23 strained relationship with your father?

24 A. I'm not -- I'm not sure.

25 Q. Okay. Does it have anything to do, you

1 think, with the fact that you have mesothelioma?

2 A. My father and I's strained relationship has
3 nothing to do with my illness.

4 MS. GROSS: I don't have anything further
5 Michael. You're done.

6 THE WITNESS: Thank you.

7 MS. GROSS: Thank you.

8 Thank you, Your Honor.

9 THE COURT: Thank you.

10 Thank you, Mr. Perry.

11 THE WITNESS: Thank you.

12 THE COURT: You may step down.

13 THE WITNESS: Thank you, Your Honor.

14 THE COURT: All right. Ladies and gentlemen
15 of the jury, that will conclude your service for today.
16 Please be ready to go tomorrow at 9:30, following the
17 instructions of the bailiffs as to when you should
18 arrive here, and have a wonderful evening. Again, I --
19 I have done this for a living for a long time. This is
20 an old hand seen, so to speak. I don't think I've seen
21 as attentive a jury in a long, long time, and I cannot
22 tell you how much I appreciate that. All right. Have
23 a good evening.

24 (The following proceedings were held
25 outside the presence of the jury.)

IN THE COURT OF
COMMON PLEAS
FOR THE FIFTH
JUDICIAL CIRCUIT

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1 liability for any of them, so it works that way as
2 well.

3 We agree about that?

4 MS. MCVEY: Yes.

5 MS. PEPKE: Yes.

6 THE COURT: Very good. All right. Now --

7 MS. MCVEY: I appreciate the clarity. I
8 really do.

9 MS. PEPKE: It's confusing.

10 THE COURT: Now, we going to rest or what?

11 MS. MCVEY: We are. Your Honor, the
12 plaintiffs rest.

13 THE COURT: All right. Very well. Okay.
14 All right. The plaintiffs' case is completed, and we
15 will now move to motions for directed verdict. Are you
16 prepared now? Do you need any time?

17 MS. PEPKE: I'm prepared.

18 THE COURT: Very good. Ms. Pepke, you are
19 recognized for the defendants' motion for a directed
20 verdict.

21 MS. PEPKE: And Your Honor, you tell me what
22 is easiest. I have -- I'm moving through claims and
23 arguments. We can do one and then let them respond,
24 which probably is easier.

25 THE COURT: I think that's easier, sure. If

1 itself, as everybody knows, says: "A defendant" --
2 this is subsection D of the -- of the contribution
3 statute, says: "A defendant shall retain the right to
4 assert that another potential tortfeasor, whether or
5 not a party, contributed to the alleged injury or
6 damages and/or may be liable for any or all of the
7 damages alleged."

8 THE COURT: Right. I know what it says, and
9 I also know the detailed discussion of that contained
10 in now Chief Justice Kittredge's writing in Smith v.
11 Tiffany.

12 MR. BROWN: Right.

13 THE COURT: What else do we need to do?

14 MS. MCVEY: No, I think we're good. This is
15 the end of your directed motion.

16 We have thoughts on jury charge, but we can
17 get to that when we get to it.

18 THE COURT: All right. Well, the bottom line
19 is the directed verdict motions are denied.

20 MS. MCVEY: Thank you. And --

21 THE COURT: All rights preserved. And so now
22 we go to --

23 MS. FLYNN: Your Honor, I did have a verdict
24 motion.

25 THE COURT: Yes, ma'am.

1 MS. MCVEY: How is she moving for -- just for
2 clarity --

3 MS. FLYNN: I will address that.

4 MS. MCVEY: Okay.

5 MS. FLYNN: We're not moving on causation. I
6 am not arguing causation. I am just arguing
7 sufficiency of the causes of action as set forth in the
8 pleadings.

9 THE COURT: You're going to have to do it
10 where I can hear you. Ms. McVey, just wait for a
11 minute. Let me see what it is she's going to say.

12 All you can do is to argue about the economic
13 damages. You can't -- there's no other argument you
14 can make about liability because you're in default.

15 MS. FLYNN: I understand your position on
16 default, Your Honor. The default --

17 THE COURT: It's a ruling. I have made a
18 definitive ruling on that. You have continued to argue
19 that you're not in default and all the other papers you
20 have submitted, including the paperwork you submitted
21 to the South Carolina Supreme Court.

22 I have definitively ruled that you were in
23 default on the first amended complaint. You are not
24 served with the second or the third amended complaint
25 because you had already been placed in default on the

1 first amended complaint.

2 So any argument about whether you are still
3 in the default, I have already rejected. If you are
4 making that motion again, I reject it. I deny your
5 ability to go forward on any premise that you are not
6 in default.

7 MS. FLYNN: I understand your ruling, Your
8 Honor.

9 THE COURT: All right.

10 MS. FLYNN: My point and what our directed
11 verdict motion is made on is the default admits only
12 what has been well pleaded. It does not forfeit the
13 rights of a defendant except as to matters necessarily
14 admitted. So if the cause of action in a complaint is
15 not sufficiently stated, then it cannot -- it goes
16 beyond the allegations of the complaint and doesn't go
17 against me.

18 Any judgment thereon, except as a dismissal,
19 would be the only allegations of the complaint, is what
20 I'm saying.

21 THE COURT: Well, I find that the allegations
22 of the complaint are completely -- on specific as to
23 AII or all causes of action, and therefore, it is -- I
24 granted a default. The time for contesting that grant
25 is long since past. That was done in the fall

1 sometime, as I recall it.

2 And so your ability to argue that is long
3 since foreclosed by the granting of the default
4 judgment -- or the granting of the motion to place you
5 in default.

6 MS. FLYNN: I understand the Court's ruling
7 on that, Your Honor. Our position was just that the
8 miss -- fraudulent misrepresentation was not well
9 pleaded in the complaint nor were the punitive damages,
10 and those -- those are the two positions.

11 I think that they -- I don't seek conspiracy
12 any longer in their charges or on the verdict form. So
13 our position was that those two causes of action were
14 not well pleaded --

15 THE COURT: What -- that's just a kind of big
16 vague thing. What do you mean by that?

17 MS. FLYNN: I will get to my argument, Your
18 Honor. I just didn't want to -- view in the light most
19 favorable to the plaintiff, the complaint fails to
20 state a cause of action for fraudulent
21 misrepresentation.

22 There's no requisite factual basis set forth.
23 Rather, the cause of action is just stated in a very
24 conclusory fashion, and that isn't sufficient. It sets
25 forth -- there are nine factors, Your Honor. Those

1 factors must be shown by clear, cogent, and convincing
2 evidence. And failure to prove any of those factors
3 is -- is fatal.

4 So the complaint sets forth against all
5 defendants in a conclusory fashion with no
6 distinguishing among any of the defendants or
7 identification of specific representation that was made
8 by AII versus anybody else. So we think that the
9 directed verdict is warranted as to fraudulent
10 misrepresentation on that basis.

11 THE COURT: All right. Well, A, I -- all
12 right. I don't see what authority or right you have to
13 make that motion at this time because are you in
14 default. Had you answered, you could have raised the
15 sufficiency of the pleading in a motion to dismiss or a
16 motion for summary judgment. You have tried to do that
17 as well.

18 But you -- you ignore the effect of a
19 default, and you've defaulted as to the well-pleaded
20 facts. The facts are well pleaded, but your arguments
21 about the sufficiency of the evidence on which those
22 facts rest moves beyond simply pleading issues and into
23 motions for summary judgment issues, which you are not
24 entitled to pursue because you defaulted. That's my
25 ruling.

1 MS. FLYNN: Okay, Your Honor.

2 THE COURT: So motion is denied.

3 MS. FLYNN: Did you want to hear anything on
4 punitive damages at this time? We filed a brief on
5 that. I'm happy to --

6 THE COURT: I don't think you need to talk
7 about that right now because we're not there.

8 MS. FLYNN: I meant as to our brief, our
9 directed verdict motion. We plead -- because there's
10 not cause, there's not specific conduct alleged, so
11 it's a due process argument in that regard.

12 THE COURT: Yes, ma'am, that -- well, that
13 ship has sailed many years ago. I could cite a bunch
14 of cases, but I won't. I deny it, taken into account
15 that argument.

16 MS. FLYNN: We have filed a brief. I don't
17 know if you would like a copy.

18 THE COURT: Of course I would.

19 Boy, I tell you, that appellation is
20 misapplied. Look at this for AII as opposed to anybody
21 else in this case.

22 MS. FLYNN: The brief is only ten pages, Your
23 Honor.

24 THE COURT: Well, what is the rest of this
25 stuff?

1 MS. MCVEY: It's probably our very well-plead
2 complaint.

3 THE COURT: Yes, that's exactly what it is.

4 MS. MCVEY: That's what I was thinking it
5 might be. Thank you.

6 THE COURT: Yes.

7 Yes, it's all 102 pages of your complaint.

8 All right. All right. What else?

9 MS. MCVEY: So I think you denied the
10 directed verdict motions of both AII and
11 Johnson & Johnson.

12 THE COURT: That's correct.

13 MS. MCVEY: And so now we move on to the
14 defendants' case.

15 Well, they need to rest.

16 THE COURT: All right. Defendant, you may
17 proceed.

18 MS. PEPKE: Defendants rest.

19 THE COURT: All right. The defendant rests.

20 MS. MCVEY: And, Your Honor, we would move
21 for directed verdict in this case because the only
22 testimony in this case in evidence is that
23 Johnson & Johnson that Mr. Perry used
24 Johnson & Johnson's Baby Powder for decades, 40-plus
25 years, that the asbestos -- that the talc contained in

1 bases, I rule that the case is going forward to the
2 jury with sufficient showing on each side to put these
3 issues in contest before the jury.

4 Ms. --

5 MS. FLYNN: AII also renews our directed
6 verdict motion, Your Honor.

7 THE COURT: Very good. And on the same basis
8 as decided before, upon in the case of AII, it is in
9 default, and therefore, the well-pleaded affirmative
10 defense of the complaint are established by the
11 default. And on that basis alone, any -- no directed
12 verdict is further needed. Liability has already been
13 established by the default.

14 All right. When we come to the submission of
15 the case to the jury, there needs to be special
16 instructions given about the ambit of their authority.
17 I have already told them some things as the case
18 started, but it will be made clear to the jury that the
19 jury's posture with respect to AII is limited to
20 termination of the economic damages.

21 MS. MCVEY: And on economic, yes.

22 THE COURT: All right.

23 MS. MCVEY: Yes, Your Honor, thank you. And
24 just for the record, I also want to note for the record
25 that as to AII's argument on directed verdict, that our

1 to do.

2 MS. BUENO: I think an hour-and-a-half would
3 be plenty.

4 THE COURT: All right. Ms. McVey.

5 MS. MCVEY: You just jumped right in front of
6 me.

7 The plaintiffs would like an hour-and-a-half
8 in the first half and 30 minutes in rebuttal --

9 THE COURT: Right.

10 MS. MCVEY: -- just because of the extent of
11 the evidence that we've put forth.

12 THE COURT: All right.

13 MS. MCVEY: And we think that's reasonable
14 based on where we are in having to do this.

15 THE COURT: All right.

16 MR. COWAN: We would just ask for the time to
17 be split evenly. So if you're going to give two hours,
18 then we would like two hours as well.

19 THE COURT: I usually give a little more to
20 the plaintiff because they've got the burden of proof.

21 MR. COWAN: Yes.

22 THE COURT: So what I'm going to do is this:
23 I'm going to give the plaintiff an hour-and-a-half on
24 the first go. I'm going to give Defendant J&J an hour
25 and 15 minutes on their response. And I'm going to

1 give AII, with trepidation in my heart, 15 minutes and
2 instruct that they may only talk about economic
3 damages. And I am going to tell the jury they're
4 already determined to be liable.

5 MS. MCVEY: Then, Your Honor, we could have
6 some rebuttal time of 30 minutes?

7 THE COURT: Yes.

8 MS. MCVEY: Okay.

9 THE COURT: Now, here's the other thing,
10 though, charges -- can -- do we need -- charges, I
11 think we just need to go back and forth, then I'm going
12 to make a determination, and y'all will put it on the
13 record.

14 MS. MCVEY: I agree.

15 THE COURT: And you will know that
16 determination by the time we finish. I'm going to have
17 your charges and your charges sitting side by side, and
18 we going to go through them and decide what we going to
19 do. And I'm going to instruct one of you to produce a
20 final for me. And then y'all will have the rest of the
21 day to file whatever you want to.

22 But do we need to have on the record any
23 discussion about the form -- the verdict form?

24 MS. MCVEY: I think we can do that off the
25 record as well and then --

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

IN THE COURT OF
COMMON PLEAS
FOR THE FIFTH
JUDICIAL CIRCUIT

- - -

MICHAEL L. PERRY AND LONNIE	)	
L. LONG,	)	
	)	
Plaintiffs,	)	
	)	Case No.
vs.	)	2023-CP-40-04072
	)	
AMERICAN INTERNATIONAL	)	
INDUSTRIES, ET AL.,	)	
	)	
Defendants.	)	

TRIAL BEFORE: THE HONORABLE JEAN H. TOAL
DAY 7

DATE TAKEN: Wednesday, August 14, 2024

TIME BEGAN: 9:00 a.m.

TIME ENDED: 5:25 p.m.

LOCATION: Richland County Judicial Center
1701 Main Street
Courtroom 3B
Columbia, South Carolina

REPORTED BY: Cynthia First, RPR, CRR
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1 THE COURT: I don't want to hear the oral
2 argument. I just want to make sure they're in
3 the written record.

4 MS. FLYNN: Yes, Your Honor. I'll get
5 those to you.

6 THE COURT: Have we done everything we
7 need to do? Can I bring in the jury?

8 MS. MCVEY: Yes, ma'am.

9 MS. BUENO: Yes, ma'am.

10 THE COURT: Bring in the jury.

11 Tasha will print your objections,
12 Ms. Flynn.

13 MS. FLYNN: Fantastic.

14 - - -

15 (The jury entered the courtroom at
16 9:35 a.m.)

17 THE BAILIFF: The jury is seated, Your
18 Honor.

19 THE COURT: Thank you, ma'am.

20 Ladies and gentlemen of the jury, we had a
21 very productive day. I hope you did too not
22 being in this courthouse yesterday. We used
23 that time to advantage to do a lot of technical
24 things that are necessary to get us to this
25 point.

1 What will happen now is I'll turn to each
2 side, and they will put some technical things
3 before you and on the record. And then we'll
4 proceed to closing arguments of each side.
5 They have time limits on each side, but the
6 closing arguments will take a little while.

7 After that, technical matters very simply,
8 and then I will charge the jury. You will have
9 these charges and the jury verdict form in the
10 jury room. Each of you will have the ability
11 to have that. So you don't need to stress out,
12 Hey, gosh, do I need to take some notes on
13 this? You'll have the complete jury charge in
14 the jury room with you.

15 So that's how we're going to proceed. My
16 guess is that the closings will take place;
17 then we would probably break for lunch, even if
18 it's a little early.

19 And so, clerks, be sure that we have
20 what's been ordered in a timely fashion.

21 And then when we return from our lunch
22 break, then we would go into the charge by the
23 Court. And then the case would be submitted to
24 you. So that's what today brings.

25 Please be seated. I turn first to the

1 plaintiff.

2 Ms. McVey.

3 MS. MCVEY: Thank you, Your Honor. Just
4 briefly, we have a stipulation. The plaintiffs
5 and defendant AII stipulate that the reasonable
6 and necessary past medical bills as a result of
7 Michael Perry's mesothelioma diagnosis and
8 treatment are \$510,620.05.

9 And, Your Honor, with that, the plaintiffs
10 rest.

11 THE COURT: Very good. Please note that
12 these stipulations will be in the jury charge
13 and figures on both economic damages and the
14 medical expenses.

15 I call for the defendant, Ms. Pepke.

16 MS. PEPKE: Thank you, Your Honor. The
17 Johnson & Johnson defendants renew our prior
18 directed verdict motion based on prior
19 agreements and *The Kitchen Planners* case
20 standards and other applicable standards of
21 evidence as required.

22 THE COURT: Thank you. Those matters have
23 been fully explored with the Court with very
24 detailed briefs and other materials. The Court
25 has considered those and denied those motions,

1 and they are now formally submitted for the
2 record, along with detailed memoranda
3 explaining the positions that the defendant has
4 taken.

5 Ms. Bueno.

6 MS. BUENO: Yes, Your Honor. The rest of
7 our exhibits were offered and entered into
8 evidence yesterday. Defendants rest, and we're
9 ready to proceed to closing arguments.

10 MS. FLYNN: Your Honor, I would also renew
11 AII's motion for directed verdict.

12 MS. PEPKE: We would renew ours as well.

13 THE COURT: Those materials are in
14 writing. They have been submitted to me.
15 Those motions have been denied. I deny them on
16 the record. The information will be
17 memorialized in the material you put in the
18 record on that, Ms. Flynn.

19 MS. FLYNN: Thank you, Your Honor. The
20 defense rests.

21 THE COURT: Ms. McVey.

22 MS. MCVEY: Your Honor, the plaintiffs
23 would renew our directed verdict motion that we
24 discussed at length yesterday on the record.

25 THE COURT: Very good. Again, I heard

1 extensive arguments about these matters
2 yesterday. And we're formally putting on the
3 record that I have denied the motions for the
4 directed verdict. And the positions that
5 plaintiff took and that defendant took on the
6 plaintiffs' motions are in the record with
7 briefing and materials. All you need to know
8 is that each side's motions were denied.

9 All right. Now, plaintiff, are you ready
10 to proceed? All right.

11 MR. ADAMS: Yes, ma'am.

12 THE COURT: Plaintiffs may proceed with
13 closing argument.

14 - - -

15 CLOSING ARGUMENT BY MR. ADAMS

16 - - -

17 MR. ADAMS: Good morning, everybody.
18 Thank you for patiently listening for so long.
19 Thank you for showing up for jury service, for
20 volunteering to stay, for being here every day,
21 for taking such good notes. I know that it
22 costs money to be here and that people had work
23 and school conflicts, and I'm sure there's a
24 hundred other inconveniences that we don't even
25 know about. We appreciate so much you coming

1 here.

2 Today is the last day that Michael Perry
3 and Lonnie Long's case belongs to us. This
4 afternoon the case is going to belong to you.
5 You're going to go back in that jury room, and
6 you're going to be able to discuss and
7 deliberate the case with one another for the
8 first time.

9 When you go back there, you're going to
10 have three jobs. Number one is to follow the
11 law that the judge gives you. Number two is to
12 fill out the questions on the verdict form that
13 you're going to get and we're going to go over
14 in closing argument. And number three is to,
15 when you believe a question on the verdict form
16 should be answered in a certain way, tell your
17 fellow jurors why, why you think a question
18 should be answered in a certain way.

19 In my time for closing arguments, I going
20 to try to help to give you some of that why,
21 why we believe every single question on the
22 verdict form should be answered yes.

23 But before I do that, I want to give you
24 two tools to guide you along your way, to guide
25 you through your deliberation process. I think

1 they're going to be your guiding light in this
2 case so you can get it right.

3 The first tool is what I think is the most
4 powerful thing in the courtroom. I think it's
5 more powerful than the lawyers, it's more
6 powerful than the witnesses, it's more powerful
7 than the clerks. It might even be more
8 powerful than the judge. It's your common
9 sense. Your common sense. Because this is a
10 commonsense case.

11 Michael Perry, a human being, was born on
12 this earth, and from the day he was born until
13 he was 50 years old, he breathed dust from
14 Johnson's Baby Powder almost every single day
15 of his life. And the dust from Johnson's Baby
16 Powder contained asbestos. And then he got
17 asbestos cancer.

18 And he came to court to hold the companies
19 responsible who we believe played a role in
20 giving him that cancer. One of those companies
21 was Johnson & Johnson.

22 And when we came into court on behalf of
23 Michael Perry and Lonnie Long, we accused
24 Johnson & Johnson of the most heinous acts you
25 can do to a human being -- knowingly selling a

1 baby powder for over a hundred years that has
2 the worst carcinogen in it in the industry.
3 And Johnson & Johnson, with all its resources
4 and power and strength, defended itself in the
5 case.

6 You've heard they hired seven separate
7 expert witnesses to come into court to swear
8 under oath and to tell you they didn't do it.

9 But then something very -- and those
10 expert witnesses, you heard, wrote long
11 reports. And they gave depositions. And they
12 were ready to come into court and defend this
13 company.

14 But then something very interesting
15 happened. We looked at Michael Perry's body,
16 and we found the exact talc and the exact
17 asbestos that was in Johnson's Baby Powder that
18 he breathed for 50 years. And then not a
19 single expert witness came into court to look
20 you in the eye and defend this company. Not
21 one. Please don't set aside your common sense.

22 In this country you can buy almost
23 anything. You can pay people to eat bugs on TV
24 or marry someone they've never met. You can
25 pay experts to come into court and say smoking

1 doesn't cause lung cancer, arsenic in the water
2 doesn't cause leukemia. If you can afford it,
3 you can pay for almost anything.

4 Once we realized what was in Michael
5 Perry's lungs, they couldn't find an expert on
6 earth to come into this court and tell you they
7 didn't do it.

8 MS. BUENO: Objection, Your Honor.

9 THE COURT: Approach.

10 (Whereupon a bench conference was
11 held.)

12 MS. BUENO: Yes, ma'am. That's absolutely
13 not true. It's not in the evidence. He's
14 saying that we couldn't find an expert to come
15 in and defend this product. That is not true.

16 THE COURT: Okay.

17 MS. BUENO: It's inaccurate. It's
18 inflaming passions for no reason. It's
19 improper.

20 THE COURT: Reply.

21 MS. MCVEY: Your Honor, she can argue that
22 all she wants. This is an argument about our
23 interpretation of the evidence. She can't make
24 this argument.

25 THE COURT: No. Here's what she's saying.

1 She's saying that there's nothing in the
2 evidence that isn't in the record that
3 justifies saying they couldn't find an expert.
4 That's a little bit more nuanced thing.

5 MS. MCVEY: I think --

6 MR. ADAMS: Dr. Kuffner testified about
7 these experts they hired and that they put out
8 the reports and arguments, and they didn't
9 come.

10 MS. BUENO: Your Honor, we talked about
11 *Gonzalez* yesterday and the *Gonzalez* case says
12 they are able to comment on the fact we didn't
13 bring experts, but they shouldn't be able to
14 say we didn't bring somebody in to defend it.

15 THE COURT: I think it's a little bit of a
16 nuance, and I agree with them about that. You
17 can certainly say they didn't offer experts,
18 but you can't say they couldn't find an expert.

19 MS. PEPKE: Can we have a curative
20 instruction on the strike?

21 THE COURT: Yes.

22 MS. BUENO: Please, yes.

23 MS. MCVEY: That's inappropriate to give
24 an instruction on this. We can move on from
25 this.

1 THE COURT: I note your objection and,
2 over your objection, I'm going to give an
3 instruction to the jury about that.

4 MS. MCVEY: And *Gonzalez* clearly says we
5 can make this --

6 THE COURT: *Gonzalez* says you can say the
7 failure to call. It's a little nuanced thing
8 that is a factual assertion that is concerning
9 me a little bit. Frankly, I think that may
10 have an appellate value different than
11 *Gonzalez*. That's why I'm going to give this
12 instruction.

13 (Bench conference concluded.)

14 THE COURT: Ladies and gentlemen of the
15 jury, I have partially granted defendants'
16 motion, and what I have granted is this:
17 Discussion of failure to call an expert is
18 completely permitted, but the assertion they
19 couldn't find any expert is not something that
20 is in evidence; and therefore, I'm striking
21 that.

22 And you may continue, Mr. Adams.

23 MR. ADAMS: Thank you, Your Honor.

24 When they come up and they tell you and
25 they show you their slides and they argue and

1 they talk about the dose and the brakes and
2 they talk about all the things that they're
3 going to tell you about, I want to keep in
4 mind -- I want you to keep in mind and remember
5 that they had expert witnesses who they could
6 have called to say everything the lawyers are
7 about to say, but they didn't. Please don't
8 set aside your common sense.

9 The second tool you have that will guide
10 you through the verdict form --

11 THE COURT: Mr. Adams, I'm sorry to
12 interrupt you, but approach again.

13 (Whereupon a bench conference was
14 held.)

15 THE COURT: Wish we had worked this out
16 beforehand, but *Gonzalez* also says this: It's
17 the missing witness rule. We do have such a
18 rule in South Carolina. And the missing
19 witness rule, as *Gonzalez* said, "is based on
20 the premise 'that the party's failure to rebut
21 evidence that the party would naturally be able
22 to, through testimony and physical evidence,
23 may warrant an inference that such evidence
24 either does not exist or would be unfavorable."
25 That's in *Gonzalez*.

1 MS. BUENO: For fact witnesses, Your
2 Honor. And it applies to fact witnesses.

3 MS. MCVEY: And we can make the argument,
4 of course --

5 THE COURT: It does say the "party's
6 invocation of the missing witness rule should
7 be limited to fact witnesses."

8 I agree with you on that. I'm just
9 saying --

10 MS. BUENO: We were talking about experts.

11 MS. MCVEY: Which can be clearly argued at
12 length about their failure to call an expert.

13 THE COURT: Well, I'm going to listen very
14 closely to how they argue because they may open
15 that door.

16 MS. MCVEY: Thank you.

17 THE COURT: I'm just saying I'm sticking
18 to what I've said so far, but I'm listening.

19 MS. MCVEY: Thank you.

20 MS. BUENO: Thank you.

21 (Bench conference concluded.)

22 THE COURT: By the way, these conferences,
23 if I have to have them -- and you know I don't
24 like to do that if there's any way possible;
25 that's why I don't send you out -- does not

1 count against your time, any time. So take
2 that into account when you all are doing your
3 calculations about time.

4 You may continue.

5 MR. ADAMS: Thank you, Your Honor.

6 The second rule is the burden of proof.
7 It's just 51 percent. It's not beyond a
8 reasonable doubt. It's just 51 percent on
9 every question on the verdict form except two,
10 and I'll tell you about those two. There's a
11 fraud claim and a claim about reckless
12 behavior. Those have a higher burden of proof.
13 But for every other question on the verdict
14 form, it's just 51 percent.

15 So if you're back there and people say,
16 I'm not sure or I'm not completely convinced,
17 you don't have to be. You can have all the
18 doubts in the world. If 12 of you get to
19 51 percent, you can just check yes and move on
20 in the verdict form.

21 It's a little counterintuitive in cases
22 with so much at stake in cases like this. Why
23 would it be 51 percent? It's 51 percent on a
24 thousand-dollar case; it's 51 percent in a
25 million-dollar case. And the reason for that

1 is twofold.

2 The first reason is that the law
3 understands that good lawyers can confuse
4 anything. They can come into court and they
5 can tell you Dr. Langer, when he found asbestos
6 in Johnson's Baby Powder 53 years ago, in
7 1971 -- they have a video of Dr. Langer under
8 oath that we have to show you saying he never
9 took it back.

10 They can come into court, and they can
11 talk about how brakes were 100 percent of what
12 caused Mr. Perry's mesothelioma when their own
13 expert in this case said the brakes didn't
14 count at all.

15 Lawyers can come into court, and they can
16 talk about the furor law. From 1969, the furor
17 memo, where Johnson & Johnson wrote down, their
18 medical director wrote down, "If people knew
19 there was tremolite in our baby powder, there
20 would be outrage."

21 They can come into court and call their
22 corporate representative, who pretends on the
23 stand he's never seen it, and then tells you
24 it's about skin irritation, not people's lungs
25 being crushed until they can't breathe from

1 terminal cancer.

2 Good lawyers can confuse anything. And so
3 once you get to 51 percent, you can just move
4 on.

5 The second reason the burden of proof is
6 only 51 percent is because the law respects
7 your time. Believe it or not -- I know it
8 doesn't feel like it sometimes when those
9 videos went on forever -- but the law really
10 does respect your time.

11 And so if you went back there and you sat
12 there for a month and you discussed it and you
13 went over every exhibit and you read every
14 transcript, you'd probably reach certainty like
15 we have that Johnson & Johnson played a role in
16 Michael Perry's cancer.

17 But the law says you don't have to. Once
18 12 of you reach 51 percent, you can just move
19 on to the next question.

20 The verdict form is five sections and
21 eight questions. We have different legal
22 claims. We have three legal claims, and then
23 there's the damages section, and then there's a
24 section about willful and reckless conduct.

25 The first section on the verdict form is

1 negligence. Were the Johnson & Johnson -- was
2 Johnson & Johnson negligent? And negligence
3 has a definition. It just means the failure to
4 act reasonably.

5 A lot of times people think, well,
6 negligence, it sounds like this really bad,
7 sort of evil thing that someone did.
8 Negligence just means if you don't act
9 reasonably careful and you hurt somebody,
10 you're negligent. That's it.

11 The classic sort of example of what
12 negligence is is somebody running a stop sign.
13 Nobody runs a stop sign and crashes into
14 somebody because they want to, because they
15 looked at the stop sign and they said, "I want
16 to hurt somebody; I'm going to run a stop
17 sign."

18 What happens is people take their eye off
19 the road for a moment. They run the stop sign,
20 and they crash into somebody. They didn't want
21 to. They didn't mean to. They didn't want to
22 hurt anybody. But the law says if you take
23 your eye off the road, that's not reasonably
24 careful. That's negligence.

25 I think what we've proven in this case is

1 that what Johnson & Johnson did was so far past
2 a reasonable mistake, it's not even close.

3 What we know about Johnson & Johnson is
4 that, by 1958, they knew two things:

5 Number one, there was asbestos -- number
6 one was asbestos gives people cancer.

7 And number two is there was asbestos in
8 the baby powder.

9 They wrote it down, fibrous particles of
10 amphibole in our baby powder are tremolite.
11 That's asbestos. That's not my definition.
12 That's not a lawyer's definition. That's not a
13 paid expert's definition. That's
14 Johnson & Johnson's own definition written down
15 in their own files. That's what they found in
16 the baby powder in 1958.

17 And I showed you this picture from their
18 Vermont mine. This was some of the material
19 from their Vermont talcum powder, fibrous
20 material from the waste rock identified as
21 tremolite.

22 I wanted to show you that so you know what
23 it looks like. That's part of the material
24 they were grinding into the baby powder and
25 that they knew was there in 1958.

1 At the same time, Johnson & Johnson was
2 advertising about how fragile babies are.
3 Babies are so fragile. Use our pure and safe
4 powder when they've written down in their own
5 records it contained asbestos.

6 And so Johnson & Johnson as a company was
7 at a turning point. They had to decide what to
8 do, a fork in the road, right? They could have
9 recalled the powder. They could have warned
10 people. They could have switched to
11 cornstarch. They had cornstarch the whole
12 time. They could have taken the talc out, and
13 they could have used cornstarch.

14 And what I think you'll learn and what we
15 know is that corporations, just like people,
16 can be responsible or irresponsible.
17 Corporations, just like people, can be honest
18 or they can be dishonest. And corporations,
19 just like people, can have character or they
20 can lack it.

21 When Johnson & Johnson knew there was
22 asbestos in their baby powder and they were
23 advertising it to moms, they showed you who
24 they were. They just kept selling it year
25 after year after year. Not for a day or a week

1 or a month, but for years they kept selling it
2 all over this country and telling moms it was
3 the purest protection; put it on your babies.

4 In 1966, a worker inside
5 Johnson & Johnson, one of their employees, sent
6 around this document. And he was asking why
7 are we still selling talc baby powder? Why are
8 we still selling it?

9 It has no medicinal value. It's a foreign
10 body that goes into babies' lungs, and there
11 have been at least three deaths not from
12 mesothelioma but from babies choking on the
13 powder. Sometime they'd knock it over and it
14 would fall on them, and they would choke.

15 Johnson & Johnson, in 1966, knowing that
16 it was a foreign body and that babies were
17 dying, wrote down why they kept selling it.

18 They said baby powder represents the
19 cornerstone of our company. They built their
20 entire company with baby powder. Not the baby
21 division. Not the baby powder that they said
22 they only made 45 million a year on. The whole
23 J&J. They built the company on baby powder.
24 And they'd also spent a bunch of money on the
25 talcum. And so they just kept selling the baby

1 powder year after year.

2 In 1967, Johnson & Johnson, they had been
3 using Italian talc and they were still using
4 Italian talc, but they bought this Vermont talc
5 mine. And they were going to slowly start
6 using the Vermont talc and the Italian until
7 1973 when they switched over to Vermont
8 completely.

9 They immediately tested the new Vermont
10 talc and found it to be exactly the same thing
11 that was in the other talc -- tremolite. And
12 then they just kept selling it.

13 By 1968 Johnson & Johnson in its own
14 records had 153 tests finding tremolite
15 asbestos in the baby powder, 153.

16 In 1969 the medical director of
17 Johnson & Johnson, the head guy in charge of
18 medicine, Dr. Thompson, wrote this memo to the
19 people in charge at J&J. There'd been a furor,
20 an outbreak of public anger -- what's that
21 furor means, outrage -- if it became known our
22 talc contained any significant amount of
23 tremolite.

24 And so when they get up and they tell you
25 the tremolite was safe and it wasn't asbestos

1 and it was no big deal and it couldn't hurt
2 anybody, they wrote down there'd be outrage if
3 people knew. We need to contact the law
4 department.

5 55 years ago, they knew this day would
6 come. They wrote it down and they said we
7 better lawyer up. And then they just kept
8 selling the asbestos baby powder and didn't
9 tell anybody.

10 And the tests just keep coming and coming
11 and coming, and there's over a thousand of
12 them. I'm just going to show you a few.
13 They're in evidence. You can look at them if
14 you want.

15 1971, Colorado School of Mines, J&J's own
16 consultant, the needles are tremolite in the
17 baby powder.

18 1971, Dr. Langer of Mount Sinai finds
19 another kind of asbestos, chrysotile, in
20 Johnson's Baby Powder, the same thing that
21 Dr. Lewin at the FDA found in 1972, the same
22 thing that Sperry Rand found in J&J's talc that
23 same year in the same sample.

24 And then there's Dr. Hutchinson. And I
25 just didn't do a good job during the trial

1 explaining exactly what Dr. Hutchinson did and
2 what J&J did to him.

3 J&J hired Dr. Hutchinson through their
4 go-to lab, McCrone, to double-check what
5 Dr. Lewin had found through the FDA, to
6 double-check the Lewin samples, to see if what
7 Lewin found, the asbestos was really there.

8 Dr. Hutchinson wrote a report finding the
9 exact same asbestos in the exact same Lewin
10 sample that Dr. Lewin, Dr. Langer, Sperry Rand,
11 and everyone else found. And he took pictures
12 of it. He took pictures of it.

13 Then the report went to Johnson & Johnson,
14 and the report talked throughout about the
15 asbestos he found. And then Johnson & Johnson
16 had another report written up that went to the
17 FDA that mentioned Dr. Hutchinson but left out
18 the dot dot dot.

19 The dot dot dot was the part of
20 Dr. Hutchinson's report where he found the
21 asbestos. They scrubbed that from the report
22 that went to the FDA and only sent the part
23 about Dr. Hutchinson not finding it with the
24 weaker microscope.

25 It would have been bad enough to just bury

1 Dr. Hutchinson's report and never tell anybody
2 about it. They didn't just do that. They took
3 his report and told the FDA he didn't write it
4 when he did, and it was written down and there
5 were pictures.

6 And in that report Johnson & Johnson told
7 the FDA there's been an extensive survey of the
8 Lewin sample -- that's Johnson & Johnson's
9 talc, the same talc they used in the baby
10 powder -- using the strongest microscope, the
11 big, giant microscope. None of the techniques
12 revealed any trace of chrysotile. That's what
13 they told the FDA when they had
14 Dr. Hutchinson's report finding chrysotile in
15 the talc in their files.

16 And then they buried Hutchinson's report
17 for 46 years. And it worked.
18 Johnson & Johnson documented about how
19 Dr. Schaffner -- that's the FDA -- was now
20 convinced that Dr. Lewin's findings are not
21 reliable and we don't think he's going to tell
22 anybody. They told the FDA Dr. Lewin was
23 wrong, there was no asbestos, when they have it
24 written down in their own files, and the FDA
25 believed them.

1 And then they just kept selling the
2 asbestos baby powder. And the documents and
3 the testing keep coming. This is 1973.
4 Asbestos, our powder contains quantities of
5 tremolite, which might be classified as
6 asbestos.

7 1974, Johnson & Johnson, they kept trying
8 to tell the FDA substantial asbestos can be
9 allowed safely in a baby powder. Why would
10 they say that if it wasn't there? Why would
11 they say asbestos is okay in our baby powder if
12 it was never there?

13 McCrone, Vermont talc samples that they
14 used in their baby powder for over 30 years,
15 fibrous tremolite, four times.

16 They always had the option to switch out
17 the talc for cornstarch, to take out the thing
18 that had asbestos in it and use cornstarch.
19 Cornstarch has been used in some body powders
20 since the turn of the last century. That's
21 what they told you under oath. They could have
22 always done it. Why didn't they?

23 They wrote down why. They knew that if
24 they switched out the talc for cornstarch, they
25 might get caught. Due to growing attention

1 shown by scientific and regulatory groups, we
2 should avoid changes to the product which would
3 increase our vulnerability to criticism or
4 suspicion.

5 They want you to believe they did nothing
6 wrong, that there was nothing to be suspicious
7 about, that there was never any asbestos. They
8 wrote down if we switch to cornstarch, we might
9 get caught.

10 And they kept trying to convince the FDA
11 that 1 percent asbestos fibers by weight in a
12 baby powder, millions and millions and millions
13 of fibers per bottle, was safe.

14 So the FDA didn't need to adopt more
15 stringent testing methods. Use the weak tool
16 that can't see less than 1 percent asbestos
17 because 1 percent asbestos is safe.

18 And then they kept selling it. And they
19 kept finding it over and over and over and over
20 again. McCrone confirmed asbestos. McCrone,
21 talc samples, asbestos, over and over and over
22 again. McCrone, fibers of asbestos, rather
23 high, over and over and over and over.

24 This is another just totally separate,
25 independent lab with nothing to gain, no dog in

1 the fight. Mountain State Research Lab tests
2 Johnson & Johnson's talc. The tremolite occurs
3 in needles.

4 EMV Associates in 1977, another lab, a
5 consultant to Johnson & Johnson. When you
6 weigh the weight of evidence, there are paid
7 experts and there are paid witnesses who come
8 in. They might be entitled to less weight.

9 There are neutral witnesses with no dog in
10 the fight, like Dr. Gibney, no dog in the
11 fight. They're probably entitled to more
12 weight.

13 But the most weighty evidence is the
14 evidence from their own people who had every
15 motive in the world not to find asbestos in the
16 powder of the company that hired and paid them.

17 That's who all of these folks are,
18 Johnson & Johnson people, that they hired and
19 paid, and who told Johnson & Johnson you've got
20 asbestos in your powder and they took pictures
21 of it, pictures that look just like what
22 Dr. Longo has found over 140 times in Johnson's
23 Baby Powder. And then they just kept selling
24 it year after year after year after year after
25 year.

1 There are documents from the '80s which
2 show that they sort of just stopped doing much
3 quality control at all. The quality control
4 testing of all production is minimal. Process
5 control testing is virtually nonexistent.

6 They had hundreds and hundreds and
7 hundreds of tests in their own documents
8 finding asbestos in baby powder, and they
9 didn't even really bother to use quality
10 controls. Year after year of testing.

11 In 1991 Dr. Johnson had a consultant named
12 Dr. Blount. She was a mineralogist. She was
13 an expert in looking at products and finding
14 what they contained. She was not a paid
15 expert, not a plaintiffs' expert, not one of
16 our people; she was Johnson & Johnson's expert.

17 She tested something called Talc Sample I,
18 and she found tremolite asbestos in it, the
19 same thing in their records hundreds of times,
20 in their powder. Sample I was Johnson's Baby
21 Powder.

22 She put it in a peer-reviewed published
23 scientific paper. But the only thing the
24 peer-reviewed published scientific paper was
25 that Sample I contained asbestos. There was no

1 definition of what Sample I was. So people who
2 read the paper didn't know whose powder it was.

3 But Johnson & Johnson did.

4 Johnson & Johnson had the key in their files
5 for 23 years that said Sample I is our baby
6 powder that was first released to the public in
7 2017.

8 They kept selling the powder year after
9 year after year into the '90s, into the 2000s.

10 In 1997 Johnson & Johnson started getting
11 sued from people with mesothelioma. They
12 started getting sued. People came to
13 Johnson & Johnson and said I have mesothelioma.
14 Did your talc contain asbestos? Did you hurt
15 me? Did you give me this cancer?

16 Johnson & Johnson, in an internal memo,
17 said the majority of asbestos bodies isolated
18 from the lungs of women in the general
19 population have tremolite or anthophyllite.
20 They're talking about women because women were
21 the ones who sued them first because women used
22 this powder more than men.

23 Women were the ones who put it on their
24 babies the most. Women were the ones who put
25 it on their bodies the most. But the fact that

1 they were talking about women doesn't mean
2 anything because if you're a man and you used
3 the powder like a woman did for 50 years all
4 over your body, it does exactly the same thing
5 to a man that it did to a woman.

6 Johnson & Johnson said because tremolite
7 and anthophyllite are known contaminants of
8 talc, rare cases of mesothelioma might be
9 related to cosmetic talc. They wrote that down
10 27 years ago.

11 Do you know what you call that? It's a
12 confession. They wrote down our talc with
13 asbestos in it is giving people this horrific
14 cancer that Michael Perry has 27 years ago.
15 And then they just kept selling it. They kept
16 selling it.

17 You know, it's one thing to read something
18 in a book, right? Read it in a book, but it's
19 another thing to experience it in real life.
20 Real people in real world in real life with
21 real cancer came knocking and told
22 Johnson & Johnson you hurt me; just like
23 Michael Perry, you hurt me.

24 They wrote down that it might be true.
25 And then they just kept selling the baby

1 powder. They just kept selling it. And they
2 told you why. Because we built this entire
3 company on the mother-infant bond. We're the
4 most trustworthy caring health care home
5 products company in the world. It's our key
6 competitive advantages, the mother-baby
7 company. And they stressed the mother-infant
8 bond.

9 That's what they did. They knew that if
10 this got out, that if people knew that what
11 they built their entire company on, the
12 mother-infant bond, the big J&J, if that got
13 out, it would destroy the company.

14 They knew the entire company was at risk
15 because what Johnson & Johnson is is the image
16 of the mother-infant bond. They wrote it down.
17 They gave speeches on it. It's written down
18 year after year. Not one person, not two
19 people, people all over the company in
20 different decades at different times said the
21 mother-infant bond is our company. And so they
22 just kept selling the asbestos powder year
23 after year after year.

24 In 2000 more people sued
25 Johnson & Johnson, came to Johnson & Johnson

1 with mesothelioma. And they wrote questions
2 under oath that we got to exchange in
3 litigation, written questions under oath.

4 Did your baby powder ever contain
5 asbestos? Did it ever contain tremolite? They
6 had hundreds and hundreds and hundreds of
7 tests, not -- not that they had to go ask
8 someone else for, not that they had to
9 subpoena, not that they had from somebody
10 else -- in their own files showing tremolite in
11 their baby powder.

12 They told these dying people under oath
13 the powder never contained it. It tells you
14 everything you need to know. It tells you
15 everything you need to know. They said it
16 under oath, but it wasn't true. And then they
17 just kept selling the powder year after year
18 after year.

19 In 2004 a TV station up in Sacramento not
20 involved with the lawsuit at all, not suing for
21 money, not coming into court wanting anything,
22 just a TV station, bought baby powder off a
23 shelf, sent it to a lab, and found asbestos in
24 it.

25 They contacted Johnson & Johnson. They

1 said we found asbestos in your baby powder.
2 You saw that video of Steve Mann. It kind of
3 looked like Santa Claus, but he's not Santa
4 Claus. He was the director of the entire
5 company for toxicology for health, Steve Mann.

6 They sent it to him. They had hundreds
7 and hundreds of tests finding asbestos in the
8 baby powder in their files. They got it, and
9 they said no, we couldn't verify it. We
10 couldn't verify it.

11 They could verify it by looking at their
12 own documents. They knew it was true. They
13 didn't need an investigation. They'd known for
14 50 years. And so they just kept selling it,
15 and they never told anybody.

16 They wrote down over and over why they did
17 it. Johnson's Baby Powder is the primary link
18 to the positive J&J name in the public mind.
19 It's sacred. It's a sacred cow. It's the
20 golden egg. It's our number one equity, our
21 flagship, our foundation, the cornerstone of
22 our company.

23 So they just kept selling it. And they
24 didn't just keep quiet. You know that long
25 Steve Mann video? It was so long, and I don't

1 know. I saw you all paying attention, but it
2 was pretty long.

3 They went out to these organizations.
4 47 years after they found asbestos, they hired
5 Dr. Wehner -- remember Dr. Wehner? They paid
6 him a bunch of money to write articles in
7 science 47 years after they found asbestos.

8 Dr. Wehner wrote in the medical journal
9 where he was on the board and he could publish
10 whatever he wants talc is not a carcinogen.
11 It's totally safe. There aren't even fibers in
12 it. Fibers. Not just no asbestos, not even
13 fibers.

14 They paid this guy to write litigation --
15 or to write articles so they can send them to
16 the NTP and convince the NTP, the National
17 Toxicology Program, don't list the talc as a
18 carcinogen that we've known contains asbestos
19 for 47 years.

20 And then they celebrated. Write notes,
21 NTP, who was going to list it as a carcinogen,
22 withdrew it from consideration. Dr. Wehner,
23 who we secretly paid, convinced them. That's
24 not my words. J&J wrote that. This is a
25 direct result of our efforts. We did it.

1 That is so shameful. There are no words
2 for it. They've known for 47 years. Is that
3 reasonably careful?

4 And then they just kept selling it in the
5 2000s still, year after year after year after
6 year, until 2017 when the truth finally came
7 out. Johnson & Johnson was finally forced to
8 turn over millions of pages of internal
9 corporate documents listing asbestos in their
10 talc hundreds and hundreds of times, hundreds
11 and hundreds of times.

12 And then two years later the FDA bought a
13 bottle of Johnson's Baby Powder off the shelf,
14 tested it for asbestos, and found asbestos over
15 and over again, and called it poison.

16 Johnson & Johnson took that bottle of baby
17 powder, flew it on a private plane to their
18 go-to lab, RJ Lee. They were panicked because,
19 unlike Dr. Hutchinson in the 1970s, unlike
20 Dr. Mann in the 2000s, this was front-page
21 news. It was front-page news. Everybody knew
22 what Johnson & Johnson had known for 60 years.
23 There was asbestos in the baby powder.

24 So Johnson & Johnson flew it to RJ Lee and
25 said please double-check. Please don't find

1 it. But RJ Lee did. They found the exact same
2 asbestos in the exact same bottle in the exact
3 same container the FDA did, and they found it
4 27 times. They took pictures of it.

5 Johnson & Johnson is selling baby powder
6 to be put on babies while this is happening.
7 And then Johnson & Johnson told the American
8 public it didn't happen. It didn't happen, the
9 same thing they did with Dr. Hutchinson and the
10 FDA. Dr. Hutchinson finds it; they bury the
11 report and tell the FDA it didn't happen.

12 The FDA finds it. Johnson & Johnson
13 confirms it with their own lab. And then they
14 tell the American public it didn't happen. And
15 they're going to get up and tell you now, it
16 didn't happen. Please don't set aside your
17 common sense.

18 You've seen it with your own eyes 27
19 times. If that's not negligence, what is? If
20 that's reasonably careful, what wouldn't be?
21 The answer to Question 1 should be yes.

22 Our next claim is something called strict
23 liability. It's Question 3 on the verdict
24 form. Most people don't know what that means
25 who are not lawyers.

1 The judge is going to give you the law.
2 That's the jury charge. When the Court refers
3 to the jury charge, that's the law. The judge
4 is going to read it to you and give you copies
5 of it. You'll have it back with you.

6 But the law describes strict liability as
7 liability without fault. And, boy, that
8 doesn't seem right. Why would somebody be
9 liable if they weren't at fault? You have to
10 do something wrong to be liable, right?

11 What strict liability focuses on is not
12 the conduct of the defendant but their product,
13 the product they made. It's focused on the
14 product. And the law has struggled with this
15 for a long time.

16 What do we do if a company makes a product
17 and they're not negligent? They're not
18 negligent. They test it. They use it.
19 They're careful. They use the best materials.
20 They're really careful in what they do.
21 They're reasonably careful. They are
22 reasonably careful. What do we do if that
23 product hurts then somebody? Who pays for it?

24 Does the person who was hurt -- I like to
25 use the example of an exploding toaster. Let's

1 say General Electric made an exploding toaster,
2 and they were super careful and they had great
3 scientists and they tested it with the best
4 methods, and they thought it was a great
5 toaster, and it went out and exploded and it
6 hurt somebody. Who pays for that? The person
7 who got hurt or the company who made the
8 product?

9 And society has to decide if it's the
10 person that got hurt, then society has to pay
11 for it.

12 What the law has decided is that the
13 company should pay for it even if they weren't
14 negligent because at least the company has the
15 opportunity to change the design and make it
16 safer in the future. That's strict products
17 liability.

18 And so what you determine is not whether
19 the company was unreasonable or not careful but
20 whether the product itself was unreasonably
21 dangerous.

22 And how you do that is you look at dangers
23 that would be reasonably anticipated. Were the
24 dangers of the product reasonably anticipated
25 by the folks who used it? If they weren't

1 reasonably anticipated, then the product was
2 defective and they're strictly liable for it.
3 I hope that makes some sense.

4 This is what folks anticipated about
5 Johnson's Baby Powder. This is an easy one.
6 They anticipated it was safe. They anticipated
7 it was good for babies. They anticipated it
8 was good for dad. They didn't anticipate that.
9 But that was the truth of the baby powder.

10 We asked Michael specifically, "Why did
11 you use it?" It was trusted family brand, and
12 it was safe for babies. Michael never
13 anticipated in a million years that this
14 product for babies would give him cancer.

15 And J&J knew people didn't anticipate the
16 harms. That's why they wrote down 55 years
17 ago, if people found out, there'd be outrage
18 because they knew people didn't know.

19 Johnson & Johnson's own corporate
20 spokesperson in the video we played for you
21 admitted that people didn't know. "No mother
22 or father would ever buy talc for use on
23 themselves or their children if they knew it
24 had a single fiber of asbestos in it, correct?"
25 The answer under oath for Johnson & Johnson,

1 "Yes."

2 So people never anticipated the dangers,
3 and the product was unreasonably dangerous.
4 OSHA is aware of no instance in which exposure
5 to a toxic exposure has more clearly
6 demonstrated detrimental health effects on
7 humans than asbestos. OSHA said this is
8 literally the worst carcinogen of all time.
9 OSHA said there's no safe level. A few days of
10 exposure have caused mesothelioma in humans.
11 Michael Perry powdered himself with this for 50
12 years, not a few days.

13 It's not close. It's not a judgment call.
14 This product wasn't safe. It's not safe for
15 toxic substances on babies. And they didn't
16 say just put it on babies. They said use it
17 your whole life. Put it on the kids. Put it
18 on the teenagers. Put it on mom. Put it on
19 dad. Put it on yourself your whole life. A
20 few days of this powder, to people who are
21 susceptible, can give you mesothelioma. And
22 the FDA calls it poison as well.

23 This really isn't a close call. This was
24 a defective product, and it wasn't safe. The
25 answer to Number 3 should be yes.

1 Our third claim is fraud, fraud against
2 Johnson & Johnson. And it's Question 5 on the
3 verdict form. Fraud also has a definition.
4 It's the perversion of truth for the purpose of
5 inducing another in reliance upon it to part
6 with some valuable thing. The perversion of
7 truth.

8 They took the most sacred and precious
9 thing in this world and they said, "Put our
10 baby powder on it. It's so pure, it feels like
11 love, love from mom." And the whole time they
12 knew that was in the powder. If that's not a
13 perversion of truth, what would be?

14 And they did it for money. This is their
15 slide. Let's take that mother-baby bond, that
16 sacred, precious thing, a mom's love for the
17 most important thing in the world to her. And
18 if we communicate that and create deep personal
19 trust, we're going to make a lot of money.

20 And that's what they did. And they told
21 people to use it for life. And they induced
22 Mr. Perry, Michael, to use it. This is one of
23 the bottles that he found in his house. You
24 understand he found the poison in his house.
25 And he said, "When it said purest protection, I

1 thought that meant safe." Because who
2 wouldn't?

3 This was another bottle in his house.
4 "Clinically proven." Boy, that sounds
5 sciencey, huh? Clinically. Lab coat.
6 Scientists. Proven mild. He thought that
7 meant it was safe too.

8 These moms that they advertised the powder
9 to, they said, "Put this on your fragile
10 babies. It will feel like love." That's who
11 taught Michael how to do it. It worked.
12 Michael's mom, who loved him so much, who
13 called him her little piece of toast, she's the
14 one who taught him how to do it, just like the
15 ads told him to.

16 Piggy banks, money, mother-baby bond, and
17 the worst carcinogen in human history. That's
18 fraud. It just is. The answer to Question 5
19 should be yes.

20 All three of the claims talk about
21 proximate cause, a proximate cause, the
22 negligence claim, the strict liability claim,
23 and the fraud claim. A proximate cause. Not
24 the proximate cause, not the biggest cause, not
25 the only cause, not the most important cause.

1 A cause. Was the baby powder with asbestos
2 that he breathed for 50 years a cause of his
3 mesothelioma?

4 And I know you heard about all the other
5 powders, and you're going to hear about it when
6 they get up. And I know you heard about the
7 brakes, and you're going to hear about all
8 kinds of stuff. But none of that matters. The
9 only question for you is did the baby powder
10 count even 1 percent? Did it count at all?

11 If it did, it was a cause of Mr. Perry's
12 disease. It doesn't have to be the only cause
13 or the biggest or the one even though it
14 obviously was. It was the one he used the
15 longest, he used the most. It was his first
16 exposure. It was his last exposure. It was
17 his biggest exposure. It was in the home. It
18 was when he was literally an infant. It was
19 when he was going through puberty as a
20 teenager, when his cells were dividing.

21 But it doesn't have to be the only cause
22 to be proximate cause. It has to be a
23 substantial factor in bringing about his
24 disease. So it has to be substantial; it can't
25 be nothing. But it can be one of many causes.

1 A substantial factor can literally be
2 1 percent. That's substantial.

3 We know that the exact product he used
4 caused the exact disease he has, not from a
5 paid expert, not from -- from a world health
6 organization, from IARC, the International
7 Agency for Research on Cancer. Talc with the
8 stuff that Johnson's Baby Powder had in it can
9 give people mesothelioma.

10 And there's no safe level. Not just OSHA.
11 Their director, no known safe level. Their
12 corporate spokesperson, no known safe level,
13 especially for children.

14 They're going to try to get up and talk to
15 you for an hour about a safe level when their
16 own people, their own documents, and every
17 government organization says there isn't one.

18 Their own documents, "In order to be safe,
19 it has to be free from asbestos minerals."

20 Michael's own treating physician, "Have
21 you ever heard of a level of asbestos that's
22 safe in a hundred mesothelioma patients you've
23 seen and the peer-reviewed scientific articles
24 you've published about mesothelioma when you've
25 studied under the foremost expert on earth,

1 Dr. Bueno, on this disease? Ever heard of a
2 safe level?" "No."

3 A few days can give you this disease.
4 Michael used it for 50 years. He used
5 literally half a ton of baby powder if you add
6 up all the bottles throughout his life.
7 Thousands of uses, hundreds of bottles, a
8 powder product used on him as a baby in the
9 home for a lifetime, during all the times when
10 he was having the most cellular division.

11 I know Dr. Brody was early in the case and
12 we ran out of time and he was really rushed,
13 but what he said is that the DNA in our cells,
14 when it divides, there's a shell around it.
15 That shell goes away, and the DNA is exposed.
16 And that's when the asbestos can hit the DNA
17 and damage it.

18 So when our cells are dividing the
19 fastest, our DNA is vulnerable the most because
20 the shell goes away and the DNA replicates in
21 the two cells.

22 When do you think our DNA -- when do you
23 think our cells are replicating the fastest?
24 When we're growing up. When we're babies.
25 When we're kids. When we're going through

1 puberty. That's when cells are dividing the
2 fastest. During every single stage of that in
3 Michael's life, he was breathing their asbestos
4 into his body in his home.

5 And what we know is that, when asbestos
6 gets in a home, it's nearly impossible to get
7 out. It doesn't just disappear. You don't
8 just powder yourself and then poof, it's gone.
9 It's in the carpet. It's in the drapes. It's
10 in the furniture. It's in the home.

11 Once asbestos is introduced in the home,
12 it will spread to all rooms, and it's almost
13 impossible to remove, even with a vacuum
14 cleaner. It will be easily disturbed in the
15 air from the slightest movement. And
16 sedimentation is very low. That means it
17 floats in the air, and it takes a long, long
18 time for it to hit the ground.

19 Johnson & Johnson in its own documents
20 said the type of asbestos in our baby powder is
21 not just that it was just asbestos, it's not
22 just that asbestos is horrible, it's not that
23 there's no safe level; they literally had one
24 of the worst kinds of asbestos in baby powder.

25 Erionite, which I know you never heard of,

1 is considered the most potent mesothelioma
2 producer, followed by tremolite. That's
3 Johnson & Johnson. Out of the six asbestos
4 minerals, the one in their baby powder is the
5 worst. There were guaranteed exposures.

6 We brought you a statistician, an
7 epidemiologist, to say, even though every
8 bottle didn't always have asbestos in it,
9 70-plus percent of them did. And if you add up
10 all the bottles that Michael used, it's more
11 likely for him to win Powerball twice than that
12 he miss the asbestos in Johnson's Baby Powder.
13 He was absolutely exposed. There's no doubt
14 about it.

15 And they used industrial talc in baby
16 powder. Industrial talc. The stuff in tire
17 factories, the stuff in roofing material. They
18 put that in the baby powder. It's undisputed.

19 Here is the definition of cosmetic talc.
20 Over 98 percent talc. Their own tests show, it
21 was never 98 percent here. It was even under
22 90. This is the Shower to Shower. 1972.
23 Michael's three years old. His mom is using it
24 in the house. It's industrial talc.

25 Johnson & Johnson's own documents say this

1 is a severe health hazard in all talc ores.

2 Not is it enough? Not do we need to do a dose
3 calculation? Not do we need to do funny money
4 math -- math. All the things you're about to
5 hear. If it's there, it's a hazard.

6 And the epidemiology proves it. The
7 epidemiology proves it.

8 These are separate epidemiology studies in
9 the peer-reviewed scientific literature. They
10 list the author's last name, reports the last
11 name. Rosenberg is the author's last name.

12 At the lowest levels of exposure to
13 asbestos, less than .1 fiber per cc years, four
14 times the risk, a quadrupling the risk of
15 mesothelioma at extremely low levels. 0.1
16 fibers per cc years, almost an eightfold
17 increase in mesothelioma. 0.07, less than
18 that, almost a tripling of the risk of
19 mesothelioma. .5 fibers per cc years, 28 times
20 the risk.

21 Those are the levels inhaled. The levels
22 inhaled from Johnson's Baby Powder are way more
23 than that. These are the levels from only 40
24 years of use. Michael's was 50, 50 years.

25 Dr. Gordon's paper, a peer-reviewed

1 scientific literature from a doctor, 1.9 fibers
2 per cc years. J&J's own internal estimates,
3 .18 fibers per cc years for diapering, 4.5-plus
4 for people who are 6-foot-2 tall, like Michael
5 Perry, who used it all over their body.

6 And then we have the folks who worked in
7 their mines, the miners. This disease is one
8 in a million, mesothelioma. It was one in 200
9 in their miners. Two out of 427 miners in
10 their Vermont mine died of mesothelioma, in the
11 thing they say had no asbestos in it and was
12 never there.

13 There are hundreds of cases of malignant
14 mesothelioma in folks who were exposed to
15 nothing but cosmetic talc in a peer-reviewed
16 scientific literature. 33 cases, only exposure
17 to cosmetic talc. 122 cases, the only known
18 exposure to asbestos from cosmetic talc. 75
19 individuals with mesothelioma, same thing.

20 And then there are Michael Perry's lungs,
21 with the exact same thing in the baby powder,
22 with the exact same thing they said causes
23 mesothelioma, looking exactly like the
24 tremolite asbestos standard, the tremolite in
25 Johnson's Baby Powder, the tremolite in Michael

1 Perry's lung.

2 The medical doctors came. Johnson's Baby
3 Powder was a substantial contributing factor to
4 Mr. Perry's disease. No medical doctor came to
5 dispute that. It's undisputed.

6 And his treater said it too. They made a
7 big deal about how well the treating doctor,
8 the guy who does these surgeries that take nine
9 hours, he's not an expert on what the products
10 can do. He's not a products expert.

11 So they're like, "Do you know about talc
12 in asbestos?"

13 He goes, "No, I'm not a product expert."

14 They made a big deal about that. But he
15 said if Johnson's Baby Powder had asbestos in
16 it, it caused Michael Perry's mesothelioma.
17 They brought no doctor to dispute that.

18 The answer on proximate cause for
19 negligence is yes, and for the other two claims
20 as well.

21 Then we get to Question 7. Question 7 is
22 about money damages for the things that were
23 taken from Michael Perry and Lonnie Long, money
24 for what was stolen from them.

25 It's not just what was stolen from them by

1 Johnson & Johnson. This is a little
2 counterintuitive. It's the total loss that
3 this disease has caused in their life, not just
4 the part caused by Johnson & Johnson, not just
5 the part caused by American International
6 Industries, not just the part caused by whoever
7 else you think may have played a role. It's
8 their total loss, the whole thing.

9 MS. BUENO: Objection, Your Honor.

10 THE COURT: Approach.

11 (Whereupon a bench conference was
12 held.)

13 MS. BUENO: He's suggesting some type of
14 an apportionment argument that they're allowed
15 to --

16 MS. MCVEY: I can't hear what you're
17 saying.

18 THE COURT: She's saying that this
19 suggests an apportionment argument.

20 I understand exactly the opposite. I
21 think what he's saying is you don't apportion;
22 you just look at the whole damage. That's what
23 I'm hearing.

24 MS. MCVEY: Exactly.

25 MR. ADAMS: Right.

1 THE COURT: I'll overrule the objection.

2 (Bench conference concluded.)

3 THE COURT: Objection is overruled.

4 MR. ADAMS: A total loss.

5 There's two categories that the losses
6 fall into. I know it's three lines, but
7 there's just two categories. There's one which
8 is the type of loss, the type of money damages,
9 that comes with a receipt, things like paycheck
10 losses, household services, funeral expenses,
11 medical bills. That's the economic loss,
12 things that come with a receipt.

13 We have a stipulation that the current
14 economic losses, the things that come with a
15 receipt, paycheck losses, is \$3.3 million and
16 change, \$3,329,973.05.

17 Remember Bob Johnson came and testified
18 over Zoom the other day, and he said the
19 household services, the value of what Michael
20 did around the house -- taking the garbage out,
21 mowing the lawn, making dinner, stuff like
22 that -- and his paycheck losses -- his money he
23 made every year -- was about \$2.8 million.

24 And then we had a stipulation read this
25 morning. I know it kind of whizzed by us. I

1 saw somebody trying to write it down. I don't
2 know if you got it all down -- it's in her
3 instruction -- was about \$510,000 more. So
4 2.8 million plus 510,000, that's how we get the
5 3.3 number. That's what that means.

6 It's only the current economic loss. But
7 the number that you have to write down is for
8 the past and the future. And I hate to say it
9 out loud with Michael in here, but there's
10 going to be a lot of medical expenses in
11 Michael's future. A lot. He's already had
12 510,000, and this has barely started. You
13 heard it came back, and his pleura is twice the
14 size it was. This is going to keep coming
15 back. And it's never going to stop coming
16 back.

17 And so I think, conservatively, Michael
18 has another half a million dollars of medical
19 expenses in his future. I think the number you
20 should write down is \$3.8 million.

21 These are for paycheck losses, medical
22 bills, household services. But I know y'all
23 know we didn't bring this case because Michael
24 can't mow the lawn. We brought this case
25 because they stole his life. And what the law

1 says is they have to pay for a fair trade for
2 what they took.

3 A lot of things about the law, we learned
4 in kindergarten, in preschool, kindergarten.
5 One of the things about the law that we learned
6 in kindergarten is that, if you take something
7 from someone else, if you take something that
8 doesn't belong to you from someone else,
9 there's three ways to make it right: You can
10 return it, replace it, or pay for it.

11 What they took can't be returned. Michael
12 will never live a day, another healthy day in
13 his life.

14 What they took can't be replaced. There
15 is only one Michael Perry.

16 And so they have to pay for what they
17 took. And it's the most expensive thing in the
18 world. It's a human being's life, a human
19 being who wants to live just as bad as any
20 human being who ever lived on this earth. He
21 wants to live so bad.

22 And so how do we put a value on what they
23 took?

24 You heard that, if Michael didn't have
25 this mesothelioma that's crushing his lungs, he

1 would have lived another 25.65 years. What's
2 that worth? If it's a small case, it's a small
3 verdict. If it's a medium case, it's a medium
4 verdict. If it's a big case, it's a big
5 verdict. If it's the most catastrophic and
6 horrible thing you can do to another human
7 being, it has to be the biggest and most
8 catastrophic thing the law allows. It's just
9 common sense.

10 What's a fair trade for stealing 25 years
11 of life? Is it a million dollars a year? If
12 they came to Michael and they said, "Michael,
13 we're going to give you this terminal cancer.
14 They're going to cut you in half. They're
15 going to literally peel the lining of your lung
16 off like an orange. You're going to have to go
17 through it all in front of your favorite person
18 in the whole world, who's going to have to take
19 care of you and take you to every doctor
20 appointment and watch you waste away." Do you
21 think he would have took it, \$25 million, to go
22 through what he's gone through? He never
23 would.

24 Even though they took the biggest thing
25 you can take from somebody -- what if they took

1 a finger? What's a finger worth? What would
2 people have to be paid to give up a finger?
3 Half a million dollars? A million dollars?
4 \$2 million? What about a whole hand? What
5 about every finger? What about their arm? 20?
6 30? 40 million? What about a leg?

7 They didn't take a finger or a hand or an
8 arm or a leg. They took his whole life. What
9 could be bigger?

10 But that's not even the biggest part of
11 the case because this case isn't about what
12 they took. It's about how they took it, what
13 they put him through, what he's facing in the
14 future.

15 Every person wants to die in their old age
16 in their sleep. Why is that? Because it's
17 scary to die. We're afraid that it's going to
18 hurt. And so we don't want to be conscious of
19 it. We want to be asleep. We want to just go
20 peacefully.

21 Michael is not going peacefully. They cut
22 him open. They poked him. They pumped him
23 full of chemicals. They radiated him. It's
24 just begun. This cancer literally crushes your
25 lungs until you can't breathe anymore. And I'm

1 sorry to say it in front of Michael, but it's
2 true. There's no hope.

3 You have to put a value on not just what
4 they took but how they took it, right? Michael
5 is afraid. He is scared to death. Pain and
6 suffering, mental anguish, grief, humiliation,
7 worry. You have to put a value on all that.

8 On every metric, it's as big as it gets.
9 Michael had a great life. It wasn't a big
10 life, a flashy life, a fancy life, but it was a
11 beautiful life that he had with his favorite
12 person in the whole world.

13 If you do 2 million a year, it's
14 \$51.3 million. I know that's a huge amount of
15 money. It's huge. I don't think it's enough.
16 For what he's going to go through, 2 million a
17 year, they stole his life.

18 MS. BUENO: Objection, Your Honor.

19 THE COURT: Approach.

20 (Whereupon a bench conference was
21 held.)

22 THE COURT: Let Mr. Brown get up here.

23 MR. BROWN: Thank you, Your Honor. The
24 problem is giving opinions about what the
25 verdict should be. That's for the jury to

1 determine. Filling in blanks with numbers is
2 inappropriate, in our opinion. We object to
3 that.

4 THE COURT: All right.

5 MS. MCVEY: And, Your Honor, he clearly
6 has given comparables to if it's a finger, a
7 leg, a suggestion. He's filling in there.
8 We've done it in every case. It's clearly
9 appropriate.

10 THE COURT: Overruled.

11 (Bench conference concluded.)

12 THE COURT: The objection is overruled.

13 MR. ADAMS: I could be up here asking for
14 \$100 million, and maybe I should have, but we
15 think that's fair. Please value his life.

16 You heard from Lonnie Long. He's also
17 lost something. I think you saw it when he
18 took the stand when he was so nervous and
19 afraid when he got up there and he did it
20 anyways.

21 When you take somebody's favorite person
22 in the whole world who they were going to grow
23 old with, who they loved more than anyone on
24 earth, you have to pay for it.

25 This is what Lonnie hand drew to Michael

1 to cheer him up when he got the worst news of
2 his life. I just think it tells you everything
3 you need to know.

4 Lonnie's been there every single day at
5 every single doctors' appointment, and he's
6 going to be there every single day and every
7 single doctors' appointment until Michael takes
8 his last breath.

9 I think half of Michael's loss is
10 appropriate. You can do more; you can do less.
11 You can do anything. That's what I think.

12 Question 8 is the most important question
13 on the entire verdict form. Did this company
14 do what it did because it didn't see a stop
15 sign and ran through it and was just negligent,
16 or is what they did willful? Did they see that
17 stop sign hundreds of times and put the pedal
18 to the floor?

19 Willful, wanton, or reckless conduct is
20 conscious. That means they knew. Failure to
21 exercise due care or conscious indifference to
22 the rights and safety of others or reckless
23 disregard of the rights and safety of others.

24 This company was so reckless, there's no
25 words for it. They knew it was bad. They knew

1 it would hurt people. That's why they tried to
2 cover it up over and over again.

3 They went from .5 percent -- that's
4 billions of fibers in a bottle -- to a few
5 isolated crystals. They minimized it. They
6 hid it. They concealed this for 46 years and
7 told the FDA it didn't exist and Hutchinson got
8 it wrong when there were pictures.

9 They tested with the weak tools when they
10 knew it wouldn't find asbestos. This is a
11 document we barely talked about, but it's in
12 evidence.

13 In 1977 Johnson & Johnson was trying to
14 get this J-41 method. I know you don't know
15 what that means. J-41 is their weak method
16 with XRD, the weakest tool that they tested the
17 baby powder with. In '77 they were testing out
18 that J-41 method.

19 They literally dumped asbestos in the
20 bottle. They spiked the samples with asbestos
21 to test this method to see if it was any good.
22 They sent the bottles which they've dumped
23 asbestos in to seven separate labs. Only one
24 of the seven found the tremolite they spiked
25 the sample with using their J-41 method.

1 The method was so trash, when they poured
2 asbestos in the bottle, six out of seven labs
3 missed it. That's the method they used for the
4 next 46 years. That is unconscionable. That
5 is so shameful. On babies.

6 MS. BUENO: Objection, Your Honor.

7 THE COURT: Approach.

8 (Whereupon a bench conference was
9 held.)

10 MS. BUENO: Objection to inflaming the
11 passions of the jury through words like
12 "unconscionable" and "shameful" and "use on
13 babies."

14 MS. MCVEY: We're talking about conscious
15 disregard for willful and wanton conduct. It's
16 clearly a word that can be used.

17 THE COURT: Ms. Pepke?

18 MS. PEPKE: I've been writing it down.
19 "Shameful," "heinous," "stole." They're using
20 criminal words.

21 THE COURT: I am concerned about that too.
22 I think you can make a point without as
23 pejorative a group of adjectives you're using.
24 So I'm going to sustain the objection and tell
25 the jury to disregard.

1 (Bench conference concluded.)

2 THE COURT: Ladies and gentlemen of the
3 jury, the defendant objects to the use of
4 pejorative words such as "stole" and words of
5 that nature. And I've sustained that
6 objection.

7 I think the argument can be made about the
8 nature of the conduct without using some of
9 those loaded words. So I've asked Mr. Allen to
10 refrain from that, and I strike those loaded
11 words from the record.

12 MR. ADAMS: Thank you, Your Honor.

13 THE COURT: Thank you, Mr. Allen.
14 Proceed.

15 MR. ADAMS: It was conscience. They
16 tested talc baby powder for asbestos thousands
17 of times. That's what I asked their corporate
18 rep when he came and testified. They tested
19 talc baby powder for asbestos thousands of
20 times, right?

21 This was the guy who, when I showed him
22 the documents, he pretended he had never seen
23 them, the furor memo. He was like, "What's
24 that?" Remember?

25 And they never told the moms. They never

1 told the moms that were so concerned about
2 asbestos in our baby powder that we have to
3 test it hundreds of times for asbestos.

4 This is a document you never saw, but it's
5 in evidence. We just never had time. Folks
6 wrote Johnson & Johnson because sometimes there
7 was, like, some news about asbestos in baby
8 powder and some people heard.

9 They wrote Johnson & Johnson. They said,
10 "Johnson & Johnson, I heard talcum contains
11 asbestos. Any information on Johnson's Baby
12 Powder?"

13 Johnson & Johnson responded, "We obtain
14 the purest talc. It undergoes a cleansing
15 procedure known as flotation, many separate
16 washing operations to remove any impurities.
17 Don't worry. Keep putting it on your baby,
18 keep putting it on yourself. We washed the bad
19 stuff out."

20 Except two years earlier in 1972, two
21 years before that letter, J&J wrote down that
22 didn't work. Asbestiform particles cannot be
23 processed out of the talc. But when concerned
24 citizens wrote them and said can it? they said
25 yeah, don't worry, we process it out.

1 Then they used the big microscope.

2 Remember that we had seen in industry
3 standards. Remember all that? But when they
4 used the big microscope, they rigged the test.

5 They said you have to detect five or more
6 asbestos minerals of one variety or you can say
7 it's not there. You can say it's not there.

8 That means 16 -- you can find 16 separate
9 asbestos fibers -- 4 anthophyllite, 4
10 tremolite, 4 actinolite, 4 chrysotile --
11 billions of asbestos fibers in a single
12 bottle -- when you find 16 in a microscopic
13 sample, that means billions in the bottle --
14 and you can say it wasn't there.

15 Let's see if they get up and they tell you
16 about how great their testing was now. I hope
17 you'll listen close.

18 They kept telling the FDA 1 percent
19 asbestos is safe. They wrote down inside we
20 need to get the FDA to adopt our J-4 method
21 that doesn't work quickly. Because if we
22 don't, the FDA will recommend more
23 sophisticated techniques with higher levels of
24 sensitization.

25 We've got to get the FDA to do our XRD

1 method that we know doesn't find asbestos. So
2 they adopt that as an industry standard before
3 they figure out to use the big powerful
4 microscope and not rig the test.

5 Use it on your family your whole life.
6 Concentration method, we talked about in
7 opening a little bit. We didn't -- I talked
8 about it with Dr. Longo quickly, but it kind of
9 whizzed by. I doubt anyone understood it.

10 In the '70s Johnson & Johnson knew you can
11 do the concentration method where you can
12 separate the talc from the asbestos. Remember
13 the tubes and you put it in the centrifuge and
14 you spin it? The asbestos and the talc are
15 different weights. And so the asbestos weighs
16 more. So it goes down to the end of the tube
17 and the talc floats up to the top.

18 Then you can take the asbestos out and
19 look just at the asbestos in a microscope.
20 Preconcentrated. They knew about it in 1973.
21 And when they used it, they find asbestos in
22 the Vermont talc.

23 And then they wrote down why they didn't
24 want to use it. We deliberately have not
25 included a concentration technique as we felt

1 it would not be in worldwide company interests
2 to do so. Don't use the sensitive test. Don't
3 use the sensitive test; you might find the
4 truth.

5 They said under oath it never contained
6 tremolite. This was a series of documents
7 where they used the TM 7024 rape of the test.
8 We can count the asbestos and report it's not
9 there.

10 But somebody didn't get the memo the first
11 time. Dr. Millette didn't get the memo from
12 McCrone, and he sent Johnson & Johnson a report
13 saying chrysotile asbestos is detected in the
14 samples.

15 Now, this isn't Vermont talc; it's
16 California talc. But that's not the point.
17 The point of this is it's using the TM 7024
18 method.

19 And I know everybody is tired. I saw some
20 tired faces.

21 This is using their method. So
22 Dr. Millette from McCrone says I looked at your
23 talc; I found some asbestos.

24 Then Roger Miller, the president of
25 Windsor Minerals -- that's Johnson & Johnson;

1 Windsor Minerals is the part of Johnson &
2 Johnson that owned the talc mine -- wrote to
3 J&J and said, I'm touching base with you to
4 complain on failure to read our correspondence.
5 As I explained on my visit to Chicago, your
6 report is couched in substantially different
7 language."

8 You used the wrong language in your
9 report. We didn't like the language. It's
10 very important that specific language be used.

11 Roger Miller from the mine in Vermont flew
12 to Chicago to McCrone to tell them in person
13 their language is unacceptable. The language
14 was the asbestos word they used.

15 And so after that, Dr. Millette sent a new
16 report to J&J. On the same samples, nondetect,
17 nondetect. They rigged the test. That's how
18 they got away with it for 60 years.

19 This wasn't running a stop sign. It
20 wasn't an accident. It wasn't a careless
21 mistake. It was deliberate in 20 different
22 ways. The answer to Number 8 should be yes.

23 Thank you all so much for listening to me.
24 I appreciate it.

25 THE COURT: All right. Mr. Allen, does

1 that conclude your presentation?

2 MR. ADAMS: Yes, Your Honor.

3 THE COURT: Ladies and gentlemen, let's
4 take our morning break. And what we can
5 anticipate when you come back, we will then go,
6 of course, to defendants' principal closing
7 argument. And then we'll come back for a
8 reply.

9 But we're going to take -- it's 10 minutes
10 after, roughly. Be -- take a break until
11 11:25-ish, but be sure everyone is completely
12 refreshed before you come back in.

13 Please stand for the departure of the
14 jury.

15 (The jury exited the courtroom at
16 this time.)

17 (The following proceedings were held
18 outside the presence of the jury:)

19 THE COURT: All right. Before we take our
20 break, anything further for the record?

21 MS. MCVEY: Not from us, Your Honor.

22 THE COURT: Very good. Please be at ease.
23 Mr. Brown?

24 MR. BROWN: Yeah. Your Honor, we don't
25 agree that -- we appreciate the Court striking

1 the commentary from Mr. Adams that was
2 designed --

3 THE COURT: Yeah, I keep calling him
4 Allen. I'm sorry for that.

5 MR. BROWN: That's all right.

6 Those comments were designed, in our
7 opinion, to incite passion and prejudice, and
8 Your Honor struck them; but we don't believe
9 that cures the argument, and we move for a
10 mistrial on that issue.

11 THE COURT: All right. Motion for a
12 mistrial on the basis of arguments calculated
13 to inflame the passions of the jury.

14 Ms. McVey?

15 MS. MCVEY: Your Honor, they were not
16 designed to inflame the passion of the jury.
17 And, in fact, what we had to show is a
18 conscious disregard. And that's what that was
19 directed to.

20 They can certainly make an argument in
21 rebuttal. This is an argument in front of the
22 jury. But even if you've done it improper, you
23 struck it from the jury. You made an oral
24 instruction about striking it, and they were
25 pejorative, and you asked the jury to disregard

1 them. That's a curative instruction.

2 THE COURT: Ms. Pepke, you very helpfully,
3 when we were at the sidebar, quoted the things
4 that you highlighted as adjectives that were
5 calculated to inflame the passion of the jury.
6 How about put those on the record?

7 MS. PEPKE: Yes. I will do that right
8 now. You read my mind.

9 So it began with telling the jury that
10 "these are the most heinous acts you can do to
11 another human being," referring to
12 Johnson & Johnson's -- defendants as confessing
13 that they were giving -- talcum powder was
14 giving people mesothelioma, referencing harms
15 to other people, referencing killing other
16 people, telling the American public that --
17 lying under oath.

18 They told dying people under-oath lies.
19 It's so shameful, lied to the American public.
20 They should be given money for what was stolen
21 from them. They stole his life and are getting
22 away with it -- or they've got away with it.
23 This is the most catastrophic thing you can do.

24 And then, of course, they emphasize the
25 willful and wanton question is the most

1 important question on the verdict form. Of
2 course, the jury has no idea what they're
3 supposed to do with that unless they're told
4 that they cannot give punitive damages at this
5 stage and that question would take them to a
6 second stage.

7 If the Court is not going to grant a
8 mistrial, we would request the instruction
9 be -- it goes to 4 -- that no punitive damages
10 are to be awarded in this stage.

11 THE COURT: All right. Let me say with
12 respect to the recitation of the language that
13 was viewed as inflaming the passions of the
14 jury, and I'm just going to go down these.

15 "Heinous" was said in the very opening; no
16 objection.

17 "Confessing" was said at some point; no
18 objection.

19 "Harm to other people" is, in my view, a
20 legitimate thing to discuss.

21 "Lying under oath" is appropriate if they
22 took an oath in a particular document, and the
23 document was shown to the jury that was an
24 under-oath document in another case.

25 "Lying," I think, is a pejorative term.

1 And that is what I meant by striking pejorative
2 sort of terms.

3 "Shameful," I think, is a little over the
4 top. That's what I meant by -- I think that
5 was a valid objection.

6 And "catastrophic" -- "catastrophic" has
7 been said several times. I think it's a fair
8 commentary on the extent of the damages to
9 someone who they contend they have shown is
10 going to die because of the product. I don't
11 think "catastrophic" is a pejorative term; it
12 is a term that measures the extent of the
13 damage.

14 And "stolen," I felt that the use of the
15 word "steal" or "stolen" was a pejorative term,
16 and that's what I meant.

17 So if you want me to repeat to the jury
18 the words that I said pejorative, I think the
19 jury got the picture that what I was saying was
20 don't use pejorative terms or unduly dramatic
21 terms, but quantifying the part of -- the
22 extent of the damage, I think, is a legitimate
23 thing.

24 So in short I give that as a predicate to
25 say I don't believe the use of the few terms

1 that I would say were pejorative were so
2 inflammatory as to overcome the logic in the
3 minds of the jurors and have them decide the
4 matter on the basis of passion or emotion.

5 I know you disagree with that, but I'm
6 just putting on the record what my ruling is.

7 Now, with respect to this punitive damages
8 thing, I just go all over the block about it.
9 I am not going to put anything in there that
10 violates what I think is the clear preference
11 of the appellate authorities in this state for
12 not injecting punitive damages into the actual
13 damages portion of the trial.

14 But my feelings are a little bit
15 influenced by the fact that some pejorative
16 terms were used, and they were used in
17 connection with talking about willful, wanton,
18 and reckless conduct, which is the predicate
19 for punitive damages.

20 And so I'm going to instruct them on
21 something along those lines. And I haven't
22 decided exactly what that something is, but I'm
23 going to go to my chambers and cogitate about
24 that. And then I'll come back and tell you
25 what I'm going to charge.

1 MS. MCVEY: Judge, may I be heard on that
2 before you --

3 THE COURT: You can be heard as soon as I
4 figure out exactly what I'm going to say. But
5 if you want to say something in general about
6 the fact that you don't want me to mention
7 punitive damages, I --

8 MS. MCVEY: And we perfectly stayed away
9 from that, right? I mean, we stayed away from
10 any talk about damages. But we have a burden
11 on this first part to talk about willful,
12 wanton, reckless conduct by clear and
13 convincing evidence.

14 THE COURT: Yes. That's true.

15 MS. MCVEY: That's the standard, and
16 that's what we were addressing in this.

17 THE COURT: Yes. I understand that. And
18 that, frankly, is exactly what I would propose
19 to tell the jury is it is plaintiffs' burden to
20 show -- to prove all these elements and
21 findings that you're going to make in this
22 portion of the trial.

23 This is an actual damage portion of the
24 trial. One of the things that they're going to
25 have to prove is willful, wanton, and reckless

1 conduct by clear and convincing evidence. I've
2 asked you to find that in the actual damage
3 portion of this case. This is not a case about
4 anything at this point other than actual
5 damages.

6 MS. MCVEY: And that's all we argued in
7 terms of --

8 THE COURT: That's the way I would say it.

9 MR. BROWN: Your Honor --

10 THE COURT: And, therefore, I wouldn't use
11 the word "punitive damages," because I'm
12 wanting to stay away from that --

13 MS. MCVEY: Thank you.

14 THE COURT: -- in light of what I
15 explained to you -- as a judge, my
16 interpretation of what our court wants us to do
17 and not do in this matter.

18 MR. BROWN: Thank you, Your Honor.

19 MS. PEPKE: We'll wait until we hear what
20 the actual instruction is and put any other
21 objections --

22 THE COURT: Sure. But I can tell you it's
23 not going to use the word "punitive." It's
24 going to say that, as part of what they have to
25 show in this actual damage matter that's being

1 presented to you for your evaluation and
2 verdict, is they are being required to show
3 that the conduct was -- now, see, that's --
4 darn. I don't know how to do that because they
5 can still give a verdict without having to show
6 that.

7 MR. BROWN: Your Honor, may I say
8 something?

9 THE COURT: Yes.

10 MR. BROWN: There was a statement made
11 going to exactly what Your Honor is saying
12 you're intending to do about this is not a
13 punitive stage. This was the statement because
14 I wrote it down.

15 Cannot put a value on what they took but
16 how they took it. You have to look at how they
17 took it.

18 MS. MCVEY: How he's going to die?

19 THE COURT: Now, that's legitimate.

20 MS. MCVEY: How he's going to die.

21 THE COURT: Yeah, how he's going to die.

22 MR. BROWN: "How they took it" is a
23 reference to the conduct.

24 MS. MCVEY: Right, because --

25 THE COURT: Wait a minute, Ms. McVey.

1 MS. MCVEY: Sorry.

2 THE COURT: I know you feel very strongly
3 about this, as do your opposing counsel. I'm
4 trying to be the voice of reason, but I'm not
5 having much success at that.

6 MS. MCVEY: Sorry, Judge.

7 THE COURT: They have to prove, in my
8 view, Mr. Brown, that the conduct is, you know,
9 intentional conduct.

10 MR. BROWN: I understand. But he uses the
11 word "value" along with "conduct."

12 THE COURT: That's okay. That's part of
13 what they have to show, that this intentional
14 conduct has a value. And his life has a value.
15 What's wrong with that?

16 MR. BROWN: Your Honor, I --

17 THE COURT: Punitive damages, my friend,
18 is not about any of that. Punitive damages is
19 in a completely different separate hemisphere.
20 Punitive damages is predicated on the finding
21 of actual damages and then looking at whether
22 the conduct is so severe that it should be
23 punished with punishing damages. That's a
24 whole separate kettle of fish.

25 Now, the standard for the punishing

1 damages is willful, wanton, and reckless
2 conduct. And I have chosen to not simply open
3 a punitive case by saying, "Hey, they want some
4 punitive damages, but what you've first got to
5 do" -- if they don't find that, then we don't
6 have a punitive damages hearing.

7 I've done that in every one of these cases
8 I tried so far. Nobody's fussed about it. But
9 I must concede to you, Mr. Brown, that nobody's
10 really honed in on what you're honing in on
11 right now.

12 So I don't know quite what I'm going to
13 do, but here's what I would like to do before I
14 hear anything further from anybody. I would
15 like to go to my chambers and think about this
16 for a moment.

17 MS. MCVEY: Thank you, Judge.

18 MS. FLYNN: Your Honor, I'm so sorry. I
19 do have one more matter that's separate from
20 that one.

21 THE COURT: All right.

22 MS. FLYNN: It just relates to the
23 economic damages. I was just a little
24 confused. I thought that the way it came out,
25 I think with J&J, there was a \$3.3 million

1 stipulation; and then obviously AII stipulated
2 to actual medical expenses of 510,000. But
3 that 510,000 is inclusive in the J&J
4 stipulation; so it's only 3.3, not 3.8, which I
5 think is what they put on the verdict form as
6 past economic damages as if you're adding those
7 two numbers.

8 MS. MCVEY: He's talking about future.
9 3.8 refers to the future.

10 THE COURT: He was talking about present
11 and future economic damages. And he made that
12 very clear, Ms. Flynn. He said that he's going
13 to have a lot of additional medical expenses,
14 maybe as much as a half a million more dollars.
15 He added that to the already proved damages,
16 medical damages, to come up with that 3.8 total
17 loss figure.

18 So I overruled that objection.

19 MS. FLYNN: I understand, Your Honor.

20 THE COURT: I'm not going to hear any more
21 objections right now. I'm going to go think
22 about it.

23 MS. MCVEY: Thank you, Judge.

24 THE COURT: With all peace and love.

25 (Whereupon there was a recess in the

1 proceedings from 11:20 a.m. to 11:40 a.m.)

2 THE COURT: Please be seated.

3 (The following proceedings were held
4 outside the presence of the jury:)

5 THE COURT: All right. I still think the
6 safest thing to do is to do what I've been
7 doing. But if I were to say something to the
8 jury, I'm going to tell you what I would say to
9 them, and I'm going to receive some very brief
10 discussion about it. But I am not going to get
11 off on a huge, long tangent about this. We're
12 right in the middle of closing arguments.

13 Let me remind you that the only reason I
14 spend all this time with the lawyers developing
15 a complete and guaranteed group of charges and
16 receiving all your objections and getting all
17 that out of the way is so that -- I do it for
18 your benefit.

19 I've tried cases for many, many years.
20 And it used to be you didn't know what the
21 judge was going to charge. You had to kind of
22 guess in your closing arguments. You could
23 step into something you didn't want to step
24 into that way. And I don't -- I never liked
25 that. I also -- you sometimes didn't even know

1 what the verdict form was going to look like.

2 I've lived through those bad old times.

3 Thank the good Lord, the trial practice in this
4 country is such that you don't do ambush-type
5 things like that.

6 And I've got a group of some of the top
7 tier in this country of very skilled
8 litigators -- Ms. Bueno, Ms. Pepke, Mr. Cowan,
9 my own Mitch Brown, and every one of the people
10 in the plaintiffs' claim. Ms. McVey happens to
11 be local, but she can go toe to toe with
12 anybody in the country. And Ms. Gross and
13 Mr. Adams go all around the country, just as
14 Ms. Bueno and Ms. Pepke do, trying these very
15 complex cases.

16 Y'all are at the top of the line, and
17 things are now in a much more professional
18 posture than they ever were in the bad old days
19 when we tried products liability cases with the
20 Uniform Commercial Code being adopted my second
21 year in law school and certain product
22 liability matters just arising and being
23 mature. Now we have this very sophisticated
24 practice.

25 That's why I try to get all that settled

1 so you will know exactly how to argue your case
2 and present your case to the jury.

3 Now I've got this snafu that's developed.
4 That's a World War II term I don't want to
5 completely define. And I just don't know what
6 to do because the more you say, the more you
7 dig yourself a hole. If I were to say
8 something, it would run something like this:

9 I have not given you yet my charge, but I
10 have settled that so that the lawyers could
11 adequately and accurately argue their case.
12 The same is true with the verdict form. I
13 haven't given you the verdict form yet, but I
14 let them know what it would be so they could
15 show it to you and talk about it, and they've
16 done that and they're going to continue to do
17 that as defendant presents its closing
18 arguments.

19 At this moment, this is a trial about
20 actual present and future damages, economic as
21 well as noneconomic. And at the end of the
22 verdict that represent your views about that,
23 you'll ask the question, and that question asks
24 you to -- it's a question regarding the
25 character of the conduct.

1 If you find that they are -- and it says,
2 if you find an answer, an affirmative answer to
3 this conduct, that is a verdict for the
4 plaintiff on any of these causes, you are asked
5 to characterize the conduct of the defendant.
6 And that's the question on willful, wanton, and
7 reckless conduct.

8 Now, that's all I would say. What you
9 could then go and say -- but this is where you
10 start digging a hole -- this finding would
11 determine whether or not the plaintiff may also
12 request of you punitive damages. That is not
13 an issue at the present time.

14 That's kind of how I would do it, but I
15 just -- there are all kind of perils no matter
16 which way I go on this thing.

17 So, Ms. McVey, briefly.

18 MS. MCVEY: Briefly, I don't think you
19 need to say anything, but if you do say
20 something, we certainly don't think you should
21 say, "If you find yes on this question, you're
22 going to go to a punitive damages."

23 THE COURT: Well, see, and that's the
24 problem. It gets them -- but it's going to all
25 be over Friday. Once you start down that road,

1 you introduce elements into the jury's inquiry
2 that ought not to be in that inquiry right now.

3 MS. MCVEY: And that's the fear. I think
4 you've made a curative instruction to the
5 extent -- we don't believe there was one
6 needed, but to the extent that you needed to do
7 one, you've done that. I think we move on.
8 They're going to get your whole jury charge.
9 And it's coming.

10 THE COURT: And the verdict restricts them
11 to a warning frames for actual damages.

12 MS. MCVEY: Absolutely.

13 THE COURT: And I think -- so that's kind
14 of the way I am.

15 Ms. Pepke.

16 MS. PEPKE: Thank you, Your Honor. Of
17 course, we stand on our objections that we
18 made. We believe the line was crossed. We do
19 believe that the combination of the
20 inflammatory language that was used and also
21 asking the jury to focus on the most important
22 question on the verdict form being the willful,
23 wanton question and now leaving the jury with
24 wondering what in the world we're supposed to
25 do with it if it's the most important question

1 on the verdict form?

2 It's prejudicial to us. We do not think a
3 partial curative charge that you suggested
4 would be sufficient. It would be the entire
5 charge directing them that there would be a
6 base for punitive damages.

7 THE COURT: I understand your position,
8 and while I think it's well said and well put,
9 as it has been by your colleague Mr. Brown and
10 your colleague Ms. Bueno, both in our sidebars
11 and in this argument here, I just think there's
12 more danger and more peril if I step into this
13 arena than if not.

14 So I am going to decline the request that
15 I say something about punitive damages with
16 respect to the piece of the -- of the verdict
17 form that asks for a characterization of the
18 conduct.

19 I understand all your arguments. And, you
20 know, this is a big question. I mean, it will
21 be preserved for appeal, and who knows what the
22 appellate authorities will say?

23 I revere the appellate authorities, and
24 they have final words on these matters, not me,
25 the trial judge. I'm doing the best I can, but

1 my best at this moment tells me that there's
2 more danger in where you go with this punitive
3 thing and then how much you have to reassure
4 the jury and so forth and it is simply to leave
5 it as I've always left it in other trials.

6 And I don't think that the few remarks of
7 a pejorative nature that were made by
8 Mr. Adams, which I have struck, imperil the
9 situation to such an extent that I need to vary
10 from that by the request you asked me to
11 consider with respect to punitive damages.

12 But you've made a very good record on this
13 thing, and who knows how it will turn out? I
14 can't solve every problem and keep every
15 appellate issue out of the record. That's not
16 what I'm supposed to do.

17 So your issue is preserved big-time, as
18 far as I'm concerned.

19 MS. PEPKE: Thank you, Your Honor.

20 THE COURT: And I'm going to ask the jury
21 to come forward and listen to the very good
22 arguments of Ms. Bueno.

23 MS. BUENO: And we're starting with
24 Ms. Flynn, remember.

25 THE COURT: All right. Ms. Flynn.

1 Bring in the jury.

2 (The jury entered the courtroom at
3 this time.)

4 THE COURT: Have we got the material that
5 I asked to be brought?

6 MS. MCVEY: I just got a copy of it. I
7 don't know if it's full, but I have a copy.

8 THE COURT: At some point I would like to
9 see it.

10 MS. MCVEY: Do you want it now?

11 MS. BUENO: Yes.

12 MS. FLYNN: Yes, Your Honor. I did want
13 the record to reflect we did provide
14 information --

15 THE COURT: I'm going to reserve judgment
16 on how I would characterize this until I've
17 looked at it. All right.

18 THE BAILIFF: Jury is seated, Your Honor.

19 THE COURT: Thank you, ma'am.

20 Ladies and gentlemen of the jury -- you
21 may be seated, Counsel.

22 Ladies and gentlemen of the jury, you'll
23 now hear closing arguments presented on behalf
24 of AII by Ms. Flynn. They will be brief in
25 nature. And then we'll go right to closing

1 arguments presented by Ms. Bueno on behalf of
2 Johnson & Johnson.

3 All right. Ms. Flynn.

4 MS. FLYNN: Thank you, Your Honor.

5 - - -

6 CLOSING ARGUMENT BY MS. FLYNN

7 - - -

8 MS. FLYNN: Ladies and gentlemen of the
9 jury, I just wanted to spend a few moments with
10 you this morning. I'm not going to take up
11 much of your time before I turn you over to
12 Johnson & Johnson to listen to what they have
13 to say to you.

14 But as you know, I've been kind of tucked
15 in the corner back over there in the back of
16 the courtroom. I haven't had many
17 opportunities to talk to you.

18 My name is Stephanie Flynn, as the judge
19 told you. I do represent a company called
20 American International Industries. You've
21 probably heard them referred to throughout this
22 trial as AII. So when you hear that, that's my
23 client, American International Industries.

24 And what I wanted to say to you today is
25 that the only just verdict in this case as to

1 All is zero. Almost every decision that has --
2 in this case as to All has been made for you.

3 But soon there is a decision that you are
4 going to be able to make. You've not heard
5 from me very much because, as the Court has
6 told you, I could only discuss damages, and
7 that remains true right now. All I can do
8 right now in front of you is discuss damages
9 due to a function of the law.

10 You heard earlier this morning that we've
11 stipulated to actual medical damages. And what
12 that means is we looked at the medical bills,
13 and we saw what they were for, and we added
14 them up, and we agree the math is right. The
15 math is correct. That does not mean that we
16 think that that's what you should award to the
17 plaintiff.

18 We so too talked to Robert Johnson. You
19 remember the plaintiffs' economist. We did
20 that -- we hoped it wasn't a waste of time.
21 The reason we did that is because we had
22 concerns about his underlying assumptions that
23 make up the numbers. And we hope that you will
24 also take that to heart and really look at the
25 numbers and question his assumptions as well.

1 In the plaintiffs' closing argument, they
2 showed you the verdict form, the same one.
3 It's three pages. You're going to see it
4 again.

5 As you'll see on the verdict form as you
6 go down, you saw checks by American
7 International on each of the causes of action
8 already made for you.

9 You have heard the evidence that the
10 parties have elected to present to you in this
11 case. The decision is going to be yours.
12 You're free to award the damages the plaintiff
13 requested. You're free to award zero. You're
14 free to award a number that's somewhere in
15 between that. When you have the opportunity to
16 decide any damages as to AII, the only just
17 verdict in this case as to AII is zero.

18 I really wish we would have had more time
19 to spend with you, the jury. We appreciate
20 your attentiveness over these last few days. I
21 know that you've paid very close attention, and
22 it's much appreciated.

23 I'm going to let the Johnson & Johnson
24 lawyers now come up and say a few words to you.
25 Thank you.

1 THE COURT: Thank you, Ms. Flynn.

2 And now you'll hear from Ms. Bueno on
3 behalf of Johnson & Johnson.

4 MS. BUENO: Just one moment, Your Honor,
5 while I kind of get myself set up.

6 THE COURT: Certainly. You take your
7 time.

8 MS. BUENO: May I proceed?

9 THE COURT: Yes, ma'am.

10 - - -

11 CLOSING ARGUMENT BY MS. BUENO

12 - - -

13 MS. BUENO: Last Monday when I was here, I
14 told you I was going to stand right in this
15 spot in my closing argument, and here I am.
16 And here I am asking for you to find that the
17 plaintiffs have not proven that Johnson's Baby
18 Powder caused Mr. Perry's cancer. And if they
19 cannot prove that Johnson's Baby Powder caused
20 his cancer, they have no case.

21 And I sat here this morning, like you did,
22 and I sat here through this trial, and I've
23 heard these allegations. I know that you've
24 been disturbed by them, and it would be natural
25 if you felt some concern, some emotion when you

1 saw the documents and you heard the argument,
2 particularly the way they were put up there.
3 It's natural.

4 And, you know, I felt that same emotion,
5 but I think for a different reason. I felt
6 some emotion because it is a misrepresentation
7 of the documents and the story of the
8 scientists and the doctors at Johnson &
9 Johnson. It's a distortion of the truth. And
10 when you take words out of documents and you
11 cut them with scissors and you put them in an
12 order on a slide and say that that's what the
13 document says, that's a problem.

14 There are going to be documents with you
15 in the jury room, and I encourage you, I beg
16 you to read the documents because the documents
17 and the facts and the truth of this story are
18 not what you have heard throughout this trial
19 and it's not what you've heard this morning.
20 So if I'm getting emotional, that's why.

21 I'm going to spend some time on that
22 today. But I'm going to start today with you
23 where I started last Monday because I think my
24 defense in this case has been clear from the
25 start.

1 And what was it that I told you last
2 Monday? Dose matters. Dose matters.

3 And in order to win this case, the
4 plaintiffs' lawyers must prove to you that the
5 asbestos, not just in some bottle of Johnson &
6 Johnson somewhere decades ago, but the asbestos
7 in the bottles that Mr. Perry used was enough
8 to get into the air around him and to lodge in
9 his lungs and have it be retained. And they
10 cannot and did not do that.

11 And then they accused me of not bringing
12 any expert to refute their claims. But every
13 single thing I told you in opening statement
14 that the evidence will show came into this
15 trial. There's not one promise that I made to
16 you that you did not hear and that is not in
17 evidence.

18 So when you're weighing the evidence in
19 this case, as you are asked to do, think about
20 Dr. Brody because he told you what I said he
21 would. Dr. Haber. Dr. Gibney, the treating
22 physician. Dr. Madigan. Even Dr. Longo.
23 Their experts, along with Dr. Gibney, told you
24 exactly what I said they would. Exactly.

25 The evidence here is clear, and we're

1 going to go through that. I'm going to walk
2 through everything I told you in opening and
3 show you that I proved that with the evidence.

4 They said we didn't bring any other
5 experts. Their expert told my story and proved
6 my defense for Johnson & Johnson. And I'm
7 going to show you that.

8 And my plan when I started this trial,
9 when I was thinking through to today and
10 thinking what I was going to say to you in
11 closing statements, my plan was to structure it
12 and build it around this. I thought we would
13 spend our time together and I'd walk through
14 the bottle and the air and the body. And
15 that's the defense: Dose matters. And then I
16 thought I was going to talk to you about the
17 brake exposure that you've heard about. So
18 dose and brakes, that was my plan.

19 But then something happened to change that
20 plan. It kind of got derailed. And I think
21 you know why. It was a big moment. I told you
22 in opening statements that there was a tissue
23 test coming from Mr. Perry. Remember? And I
24 said I don't even know what it is. This wasn't
25 even evidence that we had when we started the

1 trial.

2 I knew Dr. Longo, their expert, was going
3 to come in and say, "Here's what I found in
4 Mr. Perry's tissue," but we didn't know, when I
5 first talked to you, what in the world that
6 was.

7 And it was after that opening statement on
8 Monday, before Dr. Longo came, that the truth
9 was revealed. And what I realized when I saw
10 that test result is that we now have physical
11 evidence to prove that Johnson's Baby Powder is
12 not to blame for Mr. Perry's cancer. So in
13 addition to everything we learned about dose,
14 we now have physical evidence that Johnson's
15 Baby Powder is not to blame.

16 So for that reason, I'm changing my order
17 here. I'm going to start by talking about the
18 tissue test; then I'm going to talk about dose;
19 and then I'm going to talk about the brake
20 exposure you've heard about.

21 And once we get through with this, these
22 three items proving why Johnson's Baby Powder
23 did not cause Mr. Perry's cancer, then you
24 better believe it, I'm going to address some of
25 those claims you heard this morning and I'm

1 going to tell you why they're wrong and I'm
2 going to explain why it is a distortion of the
3 facts. So that's my plan for you today.

4 And I have a lot to get through. I'm
5 going to try to slow it down and make sure it's
6 clear because all of this is very important.
7 All of this is evidence in this case.

8 Let's start with the tissue test. I have
9 a board here, and I'm sure plaintiffs might
10 want to see it as well if they haven't already.
11 This is a board -- and I hope you all can see
12 it. And I'm going to talk you through.

13 On the left-hand side I have the types of
14 asbestos that were shown to you in plaintiffs'
15 opening statement. So the slide that you're
16 seeing on the big screen are the six types of
17 asbestos that counsel told you in opening
18 statement are there. And then here were her
19 statements to you.

20 The statement was -- and looking at the
21 highlighted section in yellow -- the four you
22 have to worry about for the length of this
23 trial are tremolite, anthophyllite, actinolite,
24 and chrysotile.

25 So what I have here -- and I hope you can

1 see it -- in this first column is plaintiffs'
2 opening statement.

3 Can everybody see that okay? Okay.

4 So what I'm going to do is I'm going to
5 put a check next to what she said, the four
6 types of asbestos that we need to worry about
7 in this trial. And they were tremolite,
8 anthophyllite, actinolite, and chrysotile. So
9 that's what we heard in opening statement.

10 Then Dr. Haber, their pulmonology expert,
11 talked to you about something called a
12 fingerprint. I don't know if you remember
13 that, but he talked to you about some studies
14 that had been done on tissues of people who had
15 mesothelioma.

16 And he claimed to you that these patients
17 had only had cosmetic talc exposure. And what
18 he said is that in these studies, when you look
19 at the tissue, you find talc, tremolite, and
20 anthophyllite. He said it was the fingerprint.
21 He used that word a couple times.

22 So Dr. Haber's fingerprint is asbestos
23 tremolite and anthophyllite. That's what
24 Dr. Haber said is in the tissue of people using
25 Johnson's Baby Powder and cosmetic talc who get

1 mesothelioma.

2 Then you heard from Dr. Longo, their
3 testing expert. What I have here is what
4 Dr. Longo finds. And remember, Dr. Longo
5 generally looks at talc, right? So I'm going
6 to write "talc" up here so there's no
7 confusion.

8 So Dr. Longo testified that, when he's
9 looking in Johnson's Baby Powder and other
10 cosmetic talc, he finds anthophyllite,
11 tremolite. And then he also talked about
12 actinolite and chrysotile.

13 So when Dr. Longo is looking, this is what
14 he says he finds in our talc. And what he said
15 was that he finds more anthophyllite than
16 tremolite.

17 And I think I'll draw a red circle around
18 that because, according to Dr. Longo, the thing
19 he finds most often in Johnson's Baby Powder is
20 this one (indicating). Okay?

21 So then what happened? We got the tissue
22 testing from Mr. Perry's tissue. And what was
23 found in the tissue, according to Dr. Longo,
24 those particles -- so on this last column I
25 have "Mr. Perry's tissue, tremolite." And then

1 another one, winchite. Winchite.

2 Plaintiffs' lawyers clearly were not
3 expecting that. When they stood up in opening
4 statement and said here are the ones you need
5 to worry about, they clearly thought one of
6 those or that fingerprint was in Mr. Perry.

7 But all of a sudden, winchite is in his
8 tissue. Winchite, a completely different form
9 of asbestos.

10 Now, winchite was not discussed in
11 plaintiffs' opening statement. It is not part
12 of Dr. Haber's fingerprint. And it was not
13 something that Dr. Longo finds in the talc.
14 How do we know that?

15 Well, we asked him.

16 "Dr. Longo, you have never, not once,
17 identified winchite in Johnson & Johnson's talc
18 product, ever, in any report, correct?"

19 "That's correct."

20 Dr. Longo has never found it.

21 Now, what did they say in response?
22 Because they were loaded for bear. You know
23 they were ready for it. They had it all
24 planned out.

25 They showed you this slide. They showed

1 you this slide by an expert report in 2018 by a
2 gentleman named Dr. Matt Sanchez. And in this
3 report Dr. Sanchez indicated winchite in a
4 sample of Johnson's Baby Powder.

5 Now, interestingly, the sample number is
6 called out. And whether you knew it or not,
7 you had seen that before because the sample
8 that is discussed in this report was part of
9 the Round 1 testing of Dr. Longo, their testing
10 expert. It's the one up in the upper
11 right-hand corner. And when you look at the
12 numbers that's on that slide, it's the same
13 number.

14 And what did Dr. Longo say about that
15 sample? He said the ones that look really old,
16 those were the ones that were from the 1940s.
17 The World War II ones have California talc in
18 them. Do you remember that discussion about
19 Italy and we weren't getting our talc from
20 Italy anymore during that time and it came from
21 California?

22 Mr. Perry never used talc -- Johnson's
23 Baby Powder talc from California. So they
24 tried to say, aha, your own expert found
25 winchite in Johnson's Baby Powder; so that's

1 the reason we should think that it was from our
2 product.

3 Folks, there is no evidence of that.
4 There has never been a finding of winchite in
5 Johnson's Baby Powder in Vermont, Italy, or
6 China, where Mr. Perry's talc came from.

7 And here's why this is important:
8 Dr. Haber acknowledged that Johnson & Johnson
9 went to mines in different places like North
10 Carolina and California and determined that
11 those mines were not suitable for Johnson's
12 Baby Powder. And Dr. Longo said he found
13 winchite in some cosmetic talc products,
14 including Avon that came from California.

15 But here's what I want to point out:
16 There are a lot of documents that you're going
17 to see in the back room. And there's a lot of
18 documents that were produced in this case, you
19 heard about in the million pages.

20 And Dr. Kuffner, our corporate
21 representative, has reviewed all this. And he
22 confirmed for you there is not a single --
23 single document that talks about winchite in
24 Johnson's Baby Powder, not a single document.
25 And it's not just us.

1 Look, if you have seen these documents and
2 you don't know what to believe and you don't
3 know if Johnson & Johnson's shooting you
4 straight, then believe what plaintiffs have
5 told you. They put together what they called a
6 decades of evidence chart. You saw a snippet
7 of this throughout trial.

8 This is a chart that they marked as
9 Plaintiffs' Exhibit 72 that will go back with
10 you into the jury room. And you can take a
11 look.

12 And what they have put here, and Dr. Haber
13 described for you, was every incident of asbestos
14 exposure or asbestos that he saw in the documents.
15 Remember that? He said, "I created a chart. I went
16 through it. If it wasn't right, I corrected it."

17 This chart that they say is the decades of
18 evidence of what is in Johnson's Baby Powder, no
19 winchite. No winchite anywhere.

20 Allegations with evidence are not proof.
21 There is a fingerprint -- according to plaintiffs,
22 right, there is a fingerprint of if somebody has
23 mesothelioma caused by Johnson's Baby Powder and you
24 look in their body, they've got talc, they've got
25 tremolite, and they've got anthophyllite. This

1 fingerprint doesn't match.

2 The fingerprint doesn't match because the
3 tissue testing that came in said that there was
4 tremolite and talc and winchite. Winchite, which we
5 know from the evidence is not in Johnson's Baby
6 Powder. And there has been no proof -- no proof
7 offered to you that there could be winchite in
8 Johnson's Baby Powder. The fingerprint doesn't
9 match.

10 That's number one. The tissue testing
11 demonstrates physical evidence that Johnson's Baby
12 Powder is not responsible for Mr. Perry's cancer.

13 Now we're going to talk about dose. I
14 told you at the very beginning of trial that dose
15 matters. And I told you about you need to look at
16 what's in the bottle, the air, and the body. So I'm
17 going to go through it just like this, and I'm going
18 to tell you why everything I told you in opening
19 statements was proven.

20 And what did I tell you? I said, at the
21 end of this trial, you're not looking to see if
22 there's a fiber of Johnson's Baby Powder in some
23 bottle somewhere. Plaintiffs have to prove it was
24 in the bottles that Mr. Perry used.

25 But what we have and what they brought you

1 was testing by Dr. Longo about first some bottles he
2 bought off of eBay, including that California one
3 from the '40s. And then a group of bottles called
4 the museum test, right, the museum bottles. And
5 those museum bottles were called Round 2.

6 And I showed you this slide in opening
7 statement, and Dr. Longo agreed that, when he tested
8 the bottles from the Johnson & Johnson museum, many
9 of them didn't have asbestos.

10 But the lowest amount of asbestos that he
11 says he found was .0000033 percent in a Johnson's
12 Baby Powder bottle. And the one that he said he
13 found the most asbestos in was .0092 percent.
14 That's the highest amount, the highest amount,
15 trace, subtrace, ultratrace levels.

16 And so when Dr. Longo was here, he talked
17 about those same bottles. And then he did the
18 numbers for you. And this slide went up. The
19 average concentration in the bottle, 23,700 fibers
20 per gram. That's the amount in the bottle.

21 And then my partner had Dr. Longo do the
22 math about if that is the amount in the bottle, what
23 would be the average concentration be in the air?
24 Do you remember that discussion?

25 And what did Dr. Longo say? He said .004

1 fibers per cc. And, again, when we're talking cc,
2 remember that's the cubic centimeter of air, kind of
3 like a sugar cube. So that's the metric that is
4 analyzed here.

5 So this is Dr. Longo. He has admitted to
6 this. This is evidence that the average
7 concentration in the Johnson Baby Powder bottle,
8 according to his own testing, plaintiffs' own
9 testing, .004 fibers per cc.

10 And this was interesting. Dr. Longo also
11 told you that, when somebody uses a
12 Johnson & Johnson talc bottle, 99.5 to 99.9 percent
13 just goes onto the ground as opposed to being
14 airborne. So even a smaller amount would actually
15 get into the air.

16 So let's talk a little bit more about
17 what's in the air. Remember I told you that there's
18 a background level of asbestos. And we proved that
19 to you through Dr. Brody on the very first day of
20 trial. You remember Dr. Brody, the first witness.
21 I showed him this slide, and he agreed.

22 He agreed there are billions of asbestos
23 fibers in our lungs that we all breathe all day day
24 in and day out. He also agreed, when I asked him
25 this question:

1 "And we're all breathing asbestos fibers
2 every day, and that's what we call the background
3 level, right?"

4 "Correct."

5 And he told you that the background level
6 is indeed safe, the background level of asbestos.

7 And this was my question:

8 "So, Dr. Brody, in layman's terms, that
9 means anybody walking around, it's safe to breathe
10 the background level, true?"

11 "A As far as we can tell, yes."

12 And then I put this slide up here on the
13 ELMO, and he agreed that the background level
14 of .006 fibers per cc was safe.

15 That's my bad handwriting there.

16 And then I asked him -- I said:

17 "Okay. Even at that level, the National
18 Institute of Occupational Safety and Health,
19 .006 fibers per cc, there's no increased risk
20 of mesothelioma, correct?"

21 "Correct."

22 This is important, folks. This tells you
23 that Dr. Brody said .006 fibers per cc is safe.

24 And, look, I know there's a lot of numbers
25 here. I'm going to get to the point. But

1 these are important to keep in mind because
2 what we're trying to figure out here is a level
3 of asbestos exposure. Because nobody on the
4 plaintiffs' side did the math to try to tell
5 you how much asbestos exposure Mr. Perry had
6 from his Johnson & Johnson use.

7 Now, you heard about something called
8 OSHA, which is this government organization,
9 Occupational Safety and Health Administration.
10 They have these permissible exposure levels.

11 And, in fact, plaintiffs' counsel this
12 morning put up a slide with the definition of
13 OSHA talking about how asbestos was so
14 dangerous and toxic and hazardous. And nobody
15 disagrees with that.

16 But I think the suggestion was that
17 there's no safe level and you can never have
18 it. But we know that OSHA has a permissible
19 exposure level of .1 fibers per cc. You've
20 heard about this. And what is this level?

21 This is the level that the government
22 organization created and said if you have
23 eight-hour workday day in and day out, you can
24 be exposed to .1 fibers per cc. That's the
25 level, the limit.

1 And we know that Dr. Longo's Round 2
2 testing of how much he said was in the bottle
3 is .004.

4 And what I thought was the most
5 interesting was when Dr. Longo agreed with
6 exactly what I told you in opening statement,
7 which is this:

8 Somebody could take a bottle of Johnson's
9 Baby Powder and shake it on themselves for
10 eight hours a day for 40 years and still not
11 reach the OSHA limit. Think about that for a
12 minute. All day long, every day, eight hours a
13 day for 40 years.

14 So how did plaintiffs try to get around
15 this in the trial? They brought you Dr. Longo,
16 who put up this slide. This is their evidence.
17 This is what they put forth to try to tear
18 apart my entire dose argument.

19 But this slide is not accurate and not
20 correct. And here's why: If you look at the
21 highest level here, the J&J estimate and also
22 the J&J diapering estimate, this is Dr. Longo
23 trying to tell you, as he did, that
24 Johnson & Johnson, we did our own studies and
25 showed that the levels of asbestos exposure

1 were above background. That's what he told
2 you. But he's relying on a document that is in
3 evidence for this.

4 Now, I'm putting up these slides, and
5 plaintiffs did as well. And do you see on the
6 bottom right-hand corner how there's an exhibit
7 sticker? That's what we call them, that little
8 yellow sticker that has a number on it. That
9 tells you what document this comes from.

10 And I encourage you, if I say something
11 that you have a question about or you're
12 interested in, to write down that number so
13 when you go back to the jury room, you can take
14 a look.

15 This is Plaintiffs' Exhibit 191. And
16 here's what I want to point your attention to.
17 The numbers that I've highlighted there, 4.5 to
18 9.3, it says "fibers," doesn't it? And then
19 underneath it, "diapering, fibers." And this
20 says it's a hypothetical consumer exposure, and
21 it's talking about fibers. And here's why it
22 matters:

23 Because let's look at Dr. Longo's slide.
24 What does he say at the bottom? He says 4.5
25 fibers per cc, not fibers. It's a different

1 measurement, a different measurement. And what
2 would happen is if you actually took down to
3 the fibers amount, we're talking about a very
4 small amount.

5 So then what's left here on Dr. Longo's
6 slide? Do you see that Gordon article that he
7 still says is above background level? First of
8 all, you learned in this trial that's not even
9 our product; that was a different product.

10 But you also learned that the talc in that
11 study was a blend -- a blend from Italy, North
12 Carolina, and Montana. And you learned that
13 Johnson & Johnson, we never sourced our talc
14 from there.

15 So if we really go back to Dr. Longo's
16 slide and take off Gordon, and then we put on
17 there the background level that their own
18 expert, Dr. Brody, told you, and we put on
19 Dr. Longo's slide, every single exposure that
20 was brought to your attention was below
21 background level.

22 There's one -- it was interesting. You
23 were shown it today. I'm not sure if you
24 caught it. It was on a slide where plaintiffs'
25 counsel showed you a higher exposure level. It

1 was a study by an author named Steffen, who
2 you've heard about in this trial.

3 Do you know who the coauthor was on that
4 study? Dr. Longo. Dr. Longo. And he said I'm
5 not relying on my own study. He didn't put
6 that study on his own slide. That tells you
7 something.

8 Now, I know I'm getting in the weeds. I
9 know this trial went so fast. And those of us
10 who have been analyzing and studying this for a
11 really long time understand that this is a lot.

12 But what you're hearing and what you've
13 heard throughout this trial is not accurate.
14 And Dr. Longo agreed with us that .004 fibers
15 per cc was what he found. If you remember
16 nothing else about Dr. Longo, please remember
17 that. And it matters because their own expert
18 told you that .006 fibers per cc is safe. This
19 is what I told you on day one, and this is what
20 the evidence in this case.

21 So even if you believe what Dr. Longo says
22 he found in bottles of Johnson's Baby Powder,
23 their own experts agree that that amount in the
24 air is below background level.

25 So then what gets in the body? That's my

1 next point, isn't it? What gets in the body?
2 Their own expert, Dr. Haber, told you that just
3 because someone is exposed to something doesn't
4 mean they get the dose of it.

5 And this is really important because they
6 have this whole theory, don't they, that even
7 one little fiber of asbestos can add to it.
8 They kept talking about a cumulative dose, a
9 cumulative dose, they say, which is trying to
10 get you to believe that even a little bit can
11 cause cancer.

12 So I asked him this. I said, "You also
13 agree with the statement there is no evidence
14 that a de minimis dose increases one's risk of
15 mesothelioma, like one fiber or something like
16 that?"

17 And he fought me a little, as he kind of
18 had a tendency to do, but he said, "Right."
19 And he said at the end, "You wouldn't be able
20 to say that it increased the risk."

21 But then he showed you that -- that
22 demonstrative, that slide, right? And this is
23 what he said. He said that every little dose
24 will fill up a cup.

25 But in opening statement, I explained to

1 you how false that is. I told you this. I
2 told you that plaintiffs were going to do it.
3 I said they're going to come here and tell you
4 that your body is like a bowl.

5 I guess I was wrong because he said cup,
6 but same concept, right? That they're going to
7 say that the water in the bowl just sits there
8 stagnant, and every little drop adds up to a
9 cumulative dose.

10 But I explained to you that our bodies are
11 more like a colander. And it wasn't just me
12 that explained it. Their own experts told you
13 this. They explained that dose matters.

14 And Dr. Haber talked about the body's
15 defense systems that help clear the asbestos.
16 And he talked to you about you breathe in
17 fibers, you have nose hair that stops things,
18 you swallow, it gets into your body, it comes
19 out your stomach.

20 He also talked about once a fiber gets
21 into your lung, that you've got these
22 macrophages and cells that helps clear it out.
23 He said that these billions of asbestos fibers
24 that are in our body, our body knows how to
25 handle these.

1 So if our bodies are like a colander that
2 we're able to clear things out, that's why dose
3 matters and that's why dose is important.

4 This was another slide I put up for you
5 last Monday. And I said what's the dose? What
6 are plaintiffs going to say is the dose of
7 asbestos that Mr. Perry actually had from
8 Johnson's Baby Powder? Because it's an
9 important question, isn't it? Isn't it
10 important to tell you how much asbestos he
11 supposedly got in his body using our product?

12 They did not bring you anybody. We asked
13 each of them. Dr. Haber didn't do the math,
14 didn't give you a bottle count. Dr. Madigan
15 didn't look at dose. We'll talk about each of
16 these. But Dr. Madigan didn't look at dose.
17 And Dr. Longo, what did he say? Tons, tons of
18 talc this man used.

19 But even Dr. Longo, who's the guy that
20 studies the amount in the bottle and studies
21 the amount in the air, he didn't give you an
22 amount for Mr. Perry. They did not tell you
23 that. They did not give you that evidence.
24 They did not prove that.

25 These are the Tic Tacs from Dr. Madigan.

1 Do you remember he brought the Tic Tacs? He
2 wasn't here with us, but they were held up. He
3 said the orange means asbestos is in the bottle
4 and the white means asbestos is not in the
5 bottle, right? Orange and white, either/or.

6 And he said I'm not giving the jury any
7 information about quantity or dose. Remember?
8 Because I asked him are you kind of making it
9 more yellow or more orange if it's one thing or
10 another?

11 And he said no, that's not the
12 calculations. It's either present or it's
13 absent. It's either orange or it's white.

14 And I think I even asked him, so if it's
15 just a sub/ultra trace amount, could you make
16 it pink? And he said no. He said, in his
17 mind, it's orange or white. But we know that
18 dose matters.

19 So think about this for a minute. What
20 Dr. Madigan was telling you was the white Tic
21 Tacs have no asbestos in them, right? Those
22 are bottles where there's no asbestos. He did
23 it 50/50.

24 But he didn't tell you how many or what
25 number based on dose would apply. They just

1 didn't do the math. They didn't do the math.

2 And that matters.

3 So what -- what talcum powder did
4 Mr. Perry actually use? I thought it was
5 interesting that, aside from just saying they
6 used a lot of Johnson's Baby Powder, there
7 wasn't much evidence presented to you by
8 plaintiffs about exactly what products he used.
9 And we did our best to get that information
10 from their experts.

11 And we learned that his personal use and
12 his secondhand use included about 20 different
13 brands of talcum powder. And the allegation or
14 the claim was that he used it from his first
15 memory in 1974 all the way up to 2019, which is
16 45 years -- keep that in mind for a minute --
17 45 years of talc use.

18 But then when we asked Mr. Perry about the
19 actual amount, he said he bought 10 or more
20 bottles of Johnson's Baby Powder each year.
21 And for Clubman talc, it was similar, 10
22 bottles per year.

23 But he didn't stop there. When we asked
24 him about the other talc use, we've got the 10
25 bottles of baby powder, 10 bottles of Clubman.

1 He said about six per year of the Drakkar Noir
2 brand. And then he just said several. So I
3 put three on here, but he said several of the
4 Gold Bond, of the Ralph Lauren, of the Ammens,
5 of the Calvin Klein. And I forgot to ask him
6 how much Equate. We talked about Equate talc
7 powder too; so I have question marks there. I
8 didn't add it because I didn't ask. But we're
9 at about 38 bottles a year is his testimony.

10 So when he came up and when the experts
11 came up and said to you over and over again,
12 "Oh, it was the majority Johnson's Baby Powder,
13 that's pretty much what I used," that's not
14 what the evidence shows. We're talking about
15 25 percent, right, of what he testified he
16 actually used.

17 And you saw this medical record, which was
18 interesting. This was the medical record on
19 July 11th of 2023, and it has the exhibit
20 number there on the bottom. This is defense
21 exhibit. It was not put in by plaintiffs.
22 This was something we had to put in.

23 But this is the slide that was shown to
24 you by plaintiffs. And I point that out
25 because of the highlighting. Plaintiffs showed

1 you this slide with this highlighting about
2 what Mr. Perry told his doctor on the day he
3 went to see Dr. Gibney, his treating physician,
4 for the first time. And what it said was
5 "Mr. Perry denies any direct asbestos exposure;
6 however, he did use a lot of talc throughout
7 his life as a swimmer." As a swimmer.

8 So before filing the lawsuit, before
9 testifying under oath, before saying he used
10 talcum powder four times a day every day for
11 45 years, when he went to see his doctor, he
12 said he did use it in the past, a lot of talc
13 throughout his life, as a swimmer.

14 So I just wonder, if you're using four
15 times a day every day for 45 years, if that is
16 what you tell your doctor when you're diagnosed
17 with cancer. Or do you say, "Doctor, I have
18 asbestos, which is a disease of -- I have
19 mesothelioma, which is a disease of breathing
20 in asbestos. And, Doctor, I've used talcum
21 powder four times a day, four heaping
22 tablespoons, every day for 45 years."

23 I asked him questions, of both Mr. Perry
24 and Mr. Long, about his family history, his
25 family history of cancer, and I asked about his

1 father and his sister. And I think there was a
2 misunderstanding about why I asked these
3 questions.

4 The evidence was, prior to trial and what
5 was discussed in the depositions as you heard,
6 that Mr. Perry's father and sister had both
7 been estranged from him for many, many years.
8 And then about a month before trial, when we
9 had a chance to talk with Mr. Long, we learned
10 that they actually were in regular contact.

11 And the reason that was important and the
12 reason we asked is because there's questions
13 here. And it would have been nice to have
14 somebody at trial that they could have brought
15 to trial, either a father or a sister, to talk
16 about this talc use, to talk about when and how
17 talc was used in his family, right, and to talk
18 about the family history. Was it true that his
19 grandfather had mesothelioma? We know it's in
20 the record 31 times.

21 So these were not just rude questions by
22 an attorney trying to attack someone. I want
23 to just make sure that's clear. The point here
24 is there are questions about this family, this
25 history, this talc use. And there's a big

1 difference between whether or not they were
2 estranged or in touch and able to come and
3 share with you what they know.

4 So what do we know? What do we have? We
5 have some bottles that were found in his home,
6 right? This was one of them. It's an older
7 bottle. We know from Dr. Longo's slide that
8 this bottle that he showed you is in the 1970s.
9 And although Mr. Perry and Mr. Long didn't know
10 exactly the date of the bottle that they had in
11 their home, it shows it was from the '70s. And
12 it was in a dive bag or a sailing bag.

13 And you know what? I probably have some
14 things in my home too that are pretty dated and
15 old and in a back corner or a bag. So no
16 judgment there.

17 But the other bottle, the other one that
18 was found, was from 2004.

19 And so I guess my question is, if you are
20 regularly using a product all day every day up
21 until 2019 or maybe 2023, depending on what the
22 truth is, then when you have a diagnosis and
23 you go around your home and you look for every
24 talcum powder bottle you have, if you had been
25 using it more regularly, would you have found

1 one from 2019 or 2018 or 2016 or '15 or '14?
2 Or would you have found one from the 1970s,
3 back when you were a kid, and maybe one from
4 20 years ago?

5 And all we know is that Dr. Longo says 24
6 to 35 years, and he said a half ton of talc,
7 which is a lot, which is a lot.

8 And this is a half-ton truck. We're
9 talking about a lot of talc. And that's just
10 the Johnson's Baby Powder claimed in this case.
11 That's not even talking about the other
12 75 percent of the talc use.

13 And, look, why -- why do we hear this?
14 Why did we hear about tons -- literally tons --
15 truckloads of talc? I think the evidence shows
16 that there's a dose problem.

17 Because they didn't do the math and
18 couldn't tell you how much asbestos was
19 actually in the bottle and they couldn't tell
20 you how much he actually breathed in and got in
21 his lungs, I think what's going on here is that
22 they're trying to say it was substantial, it
23 was significant, there was so much talc, and
24 lead you to believe that dose is not an issue
25 because he used so much.

1 But keep in mind that even this -- even if
2 this amount of talc were true and we believe at
3 face value tons of talc, what Dr. Longo said,
4 you could shake that bottle all day every day,
5 eight hours a day, and never reach the OSHA
6 limits.

7 Dose matters. There is a dose problem
8 here. That's the second reason. Tissue
9 testing and dose matters, the second reason
10 that plaintiffs cannot prove causation.

11 And now I'm going to give you the third:
12 Brakes.

13 We talked to you about this in opening
14 statements. Plaintiffs' witnesses didn't
15 really want to talk about it, did they? We
16 asked them about it on cross-examination. I
17 don't think Dr. Longo mentioned brakes once
18 when he was providing testimony until
19 cross-examination when we asked him about it.

20 Brakes. There is no question, and the
21 record is clear, that Mr. Perry was exposed to
22 asbestos from his brake use in the 1980s.
23 There's no dispute there.

24 There is an affidavit in evidence that I
25 encourage you to look at. We went through it

1 quickly, but I knew you'd have it back there
2 with you. It is DX12007. This is the
3 affidavit that Mr. Perry himself signed on
4 August the 2nd of 2023. And I don't have time
5 to go through all of this with you right now,
6 but take a look. It talks about his brake use;
7 it talks about the fact that they contained
8 asbestos; it talks about the release of visible
9 dust into the air, "which I breathed."

10 And I asked him about this, and he fought
11 me a little bit, and he made me show him his
12 prior testimony saying he breathed in this.

13 But the evidence is clear that this was a
14 sworn affidavit that was provided just shortly
15 after the time of his mesothelioma diagnosis.

16 Then Dr. Longo comes to the stand, the
17 testing expert, and he tells you that asbestos
18 in brakes is, like, 15 to 40 percent asbestos.
19 That is quadrillions of asbestos fibers.

20 And think about this, folks. There's no
21 allegation that people were purposely putting
22 asbestos in baby powder. You heard some crazy
23 things and this theory about what Johnson &
24 Johnson was doing. One thing they're not
25 alleging is that we were putting it in there on

1 purpose. No question.

2 But the brake manufacturers were. The
3 whole purpose of using asbestos in brakes was
4 to use it for those qualities we talked about,
5 right? The fact that it doesn't catch on fire
6 and it's fire-resistant. And they were putting
7 a lot in there.

8 And just to put this in context, when I
9 hear "quadrillion fibers," it's hard for me to
10 kind of figure out what that means. So what we
11 said to ourselves was, if we took fibers and
12 put it into seconds, that's more manageable for
13 me.

14 So 23,700 seconds instead of fibers is 7.5
15 hours. Okay? Dr. Brody told us there's a
16 billion asbestos fibers in our lungs, and if we
17 do that in seconds, that's 31 years.

18 What about the quadrillions in the brakes?
19 Over 31 million years. So we're talking about
20 the difference between 7.5 hours and 31 million
21 years when we're talking about the amount of
22 fibers.

23 And here is a slide that Dr. Longo showed
24 you. On the left we have what he says is in
25 the average museum bottle, .004 fibers per cc;

1 and on the right is his own testing of brakes,
2 10,000 times higher when you get to 36 fibers
3 per cc.

4 If we are talking about dose -- and we
5 should be because dose matters -- what does
6 this tell us? What was his dose?

7 And we're going to get to the jury charges
8 here in a minute, but you're going to be asked
9 about substantial factor. Substantial factor.
10 There is no question, when you look at dose,
11 that brakes were a substantial factor, and
12 there is no question that Johnson's Baby Powder
13 was not.

14 And I'll stop right there and say there
15 was a statement by counsel that, when you hear
16 substantial factor when you're looking at that
17 jury form, anything over 1 percent is
18 substantial. And he may believe that. That's
19 not the law. That is not the law that
20 Justice Toal is going to give you. That just
21 came from him. There's nothing to say
22 1 percent is substantial. I could get up here
23 and say, folks, I think 51 percent is
24 substantial. You know what? That's not the
25 law either. That's not the law. So don't

1 listen to what I say or any counsel says about
2 the law. Justice Toal will give you that law.

3 Why am I doing this? Why am I talking so
4 much about brakes? Because Dr. Haber proved to
5 you my point. I said to him -- and I know this
6 is long, but it's important for me to read it
7 word for word so you remember what he said.

8 "Q Now, if Mr. Perry had never used
9 cosmetic talc at all -- all right? Let's
10 consider a scenario where Mr. Perry never used
11 cosmetic talc. His only asbestos exposure was
12 from doing brake jobs. In that circumstance,
13 you would give the opinion that the brake jobs
14 would be a significant factor in his
15 mesothelioma, correct?"

16 So what I'm asking there is take the
17 cosmetic talc out of it; what caused this man's
18 mesothelioma?

19 And Dr. Haber said:

20 "A If Mr. Perry got mesothelioma from
21 doing -- and did the brake jobs, then, yes,
22 then that would be the cause. But you can't do
23 the reverse. You can't say change exposure. I
24 mean, what would have happened is if" --
25 buh-buh-buh.

1 But then he said.

2 "But I can say that, if he did
3 get mesothelioma, then I would have attributed
4 the mesothelioma to that exposure."

5 Dr. Haber. If he never used cosmetic
6 talc, the brakes caused his cancer.

7 What did Dr. Longo tell you? Dr. Longo
8 told you that those brakes are contaminated
9 with what? Tremolite. Tremolite.

10 It's plaintiffs' burden to prove this
11 case. They have to do it by the weight of the
12 evidence. And they have to prove, for every
13 single question on that verdict form, cause.
14 They have to prove cause.

15 And you're going to hear this instruction
16 from the Court about substantial factor. A
17 substantial factor. The evidence has shown
18 that Johnson's Baby Powder, even if you believe
19 what plaintiffs have said, that was not a
20 substantial factor when you think about dose.

21 And this is what I really want to draw
22 your attention to. These are the questions --
23 1, 3, and 5 -- on the jury form. I know you
24 probably can't read this well right now, but
25 you're going to be holding that in your hands,

1 each one of you. These are the three questions
2 that you have to answer about Johnson &
3 Johnson.

4 And if you answer no to each of these, as
5 I think you should, your job is over. That's
6 it. And each and every one of them, whether it
7 be negligence, strict liability, or fraud, asks
8 a question about causation because no matter
9 what the conduct is that they're alleging, they
10 have to prove cause. Cause. Did the Johnson's
11 Baby Powder cause his cancer?

12 And they have to prove cause not just for
13 some person out there that used this product.
14 The instructions the Court will say is the
15 proximate cause of plaintiff Michael Perry's
16 injuries.

17 So if you make the determination that they
18 haven't proven their case because of the tissue
19 testing, the dose problem, and the brakes --
20 and I think the evidence is there, folks -- if
21 you make that decision that they have not
22 proven that Johnson's Baby Powder is the cause,
23 then the answer to every single question is no,
24 and your job is over. Your job is over.

25 And you might be hearing two different

1 stories right now, right? Because you're
2 hearing plaintiffs talking -- you're hearing
3 plaintiffs talking all about Johnson & Johnson
4 conduct, aren't you? And you're hearing me
5 talking about Mr. Perry and cause. And we're
6 kind of like two ships, right? But I'm going
7 to address some of these allegations with you
8 now.

9 I think that the cause is clear, and I
10 could just stop now and you could go back to
11 the jury room and do your deliberations and
12 determine that Johnson & Johnson should have
13 the verdict in this case, because plaintiffs
14 have not proven their case, but I'm not going
15 to do that because you deserve an answer to
16 some of these allegations about this company.

17 I told you I was emotional this morning
18 hearing about some of the argument, and I was,
19 and it's happened throughout trial. And so I'm
20 going to try to give you, in my short time with
21 you -- and I'm getting notes telling me to move
22 on -- but I'm trying to give you some ideas
23 about what this all means.

24 Could I have the ELMO, please. Actually,
25 before you do that -- before you do that,

1 Mr. Loebbaka.

2 I don't know if you can see this slide.

3 This is Dr. Mann. Remember when Dr. Mann was
4 testifying? And this is a screenshot from when
5 plaintiffs were asking him questions. And they
6 showed him this document, and it's an important
7 one. And I put that plaintiff exhibit sticker
8 up there because I want you to look at this.
9 It's Plaintiffs' Exhibit 347.

10 This is how they showed it to Dr. Mann,
11 and they showed it to Dr. Kuffner the exact
12 same way. And they showed it with the slide --
13 well, just real quick, before you do that, I
14 know it's so hard to see here, but at the very
15 bottom of the slide it's cut off after the
16 highlight that says, "Contain trace amounts of
17 asbestos." Are you able to see that? It's
18 that line.

19 So as an example, I want to show you what
20 that document says after that.

21 TECHNICIAN: Is it on?

22 MS. BUENO: It's on.

23 There we go. It's warming up. Thank you
24 very much.

25 All right. So the place that I have

1 stopped -- or not highlighted here, "Contain
2 trace amounts of asbestos," that is where they
3 stopped showing this document. Okay? But read
4 the whole document.

5 Dr. Blount, who you heard about this
6 morning from plaintiffs' counsel, it goes on to
7 say -- and you'll have this back there with you
8 so you can read it yourself -- "However,
9 Dr. Blount said that all powder she tested,
10 including Johnson & Johnson Baby Powder, were
11 well below acceptable limits as defined by OSHA
12 and that she considered Vermont talc as some of
13 the purest talc available. In addition,
14 Dr. Blount stated she did not think that
15 whatever amounts of asbestos that might --
16 might -- be present in baby powder was harmful,
17 that the concern about talc was blown out of
18 proportion, and that she has a very high
19 opinion of Johnson & Johnson Baby Powder."

20 An example -- I can't do every one, but an
21 example of reading the document and seeing
22 really the context for it, which I think is
23 just so important.

24 Can we go back to the slides? Defendants'
25 Exhibit 7694.

1 And, Your Honor, if we're going to take a
2 lunch break, you just tell me; otherwise, I'm
3 rocking and rolling and I'll keep going.

4 MS. PEPKE: I think we have about 30
5 minutes.

6 MS. BUENO: Do you want me to keep going?

7 THE COURT: Hang on for a minute. You
8 have about 30 minutes left?

9 MS. BUENO: I do.

10 THE COURT: And then, of course, we have
11 reply by the plaintiff.

12 So I'm going to ask you, Madam Foreperson,
13 do you want to take a break now for lunch?

14 JURY FOREPERSON: Keep going.

15 THE COURT: Keep on going.

16 MS. BUENO: If anyone needs one, let me
17 know.

18 THE COURT: You may proceed.

19 MS. BUENO: So a couple more documents to
20 kind of show you what's going on. I have put
21 these numbers up there because I encourage you
22 to go back and look at them if you have any
23 questions.

24 Now I'll go to the ELMO, please. 7694.

25 This is Defense Exhibit 7694. You've

1 heard a lot about this whole industrial versus
2 cosmetic talc thing. And I want you to keep in
3 mind that the mine at the Windsor Minerals that
4 you heard about had both industrial and
5 cosmetic. And that matters. And I'm going to
6 tell you right now why it matters.

7 This is a document from the president of
8 Windsor Minerals, who you heard about from
9 counsel this morning. And he talks about what
10 is cosmetic talc. He says, "The samples which
11 are relevant to the production and sale of
12 cosmetic talcs in the U.S. and Canadian markets
13 are those bearing the letters HC as part of
14 their prefix." As part of their prefix.

15 Now, do you remember back in school when
16 we learned prefixes and suffixes? Prefix came
17 before; suffix came after. Right? Prefix,
18 cosmetic talc. Keep that in mind.

19 The next exhibit I'm showing you is 8111.
20 This is a document that talks about roofing
21 material at Windsor Minerals. And it talks
22 about the talcs for roofing materials, and it
23 mentions HC. And where does it mention? A
24 prefix or a suffix? Suffix, at the end. Do
25 you see that?

1 Why am I bringing this up and spending my
2 time with you on this?

3 Well, can we go to the slide now?

4 That's the one that said HC in the prefix;
5 this is the one that said roofing materials
6 with HC in the suffix. And this is what they
7 showed Dr. Gibney.

8 You remember Dr. Gibney, the treating
9 physician that came into this courtroom by Zoom
10 to talk to you, who had never seen a
11 Johnson & Johnson company document in his life.
12 And the representation was made that would it
13 be ethical for a company like Johnson & Johnson
14 to put asbestos in our baby powder? And it got
15 real dramatic, showing him this document,
16 saying that the HC meant cosmetic talc.

17 Folks, that's not true. Look at this one,
18 Plaintiffs' 125. It's actually a chart on the
19 back of a document that has a cover page that
20 makes clear it's industrial talc. It talks
21 about crud and sediment in the ore body. This
22 is not cosmetic talc.

23 Other examples. You've seen slides like
24 this one. I pulled this out with Dr. Kuffner,
25 and he explained to you that the three deaths

1 that were discussed had to do with inhalation,
2 right? Babies who, unsupervised, got ahold of
3 a Johnson's Baby Powder product and bottle and
4 really hurt themselves and died as a result,
5 which is absolutely tragic, which led us to put
6 a warning label on the bottle, as Dr. Kuffner
7 explained to you. But if this is suggested
8 that this somehow has to do with this case, it
9 does not.

10 And I encourage you to look at this
11 document as well. They put it up there this
12 morning as well.

13 And here's one I want to take a minute on
14 because you've seen this multiple times. This
15 is another example of taking things out of
16 context and distorting the truth. This is P19.
17 Please look at this one. You've seen this
18 document. You've heard about it. These
19 allegations that Johnson & Johnson told the FDA
20 that we could have substantial asbestos in our
21 baby powder.

22 And the allegation was we knew it, we said
23 it could be substantial, we told that to the
24 FDA. And that was one of the examples you
25 heard this morning of us being willful and

1 wanton and reckless. This is what we're
2 talking about.

3 And when you read this document, this
4 document indicates that the FDA asked Johnson &
5 Johnson to do an exposure assessment. This was
6 not us saying it; they asked us. It's all
7 outlined here. They asked us to do it, and we
8 did that.

9 And, of course, what was not shown to you
10 in this document, which I can show you now, in
11 a discussion with the FDA and Johnson &
12 Johnson, right, this document says, "It was
13 brought out that critical review of all the
14 world literature failed to show any evidence of
15 adverse health effects following the normal use
16 of cosmetic talcs."

17 And it goes on to say that Dr. Fuller
18 stressed Johnson & Johnson's policy of full
19 cooperation with the FDA and that, if the
20 results of any scientific studies show any
21 question about the safety of talc,
22 Johnson & Johnson will not hesitate to take it
23 off the market.

24 There has been allegations in this case
25 that Johnson & Johnson knew there was

1 substantial asbestos in our baby powder and
2 that we just sold it anyway, that the tens of
3 thousands of employees and doctors and
4 scientists -- that Johnson & Johnson somehow
5 knew this and they were all in on it and all
6 kept the secret in a quest for a lot of money,
7 and that it went on for decades and decades and
8 there wasn't one whistleblower, somebody who
9 said, wait a minute, I think we have a problem
10 here.

11 Think about what is being alleged in this
12 courtroom. There is not evidence to support
13 that. And I wish I could go through every
14 single document and every single slide -- let's
15 go back to the slide.

16 I wish I could go through all of this and
17 point out why, whether it's ellipses like this,
18 dot, dot, dot, or whether it's the cutting and
19 the pasting of words and putting them in order,
20 why that is not the way you need to look at
21 scientific evidence.

22 And that the documents back with you in
23 the jury room, there's just going to be a
24 portion of the millions of pages that are out
25 there. I can't show you every one.

1 But I can tell you that for the
2 allegations of conduct, the fraud claims, the
3 willful, the wanton, the reckless, they have a
4 standard. Plaintiffs must prove this to a
5 higher standard.

6 They must prove by clear and convincing
7 evidence that Johnson & Johnson did all of
8 these acts that they allege. And they cannot
9 do that. And I encourage you to look at those
10 documents and not rely just on attorney
11 argument in how the story is woven together.

12 Let's just think for a minute, common
13 sense. Counsel said it this morning, chief
14 justice is going to say it later today. This
15 case asks you to rely on your common sense.

16 If you were a company and you knew that
17 there was something dangerous in your product,
18 would you test it? Would you exceed the
19 industry standards? Would you put your
20 documents out for everything to see?

21 That's what's happened here. You've seen
22 that Johnson & Johnson had a very robust
23 testing program. You heard that we didn't just
24 stop with the J-41 system. Counsel said today
25 that was Johnson & Johnson's testing program,

1 but that's not what the evidence shows.

2 The evidence shows we went above that. We
3 exceeded that standard. And even their expert,
4 Dr. Haber, said Johnson & Johnson exceeded
5 J-41. We did more than that.

6 So if the statement was made this morning
7 that we just stuck with J-41 and didn't do
8 anything more, that's flat wrong and that's
9 contradicted by the evidence in this case.

10 You heard that the FDA tested in 1976, no
11 asbestos in Johnson's Baby Powder.

12 In 1994 there was a symposium of hundreds
13 of folks that gathered together, toxicologists,
14 mineralogists, FDA. We talked about those
15 meeting minutes. What did they conclude?

16 In 1994 they concluded that talc was among
17 the safest of all consumer products and that
18 the probability of human risk is likely
19 nonexistent. You've heard that from
20 Dr. Kuffner, and you saw the article.

21 You also heard that in 2010 the FDA just
22 went and bought some bottles of Johnson's Baby
23 Powder off the shelf, as they did, to do their
24 testing. Once again, no asbestos in Johnson's
25 Baby Powder.

1 Think about this: If you wanted to be a
2 company that was willfully and wantonly and
3 recklessly just out selling a dangerous
4 product, would you just manufacture a lot of
5 bottles and just put it on the shelf for
6 anybody to test?

7 It doesn't sound like a good way to hide
8 evidence to me. Look, this -- this product was
9 on the market and available to test, and
10 evidence shows the FDA had a regular testing
11 program and did not find asbestos.

12 And you also heard that there are
13 thousands of documents that have been made
14 available from Johnson & Johnson that are just
15 online for the world to see. Okay?

16 I want you to think about this for a
17 second. You've seen a lot of documents. I
18 know you have. All of those -- everything
19 you've seen is online and was available even
20 before you walked into this courtroom. Every
21 single document that we made available, we made
22 public.

23 And yeah, it was at the time when we were
24 being sued and had to turn over documents. But
25 we said, "Here. Have them. Let's put them

1 online for the world to see." The FDA can look
2 at them, OSHA, the EPA, doctors. Anybody can
3 look at these documents.

4 And do you know what? Even after
5 publishing all of those documents, there is no
6 warning label on cosmetic talc for asbestos
7 today.

8 Now, we stopped selling it, and I'll get
9 to that. But even today this product is on the
10 market without a warning label. And when I say
11 "this product," just so I'm clear, not
12 Johnson's Baby Powder -- I'll talk about
13 that -- but cosmetic talc, no warning for
14 asbestos even today --

15 Now, 2019, there was testing by the FDA
16 and there was small amounts of chrysotile found
17 in September. You've heard about this. I
18 don't need to belabor it. But Dr. Kuffner came
19 over here and told you that he was overseas and
20 he flew home. This was a major issue for
21 Johnson & Johnson in 2019, because it had never
22 happened before.

23 The FDA had been doing decades of testing
24 of our talc off the shelf. And for the very
25 first time, they found what they believed to be

1 trace amounts of chrysotile. And you heard
2 that Johnson & Johnson acted quickly and
3 removed that single lot of Johnson's Baby
4 Powder. And it was what was called a Class II
5 recall.

6 We had some back and forth about that, you
7 remember. But the Class II recall means that
8 it was temporary or medically reversible
9 adverse health consequences, where the
10 probability of serious adverse health
11 consequences is remote. That was the FDA
12 regulatory language for that Class II.

13 But what's important to note here is this
14 was just one lot, right, one group of
15 manufacturer, with this sub/ultra trace
16 amounts. And what was the type of asbestos
17 that was found? I'll back up one.

18 Chrysotile. Chrysotile. Chrysotile,
19 which was not in Mr. Perry's tissue. But
20 Johnson & Johnson decided to do the right thing
21 and, out of an abundance of caution, took this
22 lot off the market.

23 Now I misplaced my clicker.

24 Thank you, sir.

25 As Dr. Kuffner explained to you, the

1 decision to take that one lot of Johnson's Baby
2 Powder off the market had nothing to do with
3 the ultimate decision to take the product --
4 talc product off the market entirely in the
5 U.S. the next year. Okay?

6 What did he tell you? In 2020
7 Johnson & Johnson made the decision to stop
8 selling talc. Okay? May of 2020.

9 And he explained to you that that decision
10 was made by the businesspeople. He said the
11 decision was not made by him and the medical
12 department. It was not a safety decision.

13 And there's a document that's DX0027
14 that's in evidence that is the press release
15 from Johnson & Johnson when we made the
16 decision to stop selling this product. And it
17 talks about why.

18 And you can read it for yourself, but it
19 talked about the fact that demand for
20 talc-based Johnson's Baby Powder in North
21 America has been declining due in large part to
22 changes in consumer habits and fueled by
23 misinformation around the safety of the
24 product.

25 The same misinformation that we've seen in

1 this courtroom led to declining sales because
2 when people hear this -- these allegations,
3 even though they're untrue and unfounded, and
4 you now know that because you've at least seen
5 some evidence, but of course the sales
6 declined. Of course the sales declined.

7 And as a business decision, it was made to
8 take this product -- this talc product off the
9 market. It had nothing to do with safety. And
10 Dr. Kuffner, the chief medical officer, came
11 here and testified to you because he believes
12 in the safety of this product and he believes
13 in this company.

14 Plaintiffs want you to say that we're
15 reckless and wanton and willful, deceptive,
16 deliberately trying to hurt patients like
17 Mr. Perry. But their own expert had to admit
18 that he hasn't seen a single cosmetic talc
19 company that did more testing than
20 Johnson & Johnson.

21 And you've heard about these studies of
22 the talc miners and millers, the ones that were
23 in the mill breathing in talc all day every day
24 and in the mine. And the evidence showed there
25 was no increased risk of mesothelioma for those

1 patients.

2 And who was the one person they brought in
3 to try to contradict that? It was Dr. Madigan,
4 right, the statistician, the epidemiologist who
5 came by Zoom.

6 But I showed him that International Agency
7 for Research on Cancer. And I indicated to him
8 that they had written the studies of talc
9 miners and millers are considered to be the
10 best source of evidence, and he had to admit
11 he'd seen it before.

12 And he was the one that picked at it and
13 said, well, they actually found mesothelioma in
14 those patients. But then remember, I took the
15 actual article and I put it under here and we
16 looked at it together. It was that article
17 from Vermont talc mining and milling, where it
18 indicated there was no asbestos in those mines.
19 There was no asbestos, but there was
20 mesothelioma.

21 And I asked him, "You're not aware of any
22 peer-reviewed published epidemiological study
23 that has ever concluded that
24 Johnson & Johnson's talc caused mesothelioma?"

25 "Yeah, yeah. I'm not aware of such

1 stuff."

2 And there is none. There's no study out
3 there. The science is not there. The science
4 is not there. These allegations are not true.
5 I don't know how else to sing it from the
6 rooftops.

7 Otherwise, Dr. Gibney -- if there's one
8 thing you think about as you go back into the
9 jury room today, maybe it's Dr. Gibney because
10 he's a treating physician for Mr. Perry, right?
11 He works at Medical University of South
12 Carolina.

13 He told us that he's one of 50 surgeons in
14 the country that does this specialized
15 mesothelioma surgery. This guy is at the top
16 of his game. He knows more about mesothelioma
17 than most people, even other specialists.

18 And he had never ever seen a published
19 study saying cosmetic talc contains asbestos.
20 He'd never even heard any of his colleagues say
21 that cosmetic talc has asbestos in it.

22 What is the strength of the science if the
23 specialists in the field dealing with
24 asbestos-related diseases don't know what the
25 plaintiff lawyers are telling you?

1 All those documents that went online in
2 2017, like I said, when the skies kind of
3 parted, according to plaintiffs' lawyers, and
4 all of a sudden the truth became known, that
5 was seven years ago.

6 And do you think that one of the foremost
7 mesothelioma surgeons in the entire country
8 doesn't have access to the latest and greatest
9 information? He does. He does.

10 And he does not know -- he's never seen,
11 he's never heard what you're hearing. There's
12 no truth to this. There's no science to this.
13 He doesn't ask his patients whether or not they
14 used talc.

15 If Dr. Gibney thought that there could be
16 asbestos in talc, wouldn't that be something on
17 the checklist he talks to his patients about?
18 He doesn't.

19 And he told us that the note about use of
20 talc as a swimmer in the past that you'll see,
21 that that was something Mr. Perry told him
22 about. And I asked him, "You're not here to
23 say that Mr. Perry's mesothelioma was caused by
24 Johnson's Baby Powder?"

25 "No."

1 Now, when he's asked a question by
2 plaintiffs' counsel, which you saw this
3 morning, which is if there was a lot of
4 asbestos in Johnson's Baby Powder and he used
5 it his whole life, couldn't that have been the
6 cause?

7 Well, any reasonable doctor would be like,
8 yeah, if he was exposed to lot of asbestos.
9 But that wasn't his testimony. He said no, he
10 is not offering the opinion that Johnson's Baby
11 Powder was to blame.

12 So I know we did not bring any witnesses,
13 but we didn't need to because the witnesses
14 that were called by plaintiffs demonstrate that
15 they cannot prove their case. When you go back
16 to the jury room and you're thinking about the
17 scales, you're thinking about what the evidence
18 is -- the brakes, the dose information, the
19 tissue test results showing that that
20 fingerprint doesn't match and can't be
21 Johnson's Baby Powder, the talc miners and
22 millers, the lack of science, the epidemiology
23 and all of the experts -- we didn't need to
24 make you stay for three more days to hear the
25 same thing over and over again.

1 The evidence is clear. Everything I told
2 you in opening statement that the evidence will
3 show was shown.

4 I want to end on a couple points that are
5 important to you as you go back to the jury
6 room.

7 You heard about damages, meaning the money
8 that plaintiffs are requesting. And you're
9 going to be instructed about actual damages.
10 The damages you are being asked to provide are
11 those to put Mr. Perry in the same position
12 they were in before the incident or accident.

13 The idea here is money to make Mr. Perry
14 and Mr. Long whole. That's what you're being
15 asked to do.

16 There were some numbers that were filled
17 in here by plaintiff lawyers. And I just want
18 to make sure you're clear.

19 In the verdict form there is a stipulation
20 that you saw that Johnson & Johnson agreed and
21 stipulated to economic damages. Now, we did
22 not agree that you should award them. I want
23 to make sure this is clear.

24 It's \$3.3 million. The stipulation was
25 not that we think we owe that. I think we owe

1 zero because I think you should put a verdict
2 for Johnson & Johnson.

3 What a stipulation means is that we agreed
4 that that is the number, right? You're going
5 to see the number for medical expenses. It's
6 about \$500,000. Mr. Johnson, the economist
7 that came, said about 2.8 million for economic
8 damages, loss of social security, loss of
9 income, et cetera.

10 And you notice we didn't cross-examine
11 Mr. Johnson; the AII lawyer did. Well, that's
12 all because we agreed to this. We basically
13 said we're not going to quibble with your
14 numbers.

15 We're not going to stand up there and try
16 to say, oh, it's 50 grand less or that medical
17 record shouldn't apply. We're not going to do
18 that. We agreed to the 3.3 million if you find
19 in plaintiffs' favor for economic damages.

20 But the other numbers that were put up
21 there by plaintiff lawyers were his suggestions
22 and not found in anything, right? You as
23 jurors would have the ability to decide the
24 amounts.

25 So just because somebody put something up

1 here doesn't mean that there's any basis for
2 it. This is a decision that you would make
3 independently if you decide Johnson & Johnson
4 is to blame.

5 And you know what? I don't think you get
6 there. Because if you answer no to the
7 question on proximate cause, if you find that
8 plaintiffs have not met their burden to prove
9 that Johnson's Baby Powder was the cause of his
10 cancer, you do not answer this question at all.
11 You don't even get there.

12 I showed you this last week, and I think
13 it's fitting to end on this.

14 Johnson & Johnson is here defending itself
15 with the spotlight on Johnson's Baby Powder.
16 Plaintiffs have told you that Johnson's Baby
17 Powder is used more than any other talc.
18 They've told you that Johnson's Baby Powder is
19 to blame for his cancer.

20 And I don't think there's any question why
21 they've chosen a company like
22 Johnson & Johnson, right? Each and every one
23 of you had heard of us before you walked in
24 this room. I think it's pretty clear why we
25 are in the crosshairs and why we're here.

1 But we're defending ourselves for a reason
2 because we think the claims have no scientific
3 merit and they are false. And this allegation
4 that this company somehow knew that we had
5 poison in our product and we sold it anyway and
6 we were out to kill people for decades is just
7 false. It's not supported by the documents.

8 And, please, please, if you have any
9 questions about that, go back and read those
10 documents. You're going to have plenty of
11 them. Look at what they say because what you
12 have heard from counsel in argument is not what
13 is in the evidence.

14 And let me leave you with this: I thought
15 it was interesting when we were talking with
16 Mr. Perry and Mr. Long about what happened when
17 they went to their doctor and got this
18 diagnosis the very first time.

19 You heard Mr. Perry say that his doctor
20 gave him a little warning. If you're going to
21 go and get on the internet, don't just go
22 anywhere looking but go to a reputable site.

23 She told him go to the National Institutes
24 of Health. Go there, look only there, and find
25 your answers there. And you heard he did go

1 there.

2 There was no discussion of Johnson's Baby
3 Powder. There was no discussion of cosmetic
4 talc causing mesothelioma. And we know from
5 Mr. Long that the internet research continued.
6 It was during that research that they came to
7 believe that Johnson's Baby Powder was to
8 blame. That's why we're here.

9 But the doctor -- the doctor told him to
10 look for advice at the NIH, which would not
11 have pointed him here.

12 And Dr. Gibney -- Dr. Gibney did not tell
13 you that Johnson's Baby Powder was to blame.

14 I'm so thankful for you for listening. I
15 know it's been a long morning already, and I
16 appreciate you giving me an opportunity to
17 defend Johnson & Johnson about these claims.

18 We take them very seriously. We are
19 disturbed by what you heard this morning. And
20 I just want you to know that this company is
21 defending itself because Johnson's Baby Powder
22 did not cause Mr. Perry's cancer. Thank you
23 very much for your time.

24 THE COURT: Now, Mr. Adams, how much time
25 is allotted to you?

1

- - -

2

THE COURT: Y'all done? Bring me the

3

jury.

4

(The jury entered the courtroom at this

5

time.)

6

THE BAILIFF: Jury seated, Your Honor.

7

THE COURT: Thank you, ma'am.

8

Ladies and gentlemen, the jury will now

9

have the conclusion of closing arguments. I

10

will then come down to the podium and just

11

proceed right into giving you the charge.

12

And then here's what happens. You'll go

13

to the jury room. We will take our alternates

14

and place them in a different room because we

15

don't want to let you go. You know, we want

16

you here until the very end in case your

17

services are needed. So we'll put you in

18

another room. If your services were needed

19

because of anything that happened, I will make

20

the appropriate instructions about how to

21

proceed and how to involve someone who's coming

22

back into the deliberations. So no fears about

23

that.

24

Again, expressed through the clerk's

25

office concerns about is this going into next

1 week? The answer to that is still absolutely
2 not. As I told y'all, even if I had to declare
3 a mistrial, which would kill me with this
4 lengthy trial, rather than go back on my word
5 to you, I would do that. So be peaceful about
6 all that.

7 I think that's all I need to tell you.

8 Mr. Adams, whose name I have butchered
9 many times but he always says it's okay, you
10 may proceed.

11 MR. ADAMS: Thank you, Your Honor.

12 - - -

13 REBUTTAL ARGUMENT BY MR. ADAMS

14 - - -

15 MR. ADAMS: Long stretch, everybody.

16 Thank you for bearing with us.

17 One of the things you just heard is that
18 no epidemiology studies says talc causes
19 mesothelioma. Sounds pretty bad, right, for
20 us, except they chose their words very
21 carefully. They said talc. Because we know
22 that talc containing asbestos fibers gives
23 folks the disease Michael Perry has. That's
24 from the World Health Organization and IARC.

25 You also heard about these miners and

1 millers, and folks in the mine don't get the
2 disease, according to Johnson & Johnson; so it
3 must be safe. Except they do. A disease
4 that's only one or two per million for the
5 folks in Johnson & Johnson's Vermont talc mine,
6 the talc that Mr. Perry breathed for over three
7 decades, it's not one in a million, it's one in
8 2 million.

9 Then they talk about Dr. Gibney. Maybe
10 you remember opening statement, Johnson &
11 Johnson said, pay attention to Dr. Gibney.
12 They tried to co-opt him. They tried to say he
13 was their witness.

14 Then he came and literally said there's
15 asbestos in the baby powder that gave Michael
16 Perry this disease. He called their company
17 unethical because they concealed the asbestos
18 from doctors and nurses for decades, not just
19 by keeping quiet but by going to the doctors
20 and nurses and telling them it wasn't there.

21 But they said Dr. Gibney, who's a surgeon,
22 he didn't know about asbestos in talc. Why
23 would they say that? Does that prove there's
24 not asbestos in their talc because a doctor
25 didn't know about it? Or do their own records

1 finding asbestos in their talc over and over
2 and over and over and over again, hundreds and
3 hundreds of times? Why would they stand, look
4 at you, and say because Dr. Gibney didn't know
5 when they concealed it from doctors, maybe it
6 wasn't there. It's just not straight. Over
7 and over it's there.

8 Dr. Blount, they showed you something
9 where she said she didn't think asbestos was a
10 health hazard, their mineralogist. She knows a
11 lot about finding asbestos in talc. She's a
12 mineralogist. She's not a medical doctor. She
13 doesn't know. But it was there.

14 And then the lawyer for Johnson & Johnson
15 showed you some documents that they said that
16 maybe I used scissors. Remember that? They
17 said I used scissors and I cut out parts.

18 They've had the documents for 70 years.
19 What do you think I cut out? The word "not"
20 right before asbestos? Just kidding. Psych.
21 The word "asbestos" is there. Do you think, if
22 I cut out something, they wouldn't have got up
23 and shown you? They've had them for 70 years.
24 There was asbestos in their baby powder.

25 But they showed you this document, and

1 they said this is our industrial talc.

2 Mr. Adams showed you this document and he said
3 talc samples confirmed asbestos and then had
4 this big long list.

5 Folks, that was our industrial stuff.
6 That's what they just told you. It wasn't
7 true. But it doesn't matter because they put
8 industrial talc in the baby powder.

9 But let's take a look -- and the reason
10 they told you it was industrial because they
11 said, look, it has this HC acronym on it; so it
12 must be industrial. So this industrial talc
13 that we took out of the Vermont mine, the exact
14 same mine where they got the talc for the baby
15 powder, maybe we tried to mislead you.

16 Except what we know is that this was in
17 the sediments and the fines in this document,
18 and I'll show it to you in just a second. And
19 we know that the sediment and the fines was
20 only created when they floated the talc. The
21 only talc they floated was the cosmetic. I
22 don't know if that made any sense to anybody.

23 This is in the sediment and the fines, and
24 I'll show you it on the next document. The
25 sediment and the fines were only created when

1 they floated the talc, and they only floated
2 the cosmetic talc. That's what was in the baby
3 powder.

4 "Q You told me that industrial were not
5 floated, right? You told me that?

6 "A I believe they're not floated.

7 "Q We know that, because we have fines
8 and sediment, these were floated. And we know
9 that there was one, two, three, four, five,
10 six, seven, eight, nine findings of confirmed
11 asbestos in the fines, correct, sir?

12 "A You've read what was written on that
13 report.

14 "Q And I've counted, right?

15 "A You've counted correctly.

16 "Q And we know that in the sediment we
17 have one, two, three, four, five. That's a
18 total of 14 results for asbestos, correct?

19 "A Correct."

20 Confirmed asbestos in the fines of the
21 sediment, the thing that was only created when
22 they floated the talc, and they only floated
23 the cosmetic. That's what they put in baby
24 powder. He says it twice.

25 "Q The industrial talc was not floated,

1 correct?

2 "A That is my understanding."

3 But it doesn't matter at all anyways
4 because they put industrial talc in baby powder
5 anyways. And if you didn't think Dr. Haber
6 told the truth or he made that up, we have
7 their own documents that I showed you about the
8 talc not being over 90 percent talc -- that's
9 industrial talc -- and they didn't bring anyone
10 to say Dr. Haber was wrong.

11 Then they told you that this winchite,
12 this winchite proved they didn't do it.
13 Remember that? They had a big board and they
14 did the fill in the blanks and all that.
15 Except their own expert found winchite in
16 Johnson's Baby Powder, winchite in the powder
17 in Johnson's Baby Powder.

18 Then they said, don't believe our own
19 expert who didn't come. That was an old
20 bottle. Except their own expert found winchite
21 in the bottles over and over again, and so did
22 Dr. Longo.

23 To put a bow on this, your lab finds
24 winchite; Longo's lab finds richterite. You're
25 seeing the same thing, right? That's not

1 Mr. Adams. That's not our experts. That's
2 their expert under oath. Dr. Longo found
3 richterite in the Italian, the Vermont, and the
4 Chinese. Every type of talc Mr. Perry breathed
5 from Johnson's Baby Powder had richterite in
6 it, which Dr. Sanchez, their own expert, says
7 the exact same thing; it's winchite.

8 But Mr. Perry was also exposed to Italian
9 talc when he was most vulnerable, the first
10 four years of his life at least, from '69 to
11 '73. The talc that was put on him every day as
12 an infant from Johnson & Johnson was Italian
13 talc, and it was probably past '73 because when
14 they stopped making Italian, they didn't just
15 pull it all off the shelves; they kept selling
16 the inventory.

17 And then they went back to Italian talc in
18 1979 for another year. At least five years,
19 probably more, the most vulnerable years for
20 Mr. Perry, he was exposed to Italian talc. And
21 the peer-reviewed published literature about
22 Johnson & Johnson's Italian talc in a
23 peer-reviewed scientific paper says it's
24 contaminated with winchite.

25 That's the tremolite in Johnson's Baby

1 Powder and the tremolite in Michael Perry's
2 lung. That's the talc in Johnson's Baby Powder
3 and the talc in Michael Perry's lung. And
4 that's the winchite in Johnson's Baby Powder
5 and the winchite in Michael Perry's lung. The
6 winchite proves they did it.

7 The next thing they told you is it wasn't
8 enough. They said occupational levels, the PEL
9 from OSHA, .1, it never got above the PEL. But
10 OSHA said the PEL is not safe for the disease,
11 mesothelioma, anyways even if that were true.
12 Did OSHA say that it was safe for the disease
13 mesothelioma? No. It was the opposite. They
14 said even at .1, it was not.

15 And so they came up to you and they tried
16 to say, because it was below the OSHA PEL,
17 which it wasn't, by the way, but even if it
18 was, OSHA says that's not safe. That's for
19 grown men in a factory. That's for grown men
20 in a power plant. This was babies. It's not
21 safe.

22 Johnson & Johnson did all this math for
23 you. They excluded the Round 1 testing, which,
24 by the way, was Italian that he breathed. They
25 only did the museum samples. They did the

1 lowest number. They did all that stuff to try
2 to get this low number.

3 But when they weren't in court and they
4 weren't challenged, they said the numbers were
5 way higher.

6 "Q But Johnson & Johnson has actually
7 done some experimental calculations where
8 they've estimated what the dose of asbestos a
9 person would get would be if they used talc
10 that had a very small bit of asbestos, about
11 ten parts per million, correct?

12 "A I believe so, yes.

13 "Q Yes. And they calculated that. That
14 would create a dose of between 4.5 to 9.3
15 fibers per cc for the adult and .16 to .18
16 fibers per cc in a baby, correct?

17 "A I believe that's been stated."

18 Those are massive exposures. There's no
19 organization on earth that says that's safe for
20 anybody, let alone a baby. There's no one on
21 earth that they could get to come say that's
22 safe because no one on earth would.

23 Then they talked about epidemiology and
24 the fact that Johnson & Johnson, for the
25 hundred-plus years they were selling this baby

1 powder, never paid for an epidemiology study,
2 never conducted an epidemiology study, never
3 followed any of the people using their powder
4 for an epidemiology study.

5 But it doesn't matter because epidemiology
6 proves they played a role in Michael Perry's
7 mesothelioma. Do y'all understand the only way
8 they win is if they played zero role? They
9 wanted to be the biggest, the strongest, the
10 most --

11 MS. BUENO: Objection, Your Honor.

12 THE COURT: Approach.

13 (Whereupon a bench conference was
14 held.)

15 MS. BUENO: The objection is he just said
16 the only way we win is if we played zero role,
17 which is not the law. The law is substantial
18 factor. He's now trying to say that anything
19 above zero is substantial, which is not what
20 you are going to instruct them.

21 MS. MCVEY: Judge, you're going to
22 instruct them what "substantial factor" means.
23 It doesn't have to be the biggest role. It's
24 in expert testimony and undisputed there was a
25 substantial factor in this case. He doesn't

1 have to say they were the biggest exposure.

2 MS. BUENO: That wasn't my objection. He
3 said anything above zero, and that's not the
4 law.

5 THE COURT: I understand your argument. I
6 have listened to the testimony. I will
7 overrule your objection.

8 MS. MCVEY: Thank you.

9 THE COURT: Objection is overruled.

10 (Bench conference concluded.)

11 MR. ADAMS: Witnesses for
12 Johnson & Johnson under oath say 4.5 to 9.3
13 fibers per cc.

14 Look at these numbers. 0.1 fibers per cc,
15 quadrupling of the risk. I showed you this
16 already, but this is everything. This is it.
17 The epi shows the levels from their powder
18 gives people this disease, not a doubling of
19 the risk, a quadrupling of the risk, an
20 eightfold increase, a 28-fold increase, a
21 fraction of what their corporate representative
22 just told you people are exposed to.

23 And it's not just their corporate
24 representative. And it wasn't just fibers; it
25 was fibers per cc. That's why he admitted to

1 it under oath, that whole thing where they
2 tried to make it disappear. He said it under
3 oath.

4 Gordon 2014. It was Italian. 22 of the
5 50 samples were Italian talc, the exact same
6 thing Johnson & Johnson put in its powder for
7 the first four years of Michael's life. And in
8 1979 it was the exact same talc from the exact
9 same mine they did that study with. It was 1.9
10 fibers per cc, orders of magnitude higher than
11 all these epi studies we just looked at.

12 They told you that Dr. Longo didn't rely
13 on this paper, this peer-reviewed paper with no
14 citation. Do you know why they didn't have a
15 citation? Because he never said that ever. He
16 didn't say he doesn't rely on this. That's not
17 in this case. You can ask for a readback. You
18 can ask to see it. It doesn't exist. Those
19 numbers are way higher.

20 But it doesn't matter because Dr. Haber
21 came.

22 "Between .1 to 4 fibers per cc is my
23 estimate of what people were exposed to from
24 Johnson's Baby Powder."

25 It's undisputed. If a corporate rep got

1 it wrong, if all the peer-reviewed studies got
2 it wrong, if everyone got it wrong, why didn't
3 they bring someone to say it to your face? Why
4 didn't they bring an expert to say, "Everybody
5 got it wrong; I'm going to straighten it out."

6 After that, they did the OSHA thing, OSHA
7 said it's safe. Well, that's not true. Then
8 they did the winchite thing. Well, that's not
9 true. Then they did the fibers per cc dose
10 thing. Well, that's not true.

11 Then they tried to say, well, the
12 exposures were lower in the background. The
13 exposure to asbestos from our powder were lower
14 than background.

15 They said Dr. Brody said background, and
16 they had some number, was safe. They left out
17 the part where I came back and asked him
18 questions and said, "If they knew that
19 background number and said someone was exposed
20 to it their whole life, would that be safe?"
21 He said no.

22 But it doesn't matter because the
23 background, we learned, is short-fiber
24 chrysotile; it's not tremolite. When you
25 compare the amount of tremolite in their baby

1 powder to the amount of tremolite in the
2 background there, it's a million times more
3 than in baby powder. It's not below
4 background. It's a million times more.

5 And then they tried to say this was
6 100 percent brakes and other talc when their
7 own expert said the brakes didn't count at all.
8 Zero. Understand why they didn't bring him?

9 And we could go through this whole
10 exercise of comparing the brakes to the talc,
11 the 70 brake jobs, at least 18,000 uses of
12 Johnson's Baby Powder if he just used it once a
13 day. He did brakes for three years, J&J for
14 50.

15 Brakes are in a resin binder; Johnson's
16 Baby Powder is a powder. Brakes are mostly
17 chrysotile. I don't know if you noticed, but
18 they did this whole thing about how there
19 wasn't chrysotile in Mr. Perry's lungs; so
20 maybe it didn't come from the powder. But
21 brakes were 99.9 percent chrysotile.

22 They took a tiny little sliver of his lung
23 and looked at it. It doesn't mean it wasn't
24 there, but what they found is exactly what was
25 in the bottle of Johnson's Baby Powder. J&J

1 was mostly tremolite. Brakes were outdoors.
2 The powder was in the home. Brakes weren't on
3 a baby; the powder was.

4 But it doesn't matter. It really doesn't
5 matter at all because the undisputed testimony
6 is that it's the total dose of asbestos that
7 causes the disease. The total dose, all of it
8 counted. Of course the brakes counted. Of
9 course they count.

10 He worked with brakes; he was exposed to
11 asbestos. He breathed it into his body. It
12 was part of his dose. They counted. But so
13 did the asbestos from the baby powder that he
14 breathed for 50 years. It's the cumulative
15 dose that counts, the total dose. You can't go
16 back and start deleting asbestos exposures.

17 It would be like if someone had lung
18 cancer and they smoked Camels for 10 years,
19 Marlboros for three, and Kents -- Kools for 50
20 or whatever, and they got lung cancer. You
21 can't go back and say, oh, the Kents didn't
22 count, the Marlboros didn't count; it was just
23 the Kools. That's not how science works.

24 Asbestos is exactly the same. It's all
25 the cigarettes that caused the lung cancer, and

1 it's all of the asbestos that gave Michael
2 Perry mesothelioma. And it's a hundred percent
3 undisputed. This is medical stuff, folks. Why
4 didn't they bring a doctor to say it's not a
5 cumulative-dose disease, it didn't count, it
6 was too little?

7 And that's what the law says too.
8 Proximate cause doesn't mean the only cause.

9 There's another slide -- and you'll get it
10 from the judge as soon as I'm done -- and I'm
11 almost done, I promise -- that says multiple --
12 there can be multiple causes. I lost it. But
13 you'll hear it. You'll have it back there.
14 The law says the same thing.

15 We heard from Johnson & Johnson about how
16 they won't attack Mr. Perry. They won't attack
17 someone who's sick. And they said they won't
18 do that because they know that it would anger
19 you.

20 But then they got up and they did that
21 whole bottle thing. Remember, 10 bottles of
22 J&J, 10 bottles of Clubman, 8 bottles of
23 something else. Why?

24 Then they said, well, he had a bottle from
25 the '70s and he had a bottle of Johnson's Baby

1 Powder from 2004. So -- so what? What are
2 they saying? He made it up? He lied? He
3 didn't really use their powder? He had it in
4 his home, and he has it in his body. The talc
5 and the asbestos in their powder is in his
6 body, and that's all you need to know.

7 Thank you so much for listening to us. I
8 appreciate you so much. Please value Michael
9 Perry's life. Thank you.

10 THE COURT: Move the ELMO. Don't be
11 blocking the jurors. There you go.

12 MR. ADAMS: Do you need a mic, Your Honor?

13 THE COURT: Thank you.

14 - - -

15 JURY CHARGE GIVEN BY CHIEF JUSTICE TOAL

16 - - -

17 THE COURT: Ladies and gentlemen of the
18 jury, I am now going to give you the jury
19 charge. It's just a little bit easier for you
20 to hear me if I come down here. So I'm not
21 planning on making any arguments of any kind;
22 I'm just going to give you the jury charge.

23 Charge 1, Role of the jury. Ladies and
24 gentlemen, I'm going to charge you on the law
25 that applies to the case and the law that

1 applies to the facts of this case. And it is
2 your duty to find the facts from the evidence.

3 And to those facts, you must apply the law
4 as I give it to you. And you must decide this
5 case based on the evidence and the law.

6 You should not be concerned with what the
7 law should be but what it is. And you must not
8 be interested in this case by any personal
9 likes or dislikes or any undue sympathy or
10 prejudice.

11 And that means you must decide this case
12 solely on the evidence before you according to
13 the law. You will remember that you took an
14 oath to do just that when we began this trial.

15 So follow my instruction. You must follow
16 all of them and not single out some and ignore
17 the others because they are all equally
18 important.

19 Please don't read into these instructions
20 or into anything I may have said or done during
21 the course of this trial any indication as to
22 what I think the facts are or what I think your
23 verdict should be because, under our system of
24 justice, you the jury are the sole and
25 exclusive judges of the facts.

1 And I'm not going to intrude on your
2 constitutionally guaranteed right to determine
3 the facts, just as I know you're not going to
4 intrude on my responsibility as your judge
5 under the Constitution to charge you as to what
6 the law is.

7 Now, ladies and gentlemen, how do you
8 decide what the facts are? You do it by
9 evaluating or weighing the evidence you have
10 heard during this trial. And there's no way
11 for you to weigh the evidence in any literal
12 sense. I'm not going to give you a set of
13 scales to go back and conduct experiments.
14 That's not what I'm talking about.

15 You weigh and evaluate the evidence simply
16 by using your good common sense, your sense of
17 logic and reason, your life experiences. And
18 you bring those things to bear on the evidence
19 you've heard during this case.

20 And once you do that, you will be able to
21 determine the true facts of this case. And
22 once you determine -- done that, you will be
23 able to take the law as I'm about to give it to
24 you and apply that law to the facts, and you
25 will be able to reach a decision and a verdict

1 in this case.

2 In deciding the facts of this case, you
3 must not be swayed by any bias or prejudice or
4 favor as to any party. Our system of justice
5 does not permit jurors to be governed by
6 prejudice or sympathy or public opinion. This
7 case should be considered and decided by you as
8 an action between two parties of equal standing
9 in the community, of equal worth, and holding
10 the same or similar stations in life.

11 A corporation is entitled to the same fair
12 trial at your hands as a private individual.
13 All persons, including corporations, stand
14 equal before the law and are to be dealt with
15 as equals in the court of justice.

16 So you must not consider as evidence any
17 statement of counsel made during the trial.
18 Statements of counsel do not constitute
19 evidence. Rather, counsel is articulating the
20 position and the contentions of his or her
21 client. And this rule applies to the opening
22 statements of counsel and the closing
23 arguments.

24 Attorneys are officers of the court.
25 Attorneys have the absolute right and duty to

1 bring matters to the attention of the Court by
2 way of objections. So don't be upset or
3 disturbed by counsel because of an objection.
4 Our trial procedure includes the objection
5 process as a means of controlling the evidence;
6 in other words, letting in proper evidence and
7 keeping out improper evidence. So counsel by
8 objecting are simply performing their role in
9 the trial of the case.

10 Now, once the Court makes a ruling on an
11 objection, the jury is bound by that ruling.
12 If an objection is sustained, the question is
13 improper; and if the objection is overruled,
14 the question is proper.

15 In that regard, the jury must not under
16 any circumstances derive any inference to any
17 ruling made by the Court on objections as to
18 any opinion the Court may have on the case.

19 The judge does not have an opinion on the
20 evidence and is not entitled to an opinion
21 under the law. The judge is performing her
22 role in the trial of the case.

23 As to any questions to which an objection
24 was sustained, you must not speculate on what
25 the answer might have been or the reason for

1 the objection.

2 Burden of proof. I told you at the
3 beginning of the case that plaintiffs have the
4 burden of proving their case. And the burden
5 of proof in a civil case is by means of greater
6 weight or preponderance of the evidence.

7 And that means that the plaintiffs, in
8 order to obtain a verdict, must produce
9 evidence which, considered in light of all the
10 facts, leads you to believe that what they are
11 claiming is more likely true than not.

12 A better way to visualize it perhaps is to
13 envision a set of scales. And if you put the
14 plaintiff and the defense evidence on opposite
15 sides of the scale, in order to receive a
16 verdict, the plaintiff would have to tip the
17 scales in their favor.

18 If those scales tip in the plaintiffs'
19 favor even slightly, the most minute portion,
20 then the plaintiffs would be entitled to a
21 verdict because the greater weight would be on
22 their side.

23 However, after you review the evidence, if
24 the scales are evenly balanced and there's not
25 a greater weight on either side or the scales

1 are tipped even slightly in the defendant's
2 favor, then the defendant would be entitled to
3 a verdict because the plaintiff would not have
4 proved his case by the greater weight or
5 preponderance of the evidence.

6 Now, in connection with my charge on
7 burden of proof, I charge you that a party's
8 allegations -- that is, the stated case or
9 defense -- may be proved by any evidence
10 regardless of whether that evidence is brought
11 out or introduced by an opposing party or by
12 the opposing party's witness.

13 That is to say, a party in proving the
14 claim or defense is not limited solely to the
15 defendant -- to the testimony given by that
16 party's own witnesses but may rely on any
17 evidence that's been presented and introduced
18 by the opposing party and upon any testimony
19 elicited from the opposing party's witnesses on
20 direct or cross-examination.

21 Now, some of you may be familiar with the
22 burden of proof in a criminal case. Before the
23 state can convict someone of a crime, they must
24 prove each element of that crime beyond a
25 reasonable doubt.

1 And this is not a criminal case,
2 obviously, so that phrase, "beyond a reasonable
3 doubt," which is one of the highest standards
4 of proof the law knows, it has no place in this
5 civil case. The standard of proof that you
6 must use and the yardstick you must apply is
7 the burden of the greater weight of the
8 evidence.

9 Now, let's talk about evidence. You must
10 decide what the facts are from the evidence.
11 And the evidence consists of sworn witness
12 testimony, exhibits, and we've also had
13 something called stipulations in this case.

14 And a stipulation is simply an agreement
15 by the parties that a certain fact exists
16 without necessity of further proof. And you
17 must take a stipulation as conclusive evidence
18 of a fact so that -- the only things you can
19 use in determining what the facts are are
20 witness testimony, exhibits, stipulations, and
21 court-ordered instructions. Nothing else is
22 evidence.

23 We have had excellent lawyers in this
24 case. This is the cream of the crop in this
25 country that you and I have had the privilege

1 of hearing in a Richland County courtroom. And
2 they have zealously advocated for their
3 clients' positions.

4 But, again, they're not witnesses. So
5 what they say is not evidence. If you remember
6 something differently than the way the lawyers
7 remember it, your memory controls. What they
8 have said and argued in this case is very
9 important for you to listen to because, as I
10 said at the outset, they are trying to help you
11 understand the evidence. But do keep in mind,
12 what they say is not itself evidence.

13 Now, stipulations. There is an economic
14 loss stipulation. The plaintiffs and
15 defendants stipulate that the total current
16 economic loss is \$3,329,973.05. And you will
17 have this figure in the jury room with you.

18 Plaintiffs and defendant AII stipulate
19 that the reasonable and necessary past medical
20 bills, which is another element of loss, as a
21 result of Michael Perry's mesothelioma
22 diagnosis and treatment are \$510,620.05.

23 So when you saw those two figures added
24 together in argument, that's what is meant,
25 that those are -- if you're going to award

1 anything, that's what you'd consider in making
2 your award.

3 Direct and circumstantial evidence. In
4 any type of case, there are different types of
5 evidence. And what I'm discussing now is
6 direct as opposed to circumstantial evidence.
7 I'm going to give you a definition for each.

8 Direct evidence is the testimony of a
9 witness who claims to have actual and direct
10 knowledge of the facts such as an eyewitness.
11 It's evidence that, if believed, immediately
12 establishes a fact.

13 Another type of evidence is circumstantial
14 evidence. I'm sure you've heard that term.
15 Circumstantial evidence is indirect evidence.
16 Put another way, circumstantial evidence is
17 proof of a chain of facts and circumstances
18 from which you could find that another fact
19 exists even though it hasn't been proven to you
20 directly. In modern parlance, we call that
21 connecting the dots.

22 The law makes no distinction between the
23 weight or value to be given either direct or
24 circumstantial evidence. You may consider both
25 kinds of evidence in this case.

1 By way of an example, if a witness
2 testified that the witness saw it was raining
3 outside, that would be direct evidence that
4 it's raining.

5 But if a witness testified that the
6 witness saw someone enter the room wearing a
7 raincoat covered with drops of water and
8 carrying a wet umbrella, that would be
9 circumstantial evidence from which you could
10 conclude that it was raining.

11 Where circumstantial evidence is relied
12 upon, it is incumbent upon the party presenting
13 the evidence to show the existence of such
14 circumstances as would justify the inference
15 that a particular event actually occurred and
16 not to leave questions to speculation or
17 conjecture.

18 If the circumstances are proved to your
19 satisfaction, you may infer a fact from those
20 circumstances. But the circumstances must lead
21 to the conclusion with reasonable certainty.
22 If the circumstances are not proved to your
23 satisfaction, then you shouldn't infer the
24 facts.

25 Evidence, evaluating witness testimony.

1 You must consider all of the evidence in
2 deciding what the facts are. And if there has
3 been evidence that's been stricken from the
4 record or if I told you to disregard it, that
5 material is no longer a part of the record or
6 evidence in the case and you can't consider it
7 in your deliberations.

8 But you must, as judges of the facts,
9 determine the credibility of all evidence. So
10 as I told you at the beginning, for every
11 witness who testifies and every exhibit that is
12 admitted, you will have to determine whether
13 those things are worthy of belief. And how do
14 you do that?

15 In a case of a witness who testified, I
16 can give you some general guidelines. First,
17 you may consider whether the witness had some
18 interest in the outcome of the case, whether
19 they had some bias or prejudice towards someone
20 or some issue in the case, whether they had
21 something to gain by their testimony.

22 Second, you may consider what opportunity
23 the witness had to observe the things they were
24 here to tell you about.

25 Third, you may consider how the witness

1 evidence or testimony stacks up against other
2 evidence in the case. Is it consistent or
3 inconsistent?

4 Fourth, you may consider the demeanor on
5 the stand of the witness. Was the witness
6 hesitant or forthright in their testimony?

7 Fifth, you may certainly use what you'd
8 call your day-to-day life to determine whether
9 someone is telling you the truth because you
10 didn't surrender your common sense when you
11 walked into this courtroom last week.

12 I will tell you this: You may believe
13 everything a witness says; you may believe
14 nothing a witness says; you may believe parts
15 of a witness's testimony; you may disbelieve
16 other parts; you may believe the one witness
17 over the several; or you may believe the
18 several over the one.

19 But you certainly don't decide this matter
20 of credibility simply by counting up the
21 witnesses on one side or the other because your
22 sole objective, ladies and gentlemen, is to
23 determine the truth in this case. And it does
24 not matter to you whether that truth comes from
25 a witness for the plaintiff or for the

1 defendant.

2 Now, expert testimony. You've heard
3 testimony from people who have been described
4 and qualified as experts. They were qualified
5 as experts because they, by reason of their
6 education, training, or experience, achieved
7 some expertise in their given field. And they
8 can state their opinion on matters in their
9 field. And they may state their reasons for
10 their opinions.

11 But expert testimony, as I told you when
12 we had the very first expert qualified, must be
13 judged by you just as any other testimony in
14 this important respect. And that is that you,
15 the jury, are the sole judges of the
16 credibility of the witness. You may believe a
17 witness's testimony and accept it, or you may
18 reject it, or you may give it whatever weight
19 you think it deserves.

20 Expert witnesses and causation. Now, when
21 someone relies on expert testimony to show a
22 causal connection between an injury and the
23 subsequent condition, the testimony must meet
24 the most probably rule.

25 It's not sufficient to say the condition

1 in question possibly could have come or might
2 have come from the injury. Expert must go
3 further and testify that, taking into
4 consideration all the facts, it is his or her
5 professional opinion that the result in
6 question most probably came from the cause
7 alleged.

8 Deposition testimony. You've also heard
9 testimony presented through depositions. And I
10 just want to remind you that deposition
11 testimony is entitled to the same weight and
12 consideration as if that witness had been here
13 and testified from the stand.

14 Taking notes. Now, some of you have been
15 taking notes during the trial, and I gave you
16 an instruction on that. I just want to remind
17 you that the notes are for your own personal
18 use, and notes certainly don't overcome
19 another's independent recollection of the
20 testimony. They're not to be used in place of
21 your memory.

22 Multiple defendants. The plaintiffs in
23 this case are Michael Perry and his husband,
24 Lonnie Long. And there are multiple defendants
25 in this trial, the Johnson & Johnson entities

1 and American International Industries.

2 Plaintiffs contend that Johnson & Johnson
3 entities is responsible for Johnson's Baby
4 Powder during all the years of its use in this
5 case.

6 You should decide the case against each
7 defendant separately as if it were a separate
8 lawsuit. Each defendant is entitled to
9 separate consideration of its defenses.

10 Now, I have found as a matter of law that
11 American International Industries, AII, is
12 liable. So you don't have to make that
13 liability determination. They are liable.

14 The Court has already determined that
15 American International Industries, the company
16 responsible for Clubman talc products, is
17 liable to Michael Perry on each of the causes
18 of action pled against them, specifically
19 negligence, strict liability, fraudulent
20 misrepresentation.

21 The Court has determined that Clubman
22 asbestos-containing talc products was defective
23 and unreasonably dangerous and was a
24 substantial factor in the development of
25 Michael Perry's mesothelioma.

1 The Court has determined that American
2 International Industry's conduct was willful,
3 wanton, and reckless, meaning American
4 International Industries acted with a conscious
5 indifference to the rights and safety of
6 others.

7 Now, while these are issues you must
8 decide against Johnson & Johnson, you are
9 instructed that American International
10 Industries is liable to the plaintiffs in this
11 case. Your task -- your only task as to AII is
12 to determine the total amount of damages that
13 Michael Perry and Lonnie Long have suffered.

14 Summary of the plaintiffs' claims. This
15 is a claim for damages stemming from
16 personal -- from a personal injury that has
17 been alleged. And I want to go over with you
18 the various claims that have been made in this
19 case.

20 The plaintiffs Michael Perry and Lonnie
21 Long are seeking to recover damages for
22 personal injury arising out of alleged exposure
23 of Michael Perry to asbestos from the
24 defendant's products. Plaintiffs' claims in
25 this case are based on several theories:

1 negligence, strict liability, and fraudulent
2 misrepresentation.

3 There are three different ways a company
4 can be strictly liable under the law of this
5 state: design defect, manufacturing defect,
6 and warning defect. And the plaintiff must
7 only prove one of those defects to establish
8 defendant's liability under strict liability.

9 The plaintiffs are not required to prove
10 all of these theories to recover. Proof of a
11 claim under any one of these theories would
12 enable you to find the plaintiffs are entitled
13 to a verdict. But the plaintiffs must meet
14 their burden of proof as to at least one of
15 these theories against at least one of the
16 defendants in order to recover. If you find
17 they have not, then the verdict would be --
18 then the defendant would be entitled to a
19 verdict.

20 Negligence. The first theory of the
21 plaintiffs is one of negligence. The focus on
22 the negligence is on the conduct of each of the
23 defendants. In order to prevail under this
24 claim, the plaintiffs must prove by the greater
25 weight of the evidence that the defendant

1 failed to exercise due care in some respect.

2 If you're having a hard time with the
3 phrase "negligence," you can substitute the
4 word "careless" because it really means
5 essentially the same thing. It means the
6 failure to act as a reasonably prudent person
7 would act under the same or similar
8 circumstances or doing something that a
9 reasonable person would not do under the same
10 or similar circumstances.

11 You must first determine if the defendant
12 owed the plaintiffs a duty of care. A
13 defendant will owe the plaintiff a duty of care
14 when the defendant knows of the risk of harm
15 posed by its product. This may be met by
16 showing the defendant was aware of the danger
17 and failed to take reasonable steps to correct
18 it.

19 A manufacturer is held to the skill of an
20 expert in the field as to the products itself
21 and is charged with an expert's knowledge of
22 materials and processes used in the industry.

23 A manufacturer has a duty to stay aware of
24 current standards and scientific knowledge in
25 the industry; and therefore, since the seller

1 assumes the duties of a manufacturer, a seller
2 is held to the skill of an expert in the field
3 as well and has a duty to stay aware of current
4 standards and scientific knowledge in the
5 industry.

6 Although evidence of industry standards
7 may be considered as evidence of the standard
8 of care, an industry can't set its own
9 unreasonable standards. An entire industry may
10 lag behind in adoption of new and available
11 products or safety features, and the failure to
12 use due care, even if no one in the industry
13 uses due care, does not excuse negligence.

14 It is for you to decide whether the
15 standard of care was proper considering what a
16 reasonable person would have done under similar
17 circumstances.

18 If you find the defendant owed the
19 plaintiff a duty of care, then the next thing
20 the plaintiffs must prove by the greater weight
21 of preponderance of the evidence is that the
22 defendant breached that duty of care by a
23 negligent act or omission.

24 In deciding whether the defendant breached
25 the duty of care, you should consider whether

1 the defendant has filed the normal and
2 customary procedures in the industry in light
3 of the defendant's expertise and ability to see
4 and appreciate the product and its cause.

5 If the defendant failed to exercise
6 reasonable care in fulfilling any of its
7 duties, the defendant would be responsible for
8 the injuries to any person the defendant should
9 expect to use the product, assuming the
10 injuries have been proven to have been
11 proximately caused by that breach. This burden
12 may be met by showing that the manufacturer was
13 aware of the danger and failed to take
14 reasonable steps to correct it.

15 In an action based on negligence,
16 plaintiffs must also prove that the product was
17 in a defective condition, unreasonably
18 dangerous to the user, when it left control of
19 the defendant and the defect caused the
20 plaintiff's injury.

21 Now, the next thing is the duty of product
22 manufacturers themselves.

23 A manufacturer owes a duty of care in the
24 manufacture of its product proportionate to the
25 dangers involved in the product's use. A

1 manufacturer of a product may, under a claim or
2 design that makes it dangerous for use for
3 which it's made, owe a duty to use reasonable
4 care in the adoption of a safe plan or design
5 those users you would expect to use the
6 product. A seller owes the duty to conduct
7 adequate tests and inspections of its product
8 to discover latent defects or defects that are
9 not visible or apparent on reasonable
10 inspection.

11 Now, if a seller had reason to know that
12 the product was likely to be dangerous or
13 defective, a seller owes a duty to exercise and
14 use reasonable care, inspecting and testing the
15 product, before selling.

16 If a reasonable inspection or test would
17 have disclosed a defect, a manufacturer who
18 incorporates a defective component into its
19 finished product and places the finished
20 product into the stream of commerce is liable
21 for the injuries caused by defect in that
22 component part.

23 But defendant can, however, be liable for
24 an alleged defective product it did not design,
25 recommend, specify, require, manufacture, sell,

1 or place in the stream of commerce. In
2 deciding whether the defendant had a duty to
3 test the product, you should consider the
4 defendant's ability to conduct tests at the
5 time the product was sold.

6 A seller of a defective product has a duty
7 to warn users of the product and any dangers
8 created by the product with which the
9 manufacturer is or should be aware at the time
10 the products are sold.

11 A supplier of a product who knew or should
12 have known that the product might be dangerous
13 during its foreseeable use and has a reason to
14 believe that the ultimate user would not
15 appreciate the danger has a duty to clearly and
16 understandably warn the ultimate user of the
17 danger.

18 Now, a seller is required only to warn
19 about dangers that are unreasonable or which
20 are dangerous beyond the expectation and
21 general knowledge of an ordinary person who
22 uses the product with an ordinary common
23 knowledge about the product's characteristics.

24 In other words, there's a duty to warn not
25 when scientific certainty is established but

1 when a reasonable person would want to be
2 informed of the risks. In deciding whether the
3 directions or instructions or warranties are
4 adequate, you should consider their location,
5 language, and size.

6 Strict liability, the elements.

7 Second theory I want to go over with you
8 is strict liability. The plaintiffs' claims
9 are that the defendant should be held strictly
10 liable for the plaintiffs' injuries; and to
11 recover under the strict liability, the
12 plaintiff must prove three things by the
13 greater weight of the evidence.

14 First, the product was in a defective
15 condition, unreasonably dangerous to the
16 plaintiff.

17 Second, that at the time of the injury,
18 the product was essentially in the same
19 condition as when it left the defendant's hand.

20 Third, the plaintiffs were injured by the
21 product.

22 Strict liability means liability without
23 fault. Under the law, the theory of strict
24 liability says that, even if a defendant used
25 due care, the defendant may still be

1 responsible for the plaintiff's injuries.

2 In other words, it does not matter whether
3 the defendant was negligent or not negligent.
4 If the products were defective and unreasonably
5 dangerous whether they left defendant's hands,
6 the defendant is liable, even if all reasonable
7 care was used in making and selling the product
8 and even if the plaintiff did not buy the
9 product from any of the defendants or enter
10 into a contract with the defendant because the
11 plaintiffs do not have to show negligence under
12 the theory of strict liability. The plaintiffs
13 must only prove the product was defective and
14 unreasonably dangerous when it was placed in
15 the stream of commerce. So your focus should
16 be on the product itself and not the conduct of
17 the defendant.

18 The defect must exist at the time that it
19 leaves defendant's control. The existence of a
20 defect is crucial because a manufacturer is not
21 an insurer against all risk of injury
22 associated with the product. In a products
23 liability case against a manufacturer, the
24 plaintiffs have the burden of proving that the
25 product in question was defective at the time

1 when the defendant had possession or control of
2 it or when the product was delivered or
3 purchased.

4 There's no duty on a manufacturer to
5 furnish a product which will not wear out. A
6 party who sells a product in a defective
7 condition unreasonably dangerous is subject to
8 liability for physical harm caused to the user
9 if the manufacturer is engaged in the business
10 of producing or selling a product and it is
11 expected to reach and reaches the consumer
12 without a substantial change in its condition.

13 So if you find it was probable that a user
14 would be injured by the product and the injury
15 was not reasonably perceivable to the user, the
16 product is defective. You cannot find the
17 product is defective if it's only possible that
18 such an injury would occur.

19 In deciding whether a product is
20 unreasonably dangerous and defective, you
21 should consider the dangers that would be
22 reasonably anticipated by a typical user of a
23 product of this kind. Then you should decide
24 whether the particular product involved in this
25 case has a tendency for causing dangers beyond

1 that that an ordinary user with common
2 knowledge of the product's characteristics
3 would anticipate. And you should also consider
4 whether the dangers associated with the use of
5 the product outweigh the usefulness of the
6 product, the costs involved for adding safety,
7 and the likelihood and seriousness of the
8 injury and the obviousness of the danger.

9 Now, many products cannot be made
10 completely safe for their use. If a product is
11 useful and desirable and properly prepared and
12 manufactured and packaged and accompanied by
13 adequate warnings and instructions, they cannot
14 be said to be defective. The fact that a
15 product can be made safer alone does not make
16 the product unreasonably dangerous.

17 In order for a defendant to be
18 responsible, the product must have been in a
19 condition not contemplated by the ultimate
20 user, which would be unreasonably dangerous to
21 that user when the product was used in a
22 foreseeable manner, including any intended use
23 of the product at the time it left defendant's
24 hands.

25 Now, there are three kinds of product

1 defects: design defects, manufacturing
2 defects, and warning defects.

3 Plaintiffs allege that defendant's
4 products have all three of these types of
5 defects. You only need to find one of these
6 defects, however, to find the defendant
7 strictly liable. And I will give you
8 instructions on each one of these defects.

9 Design defect. To prove a defective
10 condition, the plaintiff must prove that the
11 defendant sold the product and at the time of
12 sale it was unreasonably dangerous to the user.
13 A defect does not have to be a manufacturing
14 error. With a design defect, there's nothing
15 wrong with the manufacturing product and the
16 product is made according to its design;
17 however, there's a flaw in the product's
18 design. The plaintiffs must prove that the
19 product as designed was in a defective
20 condition, unreasonably dangerous. The test is
21 not whether the product could be made safer but
22 whether its design was unreasonably dangerous.

23 Now, you must balance the utility of the
24 risk inherent in the design of a product with
25 the magnitude of the risk to determine the

1 reasonableness of the manufacturer's action in
2 designing the product.

3 A product is unreasonably dangerous and
4 defective if the danger associated with the use
5 of the product outweighs the utility of the
6 product. Numerous factors must be considered
7 when determining whether a product is
8 unreasonably dangerous, including the
9 usefulness and desirability of the product, the
10 cost of adding additional safety, the
11 likelihood of potential seriousness of the
12 injury, and the obviousness of the danger.

13 The plaintiff must also prove the
14 existence of a reasonable alternative design.
15 If the plaintiff does not show that the
16 defendant could have designed the product in an
17 alternative manner that would have eliminated
18 the defect, plaintiff cannot recover under the
19 claim of design defect.

20 Strict liability manufacturing defect.

21 Plaintiffs also contend that defendant's
22 products were defectively manufactured. A
23 manufactured defect exists when the product
24 doesn't conform to the manufacturer's design
25 standard and specifications and the flaw makes

1 the product more dangerous and, therefore,
2 unfit for its intended or foreseeable use.

3 This type of defect is not a defective
4 design but a defective execution of the design.
5 When a manufacturing defect is claimed, the
6 test of whether a product is or is not
7 defective is whether the product is
8 unreasonably dangerous to the consumer or user
9 given the conditions and circumstances that
10 foreseeably attend the use of the product.

11 Now, strict liability warning defect.

12 The product may also be defective if the
13 defendant failed to warn or failed to provide
14 adequate instruction to the user. Product is
15 not defective for failure to warn of the
16 obvious. Seller is not required to warn with
17 respect to products when the danger or
18 potential danger is generally known and
19 recognized.

20 A product can't be deemed either defective
21 or unreasonably dangerous if the danger
22 associated with the product is one that
23 product's users generally recognize.

24 A product may, by reason of its nature and
25 use, be -- a product may be, by reason of its

1 nature and use, unreasonably dangerous unless
2 proper instructions and warnings are supplied
3 for its intended use. In those cases, a seller
4 or manufacturer must give an appropriate
5 warning of any dangerous conditions likely to
6 be encountered. The warning must be one that
7 would cause a reasonable person to use caution
8 proportionate to the potential danger.

9 There is a particular need for sufficient
10 warning when there is a representation that the
11 product in question is not dangerous. A
12 product may be found defective if the product
13 is unreasonably dangerous in the hands of the
14 user without suitable warning. A manufacturer
15 or seller is not required to warn about defects
16 of a product unless the manufacturer knew or
17 should have known about the defects when the
18 product was sold.

19 Now, state of the art. Something you must
20 consider in assessing the defendant product and
21 conduct is the state of the art at the time the
22 products left the defendant's hands. The issue
23 of due care, as well as the breach of any
24 warranty, must be assessed in light of the
25 circumstances existing at the time of sale.

1 In order for plaintiffs to prove their
2 product's liability action, they must show the
3 product was in a defective condition at the
4 time they left the hands of the particular
5 seller. The product must be measured against
6 standards existing at the time of sale.

7 State of the art includes all the
8 reasonably available scientific knowledge on
9 the subject at the given time. And this
10 includes scientific, medical, engineering, or
11 other knowledge that may be available. State
12 of the art includes the element of time, what
13 is known, and when this knowledge was
14 available.

15 If a product is nondefective under the
16 standards existing at the time of its
17 manufacture, the manufacturer does not have a
18 postsale duty to warn. You should return a
19 verdict in favor of the plaintiffs only if,
20 considering the state of the art existing at
21 the time defendant's products were sold, the
22 product was sold in a defective condition.

23 Causation. Under any products liability
24 theory of recovery -- negligence, strict
25 liability, or fraudulent misrepresentation --

1 the plaintiff must establish that the product
2 defect was a proximate cause of the injuries
3 sustained.

4 Plaintiff must prove that the defendant --
5 that the plaintiffs' exposure to asbestos in
6 the defendant's product was of such a
7 frequency, regularity, and duration that it was
8 a substantial factor in bringing about the
9 disease or injury. The mere fact that an
10 injury or accident occurred standing alone does
11 not permit you to draw the conclusion that the
12 injury or accident was caused by anyone's
13 negligence or breach of warranty of strict
14 liability.

15 In a negligence claim, plaintiffs must
16 prove by a greater weight of the preponderance
17 of the evidence that defendant's negligence
18 proximately caused an injury to the plaintiff
19 and the damages suffered were proximately
20 caused by the defendant's breach of its duty of
21 care.

22 Proximate cause is conduct that produces a
23 natural chain of events and in the end brings
24 about an injury. And it is the direct cause of
25 the injury.

1 To prove the defendant's negligence
2 proximately caused plaintiff's injury,
3 plaintiffs must first prove something called
4 causation in fact. That is proved by showing
5 the defendant's negligence was a substantial
6 factor in causing the injury.

7 The plaintiff must also prove something
8 called legal cause, and that is proved by
9 showing the injury was foreseeable. That means
10 the injury occurred as a natural and probable
11 consequence of the defendant's negligence.

12 The plaintiffs must prove that some injury
13 from the defendant's negligence was
14 foreseeable, but they do not have to prove the
15 particular injury that occurred -- the
16 particular injury that occurred was
17 foreseeable. However, a defendant cannot be
18 held responsible for something that could not
19 have been expected to happen.

20 There can be more than one cause.
21 Proximate cause does not mean the only cause.
22 Defendant's actions can be a proximate cause of
23 plaintiff's injury if defendant's conduct was
24 at least one of the direct causes of the
25 injury. Where two or more causes combine to

1 produce an injury, a defendant is not relieved
2 from liability for negligence because it's
3 responsible for only one of the causes. It is
4 sufficient that its negligence or fault is a
5 substantial factor in causing the injury.

6 Consequently, if a defendant's negligence
7 is a proximate cause of an injury to another,
8 the fact that the negligence of a third party
9 occurred with its own negligence to produce the
10 harm does not relieve it of liability. In such
11 cases each wrongdoer is in breach of the duty
12 of care owed to the plaintiff because the
13 negligence of each contributed to produce an
14 injury. They can all be liable.

15 Under South Carolina law, a defendant is
16 entitled to assert that other persons or
17 entities caused or contributed to the alleged
18 injury or damage. The matter of others'
19 alleged fault in causing the plaintiffs'
20 injuries has been raised by the defendants, and
21 it's proper for you to consider the actions of
22 others but only insofar as plaintiff have made
23 their -- have met their burden of proof.

24 Eggshell plaintiff. A defendant who is
25 negligent must take the plaintiff as he finds

1 him, even though a defendant may not have been
2 on a notice of any particular -- any peculiar
3 susceptibility to injury on the part of the
4 plaintiff. If the defendant's conduct was such
5 as to come out of a failure to exercise due
6 care to a person of ordinary susceptibility, he
7 would be liable for all damages suffered by the
8 plaintiff notwithstanding the fact that those
9 damages were unusually extensive because of the
10 peculiar susceptibility on the part of the
11 plaintiff.

12 Fraudulent misrepresentation. Fraud is an
13 intentional perversion of the truth for the
14 purpose of inducing another in reliance upon it
15 to part with some valuable thing belonging to
16 him or to surrender a legal right. Fraud is a
17 false representation of a matter of fact,
18 whether by words or by conduct, by false or
19 misleading allegations, or by concealment of
20 that which should have been disclosed which
21 deceives and is intended to deceive another so
22 that he will act upon it to his legal injury.

23 To recover for fraud, the plaintiffs must
24 have relied on the misrepresentation. In order
25 to prove fraudulent misrepresentation,

1 plaintiff must show the following elements:

2 1. A representation;

3 2. Its falsity;

4 3. Its materiality;

5 4. Knowledge of the falsity or reckless
6 disregard of the truth or falsity;

7 5. The intent that the representation be
8 acted upon;

9 6. The careless ignorance of its falsity;

10 7. The hearer's reliance upon the truth;

11 8. The hearer's right to rely; and

12 9. The hearer's consequent and proximate
13 injury.

14 Plaintiffs must prove each of these
15 elements of fraudulent misrepresentation by
16 clear and convincing evidence.

17 And I'm going to tell you about clear and
18 convincing evidence because these others have
19 to be proved by the greater weight of
20 preponderance, but when you get into fraud,
21 it's a different standard. It's called clear
22 and convincing evidence.

23 As I've explained to you, in evaluating
24 whether the defendants were negligent, strictly
25 liable, or in breach of implied warranty, the

1 burden of proof is simply the greater weight or
2 the preponderance of the evidence.

3 But plaintiffs' fraud claim must be proven
4 by higher burden -- clear and convincing
5 evidence.

6 In addition, if you find that the
7 defendant's conduct was willful, wanton, or
8 reckless, the plaintiff must also prove that by
9 clear and convincing evidence, that is, that
10 the evidence must clearly and convincingly
11 establish that the defendant was actually
12 reckless or willful and wanton, meaning there
13 was a conscious failure to exercise due care or
14 a conscious indifference to the rights and
15 safety of others or reckless disregard of the
16 rights and safety of others.

17 Clear and convincing is something more
18 than simply the greater weight of the evidence;
19 it's something less than beyond a reasonable
20 doubt. Clear and convincing evidence is proof
21 that leaves you firmly convinced -- clear and
22 convincing proof establishes in your mind not
23 only the fact is probable but that it is highly
24 probable.

25 Actual damages, personal injury. If you

1 find the plaintiffs have met their burden of
2 proving at least one of these theories --
3 negligence, strict liability -- by the greater
4 weight of the evidence, or that the plaintiffs
5 have made their clear and convincing burden as
6 to fraudulent misrepresentation and that the
7 damages were proximately caused by the
8 defendant's conduct or product, then you would
9 move on to assess damages.

10 That is how much money the defendant
11 should be required to pay. Actual damages are
12 designed to compensate a party for their loss
13 and to make that party as a whole as -- as
14 whole -- to make the party whole as near as
15 money can do so and to put him in the same
16 position as he was or they were prior to the
17 incident or accident occurring.

18 Actual damages include actual losses and
19 expenses that the plaintiffs have suffered
20 because of defendant's wrong.

21 Actual damages include several areas that
22 are recognized by the law. In a personal
23 injury action, plaintiffs may recover necessary
24 and reasonable expenses caused by the injury,
25 such as the amounts necessary for medical

1 treatment.

2 Persons who suffer personal injury because
3 of misconduct in another is entitled to recover
4 the reasonable value of medical care and
5 expenses for the treatment of the injury at the
6 time of trial as well as those reasonably
7 certain to be incurred in the future.

8 Accordingly, a plaintiff may recover
9 amounts incurred for past and future medical
10 care, including hospital, physician, nursing
11 care costs, medicine, or other out-of-pocket
12 anticipated expenses, such as vocational,
13 physical, or other rehabilitation.

14 Pain and suffering is also an element of
15 these actual damages, and it's properly
16 considered under the law. Pain and suffering
17 compensates the plaintiff for physical
18 discomfort, emotional response to the sensation
19 of pain caused by the injury.

20 There's no definite standard I can give
21 you for determining the amount of damages.
22 You, the jury, will have to use your calm,
23 reasonable judgment to determine them in light
24 of your own experiences, in light of testimony
25 and evidence presented in this case.

1 Another form of damages is enjoyment -- is
2 loss of enjoyment of life. This compensates
3 the plaintiff for limitations on the ability to
4 participate in and derive pleasure from normal
5 activities of daily life.

6 Another category is mental suffering, that
7 is, compensation for shock, fright, anxiety,
8 emotional upset.

9 Actual damages for the plaintiff who has
10 been physically injured include pain and
11 suffering both past and future as well as
12 mental anguish. Mental anguish is something
13 more than mere disappointment or anger or worry
14 or embarrassment or resentment.

15 While it may include all of these, it also
16 includes the mental sensation of pain resulting
17 from painful emotions such as grief, wounded
18 pride, shame, disparagement and humiliation.
19 It may also be composed of fright, nervousness,
20 grief, anxiety, and worry from an ordeal.

21 Actual damages, loss of consortium.
22 Plaintiffs also claim loss of consortium
23 damages due to the injuries received by Michael
24 Perry's husband, Lonnie Long.

25 The companionship or the society of a

1 spouse are not articles of commerce that can be
2 weighed or measured or bought or sold. No
3 expert is competent to testify as to their
4 value, and there is nowhere we can go to
5 determine their market price, of course. And
6 consideration on which they're based is not
7 monetary.

8 But Lonnie Long is entitled to
9 compensation and money for his loss. Loss of
10 consortium includes affording services provided
11 by the other spouse, love and companionship,
12 affection, society, sexual relations, comfort,
13 solace, and guidance. Plaintiff Lonnie Long is
14 entitled to recover the value of those services
15 of Michael Perry which have been lost,
16 including the loss of his society and
17 companionship in his home.

18 Now, future damages. In determining the
19 amount of compensation for someone personally
20 injured by another's conduct, it is proper to
21 consider past, present, and future aspects of
22 the injury. The injured party may recover
23 those future damages that are reasonably
24 certain to result.

25 The principle underlying the compensation

1 is -- there's only one action that can be
2 brought and therefore only one recovery had.
3 So it may be, depending on your view of the
4 evidence, proper to consider future damages,
5 future medical expenses, pain and suffering
6 that will, with reasonable certainty, result.

7 The plaintiff is never entitled to recover
8 speculative damages, and that is damages that
9 you arrive at by guesswork.

10 The plaintiff has a burden of proving the
11 existence and causation and the amount of
12 damages, which he does not have to prove to a
13 mathematical certainty. Instead, the plaintiff
14 must present to you evidence that's sufficient
15 to allow you to make a reasonable approximation
16 of damages. That is, plaintiff must prove the
17 damages to a reasonable degree of certainty.

18 Any future damages you award must be
19 reasonably calculated to -- as a result of the
20 alleged injury or damage sustained, and they
21 must be reduced to their present cash value.

22 I will charge you in this case that
23 Michael Perry is a 54-year-old male with a life
24 expectancy, according to the South Carolina
25 Code of Laws, of 25.65 years. This is a factor

1 you may consider along with any other facts and
2 circumstances that may bear on his health and
3 longevity, including his occupation, habits,
4 and health.

5 Willful and wanton and reckless conduct.
6 There's one question on the jury form that asks
7 about willful, wanton, or reckless conduct. A
8 defendant's conduct is reckless or willful or
9 wanton if there was a conscious failure to
10 exercise due care or conscious indifference to
11 the rights and safety of others or reckless
12 disregard to the rights and safety of others.

13 This must be established by clear and
14 convincing evidence, which is something more
15 than simple greater weight of the evidence and
16 something less than beyond a reasonable doubt.

17 Clear and convincing proof is proof that
18 leaves you firmly convinced. Clear and
19 convincing proof establishes in your mind not
20 only that a fact is probable but that it is
21 highly probable.

22 Jury deliberations. Now, I'm through with
23 my instructions on the law. And I just want to
24 give you some final instructions on your
25 deliberation.

1 Before we do that, I want to remind you
2 that you were chosen in this case not to be
3 partisans or advocates for either the plaintiff
4 or defendants.

5 You were chosen because all of them
6 believed you could be fair and reasonable. You
7 could be a juror who can decide this case
8 without any kind of bias or prejudice.

9 So you're the judges, the judges of fact.
10 And your sole interest is to determine the true
11 facts from the evidence in this case and take
12 the law as I just gave it to you and apply it
13 to those facts. And you will ultimately be
14 able to reach a verdict.

15 You should know that the record is closed
16 now. There's not going to be any more
17 witnesses. There's not going to be any more
18 exhibits. So if something was referred to
19 during the trial such as a particular document
20 and you don't have it back there as an exhibit,
21 I can't give it to you now. But you're going
22 to have all the exhibits, of course, that have
23 been introduced. They will go back into the
24 jury room with you.

25 So keep in mind the record is closed. You

1 have to make your decision based on the
2 exhibits you have and your memory of the
3 evidence.

4 A jury, if you look up the word in the
5 dictionary, would be defined as a company of
6 people sworn to render a true verdict. And
7 that is what you've been called upon to do, to
8 determine the true facts of this case.

9 Ladies and gentlemen, you each have a vote
10 in this case. Your vote is actually that.
11 It's your vote and no one else's vote. Don't
12 be afraid to change your mind if the discussion
13 you're going to have persuades you that you
14 should because that's what deliberation is all
15 about.

16 But don't surrender an honestly and
17 conscientiously held belief simply to get this
18 case over with or to reach a unanimous verdict
19 because these parties have waited a long time,
20 and this is their day in court. And I know you
21 recognize the importance of it to them. And we
22 appreciate the seriousness and respect you have
23 shown everyone in this case and your patience
24 with all of us.

25 The verdict form. Now, the verdict form

1 I'm going to go over with you briefly.

2 Under the constitution of this state, a
3 jury verdict must be unanimous. And unanimity
4 is mandated. Every single juror must agree on
5 the jury verdict. It can't be any split or
6 divided vote in any form or fashion, so 11 to
7 1, 10 to 2, 9 to 3. Every juror must agree on
8 the jury verdict.

9 And when the foreperson of the jury -- and
10 that is you, Madam Foreperson. When you write
11 down what the verdict is -- that's what you'll
12 do after all have voted on the various things
13 that are on this jury form -- and sign your
14 name, that assures this Court that the verdict
15 is a unanimous verdict.

16 Now, I thank you all for your attention to
17 me and your patience with me. Don't start
18 deliberating about this case until you receive
19 the exhibits. That will be your signal that
20 you can start talking about this case.

21 Believe it or not, as long as I've been up
22 here talking, I may have left something out.
23 If I have, my friends the lawyers will be quick
24 to remind me of that.

25 So what I want you to do is go back to

1 your jury room. When you get the exhibits,
2 that will be your sign that you can begin to
3 deliberate. And I will also have the first
4 bailiffs and court personnel deliver to you so
5 you each will have a copy of the verdict form
6 and a copy of these charges that I have just
7 read to you.

8 So with that, you may go to your jury
9 room. Please do not deliberate until all of
10 these materials have been placed in your jury
11 room. Thank you very much.

12 Mr. Bailiff, I know you're going to take
13 our very patient friends who are the alternates
14 into a place --

15 THE BAILIFF: We're going to put them next
16 door right here.

17 THE COURT: Alternates, if you would stay
18 in place.

19 Jury, if you will depart.

20 And then they'll take you, my friends the
21 alternates, into a separate room now.

22 Mr. Bailiff, these alternates may want to
23 go into the jury room and get materials that
24 they have in there that they would like to
25 have. So all may go to the jury room to begin

1 with, including the alternates, and then you
2 show them where they are to then sit. Make
3 sense?

4 Very good.

5 (The jury exited the courtroom at
6 this time.)

7 (The following proceedings were held
8 outside the presence of the jury:)

9 THE COURT: Before you finish -- please be
10 seated.

11 All right. I'll turn first to the
12 plaintiffs.

13 Plaintiffs?

14 MS. MCVEY: No issues from us, Your Honor,
15 other than what was previously raised.

16 THE COURT: Thank you.
17 Defense? Mr. Brown?

18 MR. BROWN: Yes, Your Honor. Thank you.

19 We think there is a problem here, Your
20 Honor, because of the overruling of Ms. Bueno's
21 objection which went to a law issue which
22 belongs solely to the Court.

23 Ms. Bueno objected to the closing argument
24 that the only way that our client would win is
25 if it had zero role. And the Court overruled

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

IN THE COURT OF
COMMON PLEAS
FOR THE FIFTH
JUDICIAL CIRCUIT

- - -

MICHAEL L. PERRY AND LONNIE	)	
L. LONG,	)	
	)	
Plaintiffs,	)	
	)	Case No.
vs.	)	2023-CP-40-04072
	)	
AMERICAN INTERNATIONAL	)	
INDUSTRIES, ET AL.,	)	
	)	
Defendants.	)	

TRIAL BEFORE: THE HONORABLE JEAN H. TOAL
DAY 8

DATE TAKEN: Thursday, August 15, 2024

TIME BEGAN: 10:00 a.m.

TIME ENDED: 5:28 p.m.

LOCATION: Richland County Judicial Center
1701 Main Street
Courtroom 3B
Columbia, South Carolina

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1 one charge to give them again, we find to be
2 unduly prejudicial and we object to it.

3 THE COURT: Very good.

4 MS. MCVEY: And just to be clear, the
5 motion for mistrial is denied?

6 THE COURT: Yes, the motion for mistrial
7 is denied.

8 Bring me the jury.

9 THE BAILIFF: Yes, ma'am.

10 (The jury entered the courtroom at this
11 time.)

12 THE BAILIFF: Jury is seated, Your Honor.

13 THE COURT: Thank you, sir.

14 - - -

15 JURY CHARGE BY CHIEF JUSTICE TOAL

16 - - -

17 THE COURT: And I think the first thing is
18 you know that we had to have our Clemson
19 Master's student, we had to let her go, just in
20 case you were wondering about that. Her plants
21 were wilting that she has spent her whole
22 thesis working on, and she needs to get up to
23 Clemson right now to see if she can revive them
24 because they're measuring every piece of
25 nutrient and they're getting all the rest of

1 that. So because of that, I did excuse her
2 with our thanks for everything she's done. And
3 she is an alternate, so the main composition of
4 the jury, of course, remains as it is. But
5 thank goodness we still have two more
6 alternates with us, and we may very well need
7 them.

8 Now, this is a question from your
9 foreperson on behalf of the jury as a whole:
10 "Do all 12 of us have to agree on each question
11 before we move on to the next or do we go with
12 a majority? Is that our decision? We want to
13 make sure we are abiding by the law."

14 First of all, let me say that with respect
15 to the verdict form, when you finally decide on
16 your verdict, you must go down each one of
17 these questions that we've got on the jury form
18 and you must answer each one of them, and it
19 has to be a unanimous vote.

20 Now, you will spend a whole lot of time
21 talking about this and deliberating, and I'm
22 not giving you any limitations on how you
23 discuss these matters. But I'm saying to you
24 that when you reach the final verdict, you must
25 go to each question, and each question must be

1 agreed to however you answer it, "yes" or "no."
2 Each question must be answered by all 12 in
3 complete unanimity, all in complete agreement.

4 Am I making sense?

5 THE JURY: Yes.

6 THE COURT: And in addition to that,
7 before you return to deliberations, I want to
8 recharge you something that is in your charge.
9 And remember that you have your charges there.
10 And, Madam Foreperson, if you just want to know
11 where I'm going and put it in your notes, I am
12 on page 20 of the charge, and it's a charge
13 about causation. And I want to read you
14 something specific out of it that's on page 20.
15 And then I'm going to read you something out of
16 Charge Number 21, which is on page 21.

17 So the first thing is: I charge you that
18 the plaintiff must prove that the plaintiff's
19 exposure to the asbestos in defendants' product
20 was of such a frequency, regularity, and
21 duration that it was a substantial factor in
22 bringing about the disease or injury. The mere
23 fact that the injury or accident occurred
24 standing alone does not permit you to draw a
25 conclusion that the injury or accident was

1 caused by anyone's negligence or strict
2 liability.

3 And I further charge you that proximate
4 cause does not mean the only cause. The
5 defendants' actions can be a proximate cause of
6 the plaintiff's injury if the defendants'
7 conduct was at least one of the direct causes
8 of the injury. Where two or more causes
9 combine to produce an injury, a defendant is
10 not relieved from liability for negligence
11 because it's responsible for only one of the
12 causes. It is sufficient that its negligence
13 or fault is a substantial factor in causing the
14 injury.

15 Consequently, if a defendants' negligence
16 is a proximate cause of the injury to another,
17 the fact that the negligence of a third party
18 occurred with its own negligence to produce the
19 harm does not relieve it of liability. In such
20 cases each wrongdoer is in breach of the duty
21 of care over the plaintiffs. And because the
22 negligence of each concurred to produce the
23 injury, they can all be liable.

24 So with that, I ask you to go and continue
25 your deliberations with much thanks from all of

1 us.

2 Please stand while the jury retires to the
3 jury room.

4 (The jury exited the courtroom at this
5 time.)

6 (The following discussion was held
7 outside the presence of the jury:)

8 THE COURT: All right.

9 MS. PEPKE: I think, for the record, I am
10 being told --

11 THE COURT: Yes. Ms. Pepke.

12 MS. PEPKE: For the record, Your Honor, I
13 just preserve our objections. We stand by our
14 motion for mistrial. We don't think that was
15 curative of the error we raised, and that the
16 Glenn language should have been used. So we
17 stand on our prior objections.

18 THE COURT: Thank you, Ms. Pepke. And the
19 motion is denied with all rights preserved,
20 both as they were explained in the initial
21 motion made yesterday and in the record, and as
22 further amplified. And I do not find that the
23 argument that is made is some new argument.
24 It's simply an expansion of an argument that
25 was made yesterday. So both motions are

1 arguments you made, Ms. McVey. So thanks very
2 much for that.

3 Anything else we need to put on the
4 record?

5 MR. BOGAN: Your Honor, we did the best we
6 could. We got a transcript late last night.
7 The court reporter got it to us last night, so
8 we apologize for the delay.

9 THE COURT: I understand. I'm not
10 pointing any negative fingers. No problem.
11 It's all done in the heat of battle. I stayed
12 up late and got up early in this case myself.

13 Be at ease.

14 (Whereupon there was a recess in the
15 proceedings from 11:15 a.m. to 2:26 p.m.)

16 THE COURT: All right. Bring me the jury.

17 (The jury entered the courtroom at this
18 time.)

19 THE BAILIFF: The jury is seated, Your
20 Honor.

21 THE COURT: Very well. Bring the verdict
22 to me. I understand you have a verdict?

23 JURY FOREPERSON: We do.

24 THE COURT: Good. Mr. Bailiff, if you'll
25 bring that verdict to me, I will then hand it

1 to the clerk after I have read it.

2 THE BAILIFF: Here, Your Honor (handing).

3 THE COURT: Got it?

4 All right, Mr. Clerk, you may publish the
5 verdict.

6 THE CLERK: Yes, Your Honor.

7 - - -

8 JURY VERDICT

9 - - -

10 THE CLERK: In the State of South
11 Carolina, County of Richland, in the Court of
12 Common Pleas, Fifth Judicial Circuit, Class
13 Action Number 2023-CP-40-04072. Michael L.
14 Perry and Lonnie L. Long, Plaintiffs, versus
15 Johnson & Johnson and American International
16 Industries, Defendants.

17 Negligence. We the jury find Defendant,
18 the Johnson & Johnson entities, were negligent
19 and its negligence was a proximate cause of the
20 Plaintiff Michael Perry's injuries: Yes.

21 We the jury find Defendant American
22 International Industries, AII, was negligent
23 and its negligence was a proximate cause of the
24 Plaintiff Michael Perry's injuries: Yes.

25 Strict liability. We the jury find

1 Defendant, the Johnson & Johnson entities, are
2 strictly liable for selling defective products
3 that was a proximate cause of Plaintiff Michael
4 Perry's injuries: Yes.

5 We the jury find Defendant American
6 International Industries, AII, is strictly
7 liable for the selling -- for selling defective
8 products that was a proximate cause of
9 Michael -- Plaintiff Michael Perry's injuries:
10 Yes.

11 Fraudulent misrepresentation. We the jury
12 find Defendant, the Johnson & Johnson entities,
13 engaged in the fraudulent misrepresentation in
14 selling its products and that fraudulent
15 misrepresentation was a proximate cause of
16 Plaintiff Michael Perry's injuries: No.

17 We the jury find Defendant American
18 International Industries, AII, engaged in
19 fraudulent misrepresentation in selling its
20 products and that fraudulent misrepresentation
21 was a proximate cause of Michael Perry's
22 injuries: Yes.

23 Damages. If you answered "yes" to any of
24 the questions 1 through 6, please state the
25 amount of actual damages that have been proven

1 by the greater weight of the evidence. Michael
2 Perry's economic loss, past and future,
3 \$3,800,000. Michael Perry's other damages,
4 past and future, 19,337,000 --

5 THE COURT: Check that, Mr. Clerk. Say
6 again. Look at that. 19 million how much?

7 THE CLERK: 19,300,00 -- 237,000.

8 THE COURT: That's right. I have
9 19,230,000 -- 37,500. Isn't that correct?

10 THE CLERK: Yes, Your Honor.

11 THE COURT: All right. And continue.

12 THE CLERK: Lonnie Long's loss of
13 consortium damages, past and future,
14 \$9,618,750.

15 Willful, wanton, and reckless conduct. If
16 you answered "yes" to questions 1, 2, 5 or 6,
17 please answer this question as to any defendant
18 for which you answered "yes."

19 We the jury find by clear and convincing
20 evidence that the conduct of the following
21 defendants was willful, wanton, and reckless:
22 Johnson & Johnson, yes. American International
23 Industries, AII, yes. Signed Juror 31,
24 Foreperson.

25 Madam Forelady, was this the verdict of

1 the entire jury?

2 JURY FOREPERSON: Yes.

3 THE COURT: Shall the jury be polled?

4 MS. MCVEY: Not from the plaintiff, Your
5 Honor.

6 THE COURT: Shall the jury be polled?

7 MS. BUENO: Yes, please.

8 THE COURT: Poll the jury.

9 THE CLERK: Yes, Your Honor.

10 THE COURT: And what that means is that
11 each of you will be asked if that's your
12 verdict and if it's still your verdict. So
13 what happens is, starting with the foreperson,
14 you'll stand and you will be polled, and each
15 one will be polled so that we verify that each
16 individual, that this is your -- this was your
17 verdict and it's still your verdict. Do you
18 understand?

19 Very good. You may poll the jury.

20 THE CLERK: Yes, Your Honor.

21 Juror 31, Forelady, was this your verdict?

22 JURY FOREPERSON: Yes.

23 THE CLERK: Is this still your verdict?

24 JURY FOREPERSON: Yes.

25 THE CLERK: Juror 37, was this your

1 verdict?

2 **JUROR NUMBER 37:** Yes.

3 THE CLERK: Is it still your verdict?

4 **JUROR NUMBER 37:** Yes.

5 THE CLERK: Juror 40, was this your

6 verdict?

7 **JUROR NUMBER 40:** Yes.

8 THE CLERK: Is this still your verdict?

9 **JUROR NUMBER 40:** Yes.

10 THE CLERK: Juror 253, was this your

11 verdict?

12 **JUROR NUMBER 253:** Yes.

13 THE CLERK: Is it still your verdict?

14 JUROR NUMBER 253: Yes.

15 THE CLERK: Juror 51, was this your

16 verdict?

17 **JUROR NUMBER 51:** Yes.

18 THE CLERK: Is this still your verdict?

19 **JUROR NUMBER 51:** Yes.

20 THE CLERK: Juror 78, was this your

21 verdict?

22 **JUROR NUMBER 78:** Yes.

23 THE CLERK: Is this still your verdict?

24 JUROR NUMBER 78: Yes.

25 THE CLERK: Juror 235, was this your

1 verdict?

2 **JUROR NUMBER 235:** Yes.

3 THE CLERK: Is it still your verdict?

4 JUROR NUMBER 235: Yes.

5 THE CLERK: Juror 166, is this your
6 verdict?

7 **JUROR NUMBER 166:** Yes.

8 THE CLERK: Is it still your verdict?

9 **JUROR NUMBER 166:** Yes.

10 THE CLERK: Juror 360, was this your
11 verdict?

12 **JUROR NUMBER 360:** Yes.

13 THE CLERK: Is it still your verdict?

14 JUROR NUMBER 360: Yes.

15 THE CLERK: Juror 191, was this your
16 verdict?

17 **JUROR NUMBER 191:** Yes.

18 THE CLERK: Is it still your verdict?

19 **JUROR NUMBER 191:** Yes.

20 THE CLERK: Juror 296, was this your
21 verdict?

22 **JUROR NUMBER 296:** Yes.

23 THE CLERK: Is it still your verdict?

24 **JUROR NUMBER 296:** Yes.

25 THE CLERK: Juror 50, is this your

1 verdict?

2 **JUROR NUMBER 50:** Yes.

3 THE CLERK: Is it still your verdict?

4 **JUROR NUMBER 50:** Yes.

5 THE CLERK: The jury's been polled, Your
6 Honor.

7 THE COURT: Ladies and gentlemen of the
8 jury, let me tell you what will now happen.
9 You have answered Question Number 8 on the
10 verdict form, willful, wanton, and reckless
11 conduct, "yes." Your answer "yes" entitles the
12 plaintiff to proceed to present their request
13 for punitive damages.

14 What we will do is this: I'll send you
15 back to your jury room. I will verify details
16 with the plaintiff as to exactly what they are
17 to present. It will be limited. I believe
18 that we will finish today, but I'm not going to
19 rush you about that any more than I rushed you
20 about the decision you've just given to me.

21 So what I would like you to do now is
22 retire to your jury room. Alternates, retire
23 to your alternates room. Do not further
24 discuss what might happen in the punitive stage
25 until I give you instructions about that. And

1 you.

2 MR. BROWN: Your Honor, our first position
3 on this is that the verdicts in the case
4 already reflects that punitive damages have
5 been awarded. The court, with all due respect,
6 should have told them that there's a punitive
7 phase coming up.

8 THE COURT: Sure, I understand.

9 MR. BROWN: So that's our first position.

10 THE COURT: Yes. All right. I decline to
11 find that the verdict already reflects
12 punitives on the basis of the rulings I've
13 already made, but you're certainly entitled to
14 have that in the record.

15 MS. FLYNN: I join, Your Honor.

16 THE COURT: Ms. Flynn joins in that.

17 MR. BROWN: There's also a case, Your
18 Honor might have authored it, called Durham
19 versus Benson -- it might be Benson versus
20 Durham. But in that case, the Supreme Court
21 held that they reversed a punitive award
22 because there was evidence put in was
23 against -- had to do with third-party harm.
24 And in this case, Your Honor, there has been an
25 abundance of third-party harm asserted in the

1 case, including to people that are not
2 Mr. Perry, such as mothers, babies. He's not a
3 mother or a baby, and there was lots and lots
4 of evidence in this case --

5 THE COURT: I understood the argument.

6 MS. FLYNN: I join in that, as well.

7 THE COURT: My approach to that would be
8 to solve it in the charge.

9 MR. BROWN: And our position, Your Honor,
10 as you can guess, is you can't unring that
11 bell, and you won't be able to charge them
12 effectively that they can't consider any of
13 that kind of evidence in the punitive phase.

14 THE COURT: Are you saying that they
15 therefore could not have considered it in the
16 actual damage phase? I will note that you did
17 not object on that basis to the receipt of what
18 you now call third-party harm evidence in the
19 actual damage case because it was part of the
20 proof about the character of the defendants'
21 conduct, as well as the direct issue of
22 negligence and strict liability.

23 So I note that you are now saying the
24 third-party harm was one of the foundations for
25 the award of punitive damages, and I would

1 solve that in my charge. But I reject the
2 argument that they've already awarded punitive
3 damages, and I indicate with respect to
4 third-party harm -- is that Durham?

5 MR. BROWN: I think it is Durham.

6 THE COURT: I'll look at it in a minute.
7 I reject the argument that it can't be solved.
8 I'm going to look at Durham, and it might solve
9 it with some sort of charge if I think it's
10 warranted.

11 MR. BROWN: Your Honor, we think -- I
12 don't have a list in front of me, but I think
13 we might have objected in a motion in limine.
14 We certainly made mistrial motions based on
15 inappropriate evidence.

16 THE COURT: You did. You did. I take it
17 back. Yes, you did. You raised that.

18 MR. BROWN: Thank you.

19 MS. MCVEY: Can I respond just to that
20 little --

21 MR. BROWN: The cite for Durham is 360
22 South Carolina 639.

23 Your Honor --

24 THE COURT: South Carolina or Southeast?

25 MR. BROWN: South Carolina.

1 THE COURT: That's fine.

2 MR. BROWN: And, Your Honor, on the net
3 worth -- I hope I'm not messing up Ms. Pepke on
4 something. But, you know, this is a worldwide
5 organization that we're talking about,
6 depending upon who we're talking about. And
7 also talc is only a single product that they
8 used to sell. And they don't sell it anymore,
9 as you know. And for that -- for that original
10 reason, Your Honor, net worth numbers and
11 talking to an economist about J&J's worldwide
12 other products and all this kind of stuff, that
13 is out of bounds. That is not going to be
14 constitutional. It's not fair because you're
15 punishing somebody who already stopped selling
16 the product as well.

17 So, Your Honor, really, based on this
18 actual damages verdict, we would respectfully
19 request that the punitive damages charge is not
20 warranted whatsoever.

21 THE COURT: All right. I understand the
22 argument there. Of course I will deny the
23 motion to prevent punitive damages for being
24 sought because it's already in the verdict.

25 In addition, the economist discussion of

1 net worth is not per se out of bounds because
2 it's unconstitutional in my view. Do you have
3 some argument on that, Ms. Pepke?

4 MS. PEPKE: I do, but I don't want to step
5 on her --

6 THE COURT: Well, let Ms. McVey hear your
7 argument first, and then she can respond to all
8 of it.

9 MS. MCVEY: I just wanted to respond to
10 the baby-mother thing real quick because I
11 think we're moving on to net worth about the
12 evidence that came in.

13 THE COURT: The harm to others,
14 third-party harm?

15 MS. MCVEY: Right. The difference here,
16 of course, is the evidence was that Michael
17 Perry's mother used it on him when he was a
18 baby. That's why all that is relevant.

19 THE COURT: I think it's a predicate to
20 the explanation of what their -- your position
21 was about the knowing and intentional nature of
22 the conduct.

23 MS. MCVEY: Exactly.

24 THE COURT: I will not rule that there's
25 some impropriety about the verdict, either

1 presently received of actual damages or the
2 seeking of punitive damage based on the need to
3 exclude third-party harm, because I think the
4 third-party harm, as they term it, is simply an
5 indication of the character of the conduct.

6 MS. MCVEY: Thank you, Your Honor.

7 MS. FLYNN: Before we move on to another
8 motion, I wanted to join in the motion, Your
9 Honor, that Mitch Brown made, on behalf of AII
10 to the extent applicable.

11 I also wanted to point out that we don't
12 think punitives are appropriate. AII no longer
13 sells any talc-based products either. We
14 haven't sold talc-based products for seven
15 years, so it couldn't constitute a deterrence.

16 THE COURT: I understand. I will just say
17 on the issue of we no longer sell it, I reject
18 that as a proper basis for not allowing the
19 seeking of punitive damages. The fact that you
20 no longer sell the product does not minimize
21 your responsibility for actual punitive damages
22 in the material that I've read.

23 So I would reject that, and your objection
24 is noted.

25 MS. FLYNN: And we also want to just renew

1 our due process concerns that punitive damages
2 haven't been proven against AII.

3 THE COURT: Well, they have been --

4 MS. FLYNN: I understand.

5 THE COURT: That's a premature one,
6 Ms. Flynn. You're going to have to see what
7 they do attempt to prove there.

8 Now, Ms. Pepke.

9 MS. PEPKE: Thank you, Your Honor. I
10 would call the court's attention to two things.
11 First of all, we did file a motion to exclude
12 their economist's testimony on the finances to
13 the extent it's anything other than the net
14 worth number. So that is on file and has been
15 pending.

16 THE COURT: Tell me your authority for
17 that.

18 MS. PEPKE: It's Branham. I want to point
19 the court to this exact language in Branham.

20 THE COURT: All right.

21 MS. PEPKE: After a very thorough
22 analysis, the court came to the conclusion --

23 THE COURT: Hang on a minute. Where is my
24 little notebook that's got all the cases in it?
25 Have I got Branham in there? Nope.

1 - - -

2 (Discussion off the record.)

3 - - -

4 THE COURT: Bring me the jury.

5 THE BAILIFF: Yes, ma'am.

6 (The jury entered the courtroom at this
7 time.)

8 THE BAILIFF: Jury is seated, Your Honor.

9 THE COURT: Thank you, sir. You're so
10 tall and I'm so short.

11 - - -

12 JURY CHARGE BY CHIEF JUSTICE TOAL

13 - - -

14 THE COURT: All right. Ladies and
15 gentlemen, first let me say that this delay is
16 not the lawyers' fault. I blame this on
17 myself. I should have, while y'all were
18 deliberating, done this, but I kind of don't
19 like to get ahead of myself and jinx things.
20 So we'll just blame it on a Catholic
21 superstition.

22 Ladies and gentlemen, let me first begin
23 by explaining how this phase of the trial will
24 work. When the plaintiff brought this lawsuit,
25 the plaintiff asked for actual and punitive

1 damages. And the way I handle these type of
2 cases, particularly when they're complex, is
3 that I bifurcate. And that is just a fancy
4 word for I divide the case into the first thing
5 that is presented to you, which is actual
6 damages. And that would involve, first,
7 whether the defendant is liable. That's based
8 on whether the activities of the defendant
9 proximately caused the injury that the
10 plaintiff suffered.

11 Now, you've gone through that phase. And
12 I don't talk about punitive damages in that
13 phase or have that presented because I don't
14 want that to impact your thoughts when you're
15 just dealing with liability. So I stay away
16 from talking about punitive damages.

17 Now, at the end of your verdict form you
18 will notice, and I always ask in that first
19 phase, after you have been instructed about
20 clear and convincing evidence, I ask you
21 whether the conduct of any defendant that you
22 find is liable and that you award actual
23 damages against, whether that conduct was
24 willful, reckless, and wanton. And you have
25 found that it was. And that is the precursor

1 or predicate for moving this case to this phase
2 of the trial.

3 This is the last phase of the trial. It
4 is a short phase of the trial. So please be
5 assured that to begin with we're not talking
6 about any lengthy process. In this phase I'm
7 giving you some instructions about punitive
8 damages. And then I will turn to the plaintiff
9 to open their case on punitive damages, which
10 will be rather short and a strictly limited
11 time. And I'll start by reading you a
12 stipulation by the defendants. So that's how
13 we're going to proceed. Plaintiffs will
14 present their case. Defendants will present
15 their case. They will both be rather short.
16 And then they are permitted to make a closing
17 argument to you. And I may need to give you
18 other instructions, but I don't think so. The
19 ones I'm going to give you will suffice.

20 So we will begin with these instructions.
21 As I have told you, if you award actual damages
22 against the defendant, you may also consider
23 and award punitive damages. You've already
24 crossed the first hurdle, which is you have
25 found that the conduct was willful, reckless,

1 and wanton. Punitive damages are intended to
2 punish a defendant for willful, reckless, and
3 wanton misconduct and to prevent the defendant
4 and others from committing similar acts in the
5 future. Punitive damages can only be awarded
6 when the conduct of the defendant has been
7 something more than mere negligence. The
8 evidence must clearly and convincingly
9 establish that the defendant was reckless or
10 willful or wanton, meaning there was a
11 conscious failure to exercise due care or a
12 conscious indifference to the rights and safety
13 of others or reckless disregard for the safety
14 of others.

15 Now, there's a statute on that, a law, and
16 I'm going to read portions of that to you. The
17 statute is Code Section 15-32-520, and it's
18 entitled Bifurcated Trials Clear and Convincing
19 Evidence Standard, Factors for Liability
20 Determination. In all actions tried before a
21 jury involving punitive damages, if requested
22 by any defendant against whom punitive damages
23 are sought, the punitive damage phase must be
24 conducted in a bifurcated manner before the
25 same jury. I have conducted it that way. In

1 the first phase of the bifurcated trial, the
2 jury shall determine the liability for
3 compensatory damages and the amount of
4 compensatory or nominal damages. In this case
5 you have determined compensatory damages.
6 Evidence relevant only to the issue of punitive
7 damages -- evidence only relevant to the issue
8 of punitive damages is not admitted in the
9 first stage. Punitive damages may be awarded
10 only if the plaintiff proves by clear and
11 convincing evidence that his harm was a result
12 of willful, wanton, and reckless conduct, and
13 that has been done.

14 In the second phase of the bifurcated
15 trial, the jury shall determine if the
16 defendant is liable for punitive damages, and
17 if determined to be liable, the amount of
18 punitive damages. In determining the amount of
19 punitive damages, the jury may consider all
20 relevant evidence, including but not limited to
21 defendants' degree of culpability, the severity
22 of the harm caused by the defendant, the
23 duration of the conduct, the defendants'
24 awareness and any concealment by the defendant,
25 the existence of similar past conduct, the

1 profitability of the conduct of the defendant,
2 the defendants' ability to pay, the likelihood
3 that the award would deter the defendant or
4 others from like conduct. Those are the
5 pertinent portions of the statute.

6 Now, in a minute I'm going to turn to
7 Mr. Adams to begin the plaintiffs' presentation
8 of the case in this punitive damages case. And
9 I'm going to begin by reading you this
10 financial disclosure. This disclosure is made
11 on behalf of Johnson & Johnson. Financial
12 data, condition of defendant. Defendants' net
13 worth information for the past calendar year is
14 sufficient for the scope of the topic of the
15 defendants' financial condition. The year is
16 2023. The defendants' net equity for fiscal
17 year 2023 is \$70 billion. This disclosure is
18 made on behalf of AII. Its net worth for 2023
19 is \$76 million.

20 Now, I also have a punitive damages form.
21 And in a moment, I'm going to give that to your
22 foreperson of the jury, each one of you. And,
23 of course, just like we did before, you'll fill
24 it out at the end. It's a pretty simple form.
25 It says, "As to Plaintiff Michael Perry's claim

1 against Defendant Johnson & Johnson entities
2 for punitive damages, we the jury, by unanimous
3 consent, find." And you check "Michael Perry"
4 there. And then you would put in the amount of
5 blank punitive damages. You could put zero
6 there. It's not mandatory that you award
7 punitive damages. Or you can put a figure that
8 you think should be awarded considering the
9 arguments of the parties and the instructions I
10 have given you.

11 And then it says, "As to Plaintiff Michael
12 Perry's claim against Defendant American
13 International Industries for punitive damages,
14 we the jury, by unanimous consent, find" --
15 check "Michael Perry," and then there's a blank
16 for punitive damage. You can put zero there or
17 you can put the amount that you think should be
18 awarded as punitive damages. And the amount,
19 of course, depends on considerations that I
20 just read you in my instructions and arguments
21 that the parties will make to you as they make
22 their presentation.

23 So, Madam Foreperson, I am going to hand
24 you at this time blank verdict forms (handing).
25 I don't have a printed out copy of the charge I

1 just made to you, but the stipulation you can
2 just write down in your notebook, Madam
3 Foreperson, the net worth of Johnson & Johnson
4 is \$70 billion, and the net worth of AII is
5 \$76 million.

6 JURY FOREPERSON: Million?

7 THE COURT: That's AII, 76 million; J&J,
8 70 billion. All right? Very good.

9 Now, Mr. Adams, you may proceed.

10 MR. ADAMS: Thank you.

11 - - -

12 CLOSING ARGUMENT BY MR. ADAMS

13 - - -

14 MR. ADAMS: There's no more phases. This
15 is it, I promise. And it's supershort. It's
16 real short, but it's real important. I know
17 you all probably thought we were going to go
18 home. We're not allowed to tell you if you
19 check "yes" on 8, there's another phase. I'm
20 going to talk to you for about five minutes.
21 You've already heard the stipulations. J&J
22 will talk to you, and then you'll be done.
23 It's one question on the verdict form, and no
24 more phases.

25 Thank you so much for your deliberations.

1 Thank you for taking us so seriously. Thank
2 you for finding that the wrongful conduct of
3 Johnson & Johnson played a role in the cancer
4 that's going to take Michael Perry's life.
5 Thank you for valuing Lonnie Long's claim and
6 the loss that he's had. But most of all, I
7 just want to thank you for valuing Michael
8 Perry's life. Thank you so much.

9 This phase is about something completely
10 different. It's about punishment and
11 deterrence. You compensated Michael and Lonnie
12 already for their loss. That's done. This
13 phase is just about punishing the company.
14 Companies are not like human beings. They're
15 not made of flesh and blood. And so when a
16 company does something horrible and hurts
17 somebody, you can punish the company with
18 money. That's what this is about, punishment
19 and deterrence.

20 I talked about money damages that come
21 with a receipt. Remember that the paycheck
22 losses, the funeral expenses, the medical
23 bills, that's one kind. The other kind was the
24 type of money damages that don't come with a
25 receipt, the human loss in the case. This is a

1 third kind, money in a verdict to punish the
2 company and to tell them, "Don't ever do
3 anything like this again. Don't ever do
4 anything like this again." That's what this is
5 about.

6 But in order to do that, you have to know
7 how much money the companies have because
8 you're not allowed to destroy the company with
9 your verdict. It can't -- it can't be so much
10 that it would destroy the company, but it can't
11 be so little that they don't feel it at all.
12 It has to be actual punishment that will deter
13 them from doing this again.

14 And so --

15 MR. BROWN: Objection, Your Honor.

16 THE COURT: Yes. I think your objection
17 is "it has to be."

18 MR. BROWN: Yes.

19 THE COURT: And I agree with you. It
20 doesn't have to be any amount; and therefore
21 your objection is sustained. Strike that from
22 the record.

23 MR. ADAMS: Sorry about that. You don't
24 have to punish them at all.

25 We believe the evidence, selling the worst

1 carcinogen in human history to children, is
2 worth punishing.

3 MS. PEPKE: Objection, Your Honor. May I
4 approach?

5 THE COURT: You may.

6 (Whereupon a bench conference was
7 held.)

8 MS. PEPKE: I believe I heard him say,
9 "selling it to children," which would be asking
10 them to punish the harm to other people.

11 MS. MCVEY: He used it as a child. His
12 mother used it on him as a child. This is the
13 punishment phase.

14 THE COURT: Then use those terms. Don't
15 say, "selling it to a child."

16 MS. PEPKE: I would object to punishing
17 Johnson & Johnson for harm to other people.

18 THE COURT: Well, deterring that is what
19 they are asking for. And that they can ask.

20 MS. PEPKE: Overruled?

21 THE COURT: Overruled.

22 MS. MCVEY: Thank you, Your Honor.

23 (Bench conference concluded.)

24 THE COURT: Proceed, Mr. Adams.

25 MR. ADAMS: Yes, Your Honor. Thank you.

1 You all have to come up with the number on
2 your own. We're not allowed to tell you a
3 number, but I just want to put some of the
4 numbers in context, if I can. That
5 \$70 billion, that's what it looks like. I have
6 trouble sort of understanding that number.
7 It's seventy thousand million dollars.
8 1 percent of \$70 billion is \$70 million.
9 That's 1 percent. One of the ways that
10 sometimes I think about it is if you got rid of
11 the million, it would be 70,000. That's kind
12 of a number that we can understand, 70,000. If
13 somebody had \$70,000, and they sold something
14 that caused a person's death, and we were
15 wondering what would be appropriate to fine
16 them for that conduct, \$70 for someone with
17 70,000 in this case would be the same as
18 70 million, just to put the numbers in context.

19 MS. BUENO: Objection, Your Honor.

20 THE COURT: Overruled.

21 MR. ADAMS: But it's up to you. I hope
22 you all will do something -- you did such a
23 good job compensating Michael Perry, but
24 they're listening closer than they've ever
25 listened right now. This is the most important