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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

The Honorable Jean H. Toal
Acting Circuit Court Judge

Appellate Case No. 2024-001997
Circuit Court Case No. 2022-CP-40-01265

Sarah J. Plant and Parker Plant, ... Plaintiffs,

v.

Avon Products, Inc.; Amaco, LLC; American Art Clay Co. Inc.;
The Bargain Barn, LLC; Beacon CMP Corporation; Belk, Inc.;
Block Drug Company, Inc.; Brenntag North America, Inc.;
Brenntag Specialties, LLC; Bristol-Myers Squibb Company;
Chattem, Inc.; Colgate-Palmolive Company; Color Techniques,
Inc.; Conopco, Inc.; Coty Inc.; Dana Classic Fragrances, Inc.;
Dillard's, Inc.; Dollar General Corporation; Elizabeth Arden, Inc.;
Estee Lauder Inc.; Estee Lauder International, Inc.; The Estee
Lauder Companies Inc.; Hamrick's Incorporated; Highwater Clays,
Inc.; Houbigant, Inc.; IMI Fabi (Diana) LLC; IMI Fabi (USA) Inc.;
IMI Fabi, LLC; Ingles Markets, Incorporated; L'Oreal USA, Inc.;
L'Oreal USA Products, Inc.; Lowcountry Grocers LLC; Martin
Himmel Inc.; May Kay Inc.; Maybelline LLC; Noxell Corporation;
Pfizer Inc.; R.T. Vanderbilt Holding Company, Inc.; Revlon
Consumer Products Corporation; Revlon, Inc.; Rite Aid of South
Carolina, Inc.; Southeastern Grocers, Inc.; Topco Associates, LLC;
Vanderbilt Minerals, LLC; Variety Wholesalers, Inc.; Variety
Wholesalers, Inc.; Vi-Jon, LLC; Walgreen Co.; Walmart, Inc.;
Whittaker, Clark & Daniels, Inc.; Winn-Dixie Stores, Inc.; Yves
Saint Laurent America, Inc. Defendants,

of which

IMI Fabi (Diana) LLC; IMI Fabi (USA) Inc.; and IMI Fabi, LLC
are the Appellants.

RECORD ON APPEAL
(VOLUME I)

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STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

**SARAH J. PLANT and PARKER
PLANT,**

Plaintiffs,

v.

AVON PRODUCTS, INC., et al.,

Defendants.

IN THE COURT OF COMMON PLEAS

FOR THE FIFTH JUDICIAL CIRCUIT

C/A NO. 2022-CP-40-01265

In Re:

Asbestos Personal Injury Litigation
Coordinated Docket

**AMENDED¹ ORDER GRANTING PLAINTIFFS' MOTION FOR RELIEF FROM
JUDGMENT UNDER SCRPC 60(b) AND MOTION FOR NEW TRIAL**

Before this Court are motions by the Plaintiffs in the above-captioned case requesting the grant of relief from judgment pursuant to South Carolina Rule of Civil Procedure 60(b) and a new trial against the IMI Fabi Defendants.² After extensive briefing and three separate hearings on the matter, this court finds that the Plaintiffs' Motion for Relief from Judgment under SCRPC Rule 60(b) and Motion for New Trial, should be, and hereby is GRANTED. Although South Carolina has adhered to a "strong policy towards finality of judgments," where this Court, upon just terms, finds that under SCRPC 60(b)(2) there is newly discovered evidence in this case that could not have been discovered by Plaintiffs through due diligence in time to move for a new trial under Rule 59(b), relief may be granted. Moreover, where this Court finds there to be extrinsic fraud upon the Court, the only relief is to grant a new trial.³ Pursuant to SCRPC 60(b), Plaintiffs Sarah

¹ The following Order is substituted for the original order in this matter, filed October 23, 2024, to correct the first name of Ms. Elizabeth O'Neill, counsel for Defendants IMI Fabi.

² IMI Fabi entities include IMI Fabi USA, LLC, IMI Fabi (Diana), LLC, and IMI Fabi, LLC. They are collectively referred to herein as "IMI Fabi" or "Defendants."

³ *Bowman v. Bowman*, 357 S.C. 146, 152, 591 S.E.2d 654, 657 (Ct. App. 2004).

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Nov 21 2024

SC Court of Appeals

J. Plant and Parker Plant are granted relief from judgment and a new trial against IMI Fabi Defendants.

I. Background

A. The Complaint

On March 10, 2022, the Plants filed a lawsuit against many defendants including IMI Fabi, a global talc supplier to the personal care products and cosmetics industry.⁴ Plaintiffs claimed that Plaintiff Sarah J. Plant was a user from childhood of many talc containing cosmetic and personal care products which were tainted by asbestos, and that the asbestos contained in these products caused for Plaintiff Sarah J. Plant to contract mesothelioma, a cancer of the mesothelial lining of the lungs. Many of the defendants were: (1) product manufacturers, while others were (2) broker distributors of talc products, and still others were (3) global talc suppliers of cosmetic talc products. The third category of companies created talc products using talc mined from various sources, made to manufacturer specifications and sold these products through broker distributors. Defendant IMI Fabi was in the third category, a global distributor, through brokers, of talc products which it produced using talc sourced from mines in China. Plaintiffs' causes of action that were submitted to jury against IMI Fabi included negligence, strict liability, and implied warranty.⁵ Plaintiffs, through their interrogatories and other discovery, requested information from the IMI Fabi Defendants that was not produced. This unproduced information linked some of the talc manufactured by IMI Fabi to the talc products used by Plaintiff Sarah Plant. Defendants' responses to discovery requests were often a statement that documents such as correspondence between IMI Fabi and product manufacturers did not exist. IMI Fabi did not provide any correspondence

⁴ See Plaintiffs' Original Complaint. Trial Testimony of Corrado Fabi ("Fabi TT"), in this case, 2/23/23, at 1179:23-1180:8, 1220:21-24.

⁵ See Jury Verdict Form, dated 3/3/23.

between it and any of the fifteen (15) product manufacturers Plaintiffs named in their discovery requests. IMI Fabi stated that it had no idea who its talc was sold to other than broker Cosmetic Specialties, Inc. These assertions by IMI Fabi were false, and IMI Fabi knew that it had these records in boxes located in its National Counsel's law office.

A key element of Plaintiffs' proof of Defendants' liability was Plaintiffs' ability to show that the end products in which Defendants' talc had been used contained asbestos, and that the product was actually supplied to cosmetic manufacturers whose products Plaintiff Sarah J. Plant used.

The issue of whether IMI Fabi products contained asbestos was hotly contested. Plaintiffs provided scientific evidence supporting their contention that the Chinese talc IMI Fabi used contained asbestos. Defendant contended that IMI Fabi extensively tested its Chinese talc, and that the tests did not reveal the presence of asbestos. Plaintiffs presented expert testimony that supported their claim that the testing methods used were insufficient to detect the true asbestos content and that the cosmetic talc industry intentionally used testing which would not reveal the true talc content. This very contested issue was properly placed before the jury.

The principal focus of IMI Fabi's defense was product identification which is most commonly proven through use of a defendant's business records showing supply of its products directly to manufacturers or to brokers who supply product manufacturers. As detailed below, almost one (1) year after the verdict for IMI Fabi Defendants was rendered, Plaintiffs' attorneys discovered business records of IMI Fabi which had been withheld during discovery. These records, and the further records disclosed after this Court ordered production, form the bases for Plaintiffs' motion for new trial.

B. Pre-trial Discovery

Prior to the trial, on February 15, 2023, the deposition was taken of IMI Fabi's Chief Executive Officer and designated SCRPC 30(b)(6) corporate representative, Corrado Fabi. During the deposition, Plaintiffs' counsel inquired as to whether all responsive documents had been produced. Defendants' attorney, Elizabeth O'Neill, confirmed that "all the documents responsive to the duces tecum" and "all of the responsive documents that we were able to get from [Mr. Fabi] or any source," were provided, but that there were "other document sources," and that Mr. Fabi had knowledge of where the documents were maintained. During the deposition, Mr. Fabi identified Cosmetic Specialties, Inc., as a distributor of IMI Fabi products, and testified that IMI Fabi had corresponding distribution agreements. Plaintiffs, hearing this information for the first time, requested the production of these records and distributor agreements. These agreements and records were never produced.

C. The Trial

It is undisputed that Plaintiffs tried their entire case regarding product identification on the then produced small number of records: (1) seven months of sales in 2001, and (2) one sale in 2007, identifying the talc sold as IMI Fabi 141. During trial, Mr. Fabi stated, under oath, that IMI Fabi's customer was broker Cosmetic Specialties, Inc., and that IMI Fabi had little knowledge of what happened with its talc once in possession of cosmetic Specialties, Inc.

During the well-executed closing argument, Defendants' counsel Ms. O'Neill stated to the jury "[y]ou're going to have to decide if Mr. Corrado Fabi flew all the way here from Italy to lie to you," as alleged by Plaintiffs. Additionally, the same closing argument emphasized the Plaintiffs' failure to produce evidence tracing talc from IMI Fabi to any products used by Plaintiff

Sarah Plant, and suggested that without such evidence Plaintiffs would have failed to meet their burden of proof in the case, and thus fault could not be connected to IMI Fabi.

At the time of the verdict, Whittaker, Clark & Daniels and IMI Fabi were the only remaining defendants. On March 3, 2023, the jury returned a verdict finding Whittaker, Clark & Daniels liable to Plaintiffs in the amount of approximately \$29 million.⁶ The jury found in favor of IMI Fabi and against Plaintiffs.

D. Post-Trial Discovery of Evidence

On November 14, 2023, eight months after the trial verdict was rendered, Plaintiffs' attorneys became aware of a transcript from a previous deposition of a corporate representative for IMI Fabi, Mr. Michael Brown, in the case of *Pamela Debora Hemmings-Russell as Administrator of the Estate of Daphne Hemmings vs. Cyprus Amex Minerals Company, et al.*⁷ It is this Court's understanding that attorney Michael Sommerville and the Cetrulo firm, who have previously been counsel for IMI Fabi, are the only known attorneys who were involved in both the *Plant* and *Hemmings* cases. During Mr. Brown's deposition he revealed and discussed discoverable information that was provided by Mr. Brown in the *Hemmings* case.⁸ The information that Mr. Brown provided in the *Hemmings* deposition was also requested by Plaintiffs in this case, but the *Plant* discovery responses provided that no such documents or information existed.

⁶ See Jury Verdict Form, dated 3/3/23.

⁷ State of New York, Index No. 1090196/2018, "Remote Deposition of Michael Brown as corporate representative of IMI Fabi (Diana) LLC". See page 2 of the deposition transcript where attorney Sommerville is listed as appearing on behalf of IMI Fabi (Diana) LLC.

⁸ *Id.* See also *Hemmings v. Cyprus Amex, et al.*, NYSCEF Document No. 66, "IMI Fabi (Diana) LLC's Responses to Plaintiff's Demand for discovery and Inspection," page 10 (attorney Sommerville is listed in the signature block as an attorney for Defendant).

II. Post-Trial Hearings before this Court

This Court reviewed extensive briefing from both parties and heard oral arguments from the parties over the course of three separate hearings. On April 26, 2024, the first post-trial motions hearing occurred, in which this Court ordered Defendants to fully produce the documents stored at the IMI Fabi Diana office.⁹ This Court also directed the Plaintiffs to supplement their original Motion for Relief from Judgment with representations made by the IMI Fabi Defendants before and during trial, as well as discovery responses, that were then to be compared to the discovery obtained and the testimony from IMI Fabi via its corporate representative in this case following the trial to determine how the production of the evidence would have changed the trial verdict in the *Plant* case.¹⁰ On June 13, 2024, this Court notified all counsel, including attorney Michael Sommerville, that they were to appear in person for the second post-trial motions hearing on June 26, 2024, scheduled in Charleston County at 9:30 AM. On June 25, 2024, this Court received communication from attorney Sommerville, for the first time, *ex parte*, that he had a “conflict” and would not be appearing at the hearing.

During the second hearing, on June 26, 2024, this Court was made aware that the Defendants had not fully complied with this Court’s previous order of production. Therefore, on June 28, 2024, this Court ordered the Defendants to provide full electronic discovery of all of the documents contained at the IMI Fabi Diana office by July 1, 2024, and set a third hearing on the matter. As result of the second order for production Plaintiff received information that had been in possession of Michael Sommerville, National Counsel for IMI Fabi, since at least 2018. These documents directly connected the talc distributed by IMI Fabi to products that Plaintiff Sarah J.

⁹ Attorney Sommerville testified, under oath, that sometime between 2017 and 2019, he an associate retrieved seven (7) Banker’s boxes of documents from the IMI Fabi Diana plant, and stored the boxes in a file room at the Cetrulo firm.

¹⁰ See Court’s Order Following 2nd Hearing regarding Plaintiffs’ Motion for a New Trial, filed June 28, 2024.

Plant used. Additionally, contrary to testimony provided at trial and in his deposition, the information produced unequivocally proved that Mr. Fabi was aware of where and to whom IMI Fabi talc was distributed, as there was direct correspondence between Mr. Fabi and cosmetic manufacturers that received IMI Fabi product from Cosmetic Specialties.

On August 21, 2024, at the third hearing on these motions, this Court heard the ordered testimony from attorney Michael Sommerville, who stated he was legal counsel for IMI Fabi in previous cases. Attorney Sommerville's previous scope of counsel included being the sole attorney to sign off on discovery responses for the *Hemmings* case to the Supreme Court of the State of New York in 2019, which he affirmatively served under penalty of perjury;¹¹ assisting in preparing a designated corporate witness for a deposition in 2022;¹² and the responsibility of reviewing and then deciding which documents were produced to the *Plant* Plaintiffs.

Following the third post-trial motions hearing, it became evident to this Court that Defendants had intentionally concealed documents naming the cosmetic manufacturers of products which Plaintiff Sarah J. Plant had used for years. Specifically, attorney Sommerville knew the extent of allegations in the complaint. Attorney Sommerville knew that IMI Fabi sourced talc from China that Plaintiffs' contended contained asbestos. Attorney Sommerville knew that IMI Fabi supplied tons of materials over many years to product manufacturers whose products Plaintiff Sarah J. Plant used for many years. From at least 2019,¹³ attorney Sommerville had all existing records of IMI Fabi Diana in seven (7) boxes in his law office Cetrulo, LLP, at 2 Seaport Lane,

¹¹ See *IN RE. NEW YORK CITY ASBESTOS LITIGATION, v. ALL DEFENDANTS IN RE. NEW YORK CITY ASBESTOS LITIGATION*, NYCAL Index No. 782000/2017, NYSCEF Doc. No. 964, filed January 2, 2019.

¹² The *Hemmings* case is a New York Supreme Court case. As such, the Uniform Rules for N.Y. State Trial Courts provides guidelines for designated corporate representatives as witnesses under §202.20-d Deposition of Entities; Identification of Matters. Subparts (b) and (f) provide, respectively, that particular matters to be discussed may be enumerated, and that the designated individual "must testify about information known or reasonably available to the entity."

¹³ Viewing the facts in the light most favorable to Defendants, the non-moving party, 2019 will be used as the date of retrieval.

Tenth Floor, Boston Massachusetts, 02110. Attorney Sommerville had exclusive and personal control over all of these documents.¹⁴

Attorney Sommerville knew that the Diana documents contained extensive records that indicate IMI Fabi supplied to cosmetic manufacturers through a broker, Cosmetic Specialties, but that IMI Fabi also had detailed records and information tracing which product went to which Cosmetic Specialties' customers. Attorney Sommerville knew the IMI Fabi records in his possession contained talc samples of actual product supplied over time to various manufacturer customers of Cosmetic Specialties. Attorney Sommerville knew the Diana records contained extensive and direct correspondence by IMI Fabi officers and its employees with cosmetic talc manufacturers who received products through Cosmetic Specialties.

Finally, attorney Sommerville knew the Diana records that were under his exclusive control contained direct correspondence between Corrado Fabi and manufacturers of products that were supplied by IMI Fabi through Cosmetic Specialties. Attorney Sommerville handled all of IMI Fabi's discovery responses to suits brought against it prior to the *Plant* suit. Attorney Sommerville personally handled the discovery responses in this suit, interacting with attorneys for IMI Fabi and with Corrado Fabi. Attorney Sommerville personally attended Mr. Fabi's deposition. Attorney Sommerville attended every day of the two-week *Plant* trial, including the opening and closing arguments.

Attorney Sommerville has stated to this Court, under oath, that he personally went through the Diana documents that were kept in a file room within his firm's office, and decided which documents to produce and which documents to withhold from the Plaintiffs in response to their discovery requests. Moreover, attorney Sommerville was counsel for IMI Fabi in 2022, and was

¹⁴ The documents are collectively referred to herein as "Diana documents" or "Diana records."

responsible for the preparation of a corporate representative, Michael Brown, for the New York Supreme Court equivalent of a SCRCP 30(b)(6) deposition, in a New York case also centering around IMI Fabi's talc production and distribution, which was based in part on the same documents in attorney Sommerville's office.¹⁵

On June 28, 2022, attorney Sommerville was present and noted as counsel of record for the deposition of corporate representative, Mr. Michael Brown in the *Hemmings* lawsuit. In the deposition, Mr. Brown stated that actual samples of IMI Fabi's talc were left in records maintained at the Diana plant office, and that he could have looked for them the day before, but attorney Sommerville had not mentioned to Mr. Brown that the information was requested from Mr. Brown included a direction explicitly to check for talc samples in the office. Mr. Brown also stated that he was not informed by his counsel, attorney Sommerville, that in preparation for the deposition the Plaintiff's counsel had requested for Mr. Brown to check for documents testing records, photographs of products, documents relating to the selling of IMI Fabi's talc, documents regarding the transfer of ownership and operation of the Diana facility, or documents regarding sales to distributors. Per the New York *Uniform Rules for the Supreme Court & The County Court* §202.20(d), "(b) Notices and subpoenas directed to an entity may enumerate the matters upon which the person is to be examined, and if so enumerated, the matters must be described with reasonable particularity," and "(d) The individual(s) designated must testify about information known or reasonably available to the entity." Therefore, attorney Sommerville had a duty to inform and prepare Mr. Brown based on the Plaintiff's requests.

¹⁵ See *Pamela Debora Hemmings-Russell as Administrator of the Estate of Daphne Hemmings vs. Cyprus Amex Minerals Company, et al. State of New York, Index No. 1090196/2018*.

Mr. Brown himself could have accessed the documents and information requested as, by his own recollection, Mr. Brown was the only person with keys to the Diana plant, but he believed there was no reason to check what documents may be at the facility. Therefore, attorney Sommerville was aware of the contents of the Diana documents and intentionally failed to prepare Mr. Brown to testify on behalf of IMI Fabi, as its corporate representative, by not instructing or even informing Mr. Brown of the request to see what documents remained at the IMI Fabi plant. Attorney Sommerville clearly has no issue with not complying with court rules of procedure and concealing information.

During the third post-trial motions hearing on August 21, 2024, attorney Sommerville expressed to this Court that in producing discovery responses for the deposition of Mr. Fabi, on November 15, 2023, attorney Sommerville was under an extreme time crunch and needed assistance as he had not previously gone through the documents, which had been in his possession since at least 2018. Instead, attorney Sommerville told this Court that with the help of two associates he was able to provide discovery in a short turn around. Furthermore, during Mr. Fabi's deposition, Mr. Fabi stated that he had to rely on attorney Sommerville for the information kept regarding IMI Fabi Diana, as, at that point, the information was only kept in hard copy form in Somerville's office. Therefore, it was attorney Sommerville's responsibility, as the sole possessor of the Diana documents, to inform Mr. Fabi of the contents. However, contrary to the testimony attorney Sommerville gave to this Court, as evidenced by a discovery verification form signed February 28, 2022, in the *Hemmings* case, attorney Sommerville had in fact previously and extensively reviewed the documents in question.

III. APPLICABLE LAW

Rule 60(b), SCRCP, provides in part that a party may obtain relief from a judgment or order on grounds of “newly discovered evidence which by due diligence could not have been discovered in time to move for a new trial under Rule 59(b),” or where the Court finds “fraud, misrepresentation, or other misconduct of an adverse party.” A SCRCP 60(b) motion must be “made within a reasonable time.” Motions based on any combination of mistake, newly discovered evidence, or fraud or misconduct must be made “not more than one year after the judgment, order or proceeding was entered or taken.”¹⁶ Whether to grant or deny a motion under Rule 60(b) lies within the sound discretion of the judge.¹⁷

Rule 60(b), SCRCP, vests the trial court with discretion to grant a new trial under limited circumstances. Rule 60(b)(2) permits a new trial when a movant has “newly discovered evidence which by due diligence could not have been discovered in time to move for a new trial under Rule 59(b).” The movant must show that the alleged newly discovered evidence: (1) will probably change the result if a new trial is granted, (2) has been discovered since the trial, (3) could not have been discovered before the trial, (4) is material to the issue, and (5) is not merely cumulative or impeaching.¹⁸ Rule 60(b)(3) permits a new trial when there is “fraud, misrepresentation, or other misconduct of an adverse party.” In all instances the Court considers all reasonable inferences in the light most favorable to the nonmoving party—here, the remaining IMI Fabi entities.¹⁹

Relief for fraud under Rule 60(b)(3) can be granted only for extrinsic fraud.²⁰ Extrinsic fraud is “fraud that induces a person not to present a case or deprives a person of the opportunity

¹⁶ *Id.*

¹⁷ *Id.* (citing *Coleman v. Dunlap*, 306 S.C. 491, 494, 413 S.E.2d 15, 17 (1992)).

¹⁸ *Lanier v. Lanier*, 364 S.C. 211, 217, 612 S.E.2d 456, 459 (Ct. App. 2005).

¹⁹ *Vinson v. Hartley*, 324 S.C. 389, 405, 477 S.E.2d 715, 723 (Ct. App. 1996).

²⁰ *Chewning v. Ford Motor Co.*, 354 S.C. 72, 81, 579 S.E.2d 605 (2003).

to be heard.”²¹ Concealment of documents by an attorney is extrinsic fraud because it involves an attorney, who is an officer of the court, “prevent[ing] the opposing party from presenting his case.”²² Attorney concealment of documents is also fraud upon the court.²³ The subornation of perjury by an attorney and the intentional concealment of documents by an attorney are both actions which individually constitute extrinsic fraud.²⁴ Unlike perjury by a witness or a party's failure to disclose requested materials, both which constitute intrinsic fraud, if an attorney—an officer of the court—suborns perjury or intentionally conceals documents, he or she effectively precludes the opposing party from having his day in court.²⁵ These actions by an attorney constitute extrinsic fraud.

Attorney fraud calls into question the integrity of the judiciary and erodes public confidence in the fairness of our system of justice. Accordingly, where an attorney embarks on a scheme to either suborn perjury or intentionally conceal documents, extrinsic fraud constituting a fraud upon the court occurs and is cause for relief.

IV. LEGAL ANALYSIS

On March 1, 2024, almost one (1) year after the verdict was entered in this case, the Plaintiffs filed a Motion for New Trial. The Motion alleges that Defendants IMI Fabi intentionally concealed documents that would have changed the outcome of the trial. Plaintiffs allege that IMI Fabi and its attorneys concealed documents and committed perjury in the discovery process. They further allege that due to the concealment and perjury, they were deprived of critical evidence

²¹ *Id.* (internal citations omitted).

²² *Id.*

²³ *Ray v. Ray*, 374 S.C. 79, 85, 647 S.E.2d 237 (2007) (reiterating “fraud upon the court” means “that species of fraud which does, or attempts to, subvert the integrity of the Court itself, or is a fraud perpetuated by officers of the court so that the judicial machinery cannot perform in the usual manner its impartial task of adjudging cases that are presented for adjudication.”).

²⁴ *Chewning* at 82, 579 S.E.2d 605, 610.

²⁵ *Id.*

including that IMI Fabi supplied the talc used in multiple products used by Plaintiff Sarah J. Plant, and that despite diligent efforts, the same evidence could not have been discovered before trial. Plaintiffs allege that such deprivation prevented them from fully exhibiting and trying their case. Plaintiffs have submitted charts in support of their motion detailing thousands of pages of documents that have been produced since the trial of this matter, and they contend that this intentionally withheld evidence would have changed the jury's verdict.

IMI Fabi argues that there is no "newly discovered" evidence that could have impacted the outcome of the case with sufficient probability as required under SCRCP 60(b). Defendants further allege that the Plaintiffs' burden is too high and that they cannot prove by clear and convincing evidence what is required under SCRCP 60 for relief from a judgment. IMI Fabi does not appear to dispute that relevant and discoverable documents were withheld from Plaintiffs. Instead, the Defendants argue the evidence was not intentionally concealed and that even if provided the evidence would not have changed the evidentiary holes in Plaintiffs case; this Court disagrees.

A. SCRCP 60(b)(2)

It is readily apparent to this Court that there was relevant and crucial evidence in the Diana documents, which were solely in the possession of attorney Michael Sommerville in a file room at his office building. The *Plant* case was not attorney Sommerville's first time reviewing and deciding what information in his possession to produce. He had previously reviewed the documents in regard to discovery responses in *Hemmings*. Attorney Sommerville testified to this Court on August 21, 2024, that he inspected the Diana documents alongside the Plaintiffs discovery requests, and then intentionally decided what to produce, and by implication what not to produce. Attorney Sommerville was the only person with knowledge of what the Diana documents contained, as they were continuously at his office throughout the trial of this case.

Attorney Sommerville testified that he had reviewed the Diana documents on many previous occasions to the review for *Plant* in order to respond to discovery propounded to IMI Fabi in other cases in which it was a defendant. The information provided to Plaintiffs, under oath, regarding whether Plaintiffs had all responsive documents was undoubtedly given in reliance on attorney Sommerville's inspection and decision as to what evidence to produce.

This Court in no way faults Defendants' counsel, Ms. O'Neill, as it is this Court's conclusion that neither Ms. O'Neill, nor any of her team, were aware of the intentional concealment of documents by attorney Sommerville on behalf of IMI Fabi. Ms. O'Neill's closing argument asked the jury to consider and thereby determine whether Mr. Corrado Fabi traveled from Italy to lie as a witness, and suggested that Plaintiffs' lack of evidence tracing talc produced by IMI Fabi to products used by Plaintiff Sarah J. Plant was a failure by the Plaintiffs to meet their burden in the case. The tracing of products used by Plaintiff Sarah J. Plant is not only material to the issue, and is by no means cumulative or a tool simply to impeach. Rather the documents produced after the trial unquestionably address the closing arguments made by Defendants' counsel; to wit that Mr. Fabi did not lie, and that there was no evidence that connected IMI Fabi's talc to Plaintiff Sarah J. Plant. Plaintiffs' inability to produce such evidence at trial was the direct result of IMI Fabi's deliberate concealment of requested discovery evidence. It took three post-trial Orders from this Court to finally produce this key evidence. The full production of documents completely supports Plaintiffs' contention that both attorney Sommerville and Mr. Fabi were dishonest with this Court, and intentionally concealed evidence from the jury. This Court is now aware of the untrue testimony given under oath by IMI Fabi via Mr. Fabi. This court is now aware of the knowledge that attorney Sommerville had when he responded to discovery and when he

attended the two-week *Plant* trial. This Court cannot ignore the fact that the jury did not have crucial evidence on which to base its decision.

Further, this newly discovered evidence is exactly the kind of evidence that Plaintiffs actually had against Whittaker, Clark & Daniel, where the jury found in favor of the Plaintiffs. In other words, the missing evidence provides a link from IMI Fabi talc to the products that Plaintiff Sarah J. Plant testified that she used repeatedly and for many years. This talc was IMI Fabi 141. The withheld evidence shows there were millions of pounds of IMI Fabi 141 sold to Procter & Gamble for Cover Girl between 2001 and 2018. The withheld evidence further shows that additional grades of IMI Fabi talc were sold to Procter & Gamble for use in Cover Girl talc powder products – such as IMI Fabi 3355. Neither the millions of pounds of 141 nor the 3355 records were disclosed to Plaintiffs before trial.

Although the Defendants argue in briefs that what the jury may have decided if provided this additional information is speculative, and without knowledge of what the jury would find, the Plaintiffs cannot meet their burden, this Court disagrees. Under *Lanier*, a Court must decide whether if a new trial is granted the result would **probably** change.²⁶ If this Court was meant to decide exactly what a jury ought to have found, this motion would need to be for a directed verdict, or otherwise for a judgment non obstante veredicto; but that is not the case here.

Here, this Court is tasked with deciding if newly discovered evidence would more likely than not change the result of trial if a new trial is granted. *Id.* Here, the evidence is clear that attorney Sommerville knowingly and intentionally concealed documents from Plaintiffs during the course of discovery and during the trial of this case. Attorney Sommerville also concealed talc samples which could have been tested by Plaintiffs and test results which could have been

²⁶ *Lanier* at 217, 612 S.E.2d 456, 459 (*emphasis added*).

evaluated by Plaintiffs. This concealed evidence would have buttressed the evidence Plaintiffs presented through scientific testimony. The evidence is also clear that Plaintiffs had no means to know or even expect that this concealed evidence existed until learning about its existence through other cases that involve the same counsel for Plaintiffs. This discovery by Plaintiffs was not until eight months after the trial. Thus, the evidence could not have been discovered within the timeframe to move for a new trial under Rule 59(b), is material to the issues of the case and those argued at trial, and is not merely cumulative, nor is the evidence meant to be an impeachment device. All of this, in conjunction with this Court's knowledge that the jury returned a verdict in favor of the Plaintiffs against another Defendant in this case, Whittaker, Clark & Daniels, based on evidence submitted to the jury that is substantively similar to the newly discovered IMI Fabi evidence, leads this Court to believe that if the Plaintiffs were granted a new trial and presented the newly discovered evidence, the newly discovered evidence would more than likely, or probably, change the result. Moreover, the IMI Fabi Defendants would not have been able to argue an absence of evidence supporting product identification, as it did in closing arguments.

Therefore, this Court finds that had such evidence been properly disclosed and produced, this newly discovered evidence would probably change the result if a new trial is granted.

B. SCRCP 60(b)(3)

The South Carolina Supreme Court addressed extrinsic fraud in *Chewning*, stating:²⁷

Extrinsic fraud is "fraud that induces a person not to present a case or deprives a person of the opportunity to be heard. Relief is granted for extrinsic fraud on the theory that because the fraud prevented a party from fully exhibiting and trying his case, there has never been a real contest before the court on the subject matter of the action." *Hilton Head Ctr. of South Carolina v. Public Serv. Comm'n*, 294 S.C. 9, 11, 362 S.E.2d 176, 177 (1987). "Relief is granted for extrinsic but not intrinsic fraud on the theory that the latter deceptions should be discovered during the litigation

²⁷ *Chewning*, at 81-82, 579 S.E.2d 605, 610-611.

itself, and to permit such relief undermines the stability of all judgments." *Mr. G. v. Mrs. G.*, 320 S.C. 305, 308, 465 S.E.2d 101, 103 (Ct. App. 1995)

Ford claims the subornation of perjury by an attorney and/or the intentional concealment of documents by an attorney do not constitute extrinsic fraud because they do not defeat the opposing party's opportunity to litigate the matter. Ford further asserts, because perjury and discovery abuse should be ferreted out during the course of litigation, disappointed parties should not be permitted to reopen final judgments on this basis. We disagree.

The subornation of perjury by an attorney and/or the intentional concealment of documents by an attorney are actions which constitute extrinsic fraud. Contrary to perjury by a witness or a party's failure to disclose requested materials, conduct which constitutes intrinsic fraud, where an attorney - an officer of the court - suborns perjury or intentionally conceals documents, he or she effectively precludes the opposing party from having his day in court. These actions by an attorney constitute extrinsic fraud.

In this case, the Plaintiffs have alleged that attorney Michael Sommerville, who has acted as counsel for IMI Fabi in many cases, and has admitted he answered the discovery requests in this case, has committed a fraud upon this Court.

Attorney Sommerville's failure to properly prepare Mr. Fabi as a SCRCP 30(b)(6) witness to speak on behalf of the IMI Fabi entities induced, or suborned, Mr. Fabi to perjure himself on the stand during the *Plant* trial. Although Mr. Fabi testified at trial that Cosmetic Specialties was IMI Fabi's only customer, as the newly discovered evidence shows, Mr. Fabi's testimony was not true, and the documents in attorney Sommerville's possession mention at least five (5) of the customers listed in Plaintiffs discovery requests as manufacturers of products used by Plaintiff Sarah J. Plant, including Avon, Estee Lauder, L'Oréal, Revlon, and Procter & Gamble. Moreover, the Diana documents have direct correspondence between Mr. Fabi and companies that received talc supplied by Cosmetic Specialties. Under *Chewning*, "where an attorney - an officer of the

court - suborns perjury or intentionally conceals documents, he or she effectively precludes the opposing party from having his day in court.”²⁸

Here, Mr. Sommerville, an attorney and thereby officer of the court, by not fully providing Mr. Fabi with the information in attorney Sommerville’s possession, not only failed to prepare and inform Mr. Fabi as the designated deponent on behalf of the IMI Fabi entities, but also knowingly induced and permitted perjured testimony to be given by Mr. Fabi on behalf of IMI Fabi. Allowing Mr. Fabi to falsely testify and not be informed of critical evidence and information stripped Plaintiffs of their opportunity to have their day in court. Attorney Sommerville prevented the Plaintiffs having their day in court by allowing perjured testimony to remain uncorrected. This conduct by IMI Fabi’s attorney constitutes extrinsic fraud.

Moreover, attorney Sommerville further committed a fraud on the Court by intentionally, repeatedly, knowingly and willfully not producing relevant and material documents and talc samples. Although attorney Sommerville stated at the hearing on August 21, 2024, that he had no intention of concealing documents, throughout the trial, attorney Sommerville was the sole possessor of the newly discovered evidence. He personally decided on behalf of IMI Fabi whether to provide this evidence to the Plaintiffs or to intentionally conceal it. The intentional withholding of documents, whose contents were not known to anyone else, including the CEO of IMI Fabi, nor the Defendants’ own counsel in this case, but were explicitly requested by Plaintiffs, and were material to this case, cannot be seen as anything other than continuous intentional concealment.

This Court finds it hard to believe, and refuses to accept, that attorney Sommerville was entirely oblivious to the inconsistencies between what was in his possession, and what he heard testified to under oath as he observed the *Plant* trial. At any point during the discovery or trial for

²⁸ *Chewning* at 82, 579 S.E.2d 605, 610.

this case, attorney Sommerville, as an officer of the court, should have made and had a duty to make this Court aware of the inconsistencies he allowed and perpetuated. Attorney Sommerville knew that there were documents that he alone had access to, which provided factual and pertinent information. Attorney Sommerville willfully failed and refused to correct this Court's record in this case. This demonstrates unequivocally that attorney Sommerville had no intent to share this information. Instead attorney Sommerville continued to conceal the documents from this Court and the Plaintiffs, thus depriving the Plaintiffs of their opportunity to be fully heard. Furthermore, in withholding information from this Court, and allowing this Court's record to be inaccurate, attorney Sommerville actively allowed a fraud on the Court, that was created by his actions or lack thereof alone. Attorney Sommerville's conduct undoubtedly "calls into question the integrity of the judiciary" and allows for the erosion of public confidence in the fairness of our judicial system, thus amounts to extrinsic fraud.²⁹

Therefore, this Court finds there has been fraud upon this Court by an officer of the court, by attorney Sommerville on the behalf of the Defendants, and therefore, the Plaintiffs are entitled to relief in the form of a new trial.

V. CONCLUSION

As the South Carolina Supreme Court stated in *Chewning*, a decision that is well known to this Court, the longstanding policy toward final judgments is not one to be taken lightly, nor can the benefits achieved by the preservation of final judgments be overlooked. However, at a certain point a court cannot allow a judgments finality to outweigh the importance of a fair and just adjudication. Therefore, I find that under SCRCP 60(b)(2) had the newly discovered evidence been properly disclosed and produced, this evidence would have more than likely changed the result of

²⁹ *Chewning* at 83, 579 S.E.2d 605, 611.

the jury verdict. I further find and conclude that under SCRCP 60(b)(3) this newly discovered evidence was intentionally concealed by attorney Sommerville, National Counsel for the IMI Fabi Defendants. This Court further finds that had the evidence been presented at trial, it more than likely would have changed the result of the jury verdict. For those reasons, Plaintiffs' Motion for Relief from Judgment under SCRCP 60(b) and Motion for a New Trial are GRANTED.

IT IS SO ORDERED.

[JUDGE'S ELECTRONIC SIGNATURE PAGE TO FOLLOW]



Richland Common Pleas

Case Caption: Sarah J Plant , plaintiff, et al vs Avon Products Inc , defendant, et al

Case Number: 2022CP4001265

Type: Amended/Other

So Ordered

Jean H. Toal

Electronically signed on 2024-10-28 14:30:02 page 21 of 21

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
COUNTY OF RICHLAND	)	FOR THE FIFTH JUDICIAL CIRCUIT
	)	
SARAH J PLANT and PARKER	)	C/A NO. 2022-CP-40-01265
PLANT,	)	
	)	
Plaintiffs,	)	In Re: Asbestos Personal Injury Litigation
	)	Coordinated Docket
v.	)	
	)	
AVON PRODUCTS, INC., et al.,	)	Order Following 2nd Hearing
	)	Regarding Plaintiffs' Motion for a
	)	New Trial
Defendants.	)	
_____	)	

This matter came before the Court for a second hearing on the Plaintiffs' Motion for a New Trial against the IMI Fabi entities.¹ Following the first hearing and as a result of the Court's directive, the Plaintiffs supplemented their original motion for relief from judgment with an exhibit in the form of a chart, which includes the representations made by defendant IMI Fabi at trial, the testimony of Corrado Fabi both at deposition and at trial in this case, the arguments IMI Fabi's trial counsel made at trial, and the discovery responses of IMI Fabi in this case. This information was then compared to testimony obtained from IMI Fabi via its corporate representative since the trial in this case, discovery that has been obtained from IMI Fabi since this case, and analyzed to determine how this information—had it have been produced in the Plant case—would have changed the trial verdict.

Following my review of the chart and supporting exhibits, on June 14, 2024, the Court gave notice to all Counsel, including Mr. Michael Sommerville, that they were to appear in person at a hearing on June 26, 2024 scheduled in Charleston County at 9:30 AM. On June 25, 2024, for

¹ IMI Fabi entities include IMI Fabi USA, LLC, IMI Fabi (Diana), LLC, and IMI Fabi, LLC. They are collectively referred to herein as "IMI Fabi."

the first time, Mr. Sommerville emailed the Court *ex parte* that he would not appear at the hearing due to a “conflict.”

The Court orders:

1. IMI Fabi shall produce all documents removed from the IMI Fabi Diana, New York plant by its attorneys in 2019. It would appear that my order made during the April 26, 2024 hearing to produce the IMI Fabi Diana documents was not fully complied with by the Defendant. The Court orders that the full production shall be made electronically by July 1, 2024.
2. Plaintiffs shall supplement the Chart with any additional information they wish to add by July 22, 2024.
3. IMI Fabi shall respond to Plaintiffs’ chart by July 29, 2024.
4. Plaintiffs shall file any reply to IMI Fabi’s response by August 5, 2024.
5. The third hearing on this matter shall take place on August 21, 2024, at 9:30 AM in the Richland County Judicial Center. Mr. Michael Sommerville is ordered to attend the hearing and provide testimony.
6. All Counsel and parties, upon receipt of an email from the opposing party requesting information or an email necessitating a response, shall respond as soon as possible, but no more than 24-hours upon receipt of an email.

IT IS SO ORDERED

[Signature to appear on following page]



Richland Common Pleas

Case Caption: Sarah J Plant , plaintiff, et al vs Avon Products Inc , defendant, et al

Case Number: 2022CP4001265

Type: Order/Other

So Ordered

Jean H. Toal

Electronically signed on 2024-06-28 16:30:47 page 3 of 3

f/k/a R.T. VANDERBILT COMPANY, INC.,)
 individually and as successor-in-interest to)
 INTERNATIONAL TALC CO.)
)
VI-JON, LLC)
 f/k/a VI-JON, INC.)
)
WALGREEN CO.)
)
WALMART INC.)
)
WHITTAKER, CLARK & DANIELS, INC.)
)
WINN-DIXIE STORES, INC.)
 a subsidiary of BI-LO a subsidiary of)
 SOUTHEASTERN GROCERS, INC.)
)
YVES SAINT LAURENT AMERICA, INC.)
)
 Defendants.)
)
)
)
)
)

PLAINTIFFS' ORIGINAL COMPLAINT

Plaintiffs, SARAH J. PLANT and PARKER PLANT (hereinafter "Plaintiffs"), sue the named Defendants for compensatory and punitive damages, by and through their attorneys, and come before this court and allege as follows:

GENERAL ALLEGATIONS

1. Plaintiff Sarah. J. Plant has been diagnosed with mesothelioma.
2. This Court has personal jurisdiction over Defendants because Plaintiffs' claims arise from Defendants' conduct in:
 - (a) Transacting business in this State, including the sale, supply, purchase, and/or use of asbestos and/or asbestos-containing products, within this State;
 - (b) Contracting to supply services or things in the State;

- (c) Commission of a tortious act in whole or in part in this State;
- (d) Having an interest in, using, or possessing real property in this State; and/or
- (e) Entering into a contract to be performed in whole or in part by either party in this State.

1. Each Defendant, or its predecessors in interest, that manufactured, sold, and/or distributed asbestos-containing products, raw asbestos materials, raw asbestos talc, and/or asbestos-containing talc products for use in South Carolina, and other states, at times relevant to this action are referred to herein as “Product Defendants.” At all times relevant to this action, the Product Defendants and the predecessors of the Product Defendants for whose actions the Product Defendants are legally responsible, were engaged in the manufacture, sale and distribution of asbestos-containing products, raw asbestos, raw asbestos talc, and/or asbestos-containing talc materials.

2. Plaintiffs’ claims against the Product Defendants, as defined herein, arise out of Defendants’ purposeful efforts to serve directly or indirectly the market for their asbestos and/or asbestos-containing products in this State, either through direct sales or through utilizing an established distribution channel with the expectation that their products would be purchased and/or used within South Carolina.

3. All of the named Defendants are corporations who purposefully availed themselves of the privilege of doing business in this State, and whose substantial and/or systematic business in South Carolina exposed Plaintiff Sarah J. Plant to asbestos in this State, subjecting them to the jurisdiction of the South Carolina courts pursuant to the South Carolina Long-Arm Statute and the United States Constitution.

4. Plaintiff Sarah J. Plant was exposed to asbestos and/or asbestos-containing cosmetic and body talc products from her birth in 1986 to approximately 2021 through her personal use, and her family's use, of asbestos-containing makeup and body talc products throughout her life and her use and her family's use of asbestos-containing body talc products. Plaintiff was also exposed through her use of asbestos-containing art clay used in the 1990s-2000s when taking art classes. These asbestos-containing talc products were designed, advertised, marketed, and sold as being appropriate for use in the ordinary course by Defendants identified above. It was foreseeable Defendants' asbestos-containing talc, as well as asbestos-containing products manufactured and distributed with the asbestos talc, such as makeup, body talc, and art clay products would be sold for personal use by individuals like Plaintiff Sarah J. Plant. Plaintiff Sarah J. Plant was thereby exposed to defendants' asbestos-containing makeup, body talc and art clay products in the State of South Carolina.

5. Plaintiff Sarah J. Plant has suffered personal injuries as a proximate result of her regular and prolonged use of, inhalation, ingestion, absorption, and exposure to a variety of asbestos-containing products¹ where asbestos-containing talc was a constituent ingredient. Though they will be further described below, collectively, these cosmetic, body and art clay products and the ingredient talc are the "PRODUCTS".

6. Plaintiff, Sarah J. Plant, was exposed to asbestos through her personal daily use, and her family's use, of a variety of talc based body products including, but not limited to, Avon body powders, Coty body powders, Johnson and Johnson baby powder, Shower to Shower body powder, Cashmere Bouquet Dusting Powder, Chantilly body powders, Elizabeth Arden body

¹

As used throughout this complaint, the term "asbestos" shall be interpreted in the broadest sense and included, without limitation, non-regulated and. Non-commercial forms of asbestos (including non-fibrous asbestos), cleavage fragments, and transition/transitional fibers, without limitation as to fiber size, dimension, or ratio.

powders, Estée Lauder body powders, Gold Bond body powders, Jean Nate body powder, Mary Kay body powders, Top Care brand baby and body powder, Walgreens body powders, Walmart body powders, and White Shoulders talcum powder, (“POWDER PRODUCTS”) throughout her life. These products were manufactured, marketed, sold and/or distributed by Defendants.

7. Plaintiff, Sarah J. Plant, also used powdered makeup products, including but not limited to, loose and pressed face powders, eye shadows, blush, bronzers, and foundations by Avon, Clinique, Coty, CoverGirl, Elizabeth Arden, Estée Lauder, Lancôme, L’Oréal, Mary Kay, Maybelline, and Revlon, and Yves Saint Laurent, (“MAKEUP PRODUCTS”) multiple times daily throughout her life. She bought these products directly and through Avon, Belk, The Bargain Barn, Dillard’s, Dollar General, Hamrick’s, Ingles Markets, J.C. Penny, Macy’s, Mary Kay, Piggly-Wiggly, Rite Aid, BI-LO, Walgreens, Walmart, and Winn-Dixie.

8. Plaintiff used the Makeup Products as part of her daily routine, putting on eye shadow, blush, foundation and face powder in the morning, and at various times to freshen up throughout the day and evening. The use of these products caused airborne visible dust to be released which Plaintiff could not avoid breathing. These products were used by Plaintiff in the State of South Carolina and others.

9. Plaintiff, Sarah J. Plant, used, or had used on her by her parents and grandparents, the Powder Products from 1980s continuously until very recently, but does not know the precise date she stopped. She frequently and regularly dusted the Powder Products on various parts of her body which at varying times may have included amongst other areas: face, neck, shoulders, arms, armpits, legs, collarbones, décolletage, breasts, vagina, and perineum. During this time she repeatedly inhaled, ingested, and was regularly exposed to asbestos dust emanating from the asbestos laden talc within the Powder Products permeating her person and clothes and home.

The use of these products caused airborne visible dust to be released which Plaintiff could not avoid breathing. These products were used by Plaintiff in the State of South Carolina and others.

10. Plaintiff also claims exposure from the Defendant talc suppliers, mines, mills, and labs named in her complaint that provided asbestos-containing talc as a constituent ingredient to the Powder Products and Makeup Products she used.

11. In addition, as a recreational activity, Plaintiff Sarah J. Plant was exposed to asbestos from working with a variety of ceramic art materials that contained asbestos. She would fashion pottery and greenware out of art clays, fire them in a kiln, and then sand and polish these results, creating visible dust that she breathed. She would then coat some with underglaze, polishing and scoring these underglazed results before glazing. This work created visible dust that she breathed. Plaintiff did this multiple times per week while in the art classes at both her school and an art collage. Collectively, the ceramic art materials, art clays and underglazes will be referred to as "CERAMIC PRODUCTS". These products were manufactured, marketed, sold and/or distributed by AMACO, American Art Clay Co., Inc., and Highwater Clays.

12. Plaintiff also claims exposure from the Defendant talc suppliers, mines, mills, and labs named in her complaint that provided asbestos-containing talc as a constituent ingredient to the CERAMIC PRODUCTS she used.

13. Each use of the Powder Products, Makeup Products and Ceramic Products was an intended and foreseeable use of the products based on the advertising, marketing and labeling of the products.

14. Plaintiff Sarah J. Plant's cumulative exposure to asbestos as a result of acts and omissions of Defendants and their defective products, individually and together, was a substantial factor in causing Plaintiff's mesothelioma and other related injuries and therefore under South Carolina law, is the legal cause of Plaintiff's injuries and damages.

15. Plaintiffs were not aware at the time of exposure that asbestos or asbestos-containing products presented any risk of injury and/or disease.

16. Each of the named Defendants is liable for damages stemming from its own tortious conduct or the tortious conduct of an "alternate entity" as hereinafter defined. Defendants are liable for the acts of their "alternate entity" and each of them, in that there has been a corporate name change, Defendant is the successor by merger, by successor in interest, or by other acquisition resulting in a virtual destruction of Plaintiffs' remedy against each such "alternate entity"; Defendants, each of them, have acquired the assets, product line, or a portion thereof, of each such "alternate entity"; such "alternate entities" have acquired the assets, product line, or a portion thereof of each such Defendant; Defendants, and each of them, caused the destruction of Plaintiffs' remedy against each such "alternate entity"; each such Defendant has the ability to assume the risk-spreading role of each such "alternate entity;" and that each such defendant enjoys the goodwill originally attached to each "alternate entity."

DEFENDANT	ALTERNATE ENTITY
BRENNTAG NORTH AMERICA, INC.	MINERAL AND PIGMENT SOLUTIONS, INC. and WHITTAKER, CLARK & DANIELS, INC.
BRENNTAG SPECIALTIES, LLC	BRENNTAG SPECIALTIES, INC., MINERAL AND PIGMENT SOLUTIONS, INC. and WHITTAKER, CLARK & DANIELS, INC
BRISTOL-MYERS SQUIBB COMPANY	CHARLES OF THE RITZ INC., LAVIN-CHARLES OF THE RITZ and JEAN NATÉ

COTY INC.	COVERGIRL COSMETICS, INC. and NOXZEMA CHEMICAL COMPANY
ESTÉE LAUDER INC.	CLINIQUE
ESTÉE LAUDER INTERNATIONAL, INC.	CLINIQUE
THE ESTÉE LAUDER COMPANIES INC.	CLINIQUE
L'ORÉAL USA, INC.	LANCÔME, MAYBELLINE, YVES SAINT LAURENT AMERICA, INC., CHARLES OF THE RITZ INC., JEAN NATÉ
L'ORÉAL USA PRODUCTS, INC.	LANCÔME, MAYBELLINE, YVES SAINT LAURENT AMERICA, INC., CHARLES OF THE RITZ INC., JEAN NATÉ
LOWCOUNTRY GROCERS LLC	PIGGLY WIGGLY
NOXELL CORPORATION	COTY INC.
PFIZER INC.	COTY INC. and COTY INTERNATIONAL, INC.
R.T. VANDERBILT HOLDING COMPANY, INC.	R.T. VANDERBILT COMPANY, INC.
REVLON CONSUMER PRODUCTS CORPORATION	REVLON RESEARCH LABORATORIES, INC., CHARLES OF THE RITZ INC., LAVIN- CHARLES OF THE RITZ, JEAN NATÉ, E. R. SQUIBB, SQUIBB CORP., and YVES SAINT LAURENT
REVLON, INC.	ELIZABETH ARDEN, INC., CHARLES OF THE RITZ INC., LAVIN-CHARLES OF THE RITZ, JEAN NATÉ, E. R. SQUIBB, SQUIBB CORP., and YVES SAINT LAURENT
SOUTHEASTERN GROCERS, INC.	BI-LO
VANDERBILT MINERALS, LLC	R.T. VANDERBILT COMPANY, INC. and INTERNATIONAL TALC CO.
VI-JON, LLC	VI-JON, INC.

WINN-DIXIE STORES, INC.	BI-LO and SOUTHEASTERN GROCERS, INC.

17. Plaintiffs have been informed and believe, and thereon allege, that at all times herein mentioned, Defendants or their “alternate entities” were or are corporations, partnerships, unincorporated associations, sole proprietorships and/or other business entities organized and existing under and by virtue of the laws of the State of South Carolina, or the laws of some other state or foreign jurisdiction, and that said Defendants were and/or are authorized to do business in the State of South Carolina, and that said Defendants have regularly conducted business in the State of South Carolina.

18. Plaintiffs have been informed and believe, and thereon allege, that progressive lung disease, mesothelioma and other serious diseases are caused by inhalation of asbestos fibers without perceptible trauma and that said disease results from exposure to asbestos and asbestos-containing products over a period of time.

19. As a direct and proximate result of the conduct as alleged within, Plaintiff Sarah J. Plant suffered permanent injuries, including, but not limited to, mesothelioma and other lung damage, as well as the mental and emotional distress attendant thereto, from the effect of exposure to asbestos fibers, all to his damage in the sum of the amount as the trier of fact determines is proper.

20. As a direct and proximate result of the conduct as hereinafter alleged, Plaintiff Sarah J. Plant incurred liability for physicians, surgeons, nurses, hospital care, medicine, hospices, x-rays and other medical treatment, the true and exact amount thereof being unknown to Plaintiffs at this time. Plaintiffs request leave to supplement this Court and all parties

accordingly when the true and exact cost of Plaintiff Sarah J. Plant's medical treatment is ascertained.

21. As a further direct and proximate result of the conduct as hereinafter alleged, Plaintiff Sarah J. Plant incurred, and will continue to incur, loss of profits and commissions, a diminishment of earning potential, and other pecuniary losses, the full nature and extent of which are not yet known to Plaintiffs. Plaintiffs pray leave to supplement this Court and all parties accordingly to conform to proof at the time of trial.

THE PARTIES

22. Plaintiffs, Sarah J. Plant and Parker Plant, are currently residents of the State of Tennessee. From the time she was a young child to the present, Plaintiff Sarah J. Plant has spent significant periods of time visiting and living in the State of South Carolina. The Plaintiff's has grandparents, aunts, uncles and cousins that have lived and continue to live in the State of South Carolina. Each year on multiple occasions, Plaintiff would, and continues to visit and stay with family members who live in South Carolina. Further, each year, her family vacationed for extended periods of the summer in South Carolina. Further, after college, from 2013-2017, Plaintiff lived in South Carolina.

23. Plaintiff Sarah J. Plant was exposed to asbestos from her personal use, and her family's use, of asbestos-containing talc-based Powder Products, Makeup Products, and Ceramic Products throughout her life in her Tennessee, Utah and South Carolina homes beginning in the 1980s. The dust and fibers from the asbestos-containing talc products permeated her person and clothes. As a direct and proximate result of Sarah J. Plant's inhalation and ingestion of dust particles and fibers, she was diagnosed with Mesothelioma on or about March 2021.

24. Defendant, **AVON PRODUCTS, INC.**, was and is a New York corporation with its principal place of business in New York. At all times material hereto, AVON PRODUCTS, INC. manufactured, sold and/or supplied substantial amounts of asbestos-containing talc products, including, but not limited to, asbestos-containing Avon Makeup Products and Powder Products. AVON PRODUCTS, INC. is sued as a Product Defendant. Plaintiffs' claims against AVON PRODUCTS, INC. arise out of this Defendant's business activities in the State of South Carolina, as well as Plaintiff Sarah J. Plant's exposure to said Defendant's products in the State of South Carolina, as well as others.

25. Defendant, **AMACO, LLC**, was and is an Indiana limited liability company with its principal place of business in Indiana. At all times material hereto, **AMACO, LLC** manufactured, sold and/or supplied substantial amounts of asbestos-containing talc products, including, but not limited to, asbestos-containing Ceramic Products. **AMACO, LLC** is sued as a Product Defendant. Plaintiffs' claims against **AMACO, LLC** arise out of this Defendant's business activities in the State of South Carolina, as well as Plaintiff Sarah J. Plant's exposure to said Defendant's products in the State of South Carolina, as well as others.

26. Defendant, **AMERICAN ART CLAY CO. INC.**, was and is an Indiana corporation with its principal place of business in Indiana. At all times material hereto, **AMERICAN ART CLAY CO. INC.** manufactured, sold and/or supplied substantial amounts of asbestos-containing talc products, including, but not limited to, asbestos-containing Ceramic Products. **AMERICAN ART CLAY CO. INC.** is sued as a Product Defendant. Plaintiffs' claims against **AMERICAN ART CLAY CO. INC.** arise out of this Defendant's business activities in the State of South Carolina, as well as Plaintiff Sarah J. Plant's exposure to said Defendant's products in the State of South Carolina, as well as others.

27. Defendant, **THE BARGAIN BARN, LLC**, was and is a South Carolina limited liability company with its principal place of business in South Carolina. At all times material hereto, **THE BARGAIN BARN, LLC** sold, distributed and/or supplied substantial amounts of asbestos-containing talc products, including, but not limited to, asbestos-containing Makeup Products and Powder Products. **THE BARGAIN BARN, LLC** is sued as a Product Defendant. Plaintiffs' claims against **THE BARGAIN BARN, LLC** arise out of this Defendant's business activities in the State of South Carolina, as well as Plaintiff Sarah J. Plant's exposure to said Defendant's products in the State of South Carolina, as well as others.

28. Defendant, **BEACON CMP CORPORATION**, was and is a New Jersey corporation with its principal place of business in New Jersey. At all times material hereto, BEACON CMP CORPORATION mined, manufactured, processed, imported, converted, compounded, supplied, used, and/or retailed substantial amounts of asbestos and/or asbestos-containing products including, but not limited to, asbestos-containing talc. BEACON CMP CORPORATION is sued as a Product Defendant. Plaintiffs' claims against BEACON CMP CORPORATION arise out of this Defendant's business activities in the State of South Carolina, as well as Plaintiff Sarah J. Plant's exposure to said Defendant's products in the State of South Carolina, as well as others.

29. Defendant, **BELK, INC.**, was and is a Delaware corporation with its principal place of business in North Carolina. At all times material hereto, BELK, INC. sold, distributed and/or supplied substantial amounts of asbestos-containing talc products, including, but not limited to, asbestos-containing Makeup Products and Powder Products. BELK, INC. is sued as a Product Defendant. Plaintiffs' claims against BELK, INC. arise out of this Defendant's business activities in the State of South Carolina, as well as Plaintiff Sarah J. Plant's exposure to said Defendant's products in the State of South Carolina, as well as others.

30. Defendant, **BRENNTAG NORTH AMERICA, INC.**, individually and as successor-in-interest to MINERAL AND PIGMENT SOLUTIONS, INC., as successor-in-interest to WHITTAKER, CLARK & DANIELS, INC., was and is a Delaware corporation with its principal place of business in Pennsylvania. At all times material hereto, BRENNTAG NORTH AMERICA, INC. mined, manufactured, processed, imported, converted, compounded, supplied, used, and/or retailed substantial amounts of asbestos and/or asbestos-containing products including, but not limited to, asbestos-containing talc. BRENNTAG NORTH

AMERICA, INC. is sued as a Product Defendant. Plaintiffs' claims against BRENNTAG NORTH AMERICA, INC. arise out of this Defendant's business activities in the State of South Carolina, as well as Plaintiff Sarah J. Plant's exposure to said Defendant's products in the State of South Carolina, as well as others.

31. Defendant, **BRENNTAG SPECIALTIES, LLC** f/k/a BRENNTAG SPECIALTIES, INC. f/k/a MINERAL AND PIGMENT SOLUTIONS, INC., as successor-in-interest to WHITTAKER, CLARK & DANIELS, INC., was and is a Delaware limited liability company with its principal place of business in New Jersey. At all times material hereto, BRENNTAG SPECIALTIES, LLC mined, manufactured, processed, imported, converted, compounded, supplied, used, and/or retailed substantial amounts of asbestos and/or asbestos-containing products including, but not limited to, asbestos-containing talc. BRENNTAG SPECIALTIES, LLC is sued as a Product Defendant. Plaintiffs' claims against BRENNTAG SPECIALTIES, LLC arise out of this Defendant's business activities in the State of South Carolina, as well as Plaintiff Sarah J. Plant's exposure to said Defendant's products in the State of South Carolina, as well as others.

32. Defendant, **BRISTOL-MYERS SQUIBB COMPANY**, individually and as successor-in-interest to CHARLES OF THE RITZ INC., LAVIN-CHARLES OF THE RITZ and JEAN NATÉ, was and is a Delaware corporation with its principal place of business in New York. At all times material hereto, BRISTOL-MYERS SQUIBB COMPANY manufactured, sold and/or supplied substantial amounts of asbestos-containing talc products, including, but not limited to, asbestos-containing Jean Naté Powder Products. BRISTOL-MYERS SQUIBB COMPANY is sued as a Product Defendant. Plaintiffs' claims against BRISTOL-MYERS SQUIBB COMPANY arise out of this Defendant's business activities in the State of South

Carolina, as well as Plaintiff Sarah J. Plant's exposure to said Defendant's products in the State of South Carolina, as well as others.

33. Defendant, **CHATTEM, INC.**, was and is a Tennessee corporation with its principal place of business in New Jersey. At all times material hereto, CHATTEM, INC. manufactured, sold and/or supplied substantial amounts of asbestos-containing talc products, including, but not limited to, asbestos-containing Gold Bond Powder Products. CHATTEM, INC. is sued as a Product Defendant. Plaintiffs' claims against CHATTEM, INC. arise out of this Defendant's business activities in the State of South Carolina, as well as Plaintiff Sarah J. Plant's exposure to said Defendant's products in the State of South Carolina, as well as others.

34. Defendant, **COLGATE-PALMOLIVE COMPANY**, was and is a Delaware corporation with its principal place of business in New York. At all times material hereto, COLGATE-PALMOLIVE COMPANY manufactured, sold and/or supplied substantial amounts of asbestos-containing talc products, including, but not limited to, asbestos-containing Cashmere Bouquet Powder Products . COLGATE-PALMOLIVE COMPANY is sued as a Product Defendant. Plaintiffs' claims against COLGATE-PALMOLIVE COMPANY arise out of this Defendant's business activities in the State of South Carolina, as well as Plaintiff Sarah J. Plant's exposure to said Defendant's products in the State of South Carolina, as well as others.

35. Defendant, **COLOR TECHNIQUES, INC.**, was and is a New Jersey corporation with its principal place of business in New Jersey. At all times material hereto, COLOR TECHNIQUES, INC. mined, manufactured, processed, imported, converted, compounded, supplied, used, and/or retailed substantial amounts of asbestos and/or asbestos-containing products including, but not limited to, asbestos-containing talc. COLOR TECHNIQUES, INC. is sued as a Product Defendant. Plaintiffs' claims against COLOR TECHNIQUES, INC. arise out

of this Defendant's business activities in the State of South Carolina, as well as Plaintiff Sarah J. Plant's exposure to said Defendant's products in the State of South Carolina, as well as others.

36. Defendant, **CONOPCO, INC.**, was and is a New York corporation with its principal place of business in New Jersey. At all times material hereto, CONOPCO, INC. manufactured, sold and/or supplied substantial amounts of asbestos-containing talc products, including, but not limited to, asbestos-containing White Shoulders Powder Products. CONOPCO, INC. is sued as a Product Defendant. Plaintiffs' claims against CONOPCO, INC. arise out of this Defendant's business activities in the State of South Carolina.

37. Defendant, **COTY INC.**, individually and as successor to COVERGIRL COSMETICS, INC., and as successor to the NOXZEMA CHEMICAL COMPANY, was and is a Delaware corporation with its principal place of business in New York. At all times material hereto, COTY INC. manufactured, sold and/or supplied substantial amounts of asbestos-containing talc products, including, but not limited to, asbestos-containing Makeup Products and Powder Products. COTY INC. is sued as a Product Defendant. Plaintiffs' claims against COTY INC. arise out of this Defendant's business activities in the State of South Carolina, as well as Plaintiff Sarah J. Plant's exposure to said Defendant's products in the State of South Carolina, as well as others.

38. Defendant, **DANA CLASSIC FRAGRANCES, INC.**, was and is a Delaware corporation with its principal place of business in New York. At all times material hereto, DANA CLASSIC FRAGRANCES, INC. manufactured, sold and/or supplied substantial amounts of asbestos-containing talc products, including, but not limited to, asbestos-containing Chantilly Powder Products. DANA CLASSIC FRAGRANCES, INC. is sued as a Product Defendant. Plaintiffs' claims against DANA CLASSIC FRAGRANCES, INC. arise out of this Defendant's

business activities in the State of South Carolina, as well as Plaintiff Sarah J. Plant's exposure to said Defendant's products in the State of South Carolina, as well as others.

39. Defendant, **DILLARD'S, INC.**, was and is a Delaware corporation with its principal place of business in Arkansas. At all times material hereto, DILLARD'S, INC. sold, distributed and/or supplied substantial amounts of asbestos-containing talc products, including, but not limited to, asbestos-containing Makeup Products and Powder Products. DILLARD'S, INC. is sued as a Product Defendant. Plaintiffs' claims against DILLARD'S, INC. arise out of this Defendant's business activities in the State of South Carolina, as well as Plaintiff Sarah J. Plant's exposure to said Defendant's products in the State of South Carolina, as well as others.

40. Defendant, **DOLLAR GENERAL CORPORATION**, was and is a Tennessee corporation with its principal place of business in Tennessee. At all times material hereto, DOLLAR GENERAL CORPORATION sold, distributed and/or supplied substantial amounts of asbestos-containing talc products, including, but not limited to, asbestos-containing Makeup Products and Powder Products. DOLLAR GENERAL CORPORATION is sued as a Product Defendant. Plaintiffs' claims against DOLLAR GENERAL CORPORATION arise out of this Defendant's business activities in the State of South Carolina, as well as Plaintiff Sarah J. Plant's exposure to said Defendant's products in the State of South Carolina, as well as others.

41. Defendant, **ELIZABETH ARDEN, INC.**, was and is a Florida corporation with its principal place of business in Florida. At all times material hereto, ELIZABETH ARDEN, INC. sold, distributed and/or supplied substantial amounts of asbestos-containing talc products, including, but not limited to, asbestos-containing White Shoulders Powder Products and Makeup Products. ELIZABETH ARDEN, INC. is sued as a Product Defendant. Plaintiffs' claims against ELIZABETH ARDEN, INC. arise out of this Defendant's business activities in the State of

South Carolina, as well as Plaintiff Sarah J. Plant's exposure to said Defendant's products in the State of South Carolina, as well as others.

42. Defendant, **ESTÉE LAUDER INC.**, individually and as successor to CLINIQUE, was and is a Delaware corporation with its principal place of business in New York. At all times material hereto, ESTÉE LAUDER INC. sold, distributed and/or supplied substantial amounts of asbestos-containing talc products, including, but not limited to, asbestos-containing Makeup Products and Powder Products. ESTÉE LAUDER INC. is sued as a Product Defendant. Plaintiffs' claims against ESTÉE LAUDER INC. arise out of this Defendant's business activities in the State of South Carolina, as well as Plaintiff Sarah J. Plant's exposure to said Defendant's products in the State of South Carolina, as well as others.

43. Defendant, **ESTÉE LAUDER INTERNATIONAL, INC.**, individually and as successor to CLINIQUE, was and is a Delaware corporation with its principal place of business in New York. At all times material hereto, ESTÉE LAUDER INTERNATIONAL INC. sold, distributed and/or supplied substantial amounts of asbestos-containing talc products, including, but not limited to, asbestos-containing Makeup Products and Powder Products. ESTÉE LAUDER INTERNATIONAL INC. is sued as a Product Defendant. Plaintiffs' claims against ESTÉE LAUDER INTERNATIONAL INC. arise out of this Defendant's business activities in the State of South Carolina, as well as Plaintiff Sarah J. Plant's exposure to said Defendant's products in the State of South Carolina, as well as others.

44. Defendant, **THE ESTÉE LAUDER COMPANIES INC.**, individually and as successor to CLINIQUE, was and is a Delaware corporation with its principal place of business in New York. At all times material hereto, THE ESTÉE LAUDER COMPANIES INC. sold, distributed and/or supplied substantial amounts of asbestos-containing talc products, including,

but not limited to, asbestos-containing Makeup Products and Powder Products. THE ESTÉE LAUDER COMPANIES INC. is sued as a Product Defendant. Plaintiffs' claims against THE ESTÉE LAUDER COMPANIES INC. arise out of this Defendant's business activities in the State of South Carolina, as well as Plaintiff Sarah J. Plant's exposure to said Defendant's products in the State of South Carolina, as well as others.

45. Defendant, **HAMRICK'S INCORPORATED**, was and is a South Carolina corporation with its principal place of business in South Carolina. At all times material hereto, HAMRICK'S INCORPORATED sold, distributed and/or supplied substantial amounts of asbestos-containing talc products, including, but not limited to, asbestos-containing Makeup Products and Powder Products. HAMRICK'S INCORPORATED is sued as a Product Defendant. Plaintiffs' claims against HAMRICK'S INCORPORATED arise out of this Defendant's business activities in the State of South Carolina, as well as Plaintiff Sarah J. Plant's exposure to said Defendant's products in the State of South Carolina, as well as others.

46. Defendant, **HIGHWATER CLAYS, INC.**, was and is a North Carolina corporation with its principal place of business in North Carolina. At all times material hereto, HIGHWATER CLAYS, INC. manufactured, sold and/or supplied substantial amounts of asbestos-containing talc products, including, but not limited to, asbestos-containing Ceramic Products. HIGHWATER CLAYS, INC. is sued as a Product Defendant. Plaintiffs' claims against HIGHWATER CLAYS, INC. arise out of this Defendant's business activities in the State of South Carolina, as well as Plaintiff Sarah J. Plant's exposure to said Defendant's products in the State of South Carolina, as well as others.

47. Defendant, **IMI FABI (DIANA) LLC**, was and is a North Carolina limited liability company with its principal place of business in West Virginia. At all times material

hereto, IMI FABI (DIANA) LLC mined, manufactured, processed, imported, converted, compounded, supplied, used, and/or retailed substantial amounts of asbestos and/or asbestos-containing products including, but not limited to, asbestos-containing talc. IMI FABI (DIANA) LLC is sued as a Product Defendant. Plaintiffs' claims against IMI FABI (DIANA) LLC arise out of this Defendant's business activities in the State of South Carolina, as well as Plaintiff Sarah J. Plant's exposure to said Defendant's products in the State of South Carolina, as well as others.

48. Defendant, **IMI FABI (USA) INC.**, was and is a Delaware corporation with its principal place of business in West Virginia. At all times material hereto, IMI FABI (USA) INC. mined, manufactured, processed, imported, converted, compounded, supplied, used, and/or retailed substantial amounts of asbestos and/or asbestos-containing products including, but not limited to, asbestos-containing talc. IMI FABI (USA) INC. is sued as a Product Defendant. Plaintiffs' claims against IMI FABI (USA) INC. arise out of this Defendant's business activities in the State of South Carolina, as well as Plaintiff Sarah J. Plant's exposure to said Defendant's products in the State of South Carolina, as well as others.

49. Defendant, **IMI FABI, LLC**, was and is a West Virginia limited liability company with its principal place of business in West Virginia. At all times material hereto, IMI FABI, LLC mined, manufactured, processed, imported, converted, compounded, supplied, used, and/or retailed substantial amounts of asbestos and/or asbestos-containing products including, but not limited to, asbestos-containing talc. IMI FABI, LLC is sued as a Product Defendant. Plaintiffs' claims against IMI FABI, LLC arise out of this Defendant's business activities in the State of South Carolina, as well as Plaintiff Sarah J. Plant's exposure to said Defendant's products in the State of South Carolina, as well as others.

50. Defendant, **INGLES MARKETS, INCORPORATED**, was and is a North Carolina corporation with its principal place of business in North Carolina. At all times material hereto, INGLES MARKETS, INCORPORATED sold, distributed and/or supplied substantial amounts of asbestos-containing talc products, including, but not limited to, asbestos-containing Makeup Products and Powder Products. INGLES MARKETS, INCORPORATED is sued as a Product Defendant. Plaintiffs' claims against INGLES MARKETS, INCORPORATED arise out of this Defendant's business activities in the State of South Carolina, as well as Plaintiff Sarah J. Plant's exposure to said Defendant's products in the State of South Carolina, as well as others.

51. Defendant, **L'ORÉAL USA, INC.**, individually and d/b/a LANCÔME and MAYBELLINE, and as successor to YVES SAINT LAURENT AMERICA, INC., CHARLES OF THE RITZ INC., and JEAN NATÉ, was and is a Delaware corporation with its principal place of business in New York. At all times material hereto, L'ORÉAL USA, INC. sold, distributed and/or supplied substantial amounts of asbestos-containing talc products, including, but not limited to, asbestos-containing Makeup Products and Powder Products. L'ORÉAL USA, INC. is sued as a Product Defendant. Plaintiffs' claims against L'ORÉAL USA, INC. arise out of this Defendant's business activities in the State of South Carolina, as well as Plaintiff Sarah J. Plant's exposure to said Defendant's products in the State of South Carolina, as well as others.

52. Defendant, **L'ORÉAL USA PRODUCTS, INC.**, individually and d/b/a LANCÔME and MAYBELLINE, and as successor to YVES SAINT LAURENT AMERICA, INC., CHARLES OF THE RITZ INC., and JEAN NATÉ, was and is a Delaware corporation with its principal place of business in New York. At all times material hereto, L'ORÉAL USA PRODUCTS, INC. sold, distributed and/or supplied substantial amounts of asbestos-containing talc products, including, but not limited to, asbestos-containing Makeup Products and Powder

Products. L'ORÉAL USA PRODUCTS, INC. is sued as a Product Defendant. Plaintiffs' claims against L'ORÉAL USA PRODUCTS, INC. arise out of this Defendant's business activities in the State of South Carolina, as well as Plaintiff Sarah J. Plant's exposure to said Defendant's products in the State of South Carolina, as well as others.

53. Defendant, **LOWCOUNTRY GROCERS LLC** d/b/a PIGGLY WIGGLY, was and is a South Carolina limited liability company with its principal place of business in South Carolina. At all times material hereto, **LOWCOUNTRY GROCERS LLC** sold, distributed and/or supplied substantial amounts of asbestos-containing talc products, including, but not limited to, asbestos-containing Makeup Products and Powder Products. **LOWCOUNTRY GROCERS LLC** is sued as a Product Defendant. Plaintiffs' claims against **LOWCOUNTRY GROCERS LLC** arise out of this Defendant's business activities in the State of South Carolina, as well as Plaintiff Sarah J. Plant's exposure to said Defendant's products in the State of South Carolina, as well as others.

54. Defendant, **MARY KAY INC.**, was and is a Delaware corporation with its principal place of business in Texas. At all times material hereto, **MARY KAY INC.** manufactured, sold and/or supplied substantial amounts of asbestos-containing talc products, including, but not limited to, asbestos-containing Mary Kay Makeup Products and Powder Products. **MARY KAY INC.** is sued as a Product Defendant. Plaintiffs' claims against **MARY KAY INC.** arise out of this Defendant's business activities in the State of South Carolina, as well as Plaintiff Sarah J. Plant's exposure to said Defendant's products in the State of South Carolina, as well as others.

55. Defendant, **MAYBELLINE LLC**, was and is a New York limited liability company with its principal place of business in New York. At all times material hereto,

MAYBELLINE LLC manufactured, sold and/or supplied substantial amounts of asbestos-containing talc products, including, but not limited to, asbestos-containing Maybelline Makeup Products and Powder Products. MAYBELLINE LLC is sued as a Product Defendant. Plaintiffs' claims against MAYBELLINE LLC arise out of this Defendant's business activities in the State of South Carolina, as well as Plaintiff Sarah J. Plant's exposure to said Defendant's products in the State of South Carolina, as well as others.

56. Defendant, **NOXELL CORPORATION** a subsidiary of COTY INC., was and is a Maryland corporation with its principal place of business in Maryland. At all times material hereto, NOXELL CORPORATION manufactured, sold and/or supplied substantial amounts of asbestos-containing talc products, including, but not limited to, asbestos-containing CoverGirl Makeup Products and Powder Products. NOXELL CORPORATION is sued as a Product Defendant. Plaintiffs' claims against NOXELL CORPORATION arise out of this Defendant's business activities in the State of South Carolina, as well as Plaintiff Sarah J. Plant's exposure to said Defendant's products in the State of South Carolina, as well as others.

57. Defendant, **PFIZER INC.**, individually and as successor to COTY INC. and COTY INTERNATIONAL INC., was and is a Delaware corporation with its principal place of business in New York. At all times material hereto, PFIZER INC. mined, manufactured, processed, imported, converted, compounded, supplied, used, and/or retailed substantial amounts of asbestos and/or asbestos-containing products including, but not limited to, asbestos-containing talc. PFIZER INC. is sued as a Product Defendant. Plaintiffs' claims against PFIZER INC. arise out of this Defendant's business activities in the State of South Carolina, as well as Plaintiff Sarah J. Plant's exposure to said Defendant's products in the State of South Carolina, as well as others.

58. Defendant, **R.T. VANDERBILT HOLDING COMPANY, INC.**, individually and as successor-in-interest to R.T. VANDERBILT COMPANY, INC., was and is a Delaware corporation with its principal place of business in Connecticut. At all times material hereto, R.T. VANDERBILT HOLDING COMPANY, INC. mined, manufactured, processed, imported, converted, compounded, supplied, used, and/or retailed substantial amounts of asbestos and/or asbestos-containing products including, but not limited to, asbestos-containing talc. R.T. VANDERBILT HOLDING COMPANY, INC. is sued as a Product Defendant. Plaintiffs' claims against R.T. VANDERBILT HOLDING COMPANY, INC. arise out of this Defendant's business activities in the State of South Carolina, as well as Plaintiff Sarah J. Plant's exposure to said Defendant's products in the State of South Carolina, as well as others.

59. Defendant, **REVLON CONSUMER PRODUCTS CORPORATION**, individually and as successor to REVLON RESEARCH LABORATORIES, INC., CHARLES OF THE RITZ INC., LAVIN-CHARLES OF THE RITZ, JEAN NATÉ, E. R. SQUIBB, SQUIBB CORP., and YVES SAINT LAURENT, was and is a Delaware corporation with its principal place of business in New York. At all times material hereto, REVLON CONSUMER PRODUCTS manufactured, sold and/or supplied substantial amounts of asbestos-containing talc products, including, but not limited to, asbestos-containing Makeup Products and Powder Products. REVLON CONSUMER PRODUCTS CORPORATION is sued as a Product Defendant. Plaintiffs' claims against REVLON CONSUMER PRODUCTS CORPORATION arise out of this Defendant's business activities in the State of South Carolina, as well as Plaintiff Sarah J. Plant's exposure to said Defendant's products in the State of South Carolina, as well as others.

60. Defendant, **REVLON, INC.**, individually and as successor to ELIZABETH ARDEN, INC., CHARLES OF THE RITZ INC., LAVIN-CHARLES OF THE RITZ, JEAN NATÉ, E. R. SQUIBB, SQUIBB CORP., and YVES SAINT LAURENT, was and is a Delaware corporation with its principal place of business in New York. At all times material hereto, REVLON, INC. manufactured, sold and/or supplied substantial amounts of asbestos-containing talc products, including, but not limited to, asbestos-containing Makeup Products and Powder Products. REVLON, INC. is sued as a Product Defendant. Plaintiffs' claims against REVLON, INC. arise out of this Defendant's business activities in the State of South Carolina, as well as Plaintiff Sarah J. Plant's exposure to said Defendant's products in the State of South Carolina, as well as others.

61. Defendant, **RITE AID OF SOUTH CAROLINA, INC.**, was and is a South Carolina corporation with its principal place of business in Pennsylvania. At all times material hereto, RITE AID OF SOUTH CAROLINA, INC. sold, distributed and/or supplied substantial amounts of asbestos-containing talc products, including, but not limited to, asbestos-containing Makeup Products and Powder Products. RITE AID OF SOUTH CAROLINA, INC. is sued as a Product Defendant. Plaintiffs' claims against RITE AID OF SOUTH CAROLINA, INC. arise out of this Defendant's business activities in the State of South Carolina, as well as Plaintiff Sarah J. Plant's exposure to said Defendant's products in the State of South Carolina, as well as others.

62. Defendant, **SOUTHEASTERN GROCERS, INC.**, individually and as successor-in-interest to BI-LO, was and is a Delaware corporation with its principal place of business in Florida. At all times material hereto, SOUTHEASTERN GROCERS, INC. sold, distributed and/or supplied substantial amounts of asbestos-containing talc products, including, but not

limited to, asbestos-containing Makeup Products and Powder Products. SOUTHEASTERN GROCERS, INC. is sued as a Product Defendant. Plaintiffs' claims against SOUTHEASTERN GROCERS, INC. arise out of this Defendant's business activities in the State of South Carolina, as well as Plaintiff Sarah J. Plant's exposure to said Defendant's products in the State of South Carolina, as well as others.

63. Defendant, **TOPCO ASSOCIATES, LLC**, was and is a Delaware corporation with its principal place of business in Illinois. At all times material hereto, TOPCO ASSOCIATES, LLC manufactured, sold and/or supplied substantial amounts of asbestos-containing talc products, including, but not limited to, asbestos-containing Top Care Powder Products. TOPCO ASSOCIATES, LLC is sued as a Product Defendant. Plaintiffs' claims against TOPCO ASSOCIATES, LLC arise out of this Defendant's business activities in the State of South Carolina, as well as Plaintiff Sarah J. Plant's exposure to said Defendant's products in the State of South Carolina, as well as others.

64. Defendant, **VANDERBILT MINERALS, LLC** f/k/a R.T. VANDERBILT COMPANY, INC., individually and as successor-in-interest to INTERNATIONAL TALC CO., was and is a Delaware limited liability company with its principal place of business in Connecticut. At all times material hereto, VANDERBILT MINERALS, LLC mined, manufactured, processed, imported, converted, compounded, supplied, used, and/or retailed substantial amounts of asbestos and/or asbestos-containing products including, but not limited to, asbestos-containing talc. VANDERBILT MINERALS, LLC is sued as a Product Defendant. Plaintiffs' claims against VANDERBILT MINERALS, LLC arise out of this Defendant's business activities in the State of South Carolina, as well as Plaintiff Sarah J. Plant's exposure to said Defendant's products in the State of South Carolina, as well as others.

65. Defendant, **VI-JON, LLC** f/k/a VI-JON, INC., was and is a Delaware limited liability company with its principal place of business in Missouri. At all times material hereto, VI-JON, LLC mined, manufactured, processed, imported, converted, compounded, supplied, used, and/or retailed substantial amounts of asbestos and/or asbestos-containing products including, but not limited to, asbestos-containing talc. VI-JON, LLC is sued as a Product Defendant. Plaintiffs' claims against VI-JON, LLC arise out of this Defendant's business activities in the State of South Carolina, as well as Plaintiff Sarah J. Plant's exposure to said Defendant's products in the State of South Carolina, as well as others.

66. Defendant, **WALGREEN CO.**, was and is an Illinois corporation with its principal place of business in Illinois. At all times material hereto, WALGREEN CO. sold, distributed and/or supplied substantial amounts of asbestos-containing talc products, including, but not limited to, asbestos-containing Makeup Products and Powder Products. WALGREEN CO. is sued as a Product Defendant. Plaintiffs' claims against WALGREEN CO. arise out of this Defendant's business activities in the State of South Carolina, as well as Plaintiff Sarah J. Plant's exposure to said Defendant's products in the State of South Carolina, as well as others.

67. Defendant, **WALMART INC.**, was and is a Delaware corporation with its principal place of business in Arkansas. At all times material hereto, WALMART INC. sold, distributed and/or supplied substantial amounts of asbestos-containing talc products, including, but not limited to, asbestos-containing Makeup Products and Powder Products. WALMART INC. is sued as a Product Defendant. Plaintiffs' claims against WALMART INC. arise out of this Defendant's business activities in the State of South Carolina, as well as Plaintiff Sarah J. Plant's exposure to said Defendant's products in the State of South Carolina, as well as others.

68. Defendant, **WHITTAKER, CLARK & DANIELS, INC.**, was and is a New Jersey corporation with its principal place of business in Connecticut. At all times material hereto, WHITTAKER, CLARK & DANIELS, INC. mined, manufactured, processed, imported, converted, compounded, supplied, used, and/or retailed substantial amounts of asbestos and/or asbestos-containing products including, but not limited to, asbestos-containing talc. WHITTAKER, CLARK & DANIELS, INC is sued as a Product Defendant. Plaintiffs' claims against WHITTAKER, CLARK & DANIELS, INC arise out of this Defendant's business activities in the State of South Carolina, as well as Plaintiff Sarah J. Plant's exposure to said Defendant's products in the State of South Carolina, as well as others.

69. Defendant, **WINN-DIXIE STORES, INC.** a subsidiary of BI-LO a subsidiary of SOUTHEASTERN GROCERS, INC., was and is a Florida corporation with its principal place of business in Florida. At all times material hereto, WINN-DIXIE STORES, INC. sold, distributed and/or supplied substantial amounts of asbestos-containing talc products, including, but not limited to, asbestos-containing Makeup Products and Powder Products. WINN-DIXIE STORES, INC.is sued as a Product Defendant. Plaintiffs' claims against WINN-DIXIE STORES, INC. arise out of this Defendant's business activities in the State of South Carolina, as well as Plaintiff Sarah J. Plant's exposure to said Defendant's products in the State of South Carolina, as well as others.

70. Defendant, **YVES SAINT LAURENT AMERICA, INC.**, was and is a New York corporation with its principal place of business in New York. At all times material hereto, YVES SAINT LAURENT AMERICA, INC. manufactured, sold and/or supplied substantial amounts of asbestos-containing talc products, including, but not limited to, asbestos-containing Makeup Products and Jean Naté Powder Products. YVES SAINT LAURENT AMERICA, INC. is

sued as a Product Defendant. Plaintiffs' claims against YVES SAINT LAURENT AMERICA, INC. arise out of this Defendant's business activities in the State of South Carolina, as well as Plaintiff Sarah J. Plant's exposure to said Defendant's products in the State of South Carolina, as well as others.

BACKGROUND FACTS

71. Plaintiff Sarah J. Plant brings this action for monetary damages as a result of contracting an asbestos-related disease.

72. Plaintiff Sarah J. Plant was diagnosed with Mesothelioma on or about March 24, 2021 as a result of her exposure to makeup and talcum powder where asbestos-containing talc was a constituent ingredient.

73. Plaintiff Sarah J. Plant's mesothelioma was caused by her exposure to asbestos through her personal use, and her family's use, of asbestos-containing talc Makeup Products and Powder Products throughout her life, her use of asbestos-containing talc Powder Products, and from the Ceramic Products (art clay) she used in the ceramic work that contained asbestos talc.

74. Plaintiff, Sarah J. Plant, used, or had used on her by her parents and grandparents, the Powder Products from 1986 continuously until very recently, but does not know the precise date she stopped. She frequently and regularly dusted the Powder Products on various parts of her body which at varying times may have included amongst other areas: face, neck, shoulders, arms, armpits, legs, collarbones, décolletage, breasts, vagina, and perineum. During this time she repeatedly inhaled, ingested, and was regularly exposed to asbestos dust emanating from the asbestos laden talc within the Powder Products permeating her person and clothes in her Tennessee, Utah and South Carolina homes. All of these activities exposed Plaintiff to asbestos and asbestos-dust.

75. Plaintiff also claims exposure from the Defendant talc suppliers, mines, mills, and labs named in her complaint that provided asbestos-containing talc as a constituent ingredient to the Powder Products and Makeup Products that she used.

76. In addition, Plaintiff Sarah J. Plant was exposed to asbestos from working with a variety of ceramic art materials that contained asbestos. She would fashion clay pottery and greenware out of art clays, fire them in a kiln, and then sand and polish these results, creating visible dust that she breathed. She would then coat some with underglaze, polishing and scoring these underglazed results before glazing. This work also created visible dust that she breathed. She did this multiple times per week while in art classes in school and at the art college. All of these activities exposed Plaintiff to asbestos and asbestos-dust.

77. Each use of the Powder Products, Makeup Products and Ceramic Products was an intended and foreseeable use of the products based on the advertising, marketing and labeling of the product. It was foreseeable Defendants' asbestos-containing talc products would be sold for personal use by individuals like Plaintiff Sarah J. Plant on herself. Plaintiff Sarah J. Plant was thereby exposed to defendants' asbestos-containing Powder Products, Makeup Products and Ceramic Products in the State of South Carolina and other states at times relevant to this action.

78. Plaintiff Sarah J. Plant's cumulative exposure to asbestos as a result of acts and omissions of Defendants and their defective products, individually and together, was a substantial factor in causing Plaintiff Sarah J. Plant's mesothelioma and other related injuries and therefore under South Carolina law, is the legal cause of Plaintiff's injuries and damages.

79. Plaintiff Sarah J. Plant was not aware at the time of exposure that asbestos or asbestos-containing talc products presented any risk of injury and/or disease.

80. Plaintiffs are informed and believe, and thereon allege, that progressive lung disease, mesothelioma and other serious diseases are caused by inhalation of asbestos fibers without perceptible trauma and that said disease results from exposure to asbestos and asbestos-containing products over a period of time.

81. As a direct and proximate result of the conduct as alleged within, Plaintiff Sarah J. Plant suffered permanent injuries, including, but not limited to, mesothelioma and other lung damage, as well as the mental and emotional distress attendant thereto, from the effect of exposure to asbestos fibers, all to his damage in the sum of the amount as the trier of fact determines is proper.

82. As a direct and proximate result of the conduct as hereinafter alleged, Plaintiff Sarah J. Plant incurred liability for physicians, surgeons, nurses, hospital care, medicine, hospices, x-rays and other medical treatment, the true and exact amount thereof being unknown to Plaintiffs at this time. Plaintiffs request leave to supplement this Court and all parties accordingly when the true and exact cost of Plaintiff Sarah J. Plant's medical treatment is ascertained.

83. As a further direct and proximate result of the conduct as hereinafter alleged, Plaintiffs incurred loss of profits and commissions, a diminishment of earning potential, and other pecuniary losses, the full nature and extent of which are not yet known to Plaintiffs. Plaintiffs request leave to supplement this Court and all parties accordingly to conform to proof at the time of trial.

FOR A FIRST CAUSE OF ACTION
(Product Liability: Negligence)

Plaintiffs Complain of Defendants for a Cause of Action for Negligence Alleging as Follows:

84. Plaintiffs incorporate herein by reference, as though fully set forth herein, each and every paragraph of the General Allegations above.

85. At all times herein mentioned, each of the named Defendants was an entity and/or the successor, successor in business, successor in product line or a portion thereof, assign, predecessor, predecessor in business, predecessor in product line or a portion thereof, parent, subsidiary, or division of an entity, hereinafter referred to collectively as “alternate entities,” engaged in the business of researching, studying, manufacturing, fabricating, designing, modifying, labeling, instructing, assembling, distributing, leasing, buying, offering for sale, supplying, selling, inspecting, servicing, installing, contracting for installation, repairing, marketing, warranting, re-branding, manufacturing for others, packaging and advertising a certain product, namely asbestos-containing talc products manufactured for foreseeable personal use by individuals like Plaintiff Sarah J. Plant on herself. Plaintiff was thereby exposed to Defendants’ asbestos-containing talc products in the State of South Carolina.

86. At all times herein mentioned, Defendants, and/or their “alternate entities” singularly and jointly, negligently and carelessly researched, manufactured, fabricated, designed, modified, tested or failed to test, abated or failed to abate, inadequately warned or failed to warn of the health hazards, failed to provide adequate use instructions for eliminating the health risks inherent in the use of the products, labeled, distributed, bought, offered for sale, supplied, sold, inspected, marketed, rebranded, manufactured for others, packaged and advertised, a certain product, namely asbestos-containing talc products manufactured for foreseeable personal use by

individuals like Plaintiff Sarah J. Plant, in that said products caused personal injuries to Plaintiff Sarah J. Plant and others similarly situated, (hereinafter collectively called “exposed persons”), while being used for their intended purpose and in a manner that was reasonably foreseeable.

87. The asbestos and asbestos-containing talc products were defective and unsafe for their intended purpose in that there was an alternative for asbestos that could have been used as the product or as a component instead of asbestos within a normally asbestos-containing/utilizing product. Said alternatives would have prevented Defendants’ asbestos and asbestos-containing talc products from causing Plaintiff Sarah J. Plant’s mesothelioma, due to an inability of any asbestos-alternative to penetrate the pleural lining of Plaintiff’s lung, even if inhaled. Said alternatives came at a comparable cost to each of the Defendants and/or their “alternate entities.” Said alternatives were of comparable utility to the asbestos or asbestos-containing products of Defendants and/or their “alternate entities.” The gravity of the potential harm resulting from the use of Defendants’ asbestos or asbestos-containing talc products, and the likelihood such harm would occur to users of its products, far outweighed any additional cost or marginal loss of functionality in creating and/or utilizing an alternative design, providing adequate warning of such potential harm, and/or providing adequate use instructions for eliminating the health risks inherent in the use of their products, thereby rendering the same defective, unsafe and dangerous for use by Plaintiff Sarah J. Plant. Defendants and/or their “alternate entities” had a duty to exercise due care in the pursuance of the activities mentioned above and Defendants, each of them, breached said duty of due care.

88. Defendants, and/or their “alternate entities” knew or should have known, and intended that the aforementioned asbestos and asbestos-containing talc products would be transported by truck, rail, ship and other common carriers, that in the shipping process the

products would break, crumble or be otherwise damaged; and/or that such products would be used for personal use by individuals like Plaintiff Sarah J. Plant on herself, resulting in the release of airborne asbestos fibers, and that through such foreseeable use and/or handling by exposed persons, including Plaintiff Sarah J. Plant, would use or be in proximity to and exposed to said asbestos fibers.

89. At all times relevant, Defendants and/or their “alternate entities” were aware of their asbestos and asbestos-containing talc products’ defect but failed to adequately warn Plaintiff Sarah J. Plant, Plaintiff’s family members or others in their vicinity, as well as failed to adequately warn others of the known hazards associated with their products and/or failed to recall or retrofit their products. A reasonable manufacturer, distributor, or seller of Defendants’ products would have, under the same or similar circumstances, adequately warned of the hazards associated with their products.

90. Plaintiff Sarah J. Plant, Plaintiff’s family members and others in their vicinity used, handled or were otherwise exposed to asbestos and asbestos-containing products referred to herein in a manner that was reasonably foreseeable. Plaintiff’s exposure to asbestos and asbestos-containing talc products occurred at various locations as set forth in this Complaint.

91. Plaintiff Sarah J. Plant suffers from mesothelioma, a cancer related to exposure to asbestos and asbestos-containing products. Plaintiff Sarah J. Plant was not aware at the time of exposure that asbestos or asbestos-containing talc products presented any risk of injury or disease.

92. Defendants’ conduct and defective products as described in this cause of action were a direct cause of Plaintiff Sarah J. Plant’s injuries, and all damages thereby sustained by

Plaintiff Sarah J. Plant. Plaintiffs therefore seek all compensatory damages in order to make them whole, according to proof.

93. Furthermore, the conduct of Defendants and/or their “alternate entities” in continuing to market and sell products which they knew were dangerous to Plaintiff Sarah J. Plant and the public without adequate warnings or proper use instructions was done in a conscious disregard and indifference to the safety and health of Plaintiff and others similarly situated.

94. In researching, manufacturing, fabricating, designing, modifying, testing or failing to test, warning or failing to warn, failing to recall or retrofit, labeling, instructing, distributing, buying, offering for sale, supplying, selling, inspecting, servicing, marketing, warranting, rebranding, manufacturing for others, packaging and advertising asbestos-containing talc products or products manufactured for foreseeable personal use by individuals like Plaintiff Sarah J. Plant, Defendants and/or their “alternate entities” did so with conscious disregard for the safety of “exposed persons” who came in contact with asbestos and asbestos-containing talc products, in that Defendants and/or their “alternate entities” had prior knowledge that there was a substantial risk of injury or death resulting from exposure to asbestos, asbestos-containing talc products or products manufactured for foreseeable personal use by individuals like Plaintiff Sarah J. Plant, including, but not limited to, asbestosis, mesothelioma, lung cancer, and other lung damages. This knowledge was obtained, in part, from scientific studies performed by, at the request of, or with the assistance of Defendants and/or their “alternate entities.”

95. Defendants and their “alternate entities” were aware that members of the general public and other “exposed persons,” who would come in contact with their asbestos and asbestos-containing products, had no knowledge or information indicating that asbestos,

asbestos-containing talc products, or products manufactured for foreseeable personal use by individuals like Plaintiff Sarah J. Plant, could cause injury, and Defendants, and their “alternate entities,” each of them, knew that members of the general public and other “exposed persons,” who came in contact with asbestos-containing talc products or products manufactured for foreseeable personal use by individuals like Plaintiff Sarah J. Plant, would assume, and in fact did assume, that exposure to asbestos-containing talc products was safe, when in fact said exposure was extremely hazardous to health and human life.

96. The above-referenced conduct of Defendants, and their “alternate entities,” was motivated by the financial interest of Defendants, their “alternate entities,” and each of them, in the continuing, uninterrupted research, design, modification, manufacture, fabrication, labeling, instructing, distribution, purchase, offer for sale, supply, sale, inspection, marketing, warranting, rebranding, manufacturing for others, packaging and advertising of asbestos-containing talc products and products manufactured for foreseeable personal use by individuals like Plaintiff Sarah J. Plant. Defendants, their “alternate entities,” and each of them consciously disregarded the safety of “exposed persons” in pursuit of profit. Defendants were consciously willing and intended to permit asbestos-containing talc products to cause injury to “exposed persons” without warning them of the potential hazards and further induced persons to use and be exposed thereto, including Plaintiff Sarah J. Plant.

97. Plaintiff Sarah J. Plant and other exposed persons did not know of the substantial danger of using Defendants’ asbestos, asbestos-containing talc products, and products manufactured for foreseeable personal use by individuals like Plaintiff. The dangers inherent in the use of these products were not readily recognizable by Plaintiff Sarah J. Plant or other

exposed persons. Defendants and/or their “alternate entities” further failed to adequately warn of the risks to which Plaintiff and others similarly situated were exposed.

98. Defendants and/or their “alternate entities” are liable for the fraudulent, oppressive, and malicious acts of their “alternate entities,” and each Defendant's officers, directors and managing agents participated in, authorized, expressly and impliedly ratified, and had full knowledge of, or should have known of, the acts of each of their “alternate entities” as set forth herein.

99. The herein-described conduct of Defendants and their “alternate entities,” was and is willful, malicious, fraudulent, and outrageous and in conscious disregard and indifference to the safety and health of persons foreseeably exposed. Plaintiffs, for the sake of example and by way of punishing said Defendants, seek punitive damages according to proof against all defendants.

FOR A SECOND CAUSE OF ACTION

(Product Liability: Strict Liability - S.C. Code Ann. § 15-73-10, et seq.)

As a Second and Distinct Cause of Action for Strict Liability, Plaintiffs Complain of Defendants, and Allege as Follows:

100. Plaintiffs incorporate herein by reference, as though fully set forth herein, each of the preceding paragraphs.

101. Plaintiff Sarah J. Plant suffered from mesothelioma, a cancer related to exposure to asbestos, asbestos-containing talc products and products manufactured for foreseeable personal use by individuals like Plaintiff. Plaintiff Sarah J. Plant was not aware at the time of exposure that asbestos or asbestos-containing talc products presented any risk of injury and/or disease.

102. The Products Defendants' conduct and defective products as described above were a direct cause of Plaintiff Sarah J. Plant's injuries, and the injuries and damages thereby sustained by Plaintiffs.

103. Furthermore, the Defendants' conduct and that of their "alternate entities" in continuing to market and sell products which they knew were dangerous to Plaintiff Sarah J. Plant and the public without adequate warnings or proper use instructions, was done in a conscious disregard and indifference to the safety and health of Plaintiff Sarah J. Plant and others similarly situated.

104. Defendants and/or their "alternate entities" knew or should have known, and intended that the aforementioned asbestos and products containing asbestos would be transported by truck, rail, ship and other common carriers, that in the shipping process the products would break, crumble or be otherwise damaged; and/or that such products would be used for personal use by individuals like Plaintiff Sarah J. Plant, resulting in the release of airborne asbestos fibers, and that through such foreseeable use and/or handling, "exposed persons," including Plaintiff, would use or be in proximity to and exposed to said asbestos fibers.

105. Plaintiff Sarah J. Plant, Plaintiff's family members, and others in their vicinity used, handled or were otherwise exposed to asbestos, asbestos-containing products, and products manufactured for foreseeable personal use by individuals like Plaintiff Sarah J. Plant, referred to herein in a manner that was reasonably foreseeable. Plaintiff Sarah J. Plant's exposure to asbestos, asbestos-containing talc products, and products manufactured for foreseeable personal use by individuals like Plaintiff Sarah J. Plant occurred at various locations as set forth in this Complaint.

106. Defendants and/or their “alternate entities” knew and intended that the above-referenced asbestos and asbestos-containing talc products would be used by the purchaser or user without inspection for defects therein or in any of their component parts and without knowledge of the hazards involved in such use.

107. The asbestos and asbestos-containing talc products were defective and unsafe for their intended purpose in that there was an alternative for asbestos that could have been used as the product or as a component instead of asbestos within a normally asbestos-containing/utilizing product. Said alternatives would have prevented Defendants’ asbestos, asbestos-containing talc products, and products manufactured for foreseeable personal use by individuals from causing Plaintiff Sarah J. Plant’s mesothelioma, due to an inability of any asbestos-alternative to penetrate the pleural lining of Plaintiff’s lung, even if inhaled. Said alternatives came at a comparable cost to each of the Defendants and/or their “alternate entities.” Said alternatives were of comparable utility to the asbestos or asbestos-containing talc products of Defendants and/or their “alternate entities.” The gravity of the potential harm resulting from the use of Defendants’ asbestos or asbestos-containing talc products, and the likelihood such harm would occur, far outweighed any additional cost or marginal loss of functionality in creating and/or utilizing an alternative design, providing adequate warning of such potential harm, and/or providing adequate use instructions for eliminating the health risks inherent in the use of their products, thereby rendering the same defective, unsafe and dangerous for use.

108. The defect existed in the said products at the time they left the possession of defendants and/or their “alternate entities,” and each of them. Said products were intended to reach the ultimate consumer in the same condition as it left defendants. Said products did, in fact, cause personal injuries, including mesothelioma, asbestosis, other lung damage, and cancer

to “exposed persons,” including Plaintiff Sarah J. Plant herein, while being used in a reasonably foreseeable manner, thereby rendering the same defective, unsafe and dangerous for use.

109. Plaintiff Sarah J. Plant and other exposed persons did not know of the substantial danger of using Defendants’ asbestos, asbestos-containing talc products, or products manufactured for foreseeable personal use by individuals like Plaintiff Sarah J. Plant. The dangers inherent in the use of these products were not readily recognizable by Plaintiff or other exposed persons. Said Defendants and/or their “alternate entities” further failed to adequately warn of the risks to which Plaintiff Sarah J. Plant and others similarly situated were exposed.

110. Defendants’ defective products as described above were a direct cause of Plaintiff Sarah J. Plant’s injuries, and the damages thereby sustained.

111. In researching, manufacturing, fabricating, designing, modifying, testing or failing to test, warning or failing to warn, labeling, instructing, distributing, buying, offering for sale, supplying, selling, inspecting, servicing, marketing, warranting, rebranding, manufacturing for others, packaging and advertising asbestos, asbestos-containing talc products, and products manufactured for foreseeable personal use by individuals like Plaintiff Sarah J. Plant, Defendants and/or their “alternate entities,” and each of them, did so with conscious disregard for the safety of Plaintiff and other exposed persons who came in contact with the asbestos, asbestos-containing talc products, and products manufactured for foreseeable personal use by individuals, in that Defendants and/or their “alternate entities” had prior knowledge that there was a substantial risk of injury or death resulting from exposure to asbestos or asbestos-containing talc products or products manufactured for foreseeable personal use by individuals like Plaintiff Sarah J. Plant, including, but not limited to, mesothelioma, asbestosis, other lung

damages and cancers. This knowledge was obtained, in part, from scientific studies performed by, at the request of, or with the assistance of Defendants and/or their “alternate entities.”

112. Defendants and/or their “alternate entities” were aware that members of the general public and other exposed persons, who would come in contact with their asbestos and asbestos-containing talc products, had no knowledge or information indicating that asbestos or asbestos-containing talc products or products manufactured for foreseeable personal use by individuals like Plaintiff Sarah J. Plant could cause injury. Defendants and/or their “alternate entities” further knew that members of the general public and other exposed persons, who came in contact with asbestos, asbestos-containing talc products, and products manufactured for foreseeable personal use by individuals like Plaintiff Sarah J. Plant would assume, and in fact did assume, that exposure to asbestos and asbestos- containing products was safe, when in fact exposure was extremely hazardous to health and human life.

113. The above-referenced conduct of Defendants and/or their “alternate entities” motivated by the financial interest of Defendants, their “alternate entities,” and each of them, in the continuing and uninterrupted research, design, modification, manufacture, fabrication, labeling, instructing, distribution, purchase, offer for sale, supply, sale, inspection, marketing, warranting, rebranding, manufacturing for others, packaging and advertising of asbestos, asbestos-containing talc products, and products manufactured for foreseeable personal use by individuals like Plaintiff Sarah J. Plant. Defendants and/or their “alternate entities” consciously disregarded the safety of “exposed persons” in their pursuit of profit and in fact consciously intended to cause injury to Plaintiff Sarah J. Plant and other exposed persons and induced persons to use, be exposed to, and thereby injured by asbestos, asbestos-containing talc products,

and products manufactured for foreseeable personal use by individuals like Plaintiff Sarah J. Plant.

114. Defendants are liable for the fraudulent, oppressive, and malicious acts of their “alternate entities,” and each Defendant's officers, directors and managing agents participated in, authorized, expressly and impliedly ratified, and knew, or should have known of, the acts of each of their “alternate entities” as set forth herein.

115. The conduct of said defendants, their “alternate entities,” and each of them as set forth in this Complaint, was and is willful, malicious, fraudulent, outrageous and in conscious disregard and indifference to the safety and health of exposed persons. Plaintiffs, for the sake of example and by way of punishing said Defendants, seeks punitive damages according to proof against all defendants.

116. At all times herein mentioned, each of the named Defendants, and/or their “alternate entities,” was an entity and/or the successor, successor in business, successor in product line or a portion thereof, assign, predecessor, predecessor in business, predecessor in product line or a portion thereof, parent, subsidiary, or division of an entity, hereinafter referred to collectively as “alternate entities,” engaged in the business of researching, studying, manufacturing, fabricating, designing, modifying, labeling, instructing, distributing, buying, offering for sale, supplying, selling, inspecting, servicing, marketing, warranting, re-branding, manufacturing for others, packaging and advertising a certain product, namely products containing asbestos and talc products manufactured for foreseeable personal use by individuals like Plaintiff Sarah J. Plant.

FOR A THIRD CAUSE OF ACTION
(Negligence Per Se)

As a Third Distinct Cause of Action for Negligence Per Se, Plaintiffs Complain of Defendants, and Allege as Follows:

117. Plaintiffs incorporate herein by reference, as though fully set forth herein, each of the preceding paragraphs.

118. The actions of Defendants also constituted negligence per se.

119. Defendants violated federal and state regulations relating to asbestos exposure. Such violations constitute negligence per se or negligence as a matter of law. Further, each such violation resulted in dangerous and unlawful exposures to asbestos for Plaintiff Sarah J. Plant. Plaintiffs are not making any claims under federal law; instead, Plaintiffs are simply using the violation of federal standards as proof of liability on their state-law theories. Further, the reference to Federal regulations does not create a federal question. *See Merrell Dow Pharms., Inc. v. Thompson*, 478 U.S. 804 (1986). Any removal on this basis will be met with an immediate motion for remand and for sanctions.

120. The negligence per se of Defendants was a proximate cause of Plaintiff Sarah J. Plant's injuries.

FOR A FOURTH CAUSE OF ACTION
(Product Liability: Breach of Implied Warranties - S.C. Code Ann. § 36-2-314)

As a Fourth Distinct Cause Of Action for Breach of Implied Warranties, Plaintiffs Complain of Defendants and Allege as Follows:

121. Plaintiffs incorporate herein by reference, as though fully set forth herein, each of the preceding paragraphs.

122. Each of the Defendants and/or their “alternate entities” impliedly warranted that their asbestos materials or asbestos-containing talc products were of good and merchantable quality and fit for their intended use.

123. The implied warranty made by the Defendants and/or their “alternate entities” that the asbestos and asbestos-containing talc products were of good and merchantable quality and fit for the particular intended use, was breached. As a result of that breach, asbestos was given off into the atmosphere where Plaintiff Sarah J. Plant used the talc products and was inhaled by Plaintiff Sarah J. Plant.

124. As a direct and proximate result of the breach of the implied warranty of good and merchantable quality and fitness for the particular intended use, Plaintiff Sarah J. Plant was exposed to Defendants’ asbestos, asbestos-containing talc products, and/or products manufactured for personal use by individuals like Plaintiff Sarah J. Plant and consequently developed mesothelioma, causing Plaintiffs to suffer all damages attendant thereto.

FOR A FIFTH CAUSE OF ACTION
(Fraudulent Misrepresentation)

For a Fifth Distinct Cause of Action for Fraudulent Misrepresentation, Plaintiffs Complain of Defendants, and Allege as Follows:

125. Plaintiffs repeat and re-allege the portions of the above paragraphs where relevant.

126. That during, before and after Plaintiff Sarah J. Plant's exposure to asbestos products manufactured by Defendants and/or their "alternate entities", the Defendants and/or their "alternate entities" falsely represented facts, including the dangers of asbestos exposure to Plaintiff Sarah J. Plant in the particulars alleged in the paragraphs above, while Defendants each had actual knowledge of said dangers of asbestos exposure to persons such as Plaintiff Sarah J. Plant. At the same time of these misrepresentations, Defendants each knew of the falsity of their representations and/or made the representations in reckless disregard of their truth or falsity.

127. The foregoing representations were material conditions precedent to Plaintiff Sarah J. Plant's continued exposure to asbestos-containing talc products. Defendants and/or their "alternate entities" each intended that Plaintiff Sarah J. Plant act upon the representations by continuing her personal use of, and thereby exposure to, the asbestos-containing talc products. Plaintiff Sarah J. Plant was ignorant of the falsity of Defendants' representations and rightfully relied upon the representations.

128. As a direct and proximate result, Plaintiff Sarah J. Plant's reliance upon Defendants' false representations, Plaintiff has suffered injury and damages as described herein.

FOR A SIXTH CAUSE OF ACTION
(Fraudulent Misrepresentation and Conspiracy/Concert Action)

For a Sixth Distinct Cause of Action for Fraudulent Misrepresentation and Conspiracy/Concert Action, Plaintiffs Complain of Defendants, and Allege as Follows:

129. Plaintiffs repeat and re-allege the portions of the above paragraphs where relevant.

130. For decades, defendants manufactured products composed of talc that were sold and marketed as safe for daily use by consumers on their person to give off a pleasant smell, mask odors, prevent chaffing and/or absorb moisture. Defendants' products were advertised as healthful for babies, children and adults and to be applied regularly to maintain freshness, keep skin soft, mask odors with a floral fragrance, prevent chaffing and/or absorb moisture.

131. Defendants and the Cosmetic, Toiletry & Fragrance Association (n/k/a Personal Care Products Council) ("CTFA") made false statements to plaintiff, the general public, news media and government agencies that exercise regulatory authority over the cosmetic industry, including, but not limited to, the U.S. Food & Drug Administration ("FDA"), the National Institute of Occupational Health and Safety ("OSHA"), the National Institute for Occupational Safety and Health ("NIOSH"), the Mine Health and Safety Administration ("MHS"), and the National Toxicology Program ("NTP"), which, in turn, proximately caused plaintiff's harm through intentional efforts to deceive the general public as to the safety of and presence of carcinogens, including asbestos, in talc-containing products.

132. Defendants and CTFA, for decades before SARAH J. PLANT was born, possessed medical and scientific data that raised concerns regarding the presence of carcinogens, including asbestos, in talc and that demonstrated the existence of health hazards to those exposed to asbestos-containing talcum powder products.

133. Talc is a hydrous magnesium silicate, inorganic material that is mined from the earth. It is used in the manufacture of goods, such as paper, plastic, paint and coatings, rubber,

food, electric cable, ceramics, and cosmetics. In its loose form and as used in defendants' products, talc is known as "talcum powder."

134. Geologists, Defendants and CTFA—and their suppliers, experts, agents and advisors—have long known that the deposits in the earth that are associated with talc are also associated with the formation of asbestos. "Asbestos" is a commercial and legal term, rather than a geologic or scientific term, referring to six now-regulated magnesium silicate minerals that occur in fibrous form, including the serpentine mineral chrysotile, and amphibole minerals such as actinolite, anthophyllite, tremolite, amosite and crocidolite. The United States Geological Survey on Commercial Talc production in 1965, as well as those dating back to the 1800s, note the presence of tremolite, anthophyllite and chrysotile commonly among those minerals found within talc deposits.

135. Defendants, some of which have been and still are the largest talc producers and/or talc-containing product manufactures in the world, admit that they have long employed and/or consulted with doctors, scientists, geologists, mineralogists and toxicologists, and that they have long maintained extensive medical and scientific libraries and archives containing materials relating to the health hazards of talc and the presence of carcinogens, including asbestos, in talc and talc deposits.

136. Beginning in the 1930s, medical and scientific literature emerged indicating talc was commonly, if not invariably, contaminated with substances known or suspected of being carcinogenic, such as asbestos, silica, quartz, nickel and arsenic. Within the next several decades, an ever-growing body of medical and scientific literature demonstrated that direct and secondary exposure to talc, including asbestos-containing talc, was hazardous to exposed persons' health in that it could cause lung disease, cancer and death.

137. Defendants and their affiliates, employees, agents and/or suppliers were members of the National Safety Council. In March of 1933, Waldemar C. Dreesen of the United States Public Health Service reported to the National Safety Council the results of a study conducted among tremolite, talc and slate workers. The study indicated that the talc was a hydrous calcium magnesium silicate, being 45% talc and 45% tremolite, and the National Safety Council stated, “The results of the study seemed to indicate a relationship between the amount of dust inhaled and the effect of this dust on the lungs of the workers.” As early as 1934, the National Safety Council was publishing that “a cause of severe pulmonary injury is asbestos, a silicate of magnesium.” In the September 1935 issue of National Safety News, an article entitled “No Halfway Measures in Dust Control” by Arthur S. Johnson reported lowered lung capacity resulting from “asbestosis” and “similar conditions” that developed “from exposure to excess of many mineral dusts relatively low in free silica content.” The article further noted that claims for disabilities from workers who alleged exposure to “clay, talc, emery, and carborundum dusts” had “claims prosecuted successfully.” The article concluded that “[i]n the absence of adequate diagnoses, occupational histories and a more satisfactory method of adjudicating claims than prosecution at common law, we must conclude that it is necessary to find a practical method for controlling all mineral dusts.”

138. In 1936, the National Safety Council published an article entitled “Lesser Known Facts About Occupational Diseases” that found “exposure to asbestos fibers, present in the weaving and grinding of dry asbestos material, offers another type of dust which may cause fatalities among workers.” In 1958, The New York Department of Labor published Industrial Code Rule No. 12 establishing regulations applying to all employees and employers relating to dangerous air contaminants and listing both asbestos and talc as such substances.

139. In 1968, a study presented at the American Industrial Hygiene Conference & Exposition and published in the American Industrial Hygiene Association Journal concluded that “[a]ll of the 22 talcum products analyzed have a...fiber content...averaging 19%. The fibrous material was predominantly talc but contained minor amounts of tremolite, anthophyllite, and chrysotile as these are often present in fibrous talc mineral deposits...Unknown significant amounts of such materials in products that may be used without precautions may create an unsuspected problem.” L. J. Cralley, et al., Fibrous and Mineral Content of Cosmetic Talcum Products, 29 Am. Ind. Hyg. Assoc. J. 350-354 (1968). Defendants were aware of these findings.

140. In 1968, a scientific study of store-bought, commercially available talcum powders conducted by the Occupational Health Program, National Center for Urban Industrial Health, was published and presented by the American Industrial Hygiene Association. Defendants were aware of this study. The study revealed that, contrary to popular belief, talcum powders were not entirely pure, but rather contained various fibrous minerals, including tremolite, anthophyllite and chrysotile. The study explained that such fibrous content was not unexpected because these types of fibers are often present in fibrous talc mineral deposits. Available documents indicate that during the same year and in the years following, at least one company began testing store-bought talcum powders for asbestos content. Despite tests showing some talcum powders contained asbestos, there is no evidence that positive results or the brand names of contaminated products were communicated to any governmental agency, the media or the public.

141. A 1976 follow-up study conducted by researchers at Mount Sinai Hospital in New York concluded that “[t]he presence in these products of asbestiform anthophyllite and tremolite, chrysotile, and quartz indicates the need for a regulatory standard for cosmetic talc...We also

recommend that evaluation be made to determine the possible health hazards associated with the use of these products.” Rohl A.N., et al., Consumer Talcums and Powders: Mineral and Chemical Characterization, 2 J. Toxicol. Environ. Health 255-284 (1976). The Mount Sinai study results were published by various newspapers, including the New York Times and the Washington Post, and Defendants were aware of same.

142. In the early 1970s, the FDA began an inquiry into whether to regulate and require warnings on talc-containing products. Defendants and CTFA, an exclusive lobbying and advocacy group representing companies engaged in the cosmetic products industry, repeatedly conspired and worked in concert to block efforts to label and warn consumers regarding the dangers (including asbestos hazards) associated with cosmetic talcum powder products, such as Defendants’ products.

143. In 1971, the New York City of Environmental Protection Administration Air Resources Board conducted a study of two “leading” brands of talcum powder using transmission electron microscopy (“TEM”) and X-ray diffraction (“XRD”) analysis, and found them to contain 5-25% tremolite and anthophyllite asbestos.

144. Soon thereafter, a symposium was held in August of 1971 at the FDA to discuss the issue of asbestos content of talcum powders with the talc industry, government officials, and doctors and scientists from Mt. Sinai Hospital, which was then the epicenter of the medical and scientific study of asbestos. Among other statements, participants and attendees heard: that asbestos should be banned in talcum powders; models should be set up to measure the levels exposure to asbestos experienced by persons using talcum powder containing asbestos at the lowest level of microscopic detection; and that finding asbestos in talc and talcum powder is extremely difficult, and the only truly reliable way to determine the asbestos content of talc and

talcum powder is through TEM and electron diffraction. Defendants and CTFA, aware of the foregoing and citing costs as well as their fear of the public learning talc was contaminated with asbestos, ignored and completely rejected any measures to meaningfully test talc products to make sure they were free from asbestos and other carcinogens.

145. After this 1971 symposium, Dr. Weissler of the FDA hired Dr. Seymour Z. Lewin to test commercially available talcum powders for asbestos. Dr. Lewin tested 195 samples and found asbestos of varying amounts in 43. Many of Dr. Lewin's positive results were eventually corroborated by Pfizer Inc. The results, however, were uncorroborated by two other laboratories, leading the FDA to the conclusion that XRD, optical and electron microscopy, and electron diffraction must be used to detect asbestos in talc and talcum powders.

146. Dr. Lewin of New York University disclosed twice in 1972 that asbestos had been found in cosmetic talc. In a report to the FDA on August 3, 1972, Dr. Lewin reported that of 195 talc products, 20 had tremolite, 7 had chrysotile, 9 had both tremolite and chrysotile, and 7 had substantial percentages of one of both. XRD had been used as the first step in analysis and the presence of asbestos and was verified by the use of optical microscopy to disclose the presence of significant numbers of fibers. Shortly thereafter, Dr. Lewin reported to Whittaker, Clark & Daniels Inc. on September 30, 1972, that Italian talc 1615 contained about 2% tremolite and 0.5% chrysotile as determined with XRD and detailed microscopic exam. In a July 31, 1973, review of Dr. Lewin's testing of 195 talc samples, the FDA found "good semi-quantitative agreement" for tremolite on selected samples re-analyzed using optical microscope analysis by FDA and XRD by Pfizer. Agreement was not as good for chrysotile, but the review did warn that optical microscopy could "completely miss the presence of chrysotile if the fibers are submicroscopic, which may well be the case in finely-milled talc." In 1972, ES Laboratories

reported that “1615” talc contained 1% chrysotile and that “4615” talc contained 3% chrysotile and 3% anthophyllite. An August 23, 1973, report by Johns-Manville on TEM analysis of commercial talcs reported that nine of fourteen samples contained chrysotile. Only five samples did not have detectable levels of chrysotile. Pages from the laboratory notebook of Colgate-Palmolive Co. scientist Paul Briscese from March 7, 1976, show that Old Regal (North Carolina) talc tested positive for tremolite, New Montana talc tested positive for anthophyllite and tremolite, and Italian talc tested positive for tremolite.

147. A December 10, 1973, report of the CTFA’s Talc Subcommittee disclosed that optical microscope analyses of talcs from the Italian, Montana I & II, Alabama, Vermont, and North Carolina mines had failed the proposed FDA’s method because of elevated chrysotile concentrations. This December 10, 1973, CTFA report also showed that several laboratories had reported chrysotile in many of the talc samples sent by the CTFA for evaluation of analytical methods as well as the several identifications of asbestos in talc mentioned.

148. In the early 1970s, the FDA began an inquiry into whether to regulate and require warnings on consumer talcum powder products. CTFA, an exclusive lobbying and advocacy group representing companies engaged in the cosmetic products industry, including many of the Defendants herein, repeatedly conspired and worked in concert to block efforts to label and warn consumers regarding the dangers associated with cosmetic talcum powder products, such as Defendants’ products. On September 3, 1973, the FDA sent CTFA a letter regarding various means of measuring asbestos in talc, stating that “conventional methods employing X-ray diffraction or differential thermal analysis are not sufficiently reliable to produce quantitative results of the desired precision.” The FDA further advised CTFA that it “has been exploring refractory optical microscopy as a means of measuring asbestos in talc.” CTFA responded to the

FDA's public notice on its proposed optical microscopy method on December 26, 1973. CTFA contended that the proposed method was not "reliable" for the detection of asbestos in talc, recommended a "collaborative effort between FDA and industry to develop such a method," and urged deferment of the proposed rule. Minutes of CTFA's Talc Subcommittee meeting on March 15, 1976, indicate that the FDA's "Dr. Shaffner suggested the possibility of having industry report periodically on the results of its analysis to the FDA." Dr. Estrin of CTFA responded that "the subcommittee would give serious consideration to this suggestion."

149. Contemporaneously, evidence began to emerge from testing conducted by various regulatory agencies revealing that asbestos was being found in food, beer and drugs, including intravenously injected medicines. In 1972, and later in 1973, the FDA filed notices of proposed rulemaking requiring talc used in food, food packing and drugs to be completely free of asbestos. These were some of the same "grades" of talc used by Defendants.

150. The talc industry's response, including that of the defendants, was swift and well-coordinated through CTFA, with which the defendants conspired and worked in concert to purposely create a flawed, voluntary testing and surveillance methodology for detecting asbestos in talc and block efforts to label and warn consumers regarding the dangers associated with the talc products, including defendants' products.

151. Regarding the FDA's proposed 1972 rule-making, the FDA Director of Product Development and Cosmetics, Dr. Schaffner, invited representatives of the talc industry to a meeting in August of 1972 to discuss the results of Dr. Lewin's study and inform them that the FDA was preparing to release a "Proposed Statement of Policy On Asbestos in Cosmetics Containing Talc." Dr. Schaffner explained that he was duty-bound and must publicize the brand names of the talcum powders that contained asbestos. CTFA's president, Dr. Merritt, strongly

objected to the FDA alerting the general public and publishing the brand names of the talcum powders, as it would cause the manufactures “economic hardship.” Dr. Merritt also threatened to sue the FDA to prevent the disclosure of the brand names. As a result, the FDA, defendants and CTFA never revealed or publicized the brand names of the talcum powders that contained asbestos, much to the detriment of the plaintiff and the general public.

152. In 1973, CTFA created a talc subcommittee and the Scientific Advisory Committee to develop a testing methodology for detecting asbestos in talc. Initially, CTFA designated a group of its members to tests talc grades used in talcum powder utilizing the methodology proposed by the FDA in its notice of rulemaking. Six samples of talc used in commercially available talcum powders, plus one talc sample purposely spiked with tremolite and chrysotile, were circulated among the members, including representatives of defendants. Of the eight participating members, four found asbestos in every sample, three did not find asbestos in any sample (including the spiked sample), and one found asbestos only in the spiked sample. In conclusion, all members agreed that the best and most reliable method of detecting asbestos in talc is not optical microscopy, but rather TEM and electron diffraction. The same members, however, dispensed with this analytical method, claiming TEM and electron diffraction equipment was too expensive, despite defendants then owning or having unfettered access to same.

153. From there, the difference between what defendants and CTFA knew diverged from what they were representing to the FDA. Defendants, CTFA and others in the industry knew that there was no such thing as asbestos-free talc—only talc in which asbestos could not be detected using the prevailing, most economic analytical methodology, XRD, which at the time

could not accurately identify chrysotile asbestos in talc, nor detect tremolite asbestos contamination levels below 2-5%.

154. Defendants and the CTFA also did not disclose to the FDA that the overwhelming majority of talcum powder manufacturers and sellers were not testing their products for asbestos, and even if they were testing, it was done so superficially: only four or so grams per 20 tons of pre-shipment and pre-processed talc, as an example. Defendants and CTFA also failed to inform the FDA that they were not testing off-the-shelf talc powder products, but rather old samples that were never from the end products themselves. They also failed to inform the FDA that they were limiting their testing of talc to only one type of asbestos fiber to the exclusion of all other fiber types that are commonly found in talc deposits. What is more, to the extent defendants found asbestos in their samples, these positive results were not reported to the FDA. Instead, on their behalf, CTFA sent letters to the FDA in March of 1976 fraudulently claiming that industry testing had shown all talcum powder products to be completely free of asbestos.

155. Beginning in 1975 and 1976, researchers at New York Air Resources Board, Mt. Sinai School of Medicine, and the FDA became increasingly concerned that CTFA, defendants and the cosmetic industries were slow to address the issue of asbestos in talc and talcum powders. Defendants had not issued any recalls, provided consumer warnings, informed the FDA of any effort to ensure that talcum powders on the market did not contain asbestos, or developed a reliable methodology or protocol for ensuring that talc and talcum powder did not contain asbestos.

156. Taking matters into their own hands, Mt. Sinai Hospital researchers published a follow-up article to Dr. Lewin's 1971 study that demonstrated that some of defendants' talcum powders contained over 20% asbestos. The researchers concluded that "[t]he presence in these

products of asbestiform anthophyllite and tremolite, chrysotile, and quartz indicates the need for a regulatory standard for cosmetic talc...We also recommend that evaluation be made to determine the possible health hazards associated with the use of these products.” The results of the Mount Sinai study were known to the defendants and published the same year by the New York Times and the Washington Post.

157. Defendants and CTFA responded to these developments by falsely claiming that the industry was doing “everything” it could to solve the problem; issuing press releases falsely claiming that chrysotile had never been found in talcum powders; and intentionally suppressing data that showed tremolite was commonly found in talc and talcum powder.

158. CTFA subsequently began in earnest to produce a voluntary protocol and methodology that would provide defendants cover from both lawsuits and regulation. Egregiously, as concerned media members, citizens and regulators began asking more questions about which other brands of talcum powder contained asbestos, defendants and CTFA falsely represented that talcum powders have never contained asbestos.

159. Defendants and third parties collectively met with and corresponded with CTFA, as well as collectively met with the FDA and other government agencies, to individually and collectively advocate for the use of “voluntary” XRD testing of miniscule portions of the tons of talc to be used in consumer products. Defendants’ “voluntary” method—that was developed collectively by defendants and CTFA and advocated to the FDA in lieu of regulations requiring asbestos labeling or warnings on talcum powder products—was inadequate because levels of asbestos contamination in talc commonly fell below the detection limit of the testing methods. Defendants and CTFA also knew that asbestos contamination was not uniformly distributed,

such that the miniscule amounts tested would not reveal the true level of contamination in talc products, such as those to which SARAH J. PLANT was exposed.

160. In support of its voluntary XRD methodology, which was finally published in 1977, CTFA produced letters to the FDA written by its members, including defendants, identifying tests conducted showing talcum powder products did not contain asbestos. CTFA, defendants and other talc product producers, however, never informed the FDA of the hundreds of positive tests showing talc and talcum powders contained asbestos and other carcinogens.

161. CTFA “Method J4-1,” published on October 7, 1976, states that TEM-SAED “offers greater sensitivity, but is not presented since it is unsuitable for normal quality control applications.” The published method, rather, relies on XRD with “the level of detection of amphibole by this method [being] 0.5% and above.” CTFA met with and corresponded with defendants and third parties, to individually and collectively advocate to the FDA for the use of inadequate XRD testing on miniscule portions of the tons of talc obtained from the mining sources to be used in the consumer products, followed by fewer “periodic” tests by TEM. This voluntary method was developed by CTFA and defendants, and was advocated to the FDA by CTFA and defendants in lieu of regulations requiring labeling and warnings on talcum powder products, even though CTFA and defendants knew that the J4-1 method would not reveal the true level of asbestos in the talc that reached consumers. In fact, the first “round robin” tests, which analyzed a “CTFA Tremolite-Spiked Talc,” resulted in 6 of 7 participating laboratories failing to detect the tremolite. In other words, 84% of the industry’s laboratories failed to detect asbestos in a sample known to contain tremolite asbestos while using the CTFA’s own J4-1 method. There is no evidence that CTFA or defendants ever shared this remarkable failure with the FDA or the public.

162. Minutes of CTFA's Talc Subcommittee from February 24, 1975, stated "It was agreed, however, that chrysotile is never found in cosmetic talcs, based on numerous analyses by several investigators..." When referring to the challenge of chrysotile detection, an article entitled "Talc" in the January/March 1976 CTFA Cosmetic Journal, states that "The only known backup method for a positive identification in this event, is [TEM] with selected area diffraction." However, "despite many efforts, the committee had been unable to find a sample of cosmetic talc containing naturally occurring asbestos...it was asked, 'Why should we test for chrysotile if there isn't any?'" CTFA's Specification for Cosmetic Talc, revised on October 7, 1976, falsely represented that no fibrous asbestos was detected in cosmetic talc. Even after 1976, CTFA and defendants continued to obtain and/or receive results of testing performed internally and externally indicating the presence of asbestos and other carcinogens in the talc being used to manufacture cosmetic products. However, CTFA and defendants continued to represent that no asbestos was detected in cosmetic talc. These material representations adversely and directly impacted the FDA's attempt to adequately test consumer talc for asbestos and regulate cosmetics. The most sensitive method of identifying or detecting asbestos in cosmetic talc, TEM-SAED, was not used because CTFA represented that its "ultra-sensitivity could be a problem" and that it was too expensive to use. Instead, its J4-1 method relied on XRD alone for detection of asbestos at greater concentrations than 0.5%, a concentration that could allow more than a billion asbestos fibers per gram of talc to be passed off as "asbestos-free."

163. Defendants and CTFA made and published such representations, claiming that their testing method was adequate, that they were ensuring that talcum powder products were safe, and that the talc reaching consumers was "safe," despite having substantial knowledge and evidence to the contrary. Defendants intentionally and knowingly did so to avoid FDA

regulations that may have required them to place warnings regarding the asbestos content of their products, and thereby inform the public, including plaintiff, that talc-containing products contained asbestos.

164. CTFA then published an article in 1979 stating it conducted over three thousand tests of talcum powders and none of them found chrysotile. The article and report failed to disclose whether the talcum powders tested contained tremolite, anthophyllite or any other form of asbestos. This publication of half-truths was conveyed to the FDA and the public with the purpose of preventing regulations of cosmetic products. Thereafter CTFA's methodology became the standard by which nearly all talc was analyzed by the entire industry, including talc used in cosmetic and hygiene products today.

165. CTFA and defendants have represented to various news media outlets and the public at large that their products are "asbestos-free," when, in fact, their products did test positive for asbestos and those that did not were merely the result of inadequate and imprecise testing methods. "No asbestos detected" does not mean the product does not contain asbestos, but due to defendants' repeated conflation of the terms, the public has been led to erroneously believe talc products are safe. Furthermore, since defendants and CTFA did not have sufficient testing protocols in place to support the claims that talc products were safe or asbestos-free, such statements were recklessly made, as they had no reason to believe them.

166. Between 1970 and the 1990s, tests conducted by and on behalf of defendants and the talc industry continued to show that talc and talcum powder products contained asbestos. None of these positive tests have ever been produced or made known to any regulatory agency, and knowledge of their existence is only because of civil litigation.

167. Defendants and CTFA's failure to disclose these positive results and the inadequacies of their testing protocols continued through the 1980s, 1990s and 2000s, even when various government agencies raised concerns about the safety of talc, including the issue of asbestos content.

168. To this day, many talc-containing products presently on the market contain asbestos. Instead of publicizing this fact, defendants and CTFA continue to deny all the above to protect their pecuniary interests, to the severe detriment of the public, including plaintiff.

169. Since at least 1979, defendants have conducted a campaign to convince the public that their products are regulated by the FDA, that their tests are conducted pursuant to FDA regulations, and that talcum powder products are, therefore, safe. Nothing could be further from the truth: the FDA has never been assigned a budget by Congress to regulate cosmetics, including asbestos and other carcinogens in talcum powders. Defendants' concerns for the safety of their products have always been voluntary and under the auspices of CTFA, a private industry group, that in its 40 years has only banned the use of 11 ingredients in all cosmetics ever sold in the United States. Indeed, as of today, asbestos-containing talc in cosmetics has not been banned or otherwise regulated by CTFA or the FDA.

170. Defendants (and other entities in the talc industry and cosmetic industries, including the CTFA), individually and collectively, failed to report to the FDA tests performed both internally and by outside laboratories confirming the presence of asbestos in both their finished products as well as talc shipments from Talc Supplier Defendants and other sources that were used to produce finished products.

171. Defendants, and even the outside laboratories, including McCrone Associates, sent letters to CTFA, to be and which were forwarded to the FDA, stating that results of testing

of talc used by them after 1972 had not revealed the presence of amphibole or chrysotile asbestos, when in fact all of these entities had received or performed tests indicating the contrary when such false representations were made.

172. After 1976, defendants and CTFA continued to obtain and/or receive results of testing performed internally and externally indicating the presence of asbestos in talc.

173. Defendants failed to place any warning on their talc and talcum powder products or ever disclose the fact that these products contained carcinogens, including asbestos, at any point, up to and including the present, despite the clear hazard and direct information that their products did and continue to contain such carcinogens.

174. Defendants and CTFA, collectively and through explicit agreement and consciously parallel behavior, controlled industry standards regarding the testing, manufacture, sale, distribution and use of talcum powder products, and controlled the level of knowledge and information available to the public, including plaintiff, regarding the hazards of exposure to carcinogens, including asbestos, from talc and talc-containing products.

175. Defendants, through agreement and consciously parallel behavior, intentionally failed to warn potential users, including plaintiff, of the serious bodily harm and/or death which may result from the inhalation and/or ingestion of asbestos in their talc and talc-containing products.

176. Defendants and CTFA, through agreement and consciously parallel behavior, knowingly and intentionally released, published and disseminated invalid, inaccurate, outdated and misleading scientific data, literature and test reports containing misinformation and false statements regarding the health risks associated with the use of talc and talcum powder products, including those to which SARAH J. PLANT was exposed.

177. Defendants and CTFA, while cognizant of the aforementioned data, deliberately chose to ignore the health and safety issues raised in said data and embarked upon a plan of deception intended to deprive the public at large, including plaintiff, of alarming medical and scientific findings, many of which remained in their exclusive possession and under their exclusive control.

178. Defendants and CTFA conspired and/or acted in concert with each other and/or with other entities through agreement and consciously parallel behavior:

- (a) to withhold from users of their products—and from persons who they knew and should have known would be exposed thereto—information regarding the health risks of inhaling and/or ingesting asbestos and other carcinogens contained in talc and talcum powder products;
- (b) to eliminate, suppress or prevent investigation into the health hazards of exposure to asbestos and other carcinogens in talc and talcum powder products;
- (c) to ensure that asbestos-containing talc and talcum powder products became widely used in commerce, irrespective of the potential and actual risk of harm to the users and consumers from the asbestos and other carcinogens therein; and
- (d) to falsely represent that talc and talcum powder products, including those of defendants, were safe and healthful for use by consumers.

1. Plaintiff reasonably and in good faith relied upon the false and fraudulent representations made by defendants and CTFA regarding the hazards of talc and talcum powder products that contained asbestos and other carcinogens, and she was, therefore, deprived of an opportunity to make informed decisions concerning use of, exposure to and contact with said products.

2. CTFA, as well as defendants and other entities in the talc industry and cosmetic industries, individually and collectively, failed to report to the FDA tests performed both internally and by outside laboratories confirming the presence of asbestos in defendants' and other CTFA members' finished products as well as talc shipments from talc suppliers and other

sources that were used to produce finished products. Instead, CTFA sent letters to the FDA stating that results of testing of talc used by the industry after 1972 had not revealed the presence of amphiboles or chrysotile, when in fact all of these entities had received or performed tests indicating the contrary by 1976, when such intentionally false misrepresentations were made. CTFA and defendants made and published such representations claiming that their collective testing method was adequate, they were ensuring that talcum powder products were safe, and that their testing of talc reaching consumers was “safe,” despite knowing the contrary.

3. The FDA, and ultimately plaintiff, directly and/or indirectly relied upon CTFA’s and defendants’ false representations regarding the safety of cosmetic talc. In fact, an FDA letter dated January 11, 1979, states: “In cooperation with scientists from industry, our scientists have been making progress in the development of such regulatory methods.” The continuing lack of FDA awareness regarding CTFA’s and defendants’ misrepresentations was obvious seven years later. In a response to a citizen petition to require an asbestos warning label on cosmetic talc, on July 11, 1986, the FDA states that an “analytical methodology was sufficiently developed” to ensure that “such talc [is] free of fibrous amphibole...” CTFA’s J4-1 method has continued for the past four decades to be the cosmetic talc industry’s method for “ensuring” “asbestos-free” talc. The use of TEM, recognized by the CTFA as offering “greater sensitivity” for asbestos, continued to increase over the following decades as its advantages were applied to more matrices. In 1990, Kremer and Millette published a TEM method for analysis of asbestos in talc with a theoretical detection limit of about 0.00005%. Despite such improvements in analytical techniques, the cosmetic talc industry, including defendants, continues, four decades later, to use and promote its antiquated and wholly inadequate J4-1 method.

4. CTFA and defendants, collectively and through explicit agreement and consciously parallel behavior, controlled industry standards regarding the testing, manufacture, sale, marketing, distribution and use of asbestos-containing talcum powder products, and controlled the level of knowledge and information available to the public regarding the hazards of exposure to asbestos and other carcinogens from talc and talc-containing products.

5. CTFA and defendants, through agreement and consciously parallel behavior, intentionally failed to warn potential users, including plaintiff and their family members, of the serious bodily harm and/or death which may result from the inhalation and/or ingestion of asbestos from their talc and talc-containing products.

6. CTFA and defendants, through agreement and consciously parallel behavior, knowingly and intentionally released, published and disseminated invalid, inaccurate, outdated and misleading scientific data, literature and test reports containing misinformation and false statements regarding the health risks associated with the use of talc and talcum powder, and specifically talc and talcum powder used in the production of products to which SARAH J. PLANT was exposed.

7. CTFA and defendants, through agreement and consciously parallel behavior, suppressed, altered, changed, destroyed and/or revised reports, data, tests, studies and other documents regarding the potential presence of asbestos and other carcinogens in talc and talc-containing products, including defendants' products to which SARAH J. PLANT was exposed.

8. As recently as 2016, Defendants made material misrepresentations to the FDA regarding asbestos in its talcum powder products.

9. For additional details regarding and supporting plaintiff's claim, see Bird T., et al., "A Review of the Talc Industry's Influence on Federal Regulation and Scientific Standards for Asbestos In Talc," New Solut., 2021 Aug; 31(2): 152-169.

10. Defendants, both acting individually and in concert with others, including the CTFA, violated the common law duty of care owed to plaintiff or otherwise engaged in intentionally culpable activity that caused plaintiff to suffer severe injuries and damages.

11. Revlon has known of the risk for asbestos in talc since at least the 1960s.

12. Revlon purchased hundreds of tons of Italian talc throughout the 1970s, 1980s, and 1990s, despite receiving test results in the early 1970s that its products containing said Italian talc tested positive for asbestos.

13. Revlon had access to information regarding the natural occurrence of asbestos in talc mines during the 1960s and access to reports finding that 22 cosmetic talcum products purchased off the shelf had asbestos fiber contents ranging from 8 to 30% by count of the total talcum particulates, with an average of 19%.

14. Revlon knew that in the early 1970s testing at New York University showed asbestos in its talc-containing products, such as Touch and Glow Face Powder, Revlon Intimate Perfumed Bath Powder, and Jean Naté Bath Powder.

15. Revlon did not itself test any of its talcum powder products to determine whether they contained asbestos, nor did it place a warning on any of its talcum powder products. Revlon chose not to conduct any independent testing of the talc used to make its talc-containing products. Instead, in an effort to further conceal the asbestos content of its products, Revlon purported to shift this responsibility to its talc suppliers, who Revlon directed to utilize intentionally-inadequate, intentionally-dishonest testing methods and protocols and provided

only sporadic “certificates of analysis” claiming, falsely, that the talc did not contain asbestos, and Revlon knew that said “certificates of analysis” were erroneous and that, in fact, the talc contained asbestos.

16. What is more, Revlon did not start requiring the aforementioned “certificates of analysis” for talc until the early 1980s. Revlon dictated the limited information it wanted from its suppliers for these certificates and chose not to ask for the geographic location of the talc source mine even though mines in certain areas were known by Revlon to have asbestos.

17. Revlon also elected not to ask its talc suppliers about the sensitivity of the testing methods they used and asked only the dishonest statement that the talc was “asbestos free,” a phrase that Revlon used as a euphemism for allowing up to 0.49% asbestos.

18. Revlon has been a member of the CTFA since the 1970s. The FDA proposed a detection limit of 0.1%, while the Committee proposed a detection limit of 0.5%. In 1977, a Revlon representative supported and voiced no objection to CTFA’s proposal to oppose all testing of cosmetic talc. In 1978, Revlon expressed concern about contamination of asbestos in talc and requested information regarding the epidemiology of cosmetic talc.

19. Revlon’s directive for certificates of analysis for its talc required the CTFA’s J4-1 testing method, despite Revlon knowing that the method could not detect the presence of asbestos less than 0.5% and not designed detect chrysotile (asbestos) at all. Nevertheless, Revlon continued to claim that its talc was “asbestos free,” although it knew that asbestos was present in the talc below the 0.5% detection limit.

20. Revlon represented to the consumers, including plaintiff, that its talc-containing products were safe and healthful to use despite knowing that they were contaminated with asbestos. When making these statements, Revlon intended to deceive the public and consumers,

including, specifically, the plaintiff herein. Plaintiff relied on Revlon's representations that its talc-containing products were safe and healthful. As a result, plaintiff used Revlon's talc-containing products which resulted in exposure to asbestos.

21. As a direct and proximate consequence of the foregoing acts and omissions, SARAH J. PLANT (i) relied on defendants' false assurances that their talc-containing products were free from asbestos and safe, (ii) used or was otherwise exposed to defendants' talc-containing products; (iii) and inhaled and/or ingested asbestos resulting from the ordinary and foreseeable use thereof.

22. The actions and omissions of defendants, independently and collectively, constitute a pattern or practice of intentionally wrongful conduct and/or malice resulting in injuries to plaintiff as described in this complaint.

23. As a direct and proximate consequence of the foregoing acts and omissions by the defendants, SARAH J. PLANT used or was otherwise exposed to defendants' products and inhaled and/or ingested asbestos resulting from the ordinary and foreseeable use thereof

FOR A SEVENTH CAUSE OF ACTION
(Loss of Consortium)

For a Seventh Distinct Cause of Action for Loss of Consortium, Plaintiff Parker Plant Complains of Defendants, and Alleges as Follows:

24. Plaintiff incorporates by reference, the preceding paragraphs, where relevant.

25. Plaintiffs Sarah J. Plant and Parker Plant were married in 2001 and at all times relevant to their action were husband and wife.

26. Prior to his injuries as alleged, Plaintiff Sarah J. Plant was able and did perform her spousal duties. As a proximate result thereof, subsequent to the injuries, Plaintiff Sarah J. Plant has been unable to perform her spousal duties and the work and service usually performed

in the care, maintenance and management of the family home. As a proximate result thereof, Plaintiff Parker Plant was deprived of the consortium of his spouse, including the performance of duties, all to Plaintiffs' damages, in an amount presently unknown to Plaintiffs but which will be proven at time of trial.

27. As a direct and proximate result of the acts of Defendants and/or their "alternate entities" and the severe injuries caused to Plaintiff Sarah J. Plant as set forth herein, Plaintiff's spouse and co-Plaintiff Parker Plant suffered loss of consortium, including but not by way of limitation, loss of services, marital relations, society, comfort, companionship, love and affection of his spouse, and has suffered severe mental and emotional distress and general nervousness. Plaintiffs pray judgment against Defendants, their "alternate entities" and each of them, as hereinafter set forth.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs pray judgment, joint and several, against Defendants and/or their "alternate entities" in an amount to be proved at trial, as follows:

1. For Plaintiffs' actual damages according to proof, including pain and suffering, mental distress, as well as medical, surgical and hospital bills;
2. For loss of income or earnings according to proof;
3. For loss of care, comfort and society;
4. For punitive damages according to proof;
5. For Plaintiffs' cost of suit herein;
6. For damages for breach of implied warranty according to proof;
7. For damages for fraudulent misrepresentation according to proof; and

8. For such other and further relief as the Court may deem just and proper, including costs and prejudgment interest as provided by South Carolina law.

A JURY IS RESPECTFULLY DEMANDED TO TRY THESE ISSUES.

Respectfully submitted,

/s/ Theile B. McVey

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ATTORNEYS FOR PLAINTIFFS

March 10, 2022
Columbia, South Carolina

STATE OF SOUTH CAROLINA)
COUNTY OF RICHLAND)
IN THE COURT OF COMMON PLEAS
FOR THE FIFTH JUDICIAL CIRCUIT

SARAH J. PLANT and
PARKER PLANT

Plaintiffs,

v.

AVON PRODUCTS, INC.

AMACO, LLC

AMERICAN ART CLAY CO. INC.

THE BARGAIN BARN, LLC

BEACON CMP CORPORATION

BELK, INC.

BLOCK DRUG COMPANY, INC.

BRENNTAG NORTH AMERICA, INC.

individually and as successor-in-interest to
MINERAL AND PIGMENT SOLUTIONS,
INC., as successor-in-interest to WHITTAKER,
CLARK & DANIELS, INC.

BRENNTAG SPECIALTIES, LLC

f/k/a BRENNTAG SPECIALTIES, INC.
f/k/a MINERAL AND PIGMENT
SOLUTIONS, INC., as successor-in-interest to
WHITTAKER, CLARK & DANIELS, INC.

BRISTOL-MYERS SQUIBB COMPANY

individually and as successor-in-interest to
CHARLES OF THE RITZ INC., LAVIN-
CHARLES OF THE RITZ and JEAN NATÉ

CHATTEM, INC.

COLGATE-PALMOLIVE COMPANY

COLOR TECHNIQUES, INC.

C/A NO. 2022-CP-40-01265

In Re:
Asbestos Personal Injury Litigation
Coordinated Docket
Living Mesothelioma

**FIRST AMENDED
COMPLAINT**

(Jury Trial Demanded)

CONOPCO, INC.

COTY INC.

individually and as successor to COVERGIRL
COSMETICS, INC., and as successor to the
NOXZEMA CHEMICAL COMPANY

DANA CLASSIC FRAGRANCES, INC.

DILLARD'S, INC.

DOLLAR GENERAL CORPORATION

ELIZABETH ARDEN, INC.

ESTÉE LAUDER INC.

individually and as successor to CLINIQUE

ESTÉE LAUDER INTERNATIONAL, INC.

individually and as successor to CLINIQUE

THE ESTÉE LAUDER COMPANIES INC.

individually and as successor to CLINIQUE

HAMRICK'S INCORPORATED

HIGHWATER CLAYS, INC.

HOUBIGANT, INC.

IMI FABI (DIANA) LLC

IMI FABI (USA) INC.

IMI FABI, LLC

INGLES MARKETS, INCORPORATED

L'ORÉAL USA, INC.

individually and d/b/a LANCÔME and
MAYBELLINE, and as successor to YVES
SAINT LAURENT AMERICA, INC.,
CHARLES OF THE RITZ INC., and JEAN
NATÉ

L'ORÉAL USA PRODUCTS, INC.

individually and d/b/a LANCÔME and)
MAYBELLINE, and as successor to YVES)
SAINT LAURENT AMERICA, INC.,)
CHARLES OF THE RITZ INC., and JEAN)
NATÉ)
))
LOWCOUNTRY GROCERS LLC)
d/b/a PIGGLY WIGGLY)
))
MARTIN HIMMEL INC.)
))
MARY KAY INC.)
))
MAYBELLINE LLC)
))
NOXELL CORPORATION)
a subsidiary of COTY INC.)
))
PFIZER INC.)
individually and as successor to COTY INC. and)
COTY INTERNATIONAL, INC.)
))
R.T. VANDERBILT HOLDING COMPANY,)
INC., individually and as successor-in-interest)
to R.T. VANDERBILT COMPANY, INC.)
))
REVLON CONSUMER PRODUCTS)
CORPORATION, individually and as)
successor to REVLON RESEARCH)
LABORATORIES, INC., CHARLES OF THE)
RITZ INC., LAVIN-CHARLES OF THE RITZ,)
JEAN NATÉ, E. R. SQUIBB, SQUIBB CORP.,)
and YVES SAINT LAURENT)
))
REVLON, INC.)
individually and as successor to ELIZABETH)
ARDEN, INC., CHARLES OF THE RITZ INC.,)
LAVIN-CHARLES OF THE RITZ, JEAN)
NATÉ, E. R. SQUIBB, SQUIBB CORP., and)
YVES SAINT LAURENT)
))
RITE AID OF SOUTH CAROLINA, INC.)
))
SOUTHEASTERN GROCERS, INC.)
individually and as successor-in-interest to)
BI-LO)
))

TOPCO ASSOCIATES, LLC	)
	)
VANDERBILT MINERALS, LLC	)
f/k/a R.T. VANDERBILT COMPANY, INC.,	)
individually and as successor-in-interest to	)
INTERNATIONAL TALC CO.	)
	)
VARIETY WHOLESALERS, INC.	)
d/b/a ROSES	)
	)
VI-JON, LLC	)
f/k/a VI-JON, INC.	)
	)
WALGREEN CO.	)
	)
WALMART INC.	)
	)
WHITTAKER, CLARK & DANIELS, INC.	)
	)
WINN-DIXIE STORES, INC.	)
a subsidiary of BI-LO a subsidiary of	)
SOUTHEASTERN GROCERS, INC.	)
	)
YVES SAINT LAURENT AMERICA, INC.	)
	)
Defendants.	)
	)

PLAINTIFFS' FIRST AMENDED COMPLAINT

Plaintiffs, SARAH J. PLANT and PARKER PLANT (hereinafter "Plaintiffs"), sue the named Defendants for compensatory and punitive damages, by and through their attorneys, and come before this court and allege as follows:

GENERAL ALLEGATIONS

1. Plaintiff Sarah. J. Plant has been diagnosed with mesothelioma.
2. This Court has personal jurisdiction over Defendants because Plaintiffs' claims arise from Defendants' conduct in:

- (a) Transacting business in this State, including the sale, supply, purchase, and/or use of asbestos and/or asbestos-containing products, within this State;
- (b) Contracting to supply services or things in the State;
- (c) Commission of a tortious act in whole or in part in this State;
- (d) Having an interest in, using, or possessing real property in this State; and/or
- (e) Entering into a contract to be performed in whole or in part by either party in this State.

3. Each Defendant, or its predecessors in interest, that manufactured, sold, and/or distributed asbestos-containing products, raw asbestos materials, raw asbestos talc, and/or asbestos-containing talc products for use in South Carolina, and other states, at times relevant to this action are referred to herein as “Product Defendants.” At all times relevant to this action, the Product Defendants and the predecessors of the Product Defendants for whose actions the Product Defendants are legally responsible, were engaged in the manufacture, sale and distribution of asbestos-containing products, raw asbestos, raw asbestos talc, and/or asbestos-containing talc materials.

4. Plaintiffs’ claims against the Product Defendants, as defined herein, arise out of Defendants’ purposeful efforts to serve directly or indirectly the market for their asbestos and/or asbestos-containing products in this State, either through direct sales or through utilizing an established distribution channel with the expectation that their products would be purchased and/or used within South Carolina.

5. All of the named Defendants are corporations who purposefully availed themselves of the privilege of doing business in this State, and whose substantial and/or systematic business in South Carolina exposed Plaintiff Sarah J. Plant to asbestos in this State, subjecting them to the

jurisdiction of the South Carolina courts pursuant to the South Carolina Long-Arm Statute and the United States Constitution.

6. Plaintiff Sarah J. Plant was exposed to asbestos and/or asbestos-containing cosmetic and body talc products from her birth in 1986 to approximately 2021 through her personal use, and her family's use, of asbestos-containing makeup and body talc products throughout her life and her use and her family's use of asbestos-containing body talc products. Plaintiff was also exposed through her use of asbestos-containing art clay used in the 1990s-2000s when taking art classes. These asbestos-containing talc products were designed, advertised, marketed, and sold as being appropriate for use in the ordinary course by Defendants identified above. It was foreseeable Defendants' asbestos-containing talc, as well as asbestos-containing products manufactured and distributed with the asbestos talc, such as makeup, body talc, and art clay products would be sold for personal use by individuals like Plaintiff Sarah J. Plant. Plaintiff Sarah J. Plant was thereby exposed to defendants' asbestos-containing makeup, body talc and art clay products in the State of South Carolina.

7. Plaintiff Sarah J. Plant has suffered personal injuries as a proximate result of her regular and prolonged use of, inhalation, ingestion, absorption, and exposure to a variety of asbestos-containing products¹ where asbestos-containing talc was a constituent ingredient. Though they will be further described below, collectively, these cosmetic, body and art clay products and the ingredient talc are the "PRODUCTS".

8. Plaintiff, Sarah J. Plant, was exposed to asbestos through her personal daily use, and her family's use, of a variety of talc based body products including, but not limited to, Avon

¹ As used throughout this complaint, the term "asbestos" shall be interpreted in the broadest sense and included, without limitation, non-regulated and. Non-commercial forms of asbestos (including non-fibrous asbestos), cleavage fragments, and transition/transitional fibers, without limitation as to fiber size, dimension, or ratio.

body powders, Coty body powders, Johnson and Johnson baby powder, Shower to Shower body powder, Cashmere Bouquet Dusting Powder, Chantilly body powders, Elizabeth Arden body powders, Estée Lauder body powders, Gold Bond body powders, Jean Nate body powder, Mary Kay body powders, Top Care brand baby and body powder, Walgreens body powders, Walmart body powders, and White Shoulders talcum powder, (“POWDER PRODUCTS”) throughout her life. These products were manufactured, marketed, sold and/or distributed by Defendants.

9. Plaintiff, Sarah J. Plant, also used powdered makeup products, including but not limited to, loose and pressed face powders, eye shadows, blush, bronzers, and foundations by Avon, Clinique, Coty, CoverGirl, Elizabeth Arden, Estée Lauder, Lancôme, L’Oréal, Mary Kay, Maybelline, and Revlon, and Yves Saint Laurent, (“MAKEUP PRODUCTS”) multiple times daily throughout her life. She bought these products directly and through Avon, Belk, The Bargain Barn, Dillard’s, Dollar General, Hamrick’s, Ingles Markets, J.C. Penny, Macy’s, Mary Kay, Piggly-Wiggly, Rite Aid, BI-LO, Roses, Walgreens, Walmart, and Winn-Dixie.

10. Plaintiff used the Makeup Products as part of her daily routine, putting on eye shadow, blush, foundation and face powder in the morning, and at various times to freshen up throughout the day and evening. The use of these products caused airborne visible dust to be released which Plaintiff could not avoid breathing. These products were used by Plaintiff in the State of South Carolina and others.

11. Plaintiff, Sarah J. Plant, used, or had used on her by her parents and grandparents, the Powder Products from 1980s continuously until very recently, but does not know the precise date she stopped. She frequently and regularly dusted the Powder Products on various parts of her body which at varying times may have included amongst other areas: face, neck, shoulders, arms, armpits, legs, collarbones, décolletage, breasts, vagina, and perineum. During this time she repeatedly inhaled, ingested, and was regularly exposed to asbestos dust emanating from the

asbestos laden talc within the Powder Products permeating her person and clothes and home. The use of these products caused airborne visible dust to be released which Plaintiff could not avoid breathing. These products were used by Plaintiff in the State of South Carolina and others.

12. Plaintiff also claims exposure from the Defendant talc suppliers, mines, mills, and labs named in her complaint that provided asbestos-containing talc as a constituent ingredient to the Powder Products and Makeup Products she used.

13. In addition, as a recreational activity, Plaintiff Sarah J. Plant was exposed to asbestos from working with a variety of ceramic art materials that contained asbestos. She would fashion pottery and greenware out of art clays, fire them in a kiln, and then sand and polish these results, creating visible dust that she breathed. She would then coat some with underglaze, polishing and scoring these underglazed results before glazing. This work created visible dust that she breathed. Plaintiff did this multiple times per week while in the art classes at both her school and an art collage. Collectively, the ceramic art materials, art clays and underglazes will be referred to as "CERAMIC PRODUCTS". These products were manufactured, marketed, sold and/or distributed by AMACO, American Art Clay Co., Inc., and Highwater Clays.

14. Plaintiff also claims exposure from the Defendant talc suppliers, mines, mills, and labs named in her complaint that provided asbestos-containing talc as a constituent ingredient to the CERAMIC PRODUCTS she used.

15. Each use of the Powder Products, Makeup Products and Ceramic Products was an intended and foreseeable use of the products based on the advertising, marketing and labeling of the products.

16. Plaintiff Sarah J. Plant's cumulative exposure to asbestos as a result of acts and omissions of Defendants and their defective products, individually and together, was a substantial

factor in causing Plaintiff's mesothelioma and other related injuries and therefore under South Carolina law, is the legal cause of Plaintiff's injuries and damages.

17. Plaintiffs were not aware at the time of exposure that asbestos or asbestos-containing products presented any risk of injury and/or disease.

18. Each of the named Defendants is liable for damages stemming from its own tortious conduct or the tortious conduct of an "alternate entity" as hereinafter defined. Defendants are liable for the acts of their "alternate entity" and each of them, in that there has been a corporate name change, Defendant is the successor by merger, by successor in interest, or by other acquisition resulting in a virtual destruction of Plaintiffs' remedy against each such "alternate entity"; Defendants, each of them, have acquired the assets, product line, or a portion thereof, of each such "alternate entity"; such "alternate entities" have acquired the assets, product line, or a portion thereof of each such Defendant; Defendants, and each of them, caused the destruction of Plaintiffs' remedy against each such "alternate entity"; each such Defendant has the ability to assume the risk-spreading role of each such "alternate entity;" and that each such defendant enjoys the goodwill originally attached to each "alternate entity."

DEFENDANT	ALTERNATE ENTITY
BRENNTAG NORTH AMERICA, INC.	MINERAL AND PIGMENT SOLUTIONS, INC. and WHITTAKER, CLARK & DANIELS, INC.
BRENNTAG SPECIALTIES, LLC	BRENNTAG SPECIALTIES, INC., MINERAL AND PIGMENT SOLUTIONS, INC. and WHITTAKER, CLARK & DANIELS, INC
BRISTOL-MYERS SQUIBB COMPANY	CHARLES OF THE RITZ INC., LAVIN-CHARLES OF THE RITZ and JEAN NATÉ
COTY INC.	COVERGIRL COSMETICS, INC. and NOXZEMA CHEMICAL COMPANY

DEFENDANT	ALTERNATE ENTITY
ESTÉE LAUDER INC.	CLINIQUE
ESTÉE LAUDER INTERNATIONAL, INC.	CLINIQUE
THE ESTÉE LAUDER COMPANIES INC.	CLINIQUE
L'ORÉAL USA, INC.	LANCÔME, MAYBELLINE, YVES SAINT LAURENT AMERICA, INC., CHARLES OF THE RITZ INC., JEAN NATÉ
L'ORÉAL USA PRODUCTS, INC.	LANCÔME, MAYBELLINE, YVES SAINT LAURENT AMERICA, INC., CHARLES OF THE RITZ INC., JEAN NATÉ
LOWCOUNTRY GROCERS LLC	PIGGLY WIGGLY
NOXELL CORPORATION	COTY INC.
PFIZER INC.	COTY INC. and COTY INTERNATIONAL, INC.
R.T. VANDERBILT HOLDING COMPANY, INC.	R.T. VANDERBILT COMPANY, INC.
REVLON CONSUMER PRODUCTS CORPORATION	REVLON RESEARCH LABORATORIES, INC., CHARLES OF THE RITZ INC., LAVIN-CHARLES OF THE RITZ, JEAN NATÉ, E. R. SQUIBB, SQUIBB CORP., and YVES SAINT LAURENT
REVLON, INC.	ELIZABETH ARDEN, INC., CHARLES OF THE RITZ INC., LAVIN-CHARLES OF THE RITZ, JEAN NATÉ, E. R. SQUIBB, SQUIBB CORP., and YVES SAINT LAURENT
SOUTHEASTERN GROCERS, INC.	BI-LO
VANDERBILT MINERALS, LLC	R.T. VANDERBILT COMPANY, INC. and INTERNATIONAL TALC CO.
VARIETY WHOLESALERS, INC.	ROSES
VI-JON, LLC	VI-JON, INC.

DEFENDANT	ALTERNATE ENTITY
WINN-DIXIE STORES, INC.	BI-LO and SOUTHEASTERN GROCERS, INC.

19. Plaintiffs have been informed and believe, and thereon allege, that at all times herein mentioned, Defendants or their “alternate entities” were or are corporations, partnerships, unincorporated associations, sole proprietorships and/or other business entities organized and existing under and by virtue of the laws of the State of South Carolina, or the laws of some other state or foreign jurisdiction, and that said Defendants were and/or are authorized to do business in the State of South Carolina, and that said Defendants have regularly conducted business in the State of South Carolina.

20. Plaintiffs have been informed and believe, and thereon allege, that progressive lung disease, mesothelioma and other serious diseases are caused by inhalation of asbestos fibers without perceptible trauma and that said disease results from exposure to asbestos and asbestos-containing products over a period of time.

21. As a direct and proximate result of the conduct as alleged within, Plaintiff Sarah J. Plant suffered permanent injuries, including, but not limited to, mesothelioma and other lung damage, as well as the mental and emotional distress attendant thereto, from the effect of exposure to asbestos fibers, all to his damage in the sum of the amount as the trier of fact determines is proper.

22. As a direct and proximate result of the conduct as hereinafter alleged, Plaintiff Sarah J. Plant incurred liability for physicians, surgeons, nurses, hospital care, medicine, hospices, x-rays and other medical treatment, the true and exact amount thereof being unknown to Plaintiffs at this time. Plaintiffs request leave to supplement this Court and all parties accordingly when the true and exact cost of Plaintiff Sarah J. Plant’s medical treatment is ascertained.

23. As a further direct and proximate result of the conduct as hereinafter alleged, Plaintiff Sarah J. Plant incurred, and will continue to incur, loss of profits and commissions, a diminishment of earning potential, and other pecuniary losses, the full nature and extent of which are not yet known to Plaintiffs. Plaintiffs pray leave to supplement this Court and all parties accordingly to conform to proof at the time of trial.

THE PARTIES

24. Plaintiffs, Sarah J. Plant and Parker Plant, are currently residents of the State of Tennessee. From the time she was a young child to the present, Plaintiff Sarah J. Plant has spent significant periods of time visiting and living in the State of South Carolina. The Plaintiff's has grandparents, aunts, uncles and cousins that have lived and continue to live in the State of South Carolina. Each year on multiple occasions, Plaintiff would, and continues to visit and stay with family members who live in South Carolina. Further, each year, her family vacationed for extended periods of the summer in South Carolina. Further, after college, from 2013-2017, Plaintiff lived in South Carolina.

25. Plaintiff Sarah J. Plant was exposed to asbestos from her personal use, and her family's use, of asbestos-containing talc-based Powder Products, Makeup Products, and Ceramic Products throughout her life in her Tennessee, Utah and South Carolina homes beginning in the 1980s. The dust and fibers from the asbestos-containing talc products permeated her person and clothes. As a direct and proximate result of Sarah J. Plant's inhalation and ingestion of dust particles and fibers, she was diagnosed with Mesothelioma on or about March 2021.

26. Defendant, **AVON PRODUCTS, INC.**, was and is a New York corporation with its principal place of business in New York. At all times material hereto, AVON PRODUCTS, INC. manufactured, sold and/or supplied substantial amounts of asbestos-containing talc products, including, but not limited to, asbestos-containing Avon Makeup Products and Powder Products.

AVON PRODUCTS, INC. is sued as a Product Defendant. Plaintiffs' claims against AVON PRODUCTS, INC. arise out of this Defendant's business activities in the State of South Carolina, as well as Plaintiff Sarah J. Plant's exposure to said Defendant's products in the State of South Carolina, as well as others.

27. Defendant, **AMACO, LLC**, was and is an Indiana limited liability company with its principal place of business in Indiana. At all times material hereto, AMACO, LLC manufactured, sold and/or supplied substantial amounts of asbestos-containing talc products, including, but not limited to, asbestos-containing Ceramic Products. AMACO, LLC is sued as a Product Defendant. Plaintiffs' claims against AMACO, LLC arise out of this Defendant's business activities in the State of South Carolina, as well as Plaintiff Sarah J. Plant's exposure to said Defendant's products in the State of South Carolina, as well as others.

28. Defendant, **AMERICAN ART CLAY CO. INC.**, was and is an Indiana corporation with its principal place of business in Indiana. At all times material hereto, AMERICAN ART CLAY CO. INC. manufactured, sold and/or supplied substantial amounts of asbestos-containing talc products, including, but not limited to, asbestos-containing Ceramic Products. AMERICAN ART CLAY CO. INC. is sued as a Product Defendant. Plaintiffs' claims against AMERICAN ART CLAY CO. INC. arise out of this Defendant's business activities in the State of South Carolina, as well as Plaintiff Sarah J. Plant's exposure to said Defendant's products in the State of South Carolina, as well as others.

29. Defendant, **THE BARGAIN BARN, LLC**, was and is a South Carolina limited liability company with its principal place of business in South Carolina. At all times material hereto, **THE BARGAIN BARN, LLC** sold, distributed and/or supplied substantial amounts of asbestos-containing talc products, including, but not limited to, asbestos-containing Makeup Products and Powder Products. **THE BARGAIN BARN, LLC** is sued as a Product Defendant. Plaintiffs'

claims against **THE BARGAIN BARN, LLC** arise out of this Defendant's business activities in the State of South Carolina, as well as Plaintiff Sarah J. Plant's exposure to said Defendant's products in the State of South Carolina, as well as others.

30. Defendant, **BEACON CMP CORPORATION**, was and is a New Jersey corporation with its principal place of business in New Jersey. At all times material hereto, BEACON CMP CORPORATION mined, manufactured, processed, imported, converted, compounded, supplied, used, and/or retailed substantial amounts of asbestos and/or asbestos-containing products including, but not limited to, asbestos-containing talc. BEACON CMP CORPORATION is sued as a Product Defendant. Plaintiffs' claims against BEACON CMP CORPORATION arise out of this Defendant's business activities in the State of South Carolina, as well as Plaintiff Sarah J. Plant's exposure to said Defendant's products in the State of South Carolina, as well as others.

31. Defendant, **BELK, INC.**, was and is a Delaware corporation with its principal place of business in North Carolina. At all times material hereto, BELK, INC. sold, distributed and/or supplied substantial amounts of asbestos-containing talc products, including, but not limited to, asbestos-containing Makeup Products and Powder Products. BELK, INC. is sued as a Product Defendant. Plaintiffs' claims against BELK, INC. arise out of this Defendant's business activities in the State of South Carolina, as well as Plaintiff Sarah J. Plant's exposure to said Defendant's products in the State of South Carolina, as well as others.

32. Defendant, **BLOCK DRUG COMPANY, INC.**, was and is a New Jersey corporation with its principal place of business in Pennsylvania. At all times material hereto, BLOCK DRUG COMPANY, INC. sold, distributed and/or supplied substantial amounts of asbestos-containing talc products, including, but not limited to, asbestos-containing Makeup Products and Powder Products including Gold Bond Powder Products. BLOCK DRUG

COMPANY, INC. is sued as a Product Defendant. Plaintiffs' claims against BLOCK DRUG COMPANY, INC. arise out of this Defendant's business activities in the State of South Carolina, as well as Plaintiff Sarah J. Plant's exposure to said Defendant's products in the State of South Carolina, as well as others.

33. Defendant, **BRENNTAG NORTH AMERICA, INC.**, individually and as successor-in-interest to MINERAL AND PIGMENT SOLUTIONS, INC., as successor-in-interest to WHITTAKER, CLARK & DANIELS, INC., was and is a Delaware corporation with its principal place of business in Pennsylvania. At all times material hereto, BRENNTAG NORTH AMERICA, INC. mined, manufactured, processed, imported, converted, compounded, supplied, used, and/or retailed substantial amounts of asbestos and/or asbestos-containing products including, but not limited to, asbestos-containing talc. BRENNTAG NORTH AMERICA, INC. is sued as a Product Defendant. Plaintiffs' claims against BRENNTAG NORTH AMERICA, INC. arise out of this Defendant's business activities in the State of South Carolina, as well as Plaintiff Sarah J. Plant's exposure to said Defendant's products in the State of South Carolina, as well as others.

34. Defendant, **BRENNTAG SPECIALTIES, LLC** f/k/a BRENNTAG SPECIALTIES, INC. f/k/a MINERAL AND PIGMENT SOLUTIONS, INC., as successor-in-interest to WHITTAKER, CLARK & DANIELS, INC., was and is a Delaware limited liability company with its principal place of business in New Jersey. At all times material hereto, BRENNTAG SPECIALTIES, LLC mined, manufactured, processed, imported, converted, compounded, supplied, used, and/or retailed substantial amounts of asbestos and/or asbestos-containing products including, but not limited to, asbestos-containing talc. BRENNTAG SPECIALTIES, LLC is sued as a Product Defendant. Plaintiffs' claims against BRENNTAG SPECIALTIES, LLC arise out of this Defendant's business activities in the State of South

Carolina, as well as Plaintiff Sarah J. Plant's exposure to said Defendant's products in the State of South Carolina, as well as others.

35. Defendant, **BRISTOL-MYERS SQUIBB COMPANY**, individually and as successor-in-interest to CHARLES OF THE RITZ INC., LAVIN-CHARLES OF THE RITZ and JEAN NATÉ, was and is a Delaware corporation with its principal place of business in New York. At all times material hereto, BRISTOL-MYERS SQUIBB COMPANY manufactured, sold and/or supplied substantial amounts of asbestos-containing talc products, including, but not limited to, asbestos-containing Jean Naté Powder Products. BRISTOL-MYERS SQUIBB COMPANY is sued as a Product Defendant. Plaintiffs' claims against BRISTOL-MYERS SQUIBB COMPANY arise out of this Defendant's business activities in the State of South Carolina, as well as Plaintiff Sarah J. Plant's exposure to said Defendant's products in the State of South Carolina, as well as others.

36. Defendant, **CHATTEM, INC.**, was and is a Tennessee corporation with its principal place of business in New Jersey. At all times material hereto, CHATTEM, INC. manufactured, sold and/or supplied substantial amounts of asbestos-containing talc products, including, but not limited to, asbestos-containing Gold Bond Powder Products. CHATTEM, INC. is sued as a Product Defendant. Plaintiffs' claims against CHATTEM, INC. arise out of this Defendant's business activities in the State of South Carolina, as well as Plaintiff Sarah J. Plant's exposure to said Defendant's products in the State of South Carolina, as well as others.

37. Defendant, **COLGATE-PALMOLIVE COMPANY**, was and is a Delaware corporation with its principal place of business in New York. At all times material hereto, COLGATE-PALMOLIVE COMPANY manufactured, sold and/or supplied substantial amounts of asbestos-containing talc products, including, but not limited to, asbestos-containing Cashmere Bouquet Powder Products. COLGATE-PALMOLIVE COMPANY is sued as a Product Defendant.

Plaintiffs' claims against COLGATE-PALMOLIVE COMPANY arise out of this Defendant's business activities in the State of South Carolina, as well as Plaintiff Sarah J. Plant's exposure to said Defendant's products in the State of South Carolina, as well as others.

38. Defendant, **COLOR TECHNIQUES, INC.**, was and is a New Jersey corporation with its principal place of business in New Jersey. At all times material hereto, COLOR TECHNIQUES, INC. mined, manufactured, processed, imported, converted, compounded, supplied, used, and/or retailed substantial amounts of asbestos and/or asbestos-containing products including, but not limited to, asbestos-containing talc. COLOR TECHNIQUES, INC. is sued as a Product Defendant. Plaintiffs' claims against COLOR TECHNIQUES, INC. arise out of this Defendant's business activities in the State of South Carolina, as well as Plaintiff Sarah J. Plant's exposure to said Defendant's products in the State of South Carolina, as well as others.

39. Defendant, **CONOPCO, INC.**, was and is a New York corporation with its principal place of business in New Jersey. At all times material hereto, CONOPCO, INC. manufactured, sold and/or supplied substantial amounts of asbestos-containing talc products, including, but not limited to, asbestos-containing White Shoulders Powder Products. CONOPCO, INC. is sued as a Product Defendant. Plaintiffs' claims against CONOPCO, INC. arise out of this Defendant's business activities in the State of South Carolina.

40. Defendant, **COTY INC.**, individually and as successor to COVERGIRL COSMETICS, INC., and as successor to the NOXZEMA CHEMICAL COMPANY, was and is a Delaware corporation with its principal place of business in New York. At all times material hereto, COTY INC. manufactured, sold and/or supplied substantial amounts of asbestos-containing talc products, including, but not limited to, asbestos-containing Makeup Products and Powder Products. COTY INC. is sued as a Product Defendant. Plaintiffs' claims against COTY INC. arise out of this Defendant's business activities in the State of South Carolina, as well as Plaintiff

Sarah J. Plant's exposure to said Defendant's products in the State of South Carolina, as well as others.

41. Defendant, **DANA CLASSIC FRAGRANCES, INC.**, was and is a Delaware corporation with its principal place of business in New York. At all times material hereto, DANA CLASSIC FRAGRANCES, INC. manufactured, sold and/or supplied substantial amounts of asbestos-containing talc products, including, but not limited to, asbestos-containing Chantilly Powder Products. DANA CLASSIC FRAGRANCES, INC. is sued as a Product Defendant. Plaintiffs' claims against DANA CLASSIC FRAGRANCES, INC. arise out of this Defendant's business activities in the State of South Carolina, as well as Plaintiff Sarah J. Plant's exposure to said Defendant's products in the State of South Carolina, as well as others.

42. Defendant, **DILLARD'S, INC.**, was and is a Delaware corporation with its principal place of business in Arkansas. At all times material hereto, DILLARD'S, INC. sold, distributed and/or supplied substantial amounts of asbestos-containing talc products, including, but not limited to, asbestos-containing Makeup Products and Powder Products. DILLARD'S, INC. is sued as a Product Defendant. Plaintiffs' claims against DILLARD'S, INC. arise out of this Defendant's business activities in the State of South Carolina, as well as Plaintiff Sarah J. Plant's exposure to said Defendant's products in the State of South Carolina, as well as others.

43. Defendant, **DOLLAR GENERAL CORPORATION**, was and is a Tennessee corporation with its principal place of business in Tennessee. At all times material hereto, DOLLAR GENERAL CORPORATION sold, distributed and/or supplied substantial amounts of asbestos-containing talc products, including, but not limited to, asbestos-containing Makeup Products and Powder Products. DOLLAR GENERAL CORPORATION is sued as a Product Defendant. Plaintiffs' claims against DOLLAR GENERAL CORPORATION arise out of this Defendant's

business activities in the State of South Carolina, as well as Plaintiff Sarah J. Plant's exposure to said Defendant's products in the State of South Carolina, as well as others.

44. Defendant, **ELIZABETH ARDEN, INC.**, was and is a Florida corporation with its principal place of business in Florida. At all times material hereto, ELIZABETH ARDEN, INC. sold, distributed and/or supplied substantial amounts of asbestos-containing talc products, including, but not limited to, asbestos-containing White Shoulders Powder Products and Makeup Products. ELIZABETH ARDEN, INC. is sued as a Product Defendant. Plaintiffs' claims against ELIZABETH ARDEN, INC. arise out of this Defendant's business activities in the State of South Carolina, as well as Plaintiff Sarah J. Plant's exposure to said Defendant's products in the State of South Carolina, as well as others.

45. Defendant, **ESTÉE LAUDER INC.**, individually and as successor to CLINIQUE, was and is a Delaware corporation with its principal place of business in New York. At all times material hereto, ESTÉE LAUDER INC. sold, distributed and/or supplied substantial amounts of asbestos-containing talc products, including, but not limited to, asbestos-containing Makeup Products and Powder Products. ESTÉE LAUDER INC. is sued as a Product Defendant. Plaintiffs' claims against ESTÉE LAUDER INC. arise out of this Defendant's business activities in the State of South Carolina, as well as Plaintiff Sarah J. Plant's exposure to said Defendant's products in the State of South Carolina, as well as others.

46. Defendant, **ESTÉE LAUDER INTERNATIONAL, INC.**, individually and as successor to CLINIQUE, was and is a Delaware corporation with its principal place of business in New York. At all times material hereto, ESTÉE LAUDER INTERNATIONAL INC. sold, distributed and/or supplied substantial amounts of asbestos-containing talc products, including, but not limited to, asbestos-containing Makeup Products and Powder Products. ESTÉE LAUDER INTERNATIONAL INC. is sued as a Product Defendant. Plaintiffs' claims against ESTÉE

LAUDER INTERNATIONAL INC. arise out of this Defendant's business activities in the State of South Carolina, as well as Plaintiff Sarah J. Plant's exposure to said Defendant's products in the State of South Carolina, as well as others.

47. Defendant, **THE ESTÉE LAUDER COMPANIES INC.**, individually and as successor to CLINIQUE, was and is a Delaware corporation with its principal place of business in New York. At all times material hereto, THE ESTÉE LAUDER COMPANIES INC. sold, distributed and/or supplied substantial amounts of asbestos-containing talc products, including, but not limited to, asbestos-containing Makeup Products and Powder Products. THE ESTÉE LAUDER COMPANIES INC. is sued as a Product Defendant. Plaintiffs' claims against THE ESTÉE LAUDER COMPANIES INC. arise out of this Defendant's business activities in the State of South Carolina, as well as Plaintiff Sarah J. Plant's exposure to said Defendant's products in the State of South Carolina, as well as others.

48. Defendant, **HAMRICK'S INCORPORATED**, was and is a South Carolina corporation with its principal place of business in South Carolina. At all times material hereto, HAMRICK'S INCORPORATED sold, distributed and/or supplied substantial amounts of asbestos-containing talc products, including, but not limited to, asbestos-containing Makeup Products and Powder Products. HAMRICK'S INCORPORATED is sued as a Product Defendant. Plaintiffs' claims against HAMRICK'S INCORPORATED arise out of this Defendant's business activities in the State of South Carolina, as well as Plaintiff Sarah J. Plant's exposure to said Defendant's products in the State of South Carolina, as well as others.

49. Defendant, **HIGHWATER CLAYS, INC.**, was and is a North Carolina corporation with its principal place of business in North Carolina. At all times material hereto, HIGHWATER CLAYS, INC. manufactured, sold and/or supplied substantial amounts of asbestos-containing talc products, including, but not limited to, asbestos-containing Ceramic Products.

HIGHWATER CLAYS, INC. is sued as a Product Defendant. Plaintiffs' claims against HIGHWATER CLAYS, INC. arise out of this Defendant's business activities in the State of South Carolina, as well as Plaintiff Sarah J. Plant's exposure to said Defendant's products in the State of South Carolina, as well as others.

50. Defendant, **HOUBIGANT, INC.**, was and is a Delaware corporation with its principal place of business in Connecticut. At all times material hereto, HOUBIGANT, INC. manufactured, sold and/or supplied substantial amounts of asbestos-containing talc products, including, but not limited to, asbestos-containing Chantilly Makeup Products and Powder Products. HOUBIGANT, INC. is sued as a Product Defendant. Plaintiffs' claims against HOUBIGANT, INC. arise out of this Defendant's business activities in the State of South Carolina, as well as Plaintiff Sarah J. Plant's exposure to said Defendant's products in the State of South Carolina, as well as others.

51. Defendant, **IMI FABI (DIANA) LLC**, was and is a North Carolina limited liability company with its principal place of business in West Virginia. At all times material hereto, IMI FABI (DIANA) LLC mined, manufactured, processed, imported, converted, compounded, supplied, used, and/or retailed substantial amounts of asbestos and/or asbestos-containing products including, but not limited to, asbestos-containing talc. IMI FABI (DIANA) LLC is sued as a Product Defendant. Plaintiffs' claims against IMI FABI (DIANA) LLC arise out of this Defendant's business activities in the State of South Carolina, as well as Plaintiff Sarah J. Plant's exposure to said Defendant's products in the State of South Carolina, as well as others.

52. Defendant, **IMI FABI (USA) INC.**, was and is a Delaware corporation with its principal place of business in West Virginia. At all times material hereto, IMI FABI (USA) INC. mined, manufactured, processed, imported, converted, compounded, supplied, used, and/or retailed substantial amounts of asbestos and/or asbestos-containing products including, but not

limited to, asbestos-containing talc. IMI FABI (USA) INC. is sued as a Product Defendant. Plaintiffs' claims against IMI FABI (USA) INC. arise out of this Defendant's business activities in the State of South Carolina, as well as Plaintiff Sarah J. Plant's exposure to said Defendant's products in the State of South Carolina, as well as others.

53. Defendant, **IMI FABI, LLC**, was and is a West Virginia limited liability company with its principal place of business in West Virginia. At all times material hereto, IMI FABI, LLC mined, manufactured, processed, imported, converted, compounded, supplied, used, and/or retailed substantial amounts of asbestos and/or asbestos-containing products including, but not limited to, asbestos-containing talc. IMI FABI, LLC is sued as a Product Defendant. Plaintiffs' claims against IMI FABI, LLC arise out of this Defendant's business activities in the State of South Carolina, as well as Plaintiff Sarah J. Plant's exposure to said Defendant's products in the State of South Carolina, as well as others.

54. Defendant, **INGLES MARKETS, INCORPORATED**, was and is a North Carolina corporation with its principal place of business in North Carolina. At all times material hereto, INGLES MARKETS, INCORPORATED sold, distributed and/or supplied substantial amounts of asbestos-containing talc products, including, but not limited to, asbestos-containing Makeup Products and Powder Products. INGLES MARKETS, INCORPORATED is sued as a Product Defendant. Plaintiffs' claims against INGLES MARKETS, INCORPORATED arise out of this Defendant's business activities in the State of South Carolina, as well as Plaintiff Sarah J. Plant's exposure to said Defendant's products in the State of South Carolina, as well as others.

55. Defendant, **L'ORÉAL USA, INC.**, individually and d/b/a LANCÔME and MAYBELLINE, and as successor to YVES SAINT LAURENT AMERICA, INC., CHARLES OF THE RITZ INC., and JEAN NATÉ, was and is a Delaware corporation with its principal place of business in New York. At all times material hereto, L'ORÉAL USA, INC. sold, distributed and/or

supplied substantial amounts of asbestos-containing talc products, including, but not limited to, asbestos-containing Makeup Products and Powder Products. L'ORÉAL USA, INC. is sued as a Product Defendant. Plaintiffs' claims against L'ORÉAL USA, INC. arise out of this Defendant's business activities in the State of South Carolina, as well as Plaintiff Sarah J. Plant's exposure to said Defendant's products in the State of South Carolina, as well as others.

56. Defendant, **L'ORÉAL USA PRODUCTS, INC.**, individually and d/b/a LANCÔME and MAYBELLINE, and as successor to YVES SAINT LAURENT AMERICA, INC., CHARLES OF THE RITZ INC., and JEAN NATÉ, was and is a Delaware corporation with its principal place of business in New York. At all times material hereto, L'ORÉAL USA PRODUCTS, INC. sold, distributed and/or supplied substantial amounts of asbestos-containing talc products, including, but not limited to, asbestos-containing Makeup Products and Powder Products. L'ORÉAL USA PRODUCTS, INC. is sued as a Product Defendant. Plaintiffs' claims against L'ORÉAL USA PRODUCTS, INC. arise out of this Defendant's business activities in the State of South Carolina, as well as Plaintiff Sarah J. Plant's exposure to said Defendant's products in the State of South Carolina, as well as others.

57. Defendant, **LOWCOUNTRY GROCERS LLC** d/b/a PIGGLY WIGGLY, was and is a South Carolina limited liability company with its principal place of business in South Carolina. At all times material hereto, **LOWCOUNTRY GROCERS LLC** sold, distributed and/or supplied substantial amounts of asbestos-containing talc products, including, but not limited to, asbestos-containing Makeup Products and Powder Products. **LOWCOUNTRY GROCERS LLC** is sued as a Product Defendant. Plaintiffs' claims against **LOWCOUNTRY GROCERS LLC** arise out of this Defendant's business activities in the State of South Carolina, as well as Plaintiff Sarah J. Plant's exposure to said Defendant's products in the State of South Carolina, as well as others.

58. Defendant, **MARTIN HIMMEL INC.**, was a Delaware corporation with its principal place of business in Florida and New York. At all times material hereto, MARTIN HIMMEL INC. manufactured, sold and/or supplied substantial amounts of asbestos-containing talc products, including, but not limited to, asbestos-containing Gold Bond Powder Products. MARTIN HIMMEL INC. is sued as a Product Defendant. Plaintiffs' claims against MARTIN HIMMEL INC. arise out of this Defendant's business activities in the State of South Carolina, as well as Plaintiff Sarah J. Plant's exposure to said Defendant's products in the State of South Carolina, as well as others.

59. Defendant, **MARY KAY INC.**, was and is a Delaware corporation with its principal place of business in Texas. At all times material hereto, MARY KAY INC. manufactured, sold and/or supplied substantial amounts of asbestos-containing talc products, including, but not limited to, asbestos-containing Mary Kay Makeup Products and Powder Products. MARY KAY INC. is sued as a Product Defendant. Plaintiffs' claims against MARY KAY INC. arise out of this Defendant's business activities in the State of South Carolina, as well as Plaintiff Sarah J. Plant's exposure to said Defendant's products in the State of South Carolina, as well as others.

60. Defendant, **MAYBELLINE LLC**, was and is a New York limited liability company with its principal place of business in New York. At all times material hereto, MAYBELLINE LLC manufactured, sold and/or supplied substantial amounts of asbestos-containing talc products, including, but not limited to, asbestos-containing Maybelline Makeup Products and Powder Products. MAYBELLINE LLC is sued as a Product Defendant. Plaintiffs' claims against MAYBELLINE LLC arise out of this Defendant's business activities in the State of South Carolina, as well as Plaintiff Sarah J. Plant's exposure to said Defendant's products in the State of South Carolina, as well as others.

61. Defendant, **NOXELL CORPORATION** a subsidiary of COTY INC., was and is a Maryland corporation with its principal place of business in Maryland. At all times material hereto, NOXELL CORPORATION manufactured, sold and/or supplied substantial amounts of asbestos-containing talc products, including, but not limited to, asbestos-containing CoverGirl Makeup Products and Powder Products. NOXELL CORPORATION is sued as a Product Defendant. Plaintiffs' claims against NOXELL CORPORATION arise out of this Defendant's business activities in the State of South Carolina, as well as Plaintiff Sarah J. Plant's exposure to said Defendant's products in the State of South Carolina, as well as others.

62. Defendant, **PFIZER INC.**, individually and as successor to COTY INC. and COTY INTERNATIONAL INC., was and is a Delaware corporation with its principal place of business in New York. At all times material hereto, PFIZER INC. mined, manufactured, processed, imported, converted, compounded, supplied, used, and/or retailed substantial amounts of asbestos and/or asbestos-containing products including, but not limited to, asbestos-containing talc. PFIZER INC. is sued as a Product Defendant. Plaintiffs' claims against PFIZER INC. arise out of this Defendant's business activities in the State of South Carolina, as well as Plaintiff Sarah J. Plant's exposure to said Defendant's products in the State of South Carolina, as well as others.

63. Defendant, **R.T. VANDERBILT HOLDING COMPANY, INC.**, individually and as successor-in-interest to R.T. VANDERBILT COMPANY, INC., was and is a Delaware corporation with its principal place of business in Connecticut. At all times material hereto, R.T. VANDERBILT HOLDING COMPANY, INC. mined, manufactured, processed, imported, converted, compounded, supplied, used, and/or retailed substantial amounts of asbestos and/or asbestos-containing products including, but not limited to, asbestos-containing talc. R.T. VANDERBILT HOLDING COMPANY, INC. is sued as a Product Defendant. Plaintiffs' claims against R.T. VANDERBILT HOLDING COMPANY, INC. arise out of this Defendant's business activities in

the State of South Carolina, as well as Plaintiff Sarah J. Plant's exposure to said Defendant's products in the State of South Carolina, as well as others.

64. Defendant, **REVLON CONSUMER PRODUCTS CORPORATION**, individually and as successor to REVLOX RESEARCH LABORATORIES, INC., CHARLES OF THE RITZ INC., LAVIN-CHARLES OF THE RITZ, JEAN NATÉ, E. R. SQUIBB, SQUIBB CORP., and YVES SAINT LAURENT, was and is a Delaware corporation with its principal place of business in New York. At all times material hereto, REVLOX CONSUMER PRODUCTS manufactured, sold and/or supplied substantial amounts of asbestos-containing talc products, including, but not limited to, asbestos-containing Makeup Products and Powder Products. REVLOX CONSUMER PRODUCTS CORPORATION is sued as a Product Defendant. Plaintiffs' claims against REVLOX CONSUMER PRODUCTS CORPORATION arise out of this Defendant's business activities in the State of South Carolina, as well as Plaintiff Sarah J. Plant's exposure to said Defendant's products in the State of South Carolina, as well as others.

65. Defendant, **REVLON, INC.**, individually and as successor to ELIZABETH ARDEN, INC., CHARLES OF THE RITZ INC., LAVIN-CHARLES OF THE RITZ, JEAN NATÉ, E. R. SQUIBB, SQUIBB CORP., and YVES SAINT LAURENT, was and is a Delaware corporation with its principal place of business in New York. At all times material hereto, REVLOX, INC. manufactured, sold and/or supplied substantial amounts of asbestos-containing talc products, including, but not limited to, asbestos-containing Makeup Products and Powder Products. REVLOX, INC. is sued as a Product Defendant. Plaintiffs' claims against REVLOX, INC. arise out of this Defendant's business activities in the State of South Carolina, as well as Plaintiff Sarah J. Plant's exposure to said Defendant's products in the State of South Carolina, as well as others.

66. Defendant, **RITE AID OF SOUTH CAROLINA, INC.**, was and is a South Carolina corporation with its principal place of business in Pennsylvania. At all times material hereto, RITE AID OF SOUTH CAROLINA, INC. sold, distributed and/or supplied substantial amounts of asbestos-containing talc products, including, but not limited to, asbestos-containing Makeup Products and Powder Products. RITE AID OF SOUTH CAROLINA, INC. is sued as a Product Defendant. Plaintiffs' claims against RITE AID OF SOUTH CAROLINA, INC. arise out of this Defendant's business activities in the State of South Carolina, as well as Plaintiff Sarah J. Plant's exposure to said Defendant's products in the State of South Carolina, as well as others.

67. Defendant, **SOUTHEASTERN GROCERS, INC.**, individually and as successor-in-interest to BI-LO, was and is a Delaware corporation with its principal place of business in Florida. At all times material hereto, SOUTHEASTERN GROCERS, INC. sold, distributed and/or supplied substantial amounts of asbestos-containing talc products, including, but not limited to, asbestos-containing Makeup Products and Powder Products. SOUTHEASTERN GROCERS, INC. is sued as a Product Defendant. Plaintiffs' claims against SOUTHEASTERN GROCERS, INC. arise out of this Defendant's business activities in the State of South Carolina, as well as Plaintiff Sarah J. Plant's exposure to said Defendant's products in the State of South Carolina, as well as others.

68. Defendant, **TOPCO ASSOCIATES, LLC**, was and is a Delaware corporation with its principal place of business in Illinois. At all times material hereto, TOPCO ASSOCIATES, LLC manufactured, sold and/or supplied substantial amounts of asbestos-containing talc products, including, but not limited to, asbestos-containing Top Care Powder Products. TOPCO ASSOCIATES, LLC is sued as a Product Defendant. Plaintiffs' claims against TOPCO ASSOCIATES, LLC arise out of this Defendant's business activities in the State of South

Carolina, as well as Plaintiff Sarah J. Plant's exposure to said Defendant's products in the State of South Carolina, as well as others.

69. Defendant, **VANDERBILT MINERALS, LLC** f/k/a R.T. VANDERBILT COMPANY, INC., individually and as successor-in-interest to INTERNATIONAL TALC CO., was and is a Delaware limited liability company with its principal place of business in Connecticut. At all times material hereto, VANDERBILT MINERALS, LLC mined, manufactured, processed, imported, converted, compounded, supplied, used, and/or retailed substantial amounts of asbestos and/or asbestos-containing products including, but not limited to, asbestos-containing talc. VANDERBILT MINERALS, LLC is sued as a Product Defendant. Plaintiffs' claims against VANDERBILT MINERALS, LLC arise out of this Defendant's business activities in the State of South Carolina, as well as Plaintiff Sarah J. Plant's exposure to said Defendant's products in the State of South Carolina, as well as others.

70. Defendant, **VARIETY WHOLESALERS, INC.** d/b/a ROSES, was and is a North Carolina corporation with its principal place of business in North Carolina. At all times material hereto, VARIETY WHOLESALERS, INC. mined, manufactured, processed, imported, converted, compounded, supplied, used, and/or retailed substantial amounts of asbestos and/or asbestos-containing products including, but not limited to, asbestos-containing Makeup Products and Powder Products. VARIETY WHOLESALERS, INC. is sued as a Product Defendant. Plaintiffs' claims against VARIETY WHOLESALERS, INC. arise out of this Defendant's business activities in the State of South Carolina, as well as Plaintiff Sarah J. Plant's exposure to said Defendant's products in the State of South Carolina, as well as others.

71. Defendant, **VI-JON, LLC** f/k/a VI-JON, INC., was and is a Delaware limited liability company with its principal place of business in Missouri. At all times material hereto, VI-JON, LLC mined, manufactured, processed, imported, converted, compounded, supplied, used,

and/or retailed substantial amounts of asbestos and/or asbestos-containing products including, but not limited to, asbestos-containing talc. VI-JON, LLC is sued as a Product Defendant. Plaintiffs' claims against VI-JON, LLC arise out of this Defendant's business activities in the State of South Carolina, as well as Plaintiff Sarah J. Plant's exposure to said Defendant's products in the State of South Carolina, as well as others.

72. Defendant, **WALGREEN CO.**, was and is an Illinois corporation with its principal place of business in Illinois. At all times material hereto, WALGREEN CO. sold, distributed and/or supplied substantial amounts of asbestos-containing talc products, including, but not limited to, asbestos-containing Makeup Products and Powder Products. WALGREEN CO. is sued as a Product Defendant. Plaintiffs' claims against WALGREEN CO. arise out of this Defendant's business activities in the State of South Carolina, as well as Plaintiff Sarah J. Plant's exposure to said Defendant's products in the State of South Carolina, as well as others.

73. Defendant, **WALMART INC.**, was and is a Delaware corporation with its principal place of business in Arkansas. At all times material hereto, WALMART INC. sold, distributed and/or supplied substantial amounts of asbestos-containing talc products, including, but not limited to, asbestos-containing Makeup Products and Powder Products. WALMART INC. is sued as a Product Defendant. Plaintiffs' claims against WALMART INC. arise out of this Defendant's business activities in the State of South Carolina, as well as Plaintiff Sarah J. Plant's exposure to said Defendant's products in the State of South Carolina, as well as others.

74. Defendant, **WHITTAKER, CLARK & DANIELS, INC.**, was and is a New Jersey corporation with its principal place of business in Connecticut. At all times material hereto, WHITTAKER, CLARK & DANIELS, INC. mined, manufactured, processed, imported, converted, compounded, supplied, used, and/or retailed substantial amounts of asbestos and/or asbestos-containing products including, but not limited to, asbestos-containing talc.

WHITTAKER, CLARK & DANIELS, INC is sued as a Product Defendant. Plaintiffs' claims against WHITTAKER, CLARK & DANIELS, INC arise out of this Defendant's business activities in the State of South Carolina, as well as Plaintiff Sarah J. Plant's exposure to said Defendant's products in the State of South Carolina, as well as others.

75. Defendant, **WINN-DIXIE STORES, INC.** a subsidiary of BI-LO a subsidiary of SOUTHEASTERN GROCERS, INC., was and is a Florida corporation with its principal place of business in Florida. At all times material hereto, WINN-DIXIE STORES, INC. sold, distributed and/or supplied substantial amounts of asbestos-containing talc products, including, but not limited to, asbestos-containing Makeup Products and Powder Products. WINN-DIXIE STORES, INC. is sued as a Product Defendant. Plaintiffs' claims against WINN-DIXIE STORES, INC. arise out of this Defendant's business activities in the State of South Carolina, as well as Plaintiff Sarah J. Plant's exposure to said Defendant's products in the State of South Carolina, as well as others.

76. Defendant, **YVES SAINT LAURENT AMERICA, INC.**, was and is a New York corporation with its principal place of business in New York. At all times material hereto, YVES SAINT LAURENT AMERICA, INC. manufactured, sold and/or supplied substantial amounts of asbestos-containing talc products, including, but not limited to, asbestos-containing Makeup Products and Jean Naté Powder Products. YVES SAINT LAURENT AMERICA, INC. is sued as a Product Defendant. Plaintiffs' claims against YVES SAINT LAURENT AMERICA, INC. arise out of this Defendant's business activities in the State of South Carolina, as well as Plaintiff Sarah J. Plant's exposure to said Defendant's products in the State of South Carolina, as well as others.

BACKGROUND FACTS

77. Plaintiff Sarah J. Plant brings this action for monetary damages as a result of contracting an asbestos-related disease.

78. Plaintiff Sarah J. Plant was diagnosed with Mesothelioma on or about March 24, 2021 as a result of her exposure to makeup and talcum powder where asbestos-containing talc was a constituent ingredient.

79. Plaintiff Sarah J. Plant's mesothelioma was caused by her exposure to asbestos through her personal use, and her family's use, of asbestos-containing talc Makeup Products and Powder Products throughout her life, her use of asbestos-containing talc Powder Products, and from the Ceramic Products (art clay) she used in the ceramic work that contained asbestos talc.

80. Plaintiff, Sarah J. Plant, used, or had used on her by her parents and grandparents, the Powder Products from 1986 continuously until very recently, but does not know the precise date she stopped. She frequently and regularly dusted the Powder Products on various parts of her body which at varying times may have included amongst other areas: face, neck, shoulders, arms, armpits, legs, collarbones, décolletage, breasts, vagina, and perineum. During this time she repeatedly inhaled, ingested, and was regularly exposed to asbestos dust emanating from the asbestos laden talc within the Powder Products permeating her person and clothes in her Tennessee, Utah and South Carolina homes. All of these activities exposed Plaintiff to asbestos and asbestos-dust.

81. Plaintiff also claims exposure from the Defendant talc suppliers, mines, mills, and labs named in her complaint that provided asbestos-containing talc as a constituent ingredient to the Powder Products and Makeup Products that she used.

82. In addition, Plaintiff Sarah J. Plant was exposed to asbestos from working with a variety of ceramic art materials that contained asbestos. She would fashion clay pottery and

greenware out of art clays, fire them in a kiln, and then sand and polish these results, creating visible dust that she breathed. She would then coat some with underglaze, polishing and scoring these underglazed results before glazing. This work also created visible dust that she breathed. She did this multiple times per week while in art classes in school and at the art college. All of these activities exposed Plaintiff to asbestos and asbestos-dust.

83. Each use of the Powder Products, Makeup Products and Ceramic Products was an intended and foreseeable use of the products based on the advertising, marketing and labeling of the product. It was foreseeable Defendants' asbestos-containing talc products would be sold for personal use by individuals like Plaintiff Sarah J. Plant on herself. Plaintiff Sarah J. Plant was thereby exposed to defendants' asbestos-containing Powder Products, Makeup Products and Ceramic Products in the State of South Carolina and other states at times relevant to this action.

84. Plaintiff Sarah J. Plant's cumulative exposure to asbestos as a result of acts and omissions of Defendants and their defective products, individually and together, was a substantial factor in causing Plaintiff Sarah J. Plant's mesothelioma and other related injuries and therefore under South Carolina law, is the legal cause of Plaintiff's injuries and damages.

85. Plaintiff Sarah J. Plant was not aware at the time of exposure that asbestos or asbestos-containing talc products presented any risk of injury and/or disease.

86. Plaintiffs are informed and believe, and thereon allege, that progressive lung disease, mesothelioma and other serious diseases are caused by inhalation of asbestos fibers without perceptible trauma and that said disease results from exposure to asbestos and asbestos-containing products over a period of time.

87. As a direct and proximate result of the conduct as alleged within, Plaintiff Sarah J. Plant suffered permanent injuries, including, but not limited to, mesothelioma and other lung damage, as well as the mental and emotional distress attendant thereto, from the effect of exposure

to asbestos fibers, all to his damage in the sum of the amount as the trier of fact determines is proper.

88. As a direct and proximate result of the conduct as hereinafter alleged, Plaintiff Sarah J. Plant incurred liability for physicians, surgeons, nurses, hospital care, medicine, hospices, x-rays and other medical treatment, the true and exact amount thereof being unknown to Plaintiffs at this time. Plaintiffs request leave to supplement this Court and all parties accordingly when the true and exact cost of Plaintiff Sarah J. Plant's medical treatment is ascertained.

89. As a further direct and proximate result of the conduct as hereinafter alleged, Plaintiffs incurred loss of profits and commissions, a diminishment of earning potential, and other pecuniary losses, the full nature and extent of which are not yet known to Plaintiffs. Plaintiffs request leave to supplement this Court and all parties accordingly to conform to proof at the time of trial.

FOR A FIRST CAUSE OF ACTION
(Product Liability: Negligence)

Plaintiffs Complain of Defendants for a Cause of Action for Negligence Alleging as Follows:

90. Plaintiffs incorporate herein by reference, as though fully set forth herein, each and every paragraph of the General Allegations above.

91. At all times herein mentioned, each of the named Defendants was an entity and/or the successor, successor in business, successor in product line or a portion thereof, assign, predecessor, predecessor in business, predecessor in product line or a portion thereof, parent, subsidiary, or division of an entity, hereinafter referred to collectively as "alternate entities," engaged in the business of researching, studying, manufacturing, fabricating, designing, modifying, labeling, instructing, assembling, distributing, leasing, buying, offering for sale, supplying, selling, inspecting, servicing, installing, contracting for installation, repairing,

marketing, warranting, re-branding, manufacturing for others, packaging and advertising a certain product, namely asbestos-containing talc products manufactured for foreseeable personal use by individuals like Plaintiff Sarah J. Plant on herself. Plaintiff was thereby exposed to Defendants' asbestos-containing talc products in the State of South Carolina.

92. At all times herein mentioned, Defendants, and/or their "alternate entities" singularly and jointly, negligently and carelessly researched, manufactured, fabricated, designed, modified, tested or failed to test, abated or failed to abate, inadequately warned or failed to warn of the health hazards, failed to provide adequate use instructions for eliminating the health risks inherent in the use of the products, labeled, distributed, bought, offered for sale, supplied, sold, inspected, marketed, rebranded, manufactured for others, packaged and advertised, a certain product, namely asbestos-containing talc products manufactured for foreseeable personal use by individuals like Plaintiff Sarah J. Plant, in that said products caused personal injuries to Plaintiff Sarah J. Plant and others similarly situated, (hereinafter collectively called "exposed persons"), while being used for their intended purpose and in a manner that was reasonably foreseeable.

93. The asbestos and asbestos-containing talc products were defective and unsafe for their intended purpose in that there was an alternative for asbestos that could have been used as the product or as a component instead of asbestos within a normally asbestos-containing/utilizing product. Said alternatives would have prevented Defendants' asbestos and asbestos-containing talc products from causing Plaintiff Sarah J. Plant's mesothelioma, due to an inability of any asbestos-alternative to penetrate the pleural lining of Plaintiff's lung, even if inhaled. Said alternatives came at a comparable cost to each of the Defendants and/or their "alternate entities." Said alternatives were of comparable utility to the asbestos or asbestos-containing products of Defendants and/or their "alternate entities." The gravity of the potential harm resulting from the use of Defendants' asbestos or asbestos-containing talc products, and the likelihood such harm

would occur to users of its products, far outweighed any additional cost or marginal loss of functionality in creating and/or utilizing an alternative design, providing adequate warning of such potential harm, and/or providing adequate use instructions for eliminating the health risks inherent in the use of their products, thereby rendering the same defective, unsafe and dangerous for use by Plaintiff Sarah J. Plant. Defendants and/or their “alternate entities” had a duty to exercise due care in the pursuance of the activities mentioned above and Defendants, each of them, breached said duty of due care.

94. Defendants, and/or their “alternate entities” knew or should have known, and intended that the aforementioned asbestos and asbestos-containing talc products would be transported by truck, rail, ship and other common carriers, that in the shipping process the products would break, crumble or be otherwise damaged; and/or that such products would be used for personal use by individuals like Plaintiff Sarah J. Plant on herself, resulting in the release of airborne asbestos fibers, and that through such foreseeable use and/or handling by exposed persons, including Plaintiff Sarah J. Plant, would use or be in proximity to and exposed to said asbestos fibers.

95. At all times relevant, Defendants and/or their “alternate entities” were aware of their asbestos and asbestos-containing talc products’ defect but failed to adequately warn Plaintiff Sarah J. Plant, Plaintiff’s family members or others in their vicinity, as well as failed to adequately warn others of the known hazards associated with their products and/or failed to recall or retrofit their products. A reasonable manufacturer, distributor, or seller of Defendants’ products would have, under the same or similar circumstances, adequately warned of the hazards associated with their products.

96. Plaintiff Sarah J. Plant, Plaintiff’s family members and others in their vicinity used, handled or were otherwise exposed to asbestos and asbestos-containing products referred to herein

in a manner that was reasonably foreseeable. Plaintiff's exposure to asbestos and asbestos-containing talc products occurred at various locations as set forth in this Complaint.

97. Plaintiff Sarah J. Plant suffers from mesothelioma, a cancer related to exposure to asbestos and asbestos-containing products. Plaintiff Sarah J. Plant was not aware at the time of exposure that asbestos or asbestos-containing talc products presented any risk of injury or disease.

98. Defendants' conduct and defective products as described in this cause of action were a direct cause of Plaintiff Sarah J. Plant's injuries, and all damages thereby sustained by Plaintiff Sarah J. Plant. Plaintiffs therefore seek all compensatory damages in order to make them whole, according to proof.

99. Furthermore, the conduct of Defendants and/or their "alternate entities" in continuing to market and sell products which they knew were dangerous to Plaintiff Sarah J. Plant and the public without adequate warnings or proper use instructions was done in a conscious disregard and indifference to the safety and health of Plaintiff and others similarly situated.

100. In researching, manufacturing, fabricating, designing, modifying, testing or failing to test, warning or failing to warn, failing to recall or retrofit, labeling, instructing, distributing, buying, offering for sale, supplying, selling, inspecting, servicing, marketing, warranting, rebranding, manufacturing for others, packaging and advertising asbestos-containing talc products or products manufactured for foreseeable personal use by individuals like Plaintiff Sarah J. Plant, Defendants and/or their "alternate entities" did so with conscious disregard for the safety of "exposed persons" who came in contact with asbestos and asbestos-containing talc products, in that Defendants and/or their "alternate entities" had prior knowledge that there was a substantial risk of injury or death resulting from exposure to asbestos, asbestos-containing talc products or products manufactured for foreseeable personal use by individuals like Plaintiff Sarah J. Plant, including, but not limited to, asbestosis, mesothelioma, lung cancer, and other lung damages. This

knowledge was obtained, in part, from scientific studies performed by, at the request of, or with the assistance of Defendants and/or their “alternate entities.”

101. Defendants and their “alternate entities” were aware that members of the general public and other “exposed persons,” who would come in contact with their asbestos and asbestos-containing products, had no knowledge or information indicating that asbestos, asbestos-containing talc products, or products manufactured for foreseeable personal use by individuals like Plaintiff Sarah J. Plant, could cause injury, and Defendants, and their “alternate entities,” each of them, knew that members of the general public and other “exposed persons,” who came in contact with asbestos-containing talc products or products manufactured for foreseeable personal use by individuals like Plaintiff Sarah J. Plant, would assume, and in fact did assume, that exposure to asbestos-containing talc products was safe, when in fact said exposure was extremely hazardous to health and human life.

102. The above-referenced conduct of Defendants, and their “alternate entities,” was motivated by the financial interest of Defendants, their “alternate entities,” and each of them, in the continuing, uninterrupted research, design, modification, manufacture, fabrication, labeling, instructing, distribution, purchase, offer for sale, supply, sale, inspection, marketing, warranting, rebranding, manufacturing for others, packaging and advertising of asbestos-containing talc products and products manufactured for foreseeable personal use by individuals like Plaintiff Sarah J. Plant. Defendants, their “alternate entities,” and each of them consciously disregarded the safety of “exposed persons” in pursuit of profit. Defendants were consciously willing and intended to permit asbestos-containing talc products to cause injury to “exposed persons” without warning them of the potential hazards and further induced persons to use and be exposed thereto, including Plaintiff Sarah J. Plant.

103. Plaintiff Sarah J. Plant and other exposed persons did not know of the substantial danger of using Defendants' asbestos, asbestos-containing talc products, and products manufactured for foreseeable personal use by individuals like Plaintiff. The dangers inherent in the use of these products were not readily recognizable by Plaintiff Sarah J. Plant or other exposed persons. Defendants and/or their "alternate entities" further failed to adequately warn of the risks to which Plaintiff and others similarly situated were exposed.

104. Defendants and/or their "alternate entities" are liable for the fraudulent, oppressive, and malicious acts of their "alternate entities," and each Defendant's officers, directors and managing agents participated in, authorized, expressly and impliedly ratified, and had full knowledge of, or should have known of, the acts of each of their "alternate entities" as set forth herein.

105. The herein-described conduct of Defendants and their "alternate entities," was and is willful, malicious, fraudulent, and outrageous and in conscious disregard and indifference to the safety and health of persons foreseeably exposed. Plaintiffs, for the sake of example and by way of punishing said Defendants, seek punitive damages according to proof against all defendants.

FOR A SECOND CAUSE OF ACTION

(Product Liability: Strict Liability - S.C. Code Ann. § 15-73-10, et seq.)

As a Second and Distinct Cause of Action for Strict Liability, Plaintiffs Complain of Defendants, and Allege as Follows:

106. Plaintiffs incorporate herein by reference, as though fully set forth herein, each of the preceding paragraphs.

107. Plaintiff Sarah J. Plant suffered from mesothelioma, a cancer related to exposure to asbestos, asbestos-containing talc products and products manufactured for foreseeable personal use by individuals like Plaintiff. Plaintiff Sarah J. Plant was not aware at the time of exposure that asbestos or asbestos-containing talc products presented any risk of injury and/or disease.

108. The Products Defendants' conduct and defective products as described above were a direct cause of Plaintiff Sarah J. Plant's injuries, and the injuries and damages thereby sustained by Plaintiffs.

109. Furthermore, the Defendants' conduct and that of their "alternate entities" in continuing to market and sell products which they knew were dangerous to Plaintiff Sarah J. Plant and the public without adequate warnings or proper use instructions, was done in a conscious disregard and indifference to the safety and health of Plaintiff Sarah J. Plant and others similarly situated.

110. Defendants and/or their "alternate entities" knew or should have known, and intended that the aforementioned asbestos and products containing asbestos would be transported by truck, rail, ship and other common carriers, that in the shipping process the products would break, crumble or be otherwise damaged; and/or that such products would be used for personal use by individuals like Plaintiff Sarah J. Plant, resulting in the release of airborne asbestos fibers, and that through such foreseeable use and/or handling, "exposed persons," including Plaintiff, would use or be in proximity to and exposed to said asbestos fibers.

111. Plaintiff Sarah J. Plant, Plaintiff's family members, and others in their vicinity used, handled or were otherwise exposed to asbestos, asbestos-containing products, and products manufactured for foreseeable personal use by individuals like Plaintiff Sarah J. Plant, referred to herein in a manner that was reasonably foreseeable. Plaintiff Sarah J. Plant's exposure to asbestos, asbestos-containing talc products, and products manufactured for foreseeable personal use by individuals like Plaintiff Sarah J. Plant occurred at various locations as set forth in this Complaint.

112. Defendants and/or their "alternate entities" knew and intended that the above-referenced asbestos and asbestos-containing talc products would be used by the purchaser or user

without inspection for defects therein or in any of their component parts and without knowledge of the hazards involved in such use.

113. The asbestos and asbestos-containing talc products were defective and unsafe for their intended purpose in that there was an alternative for asbestos that could have been used as the product or as a component instead of asbestos within a normally asbestos-containing/utilizing product. Said alternatives would have prevented Defendants' asbestos, asbestos-containing talc products, and products manufactured for foreseeable personal use by individuals from causing Plaintiff Sarah J. Plant's mesothelioma, due to an inability of any asbestos-alternative to penetrate the pleural lining of Plaintiff's lung, even if inhaled. Said alternatives came at a comparable cost to each of the Defendants and/or their "alternate entities." Said alternatives were of comparable utility to the asbestos or asbestos-containing talc products of Defendants and/or their "alternate entities." The gravity of the potential harm resulting from the use of Defendants' asbestos or asbestos-containing talc products, and the likelihood such harm would occur, far outweighed any additional cost or marginal loss of functionality in creating and/or utilizing an alternative design, providing adequate warning of such potential harm, and/or providing adequate use instructions for eliminating the health risks inherent in the use of their products, thereby rendering the same defective, unsafe and dangerous for use.

114. The defect existed in the said products at the time they left the possession of defendants and/or their "alternate entities," and each of them. Said products were intended to reach the ultimate consumer in the same condition as it left defendants. Said products did, in fact, cause personal injuries, including mesothelioma, asbestosis, other lung damage, and cancer to "exposed persons," including Plaintiff Sarah J. Plant herein, while being used in a reasonably foreseeable manner, thereby rendering the same defective, unsafe and dangerous for use.

115. Plaintiff Sarah J. Plant and other exposed persons did not know of the substantial danger of using Defendants' asbestos, asbestos-containing talc products, or products manufactured for foreseeable personal use by individuals like Plaintiff Sarah J. Plant. The dangers inherent in the use of these products were not readily recognizable by Plaintiff or other exposed persons. Said Defendants and/or their "alternate entities" further failed to adequately warn of the risks to which Plaintiff Sarah J. Plant and others similarly situated were exposed.

116. Defendants' defective products as described above were a direct cause of Plaintiff Sarah J. Plant's injuries, and the damages thereby sustained.

117. In researching, manufacturing, fabricating, designing, modifying, testing or failing to test, warning or failing to warn, labeling, instructing, distributing, buying, offering for sale, supplying, selling, inspecting, servicing, marketing, warranting, rebranding, manufacturing for others, packaging and advertising asbestos, asbestos-containing talc products, and products manufactured for foreseeable personal use by individuals like Plaintiff Sarah J. Plant, Defendants and/or their "alternate entities," and each of them, did so with conscious disregard for the safety of Plaintiff and other exposed persons who came in contact with the asbestos, asbestos-containing talc products, and products manufactured for foreseeable personal use by individuals, in that Defendants and/or their "alternate entities" had prior knowledge that there was a substantial risk of injury or death resulting from exposure to asbestos or asbestos-containing talc products or products manufactured for foreseeable personal use by individuals like Plaintiff Sarah J. Plant, including, but not limited to, mesothelioma, asbestosis, other lung damages and cancers. This knowledge was obtained, in part, from scientific studies performed by, at the request of, or with the assistance of Defendants and/or their "alternate entities."

118. Defendants and/or their "alternate entities" were aware that members of the general public and other exposed persons, who would come in contact with their asbestos and asbestos-

containing talc products, had no knowledge or information indicating that asbestos or asbestos-containing talc products or products manufactured for foreseeable personal use by individuals like Plaintiff Sarah J. Plant could cause injury. Defendants and/or their “alternate entities” further knew that members of the general public and other exposed persons, who came in contact with asbestos, asbestos-containing talc products, and products manufactured for foreseeable personal use by individuals like Plaintiff Sarah J. Plant would assume, and in fact did assume, that exposure to asbestos and asbestos-containing products was safe, when in fact exposure was extremely hazardous to health and human life.

119. The above-referenced conduct of Defendants and/or their “alternate entities” motivated by the financial interest of Defendants, their “alternate entities,” and each of them, in the continuing and uninterrupted research, design, modification, manufacture, fabrication, labeling, instructing, distribution, purchase, offer for sale, supply, sale, inspection, marketing, warranting, rebranding, manufacturing for others, packaging and advertising of asbestos, asbestos-containing talc products, and products manufactured for foreseeable personal use by individuals like Plaintiff Sarah J. Plant. Defendants and/or their “alternate entities” consciously disregarded the safety of “exposed persons” in their pursuit of profit and in fact consciously intended to cause injury to Plaintiff Sarah J. Plant and other exposed persons and induced persons to use, be exposed to, and thereby injured by asbestos, asbestos-containing talc products, and products manufactured for foreseeable personal use by individuals like Plaintiff Sarah J. Plant.

120. Defendants are liable for the fraudulent, oppressive, and malicious acts of their “alternate entities,” and each Defendant's officers, directors and managing agents participated in, authorized, expressly and impliedly ratified, and knew, or should have known of, the acts of each of their “alternate entities” as set forth herein.

121. The conduct of said defendants, their “alternate entities,” and each of them as set forth in this Complaint, was and is willful, malicious, fraudulent, outrageous and in conscious disregard and indifference to the safety and health of exposed persons. Plaintiffs, for the sake of example and by way of punishing said Defendants, seeks punitive damages according to proof against all defendants.

122. At all times herein mentioned, each of the named Defendants, and/or their “alternate entities,” was an entity and/or the successor, successor in business, successor in product line or a portion thereof, assign, predecessor, predecessor in business, predecessor in product line or a portion thereof, parent, subsidiary, or division of an entity, hereinafter referred to collectively as “alternate entities,” engaged in the business of researching, studying, manufacturing, fabricating, designing, modifying, labeling, instructing, distributing, buying, offering for sale, supplying, selling, inspecting, servicing, marketing, warranting, re-branding, manufacturing for others, packaging and advertising a certain product, namely products containing asbestos and talc products manufactured for foreseeable personal use by individuals like Plaintiff Sarah J. Plant.

FOR A THIRD CAUSE OF ACTION
(Negligence Per Se)

As a Third Distinct Cause of Action for Negligence Per Se, Plaintiffs Complain of Defendants, and Allege as Follows:

123. Plaintiffs incorporate herein by reference, as though fully set forth herein, each of the preceding paragraphs.

124. The actions of Defendants also constituted negligence per se.

125. Defendants violated federal and state regulations relating to asbestos exposure. Such violations constitute negligence per se or negligence as a matter of law. Further, each such violation resulted in dangerous and unlawful exposures to asbestos for Plaintiff Sarah J. Plant. Plaintiffs are not making any claims under federal law; instead, Plaintiffs are simply using the

violation of federal standards as proof of liability on their state-law theories. Further, the reference to Federal regulations does not create a federal question. *See Merrell Dow Pharms., Inc. v. Thompson*, 478 U.S. 804 (1986). Any removal on this basis will be met with an immediate motion for remand and for sanctions.

126. The negligence per se of Defendants was a proximate cause of Plaintiff Sarah J. Plant's injuries.

FOR A FOURTH CAUSE OF ACTION
(Product Liability: Breach of Implied Warranties - S.C. Code Ann. § 36-2-314)

As a Fourth Distinct Cause Of Action for Breach of Implied Warranties, Plaintiffs Complain of Defendants and Allege as Follows:

127. Plaintiffs incorporate herein by reference, as though fully set forth herein, each of the preceding paragraphs.

128. Each of the Defendants and/or their "alternate entities" impliedly warranted that their asbestos materials or asbestos-containing talc products were of good and merchantable quality and fit for their intended use.

129. The implied warranty made by the Defendants and/or their "alternate entities" that the asbestos and asbestos-containing talc products were of good and merchantable quality and fit for the particular intended use, was breached. As a result of that breach, asbestos was given off into the atmosphere where Plaintiff Sarah J. Plant used the talc products and was inhaled by Plaintiff Sarah J. Plant.

130. As a direct and proximate result of the breach of the implied warranty of good and merchantable quality and fitness for the particular intended use, Plaintiff Sarah J. Plant was exposed to Defendants' asbestos, asbestos-containing talc products, and/or products manufactured for personal use by individuals like Plaintiff Sarah J. Plant and consequently developed mesothelioma, causing Plaintiffs to suffer all damages attendant thereto.

FOR A FIFTH CAUSE OF ACTION
(Fraudulent Misrepresentation)

For a Fifth Distinct Cause of Action for Fraudulent Misrepresentation, Plaintiffs Complain of Defendants, and Allege as Follows:

131. Plaintiffs repeat and re-allege the portions of the above paragraphs where relevant.

132. That during, before and after Plaintiff Sarah J. Plant's exposure to asbestos products manufactured by Defendants and/or their "alternate entities", the Defendants and/or their "alternate entities" falsely represented facts, including the dangers of asbestos exposure to Plaintiff Sarah J. Plant in the particulars alleged in the paragraphs above, while Defendants each had actual knowledge of said dangers of asbestos exposure to persons such as Plaintiff Sarah J. Plant. At the same time of these misrepresentations, Defendants each knew of the falsity of their representations and/or made the representations in reckless disregard of their truth or falsity.

133. The foregoing representations were material conditions precedent to Plaintiff Sarah J. Plant's continued exposure to asbestos-containing talc products. Defendants and/or their "alternate entities" each intended that Plaintiff Sarah J. Plant act upon the representations by continuing her personal use of, and thereby exposure to, the asbestos-containing talc products. Plaintiff Sarah J. Plant was ignorant of the falsity of Defendants' representations and rightfully relied upon the representations.

134. As a direct and proximate result, Plaintiff Sarah J. Plant's reliance upon Defendants' false representations, Plaintiff has suffered injury and damages as described herein.

FOR A SIXTH CAUSE OF ACTION
(Fraudulent Misrepresentation and Conspiracy/Concert Action)

For a Sixth Distinct Cause of Action for Fraudulent Misrepresentation and Conspiracy/Concert Action, Plaintiffs Complain of Defendants, and Allege as Follows:

135. Plaintiffs repeat and re-allege the portions of the above paragraphs where relevant.

136. For decades, defendants manufactured products composed of talc that were sold and marketed as safe for daily use by consumers on their person to give off a pleasant smell, mask odors, prevent chaffing and/or absorb moisture. Defendants' products were advertised as healthful for babies, children and adults and to be applied regularly to maintain freshness, keep skin soft, mask odors with a floral fragrance, prevent chaffing and/or absorb moisture.

137. Defendants and the Cosmetic, Toiletry & Fragrance Association (n/k/a Personal Care Products Council) ("CTFA") made false statements to plaintiff, the general public, news media and government agencies that exercise regulatory authority over the cosmetic industry, including, but not limited to, the U.S. Food & Drug Administration ("FDA"), the National Institute of Occupational Health and Safety ("OSHA"), the National Institute for Occupational Safety and Health ("NIOSH"), the Mine Health and Safety Administration ("MHS"), and the National Toxicology Program ("NTP"), which, in turn, proximately caused plaintiff's harm through intentional efforts to deceive the general public as to the safety of and presence of carcinogens, including asbestos, in talc-containing products.

138. Defendants and CTFA, for decades before SARAH J. PLANT was born, possessed medical and scientific data that raised concerns regarding the presence of carcinogens, including asbestos, in talc and that demonstrated the existence of health hazards to those exposed to asbestos-containing talcum powder products.

139. Talc is a hydrous magnesium silicate, inorganic material that is mined from the earth. It is used in the manufacture of goods, such as paper, plastic, paint and coatings, rubber, food, electric cable, ceramics, and cosmetics. In its loose form and as used in defendants' products, talc is known as "talcum powder."

140. Geologists, Defendants and CTFA—and their suppliers, experts, agents and advisors—have long known that the deposits in the earth that are associated with talc are also

associated with the formation of asbestos. “Asbestos” is a commercial and legal term, rather than a geologic or scientific term, referring to six now-regulated magnesium silicate minerals that occur in fibrous form, including the serpentine mineral chrysotile, and amphibole minerals such as actinolite, anthophyllite, tremolite, amosite and crocidolite. The United States Geological Survey on Commercial Talc production in 1965, as well as those dating back to the 1800s, note the presence of tremolite, anthophyllite and chrysotile commonly among those minerals found within talc deposits.

141. Defendants, some of which have been and still are the largest talc producers and/or talc-containing product manufactures in the world, admit that they have long employed and/or consulted with doctors, scientists, geologists, mineralogists and toxicologists, and that they have long maintained extensive medical and scientific libraries and archives containing materials relating to the health hazards of talc and the presence of carcinogens, including asbestos, in talc and talc deposits.

142. Beginning in the 1930s, medical and scientific literature emerged indicating talc was commonly, if not invariably, contaminated with substances known or suspected of being carcinogenic, such as asbestos, silica, quartz, nickel and arsenic. Within the next several decades, an ever-growing body of medical and scientific literature demonstrated that direct and secondary exposure to talc, including asbestos-containing talc, was hazardous to exposed persons’ health in that it could cause lung disease, cancer and death.

143. Defendants and their affiliates, employees, agents and/or suppliers were members of the National Safety Council. In March of 1933, Waldemar C. Dreesen of the United States Public Health Service reported to the National Safety Council the results of a study conducted among tremolite, talc and slate workers. The study indicated that the talc was a hydrous calcium magnesium silicate, being 45% talc and 45% tremolite, and the National Safety Council stated,

“The results of the study seemed to indicate a relationship between the amount of dust inhaled and the effect of this dust on the lungs of the workers.” As early as 1934, the National Safety Council was publishing that “a cause of severe pulmonary injury is asbestos, a silicate of magnesium.” In the September 1935 issue of National Safety News, an article entitled “No Halfway Measures in Dust Control” by Arthur S. Johnson reported lowered lung capacity resulting from “asbestosis” and “similar conditions” that developed “from exposure to excess of many mineral dusts relatively low in free silica content.” The article further noted that claims for disabilities from workers who alleged exposure to “clay, talc, emery, and carborundum dusts” had “claims prosecuted successfully.” The article concluded that “[i]n the absence of adequate diagnoses, occupational histories and a more satisfactory method of adjudicating claims than prosecution at common law, we must conclude that it is necessary to find a practical method for controlling all mineral dusts.”

144. In 1936, the National Safety Council published an article entitled “Lesser Known Facts About Occupational Diseases” that found “exposure to asbestos fibers, present in the weaving and grinding of dry asbestos material, offers another type of dust which may cause fatalities among workers.” In 1958, The New York Department of Labor published Industrial Code Rule No. 12 establishing regulations applying to all employees and employers relating to dangerous air contaminants and listing both asbestos and talc as such substances.

145. In 1968, a study presented at the American Industrial Hygiene Conference & Exposition and published in the American Industrial Hygiene Association Journal concluded that “[a]ll of the 22 talcum products analyzed have a...fiber content...averaging 19%. The fibrous material was predominantly talc but contained minor amounts of tremolite, anthophyllite, and chrysotile as these are often present in fibrous talc mineral deposits...Unknown significant amounts of such materials in products that may be used without precautions may create an

unsuspected problem.” L. J. Cralley, et al., *Fibrous and Mineral Content of Cosmetic Talcum Products*, 29 Am. Ind. Hyg. Assoc. J. 350-354 (1968). Defendants were aware of these findings.

146. In 1968, a scientific study of store-bought, commercially available talcum powders conducted by the Occupational Health Program, National Center for Urban Industrial Health, was published and presented by the American Industrial Hygiene Association. Defendants were aware of this study. The study revealed that, contrary to popular belief, talcum powders were not entirely pure, but rather contained various fibrous minerals, including tremolite, anthophyllite and chrysotile. The study explained that such fibrous content was not unexpected because these types of fibers are often present in fibrous talc mineral deposits. Available documents indicate that during the same year and in the years following, at least one company began testing store-bought talcum powders for asbestos content. Despite tests showing some talcum powders contained asbestos, there is no evidence that positive results or the brand names of contaminated products were communicated to any governmental agency, the media or the public.

147. A 1976 follow-up study conducted by researchers at Mount Sinai Hospital in New York concluded that “[t]he presence in these products of asbestiform anthophyllite and tremolite, chrysotile, and quartz indicates the need for a regulatory standard for cosmetic talc...We also recommend that evaluation be made to determine the possible health hazards associated with the use of these products.” Rohl A.N., et al., *Consumer Talcums and Powders: Mineral and Chemical Characterization*, 2 J. Toxicol. Environ. Health 255-284 (1976). The Mount Sinai study results were published by various newspapers, including the New York Times and the Washington Post, and Defendants were aware of same.

148. In the early 1970s, the FDA began an inquiry into whether to regulate and require warnings on talc-containing products. Defendants and CTFA, an exclusive lobbying and advocacy group representing companies engaged in the cosmetic products industry, repeatedly conspired

and worked in concert to block efforts to label and warn consumers regarding the dangers (including asbestos hazards) associated with cosmetic talcum powder products, such as Defendants' products.

149. In 1971, the New York City of Environmental Protection Administration Air Resources Board conducted a study of two "leading" brands of talcum powder using transmission electron microscopy ("TEM") and X-ray diffraction ("XRD") analysis, and found them to contain 5-25% tremolite and anthophyllite asbestos.

150. Soon thereafter, a symposium was held in August of 1971 at the FDA to discuss the issue of asbestos content of talcum powders with the talc industry, government officials, and doctors and scientists from Mt. Sinai Hospital, which was then the epicenter of the medical and scientific study of asbestos. Among other statements, participants and attendees heard: that asbestos should be banned in talcum powders; models should be set up to measure the levels exposure to asbestos experienced by persons using talcum powder containing asbestos at the lowest level of microscopic detection; and that finding asbestos in talc and talcum powder is extremely difficult, and the only truly reliable way to determine the asbestos content of talc and talcum powder is through TEM and electron diffraction. Defendants and CTFA, aware of the foregoing and citing costs as well as their fear of the public learning talc was contaminated with asbestos, ignored and completely rejected any measures to meaningfully test talc products to make sure they were free from asbestos and other carcinogens.

151. After this 1971 symposium, Dr. Weissler of the FDA hired Dr. Seymour Z. Lewin to test commercially available talcum powders for asbestos. Dr. Lewin tested 195 samples and found asbestos of varying amounts in 43. Many of Dr. Lewin's positive results were eventually corroborated by Pfizer Inc. The results, however, were uncorroborated by two other laboratories,

leading the FDA to the conclusion that XRD, optical and electron microscopy, and electron diffraction must be used to detect asbestos in talc and talcum powders.

152. Dr. Lewin of New York University disclosed twice in 1972 that asbestos had been found in cosmetic talc. In a report to the FDA on August 3, 1972, Dr. Lewin reported that of 195 talc products, 20 had tremolite, 7 had chrysotile, 9 had both tremolite and chrysotile, and 7 had substantial percentages of one of both. XRD had been used as the first step in analysis and the presence of asbestos was verified by the use of optical microscopy to disclose the presence of significant numbers of fibers. Shortly thereafter, Dr. Lewin reported to Whittaker, Clark & Daniels Inc. on September 30, 1972, that Italian talc 1615 contained about 2% tremolite and 0.5% chrysotile as determined with XRD and detailed microscopic exam. In a July 31, 1973, review of Dr. Lewin's testing of 195 talc samples, the FDA found "good semi-quantitative agreement" for tremolite on selected samples re-analyzed using optical microscope analysis by FDA and XRD by Pfizer. Agreement was not as good for chrysotile, but the review did warn that optical microscopy could "completely miss the presence of chrysotile if the fibers are submicroscopic, which may well be the case in finely-milled talc." In 1972, ES Laboratories reported that "1615" talc contained 1% chrysotile and that "4615" talc contained 3% chrysotile and 3% anthophyllite. An August 23, 1973, report by Johns-Manville on TEM analysis of commercial talcs reported that nine of fourteen samples contained chrysotile. Only five samples did not have detectable levels of chrysotile. Pages from the laboratory notebook of Colgate-Palmolive Co. scientist Paul Briscese from March 7, 1976, show that Old Regal (North Carolina) talc tested positive for tremolite, New Montana talc tested positive for anthophyllite and tremolite, and Italian talc tested positive for tremolite.

153. A December 10, 1973, report of the CTFA's Talc Subcommittee disclosed that optical microscope analyses of talcs from the Italian, Montana I & II, Alabama, Vermont, and North Carolina mines had failed the proposed FDA's method because of elevated chrysotile

concentrations. This December 10, 1973, CTFA report also showed that several laboratories had reported chrysotile in many of the talc samples sent by the CTFA for evaluation of analytical methods as well as the several identifications of asbestos in talc mentioned.

154. In the early 1970s, the FDA began an inquiry into whether to regulate and require warnings on consumer talcum powder products. CTFA, an exclusive lobbying and advocacy group representing companies engaged in the cosmetic products industry, including many of the Defendants herein, repeatedly conspired and worked in concert to block efforts to label and warn consumers regarding the dangers associated with cosmetic talcum powder products, such as Defendants' products. On September 3, 1973, the FDA sent CTFA a letter regarding various means of measuring asbestos in talc, stating that "conventional methods employing X-ray diffraction or differential thermal analysis are not sufficiently reliable to produce quantitative results of the desired precision." The FDA further advised CTFA that it "has been exploring refractory optical microscopy as a means of measuring asbestos in talc." CTFA responded to the FDA's public notice on its proposed optical microscopy method on December 26, 1973. CTFA contended that the proposed method was not "reliable" for the detection of asbestos in talc, recommended a "collaborative effort between FDA and industry to develop such a method," and urged deferment of the proposed rule. Minutes of CTFA's Talc Subcommittee meeting on March 15, 1976, indicate that the FDA's "Dr. Shaffner suggested the possibility of having industry report periodically on the results of its analysis to the FDA." Dr. Estrin of CTFA responded that "the subcommittee would give serious consideration to this suggestion."

155. Contemporaneously, evidence began to emerge from testing conducted by various regulatory agencies revealing that asbestos was being found in food, beer and drugs, including intravenously injected medicines. In 1972, and later in 1973, the FDA filed notices of proposed

rulemaking requiring talc used in food, food packing and drugs to be completely free of asbestos. These were some of the same “grades” of talc used by Defendants.

156. The talc industry’s response, including that of the defendants, was swift and well-coordinated through CTFA, with which the defendants conspired and worked in concert to purposely create a flawed, voluntary testing and surveillance methodology for detecting asbestos in talc and block efforts to label and warn consumers regarding the dangers associated with the talc products, including defendants’ products.

157. Regarding the FDA’s proposed 1972 rule-making, the FDA Director of Product Development and Cosmetics, Dr. Schaffner, invited representatives of the talc industry to a meeting in August of 1972 to discuss the results of Dr. Lewin’s study and inform them that the FDA was preparing to release a “Proposed Statement of Policy On Asbestos in Cosmetics Containing Talc.” Dr. Schaffner explained that he was duty-bound and must publicize the brand names of the talcum powders that contained asbestos. CTFA’s president, Dr. Merritt, strongly objected to the FDA alerting the general public and publishing the brand names of the talcum powders, as it would cause the manufactures “economic hardship.” Dr. Merritt also threatened to sue the FDA to prevent the disclosure of the brand names. As a result, the FDA, defendants and CTFA never revealed or publicized the brand names of the talcum powders that contained asbestos, much to the detriment of the plaintiff and the general public.

158. In 1973, CTFA created a talc subcommittee and the Scientific Advisory Committee to develop a testing methodology for detecting asbestos in talc. Initially, CTFA designated a group of its members to tests talc grades used in talcum powder utilizing the methodology proposed by the FDA in its notice of rulemaking. Six samples of talc used in commercially available talcum powders, plus one talc sample purposely spiked with tremolite and chrysotile, were circulated among the members, including representatives of defendants. Of the eight participating members,

four found asbestos in every sample, three did not find asbestos in any sample (including the spiked sample), and one found asbestos only in the spiked sample. In conclusion, all members agreed that the best and most reliable method of detecting asbestos in talc is not optical microscopy, but rather TEM and electron diffraction. The same members, however, dispensed with this analytical method, claiming TEM and electron diffraction equipment was too expensive, despite defendants then owning or having unfettered access to same.

159. From there, the difference between what defendants and CTFA knew diverged from what they were representing to the FDA. Defendants, CTFA and others in the industry knew that there was no such thing as asbestos-free talc—only talc in which asbestos could not be detected using the prevailing, most economic analytical methodology, XRD, which at the time could not accurately identify chrysotile asbestos in talc, nor detect tremolite asbestos contamination levels below 2-5%.

160. Defendants and the CTFA also did not disclose to the FDA that the overwhelming majority of talcum powder manufacturers and sellers were not testing their products for asbestos, and even if they were testing, it was done so superficially: only four or so grams per 20 tons of pre-shipment and pre-processed talc, as an example. Defendants and CTFA also failed to inform the FDA that they were not testing off-the-shelf talc powder products, but rather old samples that were never from the end products themselves. They also failed to inform the FDA that they were limiting their testing of talc to only one type of asbestos fiber to the exclusion of all other fiber types that are commonly found in talc deposits. What is more, to the extent defendants found asbestos in their samples, these positive results were not reported to the FDA. Instead, on their behalf, CTFA sent letters to the FDA in March of 1976 fraudulently claiming that industry testing had shown all talcum powder products to be completely free of asbestos.

161. Beginning in 1975 and 1976, researchers at New York Air Resources Board, Mt. Sinai School of Medicine, and the FDA became increasingly concerned that CTFA, defendants and the cosmetic industries were slow to address the issue of asbestos in talc and talcum powders. Defendants had not issued any recalls, provided consumer warnings, informed the FDA of any effort to ensure that talcum powders on the market did not contain asbestos, or developed a reliable methodology or protocol for ensuring that talc and talcum powder did not contain asbestos.

162. Taking matters into their own hands, Mt. Sinai Hospital researchers published a follow-up article to Dr. Lewin's 1971 study that demonstrated that some of defendants' talcum powders contained over 20% asbestos. The researchers concluded that "[t]he presence in these products of asbestiform anthophyllite and tremolite, chrysotile, and quartz indicates the need for a regulatory standard for cosmetic talc...We also recommend that evaluation be made to determine the possible health hazards associated with the use of these products." The results of the Mount Sinai study were known to the defendants and published the same year by the New York Times and the Washington Post.

163. Defendants and CTFA responded to these developments by falsely claiming that the industry was doing "everything" it could to solve the problem; issuing press releases falsely claiming that chrysotile had never been found in talcum powders; and intentionally suppressing data that showed tremolite was commonly found in talc and talcum powder.

164. CTFA subsequently began in earnest to produce a voluntary protocol and methodology that would provide defendants cover from both lawsuits and regulation. Egregiously, as concerned media members, citizens and regulators began asking more questions about which other brands of talcum powder contained asbestos, defendants and CTFA falsely represented that talcum powders have never contained asbestos.

165. Defendants and third parties collectively met with and corresponded with CTFA, as well as collectively met with the FDA and other government agencies, to individually and collectively advocate for the use of “voluntary” XRD testing of miniscule portions of the tons of talc to be used in consumer products. Defendants’ “voluntary” method—that was developed collectively by defendants and CTFA and advocated to the FDA in lieu of regulations requiring asbestos labeling or warnings on talcum powder products—was inadequate because levels of asbestos contamination in talc commonly fell below the detection limit of the testing methods. Defendants and CTFA also knew that asbestos contamination was not uniformly distributed, such that the miniscule amounts tested would not reveal the true level of contamination in talc products, such as those to which SARAH J. PLANT was exposed.

166. In support of its voluntary XRD methodology, which was finally published in 1977, CTFA produced letters to the FDA written by its members, including defendants, identifying tests conducted showing talcum powder products did not contain asbestos. CTFA, defendants and other talc product producers, however, never informed the FDA of the hundreds of positive tests showing talc and talcum powders contained asbestos and other carcinogens.

167. CTFA “Method J4-1,” published on October 7, 1976, states that TEM-SAED “offers greater sensitivity, but is not presented since it is unsuitable for normal quality control applications.” The published method, rather, relies on XRD with “the level of detection of amphibole by this method [being] 0.5% and above.” CTFA met with and corresponded with defendants and third parties, to individually and collectively advocate to the FDA for the use of inadequate XRD testing on miniscule portions of the tons of talc obtained from the mining sources to be used in the consumer products, followed by fewer “periodic” tests by TEM. This voluntary method was developed by CTFA and defendants, and was advocated to the FDA by CTFA and defendants in lieu of regulations requiring labeling and warnings on talcum powder products, even

though CTFA and defendants knew that the J4-1 method would not reveal the true level of asbestos in the talc that reached consumers. In fact, the first “round robin” tests, which analyzed a “CTFA Tremolite-Spiked Talc,” resulted in 6 of 7 participating laboratories failing to detect the tremolite. In other words, 84% of the industry’s laboratories failed to detect asbestos in a sample known to contain tremolite asbestos while using the CTFA’s own J4-1 method. There is no evidence that CTFA or defendants ever shared this remarkable failure with the FDA or the public.

168. Minutes of CTFA’s Talc Subcommittee from February 24, 1975, stated “It was agreed, however, that chrysotile is never found in cosmetic talcs, based on numerous analyses by several investigators...” When referring to the challenge of chrysotile detection, an article entitled “Talc” in the January/March 1976 CTFA Cosmetic Journal, states that “The only known backup method for a positive identification in this event, is [TEM] with selected area diffraction.” However, “despite many efforts, the committee had been unable to find a sample of cosmetic talc containing naturally occurring asbestos...it was asked, ‘Why should we test for chrysotile if there isn’t any?’” CTFA’s Specification for Cosmetic Talc, revised on October 7, 1976, falsely represented that no fibrous asbestos was detected in cosmetic talc. Even after 1976, CTFA and defendants continued to obtain and/or receive results of testing performed internally and externally indicating the presence of asbestos and other carcinogens in the talc being used to manufacture cosmetic products. However, CTFA and defendants continued to represent that no asbestos was detected in cosmetic talc. These material representations adversely and directly impacted the FDA’s attempt to adequately test consumer talc for asbestos and regulate cosmetics. The most sensitive method of identifying or detecting asbestos in cosmetic talc, TEM-SAED, was not used because CTFA represented that its “ultra-sensitivity could be a problem” and that it was too expensive to use. Instead, its J4-1 method relied on XRD alone for detection of asbestos at greater

concentrations than 0.5%, a concentration that could allow more than a billion asbestos fibers per gram of talc to be passed off as “asbestos-free.”

169. Defendants and CTFA made and published such representations, claiming that their testing method was adequate, that they were ensuring that talcum powder products were safe, and that the talc reaching consumers was “safe,” despite having substantial knowledge and evidence to the contrary. Defendants intentionally and knowingly did so to avoid FDA regulations that may have required them to place warnings regarding the asbestos content of their products, and thereby inform the public, including plaintiff, that talc-containing products contained asbestos.

170. CTFA then published an article in 1979 stating it conducted over three thousand tests of talcum powders and none of them found chrysotile. The article and report failed to disclose whether the talcum powders tested contained tremolite, anthophyllite or any other form of asbestos. This publication of half-truths was conveyed to the FDA and the public with the purpose of preventing regulations of cosmetic products. Thereafter CTFA’s methodology became the standard by which nearly all talc was analyzed by the entire industry, including talc used in cosmetic and hygiene products today.

171. CTFA and defendants have represented to various news media outlets and the public at large that their products are “asbestos-free,” when, in fact, their products did test positive for asbestos and those that did not were merely the result of inadequate and imprecise testing methods. “No asbestos detected” does not mean the product does not contain asbestos, but due to defendants’ repeated conflation of the terms, the public has been led to erroneously believe talc products are safe. Furthermore, since defendants and CTFA did not have sufficient testing protocols in place to support the claims that talc products were safe or asbestos-free, such statements were recklessly made, as they had no reason to believe them.

172. Between 1970 and the 1990s, tests conducted by and on behalf of defendants and the talc industry continued to show that talc and talcum powder products contained asbestos. None of these positive tests have ever been produced or made known to any regulatory agency, and knowledge of their existence is only because of civil litigation.

173. Defendants and CTFA's failure to disclose these positive results and the inadequacies of their testing protocols continued through the 1980s, 1990s and 2000s, even when various government agencies raised concerns about the safety of talc, including the issue of asbestos content.

174. To this day, many talc-containing products presently on the market contain asbestos. Instead of publicizing this fact, defendants and CTFA continue to deny all the above to protect their pecuniary interests, to the severe detriment of the public, including plaintiff.

175. Since at least 1979, defendants have conducted a campaign to convince the public that their products are regulated by the FDA, that their tests are conducted pursuant to FDA regulations, and that talcum powder products are, therefore, safe. Nothing could be further from the truth: the FDA has never been assigned a budget by Congress to regulate cosmetics, including asbestos and other carcinogens in talcum powders. Defendants' concerns for the safety of their products have always been voluntary and under the auspices of CTFA, a private industry group, that in its 40 years has only banned the use of 11 ingredients in all cosmetics ever sold in the United States. Indeed, as of today, asbestos-containing talc in cosmetics has not been banned or otherwise regulated by CTFA or the FDA.

176. Defendants (and other entities in the talc industry and cosmetic industries, including the CTFA), individually and collectively, failed to report to the FDA tests performed both internally and by outside laboratories confirming the presence of asbestos in both their finished

products as well as talc shipments from Talc Supplier Defendants and other sources that were used to produce finished products.

177. Defendants, and even the outside laboratories, including McCrone Associates, sent letters to CTFA, to be and which were forwarded to the FDA, stating that results of testing of talc used by them after 1972 had not revealed the presence of amphibole or chrysotile asbestos, when in fact all of these entities had received or performed tests indicating the contrary when such false representations were made.

178. After 1976, defendants and CTFA continued to obtain and/or receive results of testing performed internally and externally indicating the presence of asbestos in talc.

179. Defendants failed to place any warning on their talc and talcum powder products or ever disclose the fact that these products contained carcinogens, including asbestos, at any point, up to and including the present, despite the clear hazard and direct information that their products did and continue to contain such carcinogens.

180. Defendants and CTFA, collectively and through explicit agreement and consciously parallel behavior, controlled industry standards regarding the testing, manufacture, sale, distribution and use of talcum powder products, and controlled the level of knowledge and information available to the public, including plaintiff, regarding the hazards of exposure to carcinogens, including asbestos, from talc and talc-containing products.

181. Defendants, through agreement and consciously parallel behavior, intentionally failed to warn potential users, including plaintiff, of the serious bodily harm and/or death which may result from the inhalation and/or ingestion of asbestos in their talc and talc-containing products.

182. Defendants and CTFA, through agreement and consciously parallel behavior, knowingly and intentionally released, published and disseminated invalid, inaccurate, outdated

and misleading scientific data, literature and test reports containing misinformation and false statements regarding the health risks associated with the use of talc and talcum powder products, including those to which SARAH J. PLANT was exposed.

183. Defendants and CTFA, while cognizant of the aforementioned data, deliberately chose to ignore the health and safety issues raised in said data and embarked upon a plan of deception intended to deprive the public at large, including plaintiff, of alarming medical and scientific findings, many of which remained in their exclusive possession and under their exclusive control.

184. Defendants and CTFA conspired and/or acted in concert with each other and/or with other entities through agreement and consciously parallel behavior:

- (a) to withhold from users of their products—and from persons who they knew and should have known would be exposed thereto—information regarding the health risks of inhaling and/or ingesting asbestos and other carcinogens contained in talc and talcum powder products;
- (b) to eliminate, suppress or prevent investigation into the health hazards of exposure to asbestos and other carcinogens in talc and talcum powder products;
- (c) to ensure that asbestos-containing talc and talcum powder products became widely used in commerce, irrespective of the potential and actual risk of harm to the users and consumers from the asbestos and other carcinogens therein; and
- (d) to falsely represent that talc and talcum powder products, including those of defendants, were safe and healthful for use by consumers.

185. Plaintiff reasonably and in good faith relied upon the false and fraudulent representations made by defendants and CTFA regarding the hazards of talc and talcum powder products that contained asbestos and other carcinogens, and she was, therefore, deprived of an opportunity to make informed decisions concerning use of, exposure to and contact with said products.

186. CTFA, as well as defendants and other entities in the talc industry and cosmetic industries, individually and collectively, failed to report to the FDA tests performed both internally and by outside laboratories confirming the presence of asbestos in defendants' and other CTFA members' finished products as well as talc shipments from talc suppliers and other sources that were used to produce finished products. Instead, CTFA sent letters to the FDA stating that results of testing of talc used by the industry after 1972 had not revealed the presence of amphiboles or chrysotile, when in fact all of these entities had received or performed tests indicating the contrary by 1976, when such intentionally false misrepresentations were made. CTFA and defendants made and published such representations claiming that their collective testing method was adequate, they were ensuring that talcum powder products were safe, and that their testing of talc reaching consumers was "safe," despite knowing the contrary.

187. The FDA, and ultimately plaintiff, directly and/or indirectly relied upon CTFA's and defendants' false representations regarding the safety of cosmetic talc. In fact, an FDA letter dated January 11, 1979, states: "In cooperation with scientists from industry, our scientists have been making progress in the development of such regulatory methods." The continuing lack of FDA awareness regarding CTFA's and defendants' misrepresentations was obvious seven years later. In a response to a citizen petition to require an asbestos warning label on cosmetic talc, on July 11, 1986, the FDA states that an "analytical methodology was sufficiently developed" to ensure that "such talc [is] free of fibrous amphibole..." CTFA's J4-1 method has continued for the past four decades to be the cosmetic talc industry's method for "ensuring" "asbestos-free" talc. The use of TEM, recognized by the CTFA as offering "greater sensitivity" for asbestos, continued to increase over the following decades as its advantages were applied to more matrices. In 1990, Kremer and Millette published a TEM method for analysis of asbestos in talc with a theoretical detection limit of about 0.00005%. Despite such improvements in analytical techniques, the

cosmetic talc industry, including defendants, continues, four decades later, to use and promote its antiquated and wholly inadequate J4-1 method.

188. CTFA and defendants, collectively and through explicit agreement and consciously parallel behavior, controlled industry standards regarding the testing, manufacture, sale, marketing, distribution and use of asbestos-containing talcum powder products, and controlled the level of knowledge and information available to the public regarding the hazards of exposure to asbestos and other carcinogens from talc and talc-containing products.

189. CTFA and defendants, through agreement and consciously parallel behavior, intentionally failed to warn potential users, including plaintiff and their family members, of the serious bodily harm and/or death which may result from the inhalation and/or ingestion of asbestos from their talc and talc-containing products.

190. CTFA and defendants, through agreement and consciously parallel behavior, knowingly and intentionally released, published and disseminated invalid, inaccurate, outdated and misleading scientific data, literature and test reports containing misinformation and false statements regarding the health risks associated with the use of talc and talcum powder, and specifically talc and talcum powder used in the production of products to which SARAH J. PLANT was exposed.

191. CTFA and defendants, through agreement and consciously parallel behavior, suppressed, altered, changed, destroyed and/or revised reports, data, tests, studies and other documents regarding the potential presence of asbestos and other carcinogens in talc and talc-containing products, including defendants' products to which SARAH J. PLANT was exposed.

192. As recently as 2016, Defendants made material misrepresentations to the FDA regarding asbestos in its talcum powder products.

193. For additional details regarding and supporting plaintiff's claim, see Bird T., et al., "A Review of the Talc Industry's Influence on Federal Regulation and Scientific Standards for Asbestos In Talc," New Solut., 2021 Aug; 31(2): 152-169.

194. Defendants, both acting individually and in concert with others, including the CTFA, violated the common law duty of care owed to plaintiff or otherwise engaged in intentionally culpable activity that caused plaintiff to suffer severe injuries and damages.

195. Revlon has known of the risk for asbestos in talc since at least the 1960s.

196. Revlon purchased hundreds of tons of Italian talc throughout the 1970s, 1980s, and 1990s, despite receiving test results in the early 1970s that its products containing said Italian talc tested positive for asbestos.

197. Revlon had access to information regarding the natural occurrence of asbestos in talc mines during the 1960s and access to reports finding that 22 cosmetic talcum products purchased off the shelf had asbestos fiber contents ranging from 8 to 30% by count of the total talcum particulates, with an average of 19%.

198. Revlon knew that in the early 1970s testing at New York University showed asbestos in its talc-containing products, such as Touch and Glow Face Powder, Revlon Intimate Perfumed Bath Powder, and Jean Naté Bath Powder.

199. Revlon did not itself test any of its talcum powder products to determine whether they contained asbestos, nor did it place a warning on any of its talcum powder products. Revlon chose not to conduct any independent testing of the talc used to make its talc-containing products. Instead, in an effort to further conceal the asbestos content of its products, Revlon purported to shift this responsibility to its talc suppliers, who Revlon directed to utilize intentionally-inadequate, intentionally-dishonest testing methods and protocols and provided only sporadic

“certificates of analysis” claiming, falsely, that the talc did not contain asbestos, and Revlon knew that said “certificates of analysis” were erroneous and that, in fact, the talc contained asbestos.

200. What is more, Revlon did not start requiring the aforementioned “certificates of analysis” for talc until the early 1980s. Revlon dictated the limited information it wanted from its suppliers for these certificates and chose not to ask for the geographic location of the talc source mine even though mines in certain areas were known by Revlon to have asbestos.

201. Revlon also elected not to ask its talc suppliers about the sensitivity of the testing methods they used and asked only the dishonest statement that the talc was “asbestos free,” a phrase that Revlon used as a euphemism for allowing up to 0.49% asbestos.

202. Revlon has been a member of the CTFA since the 1970s. The FDA proposed a detection limit of 0.1%, while the Committee proposed a detection limit of 0.5%. In 1977, a Revlon representative supported and voiced no objection to CTFA’s proposal to oppose all testing of cosmetic talc. In 1978, Revlon expressed concern about contamination of asbestos in talc and requested information regarding the epidemiology of cosmetic talc.

203. Revlon’s directive for certificates of analysis for its talc required the CTFA’s J4-1 testing method, despite Revlon knowing that the method could not detect the presence of asbestos less than 0.5% and not designed detect chrysotile (asbestos) at all. Nevertheless, Revlon continued to claim that its talc was “asbestos free,” although it knew that asbestos was present in the talc below the 0.5% detection limit.

204. Revlon represented to the consumers, including plaintiff, that its talc-containing products were safe and healthful to use despite knowing that they were contaminated with asbestos. When making these statements, Revlon intended to deceive the public and consumers, including, specifically, the plaintiff herein. Plaintiff relied on Revlon’s representations that its talc-containing

products were safe and healthful. As a result, plaintiff used Revlon's talc-containing products which resulted in exposure to asbestos.

205. As a direct and proximate consequence of the foregoing acts and omissions, SARAH J. PLANT (i) relied on defendants' false assurances that their talc-containing products were free from asbestos and safe, (ii) used or was otherwise exposed to defendants' talc-containing products; (iii) and inhaled and/or ingested asbestos resulting from the ordinary and foreseeable use thereof.

206. The actions and omissions of defendants, independently and collectively, constitute a pattern or practice of intentionally wrongful conduct and/or malice resulting in injuries to plaintiff as described in this complaint.

207. As a direct and proximate consequence of the foregoing acts and omissions by the defendants, SARAH J. PLANT used or was otherwise exposed to defendants' products and inhaled and/or ingested asbestos resulting from the ordinary and foreseeable use thereof

FOR A SEVENTH CAUSE OF ACTION
(Loss of Consortium)

For a Seventh Distinct Cause of Action for Loss of Consortium, Plaintiff Parker Plant Complains of Defendants, and Alleges as Follows:

208. Plaintiff incorporates by reference, the preceding paragraphs, where relevant.

209. Plaintiffs Sarah J. Plant and Parker Plant were married in 2001 and at all times relevant to their action were husband and wife.

210. Prior to his injuries as alleged, Plaintiff Sarah J. Plant was able and did perform her spousal duties. As a proximate result thereof, subsequent to the injuries, Plaintiff Sarah J. Plant has been unable to perform her spousal duties and the work and service usually performed in the care, maintenance and management of the family home. As a proximate result thereof, Plaintiff Parker Plant was deprived of the consortium of his spouse, including the performance of duties,

all to Plaintiffs' damages, in an amount presently unknown to Plaintiffs but which will be proven at time of trial.

211. As a direct and proximate result of the acts of Defendants and/or their "alternate entities" and the severe injuries caused to Plaintiff Sarah J. Plant as set forth herein, Plaintiff's spouse and co-Plaintiff Parker Plant suffered loss of consortium, including but not by way of limitation, loss of services, marital relations, society, comfort, companionship, love and affection of his spouse, and has suffered severe mental and emotional distress and general nervousness. Plaintiffs pray judgment against Defendants, their "alternate entities" and each of them, as hereinafter set forth.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs pray judgment, joint and several, against Defendants and/or their "alternate entities" in an amount to be proved at trial, as follows:

1. For Plaintiffs' actual damages according to proof, including pain and suffering, mental distress, as well as medical, surgical and hospital bills;
2. For loss of income or earnings according to proof;
3. For loss of care, comfort and society;
4. For punitive damages according to proof;
5. For Plaintiffs' cost of suit herein;
6. For damages for breach of implied warranty according to proof;
7. For damages for fraudulent misrepresentation according to proof; and
8. For such other and further relief as the Court may deem just and proper, including costs and prejudgment interest as provided by South Carolina law.

A JURY IS RESPECTFULLY DEMANDED TO TRY THESE ISSUES.

Respectfully submitted,

s/Theile B. McVey

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ATTORNEYS FOR PLAINTIFFS

April 11, 2022

Columbia, South Carolina

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF RICHLAND	)	FOR THE FIFTH JUDICIAL CIRCUIT
SARAH J. PLANT and PARKER PLANT,	)	
	)	Civil Action No. 2022CP4001265
Plaintiffs,	)	
	)	DEFENDANT IMI FABI (DIANA)
v.	)	LLC'S ANSWER TO PLAINTIFFS'
	)	FIRST AMENDED COMPLAINT AND
AVON PRODUCTS, INC., et al.,	)	AFFIRMATIVE DEFENSES
	)	(JURY TRIAL DEMANDED)
Defendants.	)	
	)	

Defendant, IMI Fabi (Diana) LLC answering Plaintiffs' First Amended Complaint ("Complaint") and any and all Cross-Claims asserted previously or in the future by any Co-Defendants or Third-Party Defendants, whether having appeared in the case at this time or not, denies all allegations not hereinafter specifically admitted and, as to the correspondingly numbered paragraphs of the Complaint, states as follows:

AS TO GENERAL ALLEGATIONS

1. Defendant denies all allegations of this Paragraph directed against it and is without sufficient information to admit or deny the remaining allegations contained therein and, therefore, denies the same.

2. This Paragraph states legal conclusions which Defendant is required to neither admit nor deny. To the extent a response is deemed necessary, Defendant denies all allegations set forth in this Paragraph, including all subparts, directed against it and is without sufficient information to admit or deny the remaining allegations contained therein and, therefore, denies the same. Defendant affirmatively alleges that the allegations set forth in the Complaint are insufficient to establish a basis for personal jurisdiction.

3. This Paragraph states legal conclusions which Defendant is required to neither admit nor deny. To the extent a response is deemed necessary, Defendant denies all allegations set forth in this Paragraph directed against it and is without sufficient information to admit or deny the remaining allegations contained therein and, therefore, denies the same. Defendant affirmatively alleges that the allegations set forth in the Complaint are insufficient to establish a basis for personal jurisdiction.

4. This Paragraph states legal conclusions which Defendant is required to neither admit nor deny. To the extent a response is deemed necessary, Defendant denies all allegations set forth in this Paragraph, including all subparts, directed against it and is without sufficient information to admit or deny the remaining allegations contained therein and, therefore, denies the same. Defendant affirmatively alleges that the allegations set forth in the Complaint are insufficient to establish a basis for personal jurisdiction.

5. This Paragraph states legal conclusions which Defendant is required to neither admit nor deny. To the extent a response is deemed necessary, Defendant denies all allegations set forth in this Paragraph directed against it and is without sufficient information to admit or deny the remaining allegations contained therein and, therefore, denies the same.

6. This Paragraph states legal conclusions which Defendant is required to neither admit nor deny. To the extent a response is deemed necessary, Defendant denies all allegations set forth in this Paragraph directed against it and is without sufficient information to admit or deny the remaining allegations contained therein and, therefore, denies the same.

7. This Paragraph states legal conclusions which Defendant is required to neither admit nor deny. To the extent a response is deemed necessary, Defendant denies all allegations set

forth in this Paragraph directed against it and is without sufficient information to admit or deny the remaining allegations contained therein and, therefore, denies the same.

8. This Paragraph states legal conclusions which Defendant is required to neither admit nor deny. To the extent a response is deemed necessary, Defendant denies all allegations set forth in this Paragraph, including all subparts, directed against it and is without sufficient information to admit or deny the remaining allegations contained therein and, therefore, denies the same. Defendant affirmatively alleges that the allegations set forth in the Complaint are insufficient to establish a basis for personal jurisdiction.

9. This Paragraph states legal conclusions which Defendant is required to neither admit nor deny. To the extent a response is deemed necessary, Defendant denies all allegations set forth in this Paragraph, including all subparts, directed against it and is without sufficient information to admit or deny the remaining allegations contained therein and, therefore, denies the same. Defendant affirmatively alleges that the allegations set forth in the Complaint are insufficient to establish a basis for personal jurisdiction.

10. This Paragraph states legal conclusions which Defendant is required to neither admit nor deny. To the extent a response is deemed necessary, Defendant denies all allegations set forth in this Paragraph directed against it and is without sufficient information to admit or deny the remaining allegations contained therein and, therefore, denies the same.

11. This Paragraph states legal conclusions which Defendant is required to neither admit nor deny. To the extent a response is deemed necessary, Defendant denies all allegations set forth in this Paragraph directed against it and is without sufficient information to admit or deny the remaining allegations contained therein and, therefore, denies the same.

12. This Paragraph states legal conclusions which Defendant is required to neither admit nor deny. To the extent a response is deemed necessary, Defendant denies all allegations set forth in this Paragraph directed against it and is without sufficient information to admit or deny the remaining allegations contained therein and, therefore, denies the same.

13. This Paragraph states legal conclusions which Defendant is required to neither admit nor deny. To the extent a response is deemed necessary, Defendant denies all allegations set forth in this Paragraph directed against it and is without sufficient information to admit or deny the remaining allegations contained therein and, therefore, denies the same.

14. This Paragraph states legal conclusions which Defendant is required to neither admit nor deny. To the extent a response is deemed necessary, Defendant denies all allegations set forth in this Paragraph directed against it and is without sufficient information to admit or deny the remaining allegations contained therein and, therefore, denies the same. Defendant further states that it is not responsible for Plaintiff's damages, if any.

15. Defendant denies all allegations of this Paragraph directed against it and is without sufficient information to admit or deny the remaining allegations contained therein and, therefore, denies the same.

16. This Paragraph states legal conclusions which Defendant is required to neither admit nor deny. To the extent a response is deemed necessary, Defendant denies all allegations set forth in this Paragraph directed against it and is without sufficient information to admit or deny the remaining allegations contained therein and, therefore, denies the same. Defendant further states that it is not responsible for Plaintiff's damages, if any.

17. This Paragraph states legal conclusions which Defendant is required to neither admit nor deny. To the extent a response is deemed necessary, Defendant denies all allegations set

forth in this Paragraph, including all subparts, directed against it and is without sufficient information to admit or deny the remaining allegations contained therein and, therefore, denies the same. Defendant affirmatively alleges that the allegations set forth in the Complaint are insufficient to establish a basis for personal jurisdiction.

18. This Paragraph states legal conclusions which Defendant is required to neither admit nor deny. To the extent a response is deemed necessary, Defendant denies all allegations set forth in this Paragraph directed against it and is without sufficient information to admit or deny the remaining allegations contained therein and, therefore, denies the same. Defendant further states that it is not responsible for Plaintiff's damages, if any.

19. This Paragraph states legal conclusions which Defendant is required to neither admit nor deny. To the extent a response is deemed necessary, Defendant denies all allegations set forth in this Paragraph directed against it and is without sufficient information to admit or deny the remaining allegations contained therein and, therefore, denies the same. Defendant further states that it is not responsible for Plaintiff's damages, if any.

20. This Paragraph states legal conclusions which Defendant is required to neither admit nor deny. To the extent a response is deemed necessary, Defendant denies all allegations set forth in this Paragraph directed against it and is without sufficient information to admit or deny the remaining allegations contained therein and, therefore, denies the same. Defendant further states that it is not responsible for Plaintiff's damages, if any.

21. This Paragraph states legal conclusions which Defendant is required to neither admit nor deny. To the extent a response is deemed necessary, Defendant denies all allegations set forth in this Paragraph directed against it and is without sufficient information to admit or deny

the remaining allegations contained therein and, therefore, denies the same. Defendant further states that it is not responsible for Plaintiff's damages, if any.

22. This Paragraph states legal conclusions which Defendant is required to neither admit nor deny. To the extent a response is deemed necessary, Defendant denies all allegations set forth in this Paragraph directed against it and is without sufficient information to admit or deny the remaining allegations contained therein and, therefore, denies the same. Defendant further states that it is not responsible for Plaintiff's damages, if any.

23. This Paragraph states legal conclusions which Defendant is required to neither admit nor deny. To the extent a response is deemed necessary, Defendant denies all allegations set forth in this Paragraph directed against it and is without sufficient information to admit or deny the remaining allegations contained therein and, therefore, denies the same. Defendant further states that it is not responsible for Plaintiff's damages, if any.

AS TO THE PARTIES

- 24. Defendant denies all allegations of this Paragraph for lack of sufficient information.
- 25. Defendant denies all allegations of this Paragraph for lack of sufficient information.
- 26. Defendant denies all allegations of this Paragraph for lack of sufficient information.
- 27. Defendant denies all allegations of this Paragraph for lack of sufficient information.
- 28. Defendant denies all allegations of this Paragraph for lack of sufficient information.
- 29. Defendant denies all allegations of this Paragraph for lack of sufficient information.
- 30. Defendant denies all allegations of this Paragraph for lack of sufficient information.
- 31. Defendant denies all allegations of this Paragraph for lack of sufficient information.
- 32. Defendant denies all allegations of this Paragraph for lack of sufficient information.
- 33. Defendant denies all allegations of this Paragraph for lack of sufficient information.

34. Defendant denies all allegations of this Paragraph for lack of sufficient information.

35. Defendant denies all allegations of this Paragraph for lack of sufficient information.

36. Defendant denies all allegations of this Paragraph for lack of sufficient information.

37. Defendant denies all allegations of this Paragraph for lack of sufficient information.

38. Defendant denies all allegations of this Paragraph for lack of sufficient information.

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40. Defendant denies all allegations of this Paragraph for lack of sufficient information.

41. Defendant denies all allegations of this Paragraph for lack of sufficient information.

42. Defendant denies all allegations of this Paragraph for lack of sufficient information.

43. Defendant denies all allegations of this Paragraph for lack of sufficient information.

44. Defendant denies all allegations of this Paragraph for lack of sufficient information.

45. Defendant denies all allegations of this Paragraph for lack of sufficient information.

46. Defendant denies all allegations of this Paragraph for lack of sufficient information.

47. Defendant denies all allegations of this Paragraph for lack of sufficient information.

48. Defendant denies all allegations of this Paragraph for lack of sufficient information.

49. Defendant denies all allegations of this Paragraph for lack of sufficient information.

50. Defendant denies all allegations of this Paragraph for lack of sufficient information.

51. Defendant admits it is incorporated in and has its principal place of business in a state other than South Carolina. Defendant denies the remaining allegations of this Paragraph.

52. Defendant denies all allegations of this Paragraph for lack of sufficient information.

53. Defendant denies all allegations of this Paragraph for lack of sufficient information.

54. Defendant denies all allegations of this Paragraph for lack of sufficient information.

55. Defendant denies all allegations of this Paragraph for lack of sufficient information.

56. Defendant denies all allegations of this Paragraph for lack of sufficient information.
57. Defendant denies all allegations of this Paragraph for lack of sufficient information.
58. Defendant denies all allegations of this Paragraph for lack of sufficient information.
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71. Defendant denies all allegations of this Paragraph for lack of sufficient information.
72. Defendant denies all allegations of this Paragraph for lack of sufficient information.
73. Defendant denies all allegations of this Paragraph for lack of sufficient information.
74. Defendant denies all allegations of this Paragraph for lack of sufficient information.
75. Defendant denies all allegations of this Paragraph for lack of sufficient information.
76. Defendant denies all allegations of this Paragraph for lack of sufficient information.

AS TO BACKGROUND FACTS

77. This Paragraph is a statement as to Plaintiff's alleged damages. Defendant denies that it is liable for Plaintiff's damages, if any. Defendant denies all allegations of this Paragraph directed

against it and is without sufficient information to admit or deny the remaining allegations contained therein and, therefore, denies the same.

78. Defendant denies all allegations of this Paragraph for lack of sufficient information.

79. Defendant denies all allegations of this Paragraph for lack of sufficient information.

80. This Paragraph states legal conclusions which Defendant is required to neither admit nor deny. To the extent a response is deemed necessary, Defendant denies all allegations of this Paragraph directed against it and is without sufficient information to admit or deny the remaining allegations contained therein and, therefore, denies the same.

81. Defendant denies all allegations of this Paragraph directed against it and is without sufficient information to admit or deny the remaining allegations contained therein and, therefore, denies the same.

82. Defendant denies all allegations of this Paragraph directed against it and is without sufficient information to admit or deny the remaining allegations contained therein and, therefore, denies the same.

83. Defendant denies all allegations of this Paragraph directed against it and is without sufficient information to admit or deny the remaining allegations contained therein and, therefore, denies the same.

84. Defendant denies all allegations of this Paragraph directed against it and is without sufficient information to admit or deny the remaining allegations contained therein and, therefore, denies the same.

85. Defendant denies all allegations of this Paragraph directed against it and is without sufficient information to admit or deny the remaining allegations contained therein and, therefore, denies the same.

86. Defendant denies all allegations of this Paragraph directed against it and is without sufficient information to admit or deny the remaining allegations contained therein and, therefore, denies the same.

87. This Paragraph states legal conclusions which Defendant is required to neither admit nor deny. To the extent a response is deemed necessary, Defendant denies all allegations of this Paragraph directed against it and is without sufficient information to admit or deny the remaining allegations contained therein and, therefore, denies the same. Defendant further states that it is not responsible for Plaintiff's damages, if any.

88. This Paragraph states legal conclusions which Defendant is required to neither admit nor deny. To the extent a response is deemed necessary, Defendant denies all allegations of this Paragraph directed against it and is without sufficient information to admit or deny the remaining allegations contained therein and, therefore, denies the same. Defendant further states that it is not responsible for Plaintiff's damages, if any.

89. This Paragraph states legal conclusions which Defendant is required to neither admit nor deny. To the extent a response is deemed necessary, Defendant denies all allegations of this Paragraph directed against it and is without sufficient information to admit or deny the remaining allegations contained therein and, therefore, denies the same. Defendant further states that it is not responsible for Plaintiff's damages, if any.

AS TO THE FIRST CAUSE OF ACTION
(Product Liability: Negligence)

90. Defendant repeats, realleges, and incorporates herein by reference its responses to Paragraphs 1 through 89.

91. This Paragraph states legal conclusions which Defendant is required to neither admit nor deny. To the extent a response is deemed necessary, Defendant denies all allegations of this

Paragraph directed against it and is without sufficient information to admit or deny the remaining allegations contained therein and, therefore, denies the same.

92. This Paragraph states legal conclusions which Defendant is required to neither admit nor deny. To the extent a response is deemed necessary, Defendant denies all allegations of this Paragraph directed against it and is without sufficient information to admit or deny the remaining allegations contained therein and, therefore, denies the same.

93. This Paragraph states legal conclusions which Defendant is required to neither admit nor deny. To the extent a response is deemed necessary, Defendant denies all allegations of this Paragraph directed against it and is without sufficient information to admit or deny the remaining allegations contained therein and, therefore, denies the same.

94. This Paragraph states legal conclusions which Defendant is required to neither admit nor deny. To the extent a response is deemed necessary, Defendant denies all allegations of this Paragraph directed against it and is without sufficient information to admit or deny the remaining allegations contained therein and, therefore, denies the same.

95. This Paragraph states legal conclusions which Defendant is required to neither admit nor deny. To the extent a response is deemed necessary, Defendant denies all allegations of this Paragraph directed against it and is without sufficient information to admit or deny the remaining allegations contained therein and, therefore, denies the same.

96. This Paragraph states legal conclusions which Defendant is required to neither admit nor deny. To the extent a response is deemed necessary, Defendant denies all allegations of this Paragraph directed against it and is without sufficient information to admit or deny the remaining allegations contained therein and, therefore, denies the same.

97. This Paragraph states legal conclusions which Defendant is required to neither admit nor deny. To the extent a response is deemed necessary, Defendant denies all allegations of this Paragraph directed against it and is without sufficient information to admit or deny the remaining allegations contained therein and, therefore, denies the same.

98. This Paragraph states legal conclusions which Defendant is required to neither admit nor deny. To the extent a response is deemed necessary, Defendant denies all allegations of this Paragraph directed against it and is without sufficient information to admit or deny the remaining allegations contained therein and, therefore, denies the same. Defendant further states that it is not responsible for Plaintiff's damages, if any.

99. This Paragraph states legal conclusions which Defendant is required to neither admit nor deny. To the extent a response is deemed necessary, Defendant denies all allegations of this Paragraph directed against it and is without sufficient information to admit or deny the remaining allegations contained therein and, therefore, denies the same.

100. This Paragraph states legal conclusions which Defendant is required to neither admit nor deny. To the extent a response is deemed necessary, Defendant denies all allegations of this Paragraph directed against it and is without sufficient information to admit or deny the remaining allegations contained therein and, therefore, denies the same. Defendant further states that it is not responsible for Plaintiff's damages, if any.

101. This Paragraph states legal conclusions which Defendant is required to neither admit nor deny. To the extent a response is deemed necessary, Defendant denies all allegations of this Paragraph directed against it and is without sufficient information to admit or deny the remaining allegations contained therein and, therefore, denies the same.

102. This Paragraph states legal conclusions which Defendant is required to neither admit nor deny. To the extent a response is deemed necessary, Defendant denies all allegations of this Paragraph directed against it and is without sufficient information to admit or deny the remaining allegations contained therein and, therefore, denies the same.

103. This Paragraph states legal conclusions which Defendant is required to neither admit nor deny. To the extent a response is deemed necessary, Defendant denies all allegations of this Paragraph directed against it and is without sufficient information to admit or deny the remaining allegations contained therein and, therefore, denies the same.

104. This Paragraph states legal conclusions which Defendant is required to neither admit nor deny. To the extent a response is deemed necessary, Defendant denies all allegations of this Paragraph directed against it and is without sufficient information to admit or deny the remaining allegations contained therein and, therefore, denies the same.

105. This Paragraph states legal conclusions which Defendant is required to neither admit nor deny. To the extent a response is deemed necessary, Defendant denies all allegations of this Paragraph directed against it and is without sufficient information to admit or deny the remaining allegations contained therein and, therefore, denies the same. Defendant denies that it is liable for Plaintiff's damages, if any, and further denies that Plaintiffs are entitled to punitive damages.

AS TO THE SECOND CAUSE OF ACTION
(Product Liability: Strict Liability – S.C. Code Ann. § 15-73-10, et. seq.)

106. Defendant repeats, realleges, and incorporates herein by reference its responses to Paragraphs 1 through 105.

107. This Paragraph states legal conclusions which Defendant is required to neither admit nor deny. To the extent a response is deemed necessary, Defendant denies all allegations of

this Paragraph directed against it and is without sufficient information to admit or deny the remaining allegations contained therein and, therefore, denies the same.

108. This Paragraph states legal conclusions which Defendant is required to neither admit nor deny. To the extent a response is deemed necessary, Defendant denies all allegations of this Paragraph directed against it and is without sufficient information to admit or deny the remaining allegations contained therein and, therefore, denies the same. Defendant further states that it is not responsible for Plaintiff's damages, if any.

109. This Paragraph states legal conclusions which Defendant is required to neither admit nor deny. To the extent a response is deemed necessary, Defendant denies all allegations of this Paragraph directed against it and is without sufficient information to admit or deny the remaining allegations contained therein and, therefore, denies the same. Defendant denies any duty, or failure thereof, to warn Plaintiff and/or others.

110. This Paragraph states legal conclusions which Defendant is required to neither admit nor deny. To the extent a response is deemed necessary, Defendant denies all allegations of this Paragraph directed against it and is without sufficient information to admit or deny the remaining allegations contained therein and, therefore, denies the same.

111. This Paragraph states legal conclusions which Defendant is required to neither admit nor deny. To the extent a response is deemed necessary, Defendant denies all allegations of this Paragraph directed against it and is without sufficient information to admit or deny the remaining allegations contained therein and, therefore, denies the same.

112. This Paragraph states legal conclusions which Defendant is required to neither admit nor deny. To the extent a response is deemed necessary, Defendant denies all allegations of

this Paragraph directed against it and is without sufficient information to admit or deny the remaining allegations contained therein and, therefore, denies the same.

113. This Paragraph states legal conclusions which Defendant is required to neither admit nor deny. To the extent a response is deemed necessary, Defendant denies all allegations of this Paragraph directed against it and is without sufficient information to admit or deny the remaining allegations contained therein and, therefore, denies the same. Defendant denies any duty, or failure thereof, to warn Plaintiff, Plaintiff and/or others.

114. This Paragraph states legal conclusions which Defendant is required to neither admit nor deny. To the extent a response is deemed necessary, Defendant denies all allegations of this Paragraph directed against it and is without sufficient information to admit or deny the remaining allegations contained therein and, therefore, denies the same.

115. This Paragraph states legal conclusions which Defendant is required to neither admit nor deny. To the extent a response is deemed necessary, Defendant denies all allegations of this Paragraph directed against it and is without sufficient information to admit or deny the remaining allegations contained therein and, therefore, denies the same. Defendant denies any duty, or failure thereof, to warn Plaintiff and/or others.

116. This Paragraph states legal conclusions which Defendant is required to neither admit nor deny. To the extent a response is deemed necessary, Defendant denies all allegations of this Paragraph directed against it and is without sufficient information to admit or deny the remaining allegations contained therein and, therefore, denies the same. Defendant further states that it is not responsible for Plaintiff's damages, if any.

117. This Paragraph states legal conclusions which Defendant is required to neither admit nor deny. To the extent a response is deemed necessary, Defendant denies all allegations of

this Paragraph directed against it and is without sufficient information to admit or deny the remaining allegations contained therein and, therefore, denies the same. Defendant denies any duty, or failure thereof, to warn Plaintiff and/or others.

118. This Paragraph states legal conclusions which Defendant is required to neither admit nor deny. To the extent a response is deemed necessary, Defendant denies all allegations of this Paragraph directed against it and is without sufficient information to admit or deny the remaining allegations contained therein and, therefore, denies the same.

119. This Paragraph states legal conclusions which Defendant is required to neither admit nor deny. To the extent a response is deemed necessary, Defendant denies all allegations of this Paragraph directed against it and is without sufficient information to admit or deny the remaining allegations contained therein and, therefore, denies the same.

120. This Paragraph states legal conclusions which Defendant is required to neither admit nor deny. To the extent a response is deemed necessary, Defendant denies all allegations of this Paragraph directed against it and is without sufficient information to admit or deny the remaining allegations contained therein and, therefore, denies the same.

121. This Paragraph states legal conclusions which Defendant is required to neither admit nor deny. To the extent a response is deemed necessary, Defendant denies all allegations of this Paragraph directed against it and is without sufficient information to admit or deny the remaining allegations contained therein and, therefore, denies the same. Defendant denies that it is liable for Plaintiff's damages, if any, and further denies that Plaintiffs are entitled to punitive damages.

122. This Paragraph states legal conclusions which Defendant is required to neither admit nor deny. To the extent a response is deemed necessary, Defendant denies all allegations of

this Paragraph directed against it and is without sufficient information to admit or deny the remaining allegations contained therein and, therefore, denies the same.

AS TO THE THIRD CAUSE OF ACTION
(Negligence Per Se)

123. Defendant repeats, realleges, and incorporates herein by reference its responses to Paragraphs 1 through 122.

124. This Paragraph states legal conclusions which Defendant is required to neither admit nor deny. To the extent a response is deemed necessary, Defendant denies all allegations of this Paragraph directed against it and is without sufficient information to admit or deny the remaining allegations contained therein and, therefore, denies the same.

125. This Paragraph states legal conclusions which Defendant is required to neither admit nor deny. To the extent a response is deemed necessary, Defendant denies all allegations of this Paragraph directed against it and is without sufficient information to admit or deny the remaining allegations contained therein and, therefore, denies the same.

126. This Paragraph states legal conclusions which Defendant is required to neither admit nor deny. To the extent a response is deemed necessary, Defendant denies all allegations of this Paragraph directed against it and is without sufficient information to admit or deny the remaining allegations contained therein and, therefore, denies the same.

AS TO THE FOURTH CAUSE OF ACTION
(Product Liability: Breach of Implied Warranties – S.C. Code Ann. § 36-2-314)

127. Defendant repeats, realleges, and incorporates herein by reference its responses to Paragraphs 1 through 126.

128. This Paragraph states legal conclusions which Defendant is required to neither admit nor deny. To the extent a response is deemed necessary, Defendant denies all allegations of

this Paragraph, including all subparts, directed against it and is without sufficient information to admit or deny the remaining allegations contained therein and, therefore, denies the same.

129. This Paragraph states legal conclusions which Defendant is required to neither admit nor deny. To the extent a response is deemed necessary, Defendant denies all allegations of this Paragraph, including all subparts, directed against it and is without sufficient information to admit or deny the remaining allegations contained therein and, therefore, denies the same.

130. This Paragraph states legal conclusions which Defendant is required to neither admit nor deny. To the extent a response is deemed necessary, Defendant denies all allegations of this Paragraph, including all subparts, directed against it and is without sufficient information to admit or deny the remaining allegations contained therein and, therefore, denies the same. Defendant further states that it is not responsible for Plaintiff's damages, if any.

AS TO THE FIFTH CAUSE OF ACTION
(Fraudulent Misrepresentation)

131. Defendant repeats, realleges, and incorporates herein by reference its responses to Paragraphs 1 through 130.

132. This Paragraph states legal conclusions which Defendant is required to neither admit nor deny. To the extent a response is deemed necessary, Defendant denies all allegations of this Paragraph directed against it and is without sufficient information to admit or deny the remaining allegations contained therein and, therefore, denies the same.

133. This Paragraph states legal conclusions which Defendant is required to neither admit nor deny. To the extent a response is deemed necessary, Defendant denies all allegations of this Paragraph directed against it and is without sufficient information to admit or deny the remaining allegations contained therein and, therefore, denies the same.

134. This Paragraph states legal conclusions which Defendant is required to neither admit nor deny. To the extent a response is deemed necessary, Defendant denies all allegations of this Paragraph directed against it and is without sufficient information to admit or deny the remaining allegations contained therein and, therefore, denies the same. Defendant further states that it is not responsible for Plaintiff's damages, if any.

AS TO THE SIXTH CAUSE OF ACTION
(Fraudulent Misrepresentation and Conspiracy/Concert Action)

135. Defendant repeats, realleges, and incorporates herein by reference its responses to Paragraphs 1 through 134.

136. This Paragraph states legal conclusions which Defendant is required to neither admit nor deny. To the extent a response is deemed necessary, Defendant denies all allegations of this Paragraph directed against it and is without sufficient information to admit or deny the remaining allegations contained therein and, therefore, denies the same.

137. This Paragraph states legal conclusions which Defendant is required to neither admit nor deny. To the extent a response is deemed necessary, Defendant denies all allegations of this Paragraph directed against it and is without sufficient information to admit or deny the remaining allegations contained therein and, therefore, denies the same.

138. This Paragraph states legal conclusions which Defendant is required to neither admit nor deny. To the extent a response is deemed necessary, Defendant denies all allegations of this Paragraph directed against it and is without sufficient information to admit or deny the remaining allegations contained therein and, therefore, denies the same.

139. This Paragraph states legal conclusions which Defendant is required to neither admit nor deny. To the extent a response is deemed necessary, Defendant denies all allegations of

this Paragraph directed against it and is without sufficient information to admit or deny the remaining allegations contained therein and, therefore, denies the same.

140. This Paragraph states legal conclusions which Defendant is required to neither admit nor deny. To the extent a response is deemed necessary, Defendant denies all allegations of this Paragraph directed against it and is without sufficient information to admit or deny the remaining allegations contained therein and, therefore, denies the same.

141. This Paragraph states legal conclusions which Defendant is required to neither admit nor deny. To the extent a response is deemed necessary, Defendant denies all allegations of this Paragraph directed against it and is without sufficient information to admit or deny the remaining allegations contained therein and, therefore, denies the same.

142. This Paragraph states legal conclusions which Defendant is required to neither admit nor deny. To the extent a response is deemed necessary, Defendant denies all allegations of this Paragraph directed against it and is without sufficient information to admit or deny the remaining allegations contained therein and, therefore, denies the same.

143. This Paragraph states legal conclusions which Defendant is required to neither admit nor deny. To the extent a response is deemed necessary, Defendant denies all allegations of this Paragraph directed against it and is without sufficient information to admit or deny the remaining allegations contained therein and, therefore, denies the same.

144. This Paragraph states legal conclusions which Defendant is required to neither admit nor deny. To the extent a response is deemed necessary, Defendant denies all allegations of this Paragraph directed against it and is without sufficient information to admit or deny the remaining allegations contained therein and, therefore, denies the same.

145. This Paragraph states legal conclusions which Defendant is required to neither admit nor deny. To the extent a response is deemed necessary, Defendant denies all allegations of this Paragraph directed against it and is without sufficient information to admit or deny the remaining allegations contained therein and, therefore, denies the same.

146. This Paragraph states legal conclusions which Defendant is required to neither admit nor deny. To the extent a response is deemed necessary, Defendant denies all allegations of this Paragraph directed against it and is without sufficient information to admit or deny the remaining allegations contained therein and, therefore, denies the same.

147. This Paragraph states legal conclusions which Defendant is required to neither admit nor deny. To the extent a response is deemed necessary, Defendant denies all allegations of this Paragraph directed against it and is without sufficient information to admit or deny the remaining allegations contained therein and, therefore, denies the same.

148. This Paragraph states legal conclusions which Defendant is required to neither admit nor deny. To the extent a response is deemed necessary, Defendant denies all allegations of this Paragraph directed against it and is without sufficient information to admit or deny the remaining allegations contained therein and, therefore, denies the same.

149. This Paragraph states legal conclusions which Defendant is required to neither admit nor deny. To the extent a response is deemed necessary, Defendant denies all allegations of this Paragraph directed against it and is without sufficient information to admit or deny the remaining allegations contained therein and, therefore, denies the same.

150. This Paragraph states legal conclusions which Defendant is required to neither admit nor deny. To the extent a response is deemed necessary, Defendant denies all allegations of

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151. This Paragraph states legal conclusions which Defendant is required to neither admit nor deny. To the extent a response is deemed necessary, Defendant denies all allegations of this Paragraph directed against it and is without sufficient information to admit or deny the remaining allegations contained therein and, therefore, denies the same.

152. This Paragraph states legal conclusions which Defendant is required to neither admit nor deny. To the extent a response is deemed necessary, Defendant denies all allegations of this Paragraph directed against it and is without sufficient information to admit or deny the remaining allegations contained therein and, therefore, denies the same.

153. This Paragraph states legal conclusions which Defendant is required to neither admit nor deny. To the extent a response is deemed necessary, Defendant denies all allegations of this Paragraph directed against it and is without sufficient information to admit or deny the remaining allegations contained therein and, therefore, denies the same.

154. This Paragraph states legal conclusions which Defendant is required to neither admit nor deny. To the extent a response is deemed necessary, Defendant denies all allegations of this Paragraph directed against it and is without sufficient information to admit or deny the remaining allegations contained therein and, therefore, denies the same.

155. This Paragraph states legal conclusions which Defendant is required to neither admit nor deny. To the extent a response is deemed necessary, Defendant denies all allegations of this Paragraph directed against it and is without sufficient information to admit or deny the remaining allegations contained therein and, therefore, denies the same.

156. This Paragraph states legal conclusions which Defendant is required to neither admit nor deny. To the extent a response is deemed necessary, Defendant denies all allegations of this Paragraph directed against it and is without sufficient information to admit or deny the remaining allegations contained therein and, therefore, denies the same.

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158. This Paragraph states legal conclusions which Defendant is required to neither admit nor deny. To the extent a response is deemed necessary, Defendant denies all allegations of this Paragraph directed against it and is without sufficient information to admit or deny the remaining allegations contained therein and, therefore, denies the same.

159. This Paragraph states legal conclusions which Defendant is required to neither admit nor deny. To the extent a response is deemed necessary, Defendant denies all allegations of this Paragraph directed against it and is without sufficient information to admit or deny the remaining allegations contained therein and, therefore, denies the same.

160. This Paragraph states legal conclusions which Defendant is required to neither admit nor deny. To the extent a response is deemed necessary, Defendant denies all allegations of this Paragraph directed against it and is without sufficient information to admit or deny the remaining allegations contained therein and, therefore, denies the same.

161. This Paragraph states legal conclusions which Defendant is required to neither admit nor deny. To the extent a response is deemed necessary, Defendant denies all allegations of

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162. This Paragraph states legal conclusions which Defendant is required to neither admit nor deny. To the extent a response is deemed necessary, Defendant denies all allegations of this Paragraph directed against it and is without sufficient information to admit or deny the remaining allegations contained therein and, therefore, denies the same.

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164. This Paragraph states legal conclusions which Defendant is required to neither admit nor deny. To the extent a response is deemed necessary, Defendant denies all allegations of this Paragraph directed against it and is without sufficient information to admit or deny the remaining allegations contained therein and, therefore, denies the same.

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this Paragraph directed against it and is without sufficient information to admit or deny the remaining allegations contained therein and, therefore, denies the same.

173. This Paragraph states legal conclusions which Defendant is required to neither admit nor deny. To the extent a response is deemed necessary, Defendant denies all allegations of this Paragraph directed against it and is without sufficient information to admit or deny the remaining allegations contained therein and, therefore, denies the same.

174. This Paragraph states legal conclusions which Defendant is required to neither admit nor deny. To the extent a response is deemed necessary, Defendant denies all allegations of this Paragraph directed against it and is without sufficient information to admit or deny the remaining allegations contained therein and, therefore, denies the same.

175. This Paragraph states legal conclusions which Defendant is required to neither admit nor deny. To the extent a response is deemed necessary, Defendant denies all allegations of this Paragraph directed against it and is without sufficient information to admit or deny the remaining allegations contained therein and, therefore, denies the same.

176. This Paragraph states legal conclusions which Defendant is required to neither admit nor deny. To the extent a response is deemed necessary, Defendant denies all allegations of this Paragraph directed against it and is without sufficient information to admit or deny the remaining allegations contained therein and, therefore, denies the same.

177. This Paragraph states legal conclusions which Defendant is required to neither admit nor deny. To the extent a response is deemed necessary, Defendant denies all allegations of this Paragraph directed against it and is without sufficient information to admit or deny the remaining allegations contained therein and, therefore, denies the same.

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183. This Paragraph states legal conclusions which Defendant is required to neither admit nor deny. To the extent a response is deemed necessary, Defendant denies all allegations of

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184. This Paragraph states legal conclusions which Defendant is required to neither admit nor deny. To the extent a response is deemed necessary, Defendant denies all allegations of this Paragraph directed against it, including all subparts, and is without sufficient information to admit or deny the remaining allegations contained therein and, therefore, denies the same.

185. This Paragraph states legal conclusions which Defendant is required to neither admit nor deny. To the extent a response is deemed necessary, Defendant denies all allegations of this Paragraph directed against it and is without sufficient information to admit or deny the remaining allegations contained therein and, therefore, denies the same.

186. This Paragraph states legal conclusions which Defendant is required to neither admit nor deny. To the extent a response is deemed necessary, Defendant denies all allegations of this Paragraph directed against it and is without sufficient information to admit or deny the remaining allegations contained therein and, therefore, denies the same.

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188. This Paragraph states legal conclusions which Defendant is required to neither admit nor deny. To the extent a response is deemed necessary, Defendant denies all allegations of this Paragraph directed against it and is without sufficient information to admit or deny the remaining allegations contained therein and, therefore, denies the same.

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193. This Paragraph states legal conclusions which Defendant is required to neither admit nor deny. To the extent a response is deemed necessary, Defendant denies all allegations of this Paragraph directed against it and is without sufficient information to admit or deny the remaining allegations contained therein and, therefore, denies the same.

194. This Paragraph states legal conclusions which Defendant is required to neither admit nor deny. To the extent a response is deemed necessary, Defendant denies all allegations of this Paragraph directed against it and is without sufficient information to admit or deny the

remaining allegations contained therein and, therefore, denies the same. Defendant further states that it is not responsible for Plaintiff's damages, if any.

195. This Paragraph states legal conclusions which Defendant is required to neither admit nor deny. To the extent a response is deemed necessary, Defendant denies all allegations of this Paragraph directed against it and is without sufficient information to admit or deny the remaining allegations contained therein and, therefore, denies the same.

196. This Paragraph states legal conclusions which Defendant is required to neither admit nor deny. To the extent a response is deemed necessary, Defendant denies all allegations of this Paragraph directed against it and is without sufficient information to admit or deny the remaining allegations contained therein and, therefore, denies the same.

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199. This Paragraph states legal conclusions which Defendant is required to neither admit nor deny. To the extent a response is deemed necessary, Defendant denies all allegations of this Paragraph directed against it and is without sufficient information to admit or deny the remaining allegations contained therein and, therefore, denies the same.

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205. This Paragraph states legal conclusions which Defendant is required to neither admit nor deny. To the extent a response is deemed necessary, Defendant denies all allegations of

this Paragraph directed against it and is without sufficient information to admit or deny the remaining allegations contained therein and, therefore, denies the same.

206. This Paragraph states legal conclusions which Defendant is required to neither admit nor deny. To the extent a response is deemed necessary, Defendant denies all allegations of this Paragraph directed against it and is without sufficient information to admit or deny the remaining allegations contained therein and, therefore, denies the same.

207. This Paragraph states legal conclusions which Defendant is required to neither admit nor deny. To the extent a response is deemed necessary, Defendant denies all allegations of this Paragraph directed against it and is without sufficient information to admit or deny the remaining allegations contained therein and, therefore, denies the same.

AS TO THE SEVENTH CAUSE OF ACTION
(Loss of Consortium)

208. Defendant repeats, realleges, and incorporates herein by reference its responses to Paragraphs 1 through 207.

209. Defendant denies all allegations of this Paragraph directed against it and is without sufficient information to admit or deny the remaining allegations contained therein and, therefore, denies the same.

210. This Paragraph states legal conclusions which Defendant is required to neither admit nor deny. To the extent a response is deemed necessary, Defendant denies all allegations of this Paragraph directed against it and is without sufficient information to admit or deny the remaining allegations contained therein and, therefore, denies the same. Defendant further states that it is not responsible for Plaintiff's damages, if any.

211. This Paragraph states legal conclusions which Defendant is required to neither admit nor deny. To the extent a response is deemed necessary, Defendant denies all allegations of

this Paragraph directed against it and is without sufficient information to admit or deny the remaining allegations contained therein and, therefore, denies the same. Defendant further states that it is not responsible for Plaintiff's damages, if any.

AS TO PRAYER FOR RELIEF

212. Defendant denies the allegations and requests for relief contained in the unnumbered paragraph beginning with WHEREFORE on page 67 of the First Amended Complaint, including all subparts, and demands strict proof thereof. Defendant denies any liability whatsoever to Plaintiff in this matter.

AFFIRMATIVE DEFENSES

1. The Complaint does not make it clear where Plaintiff allegedly encountered any product of this Defendant. For this reason, Defendant expressly reserves all defenses, including but not limited to jurisdictional defenses, and Defendant's participation in subsequent discovery in this case is not deemed to be a waiver of any rights, defenses or objections.

2. As Defendant's affirmative defense and by way of a motion to dismiss, which will be filed by separate pleading in this matter, the Court lacks personal jurisdiction over this Defendant. Under the Supreme Court's decision in *Daimler AG v. Bauman*, 134 S. Ct. 746 (2014), Defendant is not subject to general personal jurisdiction in South Carolina. *Daimler* holds that, absent "exceptional" circumstances, a corporation is subject to general jurisdiction only in its place of incorporation and principal place of business. Because South Carolina is not Defendant's place of incorporation or principal place of business—and as there are no "exceptional" circumstances that would warrant a departure from the governing rule—general jurisdiction is unavailable. Specific jurisdiction exists only where a defendant's suit-related conduct is alleged to have occurred in the forum. See *Bristol-Myers Squibb Co. v. Superior Court of California, San*

Francisco County, 137 S. Ct. 1773, 1778 (2017). Plaintiff's Complaint lacks any allegation that Defendant did or failed to do anything in South Carolina giving rise to Plaintiff's damages, if any.

3. The Complaint and each Cause of Action therein fail to state a claim against this Defendant.

4. The Complaint should be dismissed due to the Plaintiff's lack of capacity.

5. There is a lack of joinder of one or more parties who should or must be joined; without the joinder of these proper parties, complete relief cannot be accorded among those already made parties to this action.

6. The claims set forth in the Complaint may be barred by the applicable statutes of limitations and/or repose in this state or other states as may be applicable.

7. Plaintiff's claims are barred by the contributory or comparative negligence of the Plaintiff; in the alternative, Plaintiff's claims are barred in part by the comparative negligence of the Plaintiff and any award to the Plaintiff should be reduced accordingly.

8. The claims set forth in the Complaint are barred to the extent there is another action pending between the same parties for the same claim.

9. Plaintiff's claims are barred or reduced by the doctrines of *res judicata*, waiver, release, laches, and/or conditions precedent or subsequent.

10. Plaintiff's claims are barred or reduced by the applicable provisions of the Worker's Compensation Act, whether of this state or another.

11. By virtue of the doctrine of judicial estoppel, Plaintiff is precluded from taking a position inconsistent with one taken with respect to the same facts in earlier litigation, if any, and are, therefore, precluded from alleging the material facts necessary to state a cause of action against this Defendant.

12. Venue is improper in this action. This Defendant reserves its right to move for dismissal and/or transfer of the action based on improper and/or inconvenient venue and further reserves its right to seek application of the law of the appropriate venue on all issues.

13. There has been no concert of action between this Defendant and any of the other named Defendants. The Defendants are not joint tortfeasors and, therefore, this Defendant may not be held jointly and severally liable with the other named Defendants.

14. To the extent that Plaintiff received payment in satisfaction of any of the alleged injuries and/or claims against this Defendant, the Plaintiff's Complaint in each and every count and cause of action alleged therein is barred or reduced by the defenses of payment and accord and satisfaction.

15. There are no allegations against this Defendant stated with sufficient particularity to constitute a cause of action for malice, fraud, fraudulent concealment, concert of action, conspiracy, or the like meeting the requirement of Rule 9(b) of the South Carolina Rules of Civil Procedure.

16. This Defendant had no duty to warn Plaintiff or others, of or protect them from the risks and dangers, if any, associated with asbestos or asbestos-related products.

17. Plaintiff's claims are barred to the extent this Defendant's products were sold to a "learned intermediary" and/or "sophisticated user" or other similar purchaser and/or Defendant was a "bulk supplier."

18. Plaintiff's implied warranty claims, if any, do not apply to any products of this Defendant sold prior to the effective date of the Uniform Commercial Code. Plaintiff was not in privity with this Defendant, thus, may not rely upon any warranties which may have been implied or imposed by law upon this Defendant. This Defendant affirmatively states that it breached no warranty.

19. Any oral warranties upon which Plaintiff alleges to have relied are inadmissible and unavailable because of the provisions of the applicable Statute of Frauds.

20. This Defendant affirmatively states that it has appropriately disclaimed all applicable warranties.

21. This Defendant alleges that the Plaintiff had actual knowledge of and voluntarily assumed the risk incident to Plaintiff's use and exposure to asbestos or the products and processes involving the use of asbestos or asbestos-containing materials which were known to Plaintiff to be dangerous.

22. This Defendant alleges that if Plaintiff was injured by any of Defendant's products, which is denied, Plaintiff discovered any defect in the products and was aware of the dangers thereof, but, nevertheless, proceeded unreasonably to make use of the same.

23. This Defendant alleges that the Plaintiff failed to properly use the product or products in question, abused the product or products, and/or subjected them to abnormal use at the time or times and places alleged in the Complaint.

24. This Defendant alleges that if Plaintiff used the product or products of this Defendant, the same was used for a purpose not intended by this Defendant and contrary to any instructions or normal method of using the same.

25. This Defendant alleges that if Plaintiff sustained any injuries or damages as set forth in the Complaint, which is denied, the same were due to and caused by the negligence, recklessness, willfulness, and wantonness of others and not this Defendant.

26. This Defendant would show that even if Plaintiff suffered injuries as described in the Complaint, and the same are admitted for the purposes of this defense only, then said injuries were caused by the acts or omissions of third parties including, but not limited to, the actions of unions,

employers, other manufacturers, distributors, and others, and that these acts or omissions of third parties acted as a direct and proximate cause of their injuries in such a way as to constitute a supervening or intervening cause ending all liability on the part of this Defendant.

27. This Defendant alleges that if Plaintiff sustained injuries as a result of exposure to asbestos or asbestos-containing products, which is denied, then such injuries were or may have been due to exposures to products of manufacturers not named as Defendants in this action including, but not limited to, product manufacturers which have taken advantage of the protections of the bankruptcy provisions of the United States Code.

28. This Defendant denies that it mined, manufactured, processed, imported and/or sold any asbestos or asbestos-containing material which allegedly caused or contributed to the alleged injuries or damages of the Plaintiff. This Defendant further denies that, for those periods of time alleged by the Plaintiff, any product, or action or inaction on its part, caused damage to the Plaintiff.

29. Plaintiff failed to notify this Defendant within a reasonable period of time after Plaintiff discovered or should have discovered the alleged defect in its products and, therefore, is barred from recovery.

30. If Plaintiff was exposed to any of Defendant's products, said products at the time were manufactured in conformity with applicable federal and state regulations, standards, specifications and laws; consequently, recovery by Plaintiff herein is barred.

31. If it should be proven that Plaintiff, while working for or otherwise associated with the United States Government, worked with or around asbestos-containing products manufactured by this Defendant or a predecessor corporation, such materials, on information and belief, were made in compliance with military specifications and contract requirements for a specific intended use by the United States Government.

32. If any products manufactured and sold by this Defendant, which give rise to Plaintiff's claims herein, were designed and manufactured pursuant to and in accordance with the standards of, or specifications mandated by, the United States Government and its agencies, the knowledge of the United States Government and its agencies of any possible health hazards from use of such products was equal or superior to that of this Defendant, and by reason thereof, this Defendant is entitled to assume any immunity from liability which exists in favor of the United States Government or its agencies and/or to assert the government contractor defense.

33. In the event it is determined that any product developed, manufactured, distributed, sold or otherwise utilized by this Defendant was dangerous, which danger is specifically denied, this Defendant was unaware of such danger as it would apply in any conceivable use of its products by Plaintiff; furthermore, the discovery of such danger was beyond the state of the art at the time such product or products were manufactured, distributed, sold or used. Further, such products were manufactured, distributed, sold and used in conformity with the state of the art and/or prevailing industry standards at the time.

34. On information and belief, Plaintiff received payments from and granted releases to other parties including, but not limited to, other parties to this action and other non-parties against whom Plaintiffs claimed liability in tort for the same injury for which Plaintiff claims this Defendant has liability. This Defendant is entitled to set off of the greater of the amount stipulated to in such release or the amount of consideration paid for such a release.

35. Plaintiff failed to mitigate or otherwise act to lessen or reduce the injuries and disabilities alleged in the Complaint.

36. The Complaint fails to set forth a claim for punitive damages upon which relief may be granted.

37. To the extent the Complaint asserts a demand for punitive damages, this Defendant specifically incorporates by reference any and all standards of limitations regarding the determination and/or enforceability of punitive damage awards that arose in the decisions of *BMW of North America, Inc. v. Gore*, 517 U.S. 559 (1966); *Cooper Industries, Inc. v. Leatherman Tool Group, Inc.*, 532 U.S. 424 (2001); and *State Farm Mut. Automobile Ins. Co. v. Campbell*, 538 U.S. 408 (2003).

38. To the extent that the Complaint seeks punitive damages, this Defendant affirmatively pleads the following in regard to punitive damages:

(a) An award of punitive damages in this civil action would amount to a deprivation of property without due process of law in violation of the Fifth and Fourteenth Amendments to the United States Constitution and the corresponding provisions of the applicable state Constitution;

(b) An award of punitive damages in this civil action would violate the due process provisions of the Fifth and Fourteenth Amendments to the United States Constitution and the corresponding provisions of the applicable state Constitution;

(c) The criteria used for determining whether, and in what amount, punitive damages may be awarded are impermissible, vague, imprecise and inconsistent and, therefore, violate the due process provisions of the Fifth and Fourteenth Amendments to the United States Constitution and the corresponding provisions of the applicable state Constitution;

(d) An award of punitive damages in this civil action would amount to an excessive fine in violation of the due process provisions of the Eighth Amendment to the United States Constitution and the corresponding provisions of the applicable state Constitution; and

(e) Plaintiff's claim for punitive damages is barred by the "double jeopardy" clause of the Fifth Amendment to the United States Constitution, as applied to the states through the Fourteenth Amendment.

39. Defendant would show that Plaintiff's claim for punitive damages is barred, and/or must be bifurcated for trial, pursuant to South Carolina Code §15-32-520 and §15-32-530, and/or similar and/or related state statutes and limitations and any amendments thereto.

40. Defendant would show that Plaintiff's claim for punitive damages is barred, and/or must be reduced, capped, and/or limited pursuant to South Carolina Code §15-32-520 and §15-32-530, and/or similar and/or related state statutes and limitations and any amendments thereto. Defendant specifically pleads as an affirmative defense and puts the Plaintiff on notice of Defendant's intent to invoke the statutory cap on punitive damages. Defendant asserts that in the event of any verdict against it, that such verdict shall be capped, reduced or limited in accordance with SC Code §15-32-530(A), including that an award of punitive damages may not exceed the greater of three times the amount of compensatory damages awarded to each claimant entitled thereto or the sum of five hundred thousand dollars. Alternatively, Defendant asserts that in the event of any verdict against it, that such verdict be capped, reduced or limited in accordance with SC Code §15-32-530(B), such that punitive damages must not exceed the greater of four times the amount of compensatory damages awarded to each claimant entitled thereto or the sum of two million dollars. If necessary, Defendant requests that the trial court reduce any award and enter judgment for punitive damages in the maximum amount allowed by SC Code §15-32-530(A) and (B). Defendant requires strict proof in accordance with SC Code §15-32-520 and §15-32-530, including ensuring that the award is not excessive or the result of passion or prejudice, and that any punitive damages award must be specific to this defendant, and that defendant be liable only

for the amount of the award made against this defendant. Defendant asserts and reserves all rights, arguments, remedies, immunities and defenses available under SC Code §15-32-520 and §15-32-530.

41. To the extent Plaintiff smoked, or otherwise used, or was exposed to tobacco products including, but not limited to, cigarettes, cigars, snuff, chew, and such use of and/or exposure to tobacco products has caused or contributed to any of the alleged injuries, Plaintiff's use of and/or exposure to tobacco products constitutes negligence which bars, limits, or reduces any recovery by Plaintiff.

42. Plaintiff may not bring this claim pursuant to Section 15-5-150 of the South Carolina Code of Laws, also referred to the South Carolina's Door Closing Statute.

43. Plaintiff's Complaint should be dismissed and/or is not subject to trial for its failure to comply with the requirements of Section 44-135-10 *et seq.*, of the South Carolina Code of Laws, also known as the "Asbestos and Silica Claims Procedure Act of 2006," including, but not limited to, failing to make a prima facie showing of asbestos-related malignancy or impairment as required by S.C. Code Ann. § 44-135-50. This Defendant reserves all rights and remedies available to it as set forth in the Act.

44. The alleged injuries to Plaintiff are barred by Section 15-73-10 *et seq.*, of the South Carolina Code of Laws; therefore, Plaintiff is prohibited by law from asserting a cause of action based on strict liability for either actual or punitive damages.

45. This Defendant should not be held jointly and severally liable pursuant to the provisions of Section 15-38-15 of the South Carolina Code of Laws and/or other similar statutes.

46. This Defendant denies its "alternate entity" to the extent alleged in the Complaint. This Defendant denies any and all liability asserted against it by the Plaintiff, where based in whole

or part on its alleged status as a successor, successor in business, successor in product line, assignee, predecessor, predecessor in business, predecessor in product line, parent, alter ego, alternate entity or other derivative status.

47. This Defendant denies it has any post-sale duty to warn and asserts that South Carolina has affirmatively established it does not recognize a post-sale duty to warn. See *Bragg v. Hi-Ranger*, 319 S.C. 531, 462 S.E.2d 321 (Ct. App. 1995); *Branham v. Ford Motor Co.*, 390 S.C. 203, 226, 701 S.E.2d 5, 17 (2010).

48. This Defendant alleges that any injuries or damages sustained by the Plaintiff were due to and caused by the suppliers to this Defendant, since all of this Defendant's products were supplied by others, and these suppliers did not include warnings on the products, therefore, the negligence, carelessness, recklessness, and breach of implied warranties, if any, by such product suppliers was a direct and proximate cause of any damages the Plaintiff may have sustained and, therefore, this Defendant is not liable in any sum whatsoever.

49. This Defendant alleges that the absence of warnings on any product of this Defendant did not lead to reasonable reliance by Plaintiff on the safety of any such product.

50. This Defendant cannot be liable to the Plaintiff under the doctrine of strict liability, to the extent the Plaintiff was not exposed to or injured by a product sold after the effective date of the statute.

51. This Defendant asserts that any talc products sold by this Defendant which give rise to Plaintiff's claims herein were designed and manufactured pursuant to, and in accordance with, specifications mandated by the United States Government or its agencies. The knowledge of the United States Government and its agencies of any possible health hazards from use of such products were equal or superior to that of this Defendant, and by reason thereof, this Defendant is

entitled to such immunity from liability as exists in favor of the United States Government or its agencies.

52. The damages allegedly sustained by the Plaintiff from her alleged exposure to asbestos-containing products were caused, in whole or in part, by the improper use and operation of the products, rather than any defect in the design, manufacture, production, assemblage, installation, testing, labeling, marketing, distribution, sale or inspection of any product by this Defendant.

53. This Defendant denies that there was any defect or negligent mining, processing, manufacture, design, testing, investigation, fashioning, packaging, distributing, delivery, and/or sale, in any talc product referred to in the Plaintiff's Complaint, but if there was any defect or negligence as alleged, then this Defendant is not liable as it justifiably relied upon inspection by others in the regular course of trade and business.

54. As to any product sold by Defendant, the product was not defective or dangerous at any time when this Defendant had possession or control of it.

55. Any and all implied warranties, including the warranties of merchantability and fitness for a particular purpose, were excluded at the time of the sale of the product.

56. No implied warranties, including the warranties of merchantability and fitness for a particular purpose, were a part of the basis of the bargain in the sale of the product.

57. This Defendant is not liable to Plaintiff for the damages alleged in the Complaint because such damages may not be recoverable under express warranty.

58. The purchaser of the product and any or all third-party beneficiaries of any warranties, expressed or implied, relating to the product failed to provide notice of the alleged

breaches of warranty to this Defendant pursuant to the applicable provision of the Uniform Commercial Code.

59. This Defendant denies that the products alleged in Plaintiff's Complaint to contain asbestos are products within the meaning and scope of the Restatement of Torts Section 402A and, as such, the Complaint fails to state a cause of action in strict liability.

60. This Defendant had no knowledge or reason to know of any alleged risks associated with the alleged asbestos-containing products at any time during the periods complained of by Plaintiff.

61. The Plaintiff did not directly or indirectly purchase any asbestos-containing products or materials from this Defendant, nor did the Plaintiff receive or rely upon any representation or warranty allegedly made by this Defendant.

62. To the extent that the Plaintiff was exposed to any product containing asbestos as a result of conduct by this Defendant, which is denied, said exposure was de minimis and not a substantial contributing factor to any asbestos-related disease which the Plaintiff may have developed, and not actionable at law or equity.

63. Exposure to asbestos allegedly attributable to this Defendant, if any, is so minimal as to be insufficient to establish to a reasonable degree of probability that the products are capable of causing Plaintiff's injury or damages and must be considered speculative as a matter of law.

64. To the extent products sold by this Defendant are found to contain asbestos or asbestos-containing talc, which this Defendant denies, those products are not unreasonably dangerous as a matter of law.

65. Plaintiff's claims are barred or diminished as a matter of public policy as the social utility and benefit of asbestos-containing products outweighed the risk.

66. Plaintiff caused and/or contributed to Plaintiff's alleged illness, either in whole or in part, by exposure to or the use of tobacco products and/or other substances, products, medications, or drugs.

67. Plaintiff's recovery against Defendant is barred, diminished or reduced to the extent the Complaint seeks recovery under the theory of "enterprise," "industry-wide," "alternate" or "market share" (collectively referred to hereafter as "market share") liability, and furthermore, the essential elements of a cause of action premised on a market share theory of liability do not exist between Plaintiff and Defendant.

68. The Complaint fails to allege facts sufficient to constitute a cause of action based upon market share liability and/or enterprise liability and therefore, violates the guarantees of due process of law and equal protection of the laws guaranteed by the United States and South Carolina Constitutions, and such violations bar Plaintiff's recovery or judgment against Defendant.

69. Plaintiff's recovery is barred, diminished or reduced to the extent that Plaintiff failed to, and cannot identify the product(s), and the toxins within said product(s), to which Plaintiff was allegedly exposed.

70. Plaintiff's recovery is barred, diminished or reduced to the extent that Plaintiff cannot show that any product supplied by Defendant, if any, in all reasonable medical probability, was a substantial factor in increasing the risk of bringing about the injuries or damages complained of by Plaintiff.

71. Each and every claim of Plaintiff, to the extent it pertains to Defendant, is preempted, in whole or in part, by the applicable state and/or federal statutes, rules, standards and/or regulations.

72. Each and every claim of Plaintiff, to the extent it pertains to Defendant, is preempted by the Federal Food, Drug, and Cosmetics Act ("FFDCA"), 21 U.S.C. §§ 301-399(a)

(2009), in that the U.S. Food and Drug Administration (“FDA”) has primary and exclusive jurisdiction over the safety of cosmetic talc-containing products and primary and exclusive jurisdiction to determine whether any warning must accompany cosmetic talc-containing products. The FDA has ruled, on multiple occasions, that cosmetic grade talc is a safe substance when used as intended and further ruled that manufacturers need not provide any warnings on, or in connection with the sale of, cosmetic grade talc-containing products.

73. Each and every claim of Plaintiff, to the extent it pertains to Defendant’s alleged manufacture and/or sale of cosmetic grade talc-containing products, is subject to the FDA’s primary jurisdiction. Consequently, each and every claim, to the extent they pertain to Defendant, should be dismissed or stayed pending further FDA review of whether cosmetic talc is generally recognized as safe and whether any warning must accompany, or other restrictions be placed upon the manufacture and sale of, a cosmetic talc-containing product.

74. Each and every claim of Plaintiff, to the extent it pertains to Defendant’s alleged manufacture and/or sale of cosmetic grade talc-containing products, is an unauthorized and improper attempt to enforce privately a claim under the FFDCA, 21 U.S.C. §§ 301-399(a) (2009).

75. Defendant alleges that Plaintiff’s claims and causes of action, to the extent asserted against Defendant, are barred in whole or in part because the product(s) allegedly sold by Defendant complied with all applicable federal, state and local rules, regulations, specifications, and laws.

76. The injuries complained of by Plaintiff are wholly or partially caused by independent means, including, *inter alia*, the conduct and habits of Plaintiff and exposure to other particulates in the environment.

77. Defendant specifically denies that any cosmetic or talcum powder product that it allegedly sold was defectively designed, because the manufacturing specifications did not include asbestos.

78. This Defendant reserves the right to allege additional facts and circumstances in support of its defenses as these facts become available.

79. The Complaint does not specify the brand name or type of product purchased from Defendant, including the nature, manner, and time frame of any such exposure. For this reason, Defendant expressly reserves all defenses, both affirmative and otherwise, and Defendant's participation in subsequent discovery in this case is not deemed to be a waiver of any rights, defenses or objections.

80. This Defendant incorporates by reference herein, as if fully set forth, all defenses, both affirmative and otherwise, raised, pleaded or asserted by all other answering Defendants.

ANSWER TO CROSS-CLAIMS

This Defendant, answering any and all Cross-Claims which may already have been asserted or which may be asserted in the future against it by any Co-Defendants and/or Third-Party Defendants, says:

1. In defense of any and all Cross-Claims, this Defendant incorporates herein as if restated fully all responses and defenses which it has asserted above or may assert in response to the allegations contained in the Complaint.

2. The allegations against this Defendant in any and all Cross-Claims are denied.

3. This Defendant denies liability with respect to any and all Cross-Claims.

4. This Defendant denies that it has any indemnity or contribution liability to any other Defendant or Third-Party Defendant.

RESERVATION OF CROSS-CLAIMS

All Cross-Claims for contribution and for indemnity by this Defendant against all Co-Defendants and Third-Party Defendants are hereby reserved and implied.

JURY DEMAND

This Defendant requests trial by jury on all issues so triable.

WHEREFORE, this Defendant prays the Court for the following relief:

1. That the Complaint be dismissed with prejudice as to this Defendant;
2. That all Cross-Claims against this Defendant be dismissed with prejudice;
3. That the Plaintiff and other Defendants and/or Third-Party Defendants have and recover nothing from this Defendant;
4. That the costs of this action be taxed against the Plaintiff and/or other Defendants and/or Third-Party Defendants;
5. That any judgment against this Defendant be reduced by any amount that any employer of Plaintiff, their successors or assigns, would be entitled to receive therefrom by way of subrogation;
6. That there be a trial by jury on all issues of fact;
7. That such trial be bifurcated with respect to Plaintiffs' request for punitive damages; and
8. For such other and further relief as the Court deems just and proper.

Respectfully submitted this 23rd day of February, 2023.

WOMBLE BOND DICKINSON (US) LLP

/s/ M. Elizabeth O'Neill

M. Elizabeth O'Neill (S.C. Bar No. 104013)

M. Todd Carroll (S.C. Bar No. 74000)

Theodore F. Roberts (S.C. Bar. 104986)

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Other email: WBD.SCAbestos@wbd-us.com

Counsel for Defendant, IMI Fabi (Diana) LLC

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF RICHLAND	)	FOR THE FIFTH JUDICIAL CIRCUIT
SARAH J. PLANT and PARKER PLANT,	)	
	)	Civil Action No. 2022CP4001265
Plaintiffs,	)	
	)	DEFENDANT IMI FABI (USA) INC.'S
v.	)	ANSWER TO PLAINTIFFS' FIRST
	)	AMENDED COMPLAINT AND
AVON PRODUCTS, INC., et al.,	)	AFFIRMATIVE DEFENSES
	)	(JURY TRIAL DEMANDED)
Defendants.	)	
	)	

Defendant, IMI Fabi (USA) Inc., answering Plaintiffs' First Amended Complaint ("Complaint") and any and all Cross-Claims asserted previously or in the future by any Co-Defendants or Third-Party Defendants, whether having appeared in the case at this time or not, denies all allegations not hereinafter specifically admitted and, as to the correspondingly numbered paragraphs of the Complaint, states as follows:

AS TO GENERAL ALLEGATIONS

1. Defendant denies all allegations of this Paragraph directed against it and is without sufficient information to admit or deny the remaining allegations contained therein and, therefore, denies the same.

2. This Paragraph states legal conclusions which Defendant is required to neither admit nor deny. To the extent a response is deemed necessary, Defendant denies all allegations set forth in this Paragraph, including all subparts, directed against it and is without sufficient information to admit or deny the remaining allegations contained therein and, therefore, denies the same. Defendant affirmatively alleges that the allegations set forth in the Complaint are insufficient to establish a basis for personal jurisdiction.

3. This Paragraph states legal conclusions which Defendant is required to neither admit nor deny. To the extent a response is deemed necessary, Defendant denies all allegations set forth in this Paragraph directed against it and is without sufficient information to admit or deny the remaining allegations contained therein and, therefore, denies the same. Defendant affirmatively alleges that the allegations set forth in the Complaint are insufficient to establish a basis for personal jurisdiction.

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15. Defendant denies all allegations of this Paragraph directed against it and is without sufficient information to admit or deny the remaining allegations contained therein and, therefore, denies the same.

16. This Paragraph states legal conclusions which Defendant is required to neither admit nor deny. To the extent a response is deemed necessary, Defendant denies all allegations set forth in this Paragraph directed against it and is without sufficient information to admit or deny the remaining allegations contained therein and, therefore, denies the same. Defendant further states that it is not responsible for Plaintiff's damages, if any.

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18. This Paragraph states legal conclusions which Defendant is required to neither admit nor deny. To the extent a response is deemed necessary, Defendant denies all allegations set forth in this Paragraph directed against it and is without sufficient information to admit or deny the remaining allegations contained therein and, therefore, denies the same. Defendant further states that it is not responsible for Plaintiff's damages, if any.

19. This Paragraph states legal conclusions which Defendant is required to neither admit nor deny. To the extent a response is deemed necessary, Defendant denies all allegations set forth in this Paragraph directed against it and is without sufficient information to admit or deny the remaining allegations contained therein and, therefore, denies the same. Defendant further states that it is not responsible for Plaintiff's damages, if any.

20. This Paragraph states legal conclusions which Defendant is required to neither admit nor deny. To the extent a response is deemed necessary, Defendant denies all allegations set forth in this Paragraph directed against it and is without sufficient information to admit or deny the remaining allegations contained therein and, therefore, denies the same. Defendant further states that it is not responsible for Plaintiff's damages, if any.

21. This Paragraph states legal conclusions which Defendant is required to neither admit nor deny. To the extent a response is deemed necessary, Defendant denies all allegations set forth in this Paragraph directed against it and is without sufficient information to admit or deny

the remaining allegations contained therein and, therefore, denies the same. Defendant further states that it is not responsible for Plaintiff's damages, if any.

22. This Paragraph states legal conclusions which Defendant is required to neither admit nor deny. To the extent a response is deemed necessary, Defendant denies all allegations set forth in this Paragraph directed against it and is without sufficient information to admit or deny the remaining allegations contained therein and, therefore, denies the same. Defendant further states that it is not responsible for Plaintiff's damages, if any.

23. This Paragraph states legal conclusions which Defendant is required to neither admit nor deny. To the extent a response is deemed necessary, Defendant denies all allegations set forth in this Paragraph directed against it and is without sufficient information to admit or deny the remaining allegations contained therein and, therefore, denies the same. Defendant further states that it is not responsible for Plaintiff's damages, if any.

AS TO THE PARTIES

- 24. Defendant denies all allegations of this Paragraph for lack of sufficient information.
- 25. Defendant denies all allegations of this Paragraph for lack of sufficient information.
- 26. Defendant denies all allegations of this Paragraph for lack of sufficient information.
- 27. Defendant denies all allegations of this Paragraph for lack of sufficient information.
- 28. Defendant denies all allegations of this Paragraph for lack of sufficient information.
- 29. Defendant denies all allegations of this Paragraph for lack of sufficient information.
- 30. Defendant denies all allegations of this Paragraph for lack of sufficient information.
- 31. Defendant denies all allegations of this Paragraph for lack of sufficient information.
- 32. Defendant denies all allegations of this Paragraph for lack of sufficient information.
- 33. Defendant denies all allegations of this Paragraph for lack of sufficient information.

34. Defendant denies all allegations of this Paragraph for lack of sufficient information.

35. Defendant denies all allegations of this Paragraph for lack of sufficient information.

36. Defendant denies all allegations of this Paragraph for lack of sufficient information.

37. Defendant denies all allegations of this Paragraph for lack of sufficient information.

38. Defendant denies all allegations of this Paragraph for lack of sufficient information.

39. Defendant denies all allegations of this Paragraph for lack of sufficient information.

40. Defendant denies all allegations of this Paragraph for lack of sufficient information.

41. Defendant denies all allegations of this Paragraph for lack of sufficient information.

42. Defendant denies all allegations of this Paragraph for lack of sufficient information.

43. Defendant denies all allegations of this Paragraph for lack of sufficient information.

44. Defendant denies all allegations of this Paragraph for lack of sufficient information.

45. Defendant denies all allegations of this Paragraph for lack of sufficient information.

46. Defendant denies all allegations of this Paragraph for lack of sufficient information.

47. Defendant denies all allegations of this Paragraph for lack of sufficient information.

48. Defendant denies all allegations of this Paragraph for lack of sufficient information.

49. Defendant denies all allegations of this Paragraph for lack of sufficient information.

50. Defendant denies all allegations of this Paragraph for lack of sufficient information.

51. Defendant denies all allegations of this Paragraph for lack of sufficient information.

52. Defendant admits it is incorporated in and has its principal place of business in a state other than South Carolina. Defendant denies the remaining allegations of this Paragraph.

53. Defendant denies all allegations of this Paragraph for lack of sufficient information.

54. Defendant denies all allegations of this Paragraph for lack of sufficient information.

55. Defendant denies all allegations of this Paragraph for lack of sufficient information.

56. Defendant denies all allegations of this Paragraph for lack of sufficient information.
57. Defendant denies all allegations of this Paragraph for lack of sufficient information.
58. Defendant denies all allegations of this Paragraph for lack of sufficient information.
59. Defendant denies all allegations of this Paragraph for lack of sufficient information.
60. Defendant denies all allegations of this Paragraph for lack of sufficient information.
61. Defendant denies all allegations of this Paragraph for lack of sufficient information.
62. Defendant denies all allegations of this Paragraph for lack of sufficient information.
63. Defendant denies all allegations of this Paragraph for lack of sufficient information.
64. Defendant denies all allegations of this Paragraph for lack of sufficient information.
65. Defendant denies all allegations of this Paragraph for lack of sufficient information.
66. Defendant denies all allegations of this Paragraph for lack of sufficient information.
67. Defendant denies all allegations of this Paragraph for lack of sufficient information.
68. Defendant denies all allegations of this Paragraph for lack of sufficient information.
69. Defendant denies all allegations of this Paragraph for lack of sufficient information.
70. Defendant denies all allegations of this Paragraph for lack of sufficient information.
71. Defendant denies all allegations of this Paragraph for lack of sufficient information.
72. Defendant denies all allegations of this Paragraph for lack of sufficient information.
73. Defendant denies all allegations of this Paragraph for lack of sufficient information.
74. Defendant denies all allegations of this Paragraph for lack of sufficient information.
75. Defendant denies all allegations of this Paragraph for lack of sufficient information.
76. Defendant denies all allegations of this Paragraph for lack of sufficient information.

AS TO BACKGROUND FACTS

77. This Paragraph is a statement as to Plaintiff's alleged damages. Defendant denies that it is liable for Plaintiff's damages, if any. Defendant denies all allegations of this Paragraph directed

against it and is without sufficient information to admit or deny the remaining allegations contained therein and, therefore, denies the same.

78. Defendant denies all allegations of this Paragraph for lack of sufficient information.

79. Defendant denies all allegations of this Paragraph for lack of sufficient information.

80. This Paragraph states legal conclusions which Defendant is required to neither admit nor deny. To the extent a response is deemed necessary, Defendant denies all allegations of this Paragraph directed against it and is without sufficient information to admit or deny the remaining allegations contained therein and, therefore, denies the same.

81. Defendant denies all allegations of this Paragraph directed against it and is without sufficient information to admit or deny the remaining allegations contained therein and, therefore, denies the same.

82. Defendant denies all allegations of this Paragraph directed against it and is without sufficient information to admit or deny the remaining allegations contained therein and, therefore, denies the same.

83. Defendant denies all allegations of this Paragraph directed against it and is without sufficient information to admit or deny the remaining allegations contained therein and, therefore, denies the same.

84. Defendant denies all allegations of this Paragraph directed against it and is without sufficient information to admit or deny the remaining allegations contained therein and, therefore, denies the same.

85. Defendant denies all allegations of this Paragraph directed against it and is without sufficient information to admit or deny the remaining allegations contained therein and, therefore, denies the same.

86. Defendant denies all allegations of this Paragraph directed against it and is without sufficient information to admit or deny the remaining allegations contained therein and, therefore, denies the same.

87. This Paragraph states legal conclusions which Defendant is required to neither admit nor deny. To the extent a response is deemed necessary, Defendant denies all allegations of this Paragraph directed against it and is without sufficient information to admit or deny the remaining allegations contained therein and, therefore, denies the same. Defendant further states that it is not responsible for Plaintiff's damages, if any.

88. This Paragraph states legal conclusions which Defendant is required to neither admit nor deny. To the extent a response is deemed necessary, Defendant denies all allegations of this Paragraph directed against it and is without sufficient information to admit or deny the remaining allegations contained therein and, therefore, denies the same. Defendant further states that it is not responsible for Plaintiff's damages, if any.

89. This Paragraph states legal conclusions which Defendant is required to neither admit nor deny. To the extent a response is deemed necessary, Defendant denies all allegations of this Paragraph directed against it and is without sufficient information to admit or deny the remaining allegations contained therein and, therefore, denies the same. Defendant further states that it is not responsible for Plaintiff's damages, if any.

AS TO THE FIRST CAUSE OF ACTION
(Product Liability: Negligence)

90. Defendant repeats, realleges, and incorporates herein by reference its responses to Paragraphs 1 through 89.

91. This Paragraph states legal conclusions which Defendant is required to neither admit nor deny. To the extent a response is deemed necessary, Defendant denies all allegations of this

Paragraph directed against it and is without sufficient information to admit or deny the remaining allegations contained therein and, therefore, denies the same.

92. This Paragraph states legal conclusions which Defendant is required to neither admit nor deny. To the extent a response is deemed necessary, Defendant denies all allegations of this Paragraph directed against it and is without sufficient information to admit or deny the remaining allegations contained therein and, therefore, denies the same.

93. This Paragraph states legal conclusions which Defendant is required to neither admit nor deny. To the extent a response is deemed necessary, Defendant denies all allegations of this Paragraph directed against it and is without sufficient information to admit or deny the remaining allegations contained therein and, therefore, denies the same.

94. This Paragraph states legal conclusions which Defendant is required to neither admit nor deny. To the extent a response is deemed necessary, Defendant denies all allegations of this Paragraph directed against it and is without sufficient information to admit or deny the remaining allegations contained therein and, therefore, denies the same.

95. This Paragraph states legal conclusions which Defendant is required to neither admit nor deny. To the extent a response is deemed necessary, Defendant denies all allegations of this Paragraph directed against it and is without sufficient information to admit or deny the remaining allegations contained therein and, therefore, denies the same.

96. This Paragraph states legal conclusions which Defendant is required to neither admit nor deny. To the extent a response is deemed necessary, Defendant denies all allegations of this Paragraph directed against it and is without sufficient information to admit or deny the remaining allegations contained therein and, therefore, denies the same.

97. This Paragraph states legal conclusions which Defendant is required to neither admit nor deny. To the extent a response is deemed necessary, Defendant denies all allegations of this Paragraph directed against it and is without sufficient information to admit or deny the remaining allegations contained therein and, therefore, denies the same.

98. This Paragraph states legal conclusions which Defendant is required to neither admit nor deny. To the extent a response is deemed necessary, Defendant denies all allegations of this Paragraph directed against it and is without sufficient information to admit or deny the remaining allegations contained therein and, therefore, denies the same. Defendant further states that it is not responsible for Plaintiff's damages, if any.

99. This Paragraph states legal conclusions which Defendant is required to neither admit nor deny. To the extent a response is deemed necessary, Defendant denies all allegations of this Paragraph directed against it and is without sufficient information to admit or deny the remaining allegations contained therein and, therefore, denies the same.

100. This Paragraph states legal conclusions which Defendant is required to neither admit nor deny. To the extent a response is deemed necessary, Defendant denies all allegations of this Paragraph directed against it and is without sufficient information to admit or deny the remaining allegations contained therein and, therefore, denies the same. Defendant further states that it is not responsible for Plaintiff's damages, if any.

101. This Paragraph states legal conclusions which Defendant is required to neither admit nor deny. To the extent a response is deemed necessary, Defendant denies all allegations of this Paragraph directed against it and is without sufficient information to admit or deny the remaining allegations contained therein and, therefore, denies the same.

102. This Paragraph states legal conclusions which Defendant is required to neither admit nor deny. To the extent a response is deemed necessary, Defendant denies all allegations of this Paragraph directed against it and is without sufficient information to admit or deny the remaining allegations contained therein and, therefore, denies the same.

103. This Paragraph states legal conclusions which Defendant is required to neither admit nor deny. To the extent a response is deemed necessary, Defendant denies all allegations of this Paragraph directed against it and is without sufficient information to admit or deny the remaining allegations contained therein and, therefore, denies the same.

104. This Paragraph states legal conclusions which Defendant is required to neither admit nor deny. To the extent a response is deemed necessary, Defendant denies all allegations of this Paragraph directed against it and is without sufficient information to admit or deny the remaining allegations contained therein and, therefore, denies the same.

105. This Paragraph states legal conclusions which Defendant is required to neither admit nor deny. To the extent a response is deemed necessary, Defendant denies all allegations of this Paragraph directed against it and is without sufficient information to admit or deny the remaining allegations contained therein and, therefore, denies the same. Defendant denies that it is liable for Plaintiff's damages, if any, and further denies that Plaintiffs are entitled to punitive damages.

AS TO THE SECOND CAUSE OF ACTION
(Product Liability: Strict Liability – S.C. Code Ann. § 15-73-10, et. seq.)

106. Defendant repeats, realleges, and incorporates herein by reference its responses to Paragraphs 1 through 105.

107. This Paragraph states legal conclusions which Defendant is required to neither admit nor deny. To the extent a response is deemed necessary, Defendant denies all allegations of

this Paragraph directed against it and is without sufficient information to admit or deny the remaining allegations contained therein and, therefore, denies the same.

108. This Paragraph states legal conclusions which Defendant is required to neither admit nor deny. To the extent a response is deemed necessary, Defendant denies all allegations of this Paragraph directed against it and is without sufficient information to admit or deny the remaining allegations contained therein and, therefore, denies the same. Defendant further states that it is not responsible for Plaintiff's damages, if any.

109. This Paragraph states legal conclusions which Defendant is required to neither admit nor deny. To the extent a response is deemed necessary, Defendant denies all allegations of this Paragraph directed against it and is without sufficient information to admit or deny the remaining allegations contained therein and, therefore, denies the same. Defendant denies any duty, or failure thereof, to warn Plaintiff and/or others.

110. This Paragraph states legal conclusions which Defendant is required to neither admit nor deny. To the extent a response is deemed necessary, Defendant denies all allegations of this Paragraph directed against it and is without sufficient information to admit or deny the remaining allegations contained therein and, therefore, denies the same.

111. This Paragraph states legal conclusions which Defendant is required to neither admit nor deny. To the extent a response is deemed necessary, Defendant denies all allegations of this Paragraph directed against it and is without sufficient information to admit or deny the remaining allegations contained therein and, therefore, denies the same.

112. This Paragraph states legal conclusions which Defendant is required to neither admit nor deny. To the extent a response is deemed necessary, Defendant denies all allegations of

this Paragraph directed against it and is without sufficient information to admit or deny the remaining allegations contained therein and, therefore, denies the same.

113. This Paragraph states legal conclusions which Defendant is required to neither admit nor deny. To the extent a response is deemed necessary, Defendant denies all allegations of this Paragraph directed against it and is without sufficient information to admit or deny the remaining allegations contained therein and, therefore, denies the same. Defendant denies any duty, or failure thereof, to warn Plaintiff, Plaintiff and/or others.

114. This Paragraph states legal conclusions which Defendant is required to neither admit nor deny. To the extent a response is deemed necessary, Defendant denies all allegations of this Paragraph directed against it and is without sufficient information to admit or deny the remaining allegations contained therein and, therefore, denies the same.

115. This Paragraph states legal conclusions which Defendant is required to neither admit nor deny. To the extent a response is deemed necessary, Defendant denies all allegations of this Paragraph directed against it and is without sufficient information to admit or deny the remaining allegations contained therein and, therefore, denies the same. Defendant denies any duty, or failure thereof, to warn Plaintiff and/or others.

116. This Paragraph states legal conclusions which Defendant is required to neither admit nor deny. To the extent a response is deemed necessary, Defendant denies all allegations of this Paragraph directed against it and is without sufficient information to admit or deny the remaining allegations contained therein and, therefore, denies the same. Defendant further states that it is not responsible for Plaintiff's damages, if any.

117. This Paragraph states legal conclusions which Defendant is required to neither admit nor deny. To the extent a response is deemed necessary, Defendant denies all allegations of

this Paragraph directed against it and is without sufficient information to admit or deny the remaining allegations contained therein and, therefore, denies the same. Defendant denies any duty, or failure thereof, to warn Plaintiff and/or others.

118. This Paragraph states legal conclusions which Defendant is required to neither admit nor deny. To the extent a response is deemed necessary, Defendant denies all allegations of this Paragraph directed against it and is without sufficient information to admit or deny the remaining allegations contained therein and, therefore, denies the same.

119. This Paragraph states legal conclusions which Defendant is required to neither admit nor deny. To the extent a response is deemed necessary, Defendant denies all allegations of this Paragraph directed against it and is without sufficient information to admit or deny the remaining allegations contained therein and, therefore, denies the same.

120. This Paragraph states legal conclusions which Defendant is required to neither admit nor deny. To the extent a response is deemed necessary, Defendant denies all allegations of this Paragraph directed against it and is without sufficient information to admit or deny the remaining allegations contained therein and, therefore, denies the same.

121. This Paragraph states legal conclusions which Defendant is required to neither admit nor deny. To the extent a response is deemed necessary, Defendant denies all allegations of this Paragraph directed against it and is without sufficient information to admit or deny the remaining allegations contained therein and, therefore, denies the same. Defendant denies that it is liable for Plaintiff's damages, if any, and further denies that Plaintiffs are entitled to punitive damages.

122. This Paragraph states legal conclusions which Defendant is required to neither admit nor deny. To the extent a response is deemed necessary, Defendant denies all allegations of

this Paragraph directed against it and is without sufficient information to admit or deny the remaining allegations contained therein and, therefore, denies the same.

AS TO THE THIRD CAUSE OF ACTION
(Negligence Per Se)

123. Defendant repeats, realleges, and incorporates herein by reference its responses to Paragraphs 1 through 122.

124. This Paragraph states legal conclusions which Defendant is required to neither admit nor deny. To the extent a response is deemed necessary, Defendant denies all allegations of this Paragraph directed against it and is without sufficient information to admit or deny the remaining allegations contained therein and, therefore, denies the same.

125. This Paragraph states legal conclusions which Defendant is required to neither admit nor deny. To the extent a response is deemed necessary, Defendant denies all allegations of this Paragraph directed against it and is without sufficient information to admit or deny the remaining allegations contained therein and, therefore, denies the same.

126. This Paragraph states legal conclusions which Defendant is required to neither admit nor deny. To the extent a response is deemed necessary, Defendant denies all allegations of this Paragraph directed against it and is without sufficient information to admit or deny the remaining allegations contained therein and, therefore, denies the same.

AS TO THE FOURTH CAUSE OF ACTION
(Product Liability: Breach of Implied Warranties – S.C. Code Ann. § 36-2-314)

127. Defendant repeats, realleges, and incorporates herein by reference its responses to Paragraphs 1 through 126.

128. This Paragraph states legal conclusions which Defendant is required to neither admit nor deny. To the extent a response is deemed necessary, Defendant denies all allegations of

this Paragraph, including all subparts, directed against it and is without sufficient information to admit or deny the remaining allegations contained therein and, therefore, denies the same.

129. This Paragraph states legal conclusions which Defendant is required to neither admit nor deny. To the extent a response is deemed necessary, Defendant denies all allegations of this Paragraph, including all subparts, directed against it and is without sufficient information to admit or deny the remaining allegations contained therein and, therefore, denies the same.

130. This Paragraph states legal conclusions which Defendant is required to neither admit nor deny. To the extent a response is deemed necessary, Defendant denies all allegations of this Paragraph, including all subparts, directed against it and is without sufficient information to admit or deny the remaining allegations contained therein and, therefore, denies the same. Defendant further states that it is not responsible for Plaintiff's damages, if any.

AS TO THE FIFTH CAUSE OF ACTION
(Fraudulent Misrepresentation)

131. Defendant repeats, realleges, and incorporates herein by reference its responses to Paragraphs 1 through 130.

132. This Paragraph states legal conclusions which Defendant is required to neither admit nor deny. To the extent a response is deemed necessary, Defendant denies all allegations of this Paragraph directed against it and is without sufficient information to admit or deny the remaining allegations contained therein and, therefore, denies the same.

133. This Paragraph states legal conclusions which Defendant is required to neither admit nor deny. To the extent a response is deemed necessary, Defendant denies all allegations of this Paragraph directed against it and is without sufficient information to admit or deny the remaining allegations contained therein and, therefore, denies the same.

134. This Paragraph states legal conclusions which Defendant is required to neither admit nor deny. To the extent a response is deemed necessary, Defendant denies all allegations of this Paragraph directed against it and is without sufficient information to admit or deny the remaining allegations contained therein and, therefore, denies the same. Defendant further states that it is not responsible for Plaintiff's damages, if any.

AS TO THE SIXTH CAUSE OF ACTION
(Fraudulent Misrepresentation and Conspiracy/Concert Action)

135. Defendant repeats, realleges, and incorporates herein by reference its responses to Paragraphs 1 through 134.

136. This Paragraph states legal conclusions which Defendant is required to neither admit nor deny. To the extent a response is deemed necessary, Defendant denies all allegations of this Paragraph directed against it and is without sufficient information to admit or deny the remaining allegations contained therein and, therefore, denies the same.

137. This Paragraph states legal conclusions which Defendant is required to neither admit nor deny. To the extent a response is deemed necessary, Defendant denies all allegations of this Paragraph directed against it and is without sufficient information to admit or deny the remaining allegations contained therein and, therefore, denies the same.

138. This Paragraph states legal conclusions which Defendant is required to neither admit nor deny. To the extent a response is deemed necessary, Defendant denies all allegations of this Paragraph directed against it and is without sufficient information to admit or deny the remaining allegations contained therein and, therefore, denies the same.

139. This Paragraph states legal conclusions which Defendant is required to neither admit nor deny. To the extent a response is deemed necessary, Defendant denies all allegations of

this Paragraph directed against it and is without sufficient information to admit or deny the remaining allegations contained therein and, therefore, denies the same.

140. This Paragraph states legal conclusions which Defendant is required to neither admit nor deny. To the extent a response is deemed necessary, Defendant denies all allegations of this Paragraph directed against it and is without sufficient information to admit or deny the remaining allegations contained therein and, therefore, denies the same.

141. This Paragraph states legal conclusions which Defendant is required to neither admit nor deny. To the extent a response is deemed necessary, Defendant denies all allegations of this Paragraph directed against it and is without sufficient information to admit or deny the remaining allegations contained therein and, therefore, denies the same.

142. This Paragraph states legal conclusions which Defendant is required to neither admit nor deny. To the extent a response is deemed necessary, Defendant denies all allegations of this Paragraph directed against it and is without sufficient information to admit or deny the remaining allegations contained therein and, therefore, denies the same.

143. This Paragraph states legal conclusions which Defendant is required to neither admit nor deny. To the extent a response is deemed necessary, Defendant denies all allegations of this Paragraph directed against it and is without sufficient information to admit or deny the remaining allegations contained therein and, therefore, denies the same.

144. This Paragraph states legal conclusions which Defendant is required to neither admit nor deny. To the extent a response is deemed necessary, Defendant denies all allegations of this Paragraph directed against it and is without sufficient information to admit or deny the remaining allegations contained therein and, therefore, denies the same.

145. This Paragraph states legal conclusions which Defendant is required to neither admit nor deny. To the extent a response is deemed necessary, Defendant denies all allegations of this Paragraph directed against it and is without sufficient information to admit or deny the remaining allegations contained therein and, therefore, denies the same.

146. This Paragraph states legal conclusions which Defendant is required to neither admit nor deny. To the extent a response is deemed necessary, Defendant denies all allegations of this Paragraph directed against it and is without sufficient information to admit or deny the remaining allegations contained therein and, therefore, denies the same.

147. This Paragraph states legal conclusions which Defendant is required to neither admit nor deny. To the extent a response is deemed necessary, Defendant denies all allegations of this Paragraph directed against it and is without sufficient information to admit or deny the remaining allegations contained therein and, therefore, denies the same.

148. This Paragraph states legal conclusions which Defendant is required to neither admit nor deny. To the extent a response is deemed necessary, Defendant denies all allegations of this Paragraph directed against it and is without sufficient information to admit or deny the remaining allegations contained therein and, therefore, denies the same.

149. This Paragraph states legal conclusions which Defendant is required to neither admit nor deny. To the extent a response is deemed necessary, Defendant denies all allegations of this Paragraph directed against it and is without sufficient information to admit or deny the remaining allegations contained therein and, therefore, denies the same.

150. This Paragraph states legal conclusions which Defendant is required to neither admit nor deny. To the extent a response is deemed necessary, Defendant denies all allegations of

this Paragraph directed against it and is without sufficient information to admit or deny the remaining allegations contained therein and, therefore, denies the same.

151. This Paragraph states legal conclusions which Defendant is required to neither admit nor deny. To the extent a response is deemed necessary, Defendant denies all allegations of this Paragraph directed against it and is without sufficient information to admit or deny the remaining allegations contained therein and, therefore, denies the same.

152. This Paragraph states legal conclusions which Defendant is required to neither admit nor deny. To the extent a response is deemed necessary, Defendant denies all allegations of this Paragraph directed against it and is without sufficient information to admit or deny the remaining allegations contained therein and, therefore, denies the same.

153. This Paragraph states legal conclusions which Defendant is required to neither admit nor deny. To the extent a response is deemed necessary, Defendant denies all allegations of this Paragraph directed against it and is without sufficient information to admit or deny the remaining allegations contained therein and, therefore, denies the same.

154. This Paragraph states legal conclusions which Defendant is required to neither admit nor deny. To the extent a response is deemed necessary, Defendant denies all allegations of this Paragraph directed against it and is without sufficient information to admit or deny the remaining allegations contained therein and, therefore, denies the same.

155. This Paragraph states legal conclusions which Defendant is required to neither admit nor deny. To the extent a response is deemed necessary, Defendant denies all allegations of this Paragraph directed against it and is without sufficient information to admit or deny the remaining allegations contained therein and, therefore, denies the same.

156. This Paragraph states legal conclusions which Defendant is required to neither admit nor deny. To the extent a response is deemed necessary, Defendant denies all allegations of this Paragraph directed against it and is without sufficient information to admit or deny the remaining allegations contained therein and, therefore, denies the same.

157. This Paragraph states legal conclusions which Defendant is required to neither admit nor deny. To the extent a response is deemed necessary, Defendant denies all allegations of this Paragraph directed against it and is without sufficient information to admit or deny the remaining allegations contained therein and, therefore, denies the same.

158. This Paragraph states legal conclusions which Defendant is required to neither admit nor deny. To the extent a response is deemed necessary, Defendant denies all allegations of this Paragraph directed against it and is without sufficient information to admit or deny the remaining allegations contained therein and, therefore, denies the same.

159. This Paragraph states legal conclusions which Defendant is required to neither admit nor deny. To the extent a response is deemed necessary, Defendant denies all allegations of this Paragraph directed against it and is without sufficient information to admit or deny the remaining allegations contained therein and, therefore, denies the same.

160. This Paragraph states legal conclusions which Defendant is required to neither admit nor deny. To the extent a response is deemed necessary, Defendant denies all allegations of this Paragraph directed against it and is without sufficient information to admit or deny the remaining allegations contained therein and, therefore, denies the same.

161. This Paragraph states legal conclusions which Defendant is required to neither admit nor deny. To the extent a response is deemed necessary, Defendant denies all allegations of

this Paragraph directed against it and is without sufficient information to admit or deny the remaining allegations contained therein and, therefore, denies the same.

162. This Paragraph states legal conclusions which Defendant is required to neither admit nor deny. To the extent a response is deemed necessary, Defendant denies all allegations of this Paragraph directed against it and is without sufficient information to admit or deny the remaining allegations contained therein and, therefore, denies the same.

163. This Paragraph states legal conclusions which Defendant is required to neither admit nor deny. To the extent a response is deemed necessary, Defendant denies all allegations of this Paragraph directed against it and is without sufficient information to admit or deny the remaining allegations contained therein and, therefore, denies the same.

164. This Paragraph states legal conclusions which Defendant is required to neither admit nor deny. To the extent a response is deemed necessary, Defendant denies all allegations of this Paragraph directed against it and is without sufficient information to admit or deny the remaining allegations contained therein and, therefore, denies the same.

165. This Paragraph states legal conclusions which Defendant is required to neither admit nor deny. To the extent a response is deemed necessary, Defendant denies all allegations of this Paragraph directed against it and is without sufficient information to admit or deny the remaining allegations contained therein and, therefore, denies the same.

166. This Paragraph states legal conclusions which Defendant is required to neither admit nor deny. To the extent a response is deemed necessary, Defendant denies all allegations of this Paragraph directed against it and is without sufficient information to admit or deny the remaining allegations contained therein and, therefore, denies the same.

167. This Paragraph states legal conclusions which Defendant is required to neither admit nor deny. To the extent a response is deemed necessary, Defendant denies all allegations of this Paragraph directed against it and is without sufficient information to admit or deny the remaining allegations contained therein and, therefore, denies the same.

168. This Paragraph states legal conclusions which Defendant is required to neither admit nor deny. To the extent a response is deemed necessary, Defendant denies all allegations of this Paragraph directed against it and is without sufficient information to admit or deny the remaining allegations contained therein and, therefore, denies the same.

169. This Paragraph states legal conclusions which Defendant is required to neither admit nor deny. To the extent a response is deemed necessary, Defendant denies all allegations of this Paragraph directed against it and is without sufficient information to admit or deny the remaining allegations contained therein and, therefore, denies the same.

170. This Paragraph states legal conclusions which Defendant is required to neither admit nor deny. To the extent a response is deemed necessary, Defendant denies all allegations of this Paragraph directed against it and is without sufficient information to admit or deny the remaining allegations contained therein and, therefore, denies the same.

171. This Paragraph states legal conclusions which Defendant is required to neither admit nor deny. To the extent a response is deemed necessary, Defendant denies all allegations of this Paragraph directed against it and is without sufficient information to admit or deny the remaining allegations contained therein and, therefore, denies the same.

172. This Paragraph states legal conclusions which Defendant is required to neither admit nor deny. To the extent a response is deemed necessary, Defendant denies all allegations of

this Paragraph directed against it and is without sufficient information to admit or deny the remaining allegations contained therein and, therefore, denies the same.

173. This Paragraph states legal conclusions which Defendant is required to neither admit nor deny. To the extent a response is deemed necessary, Defendant denies all allegations of this Paragraph directed against it and is without sufficient information to admit or deny the remaining allegations contained therein and, therefore, denies the same.

174. This Paragraph states legal conclusions which Defendant is required to neither admit nor deny. To the extent a response is deemed necessary, Defendant denies all allegations of this Paragraph directed against it and is without sufficient information to admit or deny the remaining allegations contained therein and, therefore, denies the same.

175. This Paragraph states legal conclusions which Defendant is required to neither admit nor deny. To the extent a response is deemed necessary, Defendant denies all allegations of this Paragraph directed against it and is without sufficient information to admit or deny the remaining allegations contained therein and, therefore, denies the same.

176. This Paragraph states legal conclusions which Defendant is required to neither admit nor deny. To the extent a response is deemed necessary, Defendant denies all allegations of this Paragraph directed against it and is without sufficient information to admit or deny the remaining allegations contained therein and, therefore, denies the same.

177. This Paragraph states legal conclusions which Defendant is required to neither admit nor deny. To the extent a response is deemed necessary, Defendant denies all allegations of this Paragraph directed against it and is without sufficient information to admit or deny the remaining allegations contained therein and, therefore, denies the same.

178. This Paragraph states legal conclusions which Defendant is required to neither admit nor deny. To the extent a response is deemed necessary, Defendant denies all allegations of this Paragraph directed against it and is without sufficient information to admit or deny the remaining allegations contained therein and, therefore, denies the same.

179. This Paragraph states legal conclusions which Defendant is required to neither admit nor deny. To the extent a response is deemed necessary, Defendant denies all allegations of this Paragraph directed against it and is without sufficient information to admit or deny the remaining allegations contained therein and, therefore, denies the same.

180. This Paragraph states legal conclusions which Defendant is required to neither admit nor deny. To the extent a response is deemed necessary, Defendant denies all allegations of this Paragraph directed against it and is without sufficient information to admit or deny the remaining allegations contained therein and, therefore, denies the same.

181. This Paragraph states legal conclusions which Defendant is required to neither admit nor deny. To the extent a response is deemed necessary, Defendant denies all allegations of this Paragraph directed against it and is without sufficient information to admit or deny the remaining allegations contained therein and, therefore, denies the same.

182. This Paragraph states legal conclusions which Defendant is required to neither admit nor deny. To the extent a response is deemed necessary, Defendant denies all allegations of this Paragraph directed against it and is without sufficient information to admit or deny the remaining allegations contained therein and, therefore, denies the same.

183. This Paragraph states legal conclusions which Defendant is required to neither admit nor deny. To the extent a response is deemed necessary, Defendant denies all allegations of

this Paragraph directed against it and is without sufficient information to admit or deny the remaining allegations contained therein and, therefore, denies the same.

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AS TO THE SEVENTH CAUSE OF ACTION
(Loss of Consortium)

208. Defendant repeats, realleges, and incorporates herein by reference its responses to Paragraphs 1 through 207.

209. Defendant denies all allegations of this Paragraph directed against it and is without sufficient information to admit or deny the remaining allegations contained therein and, therefore, denies the same.

210. This Paragraph states legal conclusions which Defendant is required to neither admit nor deny. To the extent a response is deemed necessary, Defendant denies all allegations of this Paragraph directed against it and is without sufficient information to admit or deny the remaining allegations contained therein and, therefore, denies the same. Defendant further states that it is not responsible for Plaintiff's damages, if any.

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this Paragraph directed against it and is without sufficient information to admit or deny the remaining allegations contained therein and, therefore, denies the same. Defendant further states that it is not responsible for Plaintiff's damages, if any.

AS TO PRAYER FOR RELIEF

212. Defendant denies the allegations and requests for relief contained in the unnumbered paragraph beginning with WHEREFORE on page 67 of the First Amended Complaint, including all subparts, and demands strict proof thereof. Defendant denies any liability whatsoever to Plaintiff in this matter.

AFFIRMATIVE DEFENSES

1. The Complaint does not make it clear where Plaintiff allegedly encountered any product of this Defendant. For this reason, Defendant expressly reserves all defenses, including but not limited to jurisdictional defenses, and Defendant's participation in subsequent discovery in this case is not deemed to be a waiver of any rights, defenses or objections.

2. As Defendant's affirmative defense and by way of a motion to dismiss, which will be filed by separate pleading in this matter, the Court lacks personal jurisdiction over this Defendant. Under the Supreme Court's decision in *Daimler AG v. Bauman*, 134 S. Ct. 746 (2014), Defendant is not subject to general personal jurisdiction in South Carolina. *Daimler* holds that, absent "exceptional" circumstances, a corporation is subject to general jurisdiction only in its place of incorporation and principal place of business. Because South Carolina is not Defendant's place of incorporation or principal place of business—and as there are no "exceptional" circumstances that would warrant a departure from the governing rule—general jurisdiction is unavailable. Specific jurisdiction exists only where a defendant's suit-related conduct is alleged to have occurred in the forum. See *Bristol-Myers Squibb Co. v. Superior Court of California, San*

Francisco County, 137 S. Ct. 1773, 1778 (2017). Plaintiff's Complaint lacks any allegation that Defendant did or failed to do anything in South Carolina giving rise to Plaintiff's damages, if any.

3. The Complaint and each Cause of Action therein fail to state a claim against this Defendant.

4. The Complaint should be dismissed due to the Plaintiff's lack of capacity.

5. There is a lack of joinder of one or more parties who should or must be joined; without the joinder of these proper parties, complete relief cannot be accorded among those already made parties to this action.

6. The claims set forth in the Complaint may be barred by the applicable statutes of limitations and/or repose in this state or other states as may be applicable.

7. Plaintiff's claims are barred by the contributory or comparative negligence of the Plaintiff; in the alternative, Plaintiff's claims are barred in part by the comparative negligence of the Plaintiff and any award to the Plaintiff should be reduced accordingly.

8. The claims set forth in the Complaint are barred to the extent there is another action pending between the same parties for the same claim.

9. Plaintiff's claims are barred or reduced by the doctrines of *res judicata*, waiver, release, laches, and/or conditions precedent or subsequent.

10. Plaintiff's claims are barred or reduced by the applicable provisions of the Worker's Compensation Act, whether of this state or another.

11. By virtue of the doctrine of judicial estoppel, Plaintiff is precluded from taking a position inconsistent with one taken with respect to the same facts in earlier litigation, if any, and are, therefore, precluded from alleging the material facts necessary to state a cause of action against this Defendant.

12. Venue is improper in this action. This Defendant reserves its right to move for dismissal and/or transfer of the action based on improper and/or inconvenient venue and further reserves its right to seek application of the law of the appropriate venue on all issues.

13. There has been no concert of action between this Defendant and any of the other named Defendants. The Defendants are not joint tortfeasors and, therefore, this Defendant may not be held jointly and severally liable with the other named Defendants.

14. To the extent that Plaintiff received payment in satisfaction of any of the alleged injuries and/or claims against this Defendant, the Plaintiff's Complaint in each and every count and cause of action alleged therein is barred or reduced by the defenses of payment and accord and satisfaction.

15. There are no allegations against this Defendant stated with sufficient particularity to constitute a cause of action for malice, fraud, fraudulent concealment, concert of action, conspiracy, or the like meeting the requirement of Rule 9(b) of the South Carolina Rules of Civil Procedure.

16. This Defendant had no duty to warn Plaintiff or others, of or protect them from the risks and dangers, if any, associated with asbestos or asbestos-related products.

17. Plaintiff's claims are barred to the extent this Defendant's products were sold to a "learned intermediary" and/or "sophisticated user" or other similar purchaser and/or Defendant was a "bulk supplier."

18. Plaintiff's implied warranty claims, if any, do not apply to any products of this Defendant sold prior to the effective date of the Uniform Commercial Code. Plaintiff was not in privity with this Defendant, thus, may not rely upon any warranties which may have been implied or imposed by law upon this Defendant. This Defendant affirmatively states that it breached no warranty.

19. Any oral warranties upon which Plaintiff alleges to have relied are inadmissible and unavailable because of the provisions of the applicable Statute of Frauds.

20. This Defendant affirmatively states that it has appropriately disclaimed all applicable warranties.

21. This Defendant alleges that the Plaintiff had actual knowledge of and voluntarily assumed the risk incident to Plaintiff's use and exposure to asbestos or the products and processes involving the use of asbestos or asbestos-containing materials which were known to Plaintiff to be dangerous.

22. This Defendant alleges that if Plaintiff was injured by any of Defendant's products, which is denied, Plaintiff discovered any defect in the products and was aware of the dangers thereof, but, nevertheless, proceeded unreasonably to make use of the same.

23. This Defendant alleges that the Plaintiff failed to properly use the product or products in question, abused the product or products, and/or subjected them to abnormal use at the time or times and places alleged in the Complaint.

24. This Defendant alleges that if Plaintiff used the product or products of this Defendant, the same was used for a purpose not intended by this Defendant and contrary to any instructions or normal method of using the same.

25. This Defendant alleges that if Plaintiff sustained any injuries or damages as set forth in the Complaint, which is denied, the same were due to and caused by the negligence, recklessness, willfulness, and wantonness of others and not this Defendant.

26. This Defendant would show that even if Plaintiff suffered injuries as described in the Complaint, and the same are admitted for the purposes of this defense only, then said injuries were caused by the acts or omissions of third parties including, but not limited to, the actions of unions,

employers, other manufacturers, distributors, and others, and that these acts or omissions of third parties acted as a direct and proximate cause of their injuries in such a way as to constitute a supervening or intervening cause ending all liability on the part of this Defendant.

27. This Defendant alleges that if Plaintiff sustained injuries as a result of exposure to asbestos or asbestos-containing products, which is denied, then such injuries were or may have been due to exposures to products of manufacturers not named as Defendants in this action including, but not limited to, product manufacturers which have taken advantage of the protections of the bankruptcy provisions of the United States Code.

28. This Defendant denies that it mined, manufactured, processed, imported and/or sold any asbestos or asbestos-containing material which allegedly caused or contributed to the alleged injuries or damages of the Plaintiff. This Defendant further denies that, for those periods of time alleged by the Plaintiff, any product, or action or inaction on its part, caused damage to the Plaintiff.

29. Plaintiff failed to notify this Defendant within a reasonable period of time after Plaintiff discovered or should have discovered the alleged defect in its products and, therefore, is barred from recovery.

30. If Plaintiff was exposed to any of Defendant's products, said products at the time were manufactured in conformity with applicable federal and state regulations, standards, specifications and laws; consequently, recovery by Plaintiff herein is barred.

31. If it should be proven that Plaintiff, while working for or otherwise associated with the United States Government, worked with or around asbestos-containing products manufactured by this Defendant or a predecessor corporation, such materials, on information and belief, were made in compliance with military specifications and contract requirements for a specific intended use by the United States Government.

32. If any products manufactured and sold by this Defendant, which give rise to Plaintiff's claims herein, were designed and manufactured pursuant to and in accordance with the standards of, or specifications mandated by, the United States Government and its agencies, the knowledge of the United States Government and its agencies of any possible health hazards from use of such products was equal or superior to that of this Defendant, and by reason thereof, this Defendant is entitled to assume any immunity from liability which exists in favor of the United States Government or its agencies and/or to assert the government contractor defense.

33. In the event it is determined that any product developed, manufactured, distributed, sold or otherwise utilized by this Defendant was dangerous, which danger is specifically denied, this Defendant was unaware of such danger as it would apply in any conceivable use of its products by Plaintiff; furthermore, the discovery of such danger was beyond the state of the art at the time such product or products were manufactured, distributed, sold or used. Further, such products were manufactured, distributed, sold and used in conformity with the state of the art and/or prevailing industry standards at the time.

34. On information and belief, Plaintiff received payments from and granted releases to other parties including, but not limited to, other parties to this action and other non-parties against whom Plaintiffs claimed liability in tort for the same injury for which Plaintiff claims this Defendant has liability. This Defendant is entitled to set off of the greater of the amount stipulated to in such release or the amount of consideration paid for such a release.

35. Plaintiff failed to mitigate or otherwise act to lessen or reduce the injuries and disabilities alleged in the Complaint.

36. The Complaint fails to set forth a claim for punitive damages upon which relief may be granted.

37. To the extent the Complaint asserts a demand for punitive damages, this Defendant specifically incorporates by reference any and all standards of limitations regarding the determination and/or enforceability of punitive damage awards that arose in the decisions of *BMW of North America, Inc. v. Gore*, 517 U.S. 559 (1996); *Cooper Industries, Inc. v. Leatherman Tool Group, Inc.*, 532 U.S. 424 (2001); and *State Farm Mut. Automobile Ins. Co. v. Campbell*, 538 U.S. 408 (2003).

38. To the extent that the Complaint seeks punitive damages, this Defendant affirmatively pleads the following in regard to punitive damages:

(a) An award of punitive damages in this civil action would amount to a deprivation of property without due process of law in violation of the Fifth and Fourteenth Amendments to the United States Constitution and the corresponding provisions of the applicable state Constitution;

(b) An award of punitive damages in this civil action would violate the due process provisions of the Fifth and Fourteenth Amendments to the United States Constitution and the corresponding provisions of the applicable state Constitution;

(c) The criteria used for determining whether, and in what amount, punitive damages may be awarded are impermissible, vague, imprecise and inconsistent and, therefore, violate the due process provisions of the Fifth and Fourteenth Amendments to the United States Constitution and the corresponding provisions of the applicable state Constitution;

(d) An award of punitive damages in this civil action would amount to an excessive fine in violation of the due process provisions of the Eighth Amendment to the United States Constitution and the corresponding provisions of the applicable state Constitution; and

(e) Plaintiff's claim for punitive damages is barred by the "double jeopardy" clause of the Fifth Amendment to the United States Constitution, as applied to the states through the Fourteenth Amendment.

39. Defendant would show that Plaintiff's claim for punitive damages is barred, and/or must be bifurcated for trial, pursuant to South Carolina Code §15-32-520 and §15-32-530, and/or similar and/or related state statutes and limitations and any amendments thereto.

40. Defendant would show that Plaintiff's claim for punitive damages is barred, and/or must be reduced, capped, and/or limited pursuant to South Carolina Code §15-32-520 and §15-32-530, and/or similar and/or related state statutes and limitations and any amendments thereto. Defendant specifically pleads as an affirmative defense and puts the Plaintiff on notice of Defendant's intent to invoke the statutory cap on punitive damages. Defendant asserts that in the event of any verdict against it, that such verdict shall be capped, reduced or limited in accordance with SC Code §15-32-530(A), including that an award of punitive damages may not exceed the greater of three times the amount of compensatory damages awarded to each claimant entitled thereto or the sum of five hundred thousand dollars. Alternatively, Defendant asserts that in the event of any verdict against it, that such verdict be capped, reduced or limited in accordance with SC Code §15-32-530(B), such that punitive damages must not exceed the greater of four times the amount of compensatory damages awarded to each claimant entitled thereto or the sum of two million dollars. If necessary, Defendant requests that the trial court reduce any award and enter judgment for punitive damages in the maximum amount allowed by SC Code §15-32-530(A) and (B). Defendant requires strict proof in accordance with SC Code §15-32-520 and §15-32-530, including ensuring that the award is not excessive or the result of passion or prejudice, and that any punitive damages award must be specific to this defendant, and that defendant be liable only

for the amount of the award made against this defendant. Defendant asserts and reserves all rights, arguments, remedies, immunities and defenses available under SC Code §15-32-520 and §15-32-530.

41. To the extent Plaintiff smoked, or otherwise used, or was exposed to tobacco products including, but not limited to, cigarettes, cigars, snuff, chew, and such use of and/or exposure to tobacco products has caused or contributed to any of the alleged injuries, Plaintiff's use of and/or exposure to tobacco products constitutes negligence which bars, limits, or reduces any recovery by Plaintiff.

42. Plaintiff may not bring this claim pursuant to Section 15-5-150 of the South Carolina Code of Laws, also referred to the South Carolina's Door Closing Statute.

43. Plaintiff's Complaint should be dismissed and/or is not subject to trial for its failure to comply with the requirements of Section 44-135-10 *et seq.*, of the South Carolina Code of Laws, also known as the "Asbestos and Silica Claims Procedure Act of 2006," including, but not limited to, failing to make a prima facie showing of asbestos-related malignancy or impairment as required by S.C. Code Ann. § 44-135-50. This Defendant reserves all rights and remedies available to it as set forth in the Act.

44. The alleged injuries to Plaintiff are barred by Section 15-73-10 *et seq.*, of the South Carolina Code of Laws; therefore, Plaintiff is prohibited by law from asserting a cause of action based on strict liability for either actual or punitive damages.

45. This Defendant should not be held jointly and severally liable pursuant to the provisions of Section 15-38-15 of the South Carolina Code of Laws and/or other similar statutes.

46. This Defendant denies its "alternate entity" to the extent alleged in the Complaint. This Defendant denies any and all liability asserted against it by the Plaintiff, where based in whole

or part on its alleged status as a successor, successor in business, successor in product line, assignee, predecessor, predecessor in business, predecessor in product line, parent, alter ego, alternate entity or other derivative status.

47. This Defendant denies it has any post-sale duty to warn and asserts that South Carolina has affirmatively established it does not recognize a post-sale duty to warn. See *Bragg v. Hi-Ranger*, 319 S.C. 531, 462 S.E.2d 321 (Ct. App. 1995); *Branham v. Ford Motor Co.*, 390 S.C. 203, 226, 701 S.E.2d 5, 17 (2010).

48. This Defendant alleges that any injuries or damages sustained by the Plaintiff were due to and caused by the suppliers to this Defendant, since all of this Defendant's products were supplied by others, and these suppliers did not include warnings on the products, therefore, the negligence, carelessness, recklessness, and breach of implied warranties, if any, by such product suppliers was a direct and proximate cause of any damages the Plaintiff may have sustained and, therefore, this Defendant is not liable in any sum whatsoever.

49. This Defendant alleges that the absence of warnings on any product of this Defendant did not lead to reasonable reliance by Plaintiff on the safety of any such product.

50. This Defendant cannot be liable to the Plaintiff under the doctrine of strict liability, to the extent the Plaintiff was not exposed to or injured by a product sold after the effective date of the statute.

51. This Defendant asserts that any talc products sold by this Defendant which give rise to Plaintiff's claims herein were designed and manufactured pursuant to, and in accordance with, specifications mandated by the United States Government or its agencies. The knowledge of the United States Government and its agencies of any possible health hazards from use of such products were equal or superior to that of this Defendant, and by reason thereof, this Defendant is

entitled to such immunity from liability as exists in favor of the United States Government or its agencies.

52. The damages allegedly sustained by the Plaintiff from her alleged exposure to asbestos-containing products were caused, in whole or in part, by the improper use and operation of the products, rather than any defect in the design, manufacture, production, assemblage, installation, testing, labeling, marketing, distribution, sale or inspection of any product by this Defendant.

53. This Defendant denies that there was any defect or negligent mining, processing, manufacture, design, testing, investigation, fashioning, packaging, distributing, delivery, and/or sale, in any talc product referred to in the Plaintiff's Complaint, but if there was any defect or negligence as alleged, then this Defendant is not liable as it justifiably relied upon inspection by others in the regular course of trade and business.

54. As to any product sold by Defendant, the product was not defective or dangerous at any time when this Defendant had possession or control of it.

55. Any and all implied warranties, including the warranties of merchantability and fitness for a particular purpose, were excluded at the time of the sale of the product.

56. No implied warranties, including the warranties of merchantability and fitness for a particular purpose, were a part of the basis of the bargain in the sale of the product.

57. This Defendant is not liable to Plaintiff for the damages alleged in the Complaint because such damages may not be recoverable under express warranty.

58. The purchaser of the product and any or all third-party beneficiaries of any warranties, expressed or implied, relating to the product failed to provide notice of the alleged

breaches of warranty to this Defendant pursuant to the applicable provision of the Uniform Commercial Code.

59. This Defendant denies that the products alleged in Plaintiff's Complaint to contain asbestos are products within the meaning and scope of the Restatement of Torts Section 402A and, as such, the Complaint fails to state a cause of action in strict liability.

60. This Defendant had no knowledge or reason to know of any alleged risks associated with the alleged asbestos-containing products at any time during the periods complained of by Plaintiff.

61. The Plaintiff did not directly or indirectly purchase any asbestos-containing products or materials from this Defendant, nor did the Plaintiff receive or rely upon any representation or warranty allegedly made by this Defendant.

62. To the extent that the Plaintiff was exposed to any product containing asbestos as a result of conduct by this Defendant, which is denied, said exposure was de minimis and not a substantial contributing factor to any asbestos-related disease which the Plaintiff may have developed, and not actionable at law or equity.

63. Exposure to asbestos allegedly attributable to this Defendant, if any, is so minimal as to be insufficient to establish to a reasonable degree of probability that the products are capable of causing Plaintiff's injury or damages and must be considered speculative as a matter of law.

64. To the extent products sold by this Defendant are found to contain asbestos or asbestos-containing talc, which this Defendant denies, those products are not unreasonably dangerous as a matter of law.

65. Plaintiff's claims are barred or diminished as a matter of public policy as the social utility and benefit of asbestos-containing products outweighed the risk.

66. Plaintiff caused and/or contributed to Plaintiff's alleged illness, either in whole or in part, by exposure to or the use of tobacco products and/or other substances, products, medications, or drugs.

67. Plaintiff's recovery against Defendant is barred, diminished or reduced to the extent the Complaint seeks recovery under the theory of "enterprise," "industry-wide," "alternate" or "market share" (collectively referred to hereafter as "market share") liability, and furthermore, the essential elements of a cause of action premised on a market share theory of liability do not exist between Plaintiff and Defendant.

68. The Complaint fails to allege facts sufficient to constitute a cause of action based upon market share liability and/or enterprise liability and therefore, violates the guarantees of due process of law and equal protection of the laws guaranteed by the United States and South Carolina Constitutions, and such violations bar Plaintiff's recovery or judgment against Defendant.

69. Plaintiff's recovery is barred, diminished or reduced to the extent that Plaintiff failed to, and cannot identify the product(s), and the toxins within said product(s), to which Plaintiff was allegedly exposed.

70. Plaintiff's recovery is barred, diminished or reduced to the extent that Plaintiff cannot show that any product supplied by Defendant, if any, in all reasonable medical probability, was a substantial factor in increasing the risk of bringing about the injuries or damages complained of by Plaintiff.

71. Each and every claim of Plaintiff, to the extent it pertains to Defendant, is preempted, in whole or in part, by the applicable state and/or federal statutes, rules, standards and/or regulations.

72. Each and every claim of Plaintiff, to the extent it pertains to Defendant, is preempted by the Federal Food, Drug, and Cosmetics Act ("FFDCA"), 21 U.S.C. §§ 301-399(a)

(2009), in that the U.S. Food and Drug Administration (“FDA”) has primary and exclusive jurisdiction over the safety of cosmetic talc-containing products and primary and exclusive jurisdiction to determine whether any warning must accompany cosmetic talc-containing products. The FDA has ruled, on multiple occasions, that cosmetic grade talc is a safe substance when used as intended and further ruled that manufacturers need not provide any warnings on, or in connection with the sale of, cosmetic grade talc-containing products.

73. Each and every claim of Plaintiff, to the extent it pertains to Defendant’s alleged manufacture and/or sale of cosmetic grade talc-containing products, is subject to the FDA’s primary jurisdiction. Consequently, each and every claim, to the extent they pertain to Defendant, should be dismissed or stayed pending further FDA review of whether cosmetic talc is generally recognized as safe and whether any warning must accompany, or other restrictions be placed upon the manufacture and sale of, a cosmetic talc-containing product.

74. Each and every claim of Plaintiff, to the extent it pertains to Defendant’s alleged manufacture and/or sale of cosmetic grade talc-containing products, is an unauthorized and improper attempt to enforce privately a claim under the FFDCA, 21 U.S.C. §§ 301-399(a) (2009).

75. Defendant alleges that Plaintiff’s claims and causes of action, to the extent asserted against Defendant, are barred in whole or in part because the product(s) allegedly sold by Defendant complied with all applicable federal, state and local rules, regulations, specifications, and laws.

76. The injuries complained of by Plaintiff are wholly or partially caused by independent means, including, *inter alia*, the conduct and habits of Plaintiff and exposure to other particulates in the environment.

77. Defendant specifically denies that any cosmetic or talcum powder product that it allegedly sold was defectively designed, because the manufacturing specifications did not include asbestos.

78. This Defendant reserves the right to allege additional facts and circumstances in support of its defenses as these facts become available.

79. The Complaint does not specify the brand name or type of product purchased from Defendant, including the nature, manner, and time frame of any such exposure. For this reason, Defendant expressly reserves all defenses, both affirmative and otherwise, and Defendant's participation in subsequent discovery in this case is not deemed to be a waiver of any rights, defenses or objections.

80. This Defendant incorporates by reference herein, as if fully set forth, all defenses, both affirmative and otherwise, raised, pleaded or asserted by all other answering Defendants.

ANSWER TO CROSS-CLAIMS

This Defendant, answering any and all Cross-Claims which may already have been asserted or which may be asserted in the future against it by any Co-Defendants and/or Third-Party Defendants, says:

1. In defense of any and all Cross-Claims, this Defendant incorporates herein as if restated fully all responses and defenses which it has asserted above or may assert in response to the allegations contained in the Complaint.

2. The allegations against this Defendant in any and all Cross-Claims are denied.

3. This Defendant denies liability with respect to any and all Cross-Claims.

4. This Defendant denies that it has any indemnity or contribution liability to any other Defendant or Third-Party Defendant.

RESERVATION OF CROSS-CLAIMS

All Cross-Claims for contribution and for indemnity by this Defendant against all Co-Defendants and Third-Party Defendants are hereby reserved and implied.

JURY DEMAND

This Defendant requests trial by jury on all issues so triable.

WHEREFORE, this Defendant prays the Court for the following relief:

1. That the Complaint be dismissed with prejudice as to this Defendant;
2. That all Cross-Claims against this Defendant be dismissed with prejudice;
3. That the Plaintiff and other Defendants and/or Third-Party Defendants have and recover nothing from this Defendant;
4. That the costs of this action be taxed against the Plaintiff and/or other Defendants and/or Third-Party Defendants;
5. That any judgment against this Defendant be reduced by any amount that any employer of Plaintiff, their successors or assigns, would be entitled to receive therefrom by way of subrogation;
6. That there be a trial by jury on all issues of fact;
7. That such trial be bifurcated with respect to Plaintiffs' request for punitive damages; and
8. For such other and further relief as the Court deems just and proper.

Respectfully submitted this 23rd day of February, 2023.

WOMBLE BOND DICKINSON (US) LLP

/s/ M. Elizabeth O'Neill

M. Elizabeth O'Neill (S.C. Bar No. 104013)

M. Todd Carroll (S.C. Bar No. 74000)

Theodore F. Roberts (S.C. Bar. 104986)

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(410) 545-5875; Ted.Roberts@wbd-us.com

Other email: WBD.SCAbestos@wbd-us.com

Counsel for Defendant, IMI Fabi (USA) Inc.

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF RICHLAND	)	FOR THE FIFTH JUDICIAL CIRCUIT
SARAH J. PLANT and PARKER PLANT,	)	
	)	Civil Action No. 2022CP4001265
Plaintiffs,	)	
	)	DEFENDANT IMI FABI, LLC'S
v.	)	ANSWER TO PLAINTIFFS' FIRST
	)	AMENDED COMPLAINT AND
AVON PRODUCTS, INC., et al.,	)	AFFIRMATIVE DEFENSES
	)	(JURY TRIAL DEMANDED)
Defendants.	)	
	)	

Defendant, IMI Fabi, LLC answering Plaintiffs' First Amended Complaint ("Complaint") and any and all Cross-Claims asserted previously or in the future by any Co-Defendants or Third-Party Defendants, whether having appeared in the case at this time or not, denies all allegations not hereinafter specifically admitted and, as to the correspondingly numbered paragraphs of the Complaint, states as follows:

AS TO GENERAL ALLEGATIONS

1. Defendant denies all allegations of this Paragraph directed against it and is without sufficient information to admit or deny the remaining allegations contained therein and, therefore, denies the same.

2. This Paragraph states legal conclusions which Defendant is required to neither admit nor deny. To the extent a response is deemed necessary, Defendant denies all allegations set forth in this Paragraph, including all subparts, directed against it and is without sufficient information to admit or deny the remaining allegations contained therein and, therefore, denies the same. Defendant affirmatively alleges that the allegations set forth in the Complaint are insufficient to establish a basis for personal jurisdiction.

3. This Paragraph states legal conclusions which Defendant is required to neither admit nor deny. To the extent a response is deemed necessary, Defendant denies all allegations set forth in this Paragraph directed against it and is without sufficient information to admit or deny the remaining allegations contained therein and, therefore, denies the same. Defendant affirmatively alleges that the allegations set forth in the Complaint are insufficient to establish a basis for personal jurisdiction.

4. This Paragraph states legal conclusions which Defendant is required to neither admit nor deny. To the extent a response is deemed necessary, Defendant denies all allegations set forth in this Paragraph, including all subparts, directed against it and is without sufficient information to admit or deny the remaining allegations contained therein and, therefore, denies the same. Defendant affirmatively alleges that the allegations set forth in the Complaint are insufficient to establish a basis for personal jurisdiction.

5. This Paragraph states legal conclusions which Defendant is required to neither admit nor deny. To the extent a response is deemed necessary, Defendant denies all allegations set forth in this Paragraph directed against it and is without sufficient information to admit or deny the remaining allegations contained therein and, therefore, denies the same.

6. This Paragraph states legal conclusions which Defendant is required to neither admit nor deny. To the extent a response is deemed necessary, Defendant denies all allegations set forth in this Paragraph directed against it and is without sufficient information to admit or deny the remaining allegations contained therein and, therefore, denies the same.

7. This Paragraph states legal conclusions which Defendant is required to neither admit nor deny. To the extent a response is deemed necessary, Defendant denies all allegations set

forth in this Paragraph directed against it and is without sufficient information to admit or deny the remaining allegations contained therein and, therefore, denies the same.

8. This Paragraph states legal conclusions which Defendant is required to neither admit nor deny. To the extent a response is deemed necessary, Defendant denies all allegations set forth in this Paragraph, including all subparts, directed against it and is without sufficient information to admit or deny the remaining allegations contained therein and, therefore, denies the same. Defendant affirmatively alleges that the allegations set forth in the Complaint are insufficient to establish a basis for personal jurisdiction.

9. This Paragraph states legal conclusions which Defendant is required to neither admit nor deny. To the extent a response is deemed necessary, Defendant denies all allegations set forth in this Paragraph, including all subparts, directed against it and is without sufficient information to admit or deny the remaining allegations contained therein and, therefore, denies the same. Defendant affirmatively alleges that the allegations set forth in the Complaint are insufficient to establish a basis for personal jurisdiction.

10. This Paragraph states legal conclusions which Defendant is required to neither admit nor deny. To the extent a response is deemed necessary, Defendant denies all allegations set forth in this Paragraph directed against it and is without sufficient information to admit or deny the remaining allegations contained therein and, therefore, denies the same.

11. This Paragraph states legal conclusions which Defendant is required to neither admit nor deny. To the extent a response is deemed necessary, Defendant denies all allegations set forth in this Paragraph directed against it and is without sufficient information to admit or deny the remaining allegations contained therein and, therefore, denies the same.

12. This Paragraph states legal conclusions which Defendant is required to neither admit nor deny. To the extent a response is deemed necessary, Defendant denies all allegations set forth in this Paragraph directed against it and is without sufficient information to admit or deny the remaining allegations contained therein and, therefore, denies the same.

13. This Paragraph states legal conclusions which Defendant is required to neither admit nor deny. To the extent a response is deemed necessary, Defendant denies all allegations set forth in this Paragraph directed against it and is without sufficient information to admit or deny the remaining allegations contained therein and, therefore, denies the same.

14. This Paragraph states legal conclusions which Defendant is required to neither admit nor deny. To the extent a response is deemed necessary, Defendant denies all allegations set forth in this Paragraph directed against it and is without sufficient information to admit or deny the remaining allegations contained therein and, therefore, denies the same. Defendant further states that it is not responsible for Plaintiff's damages, if any.

15. Defendant denies all allegations of this Paragraph directed against it and is without sufficient information to admit or deny the remaining allegations contained therein and, therefore, denies the same.

16. This Paragraph states legal conclusions which Defendant is required to neither admit nor deny. To the extent a response is deemed necessary, Defendant denies all allegations set forth in this Paragraph directed against it and is without sufficient information to admit or deny the remaining allegations contained therein and, therefore, denies the same. Defendant further states that it is not responsible for Plaintiff's damages, if any.

17. This Paragraph states legal conclusions which Defendant is required to neither admit nor deny. To the extent a response is deemed necessary, Defendant denies all allegations set

forth in this Paragraph, including all subparts, directed against it and is without sufficient information to admit or deny the remaining allegations contained therein and, therefore, denies the same. Defendant affirmatively alleges that the allegations set forth in the Complaint are insufficient to establish a basis for personal jurisdiction.

18. This Paragraph states legal conclusions which Defendant is required to neither admit nor deny. To the extent a response is deemed necessary, Defendant denies all allegations set forth in this Paragraph directed against it and is without sufficient information to admit or deny the remaining allegations contained therein and, therefore, denies the same. Defendant further states that it is not responsible for Plaintiff's damages, if any.

19. This Paragraph states legal conclusions which Defendant is required to neither admit nor deny. To the extent a response is deemed necessary, Defendant denies all allegations set forth in this Paragraph directed against it and is without sufficient information to admit or deny the remaining allegations contained therein and, therefore, denies the same. Defendant further states that it is not responsible for Plaintiff's damages, if any.

20. This Paragraph states legal conclusions which Defendant is required to neither admit nor deny. To the extent a response is deemed necessary, Defendant denies all allegations set forth in this Paragraph directed against it and is without sufficient information to admit or deny the remaining allegations contained therein and, therefore, denies the same. Defendant further states that it is not responsible for Plaintiff's damages, if any.

21. This Paragraph states legal conclusions which Defendant is required to neither admit nor deny. To the extent a response is deemed necessary, Defendant denies all allegations set forth in this Paragraph directed against it and is without sufficient information to admit or deny

the remaining allegations contained therein and, therefore, denies the same. Defendant further states that it is not responsible for Plaintiff's damages, if any.

22. This Paragraph states legal conclusions which Defendant is required to neither admit nor deny. To the extent a response is deemed necessary, Defendant denies all allegations set forth in this Paragraph directed against it and is without sufficient information to admit or deny the remaining allegations contained therein and, therefore, denies the same. Defendant further states that it is not responsible for Plaintiff's damages, if any.

23. This Paragraph states legal conclusions which Defendant is required to neither admit nor deny. To the extent a response is deemed necessary, Defendant denies all allegations set forth in this Paragraph directed against it and is without sufficient information to admit or deny the remaining allegations contained therein and, therefore, denies the same. Defendant further states that it is not responsible for Plaintiff's damages, if any.

AS TO THE PARTIES

- 24. Defendant denies all allegations of this Paragraph for lack of sufficient information.
- 25. Defendant denies all allegations of this Paragraph for lack of sufficient information.
- 26. Defendant denies all allegations of this Paragraph for lack of sufficient information.
- 27. Defendant denies all allegations of this Paragraph for lack of sufficient information.
- 28. Defendant denies all allegations of this Paragraph for lack of sufficient information.
- 29. Defendant denies all allegations of this Paragraph for lack of sufficient information.
- 30. Defendant denies all allegations of this Paragraph for lack of sufficient information.
- 31. Defendant denies all allegations of this Paragraph for lack of sufficient information.
- 32. Defendant denies all allegations of this Paragraph for lack of sufficient information.
- 33. Defendant denies all allegations of this Paragraph for lack of sufficient information.

34. Defendant denies all allegations of this Paragraph for lack of sufficient information.
35. Defendant denies all allegations of this Paragraph for lack of sufficient information.
36. Defendant denies all allegations of this Paragraph for lack of sufficient information.
37. Defendant denies all allegations of this Paragraph for lack of sufficient information.
38. Defendant denies all allegations of this Paragraph for lack of sufficient information.
39. Defendant denies all allegations of this Paragraph for lack of sufficient information.
40. Defendant denies all allegations of this Paragraph for lack of sufficient information.
41. Defendant denies all allegations of this Paragraph for lack of sufficient information.
42. Defendant denies all allegations of this Paragraph for lack of sufficient information.
43. Defendant denies all allegations of this Paragraph for lack of sufficient information.
44. Defendant denies all allegations of this Paragraph for lack of sufficient information.
45. Defendant denies all allegations of this Paragraph for lack of sufficient information.
46. Defendant denies all allegations of this Paragraph for lack of sufficient information.
47. Defendant denies all allegations of this Paragraph for lack of sufficient information.
48. Defendant denies all allegations of this Paragraph for lack of sufficient information.
49. Defendant denies all allegations of this Paragraph for lack of sufficient information.
50. Defendant denies all allegations of this Paragraph for lack of sufficient information.
51. Defendant denies all allegations of this Paragraph for lack of sufficient information.
52. Defendant denies all allegations of this Paragraph for lack of sufficient information.
53. Defendant admits it is incorporated in and has its principal place of business in a state other than South Carolina. Defendant denies the remaining allegations of this Paragraph.
54. Defendant denies all allegations of this Paragraph for lack of sufficient information.
55. Defendant denies all allegations of this Paragraph for lack of sufficient information.

56. Defendant denies all allegations of this Paragraph for lack of sufficient information.
57. Defendant denies all allegations of this Paragraph for lack of sufficient information.
58. Defendant denies all allegations of this Paragraph for lack of sufficient information.
59. Defendant denies all allegations of this Paragraph for lack of sufficient information.
60. Defendant denies all allegations of this Paragraph for lack of sufficient information.
61. Defendant denies all allegations of this Paragraph for lack of sufficient information.
62. Defendant denies all allegations of this Paragraph for lack of sufficient information.
63. Defendant denies all allegations of this Paragraph for lack of sufficient information.
64. Defendant denies all allegations of this Paragraph for lack of sufficient information.
65. Defendant denies all allegations of this Paragraph for lack of sufficient information.
66. Defendant denies all allegations of this Paragraph for lack of sufficient information.
67. Defendant denies all allegations of this Paragraph for lack of sufficient information.
68. Defendant denies all allegations of this Paragraph for lack of sufficient information.
69. Defendant denies all allegations of this Paragraph for lack of sufficient information.
70. Defendant denies all allegations of this Paragraph for lack of sufficient information.
71. Defendant denies all allegations of this Paragraph for lack of sufficient information.
72. Defendant denies all allegations of this Paragraph for lack of sufficient information.
73. Defendant denies all allegations of this Paragraph for lack of sufficient information.
74. Defendant denies all allegations of this Paragraph for lack of sufficient information.
75. Defendant denies all allegations of this Paragraph for lack of sufficient information.
76. Defendant denies all allegations of this Paragraph for lack of sufficient information.

AS TO BACKGROUND FACTS

77. This Paragraph is a statement as to Plaintiff's alleged damages. Defendant denies that it is liable for Plaintiff's damages, if any. Defendant denies all allegations of this Paragraph directed

against it and is without sufficient information to admit or deny the remaining allegations contained therein and, therefore, denies the same.

78. Defendant denies all allegations of this Paragraph for lack of sufficient information.

79. Defendant denies all allegations of this Paragraph for lack of sufficient information.

80. This Paragraph states legal conclusions which Defendant is required to neither admit nor deny. To the extent a response is deemed necessary, Defendant denies all allegations of this Paragraph directed against it and is without sufficient information to admit or deny the remaining allegations contained therein and, therefore, denies the same.

81. Defendant denies all allegations of this Paragraph directed against it and is without sufficient information to admit or deny the remaining allegations contained therein and, therefore, denies the same.

82. Defendant denies all allegations of this Paragraph directed against it and is without sufficient information to admit or deny the remaining allegations contained therein and, therefore, denies the same.

83. Defendant denies all allegations of this Paragraph directed against it and is without sufficient information to admit or deny the remaining allegations contained therein and, therefore, denies the same.

84. Defendant denies all allegations of this Paragraph directed against it and is without sufficient information to admit or deny the remaining allegations contained therein and, therefore, denies the same.

85. Defendant denies all allegations of this Paragraph directed against it and is without sufficient information to admit or deny the remaining allegations contained therein and, therefore, denies the same.

86. Defendant denies all allegations of this Paragraph directed against it and is without sufficient information to admit or deny the remaining allegations contained therein and, therefore, denies the same.

87. This Paragraph states legal conclusions which Defendant is required to neither admit nor deny. To the extent a response is deemed necessary, Defendant denies all allegations of this Paragraph directed against it and is without sufficient information to admit or deny the remaining allegations contained therein and, therefore, denies the same. Defendant further states that it is not responsible for Plaintiff's damages, if any.

88. This Paragraph states legal conclusions which Defendant is required to neither admit nor deny. To the extent a response is deemed necessary, Defendant denies all allegations of this Paragraph directed against it and is without sufficient information to admit or deny the remaining allegations contained therein and, therefore, denies the same. Defendant further states that it is not responsible for Plaintiff's damages, if any.

89. This Paragraph states legal conclusions which Defendant is required to neither admit nor deny. To the extent a response is deemed necessary, Defendant denies all allegations of this Paragraph directed against it and is without sufficient information to admit or deny the remaining allegations contained therein and, therefore, denies the same. Defendant further states that it is not responsible for Plaintiff's damages, if any.

AS TO THE FIRST CAUSE OF ACTION
(Product Liability: Negligence)

90. Defendant repeats, realleges, and incorporates herein by reference its responses to Paragraphs 1 through 89.

91. This Paragraph states legal conclusions which Defendant is required to neither admit nor deny. To the extent a response is deemed necessary, Defendant denies all allegations of this

Paragraph directed against it and is without sufficient information to admit or deny the remaining allegations contained therein and, therefore, denies the same.

92. This Paragraph states legal conclusions which Defendant is required to neither admit nor deny. To the extent a response is deemed necessary, Defendant denies all allegations of this Paragraph directed against it and is without sufficient information to admit or deny the remaining allegations contained therein and, therefore, denies the same.

93. This Paragraph states legal conclusions which Defendant is required to neither admit nor deny. To the extent a response is deemed necessary, Defendant denies all allegations of this Paragraph directed against it and is without sufficient information to admit or deny the remaining allegations contained therein and, therefore, denies the same.

94. This Paragraph states legal conclusions which Defendant is required to neither admit nor deny. To the extent a response is deemed necessary, Defendant denies all allegations of this Paragraph directed against it and is without sufficient information to admit or deny the remaining allegations contained therein and, therefore, denies the same.

95. This Paragraph states legal conclusions which Defendant is required to neither admit nor deny. To the extent a response is deemed necessary, Defendant denies all allegations of this Paragraph directed against it and is without sufficient information to admit or deny the remaining allegations contained therein and, therefore, denies the same.

96. This Paragraph states legal conclusions which Defendant is required to neither admit nor deny. To the extent a response is deemed necessary, Defendant denies all allegations of this Paragraph directed against it and is without sufficient information to admit or deny the remaining allegations contained therein and, therefore, denies the same.

97. This Paragraph states legal conclusions which Defendant is required to neither admit nor deny. To the extent a response is deemed necessary, Defendant denies all allegations of this Paragraph directed against it and is without sufficient information to admit or deny the remaining allegations contained therein and, therefore, denies the same.

98. This Paragraph states legal conclusions which Defendant is required to neither admit nor deny. To the extent a response is deemed necessary, Defendant denies all allegations of this Paragraph directed against it and is without sufficient information to admit or deny the remaining allegations contained therein and, therefore, denies the same. Defendant further states that it is not responsible for Plaintiff's damages, if any.

99. This Paragraph states legal conclusions which Defendant is required to neither admit nor deny. To the extent a response is deemed necessary, Defendant denies all allegations of this Paragraph directed against it and is without sufficient information to admit or deny the remaining allegations contained therein and, therefore, denies the same.

100. This Paragraph states legal conclusions which Defendant is required to neither admit nor deny. To the extent a response is deemed necessary, Defendant denies all allegations of this Paragraph directed against it and is without sufficient information to admit or deny the remaining allegations contained therein and, therefore, denies the same. Defendant further states that it is not responsible for Plaintiff's damages, if any.

101. This Paragraph states legal conclusions which Defendant is required to neither admit nor deny. To the extent a response is deemed necessary, Defendant denies all allegations of this Paragraph directed against it and is without sufficient information to admit or deny the remaining allegations contained therein and, therefore, denies the same.

102. This Paragraph states legal conclusions which Defendant is required to neither admit nor deny. To the extent a response is deemed necessary, Defendant denies all allegations of this Paragraph directed against it and is without sufficient information to admit or deny the remaining allegations contained therein and, therefore, denies the same.

103. This Paragraph states legal conclusions which Defendant is required to neither admit nor deny. To the extent a response is deemed necessary, Defendant denies all allegations of this Paragraph directed against it and is without sufficient information to admit or deny the remaining allegations contained therein and, therefore, denies the same.

104. This Paragraph states legal conclusions which Defendant is required to neither admit nor deny. To the extent a response is deemed necessary, Defendant denies all allegations of this Paragraph directed against it and is without sufficient information to admit or deny the remaining allegations contained therein and, therefore, denies the same.

105. This Paragraph states legal conclusions which Defendant is required to neither admit nor deny. To the extent a response is deemed necessary, Defendant denies all allegations of this Paragraph directed against it and is without sufficient information to admit or deny the remaining allegations contained therein and, therefore, denies the same. Defendant denies that it is liable for Plaintiff's damages, if any, and further denies that Plaintiffs are entitled to punitive damages.

AS TO THE SECOND CAUSE OF ACTION
(Product Liability: Strict Liability – S.C. Code Ann. § 15-73-10, et. seq.)

106. Defendant repeats, realleges, and incorporates herein by reference its responses to Paragraphs 1 through 105.

107. This Paragraph states legal conclusions which Defendant is required to neither admit nor deny. To the extent a response is deemed necessary, Defendant denies all allegations of

this Paragraph directed against it and is without sufficient information to admit or deny the remaining allegations contained therein and, therefore, denies the same.

108. This Paragraph states legal conclusions which Defendant is required to neither admit nor deny. To the extent a response is deemed necessary, Defendant denies all allegations of this Paragraph directed against it and is without sufficient information to admit or deny the remaining allegations contained therein and, therefore, denies the same. Defendant further states that it is not responsible for Plaintiff's damages, if any.

109. This Paragraph states legal conclusions which Defendant is required to neither admit nor deny. To the extent a response is deemed necessary, Defendant denies all allegations of this Paragraph directed against it and is without sufficient information to admit or deny the remaining allegations contained therein and, therefore, denies the same. Defendant denies any duty, or failure thereof, to warn Plaintiff and/or others.

110. This Paragraph states legal conclusions which Defendant is required to neither admit nor deny. To the extent a response is deemed necessary, Defendant denies all allegations of this Paragraph directed against it and is without sufficient information to admit or deny the remaining allegations contained therein and, therefore, denies the same.

111. This Paragraph states legal conclusions which Defendant is required to neither admit nor deny. To the extent a response is deemed necessary, Defendant denies all allegations of this Paragraph directed against it and is without sufficient information to admit or deny the remaining allegations contained therein and, therefore, denies the same.

112. This Paragraph states legal conclusions which Defendant is required to neither admit nor deny. To the extent a response is deemed necessary, Defendant denies all allegations of

this Paragraph directed against it and is without sufficient information to admit or deny the remaining allegations contained therein and, therefore, denies the same.

113. This Paragraph states legal conclusions which Defendant is required to neither admit nor deny. To the extent a response is deemed necessary, Defendant denies all allegations of this Paragraph directed against it and is without sufficient information to admit or deny the remaining allegations contained therein and, therefore, denies the same. Defendant denies any duty, or failure thereof, to warn Plaintiff, Plaintiff and/or others.

114. This Paragraph states legal conclusions which Defendant is required to neither admit nor deny. To the extent a response is deemed necessary, Defendant denies all allegations of this Paragraph directed against it and is without sufficient information to admit or deny the remaining allegations contained therein and, therefore, denies the same.

115. This Paragraph states legal conclusions which Defendant is required to neither admit nor deny. To the extent a response is deemed necessary, Defendant denies all allegations of this Paragraph directed against it and is without sufficient information to admit or deny the remaining allegations contained therein and, therefore, denies the same. Defendant denies any duty, or failure thereof, to warn Plaintiff and/or others.

116. This Paragraph states legal conclusions which Defendant is required to neither admit nor deny. To the extent a response is deemed necessary, Defendant denies all allegations of this Paragraph directed against it and is without sufficient information to admit or deny the remaining allegations contained therein and, therefore, denies the same. Defendant further states that it is not responsible for Plaintiff's damages, if any.

117. This Paragraph states legal conclusions which Defendant is required to neither admit nor deny. To the extent a response is deemed necessary, Defendant denies all allegations of

this Paragraph directed against it and is without sufficient information to admit or deny the remaining allegations contained therein and, therefore, denies the same. Defendant denies any duty, or failure thereof, to warn Plaintiff and/or others.

118. This Paragraph states legal conclusions which Defendant is required to neither admit nor deny. To the extent a response is deemed necessary, Defendant denies all allegations of this Paragraph directed against it and is without sufficient information to admit or deny the remaining allegations contained therein and, therefore, denies the same.

119. This Paragraph states legal conclusions which Defendant is required to neither admit nor deny. To the extent a response is deemed necessary, Defendant denies all allegations of this Paragraph directed against it and is without sufficient information to admit or deny the remaining allegations contained therein and, therefore, denies the same.

120. This Paragraph states legal conclusions which Defendant is required to neither admit nor deny. To the extent a response is deemed necessary, Defendant denies all allegations of this Paragraph directed against it and is without sufficient information to admit or deny the remaining allegations contained therein and, therefore, denies the same.

121. This Paragraph states legal conclusions which Defendant is required to neither admit nor deny. To the extent a response is deemed necessary, Defendant denies all allegations of this Paragraph directed against it and is without sufficient information to admit or deny the remaining allegations contained therein and, therefore, denies the same. Defendant denies that it is liable for Plaintiff's damages, if any, and further denies that Plaintiffs are entitled to punitive damages.

122. This Paragraph states legal conclusions which Defendant is required to neither admit nor deny. To the extent a response is deemed necessary, Defendant denies all allegations of

this Paragraph directed against it and is without sufficient information to admit or deny the remaining allegations contained therein and, therefore, denies the same.

AS TO THE THIRD CAUSE OF ACTION
(Negligence Per Se)

123. Defendant repeats, realleges, and incorporates herein by reference its responses to Paragraphs 1 through 122.

124. This Paragraph states legal conclusions which Defendant is required to neither admit nor deny. To the extent a response is deemed necessary, Defendant denies all allegations of this Paragraph directed against it and is without sufficient information to admit or deny the remaining allegations contained therein and, therefore, denies the same.

125. This Paragraph states legal conclusions which Defendant is required to neither admit nor deny. To the extent a response is deemed necessary, Defendant denies all allegations of this Paragraph directed against it and is without sufficient information to admit or deny the remaining allegations contained therein and, therefore, denies the same.

126. This Paragraph states legal conclusions which Defendant is required to neither admit nor deny. To the extent a response is deemed necessary, Defendant denies all allegations of this Paragraph directed against it and is without sufficient information to admit or deny the remaining allegations contained therein and, therefore, denies the same.

AS TO THE FOURTH CAUSE OF ACTION
(Product Liability: Breach of Implied Warranties – S.C. Code Ann. § 36-2-314)

127. Defendant repeats, realleges, and incorporates herein by reference its responses to Paragraphs 1 through 126.

128. This Paragraph states legal conclusions which Defendant is required to neither admit nor deny. To the extent a response is deemed necessary, Defendant denies all allegations of

this Paragraph, including all subparts, directed against it and is without sufficient information to admit or deny the remaining allegations contained therein and, therefore, denies the same.

129. This Paragraph states legal conclusions which Defendant is required to neither admit nor deny. To the extent a response is deemed necessary, Defendant denies all allegations of this Paragraph, including all subparts, directed against it and is without sufficient information to admit or deny the remaining allegations contained therein and, therefore, denies the same.

130. This Paragraph states legal conclusions which Defendant is required to neither admit nor deny. To the extent a response is deemed necessary, Defendant denies all allegations of this Paragraph, including all subparts, directed against it and is without sufficient information to admit or deny the remaining allegations contained therein and, therefore, denies the same. Defendant further states that it is not responsible for Plaintiff's damages, if any.

AS TO THE FIFTH CAUSE OF ACTION
(Fraudulent Misrepresentation)

131. Defendant repeats, realleges, and incorporates herein by reference its responses to Paragraphs 1 through 130.

132. This Paragraph states legal conclusions which Defendant is required to neither admit nor deny. To the extent a response is deemed necessary, Defendant denies all allegations of this Paragraph directed against it and is without sufficient information to admit or deny the remaining allegations contained therein and, therefore, denies the same.

133. This Paragraph states legal conclusions which Defendant is required to neither admit nor deny. To the extent a response is deemed necessary, Defendant denies all allegations of this Paragraph directed against it and is without sufficient information to admit or deny the remaining allegations contained therein and, therefore, denies the same.

134. This Paragraph states legal conclusions which Defendant is required to neither admit nor deny. To the extent a response is deemed necessary, Defendant denies all allegations of this Paragraph directed against it and is without sufficient information to admit or deny the remaining allegations contained therein and, therefore, denies the same. Defendant further states that it is not responsible for Plaintiff's damages, if any.

AS TO THE SIXTH CAUSE OF ACTION
(Fraudulent Misrepresentation and Conspiracy/Concert Action)

135. Defendant repeats, realleges, and incorporates herein by reference its responses to Paragraphs 1 through 134.

136. This Paragraph states legal conclusions which Defendant is required to neither admit nor deny. To the extent a response is deemed necessary, Defendant denies all allegations of this Paragraph directed against it and is without sufficient information to admit or deny the remaining allegations contained therein and, therefore, denies the same.

137. This Paragraph states legal conclusions which Defendant is required to neither admit nor deny. To the extent a response is deemed necessary, Defendant denies all allegations of this Paragraph directed against it and is without sufficient information to admit or deny the remaining allegations contained therein and, therefore, denies the same.

138. This Paragraph states legal conclusions which Defendant is required to neither admit nor deny. To the extent a response is deemed necessary, Defendant denies all allegations of this Paragraph directed against it and is without sufficient information to admit or deny the remaining allegations contained therein and, therefore, denies the same.

139. This Paragraph states legal conclusions which Defendant is required to neither admit nor deny. To the extent a response is deemed necessary, Defendant denies all allegations of

this Paragraph directed against it and is without sufficient information to admit or deny the remaining allegations contained therein and, therefore, denies the same.

140. This Paragraph states legal conclusions which Defendant is required to neither admit nor deny. To the extent a response is deemed necessary, Defendant denies all allegations of this Paragraph directed against it and is without sufficient information to admit or deny the remaining allegations contained therein and, therefore, denies the same.

141. This Paragraph states legal conclusions which Defendant is required to neither admit nor deny. To the extent a response is deemed necessary, Defendant denies all allegations of this Paragraph directed against it and is without sufficient information to admit or deny the remaining allegations contained therein and, therefore, denies the same.

142. This Paragraph states legal conclusions which Defendant is required to neither admit nor deny. To the extent a response is deemed necessary, Defendant denies all allegations of this Paragraph directed against it and is without sufficient information to admit or deny the remaining allegations contained therein and, therefore, denies the same.

143. This Paragraph states legal conclusions which Defendant is required to neither admit nor deny. To the extent a response is deemed necessary, Defendant denies all allegations of this Paragraph directed against it and is without sufficient information to admit or deny the remaining allegations contained therein and, therefore, denies the same.

144. This Paragraph states legal conclusions which Defendant is required to neither admit nor deny. To the extent a response is deemed necessary, Defendant denies all allegations of this Paragraph directed against it and is without sufficient information to admit or deny the remaining allegations contained therein and, therefore, denies the same.

145. This Paragraph states legal conclusions which Defendant is required to neither admit nor deny. To the extent a response is deemed necessary, Defendant denies all allegations of this Paragraph directed against it and is without sufficient information to admit or deny the remaining allegations contained therein and, therefore, denies the same.

146. This Paragraph states legal conclusions which Defendant is required to neither admit nor deny. To the extent a response is deemed necessary, Defendant denies all allegations of this Paragraph directed against it and is without sufficient information to admit or deny the remaining allegations contained therein and, therefore, denies the same.

147. This Paragraph states legal conclusions which Defendant is required to neither admit nor deny. To the extent a response is deemed necessary, Defendant denies all allegations of this Paragraph directed against it and is without sufficient information to admit or deny the remaining allegations contained therein and, therefore, denies the same.

148. This Paragraph states legal conclusions which Defendant is required to neither admit nor deny. To the extent a response is deemed necessary, Defendant denies all allegations of this Paragraph directed against it and is without sufficient information to admit or deny the remaining allegations contained therein and, therefore, denies the same.

149. This Paragraph states legal conclusions which Defendant is required to neither admit nor deny. To the extent a response is deemed necessary, Defendant denies all allegations of this Paragraph directed against it and is without sufficient information to admit or deny the remaining allegations contained therein and, therefore, denies the same.

150. This Paragraph states legal conclusions which Defendant is required to neither admit nor deny. To the extent a response is deemed necessary, Defendant denies all allegations of

this Paragraph directed against it and is without sufficient information to admit or deny the remaining allegations contained therein and, therefore, denies the same.

151. This Paragraph states legal conclusions which Defendant is required to neither admit nor deny. To the extent a response is deemed necessary, Defendant denies all allegations of this Paragraph directed against it and is without sufficient information to admit or deny the remaining allegations contained therein and, therefore, denies the same.

152. This Paragraph states legal conclusions which Defendant is required to neither admit nor deny. To the extent a response is deemed necessary, Defendant denies all allegations of this Paragraph directed against it and is without sufficient information to admit or deny the remaining allegations contained therein and, therefore, denies the same.

153. This Paragraph states legal conclusions which Defendant is required to neither admit nor deny. To the extent a response is deemed necessary, Defendant denies all allegations of this Paragraph directed against it and is without sufficient information to admit or deny the remaining allegations contained therein and, therefore, denies the same.

154. This Paragraph states legal conclusions which Defendant is required to neither admit nor deny. To the extent a response is deemed necessary, Defendant denies all allegations of this Paragraph directed against it and is without sufficient information to admit or deny the remaining allegations contained therein and, therefore, denies the same.

155. This Paragraph states legal conclusions which Defendant is required to neither admit nor deny. To the extent a response is deemed necessary, Defendant denies all allegations of this Paragraph directed against it and is without sufficient information to admit or deny the remaining allegations contained therein and, therefore, denies the same.

156. This Paragraph states legal conclusions which Defendant is required to neither admit nor deny. To the extent a response is deemed necessary, Defendant denies all allegations of this Paragraph directed against it and is without sufficient information to admit or deny the remaining allegations contained therein and, therefore, denies the same.

157. This Paragraph states legal conclusions which Defendant is required to neither admit nor deny. To the extent a response is deemed necessary, Defendant denies all allegations of this Paragraph directed against it and is without sufficient information to admit or deny the remaining allegations contained therein and, therefore, denies the same.

158. This Paragraph states legal conclusions which Defendant is required to neither admit nor deny. To the extent a response is deemed necessary, Defendant denies all allegations of this Paragraph directed against it and is without sufficient information to admit or deny the remaining allegations contained therein and, therefore, denies the same.

159. This Paragraph states legal conclusions which Defendant is required to neither admit nor deny. To the extent a response is deemed necessary, Defendant denies all allegations of this Paragraph directed against it and is without sufficient information to admit or deny the remaining allegations contained therein and, therefore, denies the same.

160. This Paragraph states legal conclusions which Defendant is required to neither admit nor deny. To the extent a response is deemed necessary, Defendant denies all allegations of this Paragraph directed against it and is without sufficient information to admit or deny the remaining allegations contained therein and, therefore, denies the same.

161. This Paragraph states legal conclusions which Defendant is required to neither admit nor deny. To the extent a response is deemed necessary, Defendant denies all allegations of

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AS TO THE SEVENTH CAUSE OF ACTION
(Loss of Consortium)

208. Defendant repeats, realleges, and incorporates herein by reference its responses to Paragraphs 1 through 207.

209. Defendant denies all allegations of this Paragraph directed against it and is without sufficient information to admit or deny the remaining allegations contained therein and, therefore, denies the same.

210. This Paragraph states legal conclusions which Defendant is required to neither admit nor deny. To the extent a response is deemed necessary, Defendant denies all allegations of this Paragraph directed against it and is without sufficient information to admit or deny the remaining allegations contained therein and, therefore, denies the same. Defendant further states that it is not responsible for Plaintiff's damages, if any.

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AS TO PRAYER FOR RELIEF

212. Defendant denies the allegations and requests for relief contained in the unnumbered paragraph beginning with WHEREFORE on page 67 of the First Amended Complaint, including all subparts, and demands strict proof thereof. Defendant denies any liability whatsoever to Plaintiff in this matter.

AFFIRMATIVE DEFENSES

1. The Complaint does not make it clear where Plaintiff allegedly encountered any product of this Defendant. For this reason, Defendant expressly reserves all defenses, including but not limited to jurisdictional defenses, and Defendant's participation in subsequent discovery in this case is not deemed to be a waiver of any rights, defenses or objections.

2. As Defendant's affirmative defense and by way of a motion to dismiss, which will be filed by separate pleading in this matter, the Court lacks personal jurisdiction over this Defendant. Under the Supreme Court's decision in *Daimler AG v. Bauman*, 134 S. Ct. 746 (2014), Defendant is not subject to general personal jurisdiction in South Carolina. *Daimler* holds that, absent "exceptional" circumstances, a corporation is subject to general jurisdiction only in its place of incorporation and principal place of business. Because South Carolina is not Defendant's place of incorporation or principal place of business—and as there are no "exceptional" circumstances that would warrant a departure from the governing rule—general jurisdiction is unavailable. Specific jurisdiction exists only where a defendant's suit-related conduct is alleged to have occurred in the forum. See *Bristol-Myers Squibb Co. v. Superior Court of California, San*

Francisco County, 137 S. Ct. 1773, 1778 (2017). Plaintiff's Complaint lacks any allegation that Defendant did or failed to do anything in South Carolina giving rise to Plaintiff's damages, if any.

3. The Complaint and each Cause of Action therein fail to state a claim against this Defendant.

4. The Complaint should be dismissed due to the Plaintiff's lack of capacity.

5. There is a lack of joinder of one or more parties who should or must be joined; without the joinder of these proper parties, complete relief cannot be accorded among those already made parties to this action.

6. The claims set forth in the Complaint may be barred by the applicable statutes of limitations and/or repose in this state or other states as may be applicable.

7. Plaintiff's claims are barred by the contributory or comparative negligence of the Plaintiff; in the alternative, Plaintiff's claims are barred in part by the comparative negligence of the Plaintiff and any award to the Plaintiff should be reduced accordingly.

8. The claims set forth in the Complaint are barred to the extent there is another action pending between the same parties for the same claim.

9. Plaintiff's claims are barred or reduced by the doctrines of *res judicata*, waiver, release, laches, and/or conditions precedent or subsequent.

10. Plaintiff's claims are barred or reduced by the applicable provisions of the Worker's Compensation Act, whether of this state or another.

11. By virtue of the doctrine of judicial estoppel, Plaintiff is precluded from taking a position inconsistent with one taken with respect to the same facts in earlier litigation, if any, and are, therefore, precluded from alleging the material facts necessary to state a cause of action against this Defendant.

12. Venue is improper in this action. This Defendant reserves its right to move for dismissal and/or transfer of the action based on improper and/or inconvenient venue and further reserves its right to seek application of the law of the appropriate venue on all issues.

13. There has been no concert of action between this Defendant and any of the other named Defendants. The Defendants are not joint tortfeasors and, therefore, this Defendant may not be held jointly and severally liable with the other named Defendants.

14. To the extent that Plaintiff received payment in satisfaction of any of the alleged injuries and/or claims against this Defendant, the Plaintiff's Complaint in each and every count and cause of action alleged therein is barred or reduced by the defenses of payment and accord and satisfaction.

15. There are no allegations against this Defendant stated with sufficient particularity to constitute a cause of action for malice, fraud, fraudulent concealment, concert of action, conspiracy, or the like meeting the requirement of Rule 9(b) of the South Carolina Rules of Civil Procedure.

16. This Defendant had no duty to warn Plaintiff or others, of or protect them from the risks and dangers, if any, associated with asbestos or asbestos-related products.

17. Plaintiff's claims are barred to the extent this Defendant's products were sold to a "learned intermediary" and/or "sophisticated user" or other similar purchaser and/or Defendant was a "bulk supplier."

18. Plaintiff's implied warranty claims, if any, do not apply to any products of this Defendant sold prior to the effective date of the Uniform Commercial Code. Plaintiff was not in privity with this Defendant, thus, may not rely upon any warranties which may have been implied or imposed by law upon this Defendant. This Defendant affirmatively states that it breached no warranty.

19. Any oral warranties upon which Plaintiff alleges to have relied are inadmissible and unavailable because of the provisions of the applicable Statute of Frauds.

20. This Defendant affirmatively states that it has appropriately disclaimed all applicable warranties.

21. This Defendant alleges that the Plaintiff had actual knowledge of and voluntarily assumed the risk incident to Plaintiff's use and exposure to asbestos or the products and processes involving the use of asbestos or asbestos-containing materials which were known to Plaintiff to be dangerous.

22. This Defendant alleges that if Plaintiff was injured by any of Defendant's products, which is denied, Plaintiff discovered any defect in the products and was aware of the dangers thereof, but, nevertheless, proceeded unreasonably to make use of the same.

23. This Defendant alleges that the Plaintiff failed to properly use the product or products in question, abused the product or products, and/or subjected them to abnormal use at the time or times and places alleged in the Complaint.

24. This Defendant alleges that if Plaintiff used the product or products of this Defendant, the same was used for a purpose not intended by this Defendant and contrary to any instructions or normal method of using the same.

25. This Defendant alleges that if Plaintiff sustained any injuries or damages as set forth in the Complaint, which is denied, the same were due to and caused by the negligence, recklessness, willfulness, and wantonness of others and not this Defendant.

26. This Defendant would show that even if Plaintiff suffered injuries as described in the Complaint, and the same are admitted for the purposes of this defense only, then said injuries were caused by the acts or omissions of third parties including, but not limited to, the actions of unions,

employers, other manufacturers, distributors, and others, and that these acts or omissions of third parties acted as a direct and proximate cause of their injuries in such a way as to constitute a supervening or intervening cause ending all liability on the part of this Defendant.

27. This Defendant alleges that if Plaintiff sustained injuries as a result of exposure to asbestos or asbestos-containing products, which is denied, then such injuries were or may have been due to exposures to products of manufacturers not named as Defendants in this action including, but not limited to, product manufacturers which have taken advantage of the protections of the bankruptcy provisions of the United States Code.

28. This Defendant denies that it mined, manufactured, processed, imported and/or sold any asbestos or asbestos-containing material which allegedly caused or contributed to the alleged injuries or damages of the Plaintiff. This Defendant further denies that, for those periods of time alleged by the Plaintiff, any product, or action or inaction on its part, caused damage to the Plaintiff.

29. Plaintiff failed to notify this Defendant within a reasonable period of time after Plaintiff discovered or should have discovered the alleged defect in its products and, therefore, is barred from recovery.

30. If Plaintiff was exposed to any of Defendant's products, said products at the time were manufactured in conformity with applicable federal and state regulations, standards, specifications and laws; consequently, recovery by Plaintiff herein is barred.

31. If it should be proven that Plaintiff, while working for or otherwise associated with the United States Government, worked with or around asbestos-containing products manufactured by this Defendant or a predecessor corporation, such materials, on information and belief, were made in compliance with military specifications and contract requirements for a specific intended use by the United States Government.

32. If any products manufactured and sold by this Defendant, which give rise to Plaintiff's claims herein, were designed and manufactured pursuant to and in accordance with the standards of, or specifications mandated by, the United States Government and its agencies, the knowledge of the United States Government and its agencies of any possible health hazards from use of such products was equal or superior to that of this Defendant, and by reason thereof, this Defendant is entitled to assume any immunity from liability which exists in favor of the United States Government or its agencies and/or to assert the government contractor defense.

33. In the event it is determined that any product developed, manufactured, distributed, sold or otherwise utilized by this Defendant was dangerous, which danger is specifically denied, this Defendant was unaware of such danger as it would apply in any conceivable use of its products by Plaintiff; furthermore, the discovery of such danger was beyond the state of the art at the time such product or products were manufactured, distributed, sold or used. Further, such products were manufactured, distributed, sold and used in conformity with the state of the art and/or prevailing industry standards at the time.

34. On information and belief, Plaintiff received payments from and granted releases to other parties including, but not limited to, other parties to this action and other non-parties against whom Plaintiffs claimed liability in tort for the same injury for which Plaintiff claims this Defendant has liability. This Defendant is entitled to set off of the greater of the amount stipulated to in such release or the amount of consideration paid for such a release.

35. Plaintiff failed to mitigate or otherwise act to lessen or reduce the injuries and disabilities alleged in the Complaint.

36. The Complaint fails to set forth a claim for punitive damages upon which relief may be granted.

37. To the extent the Complaint asserts a demand for punitive damages, this Defendant specifically incorporates by reference any and all standards of limitations regarding the determination and/or enforceability of punitive damage awards that arose in the decisions of *BMW of North America, Inc. v. Gore*, 517 U.S. 559 (1996); *Cooper Industries, Inc. v. Leatherman Tool Group, Inc.*, 532 U.S. 424 (2001); and *State Farm Mut. Automobile Ins. Co. v. Campbell*, 538 U.S. 408 (2003).

38. To the extent that the Complaint seeks punitive damages, this Defendant affirmatively pleads the following in regard to punitive damages:

(a) An award of punitive damages in this civil action would amount to a deprivation of property without due process of law in violation of the Fifth and Fourteenth Amendments to the United States Constitution and the corresponding provisions of the applicable state Constitution;

(b) An award of punitive damages in this civil action would violate the due process provisions of the Fifth and Fourteenth Amendments to the United States Constitution and the corresponding provisions of the applicable state Constitution;

(c) The criteria used for determining whether, and in what amount, punitive damages may be awarded are impermissible, vague, imprecise and inconsistent and, therefore, violate the due process provisions of the Fifth and Fourteenth Amendments to the United States Constitution and the corresponding provisions of the applicable state Constitution;

(d) An award of punitive damages in this civil action would amount to an excessive fine in violation of the due process provisions of the Eighth Amendment to the United States Constitution and the corresponding provisions of the applicable state Constitution; and

(e) Plaintiff's claim for punitive damages is barred by the "double jeopardy" clause of the Fifth Amendment to the United States Constitution, as applied to the states through the Fourteenth Amendment.

39. Defendant would show that Plaintiff's claim for punitive damages is barred, and/or must be bifurcated for trial, pursuant to South Carolina Code §15-32-520 and §15-32-530, and/or similar and/or related state statutes and limitations and any amendments thereto.

40. Defendant would show that Plaintiff's claim for punitive damages is barred, and/or must be reduced, capped, and/or limited pursuant to South Carolina Code §15-32-520 and §15-32-530, and/or similar and/or related state statutes and limitations and any amendments thereto. Defendant specifically pleads as an affirmative defense and puts the Plaintiff on notice of Defendant's intent to invoke the statutory cap on punitive damages. Defendant asserts that in the event of any verdict against it, that such verdict shall be capped, reduced or limited in accordance with SC Code §15-32-530(A), including that an award of punitive damages may not exceed the greater of three times the amount of compensatory damages awarded to each claimant entitled thereto or the sum of five hundred thousand dollars. Alternatively, Defendant asserts that in the event of any verdict against it, that such verdict be capped, reduced or limited in accordance with SC Code §15-32-530(B), such that punitive damages must not exceed the greater of four times the amount of compensatory damages awarded to each claimant entitled thereto or the sum of two million dollars. If necessary, Defendant requests that the trial court reduce any award and enter judgment for punitive damages in the maximum amount allowed by SC Code §15-32-530(A) and (B). Defendant requires strict proof in accordance with SC Code §15-32-520 and §15-32-530, including ensuring that the award is not excessive or the result of passion or prejudice, and that any punitive damages award must be specific to this defendant, and that defendant be liable only

for the amount of the award made against this defendant. Defendant asserts and reserves all rights, arguments, remedies, immunities and defenses available under SC Code §15-32-520 and §15-32-530.

41. To the extent Plaintiff smoked, or otherwise used, or was exposed to tobacco products including, but not limited to, cigarettes, cigars, snuff, chew, and such use of and/or exposure to tobacco products has caused or contributed to any of the alleged injuries, Plaintiff's use of and/or exposure to tobacco products constitutes negligence which bars, limits, or reduces any recovery by Plaintiff.

42. Plaintiff may not bring this claim pursuant to Section 15-5-150 of the South Carolina Code of Laws, also referred to the South Carolina's Door Closing Statute.

43. Plaintiff's Complaint should be dismissed and/or is not subject to trial for its failure to comply with the requirements of Section 44-135-10 *et seq.*, of the South Carolina Code of Laws, also known as the "Asbestos and Silica Claims Procedure Act of 2006," including, but not limited to, failing to make a prima facie showing of asbestos-related malignancy or impairment as required by S.C. Code Ann. § 44-135-50. This Defendant reserves all rights and remedies available to it as set forth in the Act.

44. The alleged injuries to Plaintiff are barred by Section 15-73-10 *et seq.*, of the South Carolina Code of Laws; therefore, Plaintiff is prohibited by law from asserting a cause of action based on strict liability for either actual or punitive damages.

45. This Defendant should not be held jointly and severally liable pursuant to the provisions of Section 15-38-15 of the South Carolina Code of Laws and/or other similar statutes.

46. This Defendant denies its "alternate entity" to the extent alleged in the Complaint. This Defendant denies any and all liability asserted against it by the Plaintiff, where based in whole

or part on its alleged status as a successor, successor in business, successor in product line, assignee, predecessor, predecessor in business, predecessor in product line, parent, alter ego, alternate entity or other derivative status.

47. This Defendant denies it has any post-sale duty to warn and asserts that South Carolina has affirmatively established it does not recognize a post-sale duty to warn. See *Bragg v. Hi-Ranger*, 319 S.C. 531, 462 S.E.2d 321 (Ct. App. 1995); *Branham v. Ford Motor Co.*, 390 S.C. 203, 226, 701 S.E.2d 5, 17 (2010).

48. This Defendant alleges that any injuries or damages sustained by the Plaintiff were due to and caused by the suppliers to this Defendant, since all of this Defendant's products were supplied by others, and these suppliers did not include warnings on the products, therefore, the negligence, carelessness, recklessness, and breach of implied warranties, if any, by such product suppliers was a direct and proximate cause of any damages the Plaintiff may have sustained and, therefore, this Defendant is not liable in any sum whatsoever.

49. This Defendant alleges that the absence of warnings on any product of this Defendant did not lead to reasonable reliance by Plaintiff on the safety of any such product.

50. This Defendant cannot be liable to the Plaintiff under the doctrine of strict liability, to the extent the Plaintiff was not exposed to or injured by a product sold after the effective date of the statute.

51. This Defendant asserts that any talc products sold by this Defendant which give rise to Plaintiff's claims herein were designed and manufactured pursuant to, and in accordance with, specifications mandated by the United States Government or its agencies. The knowledge of the United States Government and its agencies of any possible health hazards from use of such products were equal or superior to that of this Defendant, and by reason thereof, this Defendant is

entitled to such immunity from liability as exists in favor of the United States Government or its agencies.

52. The damages allegedly sustained by the Plaintiff from her alleged exposure to asbestos-containing products were caused, in whole or in part, by the improper use and operation of the products, rather than any defect in the design, manufacture, production, assemblage, installation, testing, labeling, marketing, distribution, sale or inspection of any product by this Defendant.

53. This Defendant denies that there was any defect or negligent mining, processing, manufacture, design, testing, investigation, fashioning, packaging, distributing, delivery, and/or sale, in any talc product referred to in the Plaintiff's Complaint, but if there was any defect or negligence as alleged, then this Defendant is not liable as it justifiably relied upon inspection by others in the regular course of trade and business.

54. As to any product sold by Defendant, the product was not defective or dangerous at any time when this Defendant had possession or control of it.

55. Any and all implied warranties, including the warranties of merchantability and fitness for a particular purpose, were excluded at the time of the sale of the product.

56. No implied warranties, including the warranties of merchantability and fitness for a particular purpose, were a part of the basis of the bargain in the sale of the product.

57. This Defendant is not liable to Plaintiff for the damages alleged in the Complaint because such damages may not be recoverable under express warranty.

58. The purchaser of the product and any or all third-party beneficiaries of any warranties, expressed or implied, relating to the product failed to provide notice of the alleged

breaches of warranty to this Defendant pursuant to the applicable provision of the Uniform Commercial Code.

59. This Defendant denies that the products alleged in Plaintiff's Complaint to contain asbestos are products within the meaning and scope of the Restatement of Torts Section 402A and, as such, the Complaint fails to state a cause of action in strict liability.

60. This Defendant had no knowledge or reason to know of any alleged risks associated with the alleged asbestos-containing products at any time during the periods complained of by Plaintiff.

61. The Plaintiff did not directly or indirectly purchase any asbestos-containing products or materials from this Defendant, nor did the Plaintiff receive or rely upon any representation or warranty allegedly made by this Defendant.

62. To the extent that the Plaintiff was exposed to any product containing asbestos as a result of conduct by this Defendant, which is denied, said exposure was de minimis and not a substantial contributing factor to any asbestos-related disease which the Plaintiff may have developed, and not actionable at law or equity.

63. Exposure to asbestos allegedly attributable to this Defendant, if any, is so minimal as to be insufficient to establish to a reasonable degree of probability that the products are capable of causing Plaintiff's injury or damages and must be considered speculative as a matter of law.

64. To the extent products sold by this Defendant are found to contain asbestos or asbestos-containing talc, which this Defendant denies, those products are not unreasonably dangerous as a matter of law.

65. Plaintiff's claims are barred or diminished as a matter of public policy as the social utility and benefit of asbestos-containing products outweighed the risk.

66. Plaintiff caused and/or contributed to Plaintiff's alleged illness, either in whole or in part, by exposure to or the use of tobacco products and/or other substances, products, medications, or drugs.

67. Plaintiff's recovery against Defendant is barred, diminished or reduced to the extent the Complaint seeks recovery under the theory of "enterprise," "industry-wide," "alternate" or "market share" (collectively referred to hereafter as "market share") liability, and furthermore, the essential elements of a cause of action premised on a market share theory of liability do not exist between Plaintiff and Defendant.

68. The Complaint fails to allege facts sufficient to constitute a cause of action based upon market share liability and/or enterprise liability and therefore, violates the guarantees of due process of law and equal protection of the laws guaranteed by the United States and South Carolina Constitutions, and such violations bar Plaintiff's recovery or judgment against Defendant.

69. Plaintiff's recovery is barred, diminished or reduced to the extent that Plaintiff failed to, and cannot identify the product(s), and the toxins within said product(s), to which Plaintiff was allegedly exposed.

70. Plaintiff's recovery is barred, diminished or reduced to the extent that Plaintiff cannot show that any product supplied by Defendant, if any, in all reasonable medical probability, was a substantial factor in increasing the risk of bringing about the injuries or damages complained of by Plaintiff.

71. Each and every claim of Plaintiff, to the extent it pertains to Defendant, is preempted, in whole or in part, by the applicable state and/or federal statutes, rules, standards and/or regulations.

72. Each and every claim of Plaintiff, to the extent it pertains to Defendant, is preempted by the Federal Food, Drug, and Cosmetics Act ("FFDCA"), 21 U.S.C. §§ 301-399(a)

(2009), in that the U.S. Food and Drug Administration (“FDA”) has primary and exclusive jurisdiction over the safety of cosmetic talc-containing products and primary and exclusive jurisdiction to determine whether any warning must accompany cosmetic talc-containing products. The FDA has ruled, on multiple occasions, that cosmetic grade talc is a safe substance when used as intended and further ruled that manufacturers need not provide any warnings on, or in connection with the sale of, cosmetic grade talc-containing products.

73. Each and every claim of Plaintiff, to the extent it pertains to Defendant’s alleged manufacture and/or sale of cosmetic grade talc-containing products, is subject to the FDA’s primary jurisdiction. Consequently, each and every claim, to the extent they pertain to Defendant, should be dismissed or stayed pending further FDA review of whether cosmetic talc is generally recognized as safe and whether any warning must accompany, or other restrictions be placed upon the manufacture and sale of, a cosmetic talc-containing product.

74. Each and every claim of Plaintiff, to the extent it pertains to Defendant’s alleged manufacture and/or sale of cosmetic grade talc-containing products, is an unauthorized and improper attempt to enforce privately a claim under the FFDCA, 21 U.S.C. §§ 301-399(a) (2009).

75. Defendant alleges that Plaintiff’s claims and causes of action, to the extent asserted against Defendant, are barred in whole or in part because the product(s) allegedly sold by Defendant complied with all applicable federal, state and local rules, regulations, specifications, and laws.

76. The injuries complained of by Plaintiff are wholly or partially caused by independent means, including, *inter alia*, the conduct and habits of Plaintiff and exposure to other particulates in the environment.

77. Defendant specifically denies that any cosmetic or talcum powder product that it allegedly sold was defectively designed, because the manufacturing specifications did not include asbestos.

78. This Defendant reserves the right to allege additional facts and circumstances in support of its defenses as these facts become available.

79. The Complaint does not specify the brand name or type of product purchased from Defendant, including the nature, manner, and time frame of any such exposure. For this reason, Defendant expressly reserves all defenses, both affirmative and otherwise, and Defendant's participation in subsequent discovery in this case is not deemed to be a waiver of any rights, defenses or objections.

80. This Defendant incorporates by reference herein, as if fully set forth, all defenses, both affirmative and otherwise, raised, pleaded or asserted by all other answering Defendants.

ANSWER TO CROSS-CLAIMS

This Defendant, answering any and all Cross-Claims which may already have been asserted or which may be asserted in the future against it by any Co-Defendants and/or Third-Party Defendants, says:

1. In defense of any and all Cross-Claims, this Defendant incorporates herein as if restated fully all responses and defenses which it has asserted above or may assert in response to the allegations contained in the Complaint.

2. The allegations against this Defendant in any and all Cross-Claims are denied.

3. This Defendant denies liability with respect to any and all Cross-Claims.

4. This Defendant denies that it has any indemnity or contribution liability to any other Defendant or Third-Party Defendant.

RESERVATION OF CROSS-CLAIMS

All Cross-Claims for contribution and for indemnity by this Defendant against all Co-Defendants and Third-Party Defendants are hereby reserved and implied.

JURY DEMAND

This Defendant requests trial by jury on all issues so triable.

WHEREFORE, this Defendant prays the Court for the following relief:

1. That the Complaint be dismissed with prejudice as to this Defendant;
2. That all Cross-Claims against this Defendant be dismissed with prejudice;
3. That the Plaintiff and other Defendants and/or Third-Party Defendants have and recover nothing from this Defendant;
4. That the costs of this action be taxed against the Plaintiff and/or other Defendants and/or Third-Party Defendants;
5. That any judgment against this Defendant be reduced by any amount that any employer of Plaintiff, their successors or assigns, would be entitled to receive therefrom by way of subrogation;
6. That there be a trial by jury on all issues of fact;
7. That such trial be bifurcated with respect to Plaintiffs' request for punitive damages; and
8. For such other and further relief as the Court deems just and proper.

Respectfully submitted this 23rd day of February, 2023.

WOMBLE BOND DICKINSON (US) LLP

/s/ M. Elizabeth O'Neill

M. Elizabeth O'Neill (S.C. Bar No. 104013)

M. Todd Carroll (S.C. Bar No. 74000)

Theodore F. Roberts (S.C. Bar. 104986)

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Counsel for Defendant, IMI Fabi, LLC

1 STATE OF SOUTH CAROLINA) COURT OF COMMON PLEAS
2 COUNTY OF RICHLAND) TRANSCRIPT OF RECORD

3 -----X
4 SARAH J. PLANT and PARKER)
5 PLANT,)
6)
7 Plaintiffs,)
8 vs.) Case No. 2022-CP-40-01265
9)
10 AVON PRODUCTS, INC., et al.,)
11)
12 Defendants.)
13 -----X

14 THURSDAY, FEBRUARY 23, 2023
15 TRIAL VOLUME 2

16 B E F O R E:

17 The Honorable Chief Justice (ret.) Jean H. Toal,
18 Presiding Judge; and a jury.

19
20
21
22
23 Court Reporter: Bethanie Creppon (AM-2 Session)

24 Court Reporter: Bobbi Fisher, RPR (AM/PM Session)
25 SC Official Court Reporter III

1 with respect to Howitt's testimony.

2 Now, what else do we need to do before we select our
3 jury? I'll turn to you first, Ms. McVey.

4 MS. McVEY: Your Honor, I do want to get the jury
5 going and openings going, so whatever --

6 THE COURT: Well, I mean, the honest-to-goodness
7 truth is, it's a quarter after now. They are going to be
8 there at 9:00. I'm going to get a report when they're
9 totally assembled, but my bet is they're not going to be
10 totally assembled until 9:30 or quarter of 10:00, so we
11 still have some time.

12 Mr. Carroll?

13 MR. CARROLL: Yes, ma'am. The IMI Fabi entities
14 have an outstanding --

15 THE COURT: Hold it right there. Thank you so much
16 for reminding me. I brought the IMI Fabi notebook with
17 me. Let me just grab it so I'll be in sync with you.

18 (Pause in the proceedings.)

19 THE COURT: Mr. Carroll, if I don't have this
20 notebook in my bag of tricks --

21 MR. CARROLL: I moved over here because I didn't
22 have a microphone, and I want to make it easier on Madam
23 Court Reporter.

24 THE COURT: That podium is always easier for me.

25 MR. CARROLL: Very good.

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22 have a microphone, and I want to make it easier on Madam
23 Court Reporter.

24 THE COURT: That podium is always easier for me.

25 MR. CARROLL: Very good.

1 THE COURT: Thank you.

2 MR. CARROLL: Yes, ma'am. Well, I'll try to be
3 brief. I do not want to delay the ultimate proceedings.

4 Your Honor, I'm Todd Carroll on behalf of IMI Fabi
5 (USA) Incorporated; IMI Fabi LLC; and IMI Fabi (Diana)
6 LLC. Three different entities.

7 Your Honor, we have pending motions to dismiss all
8 three for lack of personal jurisdiction. The
9 jurisdictional facts are as follows: There are no
10 contacts between any of my clients and the State of South
11 Carolina, and that's with the one single exception of IMI
12 Fabi LLC has shipped industrial talc to the State of South
13 Carolina for use in rubber and plastic products. It has
14 nothing to do with this case, which is about cosmetic
15 talc.

16 So, there's no -- just for purposes of the record,
17 IMI Fabi Inc., is a Delaware corporation. Principal place
18 of business is Delaware. IMI Fabi LLC is a West Virginia
19 LLC with its principal place of business in the state of
20 West Virginia. And IMI Fabi (Diana) ceased operations
21 around 2004, but it was a North Carolina LLC, with its
22 principal place of business in the state of New York. So,
23 there are no corporate contacts with the state of South
24 Carolina.

25 THE COURT: Well, let me ask you this: What kind of

1 cosmetic -- were any of the cosmetic defendants in this
2 case entities to which IMI Fabi shipped materials?

3 MR. CARROLL: Well, Your Honor, you have actually
4 phrased the question precisely consistent with our
5 argument. We didn't ship -- my clients don't ship
6 products to anybody. All of their products are picked up
7 FOB at my client's dock.

8 THE COURT: Well, I understand how people do FOB.
9 That used to be a big thing in the old days --

10 MR. CARROLL: Yes, ma'am.

11 THE COURT: -- with the beginning days of UCC. But
12 is any IMI Fabi material used by any of these cosmetic
13 defendants? If they had to pick it up FOB at your dock,
14 so be it.

15 MR. CARROLL: Well, none of them picked it up at our
16 dock. Our products were sold to Cosmetic Specialties.

17 THE COURT: Cosmetic Specialties?

18 MR. CARROLL: Yes, ma'am. And they're not a
19 defendant in this case.

20 THE COURT: How about any of the other defendants
21 like Whittaker, Clark & Daniels?

22 MR. CARROLL: I don't believe so. I don't think
23 there's any evidence that would suggest that.

24 THE COURT: Okay.

25 MR. CARROLL: As it relates to the FOB issue, I

1 don't want to gloss over that. There's a Court of
2 Appeals' decision from our state Court of Appeals that
3 it's the *Digital Ally* case, 408 S.C. 101, where this
4 notion of an FOB clause in a contract, does that impact the
5 personal ideal analysis? And our Court of Appeals says it
6 does.

7 It's not dispositive, I'll grant you that, but the
8 presence of an FOB clause can impact the personal
9 jurisdiction analysis. And here, our FOB clause says our
10 engagement with the outside world ends at our dock. We
11 are not purposefully availing ourselves of any other
12 state. We're not purposefully availing ourselves of our
13 next-door neighbor's parcel. Our purposeful availment
14 ends at the four corners of our building.

15 THE COURT: And, of course, we have just such a
16 world of law that deals with products cases and putting
17 things in the stream of commerce and the long-arm statute
18 itself, so the FOB clauses and contracts can certainly be
19 considered just like a lot of other clauses and contracts
20 that seek to limit the ambit of the relationship. Placing
21 the material in the stream of commerce is kind of -- it
22 trumps everybody.

23 MR. CARROLL: Well, I will quibble with Your Honor
24 on that just a tad, because we're not the ultimate
25 manufacturer and we're not the ones selling directly to

1 the customer. Like in the *Ford* case, the U.S. Supreme
2 Court just had, in 2021 --

3 THE COURT: Well, supply liability is around for
4 people who actually fabricated anything. That's been
5 around for a long time.

6 MR. CARROLL: Yes, ma'am, I understand that, but
7 what I'm saying is that this notion of stream of commerce
8 is the -- it's -- that thread of case law is manufacturer
9 to consumer. Like in the *Ford* case, the whole notion of
10 what did *Ford* do and how is it subject to jurisdiction in
11 Minnesota and Montana, the Supreme Court looked at it and
12 said, Well, they targeted this specific market with these
13 specific products. So, Ford had gone into Montana and
14 Ford had gone into Minnesota with their ultimate product
15 to the consumer. There's nothing that Whittaker Clark's
16 made that in this instance for any of the IMI Fabi
17 entities, Your Honor.

18 THE COURT: I understand your argument.

19 MR. CARROLL: Very good. Thank you.

20 THE COURT: Ms. McVey?

21 MS. McVEY: Thank you, Your Honor. I'll be very
22 brief, but let me say at the outset, I'm relying on our
23 briefs that we filed in this case.

24 THE COURT: Yes, I understand. You're never going
25 to be caught saying you consented to anything, if you want

1 to speed up your --

2 MS. McVEY: Okay. Everybody knows that.

3 THE COURT: I think that ship has sailed, thanks to
4 Joe Anderson.

5 MS. McVEY: Well, one would hope.

6 Your Honor, just -- you know, IMI Fabi asked that
7 this be heard the first day of trial, and we consented to
8 that without any problem, and I would go through the
9 facts. And yesterday, in front of Judge Anderson, they
10 represented that this motion had been languishing in state
11 court for over seven months, and they deserved to get out.
12 We agreed for them to pull it and then we'd hear it the
13 first day. So, I'm happy to argue that to you.

14 What IMI Fabi has done is kind of this corporate
15 game of IMI Fabi LLC, IMI Fabi (USA), IMI Fabi (Diana).
16 But where they come into this case is that Sarah Plant, as
17 you know, used COVERGIRL for a very long time. And what
18 we learned in their deposition is that IMI Fabi (USA) owns
19 IMI Fabi LLC. Okay? IMI Fabi LLC has sold cosmetic talc
20 from 2004 to the present, and they've sold industrial talc
21 since 2001. So, that overlaps Sarah Plant's usage of it.

22 They have South Carolina sales, between 2015 and
23 2021, they had revenue of 1.3 million to 1.63 million a
24 year from industrial -- now, it's industrial talc -- in
25 South Carolina. So, total revenue of sales in South

1 Carolina over the last six years is over \$11 million to
2 South Carolina. All right?

3 They also had sales prior to 2016, which we don't
4 have that information on, but what we do know is they sold
5 2,600 to 3,600 tons of industrial talc to companies in
6 South Carolina every year.

7 How do we get to this case? And how we get to this
8 case is through IMI Fabi LLC owns Fabi (Diana). So, now
9 we're coming on down. What we know is that, during this
10 time, COVERGIRL pressed powder contained talc as an
11 ingredient. Diana sold Talc 141. And between -- let's
12 see, Noxell, who was a prior defendant, who supplied to
13 COVERGIRL, primarily used Talc 141 in its COVERGIRL line.

14 Whittaker, Clark & Daniels, the previous -- entered
15 the facility, changed their name to rename 141 product
16 after the facility was sold to IMI Fabi. Diana never
17 changed the name of the product or the product range.
18 What we know is Talc 141 was shipped to Proctor & Gamble
19 between 2001 and 2005, and Noxell, i.e. IMI Fabi, as a
20 supplier to COVERGIRL products, to which she used in the
21 right time period.

22 Your Honor, we would maintain that there is both
23 general and specific jurisdiction in this case based on
24 the talc that was sold and the products that were sold
25 here, and they availed themselves in South Carolina.

1 THE COURT: Thank you, Ms. McVey.

2 Mr. Carroll, a brief reply?

3 MR. CARROLL: Yes, ma'am.

4 Your Honor, everything Ms. McVey said about the
5 industrial talc can only be relevant to a general
6 jurisdiction analysis, and the Supreme Court has made it
7 crystal-clear that general jurisdiction only applies if
8 you are, quote, "at home in the jurisdiction." I don't
9 think there's any colorful argument that any IMI Fabi
10 entities are at home in South Carolina, given that they
11 have absolutely no corporate affiliation here, no
12 registered agent, no --

13 THE COURT: I understand that argument. They'll
14 have the secret jurisdiction argument.

15 MR. CARROLL: Well, all of the stuff about revenue
16 from industrial talc sales has absolutely nothing to do
17 with specific jurisdiction. There's no arising out of or
18 related to connection between the industrial talc and the
19 state -- and Ms. Plant's claims. So that fact --

20 THE COURT: How about the rest of the argument?

21 MR. CARROLL: The rest of the argument is --

22 THE COURT: COVERGIRL.

23 MR. CARROLL: My client didn't sell to COVERGIRL.
24 My client sold to Cosmetic Specialties, and they have an
25 FOB clause that says, "We aren't going into any other

1 state."

2 THE COURT: I understand, but that -- the material
3 they sold to Cosmetic Specialties was the material used in
4 the private -- plaintiff alleged caused her cancer; right?

5 MR. CARROLL: I don't know, Your Honor. What I do
6 know is that my client didn't direct a thing to the state
7 of South Carolina, and that's the only issue that the
8 personal jurisdiction analysis concerns itself with, is
9 what did my client do. And my client did not do anything
10 whatsoever with cosmetic talc to the state of South
11 Carolina.

12 THE COURT: Thank you, sir.

13 MR. CARROLL: Very good. Thank you.

14 THE COURT: All right. Now, this is IMI Fabi's
15 motion for summary judgment; am I correct?

16 MS. McVEY: I think it's a motion to dismiss.

17 THE COURT: What's that?

18 MS. McVEY: A motion to dismiss.

19 THE COURT: A motion to dismiss by all three
20 companies; correct?

21 MS. McVEY: Yes.

22 THE COURT: All right. The motion to dismiss is
23 denied on the basis of the averments made and the
24 pleadings in issue. All right.

25 Now, what else have we got pretrial? I know one

1 When it came to testing for asbestos, IMI Fabi did
2 more than the minimum required by the applicable standard
3 of the day. Asbestos has not been found in any cosmetic
4 talc produced by IMI Fabi or Diana LLC. The cosmetic talc
5 produced by these companies is safe, ladies and gentlemen.

6 You'll have to evaluate the evidence as to whether
7 there's a connection between any product Ms. Plant used
8 and the talc produced by IMI Fabi (Diana) or IMI Fabi LLC.
9 There's no dispute, ladies and gentlemen, IMI Fabi (Diana)
10 and LLC manufactured cosmetic talc, sold it to Cosmetic
11 Specialities Inc., and in return, sold it to customers of
12 Cosmetic Specialties Inc.

13 There's no dispute, in some instances, Cosmetic
14 Specialties Inc. sold talc to various manufacturers of
15 cosmetics, such as Proctor & Gamble and others. If that
16 was all that is required for proof in this case, we would
17 not be here. What is required is evidence that IMI Fabi
18 talc was actually in a specific product used by Mrs.
19 Plant. Listen to the evidence this week to see if you
20 hear any answers to that question and hold them to their
21 burden on that issue.

22 Thank you for your patience, attention, and time.
23 Please be mindful to treat each company here this week
24 individually. There's no one defendant, no one industry,
25 no one company. Everybody is separate.

1 Q Okay. When was Sarah born?

2 A September 10th, 1986.

3 Q Did you decide to have a weird pattern with your
4 children?

5 A No, but it happened. My four children are three
6 years apart, with no planning.

7 Q For the next two in line, who are her sisters?

8 A Anna was born in 1989, and Emma was born in 1992.

9 Q I do not mean at all to leave out Josiah but in
10 terms of bathing activities, did she, at a certain age,
11 bathe her sisters?

12 A Yes, all the time.

13 Q Okay. When did she go to kindergarten about?

14 A Right before she turned six. Her birthday was in
15 September, so she just made -- I kept her longer. She
16 could have gone just at five, but she would have been only
17 just five, so we held her until she was almost six.

18 Q So that was 1992?

19 A Yes.

20 Q Okay. What about sixth grade, that kind of middle
21 school time? About when would that have been?

22 A Probably about 1997.

23 Q Okay. And when did she --

24 A '98.

25 Q '97 or '98?

1 **A** Mm-hmm.

2 **Q** What about high school?

3 **A** 2001.

4 **Q** Did she go to college?

5 **A** Yes.

6 **Q** Before graduating college, did she do a mission
7 trip?

8 **A** Yes. She served in Argentina for 18 months and she
9 also did a semester abroad in Spain.

10 **Q** So, even though she started in 2005 -- 2006 -- when
11 did she graduate; do you remember?

12 **A** 2011.

13 **Q** Okay. I want to do what I think is probably the
14 easier part, even though it's thinking about things that
15 are 30 years old, and walk you through the products you
16 used on your children --

17 **A** Okay.

18 **Q** -- and that were in the home in the years from when
19 Sarah was born to when she moved out to go to college in
20 2005. And then I want to spend the rest of the time this
21 afternoon just trying to get the jury to know your family
22 a little bit.

23 Okay. Babies have to be diapered. Did you use any
24 powder products when you diapered them?

25 **A** I did. I was 34 when I had Sarah, so a little older

1 than most, but I did everything they taught me to do at
2 the hospital, and I used baby powder every time I changed
3 their diaper, whether at home or in the diaper bag.

4 Q Did you ever use any of that powder after bathing?

5 A Yes. For the first couple of years, I used baby
6 powder, and then I would change to -- I'd call them puff
7 powder. Tubs of bath powder.

8 Q If you'd rather punch me, we can do that too.

9 A No, that's okay.

10 Q Probably revealing too much about myself.

11 Okay. Do you remember what brands were your go-to
12 brands?

13 A Of course, baby powder, it was typically Johnson &
14 Johnson or Equate. I shopped at Walmart a lot. And then
15 the bath powders were the prettier -- that was a family
16 tradition of ours. Even myself, growing up, we'd get
17 these tubs of bath powder every Christmas and birthday.
18 So, it would be like Cashmere Bouquet and Coty. And once
19 they were all in school, I used to buy a lot of Avon.

20 Q Let me break down that a little bit. For those
21 first two or three years, were you using the tubs of
22 powder or just these shaker ones?

23 A The shaker ones.

24 Q At the certain age after a bath, did the girls
25 prefer the poufs?

1 **A** Yes. Once they were, like, from two years on, I
2 would start doing the poufs. It was just easier to get
3 them in their pajamas if you powder them after a bath.

4 **Q** So about 1988-89?

5 **A** Mm-hmm.

6 **Q** A weird thing I'll do occasionally, because we have
7 a court reporter, "mm-hmm" is a tricky one. So, is that a
8 yes?

9 **A** Yes.

10 **Q** It's very -- because we're here. You are very
11 clear, I think.

12 **A** Yes.

13 **Q** Just in case somebody hasn't seen anything like
14 that, you mentioned the Coty, Avon, and Cashmere Bouquet,
15 what do those poufs look like? How did they work?

16 **A** They, like, came in a round canister, either plastic
17 or cardboard, and they were sealed with paper. When you
18 buy a new one, they had a big, fuzzy puff on top, and then
19 the lid sits over all of them. So, you had to break the
20 paper to get to the powder.

21 **Q** After a bath, where was that put on the girls?

22 **A** We put it everywhere.

23 **Q** Is that something that was normal in your house from
24 when they were little girls, to your knowledge, until she
25 left?

1 **A** Yes.

2 **Q** As more girls were born, did they get bathed
3 together?

4 **A** Yes. And we only had a small bathroom. We didn't
5 have a shower. We had a tub until 1992, so they were just
6 in a small bathroom, that they'd all powder in.

7 **Q** I know the ages change, but three-, six-, and
8 nine-year-old girl in a bathroom, help us kind of
9 visualize the environment.

10 **A** It was messy. Of course, they'd powder themselves
11 and then they'd -- like you'd get in a pillow fight.
12 They'd get in powder fights.

13 **Q** I want to just speak a little bit about each of the
14 brands that you talked about, but before I do, in addition
15 to the poufs that you mentioned, did Johnson & Johnson and
16 Equate keep being used in your household throughout all of
17 the years that Sarah was there?

18 **A** Yes.

19 **Q** You mentioned Coty. Is this a pretty fair
20 representation of what you remember buying?

21 **A** Yes.

22 **Q** Broadly speaking, you mentioned a couple of times a
23 year you would get something like this. Can you give us
24 an idea if Coty was a regular product used by your
25 daughters in your home, particularly with Sarah from 1988

1 STATE OF SOUTH CAROLINA) COURT OF COMMON PLEAS
2 COUNTY OF RICHLAND) TRANSCRIPT OF RECORD

3 -----x
4 SARAH J. PLANT and PARKER)
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7 Plaintiffs,)
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10 AVON PRODUCTS, INC., et al.,)
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12 Defendants.)
13 -----x

14 FRIDAY, FEBRUARY 24, 2023
15 TRIAL VOLUME 3

16 B E F O R E:

17 The Honorable Chief Justice (ret.) Jean H. Toal,
18 Presiding Judge; and a jury.

19
20
21
22
23 Court Reporter: Bethanie Creppon (AM Session)

24 Court Reporter: Bobbi Fisher, RPR (PM Session)
25 SC Official Court Reporter III

1 **Q** So, step one: What is asbestos?

2 **A** Yeah. So, it's a naturally-occurring mineral that's
3 been mined in many places around the world. It's been
4 used in thousands of different products. You can see the
5 six different kinds in this slide, starting with the
6 second one in the middle there called amosite.

7 You can see amosite, crocidolite, tremolite,
8 actinolite, and anthophyllite. Those five are in one
9 mineral group called amphibole. That group, particularly
10 amosite and crocidolite, make up about five percent of the
11 world's use. The other 95 percent uses -- it's in the
12 upper left-hand corner -- is called chrysotile.

13 So, that's chrysotile there. And I --

14 **Q** He has an iPad thing to draw on, and it's not
15 showing up.

16 **A** There it is.

17 **Q** Ah-ha. Success.

18 Okay. And in terms of those that were typically
19 used commercially, is there a divide between those that
20 were used commercial and those that didn't really have
21 routine commercial use?

22 **A** Well, I mean, there's a divide in the sense that
23 they worked out best for asbestos use, but, I mean,
24 they're all minerals. They all cause all the asbestos
25 diseases.

1 Amosite and crocidolite, I can say, is about
2 5 percent of the world's use; chrysotile is 95 percent.
3 But when I talk about asbestos, I talk about any one of
4 these, because they all do the same thing by the same
5 mechanisms, as we're going to talk about.

6 **Q** Do all of these different fiber types of asbestos
7 cause the cancer and scarring diseases associated with
8 asbestos?

9 **A** Yes.

10 **Q** Have you presented -- provided for me a presentation
11 explaining how asbestos gets into our bodies and what our
12 body does to fight against it?

13 **A** Yes.

14 **Q** Is this the first slide?

15 **A** Yes.

16 **Q** Tell us about that, please.

17 **A** Okay. So, when we breathe the air, obviously, it
18 comes in. We take it in through the nose or mouth. It
19 comes down this tube that we call the trachea or windpipe.
20 Actually, you can feel the top of that in your Adam's
21 apple up here; that's the trachea, the top of the
22 windpipe. And then the air goes down into these series of
23 branches that are called conducting airways because they
24 conduct air down into the lung.

25 Now, you also can see this black line that runs

1 around the other side of the lung. That black line is
2 called the pleura, p-l-e-u-r-a. It's a Saran-wrap thin
3 membrane. It wraps around the outside of the lung and
4 makes the lungs airtight.

5 There's a single layer of cells around the outside
6 of that pleura, and they're called mesothelial cells. If
7 somebody has a cancer of the mesothelial cells, it's
8 called mesothelioma.

9 Now, asbestos causes this cancer mesothelioma. So,
10 as I told you, I worked with Dr. Wagner, and he showed me
11 that asbestos can be used in animals to produce this
12 disease. And so we and other scientists around the world
13 have been tracking that process and trying to understand
14 it, and there still are no effective treatments or cures.

15 They're getting better. I mean, there are things
16 that can be done, but we still have a lot of to learn.

17 The key is -- and I want to make this point again:
18 The key is that we need to know the genes that are driving
19 this disease, and then we got to get a handle on the
20 treatments.

21 **Q** How did you go about, in your study, figuring how
22 asbestos got into our body to the pleura?

23 **A** Yeah. Right. Okay. I lost my whole -- I need
24 Ryan.

25 THE COURT: Yeah. Help Dr. Brody out a little bit

1 series of genetic errors?

2 **A** Oh, absolutely, yes. One error is not enough, two
3 errors is not enough, three is not enough. When you start
4 getting into than four and five, then the door to cancer
5 opens wider and wider.

6 **Q** We've got about two minutes, so I'm going to just go
7 to the end.

8 For most people, from when you're first exposed and
9 when you go to the doctor and find out you have cancer, is
10 there a long, latency period?

11 **A** Yes. For mesothelioma, it's anywhere from 20 to 80
12 years. Anywhere in there has been shown before. Most are
13 30 to 60 years.

14 **Q** In terms of just scientific information, did you
15 rely on this report from 1997, that's been reevaluated in
16 2014, for looking at when it's appropriate to say that
17 cancer is -- a mesothelioma cancer is caused by asbestos?

18 **A** Right. You can see this is the Helsinki criteria,
19 the criteria that allows you to make diagnoses and to
20 attribute that disease.

21 **Q** Okay.

22 **A** How do you attribute the disease, is what they're
23 saying there.

24 **Q** Now, you're not a person that goes out and tests how
25 much asbestos gets into the air, right?

1 **A** Right.

2 **Q** But if you have an exposure that puts significant
3 amounts of asbestos in the air -- the jury has heard this
4 background from just pollution in the air; I mean, levels
5 of hundreds to tens thousands of times -- and a person is
6 to that repeatedly, not for weeks or months but years and
7 the appropriate links, is there any -- do you have an
8 opinion, within a reasonable degree of scientific
9 certainty, in that situation, what would be the cause of a
10 person's mesothelioma?

11 **A** Yeah. I mean, if you have levels of exposure above
12 background, person gets mesothelioma, that's the cause.

13 **Q** Okay. And in terms of also the issue of latency,
14 does this consensus report discuss that issue?

15 **A** Yes, sure.

16 **Q** It says here a minimum of ten years from the first
17 exposure and then the more typical is 30 to 40. That's
18 similar to what you just told us, right?

19 **A** Exactly, exactly.

20 **Q** I want you to assume in this case the first exposure
21 was in 1986. Would that make this a fairly typical
22 latency interval?

23 **A** Sure.

24 **Q** Would all of the exposures that a person insulting
25 their defense mechanisms in their cells, starting in 1986

1 going all the way through the next 30-plus years, be part
2 of the carcinogenic process -- part of the cause of that
3 disease?

4 **A** Yeah, sure, because it's that person's dose that
5 caused the disease, and their dose is everything they've
6 been exposed to. And if there's one thing that I really
7 need to explain, if you'll give me one second.

8 **Q** Okay. Sorry.

9 **A** These errors that you saw occurring in the DNA,
10 there are genes in there that protect us. These are the
11 molecular defenses. If a cell gets those errors, it
12 typically dies. It's a process. It's a genetically
13 controlled process called apoptosis. That's a big word:
14 a-p-o-p-t-o-s-i-s. Apoptosis. Program cell data.

15 That's why most of us don't get skin cancers from
16 the sun. That's why most of us don't get mesothelioma,
17 why most of us don't get lung cancer from smoking, because
18 these damaged cells die. If asbestos has damaged those
19 genes that protect us, they're not going to work.

20 **Q** Last subject: I'm going to hand the Court the four
21 exhibits I pulled from your report about animal studies
22 that focused on talc. You know what I'm talking about? I
23 showed you this morning?

24 **A** Sure.

25 **Q** You've talked about these many times, including your

1 **Q** It's not the best zoomed-in, but hopefully, everyone
2 can see that.

3 So, based on your own publishing and you put it in
4 the literature, are most people that use cosmetic talcs
5 getting the disease talcosis?

6 **A** No, certainly not.

7 **Q** Okay. Are there literally but only recently, in the
8 last few years, paper after paper after paper showing case
9 series of people that are exposed to cosmetic talc and
10 getting mesothelioma?

11 **A** Yes. Those papers are becoming more common. Yes.

12 **Q** In terms of just the number of case reports, are we
13 already to the hundreds?

14 **A** Yes.

15 **Q** Can we go to the PowerPoint quickly? You were asked
16 about this, and we were talking about the different ways
17 to say, look, this cancer was caused by something, and he
18 focused on a lung fiber count. Do you see that?

19 **A** Correct.

20 **Q** Do you know who Dr. Attanoos is?

21 **A** I've never met him, but I've heard of him.

22 **Q** Do you know if they asked to ever do a long fiber
23 count?

24 MR. THACKSTON: Your Honor, I object. May we
25 approach?

1 government bodies, independent laboratories, and corporate
2 internal documents about testing on the presence of
3 asbestos and talc?

4 **A** I have, yes.

5 **Q** Now, do you have opinions about the presence of
6 asbestos in talc from the following sources: From Italy,
7 Vermont, Montana, China, and Brazil?

8 **A** Yes.

9 **Q** And do you have opinions about the amount of
10 asbestos that's released into the air from the use of a
11 talc that contains asbestos?

12 **A** I do.

13 **Q** And to make sure we're clear about a few things
14 here, are you offering testimony about the sources of talc
15 in any of the particular products that Ms. Plant used?

16 **A** Well, it's not really an opinion. It's just a fact.
17 They used -- all these different manufacturers had a
18 source from a mine that -- for cosmetic talc. It's not
19 really an opinion. It's this is what they said they used.

20 **Q** And you don't have any knowledge or experience as to
21 what was the source that was in the products that Ms.
22 Plant used; is that fair?

23 **A** Well, the products that she used -- besides looking
24 at what they said they put in it, no, I don't have any --
25 I don't have any firsthand knowledge. I mean, I wasn't

1 personally there when it was dug up and put in a bottle,
2 but this is what we used -- and I'll just use it as an
3 example. We used Chinese talc. I'm very familiar with
4 Chinese talc. I've analyzed it. It doesn't matter what
5 the brand or manufacturer it is.

6 And I like to cook, so I'll go back to cooking. You
7 can make how many different cakes with the same kind of
8 flour? Doesn't matter what the cake is. You use this
9 type of flour -- if we're talking about that particular
10 flour, it could be, you know, a carrot cake, it could be a
11 chocolate cake, the vanilla icing on a cake. It doesn't
12 matter. They're using the same source from the different
13 manufacturers and you know what that source is, then you
14 can talk about it.

15 MR. BUHA: Your Honor, may I approach the witness?

16 THE COURT: Yes.

17 BY MR. BUHA:

18 Q Dr. Longo, are you familiar with the document I just
19 gave you?

20 A Yes, sir, I am.

21 Q And what did I just hand you?

22 A You handed me my current resume.

23 MR. BUHA: Okay. Plaintiffs offer Exhibit 27,
24 Dr. Longo's current resume and CV, into evidence.

25 THE COURT: 27.

1 welding blankets, covers, because chrysotile is very
2 flexible and easy to weave like you're making a cloth.
3 Amosite, not so much. Crocidolite, the same thing; it's
4 very -- but it's not very used so much it doesn't really
5 have the utility for that.

6 Now, tremolite, actinolite, and anthophyllite are
7 brittle. It doesn't have high-tensile strength. It can't
8 be woven. Anthophyllite has been used -- and the history
9 of anthophyllite can -- I can only think -- find two
10 products.

11 In the early 20th century, it was used as a
12 filtering material because it's really good at acid, and
13 there was one product made by Johns-Manville that would
14 use anthophyllite from time to time because they're very
15 acid-resistant. For chrysotile, it's not.

16 So, tremolite, as far as I know, has never been used
17 in a product, and the same thing with actinolite, which
18 just is another form of tremolite. They're too brittle.
19 It's -- the more flexible, the more fibrous, the higher
20 the tensile strength, the more money it's worth. So
21 tremolite, anthophyllite, actinolite don't really have a
22 commercial value, except for one product.

23 **Q** Is asbestos mined out of the earth?

24 **A** Yes.

25 **Q** Is talc mined out of the earth?

1 **A** Yes.

2 **Q** What is an accessory mineral?

3 **A** When something forms like talc -- when talc forms,
4 you just don't get pure talc. You're always going to have
5 what they call accessory minerals, meaning, when the talc
6 is formed, other things get made along with it but at much
7 lower concentrations.

8 So, when talc is formed, you'll get things like
9 fibrous tremolite, actinolite, anthophyllite, and also
10 you'll get chrysotile.

11 Now, in some mines, the conditions aren't right to
12 make the amphiboles -- tremolite, actinolite,
13 anthophyllite -- so you'll see them, but not near the
14 concentration like you see mines like the Italian mine or
15 the Vermont mine. But what we're seeing now is all the
16 mines have some trace levels of chrysotile as an accessory
17 mineral.

18 So, I'm not a geologist, but there is -- a geologist
19 can tell you why, you know. It's all about temperature --
20 temperature --

21 MS. HERZ: Your Honor --

22 **A** -- temperature and ingredients.

23 MS. HERZ: -- although Dr. Longo admits he's not a
24 geologist, we object to the testimony about the geology.

25 THE COURT: And I think his training and experience

1 container -- and then we got to where I was analyzing it
2 and I could start telling a little bit where it came from
3 or it may be a blend.

4 If I'm seeing all tremolite amphibole asbestos, then
5 it's more than likely not from Italy. If I'm in Vermont
6 and I'm seeing primarily anthophyllite asbestos with a
7 little bit of iron in it, the only place I know that has
8 that type of anthophyllite is Vermont.

9 If I'm analyzing samples where I'm not finding very
10 much amphibole asbestos or none at all in a case but I'm
11 still finding chrysotile, I immediately start thinking of
12 Montana and Chinese talc.

13 But I wouldn't say that to the reasonable degree of
14 scientific certainty, unless I absolutely knew, but I
15 could pretty much guess from the analysis.

16 **Q** And have you gone back and cross-referenced the
17 particular products with the formulas and the vintages of
18 the products to understand how many samples of talc from
19 Italy, Vermont, Brazil, China, and Montana you've analyzed
20 over the last few years?

21 **A** Yes.

22 **Q** And is this consistent with your understanding that,
23 out of about 119 samples of products containing Italian
24 talc, that you found -- or MAS found asbestos in about 79
25 percent of those samples?

1 **A** Yes.

2 **Q** And that includes tremolite asbestos in the majority
3 of those?

4 **A** Occasionally you'll find anthophyllite, but the
5 majority is tremolite asbestos.

6 **Q** As to Vermont talc, is this consistent with your
7 understanding that you found -- out of about 55 samples,
8 that you found asbestos in about 74 percent of those
9 samples?

10 **A** Correct.

11 **Q** And as to Montana talc, is this consistent with your
12 understanding that you'd analyzed about 36 samples of
13 Montana talc and found asbestos in all of them?

14 **A** Correct.

15 **Q** And does that include samples of Gold Bond?

16 **A** It does.

17 **Q** And you've -- how many samples of Brazilian talc
18 have you analyzed?

19 **A** Only three.

20 **Q** And is it only chrysotile that you found in those
21 three samples?

22 **A** It is.

23 **Q** And regarding Chinese talc, how many samples of
24 Chinese talc have you found asbestos in?

25 **A** 106 out of 112.

1 BY MR. BUHA:

2 Q And has R.J. Lee found chrysotile asbestos by PLM in
3 talc from Montana mines?

4 A They have.

5 Q And we talked about finding chrysotile. You found
6 chrysotile asbestos in talc from the Brazil mines. Has
7 R.J. Lee also found chrysotile from those same sources?

8 A Yes.

9 Q And, finally, we talked about a number of tests that
10 you have done on talc from China. And are you aware of
11 any other testing that's been done that found similar
12 results?

13 A The FDA.

14 Q Can you describe that briefly?

15 A FDA has a contract out with a lab called AMA. And
16 in 2010, they got a contract. And then recently, in 2020,
17 they beat out us and R.J. Lee lab to get the new contract.
18 So, FDA sent them some off-the-shelf Johnson & Johnson --
19 I think it was a 2018 or 2019 container that they just
20 bought off the shelf and sent them three samples, and they
21 found chrysotile in two of the three samples. It was a
22 split from one sample, but three splits. They found
23 chrysotile. And the calculation of how many fibers and
24 bundles in a gram was about 30 million.

25 Q And I think I'm running -- I'm about out of time,

1 Q Good to see you. Save travels.

2 THE COURT: Thank you, Ms. Herz.

3 Redirect?

4 MS. GROSS: Very briefly, Your Honor.

5 REDIRECT EXAMINATION

6 BY MS. GROSS:

7 Q I have got 15 minutes; I'm going to jump around and
8 some things might get a little weird. Okay? And then
9 we're all done for the day.

10 Let's follow up really briefly on latency. We
11 talked about this before. Okay? Assume Sarah started
12 being exposed to asbestos and talc as a baby. So 1986,
13 okay? Is a 30-year latency period in that typical window
14 that you just discussed with Ms. Herz?

15 A That falls in the window.

16 Q So, when we look at that 20 to 50 years that y'all
17 discussed, that is from the first exposure; right?

18 A That's right.

19 Q Okay. And, as her doctor, as Sarah's doctor, the
20 person who actually treated her in this courtroom, did all
21 of her exposures, from her first year of life over the
22 course of 30 years later, cause her disease?

23 A It's cumulative, so it all adds up over time.

24 Q Okay. Does it make any sense you, Dr. Ripley, as a
25 practicing doctor, to suggest that Sarah's mesothelioma is

1 STATE OF SOUTH CAROLINA) COURT OF COMMON PLEAS
2 COUNTY OF RICHLAND) TRANSCRIPT OF RECORD

3 -----x
4 SARAH J. PLANT and PARKER)
5 PLANT,)
6)
7 Plaintiffs,)
8 vs.) Case No. 2022-CP-40-01265
9)
10 AVON PRODUCTS, INC., et al.,)
11)
12 Defendants.)
13 -----x/

14 MONDAY, FEBRUARY 27, 2023
15 TRIAL VOLUME 4

16 B E F O R E:

17 The Honorable Chief Justice (ret.) Jean H. Toal,
18 Presiding Judge; and a jury.
19
20
21
22
23
24
25

Court Reporter: Bobbi Fisher, RPR
SC Official Court Reporter III

1 **A** Yes. From 1986 through 2000.

2 **Q** If we just consider Whittaker Clark's connection to
3 Gold Bond, did you consider the duration, frequency,
4 proximity of that use to assess whether it was
5 responsible, at least in part, for why she has
6 mesothelioma?

7 **A** I did.

8 **Q** Please tell me about that.

9 **A** Yes. So, this was over a long duration, a decade or
10 more. This is something that she's using on a weekly or
11 more basis. And this is exposure starting right from
12 birth, so during her formative years. And this is a
13 product that is -- she's not only getting exposed from
14 other family members using it, but she's using it on her
15 own body and feet.

16 **Q** Had this been her own exposure -- and this is a
17 hypothetical, because the jury knows she used other
18 things. But if this was the only thing that she had used
19 and she came into your office and said, "I have
20 mesothelioma," would this be sufficient to cause the
21 disease by itself?

22 **A** Yes.

23 **Q** In this situation where it's one of others, is this
24 a substantial factor in the development of her disease?

25 **A** It is.

1 **Q** One of the things that the lawyers talked about from
2 the very beginning is IARC, the International Agency for
3 Research on Cancer. Are you aware of their 2010 and 2012
4 monographs?

5 **A** I am.

6 **Q** Do they consider in one talc without asbestos and in
7 the other talc with asbestos?

8 **A** Yes.

9 **Q** What do they conclude when you have a talc product
10 that contains asbestiform fibers?

11 **A** It's a Class 1 or Group 1 carcinogen. So, it means
12 is causes cancer in humans.

13 **Q** Do you agree with both of these concepts listed
14 here, all fibers of types of asbestos -- and the jury has
15 heard about the six types -- cause mesothelioma, and if
16 you've got talc with them it, you have a problem?

17 **A** Yes. So, it's well-understood that all fiber types
18 are able to cause cancer, including mesothelioma, and it
19 doesn't matter where the asbestos is found, what the
20 product is. It's the asbestos that gets released into the
21 air, that gets breathed in, it affects the body, and it
22 causes genetic damage.

23 **Q** In terms of evaluating the issue in this case, was
24 it important before I got to the -- kind of the end
25 question, "Why is Sarah sick?" -- for you to evaluate what

1 THE COURT: All right. Overruled.

2 A Yes.

3 BY MS. DEAN:

4 Q I want to take a moment. When you try to figure out
5 if there is a routine problem with a powder product being
6 used on babies and children in their home, does it matter
7 whether it comes in a pink bottle or a white bottle or a
8 jar or if it has a label that says J&J or Chanel or Mary
9 Kay or does it matter what source the talc came from?

10 MR. THACKSTON: Objection. Argumentative. Leading.

11 THE COURT: Overruled.

12 A No. It doesn't matter to me what the label says,
13 what the name says, what the -- the flavor. If you have
14 got a powder product, I need to know where the source is.
15 And if the source is problematic, then I've got a concern.

16 BY MS. DEAN:

17 Q Do you know if WCD sold Italian and Vermont talc,
18 thousands and thousands of tons of it per decade?

19 A They did.

20 Q Do you know if these are specific products -- these
21 sources are specifically the sources that were used in the
22 makeup and body powder talcs that Sarah Plant was putting
23 on her body?

24 A It was.

25 Q Is the idea that you would ignore tests because it

1 **Q** Did you consider the duration, frequency, and
2 proximity of use for the COVERGIRL products she was using
3 regularly at that time to evaluate whether they were part
4 of the problem?

5 **A** Yes. So, this was 15-plus years. This was
6 something that easily, on a weekly-type basis -- and the
7 proximity was right on the face, so right around the nose
8 and mouth.

9 **Q** Same question: If we had a hypothetical that this
10 was her only exposure, would this be sufficient to cause
11 the disease she's suffering from?

12 **A** Yes.

13 **Q** If it was one of the multiple exposures to makeup
14 and body powder talcs, was it a substantial factor in why
15 she got sick?

16 **A** Yes.

17 **Q** Is the fact that Sarah Plant has the BRCA2 gene,
18 which the jury heard about, indicate that she's even more
19 susceptible to these weekly exposures to asbestos?

20 **A** Yes.

21 **Q** But even if she didn't have the gene, would your
22 question about these being substantial and significant be
23 the same?

24 **A** Yes.

25 **Q** I next want to ask you about Mary Kay. Did you

1 **Q** Tell me about that.

2 **A** Yes. So, first off, is that these cancers,
3 mesotheliomas, are so rare that -- it's so tightly tied to
4 asbestos that, when you see someone who has mesothelioma,
5 the first thing that you're taught, "Look for asbestos
6 exposure, and if you've got asbestos exposure, you know
7 that you've got a risk for mesothelioma." And they have
8 said that, if you have trace amounts of asbestos in talc,
9 that using that product would exceed the standards --
10 occupational standards, which, at that time, was at 5
11 fibers per cc.

12 **Q** Has asbestos been banned so that you literally can't
13 bring it across the borders in industrial countries across
14 the world?

15 **A** Yes.

16 **Q** And in the U.S., is it functionally banned?

17 **A** Yes. I mean, it's highly regulated. And, in fact,
18 I mean, you need to be wearing a moon suit to be dealing
19 with asbestos.

20 **Q** A what suit?

21 **A** A moon suit.

22 **Q** Even with the current regulation, have they said,
23 man, if everybody does what they're supposed to do and
24 they stay within a level, is there still a significant
25 risk for the disease that Sarah Plant has?

1 **A** Yes, there is.

2 **Q** There was a representation that asbestos is in the
3 background air and that that's safe, and so, I want to
4 talk to you about that.

5 MR. THACKSTON: Your Honor.

6 BY MS. DEAN:

7 **Q** First of all, in the past --

8 THE COURT: One moment.

9 MR. THACKSTON: Object to the colloquy about
10 representations versus just asking --

11 THE COURT: Yeah, just ask the question, Ms. Dean.

12 BY MS. DEAN:

13 **Q** Have you looked at old studies about how much
14 asbestos is in the air because of pollution?

15 **A** Yes.

16 **Q** What is reported as a typical or median level
17 according to the regulatory advice?

18 **A** 0.00003 fiber per cc. And 98 percent of that is
19 chrysotile asbestos, and the vast majority of that is less
20 than 1 micron in length. So, extremely short chrysotile
21 asbestos.

22 **Q** If somebody was going to compare really short
23 chrysotile asbestos and only look at Sarah Plant's
24 exposures in considerable long fibers, is that a fair
25 comparison?

1 on from this. They called themselves the talc house. We
2 know that. I don't think we need to have a big
3 disagreement about how it exactly winds up in the other
4 products they were into, selling talc, at the various and
5 sundry cosmetic companies, as I understand it.

6 BY MS. FLYNN:

7 Q Mr. St. George, talc was on only one of the many
8 minerals in the products or raw materials that you sold;
9 correct?

10 A Yes, there were thousands of products.

11 Q I wanted to dig in a little bit about Whittaker's
12 role as a distributor.

13 A Okay.

14 Q As a distributor, did Whittaker, Clark & Daniels
15 ever do any mining of talc?

16 A No. It didn't do the mining.

17 Q Did it ever do any milling of talc?

18 A No.

19 Q Did ever have any equipment to mine or mill talc?

20 A No, it didn't.

21 Q Did it ever sift talc?

22 A No.

23 Q Did it ever do anything at all to process talc?

24 A No, it didn't.

25 Q And we heard a little bit about Whittaker owning

1 some other companies, some subsidiaries, other companies.
2 Whittaker itself -- did Whittaker ever do any of these
3 activities?

4 **A** No.

5 **Q** Did Whittaker even ever package talc?

6 **A** No. It came in the paper bags and went out in paper
7 bags. There may have been occasions where a customer
8 specified a 100-pound drum, in which event they might have
9 drummed it.

10 **Q** And prior to this stage, would that talc have been
11 tested by the miner or the miller of that talc?

12 **A** Yes, the mines did their own testing.

13 **Q** And if it tested positive at the mining or milling
14 facility, would Whittaker have accepted that?

15 MS. DEAN: Your Honor, this is another example where
16 we asked for documents. There are none. This is solely
17 based on hearsay.

18 THE COURT: Then move on from that, Ms. Flynn.
19 Sustained.

20 BY MS. FLYNN:

21 **Q** Regardless of whether any mining or milling company
22 tested or didn't test the talc, did Whittaker, Clark &
23 Daniels always test the talc?

24 **A** Yes, from 1971.

25 **Q** And we're going to get a little bit more into about

1 the testing a little bit further, but before we get too
2 far down there, what does a distributor do?

3 **A** Well, a distributor, you know, provides for the
4 producer, whose products it carries, the marketing --
5 augments its marketing arm. It has the warehousing and
6 transportation, infrastructure, and the contacts to sell
7 the products on to a customer. It also takes on credit
8 risk with customers and handles questions and issues that
9 the customers might have.

10 **Q** As a distributor, would Whittaker have ever sold
11 directly to a consumer?

12 **A** No.

13 **Q** Who were Whittaker's customers as a distributor?

14 **A** Manufacturers of finished products.

15 **Q** And why would it be that people need distributors or
16 sometimes referred to as middlemen?

17 **A** Well, the distributor adds value on both ends in
18 that it has this infrastructure that the manufacturer may
19 not have.

20 **Q** What types of things is the distributor able to do
21 that the manufacturer would prefer to outsource?

22 **A** Well, get, you know, products even smaller, you
23 know, ever smaller and granular orders out to people who
24 were buying it.

25 **Q** Would there be times -- is this an example -- let me

1 And the first one is Johnson & Johnson. We have
2 heard a lot about it; I'm sure we'll probably hear a
3 little bit more about it. Have you seen Whittaker's sales
4 records to Johnson & Johnson?

5 **A** Yes, I have.

6 **Q** Were there any regular ongoing sales to Johnson &
7 Johnson?

8 **A** Johnson & Johnson, from time to time, would buy a
9 small quantity of the talc, like, five bags, three bags,
10 ten bags. I think the largest sale would be 50.

11 **Q** And was there ever any sale large enough to enable a
12 company like Johnson & Johnson to be able to actually make
13 a product with it?

14 **A** Well, not according to Mr. Hubbard. And there was a
15 Dr. Hopkins at Johnson & Johnson that testified that those
16 amounts were not -- couldn't possibly have been in a
17 production run.

18 **Q** Were you familiar with where Johnson & Johnson
19 obtained talc?

20 **A** Well, at one time, it's -- it was a customer back in
21 the '70s, Charles Matthau, and I understand that it -- at
22 one time, it even had a mine of its own.

23 **Q** And then I wanted to ask you, I think, a little bit
24 about Gold Bond as well. You're familiar with the sales
25 records to Gold Bond?

1 **A** Yes.

2 **Q** Do you know the type of talc that was sold to Gold
3 Bond?

4 **A** I believe it was predominantly 1745 and NP-6030, if
5 I'm not mistaken.

6 MS. DEAN: I'm sorry; I just didn't hear. He said
7 1745 or 745? I'm sorry to interrupt.

8 THE WITNESS: 1745.

9 MS. DEAN: Okay. Thank you. I apologize for
10 interrupting.

11 BY MS. FLYNN:

12 **Q** And are those the same types of talc?

13 **A** Yeah, I think that they're equivalent.

14 **Q** And what type of talc is that?

15 **A** It's from Montana and it was a USP grade talc.

16 **Q** And what is USP? I think you mentioned it a little
17 bit ago.

18 **A** Yes, it has to meet the standards set out by the
19 United States Pharmacopeia.

20 **Q** What does it mean to be USP certified?

21 **A** Well, it means that -- well, first of all, it has to
22 have been tested for the absence of asbestos. I think
23 that's what they call it. In addition, it had to have
24 certain purity. There were other things in the USP that,
25 you know, are not permitted and certain impurities that

1 STATE OF SOUTH CAROLINA) COURT OF COMMON PLEAS
2 COUNTY OF RICHLAND) TRANSCRIPT OF RECORD

3 -----X
4 SARAH J. PLANT and PARKER)
5 PLANT,)
6)
7 Plaintiffs,)
8 vs.) Case No. 2022-CP-40-01265
9)
10 AVON PRODUCTS, INC., et al.,)
11)
12 Defendants.)
13 -----X

14 TUESDAY, FEBRUARY 28, 2023
15 TRIAL VOLUME 5

16 B E F O R E:

17 The Honorable Chief Justice (ret.) Jean H. Toal,
18 Presiding Judge; and a jury.
19
20
21
22
23
24
25

Court Reporter: Bobbi Fisher, RPR
SC Official Court Reporter III

1 helpful to be able to understand what sort of metamorphism
2 that the marbles have been subjected to and whether
3 asbestos will be present in the rocks.

4 **Q** Now, Mr. Bailey, for you to offer an opinion about
5 whether a product containing talc from a certain source
6 contains asbestos, is it enough for you just to know how
7 the talc deposit formed, or do you also need to look at
8 some testing?

9 **A** We want to look at testing also, yes.

10 **Q** And so, I want to go through a little bit about what
11 types of testing a geologist is interested in trying to
12 assess whether there's asbestos. And, so, I think the
13 first thing I wanted to ask, because I think this has come
14 up a bit in this trial, is, if you're asked to offer an
15 opinion about whether a talc product contains asbestos, do
16 you only consider testing of the particular product in
17 question, or do you also consider testing of other talcs
18 that contained -- other products that contained talc from
19 the same source?

20 **A** Yes. You may have a couple of different types of
21 products that one has been tested a lot, one has not been
22 tested very much or at all, but if you can tell that those
23 -- the talc is from the same mine, then you can make the
24 connection and say that the other material or talc product
25 that has not been tested much will contain asbestos.

1 **Q** Does it matter to you as a scientist whether the
2 talc came in certain packaging or was a certain brand, or
3 is it the talc source that matters?

4 **A** It's the talc source.

5 **Q** And do you also consider testing of samples from
6 different mines within the same talc district?

7 **A** Yes. A talc district -- this is a common idea in
8 geology. You have a district where, even like a gold
9 district you'll find an area where -- it's rare you'll
10 find just one mine that is used in an area. There will be
11 rocks in a certain area that have been subjected to the
12 same temperature and pressure conditions, and you're going
13 to have, say, gold present in a number of areas.

14 And so, you'll -- they're usually geographically
15 concentrated in a certain area. So, all those mines would
16 be considered to be within a given district, and so they
17 would have similar geology and a similar geologic history.

18 **Q** And along the same vein, do you consider testing of
19 samples from the same mine but from a different time
20 period, say, decades earlier?

21 **A** Yes, but that really is not going to make a
22 difference because differences in time is just -- you
23 know, as you mine down deeper, all you're doing is you're
24 mining at shallow levels initially and deeper levels maybe
25 20 years later, but it's all the same mine.

1 **Q** And the way they break about -- the ability of the,
2 mineral to break -- the way it breaks apart is called
3 cleaving and what -- the results can be called cleavage
4 fragments; right?

5 **A** Yes, you can have cleavage fragments if you have
6 cleavage within the mineral.

7 **Q** And you would agree that there are rocks that can
8 grow in either a massive habit or -- oh, this way --
9 massive habit or they can form -- they can grow as
10 asbestiform; right?

11 **A** Yes, but you're assuming that, within those
12 quote/unquote good rocks, that you know that those do not
13 have any fibers within them, or they may have some fibers
14 within them.

15 **Q** Forget the headings, if you would. I'm just talking
16 -- for you, I'm just asking about the bottom line, and
17 that is, there's something called anthophyllite and then
18 there's something anthophyllite asbestos, which is
19 crystallizing the asbestiform habit; right?

20 **A** That's correct, yes.

21 **Q** Same for tremolite?

22 **A** That's correct, yes.

23 **Q** And then, under a microscope, you can see that one
24 of them is chunky; that's a cleavage fragment. And then
25 one of them looks more like fibers, and that's

1 residency, you know, found me a counselor and helped me to
2 work through these struggles.

3 And so, from day one, you know, as an aspiring
4 medical student through med school, she supported us, and
5 then, through residency, she helped carry me and was a
6 light to me in a lot of ways. You know, I wouldn't be a
7 physician without her.

8 So, I like that picture a lot of me and Pax.

9 **Q** I love this picture. I love that his sunglasses are
10 upside-down.

11 **A** I know. They're his sister's too.

12 **Q** Okay. All right. We both know why we're here.

13 **A** Mm-hmm.

14 **Q** Tell us when this photo was taken.

15 **A** So, I want to say this is the first part of April of
16 2021. Sarah had been diagnosed a few weeks prior with
17 mesothelioma, and somebody in our church at the time
18 offered to take these pictures, because we don't know what
19 the future held. So this essentially was a -- possibly a
20 last family photo of our family.

21 And she was due for surgery a week or so after this,
22 and so, her surgery was not easy, and we didn't know what
23 would happen. Not just surgery but afterwards.

24 These pictures are -- on the left, that's us on the
25 plane on the way to Houston to have the surgery. I think

1 dad, so...

2 **Q** How about after the surgery?

3 **A** So, these are pictures that were actually taken
4 recently. The one on the left is the day of Thanksgiving.
5 We were getting on the -- kind of the Tennessee/North
6 Carolina border in this particular picture, and she had
7 all of her sisters and some cousins there and whatnot.
8 And so, that was just a fun picture.

9 And then, on the right was kind of our most recently
10 updated family photos. That's me and her taken where we
11 live currently in Chattanooga, Tennessee.

12 And so I think, for us, these really reflect a lot
13 of just -- kind of where we've come from and kind of where
14 we were at, at one point.

15 You know, I think back on the process of her
16 diagnosis, and I remember the day when we -- I listened to
17 her lungs. I had my stethoscope at home, and I couldn't
18 hear breathing on the left side, and I was really worried
19 because that's not good.

20 And so, we went and got a chest X-ray, and that led
21 to a CT scan that same day. And then, over the next week,
22 it led to a lot of questions and concerns.

23 I remember when we got the phone call that talked
24 about her diagnosis and just how -- it's kind of the
25 surreal moment but, you know, at that point, they had kind

1 of initially mentioned mesothelioma but they had to wait
2 for some further diagnosis, and so I started to look a few
3 things up, not that I'm an expert, but I know how to read
4 certain medical things in literature.

5 You know, and she asked me, once we got the final
6 diagnosis, you know, how long did she have, and she just
7 told me to tell her the truth, and I told her 9 to 18
8 months. And that wasn't fun.

9 And so this, these photos, are pretty close to -- to
10 18 months after her surgery and her diagnosis. You know,
11 we were really hopeful. She -- she's passed those
12 expectations.

13 To kind of backtrack, the reason I went into
14 medicine initially was, I had an aunt who -- I guess my
15 mom told me she was my favorite growing up, and I would
16 have breath-holding spells when I had to leave her house
17 and literally pass out because I didn't want to go. But
18 she was diagnosed with a brain tumor when I was about
19 three or four, and she was given six months to live, and
20 sure enough, she lived 25 years later.

21 I wanted to be a cancer doctor because of her and
22 then it evolved into pediatrics. And then I decided I
23 wanted to do a heme onc fellowship just because that was
24 three more years of training, so I chose orthopedics --
25 pediatric orthopedics instead.

1 translator in now, Your Honor?

2 THE COURT: Yes. Swear the interpreter, please.

3 (The interpreter was duly sworn.)

4 THE COURT: State your name for the record.

5 THE INTERPRETER: My name is Stephen Marsland.

6 THE COURT: Thank you, Mr. Marsland.

7 All right, Mr. Braly.

8 MR. BRALY: Thank you, Your Honor.

9 DIRECT EXAMINATION

10 BY MR. BRALY:

11 Q Good afternoon.

12 A Good afternoon.

13 Q How are you?

14 A So-so.

15 Q So-so.

16 My name is Ben Braly. I'm one of the lawyers for
17 the Plant family, and I wanted to thank you for taking the
18 time to travel across the ocean to come talk to us about
19 your company. Okay?

20 I just want to ask you some questions about -- a
21 little bit about the history and the different IMI Fabi
22 companies that are out there. All right?

23 A Yes.

24 Q That was, at one time, your father's business;
25 right?

1 **A** Yes. Back in the '70s.

2 **Q** Okay.

3 **A** He left 1984.

4 **Q** You took over in '84?

5 **A** Yes.

6 **Q** And before that, you were actually -- it's almost
7 like a boyhood fantasy of a lot of us; you got to be a
8 Formula 1 race car driver; right?

9 **A** Yes.

10 **Q** Okay. And then you got out of that and took over
11 this company?

12 **A** Yes.

13 **Q** We have been talking about IMI Fabi a lot. The IMI,
14 it's Industria Mineraria Italiana; correct? Or at least was
15 at one time; right?

16 **A** Industria Mineralia Italiana Fabi S.A. That was the
17 original name.

18 **Q** All right. And now, we just go by IMI Fabi?

19 **A** Yes.

20 **Q** All right. On your website -- are you familiar with
21 your company's website?

22 **A** Yes.

23 **Q** Okay. On your website, there's a statement on there
24 that states, "We are a leading talc manufacturer." And
25 then it states, "On a global scale, IMI Fabi offers a wide

1 range of high-quality products at competitive prices." Do
2 you see that?

3 **A** Yes.

4 **Q** And that's true; right?

5 **A** Yes.

6 **Q** IMI Fabi is a large company; correct?

7 **A** For the talc business, we are one of the leading
8 companies.

9 **Q** Unfortunately, the resolution here isn't super
10 clear, but your website also states I think kind of what
11 you were just saying; that you offer high-quality talc
12 prices and that you could serve all over the globe?

13 **A** Not prices. Products. Sorry.

14 **Q** Okay. And I forgot to start my stopwatch, which is
15 a bad idea because we are on time limits.

16 Oh, I did misstate that. Okay. So, it's products,
17 not prices.

18 **A** Yes.

19 **Q** Thank you.

20 This, unfortunately, I think isn't showing up super
21 well from where you are, but it says that you have over
22 3,000 different customers around the globe?

23 **A** Yes.

24 **Q** And that's for talc products; correct?

25 **A** Yes.

1 **Q** Your website also has a section specifically about
2 cosmetics in talc; correct?

3 **A** That was a fair.

4 **Q** Right. It was a fair from -- in Paris on the 5th
5 through 7th of April of last year; right?

6 **A** Yes.

7 **Q** Did you attend that?

8 **A** No.

9 **Q** You did not.

10 Because IMI Fabi still to this day sells talc
11 intended for the cosmetic industry; correct?

12 **A** Yes.

13 **Q** Your website had the most interesting video running
14 across the middle of it. Do you know what I'm talking
15 about on your website, how it's got kind of a video of the
16 talc operation?

17 **A** Yes.

18 **Q** I wanted to ask you about some of that.

19 **A** Go ahead.

20 **Q** You have seen this; right?

21 **A** Yes.

22 (Video plays.)

23 BY MR. BRALY:

24 **Q** Now, I stopped it there. Those are talc rocks;
25 right?

1 **A** Yes. Gray talc rocks.

2 **Q** All right. And the photo before that of the
3 mountain, that's talc?

4 **A** That was not a mine in Sardinia.

5 **Q** That was or was not? I'm sorry?

6 **A** The open-pit mine is located in Sardinia. Sardinia
7 is an island of Italy.

8 **Q** Now, I want to be fair and clear with you and with
9 them that this wasn't where you acquired and isn't where
10 you acquired cosmetic talc, but this is an example of talc
11 mining; fair?

12 **A** Yes.

13 **Q** Okay. There's another section of this, and it ties
14 into something we just heard. You weren't here but an
15 expert was talking about using explosives to mine. I
16 thought this section of your website was interesting, and
17 I wanted to ask you about it.

18 (Video plays.)

19 BY MR. BRALY:

20 **Q** What did that guy put into that hole?

21 **A** Dynamite.

22 **Q** Okay. Is that one of the ways talc is mined?

23 **A** That mine is an underground gray talc mine in the
24 north of Italy.

25 **Q** Okay. And that is one of the ways that talc is

1 mined?

2 **A** Yes.

3 **Q** Okay. The last one of these, there's an example of
4 putting talc into bags. And IMI Fabi talc is sold in
5 bags; right?

6 **A** Bags, big bags, or in bulk.

7 **Q** Okay. Those bags say "IMI Fabi" on them; right?

8 **A** Yes.

9 **Q** It's a real short clip, but that bag that says "IMI
10 Fabi" on it, that's a bag of talc; right?

11 **A** Yes.

12 **Q** Okay. So, last week when opening statements were
13 made, we were told that there are three IMI Fabi companies
14 that are involved in this case. There's IMI Fabi (Diana),
15 IMI Fabi LLC, and IMI Fabi (USA); right?

16 **A** Yes.

17 **Q** And you're here to talk about all of them; right?

18 **A** Yes.

19 **Q** You are our second corporate representative; the
20 first one came yesterday. But just to be clear, I
21 understand that you are Mr. Fabi. You are the guy. But
22 you have been also been the person selected to speak for
23 and to make legal binding statements on behalf of these
24 three companies. And you understand that; right?

25 **A** Yes.

1 **Q** Great. The first one that I want to talk about --
2 because there's three -- the three that I talked about --
3 IMI Fabi (Diana), LLC, and (USA).

4 Does IMI Fabi (Diana) -- now, this company sold
5 cosmetic talc between the years 2001 and 2004.
6 Unfortunately, I think the "4" got clipped on the end
7 there. But that's right, isn't it?

8 **A** Yes.

9 **Q** It's called Diana because it comes out of a region
10 of Upstate New York called Diana; right?

11 **A** Yes.

12 **Q** In fact, you can -- I don't know if you have done
13 this, but you can actually go on Apple maps or some such
14 and type in Diana, New York, and see where it's at; right?

15 **A** Yes.

16 **Q** And in that same area, there's a large industrial
17 talc mine that's referred to as the Gouverneur talc mine
18 system. You're familiar with that?

19 **A** Yes.

20 **Q** Gouverneur, just for the sake of the record, because
21 this is a little tough, is G-o-u-v-e-r-n-e-u-r.

22 That facility -- IMI Fabi (Diana) began when there
23 was an acquisition made in Diana, New York, of a facility
24 that had been run by a company called Suzorite; correct?

25 **A** Yes.

1 Q Okay. Now, what kind of facility was that?

2 A That facility was used to process raw material from
3 China for the cosmetic and the pharma markets.

4 Q Was it just coincidental that it was in the same
5 region as an active mining operation?

6 A I don't know because we started in 2001, and as you
7 said, we bought from Suzorite, and the facility was
8 already existing.

9 Q Okay. Because before it was owned by Suzorite, it
10 had actually been owned by Whittaker, Clark & Daniels;
11 right?

12 A I don't know.

13 Q You don't know?

14 A I stop at Suzorite because our contacts were with
15 Suzorite.

16 Q All right. So, let's get the timeline down here,
17 make sure that we're all right on this.

18 In 2000, IMI Fabi purchases and creates this company
19 IMI Fabi (Diana) to take over the Suzorite facility; fair?

20 A Yes.

21 Q And then, after that, IMI Fabi (Diana) sold cosmetic
22 talc from '01 to '04; right?

23 A Yes.

24 Q Great. IMI Fabi (Diana) stopped operating in
25 two-thousand -- it still exists. It just stopped

1 operating in 2004; right?

2 **A** Yes.

3 **Q** Great. Let me go back to that for a second. This
4 is when IMI Fabi LLC steps in; correct?

5 **A** Yes.

6 **Q** Great. Super. I'm so glad we're on the same page
7 on this.

8 And then between 2001 and '04, IMI Fabi (Diana),
9 that was the only IMI Fabi facility selling cosmetic talc
10 in the United States; right?

11 **A** Yes.

12 **Q** Great. Second company, IMI Fabi LLC, they're
13 headquartered -- I say based in West Virginia. They were
14 headquartered in West Virginia; right?

15 **A** Well, the facility is located in West Virginia.

16 **Q** Okay. They started selling cosmetic talc when IMI
17 Fabi (Diana) stopped operation?

18 **A** Yes.

19 **Q** Okay. And they continued to sell cosmetic talc up
20 to today?

21 **A** Yes.

22 **Q** No other IMI Fabi entity since 2004 has sold
23 cosmetic talc in the United States other than IMI Fabi
24 LLC?

25 **A** Yes.

1 **Q** Thank you.

2 And they also sell industrial talc and have since
3 2001; correct?

4 **A** Yes.

5 **Q** The third company that's involved here is called IMI
6 Fabi (USA).

7 **A** Yes.

8 **Q** IMI Fabi (USA) is what you referred to in your
9 deposition as a holding company; correct?

10 **A** Yes.

11 **Q** What do you mean by that?

12 **A** The company has -- the stake owns 100 percent of IMI
13 Fabi LLC, but has no business.

14 **Q** Okay. It's the parent of?

15 **A** Yes.

16 **Q** We'll talk about that in a second.

17 IMI Fabi (USA) was created in 1999; right?

18 **A** Yes.

19 **Q** Was the creation of IMI Fabi (USA), and the
20 subsequent IMI Fabis in the late '90s, an attempt for your
21 company, which is based primarily in Italy, to begin a
22 foothold in the talc market of the United States?

23 **A** We set up in 1998 a joint venture with Zemex
24 mineral. So, IMI Fabi LLC was -- Zemex Fabi Benwood and
25 was processing industrial talc for U.S. markets. So,

1 our -- we didn't have any responsibilities in operation.
2 Was just a financial investment.

3 Q So, the creation of IMI Fabi (USA) and then the
4 related companies, was this in order to grow a talc
5 business in the United States where there previously had
6 not been one?

7 A Yes, because our partner, Zemex, decided that talc
8 was not its core business, so Zemex was ready to sell his
9 60 percent interest in the Benwood facility.

10 Q Okay. And I'm sorry; I think this is just a
11 translation, but Zemex? Is that what you're saying?

12 A Zemex. Z-e-m-e-x.

13 Q Thank you.

14 A And Zemex owned Suzorite.

15 Q Okay. So, they were getting out of the talc
16 business; right?

17 A In 2001 when we bought.

18 Q And you were getting more entrenched in the talc
19 business?

20 A Yes.

21 Q Okay. There's a fourth company related here.
22 Something called IMI Fabi S.p.A. This is actually the
23 Italian company that you're the head of; correct?

24 A Yes.

25 Q Right. This is the overall, over the entire IMI

1 Fabi family of companies, the top of the pyramid; right?

2 **A** Yes.

3 **Q** Okay. And this is not a defendant in this lawsuit;
4 right? Well, you may not know that. I'm just saying
5 things. Don't listen to me.

6 So, I want to map this out a little bit. IMI Fabi
7 S.p.A., the big Italian top-of-the-pyramid company, owns
8 IMI Fabi (USA); correct?

9 **A** I don't know if IMI Fabi S.p.A. is big but owns IMI
10 Fabi (USA).

11 **Q** Okay. So, the statement here without the "big, top
12 of the pyramid," without all of that, that statement is
13 true; right?

14 **A** Yes.

15 **Q** Okay. IMI Fabi (USA) owns IMI Fabi LLC?

16 **A** Yes.

17 **Q** And then, IMI Fabi LLC owns IMI Fabi (Diana)?

18 **A** Yes.

19 **Q** Okay. And you already mentioned this, but there are
20 multiple divisions with mining interest all around the
21 world; right?

22 **A** Yes.

23 **Q** You have got IMI Fabi Sardinia in Italy?

24 **A** Yes.

25 **Q** You've got IMI Fabi Brazil?

1 **A** Yes.

2 **Q** You've got IMI Fabi Australia?

3 **A** Yes.

4 **Q** And you, Mr. Corrado Fabi, you are the president of
5 IMI Fabi (USA) and IMI Fabi LLC; right?

6 **A** Yes.

7 **Q** So, I want to talk to you just a little bit about
8 this process that we have been through with this lawsuit
9 and the documents, the deposition that you did a little
10 while ago. All right?

11 **A** Two weeks ago.

12 **Q** Yeah, yeah. Thank you for that, by the way. I
13 appreciate that.

14 I want to start with -- there was a request for
15 documents; right? We asked you for documents or you,
16 meaning IMI Fabi, and somebody named Mr. Summerville
17 looked for those documents, with attorneys; correct?

18 **A** For IMI Fabi (Diana).

19 **Q** Okay. But that wasn't you. You didn't participate
20 directly in the search for documents?

21 **A** No.

22 **Q** And we did get some documents; right?

23 **A** Yes.

24 **Q** Yeah. From those documents and from what you were
25 able to tell us, IMI Fabi (Diana) sold talc that was

1 sourced from China for these three years, between '01 and
2 '04; right?

3 **A** Yes.

4 **Q** Specifically from a region called Guangxi; right?

5 **A** Yes.

6 **Q** It was sold by a company called Minchen (ph)?

7 **A** Yes.

8 **Q** And that IMI Fabi LLC continued to sell talc from
9 China, from Guangxi, after IMI Fabi (Diana) stopped
10 operation?

11 **A** Yes.

12 **Q** All cosmetic talc that IMI Fabi -- any IMI
13 Fabi-related company has ever sold for the cosmetic
14 industry in the United States has come from Guangxi,
15 China; correct?

16 **A** Yes.

17 **Q** And that's from -- that's who you sell talc from to
18 the present day; correct?

19 **A** Yes.

20 **Q** All right. There is a company called Cosmetic
21 Specialties the jury has not heard a thing about but
22 probably will once I sit down. They served as your
23 exclusive distributor; correct?

24 **A** Yes.

25 **Q** When you were asked just a couple of weeks ago,

1 there was some statement that you, IMI Fabi, had
2 absolutely no knowledge about where your talc ended up
3 going once it left your doors, because it went to Cosmetic
4 Specialties; is that right?

5 **A** Yes.

6 **Q** Has that always been right?

7 **A** Yes.

8 **Q** Okay.

9 **A** What -- with few exception. We always sold the
10 material FOB from our docks regardless if it was IMI Fabi
11 (Diana) or IMI Fabi LLC. In some cases, material and
12 freight were arranged by Cosmetic Specialties and shipped
13 directly to a customer.

14 **Q** Right. So, there were times when you were aware to
15 whom you were shipping talc?

16 **A** Yes.

17 MS. O'NEILL: Object to the form. Object to the
18 form. It misstates testimony. He just said they ship
19 FOB, so they didn't ship, which, as Your Honor knows, is
20 an important UCC distinction.

21 THE COURT: Yes, it is.

22 MR. BRALY: He already answered the question,
23 though, and said yes.

24 THE COURT: Well, rephrase it.

25 MR. BRALY: Sure.

1 BY MR. BRALY:

2 Q You understand FOB to simply mean when a contract
3 has been satisfied; correct?

4 A Yes.

5 Q Regardless of whether you pay the shipping up to the
6 point of your dock or whether you pay it to the end
7 customer there were certainly circumstances where IMI Fabi
8 was aware to whom you were selling talc as far as the
9 customer and the end manufacturer; correct?

10 MS. O'NEILL: Objection to the form. Misstates
11 evidence.

12 THE COURT: Overruled.

13 [Technical difficulties with microphones. Pause in
14 the proceedings.]

15 MS. O'NEILL: I don't think that's me.

16 A We always sold our talc -- oh, sorry.

17 Q It's okay.

18 [Technical difficulties with microphones. Pause in
19 the proceedings.]

20 THE COURT: Our apologies, Mr. Fabi.

21 THE WITNESS: No problem at all.

22 THE COURT: Wait a minute. It's still got a little
23 background noise.

24 [Technical difficulties with microphones. Pause in
25 the proceedings.]

1 THE COURT: All right. You may continue, Mr. Braly.
2 Our apologies, Mr. Fabi.

3 THE WITNESS: No problem. You don't have to
4 apologize.

5 MR. BRALY: I'm sorry.

6 BY MR. BRALY:

7 Q Just understanding that FOB, that phrase, that term
8 determines when a contract has been satisfied. You
9 understand that to be the case; right?

10 A Yes.

11 Q Leaving that aside, there were circumstances --
12 there were times when IMI Fabi was aware who the
13 manufacturer of end products was who was buying IMI Fabi's
14 talc?

15 A Yes.

16 Q Okay. Today, IMI Fabi LLC sells talc through
17 Cosmetic Specialties exclusively?

18 A Yes.

19 Q And today, IMI Fabi LLC, once that bag of talc or
20 that pallet of talc or whatever it is leaves, you don't
21 have track of it anymore; right?

22 A No.

23 Q Because it goes to Cosmetic Specialties?

24 A Mainly goes to Cosmetic Specialties' warehouse.

25 Q And you don't have any knowledge about what they do

1 with it after that?

2 **A** Very limited knowledge, because Cosmetic Specialties
3 has always been very protective of its customer list.

4 **Q** Okay. The bags that are sent to Cosmetic
5 Specialties are the same bags that are labeled the same
6 way as those bags that we saw in the video; right? They
7 sell IMI Fabi?

8 **A** We don't sell anonymous bags. All our bags are
9 labeled.

10 **Q** Right. So, if you're a company, at the end of the
11 line here, and you get a pallet of talc and the bag say
12 "IMI Fabi" on it, even if it came from Cosmetic
13 Specialties, they would be identified as IMI Fabi bags;
14 right?

15 **A** IMI Fabi name is on the bags.

16 **Q** IMI Fabi sold and still sells the grade of talc
17 known as Talc 141; correct?

18 **A** Yes.

19 **Q** You have been in this talc game for a long time and
20 you know that there are codes for everything?

21 **A** Yes.

22 **Q** It's confusing, isn't it?

23 **A** A little bit, yes.

24 **Q** I kind of --

25 **A** Especially for you.

1 [Laughter]

2 Q Boy, you got that right. You got that right for
3 sure.

4 But it's a lot to understand; right?

5 This jury has heard about 141. They have heard a
6 lot about other things too, but I just want to be clear.
7 For this time period that we're talking about, 141 comes
8 from China; right?

9 A From 2001, yes.

10 Q Right. Because I'm asking as if you know -- I'm
11 hoping you do -- but before that, 141 originated from
12 Montana?

13 A I don't know.

14 Q You don't know that?

15 A No.

16 Q All right. So, we were talking about customer codes
17 before. Before we get to that, I just put this up real
18 quick to show that, as of April of 2001, that code 141 was
19 one of the products that IMI Fabi (Diana) was supplying?

20 A Yes.

21 Q Along with all those other ones; right?

22 A Yes.

23 Q Yeah. And you're aware that one of IMI Fabi (Diana)
24 and USA's customers was Procter & Gamble; correct?

25 MS. O'NEILL: Object to form.

1 **A** No.

2 BY MR. BRALY:

3 **Q** You're not aware of that?

4 **A** Procter & Gamble has never been one of our
5 customers. As I said before, our customer is Cosmetic
6 Specialties.

7 **Q** Right. Are you aware that IMI Fabi sold talc that
8 went to Procter & Gamble?

9 MS. O'NEILL: Your Honor, I'm going to object. I
10 have objected to the form of this question with this
11 display, because the display misstates the witness's
12 testimony because he said USA had no customers.

13 MR. BRALY: Oh, that should say "LLC." You're
14 right. Let's just do that.

15 MS. O'NEILL: Thank you.

16 THE COURT: He's trying to fix it.

17 MS. O'NEILL: Thank you, Your Honor.

18 BY MR. BRALY:

19 **Q** You area aware that IMI Fabi (Diana) and LLC sold
20 talc that ended up going to Procter & Gamble; correct?

21 **A** Yes.

22 **Q** And Procter & Gamble -- it gets a little confusing
23 here, but when we're talking about Procter & Gamble, you
24 understand that we're ultimately talking about the
25 COVERGIRL line of products?

1 MS. O'NEILL: Objection to form. Lack of
2 foundation.

3 MR. BRALY: I'm asking him if he knows.

4 THE COURT: Overruled.

5 **A** I found out about COVERGIRL during my deposition two
6 weeks ago.

7 BY MR. BRALY:

8 **Q** And the relationship -- the jury has already heard
9 this testimony. I'm just asking if you know that there's
10 a relationship between Procter & Gamble and Noxell, those
11 two companies, related to the manufacture of COVERGIRL
12 products.

13 **A** I found out two weeks ago during the deposition.

14 **Q** Great. One of the things that IMI Fabi released to
15 customers was called a Certificate of Analysis; correct?

16 **A** Yes.

17 **Q** Certificate of Analysis is the statement by IMI Fabi
18 of what they're supplying and the certificate of what's in
19 it; right?

20 **A** Yes.

21 **Q** And it includes a statement at the bottom that we'll
22 look at later related to testing results for asbestos
23 concentration; correct?

24 **A** Yes.

25 **Q** This particular Certificate of Analysis, which is

1 part of an exhibit that's already in evidence -- it's
2 Exhibit 70 -- has a customer code right here. Do you see
3 that?

4 **A** Yes.

5 **Q** And the customer code -- and, again, with the codes
6 -- and it's hard for me; you have got that right -- is
7 1-802980; right?

8 **A** Yes.

9 **Q** That's a code of a customer; right?

10 **A** Yes.

11 **Q** It's not your code?

12 **A** As I said, I don't know it was the same document,
13 but as I said two weeks ago, that's a Diana document.
14 Honestly, I don't remember what the code means.

15 **Q** Okay. Let's look at customer code 1-802980. What
16 we're looking at here is a Bill of Lading from May 15th of
17 2001 to Procter & Gamble. Do you see that?

18 **A** Can I see because I don't -- I don't read very well.
19 Can I see the document?

20 **Q** No problem. I'll get that for you.

21 MS. O'NEILL: Can you tell me the Bates-stamp number
22 so I can pull it, please?

23 MR. BRALY: Maybe. No.

24 THE COURT: I don't understand why we're having
25 trouble here. It says from IMI Fabi (Diana) LLC at

1 Route 3, Old Harrisville Road, Natural Bridge, New York,
2 consigned to Procter & Gamble. It shows the date of
3 15 February and then you -- 15 May 2001. It's one of
4 y'all's documents.

5 MS. O'NEILL: Oh, I don't have an issue with that,
6 Your Honor. The witness asked to see a copy, and
7 Mr. Braly is trying to find it for him, and I asked him if
8 he could tell me for the Bates stamp number so I can find
9 it too.

10 MS. DEAN: 848.

11 MS. O'NEILL: It's not an objection to the document.
12 Thank you so much.

13 MS. DEAN: Oh, I lied.

14 MR. BRALY: You did. It's the next one. It's 849.

15 MS. DEAN: I got close.

16 THE COURT: Why don't you take that inset off of it
17 so it looks like what the Bill of Lading is. Can you do
18 that?

19 MR. BRALY: Your Honor, that's -- I mean, I'm just
20 going to move on. The question is kind of simpler than
21 this. Is this all right if I --

22 THE COURT: Yeah, of course.

23 MR. BRALY: It's the other side. Yeah.

24 THE COURT: That's what's up on the screen?

25 MR. BRALY: Yes, ma'am.

1 THE COURT: Very good.

2 MR. BRALY: Great.

3 BY MR. BRALY:

4 Q So, what we have here is a Bill of Lading to Procter
5 & Gamble?

6 A Yes.

7 Q And right down here in the part that's culled out,
8 it says customer code 1-802980; right?

9 A Yes.

10 Q Which is the same customer code that we had just
11 seen in that Certificate of Analysis previously; right?

12 A Yes.

13 Q Great.

14 A But -- sorry.

15 Q No, I'm sorry. Let me work through this, and
16 Ms. O'Neill, I promise you, is going to be able to cover
17 almost everything you want to say.

18 There's a PO number down here too; right?

19 A Yes.

20 Q And that's a purchase order? That's what PO means;
21 right?

22 A Yeah.

23 Q And what it says here is that, on 15 May 2001, you
24 sold 17.6 tons of 141 Talc in 50-pound bags?

25 A Yes.

1 **Q** Okay. This is a different one so it's not the same
2 one you're looking at but the same concept. This is from
3 July 9th of 2001. Same customer code, different purchase
4 order number; right?

5 **A** Yes.

6 **Q** Another 17.6 tons of talc.

7 **A** Yes.

8 **Q** Next one, different date, same concept. This is
9 from 30 July 2001, again to Procter & Gamble. Same code
10 number, customer code number. Different purchase order
11 number; right?

12 **A** Yes.

13 **Q** And this is for another 17.6 tons of talc.

14 **A** Yes.

15 **Q** Do you know how many pounds there are in a ton?

16 **A** Sorry?

17 **Q** Do you know how many pounds there are in a ton?

18 **A** Yes.

19 **Q** How many?

20 **A** 2,000.

21 **Q** This document is already in evidence. This is a
22 listing of COVERGIRL products and their product number.
23 And it turns out that 1-802980, the customer number we
24 have been looking at, we can see in this Exhibit 60, which
25 is in evidence, COVERGIRL used that code number, Talc 141

1 type, for a lot of products. Do you see that?

2 **A** Yes.

3 **Q** On the fourth page here, this goes on for a few more
4 pages before we get into loose powders. Do you see that
5 same code number -- that same customer code number?

6 **A** Yes.

7 **Q** So, we just saw three months of sales from 2001
8 where you sold almost 60 tons of talc -- that talc -- to
9 COVERGIRL; right?

10 **A** We sold --

11 MS. O'NEILL: I'm going to object to the form.

12 **A** -- to Cosmetic Specialties. And if you look at the
13 Bill of Lading --

14 THE COURT: Just a second.

15 Don't lead.

16 MS. O'NEILL: Well, my objection was it misstates
17 the document and the testimony because he said it was sold
18 to COVERGIRL, and the documents says it was sold to
19 Cosmetic Specialties.

20 THE COURT: Right. Cosmetic Specialties is who they
21 always sell to, and then it goes from Cosmetic Specialties
22 to wherever, like Procter & Gamble and so forth.

23 MR. BRALY: Right.

24 THE COURT: Say it correctly when you ask him.

25 MR. BRALY: Sure.

1 BY MR. BRALY:

2 Q We just have three documents that showed that IMI
3 Fabi (Diana) sold almost 60 tons of talc through Cosmetic
4 Specialties that ended up going to the people who make
5 COVERGIRL; right?

6 MS. O'NEILL: Object to the form. Assumes facts.

7 THE COURT: All right. Overruled.

8 A Sorry. The delivery address on this Bill of Lading
9 is New Jersey.

10 BY MR. BRALY:

11 Q Right, because they have a facility in Maryland;
12 right?

13 A So for -- I don't know that the material ended up to
14 make COVERGIRL because we don't have this information.

15 Q Right. But it says it goes to a Procter & Gamble
16 facility; right?

17 A I don't know if Procter & Gamble has a facility in
18 the state of New Jersey. It's clearly written that
19 destination, 75 Tilbury Road, state of New Jersey.

20 Q Was Cosmetic Specialties in the business of selling
21 20 tons of talc at a time to an empty address?

22 MS. O'NEILL: Object to the form. Lack of
23 foundation. Calls for speculation.

24 A I don't know what Cosmetic Specialties --

25 BY MR. BRALY:

1 **Q** We need to stop for a second. She has to do
2 something. I'm sorry. I know the procedure is a little
3 weird.

4 **A** I'm sorry.

5 **Q** It's okay. No, no, you're all right.

6 THE COURT: All right. This thing says, Procter &
7 Gamble, care of Sterigenics in a New Jersey address. She
8 wants you to lay a foundation for that, and we're going to
9 tie it back, so lay the foundation.

10 MS. O'NEILL: He asked about -- well, all right.

11 BY MR. BRALY:

12 **Q** You don't know if there really was a Procter &
13 Gamble facility at 75 Tilbury Road in New Jersey?

14 **A** No.

15 MR. BRALY: I stopped my stopwatch and I didn't
16 restart it, so I actually have no idea how much time I
17 have left.

18 MS. DEAN: 25 minutes.

19 MR. BRALY: Thank you.

20 BY MR. BRALY:

21 **Q** So, going back to that customer code of 1-802980,
22 the one we have been talking about, there's another
23 document that is in the evidence right now, which is
24 Document 70, that goes through the Certificate of Analysis
25 that IMI Fabi issued; correct?

1 **A** I can read the logbook, yes.

2 **Q** Here's the second one. Up here, it says 141
3 cosmetic talc. Up here it says customer code 1-802980.
4 Do you see that?

5 **A** I don't see that. I believe you.

6 **Q** Okay, great. Great, great.

7 That code, that's the code that we were just looking
8 at from Exhibit 60. That's the code that COVERGIRL used
9 for cosmetics, or one of them?

10 MS. O'NEILL: Object to the form, Your Honor. It
11 misstates the documents.

12 THE COURT: Overruled. Overruled. We have already
13 been through that with that other document. That's been
14 established.

15 BY MR. BRALY:

16 **Q** But we just saw that; right?

17 **A** Yes.

18 **Q** Right. And there's more that all deal with the same
19 code.

20 Over here, we see something called a lot; right?

21 **A** Batch number, yes.

22 **Q** No, no, no. Where it says, "lot number." Lot and
23 then the pound sign. It's lot number; right?

24 **A** Or batch number. I call batch number.

25 **Q** Oh, okay. I'm sorry. I though you said page

1 number.

2 **A** I'm sorry. Batch.

3 **Q** I gotcha. But they're different for each of these
4 pages. This one is Lot 21E17. This one is Lot 21K24.

5 Well, that middle one is too, so I'm not going to
6 duplicate it. This one is Lot 21J26. They're different
7 lots; right?

8 **A** Yes.

9 **Q** Which means that we're talking about different
10 shipments?

11 **A** Yes.

12 **Q** A couple more of those.

13 We're going to talk about this a little more in a
14 moment, but I just want to put these six up here for now,
15 and we'll talk more about this later, but we have already
16 introduced into evidence a document the jury could look at
17 with more of these.

18 There's also a reference to something called
19 customer code 10200017. Have you seen reference to this?

20 **A** No.

21 **Q** You have not. Okay.

22 This is -- the Bates number on this one is 826, but
23 this is a shipment info of Product 141 from 2004, 672 bags
24 at 50 pounds a bag. 672 times 50, that's 33,600 pounds;
25 right?

1 **A** 16 tons roughly.

2 **Q** That's 16 tons.

3 And it references again customer code, and it
4 provides 10200017. See that?

5 **A** Yes.

6 **Q** Do you know that to be a Procter & Gamble customer
7 code?

8 **A** No, I don't know.

9 **Q** There's another reference of that same customer
10 code; right?

11 **A** Yes, I see.

12 **Q** And it consigned to Procter & Gamble at Beaver
13 Court, Hunt Valley, Maryland; right?

14 **A** Yes.

15 **Q** Do you know that Procter & Gamble has a cosmetic
16 manufacturing facility in Hunt Valley, Maryland?

17 **A** I don't know, but...

18 **Q** You don't know. Well I can't make you know what you
19 don't know, so...

20 And then it says at the bottom, it says, "Freight
21 bill to Procter & Gamble." Do you see that?

22 **A** Yes.

23 **Q** Okay. So, we have seen two customer codes that tie
24 back to Procter & Gamble; right?

25 **A** You've showed.

1 **Q** Yeah. So, the idea that everything that IMI Fabi
2 sells goes to Cosmetic Specialties and you have no
3 knowledge of what happens after that isn't always the
4 case; right?

5 **A** No, I disagree, because we don't know what Cosmetic
6 Specialties and its customers do with our products. And
7 if we speak of industrial talc, we sell directly, then we
8 don't know what customers do with our material.

9 COURT REPORTER WILLIAMS: I'm sorry. I didn't get
10 the end of your sentence.

11 THE WITNESS: Sorry?

12 COURT REPORTER WILLIAMS: I didn't understand.

13 "Then we don't know what customers..."

14 THE WITNESS: Industrial -- the talc customers are
15 direct customers, so many cases, we know what industrial
16 talc customers do with our material.

17 BY MR. BRALY:

18 **Q** And you saying that's not the case with cosmetics?

19 **A** No, because, as I said before, Cosmetic Specialties
20 has always been very protective of its customer list.

21 **Q** Is there any financial intertwining between -- I'm
22 sorry. Is there any financial mixing between Cosmetic
23 Specialties and any of the IMI Fabi companies?

24 **A** No, not at all.

25 **Q** Here we see a Certificate of Analysis again listing

1 Talc Code 102000017, Product No. 141. Do you see that?

2 **A** Yep.

3 **Q** And this is the same IMI Fabi document that we have
4 seen over and over again; correct?

5 **A** Yes.

6 **Q** The difference here is, this one came to us from
7 Noxell and has a fax header on it that says that it was
8 faxed directly to them from IMI Fabi. Do you see that?

9 **A** Yes.

10 **Q** So IMI Fabi was communicating directly with
11 customers. They were faxing them these Certificates of
12 Analysis; right?

13 **A** Well, Certificate of Analysis are sent to customers,
14 but it doesn't mean that we are in contact with customers.

15 **Q** How do you know to send a Certificate of Analysis to
16 a customer with a specific lot number if you didn't know
17 they got it?

18 **A** Because we have been instructed by Cosmetic
19 Specialties. It was not our initiative, for sure.

20 **Q** Well, why wouldn't Cosmetic Specialties just send
21 it? Why would they have to call you and say send your
22 Certificate of Analysis to them?

23 **A** I think for convenience.

24 **Q** Is that more convenient to you?

25 **A** Yeah.

1 **Q** Okay. We see the same Certificate of Analysis for
2 code 10200017 repeated over and over again, and you're
3 aware of that in your review of the records?

4 **A** Yeah.

5 **Q** Yeah. Are you aware that COVERGIRL, Noxell, Procter
6 & Gamble, the companies that made COVERGIRL, are you aware
7 that they have testified, when they have to do what you're
8 doing, that they have testified under oath that they get
9 their talc from IMI Fabi to --

10 MS. O'NEILL: I'm going to object, Your Honor. This
11 violates a motion in limine and violates Your Honor's
12 pre-court ruling about this very subject, and it's
13 hearsay.

14 MR. BRALY: Your Honor, we didn't have a motion in
15 limine on this.

16 MS. O'NEILL: Other lawsuits.

17 THE COURT: Wait, wait, wait, wait, wait.

18 MR. BRALY: Nope.

19 THE COURT: Counsel, approach.

20 BENCH CONFERENCE

21 (The following bench conference was held at the
22 bench with counsel present and outside the hearing of the
23 jury and others:)

24 COURT REPORTER WILLIAMS: Do you have a business
25 card?

1 MR. BRALY: I do, but I'm going to have to get it
2 shortly.

3 COURT REPORTER WILLIAMS: I know, yeah, but not
4 right this second, of course. Just for later.

5 MS. O'NEILL: I object on the basis of --

6 COURT REPORTER WILLIAMS: I can't -- I can't see or
7 hear you.

8 MS. O'NEILL: I don't care.

9 COURT REPORTER WILLIAMS: Okay. So off the record.
10 I'm sorry -- I just don't --

11 MS. O'NEILL: Just one second. It doesn't matter if
12 you can't hear. It matters if she can hear.

13 COURT REPORTER WILLIAMS: Okay. I'll keep that in
14 mind when I'm working at 4:00 in the morning.

15 MS. O'NEILL: We object on the basis of our motion
16 in limine about prior lawsuits. We object on the basis of
17 you putting this on a prior ruling about the Noxell
18 documents that we -- from the other cases and that he
19 testified in other cases, and it's hearsay because I can't
20 bring in Noxell people and impeach them.

21 THE COURT: These are their records.

22 MS. O'NEILL: These are Noxell's records.

23 THE COURT: I don't care. They're records between
24 IMI Fabi and Noxell.

25 MS. McVEY: In this case.

1 THE COURT: And these records are going from IMI
2 Fabi to Noxell with IMI Fabi's stamp on it.

3 MS. O'NEILL: I don't have an objection to the
4 document. I have an objection to the question which is,
5 "Are you aware that, in other lawsuits, Noxell was
6 testified" --

7 THE COURT: You can't ask about other lawsuits.

8 MR. BRALY: I'm not. I never did.

9 MS. McVEY: Your Honor, it says "in this case."

10 THE COURT: Huh. Wait a minute. I can't hear two
11 people at one time.

12 MS. McVEY: I'm just saying, I thought it a combined
13 deposition with Plant and Payne where Noxell was
14 testifying. Noxell was in this case.

15 MR. BRALY: It doesn't -- but -- okay enough. In
16 this case, he was deposed, and he was asked about what
17 COVERGIRL has testified about --

18 MS. O'NEILL: He --

19 MR. BRALY: And I'm not done, ma'am.

20 And what he said, he was shown the testimony about
21 what COVERGIRL says today which is they continue to buy
22 talc from IMI Fabi. He's saying they can't possibly know.
23 There's evidence of --

24 THE COURT: Here's what I don't want you to do.

25 MR. BRALY: Yes, ma'am.

1 THE COURT: Don't ask about other lawsuits.

2 MR. BRALY: I'm not. I'm asking --

3 THE COURT: Just ask him -- direct the question
4 about --

5 MR. BRALY: Yes, ma'am.

6 THE COURT: But don't ask about Noxell. Don't ask
7 about the lawsuits.

8 MR. BRALY: Well, we've been talking about Noxell,
9 but this is an impeachment --

10 THE COURT: Do what I'm telling you to do.

11 MR. BRALY: Yes, ma'am. I will do it.

12 MS. O'NEILL: They apparently did tell you, you
13 don't have to do bench conferences.

14 COURT REPORTER WILLIAMS: Okay. I just found that
15 out.

16 MS. O'NEILL: Yeah, I'm sorry. I thought you knew
17 that.

18 COURT REPORTER WILLIAMS: I did not. Thank you for
19 telling me.

20 MS. O'NEILL: I apologize; you don't have to do
21 bench conferences. That was the deal. Sorry.

22 [Open court resumes:]

23 THE COURT: All right.

24 BY MR. BRALY:

25 Q The question simply is, Are you aware -- are you

1 aware that COVERGIRL takes the position that they
2 currently purchased talc from IMI Fabi?

3 MS. O'NEILL: Same objection.

4 THE COURT: Overruled.

5 **A** No, I'm not aware.

6 BY MR. BRALY:

7 **Q** Okay. So, in the sales records that you produced,
8 have you taken the opportunity or taken the time to --

9 MS. O'NEILL: Your Honor, I apologize. I'm sorry,
10 but I object to this argumentative slide that's up here,
11 which isn't a question or a fact in evidence.

12 THE COURT: He's got -- that's the title of
13 something he's going to ask Mr. Fabi about.

14 MS. O'NEILL: I object to the --

15 THE COURT: And I'm sure he's going to ask it as a
16 straight-up question: Did IMI Fabi (Diana) sells hundreds
17 of thousands of talc to COVERGIRL?

18 So, ask it as a direct question, Mr. Braly, please.
19 And if that header is like that again, I'm going to strike
20 it out. Okay?

21 MR. BRALY: Yes, ma'am.

22 BY MR. BRALY:

23 **Q** Have you taken the time to add up the sales records
24 that were produced to us in this case, that are now
25 Exhibit 70 and 71, to determine how much talc was being

1 sold to Procter & Gamble at any point in time?

2 **A** No.

3 **Q** All right. So, in between any given month range,
4 you're not aware if that's tens of thousands of tons or
5 more?

6 **A** I know more or less the volumes, the tonnage we sold
7 to Cosmetic Specialties.

8 **Q** Okay. You have personally known since the 1970s
9 that asbestos can be hazardous; correct?

10 **A** Yes.

11 **Q** IMI Fabi has never tested their talc using
12 transmission electron microscopy; correct?

13 **A** No.

14 **Q** No, you haven't or no, you're disagreeing with my
15 question?

16 **A** No, we haven't.

17 **Q** Okay. It is true that you claim that every lot that
18 you ship has been tested by what's called X-ray
19 diffraction; correct?

20 **A** Yes.

21 **Q** As of 2016 -- and I only say that because this
22 document is dated 2016 -- IMI Fabi was doing testing by
23 what's referred to as the CTFA method J4-1. Do you see
24 that?

25 **A** Yes.

1 Q And it states, "for detecting asbestiform amphibole
2 minerals in cosmetic talc." Do you see that?

3 A Yes.

4 Q How familiar are you with the process of J4-1?

5 A I'm not a technician, but I know the test method
6 because it's very important and critical to the quality of
7 talc.

8 Q Sure. Do you know that the first step in J4-1 is to
9 conduct X-ray diffraction; correct?

10 A Yes.

11 Q And if you don't find anything, you are done; right?

12 A That's what the standard -- the norm says.

13 Q That's right.

14 And you state as, of 2016, the limit of detection
15 for X-ray diffraction was .5 percent by weight?

16 A Yes.

17 Q Which means, kind of obviously, that, if you have
18 asbestos below that level, you won't detect it?

19 A Exactly. Won't detect it.

20 Q The jury has heard about the CTFA, this part, the
21 Cosmetic, Toiletries, and Fragrance Association.

22 A Yes.

23 Q And they've heard about what happened in 1976 when
24 this standard was created. My question to you is: Are
25 you aware of the facts and circumstances that went into

1 the development of the J4-1 test method in 1976 between
2 the CTFA and the Food and Drug Administration?

3 **A** No, I'm not aware of what happened in 1976.

4 **Q** When you got into the talc business when your
5 business partner was getting out, did you take any time to
6 go back and look and to find out why do we use this test
7 method and how good is it?

8 **A** That test method is an international standard. It
9 is recognized. And if you look at that Certificate of
10 Analysis, it says also that we didn't stop doing only XRD,
11 but even we went to check with PLM or with SEM, EDS. So,
12 we went the extra mile.

13 **Q** You conformed with the standard. It says PLM, which
14 is listed here as contrast phase optical microscopy,
15 detection limit is the presence of fibers. That's what we
16 were talking about just a moment ago.

17 The standard is that if you don't find anything by
18 XRD, you stop, because XRD can't detect shape. If you
19 find a mineral that looks like asbestos, then you go to
20 that next step; right?

21 **A** That's what the methodology say, but we look after
22 our customer, and we want to provide safe -- safe products
23 to our customers. So we don't stop with XRD but we go the
24 extra mile.

25 **Q** Right.

1 **A** There is something wrong? Sorry?

2 **Q** No, no, no. That's fantastic. I mean, if true,
3 that's wonderful. I'm glad that you do that.

4 Going the extra mile --

5 **A** I'm sorry; I said that we do that, so...

6 **Q** No, I think I understand what you're saying.

7 **A** Okay. You're saying, "If that is true." It's true.

8 **Q** Okay. Great. No, no. In going the extra mile, I'm
9 just curious, when you got into the talc business, when
10 your business partners were getting out, did you go back
11 in time and look at why this method exists in the first
12 place or the criticisms that existed in 1976 of that test
13 method?

14 **A** No, I didn't went -- I didn't go back.

15 **Q** Okay. But you think you're doing everything
16 possible?

17 **A** We believe so, yes.

18 **Q** Okay. There is this little nugget at the bottom of
19 every single one of the Certificate of Analysis. It's one
20 with the arrow is pointing. And every one of them says
21 the same thing. It says, "IMI Fabi certifies that this
22 talc product does not contain detectible levels of
23 asbestos or asbestos-type minerals using current X-ray
24 diffraction methods." Do you see that?

25 **A** Yes.

1 Q It doesn't saying about optical microscopy there,
2 does it?

3 A Okay. But what date is -- what date is that
4 Certificate of Analysis? Sorry; I don't read.

5 Q Let's start with the first one. It doesn't say
6 anything about optical microscopy; right?

7 A No.

8 Q Okay. Now, what is your question?

9 A No, no, no. My point is that, when we started in
10 2001, we always try to do our best. So, we try to improve
11 our way to test our talc, and so, we try to improve our
12 analysis capabilities.

13 Q You know, when we started this, we talked about the
14 website and the size of the company and the -- we saw the
15 videos. Do you remember the videos?

16 A We didn't talk about --

17 Q No, no, just --

18 A We didn't talk about the size of the company. You
19 mentioned it's a big company. I said I don't know if we
20 are big company, I mean...

21 Q There was a statement in the website that said that
22 you were one of the leading talc companies in the world.
23 Do you remember that?

24 A Yes. But talc is a small business.

25 Q Right. We saw those videos?

1 **A** Yes.

2 **Q** Mountains of talc and all the heavy earth-moving
3 equipment. Do you remember all that?

4 **A** We didn't see mountains of talc. We see mountains.
5 And in that mountain -- those mountains, there are talc
6 deposits, but...

7 **Q** Okay.

8 **A** Are not talc mountains.

9 **Q** And heavy earth-moving equipment?

10 **A** Yeah, because you have to move, you know, the
11 overburden.

12 **Q** Does IMI Fabi own a TEM?

13 **A** No.

14 **Q** Never used one?

15 **A** Nope.

16 **Q** Thank you. Pass the witness.

17 MS. O'NEILL: I'm sorry?

18 MR. BRALY: I'll pass the witness.

19 THE COURT: The witness is passed.

20 Cross-examination?

21 MS. O'NEILL: May I ask the court reporter what the
22 last defense exhibit number is?

23 THE WITNESS: I -- sorry? I have your --

24 MR. BRALY: Oh, yes. Thank you so much.

25 CROSS-EXAMINATION

1 BY MS. O'NEILL:

2 Q All right. Mr. Fabi, you know I'm Elizabeth
3 O'Neill. It's now my turn to ask you some questions.

4 We're under some time limits, so I'm going to try to
5 be quick.

6 A Yes.

7 Q When did you arrive here in South Carolina?

8 A Sunday night.

9 Q And why did you come here?

10 A To be --

11 Q In court?

12 A -- in court, yes.

13 Q Is this your first time in South Carolina?

14 A Yes.

15 Q Mr. Braly asked you this: Your father started the
16 original company; right?

17 A Yes.

18 Q And how did you get involved and in what year?

19 A 1984.

20 Q And he asked you if you personally knew about the
21 dangers of asbestos in the 1970s. Can you tell the ladies
22 and gentlemen of the jury how you learned that?

23 A Because my father was a general manager in asbestos
24 talc mining in Italy, and he lost his job.

25 Q So, you were asked a little bit about the formation

1 of the company. I just want to make sure we have got this
2 right. IMI Fabi (USA), does it buy anything?

3 **A** No.

4 **Q** Does it sell anything?

5 **A** No.

6 **Q** Has it ever bought anything in South Carolina?

7 **A** No.

8 **Q** Has it ever sold anything to the state of South
9 Carolina?

10 **A** No.

11 **Q** IMI Fabi (Diana), it was operated from 2001 to 2004?

12 **A** Yes.

13 **Q** Has it ever bought anything in the state of South
14 Carolina?

15 **A** No.

16 **Q** Has it ever sold any product into the state of South
17 Carolina?

18 **A** No.

19 **Q** IMI Fabi LLC, it was started in 2001, got into the
20 cosmetic talc business in 2004; is that right?

21 **A** Yes.

22 **Q** And it continues to the present day?

23 **A** Yes.

24 **Q** Has it ever sold any cosmetic talc into the state of
25 South Carolina?

1 **A** No.

2 **Q** In an earlier part of this trial, IMI Fabi LLC and
3 IMI Fabi (Diana) were referred to as talcum powder
4 suppliers. Do you agree with that?

5 **A** No.

6 **Q** Why not?

7 **A** Because we process talc. We don't make body powder.

8 **Q** All right. You told the ladies and gentlemen of the
9 jury that all the cosmetic talc that IMI Fabi (Diana) or
10 IMI Fabi LLC sold to Cosmetic Specialties came from China.

11 **A** Yes.

12 **Q** You came from Italy?

13 **A** Yes.

14 **Q** Why is it Chinese talc?

15 **A** There are many Chinese talc, but the mine we
16 collected we believe is one of the best talc mine for
17 pharma and cosmetic worldwide.

18 **Q** So, there were other options, and this is the one
19 you chose. True?

20 **A** Yes.

21 **Q** I'm not allowed to ask you leading questions.

22 The jury has heard about Guangxi. That's where IMI
23 Fabi gets its cosmetic talc; right?

24 **A** Yes.

25 **Q** As has IMI Fabi -- has IMI Fabi sent anyone there,

1 directly to Guangxi?

2 **A** Yes, several times.

3 THE COURT: We're having the same problem.

4 (Pause in the proceedings for technical
5 difficulties.)

6 MS. O'NEILL: I'm going to stand right like this.

7 It's like when you were little and you had to do --

8 THE COURT: Okay.

9 BY MS. O'NEILL:

10 **Q** How big -- do you know how big the Guangxi province
11 is?

12 **A** It's a quite big province. I think it's around, if
13 I make right, the conversion is about 90,000 square miles.
14 No -- yeah.

15 **Q** 90,000 square miles?

16 **A** Yeah.

17 **Q** Do you know how many mines -- how many talc mines
18 are in the 90,000 square miles that make up the Guangxi
19 province in China?

20 **A** I don't know how many. Personally, I know three
21 mines.

22 **Q** More than one?

23 **A** Surely more than one.

24 **Q** Do you know if there are any talc processing plants
25 in Guangxi?

1 **A** Yes.

2 **Q** Did IMI Fabi use those?

3 **A** No.

4 **Q** Can you tell the ladies and gentlemen -- I want to
5 walk through -- can you tell the ladies and gentlemen of
6 the jury, did IMI Fabi (Diana) take steps to make sure
7 that cosmetic talc it sold to Cosmetic Specialties was
8 safe?

9 **A** Yes.

10 **Q** Did IMI Fabi LLC take steps to make sure that the
11 cosmetic talc it sold to Cosmetic Specialties was safe?

12 **A** Yes.

13 **Q** I want to talk about those steps. What's the first
14 thing IMI Fabi (Diana) or IMI Fabi LLC did to make sure
15 the talc it sold to Cosmetic Specialties was safe?

16 **A** First, we went to China, and we selected the mine
17 based on the information, geology, morphology, and the
18 talc deposit.

19 **Q** And then what did you do?

20 **A** Then we took sample -- talc sample, and we brought
21 back to analyze by ourselves to make sure that the purity
22 criteria were met.

23 **Q** Did that include checking for asbestos?

24 **A** No.

25 **Q** Did you find any?

1 **A** No.

2 MS. DEAN: Elizabeth?

3 MS. O'NEILL: Yes.

4 (Discussion was held off the record.)

5 BY MS. O'NEILL:

6 **Q** Mr. Fabi, there's a little bit of reverb.

7 **A** No, it's off.

8 **Q** I know. I know it's off. I'm going to take it so
9 we can all see that I have it, and that's not it, unless
10 it stops it.

11 THE COURT: Don't put it on there. Put it back at
12 your counsel table away from the mic.

13 Thank you, Ted.

14 THE WITNESS: It's not my phone.

15 [Technical difficulties with microphones. Pause in
16 the proceedings.]

17 BY MS. O'NEILL:

18 **Q** Did you find any asbestos in any of the talc that
19 you tested right at the beginning when people were in the
20 Guangxi province checking to see if you were going to use
21 them as a supplier?

22 **A** Yes. We found some tremolite asbestos in other
23 mines in China.

24 **Q** In other mines?

25 **A** In other mines, yes.

1 Q And what did you do?

2 A We didn't select those mines.

3 Q How about the mine that you buy from? Did you find
4 any asbestos contamination in that mine?

5 A No.

6 Q So, then once you have gone there, you have looked
7 at the ore and you've tested, you selected the mine that
8 showed no asbestos, then what did you do? Did you stop?

9 A We define the raw material specification with our
10 supplier.

11 Q And did the raw material specifications say anything
12 about asbestos?

13 A Yes.

14 Q What did it say?

15 A Material should not contain asbestos.

16 Q And then did you stop? Were you done? Or did you
17 keep testing?

18 A We kept testing. We ask...

19 MS. O'NEILL: Let's go off the record for a minute.

20 [Technical difficulties with microphones. Pause in
21 the proceedings.]

22 THE COURT: Thanks for your patience, Mr. Fabi.

23 MS. O'NEILL: Are we good?

24 THE COURT: I believe we are.

25 All right, Ms. O'Neill. You may continue.

1 MS. O'NEILL: Thank you.

2 BY MS. O'NEILL:

3 Q Mr. Fabi, before we got that little sound break, I
4 asked you to -- you've gone to China, you've looked at the
5 mine, you've tested, you've chosen the mine source, the
6 ore source that had no asbestos, and then you contracted
7 with the company and said no asbestos, and then you said
8 you continued to test. I think that's where we got
9 interrupted.

10 What testing -- in addition to all the ones we've
11 talked about, what else did IMI Fabi (Diana) or IMI Fabi
12 LLC do?

13 A So, we asked -- most of the shipment, we go and we
14 make -- to China and we make a visual inspection of the
15 raw material. We asked our supplier to provide the
16 Certificate of Analysis, including the absence of
17 asbestos.

18 Then, when the material is received, the batch is
19 quarantined, and we make an industrial production test,
20 and roughly the size is around 10, 15 tons. So, it's
21 about -- in pounds, about 20,000 pounds. And we take
22 three samples. One -- the first one at the beginning of
23 the production run, the second in the middle, and the
24 third at the end.

25 And we analyze these samples for -- I mean,

1 different characteristics: its whiteness, its purity, is
2 the content a silica crystalline -- crystalline silica
3 and, of course, asbestos.

4 **Q** Did you ever find any asbestos?

5 **A** No.

6 **Q** And those tests that you do, 2001, when Diana first
7 started operating, until 2004, how did you test for
8 asbestos? Did you just do J4, "Oh, I don't see it on XRD"
9 and stop, or did you do something else?

10 **A** The first year was only -- so 2001 was only XRD.

11 **Q** But then what?

12 **A** And then we went to the optical microscope. And
13 then, in 2016, we started also with SEM.

14 **Q** Why did you look three ways? J4 says you only have
15 to look one. Why did you look three?

16 **A** It's always about continuous improvement.

17 **Q** And is that then, when you do this batch testing,
18 are you done, or is there any more testing that you do to
19 make sure that there's no more asbestos in the product?

20 **A** Well, when the raw material is approved, we take
21 random sample on the finished products, and we test for
22 asbestos.

23 MS. O'NEILL: The defendants are going to offer
24 Defendant's Exhibit 208, which is IMI -- has Bates number,
25 for the record, IMI Fabi/Plant 406 to 408.

1 Could I get the Elmo, please? I'm bad with the
2 Elmo, so let's see how we do.

3 Can you come work this for me? I not only can't
4 figure out how to not make microphones work --

5 THE COURT: Help her out there. Help her focus it
6 up above there.

7 MS. O'NEILL: This is why I have people helping me.
8 This is why I brought all these people.

9 BY MS. O'NEILL:

10 **Q** Can you see this document? Mr. Fabi, can you see
11 this?

12 **A** Yes.

13 **Q** And it says it's a test report from some place
14 called VLabs?

15 **A** Yes.

16 **Q** Can you tell the ladies and gentlemen of the jury
17 who VLabs is?

18 **A** It is an external lab, and we use to cross-check
19 results between our lab and external lab.

20 **Q** And Mr. Braly asked you about the Certificates of
21 Analysis, which are marked as Exhibit 70. Do you ever put
22 on your Certificates of Analysis this annual random
23 testing that you do?

24 **A** No.

25 **Q** Do you ever put on your Certificates of Analysis the

1 fact that you went to China and tested the product there
2 first?

3 **A** No.

4 **Q** Do you put on your Certificates of Analysis all of
5 the light microscope and the SEM testing that you do?

6 **A** No.

7 **Q** Why not?

8 **A** Because we simply made the statement "not detectable
9 asbestos."

10 **Q** Because that's J4?

11 **A** Yes.

12 **Q** That's what's required under the international
13 standard?

14 **A** Yes.

15 **Q** Does IMI Fabi put labels on its product?

16 **A** Yes.

17 **Q** We're going to put into evidence Defendant's 206,
18 which has IMI Fabi/Plant 404, and Defendant's 207, which
19 has IMI/Plant 405.

20 I'm going to hope I can work the Elmo.

21 THE COURT: Turn it around. No, no, turn it around
22 again. That way. Yep.

23 MS. O'NEILL: Everyone has to help me with the Elmo.

24 BY MS. O'NEILL:

25 **Q** Can you identify this for me?

1 **A** Yeah, it's just a safety label that we put on bulk
2 bag or super sack, whatever we bag.

3 **Q** And can you identify this one for me, 207? What is
4 this?

5 **A** This is a warning label on paper bags.

6 **Q** So all the products -- the bags that come out from
7 IMI Fabi (Diana), IMI Fabi LLC, and are sold to CSI, they
8 have a label on them saying they're talc; correct?

9 **A** Yes.

10 **Q** And warn about talc; right?

11 **A** Yes.

12 **Q** I'm going to do this quick. You were asked some
13 questions about some documents. You were asked
14 specifically about this one, which is an FOB shipping
15 label that goes from IMI Fabi (Diana) and it goes to
16 Procter & Gamble, care of Sterigenics in New Jersey;
17 correct?

18 **A** Yes.

19 **Q** And it has on it a customer code number; right?

20 **A** Yes.

21 **Q** And does that customer code number continue through
22 to this Certificate of Analysis?

23 **A** Yes.

24 **Q** So, if we match those up, we can see how much of the
25 talc from IMI Fabi (Diana) went to Procter & Gamble in New

1 Jersey; right?

2 **A** Yes.

3 **Q** And Mr. Braly asked you about COVERGIRL makeup being
4 made at Procter & Gamble in Maryland. Do you recall that?

5 **A** Yes.

6 **Q** Do you know how many of these documents that
7 Mr. Braly marked in Exhibit 70 and 71 contain those
8 customer numbers about shipments to Procter & Gamble in
9 New Jersey?

10 **A** No, I don't know how many.

11 **Q** Did CSI tell you how much product it was selling to
12 Procter & Gamble in New Jersey?

13 **A** No.

14 **Q** Did it tell you how much product it was selling to
15 Procter & Gamble in Maryland?

16 **A** No.

17 **Q** Just a couple quick questions. IMI Fabi (Diana),
18 does it have any employees in the state of South Carolina?

19 **A** No.

20 **Q** Has it ever?

21 **A** No.

22 **Q** IMI Fabi LLC, does it have any employees in the
23 state of South Carolina?

24 **A** No.

25 **Q** Has it ever?

1 **A** No.

2 **Q** IMI Fabi (USA), does it have any employees in the
3 state of South Carolina?

4 **A** No.

5 **Q** Has it ever?

6 **A** No.

7 **Q** IMI Fabi (USA), LLC, or (Diana) ever have a bank
8 account in the state of South Carolina?

9 **A** No.

10 **Q** IMI Fabi LLC, (USA), or (Diana) ever own any
11 property in the state of South Carolina?

12 **A** No.

13 **Q** IMI Fabi LLC, (USA), or (Diana) ever direct any
14 marketing or advertising for cosmetic talc into the state
15 of South Carolina?

16 **A** No.

17 **Q** IMI Fabi LLC ever manufacture a product in the state
18 of South Carolina?

19 **A** No.

20 **Q** IMI Fabi (Diana) ever manufacture a product in the
21 state of South Carolina?

22 **A** No.

23 **Q** Did IMI Fabi (Diana) ever sell anything with the
24 expectation or intent that it would get to South Carolina?

25 **A** No.

1 **Q** Did IMI Fabi -- I can't remember if I said (Diana)
2 or LLC; now I've got to do it over.

3 **A** LLC.

4 **Q** Did IMI Fabi LLC ever manufacture anything with the
5 expectation or intent that it would get to South Carolina?

6 **A** Cosmetic talc?

7 **Q** Cosmetic talc.

8 **A** No.

9 **Q** Did IMI Fabi (Diana) ever manufacture any product
10 with the intent to come to South Carolina?

11 **A** No.

12 **Q** Did IMI Fabi LLC ever manufacture cosmetic talc with
13 the intent that it get to South Carolina?

14 **A** No.

15 **Q** Did IMI Fabi (Diana) have any expectation that
16 cosmetic talc --

17 MR. BRALY: Your Honor, at this time, we're going to
18 object. None of this is relevant to a determination by
19 the jury.

20 MS. O'NEILL: I have -- it got denied, so I have to
21 put it in the record. I've got one more question -- two,
22 because it's two opinions.

23 THE COURT: Ms. O'Neill, as you know, that's not the
24 test of whether something is put in the stream of
25 commerce, and I think you've established the point that

1 they didn't intentionally direct it here from their direct
2 selling, but that's not going to be the test the jury has
3 to consider it by.

4 MS. O'NEILL: Understood, Your Honor. You know I
5 worry about waiver.

6 THE COURT: All right.

7 MS. O'NEILL: Mr. Fabi, those are all my questions.
8 Thank you.

9 THE COURT: All right. I know that there's
10 redirect, but I'm going to have mercy on my jury and take
11 your afternoon break. It's now 3:30. Let's try to be
12 back here somewhere between 20 of and quarter of.

13 You may go to your jury room.

14 (The jury exited the courtroom at 3:28 p.m.)

15 THE COURT: And my court reporter ladies, I believe
16 that gives y'all enough time to do what you want to do.

17 COURT REPORTER WILLIAMS: Thank you, Your Honor.

18 THE COURT: Mr. Fabi, we're taking a break, but you
19 can't talk to your lawyer during the break. You're still
20 under your oath.

21 THE WITNESS: I was instructed two weeks ago.

22 THE COURT: Thank you, sir.

23 (A brief recess was taken from 3:29 p.m. to
24 3:44 p.m.)

25 (The jury entered the courtroom at 3:45 p.m.)

1 THE BAILIFF: The jury has been seated, Your Honor.

2 THE COURT: Thank you, sir.

3 THE BAILIFF: You're welcome.

4 THE COURT: All right. Continue. You may be
5 seated, Mr. Fabi. Thank you so much.

6 And we'll continue now with the redirect of
7 Mr. Fabi. Go ahead.

8 MR. BRALY: Thank you, Your Honor.

9 Thank you, Ms. O'Neill.

10 REDIRECT EXAMINATION

11 BY MR. BRALY:

12 Q The good news is, you're almost done and can head
13 back across the sea.

14 You know, you were talking a lot about South
15 Carolina in the conversation you were having with
16 Ms. O'Neill. Do you remember all that?

17 A Yes.

18 Q You know for a fact that IMI Fabi sold products to
19 the state of South Carolina; right?

20 A Industrial talc, yes.

21 Q And you know for a fact that IMI Fabi has profited
22 from sales of talc to the state of South Carolina?

23 MS. O'NEILL: Objection, Your Honor. That would be
24 a Phase 2 question.

25 THE COURT: Overruled.

1 **A** We sold product to South Carolina, yes.

2 BY MR. BRALY:

3 **Q** Right. Product for money that you were paid for,
4 and once you cover your expenses, you make a little profit
5 on it; right?

6 **A** Yes.

7 **Q** Yeah. Why didn't you mention that when she was
8 asking you those questions?

9 **A** Because she said cosmetic talc.

10 **Q** Okay. Do you remember when you rose your hand on
11 the Bible and all that and said you were going to tell the
12 truth and the whole truth?

13 **A** Yes.

14 **Q** That's not the whole truth, is it?

15 **A** It was the truth because she said cosmetic talc from
16 LLC to South Carolina.

17 **Q** And IMI Fabi does plenty of business in this state,
18 don't they?

19 **A** In South Carolina?

20 **Q** Yes.

21 **A** Not really because it's about 3 percent of our sales
22 volume.

23 **Q** Do you remember producing this document to us?

24 **A** Yes, yes. I don't read but I remember the document.

25 **Q** Did you notice down here at the bottom -- what are

1 the units for that? Is that straight units or is that --

2 **A** The one, I think is --

3 MS. O'NEILL: I'm going to object to this, Your
4 Honor. It's irrelevant because it's industrial talc
5 sales, and this is a cosmetic talc case. There's no
6 allegation that Ms. Plant was exposed to industrial talc.

7 THE COURT: Overruled.

8 MS. O'NEILL: Thank you.

9 THE COURT: You asked about a broad question about
10 sales to South Carolina, and he is characterizing --
11 whether some of those sales might have been noncosmetic
12 materials, I don't know. But that's what he's asking as I
13 understand it.

14 BY MR. BRALY:

15 **Q** And I think we got the point.

16 You were shown that bag; right?

17 **A** Yes.

18 **Q** There is certainly the capacity or the ability to
19 communicate information on bags of products about
20 potential hazards associated with products; right?

21 **A** Yes.

22 **Q** So, you and I -- when I was asking you questions, we
23 talked about a lot of things, and I showed you documents
24 that you gave to me. Do you remember that?

25 **A** Yes.

1 **Q** And we looked at your Certificate of Analysis in a
2 document from 2016 that said that you use XRD and then
3 optical microscopy; right?

4 **A** Yes.

5 **Q** In accordance with J4-1; right?

6 **A** Yes.

7 **Q** Which has been around --

8 **A** That was the base of the testing, yes.

9 **Q** Which has been around since 1976?

10 **A** Yes.

11 **Q** And that's what that document said?

12 **A** Yes.

13 **Q** And then we looked at other actual documents that
14 said that you did analysis by XRD; correct? That was in
15 your Certificate of Analysis?

16 **A** XRD, PLM or optical microscope, and SEM.

17 **Q** Right. That wasn't in your Certificate of Analysis.
18 The documents we looked at said by XRD.

19 **A** Yes.

20 **Q** So, we have an actual document that says you
21 followed J4-1. You have an actual set of documents that
22 said that you used XRD to issue your Certificate of
23 Analysis. And then Ms. O'Neill asked you questions about
24 all these other things, and we didn't see a single
25 document for any of them?

1 **A** Yes.

2 **Q** Didn't see any single document about testing that
3 you had performed by TEM, if at all, at any time; correct?

4 **A** We never tested TEM.

5 **Q** Right. It's available; right?

6 **A** Still today, TEM is under debate if it's the right
7 technology. And if you look at different experts --

8 **Q** I got to stop you and make an objection that it's
9 not responsive.

10 MS. O'NEILL: He is answering the question, Your
11 Honor.

12 MS. BRALY: My objection is "nonresponsive."

13 THE COURT: Don't be commenting to him. Just ask
14 him a question.

15 MR. BRALY: Oh, I was making an objection to the --

16 MS. O'NEILL: He interrupted the witness's answer,
17 Your Honor.

18 THE COURT: Ms. O'Neill, we have got your objection.
19 Don't make it again.

20 MS. O'NEILL: Yes, ma'am.

21 THE COURT: Go ahead, Mr. Braly.

22 MR. BRALY: Thank you. I appreciate it.

23 BY MR. BRALY:

24 **Q** My question to you was TEM was available -- is
25 available as a technology that can be utilized; correct?

1 **A** Yes, but it's not proved yet.

2 **Q** Okay. You know, you have been selling Chinese talc
3 now, between IMI Fabi (Diana) and LLC, for right about 23
4 years now? Maybe 22?

5 **A** Twenty-one.

6 **Q** Twenty-one. Sure.

7 Did you ever look at or consider testing by the
8 United States FDA on Chinese talc from Guangxi, from the
9 province from which you get talc, that shows the presence
10 of asbestos in that talc? Did you ever look at that or
11 review it?

12 **A** No, we didn't.

13 **Q** Have you ever looked at or reviewed testing by a lab
14 that many defendants in this litigation will employ, R.J.
15 Lee, about testing they performed on Chinese talc?

16 MS. O'NEILL: Object to the form. Assumes facts,
17 and vague as to "many defendants."

18 THE COURT: Overruled.

19 **A** No. We never tested Chinese talc at R.J. Lee.

20 BY MR. BRALY:

21 **Q** Oh, no, I understand that. I understand that you
22 never tested it. What I'm asking you is, have you ever
23 looked to see what they have done with other people's
24 tests of Chinese talc?

25 **A** Well, I follow a little bit the J&J case.

1 **Q** Okay. But that's the extent of it?

2 **A** Yeah, what I can speak of is about our products, not
3 about the products of our competitors.

4 **Q** Right. Right.

5 Now, and the J&J was really interesting. A lot of
6 people never followed it.

7 **A** Yeah.

8 **Q** But what I'm asking you is, Have you ever looked at
9 the actual testing that has been done by laboratories like
10 R.J. Lee on Chinese origin talc from Guangxi?

11 **A** Guangxi is a big province, so I don't know where
12 talc comes from. So it's -- sorry to say, but your
13 question is irrelevant because we have to test our raw
14 material, and what we certify is our raw material, not the
15 one of our competitors.

16 **Q** Certainly. And while it hurts my feelings a little
17 bit that you feel like my question is irrelevant, I don't
18 really care if Guangxi is a big place or a small place.

19 My question to you is, have you ever reviewed
20 testing results from laboratories like R.J. Lee that
21 specifically look for the presence of asbestos in
22 Guangxi-based talc?

23 **A** No, I didn't.

24 **Q** Thank you.

25 **A** But for the very simple reason that I don't know

1 where the material comes from.

2 **Q** So, you just didn't do it at all?

3 **A** No, because we tested other mines, and we found
4 asbestos, as I said before.

5 **Q** Same goes for its lab MAS that the jury's heard a
6 lot about. I take it, the same answer for them as it was
7 for R.J. Lee?

8 **A** Mm-hmm, yeah.

9 **Q** Other than what you say that you have done with the
10 protocol that we saw on the documents, other than that,
11 are you aware of any testing? Is IMI Fabi aware of any
12 testing that's been done on Chinese-based talc from
13 Guangxi from outside laboratories other than what you have
14 talked from the documents?

15 **A** As I said, when you mention Guangxi talc, it's not
16 the right question because you should mention the mine
17 where the material comes from. Otherwise, I mean, Guangxi
18 talcs means the entire province, and you don't clearly
19 identify the mine where our material comes from. It's too
20 easy.

21 **Q** All right. So, I'm sorry that my question wasn't as
22 good as you would like it to be, but simply put, is there
23 any region in Guangxi, other than what you testified about
24 from your documents, where you have reviewed testing done
25 on any talc products from that region -- from anyone

1 showing -- looking for the presence of asbestos in talc?

2 **A** We read literature, but we have no access to other
3 laboratory testing.

4 **Q** Thank you. Thank you for making the trip and
5 explaining your company to us. I really appreciate it.
6 And I hope you have a safe trip home.

7 **A** Thank you. Thank you all.

8 THE COURT: Thank you, Mr. Fabi. You may step down.
9 We appreciate your testimony.

10 THE WITNESS: Thank you, Your Honor.

11 MS. O'NEILL: Your Honor, I'm going to walk him out
12 of the courtroom and walk right back in.

13 THE COURT: What's that?

14 MS. O'NEILL: I'm going to walk him out of the
15 courtroom and right back in so I can --

16 THE COURT: Why certainly. Why certainly.

17 MS. McVEY: Before we call Ms. Plant to the stand,
18 the parties have agreed to a stipulation I'd like to
19 publish.

20 THE COURT: Oh, yes. Yes, yes. Let's wait until
21 our bailiff sanitizes the witness stand, and then you can
22 read your -- thank you so much.

23 Ladies and gentlemen of the jury, Ms. McVey will now
24 be reading to you. In order to save time, the parties
25 have stipulated on certain damages that will be claimed by

1 Q In high school, at the time of this picture, was
2 makeup part of your daily routine?

3 A Yes.

4 Q What about middle school?

5 A Yes. Almost every day.

6 Q Before then, were there occasions when you would get
7 dolled up or play with makeup?

8 A Yes. We played dress-up a lot.

9 Q Did you have aunts that spoiled you, including
10 getting new makeup?

11 A Yes. Whenever we visited my aunts, they would give
12 us a big grocery sack of makeup, and we got to play with
13 the makeups that were in the sack.

14 Q I found this picture of a different version of you.
15 How old are you here?

16 A That's middle school -- at some point in middle
17 school.

18 Q Do you remember where you were at?

19 A Litchfield, South Carolina.

20 Q Did you guys go there regularly?

21 A We went every August.

22 Q Which aunt spoiled you here?

23 A Driving through Spartanburg, in the Upstate, that
24 aunt, we would stop and see her, and we often would pick
25 up my grandmother and bring her with us to the beach. And

1 products were kind of staples. When you were growing up
2 in the 1990s, can you remember the first time you used it?

3 **A** I don't remember ever not using COVERGIRL. To me,
4 makeup and COVERGIRL were synonymous, especially in my
5 early memories.

6 **Q** Would that certainly have been before even middle
7 school?

8 **A** Yes.

9 **Q** In 2012, did you buy a bag of makeup?

10 **A** Yes.

11 **Q** So, in terms of when COVERGIRL, as opposed to Mary
12 Kay, was a staple, if we look at this time frame in the
13 '90s and your earliest memories in 2012, what products
14 were you using all the time, daily, from COVERGIRL?

15 **A** From COVERGIRL? Foundation powder -- foundation
16 powder and blush.

17 **Q** I put in here just this plus this because I know
18 these weren't as important, but in the years that you were
19 living at home with your mom before you grew up and had
20 your own home, was there a third product that you used
21 regularly but not every day?

22 **A** I used COVERGIRL eye shadows sometimes when I wanted
23 more neutral colors. I also used Maybelline, so that's
24 why the mix between which day I wore which one for the eye
25 shadow.

1 **Q** Do you kind of remember why you would go to
2 COVERGIRL on certain days and Maybelline on others?

3 **A** Yes. Maybelline was more shimmery with more fun
4 colors, and it kind of had a sparkle to it, whereas the
5 COVERGIRL colors I had were a more natural and matte
6 finish. And there was a different texture. Like,
7 Maybelline kind of flakes off you're rubbing the brush
8 across the color; whereas, COVERGIRL, you scrape across
9 it, it's more like sanding something to get the powder out
10 of the compact and onto your face.

11 **Q** And then I know, in 2012, you got the bag from Mary
12 Kay makeup, but were there still times that you'd be using
13 compact foundation and blush after 2012 all the way to
14 when you were diagnosed?

15 **A** Yes, because I often did my makeup in my car, and I
16 didn't like the loose powders that I had from the Mary Kay
17 products in a car setting, and so, I would use my
18 COVERGIRL for in my purse or on the go and in the car.

19 **Q** Speaking of the car makeup routines, did you learn
20 from your mom?

21 **A** I did. My mom's makeup was kept in the console of
22 her car. I mean, her makeup bag was black leather, gold
23 snap, and it was usually stained from the makeup through
24 the years because the products were switched in and out as
25 she replaced products. And so, we would grab hers and use

1 her stuff too.

2 **Q** And was she using these same products throughout
3 your life in the car when you were sitting right next to
4 her?

5 **A** Yes. As the older, I got first dibs on the front
6 passenger seat, so...

7 **Q** As a middle school child, I find this to be
8 remarkably wrong. That's for later.

9 In terms of just the different COVERGIRL -- when
10 you're looking at the compact foundations, can you tell us
11 a little bit -- did they vary throughout the years and
12 which ones do you remember?

13 **A** I remember -- especially earliest memories, the teal
14 color. It's like a greenish teal with gold and silver
15 accents either around the rim or on the circular -- I
16 don't know what to call it -- the powder -- the thing you
17 applied it with. And then I also remember a darker blue
18 color.

19 **Q** And did the COVERGIRL clean powder, was that a
20 regular compact that you used throughout the years?

21 **A** COVERGIRL was always my go-to foundation powder.

22 **Q** The blush, did it have a smell that you remembered?

23 **A** It did. The blush, in particular, was often messy.
24 I don't know if it was because it's a big brush, and when
25 you use a brush as opposed to something you're wiping

1 **A** We do, yeah.

2 **Q** Okay.

3 **A** Sorry.

4 **Q** That's okay. I'm going to give you weird faces to
5 get through this just because I don't want you up there
6 crying.

7 **A** Okay.

8 **Q** And I'm weird. And I don't know how to stop it.

9 Okay. This guy is a menace to society. It's just
10 true. Give us an example. I don't know which one you
11 want to pick.

12 **A** I always say he's really hard to keep safe and
13 alive. He spent the weekend dumping cups of birdseed
14 mixed with water throughout my mom's living room, and
15 while cleaning that up, I had -- while cleaning that up,
16 he got some -- I don't know, Bag Balm salve and painted
17 her couch with it. He's very sweet. That makes him sound
18 like a terror, but he's very sweet.

19 **Q** Elsie, is she your mini-me?

20 **A** Yes.

21 **Q** Is it fair to say that Paxton has a tender heart?

22 **A** Yeah. I always call him my cuddle bug.

23 **Q** Whether it be doing yoga or hiking or supporting
24 your husband or playing with your beautiful children, you
25 are happy with the life that you've had?

1 **A** Yeah. Yes.

2 **Q** Isn't it true that my favorite color is green?

3 **A** Yes.

4 **Q** Okay. Okay. Are your grandmothers both still
5 alive?

6 **A** One of them is, yeah.

7 **Q** How old is she?

8 **A** She's 96.

9 **Q** Did your other grandparents live into their 80s and
10 the 90s?

11 **A** My other grandmother lived until she was 92. My
12 grandfathers lived until their late 80s. My aunts are all
13 going strong, and in they're in their 80s.

14 **Q** Until you started having trouble breathing, did you
15 feel like you were healthy and taking care of yourself?

16 **A** I thought I had great genes. I thought that -- I
17 mean, the nurses were shocked when they asked for my
18 medication list, and I had none to give. I never had
19 surgery. I had never been in the hospital except for
20 delivering the kids.

21 **Q** Six? Come on? Sorry.

22 Okay. I want to walk through a little bit about how
23 you found out about this and just your attitude every step
24 of the way since you found out. Okay?

25 **A** Okay.

1 **Q** Not only had you heard the word "malignancy," but
2 you have a husband that's a doctor who listened to your
3 lungs and said, "Go"; right? "Go to the doctor"?

4 **A** Mm-mmm, yeah.

5 **Q** Were you scared?

6 **A** I mean, I was -- I remember -- I think I said to him
7 even at one point, "It's cancer. Like, it's not going to
8 be -- it's going to be fine."

9 Like, and then the doctor, when she told me maybe
10 it's late onset asthma, I was, "Oh, it's late onset
11 asthma. We can do that."

12 And so, to -- it was -- like, I didn't want to
13 believe it. The whole time, I was hoping it was something
14 else.

15 **Q** When you found out you had mesothelioma, what
16 happened?

17 **A** Well, first of all, when we first saw the CT scan,
18 he was telling me that, with lung cancer survival, five
19 years. "Treatment is getting better. A lot of people
20 make it to five years." I thought that was bad enough.
21 So, to find out that mesothelioma, on average, is 9 to 18
22 months, I mean, there aren't words.

23 **Q** Do you curse a lot?

24 **A** No. Occasionally, if I'm really mad.

25 **Q** Have we occasionally had to say sorry to you because

1 Q Did you pass that test?

2 A I did. I got to an 8, and I would have kept going.
3 And I was really proud of that, because I'm not a runner.

4 Q Huh?

5 A Because I'm not a runner.

6 Q We know you got through that surgery. In addition
7 to doing the surgery, did you have to go through radiation
8 and chemo?

9 A Yes. After -- the surgery was in April, and
10 throughout the summer, I did four rounds of chemo.

11 Q What's on you right here?

12 A That is the port for the chemo drugs to be
13 administered.

14 Q Whether it was passing the test on the treadmill,
15 fighting through the surgery or radiation, did they say,
16 "We're on the fence on whether you should do this or not"
17 and did you respond to that?

18 A Yes. Dr. Ripley, in the hospital room or in the
19 ICU, he was talking about radiation, and I said to him, "I
20 have three kids." And his response was, "Full-court
21 press." And so we were going to do it.

22 Q This is before you even remember being awake after
23 the surgery; right?

24 A Mm-hmm.

25 Q Even with everything that's going on in this

1 born.

2 **Q** What I want to do is talk a little bit about the
3 various powders and the cosmetic products that you used.
4 Okay?

5 **A** Okay.

6 **Q** And I know you've been sitting in the courtroom
7 through a lot of the trial, and I'm sure you've heard that
8 my client in particular, Whittaker, Clark & Daniels,
9 stopped selling talc after early 2004, February.

10 What year did you graduate from high school?

11 **A** 2005.

12 **Q** And is that when you moved away from home?

13 **A** Yes.

14 **Q** The questions that I want to ask you about in terms
15 of your use of cosmetics and body powders, I want you to
16 put it in that kind of context, because what I'm
17 interested in is what you used --

18 MS. DEAN: Stephanie, I'm sorry to interrupt. I
19 think someone is having trouble hearing. I'm seeing --
20 something's going on.

21 THE BAILIFF: They can't hear back here, Your Honor.

22 THE COURT: All right. Ms. Flynn, I want you to
23 speak up and speak out to the jury. You have a gentle
24 voice. So, if you'd kind of up it a little bit and speak
25 out to the jury.

1 school; right?

2 **A** Yes. I think it may have started even as early as
3 5th grade. That's when I put on a little bit more weight,
4 and it kind of -- like my use of the body powders
5 coincided with my thighs rubbing, embarrassing as it is to
6 say.

7 **Q** I understand. When you started playing sports,
8 that's when, I guess, you would have issues chafing;
9 correct?

10 **A** Also swimming or at the beach. We went to the beach
11 every spring break, every August as well. Any time --
12 water, sand, pool, and sports.

13 **Q** And this would be something that you would use on an
14 after-the-fact. You know your legs would be chafed, and
15 you would -- that would help calm it?

16 **A** Yes.

17 **Q** Sports activity, obviously, is not an everyday
18 thing?

19 **A** It depended on the season, because we had
20 after-school practices for certain sports. Not
21 necessarily every day but multiple times a week.

22 **Q** And if I've got my timeline straight, middle school
23 would be for you about August of 1998? So, that's the
24 time frame we're looking at right now?

25 **A** Whew, math.

1 Q I know.

2 A So, I -- I think so. I think so.

3 Q That's the way I calculated it, but you don't have
4 to --

5 A I went -- the reason it's confusing, I went through
6 a K through 8 school, so I didn't have, like, a separate
7 middle school.

8 Q Okay. Understood.

9 But, in any event, we're talking about very late
10 '90s, early 2000s, when you're in this 5th grade, 6th
11 grade, 7th grade years?

12 A Yes.

13 Q And I know that Johnson & Johnson's was one of those
14 brands that you continued to use all the way up through
15 until about a year before diagnosis?

16 A I would say I used it up until a few years before
17 diagnosis, yes.

18 Q And I know that, when you moved to South Carolina,
19 you kind of started using Equate when you were looking for
20 more budget-friendly options?

21 A Also in college.

22 Q One of the powders that I wanted to ask you about
23 was Gold Bond. And as I understood your testimony, when
24 you gave your deposition back in August, was that you did
25 not have a specific recollection of ever having used Gold

1 kid.

2 **Q** I hear you.

3 And I understood you were not using it every day at
4 that point; correct?

5 **A** It depends on what -- by 7th grade, I was using it
6 almost every day.

7 **Q** And then, obviously, those were the more -- I think
8 the more basic forms, you said. It wasn't the full
9 spectrum of all products but just a little bit of
10 foundation powder, a little bit of blush, little bit of
11 eye shadow?

12 **A** Yes. I used foundation powder, blush, eye shadow.
13 I didn't start using eye liners as much until I was in
14 high school.

15 **Q** And I think about high school is probably when you
16 also started using a little bit more bronzers, things like
17 that?

18 **A** Yes, in high school. I mean, that's when bronzer
19 became more popular.

20 **Q** As I understood it, it was sophomore year of high
21 school when you started adding more products like
22 Maybelline and eye shadow?

23 **A** Yes.

24 **Q** I think you described those. Revlon was the same
25 thing I think you described. Blue eye shadow?

1 **A** Yes. I used Maybelline more than Revlon, but yes.

2 **Q** And then L'Oréal as well, but I think that -- as I
3 understood, you remember some eye shadows starting in 2006
4 and 2007 when you moved away from college?

5 **A** L'Oréal, I remember using that either later high
6 school or through college for eye shadow colors.

7 **Q** And I know we asked you a lot of questions during
8 your deposition, but at least at that time, you were
9 unable to remember the specific foundation powder of,
10 let's say, for COVERGIRL that you would have used, among
11 the many different names. For instance, Simply Ageless or
12 Clean Matte, TruBlend, COVERGIRL Clean; they've got the
13 longest list of names.

14 Sitting here today, you're not able to recall the
15 specific names that you would have used of the COVERGIRL
16 line?

17 **A** When I buy foundation powder, I take my wrist, I
18 flip over the color, I hold it next to my wrist, and I
19 pick the one that most closely matches. So, I don't have
20 any recollection of the name of which color.

21 **Q** A quick question -- few questions about Avon. I
22 wanted to raise that because it was mentioned; it was on a
23 slide as well.

24 **A** Yes.

25 **Q** I think you remembered knowing that your sister sold

1 **A** Yes.

2 **Q** For foundation powders, for over 15 years of your
3 life, what was your go-to brand?

4 **A** COVERGIRL.

5 **Q** Are you glad you got a chance to tell the jury about
6 what happened in your life?

7 **A** Yes.

8 **Q** Okay. We are done.

9 **A** Okay.

10 **Q** Thank you.

11 MS. DEAN: Thank you, Your Honor.

12 THE COURT: Ms. Plant, thank you very much for your
13 testimony. You may be excused.

14 THE WITNESS: Thank you.

15 THE COURT: Ladies and gentlemen of the jury, we are
16 about to conclude for the day, and I am trying to nail
17 down a few things with these lawyers about our schedule
18 for tomorrow. And I wondered if you would be so kind as
19 to go to your jury room for a moment, and before I dismiss
20 you, let me talk some scheduling parameters with the
21 lawyers so that I can get you back and let you-all hear
22 it. All right?

23 So, please go to your jury room. I hope I can call
24 you back in about five minutes.

25 (The jury exited the courtroom at 5:01 p.m.)

1 STATE OF SOUTH CAROLINA) COURT OF COMMON PLEAS
2 COUNTY OF RICHLAND) TRANSCRIPT OF RECORD

3 -----X
4 SARAH J. PLANT and PARKER)
5 PLANT,)
6)
7 Plaintiffs,)
8 vs.) Case No. 2022-CP-40-01265
9)
10 AVON PRODUCTS, INC., et al.,)
11)
12 Defendants.)
13 -----X

14 WEDNESDAY, MARCH 1, 2023
15 TRIAL VOLUME 6

16 B E F O R E:

17 The Honorable Chief Justice (ret.) Jean H. Toal,
18 Presiding Judge; and a jury.
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Court Reporter: Bobbi Fisher, RPR
SC Official Court Reporter III

1 videotape was played for the jury.

2 MS. DEAN: And then, Your Honor, there's a second,
3 little bit shorter clip.

4 (Video plays.)

5 MS. DEAN: Your Honor, that concludes the video and
6 Plaintiffs rests.

7 THE COURT: Thank you.

8 All right. Plaintiffs' case has concluded.

9 I now recognize Ms. O'Neill.

10 DEFENDANTS' MOTIONS FOR DIRECTED VERDICT

11 MS. O'NEILL: Thank you, Your Honor. IMI Fabi
12 (USA), Inc; IMI Fabi (Diana) LLC; and IMI Fabi LLC move
13 for directed verdict on all of the plaintiffs' theories
14 and on the lack of personal jurisdiction.

15 THE COURT: Thank you. The motion has been made.
16 It will be recorded as having been made now. Additional
17 argument on the motion will take place at a later time,
18 hopefully today.

19 MS. O'NEILL: Thank you, Your Honor.

20 THE COURT: And hopefully -- and that takes place,
21 of course, outside the presence of the jury, but we will
22 entertain those matters later on.

23 And now, I turn to Ms. Flynn.

24 MS. FLYNN: Yes, Your Honor. On behalf of
25 Whittaker, Clark & Daniels, we similarly make a motion for

1 STATE OF SOUTH CAROLINA) COURT OF COMMON PLEAS
2 COUNTY OF RICHLAND) TRANSCRIPT OF RECORD

3 -----X
4 SARAH J. PLANT and PARKER)
5 PLANT,)
6)
7 Plaintiffs,)
8 vs.) Case No. 2022-CP-40-01265
9)
10 AVON PRODUCTS, INC., et al.,)
11)
12 Defendants.)
13 -----X

14 THURSDAY, MARCH 2, 2023
15 TRIAL VOLUME 7

16 B E F O R E:

17 The Honorable Chief Justice (ret.) Jean H. Toal,
18 Presiding Judge; and a jury.
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Court Reporter: Bobbi Fisher, RPR
SC Official Court Reporter III

1 P R O C E E D I N G S

2 (The trial commences at 9:06 a.m.)

3 THE COURT: Okay. We're ready to go?

4 MS. McVEY: Good morning, Judge.

5 THE COURT: Good morning.

6 MS. McVEY: I know you want to do directed verdict,
7 I guess, and then we can do charge conferences. Ms. Dean
8 was going to handle the directed verdict for the
9 plaintiff, so I can finish doing the exhibits with them.

10 THE COURT: Very good.

11 MS. McVEY: And then I'll come back up for charge.

12 THE COURT: All right. Motion for directed verdict?
13 Defendants?

14 M O T I O N F O R D I R E C T E D V E R D I C T

15 MS. O'NEILL: Your Honor. If it's okay with you,
16 for IMI Fabi, Mr. Carroll and I are going to split the two
17 carts because he knows more about the law in one of them
18 than I do and I know more about the law and the facts in
19 the other one. It will be quick.

20 THE COURT: Noting your clients for the record is
21 what you need to do. No enormous amount of argument needs
22 to be done, but that's great.

23 Mr. Carroll, You may proceed.

24 MR. CARROLL: Thank you, Your Honor. And
25 Ms. O'Neill vastly overstates my abilities, but I

1 appreciate it.

2 Your Honor, on behalf of IMI Fabi (USA) Inc., IMI
3 Fabi (Diana) LLC, and IMI Fabi LLC, we've moved for a
4 directed verdict. We want to be very clear on the record
5 that we adopt and incorporate in full the Whittaker, Clark
6 & Daniels' motion. They filed a written motion yesterday
7 or this morning, and we want to adopt --

8 THE COURT: I have not seen it yet.

9 MR. CARROLL: I bet Ms. Ellie [verbatim] is going to
10 argue it or --

11 THE COURT: Oh, okay. I'm sure you've got a copy
12 for me, Mr. Carroll.

13 MR. CARROLL: We'll incorporate that in full, but we
14 have a couple of specific points we want to highlight.

15 No. 1, Your Honor, the last time you and I talked
16 was on my client's motion to dismiss for lack of personal
17 jurisdiction. We renew that argument now, now that the
18 Court has heard proof. There remain zero cosmetic talc
19 contacts between any of the IMI Fabi entities and the
20 state of South Carolina. There's no business interest of
21 any IMI Fabi entity in the state of South Carolina as it
22 relates to cosmetic talc. They did not purposefully avail
23 themselves of this venue.

24 I did a little bit of research on the
25 stream-of-commerce theory, which is what carried the

1 Plaintiffs' past our 12(b)(2) motion, and I found a New
2 Jersey Supreme Court case from 2010 where the New Jersey
3 Supreme Court said, "A manufacturer that knows or
4 reasonably should know that its products are distributed
5 through a nationwide distribution system that might lead
6 to those products being sold in any of the 50 states must
7 expect that it will be subject to this state's
8 jurisdiction if one of its defective products is sold to a
9 New Jersey causing injury." That was in the *Nicastro*
10 case, 987 A.2d 575. That was a New Jersey Supreme Court
11 decision that appears to adopt the same argument that the
12 plaintiffs have presented here.

13 The very next year, Your Honor, the U.S. Supreme
14 Court reversed the New Jersey Supreme Court's decision in
15 that exact case and held that that theory -- that
16 understanding of the stream-of-commerce theory is
17 unacceptable as a matter of federal constitutional law.

18 My clients do have not any contact with this state.
19 It is unfair for my clients to be haled in a court in this
20 state and therefore, Your Honor, we would respectfully
21 move for directed verdict all three of the IMI Fabi
22 entities for lack of personal jurisdiction.

23 Unless Your Honor has any questions, I'll yield to
24 Ms. O'Neill for the remainder.

25 THE COURT: What's the cite? You don't need the

1 whole thing, just the name of the case, U.S. Supreme Court
2 case, the New Jersey case.

3 MR. CARROLL: Yes, ma'am. It is -- the U.S. Supreme
4 Court case is *J. McIntyre Machinery vs. Nicastro*. And the
5 cite is 564 U.S. 873. It is a four-two-three decision.
6 The four and the two agree that what the New Jersey
7 Supreme Court -- its articulation of the
8 stream-of-commerce is un -- is inappropriate. Both the
9 four and the two -- and I would submit that the two are
10 Justice Breyer and Alito, who are strange bedfellows to be
11 standing alone in an opinion, but they jointly agreed
12 that, without, quote "something more such as special
13 state-related design, advertising, advice, marketing, or
14 anything else," it was improper for the State of New
15 Jersey to exercise personal jurisdiction over that
16 corporate defendant.

17 And, Your Honor, that's the exact situation we have
18 here. There's no "something else." There's no nothing in
19 the first place, but there's also not any of these, quote,
20 "something elses" that the U.S. Supreme Court has
21 identified.

22 And I'll -- if Your Honor has no more questions,
23 I'll turn the microphone over to Ms. O'Neill.

24 THE COURT: Very good.

25 MS. O'NEILL: Good morning, Your Honor.

1 THE COURT: Good morning.

2 MS. O'NEILL: Mr. Carroll left something up here.

3 Your Honor, we would also move for directed verdict
4 on the merits. As you know, the first thing that the
5 plaintiffs need to prove is that there is asbestos
6 contamination in the talc product from IMI Fabi and that
7 that product was used by Ms. Plant, then frequency,
8 regularity, proximity. And I believe the plaintiffs
9 failed in their proof on the first one.

10 Their witness for that proof, asbestos content of
11 talc, was Dr. Longo. And what they asked Dr. Longo was --
12 and I have got a copy of the transcript for the Court, if
13 you would like it.

14 THE COURT: I don't need it.

15 MS. O'NEILL: All right. What they asked Dr. Longo,
16 on February 24th, 2023, in the morning session, at page
17 115, starting at line 19, the question is, "I want you to
18 assume that Ms. Sarah Plant at times used product
19 containing talc supplied by Whittaker, Clark & Daniels,
20 including Coty body powders containing Italian talc, in
21 the late '90s to early 2000s; Gold Bond powders containing
22 Montana talc in the mid to late 1900s; COVERGIRL pressed
23 powders containing Montana talc in the 1990s; and Avon
24 body powders containing Chinese talc in the mid to late
25 1900s. Is that assumption in mind?"

1 "Yes."

2 "Without getting into details, do you have opinions
3 about the asbestos content, if any, in talc from those
4 sources?"

5 ANSWER: "All those sources have been shown over and
6 over to contain asbestos in trace -- in various trace
7 concentrations usually."

8 Next question. "One more assumption before we go
9 forward. I'm going to ask you to assume that the talc in
10 Mary Kay's talc-containing products came from talc mines
11 located in Italy, Vermont, Montana, China, and Brazil.
12 With those assumptions in mind, do you have any opinions
13 about whether talc from those sources contained asbestos,
14 and do you have opinions?"

15 "I do."

16 "And what is your opinion?"

17 "Our analysis of all those different sources of talc
18 have shown various concentrations of asbestos. Some were
19 non-detects for certain types, but we have tested them all
20 and found asbestos in them."

21 No question about IMI Fabi. No question about
22 COVERGIRL after the 2001 date that IMI Fabi began to do
23 business.

24 With Dr. Haber, their questions are equally lacking.
25 Dr. Haber was called Monday -- what day was that? Wow,

1 that seems like a long time ago -- the 28th, and in the
2 morning section, this is what Dr. Haber was asked about
3 IMI Fabi in its entirety. Beginning on page 71 of the
4 morning session, line 17:

5 QUESTION: "The next company I want to ask you about
6 is IMI Fabi. Is that a company that you have studied?"

7 "Yes."

8 "In terms of what your understanding is as it
9 relates to the products that Sarah Plant was putting on
10 her body, can you tell the jury a little bit about that?"

11 ANSWER: "Yes. So, IMI Fabi was from Upstate New
12 York, and they sold Chinese talc through an intermediary,
13 COVERGIRL, during the years that Sarah Plant was using
14 COVERGIRL makeup."

15 QUESTION: "Again, just to help navigate documents,
16 COVERGIRL was owned by different entities -- Noxell,
17 Proctor & Gamble -- throughout this time?"

18 ANSWER: "Yes."

19 QUESTION: "In order to understand how they relate
20 to Chinese talc, was there a COVERGIRL code and an IMI
21 Fabi code?"

22 "Correct."

23 "And then did you consider the duration, frequency,
24 etc.?"

25 No evidence of a COVERGIRL code related to IMI Fabi.

1 None.

2 And Dr. Haber, who is a doctor, admitted on his
3 cross-examination that he doesn't know about corporate
4 formation. That's just what he was told. So, his answer
5 that's essentially testimony by the counsel in the
6 question, COVERGIRL was owned --

7 THE COURT: I think I have got the picture.

8 MS. O'NEILL: All right. So, Your Honor, there is a
9 complete failure of proof. The plaintiff has failed to
10 put any evidence in the record that Mrs. Plant used a
11 product that had IMI Fabi talc in it. They have failed to
12 put any linking evidence to show that there is asbestos
13 contamination in the talc from IMI Fabi, and that is fatal
14 to their claims -- all of their claims, and so we would
15 ask for directed verdict.

16 THE COURT: I understand.

17 All right. Ms. Dean?

18 MS. DEAN: Okay to proceed?

19 THE COURT: Yes.

20 MS. DEAN: So, the recitation of the facts by
21 counsel for IMI Fabi is incomplete and inaccurate.
22 Dr. Longo, on the 27th, on page 131, indicated that his
23 lab has done extensive testing of Chinese talc; that they
24 found, in 106 of 112 samples, the presence of asbestos;
25 and then subsequently talked about reproducibility.

1 A theme of the defendants, not just IMI Fabi, but
2 our forgotten friends of Mary Kay and others, have always
3 been you need to have testing that was specific of
4 COVERGIRL or Mary Kay, which is why we had an actual
5 testing expert and not a lawyer say that's -- he said it
6 more politely than I am, but that's nonsense. It's not
7 the brand. It's not whether it's plastic. It's what's
8 inside of it, and it's being from the same source. Both
9 Dr. Longo and Dr. Haber indicated that the source of the
10 talc testing and overwhelming finding asbestos was the
11 same.

12 There was a slide that indicated --

13 THE COURT: It's real simple what she does. She
14 says -- she doesn't contest what the content of COVERGIRL
15 is. Right now she's saying she deserves a directed
16 verdict because you didn't connect IMI Fabi with the
17 supply of talc from the Chinese mines.

18 MS. DEAN: Okay. I understood her to say the
19 asbestos content wasn't there, but if that --

20 THE COURT: I haven't heard them argue that. That's
21 not what she's arguing.

22 MS. DEAN: Okay.

23 THE COURT: She's arguing that you haven't tied her
24 client to it.

25 MS. DEAN: Dr. Haber's testimony, with this slide,

1 said, "I am not aware of what the implications of these
2 distinctions are, but I did review and rely on documents
3 that told me IMI Fabi was a New York-based plant; that
4 they sold to COVERGIRL, which went the names of Proctor &
5 Gamble and, earlier, Noxell; that the documents showed
6 that they were the sole supplier; that their internal code
7 was IMI Fabi 141, which matched COVERGIRL's code
8 10200017 --

9 THE COURT: Okay. I've got it. You don't need to
10 go on and on; I remember that slide, and I know that was
11 in there. Okay. That's Dr. Haber.

12 I mean, that is Haber; right? How about Longo?

13 MS. DEAN: So, Dr. Longo, then, tells us that
14 Chinese talc is something that he's tested over a hundred
15 times, always contains asbestos -- not always; 106 of 112
16 times. And then Dr. Madigan says that means you have
17 virtual certainty, when you use the product, that it is
18 going to be asbestos-containing.

19 THE COURT: All right. Now --

20 MS. DEAN: It is worth noting --

21 THE COURT: I have got that argument.

22 Then she always quibbles with the date. Now, I will
23 tell you -- and we'll get to it in time with these
24 charges. I am not going to present this case to the jury
25 by making them divvy up who is responsible for what are

1 IMI Fabi entities. The case wasn't presented to them like
2 that and Corrado Fabi, in his testimony, in my view, did
3 not deviate and slice and dice it in such a way that it
4 makes any difference.

5 So, I'm not going to slice it and dice it like that,
6 but she says there's a magic to the date of 2001 and 2004,
7 and --

8 MS. DEAN: Which is why we indicated that we were
9 looking at the years of 2000 to the present; that that's
10 15 years of exposure; that the exposure was weekly; that
11 the proximity was to the face --

12 THE COURT: I gotcha. So, you feel you have got
13 evidence in the record to support that theory. We're not
14 talking about whether the jury is going to buy it, but you
15 get past directed verdict because you've got that evidence
16 in the record.

17 MS. DEAN: Not only evidence but a lovely case where
18 it's uncontested.

19 THE COURT: All right. Okay. I understand your
20 argument on the directed verdict on the merits. Go back
21 to personal jurisdiction for a minute.

22 They cite McIntyre Machinery for the notion that IMI
23 Fabi and -- IMI Fabi did try to project this strongly.
24 They made this big pitch that they never purposely
25 directed any activity to South Carolina.

1 This is a stream-of-commerce case; I'm going to
2 charge that to the jury. It is my understanding from the
3 evidence presented, including by Corrado Fabi himself,
4 that they checked out these mines and they sold broadly
5 all over the country through these mines, including to
6 suppliers as well as to -- directed to cosmetic customers.
7 And it was a nationwide distribution of their product to
8 cosmetics that found their way to end users. That's what
9 I understand your argument to be.

10 MS. McVEY: And, Your Honor, can I switch over for
11 personal jurisdiction purposes? And I know we'll take it
12 up in the jury charges, but we believe that my kind of
13 jurisdictional stream of commerce, whatever, is, of
14 course, an issue of law for the Court to decide.

15 And I want to cite the Court to *Collett vs. Olympus*
16 *Medical Systems Group*.

17 THE COURT: Spell that for me.

18 MS. McVEY: Sure. It's C-o-l-l-e-t-t.

19 THE COURT: D-o-l-l-e-t-t-e?

20 MS. McVEY: C as in "cat." C as in "cat."

21 THE COURT: C? Collett?

22 MS. McVEY: Yes.

23 THE COURT: Like the French woman?

24 MS. McVEY: Oui, oui.

25 Versus Olympus Medical Systems. And the citation is

1 437 F.Supp. 3rd 1272, and it's a 2020 opinion.

2 And it is interpreting the Supreme Court case that
3 Mr. Carroll cited, *McIntyre Machinery*. And, Your Honor,
4 it's on all fours, actually.

5 Uh-oh.

6 [Technical difficulties with the microphone. Pause
7 in the proceedings.]

8 MS. McVEY: Was it me?

9 And what this case says, the plaintiffs in that case
10 presented enough facts to establish specific causation.
11 And let me just tell you briefly about the facts here.
12 The Court said, "Here, Olympus Medical admits that it
13 manufactured the colonoscope that allegedly injured
14 plaintiffs and that it sold the scope to an affiliated
15 company." Kind of like what we're doing here; right?

16 THE COURT: Right.

17 MS. McVEY: The talc goes to an affiliated company.

18 Which then sold it to the gastroenterologist who
19 committed the tort.

20 "Furthermore, Olympus Medical sought to achieve and
21 maintain a significant market share for its product," and
22 it goes on and on, kind of the same thing here.

23 Judge, we have specific sales into South Carolina
24 through an affiliate, knowing what their product was going
25 to be used for, and we believe this case is kind of

1 interpreting on all fours the facts in our case.

2 THE COURT: All right. Anything else?

3 I deny the motion for summary judgment. With regard
4 to the first point, the difference between this company
5 and McIntyre Machinery is that it had a long relationship
6 with the Cosmetic, Toiletries, and Fragrance Association
7 and with countless cosmetic manufacturers and distributors
8 around the world, and it was well aware -- very
9 specifically aware that its product would go right into
10 the stream of commerce in -- for use by women all over the
11 world. It was very well aware of that.

12 In its own advertising materials or websites or
13 other things that it puts up demonstrates an awareness of
14 the international nature of distribution of cosmetic
15 products to women. It knew that women would use products
16 in this state, just like every other state in the United
17 States. It had a big market for its products. It bought
18 additional mines or sought out additional mines to service
19 this burgeoning and growing United States market.

20 So, this is an entirely different situation from
21 *McIntyre*, that had a distributor and was in shows in
22 several states and that was kind of about it. This is a
23 -- IMI Fabi is a very different animal from that.

24 So, on that basis, I will deny the motion to direct
25 on personal jurisdiction.

1 And with regard to asbestos contamination in its
2 products, again, I think the testimony of the witnesses
3 for Plaintiff, including the corporate representative of
4 IMI Fabi, well-established that it knew or should have
5 known about the presence of asbestos, the kinds of testing
6 limitations that there are, depending on what kind of
7 testing is done. Anyone in this business knew a good deal
8 about that, including IMI Fabi. So, on that basis, I will
9 deny directed verdict for IMI Fabi.

10 Now, WCD. And I now have the motion for directed
11 verdict. Ms. Flynn?

12 MS. FLYNN: Yes, Your Honor. And we did file, as
13 Mr. Carroll mentioned, written briefs last evening or this
14 morning, rather. I apologize.

15 THE COURT: I have it.

16 MS. FLYNN: You do have it? I have an extra copy if
17 you need one.

18 THE COURT: This is a multi-page document that I
19 have just been handed. You know, when you do these, it's
20 awfully good when you send them to me; I'm supposed to be
21 the one that will see them rather than just filing.
22 Filing is a balagan for me.

23 MS. FLYNN: I filed it and sent you a copy this
24 morning.

25 THE COURT: Oh, okay. I did not see it. But I have

1 MR. CARROLL: -- the IMI Fabi entities also
2 submitted four supplemental proposed charges. One, we've
3 already looked at, was our proposed causation charge that
4 said -- you took a pass on it.

5 Our other three were about personal jurisdiction,
6 the door-closing statute, and corporate separate --
7 corporate form/corporate separateness.

8 THE COURT: All right. With respect to the personal
9 jurisdiction, I decided that on summary judgment. That's
10 not a decision for the jury to make. It's not any
11 determination they have to make in this case, so I would
12 deny that charge.

13 Door-closing statute, that, again, is a
14 determination I would make and not a determination that
15 the jury would make. And it's not -- it gets into -- this
16 doesn't affect anything the jury does. I have determined
17 that she had enough connection with the state of South
18 Carolina to have them sued in South Carolina, and you're
19 fully protected on that, but I'm not going to charge the
20 jury about that or ask them to make any determination.
21 That's not their responsibility.

22 So, again, just like for personal jurisdiction, I'm
23 not going to have a charge on that.

24 And then, finally...

25 MR. CARROLL: It's the last page, corporate form.

1 Is there any objection to that?

2 MS. McVEY: (Nodding.)

3 THE COURT: Yeah, I don't -- I think this is asking
4 the jury to make judgments that are matters of law, that
5 the Court present first, and then, secondly, the proof has
6 not been put up both by IMI Fabi, and the plaintiff has
7 not made this an issue for the jury's determination
8 because they have discussed the fact that there are three
9 companies, but in terms of the sale and distribution of
10 IMI Fabi and in terms of the logo that is on the IMI Fabi
11 material when it's distributed from them, it doesn't make
12 these kinds of distinctions or give the jury any ability
13 to aware with respect to those fine distinctions, so the
14 jury will have the case to decide on the basis of the
15 defendants being sued together and being made liable
16 together.

17 MR. CARROLL: Very good, Your Honor. I just want
18 the record to note that we think personal jurisdiction and
19 door-closing are questions of fact for the jury, because
20 those issues have percolated this far in the case, and we
21 think that Mr. Fabi's testimony was sufficiently distinct
22 based on questioning from us and from the plaintiffs to --
23 that the jury needs to consider them separately.

24 THE COURT: We have plenty of cases on
25 jurisdictional fact doctrine that do not put that in the

1 jury's hands. The one I think most clearly is the one
2 that involved the explosion in a -- I think an SCE&G
3 facility in Charleston; that, you know, you had the
4 counterplay between the comp claim and the tort claim, and
5 the issue was -- it most often comes up in South Carolina
6 by saying that you can't bring the tort claim because this
7 is a comp matter.

8 MR. CARROLL: Yes, ma'am.

9 THE COURT: And often, jurisdictional fact doctrine
10 decides that issue, and it decides that issue here as far
11 as I am concerned; so, therefore, it's not a jury issue.
12 Your position is completed preserved.

13 MR. CARROLL: Thank you, Your Honor.

14 MS. FLYNN: There was only one additional proposed
15 charge on behalf of Whittaker, Clark & Daniels, I believe,
16 Your Honor, and that was the sophisticated purchaser,
17 sophisticated intermediary.

18 THE COURT: Oh, yes. My favorite.

19 MS. McVEY: Judge, I have never heard of
20 sophisticated purchaser before, but...

21 THE COURT: Well, practically right on point is our
22 Court's decision in *Lawing against Univar*, 415 S.C. 209,
23 781 S.E. 548, a 2015 decision of our court. And there, a
24 distributor distributed product obtained from a Chinese
25 source. The Chinese source put certain labels on the

1 THE COURT: Have a separate thing that says,
2 "Punitive Damage" and a separate thing that is the form
3 for punitive damages. Thiele, you take care of that.

4 MS. McVEY: Yes, ma'am. I'll spellcheck it.

5 MR. CARROLL: Whatever you said about the doctor's
6 testimony, I don't know if that was ad-libbed or if you
7 have a handwritten note for it.

8 THE COURT: Well, I have a handwritten note to do it
9 and I kind of ad-libbed it. Maybe these folks can give
10 you a --

11 MR. CARROLL: We'll take -- we'll get them
12 printed -- how about this: We'll have the printing done
13 by the time the jury gets done with the closing argument
14 and the jury walks in there. We may not have it --

15 THE COURT: That's cool. That's cool. That makes
16 more sense. I don't have to have it before I start court
17 tomorrow. That's for sure.

18 MR. CARROLL: Yes, ma'am. So, we'll take whatever
19 you said from the transcript and drop it into the charge.

20 THE COURT: Good. And that will give you a chance
21 to also get the verdict forms done and that kind of thing.

22 MR. CARROLL: Yes, ma'am. A couple of --

23 THE COURT: Sure.

24 MR. CARROLL: A couple of housekeeping points. I
25 think -- and I don't know if this is the right time to do

1 this, but I think the plaintiffs are going to dismiss
2 IMI Fabi (USA) Inc.

3 THE COURT: Yes.

4 MS. McVEY: Yes.

5 THE COURT: All right. Please let the record
6 reflect that Plaintiff, with consent of all parties, is
7 dismissing IMI Fabi (USA). Is that right?

8 (Counsel conferring off the record.)

9 MS. McVEY: So, Judge, what he's asking me about is
10 on, our verdict form, they have a whole page for loss of
11 consortium, and that's not --

12 THE COURT: No. It's just going to be the regular,
13 normal form that I use.

14 MR. CARROLL: Okay.

15 THE COURT: I mean, can take exception to it, of
16 course. I will preserve your objection.

17 MR. CARROLL: We thought it was a separate cause of
18 action. We think it's a separate -- he's a separate
19 plaintiff. I thought, in our state, it is a separate
20 cause of action.

21 THE COURT: Well, the way I charged the case, I told
22 them they could find it under a variety of different
23 theories, and they don't have to use but one of them.
24 They don't have to find but for one of them in order to
25 find it.

1 STATE OF SOUTH CAROLINA) COURT OF COMMON PLEAS
2 COUNTY OF RICHLAND) TRANSCRIPT OF RECORD

3 -----x
4 SARAH J. PLANT and PARKER)
5 PLANT,)
6)
7 Plaintiffs,)
8 vs.) Case No. 2022-CP-40-01265
9)
10 AVON PRODUCTS, INC., et al.,)
11)
12 Defendants.)
13 -----x

14 FRIDAY, MARCH 3, 2023
15 TRIAL VOLUME 8

16 B E F O R E:

17 The Honorable Chief Justice (ret.) Jean H. Toal,
18 Presiding Judge; and a jury.
19
20
21
22
23
24
25

Court Reporter: Bobbi Fisher, RPR
SC Official Court Reporter III

1 incorporate in that the same arguments and the briefing
2 that we submitted to the Court pursuant to Rule 10(C) of
3 the South Carolina rules.

4 THE COURT: Thank you, ma'am.

5 And Ms. O'Neill for IMI Fabi?

6 MS. O'NEILL: On behalf of IMI Fabi (Diana) and IMI
7 Fabi LLC, we would also join in the Whittaker, Clark &
8 Daniels arguments and renew again our motions for directed
9 verdict for all of the grounds set forth in our earlier
10 directed verdict motion -- and Mr. Carroll is pointing at
11 me -- because there's no evidence of defect, causation, or
12 exposure and...

13 MR. CARROLL: And a lack of personal jurisdiction.

14 MS. O'NEILL: And a lack of personal jurisdiction.
15 Thank you.

16 MR. CARROLL: And, on that point, Your Honor, the
17 IMI Fabi defendants have proposed sending the question of
18 personal jurisdiction to the jury. We understand Your
19 Honor has declined to do that.

20 THE COURT: And I decline to do that.

21 MR. CARROLL: And to the extent we have a right to a
22 jury trial on that issue, we do not want the tendering of
23 the case to the jury in two hours to be deemed a waiver of
24 that right to a jury trial.

25 THE COURT: And it will not be. You have asserted

1 that issue as both a legal issue before the trial, a legal
2 and a factual issue during the trial, and I decline to
3 grant those motions. So you're protected --

4 MR. CARROLL: Thank you, Your Honor.

5 THE COURT: -- on all of those issues.

6 MS. O'NEILL: Thank you.

7 THE COURT: Very good.

8 All right. I think everybody is on the record.

9 Ms. Flynn, you have exhibits?

10 MS. FLYNN: Yes.

11 MS. McVEY: Ms. Flynn had sent around some exhibits.

12 And these are the ones that you want to put in.

13 MS. FLYNN: No, these.

14 (Counsel conferring off the record.)

15 MS. McVEY: So, two things: One, they want to put
16 in a medical record of Ms. Plant. And it is -- it has a
17 bunch of kind of boilerplate language about the BRCA gene,
18 about its potential for causing cancer. It has a bunch of
19 information about family history of cancer, all sorts of
20 things that, Your Honor, are not relevant to this case and
21 prejudicial. So, these have not been redacted. I assume
22 they've been redacted for health insurance and other
23 things, but -- Ms. Flynn tells me they've not been
24 redacted, so we'd object to this going in.

25 THE COURT: All right.

1 on the theory, but that duty, you will see, gets before
2 the duty in the law because it exists always. Always.

3 And one of the things that needs to be clear is,
4 while the law sometimes says "manufacturer" and sometimes
5 says "seller," one of the things Judge Toal tells you is
6 that the seller assumes the duty of the manufacturer. So,
7 whether you manufacture, mill, process, sell, distribute,
8 middleman, once you are involved, you have a duty in the
9 law of this state. But that duty has to exist at the time
10 of sale.

11 Here, in South Carolina, there's no post-sale duty,
12 and so, one of the first things that I want to talk about
13 is when the sale occurred. When did it leave their
14 control? When did those big pallets and bags of talc,
15 with no warnings, get sent out to companies that went to
16 this family?

17 The undisputed evidence for Whittaker, Clark &
18 Daniels is it started the day -- or maybe not the day, but
19 the time that Sarah came home and was in her family home,
20 from the use of Gold Bond in her home. The really
21 important years were the '90s but it extended until 2004.
22 For IMI Fabi, it went from 2001 until she got sick and
23 stopped using all the products. IMI Fabi is a company
24 that's still selling this stuff around the world.

25 What is the evidence of that? Dr. Haber indicated

1 there's not a document that they put in that says we're
2 wrong but they're not going to acknowledge it.

3 Exhibit 70 shows the customer codes. These are IMI
4 Fabi's Certificate of Analysis where they say, "Here's the
5 talc we sold you, and we are certifying it's good." They
6 use different language, but you get the idea.

7 That code is in these records over and over and over
8 again. Why is that so important? Because we know that
9 code, first of all, went into Noxell and Procter & Gamble
10 or, excuse me, Chattem products. I'm getting ahead of
11 myself.

12 This is Exhibit 60. This is a raw material number.
13 That is the COVERGIRL -- Noxell COVERGIRL code. For 11
14 pages, what we have information on is for every powder --
15 pressed powder or loose powder foundation sold by
16 COVERGIRL, everyone, it involved this code or the loose
17 powder code that Mr. Braly showed you. It goes on for 11
18 pages.

19 It's not every COVERGIRL product; we couldn't
20 connect the dots quite as cleanly for the eye shadow and
21 the blush but every pressed powder.

22 This document related to Whittaker, Clark & Daniels
23 years, but what we did to connect the dots is take Exhibit
24 71 and show that that exact same code, both the codes --
25 the loose powder and the pressed powder code -- shows up

1 in their documents over and over and over again. Hundreds
2 of thousands of pounds of Talc 141 into COVERGIRL in the
3 exact product that Sarah said she was using for years,
4 during the years that they sold it.

5 There is no dispute that, in the years that IMI Fabi
6 was selling this to the public, it was Chinese talc. IMI
7 Fabi's lawyers did not ask a single question challenging
8 or even asking Dr. Haber about this connection. Not one.

9 They do not have a document, an expert, or a person
10 that contradicts this evidence, and it's important because
11 it was on the basis of this evidence that he took the
12 years of exposures that IMI Fabi was selling this Chinese
13 talc, considered how often it was used, and where, and
14 said this is part of why she has this cancer.

15 We did the same for Whittaker, Clark & Daniels. One
16 of the first things that we explained is -- you're going
17 to hear and see in the documents a lot of different names.
18 Gold Bond was made by two different companies, depending
19 on the time. You heard about these companies from the
20 Chattem corporate representative. PharmaTech or PTI made
21 it for Chattem but Steffen was before that and made by
22 Martin Himmel. Just connects the dots.

23 One of the things the corporate representative for
24 Chattem told us cleanly is that they bought the line in
25 1996; that WCD provides the Barretts code, which was MP

1 was using it all the time.

2 We went further and provided a summary of the sales
3 records. The sales records themselves, which aren't even
4 complete, but, again, verified WCD was the exclusive
5 supplier to Gold Bond for year after year after year. Dr.
6 Haber considered all of this and said this is part of the
7 reason she has cancer. It's a substantial factor.

8 We went beyond that and showed you that Avon has
9 formulas so that no matter whether you have Skin-So-Soft,
10 Sweet Honey, or whatever name, they used the same raw
11 ingredients; that the only type of talc they were using at
12 that time was Chinese and that WCD was a listed vendor.
13 You actually saw the record where that occurred and that
14 they were selling millions of pounds during the years that
15 she was using Avon and powdering it on her body and her
16 sisters were powdering it on their body in a small
17 bathroom for years.

18 It was not disputed but, again, not admitted by WCD,
19 when we looked at their own sales records and agreed on a
20 summary of millions of pounds. We showed a connection
21 between WCD in earlier years of COVERGIRL use.

22 Remember, IMI Fabi got into the market in 2001.
23 When she was living in her mom's home, that same code was
24 used but was associated with a different mine. We put
25 into evidence 37-1 and 37-2 where this is cleanly

1 They have asked Dr. Longo, it wasn't widely around
2 in the '70s, and he said, "No, it was." They mentioned
3 that not many labs had it, and they even had Mr. Segrave,
4 their geologist and testing person saying, "In the early
5 '80s, I had to go and get a cup of coffee while it charged
6 up."

7 The suggestion is that their failure to use the type
8 of equipment that finds a carcinogen in a baby powder was
9 because it either wasn't there or wasn't, I guess,
10 convenient. It's nonsense.

11 This is one of the things that I had to sit here and
12 wait for because the exhibit's not in evidence yet.
13 Please look at this exhibit. It's 1683. It's all of
14 these companies reporting to the FDA in the '70s, a decade
15 before Sarah Plant was born, about using TEM. It was
16 available. It was known to the industry. Companies like
17 Johnson & Johnson and Colgate and Coty were using it.

18 WCD's supplier, the person they're getting it from,
19 had a TEM lab. And most importantly, McCrone had it.
20 Remember the lab they chose to use were ES Laboratories
21 and McCrone. This is an incredibly important document.
22 It's at 64. It's showing a company saying, "Please do
23 J4-1." And the microscopist writes, "Sure, but for nearly
24 the same cost, we can do this TEM," which is wildly more
25 sensitive. They were in connection with the right people.

1 The lab says, "Hey, there's a better way," and they chose
2 not to do it.

3 There are three theories of liability; we have to
4 only prove one. I'm spending the time on this because
5 these are companies who didn't just ignore the law for a
6 short period of time or in just one way but over and over
7 and over again.

8 The first is negligence. You will be asked a
9 specific question for each company. Was WCD negligent?
10 Was IMI Fabi (Diana), who sold talc for four years,
11 negligent? Is IMI Fabi LLC, who sold it for more than a
12 decade after that, negligent?

13 And the concept here is fairly common sense. All of
14 us -- individuals, companies -- have a responsibility to
15 be reasonable with each other. For a long time, they
16 weren't laws about texting and driving. If they're not on
17 the books and there's a rainstorm and you do that and you
18 hit someone, you can be called into court for negligence.
19 We operate as a society by being reasonable with each
20 other.

21 Here, these companies acted in a negligent way over
22 and over and over again. We only have to show one act of
23 negligence.

24 First, one of the basic things in the state of South
25 Carolina you must do -- it's a safety rule -- is research

1 Another safety rule is you have got to adequately
2 test. It's a jury instruction, particularly if it's
3 latent defects that are not visible or apparent. You may
4 have wondered why Ms. Gross had the onion in the
5 beginning. No one disputes. You don't know about this if
6 people don't tell you, and no one -- no one thinks that,
7 when they're buying a cosmetic product, that they're
8 somehow exposing themselves to some toxin.

9 The testing they used was industry testing, and they
10 tried to tell you in opening statements when you're
11 getting your bearings that this is good.

12 IMI Fabi uses J4-1. That's what's written in every
13 document in evidence. It's the only thing they did.
14 Remember, J4-1 just says use XRD, and if you don't find
15 anything, don't do anything else. If you do, use the
16 polarized light microscope.

17 Every testing record in evidence is using this weak
18 method, but they claim they went above and beyond. It
19 wasn't TEM. It didn't say what they did, but there's a
20 trip to China.

21 You have to decide what is credible and likely and
22 use your common sense. A company in an environment that
23 you're watching J&J in the news -- remember he said that?
24 You know what's going on. And you go to China and find
25 that you don't have a problem and you don't keep the test?

1 testing is -- had a 1:5 percent detection limit.
2 Stunningly bad.

3 And this was another kind of a-ha moment. IMI Fabi
4 suggested industry testing is still good. People are, you
5 know, looking into it, but it's still right. Their own
6 expert came in and says it's been long known that J4
7 doesn't work.

8 One of the instructions from Judge Toal is an entire
9 industry can be negligent. This is an industry who needs
10 to be heard.

11 One of the most powerful evidence pieces came
12 through that video. Twice, two different videos, two
13 different times. COVERGIRL, who both of these companies
14 have a relationship with, said we were told by our
15 supplier -- that's them -- that TEM was used. COVERGIRL
16 is making a decision about whether they continue to sell
17 talc. They know because everybody knows industry testing
18 doesn't work, and so, he swears under oath, "But we were
19 told they were doing the right stuff." Is that true?

20 Unequivocally, it was admitted by IMI Fabi that
21 not once, not ever did they do TEM testing, and Mr. St.
22 George from WCD admitted the same. False assurances,
23 inadequate statements to the people that are selling these
24 products to the public.

25 Sorry this is so faded, but this is a critical

1 1970s and Johnson & Johnson isn't here?

2 Well, here's why. So, let's just take the Gold
3 Bond example. Okay? They said, Gold Bond -- there's a
4 Gold Bond product. Right? Think about Gold Bond. Let's
5 do think about Gold Bond and what was the evidence?

6 Mrs. Plant said the only time she ever used Gold
7 Bond was after 2013 when she got married and she bought it
8 for her husband. Well, now, WCD quit distributing
9 anything in 2004. Okay? So, that would be a gap in the
10 evidence. You wouldn't want to put that on the wall.
11 Right?

12 And WCD quits selling in 2004. And then they said,
13 well, her mother put a small container in her gym bag.
14 Okay. A small container in her gym bag and then she went
15 off to school.

16 But Mrs. Plant said, "The only body powder I ever
17 used was Johnson & Johnson and then Equate, when I had to
18 start buying it myself." Well, now, that's a problem
19 because you've got the plaintiff saying, "I never used any
20 of this stuff before 2013."

21 And if you had a chart on the wall, you'd hear the
22 testimony, you'd write the testimony down, and then they
23 could come present that to the experts and get opinions.
24 Right? That didn't happen. And I think you'll recall --
25 and there's no proof for the travel-bag sizes. There's no

1 chest on the pleura of patients for medical purposes;
2 right? Like seven years ago? He's putting it inside of
3 people's lungs. Do you think he thinks talc could
4 possibly cause any problems? He's not going to say that
5 now because he's an expert witness getting paid \$750 an
6 hour. That puts him in a different realm. That's not a
7 guy who doesn't have a dog in the fight.

8 If he had given a deposition or come to trial as the
9 plaintiff's treating physician, maybe, but this is a guy
10 who let Mary Kay hire him first at \$850 an hour but then
11 he thought, "Oh, no, I'll switch sides," and he let the
12 plaintiffs hire him, and they're only paying him \$750 an
13 hour. That takes you out of the realm of just being a
14 treating physician. Right? No basis. He never studied
15 this, never published on it, but he's got opinions now
16 because it's like it's a good business for experts.

17 And so, there's no epidemiological basis to conclude
18 that Mrs. Plant's mesothelioma has anything to do with
19 cosmetic talc. And there's a good reason; it's not
20 contaminated with asbestos.

21 Look, OSHA made the determination a long time ago,
22 we care about asbestiform, not an asbestiform, and I won't
23 bore you with my rock book again, but I think everybody
24 gets that by now. Those things are different. They form
25 different. You've got a rock that's wavy? That's

1 And I said, "Dr. Brody, you exposed rats to 100 percent
2 asbestos fiber. What if you made them breathe talcum
3 powder with 0.002 percent?"

4 No idea. Well, because the powder would kill them.
5 That's why. You can't even breathe it. But if you did,
6 it's chrysotile; right?

7 So, they have the burden to show that you could get
8 enough into your lungs to hurt you, and the fiber type
9 makes a difference. Right?

10 And this is just IARC again saying, "Look, when you
11 have that early stuff in the '70s, there was no
12 determination that they with asbestiform." Right? And
13 so, it didn't matter that it was the rock. It had to be
14 asbestiform.

15 And the Montana talc, they went and found the purest
16 talc they could find in the world to use in cosmetic talc,
17 and Mr. Segrave talked about that. And, look, bulk
18 samples from regions were taken. Many, many, many -- the
19 U.S. Geological survey took bulk samples and found no
20 fiber in any sample of Montana talc. Hey, if you didn't
21 want to take my word for it, remember Mr. Bailey, that we
22 excruciatingly went through his sworn testimony when he
23 said he signed something saying there is no asbestos in
24 Montana talc?

25 And you heard from Mr. Segrave who said look -- and

1 found chrysotile. MVA said there's no chrysotile in all
2 53." Longo says there's no amphibole, and MVA says they
3 found six amphibole. Right?

4 At most, they're totally contradictory, and you
5 couldn't put in your affidavit that there's a test that
6 shows six positive when you know good and well that it
7 came from another place that said that's not right.

8 And Dr. Segrave -- Mr. Segrave said, "Look, we
9 tested them by PLM and TEM, and there wasn't anything that
10 was asbestos in either one of them." And he didn't tell
11 you that stuff. And it's not a mistake because, you know
12 what? Days after Mr. Bailey testified and I presented him
13 with all this, plaintiffs' counsel, once again, used the
14 same chart to question Mr. Segrave, knowing that this was
15 wrong.

16 We're not talking about stuff that happened in 1970.
17 We're talking about stuff that happened in a courtroom in
18 this trial.

19 And Italian talc, the FDA -- you know, Mr. Segrave
20 went there. He examined it. He goes, "Look, this is
21 talc. You could get a vein." You don't mine the vein.
22 They have geologists working for them to tell them where
23 to drill, and they have engineers to tell them how to
24 drill so that you don't get that. And then you test it to
25 make sure you didn't get any of that. Right?

1 And he says he's been there himself and done the
2 test and he shows how it develops and why you would expect
3 it to be so pure and listed lots and lots of studies that
4 tested for Italian talc.

5 All right. So, let's go back to, "Well, what do you
6 have to show that you were injured by a product?" Right?
7 Even if you had filled out a chart to show what she used,
8 when she used it, how she used it, then we'd start with,
9 number one, which would be the product contained asbestos.
10 Now let's talk about how you think you breathed it. All
11 right? And we never even get to that in this case because
12 we can't show the product.

13 And so, this is where Dr. Barlow came in, because
14 she did an analysis that, if you assume there was asbestos
15 in cosmetics and it got into the air and you breathed it,
16 she did a risk assessment, and she came up with the same
17 thing that the FDA came up.

18 And she also did animal studies that confirmed that
19 talc doesn't cause mesothelioma and the cleavage fragments
20 don't cause mesothelioma. But she said, "Look, in fiber
21 toxicology, you can't just say, 'Hey, we used makeup
22 frequently.'" That doesn't tell you anything if you're
23 trying to assess whether it causes disease. Right? You
24 would look at things, like, "Okay. Well, how much was in
25 the air? How much was actually deposited? What are the

1 cosmetic talc was China.

2 And the evidence in this case shows you that the IMI
3 Fabi companies acted reasonably and responsibly. Ms. Dean
4 said IMI Fabi was unreasonable because they got in when
5 everybody else was getting out. And she said, You can be
6 in the business, but then you have a duty. And she said,
7 "Rule No. 1: Research before you sell." What's the
8 evidence that you saw in this case? That they carefully
9 vetted their source mine, they vetted their talc on
10 arrival, they vetted the finished product, and then did
11 annual testing.

12 The un rebutted evidence in this case is that, before
13 they got into the business, they certainly tried to comply
14 with Rule No. 1. They sent somebody to China to look at
15 that mine, and then they tested that. And what did
16 Mr. Fabi tell you? He told you, "Oh, we found some with
17 asbestos, and we rejected that. We did not want that. We
18 wanted to make sure it had no asbestos to start." And
19 they required that to be confirmed for every shipment.

20 But did they stop there? No, they did not. They
21 absolutely did not.

22 When that shipment came to the United States, what
23 did they do? They quarantined it, and then tested it
24 again. And, initially, they used the X-ray -- XRD --
25 refraction [verbatim] -- XRD testing with optical

1 Now, does that sound like a company who is acting
2 recklessly or unreasonably or in utter disregard for
3 safety? One of the questions you're going to get asked,
4 if you get that far down in the verdict form, is whether
5 IMI Fabi did. And I would submit to you that, for both
6 entities, Diana and LLC, that answer is no.

7 Now, plaintiffs say the warning is not enough
8 because it doesn't warn about asbestos. It didn't warn
9 about asbestos because, when that product left my client's
10 dock, it didn't have asbestos in it. There is no evidence
11 at all that there was any asbestos in IMI Fabi talc --
12 cosmetic talc when it left the company dock.

13 We saw a lot about J&J. We saw a lot about Montana
14 and Vermont and Italian talc. We heard about all
15 different kinds of things, Pfizer and other companies. We
16 saw tests and papers, and we heard experts talking about
17 all of that. Not a single test about IMI Fabi cosmetic
18 talc. Not a single test.

19 We even saw a test on the FDA -- we even saw an
20 entry on the FDA website where the FDA said, "Look, we've
21 got to do a recall of Claire's makeup, because it's been
22 found to asbestos -- found to have asbestos in it."
23 Nothing -- nothing connects Claire's makeup with talc sold
24 by IMI Fabi.

25 And that's important, because the question for you,

1 And the assumption about COVERGIRL is, assume that she
2 used COVERGIRL pressed powders containing Montana talc in
3 the 1990s."

4 That's not a preponderance of the evidence about us.
5 It doesn't make anything about us more probable or not.
6 That's a question about Montana talc in the 1990s. Our
7 talc came from China.

8 They asked Dr. Longo this question as well: "How
9 about Mary Kay, the talc in Mary Kay, which came from
10 mines located in Italy, Vermont, China, and Brazil?"

11 And he said for, "Yes, for those products, I have an
12 opinion."

13 They didn't ask a question about IMI Fabi. They
14 didn't ask Dr. Longo any question -- they didn't ask any
15 of their experts a question about IMI Fabi talc being in a
16 product.

17 And I would submit to you that none of these
18 causation questions give you the evidence you would need
19 to find against my clients, because there's no testimony
20 from any expert about the content of COVERGIRL makeup or
21 its use after the 1990s.

22 So, where does that leave us? That leaves us China.
23 And what did you hear about China? Dr. Longo said things
24 like, "All Chinese talc is the same." He's checked it.
25 He's checked it all.

1 And there are a couple of things in evidence. There
2 is Plaintiff's Exhibit No. 3804, which is one of those
3 charts that the lawyers made, and it's a summary of MAS
4 testing from Italy, Vermont, Montana, Brazil, and China,
5 and when you flip to the back and you look at China, where
6 did it come from? Chanel, Johnson & Johnson, Johnson &
7 Johnson, Johnson & Johnson, Johnson & Johnson, and Avon.
8 Not IMI Fabi. Not even Procter & Gamble.

9 There's another one, Plaintiffs' Exhibit 3677. The
10 first 43 pages are pictures of Johnson & Johnson products.
11 And then, when you go all the way to the back here, there
12 is some references to China. Some Chinese talc from
13 someplace called Imerys, J&J, J&J, J&J, J&J, Chanel.
14 Nothing about IMI Fabi.

15 Now, Dr. Longo says it's all the same. It's 90,000
16 square miles. That's three times the size of the state of
17 South Carolina. So, saying it's all the same, I think
18 that's kind of like saying all American barbecue is the
19 same, and it's 20 to 1:00 so the Lady Gamecocks have
20 tipped off, but if they were here today and you went over
21 to the Palmetto Pig over by the arena, that's where you're
22 going to get South Carolina barbecue. Going to Midwood's
23 Smoke House? That's not barbecue.

24 Same concept applies to saying China. All talc in
25 all 90,000 square miles is exactly the same? It's not

1 reasonable. It's not a reasonable conclusion. Unless you
2 have been to the mine where IMI Fabi is getting its talc
3 and you tested that, you don't know what's in it or what's
4 not in it, and none of that evidence came to you today.

5 The only person who came and testified to you about
6 that was Mr. Corrado Fabi. He said, before he got in the
7 business, he went to China, and they looked with his team
8 to find the most pure talc they could find, and they
9 tested it, and they rejected the stuff that had asbestos
10 in it. He wouldn't buy it because he didn't want to have
11 a cosmetic talc source with asbestos in it to start.

12 And you heard some testimony about -- I think it was
13 J&J and Pfizer trying to, like, remove asbestos from talc.
14 IMI Fabi (Diana) and IMI Fabi LLC didn't do that. They
15 didn't even want that question. They said, "We want to it
16 start out pure. We're not going to try to take it out.
17 We don't want it in there in the first place."

18 And they said that, and then they checked to make
19 sure. And they checked and they checked and they checked
20 and they checked. And that's important because, if
21 there's no asbestos in the product that IMI Fabi sold,
22 then it can't cause mesothelioma.

23 Even the plaintiffs' expert -- this is Dr. Haber who
24 said that: "Doctor, do you agree that talc without
25 asbestos does not cause malignant mesothelioma?"

1 ANSWER: "As far as I know, that's true."

2 So I submit to you that for my clients, IMI Fabi
3 (Diana) and IMI Fabi LLC, the plaintiffs have failed to
4 meet their burden of proof with respect to the question of
5 whether or not there, in fact, is asbestos in any of the
6 cosmetic talc sold by IMI Fabi (Diana) or IMI Fabi LLC.

7 And so, I would ask you, when you get the verdict
8 form, and you're asked about the theories of liability for
9 each of them, for IMI Fabi (Diana) and IMI Fabi LLC, you
10 check no, because the plaintiffs have failed to meet the
11 first thing they need on their burden of proof.

12 But that's not the only element that they failed to
13 prove as to my client because they've also failed to give
14 you evidence that our talc was in a product that Ms. Plant
15 used.

16 They had that slide up there and they had it in
17 their closing today, too, where it's got the picture of
18 the COVERGIRL compact and then it's got, you know, IMI
19 Fabi's logo and it's got a picture of Ms. Plant. That
20 slide is not evidence. It's not in evidence, and it's not
21 even supported by the evidence. Because, if you remember,
22 that slide first came up with Dr. Haber, and Dr. Haber
23 said he was provided documents to show who the sole
24 supplier for COVERGIRL pressed powders were that he was
25 testifying about.

1 And the plaintiffs presented you no evidence to
2 suggest that it did, so I was supposed to retain an
3 expert to come and say, "Hey, I want you to assume some
4 facts that aren't in the case about some stuff that didn't
5 happen and then give the jury an opinion"? That doesn't
6 seem very helpful.

7 Plaintiffs have the burden of proof to prove to you
8 that cosmetic talc that IMI Fabi (Diana) or IMI Fabi LLC
9 sold has asbestos in it; that the asbestos-containing talc
10 got into a product Ms. Plant used; and then it caused her
11 mesothelioma. "Might" is not enough. "Might" is not a
12 preponderance.

13 The plaintiffs' experts agree that the presence of
14 talc does not mean asbestos. They agree. There are
15 mines -- talc mines without asbestos. Talc is a mineral.
16 It's a naturally-occurring thing.

17 Evidence of asbestos in somebody else's talc?
18 That's not evidence about IMI Fabi. Evidence of talc made
19 by somebody else going to a company that made COVERGIRL,
20 that's not evidence about IMI Fabi either. The plaintiff
21 has to prove not just talc but our talc, and that's
22 important because no connection means no causation.

23 And that's why we don't have any experts and that's
24 what these plaintiffs haven't given to you. It's no
25 connection at all.

1 Now, you were asked in opening by Mr. Roberts to
2 remember that everybody was a separate company. A few
3 less companies than we did to start, but it's the same
4 principle: Separate companies. We are not the talc
5 industry. We are not a makeup manufacturer. We're not
6 J&J or Pfizer or Mary Kay or Avon or any of the other
7 companies that you heard about. And that's important as
8 you consider the evidence that you have got to make your
9 decision, because this is a big stack of exhibits.

10 In fact, these are -- the plaintiffs put in this
11 many exhibits. It's 100-and-something. But if you drop
12 out all the exhibits that were written before my clients
13 even got in business in 2001, you lose a lot. And if you
14 drop out the ones that apply just to Mary Kay, you lose
15 some more. And if you drop out the ones that apply to
16 Avon, you lose some more. And if you drop the ones that
17 apply just to J&J, you lose some more. And if you drop
18 out Pfizer, more. Whittaker, Clark & Daniels, more. If
19 you drop out the ones that apply just to body powder
20 products, because we're accused of being in pressed
21 powder, more. If you drop out the one for Mr. Bailey, the
22 plaintiffs' geologist who said he doesn't know anything
23 about China, what are you left with? Two. Two exhibits.
24 70 and 71. These are those exhibits.

25 And the plaintiffs' suggested to you that these show

1 much longer than I have got time allotted.

2 So, you need to look at this and make a decision.

3 Now, the idea that this 1080 -- 1-082980 number
4 somehow connects to a raw material number that's on that
5 Exhibit 60 chart that the plaintiffs' lawyers put together
6 for Whittaker, Clark & Daniels. Well, first of all,
7 that's a chart. Second of all, nobody came in and told
8 you an RN number over here should match a different number
9 over on an IMI Fabi document. That's argument, but it's
10 not evidence.

11 So, did we sell some talc that got shipped to
12 Procter & Gamble? Oh, absolutely. Mr. Roberts told you
13 that in opening, and, in fact, there are a few pieces of
14 paper in 70 or 71 that say that. So what?

15 Procter & Gamble made all kinds of makeup. It
16 doesn't mean it got in COVERGIRL. It doesn't mean it got
17 in something Ms. Plant used. There's argument that IMI
18 Fabi was COVERGIRL's sole supplier. There's no evidence
19 of that.

20 What Dr. Haber was asked is to talk about that
21 summary chart, Exhibit 60, and then he admitted, "Oh,
22 yeah, I don't know anything about the manufacture of those
23 products. I don't know about Procter & Gamble or what
24 they did or how they made things."

25 So, there's no evidence to connect that dot. That's

1 what we're missing. Where is the Procter & Gamble
2 evidence? There's no witnesses from Procter & Gamble.
3 There's no documents. That means no causation.

4 So, what caused her mesothelioma?

5 Sorry, no exposure means no causation.

6 So, what cause her mesothelioma; right? That's the
7 \$64,000 question. I don't know.

8 But if you think that there was asbestos in talc
9 that Ms. Plant used what's more probable? Dr. Brody told
10 you that latency is from when you're first exposed and
11 that the average latency is 30 to 60 years. And Dr.
12 Ripley told you, exposing children to carcinogens or
13 people early in their life is very dangerous. And what's
14 all the testimony in this case say? Ms. Plant, whose
15 maiden name was Johnson, what were they using from the
16 time she was a baby, throughout a lot of her life?
17 [Holding up container.]

18 If you think that there is asbestos contamination in
19 talc, maybe -- maybe that's what caused it.

20 So, I'm not going to be able to get back up here,
21 and so, as Mr. Thackston said, you know, it's hard to sit
22 back there and not go, "Wait, wait." So, Ms. Dean is
23 going to come up and she's going to talk to you. And when
24 you go back in the jury room and you deliberate, after you
25 hear her final remarks, think about what would Ms. O'Neill

1 where, in the last four years, the world has been on fire
2 because asbestos was in baby and body powder, and what
3 they are asking you as a group to believe is that, without
4 a single piece of paper, documents that would show that
5 they shouldn't be on the hook exists, and they decided not
6 to bring them.

7 And in trying to make you believe that, they ignore
8 the fact that there was powerful, undisputed evidence
9 about asbestos in the exact source mine that they used
10 over and over and over again.

11 This isn't helping me. Ah-ha.

12 We're not talking about all American barbecue being
13 the same. We're not talking about a 90,000-square foot
14 region where lots of people live. We're talking about the
15 specific talc mine that is the identical talc mine that
16 was used by Chanel, that was used by Avon, that was used
17 by Johnson & Johnson, which was established not only by
18 Dr. Haber but by Dr. Longo, and no one disputes it.

19 And we have pictures of asbestos in a powder product
20 they're selling today from our federal government, not
21 someone that has a dog in the fight.

22 They have tested product after product and product,
23 and you heard from our expert, each one of these are
24 Montana or Chinese talc, over and over again finding
25 asbestos.