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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 II)

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STATE OF SOUTH CAROLINA IN THE COURT OF COMMON PLEAS

COUNTY OF RICHLAND CASE NO. 2022-CP-40-1265

Sarah J. Plant and Parker Plant,

Plaintiffs,

vs.

Avon Products, Inc., et al

Defendants.

REMOTE VIDEOTAPED DEPOSITION OF IMI FABI DIANA, LLC, IMI FABI USA, INC., AND IMI FABI, LLC, GIVEN BY CORRADO FABI

DATE TAKEN: February 15, 2023

TIME BEGAN: 9:04 a.m.

TIME ENDED: 1:00 p.m.

REPORTED BY: Traci L. Barr

CERTIFIED TRANSCRIPT

AdvancedONE LEGAL (866) 715-7770 advancedONE.com

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Q. And so you are being -- you are still making money because you are the CO of the IMI Fabi group, correct?
DEFENSE ATTORNEY: Object to the form.
THE DEPONENT: Yes, I'm paid by the company.
EXAMINATION RESUMED
BY MS. BOLLINGER:
Q. Right. So you're not specifically being paid to be here today, correct?
A. No.
Q. Okay. Mr. Fabi, did you go to school?
A. Yes.
Q. Do you have any form of college degree?
A. Well, I -- I have a degree in Italy, and it's a certificate, and I don't know what this means in the states.
Q. Okay.
THE INTERPRETER: High school graduation.
EXAMINATION RESUMED
BY MS. BOLLINGER:
Q. Okay. And your translator just clarified, in the United States, you have a -- it would be a degree from high school?
THE INTERPRETER: High school graduation, that's right.
EXAMINATION RESUMED

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BY MS. BOLLINGER:
Q. Okay. Do you have any other form of degrees?
A. No.
Q. When did you get that degree?
A. 1979.
Q. When did you start working for the family company?
A. 1984.
Q. What did you do for work between 1979 and 1984?
A. I was a professional racing driver.
Q. Was that Formula 1 racing?
A. When I stopped, yes, I was Formula 1 driver.
Q. When you joined the company in 1984, what position were you in?
A. CO.
Q. And is that the same position you're in today?
A. Yes.
Q. We talked a little bit about the document that Ms. O'Neill told us you have with you today, right?
A. I have no documents with me.
Q. Okay. Your attorney brought documents with her, right?
A. Yeah.
Q. Those documents are in the room with you, correct?
A. Behind me, but I have no access.
Q. Okay. Do you -- did you assist in gathering those documents for this case?
A. No.
Q. Have you looked at all of those documents?
A. Yesterday, some of them because there are too many documents in the folder.
Q. Do you know if anyone helped the lawyers to gather those documents?
A. I have no idea what lawyers did. I -- I provided some documents to the lawyers.
Q. Okay. Which documents are those?
A. I -- I think the documents are already in the folder, and I think you should ask my lawyer because, as I told you, I have no idea what documents are in the folder.
Q. When did you provide those to the lawyer? Was that yesterday?
DEFENSE ATTORNEY: Object to the form of the question.
THE DEPONENT: I have to say over the last seven days, eight days.
MS. BOLLINGER: Elizabeth, are those the documents that were provided to us?
MS. O'NEILL: Yes, Jordan, you have all the documents

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responsive to the duces tecum that we got for Mr. Fabi, and I don't want to answer in the deposition very much, but there are other document sources, and he can speak generally to where the documents -- document -- where they've been maintained, that kind of stuff.
MS. BOLLINGER: Okay. Okay.
MS. O'NEILL: But you do have all of the responsive documents that we were able to get from him or any source.
MS. BOLLINGER: Understand.
EXAMINATION RESUMED
BY MS. BOLLINGER:
Q. Mr. Fabi, where did you find the documents that you provided to Ms. O'Neill?
A. For Diana, I had to rely on Mr. Summerville because Diana is only hard copies. For LLC are mainly digital copies. We searched in our server.
Q. Does LLC have any hard copies of documents?
A. No. It's digital.
Q. So the documents from Diana, those are kept by Mr. Summerville?
A. Yes.
Q. Okay. So Mr. Summerville would have done the

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search for the documents that you provided to Ms. O'Neill, right?
A. Yeah.
Q. Did you personally do the search of the server for IMI Fabi, LLC?
A. Actually, some other people of my team supported me in this search.
Q. Do you know the names of those other people?
A. Matteo Crottogini, Patrizia --
MS. O'NEILL: Jordan, I'm making a list of what we're going to need to get spellings to the reporter for, and I'll work with Mr. Fabi and the interpreter to get that, and then I'll send it in an e-mail that you got it as well.
MS. BOLLINGER: Thank you. I appreciate it.
EXAMINATION RESUMED
BY MS. BOLLINGER:
Q. Patrizia, what was the last name?
A. Zuppini, Marco Leusciatti, Erin Moore, Robert Atwater [phonetic].
Q. Besides meeting with the lawyers today and looking through some documents, did you do anything else to prepare for your deposition today?
A. No.

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Q. Did you speak with anyone besides the lawyers to prepare for your deposition today?
A. No.
Q. We talked about three IMI Fabi entities. Do those entities have a parent company?
A. The parent company, IMI Fabi USA is owned by IMI Fabi SPA.
Q. Who is IMI -- does IMI Fabi SPA own IMI Fabi, LLC?
A. No. It's through IMI Fabi USA.
Q. Does IMI Fabi USA own IMI Fabi Diana?
A. No.
Q. Who owns IMI Fabi Diana?
A. LLC.
Q. Okay. Let me see if I have this correct. Okay. IMI Fabi SPA owns IMI Fabi USA, correct?
A. Yes.
Q. IMI Fabi USA owns IMI Fabi, LLC, correct?
A. Yes, yes.
Q. And IMI Fabi, LLC, owns IMI Fabi Diana, right?
A. Yes, yes.
Q. Between 2001 and 2004, who owned IMI Fabi Diana?
A. LLC.
Q. Okay. Does IMI Fabi SPA own any talc mines?
A. IMI Fabi -- sorry to be precise. In Italy, you

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don't own a mine. You have the mining rights, so there is no ownership. That being the same in United States, I don't know.
Q. Did okay. You say you rent the mining grounds in Italy? Is that what you said?
A. It's a lease. It's a mining lease from the [inaudible].
Q. So IMI Fabi SPA has mining leases in Italy. Yes?
A. Yes.
Q. Where are those mining leases?
A. In Sondrio, so it's the capital of the province where we are. About 20 -- I would say 20, 25 kilometers from here where we are now.
Q. Are there any other mining leases that IMI Fabi SPA has?
A. Directly, no.
Q. How long has IMI Fabi SPA had that mining lease for?
A. Since the '70s, but if it's important question for you, I have to make some search to give you the exact date.
Q. Between 2001 and the present day, has IMI Fabi SPA had any other mining leases in Italy?
A. Between 2001 and?
Q. Today.

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A. And today. IMI Fabi SPA, no. IMI Fabi SPA owns other companies that have mining rights.
Q. Okay. Does IMI Fabi, LLC, have any mining rights?
A. No.
Q. Have they ever had any mining rights?
A. No.
Q. Does IMI -- has IMI Fabi Diana ever had any mining rights?
A. No.
Q. You mentioned there were other IMI Fabi entities that had mining rights. Which IMI Fabi entities have mining rights?
A. IMI Fabi Sardinia.
Q. Where is that?
A. It's in Italy. Sardinia is an Italian island in the Mediterranean Sea. It's good [inaudible]. Not [inaudible]. IMI Fabi Australia -- sorry. To finish, IMI Fabi Australia and IMI Fabi Brazil.
Q. IMI Fabi Australia has mining rights, I assume, in Australia. Correct?
A. Yes.
Q. Where are those mining rights in Australia?
A. In Western Australia.

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A. Guaguang.
Q. Did someone sell that talc from China to Diana?
A. Minchen, M-I-N-C-H-E-N.
Q. Between 2001 and 2004, did Diana source its talc from anywhere besides China?
DEFENSE ATTORNEY: Object to the form.
THE DEPONENT: Diana bought talc from China.
EXAMINATION RESUMED
BY MS. BOLLINGER:
Q. Did Diana buy cosmetic talc from anywhere else?
A. No.
Q. And to be clear, Diana only sold cosmetic talc?
A. Yes.
Q. Between 2004 and 2016, where did the cosmetic talc at IMI Fabi, LLC come from?
A. Guaguang.
Q. And that was sold to IMI Fabi LLC by -- is it Minchen?
A. Minchen, M-I-N-C-H-E-N. Now it was sold until 2010 or 2011. Then LLC bought the talc directly from China. Minchen is a company based in Texas.
Q. Okay. So before -- between 2004 and 2010 or 2011, IMI Fabi, LLC, purchased talc from Minchen in Texas, correct?
A. Yes, yes.

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Q. And I'm specifically talking about cosmetic talc. Correct?
A. Yes.
Q. Between 2004 and 2010 or '11, did IMI Fabi, LLC, purchase cosmetic talc from anyone else besides Minchen?
A. From Australia, but not for cosmetic talc, and then around those years, also from Pakistan for industrial talc, not for cosmetic.
Q. Okay. So between -- let me start over. From 2004 to the present day, has IMI Fabi sold talc from anywhere besides -- okay. Let me back up.
Between 2004 and present, has IMI Fabi sold cosmetic talc from any other country than China?
A. No. The cosmetic -- the raw material used to make pharma and cosmetic products have always come from China.
Q. Okay. Has any IMI Fabi entity, at any point in time, had any business relationship with Whittaker, Clark, and Daniels?
A. No.
Q. Okay. I am going to try to share my screen with you. Can you see my screen, Mr. Fabi?
A. Let me wear my glasses. Yeah.

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Q. Okay. Have you seen this document before?
A. Yes, I presume so. I mean, it's a purchase order. I don't know if I have seen this specific document, but, you know --
MS. O'NEILL: Can you tell me the Bates stamp number?
MS. BOLLINGER: The Bates stamp number is going to be -- well, I was about to until this thing popped up. Let me try to do it this way. Hold on one second. Okay.
EXAMINATION RESUMED
BY MS. BOLLINGER:
Q. Can you still see my screen okay?
A. Yes.
Q. All right. The Bates stamp number is IMI Fabi-Plant 000878. Do you see that, Mr. Fabi?
A. Yes.
Q. Okay. And this is a document dated August 31, 2001, correct?
A. Yes.
Q. And the vendor here is IMI Fabi Diana, correct?
A. Yes.
Q. And it is being shipped to Procter & Gamble care of Sterigenics, correct?
A. Yes.
Q. IMI Fabi sold talc 141, correct?

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A. To Cosmetic Specialties.
Q. Okay. We'll get into that.
A. Okay.
Q. Right here it says WCD 141 BC. Do you know what WCD stands for?
A. It's the brand name of the product when we bought the company. We didn't change the product range.
Q. Okay. Where does talc 141 -- at this point in time in 2001, where did talc 141 come from?
A. China, Guaguang, and to Minchen.
Q. Do you have any reason to believe that WCD stands for Whittaker, Clark, and Daniels?
DEFENSE ATTORNEY: Object to the form.
THE DEPONENT: I can guess so, but we never had any relation with Whittaker, Clark, and Daniels.
EXAMINATION RESUMED
BY MS. BOLLINGER:
Q. Okay. And so -- I'm sorry. Go ahead.
A. As I said before, our contact and our distributor has always been Cosmetic Specialties.
Q. Okay. And so has -- is the better question, has IMI Fabi Diana ever sold Whittaker, Clark, and Daniels talc?
A. To my knowledge, at least since 2001, our products were sold to Cosmetic Specialties.

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Q. Okay. Maybe I didn't ask the question right. Since 2001, has IMI Fabi ever purchased Whittaker, Clark, and Daniels talc?
A. No.
Q. Okay. And so your testimony is that this WCD 141 talc in this document dated August 31, 2001, your testimony is that that would have come from Minchen; is that right?
A. Raw material came from China through Minchen and was produced at IMI Fabi Diana. WCD has nothing to do with IMI Fabi Diana.
Q. Are you aware, Mr. Fabi, that Whittaker, Clark, and Daniels sold talc 141 for decades?
DEFENSE ATTORNEY: Object to the form.
THE DEPONENT: I know because I've been in the business for many years, so, you know, I know quite well talc markets, but IMI Fabi never had any contact with WCD.
EXAMINATION RESUMED
BY MS. BOLLINGER:
Q. Okay. So how does WCD-branded talc end up in the hands of IMI Fabi Diana?
DEFENSE ATTORNEY: Object to the form.
THE DEPONENT: I told you that that's a brand name, and when we bought the company, we didn't change

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product name and -- and the label on the bags.
EXAMINATION RESUMED
BY MS. BOLLINGER:
Q. Maybe it's because we haven't covered this enough.
When you're saying, "bought the company," which company are you talking about?
A. IMI Fabi Diana that was bought in -- I mean, IMI Fabi Diana bought from Suzorite the facility in New York State.
Q. And it's my understanding that that facility was owned, at one point, by Whittaker, Clark, and Daniels. Is that right?
A. I -- I know that that facility was owned by Suzorite. I am not very familiar with, you know, the -- before that.
Q. Okay. So I'm going to attach this exhibit as -- that we're looking at right now as Exhibit 4.
(Exhibit Number 4 marked for identification.)
EXAMINATION RESUMED
BY MS. BOLLINGER:
Q. And then I am going to -- I'm going to share my screen with you again. Let me do this. I'm sorry I'm taking a little bit of time. I'm

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trying to make sure that I can see it.
A. No worries.
Q. Okay. Can you see my screen still?
A. Yes.
Q. Okay. This is a Material Safety Data Sheet, correct?
A. Yes.
Q. And the Bates number on here is IMI Fabi-Plant 000164, correct?
A. Yes.
Q. Okay. And the effective date is April of 2001, right?
A. Yes.
Q. Okay. The manufacturer's name is IMI Fabi Diana, right?
A. Yes.
Q. Okay. There are -- there is -- and I'm highlighting them for you -- a bunch of names of talc products, right?
A. Yes, yes.
Q. Are these all cosmetic talc products?
A. Yes.
Q. Okay. And would all of these cosmetic talc products have come from China?
A. Yes.

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MS. BOLLINGER: Okay. I'm going to attach that as Exhibit 5.
(Exhibit Number 5 marked for identification.)
EXAMINATION RESUMED
BY MS. BOLLINGER:
Q. And for clarity, all of those cosmetic talc products would have come from the Guaguang province of China, correct?
A. Yes.
Q. Okay. You have mentioned Cosmetic Specialties a couple of times?
A. Yes.
Q. What is Cosmetic Specialities?
A. To IMI Fabi is a distributor for our pharma and cosmetic products.
Q. How long has Cosmetic Specialities been a distributor for the IMI Fabi entities pharma and cosmetic products?
A. Since the beginning, 2001.
Q. Between 2001 and today, has IMI Fabi ever used any other distributor for its pharma and cosmetic products?
A. No.
Q. I'm sorry. That was a no?

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A. No.
Q. Do you know if there are any contracts between Cosmetic Specialities and IMI Fabi Diana?
A. There was between 2001 and 2004.
Q. Do those contracts still exist?
A. Well, not for Diana because Diana has ceased operation. Then in 2004, the distribution agreement was transferred to LLC, and since then, we have kept the relationship. Frankly speaking, I don't know if the 2004 contract is still valid. Maybe the validity has expired, but we have kept the relationship.
Q. Okay. I'm -- so I'm specifically asking about whether or not the physical copy of the contract between IMI Fabi and Cosmetic Specialities still exists today. Does it still -- do you have a physical copy of that contract?
A. Physical, no. Most likely, we did a digital copy, but I have to search.
Q. And that is not something that you produced --
A. Not yet.
Q. -- to --
A. No.
MS. BOLLINGER: Okay. I would just ask that, Elizabeth, if you could produce that to us, I would appreciate it. And, ideally, we could attach that as Exhibit 6.

(Exhibit Number 6 marked for identification.)

EXAMINATION RESUMED

BY MS. BOLLINGER:

Q. Do you know if IMI Fabi, LLC, still has the contract with Cosmetic Specialities from 2004?
A. The contract is valid because, I mean, we have kept, over the years, the same relationship, so --
Q. Okay.
A. -- Cosmetic Specialities is our distributor in US.
MS. BOLLINGER: Okay. And I would just ask that the IMI Fabi contract with Cosmetic Specialties be produced as Exhibit 7.

(Exhibit Number 7 marked for identification.)

EXAMINATION RESUMED

BY MS. BOLLINGER:

Q. Sorry, Mr. Fabi, I'm trying to look at things to reorganize my questions based on what you've told me. Okay?
A. Take your time.

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Q. Between 2001 and 2004, did IMI Fabi send talc to Cosmetic Specialities to distribute?
A. Cosmetic Specialities always organized to pick up material at our facility, so our material was sold FOB Diana.
Q. Can you just explain to me what FOB means?
A. Free of board. It's an inter term. It's an international terminology.
Q. Okay. What is free on board?
A. That you put on the truck, and the truck is organized by another party, in this case Cosmetic Specialities.
Q. Between 2004 and today, would Cosmetic Specialities -- let me strike that. Between 2004 and today, did IMI Fabi, LLC, ever send any talc directly to Cosmetic Specialities?
A. No.
Q. Okay. And so to understand -- my understanding of Cosmetic Specialities is that it does the organizing of transporting the product to the customer. Correct?
A. No.
DEFENSE ATTORNEY: Object to the form.
THE DEPONENT: No. Absolutely, Cosmetic Specialities buys the product and sells our products according to its policy. We have absolutely no knowledge of what Cosmetic Specialities is doing about, say, strategy, pricing, and so on. On top of that, Cosmetic Specialities organized the freights.

EXAMINATION RESUMED

BY MS. BOLLINGER:

Q. Have you read the depositions in this case?
A. Not all, but some.
Q. Okay. Which deposition -- okay. Which depositions did you read in this case?
A. I don't know. There are so many papers that I'm lost.
Q. Okay. Did you read the deposition of Sarah Plant?
A. No.
Q. Okay.
A. But I'm aware of what she's going through.
Q. Are you aware of any of the makeup products that Sarah Plant used?
A. No.
Q. Are you aware that Ms. Plant testified to wearing CoverGirl pressed powders?
A. No.
Q. And so you wouldn't be -- I'm sorry. Go ahead.

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A. We have no relationship with Noxell.
MS. BOLLINGER: Okay. I'm going to attach this discovery responses as Exhibit 8.
(Exhibit Number 8 marked for identification.)
MS. BOLLINGER: And then I'm going to attach this excerpt of the deposition as Exhibit --
MS. O'NEILL: I ask that you attach the whole thing, if you are going to attach anything, so I have it for context, Jordan.
MS. BOLLINGER: Yeah, I mean, we can do that, or I can send you the whole thing.
MS. O'NEILL: No, I'd like it attached so that if I [inaudible].
MS. BOLLINGER: I hope that doesn't happen. Okay.
EXAMINATION RESUMED
BY MS. BOLLINGER:
Q. Going back to those discovery responses that we were discussing, and I understand you haven't seen these before. Okay? It's not my intention to trick you. I'm just trying to see if you have any reason to disagree with them. Okay?
A. Yeah.
Q. Okay. These are the discovery responses that we looked at earlier, and these discovery responses

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say, where did this talc used in CoverGirl products come from between 1964 and 2022. That's the question. And there are some objections by the company, and it also says, a number of CoverGirl products which plaintiff claims to have used do not contain talc as an ingredient, and then it says, further answering upon -- it says, other things. Okay. I'm just trying to direct you to the point that I care about.
Further answering upon best information and belief, Noxell primarily used talc 141 in the fresh powder products at issue during the relevant time period. While Noxell cannot independently confirm the precise source of talc 141 during any particular time frame, Noxell believes that talc 141 was sourced from mines in Alabama and Montana at various times.
That's what the document says, correct?
A. Yes.
Q. And so based on your testimony and everything I've heard so far, the talc 141 that IMI Fabi sold, that would have been from China, right?
A. Well, I think --
DEFENSE ATTORNEY: Object to the form.
THE DEPONENT: -- I think we have to agree on the

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relevant period.
EXAMINATION RESUMED
BY MS. BOLLINGER:
Q. Okay. And I'm just talking about from 2001 forward. Okay?
A. And then --
Q. The talc --
A. So that is for Diana or for LLC?
Q. Okay. Between 2001 and 2004 for IMI Fabi Diana, the talc --
A. China.
Q. -- the talc 141 that IMI Fabi Diana sold would have been from China, correct?
A. From China, yes.
Q. Okay. And the talc 141 that IMI Fabi sold from 2004 to the present, that would be from China, correct?
A. Yes.
Q. Okay. From 2001 forward, IMI Fabi has never sourced any talc 141 from Alabama or Montana?
A. Never.
Q. Between 2001 and 2004, do you know if any other entity would have sold talc 141 besides IMI Fabi Diana?
A. I don't know.

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Q. Okay. And I guess the question I'm asking is, does -- did any other company, between 2001 and 2004, sell talc 141?
DEFENSE ATTORNEY: Object to the form.
EXAMINATION RESUMED
BY MS. BOLLINGER:
Q. If you know.
A. To my knowledge, honestly, I don't know, but --
Q. Okay.
A. -- 141 is one of our product.
Q. Okay.
A. The name, the product name, is not registered.
Q. I'm sorry. It's not what?
A. It's not the trade name, so everyone can use it.
Q. Mr. Fabi, do you know who Procter & Gamble is?
A. I know the company.
Q. And Procter & Gamble manufactured cosmetic talc products, correct?
A. I know Procter & Gamble. I know that it's a big company, so -- and makes also cosmetic products.
Q. Okay. I'm sharing my screen again. Do you see the document -- I'll see if I can -- all right. Give me a second.
MS. O'NEILL: Do you know the Bates number?
MS. BOLLINGER: I think this -- okay. This is actually

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a Noxell document. Let's see if I can -- it's Noxell 2187. Is that one of those you have in your --
MS. O'NEILL: Give it to him?
MS. BOLLINGER: Yeah, that would be ideal.
MS. O'NEILL: All right. I am handing the witness the document Bates stamped Noxell CG002187.
MS. BOLLINGER: Yeah.
THE DEPONENT: I can see on the screen.
MS. O'NEILL: Whichever works for you.
EXAMINATION RESUMED
BY MS. BOLLINGER:
Q. Whichever works for you. Okay.
Up here in the left-hand corner, it says, IMI Fabi Diana, LLC, and this document is also dated July 1, 2004, and I'll represent to you that this was provided to us from Noxell, who we talked about earlier. Okay?
A. Yeah.
Q. This document says, dear sir/madam, we certify the following products will meet specifications on the attached data sheet on July 2004 against your purchase order number 5600309120.
Do you see that?
A. Yes.

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Q. Okay. The customer code number here is 10200017.
Is that an IMI Fabi customer code number?
A. I don't know because the IT system and the software, today's is different, so we don't have those [inaudible] anymore.
Q. Okay. So we don't know if this is -- this number belongs to IMI Fabi or not?
A. No.
Q. Okay. The purchase order -- I'm sorry.
A. Go ahead. I'm sorry.
Q. Okay.
A. I interrupted.
Q. No, I interrupted you, Mr. Fabi, and I'm really trying not to do that, so if I do that, just let me know that you're not done speaking, and I'll try to do the same for you.
The purchase number 5600309120, that purchase order -- do you know if that is specific -- is that an IMI Fabi purchase order number?
A. No, I don't know for the same reason that I don't know the customer code.
Q. Okay. So it could be an IMI Fabi purchase number. We just don't know?
A. We don't know.
Q. The lot number right here, I think it's 24T18.

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Do you see that?
A. Yes.
Q. Okay. Do we know if that's an IMI Fabi lot number?
A. I presume so. Today we have a different system for batch number, but if I remember rightly, that is one of our batch lot number.
Q. Okay. And the weight of the bags are 50 pounds, right?
A. Yes.
Q. And then 672 bags were ordered in this -- according to this document, right?
A. Yes.
Q. Okay. Why would IMI Fabi, in 2004 -- and I'm talking about IMI Fabi Diana in this sense. Why would IMI Fabi Diana be writing directly to Procter & Gamble?
A. I'm sure that we sold the products exclusively to Cosmetic Specialities. I think that this document was sent to Procter & Gamble for convenience because I suppose that attached to this document there is the certificate of analysis.
Q. Okay. And to be clear, is this the certificate of analysis that you were discussing?

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A. It's written on top, so it's certificate of analysis, yes.
Q. Correct. And the reason I am asking is just so we can coordinate the transcript with your testimony. Okay?
So the first document was 2187, and then the second document is 2188, Noxell CG2188. Okay?
MS. O'NEILL: I've got it.
EXAMINATION RESUMED
BY MS. BOLLINGER:
Q. The next document that I'm going to show you is a similar -- a similar document to what we just looked at, and this document is Noxell CG002189. Right?
A. Yeah.
Q. Okay. And this is from IMI Fabi Diana again?
A. Yes.
Q. It's from May 24, 2004.
Again, as it relates to any of these documents discussing specifications, purchase order numbers, or customer code numbers, we wouldn't know if those numbers are specific to IMI Fabi, right?
A. I can make the previous comment, so we don't know.

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Q. Okay. So your testimony would be the same for any similar letter to the one that we've already discussed, right?
A. Yeah. We sold to Cosmetic Specialities and not to Procter & Gamble.
Q. Okay.
MS. O'NEILL: Are you going to mark that one, too, Jordan?
MS. BOLLINGER: Yeah. I'm going to show another document.
MS. O'NEILL: Sorry.
MS. BOLLINGER: It's going to all be -- I'm going to do it an exhibit.
MS. O'NEILL: Got it.
MS. BOLLINGER: I'm hoping to show another document.
EXAMINATION CONTINUED
BY MS. BOLLINGER:
Q. Okay. Mr. Fabi, I can't find what I'm referencing, but did IMI Fabi, LLC, have specific customer numbers for companies like Procter & Gamble?
A. No, because Procter & Gamble is not one of our customers.
Q. Are you aware that Procter & Gamble once owned Noxell?

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A. No.
Q. Does IMI Fabi agree that Procter & Gamble cosmetic talc products have been sold throughout the United States for decades?
DEFENSE ATTORNEY: Object to the form.
THE DEPONENT: I -- let's take the relevant period, 2001 onward. We are aware that Cosmetic Specialities sold our products to Procter & Gamble.
EXAMINATION CONTINUED
BY MS. BOLLINGER
Q. And I understand. I'm asking you about specifically Procter & Gamble. I understand that Cosmetic Specialities sold the product to Procter & Gamble.
What I'm asking you is whether IMI Fabi agrees that Procter & Gamble's cosmetic talc products have been sold throughout the United States between the 2001 to present time period?
DEFENSE ATTORNEY: Object to the form.
THE DEPONENT: I know that Procter & Gamble makes cosmetic products. I don't know what Procter & Gamble did with our products because we never had contacts with Procter & Gamble.
EXAMINATION RESUMED

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BY MS. BOLLINGER:
Q. But we do agree that Procter & Gamble was sold IMI Fabi Diana cosmetic talc between 2001 and 2004, correct?
DEFENSE ATTORNEY: Object to the form.
THE DEPONENT: Again, I can see because you showed me the certificate of analysis, but we never sold to Procter & Gamble.
EXAMINATION RESUMED
BY MS. BOLLINGER:
Q. I know, and I think that maybe I asked my question not so great. Is --
A. Probably it's my English.
Q. It might be -- honestly, Mr. Fabi, it might be my English, so I just want to make sure we're on the same page. Okay?
MS. O'NEILL: Why don't you ask the question, and we'll have it translated and let him answer and see if that helps clear it up, Jordan.
MS. BOLLINGER: Yeah, let me try to fix the question. If he still doesn't understand, then we'll ask the translator to get involved. Okay?
MS. O'NEILL: Okay.
EXAMINATION RESUMED
BY MS. BOLLINGER:

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Q. Based on the documents we looked at a few minutes ago, including the certificate of analysis, right, would you agree with me that Procter & Gamble cosmetic talc products may have contained IMI Fabi cosmetic talc?
DEFENSE ATTORNEY: Object to the form.
THE DEPONENT: I suppose after having seen our certificate of analysis.
EXAMINATION RESUMED
BY MS. BOLLINGER:
Q. Okay. Does IMI Fabi have any reason to believe that Procter & Gamble cosmetic talc products were not sold in South Carolina?
DEFENSE ATTORNEY: Object to the form.
THE DEPONENT: I have no idea what Procter & Gamble is doing with its product.
EXAMINATION RESUMED
BY MS. BOLLINGER:
Q. Does IMI Fabi agree with me that Procter & Gamble is a large company?
A. Yes.
Q. Does IMI Fabi agree with me that Procter & Gamble has had a presence in the United States from at least 2001 to the present?
DEFENSE ATTORNEY: Object to the form.

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THE DEPONENT: Being a large company, yes, but personally, I never bought Procter & Gamble product in United States, so I --

EXAMINATION RESUMED

BY MS. BOLLINGER:

Q. Okay. And so what I'm trying to ask is that -- does IMI Fabi agree with me that Procter & Gamble has sold cosmetic talc products since at least 2001?

DEFENSE ATTORNEY: Object to the form.

THE DEPONENT: As I said, I don't know what Procter & Gamble did with our products, so, you know, I have no direct information.

EXAMINATION RESUMED

BY MS. BOLLINGER:

Q. Okay. And I understand that. Okay. So is the response to my question that you cannot agree with me that Procter & Gamble has sold cosmetic talc products since at least 2001?

DEFENSE ATTORNEY: Object to the form.

MS. BOLLINGER: I'm sorry. Is there -- hold on. Is there a reason why the translator is responding right now?

MS. O'NEILL: I objected to the form. That was me.

MS. BOLLINGER: Okay. I thought I heard the translator

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saying something because I see him nodding his head and shaking his head.

MS. O'NEILL: I objected to the form, but I was going like this during, Jordan, so maybe you didn't see it, but I objected to form.

MS. BOLLINGER: Okay. Thank you.

THE DEPONENT: I don't know -- I don't know.

EXAMINATION CONTINUED

BY MS. BOLLINGER:

Q. You don't know if Procter & Gamble has sold cosmetic talc products since 2001?

A. I don't know because I don't have knowledge on what Procter & Gamble is -- was doing, is doing. I suppose because I know Procter & Gamble --

MS. O'NEILL: Don't guess.

MS. BOLLINGER: Okay. Elizabeth, please don't direct him --

MS. O'NEILL: I'm allowed to instruct my witness not to guess, Jordan.

MS. BOLLINGER: I understand, but I just ask that if there is an objection to the form or something like that, then you can object. There is -- I just feel -- I'm not in the room with you guys because I didn't know this was an option, so it just feels a little bit like you're helping him

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out right now.

MS. O'NEILL: I am allowed, under the rules in South Carolina, to instruct my client not to guess. That's not an objection. It's not a form objection. It's an instruction I'm allowed to give my client under the rules in South Carolina. I've given it. I'm done.

EXAMINATION RESUMED

BY MS. BOLLINGER:

Q. Mr. Fabi, do you understand that you're not supposed to guess in a deposition?

A. Can you repeat?

Q. Do you understand that you are not supposed to guess at answers during a deposition?

A. I didn't know. Now I know.

Q. Okay. Does IMI Fabi have any reason to believe that its cosmetic talc was not contained in products sold in the State of South Carolina?

DEFENSE ATTORNEY: Object to the form. Can you restate -- can you say the question again, Jordan, for me?

MS. BOLLINGER: Yeah.

EXAMINATION RESUMED

BY MS. BOLLINGER:

Q. Does IMI Fabi have any reason to believe that --

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I'm rephrasing it. How about that to make it more clear.
Does IMI Fabi have any reason to believe that products containing its cosmetic talc were not sold in the State of South Carolina?

DEFENSE ATTORNEY: Object to the form.

THE DEPONENT: I don't know.

EXAMINATION RESUMED

BY MS. BOLLINGER:

Q. I'm cutting out questions. Okay?

MS. O'NEILL: We're all for that.

EXAMINATION CONTINUED

BY MS. BOLLINGER:

Q. Okay. I'm going to share some more documents with you.

MS. BOLLINGER: And did we -- I don't know if I actually did the attaching of the Procter & Gamble documents, but we're going to go ahead and attach those as Exhibit 10.

(Exhibit Number 10 marked for identification.)

MS. O'NEILL: What are the Bates numbers for those?

MS. BOLLINGER: Good question. I think we had -- well --

MS. O'NEILL: I have 2187 to 2189 in my notes. I just

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want to know if that's correct.
MS. BOLLINGER: Yeah, that's correct. I think that's right.
EXAMINATION RESUMED
BY MS. BOLLINGER:
Q. Okay. I have to ask you about -- are you aware that some affidavits have been produced by your company in this matter?
A. Yes.
Q. Okay. Can you see my screen okay?
A. Yes.
Q. All right. Have you seen this affidavit before?
A. Yes.
Q. All right. This is the affidavit of Michael Brown in support of specially appearing defendant IMI Fabi Diana, LLC's motion to dismiss. It says that he is the former general manager of IMI Fabi Diana and current caretaker.
What is -- what is his responsibilities as the caretaker of IMI Fabi Diana, LLC?
A. He is looking after the assets. Essentially, the property.
Q. Okay. Do you see this paragraph I'm highlighting on page 2?
A. Yes.

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Q. Okay. And it's paragraph 23 specifically.
We talked a little bit about FOB earlier?
A. Yes.
Q. Can you just tell me what EXW is?
A. Ex Works.
Q. What is -- you said exports?
A. Ex Works.
Q. What exactly is that?
A. The same -- more or less, is the same meaning of FOB. It means that the material was sold from the factory.
Q. Okay.
A. And freight was organized by someone else.
Q. Okay. And so this paragraph 23 says -- references the buyer multiple times, correct?
A. Yes.
Q. Okay. And that buyer would be Cosmetic Specialities?
A. Yes.
Q. Okay. Is there a reason why IMI Fabi Diana did not state that the buyer was Cosmetic Specialities?
DEFENSE ATTORNEY: Object to the form.
THE DEPONENT: I have no idea. I'm not Mr. Brown.
EXAMINATION RESUMED

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BY MS. BOLLINGER:
Q. Okay. The next paragraph says, consequently Fabi Diana has never delivered any products in the State of South Carolina.
Do you see that in paragraph 24?
A. Yes.
Q. Is Fabi -- is Fabi Diana's position that because of the arrangement of the shipment of products in paragraph 23, is Fabi Diana's position is that arrangement means that it has never delivered any products in South Carolina?
A. We sold [inaudible] our facility, and we have no idea where the product was shipped to.
Q. Okay. Did Fabi Diana ever -- okay. Did Fabi Diana ever ship any products, whether it be FOB, EXW, to South Carolina?
DEFENSE ATTORNEY: Object to the form of the question. Jordan, I'm going to ask you to rephrase because -- and I know you don't want speaking objections, but I'm going to tell you I think the way you phrased it, it's legally inaccurate, so it's not a question that I think he can answer given that English isn't his first language. So I'm going to object to the form and ask you to rephrase. If you want me to, I'll send you an e-mail and

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tell you why I'm saying that. I'm not coaching the witness.
MS. BOLLINGER: Okay. Yeah, you can go ahead and send me that e-mail, I appreciate it, but --
MS. O'NEILL: I'm going to send it to you right now.
MS. BOLLINGER: Okay.
MS. O'NEILL: We can pause.
MS. BOLLINGER: Why don't we take a break?
MS. O'NEILL: We don't have to go off camera. I'll send it to you right now. I've got the e-mail up right here.
MS. BOLLINGER: Okay.
MS. O'NEILL: All right, Jordan, I just sent it.
(Discussion held off the record.)
EXAMINATION RESUMED
BY MS. BOLLINGER:
Q. Maybe this is a better question.
Did -- has Cosmetic Specialities ever arranged --
MS. BOLLINGER: Sorry, Elizabeth. I'm trying to make it match up with your e-mail. Hold on.
MS. O'NEILL: I can tell you the phrase that I used. Do you want me to do that?
MS. BOLLINGER: Why not?
MS. O'NEILL: I had to look it up, Jordan, to be real frank. I had to look this up. You don't have to

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DEFENSE ATTORNEY: Object to the form.
THE DEPONENT: I believe that we are certified according to ISO standards, so 9001, 14001, 45001, and others, but these three are the most relevant. So I believe that we were asked to improve the testability of our documents, and since then we have started to release such document specifically addressing to customer.
MS. BOLLINGER: Okay. I'm going to attach this one -- this letter as Exhibit 16.
(Exhibit Number 16 marked for identification.)
EXAMINATION RESUMED
BY MS. BOLLINGER:
Q. Did IMI -- did Cosmetic Specialities ever rebrand any IMI Fabi talc products under their name?
A. I don't know.
Q. Okay. And I think what I'm trying to get at is, Cosmetic Specialities organizes the transportation of IMI Fabi's talc to the customer. Right? So Cosmetic Specialities would not have come in and made sure the bags said Cosmetic Specialities on them, right?
A. Well, you can say that when there is a direct shipment to a customer, but Cosmetic Specialities

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has its own warehouse, so what is happening in its warehouse we don't know.
Q. Okay.
A. We never visit the warehouse.
Q. Would you know if Cosmetic Specialities ever tested any IMI Fabi Diana or any IMI Fabi, LLC, cosmetic talc products?
A. Yes, I -- we -- from time to time, we got information that our talc was tested and was approved.
Q. Was it tested for the presence of asbestos --
A. Yes.
Q. -- by Cosmetic Specialties?
A. I think so. I think so, but we don't have certificate of analysis from Cosmetic Specialities.
Q. Do you know if there are certificates of analysis from Cosmetic Specialties that exist in regards to IMI Fabi's cosmetic talc?
A. I don't know.
Q. Do you have any documents showing that IMI Fabi's talc was approved as asbestos-free by Cosmetic Specialities?
DEFENSE ATTORNEY: Object to the form.
THE DEPONENT: Can you rephrase? Because I didn't

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understand.
EXAMINATION RESUMED
BY MS. BOLLINGER:
Q. Yeah.
So do you have any documents or -- do you have any documents stating that Cosmetic Specialities has tested IMI Fabi's talc -- cosmetic talc products and determined --
A. No, I don't have any document.
Q. No documents. Okay.
But you know that they tested the products, correct?
A. Yes, but from time to time I spoke to Ron Grexa.
Q. Ron Grexa was your contact with Cosmetic Specialities?
A. Ron Grexa is the owner of Cosmetic Specialities.
Q. Understand.
MS. BOLLINGER: Sorry. Hold on one second. Let's go off the record for a second.
THE VIDEOGRAPHER: Off the record at 12:36 p.m.
(Recess taken.)
THE VIDEOGRAPHER: On the record 12:40 p.m.
EXAMINATION RESUMED
BY MS. BOLLINGER:
Q. Okay. Mr. Fabi, I only have a couple more

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questions for you.
Is IMI Fabi, LLC, a member of the CTFA?
A. No.
Q. Has IMI Fabi, LLC, ever been a member of the CTFA?
A. No.
Q. Has any IMI Fabi entity ever been a member of the CTFA?
A. No.
Q. Is IMI Fabi a member of the Industrial Minerals Association?
A. Yes. Now its name is Essential Mineral Association, so I give you an update.
Q. Oh, thank you.
How long has --
A. And --
Q. Go ahead. I'm sorry.
A. And it is -- you have -- let's keep the name Industrial Mineral Association, so it's EMA US, and it's IMA Europe. There is no Europe, but in case of US, there was US.
Q. Okay. So how long has IMI Fabi been a member of the Industrial Minerals Association?
A. I think since 2001 or very close.
Q. Okay. I know today was your first US deposition.

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& Gamble by IMI Fabi Diana that we looked at earlier, those as well were in IMI Fabi -- IMI Fabi Diana's position. Those were found in -- go ahead.

THE DEPONENT: Yes.

MS. O'NEILL: I think we can stipulate to that.

MS. BOLLINGER: Okay. I'm --

MS. O'NEILL: He needs to do a quick check back, but I believe we can stipulate to that.

MS. BOLLINGER: Okay. I understand.

EXAMINATION RESUMED

BY MS. BOLLINGER:

Q. So at least between 2001 and 2004, IMI Fabi Diana was aware that Procter & Gamble was a customer of Cosmetic Specialities, correct?

A. Yes.

Q. Okay. And IMI Fabi, LLC, has, in fact, sold industrial talc into the State of South Carolina, correct?

A. IMI Fabi, LLC, has sold industrial talc to South Carolina.

MS. BOLLINGER: Okay. That's all I have.

MS. O'NEILL: We'll read and sign.

THE VIDEOGRAPHER: Can we go off the record?

MS. O'NEILL: Yeah.

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THE VIDEOGRAPHER: Off the record 1 p.m.

(Deposition concluded at 1:00 p.m.)

- - -

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CERTIFICATE

I, the undersigned, Traci L. Barr, RPR, Notary Public in and for the State of South Carolina, do hereby certify that the deposition of CORRADO FABI was taken on the 15th day of February, 2023, that the within deponent was sworn to tell the truth, and that the foregoing is an accurate transcription of the testimony taken under oath; that all exhibits entered herein are attached hereto (if requested by counsel) and made a part of this deposition.

I further certify that I am neither counsel nor solicitor to any of the parties in said suit, nor interested in the event of the cause.

In witness whereof, I have hereunto set my hand and seal this 16th day of February, 2023.

Traci L. Barr, RPR
Notary Public for South Carolina
My Commission Expires: 4/24/29

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ERRATA SHEET

Sarah J. Plant, et al v. Avon Products, Inc, et al

DO NOT WRITE ON TRANSCRIPT - ENTER CHANGES BELOW

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Under penalties of perjury, I declare that I have read my deposition held on February 15, 2023, and that it is true and correct subject to any changes in form or substance entered here.

_____ _____
CORRADO FABI Date

STATE OF SOUTH CAROLINA
IN THE COURT OF COMMON PLEAS
COUNTY OF RICHLAND

SARAH J. PLANT AND PARKER PLANT,

Plaintiffs,

vs. C/A No.: 2022-CP-40-01265

AVON PRODUCTS, INC., ET AL.,

Defendants.
_____/

MICHAEL L. PERRY AND LONNIE L. LONG,

Plaintiffs,

vs. C/A No.: 2023-CP-40-04072

AMERICAN INTERNATIONAL
INDUSTRIES, ET AL.,

Defendants.
_____

H E A R I N G
BEFORE THE HONORABLE
CHIEF JUSTICE (RET.) JEAN TOAL
_____

DATE TAKEN: Friday, April 26, 2024

TIME START: 11:44 a.m.

TIME END: 3:24 p.m.

LOCATION: Richland County Judicial Center
1701 Main Street
Columbia, South Carolina

REPORTED BY: SHERI L. BYERS, RPR
EVERYWORD, INC.
P.O. Box 1459
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I N D E X

PAGE

MOTIONS BEFORE THE COURT

PLANT MOTIONS 4
PERRY MOTIONS 82

CERTIFICATE OF REPORTER 139

E X H I B I T S

COURT'S	DESCRIPTION	MARKED
1	October 2022 Emails Between Jordan Bollinger and Elizabeth O'Neill	62

(The exhibit was retained by the Clerk of Court.)

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P R O C E E D I N G S

- - -

THE COURT: All right. The next matter is in the case of Sarah J. Plant and Parker Plant against Avon Products.

This is 2022-CP-40-01265. This is Plaintiff's Motion for Relief from Judgment under Rules of Civil Procedure 60(b) and a Motion for a New Trial.

Ms. McVey.

MS. MCVEY: Your Honor, you remember Rachel Gross from the Plant trials.

THE COURT: Yes, I do.

MS. MCVEY: She's going to argue this motion.

THE COURT: Great.

MS. GROSS: Nice to see you again, Judge. Just for the record, my name is Rachel Gross on behalf of Plant today.

THE COURT: Speak up some, Ms. Gross.

MS. GROSS: Yes. And I can get going kind of fast so please don't hesitate to shoot me a look to slow down.

Your Honor, this, as you remember, we tried

the Plant case to verdict last year. Plaintiffs received a verdict against Whittaker Clark & Daniels. Did not receive one against defendant IMI Fabi.

The two IMI Fabi entities that were present on the verdict form were IMI Fabi Diana and IMI Fabi LLC, U.S.A. had been dismissed by agreement before we went to verdict.

This is one of those motions that I am not happy I had to file. We are aware that the allegations and what we've put down in paper in writing are serious.

But everything that we have found out since the close of that trial has put us in this position. And unfortunately, or luckily for us, there is a Supreme Court of South Carolina case directly on point, which is the Chewning v. Ford case. I'm sure you remember it.

But what we have to really decide here today in this motion is whether IMI Fabi's intentional withholding of documents, intentional concealing of documents throughout the discovery phase and even throughout the trial in the Plant case last year, amounts to extrinsic fraud, which is therefore fraud on the

Court warranting a new trial.

And the Chewning case -- and that's C-H-E-W-N-I-N-G -- says yes. The Chewning case, which I should have said before is 354 SC 72.

And it's not actually just the Chewning case that said it. Lucky for us, there's seven other courts that have agreed with Chewning that have said intentionally concealing and withholding documents during the discovery phase of a trial is fraud on the court.

The Second Circuit, the Fourth Circuit held it twice, the Fifth Circuit, the Sixth Circuit, the Ninth Circuit, District of Columbia and the Eastern District of Wisconsin all agree.

And essentially what happened in Ford is that Ford hired an expert who testified at trial about some computer model related to the car at issue in the accident. Chewning lost; Ford won.

Posttrial, there were two documents that Chewning was able to discover, that he argued would have enabled his ability to attack the credibility of the car model or the expert.

And the Court agreed ultimately. The Supreme Court of South Carolina agreed that he could have and should have been able to attack

the reliability of the car model on cross-examination from the withheld documents.

And that's actually exactly what's happened here except I wish I was only dealing with two withheld documents. How we got here with IMI Fabi is that -- I don't know if you remember, but there was an attorney for IMI Fabi who actually sat in the back of the courtroom through the Plant trial.

THE COURT: Yeah, that was the guy that was the holder of all the evidence.

MS. GROSS: That's correct.

THE COURT: What was his name?

MS. GROSS: Mike Summerville.

THE COURT: Summerville.

MS. GROSS: Mr. Summerville, yes, ma'am. I know you read the brief.

Just for the record, Mr. Summerville sat in the back of this courtroom and watched the entire Plant trial. He also attended Corrado Fabi's 30(b)(6) deposition when he was finally presented a mere six days before trial started. We were actually in here arguing motions to strike Daubert's, all that stuff, for the Plant case and the Payne case at the same time, the

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same day that Mr. Fabi was being deposed elsewhere.

He attended that deposition. And what we've learned since the close of the Plant trial is that in 2019, Mr. Summerville, while being the attorney of IMI Fabi, went onto the IMI Fabi Diana plant in Diana, New York, Diana Township, New York.

And IMI Fabi, just again so the record is clear, was the first corporate iteration in the United States of IMI Fabi that produced, manufactured, sold cosmetic talc.

Mr. Summerville went to the Diana plant premises in 2019, long after IMI Fabi had been sued for the first time in asbestos talc litigation, and removed boxes of documents. So many documents that the Plant manager of the IMI Fabi Diana Plant has since testified to me personally that if he went through every single piece of paper that was in those boxes, it would have taken him weeks to go through them.

And what's happened since the close of the Plant trial, as I'm sure Your Honor saw, because we walked through some of them in our brief, and I'm going to walk you through the most important

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ones today that I believe are in point, is that since the close of the Plant trial, all of these documents that conveniently fall within the years that the Diana Plant was in operation have been sort of slowly leaked piecemeal in various cases that my office has, in cases buckshot filed, I mean, there's no rhyme or reason to how they've slowly leaked these documents.

But what the common trend here is that several of them, if not hundreds of them, relate to the very products that Sarah Plant testified she used in her deposition.

We did not have them in discovery. They were never produced to us. We asked for them. They were obligated to produce them pursuant to the standing South Carolina asbestos discovery order. And then their attorney sat in this courtroom and watched us try this case and watched Ms. O'Neill close on the fact that we had no documents.

So the first thing I want to do is I want to walk you through, like I said, just a couple -- I know you've read the brief, but I want to talk about a couple of them.

THE COURT: I also read the closing

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arguments of both counsel to try to get some feeling for what the jury was -- what was projected to the jury in arguing about this matter.

MS. GROSS: Yes, ma'am. I believe we attached some snippets of it that we refer to in our brief in Exhibit 24. I'm going to hit some of that as we go along.

The first item I want to talk to you about is Revlon. Revlon was a product -- of course they made makeup. Sarah testified that she used Revlon products. I don't even know that we talked about Revlon at all at trial. If I remember, our entire trial was about Procter & Gamble as it relates to IMI Fabi, Procter & Gamble and CoverGirl, and here's why.

Because before trial, IMI Fabi produced five invoices, five pieces of paper that referenced Revlon in discovery. Five. I'm fairly certain two or three of those five pieces of paper referenced the same one shipment.

So the information that we were provided, what we thought was in good faith in discovery, was they didn't really have much relationship at all with Revlon. So I can't -- how can I even

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establish causation with an expert witness with two shipments of Revlon? Let alone cross-examine Mr. Fabi or their experts or anybody at trial.

What we've learned since the Plant trial has ended, which we attached as sort of a composite exhibit, as Exhibit 20 to our motion, is that IMI Fabi has produced hundreds and hundreds of invoices for talc shipments. And they're going to come up here and they're going to tell you -- they're going to belabor the point, our only customer is Cosmetic Specialties. They're the only person we sold cosmetic talc to.

That is the half truth of the century.

These hundreds and hundreds and hundreds of invoices, if you look in the body of the invoices for many of them, it explicitly says "Placard Revlon," which means that IMI Fabi, yes, they were shipping this talc to Cosmetic Specialties to distribute, but they knew it was for Revlon. Had they searched their documents, had they done what they were supposed to do in discovery, they would have seen this is a relationship with a codefendant, we need to

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produce this.
THE COURT: Let me ask you this.
MS. GROSS: Yes, ma'am.
THE COURT: The statement that Corrado Fabi made in testimony was that -- he was asked about Cosmetic Specialties, and he testified either at trial or on his deposition, I can't remember which one right now, that they didn't have much on Cosmetic Specialties because Cosmetic Specialties guarded very closely their customer list.
Did it turn out that the documents -- that the hundreds of pages of Cosmetic Specialties documents -- I want to know two things -- number one, were those documents prepared by IMI Fabi to list shipments to Cosmetic Specialties? And number two, did those documents contain specific lists of the kinds of the customers to whom Cosmetic Specialties were going to send the things like Revlon or Loreal or whatnot?
MS. GROSS: So the answer to the first part of your question is, yes, they were prepared by IMI Fabi. These were IMI Fabi's invoices showing their sales to Cosmetic Specialties. They were produced by IMI Fabi. Anything that

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we attached to our motion as exhibit will bear the IMI Fabi -- whatever case it was produced and Bates-stamp on the bottom.
THE COURT: Right.
MS. GROSS: That means it came from IMI Fabi's own records. They admitted they're authentic. They prepared. This was their invoice to Cosmetic Specialties.
The answer to your second question is many of them do, in fact, indicate the customer in just like --
THE COURT: Now the reason apparently for that, we've explored some of this to some extent, each customer has its own little peculiarities about which of the various talcs they offer, they want to take and so forth and so on. And so the listing of a customer -- of the end customer would be a means of identifying, along with identification numbers, the kind of talc, what IMI Fabi was shipping and why it was shipping it because of the specifications, not just the Cosmetic Specialties but of the end manufacturer of the cosmetic.
MS. GROSS: That's exactly right. Now,

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what they're going to tell you is, they've testified -- well, I will tell you, I deposed Corrado Fabi several times since the Plant trial. I've also deposed Mr. Grexa, who is the owner of Cosmetic Specialties.
And I suspect that they're going to come up here and they're going to tell you is he did confirm he was quite protective of his customer list. But that doesn't negate the fact that IMI Fabi had in their own records ways to provide information about customers of IMI Fabi talc because of exactly what Your Honor just keyed into. These talc -- these product manufacturers are very specific.
I'm sure you saw some of the exhibits we attached. Product specification for explicit grades of talc, for explicit products. I mean, this wasn't the kind of thing where they could wholesale shoot off whatever they wanted.
THE COURT: Let me ask you this: You mentioned Revlon. She used CoverGirl, Avon, Clinique, Estee Lauder, Revlon, Loreal. Those were the primary things she used.
In the material that you have subsequently discovered, was there designation on these

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IMI Fabi-generated invoices of all of these other cosmetic manufacturers?
MS. GROSS: Yes. And not just invoices. Material specifications. When we get to the P&G section -- I'm getting a little bit ahead of myself. But the P&G section was Exhibit 24 to our motion. It was actually one where we took sort of like a screenshot of it and plopped in right to the body of the motion with actual document. It's a couple of pages. So, yes, is the answer to your question.
So in terms of Revlon, I think I've kind of covered that. We didn't get to even attempt to establish causation with Revlon. I certainly didn't get to cross Mr. Fabi when he took the stand and in bold fashion said "IMI Fabi has no idea who their customers of their talc are."
And they still -- they're going to tell you that today. I just heard him testify in a deposition yesterday, and he still says the same thing. Despite all evidence to the contrary. I could not cross-examine him on at least Revlon. Now, that's just Revlon.
The next thing that's -- and it's sort of a big one. And I'm sure you saw in their

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opposition, they focus a lot on it. It's this Distribution Agreement between -- there's one between IMI Fabi Diana and Cosmetic Specialties. I know when IMI Fabi Diana was sort of phased out, and IMI Fabi LLC began distributing the talc. They resigned the Distribution Agreement with Cosmetic Specialties, so there's two. Neither were produced, to be clear.

The first Diana one -- you'll see they were attached together as a Composite Exhibit 21 to your motion. The first one, that Diana one, it talks about the various territories and it is just the entire United States of America. It's very broad.

When LLC starts being the one to do business with Cosmetic Specialties, there is a page in the Distribution Agreement where it lists out the specific states. IMI Fabi, LLC, and Cosmetics Specialties wanted Target to sell IMI Fabi talc. But what's odd about it is if you look at it, in addition to all these states, and there's a couple of companies they list in Canada, there's one product manufacturer that gets it own special call out. And it specifically lists Avon at it's Morton Grove,

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Illinois, manufacturing plant. Which is where they made powder products. Which are products Sarah testified she used.

And why -- I don't know if you remember from Ms. O'Neill's closing, I do because I actually will give compliments where it was due. I thought it was great, and I kind of wanted to steal it. She put up a slide, and she put on the slide all of the various Plaintiff's exhibit numbers. I don't know if Your Honor remembers this. This is very effective, and she started pulling down all the exhibit numbers that had nothing to do with IMI Fabi.

She took down all of the exhibit numbers that had to do with Avon. And she told the jury, took them all down, this has nothing to do with us.

They are the only company that was parsed out on its own that IMI Fabi and Cosmetic Specialties had enough of a relationship with to distribute IMI Fabi talc to get its own call out in this Distribution Agreement.

Similar to Revlon as well. Tons of invoices have since been produced, wherein the same way that they note in the body of the

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invoices, put a placard on this, it's for Revlon, put a placard on this, it's for Avon.

Now, they're going to come up here and they're going to tell you, well, those invoices actually say it was for Avon Brazil so we didn't have to produce those. But that's not -- that's not how this works. Maybe I don't get those into evidence at trial, but what they're obligated to produce under the standing order in this state in asbestos litigation is a relationship that they have with any codefendant.

We also asked for it in a 30(b)(6) notice. They produced nothing. We had no clue that they had any relationship with Avon whatsoever. I couldn't even do Avon discovery that I'm sure Mr. Elliott, if he was still here, would have agreed he would have indulged me on. I knew nothing.

And then Ms. O'Neill closed on the fact and told the jury "We have nothing to do with Avon."

And what makes the Distribution Agreement extra bad, to be honest, we asked for it twice. We served an interrogatory that was in the body of our motion, in November of 2022, saying

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produce all documents you have or identify all agreements you have or contracts you have with any third-party entities to sell or distribute your talc. And they said none.

Then we served the deposition notice a few months later, and we asked again. Got no documents.

We learned that there was a Distribution Agreement for the first time in the deposition on February 15th, six days before trial is supposed to start. And so Ms. Bollinger actually -- the one thing she could do while she was sandbagged with it, and she marked it as an exhibit to the deposition and said "I'm going to mark this as an exhibit. Produce it."

They never produced it.

So we asked for it twice. It got withheld twice.

P&G is the one that I said is sort of I guess extra relevant because that was essentially what our trial wound up being. And I actually brought, just because it can get a little technical, I brought a hard copy to walk Your Honor through it, if you will indulge me.

THE COURT: Yes.

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MS. GROSS: It's Exhibit 27 to our motion, just for the record.

So as I mentioned, this we marked as Exhibit 27 to our motion. We only put one sort of snippet in the body of the brief. But if you'll indulge me, I want to just walk you through -- it's just a couple of pages -- just so you understand how many different ways that withholding of this document prohibited us from doing a cross-exam, from doing discovery, from having any sort of a fair trial.

If you'll notice at the top, I know it's 2001, so I don't -- honestly, I don't even know how to use a fax machine. But this is a fax machine stamp at the top for April 29, 2001. You see it's on every single page. So this was one fax that was sent.

The first page says "Procter & Gamble raw material specification," and it's for talc 1623 type.

If you turn -- you can skip the next page, but the third page is actually what we put the screenshot of into the motion. It's on Procter & Gamble letterhead at their Hunt Valley, Maryland, location, dated March 27, 2001, to

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Mr. Grexa, Cosmetic Specialties, who IMI Fabi has testified over and over again was their sole distributor of talc.

And it says, "Please share the attached revised specification for talc 1623."

So the raw material specification we just looked at.

"If you are a distributor, please forward these specifications to the actual producer and have them sign this acknowledgment letter."

And then under "Specifications accepted by" you see signature of Michael Brown, dated April 19th, 2001.

Michael Brown was the Diana plant's plant manager. He still is to this day. He calls himself a caretaker sometimes, but he is still managing the Diana plant to this day.

So we see here that IMI Fabi specified a specific kind of talc for P&G for exactly what Your Honor keyed into earlier, which is that these talc companies were very specific about what they were using. Excuse me.

And then Michael Brown of IMI Fabi Diana signed off on it.

And then if you go to the last page, the

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fax transmission cover letter, showing that this fax was indeed sent to Michael Brown of Fabi, which at the time was IMI Fabi Diana, from Ron Grexa.

And it says, "Mike, please review and approve with comments, if necessary."

This document was never produced to me before Plant. Ever. I saw this document, and I'll represent to you on the bottom right you will see where it says IMI Fabi, Elmer and J. and then some Bates pages on each of these. This was produced to me in a New Jersey case in January of this year for the first time.

This is a document that they had in their possession as of 2019. And I can look at this document and think of about four different ways I would have loved to cross Mr. Fabi with it on.

From little things like he took the stand -- Exhibit 1 to our motion, but in the trial transcript of Plant, it's page 1208, 15 through 17. He took the stand and said, "I didn't know P&G had a facility in Hunt Valley, Maryland."

Then in Ms. O'Neill's closing, which is page 12 of our motion --

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THE COURT: Let me stop you there.

MS. GROSS: Yes.

THE COURT: Corrado Fabi testified as the 30(b)(6) representative for IMI Fabi not just as the owner; am I right?

MS. GROSS: That's correct. He testified as the 30(b)(6) on behalf of IMI Fabi Diana, LLC, and at deposition USA as well.

THE COURT: Right. So as the 30(b)(6) representative, he would have known about this -- or should have known about this.

MS. GROSS: Should have known. Should have known, yes.

THE COURT: All right.

MS. GROSS: Okay. The next point, Ms. O'Neill in her closing, we put it in our motion, but on the trial transcript it's pages 2024 to 2025.

THE COURT: Hold --

MS. GROSS: We attached it.

THE COURT: I read her closing argument again this morning.

MS. GROSS: Good.

THE COURT: And I marked it up.

All right. I got it. What page are you

on?
MS. GROSS: Yes, ma'am. 2024.
THE COURT: All right.
MS. GROSS: She says, "Plaintiff suggested to you that these," meaning Plaintiff's exhibits "show IMI Fabi talc getting to Hunt Valley Maryland, where P&G was manufacturing CoverGirl. But do they really?"
I'm pretty sure that's exactly what this document shows. Or at least some sort of a coherent argument could be made that that's exactly what this document shows. But that's not enough. She then doubles down on that on the next page, on 2025, I believe, and she says -- or actually I take that back.
On 2027, Your Honor, of her closing.
THE COURT: All right.
MS. GROSS: She says to the jury, "Where is the P&G evidence? There's no documents."
I don't know that I need to belabor this point any more, but this is a P&G document in a trial that was withheld intentionally while their attorney sat in the back of this courtroom and watched her give a closing on the fact that we have no documents when he had documents just

like this back in his office.
And if I were to sit here, Your Honor, and go through every single document just like this that's been produced to my office since the Plant trial, this would be a very long hearing indeed. This is just one example.
Another product that she testified she used, Ms. Plant did, was Estee Lauder. Exhibit 18 to our motion. IMI Fabi is going to come up here and they're going to want to minimize this document, and they're going to say, well, it was just two samples of IMI Fabi talc being sent to Estee Lauder. That doesn't evidence that our talc was actually in Estee Lauder so it wouldn't have changed the verdict.
This document being withheld prohibited us from doing several things. The first of which is we couldn't do any discovery on the fact that there was any relationship between Estee Lauder and IMI Fabi because we didn't know there was one.
And what's interesting that they didn't include in their motion is that since the Plant trial, I have done discovery on Estee Lauder about their relationship with IMI Fabi because

of this document.
And just this week in the Perry case, which is the other motion we have to argue later, Estee Lauder, just this week, produced over 1800 pages of documents, including raw material specifications for IMI Fabi talc, communications with its distributor about IMI Fabi talc, all the things we were completely prohibited from discovering before the Plant trial because they withheld just one document.
I couldn't cross Mr. Fabi with it at trial when he took the stand and boldly testified "We have no clue where our talc goes." This document shows direct communication between IMI Fabi and Estee Lauder. It doesn't matter that the document references talc samples. I would have loved to have cross-examined him on that since that was one of their entire themes of the trial. It was intentionally withheld, and we couldn't cross on it.
Sarah also used Loreal. It's Exhibit 19. Since the Plant trial, we've had document upon document produced showing a relationship with Loreal. The one we attached to this motion references Loreal similar to the Estee Lauder --

excuse me -- reference Loreal's request for IMI Fabi's talc 1629 to be an approved talc.
The Court knows where I'm going at this point. I don't want to belabor it. But that's about five different products that we not only couldn't -- didn't even know there was a relationship to do discovery on, let alone completely barred and prohibited from crossing Mr. Fabi on it at trial.
I think what you're going to hear particularly about the Distribution Agreement is they're going to come up here and they're going the cite this case Raby -- I think I'm pronouncing it right. I hope I am. But it's R-A-B-Y, v. Orr, O-R-R, 594 SC 2d 478.
And they're going the cite this case to you to support the notion that we should have moved to compel. They told us in the Distribution Agreement, we should have moved to compel it. Even if we put aside the fact that it was six days before trial for the first time when they surprised us with it, what the Raby case actually contemplates is something pretty different than what happened here.
Do you want me to wait so she can pull up

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the case?
THE COURT: She'll pull it up.
MS. GROSS: What in happened in Raby, another case that Your Honor concurred on, is that it was a complicated business situation. One of the parties gave a deposition, alerted the other party to some document. The other party didn't really do anything about it. Didn't do anything about it. They took no action. They didn't try to obtain it. And then they entered into a settlement agreement.
And then after the settlement agreement was executed, the party wanted to come back and seek relief under 60(b) for the fact that he didn't have this evidence. And the Supreme Court rightfully came back and said, no, you knew about it and you didn't do anything.
We asked twice to obtain a document such as the Distribution Agreement. Twice. The first was the interrogatory where we were lied to and told, no, we have nothing.
And then the second time was when Ms. Bollinger attached it as an exhibit to the deposition and said, "Well, produce it. I'm marking it as an exhibit. Send it the court

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reporter." And they never did. That's not at all what happened in Raby v. Orr.
What actually controls that is the Chewning case that we talked about at the beginning. Right? Because you remember, Your Honor, Ford argued actually in that case discovery abuse should be ferreted out during litigation.
And the Court disagreed.
A couple of arguments I think -- I'm sure you're going to hear a lot. I suspect you're going to hear a lot of trying to minimize the documents. Perhaps that's not surprising. But there's a couple of big things I want to hit on that I think you're going to hear from IMI Fabi when they take their turn after I'm done.
The first of which is they're -- they're still going to want to argue to Your Honor that you don't have jurisdiction over this case. It's been tried to verdict. That issue, you had a hearing on it, you denied it. They're still going to come up here and argue to Your Honor that you don't have jurisdiction.
And so I feel like I'm in a position where I have to make even the smallest record about it. Even though I'm not sure that that issue at

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this point is even remotely right. But what I will tell Your Honor is that the affidavit that they submitted in support of their motion to dismiss in Plant is full of lies.
One of the things that they put in the affidavit is, oh, we had -- we didn't test any of our talc in South Carolina. That's another way we don't have a relationship with the state. And what we've discovered since Plant is that the only lab in the entire United States that IMI Fabi has utilized to test its talc for the presence of asbestos, until they hired R.J. Lee in 2023, is here in South Carolina. Hundreds and hundreds and hundreds and hundreds of tests have been done.
THE COURT: What's the name of the lab?
MS. GROSS: ES -- the letter E, the letter S, Labs.
So I don't necessarily want to get into the jurisdictional argument. I just wanted to make that record clear since they're still trying to push this. Unless Your Honor wants me to continue, I'm just going to kind of set that aside.
THE COURT: Well, yeah. Set that aside for

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a minute. We are certainly going to come to -- but it probably will be more helpful for me to hear what they have to say about your -- we know what 60(b) allows, and we know it has its own internal time frame, which has apparently been filed here.
MS. GROSS: Yes.
THE COURT: But it's no sense in getting into all that until I hear first from them on the subject.
MS. GROSS: I agree.
The second thing I want to touch on is they spend the first about dozen pages of their motion, about 10 to 12 pages, doing this rebranding of what this trial is really about. And they post, you know, excerpts of all my experts, of all of my witnesses saying, well, it's what's in the bottle that counts. And Chinese talc has asbestos in it. Longo tested it a bunch of times and knows it has asbestos in it.
Your Honor and I have had that conversation before. It is what's in the bottle that counts. It's not what's on the label. But that's not what this trial was about.

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Your Honor read Ms. O'Neill's closing this morning. Her entire closing was predicated on the fact --

THE COURT: Product identification. Ms. O'Neill is one of the most able lawyers that's ever tried a toxic court case in front of me. And the primary thing she does and does it very effectively is product identification.

MS. GROSS: You're correct.

THE COURT: So certainly what's in the talc is very important, but who the talc goes to, and these are people who distribute talc, who it goes to is essential to --

MS. GROSS: Causation.

THE COURT: -- identify whether the end product's use by a Plaintiff could be in some way attributed to the distributor.

MS. GROSS: That's exactly it.

THE COURT: And this instance was all about IMI Fabi is not liable because there's nothing that ties IMI Fabi to a particular product that she says -- and it's a defined group of them -- caused her disease.

MS. GROSS: That's exactly right. That's exactly right.

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THE COURT: I get that. This was IMI Fabi's whole deal was product identification.

MS. GROSS: That's exactly right. Her whole closing -- the whole trial was where's the documents? There's no proof. Plaintiffs have given you no proof that our talc was even in any of the products that Sarah Plant used.

So even if our experts had tested tons of IMI Fabi talc, it could have been the rare talc that was full of crocidolite, which doesn't happen, but it could be a talc that was full of crocidolite. But unless Sarah Plant was exposed to it and breathed it, it wouldn't matter.

They skipped the whole predicate step before you can even get to that part, which is what they tried this case on. Which was that we had no evidence. She told the jury, "They have no causation. Where's the documents? That's called no causation." So I just want to be really clear about that.

And then unless Your Honor has questions, to finish this off, we -- none of us here are running from the fact that we have a high burden. I read the Chewning case. I've read

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just about every case that the Chewning case cites to and whatever cases the defendants have cited.

They're going to come up here and they're going to hammer me on the fact that I have a really high burden, and I know I do. I'm not running from it. Proving intent of another person is a hard thing to do.

But I walked -- I walked this Court through the most important documents. But when IMI Fabi is up here, I'm hoping at least three things really stand out to you. The first is meet their opposition. They don't deny once that they withheld documents from us. Not once. They tried to minimize them. They try to explain them away. They sort of make fun of us for even filing the motion saying this is absurd repeatedly. But they never once deny that they withheld documents.

Second, keep in mind Ms. O'Neill's closing that we just talked about and you read this morning. Her entire closing, their entire case for two weeks was completely hinged on the plaintiff's inability to put IMI Fabi talc into any products that Ms. Plant used. And then they

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double down on that saying "They don't even have any proof that we have any relationship with these people," and they took all the Avon slides down. The Avon exhibit numbers down at the end.

And then the third thing to keep in mind is that IMI Fabi's attorney sat in the back of this courtroom and watched that the whole time. He was at Corrado Fabi's deposition, even though it only happened six days before trial. That's pretty fresh.

He sat in the back of this courtroom and watched this entire trial. He watched IMI Fabi's trial attorneys pound our experts on lack of product identification. Pound us in closing to this Court and this jury that we have no product ID. We have no causation. We can't show IMI Fabi talc was in the products that Ms. Plant used. And he sat there and watched it.

All the while he has boxes and boxes that would take weeks to go through what's in there sitting presumably back at his office, but I, to this day, actually haven't seen those. I have no clue what's in there.

So unless Your Honor has any questions for

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me, I'm just going to end it and say they're probably going to come up here and tell you this is all a fishing expedition. We're just sore losers. I don't know what they're going to say.

But if predicating your entire defense on our lack of documents while systematically and intentionally withholding those documents and then being so bold as to have the lawyer who helped you do it sit in the back of the courtroom and watch the trial isn't intent, I don't know what is.

So unless Your Honor has any questions, I'm going to --

THE COURT: Thank you very much.

MS. GROSS: Thank you.

MR. CARROLL: Good afternoon, Your Honor.

THE COURT: Good afternoon.

MR. CARROLL: Todd Carroll on behalf of IMI Fabi, LLC and IMI Fabi Diana, LLC.

Your Honor, may I approach with an exhibit that we inadvertently omitted?

THE COURT: Certainly.

MR. CARROLL: We referenced it in our motion.

THE COURT: Hang on for a minute. Let me

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get myself organized here.

MR. CARROLL: Of course.

THE COURT: I've got this -- you're going to refer to this in your argument at some point?

MR. CARROLL: I anticipate I will. What I've just handed up is a couple of pages of Mr. Fabi's deposition in this matter. We cited the deposition pages in our opposition memo and had the typographical error of Exhibit_Blank. We forgot to fill that in when we filed.

THE COURT: Okay. Very good.

MR. CARROLL: And we have filed those this morning on the Public Index, so it's -- we don't need to add it to the record.

THE COURT: You may proceed.

MR. CARROLL: Your Honor, Ms. Gross has anticipated a lot of our arguments. She clearly read our memo, and I do embrace the standards of review here.

The plaintiffs have a virtually impossibly high standard. There's a strong policy in our state, of course, as there is everywhere, favoring the finality of judgments, favoring jury verdicts.

My clients get the benefit of every

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reasonable inference in this matter. And the plaintiff's written submission, I would suggest, undercuts their arguments so thoroughly that there's no way the Court can grant their motion.

Your Honor, I trust that you have read our opposition memo.

THE COURT: Yes, sir, in detail.

MR. CARROLL: Yes. And this -- I was obviously sitting in court a moment ago and heard this idea that this argument we are trying to recharacterize what the trial was about. I strongly disagree with that suggestion.

The plaintiffs had the burden of not only connecting a product that Ms. Plant used to something that contained my client's talc, but they also had the burden of proving that my client's talc contained asbestos. And the only evidence in the record on that point came from Mr. Fabi who sat right there and testified that the talc that he -- that his company prepares contains no asbestos.

And the competing evidence on that point was from the plaintiff's experts who say "I have tested talc from China generally and most Chinese talc contains asbestos."

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That was the sum total of the evidence on that point. Ms. O'Neill, in her closing argument, put up a slide that showed the size of the province in China from which the Fabi company gets its talc and showed how preposterous it was that the plaintiffs were suggesting that you can just generically say, oh, well, Chinese talc is all the same.

Ms. O'Neill told the jury that would be tantamount to saying that all barbecue in the United States is the same.

And Ms. Dean, in her rebuttal, got very upset at that. She thought that it was a very pithy analogy for such a serious case.

This was a big deal issue in the case, and it was such a big deal that every one of the plaintiff's experts testified about it. And we've layed that out.

THE COURT: I understand, but this is not about -- this argument today has nothing to do with whether there was talc in your asbestos. That was a contested issue. You contend that their evidence wasn't very good, but that's not what we're talking about here today.

What we're talking about here today is the

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first thing you said had to be done, which is to connect the IMI Fabi talc with products that Ms. -- with cosmetic products Ms. Plant used. She had a specific group of companies that she contended she used and products that contained asbestos. And she contended that in her pleadings IMI Fabi was one of the companies that supplied that talc to those specific cosmetic manufacturers.

And what she -- what is being contended now is that Mr. Corrado Fabi lied in his deposition, and that Mr. Summerville, the in-house lawyer for IMI Fabi, in the -- several years ago obtained from its Diana Plant boxes of its records that he now maintains control over and that IMI Fabi made the conscious decision not the share those documents with legitimate requests for discovery.

And that because of that, they could not establish product identification, which was the centerpiece of Ms. O'Neill's argument to the jury, and I think the basis upon which the jury discharged IMI Fabi from liability. Because Whittaker, Clark & Daniel got talc from some of the same locations that IMI Fabi did.

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MR. CARROLL: I don't think that's what the evidence showed.

THE COURT: But in the case of Whittaker, Clark & Daniel, they had a lot of evidence about that tie Whittaker Clark & Daniel to specific products that Ms. Plant used.

In the case of IMI Fabi, Mr. Fabi said that he didn't know where Cosmetic Specialties sent them and Ms. --

MR. CARROLL: That is not what he testified to.

THE COURT: And Ms. O'Neill argued that, and she argued that there's been no proof shown you that any of these cosmetic products, she went through all of them, are tied to IMI Fabi.

And then she made the final thing how about Procter & Gamble, they say -- they got one little piece of paper that shows they sent something to Procter & Gamble. Well, where's Procter & Gamble? It's no show that they even got it. It's Sterigenics got it. Well, it turns out in other discovery they got, Sterigenics was a radiation firm that IMI Fabi sent to so they could radiate it and then send it to the end user.

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So there's a lot to unpack in this, Mr. Carroll. And it's not going to help me to talk about anything to do with whether IMI Fabi has talc in its asbestos. That was a legitimately contested issue, evidence on both sides. You have your opinions about the strength of that evidence, and I respect those.

But I'm talking about the evidence that was not put before the jury because of deliberate discovery violations that would have shown the connection between your client and the cosmetic manufacturers she say caused her mesothelioma.

MR. CARROLL: Yes, ma'am. Let me try to make this connection for why we leaned on that so heavily in our opposition memo.

THE COURT: Yes, sir. I've read it, and I've read Ms. O'Neill's closing arguments several times now. And I have gone back and tried to get selected pieces out of the transcript of the trial itself and my notes to check on this, and I am deeply concerned about this.

MR. CARROLL: Yes, ma'am. I don't intend to quibble with Your Honor about this piece, but I don't think there's any suggestion Mr. Fabi

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lied during his deposition. I don't think that was what Your Honor --

THE COURT: They guarded that.

MR. CARROLL: I don't know what they think he lied about.

THE COURT: The fact that he had information. He says -- he took the position he didn't know who Cosmetic Specialties -- what firm they -- cosmetic manufacturer they put their things. He didn't know that. He just knows he sent everything to Cosmetic Specialties. He said that in his deposition, and he said that in testimony before this jury.

MR. CARROLL: He was asked about a customer list.

THE COURT: We're quibbling with language. He was asked who the end user was, and they made it quite clear it wasn't just Cosmetic Specialties, but he wouldn't even acknowledge he had anything from Cosmetic Specialties. And it turns out some of these documents are damning in that regard because not only were the Cosmetic Specialties things sent to him with end users on them, but the guy that ran the Diana Plant signed off on them.

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MR. CARROLL: Yes, ma'am, Your Honor.
THE COURT: I mean that's -- there's no sense in quibbling about language or words here. There's a deeper question here and I want to know the answer to it.
MR. CARROLL: A witness whose first language is Italian, who has a translator, is asked about a customer list and his --
THE COURT: Well, go on to something else. I know what you're saying about that. I don't think you answered my question.
MR. CARROLL: Yes, ma'am.
THE COURT: But I'm not going to spend --
MR. CARROLL: But I will accept your suggestion that, well, he should have known that some of these manufacturers' end users' names showed up on his company's records. I will accept that.
This -- the first five or six pages from Exhibit 20 to the plaintiff's motion were documents that were produced in the case. That these are the documents that they're saying, gee, if we had only known, we would have asked questions about it. They're produced in the Plant case. They say Revlon. They could have

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asked Mr. Fabi at his deposition.
They could have shown him this document and said, "Well, I know you say that they don't give out a customer list, but here's a document where your company is shipping talc to Cosmetic Specialties and it says Revlon on there. Tell me what that means. Why does it say Revlon?"
They could have done that, but they didn't.
THE COURT: Okay. Besides Revlon, what else have you got or they got that shows other end users?
MR. CARROLL: Your Honor, this is what their motion says on page 6 that we produced. We did produce. "A few Revlon documents and a number of CoverGirl" -- "and a number of CoverGirl documents were disclosed."
So they have Revlon and CoverGirl.
THE COURT: Right.
MR. CARROLL: According to what they put in their motion.
THE COURT: But they had a special relationship with Avon, was one of the central cosmetic companies of cosmetics she used, and you didn't disclose any of that.
MR. CARROLL: Your Honor, this is where I'm

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going with this notion of there's no asbestos in their talc and that's why this matters. You told me --
THE COURT: It doesn't matter.
MR. CARROLL: But it does, Your Honor.
THE COURT: No, sir. You don't get to decide on the front end, hey, since there's no -- we're contending there's no asbestos in the talc, we don't have to show end user stuff.
This is discovery. They get to ask questions in discovery, and you must answer those questions. Then comes whether or not that evidence leads to something that's admissible in Court and then that comes to whether the case is proved. But we're back at document and informational discovery.
MR. CARROLL: I understand that, Your Honor.
THE COURT: And this business that somehow or another the fact that you say your product don't include talc, that's a defense. That is not an excuse for failing to produce materials in discovery.
MR. CARROLL: Your Honor, if you'll hang with me for a moment as I make my argument, I

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hope that I can address this concern.
THE COURT: All right, sir.
MR. CARROLL: The Rule 60(b) standard, this is not a 26 through 37 discovery issue. This is a Rule 60(b) motion. And what they have to prove -- what they have to prove is that they -- is that if we had produced this information, that a jury would probably have rendered a different result. That's their burden.
I get every reasonable inference. They have the burden of proving that if they had just known about these IMI Fabi Diana documents from 2001, that the jury would have rendered an entirely different verdict.
Here's why -- here's why the jury would not have rendered a different verdict. Their experts, Haber, Longo, Bailey, all testified that they don't care what the bottle is, the only thing that matters is what's on the inside. So if they connected my client to one product, just one, then they would have then also had to show that the talc in that one product contained asbestos. That's their experts.
Ms. Dean, in opposition to our in-trial dispositive motion, said that to suggest the

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different branding matters was nonsense. That was her word. It's nonsense. Because all they had to do was connect my client to one product.

Their papers that they filed in support of this motion say that we gave them information to connect IMI Fabi talc to two products, Revlon and CoverGirl. That's what their motion says.

They say, "Well, we want to you know about" -- "You should have told us about products 3, 4, 5, 6, and 7."

Their experts -- their experts and their arguments in opposition to our motion for a directed verdict and in opposition to Ms. Flynn's motion for a new trial said the number of brands do not matter. The only thing that matters is the source of the talc.

That was their argument throughout. Their experts all said it. Their counsel all said it.

THE COURT: I get that. I do not think that solves this question one bit. That's the argument: You haven't proved we have talc in the product, therefore we don't have to comply with anything else.

My evaluation is that that issue was a contested issue in front of the jury. Stuff on

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both sides. This thing about continuing to refer to the one bottle and that's all you have to prove doesn't make -- that makes no sense to me either.

Because what they're asking for now is information that takes your talc and connects it with a product she used. That's called product identification. That was the main argument that Ms. O'Neill made to the jury.

So don't tell me that's not something that makes any difference. That was the main argument she made to avoid liability for her client is that you couldn't tie what she used to IMI Fabi.

MR. CARROLL: And their response was "We don't have to tie them to everything. We only have to tie them to one."

THE COURT: No, sir. Again, I've heard that argument, and I don't think you need to repeat that argument any further.

MR. CARROLL: Very good. Let me move on to the next step of the 60(b)(2) analysis. It has to be newly discovered evidence.

The Lanier case, which we've cited in our papers, is kind of the bellwether case. It's

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from the Court of Appeals. It's an '05 decision. And it talks at length about, well, what does newly discovered evidence mean?

And the court says, well, if you know about its existence, then it -- if you knew about its existence at the time of trial, then it's not newly discovered. Whether you have it or not doesn't matter. If you knew about its existence, then it's not newly discovered.

They quote Morris Federal Practice and say "Diligence looks to not what the litigant actually discovered but what he or she could have discovered."

Your Honor, this goes to the deposition excepts that I handed up. Ms. Gross spoke at great length about the Distribution Agreements. She said IMI Fabi had a Distribution Agreement with Cosmetic Specialties. Well, sorry, Diana had one with Cosmetic Specialties, and then IMI Fabi, LLC also had a Distribution Agreement with Cosmetic Specialties.

And if we only knew then what we know now about what those documents said, gee whiz, it would be a whole new world.

The plaintiffs deposed Mr. Fabi. He told

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them that these agreements existed. And they said, okay, well, let's mark them as Exhibits 6 and 7 to your deposition. Then we heard not one word about it after that.

In the Raby Construction case, which Ms. Gross referred to, and which we lean on heavily in our papers, it's the exact same situation. There's a deposition where one attorney is asking the witness, "Where are those records? We asked for them."

The witness says, "I don't know. I thought we produced them, but we have them."

And the attorney says, "No, you must give them to me. You have to -- I asked for them, you haven't produced them. You must give them to me."

And the witness says, "Well, you know, if we have them, we'll give them to you."

And they never did.

When the Rule 60 motion came following that exchange, which is on par with what we have here, where Mr. Fabi says, "Well, yeah, we have them." And the plaintiffs say, "Well will you give them to us?" And we never heard about it again. And then there was no motion. There was

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no Motion to Compel. There was no anything at trial about it. I mean, it was just like in the heat of the moment, perhaps both sides forgot all about it.

But the point is the exact same sequence in Raby Construction has happened here. A witness was asked about documents that the proponent of the discovery said, "I've already asked for this. Why have you given it to me?" Then they never came out -- the materials were never produced.

And the Supreme Court said, "I'm sorry, you didn't do anything to follow up. Your motion is denied."

It's the exact same analysis here.

I do want to address this Chewning case. There's been a lot of heated rhetoric thrown towards Mr. Summerville about intentionally deceiving the Court. Intentional behavior. Nobody's ever asked him anything. But there's this imputation of intent.

In the Chewning case, the analysis came out of a situation where Ford's lawyers were alleged to have literally hired a straw man expert to give false expert testimony and then concealed

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the documents that supported their own misconduct about creating false testimony from an expert. That is obviously not the case here. Obviously not the case.

IMI Fabi produced a thousand pages of materials, including materials that the plaintiffs' own motion today says connected IMI Fabi to Revlon and CoverGirl. That has got absolutely nothing to do with a company hiring an expert and encouraging him to give false expert testimony.

So I just want to categorically reject the notion that Chewning has anything to do with this case. It does not.

The analysis of the Raby Construction case is on point one hundred percent. I mean, the Supreme Court's opinion even excerpts the deposition portion that I've referred to where there was an exchange about, well, why weren't these documents produced? Oh, I don't know. We'll give them to you. And they never were.

Your Honor, also in the materials I handed up to you a moment ago, the deposition excerpt, Mr. Fabi was -- he was asked about Sterigenics. The name Sterigenics came up in his deposition,

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and then there was never any follow-up questions by the plaintiffs' attorneys. They just -- they just -- they said -- I think I gave -- here we go.

This is the first page of the handout I just gave you. Page 36.

The plaintiff showed Mr. Fabi a document. They say, "This document is dated August 31st, 2001?"

He says, "Yes."

"The vendor here is IMI Fabi Diana, correct?"

"Yes."

"And it is being shipped to Procter & Gamble? Procter & Gamble care of Sterigenics, correct?"

"Yes."

But they didn't follow up. They didn't ask any other questions about it. So this goes into the newly discovered evidence analysis from our appellate courts. It doesn't say -- the point of Rule 60 is to not redo the discovery process that's envisioned by 26 and 37.

The point of Rule 60 is to say what didn't you get? And if you didn't get it, did you know

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about it or have a way to know about it? And the answer here is yes.

"Mr. Fabi, you've given me a document that says Revlon. Tell me more about Revlon."

They didn't do that. Their own papers say they knew about Revlon and CoverGirl, and there was no follow up. Their experts say all you need to do is connect it with one.

And then this Procter & Gamble connection, Sterigenics, it came in Mr. Fabi's deposition. He did not deny an awareness of Procter & Gamble or Sterigenics, and the plaintiffs chose not to pursue it further with their questions. That's not our fault, and that's not a basis for a Rule 60 motion.

So, Your Honor, I would respectfully submit that the motion should be denied and the jury's verdict should be upheld.

THE COURT: All right, sir.

MR. CARROLL: Thank you.

THE COURT: Ms. Gross.

MS. GROSS: I'm not going to say very briefly, although I do hope it's brief.

I want to touch on a couple of things that you just heard from Mr. Carroll. Perhaps

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unsurprisingly.

The first -- one of the first things that struck me by what he just argued to you is he made this comment to Your Honor that "The sum total of our evidence" -- I wrote it down in quotes -- he said, "The sum total of our evidence was the fact that Chinese talc has asbestos in it."

If that's not a circular argument, I'm not really sure what is. It was the quote, unquote, sum total of our evidence because they withheld it. They withheld all of this evidence that was so waved off as, yeah, product 4, 5, 6, and 7, yeah, they withheld all of it.

So let's talk about when he brought up the Revlon documents and other rebranding of what we wrote in our motion. Yeah, we said in our brief, they gave us five. Five Revlon documents. Two or three which had to do with one shipment.

We deposed Mr. Fabi. Finally they tendered him for deposition six days before trial. Any trial lawyer worth anything has to make decisions before trial, and so if I'm in the face of five pieces of paper, yes, it indicated

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that they had -- maybe they shipped a couple of rogue shipments of talc to Revlon. Five pieces of paper that reference two shipments. Decisions are made. Probably can't make causation with an expert witness on two rogue shipments to Revlon. That's not what happened.

What happened is they withheld the hundreds of other documents showing sales to Cosmetic Specialties for Revlon. If we had been produced all of those before, I assure you Ms. Bollinger would have asked about it at the deposition. I promise. And I assure you, Revlon would have been mentioned a lot more at trial than it was, which was not at all.

Then this notion where he's -- I think what he was trying to get into with Avon, just because it's in the papers, I want to make sure the record is clear on both sides of this. I think what Mr. Carroll is trying to get into with Avon is this notion that they attached. I'm sure Your Honor saw it. Some rogue, raw specification for Skin So Soft that says it was made with cornstarch. And so they use that to make a very wide generalization and suggestion to this Court that any time after that Skin So

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Soft was made, it was made without talc. That's not what that means.

First of all, Avon has a standard production of almost 80,000 pages that they produce in every single asbestos case. I'm confident my office at this point, after all the discovery we've done with Avon, has just about every formula and raw specification for a product Avon manufactured.

That document does not have an Avon Bates-stamp on it. I have no idea where that document came from. But if they have it, they should have produced it before trial. And I've never seen it before.

Meanwhile -- and so I think they're using that to suggest to you, oh, because of this rogue specification, I have no idea where that came from. Nothing after 2001 that was Skin So Soft would have talc in it, therefore the whole asbestos -- whether or not our asbestos in the talc they hammer on their experts for doesn't matter.

But that's not what that means. That's not what that means.

What Avon's testified to through the years

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is they stopped putting talc -- they stopped making new products for women, body powders, in 2002. They did not issue some sort of recall. They did not issue some sort of ordinance to their Avon saleswomen saying, "Send all of your powder back. Send all of your women's body powder, Sweet Honesty or Topaz, all of it, send it back. That has talc in it."

They just stopped making new stuff. That's all that means. Their motion doesn't mention that -- it doesn't address Avon had -- I don't think Avon had ever addressed when they stopped putting -- making products with talc in it for unisex fragrances. Which is what Skin So Soft was. And they wholly neglect the fact that Avon was continuing to manufacture men's products that had talc in it long into the late 2000s.

But regardless, they make these general sort of sweeping statements to you in their opposition that they now want Your Honor to consider here that because we attached this one rogue specification that it had cornstarch and not talc, nothing after 2001 had talc in it. So since our whole case was somehow about, you know, whether there's asbestos and talc as the

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centerpiece, it wouldn't matter.
Let's assume that that's right. Even if you assume that everything Mr. Carroll told you is right, that still doesn't explain the Revlon. It doesn't explain the stuff about CoverGirl when Mr. Fabi testified at trial that was withheld from us. That whole trial was just about 141. We didn't talk about 1623 at all.
It doesn't explain -- it doesn't explain Estee Lauder. It doesn't explain Loreal. So even if you buy into Mr. Carroll's argument that, well, Avon somehow didn't have talc in it after 2001, that doesn't explain all the other stuff that was withheld.
Now, this notion of this Lanier v. Lanier case that Mr. Carroll cited to you, what happened in Lanier v. Lanier is a husband and wife got divorced. The wife misplaced her prenup or her postnup. I'm not sure if it was a pre or a post. I think it was a prenup. She misplaced it. She knew what the information was that was written about in the prenup. It was in her possession. She lost it.
Her and her husband entered into some sort of postnuptial divorce. She later found her

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prenup folded up in a greeting card in her home and said "I found it." So she filed a new motion and said, "I found it. It's an accident. I misplaced it."
That's not at all what happened here. That's not at all what happened here. Were we supposed to file a Motion to Compel because they didn't produce the document we marked at a deposition six days before trial? I mean, think about what they're telling Your Honor. They're telling you that it's okay to say make me.
Can you imagine if a plaintiff did that how quickly they would haul me or anyone from my law firm into your court on a Motion to Compel? That's -- I don't even know what to say about that other than to say that's not how discovery works.
He also mentioned that we directed a lot of emotional speak in Mr. Summerville's direction. Can I do discovery on Mr. Summerville? Can I ask an IMI Fabi attorney what were you thinking when you didn't produce stuff? What were you thinking when you withheld stuff? No. So that argument carries no weight.
And the last thing I'm going to --

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actually, I should do this. He didn't bring it up, but just because it's in the papers, if Your Honor will indulge me, I wanted to mark as a court exhibit.
IMI Fabi made this whole deal in their opposition that, oh, when we called them out on the fact that they didn't respond truthfully to the interrogatories, they made this whole arrangement that pervaded throughout their entire opposition. I'm sure Your Honor remembers. Oh, we just thought it was LLC responding. We didn't know that IMI Fabi Diana had to respond to these.
And so what I want to attach for the record, and I will hand a copy to opposing counsel first before I hand it up to Your Honor, as Court Exhibit 1.
It's an email between Ms. O'Neill and Ms. Bollinger of my office. On October, Ms. O'Neill emailed -- Ms. O'Neill emailed Ms. Bollinger on October 21st, 2022, to confirm who exactly she was serving the discovery for.
And Ms. Bollinger responded seven days later, on October 28th, and said, "As we discussed last week, the discovery we sent was

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intended to apply to all IMI defendants."
So I don't need to argue it, but just because it's in the opposition, I want it as part of the record that I don't know if they forgot, but we were very clear who we were intending to serve discovery on.
So the last thing I'll say before I sit down, just to not belabor the point, is Mr. Carroll just had a lot to say. Did you hear him deny once that he withheld evidence from us? I didn't. He didn't deny it. They didn't deny it in opposition. He didn't deny it in court just now because he can't. Because they withheld evidence from us. And we unknowingly tried Sarah Plant's case against IMI Fabi with our hands tied behind our backs.
And so unless Your Honor has anything further from me, I am going to take my seat.
THE COURT: Thank you, Ms. Gross.
MS. GROSS: Thank you.
MR. CARROLL: Your Honor, can I quickly address this thing that was just handed up?
THE COURT: Of course.
MR. CARROLL: This will be super brief.
THE COURT: Yes.

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MR. CARROLL: I do think we denied any discovery misconduct in our papers.

THE COURT: How about specifically say whether or not you take the position that no documents were withheld.

MR. CARROLL: I don't -- well, I don't believe any documents were intentionally withheld.

THE COURT: I'm not talking about intentionally or whatnot. They had broad discovery requests that included everything from those distribution agreements to suppliers, end product users and so forth. Enormous amount of material that they asked for from IMI Fabi that was not given to them.

Do you say that they did not withhold -- that IMI Fabi did not withhold material from the plaintiff?

MR. CARROLL: Your Honor, I want to be very careful with my answer here because I was not involved in that process. The process predated our law firm. But I -- we did not intentionally withhold anything, which is the element of fraud that they're claiming.

THE COURT: Well, now, you've got to answer

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both questions. You can't get -- wordsmith it that way. I'm asking you whether or not documents were withheld from the plaintiff.

MR. CARROLL: I do not believe anything was withheld from the plaintiff. I believe that additional materials in other cases had been produced in response to other discovery requests. The plaintiffs are now saying, "Gee, I'm seeing names. I would have made a different argument if I had known about this in Plant."

But I don't think anything was withheld.

THE COURT: Okay. I understand the position you're taking.

MR. CARROLL: Yes, ma'am. I really just want to address this quick email.

THE COURT: All right.

MR. CARROLL: I note that it's dated -- it's an exchange between my colleague, Ms. O'Neill, and Ms. Gross' colleague, Ms. Bollinger, in October of 2022.

In our papers, we pointed out that the written discovery requests were aimed at IMI Fabi, LLC and not IMI Fabi Diana. That was the only time we drew this distinction between the companies in our papers.

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Those responses were served by a different law firm before my firm was hired. And they were served before this email exchange. So I don't know if Ms. Bollinger had a similar exchange with lawyers over at Nelson Mullins about, hey, when you respond to this discovery, make sure it's on behalf of both entities. But the written discovery, which is the only thing that our papers addressed as having distinction between Fabi LLC -- IMI Diana.

THE COURT: Well, I can replay English. Look at what this thing says. It starts off with Ms. O'Neill in October of 2022, which you say is after the original exchange of documents was done. Ms. O'Neill apparently took this case over from Nelson Mullins, right?

MR. CARROLL: Yes, ma'am.

THE COURT: She says, "Hi Jordan, just following up on the voicemail I left you yesterday about IMI Fabi. Could you please let me know what would be a good time for us to talk so I can sort out the next steps on the jurisdictional discovery process that you started."

NMRS. Nelson Mullins Riley and

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Scarborough.

"I'm around for the rest of the week. Generally around for most of next week. Let me know what works."

She responds, "As we discussed last week, the discovery we sent was intended to apply to all IMI defendants. Also, I would appreciate an affidavit from IMI re: only ever supplying to Cosmetics Specialties, including the years they supplied, to assist in the PJ issue."

What do you think PJ means?

MR. CARROLL: Personal jurisdiction.

THE COURT: Yes.

MR. CARROLL: Yes, ma'am.

THE COURT: I mean, I don't get what you're saying here. That is a specific indication by the person that took over this file to -- from the plaintiff's counsel that they mean for discovery to include all aspects of IMI Fabi, not just one.

MR. CARROLL: Yes, ma'am. And when we produce documents in response to the discovery and then when we presented a witness to answer questions in a 30(b)(6) capacity, we did not draw the distinction among the different

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companies.
THE COURT: Well, then why did so many documents get left out from being disclosed? Documents that clearly were asked for by them?
MR. CARROLL: Your Honor, I don't know. But I also know that under Rule 60(b), it doesn't matter for all the reasons I've explained.
THE COURT: That's for me to determine.
MR. CARROLL: Yes, ma'am.
THE COURT: That's for me to determine.
MR. CARROLL: And it's for me to advocate.
THE COURT: Well, what I'm asking, and despite whether you believe that 60(b) encompasses my question, I want to know why these documents that have now been produced in a lot of volume, not just a couple, but hundreds of pages, maybe thousands of pages, why were they not produced in this case?
MR. CARROLL: As I said, Your Honor, I don't know. I think a lot of them are irrelevant based on --
THE COURT: Relevance, as we know, is not any kind of issue in discovery. Is it?
MR. CARROLL: Well, sure, relevance --

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well, I'm sorry.
THE COURT: No, sir. Relevance is not a foundation for failing to give discovery.
MR. CARROLL: Nonresponsive is what I mean. If we have a document that relates to a time period that had nothing to do with Ms. Plant.
THE COURT: Right. But these are documents that relate to products she says she uses and the time periods in which she used them. That's what these documents are. And they were not disclosed. And they've given us some information in the exhibits that shows pretty clearly that that is so. And what I want to know is why that wasn't done.
MR. CARROLL: I don't think it's quite as clear as Your Honor is suggesting, and we kind of go through the different product lines in our opposition papers. I don't know why some materials were produced now and why some of them were not produced then. I do not know, Your Honor. And I can't give you a different or better answer.
But I do know they had enough information if they truly thought any of this mattered. And their experts hadn't come in and all say that it

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didn't matter. They had enough information to know to ask more questions. "Hey, there's a document that says Revlon. Tell me more about Revlon."
THE COURT: I am not prepared to deal with the issue on that basis.
MR. CARROLL: Understood.
THE COURT: When I'm asking these questions and what I am contemplating is having another hearing on this matter in which I would expect Mr. Summerville to be here and Ms. O'Neill to be here and get to the bottom of this thing about why these documents were not disclosed to the plaintiff.
So that's -- just so you understand, that's why I'm asking the questions. I'm not making any accusation --
MR. CARROLL: I understand.
THE COURT: -- against you or Ms. O'Neill. But something is not right about this, and I am disturbed about that. And I want to get to the bottom of it before I make any kind of ruling on this matter.
MR. CARROLL: Yes, ma'am. I'll have a seat. I'll close where I started. I don't

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think any of that matters. I understand Your Honor takes a different view. I think Rule 60(b) cases make it clear that that ship sailed.
THE COURT: I understand.
MR. CARROLL: Thank you, Your Honor.
THE COURT: I understand.
Okay. I think both sides understand that I am very concerned about this, and I'm very perplexed about why these documents were not given in discovery. And I want to do several things that are going to be time consuming, but they need to be done.
I want the plaintiff to go over each and every one of the requests for discovery that it made in this case to IMI Fabi and annotate those things with some information about what has now been discovered, what it related to, if necessary, copies of it, but something that documents what time period we're talking about, what product we're talking about.
I would like for them then to relate that to the answers that Mr. Corrado Fabi gave in his deposition and to the answers that Corrado Fabi made in his testimony before this Court so that I may more specifically evaluate whether there

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has been a fraud on the Court by failure to produce these documents.

When that analysis by the plaintiff is completed and sent to Ms. O'Neill and Mr. Carroll and Ted and everybody else that's involved in this thing, then I certainly want to set up a briefing schedule for each side as to what those documents indicate.

I say to Mr. Carroll and to everyone on behalf of IMI Fabi, when you get this material from the plaintiffs, if I need to set some sort of schedule about briefing and response, I want to. But I want some response from you and your client in relation to the documents that are disclosed.

MR. CARROLL: Yes, ma'am.

THE COURT: I don't know what they may be, so I'm -- you know, you don't either. So let's just see what they now say.

MR. ROBERTS: Your Honor, just to clarify.

THE COURT: Yes, sir.

MR. ROBERTS: Are you envisioning -- I heard you say they're going to get an annotation of the discovery.

THE COURT: They're going to relate --

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MR. ROBERTS: Send it to us. Are you envisioning us with a response to that or --

THE COURT: Of course. Of course. Of course. That's where I'm headed.

MR. ROBERTS: Okay.

THE COURT: I want them to -- first of all, to give me a lot more documentation about what they say they've now found that would have made a difference in this case and that they contend was wrongfully and deliberately withheld from them.

And then when they get that material up, they are going to send it to -- and relate it to what they say was either forgetfulness or outright deception by Mr. Corrado Fabi. Because they allege that he did not tell the truth on the stand.

And further they allege that there was a deliberate withholding of information from them that would have made a determinative difference in the verdict when this case -- in this case when you have two distributors.

So we have the ability to make some evaluation of what the evidence -- what evidence impacted the jury. Because we got one group in

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which we had a lot of information about who they shipped to and a lot of information that connected their shipments to the products that the plaintiff used. And we have another in which there's practically no information that links the products that they agree they shipped, a bunch of products, to the products that the plaintiff used.

They now say that they have got a lot of information from IMI Fabi about that. And I want to know what that volume of information is and how I want to pursue whether it was intentionally and deliberately withheld.

MS. MCVEY: Your Honor, do you have -- I was going to suggest a time frame when we get that to you. I'm just not sure how long it's going to take us to annotate all this. It's like a billion documents.

THE COURT: You know, you may use some judgment as to how you do it. But I don't want to make that determination yet. If you all need further guidance about this, let me know because I don't know anything about the volume of the documents.

MS. MCVEY: It may help not to forecast

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what's coming next because the Motion to Compel against IMI Fabi is coming up that I think address even more documents that we're going to see.

THE COURT: Exactly. So it may be in connection with that exercise as well, but I'm going to hold this matter --

MS. MCVEY: Okay.

THE COURT: -- in abeyance until I get more information about what has allegedly been withheld and what has allegedly now been disclosed so that I can then evaluate whether it would have made a difference in the trial of the case.

MS. MCVEY: Thank you, Your Honor. And just on Ms. Gross' point, did you envision us doing a deposition of the national counsel, Mr. Summerville?

THE COURT: I can envision that, but I think the first step in that is going to be to get this factual material and see what has been withheld, if anything. Then if it turns out that has been done, then I can either envision a deposition or I can envision conducting a hearing here in which the Court directs that

Mr. Summerville come and testify.
MS. MCVEY: Okay. Thank you.
THE COURT: The first step on the ladder is to find out exactly what we're talking about in terms of evidence allegedly deliberately, intentionally withheld and then lied about.
MS. MCVEY: That's fair. And so what maybe -- I think after we hear what you're going to do with this Motion to Compel, we can get with you and defense counsel with some idea of when we can get this to you. Some sort of time.
THE COURT: Exactly. And that can come about through a status conference, and you ask for a status conference and we'll do that. But I don't want to do anything except something that's on the record, that preserves everybody's position about how they feel.
I don't know what the answer to this is. Mr. Carroll may be completely right about this. This was something unintentional, it wouldn't have made a difference anyway. But I don't know how to evaluate that on the basis of what I now have.
What I now have, though, raises big suspicions in my mind about the truthfulness of

Mr. Fabi's deposition and his testimony. And that is why I want to pursue it. It may turn out that I'm suspicious over nothing. And if it does, hallelujah and praise the Lord. Because I don't like the idea that I would ever have to overturn a verdict for this kind of a reason.
And I might say in that connection, I say this without any accusation directed towards Mr. Carroll or Ms. O'Neill or Ted. This is not about them, but this is very much about what IMI Fabi decided to do. The defendant in this matter. And what its advisers, i.e., its president, Mr. Fabi, and its central lawyer decided to do.
And when I see pieces of paper where they made an argument to the jury, "Procter & Gamble, what is that? You can't show any link." And then you've got a Procter & Gamble document that's been signed by Michael Brown, the president or plant manager of IMI Fabi, that raises big concerns in my mind. Big concerns.
And if that's just one isolated document, maybe that's one thing. But if that is not an isolated issue, then it increases my concern. And so that's where I am.

I make no judgments now of this, but I think the Court needs a lot more information than I've got now before I can just close it down by saying, hey, this is such a high burden of proof that you can't meet it. Bye-bye, so long, farewell. I'm not prepared to do that yet.
MS. MCVEY: Thank you, Your Honor.
MR. ROBERTS: Your Honor, perfectly I understand the Court's instructions where we're going from here. I just didn't want to let my silence on request for a lawyer deposition, national counsel deposition to go without commenting. My silence isn't necessarily agreeing to that.
THE COURT: I understand. I understand. If there are issues about doing that --
MR. ROBERTS: Take them up later.
THE COURT: -- we'll deal with them. What they contend is that this person is in addition to being a lawyer for the outfit, is the custodian of these documents. That he took these documents into his possession and still has them as custodian. It would be on that basis that I will be asking him about these

documents.
MS. MCVEY: And Mr. Carroll -- the reason why I brought it up, Mr. Carroll said in his argument they never asked him any questions. Right? Talking about Mr. Summerville.
THE COURT: Right.
MS. MCVEY: So that's relevant.
THE COURT: All that is yet to be explored. I don't know what the answer to that is. I don't think anybody in this room does at this point.
MS. MCVEY: Thank you, Your Honor.
THE COURT: Okay. All right. This matter is -- is in recess I guess is the best way to --
MS. MCVEY: We have a Motion to Compel. That's the only thing we have left. I'm happy to take a recess and come back.
THE COURT: Let's talk about that briefly. I quite frankly think the way I'm going may resolve the Motion to Compel. If I need to go on and grant it, I will certainly grant the Motion to Compel. We've got to see all these documents now.
MS. GROSS: That is part of the Motion to Compel. Your Honor read it, I'm sure. I have a

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whole section in there about these Diana documents and how to this day we have asked. I have no clue the entirety. I just know what's been produced and at this point I have no confidence that I have the entirety. Because it's not going to take me a week; it may take me a couple of days. It's not going to take me weeks to go through what I have.

THE COURT: I think you've got -- here's something I'm thinking. I think it's almost a point of mercy to you. I intend to compel them to produce documents. So let's put it that way.

MS. GROSS: Okay.

THE COURT: But I think the first thing to do before we do that, which relates to the depth of the deception, if there is, is to show what you got that puts you on track and what it relates to in the interrogatories you have.

Then there may be a whole other sin that's committed, which is there are other documents that have yet to be discovered in other cases that were directly relevant to this in their possession at the time. And that would be the subject of further modification of your motions. But I don't see mixing those two up right now.

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That's why I'm saying step one and then step two.

MR. ROBERTS: To be a hundred percent clear, we're deferring the motion until such time you've had to look at the information?

THE COURT: Yes, that I've asked to be prepared so far. Does that make sense?

MS. GROSS: We're not deferring the motion -- she's deferring the Motion to Compel?

THE COURT: The Motion to Compel is deferred. The global motion to grant a new trial is in suspension right now. The hearing is adjourned on that. I haven't completed my deliberations on that much less ruled.

MS. GROSS: So the Motion to Compel, Your Honor, is in a different case. And we're not just seeking to compel these Diana documents.

THE COURT: I get that, and that's another reason why I don't want to make a ruling here. I'm in Plant right now. And when we get to Perry, there may be a different reason to compel. I don't want to mix those two cases up.

MS. GROSS: I understand.

MS. MCVEY: Okay.

MR. ROBERTS: I understand.

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THE COURT: Am I clear now?

MS. GROSS: Yes.

THE COURT: We're going to take -- we're going to take a lunch break. I'm not going through another day where I sit on this bench forever and never take a lunch break. So we're going take a lunch break before we finish this, and then we still got Perry to go to.

MS. GROSS: Just the Perry Motion to Compel.

THE COURT: Do we know where we are in Plant now?

MS. GROSS: Yes, ma'am.

MR. ROBERTS: Yes, ma'am.

THE COURT: Well, that being said, then, let's come back here at quarter past 2 or 2:30, just whenever you can get -- have something to eat and come back.

- - -

(A lunch recess transpired from 1:13 p.m. to 2:24 p.m..)

- - -

THE COURT: Okay. What we've got left is the motions in Perry. This is in the matter of Michael L. Perry and Lonnie L. Long against

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American International Industries and many others.

This is CA 2023-CP-40-04072.

This is Plaintiff's Notice of Motion to Compel against IMI Fabi Diana, IMI Fabi, LLC, and IMI Fabi U.S.A., Inc.

All right. Ms. Gross.

MS. GROSS: Thanks, Your Honor.

Just for the record, Rachel Gross on behalf Michael Perry and Lonnie Long, the plaintiffs in this case.

So the good news, Your Honor, is that as I'm sure you saw, one, we sort of talked about Diana documents this morning. So I think I can cut through a lot of that and make that a very concise argument for you.

Just for some background, the products that we suspect are at issue as it relates to IMI Fabi in this case are -- I'm sorry, Your Honor -- are bystander exposure through his mother and her use of Avon, primarily, by my standards disclosure; his own personal use of Ralph Lauren talc body powder, which is made by Loreal.

THE COURT: All right.

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MS. GROSS: And his mother's use of Estee Lauder as well. And I want to caution on the record that that's based on the information that we currently have.

THE COURT: All right.

MS. GROSS: Okay. So as I mentioned previously, we've already spent a lot of time talking today about the Diana documents. The ones that Mike Summerville took and removed and we've never seen. And we're here -- one of the things we've sought to compel today is just the production of those.

IMI Fabi Diana, according to IMI Fabi, hasn't been in operation since 2004. Why don't they just produce these documents? I don't understand. I mean, this is going to be the second hearing in a row where they're trying to fight producing these documents to me.

At this point, this is a defendant that has established a pattern of telling half-truths, and I don't want Michael Perry or this court -- I don't think this Court wants Michael Perry's trial to turn out to be Sarah Plant 2.0.

So right now I think it's just Avon, Estee Lauder and Loreal at issue as it relates to

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IMI Fabi, but who knows what else is in those Diana documents.

And I can keep going on it, but I know we talked about it a lot, so I want to check in and see if Your Honor has any questions for me about the Diana documents in particular.

THE COURT: Okay. Well, let's look and see.

MS. GROSS: Sure. I'm going a little off script. I'm going out of order.

THE COURT: The 30(b)(6) --

MS. GROSS: That happened.

THE COURT: It has happened.

MS. GROSS: Yes, ma'am.

THE COURT: And now what we're talking about is -- what you mentioned was topic 12.

MS. GROSS: That was for the -- so if you go to page 10 of my brief, topic 12 has more to do with the first section of the breach, which was industrial talc, which I think we're going to talk about next.

THE COURT: Okay.

MS. GROSS: The Diana section starts on page 10.

I did bring up corporate representative

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testimony provided by Mr. Fabi. But what I did was I showed Your Honor that I asked him about those in January. And I said Have you seen them? Do you know what's in there? Do you have any clue? Have you ever asked to see them?

He has no clue. He doesn't know what's in there.

And what -- to borrow something that Ms. McVey did this morning, you don't get to do this, close your eyes and put your hands in your ears and intentionally undereducate your corporate representative. You don't get to do that.

So I don't know if it's that he doesn't want to go through the documents or what. I'll go through them. But at this point, the Court needs to compel a full production of the Diana documents.

I asked him straight up on page 13 of our brief, Exhibit 4 we attached, Volume I of Mr. Fabi's testimony that he gave to the 30(b)(6) in this Perry case, it's page 76, 5 through 9 in the deposition. I asked him, "Since you and I last discussed this," meaning the issue of the Diana documents at a

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deposition, "have you made any efforts or asked to see what documents exists that were taken from Diana in 2019?"

And his answer was, "To be honest, no."

I don't know if it's that he hasn't asked. I don't know if he doesn't want to do the legwork. I don't know -- what I suspect is what I argued in the brief, which is that IMI Fabi -- by having their attorney be what Your Honor referred to as the custodian of records, essentially, they've created this universe where any questions I ask about the search for documents are privileged or work product. I can't ask what they showed their client to educate him because they assert privilege or work product objections and won't let him ask the question.

So they've created this universe where only the IMI Fabi attorneys know where the documents are. Only the IMI Fabi attorneys are the ones that looked through these documents and determine what's relevant to produce.

And when you depose Mr. Fabi and you ask him "What documents did you review to prepare for your deposition?" He reviews the documents

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that are selected for him to review by the attorneys who have the sole possession of all of these Diana documents.

So rather than continue to discuss -- I mean, I just -- the Court really needs to compel those to be produced.

THE COURT: Okay.

MS. GROSS: Especially since it's for a company that they argue hasn't existed in almost two decades.

THE COURT: That's as to IMI Fabi?

MS. GROSS: That's for IMI Fabi Diana's 2019 documents. The Diana documents.

THE COURT: Then there is another Motion to Compel against Cosmetic Specialties.

MS. GROSS: So there's a couple of other sets of documents that I argued about in the IMI Fabi Motion to Compel that I'd like to talk about with you.

Separately, we did file a Motion to Compel against Cosmetic Specialties, which is a different defendant. But they have been engaging in good-faith discussion with us for a production, so we are not moving forward with that motion today. So we can set that aside.

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The other topics in the Motion to Compel IMI Fabi are the industrial talc documents. And this is what I explained to Your Honor. The brief, from the jump, from the git-go, was that IMI Fabi has created this defense that this is a cosmetic talc case, our industrial talc isn't relevant, you don't get to us ask us about industrial talc.

And ordinarily I guess I could see that argument. The problem for IMI Fabi is that Corrado Fabi has testified repeatedly just to me -- I don't know what he's testified to any other law firm. -- but just to me he's testified "Our industrial talc and our cosmetic talc are the same. They all come from China. They come on the same shipment."

He testified to Ms. Bollinger in a deposition yesterday it's the same ore. The only difference is they blast it for industrial customers instead of cosmetic customers. That's it.

And why the industrial talc sales are relevant is similar to what we discussed this morning. It puts me in a position to do third-party discovery. Whether or not it's

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admissible at trial is something totally different, right? I mean, that's a totally different standard. That's why we have pretrial hearings. Discovery -- the breadth of discovery is broad.

What if they sold the same grade of talc that went into Loreal that exposed Mr. Perry to asbestos-contaminated talc that they sold to the plastics company in Houston? I would like to go subpoena that plastics company in Houston. Because what if they have documents that say we tested this talc, we can't use it anymore because it has asbestos in it?

Or what if they have documents where they're talking -- because Corrado Fabi has testified that IMI Fabi handles their industrial talc sales directly. They don't go through Cosmetic Specialties, which you saw me discuss in here.

What if they have conversations with Corrado Fabi or Scott Baker or somebody who works at IMI Fabi where they say, hey, this stuff tested -- this stuff has asbestos so you guys take it for this purpose.

There's all kinds of stuff I can envision.

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And if I get nothing, I get nothing. Or if get a bunch of stuff and Your Honor says, "Rachel, that's really not relevant or admissible at trial," then you're not going to let me admit it and use it at trial. But I'm entitled to do third-party discovery. Particularly when by their own admission they've made them the same thing.

And the best example -- I think Your Honor gets it, but the best example I can think of, I put it in my brief, there was a document we found where Mr. Fabi somehow forgot that he had met with Johnson & Johnson to try and get them to buy their talc. I put the quote on page 7. No, that's a lie. Okay. Page 10 of the brief. It was from Volume I of Mr. Fabi's deposition in the Perry case. Exhibit 4 to our motion. It's at page 298, lines 5 through 17 of the deposition.

Where I asked him, "Did you try and sell" -- "Did somebody from IMI Fabi try and sell industrial talc to Johnson & Johnson for use in baby powder?"

He said, "Yeah, we tried. It didn't work, but we tried."

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If we live in this world that IMI Fabi has created, had they been successful in selling their industrial talc to Johnson & Johnson, according to their argument and their rules, I wouldn't get to discover that. Because it's industrial talc and because of the way the word game that they played with our deposition notice or where they intentionally educated him to pretend to not know what the word "benefit" means, I wouldn't be able to discover it because I didn't know when I wrote the notice that they handled their industrial talc sales directly.

So I would not have been entitled to discover that information, even though it ended up in a baby powder that was dumped on babies, because it was, quote, unquote, industrial talc. And that's the easiest way I can think to sort of wrap my head around what they're prohibiting us from discovering if I don't get their industrial talc sales.

And what's extra curious about it is it takes up two seconds to pull up industrial talc sales to customers by state. They produced it in Plant. They produced -- they reproduced it here. I attached it as an exhibit to the

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motion. But what Your Honor will notice if you go look at the exhibit that they didn't produce is the grade of talc sold to those customers.

Sure, they told me they sold to Michelin in the state of South Carolina, but what grade of talc? Was it the same grade of talc that they sold to Loreal or to Revlon or to whoever else they sold to that we don't know about that's in the Diana documents we've never seen? I mean, it's a wealth of knowledge that they just refuse to produce. And I don't understand why.

I mean, they're going to come up here and argue that it's a fishing expedition, or what I think you're going to hear is in the brief they cite to some sort of trade practices act and that somehow shifts the burden to me to justify my discovery requests. And I get why they're doing that because then I have to justify my discovery request and my burden is a lot higher.

But this is an asbestos case. There's standing discovery in the case of South Carolina that governs asbestos cases. The trade act doesn't apply. And even if it did, it is possible that a document can be both confidential and discoverable. That's why

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every, especially talc, defendant under the sun asks me to sign a protective order. They've never once asked me to sign a protective order. They never offered it. They never asked. Why?

So I'm not really sure where to go with that other than to say they're discoverable.

The other thing I wanted to bring up with Your Honor were -- I'm sure you recall during the Plant trial, they were fighting really hard at producing their financial information. And Your Honor ultimately compelled that before a verdict. They make some argument in their brief they shouldn't have to produce it until after a verdict. Had that been the case, we never would have seen their financials because obviously, as we discussed this morning, we did not get a verdict against IMI Fabi.

They produced it under strict confidentiality. I didn't even see it. Only two people from my entire law firm saw it. But they already know that Your Honor has compelled it before. Why not just offer it? Why not just say, "Rachel, we'll give it to you but sign the protective order. Only two people from your firm can see it." Why risk it all to come in

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here and lose again on the same issue?

And the reason why I think it's important to see their finances before we go to trial -- do you remember Whittaker, Clark & Daniels -- I know you do -- when you compelled their finances? I know we got a nice verdict and then somehow two days later they were bankrupt.

They have set this world up where they have three corporate entities. I'm sure Your Honor remembered they pitched a huge fit during Plant about how they wanted three different lines on the verdict form because they're three different -- they're not. They're one company. Okay. And -- but they've got these three different entities set up in the United States.

And my real fear is -- my real fear is the Italian conglomerate that owns them, the parent company over in Italy, if I don't get to see what they have available to them, we go get a verdict and then somehow two days later they have no money. They're bankrupt because they have moved all their money to their parent company in Italy. I don't -- there's so many things that I just don't understand why they don't produce it.

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And a perfect example of why they're going to come up here and tell Your Honor -- at least I should have made this point with the industrial records. I'm kind of jumping around. But they're going to come up here and probably tell you it's too much. It's too much. I don't know how we can produce that.

The reason I can tell Your Honor with a straight face that this is a company who can't be trusted, even if I could limit it, if you look on page -- I put a screenshot of it in the brief. It's on page 9. It's this invoice from IMI Fabi Diana, shipping to Cosmetic Specialties, their distributor.

And what I learned in this brief, McCarthy Drain Company was an industrial customer. And when I reviewed their opposition, I saw they -- I think they attached Dun & Bradstreet or something just to -- they haven't proved it's an industrial customer. We don't know what it is.

And it just wasn't sitting right with me, and so I just kind of poked around. You know, they're right. I am wrong. McCarthy Drain Company is not an industrial customer. It is a warehouse that their distributor owned in the

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state of California where IMI Fabi would ship their talc to be distributed all along the West Coast. And why would they not come in here and tell Your Honor that? Why would they risk it again and tell you a half-truth thinking I would never find out?

Because they just went to a court in California -- and I'm not trying to litigate this in front of Your Honor. It's just for context. Believe me, the California court will hear about it.

But they just went and told the judge in the state of California, under deposition twice, and in a declaration signed under penalty of perjury, "We had nothing to do with the state of California. We didn't ship any talc there. We didn't do anything."

And so they know if they come in here and tell you exactly why I'm wrong about this, they're going to have a problem. This is a company that excels at telling half-truths or hinging on weasel words. And because of that, we are in the position where their records just need to be compelled. Especially their financial records.

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And I am happy to attach a copy of the deposition I received with this information as a court exhibit. I received it so recently that I literally put incorrect information in this brief. I just got this information. And if I hadn't gotten it, Your Honor would never know about it.

So I know you read the brief. I know it's a lot and it's kind of heavy. So before I keep plowing forward, do you have any questions for me?

THE COURT: No.

MS. GROSS: Okay. Thank you.

MR. ROBERTS: Chief Justice, Ted Roberts on behalf of IMI Fabi, LLC, IMI Fabi Diana, LLC, and IMI Fabi USA, Inc.

Before I begin, I'd like to just respond to a couple of comments that I consider easy to respond to. The first one is the Plant trial. We have included as exhibits, Your Honor, Exhibit 13 and Exhibit 15 regarding the discussions of our financials in the Plant trial.

There was no refusal to produce the financials. Ms. McVey asked that the Court

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would ask us to. The Court did. We produced them the next day. Audited financial statements.

This has been the custom and practice of this Court to ask the defendants when you're in trial, you're going through that -- getting towards the -- is it reckless, or is it not going to be reckless? Are we starting to phase two? And I'd give them their financials. We did. We didn't refuse. You didn't have to compel us. You asked us to do it, and we did it. And that's --

I've had two trials in front of Your Honor. It seems that's been your custom and practice in these trials is to, hey, get them the financial information. If we're going to phase two, if there's a reckless finding, they'll have it, we can go. That's what we did. We didn't hide anything.

You know, it's one thing to use words like hide, half-truth, lie, with evidence to support it. That has no evidence to support it, Your Honor, provided the testimony or the discussion with Ms. McVey and Ms. O'Neill about the financials. And also given the financials

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to the Court.

To be honest with you, we got them financial information before Whittaker Clark & Daniel did at that trial. And the judge -- and Your Honor was kind enough to follow a past practice and order produce subject to a confidentiality agreement. Which we worked out and we got done. And it worked relatively well.

So what's changed here is nothing. And there's no good reason to be deviating from your past custom and practice, Your Honor. At least as to the financials.

I'll take this as the produce-your-financials-now argument. Particularly when there's no jury finding of willful, wanton, and reckless conduct. It's not relevant at this juncture. The courts have a procedural process in place for years that we'll follow. It's worked relatively well.

And once we gave them the financials, this Court heard no complaints. None. They got what they wanted. The people who needed to see it saw it, and there were no issues from that point on. We honored the Court's request. So I respectfully disagree with Ms. Gross'

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characterization of what happened at the Plant trial with regard to the financials.

And so let me just say this, Your Honor, and I'll submit this as my argument on the financial issue. At this juncture there is no reason to force us to put our financial records that a privately held company's in the public purview when the Court's custom and practice has always been produce the financials during trial, give them enough time to look at them, because of phase two they become relevant, they're coming in, we're going to deal with it.

But there's no reason to deviate, Your Honor. Nothing untoward has happened here to require any deviation of this Court's practice. So I submit as to the financial information part of the Motion to Compel should be denied.

Let me just keep this short on the Diana documents. Because we talked about this earlier this morning, Your Honor, I don't want to beat a dead horse. Corrado Fabi has reviewed and been shown Diana documents in just about every deposition they've taken. To say he hasn't looked at any Diana documents or he's got his

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head in the sand and do this stuff, again, is not based on the evidence in the case.

Ms. Gross has a quote in her brief when Mr. -- she was asking Mr. Fabi was he aware of all the documents that Mr. Summerville took from Diana at any time? The answer was no. Had seen all the documents? That's all of Diana's documents. That's all of the company's documents.

He's seen documents relevant to the case in depositions. And we know that, Your Honor, in the Perry case because I provided you with the testimony where Ms. Gross asked him about the Diana documents. And you can find that with respect to Volume 1 and 2 of Mr. Fabi's depositions, at page 171 to -80, 266 to 268, and 299 to 307, where she's asking about Diana documents. He's answering questions about Diana documents.

So the broad brush stroke that he doesn't know anything about Diana, has never looked at anything about Diana is incorrect, Your Honor.

With respect to the Diana documents, I'll make my argument right now and just relatively quickly. I'll save everybody some time here

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today. Most importantly, there's been no request in discovery for, quote, unquote, all of Diana's documents. None. And nor could there be under Rule 26, the South Carolina Rule of Civil Procedure because it would be overly broad, certainly encompass significantly irrelevant information, and it would not be connected to the merits of the case.

It's just a give me everything. Discovery would end in this litigation if we played by that rule. I don't have to ask. You just give me anything if I walk into a courtroom.

Had we been asked something like that, we could have dealt with it in terms of context of protective order or worked out something. We were never asked until this motion gets filed. Said give me everything.

Not -- beyond the scope of discovery, Rule 26, to have such a broad sweeping thing. And it wasn't even made in this case. There's no give me all of Diana's documents anywhere that you're going to see, Your Honor.

So I can't respond to discovery requests that aren't made. Request from Diana -- but all of the Diana documents should be denied in the

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context of the Perry case. I understand what you said about the Plant case earlier, Your Honor.

Industrial talc. Ms. Gross is correct that Mr. Fabi has testified at times that talc from China was used for both purposes at Fabi. That's the ore. That's not the finished product. They're two different things.

Additionally, Fabi received industrial talc or used talc ore from other countries. It wasn't all from China. It wasn't all from the same mine. There was some from Pakistan, there was some from Australia.

But here's the point, Judge. Bears no relevance in this case.

Mr. Perry was exposed to cosmetic talc.

THE COURT: Mr. Roberts. Two things.

MR. ROBERTS: Yes, ma'am.

THE COURT: Number one, relevance is not the test for the discovery, as you well know.

Number two, your own witness said that there wasn't any difference. The industrial and cosmetic were the same thing. Or sometimes he said it was all cosmetic. He said each of those things depending on which deposition or

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deposition testimony you look at.

They even make that claim.

MR. ROBERTS: I really don't think --

THE COURT: And they are now entitled to explore that information. All the information about the talc.

MR. ROBERTS: Briefly, Your Honor. I don't think Ms. Gross is going to tangle with me on this issue. The questions that were asked and the questions in response here were about ore. It means the stuff out of the mine before it hits the factory, before it's processed. And the context of --

THE COURT: And that's very pertinent because, you know, talc and asbestos are naturally occurring together. We all know that geography. And so it is very pertinent as to what the ore is like as it comes out. It's not a whole lot of refining that goes on.

The talc is -- there's not a whole lot of processing that goes on, as I understand it. Unless Mr. Fabi is going to say some things now that weren't said previously when some of this was explored.

MR. ROBERTS: Let me take a step back,

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Your Honor, because my argument -- I'm just trying to short-circuit this. But my argument on the industrial talc, quote, unquote, within the South Carolina trade statutes -- trade secrets statute. The documents --

THE COURT: Well, that can be easily solved with a confidentiality agreement. Trade secrets, again, are not ever going to stop discovery in and of themselves.

MR. ROBERTS: I totally understand that, Your Honor.

THE COURT: Many, many cases involve trade secrets. Protective orders are what you use to protect the confidentiality of documents that would constitute a trade secret. Sometimes people claim trade secret, then when you get to look at it, they send them all around the Mulberry bush, it turns out it's not really a trade secret.

But on the front end, it's very easy to protect what is claimed to be trade secrets, and that is to sign a protective agreement.

MR. ROBERTS: And that may be so, Your Honor. If you do rule against me on this issue, I will ask you for a protective order

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consistent with the requirements of the statute, which is 39-8-60. But Your Honor has already ruled on a case very similar to this case in terms of contract trade secrets, and I would appreciate you hearing me out on that one, Your Honor. Because the case you ruled on in 2018 was Falls v. CBS. And we attached that to our papers at Exhibit 3.

And in that context, you had a request just like this one. Give me all of your documents for all of your sales across the United States for Cleaver-Brooks Boilers. And those documents in the Falls case took the form of index cards. And on the index cards, there was information on every boiler Cleaver-Brooks ever sold in the United States, including the customer name, where it was installed, when it was installed, from 1930 to 1980.

And this Court reviewed -- and there were 90,000 of these index cards. And looking at that against the trade secret statute, this Court found the compilation of documents being sought by plaintiffs against Cleaver-Brooks was tantamount -- it was a collected customer list is what it was. And as a collected customer

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list, under South Carolina -- under -- customer lists had been found to be within the trade secret statute under South Carolina law, and that case is Carolina Chemical Equipment v. Muckenfuss, 322 South Carolina 289295. And this Court followed it.

And this Court determined that the 90,000 Cleaver-Brooks documents they sought show their boilers nationwide was within the statute and privileged from production.

THE COURT: Let me tell you what the rest of the Cleaver-Brooks story is, if you want to start getting in on that, Mr. Roberts, for a minute.

Yeah, that's exactly what Ms. O'Neill claimed. And, yes, I tried to do something that I thought was appropriate, but then it turned out that the -- at 12 midnight, the night before examination was to be had on this whole issue of, oh, it's no Cleaver-Brooks boiler, never has been a Cleaver-Brooks boiler. It's a product ID thing, which is her favorite tactic in these things. And it's a good one.

But it turned out that there were Cleaver-Brooks materials that either she had not

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been told about, and I chose to believe that that was the case, that a client had withheld information from her. But it turned the whole thing upside down on its head.

So don't cite the Falls case to me for the proposition that I locked myself into protecting all customer lists as trade secrets as a privilege that can't be disclosed. No, sir. I learned my lesson in that case from that.

MR. ROBERTS: And I made no suggestion to that. I wasn't suggesting that.

THE COURT: The Falls case is not something that helps you, let me just put it that way, in light of what happened. The very thing that I was concerned about, which is things would be withheld that were supposed to be disclosed, turns out that's exactly what happened even to the lawyer who made the motion, Ms. O'Neill. For me to protect these so-called privilege trade secrets, I'm not doing that anymore.

MR. ROBERTS: Again, Your Honor, relatively new to the jurisdiction over the last three or four years, but my understanding of the Cleaver-Brooks case that you're talking about now is a case called Howe, if I have it correct.

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MS. MCVEY: Involving the same index cards, though, right?

THE COURT: Yeah. That's what I'm saying. You know, she got me to make a broad ruling in Falls that all this Cleaver-Brooks stuff from the beginning of time is just too much and it's revealing all of their customer list, trade secrets. Of course, that wouldn't matter for IMI Fabi because they're not in business anymore. So I don't know what kind of trade secrets we would be protecting.

But she got me to buy into that and then this disaster happens with Cleaver-Brooks. And I told everybody at that time, I'm not doing -- I'm not getting sucked into that anymore. That was early in my time of trying these cases. I've learned a lot since then.

MR. ROBERTS: I understand, Your Honor.

To wrap it up, I'll submit my papers and my arguments regarding the industrial talc documents that they requested are trade secrets.

But I also have a separate independent argument that under Rule 26, the discovery rule request is beyond the scope of discovery. And here's what's important, Your Honor. There's no

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evidence that Mr. Perry was exposed to industrial talc. There's no evidence that he was exposed or the manufacturers of the products he used purchased industrial talc.

In fact, we put in evidence in our opposition papers of what the manufacturers of the product said, and they said it was cosmetic. And that's Avon and that was Estee Lauder. I don't think we had a --

THE COURT: That's what they say about their products. But, again, what does Mr. IMI Fabi say about that? Mr. Corrado Fabi says they're all the same thing. You can't have that both ways, Mr. Roberts.

MR. ROBERTS: Actually, I'm glad you brought that up, Your Honor. Because Ms. Gross mentioned -- referred to Mr. Fabi's testimony about the Pakistan -- Pakistan reference.

THE COURT: I have that sheet up right here.

MR. ROBERTS: Yeah, that's good.

THE COURT: That's the Pakistani talc sold to Johnson & Johnson. Yeah, what about it?

MR. ROBERTS: One, the deal never happened. So it never happened. Let's start there.

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THE COURT: I can't help it. What ultimately happens is not what we're looking at right now. It's information. He's the one testifying about this. You can't just come up in here and tell me, oh, let me change his testimony and tell you it never happened.

MR. ROBERTS: Your Honor, I've got his testimony at page 279 and 278 -- 297, 298. It's all the same stuff Ms. Gross read. She just didn't read the full thing where at the end of the sentence it says, "Fortunately, this never happened." And it -- also, it didn't involve LLC. Different companies.

THE COURT: We're not going to make any distinction between these three companies any more, I can assure you of that. I bit that too quickly too.

MR. ROBERTS: Respectfully, Your Honor.

THE COURT: We're not going to have a hide-the-ball where it's in one company and then go away and then it's in another company.

MR. ROBERTS: Just for the appellate record, I submit, Your Honor, in other papers and in my arguments that their request for all industrial talc documents across the country,

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undefined in terms of years, is within the trade secret statute as a protected customer list. They've shown no substantial need for them. And it's also beyond the scope of discovery on Rules 26(a) and 26(b).

In the event that the Court grants the motion, I request that the Court enter a protective order consistent with the language of the trade secret statute regarding the industrial talc documents.

And if I didn't make the request earlier, if I am -- if my financial information is to be disclosed now as opposed to your customary time period, I would also request the same protective order this Court issued in the Plant case for our financial documents.

And you can -- Exhibit 13 and Exhibit 15 to our opposition have the language and the discussions of the parameters of the protective order that was agreed to by both parties and entered in the Plant case.

Lastly, Your Honor, I'm just going to hit one thing that Ms. Gross brought up and then I'm going to sit down.

No, I'm not, Your Honor. I'm going to sit

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down now. So for all the foregoing reasons --

THE COURT: Okay.

MR. ROBERTS: -- as well as those expressed in my papers, IMI Fabi Diana, IMI Fabi, LLC, IMI Fabi USA respectfully requests that this Court deny Plaintiff's Motion to Compel on all four areas for which they seek to compel.

And to the extent I'm denied, with respect to financials for the trade secrets argument, I request protective orders, as I previously articulated, for the documents in those pockets of documents being sought to be compelled.

Thank you, Your Honor.

THE COURT: All right, sir.

Any response?

MS. GROSS: Yes, Your Honor.

Mr. Roberts got up here and argued exactly what I told Your Honor they were going to say. There's no evidence Mr. Perry was exposed to industrial talc. Oh, it's the talc ore. That's not what Corrado Fabi has testified to. He says it's all from China. It's all from China. Yes, they have some Pakistan talc that they sold only industrially, according to them. At this point I'm not even sure. That's been the testimony

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before. But he says it's all from China. All the same.

How do I know that Mr. Perry hasn't been exposed to something that was industrial talc? I have shown Mr. Fabi in a deposition MDSD sheets where it lists all the grades of talc, 1626, 141, 3355. All of them. And I straight up asked him, "Which ones do you consider cosmetic? Which ones are industrial?"

And he told me the first two or three are industrial. The rest are cosmetic.

They're all from China. So it's not just the talc ore. It's the finished product. It's all China. Whether they sprinkle a little bit more for it to be cosmetic than industrial, it's all the same. And as they so graciously reminded Your Honor this morning, it's what's inside the bottle that counts.

So how do I know that Mr. Perry wasn't exposed to a talc that they considered to be industrial and I just haven't been able to discover it because of that? That's point number one.

Point number two, I did not say to Your Honor or in my brief anywhere at any time

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that Mr. Fabi hasn't looked at any Diana documents. What I said to Your Honor, before Mr. Roberts spoke, was he only looks at the documents that were curated by IMI Fabi's attorneys to be produced in that particular case. And that's true whether it's here or anyplace else. I didn't say he doesn't look at all the documents. I said he only looks at the ones that the attorneys tell him, "You look at these, and we're going to produce them."

Attorneys do not get to decide on their own what's relevant to be produced in discovery. That's not how this works.

Also, a little bit more on the financial aspect. According to them, USA, the reason they convinced Your Honor to dismiss them in Plant, they told Your Honor it's a holding company. We don't do any business. We don't make any money. They still testified to that to this day.

If there's no money in there, what's the problem? Why is it so secretive if there's zero dollars in that bank account and they do nothing with it and there's no purpose other than some business or tax reason I just can't wrap my head around. Why not just show me a zero?

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Diana is the same thing. They told you earlier they haven't sold -- I told you earlier they haven't sold cosmetic talc or done any business since 2004. When you ask the plant manager in a deposition, Mr. Brown, hey, who pays your paycheck? It's LLC.

If Diana has no money, what's the problem? Why this big thing over hemming and hawing over -- and by the way, you did not wait. They did not produce their financials before Whittaker Clark. If Your Honor remembers, there was a hearing in the Payne case a couple of months before trial. I believe it was January. Where you compelled them in court to show them. I'm sure Ms. Flynn remembers. She was there as well.

They did not produce their financials before Whittaker Clark. They just weren't there. And Whittaker Clark still was bankrupt two days later after the verdict or whenever it was. So let's just kind of push that issue to rest there.

If Your Honor is swayed at all by the notion of this trade secrets business and they have to have a protective order, I would request

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that Your Honor only grant the protective order that you ordered was appropriate in the Payne and Plant cases last year. Every defendant got the same one.

Because if you remember, Mary Kay pushed the issue with you in a hearing. You said we had to sign one because we didn't want to, and then every defendant since then has used the same one.

If they want something different pursuant to some statute that is not applicable in an asbestos case, I would ask that they tell Your Honor what it is they want. Not some broad-brush statement, "We want it consistent with this statute." This is not a trustworthy company. They hinge themselves on weasel words. If they want something different than what Your Honor has previously ordered, to be completely appropriate, I would like to know it. And more importantly, I would like the Court to know it.

In terms of -- going back to the industrial talc thing. You heard me make reference to it in passing that we deposed Mr. Fabi in another case yesterday. And what we learned for the

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first time yesterday, IMI Fabi was actually sued back in 2003 by a person who alleged that they got sick from exposure to what they call industrial talc.

So the notion that somebody who has this one particular kind of exposure can't possibly be exposed, I don't know that. They are not trustworthy. I didn't even know that that had happened until yesterday for the first time.

And the one last thing I'll say, and I know Your Honor knows this is just for the record. What 30(b)(6) requires, it requires that the witness that the company chooses to speak for them, because, of course, we noticed the deposition of IMI Fabi Diana, LLC, and USA. I don't notice Mr. Corrado Fabi's personal deposition. I would love to, but I don't.

They chose to make him the corporate representative. 30(b)(6) requires that they educate their deponent. That is how it works. That is what I said. You cannot intentionally undereducate your deponent and then say that I can't even ask about the search for stuff because it's just attorneys that do it.

They create -- it's actually very smart

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where they've created this universe where I'm not allowed to know about anything that they do. And he only gets to testify about what's curated for him.

But if I push it with him and I ask him any questions, of course he says he doesn't know because they don't let him see the documents. That's my argument. Not that he's never seen them. It's a very different game. But attempting to rebrand what I said seems to be the common thread at this point.

So unless Your Honor has anything further from me, I will take my leave and rest.

THE COURT: Very good.

MS. GROSS: Thank you.

THE COURT: All right.

MR. ROBERTS: May I respond briefly?

THE COURT: All right, sir.

MR. ROBERTS: The question was raised what specifically should the industrial talc protective order look like, not broad request for the statute. I will give the Court specifics of the statute as well as counsel.

It's Section 39-8-60, Section (b). And the requirements of the statute and for business of

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statute, the protective order are paragraphs capital E through J. And they work out, you know -- the protective order is mandatory. And then they give a bunch of recommendations or discretionary. This is what it should be and it should be limited to the case. A number of items like that are in here, Your Honor. I'm not just broad-brushing it, making it up.

THE COURT: But you're calling it trade secret, and that's what still puzzles me about what you're saying. They haven't done any business since 2006, so what is this bit about trade secrets?

MR. ROBERTS: Let's clear that up. So this isn't about IMI Fabi USA. Not about them. It's not about IMI Fabi Diana. It's not about them because they haven't done any business in a long time and they only made cosmetic talc. This is all about IMI Fabi, LLC.

THE COURT: Tell me about that.

MR. ROBERTS: All the documents are going to have customers' names on them that they're going to produce. And it's over -- there's no time limit on the production, Your Honor. I mean --

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THE COURT: That's all right. They're wanting everything.

MR. ROBERTS: So that alone is overbreadth right there. Let's focus on the protective order issue.

Customer names, this is customer data that should not -- it's a collective -- the documents are collectively a customer list. I don't know how many there are, Your Honor. I'm going to hear that at some point.

THE COURT: Tell me why my normal protective order doesn't work in that situation. Why we are wrapped up in some determination about trade secret with a company who's been very secretive about what their business is.

I'm learning for the first time here, as you tell me, about that IMI Fabi USA now is the one that has all these customer lists. Because those customer lists, a lot of them are back in the time they're talking about when IMI Fabi was supplying cosmetic companies.

Now, if they're still doing that under IMI Fabi USA, that may impact Mr. Perry. But I don't understand how that becomes a trade secret.

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Trade secret is something different from just material that needs to be confidential.

MR. ROBERTS: I agree.

THE COURT: What is the end game you're talking about that you want to restrict them that can't be done with a normal protective order?

MR. ROBERTS: I'll try and make this as simple as possible for Your Honor because I failed, it appears.

The collective body of our industrial talc sales records, and by "our," I mean IMI Fabi, LLC. The collective body of them contains data on customers, pricing, sales, that is valuable to IMI Fabi. It's even more valuable to IMI Fabi's competitors who could get their hands on it and market to customers and undercut pricing and things of that nature.

Collectively, the documents are customer lists of IMI Fabi for industrial talc.

THE COURT: I get that. Let's assume that. Tell again me again the answer to my question: Why isn't my normal protective order enough?

MR. ROBERTS: Because it's heightened requirements in the statute.

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THE COURT: Sir?
MR. ROBERTS: The requirements are heightened in the statute.
THE COURT: Well, what's the difference -- what are the requirements that are in the statute that aren't in my protective order?
MR. ROBERTS: Okay. So paragraph -- so I'm a reading from, for the record, 39-8-60 paragraph B -- subsection -- strike that.
Paragraph E. "Information produced to" -- "pursuant" -- "Information produced pursuant to the section must be governed by an appropriate written protective order of the Court."
Section F. "Information produced pursuant to this section may only be disclosed to persons identified in a written protective order of the Court and may be used or disclosed only in the action in which it is produced.
"Litigation sharing orders pertaining to trade secret information must not be entered by the Court."
It goes on. There's other details. It goes on in Section G, H, and F. You get the --
THE COURT: Well, basically, you don't want them to share it with the lawyers and be suing

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IMI Fabi on behalf of other people, right?
MR. ROBERTS: Your Honor, my position is this is an industrial talc fishing expedition in the first degree.
THE COURT: I get all that --
MR. ROBERTS: I didn't say this but --
THE COURT: We're in a similar kind of a thing here. Which is you don't want them to -- since they sue IMI Fabi all over the country, you don't want them to show it to -- to use it in other litigation; is that it?
MR. ROBERTS: I want to follow trade secret requirements here, Your Honor. That's what I'm requesting.
THE COURT: If you don't want to answer my question --
MR. ROBERTS: I apologize, Your Honor.
THE COURT: -- I'll enter my order the way I need to enter it.
MR. ROBERTS: Yes, ma'am.
THE COURT: I'm trying to ask --
MR. ROBERTS: And part of my answer is yes.
THE COURT: -- a civilized question.
MR. ROBERTS: Yes. Yes, I don't want it shared either between lawyers or nonlawyers or

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put in a public record in any way.
THE COURT: Well, the public record is easily protected. I do that all the time.
What else are you talking about?
MR. ROBERTS: In the statute, Your Honor? I just read the sections of the statute.
THE COURT: Okay. Well, that's the way you want to answer?
MR. ROBERTS: Oh, the last item on my list -- and I will sit down because I've overstated my welcome and I'm well aware. -- is just on the Whittaker Clark & Daniel thing. The only reason I say IMI Fabi produced their financials before Whittaker Clark & Daniel in the case comes from page 1657 of the trial transcript where Ms. McVey -- Ms. McVey says, "I'm still waiting for the Whittaker Clark & Daniels financial stuff."
And the next person up is Ms. O'Neill who says, "Here's IMI Fabi's audited financials." So --
MS. MCVEY: This is Lindsay here. She can address it and tell you that they produced it beforehand.
MR. ROBERTS: It's not worth arguing about.

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Your Honor, so for all of those reasons, I respectfully request that you deny the motion. Thank you.
THE COURT: All right.
MS. GROSS: Your Honor, indulge me. I think I can help you a tiny bit with the timeline and just tell you exactly what we're looking for.
THE COURT: Okay.
MS. GROSS: I think it's going to help.
So in terms of this trade secrets thing, the last thing I want to say about it, they put it in their brief. What the trade secrets act governs --
THE COURT: Where are you in the brief?
MS. GROSS: Yes, ma'am. It's on page 4. It's subsection A.
THE COURT: All right.
MS. GROSS: Are you with me?
THE COURT: Yes.
MS. GROSS: "Information, including but not limited to a formula, pattern, compilation, program, device, method, technique, product, system or process, design, prototype, procedure, or code."

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It doesn't say customers or customer lists. I just want to know what kind of talc they sold and to who so I can go ask those people.

And by the way, this furthering our point that this is not -- trade secrets is not confidential. When I started kind of poking at Mr. Fabi about this in a deposition, you know what he told me? "One of our clients is LyondellBasel in Houston. The rest of them, go look in the plastics directory, they're probably all listed there."

The notion that their customers are confidential is a fiction they've created so they don't have to give me their records. That's it. And that's all I'm going to say on that.

Now, in terms of what we're really looking for here. I moved on four different things in the brief. I'm actually just going to abandon one of them because at this point, I'd rather do it myself.

So the first thing I moved on was the production of their industrial records. What we've been arguing about. Their industrial sales records. And that -- what Mr. Roberts was

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trying to explain to you is that the three different IMI Fabi entities, there's IMI Fabi Diana -- this was really hard for me when I started working on this.

IMI Fabi Diana is 2001 to 2004. They say they don't exist anymore.

LLC comes around after Diana and is still around.

USA is the holding company that first began in this country in 1999 and still exists. But they also say it does no business and makes no money.

So for the industrial sales records, what I'm looking for is the IMI Fabi, LLC industrial sales records.

THE COURT: And the LLC, what do they say about it?

MS. GROSS: That's the one that began when Diana went out of business.

THE COURT: In 2004. And it still exists?

MS. GROSS: Yes, ma'am. And it handles their industrial sales directly and the cosmetic sales allegedly through Cosmetic Specialties. That's the first thing we want.

THE COURT: All right. Well, you want

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the -- all the Diana documents?

MS. GROSS: That's the second thing is the Diana -- IMI Fabi Diana documents.

THE COURT: First, you want IMI Fabi, LLC's --

MS. GROSS: Industrial --

THE COURT: -- industrial talc records.

You want --

MS. GROSS: IMI Fabi Diana.

THE COURT: IMI Fabi Diana --

MS. GROSS: All of them.

THE COURT: All Diana documents. That's everything Mr. Summerville removed from the Diana office.

MS. GROSS: I do. And if there's a concern that there's something in there about the business, I'm not -- look, odds are, I'm not going to try and admit that at trial. Or if I do try, Your Honor is going to tell me that's not admissible. But that's not the brush you paint discovery with. That's number two.

The third thing I moved on was I think they should be compelled to talk to their codefendants because that's what Your Honor has normally held in the past. At this point, I'd

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rather do it myself because I'm making more headway. So I'm not even going to ask you to issue an order on that point.

THE COURT: So all you're asking for is an order on the Diana documents and --

MS. GROSS: Industrial talc sales.

THE COURT: Industrial talc.

MS. GROSS: And the finances.

THE COURT: And the finances.

MS. GROSS: Yes, ma'am.

With that, I will take my leave unless you have anything further you need from me. Thank you.

THE COURT: I will grant the Motion to Compel with respect to IMI Fabi Diana documents, which are the documents Mr. Summerville removed from Diana before it closed business in 2004.

With respect to those documents, I will issue a protective order along the lines of the protective orders I have issued in the past.

I will also compel the production of IMI Fabi, LLC documents with respect to industrial talc. I do not regard those as trade secrets or matters that have to be protected by the Trade Secret Act. I will sign a protective

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order that is my normal protective order about those documents.

Number three, the finances of IMI Fabi USA. I will sign an order requiring that its financial situation as it currently exists be disclosed.

MS. GROSS: What about LLC and Diana, Your Honor, as well? Remember, they said they're three separate entities.

THE COURT: All of the IMI Fabi entities.

MR. ROBERTS: Will we have the same protective order we had in Plant on those, Your Honor?

THE COURT: My normal protective order. I think that's what I signed in Plant.

MS. GROSS: For the finances, it was pretty closely held. I think there were only two people at my firm. I didn't get to look at them.

THE COURT: That's correct. Absolutely. I thought that's what he meant. That's what he means.

MS. GROSS: That's what he means, if that's what -- so the protective order for the finances is a little bit different.

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THE COURT: My normal protective order for the industrial talc stuff and the Diana documents. My financial protective order document with respect to the finances of the three companies.

MS. GROSS: Thank you.

THE COURT: That's the most restrictive one.

MS. GROSS: Yes.

THE COURT: Okay. What else?

MS. MCVEY: We'll draft orders to that effect, Your Honor, if that suits.

THE COURT: Yes. And, frankly, so that you get this thing moving on, I would do them sooner rather than later. Please get them to me and to Mr. Roberts and Mr. Carroll.

MS. MCVEY: Yes, ma'am.

THE COURT: And Mr. Roberts and Mr. Carroll, when you get them, you will have four business days to react to it before I sign anything.

MR. CARROLL: Yes, ma'am.

MS. MCVEY: Thank you, Your Honor.

THE COURT: Now what else?

MS. MCVEY: The only thing that we were

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discussing at lunch, just to put it on the record, because of the amount of additional documents that have been discovered with Diana, what we're probably going to do, as requested, match them in the discovery and what's out there -- we may start doing a rolling production so that we can get stuff to you all as soon as we can, if that suits you.

THE COURT: Well, I think that makes sense. And, frankly, I think you all are smart lawyers and can sit down and figure out what's an organized way to handle this that doesn't involve just a couple of lawyers having to devote their entire time to this darn thing as opposed to everything else they do with their cases.

I'm hoping that you all will work out a reasonable way in which to even make a rolling disclosure or whatnot. You all sit down and see if you can't work that out.

MS. MCVEY: We will. We'll bring clarity.

MR. ROBERTS: I didn't follow Ms. McVey's thread on --

MS. MCVEY: There's so many documents we've just gotten that were hidden from us in Plant

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that what we're going to do is match them, as the judge said, to the discovery responses. And so I want to be able to give that to you, but we may do it --

THE COURT: She's going back to Plant, and she is now talking about Plant. And as you may recall in Plant, what I directed be done, and this may be more for Mr. Carroll than for you, Mr. Roberts.

But in Plant, in order to deal with what I think is some serious potential questions about withholding of documents, I asked the -- I directed that Plaintiffs' counsel match up what they've gotten --

MS. MCVEY: So far.

THE COURT: -- with what they say was not disclosed. Match that up with the arguments that were made and the contentions they made. I think you all understand that. Do you not?

MS. MCVEY: Absolutely do.

THE COURT: I think you all understand that, do you not?

MR. CARROLL: Yes, ma'am.

MR. ROBERTS: Yes, Your Honor. Sorry for the confusion.

THE COURT: She's talking -- she is trying to figure out how to organize the disclosure to you for the stuff that she has gotten since Plant was tried that she contends bear on these contentions, if I can just put it broadly like that. And she wants to disclose those things to you on a rolling basis because it's a lot of documents. She'll try to go with some contentions, but in terms of getting them to you, she's going to try to feed them to you --

MS. MCVEY: As we go.

THE COURT: -- as she goes in terms of organizing them.

Am I saying that right?

MS. MCVEY: Exactly right. You said it better than I did.

THE COURT: Okay. Do you understand now what is being said, Mr. Roberts?

MR. ROBERTS: Yes, ma'am.

THE COURT: I think -- Todd, I think you --

MR. CARROLL: Yes, I'm just tracking, Your Honor.

THE COURT: And obviously, if snags are reached with this, you just let me know and I will try to iron them out. But I think decent

lawyers of goodwill, which all of you are, none of you are infected by whatever your clients did or did not do. You're just good lawyers trying to do the best you can for your clients in whatever circumstance you find themselves. So I get that. I'm just trying to figure out a decent way that doesn't consume you entirely. This is a particular kettle of fish.

So see what you can work out and if I need to be involved, I'll be happy to try to untangle it. But I believe you can figure out a staged way to get all of this material matched up to what you contend the problem is.

MS. MCVEY: I think we absolutely can. Thank you, Judge.

MR. ROBERTS: Thank you, Your Honor.

THE COURT: Now, this Court's Exhibit on Plant against Avon. That was the Bollinger, O'Neill stuff. I'm giving this to the clerk.

MS. MCVEY: We gave her one.

THE COURT: Okay. You got it. They got it.

Any other housekeeping stuff we got up here?

MS. MCVEY: No, ma'am. Thank you.

THE COURT: Okay. Thank you.

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(The hearing concluded at 3:24 p.m.)

- - -

State of South Carolina	)	Court of Common Pleas
County of Richland	)	Fifth Judicial Circuit
	)	
SARAH J. PLANT and PARKER PLANT,	)	Case Number:
	)	2022-CP-40-01265
Plaintiffs,	)	
	)	
vs.	)	
	)	
AVON PRODUCTS, INC., et al.,	)	HEARING ON PLAINTIFFS'
	)	MOTION FOR NEW TRIAL
Defendants.	)	
_____	)	TRANSCRIPT OF RECORD

June 26, 2024
Charleston, South Carolina

B E F O R E:

The Honorable Jean H. Toal

A P P E A R A N C E S:

MS. THIELE B. MCVEY,
MS. RACHEL M. GROSS,
and MS. JORDAN L. BOLLINGER,
Attorneys at Law,
for the Plaintiffs;

MS. M. ELIZABETH O'NEILL,
MR. M. TODD CARROLL,
and MR. THEODORE F. ROBERTS,
Attorneys at Law,
for the Defendants;

MS. CHERIE BLACKBURN
and MR. STEVEN J. PUGH,
Attorneys at Law,
for Defendants' Counsel.

Jamie Bickett
Official Court Reporter

(The following proceedings were had in open court.)

THE COURT: This is in the matter of Sarah J. Plant and Parker Plant against Avon Products, Inc., and many others. This is a Richland County case, with a Case Number 2022-CP-40-01265. This matter was tried in February of 2023 in front of myself as circuit court judge. Plaintiff has now filed a motion for relief from judgment pursuant to the South Carolina Rules of Civil Procedure 60(b), motion for a new trial.

Plaintiff, identify yourself, Ms. McVey, and identify the members of your team.

MS. MCVEY: Absolutely. Thiele McVey for the Plant family, along with Rachel Gross and Jordan Bollinger. And I've given Madam Court Reporter our cards.

THE COURT: Very good.

All right. And Ms. O'Neill heads the team for the defense.

Ms. O'Neill, introduce yourself and your team.

MS. O'NEILL: Elizabeth O'Neill, Womble Bond Dickinson. Trial counsel for the Plant matter was myself, Ted Roberts, and Todd Carroll, all with Womble Bond Dickinson.

THE COURT: All right. And you also have at counsel table?

MS. BLACKBURN: Your Honor, I'm Cherie Blackburn with the law firm of Maynard Nexsen, and I'm here as counsel for

Womble Bond Dickinson solely for the purpose, if needed, to protect the attorney-client privilege, to make sure they abide by Rule 1.6 of their obligations under the Professional Rules of Conduct. I am not here to impede this process at all, but I would ask your permission to be able to participate in the hearing if needed.

THE COURT: Understood. And that will be granted.

Mr. Pugh, you are here. Always glad to see you.

MR. PUGH: Good morning, your Honor. I am here -- maybe, depending on how this hearing plays out -- if any of these attorneys who represented the IMI Fabi defendants in the underlying trial are called upon to potentially provide testimony, I have been asked to make a special appearance for the limited purpose of this hearing. I can file a notice of appearance if need be.

THE COURT: No, sir. You're putting it on the record, which is all you need to do for my purposes, Mr. Pugh. But if you need to file anything further by way of written materials, I'll certainly allow it.

MR. PUGH: Yes, your Honor. I have it right here to hand up a copy to you if we get there.

THE COURT: There you go.

MR. PUGH: Otherwise, I'm going to sit back here.

THE COURT: All right.

MR. PUGH: Thank you.

THE COURT: Let me make a couple of preliminary observations before we begin.

I was heartsick when I got this motion. I have had a long experience in court work for 55-plus years, and I've certainly had a long experience as a judge and a fairly long experience now as a circuit court judge. This is certainly not the first time I've had some contention made by one party that attorneys for the other party or attorneys and clients for the other party have misrepresented matters in front of the Court.

But this allegation goes beyond that. This Rule 60(b) motion asks for a new trial with the contention that IMI Fabi and its attorneys deliberately withheld information which linked IMI Fabi to certain cosmetic manufacturers and other information with respect to the status and involvement of their plant manager and other officials of IMI Fabi directly with cosmetic manufacturers in connection with the manufacture by IMI Fabi of milled talc material made from large rocks of asbestos material from China.

My guiding light is *Chewning versus Ford Motor Company*. It discusses the only basis upon which this motion could be granted, which would be a finding -- a factual finding by myself that extrinsic fraud had been perpetrated against the Court. And in the context of *Chewning*, as well as in the context of this case, that would be by showing that an

attorney or attorneys for IMI Fabi deliberately concealed and procured the submission of evidence which concealed and falsified the true position of IMI Fabi with respect to the cosmetic manufacturers that Ms. Plant claimed produced products which injured her when she used them. That is a very serious contention.

I set this hearing more than ten days ago with a notice to everyone as to who I wanted to attend. I am very disappointed that Mr. Michael Sommerville, who I'm going to ask his position with the company to be clarified when we get there, but who attended the trial, attended the discovery depositions in the Plant matter, was involved in the assemblage of documents related to IMI Fabi, which he had assembled and maintained in his office paper records from IMI Fabi, at least since either 2017 or 2019; I can't remember exactly when.

But Mr. Sommerville as -- I thought he was an in-house attorney for IMI Fabi. I've come to understand from communication from Ms. O'Neill yesterday that that is not his position, but I'm certainly going to get some clarification as to exactly what his position is. I had thought when he came and observed the trial and was introduced to me that what I was being told was that he was national counsel or general counsel for IMI Fabi, and I addressed him that way for that reason.

I want to understand exactly what happened in this matter. But I will preliminarily say I have tremendous admiration and confidence in every one of the lawyers who is present in this courtroom today, and that includes the lawyers for the defendant.

I have tried many cases with Ms. O'Neill, who leads the defense team. She has at least one time, very clearly in my memory, in the midst of the trial of a case discovered at midnight during the trial, before the trial went on the next day, that a document very pertinent to the identification of her client with the plant in which the exposure took place had been concealed from the Court or not revealed to the Court. She immediately revealed the document. And frankly, it didn't end up making much difference, but I think she prevailed, at least in part anyway. But I have found her to be honest, and I hope I am confirmed in that.

I would be very disappointed to learn that the existence of all these other documents with Michael Brown's signature on them from IMI Fabi to Johnson and Johnson, dealing not just with Cosmetic Specialties, but dealing direct with the people who manufactured the products Ms. Plant says injured her, his signature is all over them. They have all these quality testings and all this kind of stuff. All right? That is a direct contradiction of the way this case was tried.

This case was not tried on or confined as asbestos in IMI Fabi's talc and they are liable. The case was tried on the basis, A, you must find that there was asbestos in IMI Fabi's talc, and that involved a proof about Chinese talc that I allowed to go to the jury because I felt that there was sufficient there to submit it to the jury.

The second thing that had to be shown was that IMI Fabi's talc went into the products that were used by Ms. Plant, and that is where the principal argument was made by the defense. Ms. O'Neill's one of the best in the business at arguing product identification. This is not the first matter she has prevailed in by being able to attack successfully the plaintiffs' failure to show that their product is identified with the exposure.

Frankly, we're in an age now where some of these other extraneous things that Mr. Fabi projected when he was deposed are really not material. Things like "I lose all responsibility because it's FOB." That's a commercial paper doctrine that went out when the citadel of privity was breached in *MacPherson* and in *Ford Motor Company versus Michel* as I began my legal career over 50 years ago.

South Carolina's General Assembly then saw fit to place into statutory law statements in the Restatement of Torts that define liability in terms of placing materials in the stream of commerce. And there's no question but what IMI

Fabi placed talc into the stream of commerce. And with the documents that have been submitted to me now, there's not any question in my mind but what IMI Fabi had a good deal of dealing with the cosmetic manufacturers themselves.

IMI Fabi has a manufacturing process. It -- we now see detailed diagrams of the machinery and the plant it bought from Whittaker, Clark and Daniels when it got into the business in that particular location of manufacturing cosmetic and industrial talc. So there's no mystery in my mind at this point but what this new information clarifies in a way that is significantly different from what was shown to the jury what the specific relationship is.

Now, the defense makes the contention it didn't make any difference and the suggestion that the plaintiff was sloppy about the way they did discovery and, therefore, they could have discovered this. Because if it's just a question of being sloppy and "The defense told lies," that's intrinsic fraud, and this matter cannot be overturned on the basis of intrinsic fraud. I'm very well aware of that and very open to understanding exactly what happened here to find out whether this is something more than the garden-variety intrinsic fraud that unfortunately happens in a lot of situations.

So I want to explore that, and that's going to take more than just today. I will assure you that we will have another

convening of this matter. I want to find out as much as I can about it today, and then I'm going to schedule something as quickly as I can, when Mr. Sommerville comes here and explains to me what this situation is.

That's going to have to be done. That's what I think the Supreme Court directs be done both in *Chewning* and in the *Raby* case where intrinsic rather than extrinsic fraud was found by Chuck Simons in the case that he heard, but it gives a good road map of the procedure that is supposed to be filed by a circuit court judge in dealing with these matters. It makes it clear that just like another infamous new trial matter that I presided over recently, the judge has to take a pretty central role in conducting an examination to try to find out what really happened. And that's what I'm all about trying to do.

MS. O'NEILL: Please don't cross-examine me like you did the clerk. I watched that on TV, your Honor.

THE COURT: Well, I tell you, thank goodness that one got over in a hurry. And I want this one to do as well. Many matters like this don't get better with time, and that's why I was trying to set this thing for a quick disposition because I find that's the best to do about things like this. They don't need to linger.

Again, I have no ill will against any lawyer in this room and nothing but respect for the lawyers in this room. I

hope I am not disappointed in that viewpoint about it. But I just know y'all well enough that I would be shocked if you knew what you know now about these documents. But you may have other explanations that I don't know about, and I want to hear about those.

So now that I've kind of given you a fresh ear of where I'm going, Ms. McVey, I'm going to turn to you first to kind of -- we now have your motion and we have a full reply to that from the defense. We then have a submission, which has been very helpful to the Court, of documents as well as a chart that describes the documents which you say constituted material that could not have been discovered before trial because of concealment -- deliberate concealment by attorneys for the -- or attorney, whatever it is, for IMI Fabi. And you have documented now what you believe that the evidence you have now uncovered shows.

So I'm going to invite you to make some preliminary remarks. Amongst them, I would like for you to detail for this Court what you think happened here.

MS. MCVEY: Thank you, your Honor. I would like to make some preliminary statements, and I may get Ms. Gross to jump in.

THE COURT: That's fine.

MS. MCVEY: I am heartsick because I think the concealment goes on even today, and I'll tell you why.

We had a hearing during the first Plant trial, and then we had a subsequent hearing where you ordered the IMI Fabi documents that Mr. Sommerville had taken and put into his office -- taken in 2019, you ordered those to be produced to us on the 24th. And guess what; they have not been produced. And instead, Ms. O'Neill emailed and said, "Here are some of the documents the judge ordered. If you want to see the Sommerville documents that he took, go get them. They'll be available for inspection at his office."

That's a direct violation of your order after this hearing -- after this hearing where we discussed that these documents had been hidden from us. And it's not like these -- there's some wiggle room in the interrogatories or questions that were asked. They're direct questions. And they didn't produce the documents.

Now, where that's all down within IMI Fabi, I don't know. But I'll tell you this: Able trial counsel of Mr. Carroll and Ms. O'Neill and Mr. Roberts and the national coordinating counsel -- whatever that means -- was in this trial, the Plant trial, the entire time. He knew the entire argument was, "Where is the evidence? The plaintiffs don't have any documents. You could have decided Mr. Corrado Fabi flew down here to lie to the jury." It was really effective. As you said, Ms. O'Neill's a very good lawyer and she does this very well.

I don't know what she knew or didn't know. I hope she didn't know about these documents. But we know that Mr. Sommerville did. We know that Mr. Fabi did. That's extrinsic fraud. There's no question.

And we have given you with this chart -- and I give Rachel and Jordan all the credit on creating it because they have painstakingly gone through. This is not even all the documents, but it shows you Revlon, L'Oreal, Clinique, Estee Lauder, Procter and Gamble -- all the things that we know that Sarah Plant used, that she testified to using -- Avon -- that IMI Fabi had a relationship with and they said they didn't.

And we still don't have -- we still don't have the Mike Sommerville documents. Why don't this team have those documents? After all this, they don't even have the documents.

THE COURT: Let me ask you this. The documents you do have were produced in other cases and, for my purposes most especially, the Perry case, which is on my docket for trial. Correct?

MS. MCVEY: Yes, ma'am.

THE COURT: All right. How were these documents produced to you? I mean, do they -- do these documents come out of the Sommerville paper documents that are retained in his office, or do you know?

MS. GROSS: Good morning, your Honor.

I assume they do come from the Diana documents based on the dates of the documents.

THE COURT: Yes, that's what I assumed too because the documents are described in terms of the time and dates, and these documents go back into that time period.

MS. GROSS: That's correct. And a lot of them mention --

THE COURT: And then before --

MS. GROSS: -- the Diana plant.

THE COURT: There came a time when they put them on a searchable database, as I understand it -- or put them -- digitized them in some sort of way. At least, that's the statement that is made.

MS. GROSS: So I think that the distinction here is the Diana documents, as far as I know, have never been digitized. If they have been --

THE COURT: And the Diana documents are the ones Sommerville took to begin with.

MS. GROSS: Yes, ma'am.

THE COURT: Right. And -- all right. Do you now have some materials that you documented and tabulated in these materials to me that are from the Diana documents?

MS. GROSS: Assuming that based on the date and the references to the Diana, New York, plant, then yes, these

would --

THE COURT: That's what I assume too --

MS. GROSS: Yes.

THE COURT: -- because I have very carefully marked in mine which ones say "Diana" or "Diana, New York."

MS. GROSS: But I want to make sure that there's a point made to your Honor about this 34-page chart. This is not -- we have not --

THE COURT: That's not all of what you've got.

MS. GROSS: No, ma'am.

THE COURT: I understand that.

MS. GROSS: Okay. All right.

THE COURT: You tried to add what you've got to get this matter moving. I tabulated the materials here, but tabulating them all would be an enormous additional task, correct?

MS. GROSS: We're happy to, but yes. This is -- your Honor's correct; this is not everything. This is just sort of the first wave that we're looking at.

THE COURT: Now, are there documents in here that are not the Diana documents, meaning those paper records that were not disclosed to you?

MS. GROSS: So -- right. So none of these -- so what we did when we put this chart together -- Ms. Bollinger led the charge on it. What we did when we put this chart together

was we cross-referenced the documents that were produced in Plant. There were 1,056 pages in total produced in Plant.

THE COURT: How many?

MS. GROSS: One thousand fifty-six.

THE COURT: One thousand fifty-six.

MS. GROSS: Yes, ma'am. One zero five six.

THE COURT: All right.

MS. GROSS: So when we put this chart together, we cross-referenced to make sure that what we were putting in this chart had not been produced.

THE COURT: So what you say in this chart is that none of the documents that you've produced in the chart were produced in the Plant case.

MS. GROSS: That's correct.

MS. MCVEY: And if anything is somewhat -- a piece of something was produced, like the Revlon, you'll see it noted in here that this is what we got and this is what we didn't get.

THE COURT: Yeah, I noticed that. And I just want to make it clear for the record what we're saying. There are some snippets of things that were produced that you now have a fuller document about, correct?

MS. MCVEY: That's correct.

MS. GROSS: Yes.

THE COURT: Okay.

MS. MCVEY: And your Honor, I will say that I think there's still a lot more that's missing. And Ms. Gross can go into it, but yesterday she did the deposition of Cosmetic Specialties, you know, who's the kind of no-man they talked about. And there are a lot more documents where IMI Fabi was copied on emails -- a ton of stuff. So this -- it's so widespread. And clearly, IMI Fabi would have the emails they were copied on, so those should have also been produced that were not produced in this case.

And so that's how we're getting them, either from other defendants, IMI Fabi -- we still don't have everything from IMI Fabi. Clearly, we don't have everything from IMI Fabi that should have been produced.

THE COURT: Now, explain to me again what happened about the Diana documents. What were you told in terms -- the documents were not photocopied and Bates marked and produced to you?

MS. GROSS: Is your Honor looking for the whole sort of story about how Mr. Sommerville, like, removed it in 2019?

THE COURT: Correct.

MS. GROSS: Okay. So what we were told was Mr. Sommerville -- and we were told this by deponents. I believe it started with Mr. Brown, who was the Diana, New York, plant manager. Your Honor knows this. He started telling us since, in deposition, that Mr. Sommerville went

onto the premises of the Diana plant in 2019 and removed all their documents.

THE COURT: Yes. That was said --

MS. GROSS: Right.

THE COURT: -- to me in the first hearing we had about this matter.

MS. GROSS: Right. Then Mr. Sommerville put the -- this is all -- this is what we know. Mr. Sommerville put them, has had them, or -- I don't know where they are, to be candid, at this point -- has had them in his office since then. Whatever they chose to produce in -- I have no idea how they decided to produce --

THE COURT: But what I said was that all documents should be produced, correct?

MS. GROSS: That's correct.

THE COURT: All right.

MS. GROSS: So when we had the hearing in April, we had the hearing on this matter and then we had the hearing in the Perry matter, which is what Ms. McVey referenced, where you ordered that all of these Diana documents that Mr. Sommerville took to be produced. We weren't going to have a Plant 2.0 of the Michael Perry trial, which is set to begin August 5, produce them all and not dealing with this again. Okay?

We heard -- that hearing was April 26. The documents,

as Ms. McVey mentioned, were due this past Monday, the 24th. And I personally was very eager to see what was in there. And then on 24th, we did get I think some of --

THE COURT: This is June 24?

MS. GROSS: Yes, ma'am. It was just this past Monday of this week. Two days ago they were due.

THE COURT: And what were they?

MS. GROSS: What we received was -- your Honor also ordered that the industrial talc customers and sales records be produced. We did get a lot, but I will tell your Honor I don't even know how much time in the world it would take to go through them. They are not organized by date. They're not organized by customer.

THE COURT: Oh, we got a document dump going on?

MS. GROSS: We've got a massive document dump, which -- listen, that's where we're at.

The other thing -- and I don't know how I would know if that's all of it.

THE COURT: Let me ask you this. Who is supplying these things to y'all?

MS. GROSS: The email we received on Monday was from Ms. O'Neill. That is not typically who I receive emails from. We typically get them from someone else in Womble's office. But Monday personally came from Ms. O'Neill. And in Plant -- Ms. Bollinger is telling me in Plant, Ms. O'Neill is

the one who produced them to her in Plant as well. But in terms of Monday's email, it came from Ms. O'Neill.

THE COURT: Okay.

MS. GROSS: And what it was was it was an email to me, Ms. McVey, and Mr. Brown with the industrial talc records -- as your Honor just called them, the "document dump" -- disorganized to any fashion.

And I also have -- you ordered that it's all industrial talc sales. I have no idea if what they produced represents all talc sales. From what Mr. Fabi has told me in deposition, their industrial talc business is, like, 98 percent of how they make their money. So even though it looks like a lot of documents, I suspect I didn't get everything, but I don't know.

MS. MCVEY: And it's impossible to tell.

MS. GROSS: It's impossible to tell because of how it was produced.

THE COURT: All right.

MS. GROSS: Then what you also ordered was the financials. Remember we had a long conversation about that. It got its own separate special protective order. What they produced --

THE COURT: Right. I signed a protective order about that.

MS. GROSS: You did. Yes, ma'am, you did.

What they produced was they essentially hired another law firm, I think is what it is. They hired another law firm and they produced a 4-page letter from this law firm saying, "I've done an evaluation. Here's the fair-market value of IMI Fabi USA," and then there's a list of reliance documents that this person looked at to come to that conclusion. But we didn't get any of those, and that's not what your Honor ordered.

So I mean, I appreciated the letter from the lawyer, but again, we can't depose their lawyers. This is the same argument we had in April. I can't just take what lawyer after lawyer --

THE COURT: Okay. I got it.

MS. MCVEY: And then, your Honor, the last thing, Ms. O'Neill's email on Monday, sending me those documents that she did send, says, "In addition, the documents that were previously collected from IMI Fabi Diana by Mike Sommerville are available for inspection and copying in his office at a mutually convenient time."

And I emailed Ms. O'Neill back, and everybody else, with a copy of your order that you had entered because what you ordered, "IMI Fabi Diana is ordered" -- er, I'm sorry. Here we go. "IMI Fabi Diana is ordered to produce all documents removed from the IMI Fabi Diana, New York, plant by its attorneys in 2019 of which its attorneys have been in sole

possession of since. This production will be governed by a protection order identical to those previously entered." You ordered them produced, and they say "Fly up to where Mr. Mike Sommerville is and take a look at those documents." That's not what you ordered.

And then I really -- I wrote her and said "Produce them," and there's just no response. That's my frustration.

THE COURT: Okay. Anything further?

MS. GROSS: We may later. I was asking Ms. McVey. She brought up the fact that I deposed Cosmetic Specialties yesterday, which as your Honor now knows is sort of the middle man in all this. I don't know if you want to get into that now, but what Ms. McVey was bringing up is the fact that part of that deposition was just a production of emails that Mr. Grexa, who is the owner of Cosmetic Specialties, and various people from --

THE COURT: Yes. We've seen a lot of stuff now in this material from Grexa.

MS. GROSS: He's undeniably involved -- right? -- which is why we wanted to take his deposition.

THE COURT: Yeah. He was direct with Brown and other people within the IMI Fabi organization.

MS. GROSS: Absolutely true. And part of what Cosmetic Specialties did in advance of their deposition was the document production. And part of that document production

was emails, as they're supposed to do. I think the oldest email I saw, or used at least in the deposition, was from 2017, so not that old. Corrado Fabi's copied on them. Erin Moore of IMI Fabi, various people in both Italy and the United States operations are copied on these emails.

And I didn't know if you wanted to go into that, which is what I was asking Ms. McVey.

THE COURT: Well, let's hold that for a minute.

MS. GROSS: Okay. Good.

THE COURT: Now, the one final question I'd have for the plaintiff before I turn to the defense, the contention is that you were sloppy about the way you asked these questions and that you waited until five months before trial to really get into dealing with this thing and that you didn't follow up on the way you should have when you didn't get what you thought you should get. Your interrogatory to IMI asks whether it "supplies, sells, distributes, and/or contracts with another entity for the purpose of supplying products to any of the entities listed on Exhibit A."

Now, Exhibit A is a bunch of cosmetic manufacturers. It does not include Cosmetic Specialties. And I take it that your contention is that "contracts with another entity for the purpose of supplying products to any of these entities" would include Cosmetic Specialties. And the question asked was whether they contracted with another entity, right?

MS. GROSS: Yes, ma'am.

THE COURT: And they answered that no?

MS. GROSS: Yes, ma'am.

THE COURT: There must have come a point in time when they answered it some other way because y'all asked a lot of questions about Cosmetic Specialties.

MS. GROSS: So what I will tell your Honor is we did not know about the Cosmetic Specialties angle when we did the deposition notice in Plant. I don't believe we knew about Cosmetic Specialties when we started the deposition in Plant. I believe we learned about Cosmetic Specialties in the deposition -- I mean, I'll just -- I'll say it, because I was involved in the discovery process.

What we were told prior to the deposition was that Cosmetic Specialties was their only customer. And so when they responded in that discovery and they said no, that made sense based on what they were telling me. When we got to the deposition, they then claimed, "Well, that's just our distributor. That's why it's our only customer," which doesn't align with anything that we were told.

One thing that I want to emphasize here is that list identifies companies like Noxell, Procter and Gamble, different companies. They actually produced some of the Procter and Gamble documents. They didn't produce them all. They didn't produce over a decade of documents identifying

sales to Procter and Gamble. We did ask for this stuff.

THE COURT: Well, I understand. And I am very troubled by the argument that was made to the jury by Ms. O'Neill. It was a centerpiece of her argument that you cannot connect the dots from IMI Fabi to a cosmetic manufacturer, who was Sterigenics, but she knew at some point that Sterigenics was a company to which Procter and Gamble sent the talc when it got it from IMI Fabi to have it sterilized before they then put it through their process, as I understand it.

But the way she argued the case, this was just some out-in-nowhere company. She said Maryland -- there's no connection to Maryland. It turns out that there's all kind of correspondence between Brown and the Maryland plant about -- including the cosmetic manufacturer about all this stuff.

So I understand what you're saying there, and I am troubled by that.

MS. BOLLINGER: And your Honor, I'd like to add in, my understanding through my conversations with Ms. O'Neill was that, again, that that was their only customer and that customer wasn't located in South Carolina. And so I asked for affidavits that identified Cosmetic Specialties as their only customer. And what I received in response were these affidavits that didn't mention Cosmetic Specialties at all.

And so they sent out another set of affidavits. Still didn't identify that. This is in the months leading up to

his deposition. Finally I'm saying, "We have a trial date upcoming. We need to figure out what we're doing here. We need a deposition." And this is what we got, and that's how I found out that they're using this distributor to send their talc out to all these customers.

And so in the deposition, they mentioned for the first time this distributorship agreement which they may or may not have. I asked that they attach that to the deposition. We were back in to a point right before trial. We didn't have all the documents, and they didn't give them to us. And then they just never responded. They never provided those distributorship agreements.

THE COURT: Okay.

MS. BOLLINGER: And that distributorship agreement shows the contracting with another entity for the purpose of supplying --

THE COURT: Oh, no question about that. And it also gives IMI Fabi rights in terms of what it can get from the other companies and so forth and so on. There's no question about that. I've read it.

MS. MCVEY: The only thing I want to say, and then I want Rachel to say one more thing, is it's not like they answered these interrogatories -- "Give us all your documents that shows a relationship with Revlon" or "Avon" or whatever it may be, "Procter and Gamble" -- it's not like they said,

"Maybe we have them. Maybe we don't." It says "None." So this idea that somehow we're sloppy because we didn't -- what should we have done with that? We got a -- we shouldn't believe them when they answer discovery that way?

THE COURT: I think I understand your position, Ms. McVey.

MS. MCVEY: Yeah. Sorry.

THE COURT: Ms. Gross?

MS. GROSS: The only thing I was going to add, to follow up on Ms. Bollinger's point, part of what we learned in the Cosmetic Specialties deposition yesterday that's crucial, I think, and I think your Honor will agree, is that it wasn't just Cosmetic Specialties that was shipping this talc out to customers. IMI Fabi was shipping talc directly to customers. Right?

I mean, that whole deposition in Plant, every deposition since that your Honor has seen, because they've been attached to motions that I've filed, has just been blaming Cosmetic Specialties for everything, and it's not the truth. So and we're just -- we're still learning about this case this morning. We're still learning it in realtime. So --

THE COURT: Well, frankly, that's kind of what I thought as soon as I looked at the documents we have to see is that Cosmetic Specialties was simply a setup situation to connect the two and that IMI Fabi was shipping direct to these

cosmetic manufacturers. And I think that's why they got into all this FOB business trying to -- and then Ms. O'Neill even said at one point in a deposition, looked up in the UCC about some other term that was being used that was a European term for what amounts to FOB in these states. But that makes no difference in a tort case.

MS. GROSS: Sure.

THE COURT: What's being asked is for what the conduct is and how the material is placed into commerce. I think everybody would understand that.

MS. GROSS: Absolutely.

THE COURT: Okay. All right.

Ms. O'Neill, I turn now to you. I'm not going to place you under oath at this time, nor any of the members of your team, but you have an oath of fidelity to the Court as a lawyer, and I know you will abide by that.

I want to know what in the world happened with this thing.

MS. O'NEILL: So I'd like to start by saying, your Honor, you said that -- we've had a full briefing on this, as the Court is aware. I would just like to make it clear on the record the Court did say at the last hearing that after the --

THE COURT: I hear y'all have made that point in the documents that you've sent to me so far that somehow or

another you're excused from responding fully to this --

MS. O'NEILL: No, ma'am.

THE COURT: -- because I told you I would give you a briefing schedule. No worries about that. But I had to first ascertain exactly what they're talking about, and that's what I'm trying to ascertain now. You'll get a full chance to put all the legal arguments in front of the Court. No worries about that.

I want to know what happened about this thing, what you all moved and why in the world we would be in the situation we are right now where it turns out the argument that was made to the jury is a far cry from what the real situation was with IMI Fabi and Cosmetic Specialties. The jury was told Cosmetic Specialties holds their material very close; therefore, we don't know anything about their customers. That's what IMI Fabi and the person of Corrado Fabi represented to the jury. And that's not true.

MS. O'NEILL: Well, I would disagree with the Court's characterization of that because Mr. Fabi has testified. He testified in the Plant case and he's testified a number of times since then. He doesn't know who their customers are, that Ron Grexa keeps his customers very close and well --

THE COURT: Oh, Ms. O'Neill, let me say this to you. Please don't insult my intelligence after I have seen document after document in what's already been shown to me of

material from IMI Fabi and to IMI Fabi's plant manager Michael Brown direct with Cosmetic Specialties, having Cosmetic Specialties -- having the direct customers, whether it be L'Oreal or Estee Lauder or Johnson and Johnson or whoever it is, come to the plant to inspect IMI Fabi's process and make comments about IMI Fabi's process to Mr. Brown, some of it in writing.

That -- it cannot be true that the impression that was projected to the jury, which is "We just shipped to Cosmetic Specialties. We have no idea what happens after that." That's not true based on the documents going to and from your client and its plant manager.

MS. O'NEILL: So if I may, your Honor, the documents -- the Estee Lauder documents from the IMI Fabi Diana plant, those are -- looking -- I'm going to talk about those specifically.

Those are actually Estee Lauder -- they're Estee Lauder to CSI, CSI back to Fabi, and there is a discussion. They don't actually -- not a single one of them says that there has been a sale. Those documents talk about being a qualified source. And as Estee Lauder's own representative testified in the Perry case, just because you're a qualified source doesn't mean you know that it gets bought or goes into products.

THE COURT: Ms. O'Neill --

MS. O'NEILL: So I --

THE COURT: Ms. O'Neill, we are -- I'm just not going to play hide the ball like that.

MS. O'NEILL: It's not hide the ball, your Honor. It's the --

THE COURT: Ms. O'Neill --

MS. O'NEILL: -- interpretation of the documents, your Honor --

THE COURT: Ms. O'Neill, documents --

MS. O'NEILL: -- that the client --

THE COURT: Wait a minute. You let me speak for a minute.

The documents that have been submitted to me indicate direct communication between cosmetic manufacturers -- not just a little, but a lot over a long period of time -- with IMI Fabi's plant manager, discussing the quality of its manufacturing process as well as supply. All right. These documents are not simply a document that says you may be on a list. These documents go far beyond that. So I'm not going to have -- I want to know what happened about this thing --

MS. O'NEILL: I'm trying to tell you.

THE COURT: -- and why those documents weren't disclosed, for whatever spin you want to put on them as to whether they mean that they actually supplied them, because the bottom line was they did actually supply them a lot.

MS. O'NEILL: I'm trying to explain that, your Honor. And I don't believe it's a spin because the request was for sales.

THE COURT: No. The request was for a lot of things. It says supplies --

MS. O'NEILL: Supplies sold --

THE COURT: -- sells --

MS. O'NEILL: -- by IMI Fabi --

THE COURT: -- distributes, contracts with another entity for the purpose of supplying products to any of the entities listed. You contracted with Cosmetic Specialties for the purpose of supplying to entities listed on Exhibit A. And the Brown-to-suppliers documents confirm that.

MS. O'NEILL: Okay. If I may?

THE COURT: Yes, ma'am.

MS. O'NEILL: So Michael Brown was the plant manager for IMI Fabi Diana. So we need to keep straight that there are three entities here.

THE COURT: Let me tell you something. If I knew what I know now, I wouldn't have any more dismissed any of these IMI Fabi entities than flying to the moon. I was told when you all argued about who should be going to the jury something that turns out to be far from what the accurate situation is now. So don't argue with me about that it's IMI Fabi Diana and that's not really a part of what we're -- it was IMI

Fabi, one of its entities that communicated through its plant manager with cosmetic manufacturers about supply of talc from IMI Fabi's factory in the United States.

MS. O'NEILL: IMI Fabi Diana was not dismissed and they were on the verdict form, your Honor, so that's not what I'm suggesting.

THE COURT: Well, then what are you suggesting?

MS. O'NEILL: There are three entities. The first one is IMI Fabi Diana. That's the one Michael Brown was the plant manager of. He is the person, and he and Scott Brown, their signatures are on those IMI Fabi Diana documents. They are the ones whose names you have been giving me. They are IMI Fabi Diana documents.

THE COURT: So what --

MS. O'NEILL: If I may?

THE COURT: Yes.

MS. O'NEILL: So Corrado Fabi did say at his deposition and he did say at trial that he doesn't know very much about IMI Fabi Diana. Nobody followed up. And he doesn't know very much about IMI Fabi Diana because, as the plaintiffs now know because they have subsequently asked him a great deal about this, he didn't want to buy IMI Fabi Diana.

He was a partner in a joint venture of a talc manufacturing operation -- an industrial talc manufacturing operation in Benwood, West Virginia. And when he went to buy

out his partner in that venture, the partner said, "You only get to buy this if you buy Diana." And he said, "I don't want to buy Diana." And they said, "Well, too bad. It's by your own choice." So he bought Diana, but he didn't know very much about it.

He said that in his Plant deposition and he said it at trial and he's said it since then. And so he did not have any personal knowledge about that plant. I --

THE COURT: Well, let's stop right there. Mr. Corrado Fabi was the 30(b)(6) representative in this thing. He can't get away with saying "I didn't know very much about it," and particularly not as central a role as he plays in this configuration of companies. He can't just say "Well, I didn't want to buy it, so I don't know too much about it."

He was asked direct questions about the connection between IMI Fabi and the actual cosmetic manufacturers, and he let y'all answer "No" -- flat "No" to interrogatory questions that's clearly not true. And then he's now going to have you come up here and argue in front of me, well, he didn't like buying the company so he doesn't really know a lot about it. That doesn't cut it with me.

MS. O'NEILL: Well, your Honor, I'm trying to address the issue of deliberate fraud. And what I'm trying to explain to your Honor is Mr. Fabi's name's not on the documents. He did not withhold anything. He didn't know

about those documents. Those documents were taken in 2018 by Michael Sommerville as part of the litigation because there were multiple cases against IMI Fabi back then and Mr. Sommerville was in charge and he took those documents.

THE COURT: Ms. O'Neill, the cases are legion that no party in a proceeding can stand behind letting the attorney take all the documents and put them in the attorney's office and thereby absolve the corporation --

MS. O'NEILL: I understand that.

THE COURT: -- from being responsible to their knowledge. That's the oldest --

MS. O'NEILL: I'm not suggesting that.

THE COURT: -- scheme in the books is, "Hey, if we got some documents that" -- this is when they were first being sued. So Sommerville goes and gets all these documents, and that's somehow going to absolve IMI Fabi's management from knowing what's in them?

MS. O'NEILL: I am not suggesting that, your Honor. This is a question of deliberate withholding, and I'm trying to explain --

THE COURT: Yes, ma'am. It sure is.

MS. O'NEILL: And I'm trying to explain to you why Mr. Fabi -- Corrado Fabi did not lie, because he was not engaged in deliberate withholding. So you want to know what happened in this case, here's what happened in this case.

Nelson Mullins was retained to defend these entities. And Nelson Mullins appeared in this case. And Nelson Mullins actually answered the interrogatory -- jurisdictional interrogatory responses for IMI Fabi LLC because there was a personal jurisdiction defense. And if you will recall, your Honor denied that right at the final pretrial. But that is why the FOB and Ex Works was relevant to the personal jurisdiction defense. It was never asserted as a defense to liability. It was relevant to personal jurisdiction.

In October of 2022, I was called and asked if I could take over the case because Nelson Mullins was not able to continue. And on October 20, I was hired to represent this client.

The first conversation that I had with opposing counsel was with Ms. Bollinger, who told me during that first conversation she was going to undismiss IMI Fabi in the Chamberlain case, which is pending in Pennsylvania, because she had dismissed them earlier in that case and she had subsequently learned it had supplied to Avon. So she knew that from the very first -- that was her position from the first time that I talked to her. And I said, "Jordan, I just got hired to this case. I don't know anything. I'll find out."

So we went forward. We got a notice of deposition. And first there were going to be jurisdictional depositions and

just jurisdictional depositions because of the personal jurisdiction issues. And we're getting closer and closer to trial. This is in January. The trial is in February. The plan was to have two or three different -- I can't remember off the top of my head -- jurisdictional-only depositions.

We are at the same time discussing those affidavits that they referenced. Could I just give you some affidavits on this jurisdiction and then we'll get out on that? Well, we don't. We won't have to do all these depositions. You won't have to do all this stuff. And there is a lot of communication between Ms. Bollinger and myself on that. And that doesn't happen. We ultimately don't reach an agreement and it doesn't happen.

And I say, "Okay. Well, then we're going to" -- and she says, "We're close to trial. You're going to have to give me a full deposition." So I said, "Okay. You know what? Let's just -- let's not do jurisdictional. Let's just give you all in. My witness for trial is going to be Corrado Fabi. You can do an all-in deposition. All entities, all issues. If you're not happy. We'll figure it out."

So we do. And we produce -- we get a notice of deposition for that, which asks for things far beyond the jurisdictional question. And that notice of deposition, the document requests are "all documents in your possession including sales records, correspondence, and any documentary

evidence" -- "documentary proof of the supply of talc by IMI Fabi either directly or through broker agreements to each of the codefendants in this case." And it asks for documents about the sale of those documents. It does not ask for emails. It does not ask for all these other things that we are now fighting about. We produced documents in response to that.

THE COURT: Let me stop you right there. How do those documents get accumulated by you? Do you go and search the company's records yourself, or do you --

MS. O'NEILL: No, ma'am.

THE COURT: I suspected that would be the answer, and I believe that.

MS. O'NEILL: It is now.

THE COURT: How did you get those documents?

MS. O'NEILL: Back then? I communicated with Mr. Sommerville and Mr. Michael Hooper, who are both -- well, let me back up and answer a question that the Court implicitly asked before.

There is no in-house lawyer at IMI Fabi. There is no in-house legal department at IMI Fabi Diana, IMI Fabi LLC, IMI Fabi USA, or even at the parent IMI FABI SPA.

Mr. Sommerville is the person who called me and hired me. My understanding is Mr. Sommerville is the person who hired Nelson Mullins. Mr. Sommerville is the person who I

initially communicated with, and he introduced me to Michael Hooper, who is sort of the outside corporate counsel for the client. And I communicated with them because I didn't know the division between the two of them.

THE COURT: So you say Sommerville is litigation and Hooper is corporate?

MS. O'NEILL: I don't know that either of them have any formal titles, to be honest right now.

THE COURT: Do they practice together?

MS. O'NEILL: No. They're in two different firms. And the way that I understood it -- but again, there are no titles attached to this -- is Mr. Sommerville was managing the toxic tort litigation. Mr. Sommerville opened the toxic tort department at Hartford back in the day, and he has been in private practice for many years. And he had -- he oversaw multiple IMI Fabi cases involving talc at the time that I was hired.

Mr. Hooper did general corporate things from the client. So for example, when I was asked to produce corporate formation documents, I got those from Mr. Hooper.

So we discussed -- I sent them the notice of deposition. I sent them the duces tecum. I sent them the discovery. And we discussed what the requests were.

MS. BLACKBURN: And your Honor, can I just interject at this point in time and put on the record an objection to any

discussions that would be covered by the attorney-client privilege? My concern here is that Mr. Sommerville and Mr. Hooper are extensions of IMI Fabi, that that -- they're agents of IMI Fabi in their role, so that would be --

THE COURT: That does not absolve them in any way from answering my questions about this, because the accusation is that IMI Fabi used its lawyers to willfully conceal information that would have changed the result of this trial and that it deliberately did that.

And what I'm -- what I suspected when I read that, knowing the players as I do, is that if anybody did do that -- and I'm not saying they did it; we haven't gotten there yet -- it would have been their non South Carolina lawyers. It would have been Sommerville and Hooper, but particularly Sommerville. That's why I wanted him here.

The attorney-client privilege is not something they can hide behind if they have willfully concealed or conspired with IMI Fabi to willfully conceal, or represented IMI Fabi in the course of which they committed the fraud. They're not going to be able to hide behind that, just like they're not going to be able to hide behind the Fifth Amendment. Or if they do choose to use that, it's going to be held against them in the civil proceeding and a negative inference is going to be drawn.

Now, that's the way I see the law. You are certainly

entitled to put on the record what you just put on, and I respect that.

MS. BLACKBURN: And your Honor, can I also add, just so that we cover the entire scope of the Womble attorneys' obligation, that under Rule 1.6 of the Rules of Professional Conduct, they have to maintain confidential the information related to the relationship?

THE COURT: Yes, but they --

MS. BLACKBURN: I understand --

THE COURT: But the attorney-client privilege does not protect Womble's client from inquiries into allegations of fraud.

MS. BLACKBURN: Yes, your Honor. And if I can just, going back to Rule 1.6, I understand that an exception to that is an order of the Court, order from the Court, or questions in a proceeding of this nature.

THE COURT: And that's what we're doing now.

MS. BLACKBURN: Thank you.

THE COURT: In my view.

MS. BLACKBURN: I wanted to make sure that was on the record.

And then also, your Honor, I want to mention the Work Product Doctrine, which would cover mental impressions and discussions between --

THE COURT: I don't see how work product is at all

involved in something as serious as allegations of deliberate fraud. Attorney work product -- in fact, I've read two cases before I came here this morning dealing with that very thing. But again, you put on the record what your position is.

MS. BLACKBURN: Yes, your Honor. And now I would also like to just say that with regard to the fraud, I think what we have here is an allegation of fraud, but no evidence or --

THE COURT: Well, you're going way beyond your brief. You're not the one that's going to be arguing that. You can talk to me if you'd like about the attorney-client relationship, but Ms. O'Neill is going to be the one talking about fraud. Not you.

MS. BLACKBURN: And your Honor, can we -- I know that a lot of times you might not like a blanket objection, but to prevent -- what I want to -- I don't want to interrupt this proceeding, but I want to make sure that the objections are on the record as to these communications.

THE COURT: I think they are.

MS. BLACKBURN: Thank you.

THE COURT: I'll regard them as such.

Mr. Pugh?

MR. PUGH: Your Honor, briefly on behalf of the IMI Fabi defendants, I'm making a special appearance here this morning to simply assert that --

THE COURT: Wait a minute. Wait a minute. Let me stop

you before you get started. What kind of special appearance are we talking about? A special appearance means that you're still contesting jurisdiction or --

MR. PUGH: No, your Honor.

THE COURT: What are we -- I don't want to have something I don't understand be pulled out later in connection with this matter.

MR. PUGH: And that's why I want to be completely candid and clear with you here this morning. My only concern is we're getting perilously close to getting into territory by either Ms. O'Neill's statement or statements potentially attributed to other counsel for IMI Fabi that your Honor would be considering a potential fraud waiver of the privilege that those defendants would have. And so --

THE COURT: Well, I'm not aware of a fraud waiver situation. I don't think waiver is a concept that embraces what I'm trying to do right now. What I'm trying to do right now is find out from Ms. O'Neill what happened from her perspective.

MR. PUGH: Agreed.

THE COURT: And I don't think IMI Fabi can throw into the barrel something like "Hey, we might have committed fraud; therefore, we want to protect ourselves against waiving our ability to claim some kind of privilege to do that."

MR. PUGH: I'm not suggesting there was any fraud, and I'm not trying to get between you and trying to figure out exactly what happened here, which is your goal.

THE COURT: I think it's my duty.

MR. PUGH: And that's what this hearing, and perhaps another one, is about. But Mr. Sommerville's not here, and we all wish he was. No question about that.

THE COURT: Well, that's on him.

MR. PUGH: I'm simply -- for purposes of the case that you're more familiar with than I am, which is the Hawley case, which are the Tobaccoville cases, I am simply asserting that the privilege, if any, that would be the role of the defendants to waive -- not the lawyers, whether it's Ms. O'Neill or others -- that that privilege --

THE COURT: I do not regard what Ms. O'Neill is doing by answering my questions as a waiver on IMI Fabi's part of anything. So if I can put that on the record, I think that ought to solve it.

MR. PUGH: I will sit down, your Honor.

THE COURT: All right. Did you -- in the midst of consulting, did you hear what I said, Ms. O'Neill?

MS. O'NEILL: I did, your Honor.

THE COURT: I don't regard what you are saying right now is, A, impairing any ability of IMI Fabi to assert any kind of privilege they want to assert with respect to contentions

about fraud. I don't regard your answering my questions as a waiver of anything. It might be different if Mr. Sommerville were answering these questions, but it's certainly not true with respect to what you're doing right now, which is trying to guide me through the discovery process and what the heck happened.

MS. O'NEILL: So let me state real clearly on the record, your Honor, in response to something you said before we had these discussions from my counsel and from Mr. Pugh. I was never instructed to withhold anything.

THE COURT: I believe that with all my heart, Ms. O'Neill.

MS. O'NEILL: And there was no communication made to me by Mr. Sommerville or Mr. Hooper that either of them had been instructed by Mr. Fabi or any other person at any IMI Fabi entity to withhold any responsive documents.

THE COURT: Well, here's what my response is to that. I don't believe you have consciously tried to commit a fraud on the Court or withhold anything. So I believe you when you assert that. I don't think you can make the same assertion with respect to others involved in this thing because you know what you know, but you don't know everything. So I will accept what you say about -- the projection you're making to me about your participation in this matter, and I believe it as I would believe it if Mr. Carroll asserts that or

Mr. Roberts does.

MS. O'NEILL: The discovery --

THE COURT: I know y'all, and I know you would never intentionally mislead an opponent or this Court. So I'm very satisfied with that. But others are going to have to stand on their own two feet about what happened when this thing was moving along.

MS. O'NEILL: Discovery is on me, your Honor. It's all on me.

THE COURT: Yeah. Well, I understand that.

MS. O'NEILL: So we produced documents. We have the deposition of Corrado Fabi. There are questions about the distributor agreement with CSI.

THE COURT: Why was that not produced before this case was tried?

MS. O'NEILL: Your Honor, I do not have a good answer for that. And if you would let me explain, I will.

It was asked about at the deposition. There were exhibit -- it was an exhibit number at the deposition, reserved. I have the document in my possession with Plant Bates stamp numbers on it. What I don't have and can't find is an email giving it to anybody. Now, I don't know if that meant I never gave it. That's what the plaintiffs say, and I'm not -- I'm not calling them a liar. But I don't know if I handed it to somebody.

If I had it, we handed a lot of paper documents over during the trial of this matter. I have and have had it in this file since the beginning -- since the trial, because it's on one of my exhibits -- my cross-examination exhibit list for documents I might use on cross-examination at trial.

No one -- I can tell you this. It was marked as an -- it was a placeholder exhibit at the Corrado Fabi deposition. No one called me to get it before trial. The court reporter for the Plant deposition called my paralegal this month, June 2024, and asked for it. And I told the paralegal not to respond because this motion had already been filed and I would address it with you.

But it was a placeholder, and I got -- and I looked. I have no emails from Ms. Bollinger or anybody else on the plaintiffs' team saying, "Hey, where's this exhibit?" I have no email from the court reporter asking for it until 2024.

So I had it ready to go, Bates stamped. I thought I turned it over, your Honor. But on the stake of my place, I cannot find an email where I did it, and I do not remember --

THE COURT: Well --

MS. O'NEILL: -- handing it over.

THE COURT: -- my resolution about that is pretty simple. I believe each of you. They say they didn't get it. I believe that. You say, "I prepared it. Don't remember what happened to it." I believe that. But for some reason

or another, it didn't get to them.

MS. O'NEILL: But it wasn't deliberately withheld.

THE COURT: I understand.

MS. O'NEILL: I had a whole thing about trying to find a better copy because the only copies --

THE COURT: If -- if --

MS. O'NEILL: -- are ones that we can't read.

THE COURT: If this motion pivoted on that document, I wouldn't be pursuing this. This isn't about the failure to produce the Cosmetic Specialties agreement. There's enough discussion about it that -- there's -- that was known to exist. This discussion is about all the other stuff that links IMI Fabi to the manufacturers of the cosmetics that appeared long after this case was tried.

MS. O'NEILL: And there's a dispute between the parties on this. You know, Ms. McVey said, you know, your Honor, they produced these documents, they did this, they answered. Was I not supposed to believe them? I'm being called a liar today. I was called a liar in the --

THE COURT: We're going to stop. Stop right now. I'm not going to let you say that, and I'm not going to let them say that. So y'all got -- you're mad because your --

MS. O'NEILL: I'm not mad.

THE COURT: -- you feel your integrity's being questioned. And they're mad too. I'm not going to put up

with that, and y'all got to cool it about that. They're not calling you a liar. In fact, I started this hearing by saying that that's not on the table for me. I don't believe either -- any of the fine lawyers that I've dealt with in so many other cases are telling me an untruth. So we need to get beyond that.

What I am saying is that some untruth was -- at least apparently, from what I have been supplied -- engaged in in those who provided you with the documents you needed to answer discovery and try this case. And that included a lawyer. And that is where I'm focused on what exactly happened.

Now, my bet is that after all this hullabaloo, and it probably took place -- I mean, you were correcting Mr. Brown's previous testimony in depositions I've seen that are in this file from making clear that he hadn't been accurate about his status with the -- as plant manager, etc., etc.

So a lot has changed since all this has become an issue. And I imagine you do look very carefully now at the raw documents themselves and make your own determination as to what needs to be produced, rather than rely on Sommerville or the other folks in the organization who are the custodians of the documents. That'd be my bet.

MS. O'NEILL: I have a different role now.

THE COURT: Well, I know that you said you're national counsel for IMI Fabi.

MS. O'NEILL: I am now the lawyer responsible for coordinating their asbestos litigation in the United States.

THE COURT: Okay. And that was formerly Sommerville?

MS. O'NEILL: That was my understanding.

THE COURT: Mm-hmm.

MS. O'NEILL: But I have officially been designated in that role. I don't know that he ever was.

THE COURT: Well, all right. Officially, when did that occur?

MS. O'NEILL: I have to look at the date. I think it's August of 2023.

THE COURT: Okay.

MS. O'NEILL: It's after the Plant trial.

THE COURT: Yeah. Well after that. All of this took place well after the Plant trial. Plant was tried in February.

MS. O'NEILL: I just can't remember -- it's that summer. I think it's August.

THE COURT: Yeah. My note to myself is that all of this stuff started bubbling up to the surface in the July-August framework, from what the -- I'm just looking at the documents that --

MS. O'NEILL: Yeah, I'm just trying to remember the -- I

believe it's August of 2023.

THE COURT: Okay. Well --

MS. O'NEILL: And I'm responsible for all document production for --

THE COURT: Well, that ain't the period we're talking about, Ms. O'Neill, as you know.

MS. O'NEILL: Right.

THE COURT: The period we're talking about is the period before this case was tried and while this case was being tried. And at that point, you were not the coordinating -- national coordinating counsel. You had come in as a substitute for a firm that retired from the case.

MS. O'NEILL: Correct.

THE COURT: And you were lead counsel on the Plant case.

MS. O'NEILL: Correct.

THE COURT: Okay. And so what you're saying to me, as I understand it, is at that time, as you would do with most other clients that I'm sure you represent, you were dealing with some folks in-house who would accumulate the documents for you; in this case, Sommerville.

MS. O'NEILL: He's not in-house, your Honor. He's outside counsel.

THE COURT: Well, whatever he is. I don't know what kind of distinction y'all are trying to make that you think it's important to keep saying that, but I will tell you that

wasn't made clear to me when y'all introduced him to me. But whatever he is, he was the one that was coordinating with defense lawyers like yourself who were defending IMI Fabi in cases all around the country, right?

MS. O'NEILL: That was my understanding.

THE COURT: Right. And in that --

MS. O'NEILL: But I only had my interaction.

THE COURT: And in that connection, he was the one that was assembling the documents that would be needed to be produced in discovery, correct?

MS. O'NEILL: He and Mr. Hooper.

THE COURT: Right.

MS. O'NEILL: That was my experience.

THE COURT: Okay.

MS. O'NEILL: I don't know what they did with other lawyers.

THE COURT: All right. And that obviously has changed post August 2023.

MS. O'NEILL: Correct.

THE COURT: So again, I think the period that I'm trying to focus on is who was responsible for this issue at the time -- the crucial time we're talking about, which is when -- right before and during the trial of the Plant case. And what I'm understanding from you, that's Sommerville and Hooper.

MS. O'NEILL: Well, I'm responsible, your Honor, because I'm counsel for --

THE COURT: I'm not going to have it go on that basis at all, and I don't think that's the inquiry that *Chewning* and *Raby* and the other cases from South Carolina ask me to engage in. Kind of like we Catholics say -- and Mr. Pugh knows this expression quite well -- "*te absolvo*" in terms of --

MS. O'NEILL: I know that too.

THE COURT: -- your situation. But for you to sit up here and try to be the tough defense counsel that says "I was responsible for all of it," no, ma'am. That is not the inquiry that's made in cases of this kind.

Someone specifically was charged or took charge of the responsibility to produce raw documents from the files of IMI Fabi in this case, and crucial documents were not produced. And that is not on you. It is on the folks who coordinated the production of those documents. And as I understand it, those folks are Sommerville and Hooper.

Is that wrong or right?

MS. O'NEILL: Those are the people I communicated with, your Honor. I don't actually know who did the work. I didn't ask.

THE COURT: I understand.

MS. O'NEILL: But I participated in advising on what's at issue. I'm the one who said if you look at Ms. Plant's

deposition, she said she used Avon products in middle school (verbatim), which is 1991 to 1998. And she said in middle school, which takes her to 2001, she put on Avon products that had been bought while she was in elementary school. And during her deposition, which is what I had at the time we were doing the document production, she has no other Avon product use between -- er, after 1998.

THE COURT: Well, of course, you know well that that does not define your obligations in terms of discovery. That is a helpful piece of information in terms of your defense of the case, product ID wise, but that would not absolve you. You would not be *te absolvo* and nor, but more importantly, would IMI Fabi be absolved of its responsibility to answer the questions honestly. And when they answered the question "No," that's not an honest answer.

MS. O'NEILL: I'm the one who communicated to Mr. Hooper and Mr. Sommerville. I gave them the documents. I gave them the notice of deposition. I'm the one who discussed with them about our documentation productions. I'm the one who got the P and G documents to the Plants. So while I appreciate that I didn't look for the documents, I didn't have the ability to go and look at this box or that box or this box, but I was definitely involved in this, your Honor.

THE COURT: Well, that does not help at all, Ms. O'Neill, when you look at the documents -- the slew of

documents that have now been discovered between Michael Brown and Johnson and Johnson, Avon, and many other cosmetic manufacturers that are well within the exact time that she's talking about. So, I -- you know, again, I'm not going to --

MS. O'NEILL: That's true, your Honor. And I -- for the Johnson --

THE COURT: You don't know what you don't know.

MS. O'NEILL: Right. For the Johnson and Johnson --

THE COURT: If you got partial information and the client's got more complete information, and particularly if the client is being assisted in document production by a lawyer, that lawyer has got an obligation to tell you about such things.

MS. O'NEILL: So for the Johnson and Johnson documents, I was not aware of those until afterwards. And frankly, Mr. Fabi was shown some documents in later depositions about him having meetings much later with Johnson and Johnson. He doesn't remember it. He just literally doesn't remember it. He doesn't say --

THE COURT: That's why document production is so important because memories may fail, but documents are forever.

MS. O'NEILL: But what Mr. Fabi has been very clear about, and which Johnson and Johnson supports, is that Johnson and Johnson didn't buy any talc from IMI Fabi for

baby powder in the United States. So all those production documents don't make any difference in this case because -- there are documents where Johnson and -- Mr. Brown talked about with people at Johnson and Johnson --

THE COURT: This inquiry today is not about that.

MS. O'NEILL: Okay.

THE COURT: This inquiry today is about the production of documents that are documents between IMI Fabi and a cosmetic manufacturer that it knew was using its products. The fact that they didn't go into baby powder or did go into baby powder or such is not the issue.

The issue is that a list of cosmetic manufacturers was given to IMI Fabi, and they were asked whether either directly or indirectly, through a supplier that they supplied to or directly, there were documents that dealt with the supply of their talc to cosmetic manufacturers. And that -- the truth was not told about that, nor were the documents produced, documents that obviously were in existence and had been in existence at the time this case was tried.

That's what I'm talking about. These stray defenses, "Well, you know, it's not really important because it didn't go into baby" -- that doesn't have anything to do with it. We're talking about -- right now about documents that were in existence and clearly were asked for in the interrogatories and would have made a direct impact on the argument to the

jury about IMI Fabi's product being in cosmetics that she used that were deliberately not supplied to you to supply to the plaintiff.

MS. O'NEILL: I understand that the Court would like to confine this hearing to the process by which the documents were produced, but I would like to be really clear on the record, because of the danger of waiver in South Carolina, that we do feel that the fact, for example, that J and J never bought our talc for use in any of the products that Ms. Plant says she used would be relevant to the Rule 60 inquiry. But having --

THE COURT: It might, but --

MS. O'NEILL: -- made that clear so I don't waive it --

THE COURT: I understand.

MS. O'NEILL: -- I'll answer your question.

THE COURT: I understand. And your rights are protected in that regard, just as I indicated to your counsel at table and to Mr. Pugh.

MS. O'NEILL: So I want to go on to the accusation that we continue to withhold.

THE COURT: Yes, ma'am.

MS. O'NEILL: Because --

THE COURT: Because you do -- you know, what Sommerville needs to do is copy those doggone documents, put Bates stamps on them, and get them to the Plants. That's what I --

MS. O'NEILL: This is on me, your Honor. And I would like to respond because this was my decision -- not his decision; my decision -- because I'm the person who responded to Perry that I am now the national coordinating counsel. So this is my decision. And it's not hide the ball. Your Honor signed the order to compel, written by the plaintiffs. That order uses two different types of language. In the portion that Ms. --

I'm sorry, Ms. McVey. Do I have that wrong?

MS. MCVEY: I don't know. I'm just -- I don't know what you're about to say.

MS. O'NEILL: Oh. You were shaking your head.

In the paragraph that Ms. McVey read to you about the documents from Diana, it says "produce the documents." In the next paragraph where it talks about the industrial talc documents, it says "produce the records." So I interpreted that as you wanted the physical --

THE COURT: That is the most weaseling kind of weasel-word explanation I --

MS. O'NEILL: I don't think so, your Honor, because we've been accused of withholding.

THE COURT: Well, let me tell you something, Ms. O'Neill.

MS. O'NEILL: If your instruction is that I produce them digitally, I will do that.

THE COURT: Ms. O'Neill, I'm sorry but, you know, again, this is an effort to appear to your client to be the star who's going to take the arrow on this one. I -- and then kind of put a little bit of a dig into me that I'm signing orders that are prepared by the plaintiff. I am one senior judge with an enormous docket. And yes, when the parties agree about something, I sign it. Or if I have directed that a certain party prepare something based on rulings I've made from the bench, I try to get them out. I don't try to make them as perfect as when I had the leisure of completely rewriting things myself. I've got an enormous docket to run. So I resent --

MS. O'NEILL: That's not a dig, your Honor.

THE COURT: I resent the idea that you could think that there was some weasel word in there that justifies not producing these documents. So let me tell you from the bench right now, I want these documents physically copied and produced to the plaintiff.

MS. O'NEILL: That's fine, your Honor.

THE COURT: And I thought that's what everybody understood me to mean before. I don't see how in the world, after we talked about that he got all these documents at one time -- it was the Diana documents -- and that he's had them ever since and he's the one that makes the decision about how to parcel them out, I don't see how there could have been any

misunderstanding. But since apparently every little deconstruction of a sentence like the nuns used to do in teaching me how to diagram a sentence is going to be done in this, let me make it clear as a crystal bell. I want those documents produced.

MS. O'NEILL: That's fine, your Honor.

THE COURT: All right.

MS. O'NEILL: I don't have any issue with that. And I wasn't intending that to be a dig at you. The plaintiffs wrote it, so I thought they thought it was different because of the exact thing that we're talking about. I thought they would actually want to go physically see and make sure that we weren't withholding or doing anything bad.

But I hear your Honor, and I'll get it done. It's really not withholding. I thought I was doing what you wanted me to do. But I hear you and I will get it done.

THE COURT: Very good.

MS. O'NEILL: With respect to the industrial talc documents --

THE COURT: Yes, ma'am.

MS. O'NEILL: -- plaintiffs got them in the same order I got them. I don't know; it's -- those documents don't exist physically at all. It's part of an electronic system, which they know about, they've deposed the client about. And that's how the information exports. If there's an

organizational structure, I can't figure it out either. I don't know. They have it in exactly the order I got it. So it is --

THE COURT: So you're saying -- what you're saying is, contrary to their feeling that they got a document dump, you got --

MS. O'NEILL: I got the same thing, and I had to Bates stamp and confidentiality mark it.

THE COURT: Yeah. Okay.

MS. O'NEILL: And --

THE COURT: I got it.

MS. O'NEILL: And I had representations from the client that if the Court would like -- I'm staying in my place right now that I understand that it is the last ten years, which is what the client has in its document retention system of every industrial -- every bill of lading and every invoice for every industrial talc sale for IMI Fabi.

THE COURT: And that was done by them, not by you?

MS. O'NEILL: They coordinated with my office to transfer the data.

THE COURT: Exactly. But that wasn't data organization you dreamed up.

MS. O'NEILL: No.

THE COURT: That was something they dreamed up.

MS. O'NEILL: It's -- I'm told by my e-discovery guy --

because, frankly, this is way above my pay grade -- that it's got to do with how the data is exported. Like, you can only export it a certain way, and this is what you get.

THE COURT: Well --

MS. O'NEILL: Because I tried to get it more organized, and he laughed at me.

THE COURT: Well, I'm satisfied with that explanation. I have no trouble with that. If that's the way you got it, that's fine with me.

MS. O'NEILL: That's the way I got it.

THE COURT: All right. You have to do your own internal organization of it --

MS. O'NEILL: Correct.

THE COURT: -- after you Bates stamp it to try to make it make sense, and they're going to have to do the same thing. That's what you're saying.

MS. O'NEILL: Correct. We Bates stamped it and gave it to them, and we are -- my team has to internally organize it as well. But what I had to do to get it to them was --

THE COURT: Was just to Bates stamp it all.

MS. O'NEILL: -- Bates stamp it and confidentiality it. So we had to go through a process for that, but we just did it in the exact order we got --

THE COURT: That you got it.

MS. O'NEILL: -- it exported from the client.

THE COURT: I understand. That might not be the easiest way to handle it at all --

MS. O'NEILL: It's not.

THE COURT: -- but you had a task that was central, which is you had to get the confidentiality stuff on it before you get it to them, and that's how you chose to do it. I'm not troubled by that.

MS. O'NEILL: And the Bates numbers so that we can all --

THE COURT: Right.

MS. O'NEILL: -- go forward --

THE COURT: We're talking about the same thing.

MS. O'NEILL: -- later on if we --

THE COURT: I am not troubled by that. I am frustrated again with those who still have a role to play, that is not you, who wouldn't sit down and organize it better themselves, but that's for another day.

MS. O'NEILL: I don't think it -- I think the problem is not that they're -- the documents don't exist in paper anywhere. And when you export it out of the electronic system, it doesn't export itself organized by date or invoice number or anything.

THE COURT: Oh, I understand that fairly well. I have dealt with so many of these other cases where that's what they do. They just plunk them in. They didn't organize them

at all.

MS. O'NEILL: We tried to. No, your Honor, that's what I'm trying to say. We actually worked with them to figure out if there was a way we could export --

THE COURT: Once --

MS. O'NEILL: -- it organized and it wouldn't work.

THE COURT: Again, Ms. O'Neill, I'm telling you I agree with you. I can name you five different corporations I'm working with right now in these receiver cases where when you finally get them to cough up these things that they have run around the mulberry bush a million times with, it turns out that they have either deliberately or foolishly been maintained in an electronic function that has no bearing on time, date, subject, or anything else. And when you get it, it's in that form, so it's not organized one bit.

MS. O'NEILL: Right.

THE COURT: And you just have to go through and mark it for exportation as best you can.

MS. O'NEILL: Correct.

THE COURT: I got that.

MS. O'NEILL: And I got people working on it trying to figure out how to organize it for me.

THE COURT: Yeah. I understand.

MS. O'NEILL: With respect to -- I just would like to respond to some things the Court said about -- and the

plaintiffs have said about the arguments that we made at trial, your Honor.

We did talk about product ID. We did. And I did say to the jury, "You are going to have to decide if Mr. Fabi came here and lied to you." But that was in response -- direct response to Ms. Dean's closing argument where she said, "They told you they tested. They told you they tested for asbestos. Where are the tests?"

THE COURT: Well, she did a good job.

MS. O'NEILL: She didn't --

THE COURT: Wait a minute. Wait a minute, Ms. O'Neill. That was a very pertinent --

MS. O'NEILL: Sure.

THE COURT: -- part of the discussion. What y'all said is "All our tests all the time showed no asbestos. We insisted on that. We are above everybody else on quality." What her contention was was that J4710, or whatever it is, test is not a test that picks up the asbestos, and that the test that did pick it up, companies deliberately refrained from using so that it wouldn't show up the asbestos. And she had a whole bit that did -- there was that, you know --

MS. O'NEILL: But not pertinent -- the other part for us, your Honor, because Mr. Fabi testified at trial that we did PLM and SEM testing, and she -- and we don't have any -- we don't have records.

THE COURT: Exactly.

MS. O'NEILL: And so she said --

THE COURT: And so she questioned --

MS. O'NEILL: She questioned whether that was true.

THE COURT: -- the truthfulness of that.

MS. O'NEILL: Whether that was true. "Is that true? You say you did it, but you don't have a record."

THE COURT: Exactly.

MS. O'NEILL: Right. So --

THE COURT: What's wrong that?

MS. O'NEILL: Nothing. Absolutely nothing's wrong with it. But that's why I said to the jury, "You're going to have to decide if Mr. Fabi lied" --

THE COURT: Well, in hindsight --

MS. O'NEILL: -- "during his testimony."

THE COURT: In hindsight, given what we now learned about many other things that were in existence that weren't disclosed, you can see how they would feel rather tender about that, as do I.

MS. O'NEILL: I see that, your Honor. But I don't think it rises to the level of fraud for a new trial.

THE COURT: Well, I understand that your argument's going to be none of this does. So I get that.

MS. O'NEILL: And I don't think our principal argument is product ID, your Honor, quite frankly. And I'm the one

who led the themes. Our argument was --

THE COURT: The part of it that stings the worst in terms of the arguments they have made, and it gives me the most heartburn in terms of the information that's now been disclosed, is not the "You're going to have to decide whether Mr. Fabi lied" argument. The part that stings me is that Sterigenics argument implying that there's no connection between IMI Fabi and Procter and Gamble when there is myriad material in this record now that discloses direct contact between Brown, on IMI Fabi stationary, and Procter and Gamble folks.

And Sterigenics is discussed specifically as that's not some off-brand -- some -- that's part of the manufacturing process of having the cosmetics people do it is before they begin to put it in their process, they sterilized with this Sterigenics, and that's why it's shipped there. And that apparently was known by Mr. Brown, who now reveals it in his deposition. So that's the part that gives me heartburn.

What gives me heartburn is you go down -- you compared yourself to Whittaker, Clark and Daniels by saying, "Oh, they got tons of stuff." You absolutely point to Whittaker Clark shipping to these cosmetic manufacturers. "We have nothing." And it turns out there are myriad pieces of information within IMI Fabi's records that have now been disclosed that show a direct connection between IMI Fabi and these cosmetic

manufacturers, and that does give me a lot of heartburn because product identification was the most effective argument you made, Ms. O'Neill.

MS. O'NEILL: So I would disagree with the Court's characterization of our closing. But I would also say this in response to it. At the trial, and before the trial, they did have documents between IMI Fabi and Procter and Gamble. And they showed them to the jury. And they did have documents that had Procter and Gamble on them. And at the time of the trial, I didn't know what Sterigenics was. I do now, but I didn't then. And --

THE COURT: Well, Sommerville sure did, and he sat right there in the courtroom listening to every word you said.

MS. O'NEILL: Actually, your Honor, I don't think he did.

THE COURT: Well, that we're going to find out about. And pleading dumb and ignorant is not going to be a part of what the process is, so I can tell you that. This guy's had those records within his possession for a good long time.

MS. O'NEILL: But there were documents produced to plaintiffs that had Procter and Gamble and that went to Maryland -- went to Hunt Valley in Maryland.

THE COURT: And you argued to the jury "This Maryland thing, that Sterigenics in Maryland, what does that mean?"

MS. O'NEILL: No, I --

THE COURT: "There's been no dots connected."

MS. O'NEILL: What I said was -- what I said was, I believe, that they tell you that it was Procter and Gamble. And Procter and Gamble, you saw here, made these cosmetics in Hunt Valley, Maryland. This talc here went to New Jersey. I don't know if it went to -- who's Sterigenics? I don't know if it went to Maryland or not, but this doesn't show it.

THE COURT: Well, it's a disingenuous argument, at best, in light of what has now been revealed. That's for sure.

MS. O'NEILL: Well, I would disagree with that characterization. But again, I think when you go back to look at what the plaintiffs had and what they knew, and going back we'll talk about Avon.

The very first thing -- and I said this before. The very first thing Ms. Bollinger told me was, "I know Fabi talc is in Avon." And during 2022, I know -- I know now that the Dean Omar firm had a lot of discovery against Avon in California and got formula and got things which have now been shown to our client in deposition and which have Bates stamp numbers on them from cases in California where discovery was being done in 2022.

THE COURT: Well, again, but that's something that will weigh on argument for another time. What I'm trying to find out now is what IMI Fabi and its representatives knew and why they didn't disclose these documents when they were clearly

asked for and when the whole case really revolved around product identification. That's what I'm trying to find out.

MS. O'NEILL: And again, your Honor, in my mind as lead trial counsel, the case revolved around whether there was asbestos in the talc. But I hear what the Court is saying.

THE COURT: Well --

MS. O'NEILL: Do you have any other questions for me?

THE COURT: No. I don't have anything further.

Let's talk about where we go from here.

MS. O'NEILL: I understand that I need to produce -- oh, I did have one other thing I wanted to --

THE COURT: Yes, ma'am.

MS. O'NEILL: I understand I need to produce the Diana documents. I will get that done.

On the valuation, I'm not sure that you all -- I will go back and look, because now I'm not sure if you got the full thing. But it's not a 4-page document. There's a 58- or 59-page valuation for IMI Fabi LLC. Then there's a separate one for Diana and a separate one for USA. And we -- it's not a lawyer. It's an accountant, and he's the person who's going to be the witness.

So you ordered us to give the corporate document financial information that would be used if we reach the punitive phase. These are those documents, and he is the witness. So I'm a little concerned that perhaps they didn't

get the full set of valuation if they only got a 4-page document because there's three separate things, and one of them is --

THE COURT: Well, that's something you can talk about later. We don't need to go back and forth and back and forth in the courtroom about that. If you tell me that's what you got, then I'm sure y'all can get together and get it -- and you can get it to them if they don't have it.

MS. MCVEY: What might be helpful is --

THE COURT: Wait. Wait --

MS. MCVEY: I'm sorry.

THE COURT: -- Ms. McVey. No.

MS. MCVEY: Just about that.

THE COURT: No. I'm going to come back to you for everything.

Anything else, Ms. O'Neill?

MS. O'NEILL: No, your Honor.

THE COURT: All right. Very good.

MS. MCVEY: My apologies, your Honor. I didn't want to interrupt.

As to that point, it might be helpful if Ms. O'Neill would be happy to tell us what Bates numbers relate to what topics that they were ordered to produce. And then we can go search it to make sure we have it.

THE COURT: Well, I think that'd be a good idea, and I

hope that that can be accomplished.

MS. MCVEY: Thank you.

THE COURT: All right. Anything further from y'all?

MS. MCVEY: Yes, ma'am. Couple of things.

THE COURT: All right.

MS. MCVEY: One, as to the production that apparently is still in Mike Sommerville's office, when he's no longer national coordinating counsel, that was clearly ordered to be produced on Monday. And, you know, he knew that. We would like it produced this week. They've had plenty of time to get it produced. They should produce it this week, your Honor.

THE COURT: Well, it's Wednesday now. All right? Let's produce it by next Monday.

MS. MCVEY: Thank you.

MS. O'NEILL: Okay.

MS. MCVEY: And I understand it will be a full production, everything that's in his office.

THE COURT: That's correct.

MS. O'NEILL: I understand.

MS. MCVEY: Your Honor, I just want to go back to the big picture here. And that is, they don't deny -- IMI Fabi does not deny that they withheld discoverable documents from us. They don't deny it. It's clear. So they're clearly discoverable and they're clearly relevant to Ms. Plant's

case. And Mr. Sommerville clearly knew that those documents had not been produced. And I believe Ms. O'Neill that she didn't know. But he sat in that courtroom and watched her make that closing.

And it was a good closing. Remember all those exhibit numbers were up there and she dropped them all off. Only two relate to IMI Fabi. And they said, "We had nothing to do with Avon." Your Honor, that's extrinsic fraud, the withholding of documents that Mike Sommerville knew it and he allowed his trial counsel to stand up. That's unfair to her, frankly. But it's certainly unfair to Ms. Plant.

THE COURT: Well, I -- all right. All right. That is -- you are touching on the thing that I am concerned about. All right? But what I want to have happen right now --

Ms. O'Neill, if you and Mr. Carroll need to consult, you can do that, but I don't want you to take your eye off the ball what I'm saying now.

MS. O'NEILL: I heard.

THE COURT: Okay.

MS. O'NEILL: I heard what she wants to have happen now and she thinks it's unfair to Ms. Plant.

THE COURT: Right. All right. We've got to complete the exchange of documents as pertinent to finding out what happened.

MS. O'NEILL: I understand, your Honor. You want it by

Monday.

THE COURT: All right.

MS. O'NEILL: I'll do that.

THE COURT: We then have got to schedule a time within the near future where we are going to have Mr. Sommerville present and put under oath and have these matters discussed with him.

MS. O'NEILL: I don't control him, but I can certainly convey it.

THE COURT: Oh, I will sign an order for that effect and that will require his presence here, if you tell me that's what I need to do. The "I don't control him" is a matter of unhappiness to me because you're now the national coordinating counsel and he is a lawyer employed by IMI Fabi, and I would think you would have a lot to say about his attending matters that I request his attendance.

And he has said in an email to me, which he waits till today to tell me about -- or yesterday evening to tell me about that he'll be perfectly willing to attend at a convenient time if we can do it. So I am counting on him to honor the communication he made to me about doing that.

MS. O'NEILL: I understand, your Honor.

THE COURT: And what I simply need to find out is when we can have this --

MS. O'NEILL: I just want to make it clear that he

actually doesn't work on any cases that I am coordinating. So I saw his email. I understand what you're saying. I just --

THE COURT: It doesn't matter to me what he's working on now. This has to do with what he was doing when he was doing what you're doing now.

MS. O'NEILL: Right. But then I worked for him.

THE COURT: What are you trying to tell me, Ms. O'Neill, that you're --

MS. O'NEILL: I can't command his presence in this courtroom.

THE COURT: Yes, ma'am, you sure can. And I'm going to require that you do that. He is someone who used to work for IMI Fabi in the position you now occupy. I don't know whether he works for IMI Fabi anymore or not. My bet is he still does. He's got control of their documents. I would hope they would not have him not working for them if they don't have those documents. I want to know where those documents are. I am assuming they're in his office unless you tell me otherwise.

MS. O'NEILL: They're in his office in Boston, Massachusetts.

THE COURT: There you go. Well, then he's got some relationship with IMI Fabi for sure if he is still the repository of its documents. And in that connection, you've

got the complete ability to require him to do what IMI Fabi wants him to do. And what I want him to do is be in this courtroom at a mutually agreeable time. And he's already agreed to do that. So I don't know what we continue to fence about here, that "It's me, but it's not me," this kind of thing. I'm not doing it that way. I got a simple, simple request. I need to get him to tell me what went on about this.

Is there any misunderstanding about that?

MS. O'NEILL: I hear you, your Honor.

THE COURT: All right. Now, do I need to engage in yet another bit of auto writing about this thing that I get from McVey? Or do you want to send it to you and then see whether I like it and sign it, or can we agree on the basis of what I've said here in this courtroom from the bench? I'm going to count on it being from the bench. I know y'all going to get a transcript from her immediately, so --

And I'm counting on you to do what I'm asking you and directing you to do from the bench at this time, which is complete the exchange of documents and find a suitable time for Mr. Sommerville to be present in Columbia -- and I'll set the hearing there because I'm going to be away from here shortly -- to do whatever fact finding I need to do before I then announce my ruling and issue an order.

MS. O'NEILL: We would like built into that schedule, if

the charge is done, the opportunity for us to submit a written response. And if you want us to do it between now and then, that's fine. If you want to do it afterwards, that's fine too.

THE COURT: No. What I prefer to do is to have you and Ms. McVey put your heads together and agree upon a schedule that encompasses all of this and then submit it to me.

MS. MCVEY: Your Honor, I just want to be clear. This chart is no way near done. We don't even have all the documents yet. This chart in of itself, as it stands right now, is more than enough to show extrinsic fraud in our view. They can respond to it based on this, I believe. And I --

THE COURT: Well, slow down, Ms. McVey. I'm going to give them more time to respond in the light of what is still to be produced. I take it Ms. O'Neill has not gone through all the stuff that's in his office yet. My bet is she's going to do so now. It will then have to be completely replicated and sent to you. My guess is that all this kind of activity is going to take a little while. And my thought would be that you need a couple of weeks to get that done, and then we'll set a briefing schedule and a hearing.

MS. MCVEY: So here's my concern is that it adds -- if you're going to give us -- you want us to add more to this chart, is what I'm hearing you're saying. That is going to take a lot more time. What I think I'm saying to you is,

just based on what we've already gotten together, they can respond to this. And then as we go through these documents -- I don't know how big this IMI Diana production is.

THE COURT: Well, here's -- I'm not going to sit here and control what you do. On the one hand, you stood up right at the beginning and said, "We haven't gotten anything like what we want to get and we haven't had the ability to look at everything and categorize it." So we're now in the place where I'm directing them to get all this stuff to you. Well, they've got to digest it themselves and then brief about it. So that's not making any sense to me.

MS. MCVEY: I'm sorry. I think I was not being clear. I didn't mean it that way.

This is now the third time -- or second time, at least, you've ordered them to produce --

THE COURT: I know. It's -- I could pull my hair out about it.

MS. MCVEY: Yeah.

THE COURT: I'm tired of it.

MS. MCVEY: So it's very frustrating for us. I think what I am suggesting to you is that maybe they could respond to what we've already done, and in the meantime -- so we're not holding it up. What I'm concerned about is we go back through everything else again, add more to this, and then they have more time to respond. I'm wondering if they could

respond to this and, at the same time, we could be going through the documents.

Here's the concern. I just don't want this to get six months down the road -- and I'll be honest when I -- I hear you say "You and Ms. O'Neill can put your heads together and come up with a plan." But when I email her, like "When is this stuff going to be produced?" she just doesn't respond. So we need some --

THE COURT: Well, let me ask you this. All right. Has Ms. Plant passed?

MS. MCVEY: No. She's still alive.

MS. O'NEILL: Your Honor --

MS. MCVEY: She had a second surgery right -- the cancer came back. She had a second surgery right after the trial.

MS. O'NEILL: Your Honor, I --

THE COURT: Just a second.

She had a second surgery when?

MS. MCVEY: Couple weeks after the trial finished.

MS. GROSS: She had a remission.

THE COURT: Uh-huh.

MS. GROSS: Within weeks after the trial she had a second surgery. I think it was --

THE COURT: She had a second surgery recently?

MS. GROSS: It was within a month or two --

THE COURT: Uh-huh.

MS. GROSS: -- after the trial.

MS. MCVEY: So last year.

MS. GROSS: Last year.

MS. MCVEY: It was a massive surgery.

THE COURT: Yeah. Okay. All right. That's all I needed to hear. You know, if a new trial is granted and if they don't appeal that, and so forth and so on, she is still a living mesothelioma victim. And the courts -- the statutory law of this state requires giving consideration to that in the scheduling of cases. So that's why I say it's kind of like another infamous case I had recently; bad things don't get better with age. I want to conclude it.

Now, they got to give you this other stuff. Some of the -- it's on them that they haven't done it. She said she can get that to you by Monday. All right? Let me just look at my calendar then. We're going to do it this way or I can't get people to agree on things.

MS. O'NEILL: May I make a suggestion which may help here?

THE COURT: Yes, ma'am.

MS. O'NEILL: We'll be prepared to submit our written response within two weeks after they finish their chart, so then the timing can be driven by them. I'll produce this no later than Monday, and when they finish their chart, we'll do our full response within two weeks.

THE COURT: Well, here's what I would suggest then in that regard. All right. The perfect is the enemy of the good. All right? Let's get all this stuff to you, and then y'all can make a decision as to how much more of the chart you need. And I would suggest you do that sooner rather than later out of deference to your client, if for no other reason. So if you get the material on the 1st, or shortly thereafter, then --

MS. MCVEY: How big is this file, Ms. O'Neill?

MS. O'NEILL: Digitally I don't know, but I can find -- I don't know the answer to that as I sit here. I mean, I think it's been described as, like, ten or twelve boxes by Mr. Brown.

MS. MCVEY: Mr. Brown said it would take weeks to go through in his deposition.

MS. O'NEILL: Through the paper, yeah. But I think he's also described it as ten or twelve boxes.

MS. MCVEY: My -- okay. We'll do -- Judge, we'll do whatever you think is best.

THE COURT: Well, I'm about to tell you what I want done because I just can't -- y'all are not going to agree about the time of day, and it's always going to be "I need more time" on each side.

So what I'm going to say is this. You get the stuff on the 1st. By the 22nd of July, I want you to have to them

anything further you wish to do with your chart. There's not a requirement that you do anything more with your chart, but that is for a update situation. Then I'm going to give them until -- you got things on there -- all right -- Richland, August, asbestos wise?

MS. MCVEY: The Perry trial is supposed to start August 5.

THE COURT: All right. And that's -- they're involved in that one, aren't they?

MS. O'NEILL: We are, your Honor.

THE COURT: Okay. All right. I would like for -- because the pretrial on that is on the 30th. All right? Well, IMI Fabi have me your reply the 29th of July. I'm sure there's a lot of it can be done now without worrying about the chart. I don't know that the chart is going to have a whole lot more to do with it than that. And then I will, after that, set a proceeding but --

Let's see here. I can go on and do that now. But if we go to trial, which I would hope and pray we don't, then let's set a resumption of the hearing for the taking of Mr. Sommerville's testimony for the week of the 19th of August. And I'm going to say I would prefer the Wednesday, the 21st, but I'll work with anything that week. That's the week that begins Monday, the 19th, and it's the 19th through the 23rd. I'm suggesting the 21st, but I'll go with any day

that week as a day when we can have Sommerville down here.

MS. MCVEY: Your Honor, we'd be fine with the 21st.

THE COURT: Okay.

MS. O'NEILL: I'll have to ask him, obviously.

THE COURT: Exactly. But hopefully this will be enough lead time that that would be able to work. It would be my hope to have information from him and then be able to rule from the bench, as I normally do on these things, but let's just see what happens. I don't know what more the brief's going to look like. If their brief gets to you all on the 29th -- is that what I said? -- then even though you're going to be in trial, I'll just let you know that I would want your reply, if any, to come back in on the 5th. Okay?

MS. MCVEY: Yes, ma'am.

THE COURT: Okay. We got all that? Okay.

MS. MCVEY: Your Honor, just for the record, I think you put it on there, but I don't know -- you had ordered, I think, Mr. Sommerville to be here for this hearing. And of course, we had people flying in from Dallas, and last night he says for the first time, "I have a conflict and I can't make it."

THE COURT: I'm very dissatisfied about that, yes.

MS. MCVEY: It's frustrating, of course, for all of us but --

THE COURT: Yes.

MS. MCVEY: -- it was timing. So I would like for him to respond about a conflict, if he's going to do so, as soon as possible so we don't fly the people down for another hearing.

THE COURT: I think Ms. O'Neill will be sure that he does that even though she has no control over him. She'll make him give us a quick response on that.

MS. MCVEY: Thank you.

THE COURT: Okay. All right. Hope springs eternal in the human breast, and I'm just hoping that -- I don't want to rule on this case. And I would hope that reason might prevail and that the parties might still find within their heart and soul to get together. I blame no one in this room for any of this mess, even though some are trying to be brave enough to assume responsibilities that they don't really have. But I will tell you that I think reason ought to prevail on these things, so I'm praying and hoping that y'all will come to me and tell me that there's been a resolution -- and of Perry, for that matter. Love and kisses.

MS. MCVEY: Thank you, Judge.

(End of proceedings.)

CERTIFICATE OF REPORTER

State of South Carolina

County of Richland

I, Jamie L. Bickett, an Official Court Reporter for the State of South Carolina, do hereby certify that the foregoing is a true, accurate, and complete Transcript of Record of the proceedings had and evidence introduced in the hearing of the captioned case in the Fifth Judicial Circuit, the Court of Common Pleas for Richland County, South Carolina.

Jamie L. Bickett

Official Court Reporter

Dated this 30th day

of June, 2024.

STATE OF SOUTH CAROLINA
IN THE COURT OF COMMON PLEAS
COUNTY OF RICHLAND

SARAH J. PLANT AND PARKER PLANT

Plaintiffs,

vs. C.A. No.: 2020-CP-40-01265

AVON PRODUCTS, INC., ET AL.,

Defendants.

H E A R I N G

BEFORE THE HONORABLE
CHIEF JUSTICE (RET.) JEAN TOAL

DATE TAKEN: Wednesday, August 21, 2024

TIME START: 9:37 a.m.

TIME END: 2:55 p.m.

LOCATION: Richland County Judicial Center
1701 Main Street
Columbia, South Carolina

REPORTED BY: Sheri L. Byers, RPR
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P R O C E E D I N G S

- - -

THE COURT: Okay. This is a continuation of a hearing on a motion for new trial in the Sarah Plant case. We had an extensive hearing when we first heard this thing. And very strong arguments are made by the plaintiffs that she should have a new trial because the defense -- we don't mean by that the lawyers, but the clients deliberately concealed information that would have materially affected the verdict of the jury. That's a very high standard and, of course, defense argues a couple of things.

First of all, that they didn't conceal anything. Second of all, the proof was not there to show product identification.

Ms. O'Neill is the best lawyer I know of that practices in front of me on the crucial question of product identification. She made a very strong argument to the jury going through all the things that possibly could have linked her client to the supply of talc to any cosmetic retailer or manufacturer, that nothing tie her client to that. And she very persuasively

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ticked down the list of various exhibits and documents and made that argument.

In addition to that, she made the argument that you never linked asbestos in talc to my client's product, and he was very careful about everything he tested significantly and so forth and so on. That does proceed from a notion, in part, that I have not accepted in the talc cases which is that you've got to prove it was in the very bottle or very compact or very product that was used.

Most of these cases are proved by showing that the talc mine from which the talc product was produced contained asbestos, and that is how the plaintiff was attempting to prove that case.

The plaintiff also has contentions to make about whether they were provided complete information about the talc product. So that was another contention that was made.

The thing that developed that concerned me the most was the contention that the then national counsel for IMI-Fabi, Mr. Sommerville, when these cases first began to arise in 2018 or thereabouts, whenever it was, went to the offices of IMI-Fabi Diana and took all of the

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records and relocated them to his office.

And the suggestion was made that that is where the interrogatories would go. And they were received by counsel for the defense, they would send them to Mr. Sommerville and he would allegedly search the records and then indicate what was there and what was not there.

The strong argument was made to the jury that all IMI-Fabi ever knew was that they supplied a company called Cosmetic Specialties, and where it went after that, they had no idea. Didn't have any contact with them.

The documents that have since been produced reveal a good deal of contact between IMI-Fabi personnel within the manufacturing and the cosmetic manufacturers to whom Cosmetic Specialties supplied IMI-Fabi talc products. And that includes Procter & Gamble and several others with whom -- who had their own special desires for testing of the materials and were in direct interface with IMI-Fabi officials with regard to that testing and results of it and so forth.

So there was plenty of information. What was argued to the jury is that Cosmetic

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Specialties was very secretive about their trade secrets and therefore did not share them with IMI-Fabi. And I believe Corrado Fabi was one of the witnesses for the company that testified to that. That turns out not to be true.

Now, there are a lot of things that happened during the course of the trial that might be sanctionable but can't lead to a new trial. A new trial is a very, very high standard, and it is many months, maybe more than a year now since this case was tried. And I will look carefully at this, but the first question I have to ask, is Mr. Sommerville here?

MR. WATSON: Your Honor, Cal Watson here for Mr. Sommerville who is here.

THE COURT: I thought I recognized you this morning. Verify that. We need to talk about how this will go with him.

My thought -- you can -- that's fine.

My -- I don't want some hyperaggressive cross-examination of Mr. Sommerville, but I do want to find out exactly how he handled these records when he got them and how -- what his role was in supplying records responsive to interrogatories to the plaintiff.

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Now another argument that is made by the defendants is they had to be able to get all this stuff. They just dropped the ball about how they went about discovery at the last minute. So it's their fault because the standard is a very high one. It is evidence that could not have been discovered prior to the trial of the case.

And the contention is with a little more aggressive discovery, he would have found these documents if, in fact, they are pertinent to the matter.

So I think I fairly summarized the positions of both sides about this matter. And then the question is, how do we proceed?

I want to put Mr. Sommerville up, and I can enter as a Court's witness and examine him myself, and then have the parties examine as they wish, or I can have Ms. Gross or Ms. McVey put the witness up and ask him questions.

So would you all like a moment, Ms. O'Neill, to consult about that?

MS. O'NEILL: I would, Your Honor.

THE COURT: Or you may have another proposal you want to make. You may say it's

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total attorney-client privilege de facto.

What is your position?

MS. O'NEILL: I would like to start with the attorney-client privilege issue, Your Honor, as you know.

THE COURT: Yes.

MS. O'NEILL: IMI-Fabi does not waive any of the attorney-client privilege --

THE COURT: Understood.

MS. O'NEILL: -- which would be related to its defense of the Plant case or any other case. So we want to be very clear on the record that while we're here to comply with this Court's order --

THE COURT: Yes.

MS. O'NEILL: -- and Mr. Sommerville, to my understanding, has come to comply with this Court's directive, that we are continuing to assert the privilege on behalf of IMI-Fabi. And so to the extent that there's any questions that would encroach upon the privilege, we would object to those, and we would -- that there's two ways we can handle that, obviously.

We can do it question by question and put the objections on the record as we go, or we can

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do what Your Honor did last time which was blanket objection with respect to privilege and acknowledgement that nothing that is said will be viewed as a waiver of privilege to IMI-Fabi attorney-client privilege in this case or any other case.

THE COURT: Well, I will do the second, and I will allow you to recite what you believe the ruling should be on the record, and I'll adopt it as my ruling and we will go from there if we did that.

MS. O'NEILL: Okay.

THE COURT: And I think it is particularly important to say in this case and any other case, this is not going to be a vehicle for some widespread discovery in other pending or might be pending or haven't been filed yet cases. I agree with you completely about that.

And I agree that Mr. Sommerville is definitely in an attorney-client relationship, was then and is now, with the defendant IMI-Fabi, so I have no dilemmas about that.

I have outlined to you what I want to ask him about, which is how the records came to him and whether or not he was the one that searched

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the records in order to comply with the interrogatories. I realize like any interrogatory, every one you all ever offer each other always contains things that you believe is not relevant, it's oppressive, it is this, that, and the other.

So I'm not talking about -- I would regard my questions as waiving those boilerplate, shall we say, objections. But I would intend to ask him what his advice was or anything. I essentially want to know the paper trail is what, I guess, it boils down to.

MS. O'NEILL: I would -- just one point of clarification, Your Honor. There are two things at issue with documents here. There's the interrogatories, which were jurisdictional interrogatories. You have the form ones in South Carolina. There were jurisdictional interrogatories. And then there was a duces tecum attached to the Notice of Deposition.

And just so the record is clear, the Court will recall the history of the deposition. It originally was going to be a jurisdictional-only deposition, and so there was a duces tecum associated with that. And then right before we

were going to get ready to do that first jurisdictional deposition, we reached an agreement with Dobbs because they wanted an all-issues deposition that we would just do one. We would give them Corrado Fabi. He would testify for all three entities. He would testify in all issues.

And we had -- I don't have the dates right in front of me, but I think it was maybe ten days, maybe a little bit less of a turn between when we made that decision when the deposition was and we got another -- I think it was the Fourth Amended Notice of Deposition with a bigger duces tecum, all issues.

And so the Court's recitation about this is correct, but we would ask that the record reflect that when we're here today answering whatever the Court's questions are or whatever the Court would like, that we're not waiving any of the objections that we put in our response to any of those deposition duces tecums.

THE COURT: I would agree and so rule. And it's important not only for your attorney-client privilege to have that on the record, but it's also important because one of your substantive

objections and defenses to a motion for a new trial is that that very set of circumstances that led to the all-issues deposition of Mr. Sommerville would have been the time to very easily have gone further than they went in trying to get the materials they now say were hidden from them.

MS. O'NEILL: Right. One correction. The deposition of Corrado Fabi, and you said Mr. Sommerville by accident.

THE COURT: This is the deposition Mr. Fabi, and it was an all-issues deposition. And what you contend is in part that that deposition would have been the time to pursue these other things.

MS. O'NEILL: Or a subsequent Motion to Compel because --

THE COURT: No Motion to Compel was had, correct?

MS. O'NEILL: Right. And as Your Honor knows in the asbestos litigation in front of you, there are regularly motions to compel, motions for sanctions related to discovery issues, both pre and posttrial.

THE COURT: Exactly.

MS. O'NEILL: And none of that happened.

THE COURT: And none of that happened.

MS. O'NEILL: So that is part of our argument, yes. The plaintiffs had information in their hands at the time of that deposition that they could have asked different questions, they could come back to the Court and said we don't think their document production is complete because, look here, I have these Avon documents that say they're a supplier, or I had these Estee Lauder documents or whatever.

So, yes, that's correct. And so we would just like our objections as it relates to those duces tecum to be put --

THE COURT: Sure. Sure. I understand.

Now, other than that, I'm going to go back to you, Ms. McVey, of course. But other than that, are we kind of clear about the parameters as far as you're concerned?

MS. O'NEILL: I think so. I would like to confer with counsel for Mr. Sommerville. And counsel -- we have Mr. Pugh here as conflict counsel for IMI-Fabi to make sure we get the statement on the record correct.

THE COURT: Good to have you. Good to have

you.

Before I then turn to Ms. McVey, let me take a ten-minute break and let you consult with each other. Very good. Thank you. Court will be in recess.

- - -

(A recess transpired.)

- - -

THE COURT: Okay.

MS. O'NEILL: So with respect to the questioning, Your Honor, we would propose that you do much like you did with the examination of Clerk Becky Hill where the Court asks the questions, and then if counsel feels that there are additional areas that need to be addressed to be followed up on, that they advise the Court of that. The Court makes the decisions about whether to do that.

My recollection of the Becky Hill proceedings were you asked all the questions, the lawyers told you they thought some things need to be followed up on. Some of those you agreed with and some of those you did not. And so it was up to the Court to exercise its discretion as to whether it had all the

information it needed to make the decision, and we would propose the same thing here.

THE COURT: I don't know -- all of these things run together so much. The biggest thing I wanted them not to be able to do is any direct questioning about was the questioning of the jurors. And I outlined in advance exactly what the questions would be, and I asked exactly what I told them I was going to ask.

And, you know, they had one that they were trying to ying-yang back and forth. As soon as she testified, she goes and sits right in back of Harpootlian with her attorney, and I know what was going on then. I just told them we're not having that.

Now, with respect to the clerks of court and that other clerk of court in Hill, my recollection is that I asked questions and then I allowed counsel questions. But be that as it may, let's see how the first part of this goes.

I don't know everything about this, and I do not want to get into any kind of protracted yack-yack back and forth. I mean, essentially what you all said, as it boiled down to final contention, was that they had an interrogatory

that asked whether it supplies, sells, distributes or contracts with others, entities for the purposes of supplying the products to any of the entities listed on Exhibit A. And Exhibit A did not list Cosmetic Specialties. And you all tried to contend that that meant that you had truthfully answered.

But my concern is now seeing the documents that I've seen and looking at the detailed chart that has been provided by the plaintiffs on each of these things. It's clear that they had -- that IMI-Fabi's personnel had direct contact with the manufacturers, many of them. And therefore that Exhibit A interpretation of the fact that Cosmetic Specialties was not on it doesn't hold much water to me because IMI-Fabi either directly or in contracts with another entity did supply products to a good many of these entities. At least that's what these records show. And got into the business of talking to them about testing. That informs what I will allow in terms of questions.

But let's start with me asking the questions, and if I don't think I have gotten to the bottom of this thing, I am sure Ms. McVey

will tell me.

I'm going to turn to Ms. McVey now and see what she -- go ahead.

MS. O'NEILL: Then we will come back and do the privilege thing after that?

THE COURT: No, let's do the privilege thing.

MS. O'NEILL: I just want to make sure.

MS. MCVEY: I do want to address the privilege issue because I think it's important.

THE COURT: Sure. Before you do the privilege thing, I will tell you that I intend to protect the privilege much in the way that I have already talked with Ms. O'Neill about just as I said at the last hearing. But let me see what you have to say.

MS. MCVEY: Thank you, Your Honor.

Of course, we all believe the attorney-client privilege is sacred. And that is a good argument except that we made a claim of fraud, extrinsic fraud. And if you could commit fraud and then hide behind the attorney-client privilege, that would be a good argument, but then Chewning case would not exist.

And I do want to remind the Court, and of course I think you wrote it or at least were part of the panel that affirmed it. But that's a case where the plaintiffs claimed posttrial that Ford had hidden documents, had a witness lie under oath.

And what the Supreme Court said in that case is that Ford claimed that the subornation of perjury by an attorney and/or the intentional concealment of documents by an attorney do not constitute extrinsic fraud. They do not defeat the opposing parties' opportunity to litigate a 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 extrinsic -- intrinsic fraud, when 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.

Now, I think we're going to get into who had the documents that were never produced. They don't deny they were never produced. But this is important because we talked about the deposition of Corrado Fabi, which took place four days before trial.

And you mentioned already the interrogatory request that was sent in November before this February deposition where we asked about all of the codefendants, which included Procter & Gamble, which included Revlon, all of these places that we've talked about. That's why this chart was updated to reflect it. And as you said, it noted this.

And this is also important. And this is from Mr. Fabi's deposition. I just highlighted it for you.

May I approach?

THE COURT: Yes, please.

MS. MCVEY: I'm sorry, Judge.

THE COURT: I got it.

MS. MCVEY: And what this deposition says is on this -- the third page attached, we're going through do we have all these documents? Ms. Bollinger, Ms. O'Neill is there. And what Ms. O'Neill says is -- and Mr. Sommerville was also in the room. This is important in this deposition.

Ms. O'Neill says on the record, "But you do have all of the responsive documents that we were able to get from him --"

Talking about Mr. Fabi.

"-- or any other source?"

Now, what we now know is that Mr. Sommerville had those records, all of the Diana records, in his office in 2019.

THE COURT: Yeah. Right. He goes on to say -- Mr. Fabi goes on to say, "For Diana, I had to rely on Mr. Sommerville because Diana is only hard copies, but LLC mainly digital copies. We searched our server."

So what he's saying there is the things that were not digitized, he counted on Mr. Sommerville to search the hard copy records that were kept in his office. And it is from, I

take it, those hard copy records that the information that has now been made the product of this motion was discovered in some other case apparently.

MS. MCVEY: You compelled it in the Michael Perry case. You compelled it. And so that's why we now have it because of court order.

And just a reminder that Cosmetic Specialties was not a defendant in the Plant case. Right? Okay. And so we didn't get discovery from them. We didn't know about them until right before this trial. And subsequently we were able to sue them.

And then we also see this other pile of documents from Cosmetic Specialties where we have direct contact with IMI-Fabi knowing Corrado Fabi would put it in a briefing. It's copied on emails talking about particular customers, not just CSI, but it's going to Revlon. It's going to Procter & Gamble. We have the customer lists that were produced showing millions of pounds of talc going. And it's talking about products that we know Sarah Plant used.

THE COURT: Okay. I get that. All right.

I understand.

MS. MCVEY: So that's my only concern in protecting -- I want to protect what needs to be protected, but we are making an allegation of fraud.

THE COURT: I understand that. And what I will do is have Ms. O'Neill read to me what she proposes be put upon the record by the attorney-client privilege. And if I think it in any way impinges on the right of the Court or anyone else to pursue fraud and extrinsic fraud claims, I can say that.

MS. MCVEY: Thank you.

THE COURT: But right now we're not there. Right now all I'm trying to do is track the record of how these records that were in the control of IMI-Fabi, not even talking about records in control of Cosmetic Specialties. That may be elegance of some badness on the part of IMI-Fabi, but right now all I'm trying to do is clarify what was actually in IMI-Fabi's possession. And I'm asking the lawyer about that from a paper-trail standpoint.

So with that in mind of what's kind of in my mind about it, Ms. O'Neill, please.

MS. MCVEY: Thank you, Your Honor.
MS. O'NEILL: Yes, Your Honor. As I indicated before, IMI-Fabi intends -- instructed its counsel to maintain the privilege and intends that we maintain that privilege. So we would propose that the Court issue -- it recognize that there is an objection. And although I understand that privilege objections generally need to be raised every single time that a question encroaches upon it for efficiency's sake, we would ask that because of the unusual nature of these proceedings, the Court allow a standing objection to be made on behalf of IMI-Fabi, LLC; IMI-Fabi Diana, LLC; IMI-Fabi, Inc.; Mr. Sommerville, his firm, Cetrulo, LLP; Womble Bond Dickinson; and any of the lawyers who may be asked any questions here -- any individual lawyers besides Mr. Sommerville who may be asked questions here so we don't have to keep interjecting the objection.
THE COURT: Right. This all goes to the protection from inadvertent waiver of the attorney-client privilege. There will come another time when we may be making some

substantive rulings on attorney-client privilege.
MS. O'NEILL: Correct.
THE COURT: This is simply your request that the Court protect from any waiver of the attorney-client privilege all the entities that you have referred to in connection with my inquiry of Mr. Sommerville.
MS. O'NEILL: Correct. This is specifically what we would ask the Court to put in the order for that standing objection.
THE COURT: All right.
MS. O'NEILL: There is no intent to waive any privileges including but not limited to attorney-client and work product privileges or any obligations under the rules of professional conduct that may apply to any of the lawyers here that do or may apply to communications or actions of counsel for any IMI-Fabi entity.
This includes but is not limited to privileges that apply with respect to Mr. Sommerville's and/or his firm's communications with clients and/or agents of the clients, including any attorney retained to represent the IMI-Fabi entities.

If there is any answer or argument that an answer constituted a waiver of the privileges, such waiver will be deemed inadvertent and limited to this proceeding only. Nothing here shall be used in any other case in this or any other jurisdiction. And that this ruling shall apply to all parties and all counsel appearing here today and their law firms whether they are appearing for named parties or for limited or special purposes.
THE COURT: All right. And I think that fairly recites what I have indicated I would do. I adopt that as my ruling with respect to the protection of attorney-client privilege in connection with these proceedings aimed at establishing a record of the way documents were kept and how they were produced.
I say further that I am not asked to at this time nor am I in any way ruling on allegations of fraud, intrinsic fraud, or any relationship between those and the breach or waiver of the attorney-client privilege and whether it applies in those circumstances. I'm not into that issue at all right now and don't intend to have what I do in connection with this

paper trail inadvertently on my part constitute some sort of ruling on whether attorney-client privilege would protect any of the entities you recited from whatever happens if the contention is litigated as to fraud and intrinsic fraud. We're not in that right now.
MS. O'NEILL: Understood, Your Honor.
THE COURT: Okay. Very good.
Ms. McVey.
MS. MCVEY: I just incorporate my prior arguments. I understand where the Court is right now and happy to proceed either way.
As to the questioning of Mr. Sommerville, I think we are fine with the Court questioning Mr. Sommerville. Depending on how it goes, we likely will have some questions that we think we'd be able to ask.
THE COURT: Certainly.
MS. MCVEY: So we can address that when we get there.
THE COURT: Right. Very good. And, again, all rights are preserved from your standpoint as to whether it would be more important to have you directly examine. So all that is taken into account.

MS. MCVEY: Thank you, Your Honor.
THE COURT: Mr. Sommerville, will you come around and be sworn.
- - -
MICHAEL SOMMERVILLE, being first duly sworn, testified as follows:
- - -
THE CLERK: State your full name for the record.
THE WITNESS: My name is Michael Sommerville. And that's spelled S-O-M-M, not S-U-M-M.
THE COURT: S-O-M-M-E-R-V-I-L-L-E. Michael Sommerville.
THE WITNESS: That's correct.
THE COURT: Thank you, sir.
- - -
EXAMINATION
- - -
BY THE COURT:
Q. Mr. Sommerville, state your address for the Court.
A. My home address?
Q. Or a business address is fine.
A. My business address is Cetrulo, LLP, 2

Seaport Lane, Tenth Floor, Boston, Massachusetts 02110.
Q. And spell that Cetrulo.
A. C-E-T-R-U-L-O.
Q. All right. Mr. Sommerville, are you a lawyer?
A. I am.
Q. Tell me about your educational background.
A. Well, I went to St. Mary's and St. Jane De Chantal. Then I went to Our Lady of Good Counsel High School and then to Towson University. I got a graduate degree at Catholic University, and I got a law degree at Suffolk University.
Q. All right. And where are you admitted to practice?
A. Massachusetts.
Q. When were you admitted?
A. I think about '85 or '86. I'm not exactly sure.
Q. And when did you become involved as a lawyer for the IMI-Fabi interests, the various corporations that have been recited by Ms. O'Neill?
A. I don't remember exactly when, but it was somewhere around maybe 2018 or late '17. I'm not exactly sure.

Q. The year of 2017 has been recited as a possible year when you first became involved with the documents for IMI-Fabi. Would that be -- that sounds like it's in accord with your recollection?
A. Well, yeah, it does. I had been representing Fabi in several cases for, you know -- basically I got them out of all the cases on lack of personal jurisdiction, but I, you know, prepared the affidavits if it -- originally the cases were in Massachusetts, Rhode Island. When they branched out a little bit, I would -- I knew lawyers all over the country from prior work, and I would contact them and they would do that.
Q. All right, sir. When interrogatories would be propounded for the cases brought against IMI-Fabi, would you be the one who would handle those interrogatories and the search for documents?
A. Well, first of all, up until this case, there wasn't any.
Q. There weren't any interrogatories?
A. None whatsoever.
Q. Because you make preliminary motions to dismiss for jurisdictional reasons and never gotten --
A. That's correct.

Q. -- in the discovery phase? I understand.
A. Yeah.
Q. Now go back in time to 2017 or about that period of time.
A. Yeah.
Q. It's been testified that -- in Mr. Fabi's deposition that the records for IMI-Fabi Diana at some point came into your control. Tell us about that.
A. Well, first of all, it was some of them. The records -- IMI-Fabi Diana is owned by IMI-Fabi, LLC, and they regularly communicated back and forth. And Fabi, LLC had a bunch of records from Diana. Correspondence, things, I don't know because I've never seen the LLC collection of documents.
But there was -- you know, IMI-Fabi -- I forget the name of the town, but it's a little teeny town in the middle of nowhere New York. And actually there was a mine there a hundred years ago. But they ran the Diana Fabi -- Fabi Diana Plant up there, and they had documents. The place had been closed down since 2004, and teenagers were breaking into the building and using it as a place to party. And they were throwing documents around, from what I'm told.
And one day Michael Hooper, who's the

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general -- outside general counsel of IMI-Fabi called me and said, look, we've got some records up there. We've got to get them out of there. We would like you to meet us in Watertown, New York. We'll go out there.

And so basically we flew -- me and Ryan Kenney, who was an associate at the firm, we flew to Syracuse. Got up the next morning and rented a Ford Expedition and drove up there. And I loaded I think it was seven boxes of documents, and we drove back to Boston and put them in a file room.

Q. Now, when they got back to Boston, were they maintained in your office?

A. No, they were in a file room. They're still in a file room.

Q. In where?

A. A file room in our firm.

Q. That's what I'm saying. In your offices? In other words, these IMI-Fabi documents that you all got out of this derelict building, those were in your file room, right?

A. That's correct.

Q. Okay. Now, is this case the first case in which you've had to go into those records to locate things?

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A. Yes.

Q. All right. Tell me how you went about doing that, Mr. Sommerville.

A. Well, when the first discovery request was done, we received it. I got two associates. I don't remember one of them. You know, I know one of them who's no longer with us. But in any event, we went through the document requests, and I had them pull all the documents pursuant to the request. They came and asked me a few questions. What about this document? I said either yes or no.

And then when that was done, I shipped them to I think -- where did I ship? Either Elizabeth or Michael Hooper, one or the other. And that's what I did.

Q. You are aware of the controversy that has now developed since the lawyers who were the lawyers for Ms. Plant had other cases, particularly one called Perry, right?

A. Yeah.

Q. And in connection with that case, they got some documents from Cosmetic Specialties. Are you aware of that?

A. Yeah, I'm vaguely aware of it. I never read the Perry complaint. I don't know anything

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about the pleadings, but I do know that they got some documents from Cosmetic Specialties, which is no surprise to me.

Q. Well, their contention, you've been here in the courtroom, of course you were here for the trial, so you know that their contention is that IMI-Fabi concealed documents that were pertinent to interrogatories they asked that asked for information in the files you had related to IMI-Fabi's supply of material that ultimately went to specific cosmetic manufacturers.

Are you aware of that controversy?

A. I am aware of that, but my comment to that --

Q. Yes, that's what I want to know. What do you say to that? And how did all that transpire?

A. Every company has a different document destruction policy, and Cosmetic Specialties is apparently much, much, much longer than Fabi's. And I had all of -- I had seven boxes.

Now, you know, I read the transcript. Many, many, many, many boxes. There were seven of them. Seven bankers boxes. Not that many, frankly. And we produced, in good faith, after I, you know -- the associates came and brought these to me. And I

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looked at them and I said yeah, and I think I pulled one or two out because it really, I thought, was client privilege, but I don't remember. I do know that I looked at them and then within 24 hours I sent them to Mike Hooper. I think it was Mike Hooper. It might have been --

Q. Ms. O'Neill?

A. Yeah.

Q. Is it -- you've now had a chance to understand the broader issues that they've raised because they've got these Cosmetic Specialties documents.

A. Right.

Q. What I understand you to be telling me is they saved a lot more things than we save?

A. They -- I guarantee you, they saved a lot more things.

Q. Well, they have now cataloged these various documents rather extensively in a big chart that they sent to us identifying the ones that they say were willfully concealed.

Have you looked at the old IMI-Fabi Diana documents to see whether those documents contained -- actually do contain any of the material that they say was concealed?

A. I have not because I haven't seen all of the specific documents that they say were concealed.
Q. I see.
A. But I know that we went -- my two -- my two associates and then me went through those records and we submitted documents. And then when -- just before Corrado Fabi's deposition, there was like a motion and then four amended motions.
And I got some communication from Michael Hooper who said "You got to go through the documents I have, and you've got to send them to us today." And he was sending me FedEx labels to put on them so they would get them the next day. And, you know, this was like a week before we're going to Italy. I mean, I got to tell you that I was -- I had other clients. I was trying to explain to him filing motions with the Court, I can't do this because I'm not going to be here.
But I went through the documents, and I sent to, I think it was Michael Hooper, documents and so ...
Q. Now that this controversy has arisen posttrial, one of the things that I did in the hearing that I conducted previously about this matter was to direct that all of the IMI-Fabi Diana

documents, if we can put it that way, the ones that you harvested from the old --
A. Right.
Q. -- that they all be turned over, copies of every one of those documents be turned over to the plaintiffs. Has that been done?
A. As far as I know, I sent all of the seven boxes to Ms. O'Neill, and -- okay. Let me back up just a little bit. I had boxes of documents. I didn't have a computer program with documents. And I never was asked to put them into a computer format.
Q. Sure. I understand.
A. And so when -- I think it was after -- I don't remember exactly when it was, but I sent all of the documents to Elizabeth O'Neill, who scanned -- well, I don't know what she did with them, but a month and a half later, I got them all back.
Q. So you assumed they were probably digitized in some way?
A. Well, yeah. I mean, they were, you know.
Q. I would make that same assumption. I understand.
A. Yeah. I mean, that's what it -- but I sent all of them to her, and she eventually sent them back to me.

Q. I got you.
A. And I was told they were going to be digitized. And, you know, eventually I got them back and they're in the same file room on the same shelves as they were when they were put there, what, ten years ago, eight years ago, whatever it was.
Q. Okay. Were you ever -- did you ever look at the records as you had them in the bankers boxes --
A. Right.
Q. -- and try to see whether you could identify any documents that were communications, not between Cosmetic Specialties, but between the actual manufacturers like Avon, Revlon, Procter & Gamble, et cetera, communication between the ultimate cosmetic manufacturers and people within IMI-Fabi, did you ever identify any documents with that kind of framework?
A. I don't recall seeing any such documents. What I do recall seeing is -- okay. Just to step back a little. Every ounce of talc that Fabi sold, cosmetic talc, went to Cosmetic Specialties. It was all sold FOB. Fabi's dock. So Grexa would arrange to have it picked up at Fabi's dock in Diana. And the minute it was on the truck, it was Grexa's, and

so if the truck blew up going out the driveway, that's --
Q. I'm very familiar with that scenario.
A. Okay.
Q. But as you know, that doesn't necessarily completely control the responsibility of a supplier to the ultimate manufacturer.
A. Well --
Q. But that's a subject for a different setup. That's how you say it was all handled by FOB deliveries to cosmetic talc --
A. And then.
Q. -- Cosmetic Specialties, and the question I was trying to get at was this --
A. I was getting to that.
Q. Okay. Go ahead.
A. This is a long-winded answer. I'm sorry.
Q. I'm fine.
A. So then Ron would, for the most part, have the talc and then somebody like P&G would buy it. Sometimes Cosmetic Specialties didn't have enough, so -- and CSI sold the talc to like P&G the same way. You pick it up, you pay for it, all that stuff.
Q. Yeah.
A. Sometimes P&G would pick it up in Diana.

Q. Direct?
A. And I saw some shipping invoices, but I saw -- I wouldn't call that correspondence. This was just something that went on a bag of talc and was picked up. So I think that's my answer.
THE COURT: Okay. All right. I'll turn first to Ms. O'Neill. Ms. O'Neill or Ms. Gross.
MS. GROSS: I'm happy to ask some questions, Your Honor. However you would like me to proceed. I definitely have some.
MS. O'NEILL: Your Honor, I don't mean to be difficult, but I actually don't think Ms. Gross was admitted in the Plant case.
MS. GROSS: I absolutely was. I tried the case.
THE COURT: Do what?
MS. O'NEILL: I'm thinking Ms. Bollinger. I'm sorry, Your Honor, I'm completely wrong. I'm mixing up Perry and Plant in my head.
THE COURT: Yeah, she's admitted in Plant.
MS. O'NEILL: I'm mixing up --
MS. MCVEY: They were both admitted, so the record will be clear.
THE COURT: All right. What I would intend to do is let Ms. Gross ask some questions and

what I want you to do is track very straightforward through this. I don't want to go through each one of those documents or anything like that.
What I'm trying to do is get some sense of how he reviewed them for those interrogatories that took place shortly before the Plant case was tried.
MS. GROSS: Yes, ma'am.
THE COURT: That's the main thing I'm trying to do.
MS. GROSS: I understand.
THE COURT: I take it you all now have them all.
MS. MCVEY: He just said he wasn't -- as far as he knows, we have them all. I don't know what that means.
THE COURT: Well, you have received a tranche of documents from Ms. O'Neill, I take it, that were digitized?
MS. GROSS: That's correct.
MS. O'NEILL: I can say on the record, Your Honor, if you recall the last time we were here, they complained because we had -- in response to the order to produce documents, I had

interpreted the way the order was written that they wanted the hard copy. So I said go ahead, look at them. They complained. You instructed me to give them digital copies. I did that.
THE COURT: That's what you did.
MS. O'NEILL: And then we ensured that it is every single thing in all of those boxes.
THE COURT: And what happened is you got paper -- you got boxes -- I can't have two people talking to me at one time here now.
MS. O'NEILL: Yeah.
THE COURT: Elizabeth.
MS. O'NEILL: I got boxes, yes.
THE COURT: You got the boxes and you digitized everything in the boxes?
MS. O'NEILL: We digitized and we QC'd to make sure we didn't miss anything. And counted the pages in the boxes, counted the images we got.
MS. MCVEY: And just to be clear because I think it's going to come up in this questioning, my understanding was that Ms. O'Neill told us to go to Mr. Sommerville's office to look at the boxes. They were not in her office.
THE COURT: Be that as it may, they ended

up being digitized. I trust that Ms. O'Neill digitized everything she was sent. Mr. Sommerville says he sent her the entire boxes. So that's what I have in front of me right now.
MS. O'NEILL: Just so it's clear, Your Honor, all of that happened after the trial. Mr. Sommerville sends us the boxes after the Plant trial. It was summer of 2023. They were digitized. We sent them back to him.
When you issued the order in the Perry case, we indicated -- said you could go look at them. That's what I thought they wanted. You instructed me to give them digitally, which we did. And so it is the documents they received digitally are all of the documents that we received from Mr. Sommerville.
And the offer, as we had state originally that they objected to, still stands. If they don't trust us, those documents, just as we started, I think if you remember I said last time --
THE COURT: I don't think -- I don't think it's that kind of issue. They now have --
MS. GROSS: Your Honor --

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THE COURT: Just one moment, Ms. Gross.
MS. GROSS: I'm sorry.
THE COURT: They now have everything that you've got from Mr. Sommerville. He says that's the entire contents of those boxes that were harvested from the derelict office in New York.
MS. O'NEILL: Right.
THE COURT: They have now, on the basis of those documents and other discovery that they have gotten from Cosmetic Specialties, have prepared this big chart that indicates what they think was concealed.
MS. O'NEILL: Yes.
THE COURT: Right now I'm just tracking the documents. I think I understand what happened about those documents. What kind of judgments Mr. Sommerville may have made about what he thought was pertinent and what he did not is something that they will argue because they have what was produced to them in the Plant case, and they have now what they got in the Perry case. And it's on that basis they are making the arguments they are making.
MS. O'NEILL: Right.
THE COURT: Mr. Sommerville made the first

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cut on that, as I understand what happened in Plant. You did not get the complete boxes of everything in Plant. But Plant has finished being tried.
MS. O'NEILL: Correct.
THE COURT: I think I understand the basic factual scenario. All right.
Ms. Gross, I'm going to allow you to ask some questions, and you understand the framework in which I am dealing now. I am not dealing with who did what as far as allegations of concealment are concerned, I am more trying to track how these documents were produced.
MS. GROSS: I understand. A couple of quick follow-ups before I get started first. Is it okay if I question him from here just so I can have --
THE COURT: Sure. Mr. Sommerville, can you hear her?
THE WITNESS: Yes.
MS. GROSS: I'll project. I'll be very loud.
Can you hear me?
THE WITNESS: Yeah.
MS. GROSS: The second thing is I would

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like to ask Mr. Sommerville follow-up questions about what Ms. O'Neill just told the Court. I would like to ask him his version of the timing of these documents because it is pretty critical to what we're arguing.
So with the Court's permission, I know Ms. O'Neill just told you some stuff, I would like to ask Mr. Sommerville --
THE COURT: Let's see how it develops.
MS. GROSS: All right.
THE COURT: I think you all are making a mountain out of a molehill about what can be asked and what can't. We're trying to track.
MS. GROSS: I just want to be respectful of the boundaries here. That's all.
THE COURT: Okay. Proceed.
MS. GROSS: Thank you, ma'am.

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EXAMINATION

- - -

BY MS. GROSS:
Q. You said, Mr. Sommerville, you were first retained -- did I get that correct? -- for the IMI-Fabi entities sometime in 2017 or 2018?
A. It could have been before that.

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Q. It could have been before that?
A. Well, I don't know when I got the first case.
Q. Okay.
A. I had cases in Massachusetts, cases in Rhode Island. And every single case I handled for Fabi, other than this one, we got out on lack of jurisdiction, lack of personal jurisdiction.
Q. You said that in those cases in which you got -- let me make sure I'm clear. Are you saying that every single case before Plant, you were able to get Fabi out of every single time they were sued in asbestos litigation out on personal jurisdiction?
A. That is correct.
Q. That's correct. Okay.
You told the Court before that Plant was the first time that IMI-Fabi had responded to discovery requests; do I have that right?
A. That's my recollection.
Q. Have you ever heard of the Hemmings case before?
A. I have.
Q. Hemmings was a lawsuit in which Mike Brown of IMI-Fabi Diana was deposed in 2022, right?
A. That is correct.

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Q. June 29th, 2022, right?
A. I don't know. June 2022?
Q. June 29, 2022.
A. What happened on that day?
Q. Mr. Brown was deposed as the corporate representative in the Hemmings case?
A. If you say that was the date.
Q. I do say it was the date.
A. Okay.
Q. You --
THE COURT: Ms. Gross, let's just get to the facts.
MS. GROSS: I'm sorry, I'm trying. I'm getting there.
THE COURT: He was -- Brown, we know, is an employee of Fabi was deposed on June the 29th, 2022, in this Hemmings case. Go on with that.
MS. GROSS: I promise. I assure you I'm getting there. I'll get there now.
THE COURT: All right.
BY MS. GROSS:
Q. You attended that deposition, right?
A. I did. And let me correct myself. When I said we got them out of all of them, I forgot about the New York cases against Diana.

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Q. Understood. Thank you for that correction.
In that deposition, there were IMI-Fabi discovery requests and responses that have been prepared that were attached as exhibits to that transcript. Do you remember that?
A. I don't remember what was attached to the transcript. But I remember that there was a deposition.
Q. Was it your responsibility to prepare all the discovery responses for IMI-Fabi any time they were sued?
A. I don't know that to be true.
Q. I'm asking.
A. And I'm telling you, I don't know that all of the discovery requests -- I don't know of all of the different kind of cases Fabi's been in, but I did -- I handled the New York cases, so our firm prepared the responses for the New York cases.
Q. The interrogatory request that Judge Toal asked you about earlier in the Plant case, the question -- the jurisdiction interrogatory said, "Did IMI supply, sell, distribute and or contract with another entity for the purpose of supplying products to any of the entities listed on Exhibit A? If so, please identify the company and years of sale."

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Your response to that was "No."
Did you prepare that discovery response?
A. I did.
Q. You did?
A. Yeah.
Q. Is that correct? That discovery response?
A. That is correct because Fabi had a contract with CSI. CSI -- and don't forget, I've never seen either one of the distributor agreements until after the Plant trial. Never saw either one of them. But if you look at the first one, which is the one for when Diana was open, it gave Ron Grexa, CSI, basically the opportunity to sell to anybody he wanted.
Fabi didn't give or sell talc to Ron Grexa for the purpose of selling to anybody. Ron was free to knock on any door he wanted and sell to anybody he wanted. But it -- Fabi didn't say I want you to go to P&G. I want you to go to Avon. I want you to go to any of those places.
Q. Are you aware that one of the documents that was kept in the Diana documents that's been the subject of all of this here today and several days before, there was a document called IMI-Fabi Customer List. Do you know that?

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A. No.
Q. Did you know that IMI-Fabi had a document that listed P&G as one of its customers in the Diana documents that were produced in the Sarah Plant case?
A. No.
Q. The documents that you said earlier to the Court you sent to Ms. O'Neill -- are you with me?
A. Yeah.
Q. When did you send those to her for the first time?
A. I only sent them one time.
Q. You only sent them one time. Okay. When was that one time that you sent those documents to her?
A. Approximately June of 2023.
Q. Okay. So before the Plant trial --
A. Yeah.
Q. -- you had -- or Cetrulo, I guess, had sole possession of the Diana documents; is that correct?
A. As far as I know.
Q. When Corrado -- before Mr. Fabi testified in the Plant deposition, four days before the trial, was it your responsibility to gather the responsive documents that we sought?
A. No.

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Q. No? Did you review Mr. Fabi's deposition testimony?
A. I did.
Q. You were actually at that deposition, right?
A. I was not admitted for the deposition, but I was there.
Q. You appeared, though, at the deposition, correct?
A. I didn't file an appearance.
Q. I understand. Let me be more specific.
A. I was present.
Q. You called in and listened to the deposition that Ms. O'Neill was at, right?
A. I was there. I was there.
Q. Were you physically in Italy during his deposition?
A. I was.
Q. You were? Okay. Did you -- let me ask it this way: Do you remember that Mr. Fabi testified that he depended on you to put the responsive documents together that we sought?
A. I don't recall that, but if that's what he testified to, that's what he testified to.
Q. Okay. Just to be clear, because you said

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you don't remember, on page 25 of Mr. Fabi's deposition -- I don't --
Your Honor, may I approach him?
THE COURT: Yes.
MS. O'NEILL: It's the same thing you gave us before?
MS. GROSS: It's the same thing we gave you this morning.
MS. O'NEILL: Thank you.
MS. GROSS: Thank you, sir.
BY MS. GROSS:
Q. If you go with me to the last page, Mr. Fabi -- excuse me -- Mr. Sommerville.
A. Page 25?
Q. Yes, sir.
A. Yeah.
Q. Starting on line 13, where you see "By Ms. Bollinger." Are you with me?
A. Yeah.
Q. She asked Mr. Fabi, "Mr. Fabi, where did you find the documents that you provided to Ms. O'Neill?"
And Mr. Fabi answered, "For Diana, I had to rely on Mr. Sommerville because Diana is only hard copies. For LLC, our mainly digital copies, we

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searched in our server."
And she asked a question about it being digital. If you skip down to line 22.
"So the documents from Diana, those are kept by Mr. Sommerville?"
"Answer: Yes."
Do you remember that now?
A. Yeah.
Q. Yeah. And you still -- your testimony here today is you didn't have anything to do with the search for responsive documents before Mr. Fabi testified in the Plant case?
A. No, I didn't say that at all.
Q. I thought that's what you just told me.
A. What are you --
Q. Let me ask it this way.
THE COURT: Wait a minute. Wait a minute, Ms. Gross.
MS. GROSS: Yes.
THE COURT: All right. Ask your question.
MS. GROSS: Yes, ma'am.
BY MS. GROSS:
Q. Whose job was it to find the responsive documents that we sought in the Plant case that were maintained in the Cetrulo offices before Mr. Fabi's

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deposition?
A. It was me and two associates.
Q. Okay. So it was. All right.
You told the Court earlier that you would not consider a shipment invoice correspondence. Do you remember that?
A. I do.
Q. What would you consider a shipment invoice if not correspondence?
A. A shipment invoice.
Q. Okay. Do you understand that that was one of the documents -- one of the topics of documents we sought to discover before the Plant trial?
A. No.
Q. Okay. You actually physically attended the Plant trial, right?
A. I did.
Q. You did. Were you here when Ms. O'Neill argued to the jury that there were no documents that existed?
MS. O'NEILL: Object to the form.
THE WITNESS: I don't recall if I was here or outside making a phone call. I mean, I was here for pretty much the whole trial. Because I'm a practicing lawyer, I was outside some.

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I'm not saying that that exchange didn't happen, but I don't recall those exact words.
BY MS. GROSS:
Q. Where are the Diana documents now?
A. I have already told you. They're sitting in the same place they've always sat. In our office in the file room.
Q. Okay. Did you know that -- let me ask it this way. Are there retainings of actual talc that are maintained in the Diana documents? Do you understand what I'm asking? Are there samples of talc?
A. Yes.
Q. There are? Are you aware, from your review at any time of the Diana documents, that those samples are actually labeled for P&G?
A. I don't recall that.
Q. Okay. The customer list I asked you about earlier, the -- actually, let me ask you this first, if you don't mind, with the Court's permission.
One of the other documents in the Diana documents, what I'm referring to as the Diana documents, was a folder that's labeled Sales of Talc by Customer. Do you know what I'm talking about?
A. I don't recall that, no.

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Q. Did you know that P&G was listed separately from CSI?
A. I don't recall the folder, so I don't recall the answer to that either.
Q. Did you know that there were two folders in the Diana documents called Shipments Going Out that indicated where IMI-Fabi's talc was being shipped?
A. No.
Q. So you don't know that P&G was listed separately from CSI in IMI-Fabi's own records, right?
A. Well, it doesn't surprise me, but I don't know that for a fact because there's seven boxes of documents.
Q. Why doesn't it surprise you?
A. Why doesn't it surprise me?
Q. Uh-huh.
A. Because I haven't committed to memory what's in the seven boxes of documents.
Q. I understand. Okay. You also testified to the Court earlier about the Cosmetic Specialties documents, and you said -- I'm paraphrasing -- but you said something along the lines of, well, they maintain documents longer than us. Do you remember that?
A. They do.

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Q. Have you reviewed the deposition we took of Mr. Grexa --
A. No.
Q. -- in the Perry case?
A. No.
Q. You haven't? Okay.
Have you seen any of the emails that Corrado Fabi is copied on that we used in that deposition?
A. Well, I haven't seen the deposition, so I haven't -- the transcript usually has the exhibits back. I haven't looked at any of that. I'm not in the Perry case.
Q. Do you know that the IMI-Fabi documents and emails that were used with Mr. Grexa went no earlier than 2015?
A. No.
Q. Okay. Before Mr. Fabi gave deposition testimony in the Plant case, did you help prepare him or get him ready?
A. Well, I sat and listened to it for the most part. I wasn't the one actively defending him or representing him. And, you know, I've never been admitted to the Plant case, so I just sat there and, you know, occasionally may have made a suggestion.

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But I've never met Mr. Fabi, and they asked me to come over and I did.
Q. You had never met Mr. Fabi before the Plant case?
A. I never met Mr. Fabi before the deposition a week before trial.
Q. Okay. I'm just going to ask you a big picture question. The invoices, the customer lists, all of the documents that we now know were maintained within the Diana documents, why weren't they produced?
A. I don't recall any customer list in the documents that you have.
Q. Why weren't the Diana documents produced before the Sarah Plant case?
MS. O'NEILL: Object to the form.
THE COURT: Do what now?
MS. O'NEILL: I object to the form because of Diana -- lots of Diana documents were produced.
THE COURT: I'm not going to get into the form. Overruled.
Go ahead.
THE WITNESS: What's your question again?
BY MS. GROSS:

Q. Why weren't the Diana documents produced before the Sarah Plant trial?
A. I have no idea. I did my best. I made a good faith effort. I didn't intentionally conceal anything. But I have done one go-through of those documents with two good associates, and I sent them down. And then there was an agreement between your firm and Womble Dickinson to expand the scope from personal jurisdiction to pretty much anything.
There were five iterations of requests. I got one of them, and I was told you got to get us all this today. And I did the best I could. I intentionally concealed nothing. I did the best I could, and I used my professional judgment to select the documents based on the -- what I was looking at.
Q. The grouping of the documents related to P&G that was produced in the Plant case was for about seven months in 2001 and then one shipment in 2004. Do you remember that?
A. No, I don't.
Q. Okay. You knew before the Sarah Plant trial that P&G was a pretty relevant defendant based upon what she used, correct?
A. I knew that there was a list of about 15 defendants.

Q. That's not quite what I asked. What I asked you was, you knew in the Sarah Plant case that P&G was one of the defendants that was at issue?
A. I do recall that.
Q. You do know that, right?
A. Yeah.
Q. You've already told me and the Court just now that there were samples of talc actually retained, specifically flagged for P&G?
A. I never said that. I said there were samples of talc. I didn't say they were specific to anybody.
Q. Have --
A. Because I don't know.
Q. I apologize. I thought you were done. Go ahead, finish your answer.
A. I'm done.
Q. Okay. Since Ms. O'Neill's office has produced the Diana documents to us, have you reviewed everything that was produced to us?
A. No.
Q. No.
A. I'm not representing anybody in this case, so I don't bill a lot of time to this case.
Q. Were you national coordinating counsel for

IMI-Fabi at the time of the Sarah Plant trial?
A. I have never been national counsel to IMI-Fabi.
Q. You were representing IMI-Fabi at the time of the Sarah Plant trial, correct?
A. In other cases.
Q. In other cases but Sarah Plant?
A. All for personal jurisdiction with the exception of the New York case that you referred to. And I don't know if that's over and done or not because we've gotten out on unopposed motion for summary judgment in most all the New York cases.
Q. And it was your responsibility to write the affidavits that supported those motions to dismiss based on personal jurisdiction, right?
A. Well, we did, yeah.
Q. Did you draft the one in the Plant case?
A. Well, it wasn't me, but I'm sure I reviewed it.
Q. How did you decide -- take me back to when you were deciding what documents -- where you said "I did my best to produce everything in the Plant case," take me back to that moment when you were deciding what was relevant as it relates to P&G. How did you do that?

A. I didn't do anything specific to P&G. There were requests for documents. And they were broader, is my recollection. And I used whatever document request to go through. I wasn't looking specifically for P&G or Avon or for anybody. I was looking for documents that would show -- well, I was looking -- I had a document request. I know there were like four or five of them, and they were similar. And I had one of those, and I was going through and picking out the documents I thought, using my professional judgment, what was responsive and what wasn't.
Q. So that --
A. Wait. And I think it was Ms. O'Neill said you could come to my office. And no one ever said, hey, we're coming, or can we meet? Or whatever.
Q. Okay. Are you referencing -- let me make sure I'm following what you just said. You're talking about how in the Perry case Ms. O'Neill told us we could come look in your office and we asked her to produce them electronically?
A. I know nothing about the Perry case.
Q. Okay. So I will represent to you no one told us that we could come to your office in the Plant case and look at these documents ever.

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A. Well, that's fine. I thought that was not the case. But in any event, no one ever asked me to come see the documents. I recall seeing a request for a digitized set, and there wasn't such a request. I never had them digitized because no one ever asked me to, and I don't spend the client's money until there's a need to.

Q. When you were using your best judgment to decide what was responsive to produce in the Sarah Plant case, how did you decide what documents were pulled from the Diana documents and were produced to us?

A. I had a request for production and I had the documents. And I'd go through one box starting with pulling out this one; yeah, this one goes; no, not this one, not this one; yeah, this one goes; no, not this one; yes, this one goes; not this one.

Q. Do you remember that there were 1,056 pages of documents produced to us in the Sarah Plant case by IMI-Fabi?

A. I recall seeing that number on one of the documents.

Q. Do you know that the totality of the Diana documents that were eventually produced to us by a Court order were 13,500 pages approximately?

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A. So there were 13,000 pages in the boxes. I went through. I used my professional judgment. You will also recall that I got this -- I think it was on the 8th in the afternoon. The deposition I think was in Italy on the 15th, and I had to get through these because Hooper wanted them today. So I did the best I could and got them out that day and then started making arrangements to go to Italy and also make arrangements to tell my clients that I was going to be out of pocket for a week.

Q. You took those documents from the Diana premise in 2019, right?

A. I've already said yes to that.

Q. Right.

A. I don't remember the exact date, but it was '17, '18, or '19. I just don't recall.

Q. That's fine. So between the time when you took those documents from the Diana premise in '17, '18, or '19, is your testimony to the Court today you never reviewed those before you got our deposition notice on the Sarah Plant case?

A. I think I reviewed some of them for the deposition that you referred to that Mike Brown gave in the Hemmings case. Other than that, no. There was no reason to. I got them out -- except for the

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New York cases, up to the Plant case, I got them out of every single case on personal jurisdiction.

Q. How did you decide not to produce documents from the Diana documents that were related to Coty or Avon?

MS. O'NEILL: Object to the form.

THE COURT: Overruled.

THE WITNESS: I don't understand your question.

BY MS. GROSS:

Q. Did you know that Coty and Avon were two of the defendants that Sarah Plant alleged she was exposed to asbestos from?

A. I don't recall. I know there was a list of about 15.

Q. Okay. How did you decide of that list of 15 or so that you don't remember, how did you decide which documents from the almost 14,000 existed not to produce?

MS. O'NEILL: Object to the form.

THE COURT: Overruled.

THE WITNESS: You say there were 14,000 documents?

BY MS. GROSS:

Q. I said almost 14,000. I'm just trying to

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be colloquial, so I'll be specific. Of the 13,500 pages that were produced --

A. Yeah.

Q. -- how did you decide which ones of those not to produce?

THE COURT: Ms. Gross, I don't think you're asking the question correctly. He produced a thousand pages or so of document in the Plant case --

MS. GROSS: Yes.

THE COURT: -- out of a total number of over 13,000 documents.

MS. GROSS: Yes, ma'am.

THE COURT: Mr. Sommerville, what she's asking you is this: The documents you did produce did not include any documents related to Procter & Gamble, Coty, Avon, the ultimate manufacturer/users of the talc, and she's asking you how you decided or why you decided not to produce in the original Plant production from the Diana documents any documents related to the ultimate user Coty, Avon, Procter & Gamble?

THE WITNESS: What I recall is I had a request for production of documents that was general, not specific, didn't list specific

names, and I took that list and those boxes and I pulled out documents based on the list I was looking at.

THE COURT: Well, but you didn't produce -- the list of defendants in Plant included a good many manufacturers like Coty, like Avon.

THE WITNESS: Yes, it did.

THE COURT: Like Cover Girl.

THE WITNESS: Yes, it did.

THE COURT: And you had documents in the Diana files that were direct correspondence between Mr. Brown or other people within IMI-Fabi and Procter & Gamble people, Coty people, Avon people. She's trying to get you to tell us why you did not produce those documents out of the Diana files.

THE WITNESS: Well, what I recall is that I had -- I've already explained I didn't consider a shipping document that -- basically, it was an address label to put on the bags as a piece of correspondence.

THE COURT: Okay. Well, that's not what she's asking you. In addition to just the shipping label kind of things, there was a good deal of other things, correspondence between

like Brown or somebody else within IMI-Fabi and the Coty or Avon or Procter & Gamble, is the one I remember particularly, that talked about specific testing of your product and things of that nature, not just shipping labels.

Those documents were not produced by you in the Plant production. They were ultimately produced when all the Diana documents were produced in the Perry case. She's trying to figure out why you didn't produce those documents.

THE WITNESS: Okay.

THE COURT: Do you understand the question?

THE WITNESS: Yeah. I got you. Thank you.

THE COURT: Okay.

THE WITNESS: All I know is I had a day to do this. I went through, I did my best. I used my professional judgment, and I pulled the documents that I thought were responsive. I don't know which documents -- specific documents that -- are referring to, so I can't answer your question.

BY MS. GROSS:

Q. You said just now you only had a day to gather the documents; is that right?

A. The second time. The first time, I had a longer period of time. And I also testified that I had two associates go through it, and then I reviewed their work. And I was satisfied that it was correct, and we shipped them off.

Then we were getting to up to the deposition of Corrado Fabi, and there was -- still there was no ruling on the PJ motion. And there was some PJ discovery, and we had responded to that. And then there was an agreement between you and Ms. O'Neill -- or somebody in your firm and Ms. O'Neill to make this a basic all-for deposition, any topic, whatever. It wasn't -- it wasn't specific to personal jurisdiction. It was general discovery deposition, a 30(b)(6) witness.

And I was asked to take another look and get documents by the end of the day, and I did that. I went in the seven boxes, I opened them up, I had the list, I did the best I could. I got them out at the end of the day, and you got a thousand, whatever it is, documents.

Q. Out of 13,500, right?

A. Yeah.

MS. GROSS: Yeah.

THE COURT: All right, Ms. Gross.

MS. GROSS: I have one more question. I know you want me to be done. I hear you.

BY MS. GROSS:

Q. Do you still have this document in front of you I handed up earlier? The deposition testimony?

A. This one?

Q. Yes, sir.

A. You're talking about page 25 of Corrado's deposition?

Q. Yes, sir.

A. Yeah.

Q. Go to line 8. This is what Ms. McVey read to the Court this morning where Ms. O'Neill told us "You do have all the responsive documents that we were able to get from him or any source."

Do you see that?

A. I do.

Q. Did you tell her you had all the responsive documents?

A. Did I tell her I had all the responsive documents? No. I sent her all of the documents that I felt were responsive.

Q. Okay.

A. I --

THE COURT: Ms. Gross, I think you got the

answer.
MS. GROSS: I'm done. Thank you, Your Honor.
THE COURT: All right. All right.
Ms. O'Neill.
MS. O'NEILL: Yes, ma'am.
THE COURT: All rights reserved.
MS. O'NEILL: Thank you.

- - -

EXAMINATION

- - -

BY MS. O'NEILL:

Q. Mr. Sommerville, in your representation of the IMI-Fabi entities, in your participation in locating documents for the Plant case, and to the best of your knowledge, did you ever mislead or lie to the plaintiffs in any way?

A. Never once.

Q. To your best knowledge, did you ever mislead or lie to the Court in any way?

A. Never once.

Q. Did you ever intentionally hide, destroy, or withhold any documents so that they would not be produced to the plaintiff in the Plant case or any other case?

A. I've never done that for any case ever in my life. Ever.

Q. In your review or oversight of the review of the documents at issue, did you use your professional judgment in making decisions?

A. Of course I did.

Q. Was there ever a time that you consciously decided to conceal documents or withhold documents that you believed were responsive to a discovery request or the duces tecum for the deposition issued by the plaintiff in the Plant case?

A. I would never do that because it's useless.

Q. And you didn't, did you, sir?

A. Never.

MS. O'NEILL: Thank you.
THE COURT: All right. Anything further, Ms. Gross?
MS. GROSS: (Shakes head.)
THE COURT: You may come down, Mr. Sommerville. Thank you, sir.
All right.
MS. O'NEILL: Your Honor, may Mr. Sommerville be excused?
THE COURT: No. You tell Mr. Sommerville to please stay with us until these proceedings

are complete.
MS. O'NEILL: Okay.
THE COURT: All right. Now, what I propose to do in light of what we've heard here is to have each of you discuss the motion for relief from judgment under 60(b) and the motion for a new trial. And so that's what I'd like to do now.
Ms. Gross or Ms. McVey.
MS. GROSS: Yes, Your Honor. I just want to make sure I'm -- I just want to make sure I'm following you. Do you want me to rehash everything we did in the first hearing a little bit?
THE COURT: I want you to summarize what's happened in this case is that -- I guess it doesn't come as a surprise to me, but what's happened in this case is I had some material in front of me and I'm looking right at it, the initial filings that had columns and so forth that talked about and had blow-ups of things that were discovered basically out of the Perry case --
MS. GROSS: Yes, ma'am.
THE COURT: -- that you contended were

willfully concealed in the Plant case.
Since that time, you have expanded your motion for -- your motion for relief is basically the same as it's been before, but you have expanded the exhibits to include a submission that I will call Exhibit 1 that goes through each of the Plant discovery requests and IMI-Fabi's response and discusses materiality, discusses what it's contended was withheld, and I have that.
MS. GROSS: Okay.
THE COURT: And then, of course, you also included the deposition of Cosmetic Specialties, Inc., through its 30(b)(6) representative of Ronald W. Grexa. That name has been said a couple of times. It's spelled G-R-E-X-A.
And this is a deposition that was taken June the 25th, 2024, in Perry. And Mr. Grexa's deposition is also included in this document along with a bunch of exhibits. And then, of course, there is the memorandum in opposition for motion for new trial, which is basically I think the same as previously submitted.
So in light of the examination of Mr. Sommerville, yes, I want you to summarize

what your position is with respect to this matter. And I'm going to turn to Ms. O'Neill and ask her to do the same.

MS. GROSS: Thank you, Your Honor.

So, of course, everything we discussed at the very first hearing that we had on this, the P&G documents that you remember so clearly that was produced to us after the Plant case, which was, if Your Honor remembers, when Mike Brown was conversing directly with P&G about the talc grade, it was 141, all these things that were not produced to us before Plant, right? But what we have filed since that original hearing is critical.

So there's two -- this is the supplemental motion that we since filed after the second hearing in Charleston.

THE COURT: Right. Right.

MS. GROSS: There's two sort of buckets of additional information that we've gotten. There's the first bucket, which are the Diana documents that were never produced that were the subject of everything we've done in this courtroom this morning. And it's what Your Honor had to compel to be produced in another

case.

And then there's the Cosmetic Specialties' information. Which I know Your Honor said that morning, well, that's evidence of it, but it's more than that, and I'll get there.

So the first bucket of information that was, of course, withheld as we know is the Diana documents. These 13,500 pages that included photos of talc. What I was asking Mr. Sommerville about. They actually had bags of talc attached to manila folders that said P&G. Meaning this talc was for P&G.

And as Your Honor remembers, Mr. Fabi took the stand in this courtroom and the deposition, said he had no clue who our customers are. I don't even know -- I don't know anything about P&G. I don't know anything about Hunt down in Maryland. It's just untrue.

Also, there were sales -- there was a list of sales of talc by customer in these withheld documents. Again, they testified to this jury: We have no clue who our customers are.

P&G was one of 17 customers listed separately from Cosmetic Specialties. And that's critical because their whole -- their

whole bit is, well, we only sold to Cosmetic Specialties. If that were true, then Cosmetic Specialties would be the only customer listed, and they're not. P&G is listed separately, and as Your Honor knows, is a critical defendant in the Plant case.

Then they had these other folders called Shipments Going Out showing where IMI-Fabi talc was going. Again, they testified to this jury: We have no clue what happens to our talc after it leaves our hands.

It's not true.

They had inventory lists from specific customers. They had tracking sales of talc to Cosmetic Specialties and again P&G separately. These are all attached as exhibits to our Supplemental Motion for Relief.

There's also information about Estee Lauder, which is a smaller, admittedly, situation in the Plant case, but never the less, she was exposed to Estee Lauder. What they have for Estee Lauder is a withheld Diana document. Yes, they requested samples.

And that was their argument that you remember Mr. Carroll making in our first

hearing. But critically, what was in the Diana documents was that Scott Baker, who was a manager of IMI-Fabi, is listed as the sales representative for Estee Lauder. Not Ron Grexa, not any of the other people they want to blame, their own guy, that was never produced to us.

And then you switch over to the Cosmetic Specialties bucket. I want to make sure I'm very -- we're all very clear on this because there's a lot of information in the briefing about how we are supposed to have magically known about Cosmetic Specialties and the role they played. We had no way of knowing.

Ms. Bollinger spent months trying to figure out the real role that Cosmetic Specialties had with IMI-Fabi. She couldn't get a straight answer, obviously, on the discovery responses since they told us, no, we've never contracted with anybody else in November. She tried to get them to sign an affidavit telling her about who Cosmetic Specialties was. They would not.

The first time she had any idea that they weren't the distributor was when she found out from Corrado Fabi in his deposition four days before trial.

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I would have loved to have known who Cosmetic Specialties was such that we could have sued them in the Sarah Plant case because maybe we wouldn't be here. We did not know who they were. They did. We had no idea. So this notion that that we should have been able to magically do all this discovery before is false.

And why that's so critical is because the information that we've been able to obtain from Cosmetic Specialties, Your Honor asked about it in the first hearing and the second hearing. And I sort of kind of danced around it because I didn't really know what to say yet. And Your Honor was very concerned with the motion that Mr. Fabi lied. And I kind of danced around it because I didn't really have objective proof, and that's a big thing to say. It's a big thing to come to court and say somebody lied under oath.

What we now know is he did. And I don't know how we got there. I've deposed him a bunch of times. I think he's a nice guy. I don't know how he got there, but he lied over and over and over again under oath. And we know that from the Cosmetic Specialties information.

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These weren't some old documents that they -- that maybe IMI-Fabi just got rid of. These were announcements on IMI-Fabi letterhead when they took over the Suzorite business.

These are emails from 2016, 2019, where Corrado is copied himself. Not just copied himself, he's actually conversing with Mr. Grexa about it. The most egregious example is Revlon. An exposure that you and I talked about in the first hearing that we completely abandoned because they told us at Mr. Fabi's deposition, "You've got everything." We just heard it this morning. They told us repeatedly, "You've got everything."

We have five pieces of paper. Your Honor remembers from the first hearing. Three of them were about one shipment. We thought we had everything.

Turns out, IMI-Fabi talc is still sold in Revlon to this day. The present day. And why that's so critical in terms of changing the verdict is when the Plant case was originally filed, Revlon was still a viable defendant. We could have gone and done discovery with them. We could have deposed them. We could have asked

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them what they have. But guess what? Revlon is now bankrupt.

So now we know that there's this longstanding relationship with them, but what are we supposed to do about it? We can't go get information about that. We completely abandoned that exposure because they told us that we had everything they had. It's not true.

There was an email from 2019. It's cited in our brief. We screenshotted it. Where Mr. Fabi is telling Mr. Grexa, quote, Revlon 575 from Benwood.

And if you read Mr. Grexa's deposition, he testified, "I can't" -- "CSI can't control what IMI-Fabi charges for their talc. Only IMI-Fabi has the power to do that. The notion that they didn't know who their customers were. The notion that they had no clue where their talc is going is not true.

Also, what we learned from Mr. Grexa's deposition and the CSI documents, we were very careful about the documents we included in here because we made sure to include documents that IMI-Fabi, if they were being responsive, would have had or had access to. Mr. Fabi's emails

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that he's copied on.

Documents on IMI-Fabi letterhead that are within the document retention policy, they have testified to us about under oath. That they've never produced to us.

There's also, as it relates to P&G, what we learned from CSI. Remember what I asked Mr. Sommerville? You only produced seven months of sales from 2001 and one sale in 2024. That's what the entire Plant case was tried on. Your Honor remembers. And it was only about 141 talc.

When we add up the information from CSI, just as it relates to 141, from the years 2001 to 2018, which we, of course, didn't know when we tried the Plant case, it's almost 9 million pounds of just 141 that went to P&G between 2001 and 2018.

That spreadsheet was attached to our motion. To say that that wouldn't have changed the verdict -- Your Honor, pointed this out at the first hearing. I remember it. You said, "I find it really interesting that we had two supplier defendants in this trial." We had Whittaker Clark and we had IMI-Fabi. And the

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one defendant, we had a ton of documents, we had a ton of the evidence, and we got a verdict.

And then the other defendant, we didn't really have anything. And their entire closing -- their entire case was tried on the fact you have no proof, you have no documents. And we didn't get a verdict.

I don't know of a world that exists that we can look at all of the information that was withheld and since produced to us that we can say it would not have changed the verdict. Nine million pounds that we know of. I don't even know if we still have all of the documents yet. I don't think any of us do.

And that's just 141. They also sold 3355 to P&G. We knew nothing about that, and it would have been lovely to have known that since 3355 is powder that's specified for use in a loose powder. We knew nothing about it.

And the documents that we got from Cosmetic Specialties are all information that IMI-Fabi would have had access to if Mr. Fabi had simply searched his email. If they had produced the Diana documents, judging by documents that are on -- that were produced by CSI on IMI-Fabi

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letterhead, I still don't know that we have everything from them. And that's maybe for LLC.

But I find it very difficult to believe that CSI would have IMI-Fabi's own documents that's within their document retention policy and they don't. Maybe that's the case. I don't know. But it does not weigh that way.

All right. The other critical thing, when you reread their opposition, their first one, and when you reread their second opposition, to me, when we look at the Chewning case, the way I kind of look at it is there's two steps. The first step is you have to prove that evidence was intentionally withheld. And then you have to prove that that evidence that was intentionally withheld would have changed the verdict.

To this day, they have never denied that they withheld those documents. You asked Mr. Carroll in the first hearing, and he wouldn't give you a straight answer. To this day, they don't deny that they withheld documents. They try to sort of gaslight us. And the first opposition was, well, all you did was have Longo take the stand and say, yeah,

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there's a bunch of asbestos in Chinese talc. Now their opposition is magically somehow, well, you didn't prove that there was asbestos in Chinese talc. I don't even know what the defense is at this point.

Longo took the stand. He testified he's tested Chinese talc from Wangjing. It has asbestos in it. Also, if they don't want to count that, the FDA found it in Johnson's Baby Powder in 2019. That was from Wangjing. The FDA said it was poisonous. There's all kinds of information you would have put into evidence in front of this jury about asbestos being in Chinese talc. All kinds.

And as Your Honor rightfully said this morning, this notion that talc defendants, including IMI-Fabi, like to float where unless you show that the very powder that Sarah Plant used had asbestos in it, it doesn't count. That's not the law.

Johnson & Johnson tried the same thing last week. It's not the law.

What we heard from Mr. Sommerville on the stand earlier, he decided what not to produce. I don't know why because he wouldn't answer my

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question, which is probably why I got a little turned around just trying to come at him from a couple of different directions. Your Honor had to help me. He decided what not to produce.

How are you not going to produce the fact or tell us about the fact that you have samples of talc that were flagged for P&G? How are you not going to tell us you have customer lists and then take the stand and testify to the jury we don't know who our customers are?

It's not a mystery what happened anymore. Maybe it was a little bit unclear at the first hearing. It's not any longer.

And to reiterate what Ms. McVey said this morning, just for the record, the argument that Ms. O'Neill made this morning, basically they could have done -- and in all their oppositions, well, we were sloppy. The plaintiffs were sloppy. We should have magically known. Even though they somehow said they didn't know, we should have magically known to do all this discovery.

You don't get to tell half truths in discovery and then blame us for not sniffing it out. And that's not just me saying it. That's

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not Ms. McVey or Ms. Bollinger or Ms. Rutkoski saying it. It's the Chewning case. The Chewning case says this. The Chewning case says when Ford argued perjury and discovery abuse should be ferreted out during the course of litigation, the Court said not so. That's not true.

So I am sure they have a lot to say. I know I just said a lot. I'm happy to take my seat unless Your Honor has some more questions for me.

THE COURT: That's it. Thank you.

Ms. O'Neill.

MS. O'NEILL: Ms. Gross doesn't know of a world where this wouldn't make a difference. I do. It's a world where the law in South Carolina is applied, and the Court and everyone who looks at this remembers that there are multiple parts to the defense that was presented in this case. There was no special interrogatory asking the jury which part it answered, which part it relied on. And all inferences under the law go against a new trial.

There was no magic to the discovery. First of all, Ms. Gross used the phrase, and you will

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recall I objected to the question: What did you decide to withhold? That's not what Mr. Sommerville testified to, and that's not what happened. There wasn't a -- and he was very clear about this -- oh, look, it says Avon, don't produce. That didn't happen. So there wasn't a decision to withhold.

And it wasn't something they should have magically known. I want to hand up to the Court -- we have a copy for counsel, if they would like it -- the plaintiff's own exhibit list. The Plaintiff's Exhibit List in the Plant case, which as you know from the scheduling order, is produced long before four days before trial. And while there are no Bates numbers on this document as we got it, if the Court looks at Exhibit 243, they will see that that is a Noxell document showing Fabi talking to somebody at Procter & Gamble. So it wasn't magic. Plaintiffs could have looked at their own documents.

If you look at Exhibit 387, that is an Estee Lauder document that the plaintiffs have on their exhibit list, which we didn't have, that were produced to the plaintiffs by Estee

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lauder, apparently, because it has an Estee Lauder Bates-stamp number, for a Material Safety Data Sheet for IMI-Fabi.

And if you look at 388, that's another Estee Lauder document that the plaintiffs had. An Estee Lauder raw material specification code for IMI-Fabi talc.

And if you look at 389, that's another document that the plaintiffs had. The Fabi Certificate of Analysis with an Estee Lauder Bates-stamp number.

And if you look at 390, that's another document that the plaintiffs had that's an IMI-Fabi -- another, a different IMI-Fabi Certificate of Analysis from Estee Lauder that the plaintiffs had.

And if you look at 393 and 394, those are documents the plaintiffs had from Revlon showing IMI-Fabi talc was -- at least Revlon had that connection. So it wouldn't have been magic. It would have been looking at their own files.

And if you recall in our most recent supposition or supplementation, we gave you the Avon documents that were produced to them by Avon in the Plant case. Which was a

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reproduction of documents that we know for sure went to the Dean Omar firm at least eight months before Mr. Fabi's deposition.

Now what I don't know -- I know that those documents that I just referenced that were on the Plaintiff's Exhibit List all come from the Moore case. And I know, and it's in this record, that discovery was going on for the Dean Omar firm in the Moore case in California at least eight months before the deposition of Mr. Fabi because we have and found in the record in the Moore case the Avon document production indicating the date that it produced it. I believe it was May of 2022.

And so what we don't know because we haven't taken discovery for the plaintiffs, and I'm not suggesting that we should, but when inferences have to go against them, the Court should, in the world that I know of, where the law of South Carolina is applied to the facts and the inferences go against a new trial, that there was plenty of opportunity for the plaintiffs to have done work to follow this up.

They abandoned Revlon. That was their choice. That was their choice having on their

exhibit list a connection between Revlon and Fabi. Their choice.

With respect to the Chewning case, that's, as this Court knows, a very, very different situation. That case involved counsel actively procuring fraudulent testimony from an expert. It's absolutely not that case. This case here. And the case that we rely on, the Raby Construction case, which said the failure to pursue discovery does not warrant a new trial. Raby Construction comes after the Chewning case, and it confirms that the failure to produce documents, which is what we're talking about, is at worst intrinsic fraud, and that does not justify a new trial under Rule 60(b).

If the Court has any concern at all about the timing of when the Diana documents were provided to my firm for review for the first time, I have the chain of custody forms. I don't have them here with me. If the Court would like them, we'll have them as a -- we can provide them to you as a trial exhibit -- or a Court exhibit. I'm sorry, a Court exhibit.

But I believe Mr. Sommerville's testimony is consistent with what we told you, that it was

after the Plant trial. But if the Court has any concern, we can provide those to you.

When you get to the bottom of this, what you have is eerily similar to what we heard in the Howell case after that defense verdict. These same plaintiffs lawyers said documents were improperly withheld, and if we only had them, it would have been totally different.

In the Howell case, their argument was we just wouldn't have tried the case because we knew -- we would have known then what we learned during the trial from the witness and the evidence in the case. Here, it's once again there was a defense verdict, but it clearly can't be because our case wasn't very good. It must be from some -- looking back, the defendants did, and here, it's if we just had all this, it would have changed everything.

Well, Your Honor, they don't know that. That's speculation. And the inferences go against the new trial. And here, if you look at the inferences, you're going to go against the new trial. Here's what they said. They say the defense of the IMI-Fabi defendants worked, and it worked because there wasn't a connection

between a product Ms. Plant used and IMI-Fabi talc. And I don't mean the compact or the bottle. I mean no formula.

And there isn't a single thing before you today that puts IMI-Fabi talc in the formula for that -- for any product she used. And that's important because for all of these entities, IMI-Fabi's not the only supplier. There's always at least one other supplier, which means I could have made the same closing argument. I could have said exactly the same thing.

Okay. Look, look here, here's Plaintiff's Exhibit 389, which shows a Certificate of Analysis that -- for IMI-Fabi talc that went to Estee Lauder. And here's Plaintiff's Exhibit 388, an Estee Lauder raw material code for IMI-Fabi talc.

So ladies and gentlemen of the jury, so what? You know why? Because there isn't a formula. This isn't a formula that says this raw material --

THE COURT: Ms. O'Neill, I really don't understand that argument at all because it's now clear from the documents that have since been discovered, and it's what's giving me a lot of

trouble, that IMI-Fabi talc taken from the Chinese mines went into a lot of these products. And I'm really surprised to know that they actually saved samples of the talc that was supplied to Procter & Gamble, for example, and still have them in their files, and that wasn't revealed so that could be tested.

It doesn't matter what the formula used by the manufacturer was for how much of one thing they used as opposed to another thing. But what has now been produced shows that IMI-Fabi talc was used in the production of these manufacturers' Cosmetic Specialties products. So I don't understand the formula argument at all.

MS. O'NEILL: Well, if I can, Your Honor. We think it's important, and here's why we think it's important and here's why we think it's an ongoing defense. Avon made literally thousands of products. Revlon made hundreds, if not thousands. All of these Estee Lauder, hundreds, if not thousands. Not every single one -- and we know this because we've seen formulas -- not every single one was made with the kind of talc Fabi supplied. So it is entirely possible for

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Plaintiff to say I used Revlon blue frost eye shadow and for us to go get the formula and it be talc from somebody else --

THE COURT: Well, that's --

MS. O'NEILL: So that's still a defense.

THE COURT: -- that has nothing to do with concealment of evidence. That may have to do with the strength of the evidence and whatnot. But one thing that strikes me as so significant is that with respect to Procter & Gamble, they had one product and it was revealed in terms of a couple of documents, 141 talc. That's the IMI-Fabi --

MS. O'NEILL: Yes, ma'am.

THE COURT: -- product. And there were five documents that associated in some small way with P&G's use -- or at least associate IMI-Fabi and --

MS. O'NEILL: Yes. There were many documents at trial between P&G. In fact, we admitted we sold to P&G.

THE COURT: But now the new documents to have suddenly come forward indicate between 2001 and 2018 some 9 million pounds were supplied to Procter & Gamble from IMI-Fabi, it could never

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be that that wouldn't be considered something significant to have been disclosed.

The question is, how did the ball get dropped?

Sommerville and two associates first went through these documents, the Diana documents, to respond to a jurisdictional interrogatory only and felt that there was some rather strong limitations on what would be needed. And they made their best judgment, so says Mr. Sommerville.

Then right before -- right before Corrado Fabi's deposition was taken, it was decided to combine them and make them an all-issue deposition, a true 30(b)(6). And Corrado Fabi was presented in this court as the 30(b)(6) representative of IMI-Fabi. Which gives broad responsibility for what he was directly involved in or knew about because he's the star in the company at that point.

And you argue to that jury you have to decide whether Corrado Fabi came here and lied to you, and it turns out that Mr. Fabi knew a whole lot more about exactly where his product was going and particularly something as huge as

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this Procter & Gamble, the tons of material that was supplied to them, it turns out he knew about it.

And that is what's giving me the heartburn. I don't know -- I still don't understand why Mr. Sommerville when he had to make the go-through again wouldn't have disclosed other documents that were obviously pertinent now that you're supplying information to a 30(b)(6) witness and who's going to be directly talking about whether his talc product went into these various manufacturers. But he only had a limited period of time to explain. He tried to do the best he could with what he had. So accept that.

But Mr. Fabi knew about the relationships directly with some of these big companies. They even had stuff on IMI-Fabi's stationery talking about the relationship with manufacturers. And that is completely contrary to what you argued to the jury. You went down the other supplier in the case's document, Whittaker Clark & Daniel, you ticked down those. Beautiful, the way it was done. So persuasive.

MS. O'NEILL: But I left P&G --

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THE COURT: This is what somebody who is really involved did. Where is that for Corrado Fabi?

MS. O'NEILL: But I left P&G.

THE COURT: Well, I don't care whether you left them or not. You left them with five little documents. Not with this enormous amount of evidence about a deep, enduring contacts with a major manufacturer of products she clearly used. That --

MS. O'NEILL: If I can respond to that. First of all, Your Honor --

THE COURT: That's what's got me concerned.

MS. O'NEILL: If I can respond, Your Honor.

THE COURT: And I'm not, again, please, I'm -- let me be clear. I'm not blaming you or the lawyers that you had working directly on this case about it. I don't know what to think about Mr. Sommerville. I think that was a very cursory look at these documents.

But be that as it may, Mr. Fabi knew that the relationship was a lot deeper than what he said. And he got on the stand under oath and said he never really knew about who they were supplying to because Cosmetic Specialties was

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very secretive about their customer list. But, heck, it turns out he had the customer list. His people had had it for years.

That's something well beyond Raby and some of those cases, and much more in line with Ford and those cases. That's what's got me concerned.

MS. O'NEILL: If I may respond.

THE COURT: Yes, of course.

MS. O'NEILL: First of all, we don't agree --

THE COURT: I'm struggling with this, Ms. O'Neill.

MS. O'NEILL: We don't agree that it's 9 million pounds. I want to make sure we're clear on the record on that. IMI-Fabi has only ever produced approximately 2,000 tons a year of cosmetic talc. That would make virtually all of the talc going to Procter & Gamble and I --

THE COURT: This was over a 13-year period. 18-year period, 2001 to 2018.

MS. O'NEILL: I heard what she said. I heard what she said. I wanted to make it clear on the record we don't agree that that --

THE COURT: Okay. Heck, slice it any way

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you want to. The fact that there was that kind of relationship, enduring relationship, and there are so many different documents now that show that direct contact between Fabi and these manufacturers is not in any way consistent and is completely contradictory to what he said on the stand.

MS. O'NEILL: Your Honor, I respectfully disagree with that because -- and I would like to explain, if I may.

THE COURT: Sure. Certainly.

MS. O'NEILL: So the documents with Procter & Gamble as a customer, those are IMI-Fabi Diana documents. As Mr. Fabi testified, he had to rely on Mr. Sommerville and those documents so he didn't know. He was at -- and I believe -- I can't remember if he testified to this in Plant, but he has testified to it since. He was at IMI-Fabi Diana one time. One time. He was not there all the time.

He's testified -- he testified, again, not in Plant, but he has testified since, and I believe in Perry, he didn't even want to buy IMI-Fabi Diana. He had to do it in order to get the Plant in Benwood for the industrial talc,

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which is what he wanted. So he did not have any personal knowledge of what was going on at IMI-Fabi Diana.

What he knows about IMI-Fabi Diana and what he provided in the Plant case and what he continues to provide when he testifies on behalf of Diana, it is information that he had learned because we have to prepare him for a witness and based upon documents that he has. And in fact, most of the time the witness for IMI-Fabi Diana is Mike Brown, who is -- who worked at that Plant since before IMI-Fabi owned or operated it and is currently serving as the custodian because New York law requires you to have somebody go and clean off after kids who break in.

So the documents that have been produced by the plaintiffs about P&G and the samples, which Corrado Fabi has never seen because they were at the Diana Plant and they relate to 2024, I think it's late 2023, 2024 production, those are Diana documents. He didn't lie. He didn't know.

With respect to the 2016 email from -- that relates to IMI-Fabi, LLC, he didn't recall seeing that. And he's been shown -- and we

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talked about this before, about the Johnson & Johnson stuff, he's been shown emails and he suggests that's my email. I see it. I still don't remember it. I'm not saying it's false or anything. I just don't remember. And so -- and that's a significant difference.

In Ford, there was intent. Not inference. Intent. Because inferences always go against a new trial. Here, are there inconsistencies? Sure. Are they fodder for the plaintiffs to cross-examine Mr. Fabi about in all the future cases? Yes. Have they been doing that in the year and a half since the Plant trial? Absolutely.

And I would again say, Your Honor, I know you don't think it is a particularly persuasive argument, but I do. And I think to a jury it's a persuasive argument. And I think the closing argument for the Plant case would not have had to be materially different even if they had all of these documents then because the problems that they had in the Plant case would still exist, in my opinion. The evidentiary problem. It would be up to the jury to decide if they thought it was enough.

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And we don't know if the jury thought there was no connection to the product or there was no asbestos -- no proof that there was asbestos in the talc from Fabi. And that's something that's never been addressed. Nothing that was alleged withheld by anybody on our side is proof there was asbestos in the talc. Nothing. And to this day, all they have is Dr. Longo.

And we can supplement this record with the deposition that Dr. Longo gave in the Perry case, which this court just tried, and he said he still hasn't had any tests that are any different than he had in that case. So his testimony about the Chinese talc would be the same. It would be the exact same thing.

And we don't know if the jury decided it was rendering a defense verdict because it decided there was no asbestos in the IMI-Fabi talc because it was from very many different sources than the Whittaker Clark Daniel talc -- I'm sorry, I said that wrong. The Whittaker Clark Daniel came from many different sources and wasn't the same as what was the mine source for IMI-Fabi. We don't know if the jury decided that --

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THE COURT: I understand that part of the argument.

MS. O'NEILL: -- the testing was done and there was no --

THE COURT: That's not where I am.

MS. O'NEILL: I understand, Your Honor. But the question -- the question is would it have made an outcome difference? And the inferences have to go against the new trial and all of these things, I think, go against the new trial. These are all inferences.

The jury could have gotten every single piece of this paper and still reached the exact same outcome. And the plaintiffs want to say it would have been different. I appreciate that. They're plaintiffs' lawyers. Their job is to get money for their clients.

THE COURT: Well, the one thing you would not have been able to argue to the jury, if they had all this stuff, was that there's this barrier between Cosmetic Specialties to whom they sold and anybody else. Because the thing that really raises the biggest concern to me is all the contact and communication between IMI-Fabi and the cosmetic manufacturers. That

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was a significant part of the argument that was made, that IMI-Fabi doesn't know what happened to the talc.

MS. O'NEILL: Well, if you recall --

THE COURT: And it turns out -- and this isn't just some stray email that I don't remember the particular email, this is an enduring relationship between IMI-Fabi right up to the top and these cosmetic manufacturers. Cosmetic Specialties and all the FOB stuff, I don't know how that shipment-type stuff works.

And, you know, those kind of UCC defenses are not defenses in manufacturing defects or the manufacturer -- or supply of defective materials-type cases. That is a very technical argument that just doesn't work in products liability cases. But the central focus is a group -- including some examples of the talc itself, which could still be tested.

MS. O'NEILL: Your Honor, if you will recall -- if you'll recall, there were put into evidence, because we produced them, Certificates of Analysis testing documents from IMI-Fabi Diana directly to Procter & Gamble.

THE COURT: Yeah, about five documents in

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total.

MS. O'NEILL: It was much more than five. There were a lot of shipping documents --

THE COURT: I'm not talking about shipping documents or anything else. The testing stuff that would have -- is the heart and soul.

MS. O'NEILL: There was nothing that said there was no asbestos in the talc.

THE COURT: Yeah. That's right.

MS. O'NEILL: That's right. And the jury could have bought that argument, and I could have produced --

THE COURT: Yeah.

MS. O'NEILL: -- it turns out more pieces of paper that showed no asbestos in the talc. I could have, yes. In fact, as we see in here today, I have a lot more pieces of paper that show we tested and had no asbestos in talc. And that would have all been helpful to me because I could have argued to the jury there's no test from Dr. Longo, and then I could have gone with my big chart and said here's my test --

THE COURT: If they had the samples, they might have been able to test them and see whether you're right about that.

MS. O'NEILL: They might have. I don't think they would have had time before trial, but they might have. And we have the samples. If the samples exist. And the samples we now have, I didn't have at the time, Plaintiffs apparently had at least some of these at the time, but I didn't. Estee Lauder did have the samples tested. No asbestos.

I think Revlon had samples tested. No asbestos. I'm not a hundred percent sure about that.

Avon had samples tested. No asbestos.

So, you know, I know -- I now know those documents were produced to the plaintiffs before the Plant case. I didn't have them, but I do now. So, you know, I think, again, we're going to look at what could have been produced and what might have been argued.

The inferences still have to go against the new trial, and there are many, many things which could have been produced that might have been argued that would support the defense's theory.

THE COURT: Okay.

MS. O'NEILL: So for all those reasons, we do not believe the plaintiffs have met their

burden to get a new trial in this case.

Are they disappointed? Yes. I understand that, Your Honor. I do. They were disappointed when we got the defense verdict in the Howell case, and that's why Your Honor sanctioned us. But this is -- this case, a verdict was returned by the jury against the entity that they thought -- the trial -- the entity at trial that they thought was responsible for the plaintiffs' damages. That entity has filed bankruptcy. And that is unfortunate for Ms. Plant.

I do understand that she's a creditor in that bankruptcy, and she's not going to get the verdict she thought that she could get. It's also not going to be reviewed on appeal, but you, know, that's -- but that does not change the fact that there has been no extrinsic fraud. There's been no deliberate withholding.

Mr. Fabi did not lie on the stand. I understand Your Honor thinks that he did, but there's no proof that he sat up there and said I know the answer is something different than what I'm telling you. And he has said several times since then, he has affirmed the testimony that he gave. He believes CSI is their only

customer. He understands that there is communication with some CSI customers, but they are CSI customers. And as we put -- and this is where I'll end, Your Honor. As we put in our last supplemental brief, CSI agrees with that. CSI, Ron Grexa has testified -- we gave you the specific snippet, Revlon is not an IMI-Fabi customer. These are CSI customers.

THE COURT: I understand that. That's not where my heartburn is.

All right. It is 12. Yours truly has got to attend to the business appointment I explained to you at the start of this. I'm sorry for that.

But I am going to give Plaintiff a chance to reply, and then I will make a decision on this thing even if it's only to have competing orders made and then decide which one I'm going to sign.

I've really got a lot of ambivalent feelings about this thing, as I'm sure I indicated to you. I'm honestly struggling with what is the right thing to do in this. I don't think candor was the name of the game in this thing. How that translates in terms of the

rules of the road, I'm still somewhat up in the air.

All right. See you at 2 o'clock.

MR. WATSON: Your Honor, would you like Mr. Sommerville to come back at 2, or can he be excused?

THE COURT: Plaintiffs?

MS. MCVEY: I think it's fine.

MS. GROSS: It's entirely up to you, Your Honor.

THE COURT: Let him go.

MR. WATSON: All right. Thank you, Your Honor.

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(A recess transpired from 12:08 p.m. to 2:23 p.m.)

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THE COURT: All right. I guess we're at Ms. McVey or Ms. Gross in response.

MS. MCVEY: Yes, ma'am. I want to be brief. You've heard a lot today. And so if I could, just in a brief response, address what I think is the biggest concern the Court has.

It's clear that relevant and discoverable documents were not produced in this case. That

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seems clear.
It's clear that they would have made a difference. And the reason that we know they would have made a difference is because we had Whittaker Clark & Daniel in this case, and the jury believed Dr. Longo's testing as it resulted to Whittaker Clark & Daniel testing. He also had testing as to the Chinese talc mines where it's undisputed that IMI-Fabi got their talc.
So to me, that's not the issue. Where I sense the Court is struggling is on this idea that extrinsic fraud requires intent. And I think there is no person on planet earth who is going to walk in this court and say "I intended to conceal documents." And what anybody's argument seems to be is that there has to be Mr. Sommerville saying "I intended to conceal documents."
But Mr. Sommerville said exactly the equivalent of that. He said it differently, though, right? What he said is I had all of these documents in seven boxes of documents and I decided, I decided what to produce.
He had seven boxes of documents. He had Exhibit A, which outlined exactly what we were

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looking for. We now know that there were documents that should have and must have been produced.
And what Mr. Sommerville told you, under oath, is he decided. Which meant he looked at one, he looked at the other. He said I'm going to produce this one, I'm not going to produce that one. And what was not produced was the whole case against IMI-Fabi. It was simply the whole case.
So when he decided after looking at the documents that we all know were both certainly discoverable, and we now know relevant to the case at hand, he concealed those documents. He decided to do that.
Now, I heard Ms. O'Neill talk about we're just disappointed in this verdict. We're just disappointed. And Justice Toal, I've tried a lot of cases now in front of you, and we've lost some of these cases, clearly. And I'm always disappointed to lose a case. Always. But that's not what this is about.
Sarah Plant, whose cancer, by the way, is back and has come back in a vengeance, was entitled to a fair trial. And she didn't get

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one because those documents were withheld. They were concealed. And she's entitled to that.
We may go try this case and see what happens, but she is entitled to a fair trial which she did not get.
Ms. O'Neill brought up Howell. And the Howell case, you recall, was a case against Cleaver-Brooks. In the middle of trial, Ms. O'Neill's client all of a sudden produced these midnight documents that we asked for in discovery and we asked for in other places.
And we didn't move for a new trial on Howell. We moved to sanction them, which, by the way, you granted, and the Court of Appeals affirmed. But we didn't move for a new trial. We didn't. This is different. This is different in this case.
We moved for a new trial because these documents were concealed, and they made a difference to the outcome. That's what -- we acknowledge that high, high burden. We're entitled to that in this case. It would have made a difference. We had testing showing that their talc had asbestos in it. What we didn't have and what they pushed -- they drove a truck

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through is a lack of documents. And that's how they closed this case. That's how they tried this case.
So, Your Honor, we believe that we showed intent to conceal, and we believe that we have showed that it would have made a difference in this case. And that is what we are supposed to argue.
One more thing. Counsel for IMI-Fabi made this argument like -- Mr. Corrado Fabi, he just didn't remember he was copied on all these emails. He didn't remember. What do you want him to do?
He's the corporate representative. They chose him to come here. And they, Mr. Sommerville, had a duty to educate him on the documents that were IMI-Fabi's documents.
He doesn't get to come up here and lie to the jury, knowingly or unknowingly. I don't know. I don't have to prove that. But he did. He's the corporate representative. He needed to be educated on what was in their files.
And he just acknowledged to you there's only seven boxes, it's not like it was that much, that were directly relevant and which we

asked for. And he didn't just say we're not sure upon information and belief. They entered discovery, no, we don't have those.

Ms. O'Neill, and I assume because Mr. Sommerville told her that, said in the deposition "You have all of the responsive documents from any source."

What should we have done with that? Filed a Motion to Compel anyway? To compel documents we have no idea exists? That's not how this should work. And the Chewning case gives you the map to do it. And we believe we have alleged all the facts and proven all the facts that we need to.

THE COURT: Let me ask you this, Ms. McVey. One of the things that Ms. O'Neill argued on behalf of IMI-Fabi is this big stack of listing of all the exhibits for Plaintiff in the Sarah Plant case.

MS. MCVEY: Right.

THE COURT: It goes to 5,140 exhibits. She pointed out and highlighted out of those 5,000 exhibits, six exhibits from 387 to 394. I thought there were a couple more. I might be mistaken.

I don't know why I thought you pointed to another page in addition to that. I may need correcting.

MS. O'NEILL: I did.

THE COURT: Which one did you point to?

MS. O'NEILL: 243.

THE COURT: Hang on.

243.

MS. O'NEILL: 387.

THE COURT: 387.

MS. O'NEILL: Through 390.

THE COURT: 3390?

MS. O'NEILL: No, through 390. So 387, 388, 389, 390.

THE COURT: I got you.

MS. O'NEILL: 393 and 394. And then I also argued about the documents that Avon produced to them in the Plant case which had also been produced to them eight months earlier in the Moore case, which are not on their exhibit list.

THE COURT: All right. So Ms. O'Neill has argued that these documents -- and since I've just got this page sitting right in front of me, I'll refer to it. This is 387 is an MDS -- MSDS sheet in the Moore case.

388 is an Estee Lauder raw materials specification of IMI-Fabi 643 talc.

389 is an IMI-Fabi Certificate of Analysis for 643 talc.

390 is IMI-Fabi for 3355 talc, Certificate of Analysis.

393 is Certificate of Analysis 141. That was one of the big exhibits for Revlon.

And 394 was Certificate of Analysis for 3351, luster for Cosmetic Specialties of Revlon.

And she says that should have tipped you off is basically what she's arguing. That that should have tipped you off to if you had those documents to have gone back to them and said, you know, what else is there along that line because you clearly got these? And you had them in evidence. You marked them for evidence.

So what do you say to that argument? This goes to the issue of whether you could have known.

MS. MCVEY: So a couple of things. And I want to remind the Court that in November they didn't just say maybe we have a relationship. They said, no, we do not have a relationship with anybody in sworn discovery responses to us.

Okay. That was in November.

We only got the corporate representative deposition four days. Part of that it was a personal jurisdiction issue. Part of it was trial. But when we were putting together this exhibit list, we went and found anything we could possibly find. Right? This is right before trial is happening. They had told us in November they have no relationship with anybody. If they had said something else, maybe that would trigger to file the Motion to Compel.

If then in the deposition, which is four days before trial, we are told that we have every document regardless of source.

And it's important because you will remember this one, and it sticks out to me because we wanted to put in place a Procter & Gamble, P&G formula, right? And Ms. O'Neill argued against it. And I don't have that with me because I didn't know this was going to come up today.

THE COURT: I remember when it came up.

MS. MCVEY: And she said, "We have no relationship with them." It was in another case, I think is what she said. It was in the

Moore case.

MS. GROSS: It was Moore.

MS. MCVEY: It was in the Moore case. And I'll go back and try to find it in the transcript and that will be fine. It was a different case. I'm sorry, I just don't know off the top of my head. We can go back and find it. You didn't let that formula in.

We relied on what they told us, and they withheld these documents. And it's directly relevant to all of it.

So this idea that they can take our -- a couple of the exhibits that we found in here and say that means we didn't have to produce everything is just untrue. And then the magnitude of what they didn't produce is what's so important here. The magnitude of it is so important.

The national -- I don't know what he calls himself. He didn't like the national coordinating counsel. I thought that's what he had been called before.

But Mr. Sommerville, who was counsel for IMI-Fabi, who allegedly is the only guy who looked at this box other than his associate,

these boxes, decided what to produce and what not to produce. And he decided to conceal these documents. That's what he decided.

It can't be a game of come make us. That's not the way it works. And Chewning says that.

THE COURT: The argument is made that it can be concealment, it could even be intentional concealment, but there is a level of wrongdoing that's more than just kind of you weigh the scales and it goes more in the direction of concealing than not. That it has to be a very deliberate, intentional, knowing-it's-wrong type of conduct, and that's the argument.

I mean, almost an argument that it has to be a direct piece of evidence that indicates intentional knowing the conduct is wrong and intentionally engaging in it, if I could put it that way.

MS. MCVEY: Judge, I could encourage you that maybe we all do this, too, but go back and look at exactly what words he used today. I think it's important. He didn't explain to us why these documents weren't produced, right? It's never like you said, well, it's a different time period so we decided this wasn't the right

thing. That would still be not be a good enough reason but that would be a reason. That's not what he said.

What he said is I looked at this piece of paper, and I looked at this piece of paper, and this one, even though it said Coty, I'm not going to produce it. How much more intent can there be?

Truly, I don't know what else you could get other than if he looked at these documents, they're clearly discoverable. They clearly were asked for. They clearly were relevant to this case and decided not to produce them.

And he sat here in this courtroom while the arguments were made that we didn't have the documents. He sat here in this courtroom for seven days or however -- it was a short trial because of all the craziness -- and watched it.

He sat in Corrado Fabi's deposition when he said we don't have a relationship with these people. We don't know who Procter & Gamble is. He knew. And he let Mr. Fabi perjure himself. He didn't educate Mr. Fabi. Whatever it is. But he sat there. It was knowing -- it is a knowing decision. That is an intent to conceal.

And we have a witness who did not tell the truth to the jury. We can talk about why that is. But I think Mr. Sommerville knew. I think he said that to you today.

THE COURT: I don't think there's any question what -- he made a decision knowing what the documents said. I don't think there's something that -- I mean, he says I'm rushed and that kind of thing, but he knew what the documents were.

MS. MCVEY: Absolutely. And I don't want to keep going back and forth. And this is a big -- it's a big act of the Court, of course. It's a really important case for IMI-Fabi. It's certainly important to Sarah Plant. We don't make this ask lightly.

Under these facts, with what we've proven, I don't think there's any question that there was perjury and there was concealment of these documents and that would have made a difference to this trial.

THE COURT: Well, you know, I certainly agree with regard to Corrado Fabi's testimony to the jury. The documents reveal not just some stray emails to him, but a lot of information in

Fabi's files, generated by Fabi, that discusses suppliers and we're trying to work with our suppliers or what people who we supply the talc and so forth and so on. He had to know that. And he was not truthful about that. He was not truthful about Cosmetic Specialties.

They had a great deal of contact with Cosmetic Specialties about all kind of clients and yet we argue to the jury what was Sterigenics? What was that about? So forth and so on.

That's what Ms. O'Neill -- I have no doubt that's what Ms. O'Neill believed because that's what she was told. But it turns out that that's far from the truth. That that New Jersey company was a sterilization of material and specifications of the ultimate manufacturers that they knew as these later documents reveal. That's the kind of thing that worries the heck out of me.

MS. MCVEY: It's disturbing on a lot of different levels. We haven't gone back through everything that we pulled out in this chart that we make as an exhibit. It's a 34-page chart of evidence. I'm sorry, that's the first round.

All of it. And it's just a reminder. We've gone through it, but we put in here the discovery request, what they responded, what information was withheld, and why it mattered. And we did that for each document that we think matters in this case.

I think the intent to conceal when Mr. Sommerville was here is shown by allowing a closing to take place where the centerpiece was the lack of documents.

THE COURT: It was no question but the closing argument to the jury is a stark comparison between all the information that was available from Whittaker Clark & Daniel, which was exactly like IMI-Fabi. It's another toxifier. And she -- Ms. O'Neill used that. They got all kind of context. We have none. And it turned out that was not so.

MS. MCVEY: Absolutely. And it was -- I remember the slide explicitly. It was very powerful. As you have acknowledged, she's very good.

THE COURT: She is very good.

MS. MCVEY: Especially with product ID. But to have here's all the Whittaker Clark &

Daniel documents fall away and all we're left with are these two or three or whatever it was for IMI-Fabi is exactly why this matters.

THE COURT: Okay. Well, problematic matters don't get better with age. That's why I rule from the bench, and I'm going to do that now.

This is a Motion for Relief from Judgment.

MS. O'NEILL: May I just respond briefly, Your Honor? Because we're the people who are being asked to have the defense verdict relieved.

THE COURT: Well, I understand all that. That doesn't really suddenly put you in another position but certainly you asked to be heard and I'm going to hear you.

MS. O'NEILL: A couple of things, Your Honor.

THE COURT: Yes, ma'am. I'm very torn about this thing.

MS. O'NEILL: We would ask to -- because my closing argument seems to be a centerpiece issue, we have the video of that that was shown on CBN. We would ask to supplement the record with that, and we can provide that to the Court.

THE COURT: You're asking to supplement the record with a video?

MS. O'NEILL: Of my closing because my closing seems to be a centerpiece here.

THE COURT: I read it. I have a copy of it, and I've read it many times.

MS. O'NEILL: Right. We have the video that was shown on CBN. We would like to supplement the record with that. I think it was instructive because, well, yes, we did have the slide that was animated, that got us down to those last couple of documents which were hundreds, if not thousands, of pages each. But, yes, it has all the other things in it too.

It has in the -- it has how we attacked Dr. Longo's testing. It has also some other things. So we would ask the Court --

THE COURT: Well, of course, that's the same attack that Thackston made for Whittaker Clark & Daniel. The same approach you all took, which was you got to show it came from the bottle, but as a backup to that, there's only Longo who says the 1C China talc was -- contained asbestos.

But, you know, you all had motions for

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directed verdict as well as motions to -- and that Thackston had motions for judgment notwithstanding veredicto that dealt with whether that issue should have gone to the jury. And I decided it should have gone to the jury, and I stay by that.

That was -- the argument is that testing is either unreliable or it has to be supplemented in each case by something from the very bottle or the very product that she used.

And I think that's an outlier among products liability cases, both cosmetic products and for other products of that matter. I don't agree with that. That's how I ruled. And the jury heard the arguments for both of these things, and the testing turned out not to be the issue. The issue for them was no -- was product identification. No tying IMI-Fabi to the ultimate manufacturers.

MS. O'NEILL: We would respectfully disagree with the characterization of our closing about the testing and the evidence being similar to Whittaker Clark Daniels, and we would also respectfully disagree with the conclusion that we know what the jury chose because it was

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just a single question. So it wasn't broken out so they could have chosen a number of things.

But having said -- having said that, we make the request to supplement the record with that video.

And then just one other point, which is on the Chewning case, Your Honor, it says, and I'm quoting, "Fraud on the Court, whatever else it embodies, requires a showing that one has acted with an intent to deceive or defraud the Court. Thus" -- "Thus when there is no intent to deceive, the fact that misrepresentations were made to the Court is not itself a sufficient basis for setting aside" -- "setting aside a judgment for fraud on the Court."

And it was quoting favorably -- so that's a favorably quoted from United States vs. Black, which is a Tenth Circuit opinion from 2002.

And so I heard Ms. McVey's arguments that what Mr. Sommerville said was as good as an admission of an intent. I don't agree with that, Your Honor. It's obviously going to be this Court's decision as to what -- how to interpret that, but I would again go back to what the law in South Carolina says, which is

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the inferences must be against setting aside the verdict. So I would say the inference of --

THE COURT: How do you evaluate Corrado Fabi's testimony in that regard where he says their customer list is closely held, we knew nothing about who the products went to, when the records of his own company indicate volumes of them, that that's absolutely untrue?

MS. O'NEILL: Well, I would say again, Your Honor, that we have a difference of opinion on the characterization of the evidence. But the customer list that they're referencing are from IMI-Fabi Diana, and those are not documents that Mr. Fabi had at the time to look at.

And he has said and he continues to say, and CSI says and continues to say, they are CSI customers and CSI doesn't always tell them who the customers are.

THE COURT: Well, I don't know what CSI says. That's not in this record.

MS. O'NEILL: It is in this record. We put a quote from Mr. Grexa in part of his deposition in the, I believe, Perry case.

THE COURT: The Perry case is not --

MS. O'NEILL: No, it's in our brief in

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this. It is in this record. It's in our brief.

THE COURT: Well, what I'm saying is that evidence was not in front of the jury at all in the Plant case is my recollection. But what was in front of the jury is Mr. Fabi's testimony that he didn't know who those products went to because Cosmetic Specialties regarded them as secret and closely held.

But that turns out to be completely untrue, and it's worlds of stuff in the IMI-Fabi files that he would definitely know about. It's not just some kind of stray records out of the Diana files. It's material on their letterhead that is correspondence with the manufacturers.

MS. O'NEILL: And again, some of that was admitted in the Plant case and testified about, P&G in particular. And Mr. Grexa's testimony which we put into our brief on this motion here, corroborates the evidence and the testimony Mr. Fabi gave at trial.

So I understand, it is -- this is a situation where the plaintiffs are unhappy because there was a defense verdict.

THE COURT: Listen, don't make that argument anymore. Ms. O'Neill, I am not taking

into account in any way, shape, or form what the plaintiff's attitude is about this matter or whether other defendants cannot respond. That has no appropriate presence in my evaluation of this motion.

MS. O'NEILL: Okay, Your Honor. I will just end on this saying that there is evidence that was produced afterwards which can be presented to say he lied. There's evidence that was produced afterwards that can be presented to say he didn't lie.

And the law in South Carolina is that all inferences should go in favor of keeping the verdict. So we believe that the plaintiffs have not met and cannot meet the burden to get a new trial in this matter.

THE COURT: Well, kind of like the first cousin of the old definition of circumstantial evidence used to be we charged the juries regularly that circumstantial evidence is evidence that points to the guilt of the accused or to whatever fact you are trying to establish to the exclusion of all other reasonable hypotheses. That's a great definition.

But my court, the majority decided that

that was not a proper definition because it pushed too much emphasis on that inference.

That's what we got to evaluate here. What kind of inference can properly be drawn, if any? And how the two -- how do the collection of facts have to hang together? Do they have to hang together in a new trial to the exclusion of any other reasonable alternative? Maybe they do. I'm going to look at that a little bit.

I'm unsure about this thing, quite honestly. My inclination is to grant a new trial, but I want to look one more time at the very arguments you're making, Ms. O'Neill.

I will admit the video. I will look at the video. I will ask that after I receive the video, that from time I receive it, the parties will have ten days to submit me what you propose as a dispositive order on this motion. Submit them simultaneously. But of course if either side has something further they want to say about the way the other has formulated, you will each have ten days to respond. But I want you to submit the two simultaneously.

MS. MCVEY: Thank you, Your Honor.

MS. O'NEILL: All right.

MS. MCVEY: I was going to ask: Do you know when you will get the video? It should be easily accessible.

MS. O'NEILL: It is. What I was going to say, we can certainly email a link. I don't know if it's actually easier for the Court and for plaintiffs, if you would like us to hand-deliver it on an external drive. Sending links sometimes, particularly links, lead to issues.

THE COURT: Yeah, our court case management and IT system, it has so many things that it excludes, that a flash drive is much easier for me because I know that will go into the computer and I know it will play.

MS. MCVEY: Could you get that to us by Friday?

MS. O'NEILL: I don't think there's any issue with that. Where would the Court like it delivered? And would you like yours delivered to your office?

MS. MCVEY: That would be great.

MS. O'NEILL: Where would you like yours delivered, Your Honor?

THE COURT: Why don't you just send it to

2418 Wheat Street.

MS. O'NEILL: Got it.

THE COURT: You can mail it. You don't need to --

MS. O'NEILL: We'll put it in a FedEx.

THE COURT: That's perfectly fine.

MS. O'NEILL: If we encounter any issues at all, which I don't anticipate we will, I will let everyone know.

THE COURT: Here's what I would suggest on that. I'm going back down to the beach after a hearing I'm conducting tomorrow. Let me ask you to wait until Tuesday of next week to FedEx it to me because I know I'll be back home by that time.

MS. O'NEILL: I can do that. Deliver on Tuesday or delivery on Wednesday?

THE COURT: It can be delivery on Tuesday or Wednesday, whatever suits you best. I know I'll be back. I'm going to probably carry over until Monday with my sis -- and all my sisters, my family.

MS. O'NEILL: I totally understand.

THE COURT: But I'll be back here no later than Monday evening.

MS. O'NEILL: Okay. We'll have Federal Expressed at your house on Tuesday, and Ms. McVey's office on Tuesday morning.

THE COURT: Then after you get that, that will trigger the time for each side to simultaneously prepare me a proposed order. I don't like doing it this way, but I really am of two minds about this. You are both lawyers of great ability and present very convincing arguments both ways.

I just can't make up my mind what I think is the proper way to do it. I'm looking heavily, as I always do, to what I think my court would do with this case.

MS. MCVEY: You usually do that well. I just saw that Jolly was affirmed.

THE COURT: Yes, I got that affirmed. That's a good thing.

All right. Well, thank you my friends.

MS. MCVEY: Thank you, Judge.

MS. O'NEILL: Thank you.

THE COURT: Court will be adjourned.

- - -

(The hearing concluded at 2:55 p.m.)

- - -

ELECTRONICALLY FILED - 2023 Mar 01 11:53 AM - RICHLAND - COMMON PLEAS - CASE#2022CP4001265

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FIFTH JUDICIAL CIRCUIT
COUNTY OF RICHLAND	)	
		Civil Action No. 2022-CP-40-001265
SARAH J. PLANT and PARKER PLANT,	)	
	)	
Plaintiffs,	)	
	)	IMI FABI ENTITIES' PROPOSED VERDICT FORM
vs.	)	
	)	
AVON PRODUCTS, INC., et al.,	)	
	)	
Defendants.	)	
	)	

IMI Fabi USA, Inc.; IMI Fabi (Diana), LLC; and IMI Fabi, LLC (collectively the "IMI Fabi Entities") respectfully submit their proposed verdict form. By submitting this proposed verdict form, the IMI Fabi Entities do not concede that any evidence supports any claims against them, nor should this submission be construed as a waiver of any objection or argument against liability or be deemed consent to personal jurisdiction in South Carolina.

Respectfully submitted,

WOMBLE BOND DICKINSON (US) LLP

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March 1, 2023

ELECTRONICALLY FILED - 2023 Mar 01 11:53 AM - RICHLAND - COMMON PLEAS - CASE#2022CP4001265

PERSONAL JURISDICTION—CONTACTS WITH SOUTH CAROLINA

1. We the Jury find by a preponderance of the evidence that IMI Fabi USA, Inc., intentionally and purposefully sold asbestos-containing cosmetic talc in South Carolina that is related to the Plaintiffs' injury:

_____ Yes

_____ No

If you answered NO to Question 1, then you will NOT answer any other questions on this Verdict Form regarding IMI Fabi USA, Inc.

2. We the Jury find by a preponderance of the evidence that IMI Fabi (Diana), LLC, intentionally and purposefully sold asbestos-containing cosmetic talc in South Carolina that is related to the Plaintiffs' injury:

_____ Yes

_____ No

If you answered NO to Question 2, then you will NOT answer any other questions on this Verdict Form regarding IMI Fabi (Diana) LLC.

3. We the Jury find by a preponderance of the evidence that IMI Fabi LLC intentionally and purposefully sold asbestos-containing cosmetic talc in South Carolina that is related to the Plaintiffs' injury:

_____ Yes

_____ No

If you answered NO to Question 3, then you will NOT answer any other questions on this Verdict Form regarding IMI Fabi LLC.

DOOR-CLOSING STATUTE

4. We the Jury find by a preponderance of the evidence that Sarah Plant was exposed in South Carolina to asbestos in products from one or more Defendants:

_____ Yes

_____ No

If you answered NO to Question 4, then STOP and return this Form to the Court.

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NEGLIGENCE

5. We the Jury find by a preponderance of the evidence that Whittaker, Clark & Daniels, Inc., was negligent, and its negligence was a proximate cause of Sarah Plant's injury and damages:

_____ Yes

_____ No

6. We the Jury find by a preponderance of the evidence that IMI Fabi USA, Inc., was negligent, and its negligence was a proximate cause of Sarah Plant's injury and damages:

_____ Yes

_____ No

7. We the Jury find by a preponderance of the evidence that IMI Fabi (Diana), LLC, was negligent, and its negligence was a proximate cause of Sarah Plant's injury and damages:

_____ Yes

_____ No

8. We the Jury find by a preponderance of the evidence that IMI Fabi LLC was negligent, and its negligence was a proximate cause of Sarah Plant's injury and damages:

_____ Yes

_____ No

ELECTRONICALLY FILED - 2023 Mar 01 11:53 AM - RICHLAND - COMMON PLEAS - CASE#2022CP4001265

STRICT LIABILITY

9. We the Jury find that Whittaker, Clark & Daniels, Inc., is strictly liable for selling a product that was a proximately cause of Sarah Plant's injury and damages:

_____ Yes

_____ No

10. We the Jury find that IMI Fabi USA, Inc., is strictly liable for selling a product that was a proximately cause of Sarah Plant's injury and damages:

_____ Yes

_____ No

11. We the Jury find that IMI Fabi (Diana), LLC, is strictly liable for selling a product that was a proximately cause of Sarah Plant's injury and damages:

_____ Yes

_____ No

12. We the Jury find that IMI Fabi LLC is strictly liable for selling a product that was a proximately cause of Sarah Plant's injury and damages:

_____ Yes

_____ No

ELECTRONICALLY FILED - 2023 Mar 01 11:53 AM - RICHLAND - COMMON PLEAS - CASE#2022CP4001265

IMPLIED WARRANTY OF MERCHANTABILITY

13. We the Jury find that by the preponderance of the evidence, Whittaker, Clark & Daniels, Inc., sold a product that was in a defective condition and was unreasonably dangerous, and that product proximately cause of Sarah Plant's injury and damages:

_____ Yes

_____ No

14. We the Jury find that by the preponderance of the evidence, IMI Fabi USA, Inc., sold a product that was in a defective condition and was unreasonably dangerous, and that product proximately cause of Sarah Plant's injury and damages:

_____ Yes

_____ No

15. We the Jury find that by the preponderance of the evidence, IMI Fabi (Diana), LLC, sold a product that was in a defective condition and was unreasonably dangerous, and that product proximately cause of Sarah Plant's injury and damages:

_____ Yes

_____ No

16. We the Jury find that by the preponderance of the evidence, IMI Fabi LLC sold a product that was in a defective condition and was unreasonably dangerous, and that product proximately cause of Sarah Plant's injury and damages:

_____ Yes

_____ No

ELECTRONICALLY FILED - 2023 Mar 01 11:53 AM - RICHLAND - COMMON PLEAS - CASE#2022CP4001265

LOSS OF CONSORTIUM

17. We the Jury find that because of the negligence of Whittaker, Clark & Daniels, Inc., Parker Plant has lost the companionship, aid, society, and services of Sarah Plaint resulting from her injury:

_____ Yes

_____ No

18. We the Jury find that because of the negligence of IMI Fabi USA, Inc., Parker Plant has lost the companionship, aid, society, and services of Sarah Plaint resulting from her injury:

_____ Yes

_____ No

19. We the Jury find that because of the negligence of IMI Fabi (Diana), LLC, Parker Plant has lost the companionship, aid, society, and services of Sarah Plaint resulting from her injury:

_____ Yes

_____ No

20. We the Jury find that because of the negligence of IMI Fabi LLC, Parker Plant as lost the companionship, aid, society, and services of Sarah Plaint resulting from her injury:

_____ Yes

_____ No

If you answered YES to any of Questions 5 through 20, please go to Questions 21 and 22.

If you answered NO to Questions 5 through 20, then STOP and return this Form to the Court.

ELECTRONICALLY FILED - 2023 Mar 01 11:53 AM - RICHLAND - COMMON PLEAS - CASE#2022CP4001265

DAMAGES

21. If you answered YES to any of Questions 5 through 20, please state the amount of actual damages that each Plaintiff has proven by a preponderance of the evidence:

$_____ Damages for Sarah Plant

$_____ Damages for Parker Plant

PROPORTION OF LIABILITY FOR DEFENDANTS AND OTHERS

22. We the Jury find that the defendants are, or some other third-party is, responsible for the following percentages of the Plaintiffs' injuries:

_____% Whittaker, Clark & Daniels, Inc.

_____% IMI Fabi USA, Inc.*****

_____% IMI Fabi (Diana), LLC*****

_____% IMI Fabi LLC*****

_____% A third-party (must be 100%)

***If you answered NO to Questions 1, 2, or 3, you may not assign any proportion of liability to the respective IMI Fabi entity.**

_____

Juror Foreperson

_____

Date

ELECTRONICALLY FILED - 2023 Mar 01 11:53 AM - RICHLAND - COMMON PLEAS - CASE#2022CP4001265

STATE OF SOUTH CAROLINA COUNTY OF RICHLAND SARAH J. PLANT and PARKER PLANT, Plaintiffs, vs. AVON PRODUCTS, INC., et al., Defendants.	IN THE COURT OF COMMON PLEAS FIFTH JUDICIAL CIRCUIT Civil Action No. 2022-CP-40-001265 IMI FABI ENTITIES' PROPOSED JURY INSTRUCTIONS

Pursuant to Rule 51, SCRCP, Defendants IMI Fabi USA, Inc.; IMI Fabi, LLC; and IMI Fabi (Diana), LLC ("Defendants') submit the following proposed jury instructions to supplement the instructions previously proposed by the Plaintiffs. Defendants reserve the right to supplement these proposed instructions as needed, as well as all reserve all objections to Plaintiff's proposed instructions that conflict in any way with the below. These Defendants further adopt and incorporate by reference any additional charges proposed by any other defendant to the extent such additional charges do not conflict with anything herein. Additionally, attached as Exhibit A are these Defendants objections to the Plaintiffs' proposed instructions, which are shown way of a red-lined version of those proposed instructions.

By submitting these proposed instructions, these Defendants do not concede that any evidence supports any claims against any of these Defendants, and the phrasing of these proposed instructions shall not be construed as a waiver of any objection or argument against liability or be deemed consent to personal jurisdiction in South Carolina.

Signature Page Attached

Respectfully submitted,

WOMBLE BOND DICKINSON (US) LLP

By: /s/ M. Elizabeth O'Neill
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March 1, 2023

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Before I discuss the elements of the claims asserted by Plaintiffs, there are a few threshold issues that you will need to consider. The Plaintiffs have brought this case in a court that is part of the South Carolina Unified Judicial System. You are citizens of South Carolina. But the Defendants IMI Fabi USA, Inc.; IMI Fabi, LLC; and IMI Fabi (Diana) LLC, are not South Carolina companies.

Therefore, the Plaintiffs have the burden of proving to you that these Defendants have intentionally undertaken activities within the State of South Carolina that caused Ms. Plant's injury here, in South Carolina. The fact that some talc sold by IMI Fabi USA, Inc.; IMI Fabi, LLC; and IMI Fabi (Diana) LLC may have eventually ended up in South Carolina is not what is important to this issue. Instead, the Plaintiffs must prove to you that IMI Fabi USA, Inc., IMI Fabi, LLC, and IMI Fabi (Diana) LLC intentionally and purposefully directed its business activities related to cosmetic talc to South Carolina, and that those intentional business activities relate to the Plaintiffs' injury in South Carolina.

As part of your consideration of this issue, you may consider whether any of these Defendants have contracts to sell cosmetic talc directly into South Carolina; whether any of these Defendants owns real property in South Carolina; whether any of these Defendants have any insurance coverage for its cosmetic talc in South Carolina; whether any of these Defendants has an office in South Carolina; whether any of these Defendants has a registered agent to do business in South Carolina; whether any of these Defendants has any business operations in South Carolina related to cosmetic talc; and whether any of these Defendants advertises sales of cosmetic talc in South Carolina.

If there is no such direct connection between the intentional business activities of these three IMI Fabi entities related to cosmetic talc, the State of South Carolina, and Ms. Plant's injury, then the United States Constitution provides that this Court does not have jurisdiction over IMI Fabi USA, Inc., IMI Fabi, LLC, and IMI Fabi (Diana) LLC, and that should be your decision.

Authority:

Ford Motor Co. v. Mont. Eighth Jud. Dist. Ct., 141 S. Ct. 1017 (2021); *Bristol-Myers Squibb Co. v. Superior Court*, 137 S. Ct. 1773 (2017); *J. McIntyre Mach., Ltd. v. Nicastro*, 564 U.S. 873 (2011); *Grayson v. Anderson*, 816 F.3d 262 (4th Cir. 2016); *Fed. Ins. Co. v. Lake Shore Inc.*, 886 F.2d 654 (4th Cir. 1989); *Digital Ally, Inc. v. Light-N-Up, LLC*, 408 S.C. 101 (Ct. App. 2014); S.C. Code Ann. § 36-2-803(A).

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Just as the Plaintiffs must prove that there is a sufficient connection between South Carolina, IMI Fabi, USA, Inc.; IMI Fabi (Diana), LLC; and IMI Fabi LLC and Sarah Plant's Injury for the Court to have jurisdiction over IMI Fabi USA, Inc.; IMI Fabi (Diana), LLC; or IMI Fabi LLC in this case, the Plaintiffs must also prove that either Sarah Plant was a resident of South Carolina, or that Sarah Plant's injury arose in South Carolina.

South Carolina law does not let people from other states use our courts unless they are injured here. The Plaintiffs in this case must prove to you by a preponderance of the evidence that Sarah Plant was a resident of South Carolina at the time she was injured, or that Sarah Plant was exposed in South Carolina to asbestos fibers from Whittaker, Clark & Daniels, Inc.; IMI Fabi USA, Inc.; IMI Fabi (Diana), LLC; or IMI Fabi LLC. Because these companies are separate Defendants, you must make a determination as to each entity individually.

If you find that Sarah Plant was not a resident of South Carolina, or if you find that Sarah Plant was not exposed to asbestos fibers from all or any of Whittaker, Clark & Daniels, Inc.; IMI Fabi (USA), Inc.; IMI Fabi (Diana), LLC; and IMI Fabi LLC while in South Carolina, then South Carolina law prevents the Plaintiffs from using this Court to resolve a claim that is not connected to this state.

Authority:

S.C. Code Ann. § 15-5-150; *Murphy v. Owens-Corning Fiberglas Corp.*, 356 S.C. 592 (2003); *Nix v. Mercury Motor Express, Inc.*, 270 S.C. 477 (1978).

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Not only do the Plaintiffs have the burden of proving the elements of each of their claims against each of the Defendants, but the Plaintiffs must also prove to a reasonable degree of medical certainty that Sarah Plant's alleged exposure to any asbestos-containing product manufactured by each of the Defendants was the proximate cause of her mesothelioma.

Under any products liability theory of recovery, including negligence or strict liability, the Plaintiff must prove by the greater weight of the evidence that the Defendant's actions proximately caused injury to the Plaintiff, and that the damages suffered were proximately caused by the Defendant's breach of its duty of due care. Proximate cause is conduct that produces a natural chain of events and in the end brings about the injury. It is a direct cause of the injury.

To prove a Defendant's conduct proximately caused the Plaintiff's injury, the Plaintiff must first prove something called "causation in fact." That is proven by showing the Defendant's conduct was a substantial factor in causing the injury.

The Plaintiff must also prove something called "legal cause." And that is proven by showing the injury was foreseeable and that it occurred as a natural and probable consequence of the Defendant's negligence. The Plaintiff must prove that some injury from the Defendant's negligence was foreseeable, but they do not have to prove that the particular injury that occurred was foreseeable. However, a defendant cannot be held responsible for something that could not be expected to happen.

Causation based upon a possibility rather than a probability is not sufficient for a Plaintiff to recover in a products liability case. Where the cause of a Plaintiff's injuries may be as reasonably attributed to an act for which the Defendant is not liable as to one for which it is liable, the Plaintiff

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has not met its burden of proof in establishing the Defendant's product proximately caused the Plaintiff's injuries.

Now, for latent injuries such as mesothelioma, the Plaintiff must prove more than a casual or minimal contact with the product containing asbestos in order to hold the manufacturer liable. To establish medical causation, the Plaintiff must introduce evidence that each of the individual Defendants actually manufactured, sold or distributed a product. If you so find, then you need to determine whether the Plaintiffs have introduced evidence that would allow you to conclude that it is more likely than not that Ms. Plant's exposure to asbestos from Whittaker, Clark & Daniels, Inc.; IMI Fabi USA, Inc.; IMI Fabi, LLC; or IMI Fabi (Diana) LLC's product was a substantial factor in causing her mesothelioma. The word "substantial" is used to denote the fact that the conduct of the Defendant had such an effect in producing harm as to lead reasonable people to regard it as a cause of the injury. The Plaintiffs must produce evidence of Sarah Plant's exposure to asbestos-containing cosmetic talc from Whittaker, Clark & Daniels, Inc.; IMI Fabi USA, Inc.; IMI Fabi, LLC; or IMI Fabi (Diana) LLC on a regular basis over some extended period of time in proximity to Ms. Plant.

In other words, before you can hold any Defendant liable, the Plaintiffs must prove by a preponderance of the evidence that the specific Defendant provided asbestos-containing cosmetic talc that was ultimately used in a product to which Sarah Plant was exposed, and that Sarah Plant's exposure to the Defendant's asbestos-containing cosmetic talc was of such frequency, regularity, and duration that it was a substantial factor in bringing about her disease or injury. That means that the Plaintiffs must prove by a preponderance of the evidence not only that Ms. Plant was exposed to a cosmetic product that contained talc, but the Plaintiffs must also prove by a preponderance of

the evidence that the talc contained asbestos, and that the asbestos-containing talc came from a specific Defendant.

The mere fact that Sarah Plant has mesothelioma, standing alone, does not permit you to draw a conclusion that an injury or accident was caused by anyone's negligence or strict liability. And presence in the vicinity of static asbestos is not exposure to asbestos.

Evidence was presented of other parties contributing to Ms. Plant's contraction of mesothelioma. It is proper for you to consider the actions of those other parties, but only insofar as you assess and determine whether the Plaintiffs have met the burden of proving the elements of the claims necessary to recover against any Defendant and to assess whether the actions of those other parties affected whether defendant Whittaker, Clark & Daniels, Inc.; IMI Fabi USA, Inc.; IMI Fabi, LLC; or IMI Fabi (Diana) LLC substantially contributed to Sarah Plant's injuries.

Authority:

Jones v. Owens-Corning Fiberglas Corp., 69 F.3d 712 (4th Cir. 1995); *Lohrmann v. Pittsburg Corning Corp*., 782 F.2d 1156 (4th Cir. 1986); *Henderson v. Allied Signal, Inc*., 373 S.C. 179, 644 S.E.2d 724 (2007); *Anderson v. Green Bull, Inc*., 322 S.C. 268, 471 S.E.2d 708 (Ct. App. 1996).

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Although the defendants are being sued together, you must give separate consideration to each defendant. In doing so, you must determine which evidence in the case applies to each defendant, disregarding any evidence solely applicable to other defendant(s). The rights of the defendants Whittaker, Clark & Daniels, Inc.; IMI Fabi USA, Inc.; IMI Fabi LLC; and IMI Fabi (Diana), LLC, are separate and distinct. It is commonplace for companies to establish multiple corporate entities, and as such they maintain individual corporate identities and they are not liable for each other even though there may be similar names, common purposes, or collaboration between the entities. Each entity is entitled to separate and fair consideration of the evidence and its own defenses, and you will decide each defendant's case separately as if it were a separate lawsuit. The instructions apply to each defendant unless a specific instruction states that it applies only to a specific defendant.

Authority:

Pertuis v. Front Roe Restaurants, Inc., 423 S.C. 640, 817 S.E.2d 273 (2018); *Hofferth v. Janssen Pharm., Inc.*, No. 3:17-CV-01560-MGL, 2020 WL 1536218, at *9 (D.S.C. Mar. 31, 2020)

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF RICHLAND	)	FOR THE FIFTH JUDICIAL CIRCUIT
SARAH J. PLANT and **PARKER PLANT,**	)	**C/A NO. 2022-CP-40-01265**
Plaintiffs,	)	*In Re:* Asbestos Personal Injury Litigation Coordinated Docket
v.	)	
WHITTAKER CLARK & DANIELS, INC.; IMI FABI (DIANA), LLC; and **IMI FABI LLC,** *et al.*	)	**JURY CHARGES**
Defendants.	)	

CHARGE #1 PRELIMINARY – ROLE OF JURY

LADIES AND GENTLEMEN, I'M GOING TO CHARGE YOU ON THE LAW THAT APPLIES TO THE CASE AND THE LAW THAT APPLIES TO THE FACTS IN THIS CASE. AND IT IS YOUR DUTY TO FIND THE FACTS FROM THE EVIDENCE. AND TO THOSE FACTS, YOU MUST APPLY THE LAW AS I GIVE IT TO YOU, AND YOU MUST DECIDE THIS CASE BASED ON THE EVIDENCE AND THE LAW. YOU SHOULD NOT BE CONCERNED WITH WHAT THE LAW SHOULD BE, BUT WITH WHAT IT IS. AND YOU MUST NOT BE INFLUENCED IN THIS CASE BY ANY PERSONAL LIKES OR DISLIKES OR ANY UNDUE SYMPATHY OR PREJUDICE. AND THAT MEANS YOU MUST DECIDE THIS CASE SOLELY ON THE EVIDENCE BEFORE YOU ACCORDING TO THE LAW. YOU WILL REMEMBER THAT YOU TOOK AN OATH TO DO JUST THAT WHEN WE BEGAN THIS TRIAL.

SO, FOLLOW MY INSTRUCTIONS. YOU MUST FOLLOW ALL OF THEM AND NOT SINGLE OUT SOME AND IGNORE OTHERS BECAUSE THEY ARE ALL EQUALLY IMPORTANT. PLEASE DON'T READ INTO THESE INSTRUCTIONS OR INTO ANYTHING I MAY HAVE SAID OR DONE DURING THE TRIAL AS ANY INDICATION AS TO WHAT I THINK THE FACTS ARE, OR WHAT I THINK YOUR VERDICT SHOULD BE. BECAUSE UNDER OUR SYSTEM OF JUSTICE, YOU, THE JURY, ARE THE SOLE

AND EXCLUSIVE JUDGE OF THE FACTS. I'M NOT GOING TO INTRUDE ON YOUR CONSTITUTIONALLY GUARANTEED RIGHT TO DETERMINE THE FACTS. JUST AS I KNOW YOU'RE NOT GOING TO INTRUDE ON MY RESPONSIBILITY UNDER THE CONSTITUTION TO CHARGE YOU WITH WHAT THE LAW IS.

NOW, LADIES AND GENTLEMEN, HOW DO YOU DECIDE WHAT THE FACTS ARE? YOU DO THAT BY EVALUATING OR WEIGHING THE EVIDENCE YOU'VE HEARD DURING THIS TRIAL. THERE IS NO WAY FOR YOU TO WEIGH EVIDENCE IN THE LITERAL SENSE. I'M NOT GOING TO GIVE YOU A SET OF SCALES TO GO BACK AND CONDUCT EXPERIMENTS, THAT'S NOT WHAT I'M TALKING ABOUT. YOU WEIGH AND EVALUATE EVIDENCE SIMPLY BY USING YOUR GOOD COMMON SENSE, YOUR SENSE OF LOGIC AND REASON, AND YOUR LIFE EXPERIENCES. AND YOU BRING THOSE THINGS TO BEAR ON THE EVIDENCE YOU'VE HEARD DURING THIS CASE. AND ONCE YOU DO THAT, YOU WILL BE ABLE TO DETERMINE THE TRUE FACTS OF THE CASE. AND ONCE YOU'VE DONE THAT, YOU'LL BE ABLE TO TAKE THE LAW THAT I'M ABOUT TO GIVE YOU AND APPLY THE LAW TO THOSE FACTS, AND YOU WILL BE ABLE TO REACH A DECISION AND A VERDICT IN THIS CASE.

IN DECIDING THE FACTS OF THIS CASE, YOU MUST NOT BE SWAYED BY BIAS OR PREJUDICE OR FAVOR AS TO ANY PARTY. OUR SYSTEM OF LAW DOES NOT PERMIT JURORS TO BE GOVERNED BY PREJUDICE OR SYMPATHY OR PUBLIC OPINION.

THIS CASE SHOULD BE CONSIDERED AND DECIDED BY YOU AS AN ACTION BETWEEN PERSONS OF EQUAL STANDING IN THE COMMUNITY, OF EQUAL WORTH, AND HOLDING THE SAME OR SIMILAR STATIONS IN LIFE. A CORPORATION IS ENTITLED TO THE SAME FAIR TRIAL AT YOUR HANDS AS A PRIVATE INDIVIDUAL. ALL PERSONS, INCLUDING CORPORATIONS, STAND EQUAL BEFORE THE LAW AND ARE TO BE DEALT WITH AS EQUALS IN A COURT OF JUSTICE.

YOU MUST NOT CONSIDER AS EVIDENCE ANY STATEMENT OF COUNSEL MADE DURING THE TRIAL. STATEMENTS OF COUNSEL DO NOT CONSTITUTE EVIDENCE; RATHER, COUNSEL IS ARTICULATING THE POSITION AND CONTENTION OF HIS OR HER CLIENT. THIS RULE APPLIES TO THE OPENING STATEMENT OF COUNSEL AND THE CLOSING ARGUMENT.

ATTORNEYS ARE OFFICERS OF THE COURT. ATTORNEYS HAVE THE ABSOLUTE RIGHT AND DUTY TO BRING MATTERS TO THE ATTENTION OF THE COURT BY WAY OF OBJECTION. DO NOT BECOME UPSET OR DISTURBED BY COUNSEL BECAUSE OF AN OBJECTION. OUR TRIAL PROCEDURE INCLUDES THE OBJECTION PROCESS AS A MEANS OF CONTROLLING EVIDENCE; THAT IS, LETTING IN PROPER EVIDENCE AND KEEPING OUT IMPROPER EVIDENCE. COUNSEL, BY OBJECTING, ARE SIMPLY PERFORMING THEIR ROLE IN THE TRIAL OF THE CASE.

ONCE THE COURT MAKES A RULING ON AN OBJECTION, THE JURY IS BOUND BY THAT RULING. IF THE OBJECTION IS SUSTAINED, THE QUESTION IS IMPROPER. IF THE OBJECTION IS OVERRULED, THE QUESTION IS PROPER. IN THAT REGARD, THE JURY MUST NOT, UNDER ANY CIRCUMSTANCES, DERIVE ANY INFERENCE FROM ANY RULING MADE BY THE COURT ON OBJECTIONS AS TO ANY OPINION THE COURT MAY HAVE ON THE CASE. THE JUDGE DOES NOT HAVE AN OPINION ON THE EVIDENCE AND IS NOT ENTITLED TO AN OPINION UNDER THE LAW. THE JUDGE IS PERFORMING HER ROLE IN THE TRIAL OF THE CASE.

AS TO ANY QUESTIONS TO WHICH AN OBJECTION WAS SUSTAINED, YOU MUST NOT SPECULATE AS TO WHAT THE ANSWER MIGHT HAVE BEEN OR AS TO THE REASON FOR THE OBJECTION.

CHARGE #2 BURDEN OF PROOF

I TOLD YOU AT THE BEGINNING THAT THE PLAINTIFFS HAVE THE BURDEN OF PROVING THEIR CASE. AND THE BURDEN OF PROOF IN A CIVIL CASE IS BY THE

GREATER WEIGHT, OR PREPONDERANCE, OF THE EVIDENCE. AND THAT MEANS THAT THE PLAINTIFFS, IN ORDER TO OBTAIN A VERDICT, MUST PRODUCE EVIDENCE, WHICH, CONSIDERED IN THE LIGHT OF ALL THE FACTS, LEADS YOU TO BELIEVE THAT WHAT THEY ARE CLAIMING IS MORE LIKELY TRUE THAN NOT TRUE. THE BETTER WAY TO VISUALIZE IT, PERHAPS, IS TO ENVISION A SET OF SCALES. IF YOU WERE TO PUT THE PLAINTIFFS' AND THE DEFENDANTS' EVIDENCE ON OPPOSITE SIDES OF A SET OF SCALES, IN ORDER TO RECEIVE A VERDICT, THE PLAINTIFFS WOULD HAVE TO HAVE THE SCALES TIPPED IN THEIR FAVOR. IF THOSE SCALES TIP IN THE PLAINTIFFS' FAVOR EVEN SLIGHTLY, EVEN BY THE MOST MINUTE PORTION, THEN THE PLAINTIFFS WOULD BE ENTITLED TO A VERDICT BECAUSE THEN THE GREATER WEIGHT WOULD BE ON THEIR SIDE. HOWEVER, IF AFTER YOUR REVIEW OF THE EVIDENCE, THE SCALES REMAIN EVENLY BALANCED AND THERE'S NOT A GREATER WEIGHT ON EITHER SIDE, OR THE SCALES ARE TIPPED IN THE DEFENDANT'S FAVOR, THEN THE DEFENDANT WOULD BE ENTITLED TO A VERDICT BECAUSE THE PLANTIFF WOULD NOT HAVE PROVED HER CASE BY THE GREATER WEIGHT OR PREPONDERANCE OF THE EVIDENCE.

NOW, SOME OF YOU MAY BE FAMILIAR WITH THE BURDEN OF PROOF IN A CRIMINAL CASE. IN A CRIMINAL CASE, BEFORE THE STATE CAN CONVICT SOMEONE OF A CRIME, THEY MUST PROVE EACH ELEMENT OF THAT CRIME BEYOND A REASONABLE DOUBT. THIS IS NOT A CRIMINAL CASE, OBVIOUSLY, SO THAT PHRASE "BEYOND A REASONABLE DOUBT," WHICH IS ONE OF THE HIGHEST STANDARDS OF PROOF THE LAW KNOWS, HAS NO PLACE IN THIS CIVIL CASE. THE STANDARD OF PROOF THAT YOU MUST USE AND THE YARDSTICK YOU MUST APPLY IS THE BURDEN OF THE GREATER WEIGHT OF THE EVIDENCE. THAT IS THE SOLE STANDARD OF PROOF IN THIS CASE AS TO THE PLAINTIFFS' CLAIMS FOR ACTUAL DAMAGES.

CHARGE #3 EVIDENCE

YOU MUST DECIDE WHAT THE FACTS ARE FROM THE EVIDENCE. AND THE EVIDENCE CONSISTS OF SWORN WITNESS TESTIMONY AND EXHIBITS. WE'VE ALSO HAD SOMETHING CALLED STIPULATIONS IN THIS CASE. AND A STIPULATION IS SIMPLY AN AGREEMENT BY THE PARTIES THAT A CERTAIN FACT EXISTS WITHOUT THE NECESSITY OF ANY FURTHER PROOF. AND YOU MUST TAKE THE STIPULATION AS CONCLUSIVE EVIDENCE OF A FACT. SO, THE ONLY THINGS YOU CAN USE IN DETERMINING WHAT THE FACTS ARE, ARE WITNESS TESTIMONY, EXHIBITS, AND STIPULATIONS. NOTHING ELSE IS EVIDENCE. WE HAVE HAD EXCELLENT LAWYERS IN THIS CASE. AND THEY HAVE ZEALOUSLY ADVOCATED FOR THEIR CLIENTS' POSITIONS, BUT THEY ARE NOT THE WITNESSES, SO WHAT THEY SAY IS NOT EVIDENCE. IF YOU REMEMBER SOMETHING DIFFERENTLY THAN THE WAY THE LAWYERS REMEMBER IT, YOUR MEMORY CONTROLS. WHAT THEY HAVE SAID AND ARGUED IN THIS CASE IS VERY IMPORTANT FOR YOU TO LISTEN TO, BECAUSE, AS I SAID AT THE OUTSET, THEY'RE TRYING TO HELP YOU UNDERSTAND THE EVIDENCE. BUT DO KEEP IN MIND THAT WHAT THEY SAY IS NOT IN ITSELF EVIDENCE.

CHARGE #4 STIPULATIONS

MEDICAL STIPULATION

THE PARTIES STIPULATE THAT SARAH PLANT'S REASONABLE AND NECESSARY PAST MEDICAL BILLS AS A RESULT OF HER MESOTHELIOMA DIAGNOSIS AND TREATMENT ARE **$871,356**.

THE PARTIES ALSO STIPULATE THAT IF CALLED TO TESTIFY IN THE TRIAL OF THIS MATTER, CERTIFIED LIFE CARE PLANNER SARAH LUSTIG AND ECONOMIST OLIVER WOOD WOULD TESTIFY THAT THE PRESENT VALUE OF THE COST OF THE REASONABLE AND NECESSARY FUTURE MEDICAL TREATMENT, LOSS OF INCOME, AND THE VALUE OF LOST SERVICES FOR MANAGING THE HOUSEHOLD

AND CARING FOR HER CHILDREN WOULD BE IN THE RANGE OF $2,332,664 TO $3,268,336, DEPENDING ON HOW LONG SARAH PLANT LIVES WITH HER CANCER.

OTHER PARTIES ARE GONE

MARY KAY AND COLOR TECHNIQUES ARE NO LONGER DEFENDANTS IN THIS CASE. YOU ARE NOT TO SPECULATE AS TO THE REASONS.

CHARGE #5 DIRECT AND CIRCUMSTANTIAL EVIDENCE

IN ANY TYPE OF CASE, THERE ARE DIFFERENT TYPES OF EVIDENCE. AND WHAT I'M DISCUSSING NOW IS DIRECT AND CIRCUMSTANTIAL EVIDENCE. DIRECT EVIDENCE IS THE TESTIMONY OF A WITNESS WHO CLAIMS TO HAVE ACTUAL AND DIRECT KNOWLEDGE OF THE FACTS, SUCH AS AN EYEWITNESS. IT IS EVIDENCE THAT, IF BELIEVED, IMMEDIATELY ESTABLISHES A FACT.

ANOTHER TYPE OF EVIDENCE IS CIRCUMSTANTIAL EVIDENCE. AND I'M SURE YOU'VE HEARD THAT TERM. CIRCUMSTANTIAL EVIDENCE IS INDIRECT EVIDENCE. TO PUT IT ANOTHER WAY, CIRCUMSTANTIAL EVIDENCE IS PROOF OF A CHAIN OF FACTS AND CIRCUMSTANCES FROM WHICH YOU COULD FIND THAT ANOTHER FACT EXISTS, EVEN THOUGH IT HAS NOT BEEN PROVEN TO YOU DIRECTLY. IN MODERN PARLANCE, WE CALL THIS CONNECTING THE DOTS. THE LAW MAKES NO DISTINCTION BETWEEN THE WEIGHT OR VALUE TO BE GIVEN TO EITHER DIRECT OR CIRCUMSTANTIAL EVIDENCE. YOU MAY CONSIDER BOTH KINDS OF EVIDENCE IN THIS CASE.

BY WAY OF EXAMPLE, IF A WITNESS TESTIFIED THAT THE WITNESS SAW IT WAS RAINING OUTSIDE, THAT WOULD BE DIRECT EVIDENCE THAT IT WAS RAINING. BUT IF A WITNESS TESTIFIED THAT THE WITNESS SAW SOMEONE ENTER A ROOM WEARING A RAINCOAT COVERED WITH DROPS OF WATER AND CARRYING A WET UMBRELLA, THAT WOULD BE CIRCUMSTANTIAL EVIDENCE FROM WHICH YOU COULD CONCLUDE THAT IT WAS RAINING.

WHERE CIRCUMSTANTIAL EVIDENCE IS RELIED UPON, IT IS INCUMBENT UPON THE PARTY PRESENTING THE EVIDENCE TO SHOW THE EXISTENCE OF SUCH CIRCUMSTANCES AS WOULD JUSTIFY THE INFERENCE THAT A PARTICULAR EVENT ACTUALLY OCCURRED, AND TO NOT LEAVE THE QUESTIONS TO SPECULATION OR CONJECTURE. IF THE CIRCUMSTANCES ARE PROVED TO YOUR SATISFACTION, YOU MAY INFER A FACT FROM THOSE CIRCUMSTANCES, BUT THE CIRCUMSTANCES MUST LEAD TO THE CONCLUSION WITH REASONABLE CERTAINTY. IF THE CIRCUMSTANCES ARE NOT PROVEN TO YOUR SATISFACTION, THEN YOU SHOULD NOT INFER SUCH FACTS.

CHARGE #6 EVIDENCE – EVALUATING WITNESS TESTIMONY

YOU MUST CONSIDER ALL OF THE EVIDENCE IN DECIDING WHAT THE FACTS ARE. IF THERE HAS BEEN EVIDENCE THAT HAS BEEN STRICKEN FROM THE RECORD, OR IF I'VE TOLD YOU TO DISREGARD IT, THAT MATERIAL IS NO LONGER PART OF THE RECORD OR THE EVIDENCE IN THIS CASE, AND YOU CAN'T CONSIDER IT IN YOUR DELIBERATIONS. BUT YOU MUST, AS THE JUDGES OF THE FACTS, DETERMINE THE CREDIBILITY OF ALL OF THE EVIDENCE. AND SO AS I TOLD YOU AT THE BEGINNING, FOR EVERY WITNESS WHO TESTIFIES AND EVERY EXHIBIT THAT'S ADMITTED, YOU WILL HAVE TO DETERMINE WHETHER THOSE THINGS ARE WORTHY OF BELIEF. HOW DO YOU DO THAT? IN THE CASE OF A WITNESS WHO TESTIFIES, I CAN GIVE YOU SOME GENERAL GUIDELINES.

FIRST OF ALL, YOU MAY CONSIDER WHETHER THE WITNESS HAS SOME INTEREST IN THE OUTCOME OF THIS CASE, WHETHER THEY HAVE SOME BIAS OR PREJUDICE TOWARDS SOMEONE OR SOME ISSUE IN THE CASE, WHETHER THEY HAVE SOMETHING TO GAIN BY THEIR TESTIMONY. SECOND, YOU MAY CONSIDER WHAT OPPORTUNITY THE WITNESS HAD TO OBSERVE THE THINGS THEY WERE HERE TO TELL YOU ABOUT. THIRD, YOU MAY CONSIDER HOW THE WITNESS' EVIDENCE OR TESTIMONY STACKS UP AGAINST THE OTHER EVIDENCE IN THE CASE. IS IT CONSISTENT OR INCONSISTENT? FOURTH, YOU MAY

CONSIDER THEIR DEMEANOR ON THE STAND. WAS THE WITNESS HESITANT OR FORTHRIGHT IN THEIR TESTIMONY? FIFTH YOU MAY, CERTAINLY, USE WHAT YOU USE IN YOUR DAY-TO-DAY LIFE TO DETERMINE WHETHER SOMEONE IS TELLING YOU THE TRUTH BECAUSE YOU DID NOT SURRENDER YOUR COMMON SENSE WHEN YOU WALKED INTO THIS COURTHOUSE LAST WEEK.
I WILL ALSO TELL YOU THIS, YOU MAY BELIEVE EVERYTHING A WITNESS SAYS OR YOU MAY BELIEVE NOTHING A WITNESS SAYS. YOU MAY BELIEVE PARTS OF A WITNESS'S TESTIMONY AND DISBELIEVE OTHER PARTS. YOU MAY BELIEVE ONE WITNESS OVER SEVERAL OR SEVERAL OVER ONE. BUT YOU CERTAINLY DON'T DECIDE THIS MATTER OF CREDIBILITY SIMPLY BY COUNTING UP THE WITNESSES ON ONE SIDE OR THE OTHER. BECAUSE YOUR SOLE OBJECTIVE, LADIES AND GENTLEMEN, IS TO DETERMINE THE TRUTH IN THIS CASE, AND IT DOES NOT MATTER TO YOU WHETHER THAT TRUTH COMES FROM A WITNESS FOR THE PLAINTIFFS OR FOR THE DEFENDANTS.

CHARGE #7 EXPERT TESTIMONY

NOW, YOU HAVE HEARD TESTIMONY FROM PEOPLE WHO HAVE BEEN DESCRIBED AND QUALIFIED AS EXPERTS. THEY WERE QUALIFIED AS EXPERTS BECAUSE THEY, BY REASON OF THEIR EDUCATION, TRAINING, OR EXPERIENCE, ACHIEVED SOME EXPERTISE IN THEIR GIVEN FIELDS. AND THEY CAN, THEREFORE, STATE THEIR OPINIONS ON MATTERS IN THEIR FIELD. AND THEY MAY STATE THEIR REASONS FOR THEIR OPINIONS. BUT EXPERT TESTIMONY, AS I TOLD YOU WHEN WE HAD THE FIRST EXPERT QUALIFIED, MUST BE JUDGED BY YOU JUST AS ANY OTHER TESTIMONY IN THIS IMPORTANT RESPECT, AND THIS IS THAT YOU, THE JURY, ARE THE SOLE JUDGES OF THE CREDIBILITY. YOU MAY BELIEVE A WITNESS'S TESTIMONY AND ACCEPT IT, OR YOU MAY REJECT IT. YOU MAY GIVE IT WHATEVER WEIGHT YOU THINK IT DESERVES.

IN CONNECTION WITH THE LAST EXPERT WE HEAR FROM, DR. FEINGOLD, I MADE RULINGS ABOUT THE SCOPE OF HIS TESTIMONY BEFORE HE TOOK THE STAND.

DR. FEINGOLD CANNOT EXPRESS ANY DIRECT OPINION ABOUT THE CAUSE OF SARAH PLANT'S MESOTHELIOMA BUT HE, OF COURSE, CAN TESTIFY AS HE DID IN HIS AREA OF EXPERTISE ABOUT THE MATTERS HE PRESENTED.

CHARGE #8 EXPERT WITNESSES AND CAUSATION

NOW, WHEN SOMEONE RELIES ON EXPERT TESTIMONY TO SHOW A CAUSAL CONNECTION BETWEEN AN INJURY AND A SUBSEQUENT CONDITION, THE TESTIMONY MUST MEET THE "MOST PROBABLY" RULE. IT IS NOT SUFFICIENT THAT THE CONDITION IN QUESTION POSSIBLY OR COULD HAVE OR MIGHT HAVE RESULTED FROM THE INJURY. THE EXPERT MUST GO FURTHER AND TESTIFY THAT, TAKING INTO CONSIDERATION ALL OF THE FACTS, IT IS HIS OR HER PROFESSIONAL OPINION THAT THE RESULT IN QUESTION "MOST PROBABLY" CAME FROM THE CAUSE ALLEGED.

CHARGE #9 DEPOSITION TESTIMONY

YOU ALSO HEARD TESTIMONY PRESENTED THROUGH DEPOSITIONS. I JUST WANT TO REMIND YOU THAT DEPOSITION TESTIMONY IS ENTITLED TO THE SAME WEIGHT AND CONSIDERATION AS IF THE WITNESS HAD BEEN PRESENT AND HAD TESTIFIED FROM THE STAND.

CHARGE #10 TAKING NOTES

NOW, SOME OF YOU HAVE TAKEN NOTES DURING THE TRIAL. I GAVE YOU AN INSTRUCTION ON THAT, BUT I WANT TO JUST REMIND YOU THAT THE NOTES ARE FOR YOUR OWN PERSONAL USE. AND NOTES, CERTAINLY, DON'T OVERCOME ANOTHER'S INDEPENDENT RECOLLECTION OF THE TESTIMONY, AND THEY'RE NOT TO BE USED IN PLACE OF YOUR MEMORY.

CHARGE #11 MULTIPLE DEFENDANTS

THE PLAINTIFFS IN THIS CASE ARE SARAH PLANT AND HER HUSBAND, PARKER PLANT. THERE ARE TWO DEFENDANTS IN THIS TRIAL: WHITTAKER, CLARK & DANIELS, INC. AND THE IMI FABI ENTITIES (IMI FABI, LLC; AND IMI FABI (DIANA), LLC). YOU SHOULD DECIDE THE CASE AGAINST EACH DEFENDANT SEPARATELY AS IF IT WERE A SEPARATE LAWSUIT. EACH DEFENDANT IS ENTITLED TO SEPARATE CONSIDERATION OF ITS DEFENSES.

CHARGE #12 SUMMARY OF PLAINTIFFS' CLAIMS

THIS IS A CLAIM FOR DAMAGES STEMMING FROM A PERSONAL INJURY THAT HAS BEEN ALLEGED. AND I WANT TO GO OVER WITH YOU THE VARIOUS CLAIMS THAT ARE BEING MADE IN THIS CASE. THE PLAINTIFFS, SARAH AND PARKER PLANT, ARE SEEKING TO RECOVER DAMAGES FOR PERSONAL INJURY ARISING OUT OF THE ALLEGED EXPOSURE OF SARAH PLANT TO ASBESTOS FROM THE DEFENDANTS' PRODUCTS.

PLAINTIFFS' CLAIMS IN THIS CASE ARE BASED ON THREE THEORIES: NEGLIGENCE, STRICT LIABILTY, AND BREACH OF IMPLIED WARRANTY. THERE ARE THREE DIFFERENT WAYS A COMPANY CAN BE STRICTLY LIABLE UNDER THE LAW OF THIS STATE: DESIGN DEFECT, MANUFACTURING DEFECT, AND WARNING DEFECT. THE PLAINTIFFS MUST ONLY PROVE ONE OF THESE DEFECTS TO ESTABLISH A DEFENDANTS LIABILITY UNDER STRICT LIABILITY.

THE PLAINTIFFS ARE NOT REQUIRED TO PROVE ALL OF THESE THEORIES TO RECOVER. PROOF OF A CLAIM UNDER ANY ONE OF THESE THEORIES WOULD ENABLE YOU TO FIND THE PLAINTIFFS ARE ENTITLED TO A VERDICT. BUT THE PLAINTIFFS MUST MEET THEIR BURDEN OF PROOF AS TO, AT LEAST, ONE OF THESE THEORIES AGAINST AT LEAST ONE OF THE DEFENDANTS IN ORDER TO

RECOVER. IF YOU FIND THEY HAVE NOT, THEN THE DEFENDANT WOULD BE ENTITLED TO A VERDICT.

CHARGE #13 NEGLIGENCE

THE FIRST THEORY OF THE PLAINTIFFS IS ONE OF NEGLIGENCE. THE FOCUS UNDER NEGLIGENCE IS ON THE CONDUCT OF EACH OF THE DEFENDANTS. IN ORDER TO PREVAIL UNDER THIS CLAIM, THE PLAINTIFFS MUST PROVE BY THE GREATER WEIGHT OF THE EVIDENCE THAT THE DEFENDANT FAILED TO EXERCISE DUE CARE IN SOME RESPECT. IF YOU ARE HAVING A HARD TIME WITH THE PHRASE "NEGLIGENCE," YOU CAN SUBSTITUTE THE WORD "CARELESS" BECAUSE IT MEANS ESSENTIALLY THE SAME THING. IT MEANS THE FAILURE TO ACT AS A REASONABLY PRUDENT PERSON WOULD UNDER THE SAME OR SIMILAR CIRCUMSTANCES, OR DOING SOMETHING THAT A REASONABLE PERSON WOULD NOT DO UNDER THE SAME OR SIMILAR CIRCUMSTANCES.

YOU MUST FIRST DETERMINE IF THE DEFENDANT OWED THE PLAINTIFFS A DUTY OF CARE. A DEFENDANT WILL OWE A PLAINTIFF A DUTY OF CARE WHEN THE DEFENDANT KNOWS OF THE RISKS OF HARM POSED BY ITS PRODUCTS. THIS MAY BE MET BY SHOWING THE DEFENDANT WAS AWARE OF THE DANGER AND FAILED TO TAKE REASONABLE STEPS TO CORRECT IT. WHERE A PRODUCT IS ACTUALLY DESIGNED AND MANUFACTURED BY ANOTHER COMPANY, THE SELLER ASSUMES THE DUTY OF THE MANUFACTURER AND LABELS AND SELLS THE PRODUCT AS ITS OWN. A MANUFACTURER IS HELD TO THE SKILL OF THE EXPERT IN THE FIELD AS TO PRODUCTS IT SELLS AND IS CHARGED WITH AN EXPERT'S KNOWLEDGE OF MATERIALS AND PROCESSES USED IN THE INDUSTRY. A MANUFACTURER HAS A DUTY TO STAY AWARE OF CURRENT STANDARDS AND SCIENTIFIC KNOWLEDGE IN THE INDUSTRY AND, THEREFORE, SINCE THE SELLER ASSUMES THE DUTIES OF THE MANUFACTURER, A SELLER IS HELD TO THE SKILL OF AN EXPERT IN THE FIELD AS WELL AND HAS THE DUTY TO STAY

AWARE OF THE CURRENT STANDARDS AND SCIENTIFIC KNOWLEDGE IN ITS INDUSTRY.

ALTHOUGH EVIDENCE OF INDUSTRY STANDARDS MAY BE CONSIDERED AS EVIDENCE OF THE STANDARD OF CARE, AN INDUSTRY CANNOT SET ITS OWN UNREASONABLE STANDARDS. AN ENTIRE INDUSTRY MAY LAG BEHIND IN THE ADOPTION OF NEW AND AVAILABLE PRODUCTS OR SAFETY FEATURES. AND THE FAILURE TO USE DUE CARE, EVEN IF NO ONE IN THE INDUSTRY USES DUE CARE, DOES NOT EXCUSE NEGLIGENCE. IT IS FOR YOU TO DECIDE WHETHER THE STANDARD OF CARE WAS PROPER CONSIDERING WHAT A REASONABLE PERSON WOULD HAVE DONE IN SIMILAR CIRCUMSTANCES.

IF YOU FIND A DEFENDANT OWED THE PLAINTIFFS A DUTY OF CARE, THE NEXT THING PLAINTIFFS MUST PROVE, BY THE GREATER WEIGHT, OR PREPONDERANCE, OF THE EVIDENCE, IS THAT THE DEFENDANT BREACHED THAT DUTY OF CARE BY A NEGLIGENT ACT OR OMISSION. IN DECIDING WHETHER THE DEFENDANT BREACHED THE DUTY OF CARE, YOU SHOULD CONSIDER WHETHER THE DEFENDANT HAS FOLLOWED THE NORMAL AND CUSTOMARY PRACTICES AND PROCEDURES IN THE INDUSTRY IN LIGHT OF DEFENDANT'S EXPERTISE AND ABILITY TO SEE AND APPRECIATE THE PROBLEM AND ITS CAUSE. IF THE DEFENDANT FAILED TO EXERCISE REASONABLE CARE FULFILLING ANY OF IT DUTIES, THE DEFENDANT WOULD BE RESPONSIBLE FOR THE INJURIES TO ANY PERSON THE DEFENDANT SHOULD EXPECT TO USE ITS PRODUCT, ASSUMING THE INJURIES HAVE BEEN PROVEN TO HAVE BEEN PROXIMATELY CAUSED BY THAT BREACH. THIS BURDEN MAY BE MET BY SHOWING THAT THE MANUFACTURER WAS AWARE OF THE DANGER AND FAILED TO TAKE REASONABLE STEPS TO CORRECT IT.

IN AN ACTION BASED ON NEGLIGENCE, THE PLAINTIFFS MUST ALSO PROVE THE PRODUCT WAS IN A DEFECTIVE CONDITION UNREASONABLY DANGEROUS TO

THE USER WHEN IT LEFT THE CONTROL OF THE DEFENDANT AND THE DEFECT CAUSED THE PLAINTIFF'S INJURIES.

CHARGE #14 DUTY OF PRODUCT MANUFACTURERS AND SELLERS

A MANUFACTURER OWES A DUTY OF CARE IN THE MANUFACTURE OF ITS PRODUCT PROPORTIONATE TO THE DANGERS INVOLVED IN THE PRODUCT'S USE. A MANUFACTURER OF A PRODUCT MAY, UNDER A PLAN OR DESIGN THAT MAKES IT DANGEROUS FOR THE USE FOR WHICH IT IS MADE, OWE A DUTY TO USE REASONABLE CARE IN THE ADOPTION OF A SAFE PLAN OR DESIGN TO THOSE USERS YOU WOULD EXPECT TO USE THE PRODUCT. A SELLER OWES THE DUTY TO CONDUCT ADEQUATE TESTS AND INSPECTIONS OF ITS PRODUCT TO DISCOVER LATENT DEFECTS OR DEFECTS THAT ARE NOT VISIBLE OR APPARENT ON A REASONABLE INSPECTION.

IF THE SELLER HAD REASON TO KNOW THE PRODUCT WAS LIKELY TO BE DANGEROUS OR DEFECTIVE, A SELLER OWES A DUTY TO EXERCISE AND USE REASONABLE CARE INSPECTING AND TESTING THE PRODUCT BEFORE SELLING IT IF A REASONABLE INSPECTION OR TEST WOULD HAVE DISCLOSED A DEFECT. A MANUFACTURER WHO INCORPORATES A DEFECTIVE COMPONENT PART INTO ITS FINISHED PRODUCT AND PLACES THE FINISHED PRODUCT IN THE STREAM OF COMMERCE IS LIABLE FOR INJURIES CAUSED BY DEFECTS IN THE COMPONENT PART.

A DEFENDANT CANNOT, HOWEVER, BE LIABLE FOR AN ALLEGEDLY DEFECTIVE PRODUCT IT DID NOT DESIGN, RECOMMEND, SPECIFY, REQUIRE, MANUFACTURE, SELL OR PLACE IN THE STREAM OF COMMERCE. IN DECIDING WHETHER THE DEFENDANT HAD A DUTY TO TEST THE PRODUCT, YOU SHOULD CONSIDER THE DEFENDANT'S ABILITY TO CONDUCT TESTS AT THE TIME THE PRODUCT WAS SOLD.

A SELLER OF A DEFECTIVE PRODUCT HAS A DUTY TO WARN USERS OF THE PRODUCT AND ANY DANGERS CREATED BY ITS PRODUCT WITH WHICH THE MANUFACTURER IS OR SHOULD BE AWARE AT THE TIME THE PRODUCTS ARE SOLD. THE SUPPLIER OF A PRODUCT WHO KNEW OR SHOULD HAVE KNOWN THAT THE PRODUCT IS OR MIGHT BE DANGEROUS DURING ITS PERCEIVABLE USE AND HAD A REASON TO BELIEVE THAT THE ULTIMATE USER WOULD NOT APPRECIATE THE DANGERS HAS A DUTY TO CLEARLY AND UNDERSTANDABLY WARN THE ULTIMATE USER OF THE DANGER.

A SELLER IS REQUIRED ONLY TO WARN ABOUT DANGERS THAT ARE UNREASONABLE OR WHICH ARE DANGEROUS BEYOND THE EXPECTATION AND GENERAL KNOWLEDGE OF THE ORDINARY PERSON WHO USES THE PRODUCT WITH THE ORDINARY COMMON KNOWLEDGE ABOUT THE PRODUCT'S CHARACTERISTICS. IN OTHER WORDS, THERE'S A DUTY TO WARN NOT WHEN SCIENTIFIC CERTAINTY IS ESTABLISHED, BUT WHEN A REASONABLE PERSON WOULD WANT TO BE INFORMED OF THE RISKS. IN DECIDING WHETHER THE DIRECTIONS OR INSTRUCTIONS OR WARRANTIES ARE ADEQUATE, YOU SHOULD CONSIDER THEIR LOCATION, LANGUAGE AND SIZE.

CHARGE #15 STRICT LIABILITY – ELEMENTS

THE SECOND THEORY I WANT TO GO OVER WITH YOU IS STRICT LIABILITY. PLAINTIFFS' CLAIMS ARE THAT DEFENDANTS, SHOULD BE HELD STRICTLY LIABLE FOR THE PLAINTIFFS' INJURIES. TO RECOVER UNDER STRICT LIABILITY, THE PLAINTIFFS MUST PROVE THREE THINGS BY THE GREATER WEIGHT OF THE EVIDENCE. FIRST, THAT THE PRODUCT WAS IN A DEFECTIVE CONDITION, UNREASONABLY DANGEROUS TO THE PLAINTIFF. SECOND, THAT AT THE TIME OF THE INJURY, THE PRODUCT WAS ESSENTIALLY IN THE SAME CONDITION AS IT WAS WHEN IT LEFT THE DEFENDANT'S HANDS. THIRD, THAT THE PLAINTIFFS WERE INJURED BY THE PRODUCT.

STRICT LIABILITY MEANS LIABILITY WITHOUT FAULT. UNDER THE LAW, THE THEORY OF STRICT LIABILITY SAYS THAT EVEN IF A DEFENDANT USED DUE CARE, THE DEFENDANT MAY STILL BE RESPONSIBLE FOR THE PLAINTIFF'S INJURIES. IN OTHER WORDS, IT DOES NOT MATTER WHETHER THE DEFENDANT WAS NEGLIGENT OR NOT NEGLIGENT. IF THE PRODUCTS WERE DEFECTIVE AND UNREASONABLY DANGEROUS WHEN THEY LEFT THE DEFENDANT'S HANDS, THE DEFENDANT IS LIABLE EVEN IF ALL REASONABLE CARE WAS USED IN MAKING AND SELLING THE PRODUCT AND EVEN IF THE PLAINTIFF DID NOT BUY THE PRODUCT FROM ANY OF THE DEFENDANTS OR ENTER INTO ANY CONTRACT WITH THE DEFENDANT. BECAUSE THE PLAINTIFFS DO NOT HAVE TO SHOW NEGLIGENCE UNDER THE THEORY OF STRICT LIABILITY, THE PLAINTIFFS MUST ONLY PROVE THE PRODUCT WAS DEFECTIVE AND UNREASONABLY DANGEROUS WHEN PLACED IN THE STREAM OF COMMERCE. YOUR FOCUS SHOULD BE ON THE PRODUCT ITSELF AND NOT ON THE CONDUCT OF THE DEFENDANT. THE DEFECT MUST EXIST AT THE TIME IT LEAVES THE DEFENDANT'S CONTROL.

THE EXISTENCE OF A DEFECT IS CRUCIAL BECAUSE A MANUFACTURER IS NOT AN INSURER AGAINST ALL RISKS OF INJURY ASSOCIATED WITH A PRODUCT. IN A PRODUCTS LIABILITY CASE AGAINST A MANUFACTURER, THE PLAINTIFFS HAVE THE BURDEN OF PROVING THAT THE PRODUCT IN QUESTION WAS DEFECTIVE AT THE TIME WHEN THE DEFENDANT HAD POSSESSION OR CONTROL OF IT OR WHEN THE PRODUCT WAS DELIVERED OR PURCHASED. THERE IS NO DUTY ON A MANUFACTURER TO FURNISH A PRODUCT THAT WILL NOT WEAR OUT. A PARTY WHO SELLS A PRODUCT IN A DEFECTIVE CONDITION, UNREASONABLY DANGEROUS, IS SUBJECT TO LIABILITY FOR PHYSICAL HARM CAUSED TO THE USER IF THE MANUFACTURER IS ENGAGED IN THE BUSINESS OF PRODUCING OR SELLING A PRODUCT AND IT IS EXPECTED TO REACH AND REACHES THE CONSUMER WITHOUT A SUBSTANTIAL CHANGE IN ITS CONDITION.

IF YOU FIND IT WAS PROBABLE THAT A USER WOULD BE INJURED BY THE PRODUCT AND THE INJURY WAS NOT REASONABLY PERCEIVABLE TO THE USER,

THE PRODUCT IS DEFECTIVE. YOU CANNOT FIND THE PRODUCT DEFECTIVE IF IT WERE ONLY POSSIBLE THAT SUCH AN INJURY WOULD OCCUR. IN DECIDING WHETHER A PRODUCT IS UNREASONABLY DANGEROUS AND DEFECTIVE, YOU SHOULD CONSIDER THE DANGERS THAT WOULD BE REASONABLY ANTICIPATED BY A TYPICAL USER OF A PRODUCT OF THIS KIND. THEN YOU SHOULD DECIDE WHETHER THE PARTICULAR PRODUCT INVOLVED IN THIS CASE HAD A TENDENCY FOR CAUSING DANGERS BEYOND THOSE THAT AN ORDINARY USER WITH COMMON KNOWLEDGE OF THE PRODUCT'S CHARACTERISTICS WOULD ANTICIPATE. YOU SHOULD ALSO CONSIDER WHETHER THE DANGERS ASSOCIATED WITH USE OF THE PRODUCT OUTWEIGH THE USEFULNESS OF THE PRODUCT, THE COSTS INVOLVED FOR ADDING THE SAFETY, THE LIKELIHOOD AND THE SERIOUSNESS OF THE INJURY AND THE OBVIOUSNESS OF THE DANGER.

MANY PRODUCTS CANNOT BE MADE COMPLETELY SAFE FOR THEIR USE. IF PRODUCTS ARE USEFUL AND DESIRABLE AND PROPERLY PREPARED AND MANUFACTURED, PACKAGED, AND ACCOMPANIED WITH ADEQUATE WARNINGS AND INSTRUCTIONS, THEY CANNOT BE SAID TO BE DEFECTIVE. THE FACT THAT A PRODUCT CAN BE MADE SAFER ALONE DOES NOT MAKE THE PRODUCT UNREASONABLY DANGEROUS. IN ORDER FOR THE DEFENDANT TO BE HELD RESPONSIBLE, THE PRODUCT MUST HAVE BEEN IN A CONDITION NOT CONTEMPLATED BY THE ULTIMATE USER, WHICH WOULD BE UNREASONABLY DANGEROUS TO THE USER WHEN THE PRODUCT WAS USED IN A FORESEEABLE MANNER, INCLUDING ANY INTENDED USE OF THE PRODUCT AT THE TIME IT LEFT THE DEFENDANT'S HANDS.

THERE ARE THREE TYPES OF PRODUCT DEFECTS: DESIGN DEFECT, MANUFACTURING DEFECT, AND WARNING DEFECT. PLAINTIFFS ALLEGE THAT DEFENDANTS' PRODUCTS HAVE ALL THREE TYPES OF DEFECTS. YOU NEED ONLY FIND ONE TYPE OF DEFECT, HOWEVER, TO FIND A DEFENDANT STRICTLY LIABLE. I WILL GIVE INSTRUCTIONS ON EACH TYPE OF DEFECT.

CHARGE # 16 STRICT LIABILITY – DESIGN DEFECT

TO PROVE DEFECTIVE CONDITION, THE PLAINTIFFS MUST FIRST PROVE THAT THE DEFENDANT SOLD THE PRODUCT, AND, AT THE TIME OF THE SALE, IT WAS UNREASONABLY DANGEROUS TO THE USER. A DEFECT DOES NOT HAVE TO BE A MANUFACTURING ERROR. WITH A DESIGN DEFECT, THERE'S NOTHING WRONG WITH THE MANUFACTURING PROCESS AND THE PRODUCT IS MADE ACCORDING TO ITS DESIGN. HOWEVER, THERE IS A FLAW IN THE PRODUCT'S DESIGN. THE PLAINTIFFS MUST PROVE THAT THE PRODUCT AS DESIGNED WAS IN A DEFECTIVE CONDITION, UNREASONABLY DANGEROUS. THE TEST IS NOT WHETHER THE PRODUCT COULD BE MADE SAFER BUT WHETHER ITS DESIGN WAS UNREASONABLY DANGEROUS.

YOU MUST BALANCE THE UTILITY OF THE RISK INHERENT IN THE DESIGN OF THE PRODUCT WITH THE MAGNITUDE OF THE RISK TO DETERMINE THE REASONABLENESS OF THE MANUFACTURER'S ACTION IN DESIGNING THE PRODUCT. A PRODUCT IS UNREASONABLY DANGEROUS AND DEFECTIVE IF THE DANGER ASSOCIATED WITH THE USE OF THE PRODUCT OUTWEIGHS THE UTILITY OF THE PRODUCT. NUMEROUS FACTORS MUST BE CONSIDERED WHEN DETERMINING WHETHER A PRODUCT IS UNREASONABLY DANGEROUS, INCLUDING THE USEFULNESS AND DESIRABILITY OF THE PRODUCT, THE COST INVOLVED FOR ADDED SAFETY, THE LIKELIHOOD AND POTENTIAL SERIOUSNESS OF INJURY, AND THE OBVIOUSNESS OF DANGER.

THE PLAINTIFF MUST ALSO PROVE THE EXISTENCE OF A REASONABLE ALTERNATIVE DESIGN. IF THE PLAINTIFF DOES NOT SHOW THAT THE DEFENDANT COULD HAVE DESIGNED THE PRODUCT IN AN ALTERNATIVE MANNER THAT WOULD HAVE ELIMINATED THE DEFECT, THE PLAINTIFF CANNOT RECOVER UNDER THE CLAIM OF DESIGN DEFECT.

CHARGE #17 STRICT LIABILITY – MANUFACTURING DEFECT

PLAINTIFFS ALSO CONTEND THAT DEFENDANTS' PRODUCTS WERE DEFECTIVELY MANUFACTURED. A MANUFACTURING DEFECT EXISTS WHEN A PRODUCT DOES NOT CONFORM TO THE MANUFACTURER'S DESIGN STANDARDS AND SPECIFICATIONS AND THE FLAW MAKES THE PRODUCT MORE DANGEROUS AND THEREFORE UNFIT FOR ITS INTENDED OR FORESEEABLE USES. THIS TYPE OF DEFECT IS NOT A DEFECTIVE DESIGN BUT DEFECTIVE EXECUTION OF THE DESIGN. WHEN A MANUFACTURING DEFECT IS CLAIMED, THE TEST OF WHETHER A PRODUCT IS OR IS NOT DEFECTIVE IS WHETHER THE PRODUCT IS UNREASONABLY DANGEROUS TO THE CONSUMER OR USER GIVEN THE CONDITIONS AND CIRCUMSTANCES THAT FORESEEABLY ATTEND USE OF THE PRODUCT.

CHARGE #18 STRICT LIABILITY –WARNING DEFECT

THE PRODUCT MAY ALSO BE DEFECTIVE IF THE DEFENDANT FAILED TO WARN OR FAILED TO PROVIDE ADEQUATE INSTRUCTIONS TO THE USER. A PRODUCT IS NOT DEFECTIVE FOR FAILURE TO WARN OF THE OBVIOUS. A SELLER IS NOT REQUIRED TO WARN WITH RESPECT TO PRODUCTS WHEN A DANGER OR POTENTIAL DANGER IS GENERALLY KNOWN AND RECOGNIZED. A PRODUCT CANNOT BE DEEMED EITHER DEFECTIVE OR UNREASONABLY DANGEROUS IF THE DANGER ASSOCIATED WITH THE PRODUCT IS ONE THAT THE PRODUCT'S USERS GENERALLY RECOGNIZE.

A PRODUCT MAY BE, BY REASON OF ITS NATURE AND USE, UNREASONABLY DANGEROUS UNLESS PROPER INSTRUCTIONS AND WARNINGS ARE SUPPLIED FOR ITS INTENDED USE. IN THOSE CASES, A SELLER OR MANUFACTURER MUST GIVE AN APPROPRIATE WARNING OF ANY DANGEROUS CONDITIONS LIKELY TO BE ENCOUNTERED. THE WARNING MUST BE ONE THAT WOULD CAUSE A

REASONABLE PERSON TO USE CAUTION PROPORTIONATE TO THE POTENTIAL DANGER.

THERE IS A PARTICULAR NEED FOR SUFFICIENT WARNING WHEN THERE IS A REPRESENTATION THAT THE PRODUCT IN QUESTION IS NOT DANGEROUS. A PRODUCT MAY BE FOUND DEFECTIVE IF THE PRODUCT IS UNREASONABLY DANGEROUS IN THE HANDS OF THE USER WITHOUT A SUITABLE WARNING. A MANUFACTURER OR SELLER IS NOT REQUIRED TO WARN ABOUT THE DEFECTS IN A PRODUCT UNLESS THE MANUFACTURER KNEW OR SHOULD HAVE KNOWN ABOUT THE DEFECTS WHEN THE PRODUCTS WERE SOLD.

CHARGE #19 IMPLIED BREACH OF WARRANTY

PLAINTIFFS' THIRD THEORY OF LIABILTY IS IMPLIED WARRANTY OF MERCHANTABILITY. IN ORDER TO RECOVER UNDER THIS THEORY, THE PLAINTIFFS MUST PROVE BY THE GREATER WEIGHT OR PREPONDERANCE OF THE EVIDENCE THE SAME FACTORS I'VE EXPLAINED TO YOU FOR STRICT LIABILITY. THE PLAINTIFF MUST PROVE BY THE GREATER WEIGHT OR THE PREPONDERANCE OF THE EVIDENCE THAT THE GOODS WERE NOT MERCHANTABLE. THAT IS, THE DEFENDANT MANUFACTURED OR SOLD A PRODUCT WHICH AT THE TIME OF THE SALE WAS IN A DEFECTIVE CONDITION, UNREASONABLY DANGEROUS TO THE USER, AND THAT THE PRODUCT WAS EXPECTED TO AND DID REACH THE ULTIMATE USER WITHOUT SUBSTANTIAL CHANGE IN CONDITION IN WHICH THE DEFENDANT SOLD IT, AND THAT THE PLAINTIFF'S INJURIES WERE PROXIMATELY CAUSED BY THE DEFECTIVE PRODUCT.

A WARRANTY IS A PLEDGE BY THE SELLER THAT THE PRODUCT IS AS IT IS REPRESENTED TO BE. AN IMPLIED WARRANTY IS ONE THAT THE LAW PRESUMES TO HAVE BEEN MADE IN EVERY SALE OF GOODS, WHETHER IT WAS ACTUALLY STATED BY THE SELLER OR NOT. THE SALE OF A PRODUCT ALWAYS CARRIES

WITH IT AN IMPLIED WARRANTY, THAT THE PRODUCT IS FIT FOR THE ORIGINAL PURPOSE FOR WHICH THE PRODUCT IS NORMALLY USED. AND THIS IS CALLED THE IMPLIED WARRANTY OF MERCHANTABILITY. THIS WARRANTY IS BASED ON THE BUYER'S REASONABLE EXPECTATIONS THAT GOODS PURCHASED FROM A MERCHANT WHO SELLS GOODS OF THAT KIND WILL BE FREE OF SIGNIFICANT DEFECTS AND WILL PERFORM IN THE WAY GOODS OF THAT KIND SHOULD PERFORM.

IN DECIDING WHETHER A PRODUCT IS SAFE FOR ITS INTENDED USE, THE PERSON WHO MAKES THE WARRANTY MUST FORESEE THE CONDITIONS UNDER WHICH THE PRODUCT WILL BE USED AND IS PRESUMED TO KNOW ABOUT THE NORMAL ENVIRONMENT THE PRODUCT WILL BE USED AND THE REASONABLY FORESEEABLE RISKS THAT ACCOMPANY SUCH USE. A WARRANTY THAT THE GOODS SHALL BE MERCHANTABLE IS IMPLIED UNDER THE CONTRACT OF THEIR SALE IF THE SELLER IS A MERCHANT WITH RESPECT TO GOODS OF THAT KIND. TO BE MERCHANTABLE, THE GOODS MUST, AT LEAST, PASS WITHOUT OBJECTION IN TRADE OR IN THE CONTRACT DESCRIPTION. IN ORDER TO RECOVER FOR THE BREACH OF IMPLIED WARRANTY OF MERCHANTABILITY, THE PLAINTIFFS MUST PROVE THE MERCHANTS SOLD THE GOODS, THE GOODS WERE NOT MERCHANTABLE AT THE TIME OF THE SALE AND THEIR INJURIES WERE PROXIMATELY CAUSED BY THE DEFECTIVE NATURE OF THE GOODS.

CHARGE #20 STATE OF THE ART

SOMETHING YOU MUST CONSIDER IN ASSESSING THE DEFENDANT'S PRODUCT AND CONDUCT IS THE STATE OF THE ART AT THE TIME THE PRODUCTS LEFT THE DEFENDANT'S HANDS. THE ISSUE OF DUE CARE AS WELL AS THE BREACH OF ANY WARRANTY MUST BE ASSESSED IN LIGHT OF THE CIRCUMSTANCES EXISTING AT THE TIME OF THE SALE. IN ORDER FOR THE PLAINTIFFS TO PROVE THEIR CASE IN A PRODUCTS LIABILITY ACTION, THEY MUST SHOW THE PRODUCTS WERE IN A DEFECTIVE CONDITION AT THE TIME IT LEFT THE HANDS

OF THE PARTICULAR SELLER. THE PRODUCT MUST BE MEASURED AGAINST THE STANDARDS EXISTING AT THE TIME OF THE SALE. STATE OF THE ART INCLUDES ALL OF THE REASONABLY AVAILABLE SCIENTIFIC KNOWLEDGE ON THE SUBJECT AT THE GIVEN TIME. THIS INCLUDES SCIENTIFIC, MEDICAL, ENGINEERING AND OTHER KNOWLEDGE THAT MAY BE AVAILABLE. STATE OF THE ART INCLUDES THE ELEMENT OF TIME, WHAT IS KNOWN, AND WHEN THIS KNOWLEDGE WAS AVAILABLE. IF A PRODUCT WAS NON-DEFECTIVE UNDER STANDARDS EXISTING AT THE TIME OF MANUFACTURE, THE MANUFACTURER DOES NOT HAVE A POST-SALE DUTY TO WARN. YOU SHOULD RETURN A VERDICT IN FAVOR OF THE PLAINTIFFS ONLY IF CONSIDERING THE STATE OF THE ART EXISTING AT THE TIME THE DEFENDANT'S PRODUCTS WERE SOLD IN A DEFECTIVE CONDITION.

CHARGE #21 CAUSATION

UNDER ANY PRODUCTS LIABITY THEORY OF RECOVERY—NEGLIGENCE, STRICT LIABIILITY, OR BREACH OF WARRANTY—THE PLAINTIFF MUST ESTABLISH THAT THE PRODUCT DEFECT WAS A PROXIMATE CAUSE OF THE INJURY SUSTAINED.

THE PLAINTIFFS MUST PROVE THAT THE PLAINTIFF'S EXPOSURE TO THE DEFENDANT'S ASBESTOS PRODUCT WAS OF SUCH FREQUENCY, REGULARITY AND DURATION THAT IT WAS A SUBSTANTIAL FACTOR IN BRINGING ABOUT THE DISEASE OR INJURY. THE MERE FACT THAT THE INJURY OR ACCIDENT OCCURRED STANDING ALONE DOES NOT PERMIT YOU TO DRAW A CONCLUSION THAT AN INJURY OR ACCIDENT WAS CAUSED BY ANYONE'S NEGLIGENCE OR BREACH OF WARRANTY OR STRICT LIABILITY.

IN A NEGLIGENCE CLAIM, THE PLAINTIFFS MUST PROVE BY THE GREATER WEIGHT, OR PREPONDERANCE, OF THE EVIDENCE THAT DEFENDANT'S NEGLIGENCE PROXIMATELY CAUSED INJURY TO THE PLAINTIFFS AND THAT THE DAMAGES SUFFERED WERE PROXIMATELY CAUSED BY THE DEFENDANT'S

BREACH OF ITS DUTY OF DUE CARE. PROXIMATE CAUSE IS CONDUCT THAT PRODUCES A NATURAL CHAIN OF EVENTS AND IN THE END BRINGS ABOUT THE INJURY. IT IS A DIRECT CAUSE OF THE INJURY.

TO PROVE A DEFENDANT'S NEGLIGENCE PROXIMATELY CAUSED THE PLAINTIFFS' INJURY, THE PLAINTIFFS MUST FIRST PROVE SOMETHING CALLED "CAUSATION IN FACT." AND THAT IS PROVEN BY SHOWING THE DEFENDANT'S NEGLIGENCE WAS A SUBSTANTIAL FACTOR IN CAUSING THE INJURY. THE PLAINTIFFS MUST ALSO PROVE SOMETHING CALLED "LEGAL CAUSE." AND THAT IS PROVEN BY SHOWING THE INJURY WAS FORESEEABLE. AND THAT MEANS THE INJURY OCCURRED AS A NATURAL AND PROBABLE CONSEQUENCE OF THE DEFENDANT'S NEGLIGENCE. THE PLAINTIFFS MUST PROVE THAT SOME INJURY FROM THE DEFENDANT'S NEGLIGENCE WAS FORESEEABLE, BUT THEY DO NOT HAVE TO PROVE THAT THE PARTICULAR INJURY THAT OCCURRED WAS FORESEEABLE. HOWEVER, A DEFENDANT CANNOT BE HELD RESPONSIBLE FOR SOMETHING THAT COULD NOT BE EXPECTED TO HAPPEN.

CHARGE #22 THERE CAN BE MORE THAN ONE CAUSE

PROXIMATE CAUSE DOES NOT MEAN THE ONLY CAUSE. THE DEFENDANT'S ACTIONS CAN BE A PROXIMATE CAUSE OF THE PLAINTIFF'S INJURY IF DEFENDANT'S CONDUCT WAS AT LEAST ONE OF THE DIRECT CAUSES OF THE INJURY. WHERE TWO OR MORE CAUSES COMBINE TO PRODUCE INJURY, A DEFENDANT IS NOT RELIEVED FROM LIABILITY FOR NEGLIGENCE BECAUSE IT IS RESPONSIBLE FOR ONLY ONE OF THE CAUSES. IT IS SUFFICIENT THAT ITS NEGLIGENCE OR FAULT IS A SUBSTANTIAL FACTOR IN CAUSING THE INJURY. CONSEQUENTLY, IF A DEFENDANT'S NEGLIGENCE IS A PROXIMATE CAUSE OF AN INJURY TO ANOTHER, THE FACT THAT THE NEGLIGENCE OF A THIRD PARTY OCCURRED WITH ITS OWN NEGLIGENCE TO PRODUCE THE HARM DOES NOT RELIEVE IT OF LIABILITY. IN SUCH CASES, EACH WRONGDOER IS IN BREACH OF

THE DUTY OF CARE OVER THE PLAINTIFFS, AND BECAUSE THE NEGLIGENCE OF EACH CONCURRED TO PRODUCE THE INJURY, THEY CAN ALL BE LIABLE.

UNDER SOUTH CAROLINA LAW, A DEFENDANT IS ENTITLED TO ASSERT THAT OTHER PERSONS OR ENTITIES, CONTRIBUTED TO THE ALLEGED INJURY OR DAMAGES. THE MATTER OF THE OTHERS' ALLEGED FAULT IN CAUSING THE PLAINTIFFS' INJURIES HAS BEEN RAISED BY THE DEFENDANTS, AND IT IS PROPER FOR YOU TO CONSIDER THE ACTIONS OF OTHERS, BUT ONLY IN SO FAR AS PLAINTIFFS HAVE MET THEIR BURDEN PROOF.

CHARGE #23– CLEAR AND CONVINCING EVIDENCE

AS I HAVE EXPLAINED TO YOU, IN EVALUATING WHETHER THE DEFENDANTS WERE NEGLIGENT, STRICTLY LIABLE, OR BREACHED AN IMPLIED WARRANTY, THE BURDEN OF PROOF IS SIMPLY THE GREATER WEIGHT OR THE PREPONDERANCE OF THE EVIDENCE.

THERE IS ONE QUESTION ON THE VERDICT FORM THAT ASKS WHETHER THE DEFENDANTS' CONDUCT WAS WILLFUL, WANTON, OR RECKLESS. TO FIND THAT A DEFENDANT'S CONDUCT WAS WILLFUL, WANTON, OR RECKLESS, THE PLAINTIFF MUST PROVE THAT BY CLEAR AND CONVINCING EVIDENCE.

THAT IS, THE EVIDENCE MUST CLEARLY AND CONVINCINGLY ESTABLISH THAT THE DEFENDANT WAS ACTUALLY RECKLESS OR WILLFUL AND WANTON, MEANING THERE WAS A CONSCIOUS FAILURE TO EXERCISE DUE CARE, OR CONSCIOUS INDIFFERENCE TO THE RIGHTS AND SAFETY OF OTHERS, OR RECKLESS DISREGARD OF THE RIGHTS AND SAFETY OF OTHERS. CLEAR AND CONVINCING IS SOMETHING MORE THAN SIMPLY THE GREATER WEIGHT OF THE EVIDENCE. IT'S SOMETHING LESS THAN BEYOND A REASONABLE DOUBT. CLEAR AND CONVINCING PROOF IS PROOF THAT LEAVES YOU FIRMLY CONVINCED.

CLEAR AND CONVINCING PROOF ESTABLISHES IN YOUR MIND NOT ONLY THAT A FACT IS PROBABLE, BUT IT IS HIGHLY PROBABLE.

CHARGE #24 ACTUAL DAMAGES--PERSONAL INJURY

IF YOU FIND THE PLAINTIFFS HAVE MET THEIR BURDEN OF PROVING AT LEAST ONE OF THREE THEORIES—NEGLIGENCE, STRICT LIABILITY, OR IMPLIED WARRANTY OF MERCHANTABILITY—BY THE GREATER WEIGHT OF THE EVIDENCE AND THAT THEIR DAMAGES WERE PROXIMATELY CAUSED BY THE DEFENDANT'S CONDUCT OR PRODUCT, THEN YOU WOULD MOVE ON TO ASSESS ANY DAMAGES. THAT IS HOW MUCH MONEY THE DEFENDANT SHOULD BE REQUIRED TO PAY. ACTUAL DAMAGES ARE DESIGNED TO COMPENSATE A PARTY FOR THEIR LOSS AND TO MAKE THAT PARTY AS WHOLE AS NEAR AS MONEY CAN DO AND TO PUT HIM OR HER IN THE SAME POSITION THEY WERE IN BEFORE THE INCIDENT OR ACCIDENT OCCURRED. ACTUAL DAMAGES INCLUDE THE ACTUAL LOSSES AND EXPENSES THE PLAINTIFFS HAVE SUFFERED BECAUSE OF THE DEFENDANTS' WRONGS. ACTUAL DAMAGES INCLUDE SEVERAL AREAS RECOGNIZED BY THE LAW.

IN PERSONAL INJURY ACTIONS, THE PLAINTIFFS MAY RECOVER FOR THE NECESSARY AND REASONABLE EXPENSES CAUSED BY THE INJURY, SUCH AS AMOUNTS NECESSARILY INCURRED FOR MEDICAL TREATMENT. A PERSON WHO SUFFERS PERSONAL INJURIES BECAUSE OF THE MISCONDUCT OF ANOTHER IS ENTITLED TO RECOVER THE REASONABLE VALUE OF MEDICAL CARE AND EXPENSES INCURRED FOR THE TREATMENT OF THE INJURIES TO THE TIME OF TRIAL AS WELL AS THOSE REASONABLY CERTAIN TO BE INCURRED IN THE FUTURE. ACCORDINGLY, A PLAINTIFF MAY RECOVER AMOUNTS INCURRED FOR PAST AND FUTURE MEDICAL CARE, INCLUDING HOSPITAL, PHYSICIAN AND NURSING CARE COSTS, MEDICINE AND OTHER OUT-OF-POCKET AND ANTICIPATED EXPENSES SUCH AS VOCATIONAL, PHYSICAL OR OTHER REHABILITATION EFFORTS.

PAIN AND SUFFERING IS ALSO RECOGNIZED AS AN ELEMENT OF DAMAGES PROPERLY CONSIDERED UNDER THE LAW. PAIN AND SUFFERING COMPENSATES PLAINTIFF FOR PHYSICAL DISCOMFORT AND EMOTIONAL RESPONSE TO THE SENSATION OF PAIN CAUSED BY THE INJURY. THERE'S NO DEFINITE STANDARD I CAN GIVE YOU TO DETERMINE THE AMOUNT OF DAMAGES. YOU, THE JURY, WILL HAVE TO USE YOUR CALM AND REASONABLE JUDGMENT TO DETERMINE THEM IN LIGHT OF YOUR OWN EXPERIENCES AND IN LIGHT OF THE TESTIMONY AND THE EVIDENCE PRESENTED IN THIS CASE.

ANOTHER FORM OF DAMAGES IS LOSS OF ENJOYMENT OF LIFE. THIS COMPENSATES A PLAINTIFF FOR LIMITATIONS ON THE ABILITY TO PARTICIPATE IN AND DERIVE PLEASURE FROM NORMAL ACTIVITIES OF DAILY LIFE. ANOTHER CATEGORY IS MENTAL SUFFERING. AND THAT IS COMPENSATION FOR SHOCK, FRIGHT, ANXIETY, EMOTION UPSET.

ACTUAL DAMAGES FOR PLAINTIFF WHO HAS BEEN PHYSICALLY INJURED INCLUDE PAIN AND SUFFERING, BOTH PAST AND FUTURE, AS WELL AS MENTAL ANGUISH. MENTAL ANGUISH IS MORE THAN MERE DISAPPOINTMENT OR ANGER OR WORRY OR EMBARRASSMENT OR RESENTMENT. ALTHOUGH IT MAY INCLUDE ALL OF THESE, IT ALSO INCLUDES MENTAL SENSATION OF PAIN RESULTING FROM PAINFUL EMOTION SUCH AS GRIEF AND WOUNDED PRIDE, SHAME, DISPARAGE, AND HUMILIATION. IT MAY BE COMPOSED OF FRIGHT, NERVOUSNESS, GRIEF, ANXIETY, AND WORRY FOR AN ORDEAL.

CHARGE #25 ACTUAL DAMAGES – LOSS OF CONSORTIUM

PLAINTIFFS ALSO CLAIM LOSS OF CONSORTIUM DAMAGES DUE TO INJURIES RECEIVED BY SARAH PLANT'S HUSBAND, PARKER PLANT. THE COMPANIONSHIP FOR SOCIETY OF A SPOUSE ARE NOT ARTICLES OF COMMERCE THAT CAN BE WEIGHED OR MEASURED OR BOUGHT OR SOLD. NO EXPERT IS COMPETENT TO

TESTIFY AS TO THEIR VALUE. THERE'S NO WAY WE CAN GO TO DETERMINE THEIR MARKET PRICE, OF COURSE, AND THE CONSIDERATION ON WHICH THEIR BASED IS NOT MONETARY, BUT PARKER PLANT IS ENTITLED TO COMPENSATION AND MONEY FOR HIS LOSS. LOSS OF CONSORTIUM INCLUDES AFFORDED SERVICES PROVIDES BY THE OTHER SPOUSE, LOVE, COMPANIONSHIP, AFFECTION, SOCIETY, SEXUAL RELATIONS, COMFORT, SOLACE, AND GUIDANCE. PLAINTIFF PARKER PLANT IS ENTITLED TO RECOVER THE VALUE OF THOSE SERVICES OF SARAH PLANT WHICH HAVE BEEN LOST, INCLUDING THE LOSS OF HER SOCIETY AND COMPANIONSHIP IN HER HOME.

CHARGE #26 - DAMAGES – FUTURE DAMAGES

NOW, IN DETERMINING THE AMOUNT OF COMPENSATION FOR SOMEONE PERSONALLY INJURED BY ANOTHER'S MISCONDUCT, IT IS PROPER TO CONSIDER PAST, PRESENT, AND FUTURE ASPECTS OF THE INJURY. THE INJURED PARTY MAY RECOVER THOSE FUTURE DAMAGES THAT ARE REASONABLY CERTAIN TO RESULT. THE PRINCIPLE UNDERLYING COMPENSATION IS THAT ONLY ONE ACTION CAN BE BROUGHT AND THEREFORE, ONLY ONE RECOVERY HAD. SO IT MAY BE, DEPENDING ON YOUR VIEW OF THE EVIDENCE, PROPER TO INCLUDE THE ESTIMATE OF FUTURE DAMAGES, FUTURE MEDICAL EXPENSES, AND PAIN AND SUFFERING THAT WILL WITH REASONABLE CERTAINTY RESULT.

THE PLAINTIFF IS NEVER ENTITLED TO RECOVER SPECULATIVE DAMAGES. THAT IS DAMAGES THAT YOU ARRIVE AT BY GUESS WORK. THE PLAINTIFF HAS THE BURDEN OF PROVING THE EXISTENCE AND THE CAUSATION AND THE AMOUNT OF DAMAGES, WHICH SHE DOES NOT HAVE TO PROVE THEM TO A MATHEMATICAL CERTAINTY. INSTEAD, THE PLAINTIFF MUST PRESENT YOU EVIDENCE THAT IS SUFFICIENT TO ALLOW YOU TO MAKE A REASONABLE APPROXIMATION OF THE DAMAGES. THAT IS, PLAINTIFF MUST PROVE THEIR DAMAGES TO A REASONABLE DEGREE OF CERTAINTY. ANY FUTURE DAMAGES YOU AWARD MUST BE REASONABLY CALCULATED TO A RESULT OF THE

ALLEGED INJURY OR DAMAGE SUSTAINED AND THEY MUST BE REDUCED TO THEIR PRESENT CASH VALUE. I WILL CHARGE THAT IN THIS CASE, SARAH PLANT IS A 36-YEAR-OLD FEMALE WITH A LIFE EXPECTANCY ACCORDING TO THE SOUTH CAROLINA CODE OF 45.80 YEARS. THIS IS A FACTOR YOU MAY CONSIDER ALONG WITH ANY OTHER FACTS AND CIRCUMSTANCES THAT MAY BEAR ON HER HEALTH AND LONGEVITY, INCLUDING HER OCCUPATION, HABITS, AND HEALTH.

CHARGE #27 JURY DELIBERATIONS

NOW, I AM THROUGH WITH MY INSTRUCTION ON THE LAW. I JUST WANT TO GIVE YOU SOME FINAL INSTRUCTIONS ON YOUR DELIBERATIONS. BEFORE WE DO THAT, I WANT TO REMIND YOU THAT YOU WERE CHOSEN IN THIS CASE NOT TO BE PARTISANS OR ADVOCATES FOR EITHER THE PLANTS OR FOR DEFENDANTS. YOU WERE CHOSEN BECAUSE ALL OF THEM BELIEVE YOU COULD BE FAIR AND REASONABLE AND YOU COULD BE A JUROR WHO CAN DECIDE THIS CASE WITHOUT ANY KIND OF BIAS OR PREJUDICE OR PARTISANSHIP. SO YOU ARE JUDGES, JUDGES OF THE FACTS. YOUR SOLE INTEREST IS TO DETERMINE THE TRUE FACTS FROM THE EVIDENCE IN THIS CASE AND TAKE THE LAW I JUST GAVE YOU AND APPLY IT TO THOSE FACTS AND YOU WILL, ULTIMATELY, BE ABLE TO REACH A VERDICT.

YOU SHOULD KNOW THAT THE RECORD IS NOW CLOSED. THERE ARE NOT GOING TO BE ANYMORE WITNESSES. THERE ARE NOT GOING TO BE ANYMORE EXHIBITS. SO, IF SOMETHING WAS REFERRED TO DURING THIS TRIAL, SUCH AS A PARTICULAR DOCUMENT, AND YOU DON’T HAVE IT BACK THERE WITH YOU AS AN EXHIBIT, I CAN’T GIVE IT TO YOU. SO, KEEP IN MIND THAT THE RECORD IS CLOSED, AND YOU HAVE TO MAKE YOUR DECISION BASED ON THE EXHIBITS YOU HAVE AND YOUR MEMORY OF THE EVIDENCE. A JURY: IF YOU LOOK UP THE WORD IN A DICTIONARY, WOULD BE DEFINED AS A COMPANY OF PEOPLE SWORN TO RENDER A TRUE VERDICT. AND THAT'S WHAT YOU’VE BEEN CALLED

UPON TO DO, TO DETERMINE THE TRUE FACTS OF THIS CASE. AND, LADIES AND GENTLEMEN, YOU EACH HAVE A VOTE IN THIS CASE. AND YOUR VOTE IS EXACTLY THAT: IT'S YOUR VOTE AND NO ONE ELSE'S. DON'T BE AFRAID TO CHANGE YOUR MIND IF THE DISCUSSION THAT YOU'RE GOING TO HAVE PERSUADES YOU THAT YOU SHOULD BECAUSE THAT'S WHAT DELIBERATIONS ARE ALL ABOUT. BUT DON'T SURRENDER AN HONESTLY AND CONSCIENTIOUSLY HELD BELIEF SIMPLY TO GET THIS CASE OVER WITH OR REACH A UNANIMOUS VERDICT BECAUSE THESE PARTIES HAVE WAITED A LONG TIME, AND THIS IS THEIR DAY IN COURT. I KNOW YOU RECOGNIZE THE IMPORTANCE OF IT TO THEM. AND WE APPRECIATE THE SERIOUSNESS AND RESPECT YOU'VE GIVEN EVERYONE INVOLVED IN THE CASE AND YOUR PATIENCE WITH US.

CHARGE #28 VERDICT FORM

THIS IS THE VERDICT FORM, SO I'M GOING TO GO OVER IT WITH YOU BRIEFLY. UNDER THE CONSTITUTION OF THIS STATE, THE JURY VERDICT MUST BE UNANIMOUS. UNANIMITY IS MANDATED. EVERY SINGLE JUROR MUST AGREE ON THE JURY VERDICT. THERE CANNOT BE ANY SPLIT OR DIVIDED VOTE IN ANY FORM OR FASHION, SUCH AS ELEVEN-TO-ONE, TEN-TO-TWO, OR NINE-TO-THREE. EVERY SINGLE JUROR MUST AGREE ON THE JURY VERDICT. WHEN THE FOREPERSON WRITES THE VERDICT AND SIGNS THE NAME AS THE FOREPERSON, THAT ASSURES THE COURT THAT THE JURY VERDICT IS UNANIMOUS.

CHARGE #29 RETIRE TO JURY ROOM

I THANK YOU ALL FOR YOUR ATTENTION TO ME AND YOUR PATIENCE WITH ME. DON'T START DELIBERATING ABOUT THE CASE UNTIL YOU RECEIVE THE EXHIBITS. THAT WILL BE YOUR SIGNAL THAT YOU CAN START TALKING ABOUT THE CASE. RIGHT NOW, BELIEVE IT OR NOT, FOR AS LONG AS I'VE BEEN TALKING, I MAY HAVE LEFT SOMETHING OUT AND IF I HAVE, THEY'LL BE QUICK TO REMIND ME. SO JUST GO BACK TO THE JURY ROOM AND WHEN YOU GET THE EXHIBITS, THAT WILL BE YOUR SIGNAL YOU CAN START DELIBERATING.

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF RICHLAND	)	FOR THE FIFTH JUDICIAL CIRCUIT
SARAH J. PLANT and PARKER PLANT,	)	**C/A NO. 2022-CP-40-1265**
Plaintiffs,	)	*In Re:* Asbestos Personal Injury Litigation Coordinated Docket
v.	)	
WHITTAKER CLARK & DANIELS AND IMI FABI et al.	)	
Defendants.	)	

RICHLAND COUNTY
FILED
2023 MAR -7 PM 3:32
JEANETTE W. WALDEN
C.C.P., G.S., & F.C.

VERDICT FORM

NEGLIGENCE

1. We, the jury, find that Defendant Whittaker, Clark & Daniels, Inc. was negligent, and its negligence was a proximate cause of Plaintiff Sarah Plant's injuries:

✓ Yes

_____ No

2. We, the jury, find that Defendant IMI Fabi (Diana), LLC, was negligent, and its negligence was a proximate cause of Plaintiff Sarah Plant's injuries:

_____ Yes

✓ No

3. We, the jury, find that Defendant IMI Fabi, LLC, was negligent, and its negligence was a proximate cause of Plaintiff Sarah Plant's injuries:.

_____ Yes

✓ No

STRICT LIABILITY

4. We, the jury, find that Defendant Whittaker, Clark & Daniels, Inc., is strictly liable for selling defective products that was a proximate cause of Plaintiff Sarah Plant's injuries:

✓ Yes

_____ No

5. We, the jury, find that Defendant IMI Fabi (Diana), LLC, is strictly liable for selling defective products that was a proximate cause of Plaintiff Sarah Plant's injuries:

_____ Yes

✓ No

6. We, the jury, find that Defendant IMI Fabi, LLC, is strictly liable for selling defective products that was a proximate cause of Plaintiff Sarah Plant's injuries:

_____ Yes

✓ No

IMPLIED WARRANTY

7. We, the jury, find that Defendant Whittaker, Clark & Daniels, Inc. breached an implied warranty in selling its products, and its breach was a proximate cause of Plaintiff Sarah Plant's injuries:

✓ Yes

_____ No

8. We, the jury, find that Defendant IMI Fabi (Diana), LLC, breached an implied warranty in selling its products, and its breach was a proximate cause of Plaintiff Sarah Plant's injuries:

_____ Yes

✓ No

9. We, the jury, find that Defendant IMI Fabi, LLC, breached an implied warranty in selling its products, and its breach was a proximate cause of Plaintiff Sarah Plant's injuries:

_____ Yes

✓ No

DAMAGES

10. If you answered "Yes" to any of Questions 1-9, please state the amount of actual damages that have been proven by the greater weight of the evidence:

$ ฿871,356 Sarah Plant's past Medical Expenses

$ ฿3,268,336 Sarah Plant's future Medical Expenses/out of pocket expenses

$ ฿20,000,000 Sarah Plant's other damages (past & future)

$ ฿5,000,000 Parker Plant's loss of consortium damages (past & future)

WILLFUL, WANTON OR RECKLESS CONDUCT

11. If you answered "Yes" to Questions 1, 2, or 3, please answer this question as to any Defendant for which you answered "Yes." We, the jury, find by clear and convincing evidence that the conduct of the following Defendants was willful, wanton, or reckless:

a. Whittaker, Clark & Daniels, Inc.

_____ Yes

_✓_ No

b. IMI Fabi (Diana), LLC

_____ Yes

_✓_ No

c. IMI Fabi, LLC

_____ Yes

_✓_ No

Foreperson

3-3-2023

Date

WC&D Talc Product Numbers In Some Cover Girl Products 1992-1998
Exhibit in *Plant*

General product type	Shade	Formula number	Date	Bates	R/M number	WC&D talc product number specified	Percentage of WC&D talc specified
Clean/Clarifying Pressed Powder	Creamy Beige	1654-47	4/27/1994	Noxell-CG-006629	1802980	Talc (141 Type)	68.52%
Clean/Clarifying Pressed Powder	Warm Beige	1654-53	4/27/1994	Noxell-CG-006630	1802980	Talc (141 Type)	68.51%
Clean/Clarifying Pressed Powder	Ivory	1654-54	4/27/1994	Noxell-CG-006635	1802980	Talc (141 Type)	69.07%
Clean/Clarifying Pressed Powder	Creamy Natural	1654-49	4/27/1994	Noxell-CG-007576	1802980	Talc (141 Type)	68.89%
Clean/Clarifying Pressed Powder	Natural Beige	1654-52	4/27/1994	Noxell-CG-007577	1802980	Talc (141 Type)	68.88%
Clean/Clarifying Pressed Powder	Creamy Light	1654-149	6/12/1995	Noxell-CG-006639	1802980	Talc (141 Type)	68.55%
Clean/Clarifying Pressed Powder	Classic Ivory	1654-155	6/12/1995	Noxell-CG-006640	1802980	Talc (141 Type)	68.95%
Clean/Clarifying Pressed Powder	Light	1654-163	9/11/1995	Noxell-CG-006641	1802980	Talc (141 Type)	69.44%
Clean/Clarifying Pressed Powder	Medium Light	1654-48	2/21/1996	Noxell-CG-006630	1802980	Talc (141 Type)	69.26%
Clean/Clarifying Pressed Powder	Buff Beige	1654-56	2/27/1996	Noxell-CG-006636	1802980	Talc (141 Type)	68.55%
Clean/Clarifying Pressed Powder	Medium Brunette	1654-51	3/4/1996	Noxell-CG-006632	1802980	Talc (141 Type)	68.13%
Clean/Clarifying Pressed Powder	Natural Ivory	1654-137	4/8/1996	Noxell-CG-006637	1802980	Talc (141 Type)	69.37%
Clean/Clarifying	Classic Beige	1654-143	4/8/1996	Noxell-CG-006638	1802980	Talc (141 Type)	68.55%

PLAINTIFF'S EXHIBIT
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Pressed Powder							

General product type	Shade	Formula number	Date	Bates	R/M number	WC&D talc product number specified	Percentage of WC&D talc specified
Clean Pressed Powder - Ethnic	N/A	1654-68	5/21/1992	Noxell-CG-006642	802980	Talc (141 Type)*	37.34%
Clean Pressed Powder - Ethnic	N/A	1654-69	5/21/1992	Noxell-CG-006643	802980	Talc (141 Type)*	40.23%
Clean Pressed Powder - Ethnic	N/A	1654-71	5/21/1992	Noxell-CG-006644	802980	Talc (141 Type)*	44.29%
Clean Pressed Powder - Ethnic	N/A	1654-73	5/21/1992	Noxell-CG-006645	802980	Talc (141 Type)*	46.55%
Clean Pressed Powder - Ethnic	N/A	1654-75	5/21/1992	Noxell-CG-006645	802980	Talc (141 Type)*	48.17%
Clean Pressed Powder - Ethnic	N/A	1654-76	5/21/1992	Noxell-CG-006646	802980	Talc (141 Type)*	47.61%
Clean Pressed Powder – Ethnic	Soft Sable	1654-68	6/10/1992	Noxell-CG-014090	1802980	Talc (141 Type)*	37.34%
Clean Pressed Powder – Ethnic	Bronze Glow	1654-69	6/10/1992	Noxell-CG-014104	1802980	Talc (141 Type)*	40.23%
Clean Pressed Powder – Ethnic	Toasted Almond	1654-71	6/10/1992	Noxell-CG-014115	1802980	Talc (141 Type)*	44.49%
Clean Pressed Powder – Ethnic	Tawny	1654-73	6/10/1992	Noxell-CG-014125	1802980	Talc (141 Type)*	46.55%
Clean Pressed Powder – Ethnic	Soft Honey	1654-75	6/10/1992	Noxell-CG-014135	1802980	Talc (141 Type)*	48.17%
Clean Pressed Powder – Ethnic	Cappuccino Cream	1654-76	6/10/1992	Noxell-CG-014145	1802980	Talc (141 Type)*	47.61%
Clean Pressed Powder – Ethnic	Soft Sable	1654-68	10/9/1995	Noxell-CG-014087	1802980	Talc (141 Type)*	37.34%
Clean Pressed	Bronze Glow	1654-69	10/9/1995	Noxell-CG-014092	1802980	Talc (141 Type)*	40.23%

Powder – Ethnic							
Clean Pressed Powder – Ethnic	Toasted Almond	1654-71	10/9/1995	Noxell-CG-014109	1802980	Talc (141 Type)*	44.49%
Clean Pressed Powder – Ethnic	Tawny	1654-73	10/9/1995	Noxell-CG-014122	1802980	Talc (141 Type)*	46.55%
Clean Pressed Powder – Ethnic	Soft Honey	1654-75	10/9/1995	Noxell-CG-014129	1802980	Talc (141 Type)*	48.17%
Clean Pressed Powder – Ethnic	Cappuccino Cream	1654-76	10/9/1997	Noxell-CG-014139	1802980	Talc (141 Type)*	47.61%
Clean Pressed Powder – Ethnic	Tawny	1654-73	10/12/1995	Noxell-CG-014119	1802980	Talc (141 Type)*	46.55%
Clean Pressed Powder - Ethnic	Soft Sable	1654-68	3/19/1997	Noxell-CG-014085	1802980	Talc (141 Type)*	37.34%
Clean Pressed Powder – Ethnic	Bronze Glow	1654-69	3/19/1997	Noxell-CG-014090	1802980	Talc (141 Type)*	40.23%
Clean Pressed Powder – Ethnic	Toasted Almond	1654-71	3/19/1997	Noxell-CG-014107	1802980	Talc (141 Type)*	44.49%
Clean Pressed Powder – Ethnic	Tawny	1654-73	3/19/1997	Noxell-CG-014117	1802980	Talc (141 Type)*	46.55%
Clean Pressed Powder – Ethnic	Soft Honey	1654-75	3/19/1997	Noxell-CG-014127	1802980	Talc (141 Type)*	48.17%
Clean Pressed Powder – Ethnic	Cappuccino Cream	1654-76	3/19/1997	Noxell-CG-014137	1802980	Talc (141 Type)*	47.61%

General product type	**Shade**	**Formula number**	**Date**	**Bates**	**R/M number**	**WC&D talc product number specified**	**Percentage of WC&D talc specified**
Clean Fragrance Free Pressed Powder	Creamy Beige	1654-90	6/29/1993	Noxell-CG-006666	1802980	Talc (141 Type)	69.15%
Clean Fragrance Free Pressed Powder	Medium Brunette	1654-95	6/29/1993	Noxell-CG-006669	1802980	Talc (141 Type)	68.75%

Clean Fragrance Free Pressed Powder	Beige	1654-99	6/29/1993	Noxell-CG-006673	1802980	Talc (141 Type)	69.46%
Clean Fragrance Free Pressed Powder	Classic Beige	1654-104	6/29/1993	Noxell-CG-006675	1802980	Talc (141 Type)	69.44%
Clean Fragrance Free/Balancing Pressed Powder	Creamy Natural	1654-93	7/8/1994	Noxell-CG-006668	1802980	Talc (141 Type)	69.52%
Clean Fragrance Free/Balancing Pressed Powder	Natural Beige	1654-96	7/8/1994	Noxell-CG-006670	1802980	Talc (141 Type)	69.51%
Clean Fragrance Free/Balancing Pressed Powder	Warm Beige	1654-97	7/8/1994	Noxell-CG-006671	1802980	Talc (141 Type)	69.13%
Clean Fragrance Free/Balancing Pressed Powder	Ivory	1654-98	7/8/1994	Noxell-CG-006672	1802980	Talc (141 Type)	69.70%
Clean Fragrance Free/Balancing Pressed Powder	Natural Ivory	1654-103	7/8/1994	Noxell-CG-006673	1802980	Talc (141 Type)	70.05%
Clean Fragrance Free/Balancing Pressed Powder	Tawny	1654-133	7/8/1994	Noxell-CG-006718	1802980	Talc (141 Type)*	16.57%
Clean Fragrance Free/Balancing Pressed Powder	Creamy Beige	1654-90	8/8/1994	Noxell-CG-014153	1802980	Talc (141 Type)	69.15%
Clean Fragrance Free/Balancing Pressed Powder	Creamy Natural	1654-95	8/8/1994	Noxell-CG-014174	1802980	Talc (141 Type)	69.52%
Clean Fragrance Free/Balancing Pressed Powder	Medium Brunette	1654-95	8/8/1994	Noxell-CG-014183	1802980	Talc (141 Type)	68.75%
Clean Fragrance Free/Balancing	Natural Beige	1654-96	8/8/1994	Noxell-CG-014204	1802980	Talc (141 Type)	69.51%

Pressed Powder							
Clean Fragrance Free/Balancing Pressed Powder	Warm Beige	1654-97	8/8/1994	Noxell-CG-014207	1802980	Talc (141 Type)	69.13%
Clean Fragrance Free/Balancing Pressed Powder	Ivory	1654-98	8/8/1994	Noxell-CG-014219	1802980	Talc (141 Type)	69.70%
Clean Fragrance Free/Balancing Pressed Powder	Buff Beige	1654-99	8/8/1994	Noxell-CG-014231	1802980	Talc (141 Type)	69.46%
Clean Fragrance Free/Balancing Pressed Powder	Natural Ivory	1654-103	8/8/1994	Noxell-CG-014243	1802980	Talc (141 Type)	70.05%
Clean Fragrance Free/Balancing Pressed Powder	Classical Beige	1654-104	8/8/1994	Noxell-CG-014255	1802980	Talc (141 Type)	69.44%
Clean Fragrance Free/Balancing Pressed Powder	Tawny	1654-133	8/8/1994	Noxell-CG-014267	1802980	Talc (141 Type)*	16.57%
Clean Fragrance Free/Balancing Pressed Powder	Light	1654-165	9/11/1995	Noxell-CG-006676	1802980	Talc (141 Type)	70.15%
Clean Fragrance Free/Balancing Pressed Powder	Light	1654-165	12/5/1996	Noxell-CG-014288	1802980	Talc (141 Type)	70.15%
Clean Fragrance Free/Balancing Pressed Powder	Light	1654-165	11/30/1996	Noxell-CG-014279	1802980	Talc (141 Type)	70.15%
Clean Fragrance Free/Balancing Pressed Powder	Creamy Natural	1654-95	3/6/1996	Noxell-CG-014171	1802980	Talc (141 Type)	69.52%
Clean Fragrance Free/Balancing	Medium Light	1654-92	2/21/1996	Noxell-CG-006667	1802980	Talc (141 Type)	69.89%

Pressed Powder							
Clean Fragrance Free/Balancing Pressed Powder	Medium Light	1654-92	3/6/1996	Noxell-CG-014165	1802980	Talc (141 Type)	69.89%

General product type	**Shade**	**Formula number**	**Date**	**Bates**	**R/M number**	**WC&D talc product number specified**	**Percentage of WC&D talc specified**
Moisturewear Pressed Powder	Ivory	1890-101	6/12/1995	Noxell-CG-007536	1802980	Talc (141 Type)	38.91%
Moisturewear Pressed Powder	Ivory	1890-111	9/11/1995	Noxell-CG-007537	1802980	Talc (141 Type)	38.02%

General product type	**Shade**	**Formula number**	**Date**	**Bates**	**R/M number**	**WC&D talc product number specified**	**Percentage of WC&D talc specified**
Eye Shadows – Spun Satin	Autumn Haze	2511-65	7/7/1992	Noxell-CG-010788	1802980	Talc (141 Type)	34.28%
Eye Shadows – Spun Satin	Candied Chestnut	2511-78	7/7/1992	Noxell-CG-010789	1802980	Talc (141 Type)	23.81%
Eye Shadows – Spun Satin	Satin Earth	2511-82	7/7/1992	Noxell-CG-010790	1802980	Talc (141 Type)	16.36%
Eye Shadows – Spun Satin	Sunkissed Sand	2511-84	7/7/1992	Noxell-CG-010791	1802980	Talc (141 Type)	20.73%
Eye Shadows – Spun Satin	Toasted Sand	2511-85	7/7/1992	Noxell-CG-010792	1802980	Talc (141 Type)	18.63%
Eye Shadows – Spun Satin	Silk Champagne	2511-89	7/7/1992	Noxell-CG-010793	1802980	Talc (141 Type)	40.07%
Eye Shadows – Spun	Cabernet	2511-102	7/7/1992	Noxell-CG-010794	1802980	Talc (141 Type)	39.79%

Satin							
Eye Shadows – Spun Satin	Rich Violet	2511-103	7/7/1992	Noxell-CG-010795	1802980	Talc (141 Type)	34.23%
Eye Shadows – Spun Satin	Prim Rose	2511-104	7/7/1992	Noxell-CG-010792	1802980	Talc (141 Type)	62.84%
Eye Shadows – Spun Satin	Lapis	2511-105	7/7/1992	Noxell-CG-010792	1802980	Talc (141 Type)	50.85%
Eye Shadows – Spun Satin	China Blue	2511-106	7/7/1992	Noxell-CG-010792	1802980	Talc (141 Type)	52.88%
Eye Shadows – Spun Satin	Seashell	2511-107	7/7/1992	Noxell-CG-010792	1802980	Talc (141 Type)	62.02%
Eye Shadows – Spun Satin	French Vanilla	2511-161	10/26/1994	Noxell-CG-010725	1802980	Talc (141 Type)	61.69%
Eye Shadows – Spun Satin	Burnished Gold	2511-163	10/26/1994	Noxell-CG-010726	1802980	Talc (141 Type)	16.82%
Eye Shadows – Spun Satin	Spiced Berry	2511-165	10/26/1994	Noxell-CG-010727	1802980	Talc (141 Type)	36.63%
Eye Shadows – Spun Satin	Frosted Raisin	2511-167	10/26/1994	Noxell-CG-010728	1802980	Talc (141 Type)	58.78%
Eye Shadows – Spun Satin	Mink	2511-169	10/26/1994	Noxell-CG-010729	1802980	Talc (141 Type)	29.12%
Eye Shadows – Spun Satin	Ballet Pink	2511-171	10/26/1994	Noxell-CG-010730	1802980	Talc (141 Type)	32.30%
Eye Shadows – Spun Satin	Tapestry Taupe	2511-173	10/26/1994	Noxell-CG-010731	1802980	Talc (141 Type)	38.65%
Eye Shadows – Spun Satin	Fresh Moss	2511-175	10/26/1994	Noxell-CG-010732	1802980	Talc (141 Type)	51.26%
Eye Shadows – Spun Satin	Indigo	2511-177	10/26/1994	Noxell-CG-010845	1802980	Talc (141 Type)	45.66%
Eye Shadows – Spun Satin	Rose Mist	2511-179	10/26/1994	Noxell-CG-010733	1802980	Talc (141 Type)	49.88%
Eye Shadows – Spun Satin	Wineberry	2511-181	10/26/1994	Noxell-CG-010847	1802980	Talc (141 Type)	32.675%

Eye Shadows – Spun Satin	Heather	2511-183	10/26/1994	Noxell-CG-010848	1802980	Talc (141 Type)	57.93%
Eye Shadows – Spun Satin	Pink Champagne	2511-184	10/26/1994	Noxell-CG-010849	1802980	Talc (141 Type)	37.53%
Eye Shadows – Spun Satin	Aqua Marine	2511-185	10/26/1994	Noxell-CG-010850	1802980	Talc (141 Type)	38.23%
Eye Shadows – Spun Satin	Lilac	2511-189	10/26/1994	Noxell-CG-010851	1802980	Talc (141 Type)	48.88%
Eye Shadows – Spun Satin	Golden Nugget	2511-193	10/26/1994	Noxell-CG-010852	1802980	Talc (141 Type)	46.10%
Eye Shadows – Spun Satin	Candlelight	2511-195	10/26/1994	Noxell-CG-010853	1802980	Talc (141 Type)	57.18%
Eye Shadows – Spun Satin	Cameo Pink	2511-197	10/26/1994	Noxell-CG-010854	1802980	Talc (141 Type)	48.26%
Eye Shadows – Spun Satin	Mocha	2511-199	10/26/1994	Noxell-CG-010855	1802980	Talc (141 Type)	51.41%
Eye Shadows – Spun Satin	Coffee	2511-201	10/26/1994	Noxell-CG-010856	1802980	Talc (141 Type)	40.53%
Eye Shadows – Spun Satin	Ginger	2511-203	10/26/1994	Noxell-CG-010857	1802980	Talc (141 Type)	41.655%
Eye Shadows – Spun Satin	Nutmeg	2511-205	10/26/1994	Noxell-CG-010858	1802980	Talc (141 Type)	50.44%
Eye Shadows – Spun Satin	Brass	2511-207	10/26/1994	Noxell-CG-010859	1802980	Talc (141 Type)	30.54%
Eye Shadows – Spun Satin	Plum Wine	3866-1	10/26/1994	Noxell-CG-010860	1802980	Talc (141 Type)	33.96%
Eye Shadows – Spun Satin	Plum Mist	3866-3	10/26/1994	Noxell-CG-010861	1802980	Talc (141 Type)	48.25%
Eye Shadows – Spun Satin	Bronze	3866-5	10/26/1994	Noxell-CG-010862	1802980	Talc (141 Type)	22.47%
Eye Shadows – Spun Satin	Light Burgundy	3866-7	10/26/1994	Noxell-CG-010863	1802980	Talc (141 Type)	32.35%
Eye Shadows – Spun	Taupe	3866-9	10/26/1994	Noxell-CG-010864	1802980	Talc (141 Type)	38.33%

Satin							
Eye Shadows – Spun Satin	Copper	3866-10	10/26/1994	Noxell-CG-010864	1802980	Talc (141 Type)	23.38%
Eye Shadows – Spun Satin	Capri Blue	2511-70	3/13/1995	Noxell-CG-010843	1802980	Talc (141 Type)	29.83%
Eye Shadows – Spun Satin	Mint Green	3866-25	8/30/1996	Noxell-CG-010734	1802980	Talc (141 Type)	39.86%

General product type	**Shade**	**Formula number**	**Date**	**Bates**	**R/M number**	**WC&D talc product number specified**	**Percentage of WC&D talc specified**
Clarifying Loose Powder	Translucent Medium	3162-16	3/24/1993	Noxell-CG-007583	1802980	Talc (141 Type)	47.52%
Clarifying Loose Powder	Translucent Light	3162-17	3/24/1993	Noxell-CG-007584	1802980	Talc (141 Type)	47.56%
Clarifying Loose Powder	Translucent Fair	3162-18	3/24/1993	Noxell-CG-007585	1802980	Talc (141 Type)	47.73%

General product type	**Shade**	**Formula number**	**Date**	**Bates**	**R/M number**	**WC&D talc product number specified**	**Percentage of WC&D talc specified**
Professional Finishing Loose Powder	N/A	2283-42	7/2/1992	Noxell-CG-014850	-802980 -801780	-Talc (141 Type) -Talc (1625 Type)	-20.83% -28.00%
Professional Finishing Loose Powder	N/A	2283-43	7/2/1992	Noxell-CG-012543	-802980 -801780	-Talc (141 Type) -Talc (1625 Type)	-14.36% -34.38%
Professional Finishing Loose	N/A	2283-44	7/2/1992	Noxell-CG-014854	-1802980 -1801780	-Talc (141 Type) -Talc (1625 Type)	-11.32% -23.33%

Powder							
Professional Finishing Loose Powder	Translucent Glow	2283-44	7/16/1992	Noxell-CG-012559	-1802980 -1801780	-Talc (141 Type) -Talc (1625 Type)	-11.32% -23.33%
Professional Finishing Loose Powder	Translucent Medium	2283-43	7/16/1992	Noxell-CG-012560	-1802980 -1801780	-Talc (141 Type) -Talc (1625 Type)	-14.36% -34.38%
Professional Finishing Loose Powder	Translucent Light	2283-42	7/16/1992	Noxell-CG-012561	-1802980 -1801780	-Talc (141 Type) -Talc (1625 Type)	-20.83% -28.00%
Professional Finishing Loose Powder	Translucent Medium	2283-43	8/30/1994	Noxell-CG-012566	-1802980 -1801780	-Talc (141 Type) -Talc (1625 Type)	-14.36% -34.38%
Professional Finishing Loose Powder	Translucent Glow	2283-44	8/30/1994	Noxell-CG-012569	-1802980 -1801780	-Talc (141 Type) -Talc (1625 Type)	-11.32% -23.33%
Professional Finishing Loose Powder	Translucent Light	2283-42	3/19/1997	Noxell-CG-014777	-1802980 -1801780	-Talc (141 Type) -Talc (1625 Type)	-20.83% -28.00%
Professional Finishing Loose Powder	Translucent Medium	2283-43	3/19/1997	Noxell-CG-014779	-1802980 -1801780	-Talc (141 Type) -Talc (1625 Type)	-14.36% -34.38%
Professional Finishing Loose Powder	Translucent Glow	2283-44	3/19/1997	Noxell-CG-014781	-1802980 -1801780	-Talc (141 Type) -Talc (1625 Type)	-11.32% -23.33%
Professional Finishing Loose Powder	Translucent Medium	2283-43	9/5/1997	Noxell-CG-012554	-1802980 -1801780	-Talc (141 Type) -Talc (1625 Type)	-14.36% -34.38%
Professional Finishing Loose Powder	Translucent Light	2283-42	12/15/1997	Noxell-CG-014827	-1802980 -1801780	-Talc (141 Type) -Talc (1625 Type)	-20.83% -28.00%
Professional Finishing Loose	Translucent Medium	2283-43	12/15/1997	Noxell-CG-014831	-1802980 -1801780	-Talc (141 Type) -Talc (1625 Type)	-14.36% -34.38%

Powder							
Professional Finishing Loose Powder	Translucent Glow	2283-44	12/15/1997	Noxell-CG-014833	-1802980 -1801780	-Talc (141 Type) -Talc (1625 Type)	-11.32% -23.33%

General product type	**Shade**	**Formula number**	**Date**	**Bates**	**R/M number**	**WC&D talc product number specified**	**Percentage of WC&D talc specified**
Loose Powder	Translucent Glow	2283-44	10/9/1995	Noxell-CG-012551	-1802980 -1801780	-Talc (141 Type) -Talc (1625 Type)	-11.32% -23.33%
Loose Powder	Translucent Medium	2283-43	10/9/1995	Noxell-CG-014807	-1802980 -1801780	-Talc (141 Type) -Talc (1625 Type)	-14.36% -34.38%
Loose Powder	Translucent Light	2283-42	3/15/1996	Noxell-CG-012556	-1802980 -1801780	-Talc (141 Type) -Talc (1625 Type)	-20.83% -28.00%
Loose Powder	N/A	N/A	9/18/1996	Noxell-CG-012577	N/A	Talc (141)	N/A
Loose Powder	N/A	N/A	2/24/1997	Noxell-CG-012773	N/A	Talc (141)	N/A

General product type	**Shade**	**Formula number**	**Date**	**Bates**	**R/M number**	**WC&D talc product number specified**	**Percentage of WC&D talc specified**
Fresh Complexion Oil Control Loose Powder	Translucent Colorless	3396-2	5/1/1992	Noxell-CG-013434	801780	Talc (1625 Type)	52.54%
Fresh Complexion Oil Control Loose Powder	Translucent Colorless	3396-1	6/26/1997	Noxell-CG-013433	801781	Talc (1625 Type) – Bulk	52.74%

EXHIBIT 70

FILE/FOLDER NAME	DESCRIPTION
01. Main Folder	
12-04-17 Gibbons-Bailey Rpt	Expert Report, R. Mark Bailey, Gibbons v. Axia Acquisition Corp., et al., 12/4/17.
2020a CV-Resume - RMB	CV, R. Mark Bailey, 2020.
Colgate's Notice of Taking Mark Bailey Depo	Defendant Colgate-Palmolive Company's Notice of Taking the Videotaped Deposition of Plaintiffs' Expert Mark R. Bailey and Request for Production of Documents, Lebrecht vs. American International Industries; Avon Products., et al., Superior Court of the State of California, County of Los Angeles, JCCP Case No. 4674, LASC Case No. BC700769, 12/4/19.
Lebrecht, Carol 9-14-18 (V8) Depo Full	Deposition of Carol A. Lebrecht, Lebrecht vs. American International Industries et al., Superiour Court of the State of California, County of Los Angeles, JCCP No. 4674, LASC Case No. BC700769, 9/14/18.
USGS 1995 Talc Resources of the US	Report, Talc Resources of the Conterminous United States, RC Greene, US Geological Survey, 1995.
Vermont Talc-Bailey Expert Opinion	Expert Report, R. Mark Bailey on Asbestos in Talc Products from the Hammondsville Mine, Vermont, 3/1/20.
02. Avon	
Avon EMP's	Work Product - Avon chart re testing.
Avon PMK Declaration- Avon sources for Cotillion	Declaration of Lisa Gallo in Support of Defendant Avon Products, Inc.'s Motion for Summary Judgment or, in the alternative, Summary Adjudication, Lebrecht, v. American International Industries, et al., Superior Court of the State of California, County of Los Angeles, JCCP Case No. 4674, LASC Case No. BC700769, 4/4/19.
Gallo, Lisa 10-29-19 (Lebrecht) Exhibit 3	Defendant Avon Products, Inc.'s Separate Statement of Undisputed Material Facts in Support of Motion for Summary Judgment Or, In the Alternative, Summary Adjudication, Lebrecht, v. American International Industries, et al., Superior Court of the State of California, County of Los Angeles, JCCP Case No. 4674, LASC Case No. BC700769, 4/4/19.
avon test methods and frequency	
74.1.10- JJ says Avon is opposed to EM bc of cost [WK AVON 5081]	Memo to FR Rolle and AJ Goudie from JP Schelz; Re: CTFA Subcommittee Task Force on Asbestos in Talc – Project No. 0503.00, 1/10/74; JNJNL61_000022309
74.9.17- IR Cant Detect Anything But Tremolite; TEM Key [WK AVON 5092]	Memo to RM Casciano from CG Christie; Re: CTFA Talc Subcommittee Meeting, 9/17/74; AV_LEBRECHT-0009228-29.
76.3.9- Avon IR Method Not As Sensitive At Low Concentrations [WK AVON 5106]	Memo to WR Chaney et al from RC Reardon; Re; Avon Screening of Talc, 3/9/76; AV_LEBRECHT-0009236-37.
76.4.13- Talc Lots Analyzed After Sent For Processing; After The Fact [WK AVON 5112]	Memo to B Woods from R Kaplan; Re: DTA Acquisition Considerations for Control Laboratory Analyses of Talc, 4/13/76; AV_LEBRECHT-0009242-44.
76.5.19- Avon Not Analyzing For Chrysotile [WK AVON 5113]	Requisition & Report, Chrysotile content DTA Tremolite by Infrared, 5/19/76; AV_LEBRECHT-0012701
76.8.23- Avon Knows Sensitivity Of Method Is Key [WK AVON 5114]	Memo to R Kaplan from RC Reardon; Re: Asbestiforms in Talc, 8/23/76; AV_LEBRECHT-0002836
76.9.21- Avon Claims To Look For Chrysotile; Not True See 76.8.23 [WK AVON 5116]	Letter to J Donovan from JJ Travers; Re: Talcs used at Avon, 9/21/76; AV_MARTINEZ_K-0002875-76; Copy attached AV_LEBRECHT-0009247-48
77.2.2- Avon Drafts Uniform Procedure For Fibrous Amphiboles [WK AVON 5118]	Memo to EF Milardo et al from RQ Cassaday; Re: Procedure Bulletin – Product Research & Development Control of Talc for Detectable Fibrous Amphiboles, 2/2/77; Attachment: Procedure Bulletin, re: Quality Control of Talc for Detectable Fibrous Amphiboles, 2/1/77; AV_JENKINS_S-0001515-20; Copy attached AV_LEBRECHT-0009263-68.
87.12.17- Avon Has Mccrone Do J4-1; Knows TEM Most Sensitive [WK AVON 5138]	Letter to W Luckewicz from RJ Hinch; Re: Talc samples using the CTFA J4-1 methodology, 12/18/87; talc samples attached; AV_JENKINS_S-0000144-46; Copy attached AV_LEBRECHT-0002369-71
91.1.14- XRD Is The Method; AVON ISNT USING IT [WK AVON 5142]	Memo to I ; Wankmueller from A Moss; Re: Asbestos in Talc, 1/14/91; AV_LEBRECHT-0003612.
92.1.15- Avon Knows Mccrone Requires 5 Fibers-not Lowest Detection Limit [WK AVON 5145]	Fax Transmittal Sheet to S Pinnisi from K Sprague re Analysis of 5500 Fibers, 1/14/92; AV_LEBRECHT-0003619-20.
92.4- TEM Most Sensitive And Avon Uses [WK AVON 5146]	Corporate statement re Asbestos in Cosmetic Talc, SC Pennisi, April 1992; AV_JENKINS_S-0000585; Copy attached AV_LEBRECHT-0011012.
94.2.23- Avon Doesnt Need To Test Every Lot [WK AVON 5148]	Memo to M Dickens from V Reardon; Re: Testing of Talcs, 2/23/94; AV_LEBRECHT-0002184-85.

1962- Avon Has Extensive Lab Resources [WK AVON 5262]	Avon Products Incorporated Annual Report, 1962.
WK AVON 5080	Memo to CS Rowland from Y Gressel; Re: Asbestos in Talc, 9/11/73; Attachment: Article, "Tracking Asbestos," Chemical Week; AV_JENKINS_S-0006041-42; Copy attached AV_LEBRECHT-0029283-84
WK AVON 5094	Memo to CS Rowland from JJ Travers; Re: CTFA Asbestos in Talc Subcommittee, 1/7/75; Meeting Notes of CTFA Talc Subcommittee, 12/19/74; AV_LEBRECHT-0012278-83.
Avon Uses Sierra Talc	
1961.6.26- Avon RI Spec Code 755 Sierra Alabama [WK AVON 5386].pdf	Ingredient Specifications, Avon Products, Inc., 6/26/61
1962-1963- Supreme 325 Talc In Pasadena Mixing Room [WK AVON 5218].pdf	B&W Photograph, Avon Pasadena Mixing Room Supreme Talc 325, 1963; Attached PageVault Authentication Sheet with Website Screenshot and Authenticating Affidavit, 03-18-19.
1971.9.23- Sierra Talc Eliminated From Baby Talc Formula [WK AVON 5004].pdf	Memo to L Copeland from HY Saad; Re: Baby Talc, 9/23/71; AV_JENKINS_S-0005836; Copy attached AV_LEBRECHT_0007478.
1971.10.1- Sierra Talc Approved For Beauty Dusts, Talcs, Finishing Powders, Pressed Face Powders [WK AVON 5005].pdf	Memo to L Richards from LB Copeland; Re: Talc (Sierra Talc) Talc (Alabama), undated; AV_JENKINS_S-0005840; Copy attached AV_LEBRECHT 0006872
1971.10.8- Correction To 10-1- Only Sierra Talc Approved As Substitute For Beauty Dusts And Talcs [WK AVON 5006].pdf	Memo to LJ Richards and VJ Carroll; Re: Talc (Sierra) – Talc (Alabama), 10/8/71; AV_JENKINS_S-0005839; Copy attached AV_LEBRECHT_0006871
sierra sales to avon 61-69	
CAMC Sales to Avon-Pasadena 1964, 1969.xlsx	Work Product - Chart re CAMC Sales to Avon-Pasadena 1964, 1969
Lamacchia Affidavit 1.17.20.pdf	Declaration of Custodian of Records for Cyprus Amax Minerals Company, Lebrecht, v. American International Industries, et al., Superior Court of the State of California, County of Los Angeles, JCCP Case No. 4674, LASC Case No. BC700769, 1/17/20.
Lebrecht- CAMC.Sierra sales to avon 61-69 [WK AVON 5399].pdf	Sierra Talc sales to Avon, 1961-1969; CAMC-Lebrecht-000001-240; Affidavit attached.
Pics of pallets [WK AVON 5400].pdf	Advertisement, Sierra Talc & Clay Co., undated; CAMC_GRAUBART-002882; AB-CYP-05-0000673.
Cotillion Formulas	
WK AVON 5019	Formula – By Batch, Product: Avon Talcs, 6/18/63; AV_LEBRECHT-0000004.
WK AVON 5020	Formula – By Percent, Product: Avon Talcs, 6/18/63; AV_LEBRECHT-0000005.
WK AVON 5021	Formula – By Batch, Product: Avon Talcs, 2505 – Cotillion Talc #56082, 11/20/64; AV_LEBRECHT-0000009.
WK AVON 5022	Formula – By Batch, Product: Avon Talcs, 2505 – Cotillion Talc #56082, 11/20/64, revised 2/1/65; AV_LEBRECHT-0000010.
WK AVON 5023	Formula – By Percent, Product: Beauty Dusts – Body Powders, For Patterson-Kelley Blender Only, 6/28/67; AV_LEBRECHT-0000001; AV_PIPES-0000067; Copy of page 2 attached AV_LEBRECHT_0028057
WK AVON 5024	Formula – By Batch, Product: Avon Talcs, For Patterson-Kelley Blender Only 2-2589-1 Cotillion #56957-E, 7/3/67; AV_LEBRECHT-0000011.
WK AVON 5025	Formula – By Batch, Product: Avon Talcs, For Patterson-Kelley Blender Only 2-2589-1 Cotillion #56957-E, 10/17/67; Copy attached AV_LEBRECHT_0000012
WK AVON 5026	Formula – By Percent, Product: Avon Talcs, For Patterson-Kelley Blender Only, 3/19/68; AV_LEBRECHT-0028060
WK AVON 5027	Formula – By Percent, Product: Avon Talcs, For Patterson-Kelley Blender Only, 3/13/69; AV_LEBRECHT-0028061.
WK AVON 5028	Percent Formula (By Weight), Product: Talc, 12/1/70; AV_LEBRECHT-0000014.
WK AVON 5029	Percent Formula (By Weight), Product: Beauty Dust, 12/7/70; AV_LEBRECHT-0000002.
WK AVON 5030	Basic Batch Formula, Product: Beauty Dust, 2-2433-1 Cotillion #58834-A, 12/7/70; AV_LEBRECHT-0000003.
CTFA.FDA	
02-19-74-CTFA minutes of task force on methodology detection of asbestos in talc_Redacted [WK AVON 5387]	Meeting Minutes, CTFA Task Force on Methodology for the Detection of Asbestos in Talc, 2/19/74.

72.5.16- Avon Tells FDA They Have Removed Tremolite Talc From Their Products [WK AVON 5060]	Memo to HT Johnson from CS Rowland; Re: Conversation with Dr. Kolbye, FDA Aerosol Talcs, 5/16/72; Draft letter attached to AC Kolbye, re: talc in aerosol products; AV_JENKINS_S-0006037; AV_JOHNSOND-0009192; Copy attached AV_LEBRECHT-0029272-73
72.11.9- Work On FDA To Postpone Lewin Results [WK AVON 5070]	Memo to CS Rowland from JJ Travers; Re: Avon Action – Asbestos in Talc – Dr. Lewin's Report and FDA, 11/9/72; AV_JENKINS_S-0004760-62; Copy attached AV_LEBRECHT0003592-94.
75.8.21- Avon Votes For Non Detect, Not .5% Amphibole Spec [WK AVON 5388]	Meeting Minutes, CTFA Standards Committee, 8/21/75.
75.8.22- Avon Cant Meet 90% Purity Standard; Definition Must Be Acceptable To Industry [WK AVON 5101]	Memo to CS Rowland et al from RC Reardon; Re: More on the Talc Controversy, 8/22/75; Copy attached AV_LEBRECHT-0029297
76.3.11- Avon Knows FDA Lacks Legal Authority Man Power And Money To Protect Public [WK AVON 5107]	Article, "Talc Tests Wanting, FDA Experts Admit," J Walcott, Record, 3/11/76; AV_JENKINS_S-0006206; Copy attached AV_LEBRECHT-0006595
76.3.12- Avon Tells CTFA Its All Negative Since 73 [WK AVON 5108]	Letter to N Estrin from JJ Travers; Re: results of analyses, 3/12/76; AV_JENKINS_S-0003729; Copy attached AV_LEBRECHT-0016035.
94.6.13- Dont Attribute Info To FDA As From Avon [WK AVON 5149]	Memo to SD Gettings from L MacEachern; Re: Request for Information by FDA, 6/13/94; AV_RODRIGUEZN-0000841; Copy attached AV_LEBRECHT-0012597
1974.02.19 CTFA minutes - IR method needs further eval (last page) [WK AVON 5389]	Memo to RE Norwood from HD Stanley; Re: CTFA Sub-Committee; Talc Analysis Methodology, 2/22/74; PFI_KA_00000603-11.
1974.08.14 CTFA minutes - Avon can detect 0.75 trem with IR, but test is specific [WK AVON 5390]	Meeting Notes of CTFA Talc Subcommittee, 8/14/74; PFI_KA_00000879-85.
WK AVON 5109	Memorandum of Meeting between FDA Representatives and Industry Representatives; Re: Asbestos in Talc, 3/15/76; AV_JENKINS_S-0003944-46; Copy attached AV_LEBRECHT-0020528-30.
WK CTFA 5061 [WK AVON 5391]	Meeting Minutes, CTFA Talc Task Force, 3/11/76; QE-CPC2-0000036-39.
WK CTFA 5065 [WK AVON 5392]	Meeting Minutes, Talc Subcommittee, 3/15/76.
WK_FDA_5034 [WK AVON 5109]	Memo of Meeting between FDA Representatives and Industry Representatives; Re: Asbestos in Talc, 3/15/76; FDA_WKP_005597-99; Attached Authentication
grantham-sierra	
68.8.15- Fibrene C-400 is all grantham [WK AVON 5393]	Data re Grand Island Products, United Sierra Division, Cyprus Mines Corporation, 8/15/68
89.4.12- Atty Interview W Smith, Desert Minerals EE [WK AVON 5335]	Memo to H Marsh from RL Goodbinder; Re: Interview of April 7, 1989 with Earl B Smith, 4/12/89; CRMC-JM-Talc-000003-26.
CMAX 2006 RFP- Sierra 325 DV Link [WK AVON 5394]	Cyprus Amax Minerals Company's Third Amended Responses to Plaintiffs' Request for Production of Documents, Set One, Morgan vs. Acco-Air Conditioning Company Inc., et al., Superior Court of the State of California, County of Alameda, Case No. RG 04 161970, 9/5/06
Cyprus Amax Minerals Company - 1st Set of Discovery Responses (Smith) [WK AVON 5337]	Defendant Cyprus Amax Minerals Company's Objections and Responses to Plaintiffs' First Request for Production Directed to Defendant, Smith vs. Alcatel-Lucent, Circuit Court Third Judicial Circuit, Madison County, Illinois, Cause No.: 16 L 295, 7/14/16; Exhibits attached; CAMC_Phyllis_Smith_000001-1235.
Cyprus_AMAX_Minerals_Third_Amended_Resp_to_Pltfs_RPD_Set_One_in_re_Morgan,_Linda_(Robert)	Cyprus AMAX Minerals Company's Third Amended Responses to Plaintiffs' Request for Production of Documents, Set One, Morgan vs. Acco-Air Conditioning Company Inc., et al., Superior Court of the State of California, County of Alameda, Case No. RG 04 161970, 9/6/06; Exhibits attached.
JJ Doc- CTFA testing committee- asbestiform tremolite found in Cyprus Supreme 200 [WK AVON 5395]	Memo to G Sandland from FR Rolle; Re: Results of Round Robin Analysis Using Proposed CTFA "Cookbook" Procedures for the Detection of Asbestos in Talc, undated; J&J-0100320-22; JNJ 000308074-76.
Paramentier Cyprus Article 1979- asb minerals in various talcs VT NC and CA included [WK AVON 5396]	Article, "Cosmetic talc properties and specifications," RW Grexa and CJ Parmentier, Cosmetics & Toiletries Vol. 94, February 1979; AV_LEBRECHT-0006795-99.
RJLG testing of Grantham-Lamar sample	Affidavit of Richard S. Lamar, 1/8/08; Attachment: Letter to MH Bailey from DR Van Orden; Re: Mineral Analysis of Talc Ore RJ Lee Group Project No. LLH609728, 11/1/06.
Sanchez Final Report LLH211687	Letter to J Ruff from MS Sanchez; Re: RT Vanderbilt - Ganoe Case, RJ Lee Group Project Number LLH211687, 2/7/13.
Undated- C-400 is an industrial talc [WK AVON 5397]	Cyprus Product/Application, Industrial, undated; 05121629; AB-CYP-10-000055.

Undated- Sierra talc is from DV- tremolitic fibrous talc [WK AVON 5398]	Advertisement, Sierra Talc & Clay Co., undated; CAMC_GRAUBART-002882; AB-CYP-05-0000673.
govt reports	
1964 USGS Talc Resources of the US	Geological Survey Bulletin 1167, "Talc Resources of the United States," AH Chidester et al., 1964.
1976_Cal Div of Geology & Mines [WK AVON 5339]	Special Report 125, "Mines and Mineral Deposits in Death Valley National Monument, California," JR Evans et al., California Division of Mines and Geology, 1976; PFI_GIBB_00000247-306.
1978_National Park Service Report [WK AVON 5340]	Special Report on Talc Resources A Supply an Marketing Study, C Wendel, Mining and Minerals Division, United States Department of the Interior / National Park Service, 1978; PFI_GIBB_00000097-149.
1978_NPS Report to Congress [WK AVON 5341]	Report to the Congress of the United States, "Environmental Consequences of Mineral Extraction: Death Valley and Organ Pipe Cactus National Monuments," August 1978; PFI_GIBB_00000359-418.
USGS-1964 [WK AVON 5342]	Geological Survey Professional Paper 494-A, "Stratigraphy and Structure Death Valley, California," CB Hunt and DR Mabey, 1966.
USGS-2004 [WK AVON 5343]	Geological Survey, "A USGS Study of Talc Deposits and Associated Amphibole Asbestos Within Mined Deposits of the Southern Death Valley Region, California," BS Van Gosen et al., 2004.
USGS-2011 [WK AVON 5344]	Geological Survey, "Reported Historic Asbestos Mines, Historic Asbestos Prospects, and Other Natural Occurrences of Asbestos in California," BS Van Gosen and JP Clinkenbeard, 2011.
jifsan	
Asbestos-Meeting-Transcript-Breakout-Session-C [WK AVON 5345]	Transcript, Session C – Interpretation of Testing Data, "Asbestos in Talc," Moderator: Matthew Sanchez, 11/28/18.
JIFSAN Symposium Asbestos in Talc Main Session Transcript 11282018 [WK AVON 5346]	Transcript, "JIFSAN Symposium Asbestos in Talc Main Session," Conducted by Catherine Sheehan, 11/28/18.
Talc_Van-Gosen [WK AVON 5347]	Presentation, "The Mineral Fibers of Potential Concern in Talc," B Van Gosen, US Geological Survey, undated.
Mulryan	
MULRYAN, HENRY 20160120 VOL 1 - Detail PDF	Page Lines, Henry Mulryan 1/20/16 Deposition.
MULRYAN, HENRY 20160816 VOL 1 - Summary PDF	Page Lines, Henry Mulryan 8/16/16 Deposition.
Mulryan_Henry_01-14-09_Barker__Imerys_Talc	Henry Mulryan 1/14/09 Deposition
others warned	
74.7.8- JM Warns [WK AVON 5348]	Memo to RB Von Wald from H Kranich; Re: Talc Labeling Letter, 7/8/74; Attachment: Final Draft of Customer Letter from HR Keefe, 7/26/74; CRMC-Talc-Mivro-000085-87.
74.10.15- JM Warns, loses business [WK AVON 5349]	Memo to Labeling Review Committee from EM Fenner; Re: Labeling Review Committee Meeting, 10/15/74; Attachments: Caution Labels; Memo to PA Martinson et al. from HR Keefe; Re: Talc Label, 9/20/74; Memo from HR Keefe; Re: Caution Labels, undated; Memo to WR Goodwin et al. from P Kotin; Re: Talc Labeling, 11/7/74; Affidavit; CRMC-Talc-Micro-000062-69.
74.10.25- JM Memo re Labeling Desertalc Products [WK AVON 5350]	Memo to RP Carter from PA Martinson; Re: Labeling Desertalc Products, 10/25/74; CRMC-MAD-000315.
75.3.20- JM Fx of labelnig over last 3 years [WK AVON 5351]	Memo to PA Martinson from RS Lamar; Re: An Assessment of the J-M Position with Talc, 3/20/75; Affidavit; CRMC-Talc-Micro-001835-39.
75.3.20- JM losing biz due to labeing; cant remove tremolite [WK AVON 5352]	Memo to DB Tash from RK Comann; Re: Talc Quality and Plans, 3/31/75; Affidavit; CRMC-Talc-Micro-001833-39.
1975_12_31_Pfizer Internal Memo [WK AVON 5353]	Monthly Report – Testing, HD Stanley, 1/31/75; 0009168-73; PFI_SEL_00004393-98.
1980_04_18_Pfizer labeling statements [WK AVON 5354]	Memo to PR Saueracker from DG Brant; Re: California CP Talc Asbestos Regulation, 4/18/80; PFI_SEL_00000401-404.
1985_MSDS CP Talcs [WK AVON 5355]	Material Safety Data Sheet, California Talc, Pfizer Inc., 1985.
1987_03_05_Pfizer Memo [WK AVON 5356]	Memo to PR Saueracker from DG Brant; Re: Current Labelling Program at Victorville – History and Rationale, 3/5/87; PFZ00162_002795; PFI_GIBB_00000999.
JM Memo re Labeling Desertalc Products 10-25-74 [WK AVON 5350]	Memo to RP Carter from PA Martinson; Re: Labeling Desertalc Products, 10/25/74; CRMC-MAD-000315.
Never Rejected A Lot	
78.4.10- As Of 78, No Lots Rejected [WK AVON 5124]	Letter to GH Foster from RW Cassaday; Re: Talc Receipts, 4/10/78; AV_JENKINS_S-0000683; Copy attached AV_LEBRECHT-0011152

Supplier Reliance	
WK AVON 5058	Memo to CG Christie from RA Arzapalo; Re: Revised Specifications for Talcs, 3/29/72; AV_JENKINS_S-0000060; Copy attached AV_LEBRECHT_0006028
WK AVON 5063	Memo to CG Christie from RA Arzapalo; Re: Visit to Whittaker, Clark & Daniels on Talc Specifications, 7/10/72; AV_LEBRECHT-0006029-30
testing	
69.5.20- Tremolite and antho in Grantham talc	United Sierra Report; Re: Grantham Talc Pieces Obtained in Mine 3/25/69 and other Samples 4/29/69, Report No. 3790-16, 5/20/69.
1956.2.29- Battelle Evals lots of CA talc mines, finds tremolite in almost all [WK AVON 5401]	Summary Report, "An Investigation of Selected Talc Deposits of the United States," to Johnson and Johnson, by CB Sclar et al., Battelle Memorial Institute, 2/29/56;
1969.9.12- US Selling DV, Montana [WK AVON 5036]	Laboratory Report, Report No.: 6790-15, re: Surgace areas of talc products and milling, 9/12/69; AV_LEBRECHT-0009650-51; CAMC_Phyllis_Smith_000099-100.
1971.4.20- Avon Considering Desert Talc From [WK AVON 5033]	Memo to GA SPrott from JJ Travers; Re: Talc – Samples from Gratham Mines, 4/20/71; AV_JENKINS_S-0005162; Copy attached AV_LEBRECHT_0006087
1971.8.9_Johns-Manville tremolite in grantham Letter [WK AVON 5357]	Memo to FD Richards from S Speil; Re: Tremolite in Grantham Talc, 8/9/71; Affidavit; CRMC-WK-Pfizer-Micro-000057-59.
1971.8.31- 755, 761, 768, 810 US finds tremolite [WK AVON 5039]	Letter to JJ Travers from LD Murino; Re: talc testing, 8/31/71; AV_JENKINS_S-0006019-21; Copy attached AV_LEBRECHT_0029250
1971.9.2- Pooley finds tremolite in Grantham STS [WK AVON 5333]	Report, "Electron Microscope Examination of the Grantham Talc Sample, from Johnson and Johnson," FD Pooley, 9/2/71; JNJ 000090050
1971.10.4- Supreme 325 is Code 755; 2% tremolite [WK AVON 5040]	Memo to GA Sprott from JJ Travers from Asbestos and Talc, 10/4/71; Attachments: Part 1 – Asbestos as a Carcinogenic Hazard; Article, "Getting to Grips with Asbestos," Articles of General Interest, undated; Part 2 – Analysis of Avon's Talcs; AV_JENKINS_S-0006012-18; Copy attached AV_LEBRECHT_0029250-52
1971.11.8- No Need To ChAnge talc standards [WK AVON 5042]	Memo to JJ O'Neill from RS Wilsher; Re: Meeting on Talc Specifications, 11/8/71; AV_LEBRECHT-0012834
1971.12.3- Discontinue Sierra 755, Desertalc, Canadian; continue alabama [WK AVON 5044]	Memo to CS Rowland from HY Saad; Re: Talc – Supply and Asbestos Situation, 12/3/71; Attachment: Composition by X-ray Diffraction; AV_JENKINS_S-0005228-31; Copy attached AV_LEBRECHT_0006187-90.
1972.1.3- Code 765 (sierra- grantham) has 20-25% tremolite [WK AVON 5046]	Memo to JB Ward from JJ Travers; Re: Talc Analysis – 0765, 1/3/72; AV_JENKINS_S-0002684-86; Copy attached AV_LEBRECHT_0012534; 12537-38
1972.1.26- Sierra Hot; May Cause Lung Cancer [WK AVON 5047]	Memo to J Heinlein from EG Shay; Re: United Sierra Talc – Code 0777, 1/26/72; AV_LEBRECHT-0013257
1972.2.1- Desert Talcs Hot [WK AVON 5048]	Memo to RS Wilsher from A Leardi; Re: Monthly Activities Report – January 1972, 2/1/72; AV_JENKINS_S-0005035-37; Copy attached AV_LEBRECHT_0005358-60
1972.2.18- Code 765 replaced bc high tremolite content [WK AVON 5049]	Memo to SN Zia and LB Copeland from HY Saad; Re: W. S. Talc 0765 Replacement, 2/18/72; AV_JENKINS_S-0002687-88; Copy attached AV_LEBRECHT_0012543-44.
1972.2.25- Code 765 W.S. Talc 20% tremolite- needs to be replaced [WK AVON 5053]	Memo to LB Copeland from H Dolan; Re: W.S. Talc, 2/25/72; AV_JENKINS_S-0002696; Copy attached AV_LEBRECHT_0012596
1972.2.29- FDA Schulze results for Avon tai winds- 10-20% tremolite asbestos [WK AVON 5051]	Memo to RM Schaffner from A Weissler; Re: Asbestos Content of Dr. Kolbye's sample of Avon Tai Winds Spray Talc, 2/29/72; Analytical Worksheet attached; AV_JENKINS_S-0003914-15; Copy attached AV_LEBRECHT_0022733-34
1972.3.14- Desert Talcs Hot [WK AVON 5054]	Memo to WR Chaney from CS Rowland; Re: Tremolite in Talc Program, 3/14/72; AV_JENKINS_S-0000058-59; Copy attached AV_LEBRECHT_0009219-20
1972.3.27- US Testing Grantham Hot [WK AVON 5056]	Laboratory Report, Report No.: 3790-16; Re: Several hard lumps of Grantham Talc from Car UP-108233 shipped to Bay Street Mill on 2/29/72, 3/27/72; AV_LEBRECHT-0009878; CAMC_Phyllis_Smith_000073.
1972.3.28- 755 alabama and 768 NC hot tremolite; discontinued all hot [WK AVON 5057]	Memo to CS Rowland from JJ Travers; Re: Asbestos and Talc – FDA Position, 3/28/72; AV_JENKINS_S-0006031-35; Copy attached AV_LEBRECHT_0029265-69
1972.4.21- Lewin confirms Schulze finding of tremolite in avon tai winds [WK AVON 5052]	Memo to AC Kolbye from A Weissler; Re: Asbestos Contents of Dr. Kolbye's Sample of Avon Tai Winds Spray Talc, 4/21/72; Worksheet attached; AV_JENKINS_S-0003918-
1972.5.17_Pfizer CA talcs contain tremolite [WK AVON 5359]	Memo to WM Stephenson from RE Norwood; Re: Tremolite Content of Montana and Selected California Talcs, 5/17/72; PFI_SEL_00005930.
1972.6.5- Avon eliminated talc codes due to high asbestosforms content [WK AVON 5061]	Memo to GA Scott from JJ Travers; Re: Talc – Colorado School of Mines Research Institute Visit, 6/5/72; AV_JENKINS_S-0002588-89; Copy attached

1972.6.19- only domestic source that meets asbestos requirement is Code 768 NC 2450 [WK AVON 5062]	Memo to GA Sprott from JJ Travers; Re: Long Range Plans for a Source of Good Talc, 6/19/72; AV_PIPES_0008070-72; Copy attached AV_LEBRECHT_0011803-05.
1972.8.8_JM desertalc cant meet OSHA asb regs [WK AVON 5360]	Memo to PA Martinson from EB Smith; Re: OSHA, 8/8/72; CRMC-Talc-Micro-004943-44; Affidavit attached.
1972.8.14- CTFA Mtg re Lewin- Avon 2 talcs have asb, also JJ and others [WK AVON 5064]	Meeting Minutes, CTFA/FDA Meeting – August 11, 1972; Re: Asbestos Forms in Talc, 8/14/72; AV_JENKINS_S-0006261-63; Copy attached AV_LEBRECHT_0029399-401.
1972.8.17- Desert Talc Hot Mccrone [WK AVON 5066]	Letter to I Stewart from DR Zirpoli; Re: Avon's Tai Winds Spray Talc, 8/17/72; Attachments: Letter to D Zirpoli from IM Stewart; Re: Tai Winds and Desert Talc, 9/15/72; Examination of Talcum Powder Samples – Avon Products, Inc., Walter McCrone Associates, inc.; Letter to IM Stewart from DR Zirpoli; Re: Tai Winds Spray, 10/3/72; Letter to D Zirpoli from IM Stewart; Re: Tai Winds Talc, 10/27/72; Avon-MA02803-0014; Copy attached AV_LEBRECHT-0010048; 43-46; 49; 42
1972.9.1- JM says Grantham has tremolite [WK AVON 5358]	Memo to GL Swallow from EJ Bulava; Re: Grantham Talc Samples, 9/1/72; Data Sheet re Grantham Talc Samples attached; Affidavit; CRMC-Talc-Micro-001869-70.
1972.10.1- Supreme 325 from DV- keeler mill [WK AVON 5402]	Talc Price List, United Sierra, 10/1/72; CAMC-Phyllis_Smith_000158-64; AV_LEBRECHT-0009879-85; 05273004-10.
1972.10.19- NIOSH finds asb in air in walkthrough of Avon OH [WK AVON 5068]	Walkthrough Survey of Avon Products, Inc. conducted by: JM Dement et al., National Institute for Occupational Safety and Health, 10/19/72; AV_JENKINS_S-0004491-501;
1972.12.19- WCD says italian talc has tremolite, cant seperate out [WK AVON 5073]	Memo to CS Rowland from EG Shay/JJ Travers; RE: Talc Status Report, 12/19/72; AV_JENKINS_S-0002162-66; Copy attached AV_LEBRECHT-0007705-08
1972_Grantham Proposition (Johns Manville) [WK AVON 5336]	Report, "Grantham Proposition," Celite Division Johns-Manville Products Corporation, January 1972; Affidavit; CRMC-WK-Pfizer-Micro-000166-78.
1973- FDA and Lewin find 15% tremolite in Avon tai winds [WK AVON 5032]	Report, "Summary and Comments on Analyses for Asbestos in Cosmetic Talc Products," undated; AV_JENKINS_S-0004000-03; Copy attached AV_LEBRECHT_0021073-76
1973.1.10- JM Testing of grantham [WK AVON 5361]	Report No. 414-T-2, "Quantitative Measurement of Fibrous Tremolite in Talc Matrix by X-Ray Diffraction," JP McGourty and VE Wolkodoff, 1/10/73; Affidavit; CRMC-Talc-Micro-001617-21
1973.2.16- mccrone finds tremolite in 2 of 3 avon samples [WK AVON 5228]	Data, Avon – talc analysis, 2/16/73; AVON-MA03143-0663; affidavit attached.
1973.03.21 Pfizer found high tremolite content in C-400, desertalc talc MTI 229-230	Product Applications Bulletin No. 67, re: OSHA Regulations on Talc, 3/21/73; Booker-MTI000229-230
1973.4.6- 747 italian and 815 alabama have tremolite asb XRD and OM [WK AVON 5075]	Analytical Research Laboratory Requisition & Report, Product: 2 Avon Coded Talcs & J&J Baby Powder Talcs – and Mennen Bath Talc, Project No. 50003, 4/6/73; AV_JENKINS_S-0002464-65; Copy attached AV_LEBRECHT-0010390-91
1973.4.19- mccrone finds 1% equant tremolite in avon sample [WK AVON 5230]	Data re Talc #224, MA Project 3143 Avon Products Inc., 4/19/73; AVON-MA03143-0674.
1973.6.5- JM tells EPA their talc workers are exposed to tremolite [WK AVON 5334]	Letter to S Zwicker from RF Bassett; Re: talc ore containing small percentages of tremolite, 7/5/73; Affidavit; CRMC-Talc-Micro-004757
1973.8.3- Mccrone finds Equant, elongate and rod tremolite in avon chinese talc [WK AVON 5236]	Data re Chinese Talc, Haichen #1, 325, MA Project 3143, Avon Products Inc., 8/3/73; AVON-MA03143-0515; affidavit attached.
1973.8.8- Discontinued codes had 10-15% tremolite; 755 (AL) 1-2% tremolite [WK AVON 5078]	Luckewicz; Re: Asbestos (Tremolite) in Talcs by IR – Status Report, 8/8/73; AV_JENKINS_S-0000062-64; Copy attached AV_LEBRECHT-0012362-65
1973.9.14- Asb In Current Codes; talian, alabama, NC, montana all hot [WK AVON 5082]	Memo to JO Anderson from JJ Travers; Re: Talc, 9/14/73; Attachment: Summary of information on talc; AV_JENKINS_S-0006043-47; Copy attached AV_LEBRECHT-0029286-90
1973.9.18- JJ and Avon	Memo to WH Ashton from DR Petterson; Re: Microbial problems in talc, 9/18/73; JNJAZ55_000006200-01
1973.10.29 Manville study; italian, VT, montana, CA all hot [WK AVON 5369]	Report No. 414-3 re Good Manufacturing Practices regulation, 10/29/73; MTC 000563-91.
1973.12.7- mccrone finds tremolite in 2 of 4 samples [WK AVON 5231]	Data re Avon talc, tremolite fibers, 12/7/73; AVON-MA03143-0801; affidavit attached.
1973.12.12- mccrone finds 1% equant tremolite in avon sample [WK AVON 5232]	Data re Talc #337, MA Project 3143, Avon Products Inc., 12/12/73; AVON-MA03143-0783; affidavit attached.
1974.1.11- 765 (discontinued) and 755 (old sample) contain 10% tremolite [WK AVON 5088]	Laboratory Notebook No. 2819, W Luckewicz, 11/14/73; Attachment: Project No. 50007, Book No. 2819;, "Talcs – Approved for Avon," 1/11/74; AV_LEBRECHT-0002070-74; 89
1974.1.16- confirm 1.11 results re 765 and 755 [WK AVON 5089]	Analytical Laboratory Requisition & Report, Project No. 5007, Sample & Supplier: Talcs – Approved for Avon Use, 1/16/74; AV_LEBRECHT-0011814

1974.3.14- mccrone finds possible tremolite, chrysotile in 2 avon samples [WK AVON 5229]	Handwritten notes re Avon #3143, Talc #354, Talc #359, RJ Hirsch, 3/14/74; AVON-MA03143-0766; affidavit attached.
1974.7.2- JM workers at LA talc plant exposed to AF's [WK AVON 5362]	Memo to W VanDerbeek from WB Reitze; Re: Los Angeles Talc Plant, 7/2/74; Affidavit; CRMC-Talc-Micro-001927
1975 Cyprus Grantham Action Plan- WK PZ 5206 [WK AVON 5403]	Report, "Vanderbilt-Grantham Action Plan Asbestos-Talc Study," Project No. 9790-4, Cyprus Industrial Minerals, 4/11/75; CAMC-Abbott-000247-346; 05210003-89.
1975.1.31- 747 (italian) has 5% tremolite [WK AVON 5095]	Raw Material Analytical Report, Re Talc A85, Code No. 747, 1/31/75; AV_PIPES_0003485; Copy attached AV_LEBRECHT-0007406
1975.3.26- chrysotile in 747 (italian) [WK AVON 5097]	Lab Notebook, Book No. 2447, Project No. 50003, re: Talcs 4 Samples, 3/26/75; AV_LEBRECHT-0028163
1975.5.14- 1.5-2% tremolite in 747 (italian) [WK AVON 5098]	Raw Material Analytical Report, Talc – Italian, 5/14/75; AV_LEBRECHT-0013547.
1975.10.23_Fiber bundles [WK AVON 5363]	Memo to RE Goodell from HD Stanley; Re: Routine Evaluation of California CP Talcs – August Samples, 10/23/75; PFI_SEL_00000022-27.
1975.76- small amt tremolite in Alabama code 755 [WK AVON 5031]	Handwritten Note, "Talcs from England," Ref 3412-35, ATN22077, undated; AV_JENKINS_S-0002101.
1976- Lewin, Schulze and others results- Asb in avon talcs [WK AVON 5102]	Memo to RJ Eiermann from RL Yates; Re: Tabulated Results of DCST's Analyses for Asbestos Minerals in Lewin, Field Activity Surveillance (PAS), Investigational and Consumer Cosmetic Talc Products, 1/7/76; Data attached; AV_JENKINS_S-0003714-25; Copy attached AV_LEBRECHT-0015974-85.
1976.3.18_CF talc data [WK AVON 5364]	Memo to RG Parikh from HD Stanley; Re: Analysis of Various California Fibrous Talcs, 3/18/76; micrographs attached; PFZ01162_021832-52.
1976.6.16- Mccrone finds antigorite in 755 (alabama) talc [WK AVON 5115]	Letter to W Luckewicz from LB McCrone; Re: Six talc samples, 9/3/76; data attached; AV_LEBRECHT-0002777-83.
1976.9.2_Pfizer Internal Memo [WK AVON 5365]	Memo to JP Bartels from RE Norwood; Re: Visit to Johns-Manville, 9/2/76; data attached; PFI_ABE_00006027-31.
1976.12.6- Tremolite in 756 talc [WK AVON 5117]	Requisition & Report, Code No. 0756-E, Sample: Talc, 12/6/76; AV_LEBRECHT-0012018.
1977 NIOSH- Trem in VT, Cyprus CA [WK AVON 5404]	Report, "Analysis of Talc by X-Ray Diffraction and Polarized Light Microscopy," McCrone Associates, Inc., prepared for National Inst. For Occupational Safety and Health, May 1977; INTERNET_AVON-0000009-103; AV_LEBRECHT-0027923-28017
1977.6.1- AJN22948 contains fibrous tremolite [WK AVON 5121]	McCrone testing of Avon AJN-22948, 6/1/77; AVON-MA03143-0332; Copy attached AV_LEBRECHT-0010131
1977.11.7- Mccrone finds fibrous tremolite in PQ-17 sample [WK AVON 5238]	Data re Talc Pq-17, MA Project 3143, Avon Products Inc., 11/7/77; AVON-MA03143-0256; affidavit attached.
1977.12.15	Data re Talc AJN 22877, MA Project 3143, Avon Products Inc., 12/15/77; AVON-MA03143-0282; affidavit attached.
1977.12.16- AJN22877 1% tremolite 80% of which is fibrous [WK AVON 5122]	Letter to W Luckewicz from RJ Hinch; Re: asbestos talc samples AJN22435, 22877, 2926, 24786, 24787, 25445, and 26250 using CTFA j4-1 procedure, 12/16/77; Sample sheets attached; AV_JENKINS_S-0000307-14; Copy attached AV_LEBRECHT-0002669-76.
1977.12.29- AJN22877 is 747 code talc [WK AVON 5123]	Memo Charles Hahn from W Luckewicz; Re: Talc AJN 22877 – Code 0747 – Japan Naigai, 12/29/77; AV_PIPES_0003569; Copy attached AV_LEBRECHT-0007450
1979.1.8- Mccrone UK finds non fibrous tremolite in 3 of 10 samples [WK AVON 5125]	Analysis of Talc for Asbestos, Avon, 1/8/79; Attachment: Memo to BD Crosby from JB Rushion; Re: Talc Use Levels, 7/3/79; AV_LEBRECHT-0010521-24, 13136.
1982.9.10- 747 tremolite by IR; confirms mccrone testing [WK AVON 5131]	Analytical Laboratory Work Request, RI0747 Italian Talc, 9/9/82; AV_LEBRECHT-0014257
1982.10.11- 747 tremolite in 1 of 2 lots [WK AVON 5132]	Analytical Laboratory Work Request, Italian Talc – Argentina, 10/11/82; AV_LEBRECHT-0014262
1987.7.27- mccrone finds high aspect ratio tremolite in Code 771 AJN 50301 [WK AVON 5135]	Letter to W Luckewicz from RJ Hinch; Re: Analysis of talc sample, 7/29/87; Sample data attached; AV_LEBRECHT-0002378-80.
2000.8.3- rj lee finds asb in yellowstone [WK AVON 5366]	Memo to S Bartlett from L Bithell; Re: Luzenac Yellowstone Mine Bulk Sample Prep, 8/3/00; Attachments: Letter to L Kirk from WH Powers; Re: PLM Point-Count Analysis, 9/19/00; Chain of Custody records; Letter to L Kirk from KA Allison; Re: Asbestos Results for Samples as Shown on Table I, 9/28/00; Data re Transmission Electron Microscopy (TEM) Results; ABA-ITA-04-000934-43
JM- Analysis Of Our Talc Competitors [WK AVON 5338]	Report, "An Analysis of Our Talc Competitors," EB Smith, Johns-Manville Desertalc, undated; CRMC-JM-Talc-000027-41.

Undated- List of Mccrone avon testing; tremolite and chrysotile in some samples [WK AVON 5235]	Handwritten data re tremolite and chrysotile, April 18th, AVON-MA03143-0615; affidavit attached.
Undated- Mccrone Avon sample 200 rod tremolite [WK AVON 5237]	Data re Sample 200, MA Project 3143, Avon Products Inc., undated; AVON-MA03143-0717; affidavit attached.
03. Chlorite	
72.10.27 CSM says chrysotile is chlorite_JNJ-249	Letter to A Goudie from WT Caneer; Re: Baby Powder Talc Samples 108T and 109T, 10/27/72; Attachments: Report, "Examination of Johnson and Johnson's Baby Powder," Copy 2 of 4, 10/27/72; Letter to AJ Goudie from FD Pooley; Re: Examined sample 108/T, 11/8/72; Report, "X-ray Study of Johnson & Johnson's Baby Powder Retain 108T," GE Brown, 4/17/42; J&J Memo; Re: Analysis of Johnson's Baby Powder for Chrysotile Asbestos Project No. 503, 10/31/72; J&J Memo; Re: Analysis of Johnson's Baby Powder for Tremolite Asbestos Project No. 503, 11/8/72.
1972.8.14- CTFA Mtg re Lewin- Avon 2 talcs have asb, also JJ and others [WK AVON 5064]	Meeting Minutes, CTFA/FDA Meeting – August 11, 1972; Re: Asbestos Forms in Talc, 8/14/72; AV_JENKINS_S-0006261-63; Copy attached AV_LEBRECHT_0029399-401.
1973.04.02 CSMRI chrysotile, antigorite, tremolite in J&J talc JNJ000274668	Memo to WH Ashton from WP Reid; Re: Project No. C10704 Mineralogical examination of four samples for tremolite and chrysotile, 4/2/73; JNJ 000274668-74.
1979 - Berg - Talc and Chlorite Deposits in Montana (Willow Creek) - 5125	Talc and Chlorite Deposits in Montana, RB Berg, Memoir 45, Montana Bureau of Mines and Geology, 1979.
1983 - Blount - Identification of Chlorite and Serpentine in Cosmetic and Pharma Talc	Article, "Identification of Chlorite and Serpentine in Cosmetic or Pharmaceutical Talc, AM Blount, Environmental Health Perspectives, Vol. 51, 1983.
Langer 2018 (Chrysotile and chrysophosphate chemical modification.....)	Article, "Chrysotile and chrysophosphate chemical modification of the chryostile surgace and its effect on biological behavior," AM Langer and RP Nolan, Toxicology and Applied Pharmacology, 2018.
04. Colgate	
76.3.12- Colgate only looks at 40 samples from 71-76; 3 have chrysotile	Memo to CH Costello from JP Simko; Re: Analytical Data on Talc Samples 1972-Present, 3/12/76
76.3.31- Pooley Wagner CB; dont let wagner use italian	Memo to WR Dean and AH Netherwood from IW Sloan; Re: Telephone Conversation – Dr F Pooley, 3/31/76; J&J-0073785-86; JNJTALC000102214-15
briscese finds antho and trem in CB	Colgate-Palmolive Co. Instructions for Keeping Laboratory Notebooks, signed by P Briscese, 3/28/78; Attachment: Lab Notes, 6490, various dates; CPC-NB00000063-100.
Capdevielle, Marie 01-23-15 (Winkel) Depo	Marie Capdevielle Deposition, 1/23/15.
Cashmere Bouquet - summary of test results	Work Product - Summary of test results re Cashmere Bouquet
Colgate - ''Samples Chart_Talc Samples Tested by Plaintiff's Experts''	Samples Chart: Talc Samples Tested by Plaintiff's Experts
Egilman- Exponent changed floyd's results	Article, "Commentary on "Assessment of Health Risk from Historical Use of Cosmetic Talcum Powder"," David Egilman, Joan Steffen, Journal of Environmental and Occupational Health Policy, 2018.
Lab notebook FDA CB retest	Excerpt from Laboratory Notebook 6164-85, P Briscese, 1/27/76 to 4/1/76; CPC-NB00000055-60.
Colgate.McCrone Testing	
193	Letter to JP Simko, from R Shimps, McCrone Associates; Re: Analysis of samples designated 516, Cashmere Bouquet and NC Regal, 2/5/74; CPC-NYCALTRSCPT00004549.
196	Simko and McCrone correspondence dated 2/5/74 regarding testing of Cashmere Bouquet, 1974-1984; CPC-BCALTRSCPT00000741-52.

204	Letter to JP Simko, from LB McCrone; Re: Microscopical examination of your two samples - French talc - Lot 5854 - and Talc 1615 #4811, 11/16/77; MCCRONE 0075; CPC-WINKELTRSCPT00000320.
205	Letter to L Murino, Cyprus Minerals, from RM Ellis; Re: Analysis of Cyprus Monoblend Talc Lot #110865, 3/16/81; MCCRONE 0205; CPC-WINKELTRSCPT00000321.
237	Analysis Report: Asbestos in Air, Talc Study, Exponent, Inc, 4/30/11; Amended 6/20/11; FORENSIC00000507-10.
248	Excerpt from Laboratory Notebook No 6490-5, P Briscese, 3/25/76; CPC-NB00000066.
249	Excerpt from Laboratory Notebook No 6490-54, P Briscese, 10/28/76; CPC-NB00000088.
250	Letter to GR Grieger, McCrone, from JP Simko; Re: Two samples of talc for optical microscope examination, 11/7/77; Attachment: Letter to JP Simko, from LB McCrone; Re: Results of two samples - French Lot 5854 and Talc 1615 Lab #4811, 11/16/77; McCRONE 0073-77.
467	Excerpt from Laboratory Notebook No 6164-99, P Briscese, 3/5/76 to 3/8/76; CPC-NB00000061.
473	Transactions of the National Safety Council, 1934.
607	Article, “Asbestosform Impurities in Commercial Talcum Powders,” DW Snider et al., undated.
608	Memo to WH Ashton from WT Canner; Re: Meeting with Bowling Green State University Geological Staff, 6/8/73; JNJAZ55_000001871-76.
609	Report of the Examination of American Consumer Talc Samples, undated; JNJTALC000102293-313.
1330	Letter to A Weissler from SZ Lewin; Re: Final Analytical Results on the Mineral Compositions of 102 Examples of Standard, Commercial Products Containing Talc, 8/3/72; Attachment: Data, Tabulation of X-Ray Diffraction Analyses of Commercial Products Containing Talc; Key to Product Names.
1332	Memo to RM Schaffner from A Weissler; Re: Summary and Comments on Prof. Lewin’s Analytical Results for Asbestos in Talc, 7/31/73; Attachments: Final Report re X-Ray Powder Diffraction Analyses of Commercial Cosmetic Powders; Memo to G Thompson from SZ Lewin; Re: Determination of Asbestos Contents of Commercial Talcum Powders, undated; data.
1333	Memorandum of Meeting between Members of the Staff of Environmental Sciences Laboratories and Division of Cosmetics Technology, FDA; Re; Analytical Methodology for the Detection and Determination of Asbestos Minerals in Talc, 3/22/76; HHS00000018-21
1409	Letter to Walter C. McCrone Associates, Inc. from KM Lehman; Re: Sample of Monoblend Talc, 1/13/81; Attachments: Letter to L Morino from RM Ellis; Re: Cyprus Monoblend Talc Lot #110865, 3/16/81; Letter to R Ellis from KB Lehman; Re: Sample of Monoblend, Lot No. 812065, 8/21/81; Purchase Order to Walter McCrone Associates from Cyprus Industrial Materials, 2/9/83; Letter to KB Lehman from RM Ellis; Re: Talc Sample Monoblend, Lot 1120965A, 2/25/83; McCRONE 0204-205; QE-CPC00004168; QE-CPC00004166; QE-CPC00004165.
1416	Report, “Geology and Genesis of the Talc Deposits in the Pinerolese,” L Peretti, Bulletin of the Subalpine Mining Association Year III No. 3-4, September-December 1966; Affidavit attached.
1689	Article, “Consumer Talcums and Powders: Mineral and Chemical Characterization”, AN Rohl, Journal of Toxicology and Environmental Health, 1976.
1690	Report of the Examination of Talc Sapmles obtained from Mount Sinai Hospital, FD Pooley, 1/8/76; JNJNL61_000035499-562.
1693	Memo for the Record of a Telephone Conversation, between HK Shapiro and A Langer; Re: asbestos is talc, 3/1/76.
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WK COL 5029	Letter to JP Simko, from R Shimps, McCrone Associates; Re: Analysis of samples designated 516, Cashmere Bouquet and NC Regal, 2/5/74; CPC-NYCALTRSCPT00004549.

WK COL 5062	FDA Memorandum to Dr RM Schaffner, from Dr Alfred Weissler; Subject: Summary and Comments of Prof Lewin's Analytical Results for Asbestos in Talc, 7/31/73; CPC-BCALTRSCPT00001140-75.
WK COL 5070	Article, "Asbestos in commercial cosmetic talcum powder as a cause of mesothelioma in women," RE Gordon, S Fitzgerald, J Millette, IJOEH, 20(4): 318-32, 2014.
WK COL 5079	Simko and McCrone correspondence dated 2/5/74 regarding testing of Cashmere Bouquet, 1974-1984; CPC-BCALTRSCPT00000741-52.
WK COL 5083	Service Work Request and Report: Cashmere Bouquet Mt Sinai Study No. 1, X-ray diffraction for chrysotile, tremolite and anthophyllite, 3/11/76; CPC-NB00000001-2, 64.
WK COL 5143	Letter to JP Simko, from LB McCrone; Re: Microscopical examination of your two samples - French talc - Lot 5854 - and Talc 1615 #4811, 11/16/77; MCCRONE 0075; CPC-WINKELTRSCPT00000320.
WK COL 5280	Analysis Report: Asbestos in Air, Talc Study, Exponent, Inc, 4/30/11; Amended 6/20/11; FORENSIC00000507-10.
WK COL 5382	Letter to Dr A Weissler, FDA, from SZ Lewin; Re: Results on final analytical results on mineral compositions of 102 examples of products containing talc, 8/3/72.
WK COL 5383	Excerpt from Laboratory Notebook No 6490-5, P Briscese, 3/25/76; CPC-NB00000066.
WK COL 5384	Excerpt from Laboratory Notebook No 6490-54, P Briscese, 10/28/76; CPC-NB00000088.
WK COL 5406	Letter to GR Grieger, McCrone, from JP Simko; Re: Two samples of talc for optical microscope examination, 11/7/77; Attachment: Letter to JP Simko, from LB McCrone; Re: Results of two samples - French Lot 5854 and Talc 1615 Lab #4811, 11/16/77; McCRONE 0073-77.
WK COL 5459	Article, "Consumer Talcums and Powders: Mineral and Chemical Characterization," by A Rohl, et al., in the Journal of Toxicology and Environmental Health, Vol. 2, 1976.
WK COL 5461	Memo for the Record of a Telephone Conversation, between H Shapiro and A Langer, 3/1/74.
WK COL 5462	Table, List of Talc Products and Study Number/Fiber Content, undated.
WK COL 5519	Letter to H Eiermann, from R Yates, Re: Tabulated Results of DCST's Analyses for Asbestos Minerals in Lewin, Field Activity Surveillance (FAS), Investigational and Consumer Cosmetic Talc Products, 1/7/76.
WK COL 5676	Article, "Geologia E Genesi Dei Giacimenti Di Talco Nel Pinerolese" by L Perelli, September – December 1966.
WK COL 5952	Article, "Asbestosform Impurities in Commercial Talcum Powders," DW Snider et al., undated
WK COL 5953	Memo to WH Ashton from WT Canner; Re: Meeting with Bowling Green State University Geological Staff, 6/8/73; JNJAZ55_000001871-76.
WK COL 5954	Report of the Examination of American Consumer Talc Samples, undated; JNJTALC000102293-313.
WK CTSOA 5138	Report of the Examination of Talc Sapmles obtained from Mount Sinai Hospital, FD Pooley, 1/8/76; JNJNL61_000035499-562.
Lewin	
WK COL 5062	FDA Memorandum to Dr RM Schaffner, from Dr Alfred Weissler; Subject: Summary and Comments of Prof Lewin's Analytical Results for Asbestos in Talc, 7/31/73; CPC-BCALTRSCPT00001140-75.
WK COL 5382	Letter to Dr A Weissler, FDA, from SZ Lewin; Re: Results on final analytical results on mineral compositions of 102 examples of products containing talc, 8/3/72.
WK COL 5411	Memorandum of Meeting Between FDA Representatives and CTFA, Johnson & Johnson, McCrone, WC&D, Avon, Mennen, Cheesebrough and Lewin; Re: Asbestos in Cosmetics Containing Talc, Such as Dusting Powders and Face Powders, 8/11/72.
WK COL 5414	Memorandum of Meeting Between CTFA Committee on Asbestos and Talc and Representatives of the Division of Cosmetics Technology; Re: Meeting with CTFA Talc Committee for the Purpose of Discussing the Results of the Testing of Talcum Powder Products Using a CTFA Proposed Method for the Dectection of Asbestiform Amphibole Minerals in Cosmetic Grade Talc, 3/11/76.

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WK COL 5416	FDA Memorandum to Dr A Weissler, from AE Schulze; Re: Microscopic Examination of cosmetic talc products for asbestos minerals, 5/30/73.
WK COL 5429	Summary and Comments on Analyses for Asbestos in Cosmetic Talc Products, Undated; Attachment: Memorandum of Telephone Conversation Between Dr JC Wagner and Dr RE Shapiro; Re: Feeding studies with crocidolite, 11/3/72.
WK COL 5435	Letter to L Adamson and S Lang, Environmental Defense Fund, from A Weissler, FDA; Re: Reply to your letter re asbestos in talc, 3/2/73.
WK COL 5519	Letter to H Eiermann, from R Yates, Re: Tabulated Results of DCST's Analyses for Asbestos Minerals in Lewin, Field Activity Surveillance (FAS), Investigational and Consumer Cosmetic Talc Products, 1/7/76.
MAS	
20 Samples from RJ Lee_Analysis of CB for Amphibole Asbestos Expert Report-final_Reviewed	Report, "Analysis of Cashmere Bouquet Cosmetic Talcum Powder Products for Amphibole Asbestos Expert Report," WE Longo and MW Rigler, Material Analytical Services, 3/24/19.
2018_09 Cashmere Bouquet Analysis	Report, "Analysis of Cashmere Bouquet Cosmetic Talcum Powder PLM/Blount Supplemental Notebook," WE Longo and MW Rigler, Materials Analytical Services, 9/24/18.
App. B Final Compiled Notebook 9-11-18	Appendix B, "Analysis of Cashmere Bouquet Talcum Powder Submitted by Levy Konigsberg LLP," WE Longo and MW Rigler, Materials Analytical Services, September 2018.
App. C Final Compiled Notebook 9-11-18	Appendix C, "Analysis of Cashmere Bouquet Talc Powder Submitted by the Law Offices of Peter Angelos," WE Longo and MW Rigler, Materials Analytical Services, September 2018.
Appendix A-final compiled notebook	Appendix A, "Analysis of Cashmere Bouquet Talc Powder Submitted by Simon Greenstone Panatier Bartlett," WE Longo and MW Rigler, Materials Analytical Services, September 2018.
Cashmere Bouquet Final Expert Report 9-11-18-3_	Report, "Analysis of Cashmere Bouquet Cosmetic Talc Products for Amphibole Asbestos," WE Longo and MW Rigler, Materials Analytical Services, 9/11/18.
Longo Affidavit re COC for MAS samples	Declaration of William E. Longo, 3/14/19
MAS CB 20 Samples from RJLG.xlsx	Work Product - Data re Samples
MAS CB Data.xlsx	Work Product - Data re Samples
Mine information	
CB Source mine identification	
2015-01-13 CPC Verified Interrogatory Responses	Defendant Colgate-Palmolive Company's Responses to the Court's January 5, 2015 Order for Colgate's Response to Plaintiffs' Contention That All Talcum Powder is Contaminated with Asbestos, in Winkel, et al., v. Calaveras Asbestos, Ltd., et al., in the Superior Court of the State of California, Los Angeles County, 1/13/15.
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WK COL 5056	Formula for Cashmere Bouquet Talcum Powder, 6/27/86; CPC-NYCALTRSCPT0008659.
WK COL 5067	Formulas for Cashmere Bouquet Talc Powder, 1968-1986; CPC-BCALTRSCPT00008800-38.
WK COL 5080	Formulas for Cashmere Bouquet Talcum Powder, Jersey City, 1973-1984; QE-CPC00001529-38.
WK COL 5081	Formula for Cashmere Bouquet Talc Powder No. 2, Jersey City, 5/14/79; QE-CPC00001540-45.
WK COL 5138	Permanent Formula, Outside Formula, Cashmere Bouquet Talc Powder, 10/18/85; MK-CPC-00000112.
WK COL 5256	Cashmere Bouquet Formula, 5/29/68; CPC-NYCALTRSCPT00010681.
WK COL 5267	Formula for Cashmere Bouquet Talc Powder, Kansas City, 9/26/68.
WK COL 5268	Formula for Cashmere Bouquet Talc Powder, Kansas City, 7/29/70.
WK COL 5269	Formula for Cashmere Bouquet Talc Powder, Kansas City, 4/6/72.
WK COL 5603	Formula for Cashmere Bouquet Talcum Powder, Jersey City, various dates.
WK COL 5677	Various Formulas for Cashmere Bouquet Talc Powder, 1970-1992; MK-CPC-00000362-363; QE-CPC00001530-1538; 1591.
WK COL 5683	Formulas for Cashmere Bouquet Talc Powder, various dates; MK-CPC-00000196-198.
WK COL 5684	Formulas for Cashmere Bouquet Talc Powder, various dates; MK-CPC-00000199-202.
WK COL 5686	Various Formulas for Cashmere Bouquet Talc Powder, various dates; MK-CPC-00000362-370.

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WK COL 5676	Article, "Geologia E Genesi Dei Giacimenti Di Talco Nel Pinerolese," L Perretti, Ballettino della Associazione Mineraria Subalpina, September-December 1966, Attachment: Article [Translated], “Geology and Genesis of the Talc Deposits in the Pinerolese,” by L Peretti, Bulletin of the Subalpine Mining Association, Year 3, No. 3-4, September-December 1966; Attachment: Affidavit of Accuracy, by J Rock, 4/17/13.
MT	
WK COL 5057	Cyprus Memo to GD Lessner, from HM Harlan; Re: Willow Creek Mine and Greenhorn Claims, Madison County, Montana, 4/6/84; CPC-BCALTRSCPT00000892-902.
WK COL 5061	Eleventh Industrial Minerals Forum, Special Publication 74, SL Groff, State of Montana, 1976; CPC-BCALTRSCPT00001094-1139.
WK COL 5089	Affidavit of Luker Van Stewart, 1/13/10; CPC-NYCALTRSCPT00017160.
WK COL 5213	Willow Creek Mine, Madison County, Montana, Undated; ITA 557-58.
WK COL 5272	Talc and Chlorite Deposits in Montana, RB Berg, Memoir 45, Montana Bureau of Mines and Geology, 1979.
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WK COL 5271	Field Trip Guide Book: Stratigraphy and Structure of the Murphy Belt, North Carolina, WR Power, JT Forrest, Carolina Geological Society, November 13-14, 1971.
WK COL 5343	"Talc and Pyrophyllite Deposits in North Carolina, JH Pratt, The North Carolina Geological Survey, Economic Paper No 3, 1900.
WK COL 5362	The Mining Industry in North Carolina During 1913-1917 Inclusive, Economic Paper No 49, The North Carolina Geological and Economic Survey, JH Pratt, HM Berry, 1919.
WK COL 5381-Color	Bulletin No 56: Talc Deposits of the Murphy Marble Belt, EC Van Horn, North Carolina Dept of Conservation and Development, 1948.
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197	Service Work Request and Report: Cashmere Bouquet Mt Sinai Study No. 1, X-ray diffraction for chrysotile, tremolite and anthophyllite, 3/11/76; CPC-NB00000001-2, 64.
1976_01-06 Pooley finds fibrous anthophyllite in 5 American Talcs_JNJ-1058	Memo to G Lee from FR Rolle; Re: Telephone Conversation with FD Pooley on 1/5/76 Project Number 0503-01, 1/6/76; JNJ 000026932
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Langer finds 4% tremolite in CB- JJ	Memo to G Lee from FR Rolle; Re: Telephone Conversation with FD Pooley-Project #0503-01, 3/30/76; J&J-0073770; JNJMX68_000017760
MT sinai sample CB colgate retest finds antho and trem	Service Work Request and Report: Cashmere Bouquet Mt Sinai Study No. 1, X-ray diffraction for chrysotile, tremolite and anthophyllite, 3/11/76; Attachments: Letter to I Stewart from JP Simko; Re: Talc Sample CB MS No.1, 3/10/76; B&W Micrographs, Purchase Order, 3/12/76; Graphs; CPC-NYCALTRSCPT00010825-38; CPC-NB00000064; QE-CPC00004113, 4118-25, 4130, 4137-40.
WK COL 5459	Article, “Consumer Talcums and Powders: Mineral and Chemical Characterization,” by A Rohl, et al., in the Journal of Toxicology and Environmental Health, Vol. 2, 1976.
WK COL 5460	Letter, to Thomas Chalmers, from A Langer, Re: The Ongoing Talc Study in the Environmental Sciences Laboratory, 3/17/76.
WK COL 5461	Memo for the Record of a Telephone Conversation, between H Shapiro and A Langer, 3/1/74.
WK COL 5462	Table, List of Talc Products and Study Number/Fiber Content, undated.
WK COL 5769	Article, “Nature and range of mineral dusts in the environment,” DR Bows, AM Langer, and AN Rogl, Philosophical Transactions of the Royal Society of London, 1977.
WK COL 5770	Article, “Fibrous Mineral Content of Consumer Talc-Containing Products,” AN Rohl and AM Langer, Environmental Sciences Laboratory, Mount Sinai School of Medicine, undated.
WK COL 5929	Memo to WR Dean from IW Sloan; Re: Telephone Conversation – Dr F. Pooley – 31.3.76, 3/31/76; JNJTALC000102214-15.

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7.19.10	Letter to BW Thorn from DR Van Orden; Re: "Cashmere Bouquet" RJ Lee Group Project No. LLH006774, 7/19/10.
9.15.10 47 pages	Letter to BW Thorn from DR Van Orden; Re: Cashmere Bouquet, CA Samples RJ Lee Group Project No. LLH08823, 9/15/10; BCAL-RJLEE0004177-223.
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10.12.09	Report re No. 3067368, RJ Lee Group; BCAL-RJLEE0003741-55.
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Binder_Reports of Longo tested CB samples f SGP 10-2018	Binder_Reports of Longo tested CB samples f SGP 10-2018
Report 3155326 (MAS M68071-001)	Letter to M Tovey from MS Sanchez; Re: "Cashmere Bouquet" Talc Sample M68071-001, 10/31/18.
Report 3155327 (MAS M68072-001)	Letter to M Tovey from MS Sanchez; Re: "Cashmere Bouquet" Talc Sample M68072-001, 10/31/18.
Report 3155328 (MAS M68073-001)	Letter to M Tovey from MS Sanchez; Re: "Cashmere Bouquet" Talc Sample M68073-001, 10/31/18.
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820. WK COL 5221	Cyprus Call Report; Re: Olympic talc and asbestos, 4/19/76; CPC-NYCALTRSCPT00010888-89
822. WK COL 5223	Cyprus Call Report; Re: Determine status of Olympic talc, 6/4/76; CPC-NYCALTRSCPT00010898-99.
05. FDA 2020	
BradleyVanGosen_AsbestosTalcPublicMeeting_1 (1)	Presentation, "The Mineral Fibers of Potential Concern in Talc – Geology and Mineralogy," B Van Gosen, undated.
BryanBandliRJLeeGroup_PublicComment_TalcPublicMeeting	Presentation, "RJ Lee Group Comments," B Bandli, undated.
ChristopherWeis_AsbestosTalcPublicMeeting	Presentation, "Mineral Fibers in the Lung: Exposure and Toxicity," CP Weis, undated.
DavidEgilman_PublicComment_TalcPubilcMeeting	Presentation, "Impurity Standards – DL Never 0 Asbestiform 'cleavage' fragments cause cancer No known safe exposure," D Egilman, 2/4/20.
DeborahSmegal_AsbestosTalcPublicMeeting	Presentation, "Interagency Working Group on Asbestos in Consumer Products (IWGACP) Overview," D Smegal, 2/4/20.
DianaZuckerman_PubilcComment_TalcPublicMeeting	Presentation, "Measuring Asbestos: Implications for Public Health," D Zuckerman, undated.
Executive Summary Testing Methods for Asbestos in Talc	Executive Summary, "Preliminary Recommendations on Testing Methods for Asbestos in Talc and Consumer Products Containing Talc," 1/6/20.
FrankEhrenfeld_PublicCommenter_TalcPublicMeeting	Presentation re Sampling, Analysis, Management of Asbestos, and Other Microscopic Particles," F Ehrenfeld, 2020.
JohnGodleski_PublicComment_TalcPublicMeeting_0	Presentation, "Identification of Platy Talc and Fibers in the Female Genital Tract," JJ Godleski, undated.
LauraPlunkett_PublicComment_TalcPublicMeeting	Presentation, "Integrative Biostrategies," LM Plunkett, undated.
LeighODell_PublicCommenter_TalcPublicMeeting	Presentation re Johnson & Johnson Baby Powder and Shower to Shower, PL O'Dell et al., undated.
LindaKatz_Overview_AsbestosTalcPublicMeeting	Presentation, "Overview of Issues for Talc-Containing Cosmetic Products," LM Katz, 2/4/20.
LindaKatz_Overview_AsbestosTalcPublicMeeting	Presentation, "Overview of Issues for Talc-Containing Cosmetic Products," LM Katz, 2/4/20.
LindaKatz_WrapUp_AsbestosTalcPublicMeeting_0	Presentation, "Wrap-up and Next Steps," LM Katz, 2/4/20.
PaulHoward_AnalyticalMethods_AsbestosTalcPublicMeeting	Presentation, "Analytical Methods for Detecting Mineral Fibers of Concern in Talc and Talc-Containing Consumer Products," PC Howard, 2/4/20.
PaulHoward_Terminology_AsbestosTalcPublicMeeting_0	Presentation, "Terminology and Definition of Mineral Fibers of Concern in Talc," PC Howard, 2/4/20.
RobynRay_PublicComment_TalcPublicMeeting	Presentation, "Testing methodologies and their application to measurement of asbestos and other elongate mineral particles of potential health concern in talc in containing Consumer products," R Ray, 2019.

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SeanFitzgerald_PublicComment_TalcPublicMeeting	Presentation, “Asbestos in Talc Testing,” S Fitzgerald, 2/4/20.
StevenCompton_PublicCommenter_TalcPublicMeeting	Presentation, “Testing Methodologies for Elongate Mineral Fibers in Talc-Containing Consumer Products and Source Materials (Ore Samples,” SP Compton, 2020.
StevenWolfgang_AsbestosTalcPublicMeeting	Presentation, “Recommendations from the IWGACP: Data Reporting and Analysis (Subgroup 3) and Recap of Overall Preliminary Recommendations,” S Wolfgang, 2/4/20.
WilliamLongo_PublicComment_TalcPublicMeeting	Presentation, “The Heavy Liquid Separation Method for the Analysis of Cosmetic Talc to Detect Amphibole and Chrysotile Asbestos,” WE Longo, 2/4/20.
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37 Photos from lavorare nel talco	Webpage, "lavorare nel talco," alpcub.com, 2018; http://www.alpcub.com/lavorare_nel_talco.htm
40 USGS This Dynamic Earth the Story of Plate	Webpage, "Historical Perspective," United States Geological Survey, 2018; https://pubs.usgs.gov/gip/dynamic/historical.html
42 OSHA Method ID 191 Crystal Shapes Graphic CA	Webpage, "Polarized Light Microscopy of Asbestos - Non-Mandatory," dir.ca.gov, California Code of Regulations, Title 8, Section 5208. Asbestos, Appendix J, 2018; https://www.dir.ca.gov/title8/5208j.html
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1972_12_08_Pfizer test of 1615	Letter to J.E. Clements from H.D. Stanley; Re: Asbestos in Talc, 12/8/72.
1976_11_18_McCrone Test of 4915 (Italian)	Letter to JP Simko from GR Grieger; Re: Talc sample designated as 4915, 11/18/76; B&W photos of sample; McCrone2-00570-2.
1977_11_16_McCrone test of 1615	Letter to JP Simko from LB McCrone; Re: McCrone Test of 1615, 11/16/77; Attachments: MA Project 5500, Talc 1615, Lab # 4811, 11/3, Colgate Palmolive Company, 11/9/77; Letter to G Grieger from JP Simko; Re; Two Samples of Talc for Optical Microscope Examination, 11/7/77; McCRONE 0075; 0077; 0073.
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exhibit 13	Chart, Samples Reference in November 14, 2018 MAS Report entitled "The Analysis of Johnson & Johnson's Historical Baby Powder & Shower to Shower Products from the 1960's to the Early 1990's for Ampbibole Asbestos"

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exhibit 14	Chart, Samples Reference in November 14, 2018 MAS Report entitled "The Analysis of Johnson & Johnson's Historical Baby Powder & Shower to Shower Products from the 1960's to the Early 1990's for Ampbibole Asbestos"
exhibit 15	Chart, Samples Reference in November 14, 2018 MAS Report entitled "The Analysis of Johnson & Johnson's Historical Baby Powder & Shower to Shower Products from the 1960's to the Early 1990's for Ampbibole Asbestos"
exhibit 16	Chart, Samples Reference in November 14, 2018 MAS Report entitled "The Analysis of Johnson & Johnson's Historical Baby Powder & Shower to Shower Products from the 1960's to the Early 1990's for Ampbibole Asbestos"
exhibit 17	Chart, Samples Reference in November 14, 2018 MAS Report entitled "The Analysis of Johnson & Johnson's Historical Baby Powder & Shower to Shower Products from the 1960's to the Early 1990's for Ampbibole Asbestos"
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Asian Bottle Responsive Testing (Leavitt) - MDL	
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Appendices - 3154678	Laboratory Report, Project No. LLH803514-34, Client Sample No. 2014.001.0499, RJ Lee Group Sample No. 3154678, 9/5/18; Chain of Custody.
Appendices - 3154679	Laboratory Report, Project No. LLH803514-34, Client Sample No. 2014.001.2021, RJ Lee Group Sample No. 3154679, 9/5/18; Chain of Custody.
Appendices - 3154680 - Amended	Laboratory Report (Amended), Project No. LLH803514-34, Client Sample No. 2014.001.3918, RJ Lee Group Sample No. 3154680, 9/5/18; Chain of Custody.
Appendices - 3154680	Laboratory Report, Project No. LLH803514-34, Client Sample No. 2014.001.3918, RJ Lee Group Sample No. 3154680, 9/5/18; Chain of Custody.
Appendices - 3154681	Laboratory Report, Project No. LLH803514-34, Client Sample No. 2014.001.3921, RJ Lee Group Sample No. 3154681, 9/5/18; Chain of Custody.
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2018.04.23.Preliminary RJLG Report Splits of Longo Samples	Letter to K Hynes from MS Sanchez; Re: Preliminary Analytical Test Report of thirty-seven MAS Split Samples, 4/23/18; Full report attached.
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Longo Rebuttal Reports	
2018.04.07 MAS Rebuttal Rept 1978 Museum Sample of Dr. Sanchez	Letter to K Hynes from MS Sanchez; Re: Review of MAS Report dated February 16, 2018 concerning the analysis of a Historic Johnson & Johnson Baby Powder Sample, 4/7/18.
2019.08.03 - Longo MAS Rebuttal Report	Letter to K Hynes from MS Sanchez; Re: Rebuttal of Dr. William Longo's MDL Testing through February 1, 2019, 8/30/19.
Appendix A	Appendix A, "Anthophyllite PLM Comparisons"
Appendix B	Appendix B, "Tremolite PLM Comparisons"
Appendix C	Appendix C, "Bundle as a function of magnification"
Appendix D	Appendix D, "TEM SAED comparison MAS indexed to RJLG indexed"
Appendix E	Appendix E, "Bivariant Log Aspect Ratio vs. Log Width Distribution Plot"
Poye Rebuttal Report	
Poye Rebuttal Report	Letter to K Hynes from MS Sanchez; Re: Mr. Lee Poye and J3 Resource's MDL testing (16 samples of Johnson and Johnson product samples), 2/12/19.
Prop 65	
Sanchez Complete Expert Disclosure Prop 65	Expert Witness Disclosure of Matthew Sanchez, 4/22/19.
Standard MDL Testing	

Appendices 3149756	Laboratory Report, Project No. LLH803514-16, Client Sample No. 20180061-31B-STS065, RJ Lee Group Sample No. 3149756, 6/19/18; Chain of Custody.
Appendices 3149757	Laboratory Report, Project No. LLH803514-16, Client Sample No. 20180061-31E-STS065, RJ Lee Group Sample No. 3149757, 6/19/18; Chain of Custody.
Appendices 3150649	Laboratory Report, Project No. LLH803514-25, Client Sample No. STS009, RJ Lee Group Sample No. 3150649, 8/14/18; Chain of Custody.
Appendices 3150650	Laboratory Report, Project No. LLH803514-25, Client Sample No. STS014, RJ Lee Group Sample No. 3150650, 8/14/18; Chain of Custody.
Appendices 3150651	Laboratory Report, Project No. LLH803514-25, Client Sample No. STS015, RJ Lee Group Sample No. 3150651, 8/14/18; Chain of Custody.
Appendices 3150652	Laboratory Report, Project No. LLH803514-25, Client Sample No. STS027, RJ Lee Group Sample No. 3150652, 8/14/18; Chain of Custody.
Appendices 3150653	Laboratory Report, Project No. LLH803514-25, Client Sample No. STS029, RJ Lee Group Sample No. 3150653, 8/14/18; Chain of Custody.
Appendices 3150654	Laboratory Report, Project No. LLH803514-25, Client Sample No. STS030, RJ Lee Group Sample No. 3150654, 8/14/18; Chain of Custody.
Appendices 3150655	Laboratory Report, Project No. LLH803514-25, Client Sample No. STS044, RJ Lee Group Sample No. 3150655, 8/14/18; Chain of Custody.
Appendices 3150656	Laboratory Report, Project No. LLH803514-25, Client Sample No. STS049, RJ Lee Group Sample No. 3150656, 8/14/18; Chain of Custody.
Appendices 3150657	Laboratory Report, Project No. LLH803514-25, Client Sample No. 2014.001.0397, RJ Lee Group Sample No. 3150657, 8/14/18; Chain of Custody.
Vermont and Italian Mine Testing	
2018.04.06 Gunter VT Samples Testing Report	Letter to K Hynes from MS Sanchez; Re: Analytical Test Report of the Gunter Argonaut Samples, 4/6/18.
Italian Samples	Presentation, Mine Samples Val Germanesca, Italy, 2015.
Vermont Samples	Presentation, Mine Samples Argonaut Mine, Vermont, 2018.
2016.03.24 Sanchez Italian Samples Report	
2016.03.24 Sanchez Report Appendix A	MS Sanchez Report, Appendix A, Images of Samples.
2016.03.24 Sanchez Report Appendix B	MS Sanchez Report, Appendix B, XRD Report.
2016.03.24 Sanchez Report Appendix C	MS Sanchez Report, Appendix C, PLM Report, Benchsheets, and Representative Images.
2016.03.24 Sanchez Report Appendix D	MS Sanchez Report, Appendix D, TEM Report, Benchsheets, Representative Images, EDS and SAED.
2016.03.24 Sanchez Report Chain of Custody	MS Sanchez Report, Chain of Custody.
2016.03.24 Sanchez Report	Letter to Scott Elder and Morgan Tovey from RJ Lee Group; Re: Geology of the Talc Mines Located in Val Germanasca, 3/24/16
Videos and Materials	
Blount Sample Unboxing Video and Photographs	
Photos 3-27-2018	
DSC_5232	Color Photograph, Sample: 3149692, Project: LLH803526
DSC_5233	Color Photograph, Sample: 3149693, Project: LLH803526
DSC_5234	Color Photograph, Sample: 3149694, Project: LLH803526
DSC_5235	Color Photograph, Sample: 3149695, Project: LLH803526
DSC_5236	Color Photograph, Sample: 3149696, Project: LLH803526
DSC_5237	Color Photograph, Sample: 3149697, Project: LLH803526
DSC_5238	Color Photograph, Sample: 3149698, Project: LLH803526
DSC_5239	Color Photograph, Sample: 3149699, Project: LLH803526
DSC_5240	Color Photograph, Sample: 3149700, Project: LLH803526
DSC_5241	Color Photograph, Sample: 3149701, Project: LLH803526
DSC_5242	Color Photograph, Sample: 3149702, Project: LLH803526
DSC_5243	Color Photograph, Bag labeled "I" Sample: 3149694, Project: LLH803526

76.10.1 -JJ Preparing Responses to Rohl Langer	Memo to Distribution from G Lee; Re: Talc Advisory Group Meeting, 10/1/76; JNJNL61_000021331-34.
77.3.30	Memo to Distribution from G Lee; Re: Attachment, 3/30/77; Attachment: Letter to the Editor, "Mineralogical Characterization of Cosmetic Talc Products," JB Krause, Journal of Toxicology and Environmental Health, 1977; JNJNL61_000021787-91.
Pre-Pub copy of 76 langer via CTFA	Memo to SP Falk et al from G Lee; Re: Langer "Talcum Powder Paper," 9/22/76; Abstract attached, "Consumer Talcums and Powders: Mineral and Chemical Characterization," 1976; JNJ 000273664-66.
Leophonte Booklet	
84.12.12 -Ashton to Luzenac re Influence another Researcher Pitfalls	Letter to JP Grange from WH Ashton; Re: Professor Leophonte Booklet, 12/12/84; JNJNL61_000000124.
Mt Sinai	
71.6.29- NYT Reports Asb, JJ Denies	Memo to JE Burke et al from JC Walcott; Re: NY Post early edition, 6/29/71; Attachments: Early edition of New York Post; Statement issued to New York Daily News and New York Post, 6/29/71; J&J-0149688-92; JNJMX68_000015773-77.
71.11.28- Selikoff to langer- GHS is an asshole	Memo to AM Langer from IJ Selikoff; Re: "Hildick-Smith annoys me…" 12/28/71.
72.6.17- NYT Langer Bare Trace Asbestos in JJ	Article, "Asbestos in J&J Baby Powder? Doctor Admits He May Have Been Mistaken," The Home News, 6/17/72; JNJMX68_000004622.
72.6.20- JJ Happy W NYT.Sinai Revision	Memo to WR Dean from W Nashed; Re: NY EPA had misinterpreted date re Johnson's Baby Powder, 6/20/72; JNJMX68_000004624.
76.3.18- The Mt Sinai Samples are Old - Cashmere Bouquet	J&J Memo; Re: The Mt. Sinai Samples are OLD, 3/18/76; JNJMX68_000009584-56.
76.3.23- Sinai Revision	Memo to Editors from TC Chalmers; Re: Recent media reports concerning research on talcum, 3/23/76; JNJNL61_000021695-97.
76.3.26 -JJ President Chastises Chalmers about Selikoff	Letter to TC Chalmers from DD Johnston; Re: Washington Post's treatment of press release, 3/26/76; JNJ 000277322.
76.3.26- NYT Article; Selikoff No Safe Level	Article, "Talcum Study Clarified by N.Y. Hospital," M Burros, The Washington Post, 3/26/76; J&J-0150024; JNJ 000304419
76.3.27 -Toronto Star-Mt Sinai Chief of Pediatrics on JJ Board	Article, "Less asbestos found in new talc," Toronto Star, 3/27/76; JNJ 000277175
76.3.31- JJ 3.22 Meeting Leading To Sinai Revision	Memo for the Record from G Hildick-Smith; Re: Meeting with Johnson & Johnson Personnel and the Mt. Sinai School of Medicine, 3/31/76; J&J-01550033-34; JNJ 000304421-22.
76.9.22- JJ Receives Langer Pre-pub Via CTFA Via Journal Editor	Memo to SP Falk et al from G Lee; Re: Langer "Talcum Powder Paper," 9/22/76; Abstract attached, "Consumer Talcums and Powders: Mineral and Chemical Characterization," 1976; JNJNL61_000034842-44
1971- July 20-Langer and Selikoff Competent Extrapolators	Supplement to Report on Visit to Dr. Pooley, TH Shelley, 7/20/71; JNJMX68_000006301.
1971-April 30-Consult With Selikoff	Memo to RA Fuller from G Hildick-Smith; Re: Meeting with Professor IJ Selikoff, Professor of Community Medicine, Mount Sinai School of Medicine, 4/30/71; JNJAZ55_000005725-28.
1971-July 9- Poss Selikoff Research-Strategy File	Memo to G Hildick-Smith from TH Shelley; Re: Special Talc Project No. 503, 7/9/71; JNJAZ55_000005734-36.
Paoletti	
84.10.23- Paoletti- Compromise It	Memo to B Semple et al. from W Ashton; Re: Airborne Dust Activities ASTM & ISO Meetings, 10/23/84; JNJNL61_000000126-28.
Pooley- Dont Present On Findings	
75.10.3 -JJ Pursuades Pooley not to Present Paper with Sinai	Memo to Talc Advisory Board from G Lee; Re: Review of Talc Events at Brighton and Edinburgh Conferences September 14-26, 1975, 10/3/75; JNJNL61_000021580-81.
76.3.17 -Langer Letter to Chalmers explaining talc asbestos research - INDUSTRY BULLIES POOLEY	Memo to TC Chalmers from AM Langer; Re: The ongoing Talc Study in the Environmental Sciences Laboratory 3/17/76.
1975-Asbestos in British Talcums- Pooley-Langer	Report, "Mineralogy and Chemistry of British Talc and Consumer Talcum Products," FD Pooley et al., 1975; JNJAZ55_000004614-26.
Roggli	
96.9.5- Roggli Srebro; Send To Hopkins	Letter to WH Ashton from AP Wehner; Re: 1994 paper by Srebro and Roggli, 9/5/96; Attachment: Article, "Asbestos-Related Disease Associated With Exposure to Asbestiform Tremolite," SH Srebro and VL Roggli, American Journal of Industrial Medicine, 1994; JNJNL61_000013725-37.
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26. J&J negative testing - Defense Ex 252 in Pipes	Chart, "McCrone: Ore Testing Conducted By TEM"
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Exhibit 1_Matthew Stewart-Vol 1 - 08-06-19	Deposition of Matthew Stewart, 8/6/19 v.1
Exhibit 2_Matthew Stewart-Vol 2 - 03-13-20	Deposition of Matthew Stewart, 3/13/20 v.2
Exhibit 3_Matthew Stewart-Vol 3 - 03-16-20	Deposition of Matthew Stewart, 3/16/20 v.3
Exhibit 4_Map of Gouverneur Talc District	Map, Gouverneur Talc District, 4/22/61.
Exhibit 5_Vanderbilt_2016 Excerpts of Foster ROGs	Defendant Vanderbilt Minerals LLC's Supplemental Responses to Plaintiffs' Special Interrogatories (Set One), Foster v. Cyprus Amaz Mineral Company, et al., Superior Court, Alameda County, CA, Case No. RG15764371, 9/19/16.
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Exhibit 8_Engel New York Talcs-1948	Report, "New York Talcs, Their Geological Features, Mining, Milling and Uses," AEJ Engel, 9/5/48.
Exhibit 9_Stemple A Structural Study-1960	Article, "A Structural Study of Talc and Talc-Tremolite Relations," IS Stemple and GW Brindley, January 1960.
Exhibit 10_Engle Precambiran geology and talc-1962	Report, "The Precambrian geology and talc deposits of the Balmat-Edwards district, northwest Adirondack Mountains, New York, AEJ Engel, 1962.
Exhibit 11_A Brief Description of the Arnold Pit-1950s	Report, "A Brief Description of the Arnold Pit," International Talc Company, Inc. Gouverneur, New York, undated; VANDERBILT 000030581-82.
Exhibit 12_NYTAL Booklet-1966	Booklet, NYTAL, 1966.
Exhibit 13_Triclinic Talc and Associated Ambhiboles-1968	Article, "Triclinic Talc and Associated Amphiboles from Gouverneur Mining District, New York," M Ross et al., The American Mineralogist, Vol. 53, May-June 1968.
Exhibit 14_Int'l Talc Co brochure_RTV-164	Brochure, Asbestine, International Talc Co., Inc.
Exhibit 15_Determination of Chrysotile by TEM-1973	Memo to RS Lamar from VE Wolkodoff; Re: Determination of Chrysotile by TEM in Commercial Talcs, 8/28/73; Affidavit attached; CRMC-Talc-Micro-001371-1416.
Exhibit 16_CS Thompson Testing Samples-1974	Memo to RC Bacon from CS Thompson; Re: International Talc Co. Samples, 2/15/74; Attachment: Handwritten Notes re International Talc Study.
Exhibit 17_1974 OSHA w 10-9-74 Vanderbilt Ltr_RTV-800	Memo to OSHA Assistant Regional Directors and Area Directors; Re: Tremolite and Talc, 11/21/74; Attachment: Letter to HB Vanderbilt from JH Stender; Re: Asbestos Standard, 10/9/74; Affidavit; CRMC-ELS-004575-77; CRMC-Talc-Micro-00787.
Exhibit 18_Standard Procedure Instruction-1974	Standard Procedure Instructions re Raw Ore Inspection Procedure, "Method of fiber detection," 12/27/74.
Exhibit 19_Grantham Action Plan-1975	Report, Vanderbilt-Grantham Action Plan, Asbestos-Talc Study, Project No. 9790-4, Cyprus Industrial Minerals Research Laboratory, 4/11/75; CAMC-Abbott-000247-346.
Exhibit 20_Mineral Product Safety Data Sheet-2975	Mineral Product Safety Data Sheet re NYTAL 99, NYTAL 100, NYTAL 100HR, 5/1/75.
Exhibit 21_IT Fiber 2-1975	Mineral Product Safety Data Sheet re Mouldene, IT Fiber No. 2, 5/1/75.
Exhibit 22_McCrone-1975	Letter to CF Thompson from LB McCrone and RJ Shimps; Re: Results of three samples, 5/22/75; BOO002667-68.
Exhibit 23_Letter to Dr. May-1975	Letter to JR May from AM Harvey; Re: John Dement's testimony at the Borg-Warner OSHRC Hearing, 6/11/75; VM-LANGEVIN-000301.
Exhibit 24_McCrone to NIOSH-1975	Report, "Examination of Talcs from Gouverneur District - New York," MA Number: 4800, 12/12/75; Affidavit attached; CRMC-Talc-Micro-000455-507.
Exhibit 25_Rohl of Sinai on samples-1976	Letter to J Dement from AN Rohl; RE: Seven NYTAL samples, 4/29/76.

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Exhibit 28_NIOSH Dement to Harvey-1977	Letter to AM Harvey from JM Dement; Re: NIOSH report, 6/8/77; VM-LANGEVIN-000345-48.
Exhibit 29_Newspaper Article-1978	Newspaper Article, "Talc mine closing," 1/8/78; certification attached
Exhibit 30_BoM investigation-1979	Bureau of Mines Report of Investigations, Relationship of Mineral Habit to Size Characteristics for Tremolite Cleavage Fragments and Fibers, WJ Campbell et al., US Department of the Interior, 1979.
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Exhibit 32_1985 BoM Report-1985	Bureau of Mines Report of Investigations, The Phase Relationship of Talc and Amphiboles in a Fibrous Talc Sample, RL Virta, 1985.
Exhibit 33_1985 Dunn Geo Eval of Mineral Particles	Report, "An Evaluation of Mineral Particles at Gouverneur Talc Company 1975 and 1982: A Comparison of Mineralogical Results Between BIOSH and DGC," Dunn Geoscience for RT Vanderbilt, 1/4/85.
Exhibit 34_Letter from Crane to Piacielli-1986	Letter to G Piacitelli from GT Crane; Re: Talc, 11/26/86.
Exhibit 35_Asbestiform fibers in St. Lawrence County-1987	Report, "Investigation of Environmental Occurrence of Asbestiform Fibers in St. Lawrence County," February 1987; VM-LANGEVIN-035705-91.
Exhibit 36_Regulatory and Mineralogical Kelse-1989	Article, "The Regulatory and Mineralogical Definitions of Asbestos and Their Impact on Amphibole Dust Analysis," JW Kelse and CS Thompson, American Industrial Hygiene Association Journal, 1989.
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Exhibit 38_Totten Enduring Legacy-1998	Article, "The Enduring Legacy of Talc in the Balmat/Edwards District, Gouverneur, New York," F Totten, Matrix Vol. 6, Fall 1998.
Exhibit 39_CPSC Children's Crayons-2000	CPSC Staff Report on Asbestos Fibers in Children's Crayons, US Consumer Product Safety Commission, August 2000.
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Exhibit 42_Dr. Abraham Powerpoint-2010	PowerPoint Presentation, RTV_NYTAL talc samples [JA09-455] SEM/EDS analyses, JL Abraham, MD, SUNY Upstate Medical University, Syracuse, NY, 2010.
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Exhibit 44_2013 McNamee_Gunter_Part 1 of 2	Article, "Compositional Analysis and Morphological Relationships of Amphiboles, Talc and Other Minerals Found in the Talc Deposits from the Gouverneur Mining District, New York (Part 1 of 2)," BD McNamee and ME Gunter, The Microscope, Vol. 61:4, 2013.
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!New York Talc Report_9.8.21 - Supplemental	Letter to S Iola from RM Bailey; Re: Laboratory Report #371415 Transmission electron micrscopy analytical results for 3 talc archive batch samples. Job Name: New York Talc/Rt Vanderbilt, 9/8/21; Report attached.
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North Carolina Talc	Johnson & Johnson Memo to RL Sundberg from RS Russell; Re: Domestic Talc Sources (101) North Carolina, 3/3/72; IMERYS 117967-72; J&J examines 22 ore prospects in North Carolina.
North Carolina Talc	Avon Memo to JO Anderson, from JJ Travers; Re: Talc, 9/14/73; Attachments; AV_LEBRECHT-0029286-90; Avon reports 7 positives for code 0768 (NC).
North Carolina Talc	Correspondence between Whittaker, Clark & Daniels and EF Fullam regarding testing, 10/16/73 and 10/19/73; Testing Report - Determination of Asbestos in Talc by Light-Optical Microscopy for Whittaker, Clark & Daniels, Report No 1621, 11/20/73; LoGiudice/WCD/0170-0174; Fullam tells WCD NC talc has 6M chrysotile and 20.8M amphibole fibers per gram.
North Carolina Talc	Letter to JP Simko, Colgate, from R Shimps, McCrone & Associates; Re: Analysis of your sample designated 316, Cashmere Bouquet and NC Regal, 2/5/74; McCRONE0170-0179; McCrone tells Colgate chrysotile fiber in NC Regal talc.
North Carolina Talc	Excerpt from Colgate-Palmolive Laboratory Notebook No 6164-99, P Briscese, 3/5/76 to 3/8/76; CPC-NB00000061; Colgate (Bricese) finds tremolite in old Regal NC talc.
North Carolina Talc	NIOSH Results of Talc Samples from “Analysis of Talc by X-Ray Diffraction ad Polarized Light Microscopy,” May 1977; QE-CPC00004071-75
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North Carolina Talc	Excerpt of WCD Bulletin No 54-1, 643 Talc, North Carolina, Revised August 1957; WCD code 643 = North Carolina talc.
North Carolina Talc	Excerpt of WCD Bulletin No 54-1, 2450 Talc, North Carolina, Revised August 1957; WCD code 2450 = North Carolina talc.
North Carolina Talc	Avon Raw Ingredient Testing Specification, Code 0768-1, 5/26/71, Revision #2, 9/20/71; MF TOX DEPT RAW 001-0628; Avon code 0768 is WCD 2450.
North Carolina Talc	Memo to CS Rowland from HY Saad; Re: Talc – Supply and Asbestos Situation, 12/3/71; Attachment: Composition by X-ray Diffraction; AV_JENKINS_S-0005228-31; Avon code 0768 = North Carolina.
North Carolina Talc	ES Laboratories Talc Analyses (Asbestos) of 643 North Carolina Talc, 11979-1981; WCD 643 is North Carolina talc.
MONTANA TALC	
Montana Talc	Letter to WH Lycan, Johnson and Johnson, from WE Brown, Battelle; Re: Beneficiation of talc by flotation, 1/24/68; JNJNL61_00001489-1493; Battelle (for J&J) finds 2% tremolite in Stone Creek MT talc.
Montana Talc	NIOSH Memorandum to Acting Deputy Director, from Engineering Technician; Re: Talcum Sample Results, 4/27/72; JNJ000260697; Technical Service Report TS 3796-P, Leeming Pacquin Div of Pfizer, 7/21/71; PFI_SEL_00011717; NIOSH-Zumwalde finds fibers in (Pfizer) Desitin.
Montana Talc	ES Laboratories Talc Analysis (Asbestos) of 399 and 1745 Montana Talc, WCD Sample #2755, 6/12/72; Booker WCD 001038-1040; WCD Alderice Disc Docs 005471-5473; ES Labs 399-1745-2755 chrysotile.
Montana Talc	Analytical Research Laboratory Requisition & Report Re 2 Avon Coded Talcs & J&J Baby Powder Talcs – and Mennen Bath Talc, Project No 50003, Avon Codes 1747 and 0815, 4/6/73; AV_LEBRECHT-0010390-91; Avon detects tremolite in code 0815 talc.
Montana Talc	Avon Memo to JO Anderson, from JJ Travers; Re: Talc, 9/14/73; Attachments; AV_LEBRECHT-0029286-90; Avon reports detectable asbestos minerals 3x in code 0770 and 5x in code 0815.
Montana Talc	Johns-Manville Report No 414-3, 10/29/73; MTC000563-591; JM and Hazen Research find chrysotile fibers in 15 Cyprus and Pfizer MT talcs.
Montana Talc	Correspondence between Whittaker, Clark & Daniels and EF Fullam regarding testing, 10/16/73 and 10/19/73; Testing Report - Determination of Asbestos in Talc by Light-Optical Microscopy for Whittaker, Clark & Daniels, Report No 1621, 11/20/73; LoGiudice/WCD/0170-0174; Fullam finds chrysotile and amphibole in Willow Creek and Pfizer Montana talcs.
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Montana Talc	Cyprus Memo to GD Lessner, from HM Harlan; Re: Willow Creek Mine and Greenhorn Claims, Madison County, Montana, 4/6/84; CPC-BCALTRSCPT00000892-902; CIMC reports fibrous tremolite in Willow Creek, Montana ore.
Montana Talc	Cyprus Laboratory Report, Beaverhead Mine Development, Analyze samples for possible amphibole content, 7/20/88; LUZ00000069-70; CAMC-Depoian-000192-193; CIMC finds 0.33-0.76% in three samples of Beaverhead fines.
Montana Talc	Memo to Distribution from RC Munro; Re: Cyprus One Reserves- Arsenic & Tremolite, 3/25/92; IMERYS_219720-219722; Luzenac reports occurs of tremolite in Montana.
Montana Talc	Avon Raw Ingredient Testing Specification, Code 0768-1, 5/26/71, Revision #2, 9/20/71; MF TOX DEPT RAW 001-0628; Avon code 0815 = Mathieu Montana 4608 TR-2.
Montana Talc	Memo to CS Rowland from HY Saad; Re: Talc – Supply and Asbestos Situation, 12/3/71; Attachment: Composition by X-ray Diffraction; AV_JENKINS_S-0005228-31; Avon code 0815 = Montana.
Montana Talc	Talc and the OSHA Asbestos Standard 28CFR 1910.1001, Cyprus Industrial Minerals, 2/15/78; THAN010465-466; CIMC Montana talcs.
Montana Talc	Talc Supply Agreementt between Cyprus Georesearch Company and Whittaker, Clark & Daniels, 8/28/79; ITA 294-301; WCD 141 is Altalc 400 (MT) beginning in late 1979.
CANADIAN TALC	
Canadian Talc	Johnson & Johnson Memo from W Ashton; Re: Metropolitan Talc, Lot G 716 Preliminary Evaluation, 11/1/67; JNJAZ55_000012423-30; J&J reports 1% tremolite and trace serpentine in Metro 1 (Canada)
Canadian Talc	Letter to JJ Travers from LD Murino, United Sierra; Re: Talc testing, 8/31/71; AV_LEBRECHT_0029250; Cyprus tells Avon code 0810 (Canada) has 5% tremolite by XRD.
Canadian Talc	Letter to SR Mountsier, Whittaker, Clark & Daniels, from SZ Lewin, NYU; Re: Report dated September 11, 1971, 11/1/71; Dr. Lewin finds fibrous variety in 4625 and 4633.
Canadian Talc	ES Laboratory Talc Analysis (Asbestos) - 4615 Canada, SZ Lewin, 11/2/71; WCD0242; ES Labs 4615 3% tremolite.
Canadian Talc	Memo to CS Rowland from HY Saad; Re: Talc – Supply and Asbestos Situation, 12/3/71; Attachment: Composition by X-ray Diffraction; AV_LEBRECHT_0006187-90; Avon reports 6-8% tremolite in code 0810 (Canada).
Canadian Talc	ES Laboratory Talc Analysis (Asbestos) - 4615 Canada, SZ Lewin, 5/14/72; WCD0243; Dr. Lewin 4615 10% tremolite, 15% chrysotile.
Canadian Talc	ES Laboratory Talc Analysis (Asbestos) - 4615 Canada, WCD 6/72-1, 6/12/72; WCD0244; ES Labs 4615 3% tremolite, 3% chrysotile.
Canadian Talc	Letter to PH Bixby, Metropolitan Talc, from SZ Lewin, NYU; Re: XRD analysis results for 4601 talc, 7/18/72; Dr. Lewin finds 4601 has 1-2% tremolite, 1-2% chrysotile by XRD.
Canadian Talc	ES Laboratory Talc Analysis (Asbestos) - 4615 Canada, SZ Lewin, 7/20/72; WCD0245; Dr. Lewin 4615 10% tremolite, 10% chrysotile.
Canadian Talc	ES Laboratory Talc Analysis (Asbestos) - 4615 Canada, SZ Lewin, 7/20/72; WCD0246; Dr. Lewin 4615 15% tremolite, 10% chrysotile.
Canadian Talc	WCD Memo to RF Miller, Polymer Plant, from WD Inskeep; Re: Asbestos Contents of Talcs, 8/3/72; WCD0293; DE plant reports 0.4% _fibrous asbestos_ fibers longer than 5um in 4615.
Canadian Talc	ES Laboratory Talc Analysis (Asbestos) - 4615 Canada, Gordon Brown, Princeton University, 12/18/72; WCD0247; Dr. Brown (Princeton) 4615 10% tremolite, 3% chrysotile.
Canadian Talc	Letter to FF Roesch, Whittaker, Clark & Daniels, from A Weissler, FDA; Re: Sample of industrial talc containing chrysotile, 4/19/73; WCD-Pipes (OK)-1173-1175; WCD and FDA find chrysotile in 4603 Canadian talc.

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Canadian Talc	Amoco Memo to G Hauer, from J Zechinati; Re: Talc grades used at New Castle polypropylene plant, 11/21/75; WCD0292; Amoco finds 5-10% tremolite in WCD _Polytal 4615.
Canadian Talc	ES Laboratory Talc Analysis (Asbestos) - 4615 Canada, 3/22/76; WCD0265; ES Labs 4615 7% tremolite.
Canadian Talc	ES Laboratory Talc Analysis (Asbestos) - 4615 Canada, McCrone, 4/13/76; WCD0266; McCrone finds 0.5-2.0% fibrous tremolite in 4615.
Canadian Talc	ES Laboratory Talc Analysis (Asbestos) - 4615 Canada, 5/24/76; WCD0267; ES Labs 4615 3% tremolite.
Canadian Talc	Englehard Memo to EJ Triglia, from PN Gale; Re: Talc Investigation - Review and Update, 4/11/79; BASF02534-2536; Engelhard finds 12.4M, 30.5M asbestos fibers per gram in Baker talc.
Canadian Talc	Letter to P Bixby, Metropolitan Talc, from CE Clark, Clark Minerals; Re: Monthly Operating Expenses, 3/10/70; FM-WCD-MOR-KAN 0002322-2324; Metro #1 = Canadian ore, 4602 = Canadian ore.
Canadian Talc	Avon Ingredient Specifications for Code 0810-1 Talc, 9/30/70; API0018053-1; Avon code 0810 on 1970.09 = Canada Mathieu 4602.
Canadian Talc	Memo to CS Rowland from HY Saad; Re: Talc – Supply and Asbestos Situation, 12/3/71; Attachment: Composition by X-ray Diffraction; AV_LEBRECHT_0006187-90; Avon code 0810 = Canadian.
Canadian Talc	Avon Memo to CP Randa, et al, from SN Zia; Re: Talcs, 2/25/72; AV_JENKINS_S-0005242-5243; Avon code 0810 was _Canadian 4602.
Canadian Talc	WCD Memo to Bob, from Clarence; Re: Sales Report - Month of November 1969, Metropolitan Talc, 12/10/69; FM-WCD-MOR-KAN 0002326-2328; WCD reports sale of 4601 (Canadian) to Coty in November 1969.
Canadian Talc	WCD Memo to Bob, from Larry; Re: Metropolitan Talc Co, 3/16/70; WCD002853-2854; WCD refers to truckload of Metro #1 to Coty.
Canadian Talc	CTFA Memo to N Estrin, from AS Curry; Re: Coty Airspun, 3/12/76; WCD000004; CTFA reports Coty Airspun used a difference source in 7-1969 than 3-1976.
Canadian Talc	J&J Memo; Re: The Mt. Sinai Samples are OLD, 3/18/76; JNJMX68_000009584-56; J&J reports Coty (and Colgate) uses different source in 7-1969 than 3-1976.
COLGATE AND COTY TALC SOURCES AND TESTING	
COLGATE - Talc Sources and Testing	Colgate Formulas for Cashmere Bouquet, 1965-1975
COLGATE - Talc Sources and Testing	Cyprus Industrial Minerals Call Report, Colgate-Palmolive, 2/12/76; CYP00000698.
COLGATE - Talc Sources and Testing	Defendant Colgate-Palmolive Company's Objections and Responses to Plaintiffs' First Supplemental Interrogatories, Bell v American International Industries, et al, Middlesex County, New Jersey, 6/16/16; Verified.
COTY - Talc Sources and Testing	Johnson & Johnson Memo from W Ashton; Re: Metropolitan Talc, Lot G 716 Preliminary Evaluation, 11/1/67; J&J-0076514-21; JNJAZ55_000012423-30
COTY - Talc Sources and Testing	WCD Memo to Bob, from Clarence; Re: Sales Report - Month of November 1969, Metropolitan Talc, 12/10/69; FM-WCD-MOR-KAN 0002326-2328.
COTY - Talc Sources and Testing	WCD Memo to Bob, from Larry; Re: Metropolitan Talc Co, 3/16/70; WCD002853-2854.
COTY - Talc Sources and Testing	Letter to PH Bixby, Metropolitan Talc, from SZ Lewin, NYU; Re: XRD analysis results for 4601 talc, 7/18/72.
COTY - Talc Sources and Testing	CTFA Memo to N Estrin, from AS Curry; Re: Coty Airspun, 3/12/76; WCD000004.
COTY - Talc Sources and Testing	Excerpt of Defendant Pfizer Inc's Responses to Plaintiff's First Supplemental Interrogatories and Document Requests, Schoeniger v Brenntag North America, Inc, et al, Middlesex County, New Jersey, 1/13/17.
COTY - Talc Sources and Testing	Deposition of Brian Kolman, Pyle v Pfizer, Inc, et al, 10/17/18.
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AVON AND REVLON TALC SOURCES AND TESTING	
AVON - Talc Sources and Testing	Basic Batch Formula for 2-9804-1HN Sweet Honesty #64843-03, Rev #3, 1/9/78; Rev #4, 8/14/78; Rev #5, 7/28/81; AV_Garcia_000001-3.
AVON - Talc Sources and Testing	Basic Batch Formula 2-7485-1HN for Skin-So-Soft #58854-A-1, Rev #5, 8/14/78; Rev #6, 7/28/81; AV_Garcia_000004-5.

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AVON - Talc Sources and Testing	Avon Formula Master, Talc-Candid, Code 10113-11, 6/5/78; Basic Batch Formula 2-9842-1HN Candid #10113-10, Rev #3, 8/14/78; Rev #4, 1/12/79; Rev #5, 7/24/81; AV_Garcia_000006-9.
AVON - Talc Sources and Testing	Avon Formula Master, Aerosol-Powder Mist; Candid Concentrate, Code 13199-05, 1/15/79; Basic Batch Formula Rev #5, 7/24/81; AV_Garcia_000010-11.
AVON - Talc Sources and Testing	Avon Raw Ingredient Testing Specifications, Code 0747-1, Italian Talc, Rev #3, 8/24/77; API0019561-25-API0019561-26.
AVON - Talc Sources and Testing	Avon Raw Ingredient Testing Specifications, Code 0747-1, Italian Talc, Rev #1, 1/30/80; Rev #4, 7/2/81; API0019561-21-API0019561-24.
AVON - Talc Sources and Testing	Avon Raw Ingredient Specifications, Code 0750-1, Brazilian Talc, 7/15/81; AV_Garcia_000028-29.
AVON - Talc Sources and Testing	Avon New Raw Ingredient Release, Code 0752-1, Olympic Talc, 6/11/76; Rev #1, 1/19/77; Rev #3, 1/9/81; AV_FORNI-0006376; 1927-1928; AV_Garcia_000026-27.
AVON - Talc Sources and Testing	Avon Raw Ingredient Specifications, Code 0752-1, Olympic Talc, Rev #4, 10/14/82; API0013866-1-API0013866-2.
AVON - Talc Sources and Testing	Cyprus Product Application, Cosmetic, Undated; CAMC-Ratcliff-000025-27.
AVON - Talc Sources and Testing	Avon Raw Ingredient Specifications, Code 0768-1, Talc #2450, Rev #3, 8/15/77; Rev #2, 7/2/81; AV-FORNI-0004002-3; AV_Garcia_000018-19.
AVON - Talc Sources and Testing	Mineral Analysis of Currently Used Talcs, JJ Travers, 3/28/72
AVON - Talc Sources and Testing	Excerpt of the Deposition of Dennis St George, Hirshberg v Johnson & Johnson, 3/2/21.
AVON - Talc Sources and Testing	Avon Raw Ingredient Testing Specifications, Code 0815-1, Northern Talc, Rev #1, 9/20/71; Teletype to LJ Richards, from SN Zia; Re: Pasadena Carload Receipt of Talc Designated as Montana, Code 0815, from American Talc with WCD labels, 7/17/72; Analytical Research Laboratory Requisition and Report, 2 Avon Coded Talcs, J&J Baby Powder and Mennen Bath Talc, 4/6/73; Avon Raw Ingredient Testing Specifications, Code 0815-1, Northern Talc, Rev #2, 3/16/77; API0017948-5-API0017948-6; AV-FORNI-0005036; AV-LEBRECHT-0010391; API0017921-5-API0017921-6.
AVON - Talc Sources and Testing	Avon Raw Ingredient Specifications, Code 0815-1, Northern Talc, Rev #3, 12/20/79, 7/2/81; AV_Garcia_000012-17.
AVON - Talc Sources and Testing	Avon Memo to CP Randa, from JJ Kamrowski; Re: Raw Talc Information, 6/29/76; AV_JENKINS_S-0001540.
CHARLES OF THE RTIZ - Talc Sources and Testing	Whittaker, Clark & Daniels Sales Report of Sales to Charles of the Ritz, 1975-1981; WCD Alderice Disc Docs 001062-1070.
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CHARLES OF THE RTIZ - Talc Sources and Testing	Cyprus Industrial Minerals Sales Analysis by Customer, Sales to Charles of the Ritz, 12/31/82 to 12/31/87; ITA-Polakow-000001-6.
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REVLON - Talc Sources and Testing	MAS Analysis Report, Project #M71031 to M71038, Jean Nate Body Powder Products, WE Longo, 7/31/20.
REVLON - Talc Sources and Testing	MAS Analysis Report, Project #71138 Jean Nate Silkening Body Powder, Danielle Polakow's 6 oz Container, WE Longo, 8/6/20.
REVLON - Talc Sources and Testing	MAS Supplement Report #2, Project #M70293, Jean Nate Silkening Body Powder, WE Longo, 8/7/20
REVLON - Talc Sources and Testing	MAS Chart of Jean Nate Testing, WE Longo, 8/10/20.
REVLON - Talc Sources and Testing	Declaration of William E Longo, Jean Nate, 8/10/20.
REVLON - Talc Sources and Testing	MAS Supplement Report, Project #M70629, Jean Nate Silkening Body Powder, WE Longo, 8/10/20.
ADDED AUGUST 2021	
MONTANA TALC	
Geology of Montana Talc	Anderson, DL, et. al.. Petrogenesis and Timing of Talc Formation in the Ruby Range, Southwestern Montana. Economic Geology, Vol. 85, pp. 585-600, 1990.
Geology of Montana Talc	James, H. Precambrian Geology and Bedded Iron Deposits of the Southwestern Ruby Range, Montana. U.S Geological Survey Professional Paper 1495. 1990.
Geology of Montana Talc	Larson, A. Talc Formation in the Regal-Keystone Mine of the Ruby Range, Dillon, Montana. 232-237. 1991.

Geology of Montana Talc	Gammons, CH. Using Fluid Inclusions to Help Unravel the Origin of Hydrothermal Talc Deposits in Southwest Montana. Northwest Geology, v 31, 2002, p. 44-53.
Geology of Montana Talc	Cerino, M. Talc in Southwestern Montana. Northwest Geology, v. 36, 2007, p. 9-22.
Geological Map of Montana	Van Gosen, B.. Map showing areas with potential for talc deposits in the Gravelly, Greenhorn and Ruby ranges and the Henry Lake Mountains of southwestern Montana. Open-File Report 98-224-B, 1998.
Pfizer Testing - Talc 643	Pfizer technician notebook entries for 42 tests of Talc 643 in 1978-1981. Various bates stamps (PFZ-Hug, PFI_ROY, PFI_SEL, etc.).
Avon Testing Report - Beaverhead Talc	Analysis of Avon Night Magic Talcum Powder, M68319, WE Longo and MW Rigler, Material Analytical Services, January 2019.
Colgate Cashmere Bouquet	MAS Chart of Cashmere Bouquet Testing, WE Longo, 6/14/21.
Colgate Cashmere Bouquet	Declaration of William Longo, 91 Contaners, 6/23/21.
Pfizer Testing of 1615 Italian Talc	Lab notebook entries re Talc 1615, 1976-1982. (126 Tests)
Pfizer Testing of 1615 Italian Talc	Cosmetic Talc Report - Tippin, JS Webber, 8/13/21.
Pfizer Testing of 1615 Italian Talc	Appendix B, Summary Table of Pfizer TEM Test Results for Talc 1615, undated.
ADDED JANUARY 2022	
COTY, CHANEL, AVON - MISC TALC SOURCE AND TESTING DOCUMENTS	
COTY - Talc Sources	Excerpts of Coty responses to interrogatories (Hug) 2/19/2016
COTY - Talc Sources	Pfizer Analytical Report, Sample Designation and Description, Coty Talc EGT, 11/5/65; PFE-Hug00007102 to 7103
COTY - Talc Sources	WC&D on discount for Coty, 17 sales of Talc 1615 to Coty, 9/7/72; WCD-Roy-00014.
COTY - Talc Sources	WC&D invoice, Sale of 1615 AGI Talc to Coty, 6/1/73; WCD-Roy-000015.
COTY - Talc Sources	Summary of sales from WC&D and Cyprus to Coty 1975-1985 (made by attorney)
COTY - Talc Sources	WC&D sales records to Coty 1975-2004
COTY - Talc Sources	Cyprus sales records to Coty 1979-1990
COTY - Talc Sources (re change of talc source in 1970; see 3/12/1976 CTFA document)	J&J Memorandum on Mt. Sinai Talc Samples, Coty Airspun Face Powder dated 1969, 3/18/76; JNJMX68_000009855-9856.
COTY - Talc Sources	Coty L'Aimant Batch Card, 4/10/79; Talc 1615 is 95% of the product; Coty raw material code 00-101-465 is Talc 1615; Exhibit 4 to the Deposition of Brian Kolman dated 10/17/2018
COTY - Talc Sources	Coty L'Aimant Master Formula, 7/8/87; Talc 1615 is 94% of the product; Exhibit 4 to the Deposition of Brian Kolman dated 10/17/2018
COTY - Talc Sources	Coty Raw Material Specification, 7/18/94; Raw material #2-001-01-465 is Italian talc 5/0 Dec; COT-Hug0000235.
COTY - Talc Sources	Coty Airspun Powder Master Formula, 6/10/03; Italian Talc 5/0 Dec. 86.01% of the product; COT-Hug0000233-234.
COTY - Talc Sources (re Penhorwood talc 1004C)	Colgate Experimental Formula for M-6831, 8/26/81; M-6831 is Canadian talc sold by Beacon CMP Corp as # 1004C; QE-CPC00001436.
COTY - Talc Sources (re Penhorwood talc 1004C)	Color Techniques Letter to Revlon, 5/28/86; Timato is 1004CX Talc; Rev-NJ-000821.
COTY - Talc Sources	Cyprus Call Report on Coty, 7/11/90; Cyprus using Canadian talc from Beacon and Color Techniques for 6-7 years before 1991; IMERYS096098.
COTY - Talc Sources (re Penhorwood talc CosJ and others)	Luzenac Competitor Database, 3/24/97; Coty purchases Cos J and Italian 5/0 (plus two other talcs); IMERYS231100-231101.
COTY - Talc Sources (re Penhorwood talc Cos J/Talc J)	Luzenac Memorandum, 12/12/97; Talc J (Cos J) is 100% Penhorwood talc; IMERYS426200-426201.
COTY - Talc Sources (re Penhorwood talc Cos J/Talc J and 1004C)	WC&D Notes/History, 9/28/98; Coty previously purchased Luzenac's J Talc from Canada that was repackaged as RCT 1004CX Talc by Beacon; WCD-Roy-000025.
COTY - Talc sources (re Penhorwood talc 1004C)	Color Techniques Data Sheet for RCT 1004CX talc; Rev-NJ-000788-790.
CHANEL - Talc Sources	Excerpt of the Deposition of Chanel Representative, Amy Wyatt, 3/6/20.
CHANEL - Talc Sources	Excerpt of Chanel's Responses to Requests for Admissions, Roy, 8/2/21.

CHANEL - Talc Sources	Excerpts of Chanel's Responses to Special Interrogatories, Moore, 9/15/21.
CHANEL - Talc Sources	Chanel Master Batch Records, 1974-2000; Specify Talc 1615, Supra and Supra A; various bates; Chanel Raw Material Specifications (dated 11/29/1982, 4/15/1997, 9/14/1999); various bates
CHANEL - Talc Sources (re source of Australian talc in Supra A)	Luzenac America on Supra A Talc; 11/10/98, Supra A contains 50% Italian talc from Val Chisone and 50% Australian talc from the Mt. Seabrook mine; IMERYS056594
CHANEL - Talc Sources (re Italian talc and WCD supplly)	Excerpt of the Deposition of WC&D Representative, Dennis St. George dated 10/12/17; Chanel purchased 2.4 to 2.8 million pounds of primarily Talc 1615 in 1975 to 1982.
CHANEL - Talc Sources	Cyprus Sales Records to Chanel, 1979-1994.
CHANEL - Testing	Declaration of Dr. WE Longo regarding MAS Analysis of Chanel talc products, 8/10/20; MAS Chart summarizing the results of analysis of Chanel talc products
AVON - Testing	Analysis of Avon Cotillion Talc fort he presence of asbestos, Laboratory Report # 367569, Asbestos TEM Laboratories, Inc, 12/17/19.
CANADIAN TALC (MADOC/HENDERSON MINES)	
Geology of Canadian Talc (Madoc)	"Talc Deposits of Canada," M.E. Wilson, Canada Department of Mines, Geological Survey, No. 2092, 1926.
Geology of Canadian Talc (Madoc)	"Geology of Madoc and North Huntingdon Townships," Open File Report 5000, D.F. Hewitt, Ontario Department of Mines, Geological Branch, 1967.
Geology of Canadian Talc (Madoc)	"Talc in Ontario," Industrial Mineral Report 40, D.F. Hewitt, Ontario Department of Mines and Northern Affairs, 1972.
Geology of Canadian Talc (Madoc)	19th Forum on the Geology of Industrial Minerals, Guidebook for Field Trips, Miscellaneous Paper 111, S.E. Yundt, Ontario Geological Society, 1983.
Geology of Canadian Talc (Madoc)	"Geology and Geochemistry of Talc Deposits in the Madoc Area, Ontario," Thesis, George Simandl, November 1984.
Geology of Canadian Talc (Madoc)	"Talc in the Tudor Formation, Supracrustal Series, Southeastern Ontario," E.P. Dillon and P.S. Barron, Ontario Geological Society, Open File Report 5530, 1985.
Geology of Canadian Talc (Madoc)	"Talc in Southeastern Ontario," P.S. LeBaron and Steven van Haaften, Ontario Geological Society, Open File Report 5714, 1989.
Geology of Canadian Talc (Madoc)	Rio Tinto Minerals and Barrett Minerals for the EPA, 2009; IMERYS036155-036196.
Geology of Canadian Talc (Madoc)	Report of Activities, Resident Geologist Program, Ontario Geological Survey, Open File Report 6319, 2015.
Testing - Canadian Talc (Madoc)	Johnson & Johnson Support to International Report for July – October 1980; JNJ000065269-65272.
Madoc chart appendix - Madoc talc in cosmetic products (history/background)	WC&D Board of Directors Minutes, 12/15/64; WC&D forms Metropolitan Talc Company with 49% interest; Metropolitan Talc to grind talc from the Henderson mine.
Madoc chart appendix - Madoc talc in cosmetic products (WCD testimony on source of Talc 4601/Metro #1 and Talc 4602/Metro #2)	Except of the Deposition of WC&D Representative, Dennis St. George dated 10/29/21; Talc 4601 and Metro #1 (and Talc 4602 and Metro #2) are the same talc from the Henderson mine in Madoc.
Madoc chart appendix - Madoc talc in cosmetic products (WCD testimony on source of Talc 4601 and Talc 4602)	"WC&D Codes," Talc 4601 and Talc 4602 were sourced from Madoc, Ontario, Canada; Exhibit 34 to the Deposition of Dennis St. George dated 10/29/21.
Madoc chart appendix - Madoc talc in cosmetic products (Avon Code 0810 - Talc 4602)	Avon Raw Ingredient Specification for 0810, 9/30/70; 0810 is Canadian 4602; AV_Moore_000121.
Madoc chart appendix - Madoc talc in cosmetic products (Avon Code 0810 - Talc 4602)	Avon Raw Ingredient Specification for 0810, 9/20/71; 0810 is Canadian 4602; AV_Moore_000122-123.
Madoc chart appendix - Madoc talc in cosmetic products (Avon formulas specifying 0810 - Talc 4602)	Avon Percentage and Batch Formulas, 1970-1971; 8 Avon formulas in call for the product being 42-43% either Avon 0810 or Avon 0815; various bates.
Madoc chart appendix - Madoc talc in cosmetic products (Mennen equating Metro #1 and Talc 4601)	Mennen Raw Material Specification, Code 10,313, 4601 Metro #1 Talc, 2/21/68; Mennen-00004650.
Madoc chart appendix - Madoc talc in cosmetic products (Mennen specifying Metro #1)	Mennen Formula for Micro Baby Powder, 4/14/69; Mennen baby powder calls for 98.4% Metro Talc #1; Mennen-00012148.
Madoc chart appendix - Madoc talc in cosmetic products (Nestle using Talc 4602)	Letter to WC&D from Don Ferry, Metropolitan Talc, 2/16/70; Nestle ordered 300 tons of Talc 4602.

Madoc chart appendix - Madoc talc in cosmetic product (Nestle using Talc 4602)	Letter from Mr. Clark to Metropolitan Talc Company, 3/10/70; FM-WCD-MOR-KAN 0002322-2324.
Madoc chart appendix - Madoc talc in cosmetic products (Revlon code Revert for Talc 4601)	Letter from WC&D to Revlon, 5/25/89; Revlon code 98749-00 for Revert was WC&D's Talc 4601; Rev – NJ – 000800.
Madoc, Ontario Talc Chart of Documents/Sources for Mark Bailey, PG	

EXHIBIT 71

Expert Report of R. Mark Bailey, P.G. on *Asbestos in Talc Products from the Fontane Mine, Val Germanasca, Italy*

For

Jessica Dean, Esq.
Dean Omar Branham Shirley, LLP

Date
June 12, 2020

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1. Introduction to asbestos, talc and the Fontane mine

Asbestos is a well-documented human health hazard and cause of serious and frequently fatal lung disease and cancer. It is one of the most thoroughly documented sources of cancer known to man including:

- Mesothelioma
- Lung Cancer
- Asbestosis
- Pleural plaques
- Other various lung and immune system diseases

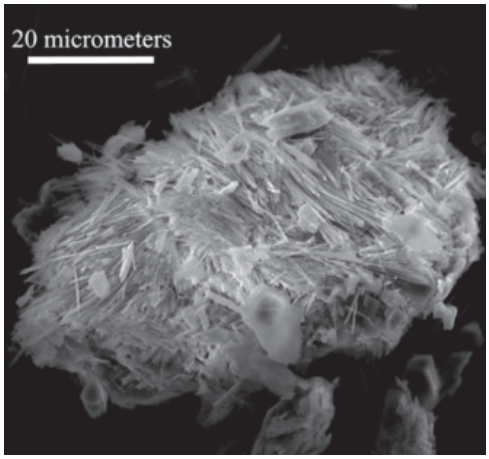


Fig. 1.1 - SEM Photo asbestos fibers in talc [1].



Exposure to asbestos fibers leading to lung disease most commonly occurs when friable (easily powdered) materials are disturbed in such a manner that asbestos fibers are released into the air and inhaled into the lungs. Unfortunately, it has been found that many talc products contain asbestos which is a particular problem because talc products are most often used in a finely powdered form.

Asbestos occurs as a contaminant in talc products due to multiple factors including: 1) the geology and geologic history of the deposit and its surrounding rocks, and 2) the ore grade identification and mining practices used during removal. Geologic materials are never 100% pure and all ores contain some level of contaminants (fig. 1.3). In addition, non-ore zone "wall" rocks bounding the ore body, or wall rock septa or inclusions within the ore, are difficult to keep from becoming entrained into the ore during the drilling, blasting and excavation processes that occur during mining. Mines are dirty places, and mining is an inexact process, and if asbestos is present either in the ore, or within the wall rocks, it will be found to some degree in the products derived from that ore.



Fig. 1.3 Example photo of Fontane mine talc ore zone which typically includes 30-40% non-talc ore contaminants. [9]

In this report I address the Fontane talc mine located in Val Germanesca, Italy, a mine which has produced talc used for cosmetic purposes for a wide range of products since at least the 1950's [4] and currently remains in operation. This mine has been, and continues to be, the source of numerous talc products.



Fig. 1.3 - Map of Italy with general location of the Fontane Mine in the westernmost Alps in Italy.

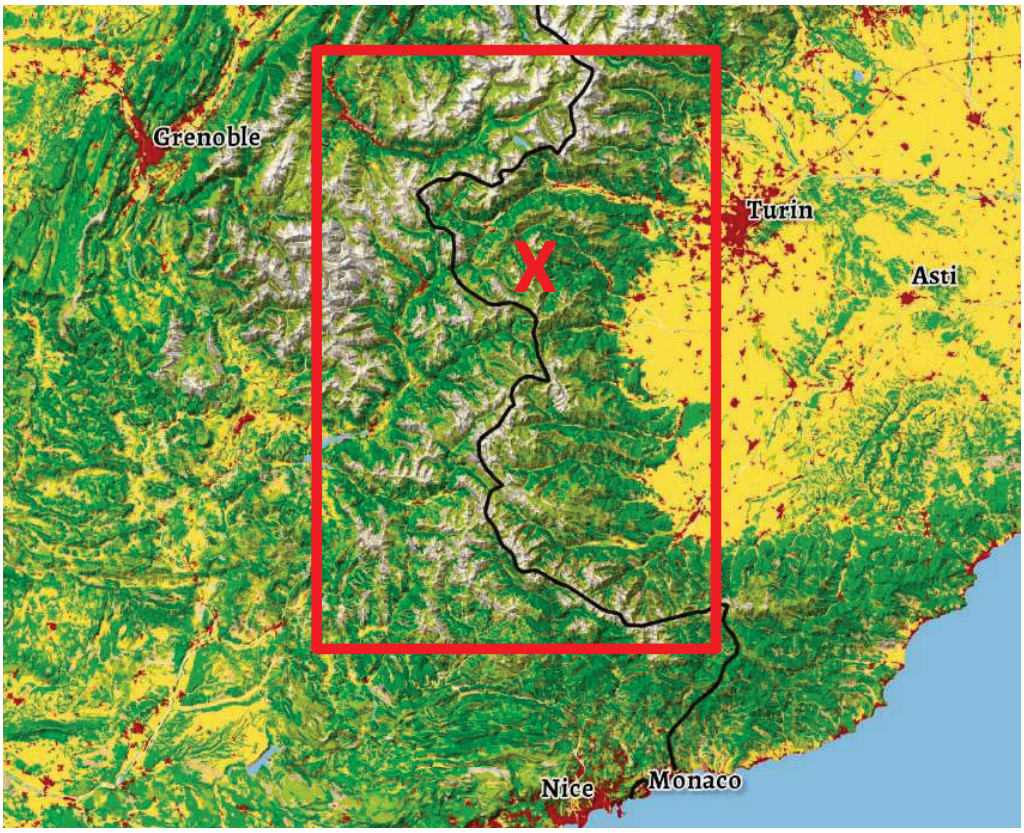


Fig. 1.4 - Map of western Italy with general location of the Fontane Mine near the border with France.

2. Definitions of asbestos & countable fibers

Typically, to define a substance as asbestos it has to meet various criteria including:

- Mineral type [31]
    - Serpentine Asbestos (Regulated)
        - Chrysotile
    - Amphibole Asbestos (Regulated)
        - Tremolite/Actinolite
        - Amosite (Grunerite)
        - Crocidolite (Riebeckite)
        - Anthophyllite
- Morphology & Optical Characteristics



Fig. 2.1 – The six regulated forms of asbestos

Several of the many regulatory definitions of asbestos

CARB 435: California Air Resources Board (CARB) Method - Determination of Asbestos Content in Serpentine Aggregate [22]

Fiber Identification – Positive identification of asbestos requires the determination of the following optical properties

Morphology (3 to 1 minimum aspect ratio)…

AHERA: USEPA Asbestos Hazard Emergency Response Act (AHERA) Asbestos-containing building materials in schools: final rule and notice. Appendix A to Subpart E – Interim Transmission Electron Microscopy Analytical Methods [21]

- Fiber – A structure greater than or equal to 0.5 µm in length with an aspect ratio (length to width) of 5:1 or greater and having substantially parallel sides…

NIOSH 7400: Asbestos and Other Fibers by PCM [23]

- Count any fiber longer than 5µm which lies entirely within graticule area.
    - Count only fibers longer than 5 µm. Measure the length of curved fibers along the curve.
    - Count only fibers with a length-to-width ratio equal to or greater than 3:1

ASTM D5755: Standard Test Method for Microvacuum Sampling and Indirect Analysis of Dust by Transmission Electron Microscopy for Asbestos Structure Number Surface Loading [34]

- *fiber*—a structure having a minimum length of 0.5 µm, an aspect ratio of 5:1 or greater, and substantially parallel sides

USEPA 600-R-93-116: Method for the Determination of Asbestos in Bulk Building Materials [31]

Asbestos is defined as a "commercial term applied to the asbestiform versions of six different minerals". The method describes the properties of the asbestiform habit *using a polarized light microscope as follows:*

- Mean aspect ratios ranging from 20:1 to 100:1 or higher for fibers longer than 5µm. Aspect ratios should be determined for fibers, not bundles
- Very thin fibrils, usually less than 0.5um in width
- Two or more of the following:
    - Parallel fibers occurring in bundles
    - Fiber bundles displaying split ends
    - Matted masses of individual fibers
    - Fibers showing curvature

These characteristics refer to the population of fibers as observed in a bulk sample…

FDA IWGACP: Interagency Working Group on Asbestos in Consumer Products (IWGACP) definition of countable elongate mineral particles (EMPs) proposed in recent Executive Summary, Jan, 2020. [43] (The term EMP is an attempt to move away from cleavage fragment vs. asbestos fiber arguments and is well described in the NIOSH Roadmap [44])

- Chrysotile (but not other serpentine minerals)
- The members of the amphibole group (inclusive; not restricted to the five amphiboles used commercially).
- Countable EMPs have an aspect ratio (AR) of >3:1 and a length of > 0.5 µm.

Various other definitions of asbestos also exist [46]. It is important to note that there are considerable differences, primarily related to aspect ratios; 3:1 aspect ratio (NIOSH [23,24] & CARB [22]) to 5:1 (AHERA [21]), or minimum width and length (NIOSH [23,24]) between a number of asbestos defintions. However, while it has not been codifed, the recent consensus opinion put forth by the FDA IWGACP, a group of the most knowledgeable government agencies with expertise on asbestos including EPA, OSHA, CDC/NIOSH, USGS, FDA, ATSDR and several others, states that when analyzing for asbestos in talc the most inclusive criteria for length and aspect ratio from among the "asbestos" counting rules in established testing protocols should be used [43]. This means that many fibers excluded by various testing labs and consultants who choose to use more conservative criteria (such as only fiber lengths >5um or >10um; aspect ratios of >5:1 or >10:1 or >20:1 or >100:1; widths <0.1um or <0.25um or <0.5um), should be counted.

Effect of milling on fiber counting and asbestos concentration

An additional factor when considering the asbestos concentration of a material such as talc, is the degree to which it has been milled during processing as milling has the potential to break down asbestos fibers so they no longer meet classic definitions of asbestos with highly elongate fibers with aspect ratios of 20:1 to 100:1 or greater. Below (Fig. 2.2) is an example of a highly asbestiform tremolite bundle to the left which, when ground to a powder, transformed into the material shown to the right with much shorter fibers. Some testing labs, following conservative particle counting criteria, would call these cleavage fragments, yet the material grew in an asbestiform habit and is a truly asbestiform material [29]. This is why counting short asbestos fibers with aspect ratios as low as 3:1 is critical to determining the asbestos concentration in milled talc. Pang et al [45], in a study on the effect of grinding talc samples, observed this very relationship when they milled various concentrations of talc and tremolite asbestos to a 325 mesh (sub 44 µm) particle size in the lab. They also found milling increased the concentration of asbestos fibers as bundles were broken apart, and long fibers became multiple shorter fibers.

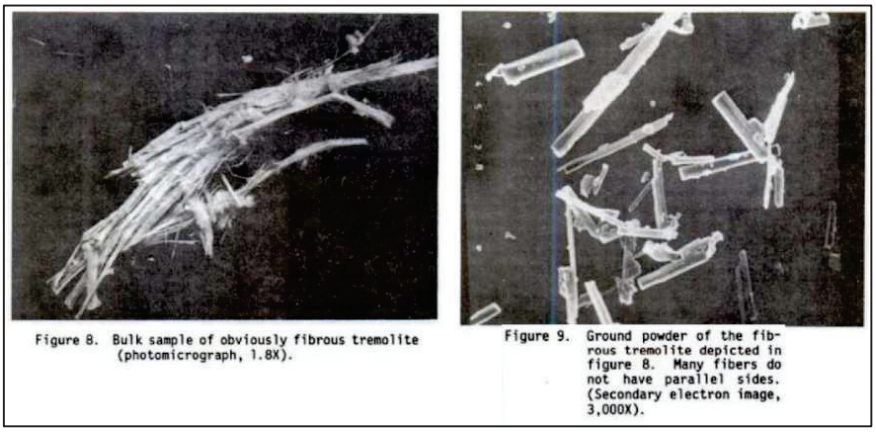


Figure 8. Bulk sample of obviously fibrous tremolite (photomicrograph, 1.8X).

Figure 9. Ground powder of the fibrous tremolite depicted in figure 8. Many fibers do not have parallel sides. (Secondary electron image, 3,000X).

Fig. 2.2 – Scanning electron microscopy photomicrographs of asbestiform tremolite and the effects on fiber morphology of grinding [29].

3. General guide to geology & geologic processes

Geology is the study of minerals and rocks. To understand how talc forms and whether it can contain asbestos we need to use the language of geology. Below are a few geologic terms to allow us to begin a discussion of asbestos and talc and how they form.

Minerals, by definition, are crystalline materials that are found in nature. Below are ten common minerals which define what is called the Mohs hardness scale. Note that talc is the softest mineral (1) and diamond is the hardest (10).

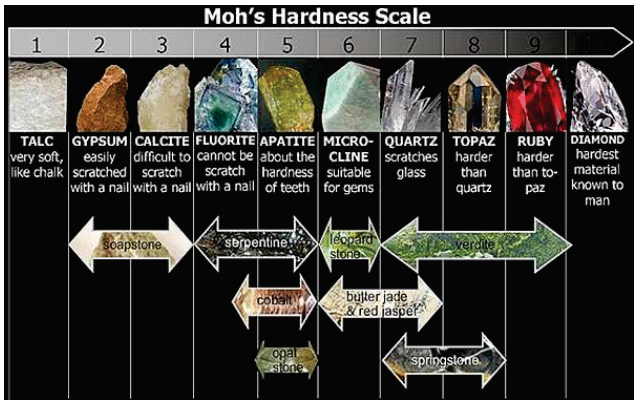
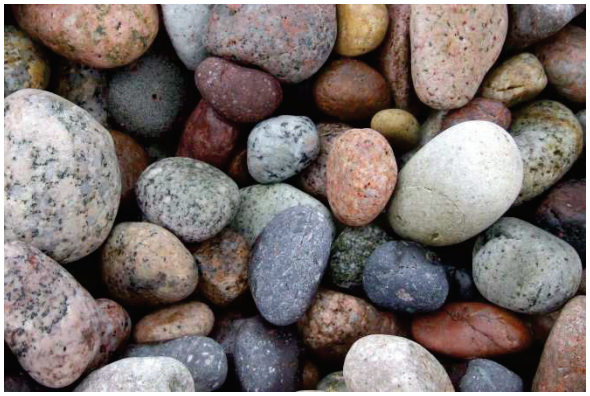


Fig. 3.1 - Mohs hardness scale is a general table used by geologist for ranking mineral hardness – Talc is the softest mineral (#1) and diamond as the hardest (#10) on a scale of 1 to 10

Rocks are aggregations of minerals bound together so as to form a more massive, concrete type of material. Sandstone, shale, limestone and basalt are some example of rocks.



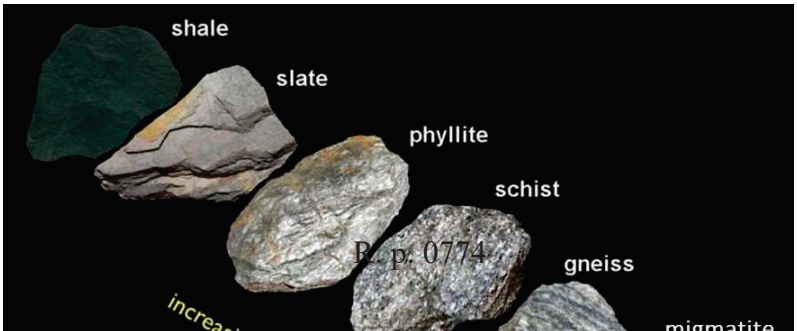


The minerals we will primarily be discussing are:

- **Select silicate minerals**
  - **The Asbestos Minerals**
    - **Tremolite/Actinolite (Amphibole)**
      - hard minerals of the amphibole group which occur widely in nature and under certain circumstances are fibrous/asbestiform
      - composed of the elements **Fe, Mg, Si & O**, **Ca -** $Ca_2(Mg,Fe)_5Si_8O_{22}(OH)_2$
    - **Chrysotile (Serpentine)**
      - composed of the elements **Mg, Si & O –** $Mg_3Si_2O_5(OH)_4$
  - **Talc** – a soft, slippery platy shaped mineral much like mica
    - composed of the elements **Mg, Si & O -** $Mg_3Si_4O_{10}(OH)_2$
  - **Chlorite** - a group of platy shaped minerals that is harder and less slippery than talc
    - composed of the elements **Fe, Mg, Si, Al & O -** $(Mg,Fe)_3(Si,Al)_4O_{10}(OH)_2 \cdot (Mg,Fe)_3(OH)_6$
  - **Feldspar** – a group of blocky light colored minerals
    - composed of the elements **Na, K, Si, Al & O**
  - **Quartz** – a clear mineral
    - composed of the elements **Si & O**
- **Select carbonate minerals**
  - **Dolomite** – composed of **Ca, Mg, C & O**
  - **Calcite** – composed of **Ca, C & O**
  - **Magnesite -** composed of **Mg, C & O**

Similarly, the rocks I will primarily be discussing are:

- **Pelites: rocks derived from siliceous mud (the Ancient Greek word *pelos* means clay)**
  - **Mudstone and shale** are very fine-grained sediment or sedimentary rocks composed primarily of clay particles.
- **Meta-pelites: rocks derived from pelites by deep burial and heating (metamorphism)**
  - **Schist** – consisting of platy mica or mica-like minerals mixed with other silicate minerals such as amphiboles
    - Talc schist
    - Talc-chlorite schist
    - Mica schist
  - **Gneiss** - consisting of platy mica mixed with other crystalline silicate minerals such as feldspar and quartz
  - **Amphibolite** – a dark rock consisting dominantly of a mix of various amphiboles
  - **Migmatite** – A gneiss which has been heated to the point it partially melts and begins to flow.



R. p. 0774

Fig. 3.3 - Typical changes to silica rich muds when lithified and metamorphosed under increasing temperature and pressure. [27 – modified to include migmatite]

- **Carbona**
    - **Chalk, limestone & dolomite** are sedimentary rock composed of shells of microscopic one celled animals as well as common seashells and reef-building organisms
- **Meta-carbonate: rocks derived from carbonates by deep burial and heating (metamorphism)**
    - **Marble** – coarsely crystalline limestone
    - **Dolomitic marble** – coarsely crystalline dolomite ± calcite



Fig. 3.4 - Typical changes to carbonate oozes lithified and metamorphosed under increasing temperature and pressure. [27 – modified to include chalk]

- **Basites: rocks formed from cooling of dark iron and magnesium-rich magma**
    - Basalt in composition, similar to that which erupts in Hawaii or at the mid-ocean ridges.
- **Meta-basites: rocks derived through metamorphism of basite rocks**
    - Prasinite & ovardite – a mix of tremolite/actinolite amphiboles with other silicate minerals such as chlorite and epidote; sometimes altered to a schist

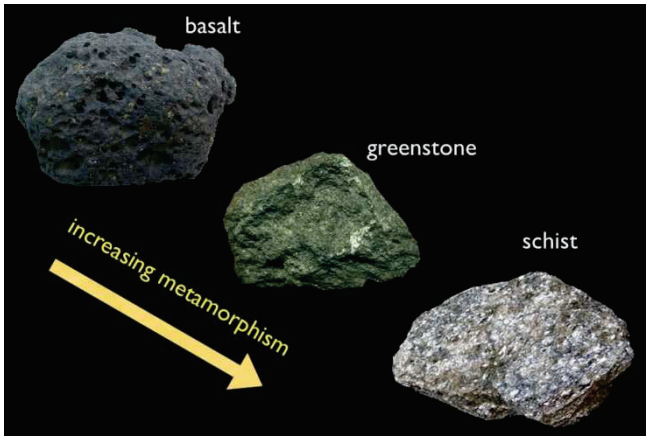


Fig. 3.5 - Typical changes to basites (basalts) metamorphosed under increasing temperature and pressure. [27]

Metamorphism: The change of muds, oozes and other various rock source materials from one set of minerals to another as they are subjected to increasing, or decreasing, temperature and pressure (depth). Below is a graphical "cookbook" of sorts called a metamorphic P-T diagram which shows the kind of rock (or metamorphic facies) that will occur if a silicate rock is heated at different depths in the earth including: zeolite and clay, greenschist, amphibolite, granulite, blueschist, eclogite and contact metamorphic rocks.

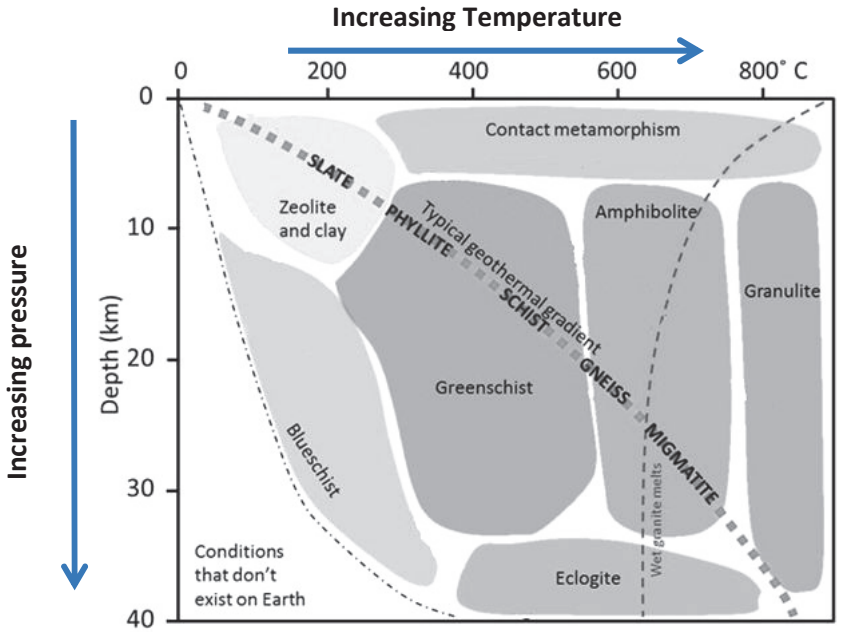


Fig. 3.5 – Metamorphic PT (pressure – temperature) diagram which graphically plots areas where rocks have stable groups of minerals [28 - modified]

4. Geology of Asbestos and Non-Asbestos Bearing Talc Deposits

Before discussing the specifics of the geology of the talc deposits of the Val Germanasca area, it is important to understand the mechanisms by which talc forms in the natural environment. These mechanisms greatly affect not only the type and quality of the talc, but also the presence of accessory minerals such as amphiboles which may become asbestiform, and which are ultimately hazardous to human health. An excellent discussion of this topic has been provided by Van Gosen [1] of the USGS, who describes 3 primary types of economic talc deposits and ranks them by the level of amphibole content:

(1) **Amphibole-free talc deposits formed by <u>hydrothermal processes</u> (Green zone A in fig. 4.1)**

The term hydrothermal is commonly used in a general sense to describe the actions and products of heated fluids, often, but not always, implying an association with igneous processes. Hydrothermal talc refers to deposits (usually of shallow depth) thought to be the product of fluids heated by a distant magma source.

An example is the Talc City district in eastern California. In this talc deposit, dolomitic rocks similar to those in Val Germanasca are altered to talc, but with a significant difference in that the Talc City Hills talc deposit formed as a result of hydrothermal alteration and not during regional metamorphism, leaving it amphibole free. In addition, the alteration is generally more

widespread throughout the affected rocks than is found in Val Germanasca. Studies of the Talc City Hills and other similar deposits indicate the temperature of the fluids which formed the talc were in the range of 280 – 405 deg. C., which is not conducive to the formation of amphiboles.

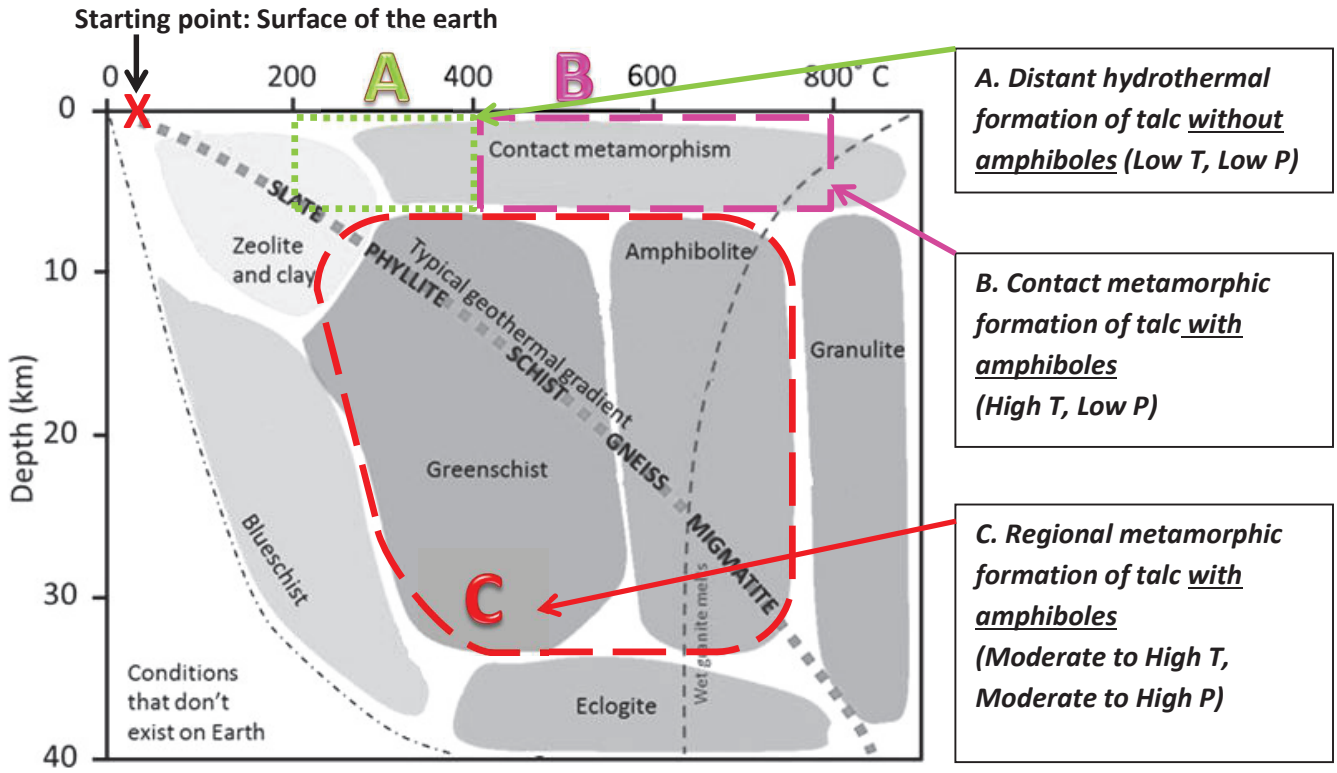


Fig. 4.1 – Pressure - Temperature diagram of talc deposits by type (with or without asbestos) [1-modified, 28-modified]]

(2) **Amphibole-bearing deposits formed by contact metamorphism (pink zone B in fig. 4.1)**
Talc bodies formed in this manner are deposits found in direct contact with an igneous body. The talc is thought to have formed by metasomatism (a change in the composition of a rock as a result of the introduction or removal of chemical constituents) due to the magmatic intrusion. An example is the Death Valley talc district where dolomitic rocks were intruded by basaltic magma which altered the nearby dolomite to talc as well as abundant asbestiform tremolite and winchite/richterite amphibole.

(3) **Amphibole-bearing talc deposits formed by regional metamorphism (red zone C in fig. 4.1)**
Talc ore bodies formed in this manner generally occur without heat supplied from an immediately adjacent magma source, but instead due to being buried deeply in the earth, and/or a mountain building geologic event, where heat from the earth itself, along with moderate to high pressures, cause the rock to recrystallize. Rocks typically convert to talc from serpentinite or dolomitic source rocks and include amphibole minerals such as tremolite/actinolite, a portion of which are found to be asbestiform. An example of this type of talc deposit, which is similar in certain ways to the Val Germanasca deposits, is the dolomite hosted talc deposit of the Gouveneur District in New York. The Gouveneur deposits "replaced dolomitic marble in sinuous belts several kilometers long. The talc-forming event in the district has been interpreted to represent late retrograde metasomatism accompanying significant fluid

flow during waning stages of regional metamorphism" [1]. Sandrone [4] in his discussion of the genesis of the Val Germanasca deposits notes "At the moment, there are no substantial talc deposits whose genesis has been explained in accordance with this model (that of the Val Germanasca). Indication can, however, be found with regard to the Balmat area in the Adirondacks", a part of the Gouveneur deposits.

5. Geologic History of the Dora Maira Formation; Host of the Fontane Mine

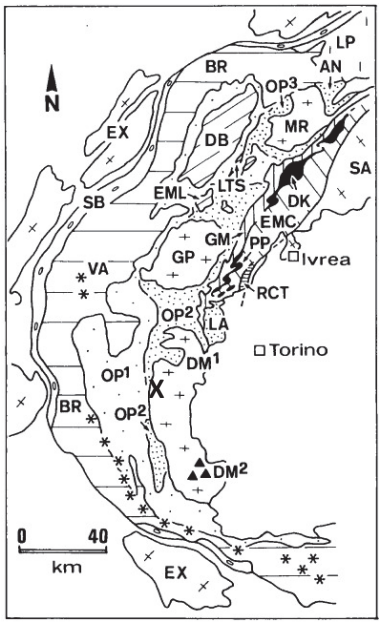


Fig. 1. Tectonic sketch map of the Western Alps. EX = external massifs; SA = Southern Alps; LP = Lower Pennine units; SB = Subbriançonnais zone; DB = Dent Blanche nappe. *Blueschist-facies units*: BR = Briançonnais zone and VA = Vanoise massif; OP^1 = western Piedmont meta-ophiolites (Queyras); GM = 'gneiss minuti' (Sesia zone); PP = 'polymetamorphic paraschists' and DK = 'II zona diorito–kinzigitica' (Sesia zone); RCT = 'Rocca Canavese Thrust Sheets' (Sesia zone). *Eclogite-facies units*: DM^1 and DM^2 = northern and southern Dora-Maira nappe; GP = Gran Paradiso nappe; MR = Monte Rosa nappe; OP^2 = eastern Piedmont meta-ophiolites [including: the Monviso and Rocciavré massifs; the Susa, Lanzo and Aosta valleys; the Lanzo periodotite massif (LA); and the Antrona zone (AN)]; OP^3 = northern Piedmont meta-ophiolites (Zermatt–Saas zone); EML = Mt Emilius klippe; LTS = 'Levaz Thrust Sheets'; EMC = 'eclogitic micaschists' and northern Sesia zone. Triangles = coesite–pyrope; asterisks = carpholite zones reported by Goffé & Chopin (1986).

Fig. 5.1 - Geologic map of the far western (Cottian) Alps with Dora Maira unit labeled DM1 (north) & DM2 (south). The location of the Fontane mine is marked with an **X** in the northern part of the Dora Maira unit. [13]

A brief history of the Dora Maira formation is given below. Please also refer to Appendix A for a graphical depiction showing continental plate tectonic movements and rock cross-sections of important geologic events experienced by the rocks of the Dora Maira.

1) **Initial formation – Pre 350 MY ago (Pre-Variscan Orogeny)**
   a) Deposition of dominant siliceous muds and subordinate limey oozes in what appears to have been a "long system" marine shelf depositional environment on a passive coastal continental margin of the ancient continent of Laurasia or Gondwana (or their various accreted subcontinents) similar to the US eastern seaboard [4, 32, 38].
2) **Burial and lithification**
   a) As more and more material is deposited on the continental shelf, the muds and oozes harden and lithify to become shale and limestone
3) **Beginning of regional metamorphism**
   a) With increasing burial, higher pressure and temperatures are achieved
   b) Limestones become partially converted to dolomite and dolomitic marbles
   c) Slate and shale become phyllite or schist
   d) Actinolite/Tremolite amphiboles can form and grow – though exact PT conditions are uncertain

4) **Mountain building and heating - Variscan Orogeny 290-370MY – exact date unknown (**(U-Pb age of 303 Ma – Variscan granite intrusion [3])
   a) Plate tectonic forces cause the ancient continent of Laurentia to move and collide with the ancient continent of Gondwana to form Pangea, leading to a major episode of mountain building, rock deformation and regional metamorphism.
   b) Meta-pelites experience amphibolite level metamorphic facies and partially melt to become higher grade schist, gneiss, amphibolite and migmatite; carbonates become marble; injection with minor intrusive basite (basalt) occurs.
   c) *Actinolite/Tremolite amphiboles can form and grow – though exact PT conditions are uncertain*
   d) The talc deposits of Val Chisone and Val Germanasca are hypothesized to have been formed [4,9].
5) **Cooling**
   a) Variscan Orogeny ends, rocks cool down, metamorphism halts, period of stability.
   b) *PT still sufficient for actinolite/tremolite amphiboles to form and grow – though exact PT conditions are uncertain*
6) **Breakup of Pangea 175-140 MY [20]**
   a) Plate tectonic movements lead to break up of Pangea with formation of African & European continents
   b) *PT still sufficient for actinolite/tremolite amphiboles to form and grow– though exact PT conditions are uncertain*
7) **Separation of Brianconnais micro-continent 50-60MY [20]**
   a) Formation of Brianconnais micro-continent, containing the Dora-Maira rocks, which separates from the European continent and moves towards the African plate.
   b) *PT still sufficient for actinolite/tremolite amphiboles to form and grow – though exact PT conditions are uncertain*
8) **Subduction – 40-50MY [20]**
   a) The African plate reverses direction causing the Brianconnais micro-continent to be subducted and attached underneath the African plate as it moves toward the European continent
   b) Subducted rocks experience eclogite metamorphic facies, meta-basites alter to eclogite.
9) **Mountain building – Present to 35 MY [20]**
   a) African continent smashes into the European continent, thrusting the remains of the Brianconnais up on top of the European continent leading to large scale shearing and metamorphism.
   b) *Actinolite/Tremolite amphiboles can form and grow – PT conditions known [13, 14] (See also Appendices B & C]*
10) **Heating – Present to 35 MY [20]**
   a) The Alps experience a widespread greenschist facies metamorphism as the rocks move higher in the earth's crust and experience an injection of granitic rocks (not in the Dora-Maira formation).
   b) *PT still sufficient for actinolite/tremolite amphiboles to form and grow – PT conditions known [13, 14] (See also Appendix B & C)*
11) **Exposure at the surface [20]**
   a) Erosion and glaciation exhume the rocks to the state they are seen in today.

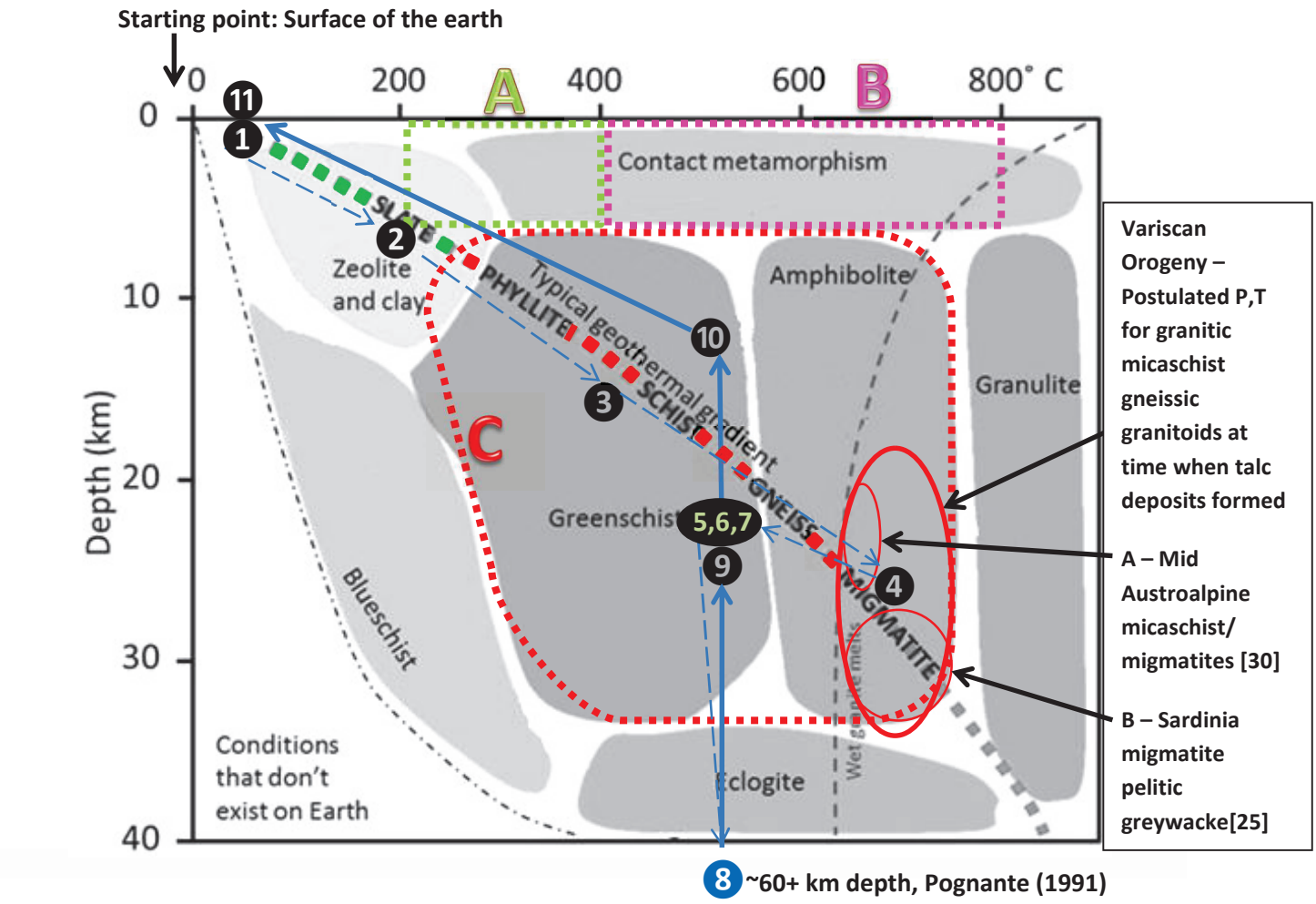


Fig. 5.2 – Pressure - Temperature diagram of talc deposits by type (with or without asbestos) [1-modified, 28-modified]] overlain with the PT history of the Dora Maira rock formation (a description of items 1 through 11 is provided on pages 12 & 13 above).

Summary of the Geologic History of the Dora Maira with reference to P-T Diagram above

The Dora Maira rock formation in which the Fontane mine sits, has experienced multiple episodes of regional metamorphism: during increased burial ❷→❸,the Variscan Orogeny ❸→❹, retrograde cooling from the Variscan Orogeny ❹→❺❻, subduction ❼→❽Alpine Orogeny →❽❾❿, cooling due to uplift and erosion ❿→⓫. The primary period of talc formation likely occurred during greenschist and/or amphibolite facies metamorphism during the Variscan orogeny[1] [4,9]. Greenschist and amphibolite metamorphic facies promote the growth of tremolite/actinolite amphiboles.

[1] Importantly, the petrological data show that talc can be a stable phase in the temperature and pressure conditions postulated by Borghi et al. (1985) and Pognante & Sandrone (1989) for the metamorphic evolution of the Dora-Maira Massif.

Temperatures of the Alpine greenschist/tremolite overprint were determined by Groppo & Compagnoni [14] in their study of the nearby rocks of the Piemontese (See also Appendix C).

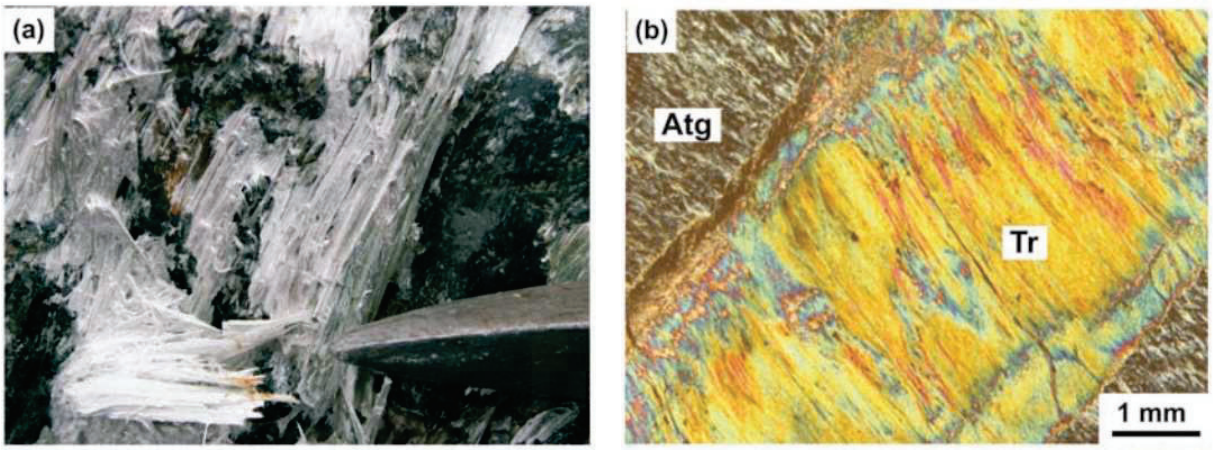


Fig. 5.3 Tremolite veins shown above formed in serpentinites of the Piemontese as the result of the last generation of Alpine metamorphism in rocks nearby to Val Germanasca and the Fontane mine: a) viewed in the field, and b) under the polarized light microscope.

Even through this is a different rock unit, it is in very close proximity to the Dora-Maira formation, and both experienced the same metamorphic conditions during the Alpine Orogeny, corroborating that the P&T needed to form amphiboles was present in the region.

6. The Geology of the Fontane Mine Area

The Fontane talc mine sits in a geologic unit called the Dora-Maira formation.

Dora-Maira

The Dora-Maira formation is recognized to contain two primary sections. This report focuses on the talc-containing upper unit[2].

- **Upper older unit of pre-350 MY amphibolite facies polymetamorphic basement complex [3]**
  - **Meta-pelites** – Sheared and deformed
    - Mica-schists
    - Gneisses/metagranitoids (migmatites) w/ granite to diorite chemistry
      - (U-Pb age of 303 Ma – Variscan [3])
    - Amphibolite layers in gneisses
  - **Meta-carbonates**
    - Marbles
    - Dolomitic marbles
  - **Meta-basites**
    - Prasinite and ovardite schists
  - **Talc deposits**

[2] The lower unit of the Dora-Maira formation is not considered here as the Fontane mine, nor any other talc mines, are found within it.

The talc ore body

The exact source and method of creation of the talc deposits of the Val Germanasca area, including the Fontane mine, has never been conclusively determined, though many geologists have tried to ascertain its genesis[3,9]. The reason for this lies in the fact that the multiple metamorphic events to which the Dora-Maira rocks have been subjected (including heating during multiple mountain building events, extreme deep burial and subduction, large scale uplift with thrusting and emplacement into the Alps, as well the large scale shearing forces and thinning of the rock units during these events), have served to obliterate the clues needed to determine their origin. However, the talc ore has been observed to have a number of undeniable and important associations with

a) dolomitic marbles which, while never observed to be in direct contact with the ore, are almost always nearby (a hundred meters or so) and parallel to, and

b) the presence, both within and immediately adjacent to, of mafic meta-basites including: amphibolites, actinolitics, prasinites, ovardites and which are generally more frequently observed close to the contact with limestones/dolomites. [9,35].

Some sort of genetic linkage is suggested by the association of the talc ore with these rocks, but none is conclusive. In any event, amphibole minerals are found in many, if not most, of the rocks adjacent to the ore body, the non-talc rocks found within the ore body, as well as the talc ore itself, which will be detailed below.

7. Rocks of the Fontane mine and the presence of asbestiform amphiboles

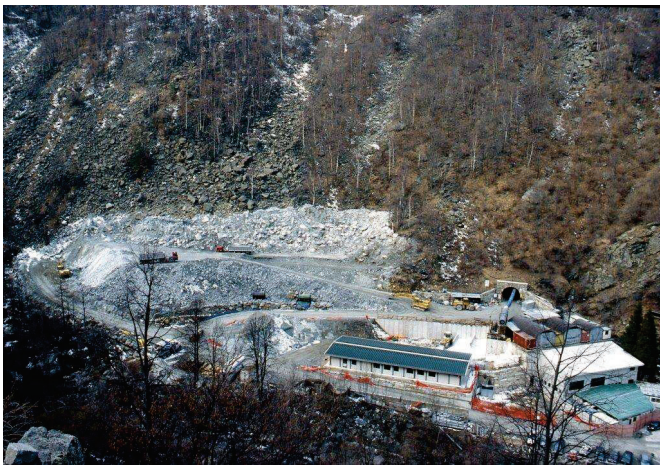


Fig. 7.1 - The Fontane mine entrance in Val Germanasca

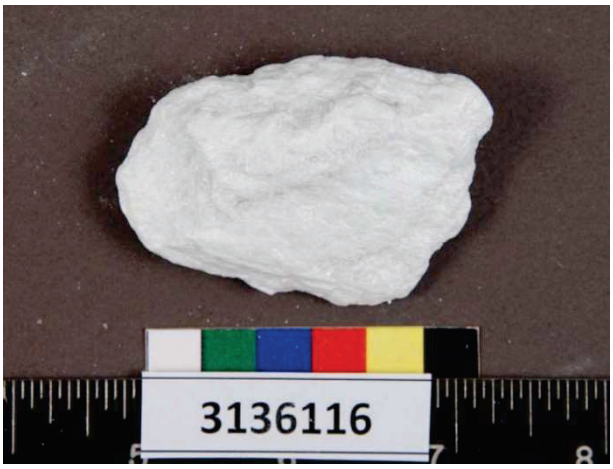


Fig. 7.2 – White talc – talco bianco sorting station [18]

Talc

The talc ore deposits of the Fontane mine generally occur as a rather thin layer, very rich in talc ranging in thickness “from some centimeters to a few meters… (exceptionally up to 15 meters) … 25 cm thickness is considered the lower limit for mining” [9]. The talc layer strikes NNW and dips ~20-25% degrees to the southwest [35]. As Peretti states, “The “white’ talc, is identified by its chemical composition with the stoichiometrically (pure) defined mineral species (as talc). The discrepancies in

the (chemical) analyses of lithologic or mining samples (from pure talc) are related in large part due to the presence in the rock, or in the bulk, of small quantities of accessory minerals."[9]

He continues, "In the mineralized bodies of the Pinerolese deposits, …are accessory minerals, as isolated crystalline individuals or in aggregated groups, at times diffused over considerable volumes, other times almost completely absent throughout one productive body (mining zone), in order of decreasing average frequency:"

- "Calcium and magnesium carbonate…" (dolomitic and calcite)
- "Chlorites, for the most part…" as chloritic schist ("grey talc")… "with various accessory minerals: **amphiboles**, …."
- "Pyrites"
- **"Amphiboles of the tremolite-actinolite series, in isolated acicular crystals, but close together and oriented radially"**

According to Sandrone [4] tremolite is a frequent contaminant in the talc ore, although often only visible with the aid of a microscope. Furthermore, Zucchetti [35] states "the 'talc' itself often contains, intimately mixed, mafic silicates (chlorites of various kinds, amphiboles of the tremolite-actinolite type,…"

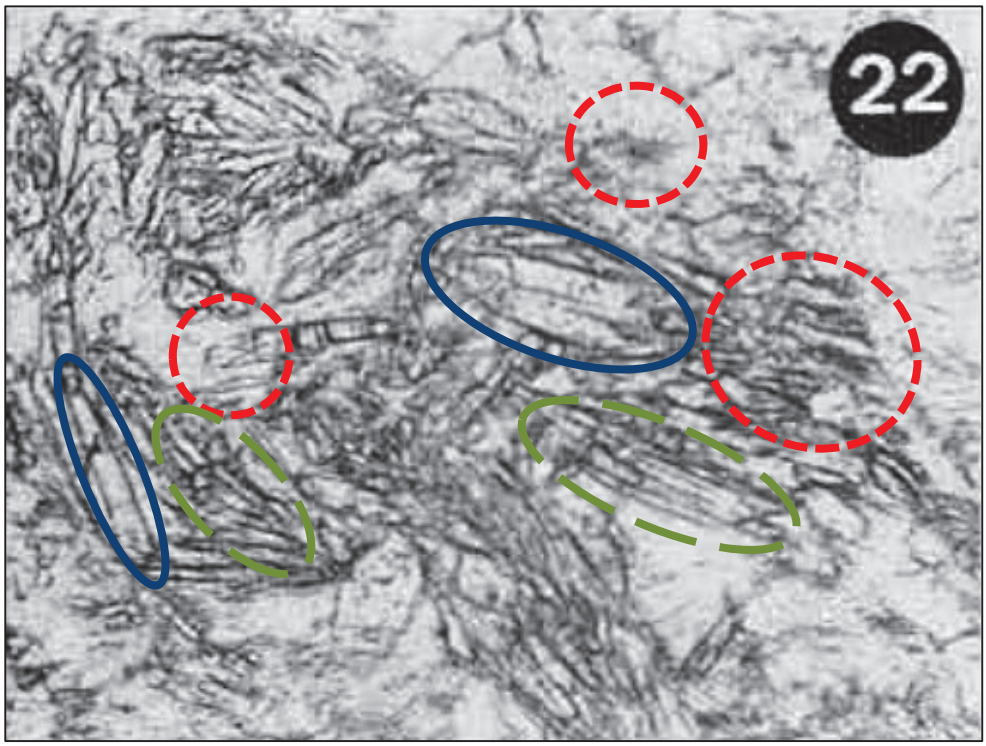


Fig. 7.2 - #22. [35] "Prismatic group of individuals crystals of tremolite in talc."

Figure 7.2 is a plane polarized light microscope image of tremolite crystals observed within a rock thin-section cut from a sample of talc ore from the mine. Here you are seeing tremolite amphibole in place directly as it occurs within the talc ore. Note the wide range of particle shapes from blocky, well-defined

prismatic crystals (non-asbestos – blue solid ovals; also see fig. 7.3,7.4 below), to thin parallel sided fibers with aspect ratios well exceeding 3:1, and in the range of 20:1, and occurring as bundles exhibiting curvature (consistent with asbestiform fibers – green long dash ovals), as well as very thin difficult to resolve fibrous growths and overgrowths with split ends (consistent with asbestiform fibers – red short dash ovals).

Geological researchers often neglect to identify fine-grained fibrous particles when looking at thin-sections of rocks. Rather, they focus on the coarse grained material, which they can easily see and identify, and ignore the rest. The image above appears to be a mix of non-asbestiform and asbestiform fibers. This is to be expected in rocks that have undergone the wide range of metamorphic conditions which the Dora-Maira formation has experienced, with multiple modes of amphibole crystal growth forms being created consistent with Van Gosen's observations [1].

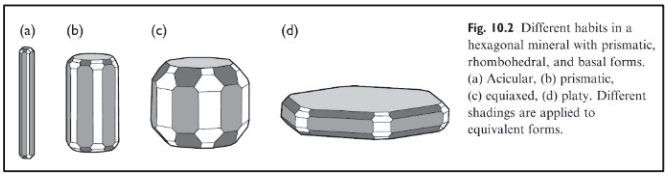
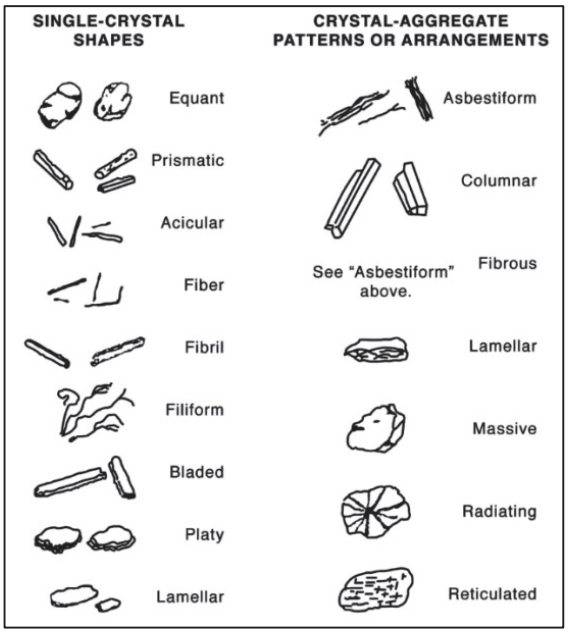


Fig. 10.2 Different habits in a hexagonal mineral with prismatic, rhombohedral, and basal forms. (a) Acicular, (b) prismatic, (c) equiaxed, (d) platy. Different shadings are applied to equivalent forms.

Fig. 7.3 (above) – Example of mineral crystal habits per Wenk [41], a) acicular, b) prismatic.

Fig. 7.4 (right) – Example mineral crystal habits per U.S. Bureau of Mines [42].



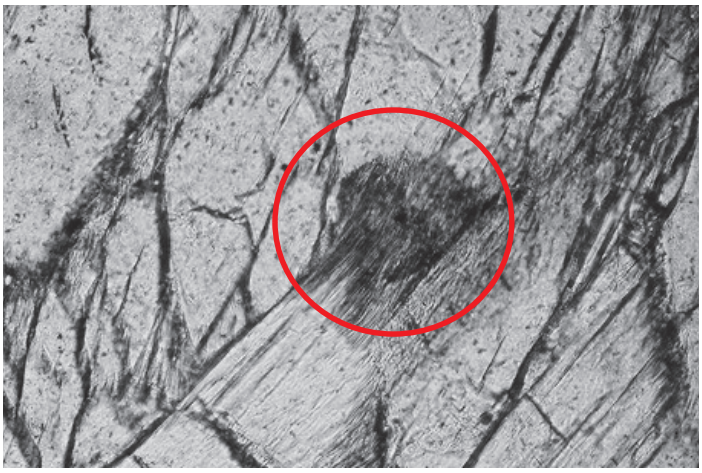


Fig. 7.3 a) Crystal of Franciscan actinolite with fuzzy fibrous overgrowth (in red circle) seen by plain polarized light microscopy (PLM), the same method as used above by Zucchetti [35] in Fig. 7.2 above. Source rock is an actinolite amphibolite.

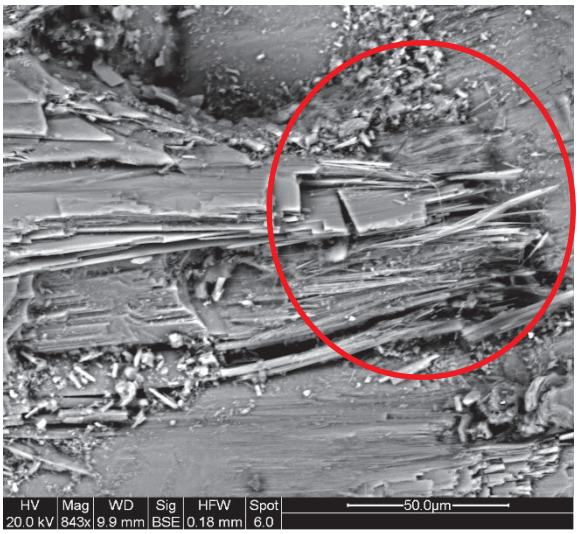


Fig. 7.3 b) Asbestiform overgrowth on actinolite (in red circle) from same rock as fig. 7.3 a) viewed by scanning electron microscopy (SEM).

Above are examples of a similar type of difficult to resolve potentially fibrous overgrowth in a prismatic actinolitic amphibolite from Franciscan rock found in Fremont, CA. As can be seen, the ability to see very fine asbestos fibers is limited by PLM and the microscopist often only gets a hint of the fibrous nature of the rock, which is revealed by SEM and TEM, confirming the fibrous overgrowth as asbestos.

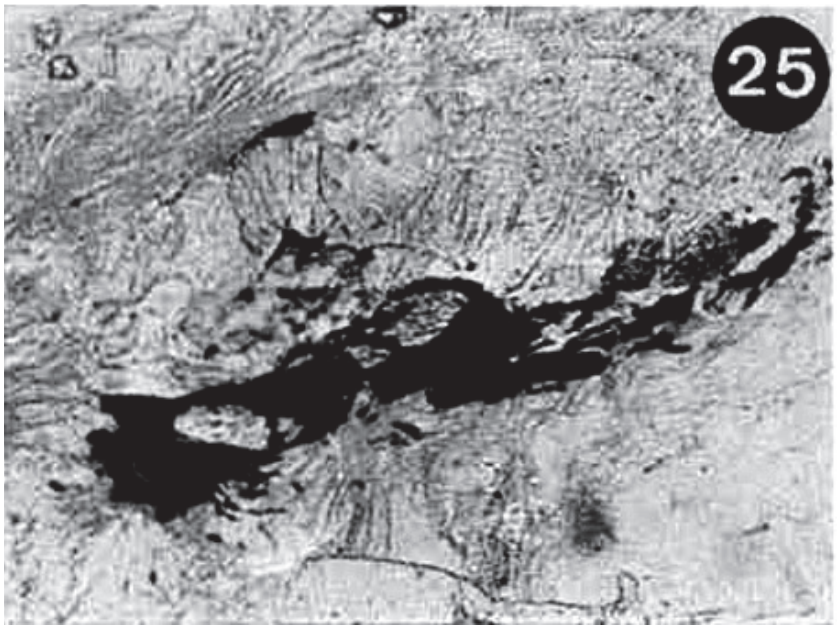


Fig. 7.4 - #25. [35] "Ilmenite (black) associated with tremolite in talc"

The image above, from a different thin-section of talc ore rock, and which is stated to contain tremolite, is difficult to interpret, but note what appear to be very fine tremolite fiber growths. The images below of amphiboles with fine fibrous asbestiform growths suggest that fig. 7.4. may have asbestiform tremolite present. As can be seen in Fig. 7.7 below, tremolite asbestos fibers have been identified in Italian talc products by TEM. Additionally, researchers from Battelle Memorial Laboratory found "acicular and *fibrous* particles of talc and amphibole" in their PLM analyses of milled talc ore from the mine. (See Appendix F)

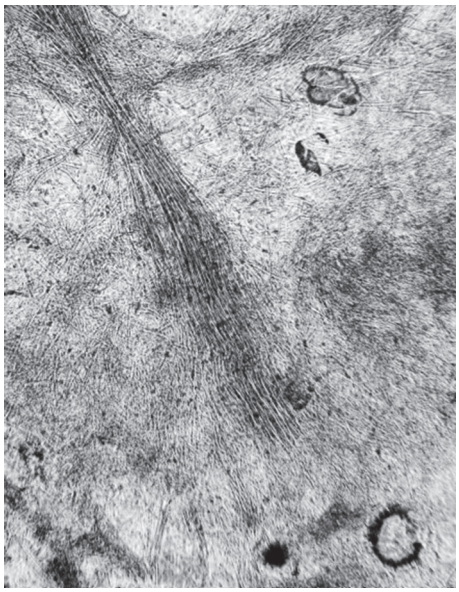


Fig. 7.5 Asbestiform actinolite in granitoid from Wilson Creek formation, AZ.

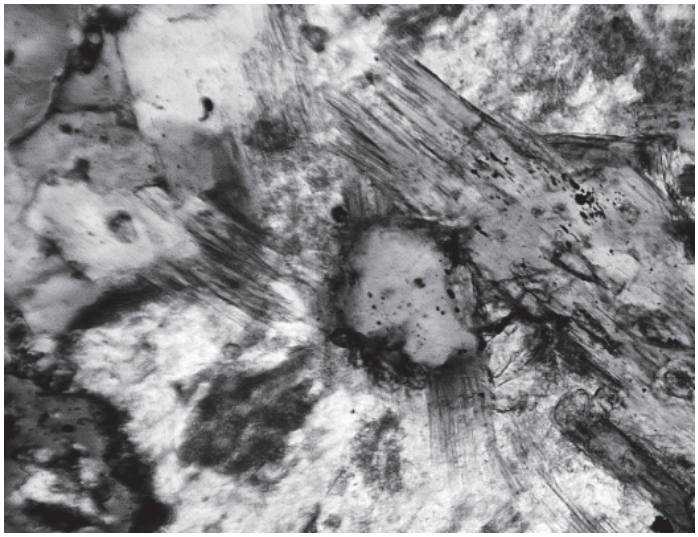


Fig. 7.6 Asbestiform glaucophane amphibole overgrowths on actinolite in Franciscan gabbro, Lagunitas, CA.

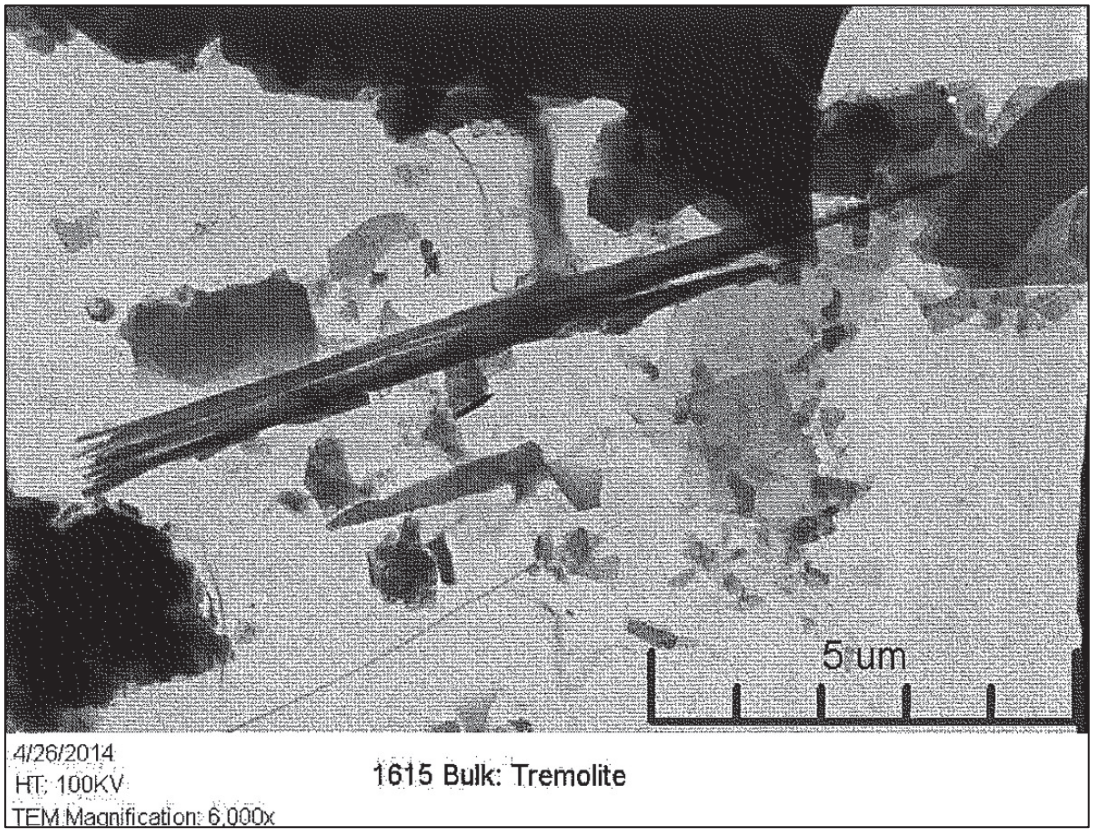


Fig. 7.7 Asbestiform tremolite bundle found in Italian talc as viewed by TEM [17].

When considering the presence of asbestos within the talc body in the Fontane mine and adjacent wall rocks, it is important to consider the following words of Van Gosen, ***"Within a single mineral deposit, such as some talc ore bodies, amphibole crystals may range in habit from blocky to prismatic to acicular to asbestiform [1].*** Van Gosen has also observed, "***often the same geologic settings that form asbestiform amphiboles will also contain acicular and fibrous amphiboles. In fact, within and adjacent to an amphibole asbestos deposit a variety of amphibole particle forms are usually found, which range from prismatic to acicular to fibrous." [34]***

The sketch cross section diagram below shows the Fontane talc vein (center - in white) with bounding rocks of different composition (the walls) to the right and above (the "roof" rock) and to the left and below (the "bed" rock). Note that small subsidiary talc veins which are present in the wall rocks on both sides and are probably un-mineable (<25cm width); also the irregular non-talc lens-like inclusions within the talc (see discussion of kidney stones below); and the presence of "grey" talc in direct contact on the left wall, or very close by in the right wall.

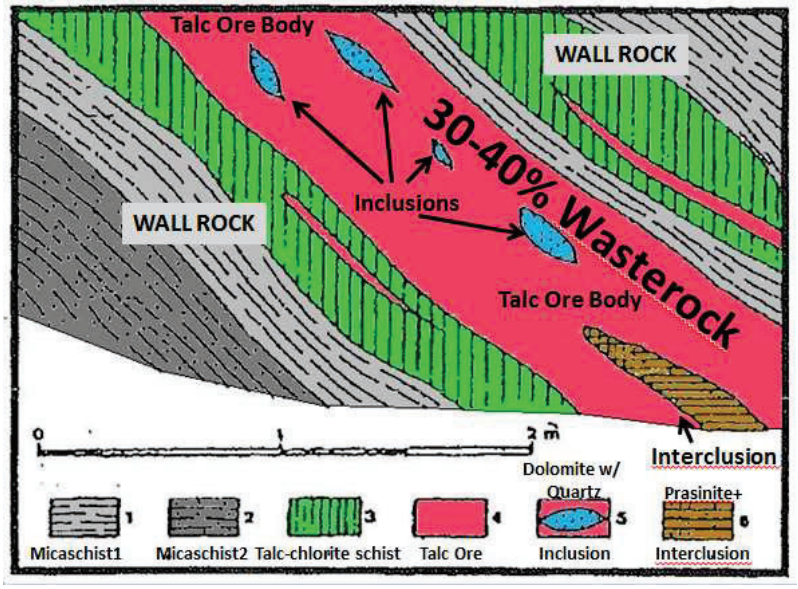


Fig. 7.7 – from Peretti [9]

Fig. 4 - Structural particulars of the talc "vein "at the 1500 level of the Nuova Fontane Mine.

LEGEND. 1: Muscovitic micaschist with albite. 2: Muscovitic micaschist with garnet. 3: Talcose chloritic schist - ("gray talc"). 4: talc. 5: Dolomite inclusions with quartz. 6: Interclusion of prasinite, chloritic quartz and calcite.

"Kidney stone" Inclusions – Part I



Fig. 7.8 – Kidney stones extracted from talc ore. [9]

The main talc ore body, as it sits in the Fontane mine, contains within it a "constant and regular presence … of clearly delimited small masses (inclusions called "kidneystones") of various lithological kinds *(rock types)*" [9]. These kidneystone inclusions are "always isolated and clearly delimited among the talc that tenaciously takes on smooth surfaces, the inclusion generally having an ellipsoidal shape and dimensions varying from a **few millimeters** to over 1 m of average diameter". It is estimated that the talc ore on average contains **~30% by volume** kidneystones. These kidneystones are rocks of varying types, some only found in the talc body itself and others which appear identical to rocks found in adjacent mine walls. The rounded kidney shape is hypothesized to be due to extensive tectonic shearing movement within the talc vein which has ground down the stones much like what you seen in a stream, or those that have come out of a rock tumbler. Of course, this means the rough edges knocked off the stones are very likely finely dispersed in the talc ore giving rise in some degree to the accessory minerals which cause the material to depart from pure talc.

The rock and mineral types found in these kidneystones commonly include tremolite/actinolite amphibole asbestos minerals [4,9,35]. These rock types are described in greater detail in "Kidney Stones – Part II", below.

Wall rocks

The wall rocks in the Fontane mine are found to be highly variable.

<u>Granite mica schist</u>

In the picture to the right taken of the talc – roof rock contact of the active mining face is a clean contact between white talc (below) with a darker granitic micaschist in the roof layer (above). The border between what is ore and what is not is clean and easy here. Actinolite amphibole asbestos fibers have been identified in this material [18] (see fig. 7.12 A. & B.)

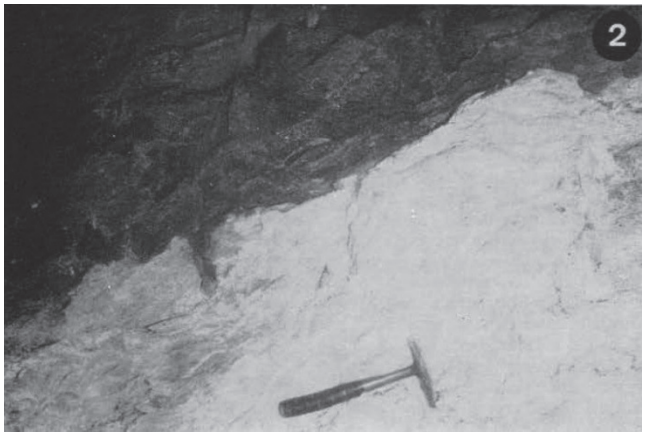


Fig. 7.9 - #2. (1972) Talc with roof rock of granitic micaschist. [35]



Fig. 7.10 –Mica schist (dark), Gianna level waste [18]



Fig. 7.11 - Mica schist (light), in contact with talc at active face [18]

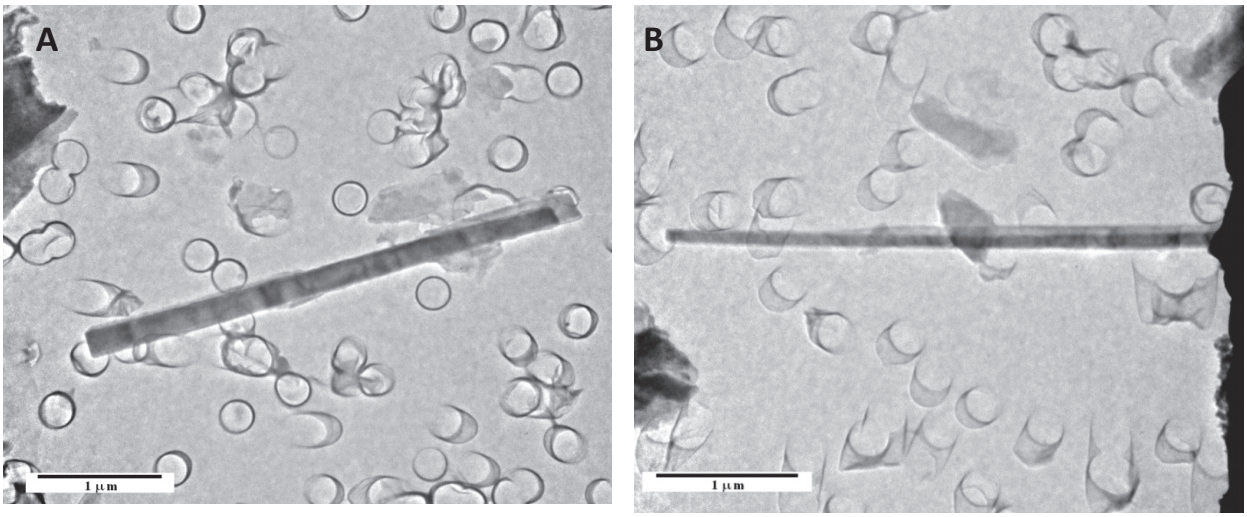


Fig. 7.12.A. & B. –TEM photomicrographs of actinolite asbestos fibers found in sample 3136125, mica schist (dark), Gianna waste [18]. These fibers, identified as non-asbestos by RJ Lee Group, are countable asbestos fibers per FDA IWGACP, CARB, AHERA, and ASTM asbestos fiber counting protocols.

Chlorite schist (w/ amphibole)

To the left is an example of chlorite schist (shown as grey streaks in the white talc) mixed with the talc. This is the "grey talc" described by Peretti [9] as "very often irregularly associated with the "white" talc, but in fairly subordinate quantities, is quantitatively a talc schist, or more often a chlorite schist, of greenish or grayish or reddish hue … with talc, (and) with various accessory minerals: **amphibole …".** As one can see, separating the "grey" talc from the white talc could be quite difficult to do. This is very common near the walls of the talc vein as shown in Fig. 7.7 above.



Fig. mixed with talc; roof rock is a talc-rich mica-chloriteschist.



Fig. 7.14 –Grey talc (grigio) (chloritic) [18]



Fig. 7.15 - Talc and chlorite at mine face [18]

A more complicated wall rock situation is shown to the right with talc overlying bedrock containing -

G. Albite muscovite gneiss (see fine grained gneiss) with **no significant amphiboles** immediately adjacent to

A. **Actinolitic amphibolite metabasite (prasinite/ovardite) which locally contains asbestiform actinolite (see fig. 7.18 thru 7.21)**, immediately adjacent to

P. Porphyritic coarse grained gneiss containing microcline with **no significant amphibole.**

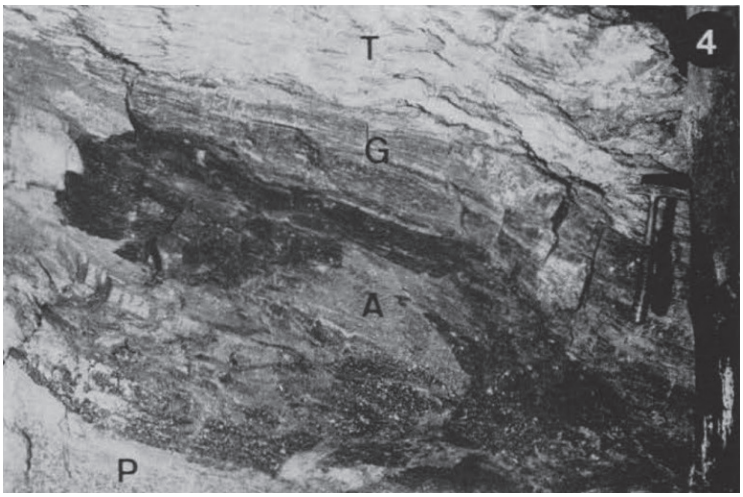


Fig. 7.16 - #4. Talc (T) interstratified with a quartz, albite, muscovite gneiss (G) a layer of a mica-chloriteschist to roof: A to amphibolite to actinolite; P gneiss – with porphyritic coarse grained microcline. [35]

Note on prasinite and ovardite: The European geological and petrographic literature uses certain terms that are not found elsewhere including prasinite and ovardite which are both a form of metabasite. A disagreement in the definitions of these terms exists and is discussed by Leardi et al [7] who conclude:

> **Prasinite** is a rock composed of albite, **amphibole (actinolite, hornblende, glaucophane**), epidote and chlorite …, roughly in equal amounts.
>
> **Ovardite** is regarded as a synonym of **chlorite-rich prasinite**…

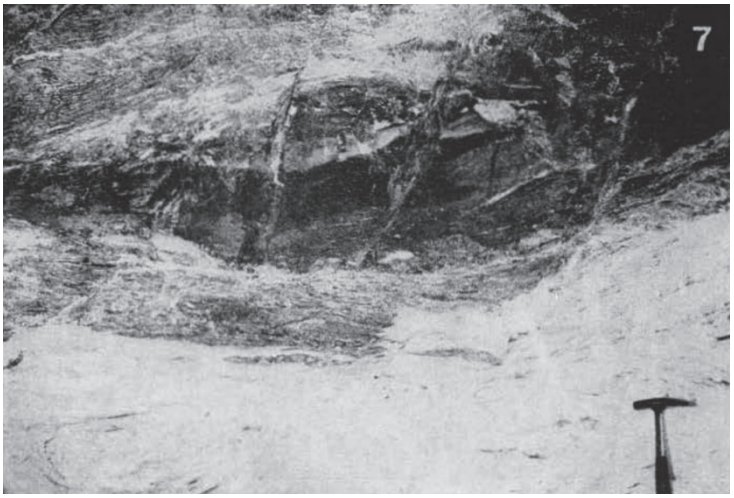


Fig. 7.17 - #7. Lens of ovarditic schist (dark) in talc mixed with chlorite grading into a mica-chloriteschist; at the bottom, white talc. [35]

In addition, "The amphibole forms thin nemetoblasts or aggregates of skeletal crystals embedded in the chlorite and albite respectively… The skeletal green amphibole aggregates are derived from the destabilization of a sodic glaucophanic amphibole, which is occasionally preserved in the core**."**

*(Definition: **nematoblastic** - fibrous texture in mineral deposits, a pattern of finely acicular, rodlike crystals, e.g. in chrysotile and amphibole asbestos [36].)*



Fig. 7.18 – Amphibole bearing metabasite (prasinite/ ovardite) collected in the country rock approximately 30 meters from a historic talc gallery in the Gianna level [18]. As shown in Fig. 7.17, this material is frequently found in direct contact with the talc.

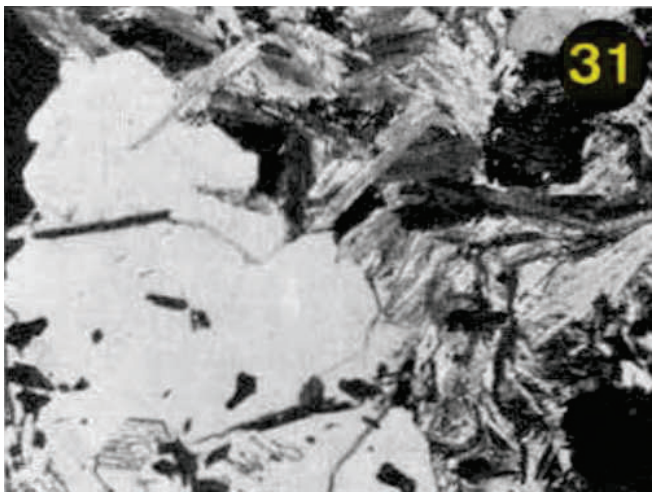


Fig. 7.19 - #7. Schist with albite, talc, chlorite, muscovite included in talc: albite (white) containing tremolite and titanite; talc in lamellar aggregate. (Quite possibly a section of prasinite/ovardite which commonly contains tremolite actinolite fibers within albite crystals). [35]

The presence of actinolite asbestos fibers has been confirmed in the prasinite/ovardite by PLM & TEM. [18] (See figs. 7.20 and 7.21.A & B.)

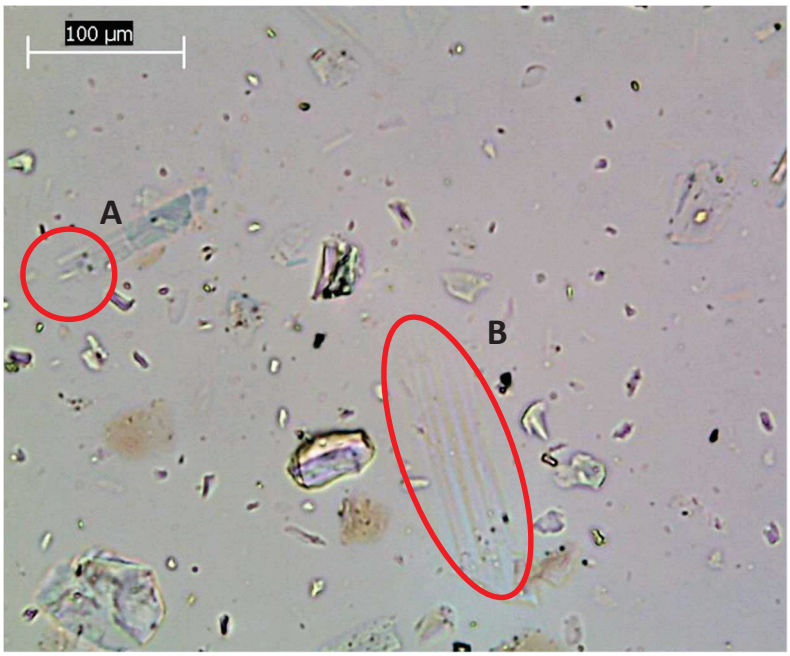


Fig. 7.20. – PLM photomicrograph in plane polarized light of fibrous actinolite in sample 3136126, amphibole bearing metabasite (prasinite/ ovardite) [18]. Note: A) fiber split ends, and B) striations and apparent split ends (top) indicating this particle is likely a bundle of asbestos fibers.

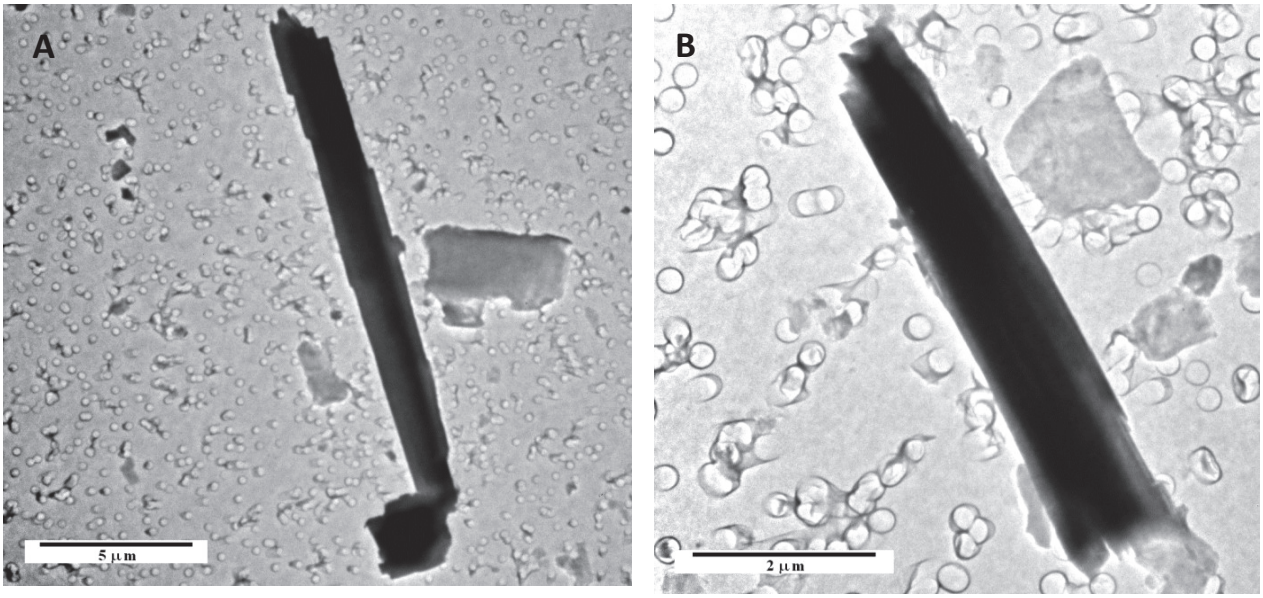


Fig. 7.21.A. & B. – TEM photomicrographs of actinolite fibers found in sample 3136126 [18]. These fibers, identified as non-asbestos by RJ Lee Group, are countable asbestos fibers per FDA IWGACP, CARB, AHERA, NIOSH and ASTM asbestos fiber counting protocols

Kidney stones – Part II

Having reviewed the wall rock types, we can now look in depth at the kidney stones. The types that are seen, in order of abundance per Peretti [9], are:

Non-wall rock

Dolomite – coarsely crystalline

Dolomite – with quartz with accessory pyrite, talc and **actinolite**,

Quartzite

Calciphyre – coarsely crystalline …; constituents essentially: dolomite, **amphibole (tremolite-actinolite) in acicular idiomorphic crystals**

Calciphyre – in elongated and indistinct zones … Structure and composition as for calciphyre above with sorting into alternate bands of the carbonate minerals and the **clear amphibole (tremolite)**

Wall rock remnants

Amphibolite - "with bacillar-radial texture, with tremolite-actinolite crystals or tremolite; these later terminating sometimes in clumps of rigid asbestoid fibers, with silky brightness."

(Note – Asbestoid is a synonym for asbestos a term which is now abandoned in the geologic literature [47]. In 1978 the International Mineralogical Association (IMA) performed a wide ranging review of terms used to describe amphibole minerals including "asbestoide" with the aim of removing unnecessary or redundant terms. "Asbestoide" was replaced by the term "asbestos", and then formally abandoned.)

Interclusions

"In addition to the inclusions it is quite normal to find, especially where the talc vein reaches the greatest thickness, interclusions of isolated edges from the surrounding (wall) rocks, still with lenticular configuration…. More frequently in some repeated cases, next to the elements of a tectonic breccia where the talc constitutes the cement, are the interclusions of talc chlorite schists (the"grey talc, already reported); less common: **a variety of amphiboles and prasinite**…" [9]

Other important rock types

Several other rock types are found in close proximity to, but not in contact with the talc ore body. These include:

Marble – the presence of magnesium rich dolomitic and/or calcite-rich marble, as described on page 18, are considered a key aspect in the formation of the Fontane mine talc body. Also, the dolomitic and calcitic marble found within the rognoni (kidneystones) are likely relics of partially converted dolomite. A sample collected of this marble was tested and found positive for tremolite amphibole by TEM [18] (See fig. 7.23. A. & B.)



Fig. 7.22 – Marble collected in the country rock, nearby, but not in contact with talc face [18]

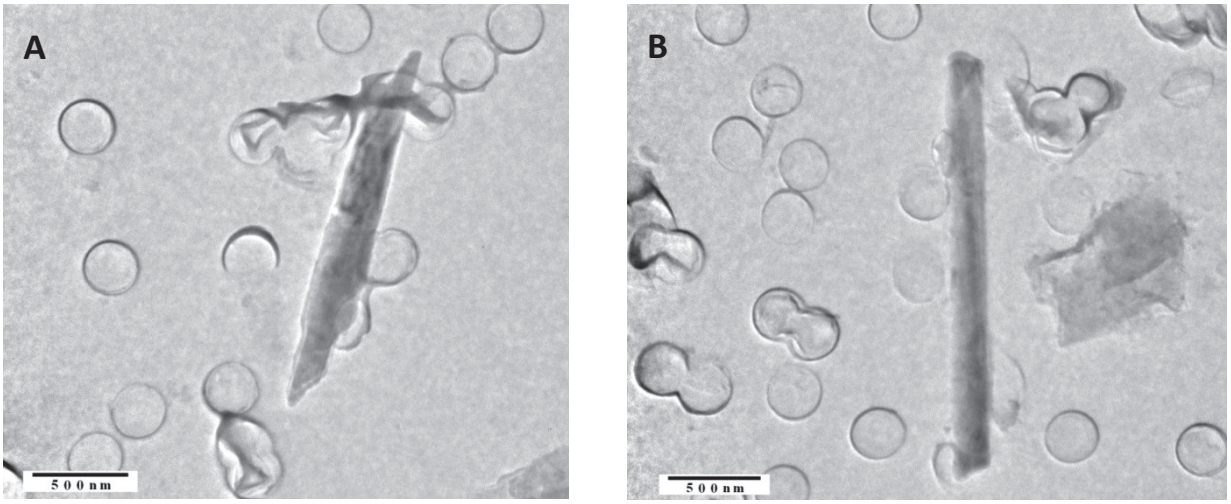


Fig. 7.23.A. & B. – TEM photomicrographs of actinolite asbestos fibers found in sample 3136115 [18]. These fibers, identified as non-asbestos by RJ Lee Group, are countable asbestos fibers per FDA IWGACP, CARB, AHERA, NIOSH and ASTM asbestos fiber counting protocols.

Sepiolite/tremolite veins in marble

Sepiolite and tremolite veins are found to crosscut the marble unit sampled separately as 3136115. Sepiolite is known to occur in the talc ore.



Fig. 7.24 – Fibrous material scraped from vein found in marble unit (sample 3136115) . [18]

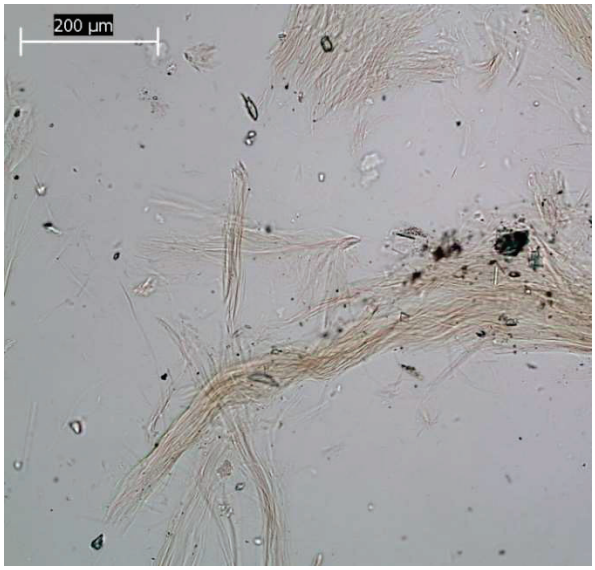


Fig. 7.25 – PLM plane polarized light photomicrograph of fibrous material scraped from vein found in marble unit (sample 3136115) [18]. Tremolite fibers observed by RJ Lee Group, and indicated as non-asbestos, are countable asbestos per FDA IWGACP and CARB 435 protocols.

8. Mining processes used at the Fontane mine

To understand the mining processes used at the Fontane mine I have reviewed deposition transcripts of the supervising mine geologist, Franco Monticelli [10,11], as well as photographs from the mine [37]. According to Monticelli the following processes are used at the mine.

- Core drilling to identify ore zones with low waste rock content for mining
- Selective blasting and extraction to separate waste rock from talc ore (Fig. 8.1 & 8.2)
- Visual screening and removal of waste rock contaminants at the mine site and hand sorting facility (Fig. 8.3)

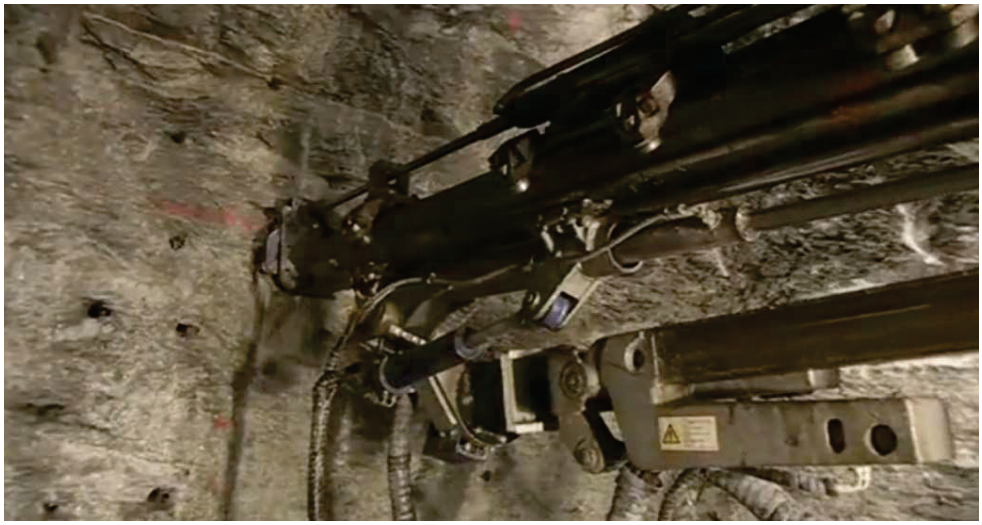


Fig. 8.1 Drilling holes in preparation for selective blasting (note multiple holes in mine face) [37]



Fig. 8.2 Preparing to blast at a safe distance – Fontane mine. [37]



Fig. 8.3 Assessing the results of a blast. Note the dark wall rock is broken into particles ranging from sand sized to several feet in diameter and are intermixed with the white talc ore – Fontane mine. [37]

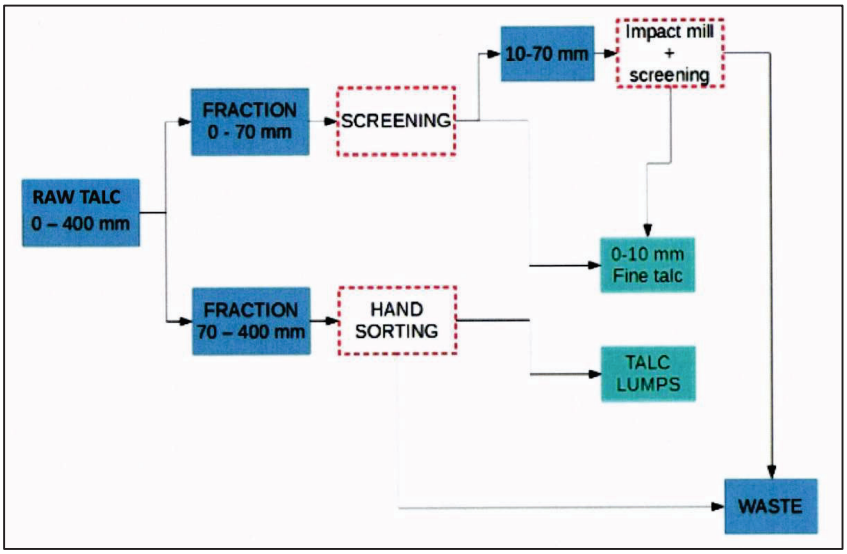


Fig 8.4 – Fontane mine talc ore sorting flow chart (Monticelli Deposition 4/3/2017, Exhibit 3)

The mining and processing methods used at the Fontane mine are insufficient to remove tremolite amphibole from the mine ore (based on Monticelli 2017 depositions [10,11]):

- Visual inspection of exploratory core samples is not capable of detecting the majority of the tremolite/actinolite in the talc ore because:
  - A drill core is a very limited sample of the ore body
  - The majority of the tremolite in the talc ore requires a microscope for detection [9]
  - Even with core drilling, the talc ore that is mined contains at least 30% waste rock.
- Selective blasting pulverizes and mixes amphibole-containing inclusions and interclusions, as well as wall rock into the talc ore.
- Observations of raw talc ore by a J&J representative states “Charles Matthieu has exclusive rights to Italian talc and has elected to import talc in the rock form. The talc will then be ground in the Plainfield plant of Metropolitan Talc. Co. Approval of Charles Mathieu’s 1615 AGIT (American Ground Italian Talc) was requested.” “Bill Ashton visited the Plainfield plant and … he also noticed the presence of some foreign material in the talc rock.”
- Screening methods do not subject small rock particles (<7cm – post 1980’s, <1” pre-1980’s at least since 1960’s) to visual inspection
- Hand sorting methods rely upon visual inspection to identify amphibole contaminants. However, as noted above, the amphiboles in the talc ore are generally not visible to the naked eye.
-

9. Tremolite/actinolite Identified in Mined Talc Ore

As already discussed, tremolite is a contaminant of the raw talc ore, as well as the waste inclusions and wall rock [4,9,35]. Consistent with these findings, a large scale series of tests by Battelle Memorial

Laboratories repeatedly and consistently found tremolite in run-of-the-mine talc samples. See Appendix E for excerpts from Battelle's reports.

10. Tremolite/actinolite and Chrysotile Found in Milled/Processed Italian Talc

Many tests of milled talc have been performed, as detailed below. These tests have repeatedly found detectable levels of tremolite found in virtually all samples. The tremolite has been described to occur as a contaminant in talc "as acicular and fibrous particles of talc and amphibole, as shards and granules of amphibole." (see Appendix F, report F.2 – "1958_05_09_Battelle Progress Report"). In addition, a test was run in 1970 (Table F.20.1) of milled talc ore which identified the presence of serpentine. A statement in the discussion of this test result indicated it was a common and expected component of Italian talc.

Organization/Desc	Date	Reference	Tremolite Conc. Observed
Battelle Progress Report	10/15/57	Quote	**Trace**
Battelle Progress Report	5/9/58	Table F.2.1, To 6	**Trace - 2%**
Battelle Progress Report	5/23/58	Table F.3.1 to 6	**Trace - 2%**
Battelle Progress Report	7/31/59	Table F.4.1 to 13	**<1-6%**
Battelle	8/31/59	Table F.5.1	**<1% to +1%**
Battelle Study	4/12/60	Table F.6.1	**Trace to <1%**
Battelle Letter	10/13/61	Table F.7.1	**Trace**
J&J Test	11/01/67	Table F.8.1	**1-2%**
Battelle Letter	10/13/61	Table F.9.1 to 9.3	**Trace to 2%**
J&J Test	3/4/70	Table F20.1	**Serpentine observed**
NYU Test	9/30/72	Table F.10.1	**2%**
Pfizer Test	12/08/72	Table F.11.1	**0.1% Using their problem method**
McCrone Test	11/18/76	Table F.12.1	**Plus photo of a fiber of tremolite, <5ppm**
McCrone Test	11/16/77	Table F.13.1	**Detected**
Pfizer Test	11/01/79	Table F.14.1	**6 fibers & 5 fibers per 100 fields (~0.5%)**
Pfizer Test	11/18/76	Table F.15.1	**<0.1%**
Pfizer Test	2/5/80	Table F.16.1	**Unreadable, but detected**
Pfizer Test	3/12/81	Table F.17.1	**40 fibers/100 fields (~4%)**
Cyprus Air Measurements	5/3/84	Table F.18.1	**5.8% anthophyllite asbestos detected**
Blount	1991	Table F.19.1	**3/100 cleavage, 2/20 cleavage & needles**

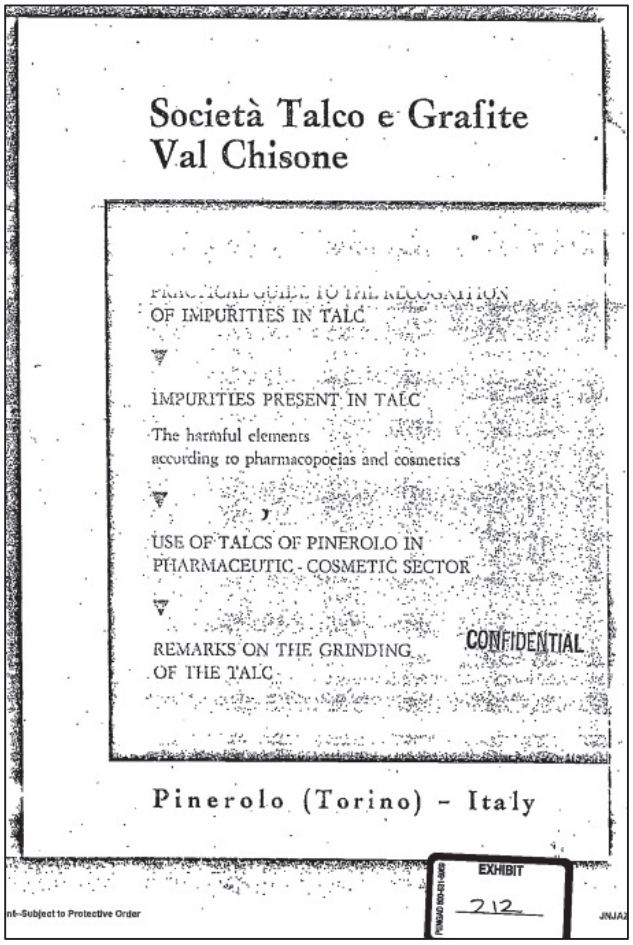
XRD tests from the 1970's to 1980's generally did not detect tremolite in milled Italian talc (Seagrave compilation). However, this can be explained by the high limit of detection of the XRD equipment used during those years. Round robin test results from 1977 show the majority of labs (6 of 7) were unable to detect tremolite by the XRD method even when talc samples were specifically spiked (May 17, 1977 CTFA Talc Task Force meeting).

11. Tremolite/actinolite and Chrysotile Identified in Finished Italian Talc Products

Tests have also been conducted on consumer talc products which are known to be made with Italian talc. As can be seen in the table below, these tests have repeatedly found tremolite/actinolite in the products, which is consistent with, and further corroborates, the numerous positive findings in both the raw and milled talc ore. Additionally, chrysotile asbestos was found in one instance by TEM.

Organization/Desc	Date	Reference	Tremolite Conc. Observed
Battelle Memorial Institute Research Report	3/8/60	Table G.1	A store bought off-the-shelf J&J talc product was tested and found to contain **trace tremolite**
R.S. Russell - Unknown	1/30/67	Table G.2	J&J Baby-Mate powder was tested and found **<1/2% fibrous tremolite**
McCrone Associates	10/27/72	Table G.3	Two samples of J&J baby powder were tested and found to contain **~0.5% and 0.2-0.3% tremolite, some of which was rod shaped.**
Johns-Manville Cosmetic Talc Test	7/28/73	Table G.4	Italian talc identified to contain **trace tremolite and 0.3% by volume chrysotile asbestos fibers**
Pfizer Internal Talc Product Test	2/24/78	Table G.5	**Asbestos fibers identified in Coty Talc** as indicted on a TEM raw lab data sheet.
Pfizer Internal Talc Product Test	1/01/79	Table G.6	**Four separate analyses of Italian Talc 1615 indicating samples contain <0.1% tremolite. At the time, however, Pfizer's testing method may have actually understated the actual concentration.**
Paoletti Evaluation of Talcs by Electron Microscopy	1984	Table G.7	**Analyzed various pharmaceutical and cosmetic products made with Italian talcs**
Ilgren et al, Scientific paper analyses by Dr. Eric Chatfield	2017	Photos G.8	**Identified 3 fibers countable as asbestos by many test methods (AHERA, CARB/Modified AHERA, ISO 10312). The authors estimate a concentration of 3.7 million fibers per gram of asbestos.**

12. Statements by Fontane mine owner (Societa Talco e Grafite Val Chisone) regarding the presence of amphiboles and asbestos in Italian talc [12]



Società Talco e Grafite
Val Chisone

PRACTICAL GUIDE TO THE RECOGNITION
OF IMPURITIES IN TALC

IMPURITIES PRESENT IN TALC
The harmful elements
according to pharmacopoeias and cosmetics

USE OF TALCS OF PINEROLO IN
PHARMACEUTIC - COSMETIC SECTOR

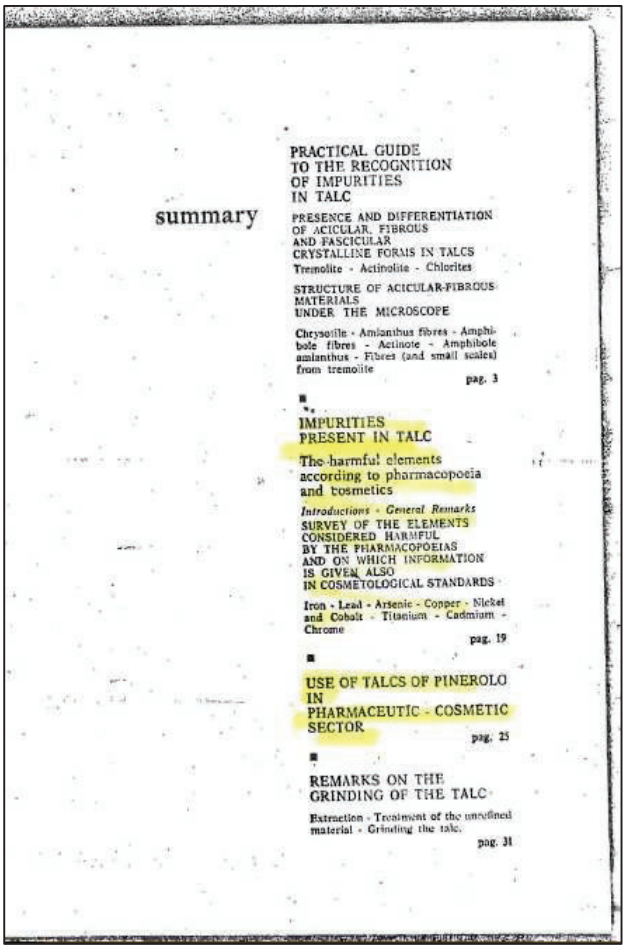
REMARKS ON THE GRINDING
OF THE TALC

CONFIDENTIAL

Pinerolo (Torino) - Italy

EXHIBIT
212

nt–Subject to Protective Order



summary

PRACTICAL GUIDE TO THE RECOGNITION OF IMPURITIES IN TALC

PRESENCE AND DIFFERENTIATION OF ACICULAR, FIBROUS AND FASCICULAR CRYSTALLINE FORMS IN TALCS
Tremolite - Actinolite - Chlorites

STRUCTURE OF ACICULAR-FIBROUS MATERIALS UNDER THE MICROSCOPE
Chrysotile - Amianthus fibres - Amphibole fibres - Actinote - Amphibole amianthus - Fibres (and small scales) from tremolite
pag. 3

IMPURITIES PRESENT IN TALC
The harmful elements according to pharmacopoeia and cosmetics
Introductions - General Remarks
SURVEY OF THE ELEMENTS CONSIDERED HARMFUL BY THE PHARMACOPOEIAS AND ON WHICH INFORMATION IS GIVEN ALSO IN COSMETOLOGICAL STANDARDS
Iron - Lead - Arsenic - Copper - Nickel and Cobalt - Titanium - Cadmium - Chrome
pag. 19

USE OF TALCS OF PINEROLO IN PHARMACEUTIC - COSMETIC SECTOR
pag. 25

REMARKS ON THE GRINDING OF THE TALC
Extraction - Treatment of the unrefined material - Grinding the talc.
pag. 31

Section titled “Use of talcs of Pinerolo in pharmaceutic-cosmetic sector”

“**Talc impurities maybe classified as follows:**

1) **Very hard silicates, as chrysotiles and tremolites, of amphibolitic derivation, namely with strict asbestos content.**
2) Chlorites, that can also reach 60%, Moh's hardness of 3 at least.
3) Noble chlorites, they reach up to 60 %, Moh's hardness 2.
4) Calcite, dolomite, ankerite, quartz, actinolite, ferromagnesium silicates of different nature, iron oxides, manganese or titanium, simple or complex sulphides.”

“The talc of Pinerolo, for cosmetic use, that's mined from the deposits of the Chisone and Germanasca Valleys in the North -Western Alps, has to be considered as a product of very high quality because:
1) **the hard silicate contents are extremely low (only traces)…”**

Section titled "Presence and Differentiation of Acicular Fibrous and Fascicular Crystalline Forms in Talc"

> "Recent regulations state that for cosmetical or pharmaceutical use a talc must be free from acicular and fibrous particles, of amphibolic or serpentine type, i.e. free from serpentine amianthus of asbestos or at least, if present, it must be a minimum quantity."
>
> "Tremolite and actinolite interest this survey in particular because of their fibrous filamentous structure."
>
> "Sometimes actinolite is filamentous, with fairly flexible fibers and forms amianthus (asbestos)."
>
> *"If these are coarsely ground or if they are residual fragments they are always linear flow fibrils or fascia. The single fibers are rectilinear needles that are white or rarely coloured light green to dark green. Often the group opens at the ends to free the fibrils in a fan shape… It is possible to have fairly long thin almost linear fibres."*

This detailed description by the mine owners, Societa Talco e Grafite Val Chisone, of the fiber types found in talc matches well with the observations made by Peretti [9] and Zucchetti [35] in their survey of the Fontane mine.

13. Summary and Conclusion

For the reasons cited above, it is my opinion that:

- The geologic history of the Dora Maira rock unit which contains the Fontane talc deposit experienced greenschist/amphibolite facies regional metamorphism for many millions of years. These metamorphic conditions were conducive to the formation of tremolite/actinolite asbestos.
- A review of the scientific literature confirms numerous rock types in the Fontane mine contain tremolite and/or actinolite [4,9,35]
    - Talc ore
    - Wall rock and interclusions
        - Chlorite schist
        - Mica schist
        - Amphibolite
        - Prasinite
        - Ovardite
    - Kidneystone inclusions
        - Dolomite
        - Calciphyre
        - Wall rock listed above
- At least a portion of the tremolite/actinolite is fibrous and meets many, if not most, of the various definitions of asbestos described above, particularly that proposed by FDA's recent (2020) IWGCAP, which is consistent with Van Gosen's observations that, where amphiboles are found in talc mines, they can exhibit the full range of crystal forms from prismatic to asbestiform [1].

- The mining process (blasting, excavating) is disruptive to the talc deposit, likely resulting in contamination of the talc ore by pulverizing and mixing of wall rock and kidneystone inclusions into the talc ore.
- The mining operator's reliance upon naked-eye visual screening methods are insufficient because the literature demonstrates that amphiboles which are present in the Fontane talc ore are often only visible under the microscope [4]. Further, the screening system used at the mine would result in many particles of talc and waste rock going directly to the mill with no visual inspection at all.
- Analysis of unprocessed talc ore by multiple independent researchers has repeatedly and consistently found tremolite.
- Multiple laboratories have analyzed the milled talc ore and final finished talc products and repeatedly confirmed the presence of tremolite, thus confirming that the mining processes fail to remove the tremolite contamination from the ore.
- Additionally, talc company internal testing identified the presence of serpentine in milled talc ore which, they considered to be a standard and expected component of the talc ore, and a separate testing lab identified the presence of chrysotile asbestos in finished talc.

In conclusion, it is my opinion to a reasonable degree of scientific certainty, that the talc material derived from the Fontane mine is consistently contaminated with tremolite/actinolite minerals, ranging in form from prismatic to asbestiform, and that chrysotile asbestos is also found at times in the mine as well.

Based on my review of peer-reviewed scientific literature, analysis of internal documents which I assume to be correct and proper representations of fact, discussions with other scientists, my personal experience as an asbestos analyst, my academic and professional field experience, the opinions expressed in this report are held to a reasonable degree of scientific certainty. I reserve the right, however, to amend or supplement my opinions should new information become available.



R. Mark Bailey, PG
President
Asbestos TEM Laboratories, Inc.

Summary of MAS testing results of talc from Italy, Vermont, Montana, Brazil and China

TALC FROM ITALY (FONTANE MINE)

Product(s)	Vintage(s)	Source mine	Reference	Amphibole by TEM	Total amphibole	Chrysotile by PLM	Total
J&J (outside of the archive)	1927-1939 to 1960	Fontane	Decl. w/chart on J&J 9/21/2021	10 of 17	10 of 17[1]	0 of 0	10 of 17
J&J (archive)	1960 to	Fontane	Decl. w/chart on J&J 9/21/2021	6 of 14	7 of 14	0 of 0	7 of 14
Cashmere Bouquet	1910s to 1920s	Fontane	Decl. w/chart on Cashmere Bouquet 6/23/2021	11 of 18	14 of 18	0 of 0	14 of 18
Cashmere Bouquet	1930s to 1940s	Fontane	Decl. w/chart on Cashmere Bouquet 6/23/2021	14 of 25	19 of 25	0 of 0	19 of 25
Cashmere Bouquet	1950s	Fontane	Decl. w/chart on Cashmere Bouquet	5 of 7	5 of 7	4 of 4	7 of 7
Cashmere Bouquet	1960 to 1967	Fontane	Decl. w/chart on Cashmere Bouquet	8 of 12	10 of 12	5 of 5	12 of 12
Avon Persian Wood, Wild Rose	1961 to 1962	Fontane	M71543 7/1/2022	0 of 2	0 of 2	2 of 2	2 of 2
Avon Persian Wood, Cotillion	1958 to 1961	Fontane	M71550 7/1/2022	0 of 2	0 of 2	2 of 2	2 of 2
Coty Airspun loose face powder	Pre-1963 to post-2000	Fontane	Decl. w/chart on Coty 5/19/2022	9 of 13	9 of 13	13 of 13	13 of 13
Coty Emeraude dusting powder	1963 to 1992	Fontane	M71494 4/28/2022	0 of 2	0 of 2	2 of 2	2 of 2

[1] The MAS chart dated 9/16/2021 identifies 18 J&J bottles from outside of J&J's archive (and 32 J&J bottles overall) containing Italian talc analyzed by MAS. Because sample #9 with a 1945 vintage may also contain California talc, it was removed from the tally.

PLAINTIFF'S EXHIBIT 3804

Chanel No. 5	Two 1954-1976, five "pre late 1980s"[2]	Fontane	Decl. w/chart on Coty 8/10/2020	7 of 7	7 of 7	0 of 0	7 of 7

Samples with Italian talc tested that contained asbestos: 95 of 119 (79.8%)
Samples with Italian talc tested that contained amphibole asbestos: 81 of 119 (71.4%)
Samples with Italian talc tested that contained amphibole asbestos by TEM: 70 of 119 (58.8%)
Samples with Italian talc tested for chrysotile asbestos by PLM: 26 of 26 (100%)

TALC FROM VERMONT

Product(s)	Vintage(s)	Source mine	Reference	Amphibole by TEM	Total amphibole	Chrysotile by PLM	Total
J&J (outside archive)	1980, 1994, 1994, 1996	Hammondsville, Hamm, Argonaut	Decl. w/chart on J&J 9/21/2021	2 of 4	2 of 4	2 of 2	4 of 4
J&J (archive)	1970 to 1996	Hammondsville, Hamm, Argonaut	Decl. w/chart on J&J 9/21/2021	23 of 36	29 of 36	0 of 0	29 of 36
West Windsor Grade 66, 96	1989 to 2003	Hammondsville, Hamm, Argonaut	Decl. w/chart on J&J 9/21/2021	7 of 15	8 of 15	0 of 0	8 of 15

Samples with Vermont talc tested that contained asbestos: 41 of 55 (74.5%)
Samples with Vermont talc tested that contained amphibole asbestos: 39 of 55 (70.9%)
Samples with Vermont talc tested that contained amphibole asbestos by TEM: 32 of 55 (58.1%)
Samples with Vermont talc tested for chrysotile asbestos by PLM: 2 of 2 (100%)

TALC FROM SOUTHWEST MONTANA

Product(s)	Vintage(s)	Source mine	Reference	Amphibole by TEM	Total amphibole	Chrysotile by PLM	Total
Gold Bond	1996 to 2012	Treasure or Regal	Decl. w/chart on	0 of 11	0 of 11	11 of 11	11 of 11

[2] In the MAS chart dated 8/10/2020, twenty samples are designated as dated 2000 or earlier (samples #1-4, 8-21 and 23-24). Out of those 20, 7 can be identified as being before the date in the late 1980s when Cyprus/Luzenac began blending Italian talc with Australian talc as Supra A; prior to the late 1980s, WC&D sold Talc 1615 and Cyprus sold Supra to Chanel.

			Gold Bond 6/23/2022				
Gold Bond	2015 to 2020	Yellowstone	Decl. w/chart on Gold Bond 6/23/2022	0 of 10	0 of 10	10 of 10	10 of 10
Clubman	2006	Treasure or Regal	M71373 3/15/2022	0 of 1	0 of 1	1 of 1	1 of 1
Talc 1745	2002 to 2016	Treasure or Regal	M71523 6/10/2022	0 of 6	0 of 6	6 of 6	6 of 6
Pfizer MP retains	1985 to 1986	Treasure	M71549 7/1/2022	0 of 5	0 of 5	5 of 5	5 of 5
Avon Night Magic	1987	Beaverhead	M68231 1/2019	0 of 1	1 of 1	0 of 0	1 of 1
Dr. Gunter samples	N/A	Treasure/Regal (MP 44-26), Treasure ore, Yellowstone ore	Report 9/2/2022	0 of 0	0 of 0	3 of 3 (FE-SEM)*	3 of 3

Samples with Montana talc tested that contained asbestos: 36 of 36 (100%)
Samples with Montana talc tested that contained amphibole asbestos: 1 of 36 (2.7%)
Samples with Montana talc tested that contained amphibole asbestos by TEM: 1 of 36 (2.7%)
Samples with Montana talc tested for chrysotile asbestos by PLM: 33 of 33 (100%)

TALC FROM BRAZIL

Product(s)	Vintage(s)	Source mine	Reference	Amphibole by TEM	Total amphibole	Chrysotile by PLM	Total
Johnson & Johnson (Argentina)	2017	Brazil	Decl. w/chart on J&J 9/21/2021	0 of 3	0 of 3	3 of 3	3 of 3

Samples with Brazilian talc tested that contained asbestos: 3 of 3 (100%)
Samples with Brazilian talc tested that contained amphibole asbestos: 0 of 3 (0%)
Samples with Brazilian talc tested that contained amphibole asbestos by TEM: 0 of 3 (0%)
Samples with Brazilian talc tested for chrysotile asbestos by PLM: 3 of 3 (100%)

TALC FROM CHINA

Product(s)	Vintage(s)	Source mine	Reference	Amphibole by TEM	Total amphibole	Chrysotile by PLM	Total

Chanel No. 5	2000s to 2014	Guangxi	Decl. w/chart on Chanel 8/10/2020	2 of 22	2 of 22	19 of 19	20 of 22
Guangxi mill (Segrave)	N/A	Guangxi	Decl. w/chart on J&J 9/21/2021	0 of 1	0 of 1	1 of 1	1 of 1
Guangxi crude (Sanchez)	N/A	Guangxi	Decl. w/chart on J&J 9/21/2021	0 of 1	0 of 1	1 of 1	1 of 1
Guangxi mill (J&J retain)	N/A	Guangxi	Decl. w/chart on J&J 9/21/2021	0 of 1	0 of 9	9 of 9	9 of 9
Supra H (Chanel retain)	2011 to 2013	Guangxi	Decl. w/chart on J&J 9/21/2021	0 of 1	0 of 0	18 of 18	18 of 18
Johnson & Johnson (JBP & STS, outside archive)	2004 to 2020	Guangxi	Decl. w/chart on J&J 9/21/2021	6 of 21	6 of 21	33 of 33	37 of 40
Johnson & Johnson (STS, archive)	2013, 2013, 2017	Guangxi	Decl. w/chart on J&J 9/21/2021	2 of 3	2 of 3	0 of 0	2 of 3
Johnson & Johnson (U.K.)	2002	Guangxi	Decl. w/chart on J&J 9/21/2021	0 of 9	0 of 9	9 of 9	9 of 9
Avon body powders[3]	1997 of 2002	Guangxi	M71560 11/15/2022	0 of 9	0 of 9	9 of 9	9 of 9

Samples with Chinese talc tested that contained asbestos: 106 of 112 (94.6%)
Samples with Chinese talc tested that contained amphibole asbestos: 10 of 75 (13.3%)
Samples with Chinese talc tested that contained amphibole asbestos by TEM: 10 of 75 (13.3%)
Samples with Chinese talc tested for chrysotile asbestos by PLM: 99 of 99 (100%)

[3] The report concerned 13 Avon samples, including 9 body powders (001 to 009), two eye shadows (010 to 011) and two blushes (012 to 013). Only the body powders are included here because they can be tied to Chinese talc.

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STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF RICHLAND	)	CIVIL ACTION NO. 2022-CP-40-01265
Sarah J. Plant and Parker Plant,	)	
	)	
Plaintiffs,	)	
	)	**DEFENDANT IMI FABI (DIANA) LLC'S MOTION TO DISMISS FOR LACK OF PERSONAL JURISDICTION**
vs.	)	
	)	
Avon Products, Inc., et al.,	)	
	)	
Defendants.	)	
	)	

Defendant IMI FABI (Diana) LLC ("Fabi Diana") respectfully submits this Motion to Dismiss[1] Plaintiffs' First Amended Complaint pursuant to Rule 12(b)(2) of the South Carolina Rules of Civil Procedure on the ground that this Court lacks personal jurisdiction over it. Fabi Diana also moves this Court, pursuant to Rule 26(c) of the South Carolina Rules of Civil Procedure, for an Order staying discovery as to Fabi Diana pending resolution of this Motion.

1. Plaintiffs' First Amended Complaint alleges that Plaintiffs are currently residents of Tennessee and that Sarah J. Plant ("Ms. Plant") developed mesothelioma as the result of exposure to various asbestos-containing talc products.[2]

2. Plaintiffs' First Amended Complaint lists Fabi Diana "as a Product Defendant" and alleges Ms. Plant was exposed to asbestos-containing talc "mined… processed… imported… supplied… and/or retailed…" by Fabi Diana.[3]

[1] Fabi Diana files this Motion in lieu of filing an Answer. *See* Rule 12(b)(2), SCRCP; *see also id.* at Note ("The motion should be made before answer for early disposition of cases."). To the extent that the Court determines that an Answer is required, Fabi Diana denies the allegations in the Complaint and Amended Complaint and reserves its right to file a full and complete Answer, with all applicable affirmative defenses, at the appropriate time, after its jurisdictional objections are heard and ruled upon.

[2] Pl.'s First Am. Compl. at ¶¶ 1, 6, 24.

[3] Pl.'s First Am. Compl. at ¶ 51.

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3. Plaintiffs have failed to make a *prima facie* showing that Fabi Diana is subject to either general or specific personal jurisdiction in South Carolina. Whether an out of state defendant, such as Fabi Diana, is subject to this Court's personal jurisdiction is an individualized analysis that is dependent on the facts of each case. *Cockrell v. Hillerich & Bradsby Co.*, 363 S.C. 485, 491, 611 S.E.2d 505, 508 (2005). At the pretrial stage Plaintiffs bear the burden of establishing personal jurisdiction either by factual allegations in the complaint or in affidavits. *Id.* Where a defendant moves to dismiss for lack of jurisdiction, the court may look to affidavits and other evidence to determine whether jurisdiction exists. *Sullivan v. Hawker Beechcraft Corp.*, 397 S.C. 143, 150, 723 S.E.2d 835, 839 (Ct. App. 2012). Here, Plaintiffs' generic and conclusory jurisdictional allegations are just that: bare boilerplate statements, unsupported by fact, which are insufficient to establish this Court's jurisdiction over Fabi Diana. *Id.* at 150-51, 723 S.E.2d at 839 ("The repeating of the statute is insufficient to support a finding of personal jurisdiction… [a] prima facie showing of personal jurisdiction can be made through *factual* allegations in the complaint or through affidavits").

4. First, the Court does not have general personal jurisdiction over Fabi Diana because it does not have continuous and systematic contacts with South Carolina such that it is essentially "at home" in this state. *See Coggeshall v. Reprod. Endocrine Assocs. of Charlotte*, 376 S.C. 12, 16, 655 S.E.2d 476, 478 (2007); *see also* S.C. Code Ann. § 36-2-802. Fabi Diana is not a South Carolina Limited Liability Company and does not have its principal place of business in South Carolina and, therefore, it is not subject to general jurisdiction in South Carolina.[4] *See e.g.,*

[4] Plaintiffs correctly state that Fabi Diana "was and is" a North Carolina limited liability company. Pl.'s First Am. Compl. at ¶ 51. However, they incorrectly state that its principal place of business is West Virginia when in fact its principal place of business was always in New York. Supporting Affidavit to be provided.

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Daimler AG v. Bauman, 571 U.S. 117, 137 (2014) ("With respect to a corporation, the place of incorporation and principal place of business are 'paradig[m] . . . bases for general jurisdiction.'").

5. Second, Plaintiffs have not shown that this Court has specific personal jurisdiction over Fabi Diana. Specific personal jurisdiction is granted pursuant to South Carolina's long arm statute, S.C. Code Ann. § 36-2-803, which has been construed to extend to the outer limits of the due process clause. *Cockrell*, 363 S.C. at 491, 611 S.E.2d at 508. Due process requires (1) that minimum contacts exist between Fabi Diana and South Carolina such that maintaining the suit does not offend "traditional notions of fair play and substantial justice" and (2) that the exercise of jurisdiction be reasonable and fair. *Id.* at 491-92, 611 S.E.2d at 508. When examining whether exercise of jurisdiction would be reasonable and fair, the Court must examine (1) the duration of Fabi Diana's activities in South Carolina, (2) the character and circumstances of Fabi Diana's acts, (3) the inconvenience resulting to Fabi Diana by either conferring or refusing jurisdiction, and (4) South Carolina's interest in exercising jurisdiction. *Id.* at 492, 611 S.E.2d at 508.

6. Plaintiffs have not shown, and cannot show, Fabi Diana has sufficient minimum contacts with South Carolina. "A minimum contacts analysis requires a court to find the defendant directed its activities to a resident of this State and that the cause of action arises out of or relates to those activities." *S. Plastics Co. v. S. Commerce Bank*, 310 S.C. 256, 260, 423 S.E.2d 128, 131 (1992). *See also Bristol-Meyers Squibb Co. v. Superior Court of California, San Francisco County*, 137 S.Ct. 1773, 1780 (2017); *World-Wide Volkswagen Corp. v. Woodson*, 444 U.S. 286, 296-297 (1980); *Hanson v. Denckla*, 357 U.S. 235, 251, 253 (1958). Fabi Diana has not purposefully directed *any* activities at South Carolina and, therefore, there are not sufficient minimum contacts with South Carolina to render this Court's exercise of personal jurisdiction permissible under the Due Process Clause. *See Coggeshall*, 376 S.C. at 16, 655 S.E.2d at 478

("Due process requires some act by which the defendant purposefully avails itself of the privilege of conducting activities within the forum state.")

7. Because the Court lacks both general personal jurisdiction and specific personal jurisdiction over Fabi Diana, Plaintiffs' First Amended Complaint must be dismissed with respect to Fabi Diana.

8. Discovery involving Fabi Diana should be stayed pending resolution of this Motion. *Sullivan* at 151–52, 723 S.E.2d at 839–40 ("[W]here a plaintiff's claim of personal jurisdiction appears to be both attenuated and based on bare allegations in the face of specific denials made by defendants, the court need not permit even limited discovery confined to issues of personal jurisdiction if it will be a fishing expedition.") ("When a plaintiff offers only speculation or conclusory assertions about contacts with a forum state, a court is within its discretion in denying jurisdictional discovery"). *See also* Rule 26(c) SCRCP; *Hamm v. South Carolina Pub. Serv. Comm'n*, 312 S.C. 238, 241, 439 S.E.2d. 852, 854 (1994); *Cannon v. United Ins. Co. of Am.*, 352 F.Supp. 1212, 1214-15 (D.S.C. 1973.)

This Motion is based upon, and may be further supplemented with, applicable pleadings, discovery, affidavits, exhibits, deposition transcripts, controlling law, a supporting memorandum of law which will be filed subsequent to this Motion, and such other and further material as the Court may deem appropriate. Fabi Diana's participation in discovery prior to a hearing on this Motion shall not be construed as a waiver by Fabi Diana of any rights, defenses, or objections, including lack of personal jurisdiction, all of which are expressly reserved.

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May 13, 2022

ELECTRONICALLY FILED - 2022 May 13 4:51 PM - RICHLAND - COMMON PLEAS - CASE#2022CP4001265

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF RICHLAND	)	CIVIL ACTION NO. 2022-CP-40-01265
Sarah J. Plant and Parker Plant,	)	
	)	
Plaintiffs,	)	
	)	**DEFENDANT IMI FABI, LLC'S MOTION TO DISMISS FOR LACK OF PERSONAL JURISDICTION**
vs.	)	
	)	
Avon Products, Inc., et al.,	)	
	)	
Defendants.	)	
	)	

Defendant IMI FABI, LLC ("Fabi, LLC") respectfully submits this Motion to Dismiss[1] Plaintiffs' First Amended Complaint pursuant to Rule 12(b)(2) of the South Carolina Rules of Civil Procedure on the ground that this Court lacks personal jurisdiction over it. Fabi, LLC also moves this Court, pursuant to Rule 26(c) of the South Carolina Rules of Civil Procedure, for an Order staying discovery as to Fabi, LLC pending resolution of this Motion.

1. Plaintiffs' First Amended Complaint alleges that Plaintiffs are currently residents of Tennessee and that Sarah J. Plant ("Ms. Plant") developed mesothelioma as the result of exposure to various asbestos-containing talc products.[2]

2. Plaintiffs' First Amended Complaint lists Fabi, LLC "as a Product Defendant" and alleges Ms. Plant was exposed to asbestos-containing talc "mined… processed… imported… supplied… and/or retailed…" by Fabi, LLC.[3]

[1] Fabi, LLC files this Motion in lieu of filing an Answer. *See* Rule 12(b)(2), SCRCP; *see also id.* at Note ("The motion should be made before answer for early disposition of cases."). To the extent that the Court determines that an Answer is required, Fabi, LLC denies the allegations in the Complaint and Amended Complaint and reserves its right to file a full and complete Answer, with all applicable affirmative defenses, at the appropriate time, after its jurisdictional objections are heard and ruled upon.

[2] Pl.'s First Am. Compl. at ¶¶ 1, 6, 24.

[3] Pl.'s First Am. Compl. at ¶ 53.

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3. Plaintiffs have failed to make a *prima facie* showing that Fabi, LLC is subject to either general or specific personal jurisdiction in South Carolina. Whether an out of state defendant, such as Fabi, LLC, is subject to this Court's personal jurisdiction is an individualized analysis that is dependent on the facts of each case. *Cockrell v. Hillerich & Bradsby Co.*, 363 S.C. 485, 491, 611 S.E.2d 505, 508 (2005). At the pretrial stage Plaintiffs bear the burden of establishing personal jurisdiction either by factual allegations in the complaint or in affidavits. *Id.* Where a defendant moves to dismiss for lack of jurisdiction, the court may look to affidavits and other evidence to determine whether jurisdiction exists. *Sullivan v. Hawker Beechcraft Corp.*, 397 S.C. 143, 150, 723 S.E.2d 835, 839 (Ct. App. 2012). Here, Plaintiffs' generic and conclusory jurisdictional allegations are just that: bare boilerplate statements, unsupported by fact, which are insufficient to establish this Court's jurisdiction over Fabi, LLC. *Id.* at 150-51, 723 S.E.2d at 839 ("The repeating of the statute is insufficient to support a finding of personal jurisdiction… [a] prima facie showing of personal jurisdiction can be made through *factual* allegations in the complaint or through affidavits").

4. First, the Court does not have general personal jurisdiction over Fabi, LLC because it does not have continuous and systematic contacts with South Carolina such that it is essentially "at home" in this state. *See Coggeshall v. Reprod. Endocrine Assocs. of Charlotte*, 376 S.C. 12, 16, 655 S.E.2d 476, 478 (2007); *see also* S.C. Code Ann. § 36-2-802. Fabi, LLC is not a South Carolina Limited Liability Company and does not have its principal place of business in South Carolina and, therefore, it is not subject to general jurisdiction in South Carolina.[4] *See e.g.,*

[4] Plaintiffs state that Fabi, LLC "was and is" a West Virginia limited liability company with its principal place of business in West Virginia. Pl.'s First Am. Compl. at ¶ 53. Fabi, LLC was a North Carolina limited liability company that was merged with a West Virginia limited liability company as of January 1, 2020. Its principal place of business is in West Virginia. Supporting Affidavit to be provided.

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Daimler AG v. Bauman, 571 U.S. 117, 137 (2014) ("With respect to a corporation, the place of incorporation and principal place of business are 'paradig[m] . . . bases for general jurisdiction.'").

5. Second, Plaintiffs have not shown that this Court has specific personal jurisdiction over Fabi, LLC. Specific personal jurisdiction is granted pursuant to South Carolina's long arm statute, S.C. Code Ann. § 36-2-803, which has been construed to extend to the outer limits of the due process clause. *Cockrell*, 363 S.C. at 491, 611 S.E.2d at 508. Due process requires (1) that minimum contacts exist between Fabi, LLC and South Carolina such that maintaining the suit does not offend "traditional notions of fair play and substantial justice" and (2) that the exercise of jurisdiction be reasonable and fair. *Id.* at 491-92, 611 S.E.2d at 508. When examining whether exercise of jurisdiction would be reasonable and fair, the Court must examine (1) the duration of Fabi, LLC's activities in South Carolina, (2) the character and circumstances of Fabi, LLC's acts, (3) the inconvenience resulting to Fabi, LLC by either conferring or refusing jurisdiction, and (4) South Carolina's interest in exercising jurisdiction. *Id.* at 492, 611 S.E.2d at 508.

6. Plaintiffs have not shown, and cannot show, Fabi, LLC has sufficient minimum contacts with South Carolina. "A minimum contacts analysis requires a court to find the defendant directed its activities to a resident of this State and that the cause of action arises out of or relates to those activities." *S. Plastics Co. v. S. Commerce Bank*, 310 S.C. 256, 260, 423 S.E.2d 128, 131 (1992). *See also Bristol-Meyers Squibb Co. v. Superior Court of California, San Francisco County*, 137 S.Ct. 1773, 1780 (2017); *World-Wide Volkswagen Corp. v. Woodson*, 444 U.S. 286, 296-297 (1980); *Hanson v. Denckla*, 357 U.S. 235, 251, 253 (1958). Fabi, LLC has not purposefully directed *any* activities at South Carolina and, therefore, there are not sufficient minimum contacts with South Carolina to render this Court's exercise of personal jurisdiction permissible under the Due Process Clause. *See Coggeshall*, 376 S.C. at 16, 655 S.E.2d at 478

("Due process requires some act by which the defendant purposefully avails itself of the privilege of conducting activities within the forum state.")

7. Because the Court lacks both general personal jurisdiction and specific personal jurisdiction over Fabi, LLC, Plaintiffs' First Amended Complaint must be dismissed with respect to Fabi, LLC.

8. Discovery involving Fabi, LLC should be stayed pending resolution of this Motion. *Sullivan* at 151–52, 723 S.E.2d at 839–40 ("[W]here a plaintiff's claim of personal jurisdiction appears to be both attenuated and based on bare allegations in the face of specific denials made by defendants, the court need not permit even limited discovery confined to issues of personal jurisdiction if it will be a fishing expedition.") ("When a plaintiff offers only speculation or conclusory assertions about contacts with a forum state, a court is within its discretion in denying jurisdictional discovery"). *See also* Rule 26(c) SCRCP; *Hamm v. South Carolina Pub. Serv. Comm'n*, 312 S.C. 238, 241, 439 S.E.2d. 852, 854 (1994); *Cannon v. United Ins. Co. of Am.*, 352 F.Supp. 1212, 1214-15 (D.S.C. 1973.)

This Motion is based upon, and may be further supplemented with, applicable pleadings, discovery, affidavits, exhibits, deposition transcripts, controlling law, a supporting memorandum of law which will be filed subsequent to this Motion, and such other and further material as the Court may deem appropriate. Fabi, LLC's participation in discovery prior to a hearing on this Motion shall not be construed as a waiver by Fabi, LLC of any rights, defenses, or objections, including lack of personal jurisdiction, all of which are expressly reserved.

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May 13, 2022

ELECTRONICALLY FILED - 2022 May 13 4:45 PM - RICHLAND - COMMON PLEAS - CASE#2022CP4001265

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF RICHLAND	)	CIVIL ACTION NO. 2022-CP-40-01265
Sarah J. Plant and Parker Plant,	)	
	)	
Plaintiffs,	)	
	)	**DEFENDANT IMI FABI (USA) INC.'s MOTION TO DISMISS FOR LACK OF PERSONAL JURISDICTION**
vs.	)	
	)	
Avon Products, Inc., et al.,	)	
	)	
Defendants.	)	
	)	

Defendant IMI FABI (USA) Inc. ("Fabi USA") respectfully submits this Motion to Dismiss[1] Plaintiffs' First Amended Complaint pursuant to Rule 12(b)(2) of the South Carolina Rules of Civil Procedure on the ground that this Court lacks personal jurisdiction over it. Fabi USA also moves this Court, pursuant to Rule 26(c) of the South Carolina Rules of Civil Procedure, for an Order staying discovery as to Fabi USA pending resolution of this Motion.

1. Plaintiffs' First Amended Complaint alleges that Plaintiffs are currently residents of Tennessee and that Sarah J. Plant ("Ms. Plant") developed mesothelioma as the result of exposure to various asbestos-containing talc products.[2]

2. Plaintiffs' First Amended Complaint lists Fabi USA "as a Product Defendant" and alleges Ms. Plant was exposed to asbestos-containing talc "mined… processed… imported… supplied… and/or retailed…" by Fabi USA.[3]

[1] Fabi USA files this Motion in lieu of filing an Answer. *See* Rule 12(b)(2), SCRCP; *see also id.* at Note ("The motion should be made before answer for early disposition of cases."). To the extent that the Court determines that an Answer is required, Fabi USA denies the allegations in the Complaint and Amended Complaint and reserves its right to file a full and complete Answer, with all applicable affirmative defenses, at the appropriate time, after its jurisdictional objections are heard and ruled upon.

[2] Pl.'s First Am. Compl. at ¶¶ 1, 6, 24.

[3] Pl.'s First Am. Compl. at ¶ 52.

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3. Plaintiffs have failed to make a *prima facie* showing that Fabi USA is subject to either general or specific personal jurisdiction in South Carolina. Whether an out of state defendant, such as Fabi USA, is subject to this Court's personal jurisdiction is an individualized analysis that is dependent on the facts of each case. *Cockrell v. Hillerich & Bradsby Co.*, 363 S.C. 485, 491, 611 S.E.2d 505, 508 (2005). At the pretrial stage Plaintiffs bear the burden of establishing personal jurisdiction either by factual allegations in the complaint or in affidavits. *Id.* Where a defendant moves to dismiss for lack of jurisdiction, the court may look to affidavits and other evidence to determine whether jurisdiction exists. *Sullivan v. Hawker Beechcraft Corp.*, 397 S.C. 143, 150, 723 S.E.2d 835, 839 (Ct. App. 2012). Here, Plaintiffs' generic and conclusory jurisdictional allegations are just that: bare boilerplate statements, unsupported by fact, which are insufficient to establish this Court's jurisdiction over Fabi USA. *Id.* at 150-51, 723 S.E.2d at 839 ("The repeating of the statute is insufficient to support a finding of personal jurisdiction… [a] prima facie showing of personal jurisdiction can be made through *factual* allegations in the complaint or through affidavits").

4. First, the Court does not have general personal jurisdiction over Fabi USA because it does not have continuous and systematic contacts with South Carolina such that it is essentially "at home" in this state. *See Coggeshall v. Reprod. Endocrine Assocs. of Charlotte*, 376 S.C. 12, 16, 655 S.E.2d 476, 478 (2007); *see also* S.C. Code Ann. § 36-2-802. Fabi USA is not a South Carolina Limited Liability Company and does not have its principal place of business in South Carolina and, therefore, it is not subject to general jurisdiction in South Carolina.[4] *See e.g.,*

[4] Plaintiffs state that Fabi USA "was and is" a Delaware corporation with its principal place of business in West Virginia. Pl.'s First Am. Compl. at ¶ 52. Fabi USA is a Delaware corporation. However, its principal place of business is in Delaware, not West Virginia. Supporting Affidavit to be provided.

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Daimler AG v. Bauman, 571 U.S. 117, 137 (2014) ("With respect to a corporation, the place of incorporation and principal place of business are 'paradig[m] . . . bases for general jurisdiction.'").

5. Second, Plaintiffs have not shown that this Court has specific personal jurisdiction over Fabi USA. Specific personal jurisdiction is granted pursuant to South Carolina's long arm statute, S.C. Code Ann. § 36-2-803, which has been construed to extend to the outer limits of the due process clause. *Cockrell*, 363 S.C. at 491, 611 S.E.2d at 508. Due process requires (1) that minimum contacts exist between Fabi USA and South Carolina such that maintaining the suit does not offend "traditional notions of fair play and substantial justice" and (2) that the exercise of jurisdiction be reasonable and fair. *Id.* at 491-92, 611 S.E.2d at 508. When examining whether exercise of jurisdiction would be reasonable and fair, the Court must examine (1) the duration of Fabi USA's activities in South Carolina, (2) the character and circumstances of Fabi USA's acts, (3) the inconvenience resulting to Fabi USA by either conferring or refusing jurisdiction, and (4) South Carolina's interest in exercising jurisdiction. *Id.* at 492, 611 S.E.2d at 508.

6. Plaintiffs have not shown, and cannot show, Fabi USA has sufficient minimum contacts with South Carolina. "A minimum contacts analysis requires a court to find the defendant directed its activities to a resident of this State and that the cause of action arises out of or relates to those activities." *S. Plastics Co. v. S. Commerce Bank*, 310 S.C. 256, 260, 423 S.E.2d 128, 131 (1992). *See also Bristol-Meyers Squibb Co. v. Superior Court of California, San Francisco County*, 137 S.Ct. 1773, 1780 (2017); *World-Wide Volkswagen Corp. v. Woodson*, 444 U.S. 286, 296-297 (1980); *Hanson v. Denckla*, 357 U.S. 235, 251, 253 (1958). Fabi USA has not purposefully directed *any* activities at South Carolina and, therefore, there are not sufficient minimum contacts with South Carolina to render this Court's exercise of personal jurisdiction permissible under the Due Process Clause. *See Coggeshall*, 376 S.C. at 16, 655 S.E.2d at 478

("Due process requires some act by which the defendant purposefully avails itself of the privilege of conducting activities within the forum state.")

7. Because the Court lacks both general personal jurisdiction and specific personal jurisdiction over Fabi USA, Plaintiffs' First Amended Complaint must be dismissed with respect to Fabi USA.

8. Discovery involving Fabi USA should be stayed pending resolution of this Motion. *Sullivan* at 151–52, 723 S.E.2d at 839–40 ("[W]here a plaintiff's claim of personal jurisdiction appears to be both attenuated and based on bare allegations in the face of specific denials made by defendants, the court need not permit even limited discovery confined to issues of personal jurisdiction if it will be a fishing expedition.") ("When a plaintiff offers only speculation or conclusory assertions about contacts with a forum state, a court is within its discretion in denying jurisdictional discovery"). *See also* Rule 26(c) SCRCP; *Hamm v. South Carolina Pub. Serv. Comm'n*, 312 S.C. 238, 241, 439 S.E.2d. 852, 854 (1994); *Cannon v. United Ins. Co. of Am.*, 352 F.Supp. 1212, 1214-15 (D.S.C. 1973.)

This Motion is based upon, and may be further supplemented with, applicable pleadings, discovery, affidavits, exhibits, deposition transcripts, controlling law, a supporting memorandum of law which will be filed subsequent to this Motion, and such other and further material as the Court may deem appropriate. Fabi USA's participation in discovery prior to a hearing on this Motion shall not be construed as a waiver by Fabi USA of any rights, defenses, or objections, including lack of personal jurisdiction, all of which are expressly reserved.

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May 13, 2022

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STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF RICHLAND	)	CIVIL ACTION NO. 2022-CP-40-01265
Sarah J. Plant and Parker Plant,	)	
	)	
Plaintiffs,	)	
	)	**DEFENDANT IMI FABI (DIANA) LLC'S MEMORANDUM IN SUPPORT OF ITS MOTION TO DISMISS FOR LACK OF PERSONAL JURISDICTION AND MOTION FOR PROTECTIVE ORDER TO STAY DISCOVERY AS TO IMI FABI (DIANA) LLC**
vs.	)	
	)	
Avon Products, Inc., et al.,	)	
	)	
Defendants.	)	
	)	

This Memorandum and accompanying affidavit are submitted in support of Defendant IMI FABI (Diana) LLC's ("Fabi Diana") Motion to Dismiss Plaintiffs' First Amended Complaint pursuant to Rule 12(b)(2), SCRCP and Motion for Protective order staying discovery as to Fabi Diana pursuant to Rule 26(c) SCRCP.

FACTS

Plaintiffs' First Amended Complaint alleges that Plaintiffs are currently residents of Tennessee and that Sarah Plant ("Ms. Plant") developed mesothelioma as the result of exposure to various asbestos-containing talc products in several states, including South Carolina.[1]

Plaintiffs do not assert that Fabi Diana is a South Carolina limited liability company or that its principal place of business was ever in South Carolina.[2] Rather, Plaintiffs assert generally that this Court has personal jurisdiction over all Defendants because Plaintiffs' claims arise from Defendants' conduct in (a) transacting business in the 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

[1] Pl. First Am. Compl. at ¶¶ 1, 6, 24, 25.
[2] See Pl. First Am. Compl. at ¶ 51.

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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] Further, Plaintiffs allege generally that "all" defendants "purposefully availed themselves of the privilege of doing business in this State" and engaged in "substantial and/or systematic business in South Carolina."[4]

Specifically as to Fabi Diana, Plaintiffs list it as a "Product Defendant" and allege Ms. Plant was exposed to asbestos-containing talc "mined . . . processed . . . imported . . . supplied . . . and or retailed" by Fabi Diana. Plaintiffs further allege that their claim against Fabi Diana arises out of Fabi Diana's "business activities" and Ms. Plant's exposure to Fabi Diana products in the State of South Carolina as well as other states. [5]

However, as attested to in the Affidavit of Michael Brown ("Mr. Brown"), attached hereto as Exhibit A, these jurisdictional allegations as to Fabi Diana are unsupported by fact. Mr. Brown's Affidavit sets forth the following relevant facts on the issue of personal jurisdiction:

- Mr. Brown is the former general manager and current caretaker of Fabi Diana. Exhibit A at ¶ 2.
- Fabi Diana is not a South Carolina limited liability company and never had its principal place of business in South Carolina. *See* Exhibit A at ¶¶ 3, 5; *See also* Pl.'s First Am. Compl. at ¶ 51.
- Fabi Diana began operations in 2001 and ceased operations on December 31, 2004. Exhibit A at ¶¶ 3, 4.

[3] Pl.'s First Am. Compl. at ¶ 2.
[4] Pl.'s First Am. Compl. at ¶ 5.
[5] Pl.'s First Am. Compl. at ¶ 51.

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- Fabi Diana sold refined talc to the cosmetic, personal care, pharmaceutical, and food industries and sold industrial talc for the manufacture of various products. Exhibit A at ¶ 6.
- Fabi Diana has never been licensed to do business in South Carolina and has never had a registered agent in South Carolina. Exhibit A at ¶¶ 7, 8.
- Fabi Diana has never owned or operated any manufacturing, sales, or distribution facilities in South Carolina; transacted business in South Carolina; contracted to supply goods or services in South Carolina; or marketed or advertised products in South Carolina. Exhibit A at ¶¶ 9, 17, 18, 19.
- Until Fabi Diana closed its facility in Diana Township, New York, all products sold by Fabi Diana were delivered F.O.B. Origin, Freight Collect, Diana Township, New York. In every instance, the Buyer made all arrangements for shipment of the products off of Fabi Diana's premises. In every instance, possession of the product and risk of loss in transit transferred from Fabi Diana to the Buyer at the Fabi Diana loading dock. In every instance, the Buyer paid for and bore the freight charges. In every instance, the Buyer, not Fabi Diana, filed claims (if any) if the product was damaged, destroyed, or lost in transit. Consequently, Fabi Diana has never delivered any products to South Carolina. Exhibit A at ¶ 22, 23.
- Fabi Diana has never had an interest in, used, or possessed real property in South Carolina. Exhibit A at ¶ 25.
- Fabi Diana has never committed a tortious act in whole or in part in South Carolina. Exhibit A at ¶ 41.

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- Fabi Diana has never manufactured, sold, or distributed any products to South Carolina and has never shipped any products to South Carolina. Exhibit A at ¶¶ 37, 38.
- Fabi Diana has never produced, manufactured, or distributed goods with the reasonable expectation that those goods are to be used or consumed in the State of South Carolina and were so used and consumed. Exhibit A at ¶ 46.

ARGUMENT

I. Motion to Dismiss for Lack of Personal Jurisdiction

i. Legal Standard

"The question of personal jurisdiction over a nonresident defendant is one which must be resolved upon the facts of each particular case." *Cockrell v. Hillerich & Bradsby Co*., 363 S.C. 485, 491, 611 S.E.2d 505, 508 (2005). "The party seeking to invoke personal jurisdiction over a non-resident defendant . . . bears the burden of establishing jurisdiction." *Power Prods. & Servs. Co., Inc. v. Kozma*, 379 S.C. 423, 430, 665 S.E.2d 660, 664 (Ct. App. 2008). At the pretrial stage, plaintiffs may meet their burden of proving personal jurisdiction over a nonresident defendant by a *prima facie* showing of jurisdiction either (1) in the complaint or (2) in affidavits. *See Cockrell*, 363 S.C. at 491, 611 S.E.2d at 508; *Sullivan v. Hawker Beechcraft Corp*., 397 S.C. 143, 150, 723 S.E.2d 835, 839 (Ct. App. 2012). However, a plaintiff must allege *specific facts* to establish the contacts necessary to invoke either general or specific jurisdiction. *See Power Prods. & Servs. Co., Inc.*, 379 S.C. at 433–36, 665 S.E.2d at 665–67 (affirming trial court's dismissal based on lack of personal jurisdiction because plaintiff did not establish facts—either through the complaint or affidavits—to confer jurisdiction). Conclusory allegations will not suffice. *Id.* at 433–35, 665

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S.E.2d at 665–66. Moreover, "[w]hen a motion to dismiss attacks the allegations of the complaint on the issue of jurisdiction, the court is not confined to the allegations of the complaint but may resort to affidavits or other evidence to determine jurisdiction." *Sullivan*, 397 S.C. at 150, 723 S.E.2d at 839 (quoting *Coggeshall v. Reprod. Endocrine Assocs. of Charlotte*, 376 S.C. 12, 16, 655 S.E.2d 476, 478 (2007)).

"Personal jurisdiction is exercised as either 'general jurisdiction' or 'specific jurisdiction.'" *Coggeshall*, 376 S.C. at 16, 655 S.E.2d at 478. "General jurisdiction is the State's right to exercise personal jurisdiction over a defendant even though the suit does not arise out of or relate to the defendant's contacts with the forum . . . ; general jurisdiction is determined under S.C. Code Ann. §36-2-802…." *Id.* "Specific jurisdiction is the State's right to exercise personal jurisdiction because the cause of action arises specifically from a defendant's contacts with the forum . . . ; specific jurisdiction is determined under S.C. Code Ann. § 36-2-803…." *Id.* The exercise of personal jurisdiction under either statute must comport with due process requirements and must not offend traditional notions of fair play and substantial justice. *Id*. Due process requires some act by which the defendant purposefully avails itself of the privilege of conducting activities within the forum state. *Id*.

Further, due process mandates that the defendant possess sufficient minimum contacts with the forum state, so that it could reasonably anticipate being haled into court there. *Cockrell*, 363, S.C. at 491-492, 611 S.E.2d at 508 (citing *World-Wide Volkswagen Corp. v. Woodson*, 444 U.S. 286 (1980)). Without minimum contacts, the Court does not have the "power" to adjudicate the action. *Cockrell*, 363 S.C. at 492, 611 S.E.2d at 508. Finally, the Court must also find that the exercise of jurisdiction is "reasonable" or "fair." *Id*.

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The Court must assess individually each defendant's contacts with South Carolina. *Cockrell*, 363 S.C. at 492, 611 S.E.2d at 508 (citing *Rush v. Savchuk*, 444 U.S. 320 (1980)). The focus of the Court's analysis must center on the contacts generated by the defendant, not on the unilateral actions of some other entity. *Cockrell*, 363 S.C. at 492, 611 S.E.2d at 508-509 (citing *Helicopteros Nacionales de Colombia, S.A. v. Hall*, 466 U.S. 408 (1984) (holding "unilateral activity of another party or a third person is not an appropriate consideration")). The foreseeability that is critical to due process analysis is not the mere likelihood that a product could find its way into the forum state. Rather, it is that the defendant's own conduct and connections with the forum state are such that he should reasonably anticipate being haled into court there. *Cockrell*, 363 S.C. at 492, 611 S.E.2d at 509 (citing *World-Wide Volkswagen Corp.*, 444 U.S. at 297).

Here, the Court has neither general nor specific jurisdiction over Fabi Diana and, therefore, Plaintiffs' claims against Fabi Diana must be dismissed.

ii. Fabi Diana is Not Subject to General Jurisdiction in South Carolina.

Fabi Diana is not a South Carolina limited liability company, its principal place of business was never in South Carolina, and it does not have such substantial contacts that it is "at home" in South Carolina; therefore, it is not subject to general personal jurisdiction in this state.

A court may assert general jurisdiction over foreign corporations when their affiliations with the forum state "are so 'continuous and systematic' as to render them essentially at home in the forum State." *Daimler AG v. Bauman*, 571 U.S. 117, 127 (2014) (quoting *Goodyear Dunlop Tires Operations, S.A. v. Brown*, 564 U.S. 915, 925 (2011)); *see also Coggeshall*, 376 S.C. 12, 16, 655 S.E.2d 476, 478; S.C. Code Ann. §36-2-802. Only in an "exceptional case" can a court exercise general jurisdiction in a forum that is not "the corporation's place of incorporation [or] its

principal place of business." *BNSF Ry. Co. v. Tyrrell*, 137 S. Ct. 1549, 1558 (2017). An example of the "exceptional case" where general jurisdiction may be exercised over a corporation that is neither incorporated in nor has its principal place of business in a state is the United States Supreme Court holding in *Perkins v. Benguet Consol. Min. Co.*, 342 U.S. 347. In *Perkins* the defendant, a foreign mining company forced to flee the Philippines during World War II, operated entirely from Ohio for several years. The company's president and principal stockholder relocated to Ohio and set up an office, where he maintained corporate files, carried on the company's correspondence, issued checks on behalf of the company, employed two corporate secretaries, maintained bank accounts, purchased company equipment, and held director's meetings for the duration of the company's exile. Under these circumstances, where Ohio became the business' *de facto* operating headquarters, the Court found general jurisdiction proper. None of these facts are present here.

Fabi Diana is not "at home" in South Carolina. It is undisputed that Fabi Diana is not a South Carolina limited liability company and its principal place of business has never been in South Carolina. It has no "enduring" relationship with South Carolina. *See Cockrell*, 363 S.C. at 495, 611 S.E.2d at 510. Furthermore, no "exceptional" circumstances, such as those present in *Perkins*, exist that would render Fabi Diana "at home" in South Carolina, nor do Plaintiffs allege any such exceptional circumstances. Accordingly, Fabi Diana is not subject to general personal jurisdiction in this State.

iii. Fabi Diana is not Subject to Specific Personal Jurisdiction in South Carolina.

Fabi Diana has never conducted business activities within South Carolina or purposefully directed business activities towards South Carolina and, therefore, does not meet the requirements of South Carolina's long-arm statute or have sufficient minimum contacts with the State for the exercise of jurisdiction to satisfy due process. Moreover, because Fabi Diana has never conducted

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business in South Carolina or purposefully directed business activities towards South Carolina, it is impossible for Plaintiffs' claims to arise out of Fabi Diana's conduct within the State. Consequently, Fabi Diana is not subject to the exercise of specific personal jurisdiction in this case.

The determination of whether a court may exercise personal jurisdiction over a non-resident defendant has traditionally involved a two-step analysis; first, the court must determine if the long-arm statute applies, and second, the court must determine whether the nonresident's contacts with this State are sufficient to satisfy due process requirements. *Power Prods. & Servs. Co., Inc.*, 379 S.C. at 431, 665 S.E.2d at 664. "Because South Carolina treats its long-arm statute as coextensive with the due process clause, the sole question becomes whether the exercise of personal jurisdiction would violate due process." *Cockrell*, 363 S.C. at 491, 611 S.E.2d at 508 (citing *Moosally v. W.W. Norton & Co.*, 358 S.C. 320, 329, 594 S.E.2d 878, 883 (Ct. App. 2004)); *See also Power Prods. & Servs. Co., Inc.*, 379 S.C. at 431, 665 S.E.2d at 664; *State v. NV Sumatra Tobacco Trading, Co.*, 379 S.C. 81, 89, 666 S.E.2d 218, 222 (2008).

1. *Plaintiffs Have Not Alleged Specific Facts Necessary to Establish Personal Jurisdiction Under South Carolina's Long-Arm Statute.*

In this case, Plaintiffs have failed to allege specific facts that subject Fabi Diana to jurisdiction under S.C. Code Ann. § 36-2-803(A)(1)-(8). Plaintiffs' generic, conclusory allegations are insufficient to show specific actions taken by Fabi Diana which would subject it to personal jurisdiction under the long-arm statute. *See* Sullivan, 397 S.C. at 150–51, 723 S.E.2d at 839 (affirming dismissal for lack of personal jurisdiction where the plaintiff merely recited the elements of the long-arm statute and failed to allege facts showing the defendant's conduct subjected it to jurisdiction). *See also Power Prods. & Servs. Co., Inc.*, 379 S.C. at 433–36, 665 S.E.2d at 665–67 (affirming trial court's dismissal based on lack of personal jurisdiction because

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plaintiff did not establish facts—either through the complaint or affidavits—to confer jurisdiction). Here, the allegations in Plaintiffs' First Amended Complaint are pled in the same way that the *Sullivan* Court found to be insufficient to meet a prima facie showing of personal jurisdiction; merely alleging legal conclusions in the First Amended Complaint does not meet the fact-pleading standard required by South Carolina courts.

The facts, as attested in Mr. Brown's affidavit, are that Fabi Diana has never (1) transacted business in this State; (2) contracted to supply services or things in this State; (3) committed a tortious act in whole or in part in this State; (4) regularly done or solicited business or engaged in any persistent course of conduct, or derived substantial revenue from goods used or consumed or services rendered, in this State; (5) had an interest in and has never used or possessed real property in this State; (6) contracted to insure any person, property or risk located within this State at the time of contracting; (7) entered into a contract to be performed in whole or in part by either party in this State; or (8) produced, manufactured, or distributed goods with the reasonable expectation that those goods were to be used or consumed in this State and were so used or consumed. *See* Exhibit A.

Plaintiffs' conclusory allegations, in the face of specific facts to the contrary, are insufficient to establish a *prima facie* showing of jurisdiction and, therefore, Plaintiffs have not met their burden and their claims must be dismissed.

2. ***Plaintiffs Have Not Shown Sufficient Minimum Contacts Between Fabi Diana and South Carolina Necessary to Satisfy Due Process.***

Assuming for the sake of argument that Plaintiffs' allegations meet the requirements of S.C. Code Ann. § 36-2-803, the exercise of personal jurisdiction over Fabi Diana is improper because Plaintiffs cannot show that the exercise of personal jurisdiction in this matter satisfies the requirements of due process.

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Due process requires that there exist sufficient minimum contacts with the forum state such that the exercise of jurisdiction does not "offend traditional notions of fair play and substantial justice" and that the defendant can "reasonably anticipate being haled into court in the forum." *E.g.*, *Cockrell*, 363 S.C. at 491-492, 611 S.E.2d at 508 (citing *Burger King Corp. v. Rudzewicz*, 471 U.S. 462, 105 S.Ct. 2174, 85 L.Ed.2d 528 (1985); *World–Wide Volkswagen Corp. v. Woodson*, 444 U.S. 286, 100 S.Ct. 559, 62 L.Ed.2d 490 (1980); *Atlantic Soft Drink Co. v. South Carolina Nat'l Bank*, 287 S.C. 228, 336 S.E.2d 876 (1985)). The Court must further determine whether the exercise of jurisdiction is "reasonable" or "fair by considering (1) the duration of the activity of the nonresident within the state; (2) the character and circumstances of the commission of the nonresident's acts; (3) the inconvenience resulting to the parties by conferring or refusing to confer jurisdiction over the nonresident; and (4) the State's interest in exercising jurisdiction." *Id.* at 492, 611 S.E.2d at 508.

Plaintiffs have not shown, and cannot show, that Fabi Diana has sufficient minimum contacts with South Carolina. "A minimum contacts analysis requires a court to find the defendant directed its activities to a resident of this State and that the cause of action arises out of or relates to those activities." *S. Plastics Co. v. S. Commerce Bank*, 310 S.C. 256, 260, 423 S.E.2d 128, 131 (1992). *See also Bristol-Meyers Squibb Co. v. Superior Court of California, San Francisco County*, 137 S.Ct. 1773, 1780 (2017); *World-Wide Volkswagen Corp.*, 444 U.S. at 296-297; *Hanson v. Denckla*, 257 U.S. 235, 251, 253 (1958). Fabi Diana has not purposefully directed <u>any</u> activities at South Carolina and, therefore, there are not sufficient minimum contacts with South Carolina to render this Court's exercise of personal jurisdiction permissible under the Due Process Clause. *See Coggeshall*, 376 S.C. at 16, 655 S.E.2d at 478 ("Due process requires

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some act by which the defendant purposefully avails itself of the privilege of conducting activities within the forum state.")

The Supreme Court of South Carolina has consistently held the focus of the minimum contacts analysis must be on each defendant's own actions, not the "unilateral actions of some other entity." *Cockrell*, 363 S.C. at 492, 611 S.E.2d at 508–09 ("The foreseeability that is critical to due process analysis is not the mere likelihood that a product will find its way into the forum state. Rather, it is that the defendant's conduct and connection with the forum state are such that he should reasonably anticipate being haled into court there"); *S. Plastics Co.*, 310 S.C. at 261, 423 S.E.2d at 131 ("[T]he defendant's activities directed to a resident of this State must be its own and not the unilateral activities of some other entity."). Likewise, the United States Supreme Court has held the defendant's actions, not those of downstream manufacturers, are determinative in a minimum contacts analysis. *E.g.*, *Asahi Metal Indus. Co. v. Superior Ct. of California, Solano Cty.*, 480 U.S. 102, 112, 107 S.Ct. 1026, 1032, 94 L. Ed. 2d 92 (1987) ("The substantial connection… for a finding of minimum contacts must come about by *an action of the defendant purposefully directed toward the forum State.* The placement of a product into the stream of commerce, without more, is not an act of the defendant purposefully directed toward the forum State.") (internal quotations and citations omitted) (emphasis in original).

While Fabi Diana did sell refined and industrial talc, none of its sales were to South Carolina and it neither marketed nor advertised its products for sale in South Carolina. Exhibit A at ¶ 6, 17, 18, 19. Fabi Diana has also never shipped any products to South Carolina. As attested in Mr. Brown's affidavit, all products sold by Fabi Diana were delivered F.O.B. Origin, Freight Collect, Diana Township, New York. Exhibit A at ¶ 22. The buyer made all shipping arrangements, bore all shipping costs, took possession of the product, and assumed all risk of

loss at Fabi Diana's loading dock in Diana Township, New York. *Id.* Even assuming, *arguendo*, that Fabi Diana's talc was later used by another unrelated entity as an ingredient in a final product that allegedly was later sold in South Carolina, specific jurisdiction does not exist where the independent, unilateral actions of a third party, rather than those of Fabi Diana, caused the talc to be incorporated into a final product that may have ended up in South Carolina. *See Cockrell*, 363 S.C. at 492, 611 S.E.2d at 508-09.

The Supreme Court of South Carolina examined the "stream of commerce" theory of personal jurisdiction in *State v. NV Sumatra Tobacco Trading, Co.*, 379 S.C. 81, 666 S.E.2d 218 (2008). The Court held that Sumatra, a foreign tobacco company who sold its products in the United States through a distributor, had sufficient minimum contacts and was, therefore, subject to personal jurisdiction in South Carolina because it: (1) admitted to manufacturing United brand cigarettes; (2) admitted it owned the United States trademark for that brand; (3) sold 6,868,000 United brand cigarettes in South Carolina in 2001; (4) filed an ingredient report for the United brand cigarettes; (5) admitted it packaged its cigarettes in packs and cartons bearing the United States-required health warnings; and (6) the United brand packaging identified the cigarettes as an "American blend," had a Surgeon General's warning, and showed an eagle and striped packaging. *NV Sumatra Tobacco Trading, Co.*, 379 S.C. at 90, 666 S.E.2d at 223. Based on these facts, the Court held that even though Sumatra used an independent distributor it had "purposely availed itself of conducting business in all 50 states, including South Carolina" and that minimum contacts with South Carolina existed regardless of how the products arrived in the State. *Id.* The facts presented in the instant case are readily distinguished. Unlike the facts presented in *Sumatra*, Fabi Diana did not manufacture or sell a final product that was allegedly sold in South Carolina, and Fabi Diana had no control over the manufacture or distribution of the

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final product. The final product did not allegedly arrive in South Carolina through any efforts of Fabi Diana. *See Cockrell*, 363 S.C. at 494, 611 S.E.2d at 510. In addition, the concern present in *Sumatra* that a company located outside the United States could avoid suit in every state is not applicable here because Fabi Diana would be subject to jurisdiction in both North Carolina and New York.

Subsequent to the *Sumatra* holding, the United States Supreme Court examined the stream of commerce theory and, in a plurality opinion authored by Justice Kennedy, held that "[a] defendant's transmission of goods permits the exercise of jurisdiction only where the defendant can be said to have targeted the forum; as a general rule, it is not enough that the defendant might have predicted that its goods will reach the forum State." *J. McIntyre Mach., Ltd. v. Nicastro*, 564 U.S. 873, 882, 131 S. Ct. 2780, 2788, 180 L. Ed. 2d 765 (2011). Justice Bryer, in his concurring opinion, found jurisdiction lacking where there was no "regular flow or regular course of business in [the forum state]; and there is no "something more," such as a special state-related design, advertising, advice, marketing, or anything else" and the defendant had not "purposefully avail[ed] itself of the privilege of conducting activities within [the forum state], or that it delivered its goods in the stream of commerce with the expectation that they will be purchased by [forum state] users." *Id.* at 889 (Bryer, J. concurring) (internal citations and quotations omitted). The concurrence further stated disagreement with the concept that a party could be subject to jurisdiction in a products liability case "so long as it knows or reasonably should know that its products are distributed through a nationwide distribution system that *might* lead to those products being sold in any of the fifty states." *Id.* at 891 (Bryer, J. concurring) (internal citations and quotations omitted) (emphasis in original).

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Applying the *J. McIntyre* Court's analysis to the facts here, it is readily apparent Fabi Diana lacks sufficient minimum contacts with South Carolina. Fabi Diana never marketed, sold, or shipped any products to South Carolina and did not engage a distributor to do so on its behalf and, therefore, cannot be said to have "targeted" the State. Fabi Diana did not sell any products with any intention or expectation that they would eventually be purchased by residents of South Carolina. Moreover, whether some other entity may have used Fabi Diana talc as an ingredient in a product that may have eventually been sold in South Carolina is irrelevant in determining whether Fabi Diana has minimum contacts with the State; the proper inquiry must focus solely on whether Fabi Diana directed its activities to residents of South Carolina. The facts here unequivocally show it did not. Absent a specific connection between Plaintiffs' claims, Fabi Diana's alleged conduct, and the State of South Carolina, there can be no specific jurisdiction over Fabi Diana.

Because Plaintiffs have not, and cannot, show that Fabi Diana has minimum contacts with South Carolina necessary for the exercise of personal jurisdiction to meet the requirements of due process, their claims against Fabi Diana must be dismissed.

II. Motion for Protective Order Staying Discovery

Fabi Diana has also moved the Court for a Protective Order staying discovery in this matter as to Fabi Diana pursuant to Rule 26(c) of the South Carolina Rules of Civil Procedure. Because Plaintiffs' First Amended Complaint is entirely conclusory and lacks factual support for its jurisdictional claims, the Court should grant Fabi Diana's motion and stay discovery pending adjudication of Fabi Diana's motion to dismiss.

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Rule 26 of the South Carolina Rules of Civil Procedure provides that, upon motion by the party from whom discovery is sought, the Court may limit discovery or order that discovery not be had to protect the party from "annoyance, embarrassment, oppression, or undue burden by expense." Rule 26(c), SCRCP. "A stay of discovery until the determination of a dispositive motion is appropriate when (1) the issue raised is strictly one of law, (2) the motion, if successful, would be dispositive of the entire action, (3) the issue is one that cannot be cured by amending the pleadings, and (4) there is no showing of any prejudice if the Court were to stay discovery." *Allen v. South Carolina Budget and Control Bd. Employee Ins. Program*, No. 2009CP1007404, 2010 WL 11579841, at *5 (S.C.Com.Pl. Oct. 12, 2010). An order under Rule 26(c) staying discovery pending a dispositive motion is an appropriate exercise of the Court's discretion. *Id*. Further, "[W]here a plaintiff's claim of personal jurisdiction appears to be both attenuated and based on bare allegations in the face of denials made by defendants, the court need not permit even limited discovery confined to issues of personal jurisdiction if it will be a fishing expedition." *Sullivan,* 397 S.C. at 151–52, 723 S.E 2d at 839–40. When a plaintiff offers only speculation or conclusory assertions about contacts with a forum state, a court is within its discretion in denying jurisdictional discovery. *Id*.

In this case, as discussed above in Fabi Diana's memorandum supporting its motion to dismiss, Plaintiffs' jurisdictional claims are conclusory and lack any factual support. Permitting Plaintiffs to conduct discovery where it is readily apparent Fabi Diana is not subject to this Court's jurisdiction in this matter would cause undue expense and serve only as a fishing expedition intended to annoy, oppress, and harass Fabi Diana. *See Cannon v. United Ins. Co. of Am.*, 352 F. Supp. 1212, 1215 (D.S.C. 1973) ("[C]ourt[s] should not order extended discovery when jurisdiction is doubtful").

Applying the factors set forth in *Allen*, an order staying discovery is appropriate in this case because the issue of this Court's jurisdiction over Fabi Diana is purely a question of law and, if

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successful, Fabi Diana's motion would be dispositive of Plaintiffs' entire case against it. Further, because Plaintiffs have not and cannot show any facts that would establish Fabi Diana had minimum contacts with South Carolina, the issue of personal jurisdiction is one that cannot be cured by amending the pleadings. Finally, there is no showing of any prejudice if the Court were to stay discovery; the requested stay would only apply to Fabi Diana, permitting Plaintiffs to conduct discovery against other parties, and would only be in effect for a brief time while the Court addresses the threshold issue of jurisdiction.

Because Plaintiffs' jurisdictional claims are conclusory allegations without any factual support which have been directly rebutted by Mr. Brown's affidavit, the Court should grant Fabi Diana's motion and stay discovery pending a decision on its motion to dismiss.

CONCLUSION

Fabi Diana is not subject to general jurisdiction because it cannot fairly be said to be "at home" in South Carolina at any time. Fabi Diana is not subject to specific jurisdiction because Plaintiffs' claims do not satisfy § 36-2-803 and because Fabi Diana has no minimum contacts with South Carolina that gave rise to Plaintiffs' claims. Plaintiffs have presented the Court with nothing but conclusory, speculative allegations with no supporting facts to support personal jurisdiction. Accordingly, Defendant Fabi Diana is entitled to an order dismissing Plaintiffs' claims against it, and in the interim, an order staying discovery as to it until the Court enters an Order on Fabi Diana's Motion to Dismiss for lack of personal jurisdiction.

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Columbia, South Carolina

July 13, 2022

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EXHIBIT A

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STATE OF SOUTH CAROLINA PLEAS	)	IN THE COURT OF COMMON
	)	
COUNTY OF RICHLAND CIRCUIT	)	FOR THE FIFTH JUDICIAL
SARAH J. PLANT and	)	C/A NO. 2022-CP-40-01265
PARKER PLANT	)	
	)	
Plaintiffs,	)	
v.	)	
	)	
AVON PRODUCTS, INC., et al.	)	
	)	
Defendants.		

AFFIDAVIT OF MICHAEL BROWN IN SUPPORT OF SPECIALLY APPEARING DEFENDANT IMI FABI (DIANA), LLC'S MOTION TO DISMISS FOR LACK OF PERSONAL JURISDICTION

I, MICHAEL BROWN, declare as follows:

1. My name is Michael Brown. I am over the age of eighteen years old (18) and I am competent to give this Affidavit.

2. I am the Former General Manager of IMI Fabi (Diana) LLC and current caretaker (hereinafter referred to as "Fabi Diana"). I make the following statements based upon my own personal knowledge, and, if called as a witness, could and would testify competently to such facts under oath.

3. On November 20, 2001, IMI Fabi (Diana) LLC was organized under the laws of North Carolina as a limited liability company.

4. IMI Fabi (Diana) LLC operated until December 31, 2004, when it closed its operations.

5. Fabi Diana's principal and only place of business was located in Diana Township, New York.

6. Fabi Diana sold refined talc to the cosmetic, personal care, pharmaceutical, food industries, and industrial talc used for the manufacture of various products.

7. Fabi Diana has never been licensed to do business in South Carolina.

8. Fabi Diana has never had a registered agent in South Carolina.

9. Fabi Diana has never owned or operated any manufacturing, sales, or distribution facilities in South Carolina.

10. Fabi Diana has never had any employees working or residing in South Carolina.

11. Fabi Diana has never recruited any South Carolina residents, directly or through an intermediary located in the State of South Carolina, for employment inside or outside of the State of South Carolina.

12. Fabi Diana has never had a mailing address, post office box, or bank account in South Carolina.

13. Fabi Diana has never owed or paid corporate taxes in South Carolina.

14. Fabi Diana has never had insurance policies, which afford coverage of any kind for specific entities located in South Carolina.

15. Fabi Diana has never paid sales tax to South Carolina.

16. Fabi Diana has never invested any dollars in business operations in South Carolina because it has never had business operations in any state other than New York.

17. Fabi Diana has never transacted any business in the State of South Carolina.

18. Fabi Diana has never contracted to supply services or goods in the State of South Carolina.

19. Fabi Diana has never marketed or advertised its products in the State of South

Carolina.

20. Fabi Diana has not received tax deductions as a result of contributions made to any organizations in the State of South Carolina.

21. Fabi Diana has never received any business incentives or tax credit from the State of South Carolina to conduct business in South Carolina.

22. Until Fabi Diana closed its facility in Diana Township, New York, all products sold by Fabi Diana were delivered F.O.B. Origin, Freight Collect, Diana Township, New York. In every instance, the Buyer made all of the arrangements for the shipment of the products off of Fabi Diana's premises. In every instance, possession of the product bought from Fabi Diana and the risk of loss in transit transferred from Fabi Diana to the Buyer at the Fabi Diana loading dock in Diana Township, New York. In every instance, the Buyer paid for and bore the freight charges. In every instance, the Buyer, not Fabi Diana, filed claims (if any) if the product was damaged, destroyed, or lost in transit.

23. Consequently, Fabi Diana has never delivered any products in the State of South Carolina.

24. Fabi Diana has never appeared in a case in South Carolina, including but not limited to, any matrimonial actions or family court proceedings.

25. Fabi Diana has never had an interest in, using or possessing real property in the State of South Carolina.

26. Fabi Diana has never owned, used, possessed, or held a mortgage or other lien on any real property in the State of South Carolina.

27. Fabi Diana has never owned, leased, or operated any real property or any offices in South Carolina.

28. Fabi Diana has never paid real estate tax to any municipality or town in South Carolina.

29. Fabi Diana has never owned a motorized vehicle registered in South Carolina and has never paid any automobile excise tax to any municipality or town located in South Carolina.

30. Fabi Diana has never owned a water vessel (boat) registered in South Carolina and has never paid any boat excise tax to any municipality or town located in South Carolina.

31. Fabi Diana has never acquired ownership, possession or control of any asset or thing of value present within the State of South Carolina.

32. Fabi Diana has had no contracts, by mail or otherwise, with a South Carolina resident to be performed in the State of South Carolina.

33. Fabi Diana has never had any affiliates, subsidiaries or corporately related companies in the State of South Carolina, or elsewhere.

34. Fabi Diana has never entered into any franchise agreements between it and any entities licensed to do business in South Carolina.

35. Fabi Diana has never had actual or constructive knowledge that its products would be used in whole or in part as an ingredient in a cosmetic product manufactured, sold or distributed in South Carolina.

36. Fabi Diana has never mined, milled, processed, tested, screened, analyzed, blended, supplied and/or distributed talc in South Carolina.

37. Fabi Diana has never manufactured, sold, or distributed any products in the State of South Carolina.

38. Fabi Diana has never shipped any products to the State of South Carolina.

39. Fabi Diana has never operated, conducted, engaged in, or carried on a business or business venture in the State of South Carolina.

40. Fabi Diana has never had an office or agency in the State of South Carolina.

41. Fabi Diana has never committed a tortious act in whole or in part in the State of South Carolina.

42. Fabi Diana has never caused tortious injury or death to persons or property within the State of South Carolina arising out of an act or omission committed outside the State of South Carolina.

43. Fabi Diana has never engaged in solicitation or service activities within the State of South Carolina.

44. Fabi Diana has never entered into a contract or breached a contract in the State of South Carolina or that is to be performed in whole or in part in the State of South Carolina.

45. Fabi Diana has never contracted to insure any person, property or risk located within the State of South Carolina at the time of contracting.

46. Fabi Diana has never produced, manufactured, or distributed goods with the reasonable expectation that those goods are to be used or consumed in the State of Carolina, and are so used or consumed.

I declare under penalty of perjury under the laws of the State of South Carolina that the foregoing is true and correct and that this declaration was executed on June 12, 2022 at Diana Township, New York.

Mark P. Oberman

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SWORN TO AND SUBSCRIBED BEFORE ME,
ON THIS THE 7th DAY OF JUNE, 2022.

Megan Brotherton
NOTARY PUBLIC

PRINT NAME: Megan Brotherton

BAR/NOTARY NUMBER: 01BR6392543

Megan Brotherton
NOTARY PUBLIC, STATE OF NEW YORK
Registration No. 01BR6392543
Qualified in Jefferson County
Commission Expires 05/28/2023

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STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF RICHLAND	)	CIVIL ACTION NO. 2022-CP-40-01265
Sarah J. Plant and Parker Plant,	)	
	)	
Plaintiffs,	)	
	)	**DEFENDANT IMI FABI, LLC'S MEMORANDUM IN SUPPORT OF ITS MOTION TO DISMISS FOR LACK OF PERSONAL JURISDICTION AND MOTION FOR PROTECTIVE ORDER TO STAY DISCOVERY AS TO IMI FABI, LLC**
vs.	)	
	)	
Avon Products, Inc., et al.,	)	
	)	
Defendants.	)	
	)	
	)	

This Memorandum and accompanying affidavit are submitted in support of Defendant IMI FABI, LLC's ("Fabi LLC") Motion to Dismiss Plaintiffs' First Amended Complaint pursuant to Rule 12(b)(2), SCRCP and Motion for Protective order staying discovery as to Fabi LLC pursuant to Rule 26(c) SCRCP.

FACTS

Plaintiffs' First Amended Complaint alleges that Plaintiffs are currently residents of Tennessee and that Sarah Plant ("Ms. Plant") developed mesothelioma as the result of exposure to various asbestos-containing talc products in several states, including South Carolina.[1]

Plaintiffs do not assert that Fabi LLC is a South Carolina limited liability company or that its principal place of business was ever in South Carolina.[2] Rather, Plaintiffs assert generally that this Court has personal jurisdiction over all Defendants because Plaintiffs' claims arise from Defendants' conduct in (a) transacting business in the 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

[1] Pl. First Am. Compl. at ¶¶ 1, 6, 24, 25.
[2] See Pl. First Am. Compl. at ¶ 53.

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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] Further, Plaintiffs allege generally that "all" defendants "purposefully availed themselves of the privilege of doing business in this State" and engaged in "substantial and/or systematic business in South Carolina."[4]

Specifically as to Fabi LLC, Plaintiffs list it as a "Product Defendant" and allege Ms. Plant was exposed to asbestos-containing talc "mined . . . processed . . . imported . . . supplied . . . and or retailed" by Fabi LLC. Plaintiffs further allege that their claim against Fabi LLC arises out of Fabi LLC's "business activities" and Ms. Plant's exposure to Fabi LLC products in the State of South Carolina as well as other states. [5]

However, as attested to in the Affidavit of James Woods ("Mr. Woods"), attached hereto as Exhibit A, these jurisdictional allegations as to Fabi LLC are unsupported by fact. Mr. Woods' Affidavit sets forth the following relevant facts on the issue of personal jurisdiction:

- Mr. Woods is Fabi LLC's manager. Exhibit A at ¶ 2.
- Neither Fabi LLC nor any of its predecessor entities were ever South Carolina limited liability companies or had their principal place of business in South Carolina. *See* Exhibit A at ¶¶ 3–5; *See also* Pl.'s First Am. Compl. at ¶ 53.
- Fabi LLC sells refined talc to the cosmetic, personal care, pharmaceutical, food industry and sells industrial grade talc to be used in non-cosmetic applications. Exhibit A at ¶ 6.
- Fabi LLC has never been licensed to do business in South Carolina and has never had a registered agent in South Carolina. Exhibit A at ¶¶ 7, 8.

[3] Pl.'s First Am. Compl. at ¶ 2.
[4] Pl.'s First Am. Compl. at ¶ 5.
[5] Pl.'s First Am. Compl. at ¶ 53.

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- Fabi LLC has never owned or operated any manufacturing, sales, or distribution facilities in South Carolina; had any employees working or residing in South Carolina; had a mailing address, post office box, or bank account in South Carolina; had an interest in, used, or possessed real property in the State of South Carolina; owned, used, possessed, or held a mortgage or other lien on any real property in South Carolina; owned leased or operated any real property or offices in South Carolina; acquired ownership, possession, or control of any asset or thing of value present in South Carolina; entered into any franchise agreements between it and any entities licensed to do business in South Carolina; operated, conducted, engaged in, or carried on a business or business venture in South Carolina; or had an office or agency in the State of South Carolina. Exhibit A at ¶¶ 9, 10, 12, 25, 26, 27, 31, 34, 38, 39.
- Fabi LLC has never mined, milled, processed, tested, screened, analyzed, and/or blended talc in South Carolina. Exhibit A at ¶ 36.
- Until January 2016, Fabi LLC never contracted to supply any goods or services in the State of South Carolina. Until January 2016, Fabi LLC never marketed, advertised, sold, or delivered its industrial grade talc products in South Carolina. Since January 2016, Fabi LLC has only sold industrial grade talc products for incorporation in the manufacture of plastic and rubber products to consumers in South Carolina. Exhibit A at ¶¶ 17, 18, 19.
- Fabi LLC has never advertised, marketed, sold or shipped cosmetic grade talc in the State of South Carolina. Fabi LLC had no contracts to sell cosmetic grade talc, by mail or otherwise, with a South Carolina resident to be performed in the State

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of South Carolina. Fabi LLC has never had actual or constructive knowledge that its products would be used in whole or in part as an ingredient in a cosmetic product manufactured, sold, or distributed in South Carolina. Fabi LLC never shipped any cosmetic grade talc products to the State of South Carolina. Fabi LLC has never produced, manufactured, or distributed cosmetic grade talc with the reasonable expectation that those goods are to be used or consumed in the State of South Carolina, and are so used or consumed. Exhibit A at ¶¶ 20, 32, 35, 37, 42.

- Until late 2018, all cosmetic grade talc products sold by Fabi LLC were delivered EXW or F.O.B. Origin, Freight Collect, West Virginia. In every instance, the Buyer made all of the arrangements for the shipment of the products off of Fabi LLC's premises. In every instance, possession of the product bought from Fabi LLC and the risk of loss in transit transferred from Fabi LLC to the Buyer at the Fabi LLC loading dock in West Virginia. In every instance, the Buyer paid for and bore the freight charges. In every instance, the Buyer, not Fabi LLC, filed claims (if any) if the product was damaged, destroyed, or lost in transit. Exhibit A at ¶ 23.

ARGUMENT

I. Motion to Dismiss for Lack of Personal Jurisdiction

i. Legal Standard

"The question of personal jurisdiction over a nonresident defendant is one which must be resolved upon the facts of each particular case." *Cockrell v. Hillerich & Bradsby Co*., 363 S.C. 485, 491, 611 S.E.2d 505, 508 (2005). "The party seeking to invoke personal jurisdiction over a non-resident defendant . . . bears the burden of establishing jurisdiction." *Power Prods. & Servs.*

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Co., Inc. v. Kozma, 379 S.C. 423, 430, 665 S.E.2d 660, 664 (Ct. App. 2008). At the pretrial stage, plaintiffs may meet their burden of proving personal jurisdiction over a nonresident defendant by a *prima facie* showing of jurisdiction either (1) in the complaint or (2) in affidavits. *See Cockrell*, 363 S.C. at 491, 611 S.E.2d at 508; *Sullivan v. Hawker Beechcraft Corp*., 397 S.C. 143, 150, 723 S.E.2d 835, 839 (Ct. App. 2012). However, a plaintiff must allege *specific facts* to establish the contacts necessary to invoke either general or specific jurisdiction. *See Power Prods. & Servs. Co., Inc.*, 379 S.C. at 433–36, 665 S.E.2d at 665–67 (affirming trial court's dismissal based on lack of personal jurisdiction because plaintiff did not establish facts—either through the complaint or affidavits—to confer jurisdiction). Conclusory allegations will not suffice. *Id.* at 433–35, 665 S.E.2d at 665–66. Moreover, "[w]hen a motion to dismiss attacks the allegations of the complaint on the issue of jurisdiction, the court is not confined to the allegations of the complaint but may resort to affidavits or other evidence to determine jurisdiction." *Sullivan*, 397 S.C. at 150, 723 S.E.2d at 839 (quoting *Coggeshall v. Reprod. Endocrine Assocs. of Charlotte*, 376 S.C. 12, 16, 655 S.E.2d 476, 478 (2007)).

"Personal jurisdiction is exercised as either 'general jurisdiction' or 'specific jurisdiction.'" *Coggeshall*, 376 S.C. at 16, 655 S.E.2d at 478. "General jurisdiction is the State's right to exercise personal jurisdiction over a defendant even though the suit does not arise out of or relate to the defendant's contacts with the forum . . . ; general jurisdiction is determined under S.C. Code Ann. §36-2-802…." *Id.* "Specific jurisdiction is the State's right to exercise personal jurisdiction because the cause of action arises specifically from a defendant's contacts with the forum . . . ; specific jurisdiction is determined under S.C. Code Ann. § 36-2-803…." *Id.* The exercise of personal jurisdiction under either statute must comport with due process requirements and must not offend traditional notions of fair play and substantial justice. *Id*. Due process requires some

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act by which the defendant purposefully avails itself of the privilege of conducting activities within the forum state. *Id*.

Further, due process mandates that the defendant possess sufficient minimum contacts with the forum state, so that it could reasonably anticipate being haled into court there. *Cockrell*, 363, S.C. at 491-492, 611 S.E.2d at 508 (citing *World-Wide Volkswagen Corp. v. Woodson*, 444 U.S. 286 (1980)). "A minimum contacts analysis requires a court to find that the defendant directed its activities to a resident of this State and that the cause of action arises out of or relates to those activities." *S. Plastics Co. v. S. Com. Bank*, 310 S.C. 256, 260, 423 S.E.2d 128, 131 (1992). Without minimum contacts, the Court does not have the "power" to adjudicate the action. *Cockrell*, 363 S.C. at 492, 611 S.E.2d at 508. Finally, the Court must also find that the exercise of jurisdiction is "reasonable" or "fair." *Id*.

The Court must assess individually each defendant's contacts with South Carolina. *Cockrell*, 363 S.C. at 492, 611 S.E.2d at 508 (citing *Rush v. Savchuk*, 444 U.S. 320 (1980)). The focus of the Court's analysis must center on the contacts generated by the defendant, not on the unilateral actions of some other entity. *Cockrell*, 363 S.C. at 492, 611 S.E.2d at 508-509 (citing *Helicopteros Nacionales de Colombia, S.A. v. Hall*, 466 U.S. 408 (1984) (holding "unilateral activity of another party or a third person is not an appropriate consideration")). The foreseeability that is critical to due process analysis is not the mere likelihood that a product could find its way into the forum state. Rather, it is that the defendant's own conduct and connections with the forum state are such that he should reasonably anticipate being haled into court there. *Cockrell*, 363 S.C. at 492, 611 S.E.2d at 509 (citing *World-Wide Volkswagen Corp.*, 444 U.S. at 297).

Here, the Court has neither general nor specific jurisdiction over Fabi LLC and, therefore, Plaintiffs' claims against Fabi LLC must be dismissed.

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ii. Fabi LLC is Not Subject to General Jurisdiction in South Carolina.

Fabi LLC is not a South Carolina limited liability company, its principal place of business was never in South Carolina, and it does not have such substantial contacts that it is "at home" in South Carolina; therefore, it is not subject to general personal jurisdiction in this State.

A court may assert general jurisdiction over foreign corporations when their affiliations with the forum state "are so 'continuous and systematic' as to render them essentially at home in the forum State." *Daimler AG v. Bauman*, 571 U.S. 117, 127 (2014) (quoting *Goodyear Dunlop Tires Operations, S.A. v. Brown*, 564 U.S. 915, 925 (2011)); *see also Coggeshall*, 376 S.C. 12, 16, 655 S.E.2d 476, 478; S.C. Code Ann. §36-2-802. Only in an "exceptional case" can a court exercise general jurisdiction in a forum that is not "the corporation's place of incorporation [or] its principal place of business." *BNSF Ry. Co. v. Tyrrell*, 137 S. Ct. 1549, 1558 (2017). An example of the "exceptional case" where general jurisdiction may be exercised over a corporation that is neither incorporated in nor has its principal place of business in a state is the United States Supreme Court holding in *Perkins v. Benguet Consol. Min. Co.*, 342 U.S. 347. In *Perkins* the defendant, a foreign mining company forced to flee the Philippines during World War II, operated entirely from Ohio for several years. The company's president and principal stockholder relocated to Ohio and set up an office, where he maintained corporate files, carried on the company's correspondence, issued checks on behalf of the company, employed two corporate secretaries, maintained bank accounts, purchased company equipment, and held director's meetings for the duration of the company's exile. Under these circumstances, where Ohio became the business' *de facto* operating headquarters, the Court found general jurisdiction proper. None of these facts are present here.

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Fabi LLC is not "at home" in South Carolina. It is undisputed that Fabi LLC is not a South Carolina limited liability company and its principal place of business has never been in South Carolina. It has no "enduring" relationship with South Carolina. *See Cockrell*, 363 S.C. at 495, 611 S.E.2d at 510. Furthermore, no "exceptional" circumstances, such as those present in *Perkins*, exist that would render Fabi LLC "at home" in South Carolina, nor do Plaintiffs allege any such exceptional circumstances. Accordingly, Fabi LLC is not subject to general personal jurisdiction in this State.

iii. Fabi LLC is not Subject to Specific Personal Jurisdiction in South Carolina.

Fabi LLC has only sold industrial talc for incorporation in the manufacture of plastic and rubber products to industrial customers in South Carolina. These sales, which did not begin until 2016, do not subject Fabi LLC to specific jurisdiction in this case because the Plaintiffs' cause of action does not arise out of or relate to Fabi LLC's sale of industrial talc. Furthermore, Fabi LLC has never marketed, advertised, sold, or shipped cosmetic grade or refined talc in South Carolina; thus, Fabi LLC is not subject to specific jurisdiction because it does not have minimum contacts with South Carolina for its cosmetic talc.

The determination of whether a court may exercise personal jurisdiction over a non-resident defendant has traditionally involved a two-step analysis; first, the court must determine if the long-arm statute applies, and second, the court must determine whether the nonresident's contacts with this State are sufficient to satisfy due process requirements. *Power Prods. & Servs. Co., Inc.*, 379 S.C. at 431, 665 S.E.2d at 664. "Because South Carolina treats its long-arm statute as coextensive with the due process clause, the sole question becomes whether the exercise of personal jurisdiction would violate due process." *Cockrell*, 363 S.C. at 491, 611 S.E.2d at 508 (citing *Moosally v. W.W. Norton & Co.*, 358 S.C. 320, 329, 594 S.E.2d 878, 883 (Ct. App. 2004));

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See also Power Prods. & Servs. Co., Inc., 379 S.C. at 431, 665 S.E.2d at 664; *State v. NV Sumatra Tobacco Trading, Co.*, 379 S.C. 81, 89, 666 S.E.2d 218, 222 (2008).

Due process requires that there exist sufficient minimum contacts with the forum state such that the exercise of jurisdiction does not "offend traditional notions of fair play and substantial justice" and that the defendant can "reasonably anticipate being haled into court in the forum." *E.g.*, *Cockrell*, 363 S.C. at 491-492, 611 S.E.2d at 508 (citing *Burger King Corp. v. Rudzewicz*, 471 U.S. 462, 105 S.Ct. 2174, 85 L.Ed.2d 528 (1985); *World–Wide Volkswagen Corp. v. Woodson*, 444 U.S. 286, 100 S.Ct. 559, 62 L.Ed.2d 490 (1980); *Atlantic Soft Drink Co. v. South Carolina Nat'l Bank*, 287 S.C. 228, 336 S.E.2d 876 (1985)). Establishing minimum contacts requires a showing that the defendant (1) directed its activities to a resident of South Carolina and (2) that the Plaintiffs' claims arise out of or relate to those activities. *S. Plastics Co.*, 310 S.C. at 260, 423 S.E.2d at 131; *Coggeshall*, 376 S.C. at 16, 655 S.E.2d at 478 ("Specific jurisdiction is the State's right to exercise personal jurisdiction because the cause of action arises specifically from a defendant's contacts with the forum"); *See also Bristol-Meyers Squibb Co. v. Superior Court of California, San Francisco County*, 137 S.Ct. 1773, 1780 (2017); *World-Wide Volkswagen Corp.*, 444 U.S. at 296-297; *Hanson v. Denckla*, 257 U.S. 235, 251, 253 (1958). The requirement that the plaintiff's cause of action arise out of the defendant's actions within the state for specific jurisdiction to exist is codified in South Carolina's long-arm statute. S.C. Code Ann. § 36-2-803(A) ("A court may exercise personal jurisdiction over a person who acts directly or by an agent as to a cause of action *arising from the person's:* (1) transacting any business in this State…").

In *Bristol-Myers Squibb Co. v. Superior Ct. of California, San Francisco Cnty.*, 137 S. Ct. 1773 (2017) the United States Supreme Court examined the requirement that plaintiff's claims

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arise out of the defendant's contacts with the forum for personal jurisdiction to exist. At issue in *Bristol-Myers Squibb* was whether a California state court could exercise personal jurisdiction over nearly 600 non-resident plaintiffs' state-law based tort claims against Bristol Myers Squibb Company ("BMS"). *Bristol-Myers Squibb Co.*, 137 S. Ct. at 1777. The Court noted BMS, a Delaware corporation with its principal place of business in New York, had a significant amount of business in California, including research and laboratory facilities employing approximately 160 people, a sales operation consisting of 250 employees, and a small advocacy office in Sacramento. *Id.* at 1777-78. While nearly 187 million Plavix pills (the drug plaintiffs alleged caused their harm) were sold in California, the nonresident plaintiffs did not allege they were prescribed or purchased Plavix in California or that they were injured by Plavix or treated for their injuries in California. *Id.* Examining whether the California courts exercise of personal jurisdiction was proper, the Court reiterated the distinction between general and specific jurisdiction:

> A court with general jurisdiction may hear *any* claim against that defendant, even if all the incidents underlying the claim occurred in a different State. But only a limited set of affiliations with a forum will render a defendant amenable to general jurisdiction in that State. Specific jurisdiction is very different. In order for a state court to exercise specific jurisdiction, the *suit* must arise out of or relate to the defendant's contacts with the *forum*. In other words, there must be an affiliation between the forum and the underlying controversy, principally, an activity or an occurrence that takes place in the forum State and is therefore subject to the State's regulation. For this reason, specific jurisdiction is confined to adjudication of issues deriving from, or connected with, the very controversy that establishes jurisdiction.

Id. at 1780 (internal citations and quotations omitted) (emphasis in original). The Court went on to note that "settled principles" mandate that where no affiliation or connection exists between the defendant's contacts with the forum and the underlying claims "specific jurisdiction is lacking

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regardless of the extent of a defendant's unconnected activities in the State." *Id.* at 1781 (citing *Goodyear Dunlop Tires Operations, S.A.*, 564 U.S. at 919; 931; n. 6.) ("[R]egularly occurring sales of a product in a State do not justify the exercise of jurisdiction over a claim unrelated to those sales"). The Supreme Court reversed the California Court's holding and specifically rejected its "sliding scale approach," holding that:

> [T]he California Supreme Court's "sliding scale approach" is difficult to square with our precedents. Under the California approach, the strength of the requisite connection between the forum and the specific claims at issue is relaxed if the defendant has extensive forum contacts that are unrelated to those claims. Our cases provide no support for this approach, which resembles a loose and spurious form of general jurisdiction. For specific jurisdiction, a defendant's general connections with the forum are not enough. As we have said, "[a] corporation's 'continuous activity of some sorts within a state ... is not enough to support the demand that the corporation be amenable to suits unrelated to that activity.

Id. at 1781 (citing *Goodyear Dunlop Tires Operations, S.A.*, 564 U.S. at 927). The Court further stated that BMS's activities in California which were unrelated to the plaintiffs' claims, such as sales of other products and research unrelated to Plavix, were not only insufficient to establish jurisdiction, but were not even relevant to the discussion. *Id.* at 1781.

In this case, Plaintiffs have not shown that Fabi LLC has sufficient minimum contacts with South Carolina for the exercise of jurisdiction to satisfy due process because their cause of action does not arise out of or relate to Fabi LLC's sales of industrial talc in the State. Plaintiffs allege Ms. Plant was exposed to asbestos-containing cosmetic and body talc products through her and her family's personal use and to asbestos-containing art clay from her participation in art classes.[6] Plaintiffs go on to list multiple "powder products," "makeup products," and "ceramic products" which they claim contained asbestos and which they claim Ms. Plant used on a regular

[6] Pl's First Am. Compl. ¶ 6.

basis.[7] Plaintiffs do not allege, however, any direct or take-home exposure since January 2016 from talc at plants that manufacture plastic or rubber products; their pleadings are devoid of any claim or allegation that Ms. Plant worked in any such plants, had family members who worked in any such plants, or set forth any other way Ms. Plant could have been exposed to Fabi LLC's industrial talc. Simply stated, there is no connection between Fabi LLC's activity in South Carolina (sales of industrial talc since January 2016 to plants that manufacture plastic and rubber products) and Ms. Plant's claimed exposure to asbestos-containing cosmetics and clay. Consequently, none of Ms. Plant's alleged exposures "arise out of" Fabi LLC's sales of industrial talc within the State, and the exercise of personal jurisdiction over it would be improper.

Furthermore, Fabi LLC's sale of refined or "cosmetic grade" talc in West Virginia is insufficient to establish jurisdiction over it in South Carolina. The Supreme Court of South Carolina has consistently held the focus of the minimum contacts analysis must be on each defendant's own actions, not the "unilateral actions of some other entity." *Cockrell*, 363 S.C. at 492, 611 S.E.2d at 508–09 ("The foreseeability that is critical to due process analysis is not the mere likelihood that a product will find its way into the forum state. Rather, it is that the defendant's conduct and connection with the forum state are such that he should reasonably anticipate being haled into court there"); *S. Plastics Co.*, 310 S.C. at 261, 423 S.E.2d at 131 ("[T]he defendant's activities directed to a resident of this State must be its own and not the unilateral activities of some other entity."). Likewise, the United States Supreme Court has held the defendant's actions, not those of downstream manufacturers, are determinative in a minimum contacts analysis. *E.g.*, *Asahi Metal Indus. Co. v. Superior Ct. of California, Solano Cty.*, 480 U.S. 102, 112, 107 S.Ct. 1026, 1032, 94 L. Ed. 2d 92 (1987) ("The substantial connection… for

[7] Pl's First Am. Compl. ¶¶ 7–15.

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a finding of minimum contacts must come about by *an action of the defendant purposefully directed toward the forum State.* The placement of a product into the stream of commerce, without more, is not an act of the defendant purposefully directed toward the forum State.") (internal quotations and citations omitted) (emphasis in original).

As attested in Mr. Woods' affidavit, Fabi LLC never advertised, marketed, sold or shipped cosmetic grade talc to South Carolina. Exhibit A at ¶ 20. Fabi LLC had no contracts to sell cosmetic grade talc, by mail or otherwise, with a South Carolina resident to be performed in South Carolina. Exhibit A at ¶ 32. Fabi LLC has never had actual or constructive knowledge that its products would be used in whole or in part as an ingredient in a cosmetic product manufactured, sold, or distributed in South Carolina. Exhibit A at ¶ 35. Fabi LLC has never shipped any cosmetic grade talc products to South Carolina. Exhibit A at ¶ 37. Fabi LLC has never produced, manufactured, or distributed cosmetic grade talc with the reasonable expectation that those goods were to be used or consumed in South Carolina, which were so used or consumed. Exhibit A at ¶ 42. Furthermore, all cosmetic talc sold by Fabi LLC until late 2018 was delivered EXW or F.O.B. Origin, Freight Collect, West Virginia. Exhibit A at ¶ 23. The buyer made all shipping arrangements, bore all shipping costs, took possession of the product, and assumed all risk of loss at Fabi LLC's loading dock in West Virginia. *Id.*

Even assuming, *arguendo*, that Fabi LLC's cosmetic talc was later used by another unrelated entity or entities as an ingredient in a final product that later was allegedly sold in South Carolina, specific jurisdiction does not exist where the unilateral actions of a third party, rather than those of Fabi LLC, caused the talc to be incorporated into a final product that may have ended up in South Carolina. *See Cockrell*, 365 S.C. at 492, 611 S.E.2d at 508-09.

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The Supreme Court of South Carolina examined the "stream of commerce" theory of personal jurisdiction in *State v. NV Sumatra Tobacco Trading, Co.*, 379 S.C. 81, 666 S.E.2d 218 (2008). The Court held that Sumatra, a foreign tobacco company who sold its products in the United States through a distributor, had sufficient minimum contacts and was, therefore, subject to personal jurisdiction in South Carolina because it: (1) admitted to manufacturing United brand cigarettes; (2) admitted it owned the United States trademark for that brand; (3) sold 6,868,000 United brand cigarettes in South Carolina in 2001; (4) filed an ingredient report for the United brand cigarettes; (5) admitted it packaged its cigarettes in packs and cartons bearing the United States-required health warnings; and (6) the United brand packaging identified the cigarettes as an "American blend," had a Surgeon General's warning, and showed an eagle and striped packaging. *NV Sumatra Tobacco Trading, Co.*, 379 S.C. at 90, 666 S.E.2d at 223. Based on these facts, the Court held that even though Sumatra used an independent distributor it had "purposely availed itself of conducting business in all 50 states, including South Carolina" and that minimum contacts with South Carolina existed regardless of how the products arrived in the State. *Id.* The facts presented in the instant case are readily distinguished. Unlike the facts presented in *Sumatra*, Fabi LLC did not manufacture or sell a final product that was allegedly sold in South Carolina and Fabi LLC had no control over the manufacture or distribution of the final product. The final product did not allegedly arrive in South Carolina through any efforts of Fabi LLC. *See Cockrell*, 365 S.C. at 494, 611 S.E.2d at 510. In addition, the concern present in *Sumatra* that a company located outside the United States could avoid suit in every state is not applicable here because Fabi LLC would be subject to jurisdiction in West Virginia.

Subsequent to the *Sumatra* holding, the United States Supreme Court examined the stream of commerce theory and, in a plurality opinion authored by Justice Kennedy, held that "[a]

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defendant's transmission of goods permits the exercise of jurisdiction only where the defendant can be said to have targeted the forum; as a general rule, it is not enough that the defendant might have predicted that its goods will reach the forum State." *J. McIntyre Mach., Ltd. v. Nicastro*, 564 U.S. 873, 882, 131 S. Ct. 2780, 2788, 180 L. Ed. 2d 765 (2011). Justice Bryer, in his concurring opinion, found jurisdiction lacking where there was no "regular flow or regular course of business in [the forum state]; and there is no "something more," such as a special state-related design, advertising, advice, marketing, or anything else" and the defendant had not "purposefully avail[ed] itself of the privilege of conducting activities within [the forum state], or that it delivered its goods in the stream of commerce with the expectation that they will be purchased by [forum state] users." *Id.* at 889 (Bryer, J. concurring) (internal citations and quotations omitted). The concurrence further stated disagreement with the concept that a party could be subject to jurisdiction in a products liability case "so long as it knows or reasonably should know that its products are distributed through a nationwide distribution system that *might* lead to those products being sold in any of the fifty states." *Id.* at 891 (Bryer, J. concurring) (internal citations and quotations omitted) (emphasis in original).

Applying the *J. McIntyre* Court's analysis to the facts here, it is readily apparent Fabi LLC's lacks sufficient minimum contacts with South Carolina. Fabi LLC cannot be said to have "targeted" South Carolina where it never marketed, advertised, sold, or shipped any products to the State and did not engage a distributor to do so on its behalf. Fabi LLC did not sell products with any intention or expectation that they would eventually be purchased by residents of South Carolina. Moreover, whether some other entity may have used Fabi LLC's cosmetic grade talc as an ingredient in a product that was eventually sold in South Carolina is irrelevant in determining whether Fabi LLC has minimum contacts with the State; the proper inquiry must

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focus solely on whether Fabi LLC directed its activities to residents of South Carolina. The facts here unequivocally show it did not. Absent a specific connection between Plaintiffs' claims, Fabi LLC's alleged conduct, and the State of South Carolina, there can be no specific jurisdiction.

Because Plaintiffs have not, and cannot, show that Fabi LLC has minimum contacts with South Carolina necessary for the exercise of personal jurisdiction to meet the requirements of due process, their claims against Fabi LLC must be dismissed.

II. Motion for Protective Order Staying Discovery

Fabi LLC has also moved the Court for a Protective Order staying discovery in this matter as to Fabi LLC pursuant to Rule 26(c) of the South Carolina Rules of Civil Procedure. Because Plaintiffs' First Amended Complaint is entirely conclusory and lacks factual support for its jurisdictional claims, the Court should grant Fabi LLC's motion and stay discovery pending adjudication of Fabi LLC's motion to dismiss.

Rule 26 of the South Carolina Rules of Civil Procedure provides that, upon motion by the party from whom discovery is sought, the Court may limit discovery or order that discovery not be had to protect the party from "annoyance, embarrassment, oppression, or undue burden by expense." Rule 26(c), SCRCP. "A stay of discovery until the determination of a dispositive motion is appropriate when (1) the issue raised is strictly one of law, (2) the motion, if successful, would be dispositive of the entire action, (3) the issue is one that cannot be cured by amending the pleadings, and (4) there is no showing of any prejudice if the Court were to stay discovery." *Allen v. South Carolina Budget and Control Bd. Employee Ins. Program*, No. 2009CP1007404, 2010 WL 11579841, at *5 (S.C.Com.Pl. Oct. 12, 2010). An order under Rule 26(c) staying discovery pending a dispositive motion is an appropriate exercise of the Court's discretion. *Id*. Further, "[W]here a

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plaintiff's claim of personal jurisdiction appears to be both attenuated and based on bare allegations in the face of denials made by defendants, the court need not permit even limited discovery confined to issues of personal jurisdiction if it will be a fishing expedition." *Sullivan,* 397 S.C. at 151–52, 723 S.E 2d at 839–40. When a plaintiff offers only speculation or conclusory assertions about contacts with a forum state, a court is within its discretion in denying jurisdictional discovery. *Id*.

In this case, as discussed above in Fabi LLC's memorandum supporting its motion to dismiss, Plaintiffs' jurisdictional claims are conclusory and lack any factual support. Permitting Plaintiffs to conduct discovery where it is readily apparent Fabi LLC is not subject to this Court's jurisdiction in this matter would cause undue expense and serve only as a fishing expedition intended to annoy, oppress, and harass Fabi LLC. *See Cannon v. United Ins. Co. of Am.*, 352 F. Supp. 1212, 1215 (D.S.C. 1973) ("[C]ourt[s] should not order extended discovery when jurisdiction is doubtful").

Applying the factors set forth in *Allen*, an order staying discovery is appropriate in this case because the issue of this Court's jurisdiction over Fabi LLC is purely a question of law and, if successful, Fabi LLC's motion would be dispositive of Plaintiffs' entire case against it. Further, because Plaintiffs have not and cannot show any facts that would establish Fabi LLC had minimum contacts with South Carolina, the issue of personal jurisdiction is one that cannot be cured by amending the pleadings. Finally, there is no showing of any prejudice if the Court were to stay discovery; the requested stay would only apply to Fabi LLC, permitting Plaintiffs to conduct discovery against other parties, and would only be in effect for a brief time while the Court addresses the threshold issue of jurisdiction.

Because Plaintiffs' jurisdictional claims are conclusory allegations without any factual support which have been directly rebutted by Mr. Wood's affidavit, the Court should grant Fabi LLC's motion and stay discovery pending a decision on its motion to dismiss.

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CONCLUSION

Fabi LLC is not subject to general jurisdiction because it cannot fairly be said to be "at home" in South Carolina at any time. Fabi LLC is not subject to specific jurisdiction because Fabi LLC does not have sufficient, relevant minimum contacts with South Carolina that gave rise to Plaintiffs' claims to satisfy the requirements of due process. Plaintiffs have presented the Court with nothing but conclusory, speculative allegations with no supporting facts to support personal jurisdiction. Accordingly, Defendant Fabi LLC is entitled to an order dismissing Plaintiffs' claims against it, and in the interim, an order staying discovery as to it until the Court enters an Order on Fabi LLC's Motion to Dismiss for lack of personal jurisdiction.

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Columbia, South Carolina

July 13, 2022

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EXHIBIT A

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STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF RICHLAND	)	FOR THE FIFTH JUDICIAL CIRCUIT
	)	
SARAH J. PLANT and PARKER PLANT	)	C/A NO. 2022-CP-40-01265
	)	
Plaintiffs,	)	
v.	)	
	)	
AVON PRODUCTS, INC., et al.	)	
	)	
Defendants.		

AFFIDAVIT OF JAMES WOODS IN SUPPORT OF SPECIALLY APPEARING DEFENDANT IMI FABI, LLC'S MOTION TO DISMISS FOR LACK OF PERSONAL JURISDICTION

I, James Woods, declare as follows:

1. My name is James Woods. I am over the age of eighteen years old (18) and I am competent to give this Affidavit.

2. I am the Manager of IMI Fabi, LLC (hereinafter referred to as "Fabi LLC"). I make the following statements based upon my own personal knowledge, and, if called as a witness, could and would testify competently to such facts under oath.

3. On December 18, 1997, Zemex Fabi Benwood, LLC, a North Carolina limited liability company, was created.

4. On April 4, 2001, Zemex Fabi Benwood LLC changed its name to IMI Fabi, LLC by Amendment to its Articles of Organization.

5. On January 1, 2020, a new IMI Fabi, LLC was established in West Virginia. IMI Fabi LLC, a North Carolina limited liability company, and was merged with and into IMI Fabi, LLC, a West Virginia limited liability company.

6. Fabi LLC sells refined talc to the cosmetic, personal care, pharmaceutical, food industry, and industrial grade talc to be used in non-cosmetic applications.

7. Fabi LLC has never been licensed to do business in any state other than North

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Carolina and West Virginia.

8. Fabi LLC has never had a registered agent in any state other than North Carolina and West Virginia.

9. Fabi LLC has never owned or operated any manufacturing, sales, or distribution facilities in South Carolina.

10. Fabi LLC has never had any employees working or residing in South Carolina.

11. Fabi LLC has never recruited any South Carolina residents, directly or through an intermediary located in the State of South Carolina, for employment inside or outside of the State of South Carolina.

12. Fabi LLC has never had a mailing address, post office box, or bank account in South Carolina.

13. Fabi LLC has never owed or paid corporate taxes in South Carolina.

14. Fabi LLC has never had insurance policies which afford coverage of any kind for specific entities located in South Carolina.

15. Fabi LLC has never paid sales tax to South Carolina.

16. Fabi LLC has never invested any dollars in business operations in South Carolina.

17. Until January 2016, Fabi LLC never contracted to supply services or goods in the State of South Carolina.

18. Until January 2016, Fabi LLC never marketed, advertised, sold or delivered its industrial grade talc products in the State of South Carolina.

19. Fabi LLC has sold only industrial grade talc products for incorporation in the manufacture of plastic and rubber products to customers in South Carolina.

20. Fabi LLC has never advertised, marketed, sold nor shipped cosmetic grade talc in the State of South Carolina.

21. Fabi LLC has not received tax deductions as a result of contributions made to any organizations in the State of South Carolina.

22. Fabi LLC has never received any business incentives or tax credit from the State

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of South Carolina to conduct business in South Carolina.

23. Until late 2018, all cosmetic grade talc products sold by Fabi LLC were delivered EXW or F.O.B. Origin, Freight Collect, West Virginia. In every instance, the Buyer made all of the arrangements for the shipment of the products off of Fabi LLC's premises. In every instance, possession of the product bought from Fabi LLC and the risk of loss in transit transferred from Fabi LLC to the Buyer at the Fabi LLC loading dock in West Virginia. In every instance, the Buyer paid for and bore the freight charges. In every instance, the Buyer, not Fabi LLC, filed claims (if any) if the product was damaged, destroyed, or lost in transit.

24. Fabi LLC has never appeared in a case in South Carolina, including but not limited to, any matrimonial actions or family court proceedings.

25. Fabi LLC has never had an interest in, using or possessing real property in the State of South Carolina.

26. Fabi LLC has never owned, used, possessed, or held a mortgage or other lien on any real property in the State of South Carolina.

27. Fabi LLC has never owned, leased, or operated any real property or any offices in South Carolina.

28. Fabi LLC has never paid real estate tax to any municipality or town in South Carolina.

29. Fabi LLC has never owned a motorized vehicle registered in South Carolina and has never paid any automobile excise tax to any municipality or town located in South Carolina.

30. Fabi LLC has never owned a water vessel (boat) registered in South Carolina and has never paid any boat excise tax to any municipality or town located in South Carolina.

31. Fabi LLC has never acquired ownership, possession or control of any asset or thing of value present within the State of South Carolina.

32. Fabi LLC had no contracts to sell cosmetic grade talc, by mail or otherwise, with a South Carolina resident to be performed in the State of South Carolina.

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33. Fabi LLC has never had any subsidiaries or corporately related companies in the State of South Carolina, or elsewhere.

34. Fabi LLC has never entered into any franchise agreements between it and any entities licensed to do business in South Carolina.

35. Fabi LLC has never had actual or constructive knowledge that its products would be used in whole or in part as an ingredient in a cosmetic product manufactured, sold or distributed in South Carolina.

36. Fabi LLC has never mined, milled, processed, tested, screened, analyzed, and/or blended talc in South Carolina.

37. Fabi LLC never shipped any cosmetic grade talc products to the State of South Carolina.

38. Fabi LLC has never operated, conducted, engaged in, or carried on a business or business venture in the State of South Carolina.

39. Fabi LLC has never had an office or agency in the State of South Carolina.

40. Fabi LLC has never committed a tortious act in whole or in part in the State of South Carolina.

41. Fabi LLC has never caused tortious injury or death to persons or property within the State of South Carolina arising out of an act or omission committed outside the State of South Carolina.

42. Fabi LLC has never produced, manufactured, or distributed cosmetic grade talc with the reasonable expectation that those goods are to be used or consumed in the State of Carolina, and are so used or consumed.

I declare under penalty of perjury under the laws of the State of South Carolina that the foregoing is true and correct and that this declaration was executed on July 8, 2022 at West Virginia.

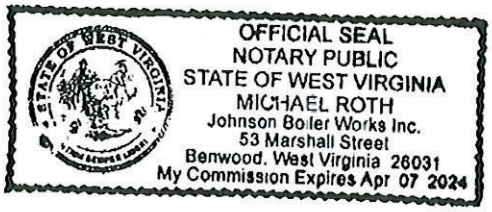
James Woods, Manager of Fabi, LLC

SWORN TO AND SUBSCRIBED BEFORE ME,
ON THIS THE 8 DAY OF JULY, 2022.

Michael Roth
NOTARY PUBLIC

PRINT NAME: Michael Roth

BAR/NOTARY NUMBER: _____



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STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF RICHLAND	)	CIVIL ACTION NO. 2022-CP-40-01265
Sarah J. Plant and Parker Plant,	)	
	)	
Plaintiffs,	)	
	)	**DEFENDANT IMI FABI (USA) INC.'S MEMORANDUM IN SUPPORT OF ITS MOTION TO DISMISS FOR LACK OF PERSONAL JURISDICTION AND MOTION FOR PROTECTIVE ORDER TO STAY DISCOVERY AS TO IMI FABI (USA) INC.**
vs.	)	
	)	
Avon Products, Inc., et al.,	)	
	)	
Defendants.	)	
	)	
	)	

This Memorandum and accompanying affidavit are submitted in support of Defendant IMI FABI (USA) Inc.'s ("Fabi USA") Motion to Dismiss Plaintiffs' First Amended Complaint pursuant to Rule 12(b)(2), SCRCP and Motion for Protective order staying discovery as to Fabi USA pursuant to Rule 26(c) SCRCP.

FACTS

Plaintiffs' First Amended Complaint alleges that Plaintiffs are currently residents of Tennessee and that Sarah Plant ("Ms. Plant") developed mesothelioma as the result of exposure to various asbestos-containing talc products in several states, including South Carolina.[1]

Plaintiffs do not assert that Fabi USA is incorporated in South Carolina or that its principal place of business is in South Carolina.[2] Rather, Plaintiffs assert generally that this Court has personal jurisdiction over all Defendants because Plaintiffs' claims arise from Defendants' conduct in (a) transacting business in the 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,

[1] Pl. First Am. Compl. at ¶¶ 1, 6, 24, 25.
[2] See Pl. First Am. Compl. at ¶ 52.

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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] Further, Plaintiffs allege generally that "all" defendants "purposefully availed themselves of the privilege of doing business in this State" and engaged in "substantial and/or systematic business in South Carolina."[4]

Specifically as to Fabi USA, Plaintiffs list it as a "Product Defendant" and allege Ms. Plant was exposed to asbestos-containing talc "mined . . . processed . . . imported . . . supplied . . . and or retailed" by Fabi USA. Plaintiffs further allege that their claim against Fabi USA arises out of Fabi USA's "business activities" and Ms. Plant's exposure to Fabi USA products in the State of South Carolina as well as other states. [5]

However, as attested to in the Affidavit of Patrizia Zuppini ("Ms. Zuppini"), attached hereto as Exhibit A, these allegations, including jurisdictional allegations, as to Fabi USA are wholly unsupported by fact. Ms. Zuppini's Affidavit sets forth the following relevant facts on the issue of personal jurisdiction:

- Ms. Zuppini is the Vice President of IMI Fabi (USA), Inc. Exhibit A at ¶ 2.
- Fabi USA is a Delaware corporation. It is not qualified to transact business in any other jurisdiction. *See* Exhibit A at ¶ 3.[6]
- Fabi USA's sole business is to hold all membership interest in IMI Fabi, LLC. Fabi USA has no business or operations, and it holds no other property or assets. Fabi

[3] Pl.'s First Am. Compl. at ¶ 2.
[4] Pl.'s First Am. Compl. at ¶ 5.
[5] Pl.'s First Am. Compl. at ¶ 52.
[6] Fabi USA's motion to dismiss asserted that it was and is a Delaware corporation with its principal place of business in Delaware. *See* Motion to Dismiss at n.4. It should have stated that Fabi USA was and is a Delaware corporation and "it is not qualified to transact business in any other jurisdiction." However, for purposes of this motion and memorandum the discrepancy is immaterial as Fabi USA's principal place of business is not South Carolina.

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USA has never owned or operated any manufacturing, sales, or distribution facilities in any state. It has never had a registered agent in any state other than Delaware. It has never sold any product. Exhibit A at ¶¶ 3, 4, 5, 17.

- Fabi USA has never had a mailing address, post office box, or bank account in South Carolina; transacted business in South Carolina; contracted to supply services or goods in South Carolina; marketed or advertised products in South Carolina; or delivered any products in South Carolina. Exhibit A at ¶¶ 8, 12, 13, 14, 18.
- Fabi USA has never had an interest in, used, or possessed real property in South Carolina; owned, used, possessed, or held a mortgage or other lien on any real property in South Carolina; or owned, leased, or operated any real property or any offices in South Carolina. Exhibit A at ¶¶ 20, 21, 22.
- Fabi USA has never had any contracts with a South Carolina resident to be performed in South Carolina; entered into a contract or breached a contract in South Carolina or that is to be performed in whole or in part in South Carolina; or contracted to insure a person, property, or risk located in South Carolina. Exhibit A at ¶¶ 27, 38, 39.
- Fabi USA has never mined, milled, processed, tested, screened, analyzed, blended, supplied, and/or distributed talc in South Carolina; manufactured, sold, or distributed any products in South Carolina; shipped any products to South Carolina; engaged in solicitation or service activities in South Carolina; produced, manufactured, or distributed goods with the reasonable expectation that those goods were to be used in South Carolina. Exhibit A at ¶¶ 30, 31, 32, 37, 40.

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- Fabi USA has never committed a tortious act in whole or in part in South Carolina and has never caused tortious injury or death to persons or property within South Carolina arising out of an act or omission committed outside of South Carolina. Exhibit A at ¶¶ 35, 36.

ARGUMENT

I. Motion to Dismiss for Lack of Personal Jurisdiction

i. Legal Standard

"The question of personal jurisdiction over a nonresident defendant is one which must be resolved upon the facts of each particular case." *Cockrell v. Hillerich & Bradsby Co.*, 363 S.C. 485, 491, 611 S.E.2d 505, 508 (2005). "The party seeking to invoke personal jurisdiction over a non-resident defendant . . . bears the burden of establishing jurisdiction." *Power Prods. & Servs. Co., Inc. v. Kozma*, 379 S.C. 423, 430, 665 S.E.2d 660, 664 (Ct. App. 2008). At the pretrial stage, plaintiffs may meet their burden of proving personal jurisdiction over a nonresident defendant by a *prima facie* showing of jurisdiction either (1) in the complaint or (2) in affidavits. *See Cockrell*, 363 S.C. at 491, 611 S.E.2d at 508; *Sullivan v. Hawker Beechcraft Corp.*, 397 S.C. 143, 150, 723 S.E.2d 835, 839 (Ct. App. 2012). However, a plaintiff must allege *specific facts* to establish the contacts necessary to invoke either general or specific jurisdiction. *See Power Prods. & Servs. Co., Inc.*, 379 S.C. at 433–36, 665 S.E.2d at 665–67 (affirming trial court's dismissal based on lack of personal jurisdiction because plaintiff did not establish facts—either through the complaint or affidavits—to confer jurisdiction). Conclusory allegations will not suffice. *Id.* at 433–35, 665 S.E.2d at 665–66. Moreover, "[w]hen a motion to dismiss attacks the allegations of the complaint on the issue of jurisdiction, the court is not confined to the allegations of the complaint but may resort to affidavits or other evidence to determine jurisdiction." *Sullivan*, 397 S.C. at 150, 723

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S.E.2d at 839 (quoting *Coggeshall v. Reprod. Endocrine Assocs. of Charlotte*, 376 S.C. 12, 16, 655 S.E.2d 476, 478 (2007)).

"Personal jurisdiction is exercised as either 'general jurisdiction' or 'specific jurisdiction.'" *Coggeshall*, 376 S.C. at 16, 655 S.E.2d at 478. "General jurisdiction is the State's right to exercise personal jurisdiction over a defendant even though the suit does not arise out of or relate to the defendant's contacts with the forum . . . ; general jurisdiction is determined under S.C. Code Ann. §36-2-802...." *Id.* "Specific jurisdiction is the State's right to exercise personal jurisdiction because the cause of action arises specifically from a defendant's contacts with the forum . . . ; specific jurisdiction is determined under S.C. Code Ann. § 36-2-803...." *Id.* The exercise of personal jurisdiction under either statute must comport with due process requirements and must not offend traditional notions of fair play and substantial justice. *Id.* Due process requires some act by which the defendant purposefully avails itself of the privilege of conducting activities within the forum state. *Id.*

Further, due process mandates that the defendant possess sufficient minimum contacts with the forum state, so that it could reasonably anticipate being haled into court there. *Cockrell*, 363, S.C. at 491-492, 611 S.E.2d at 508 (citing *World-Wide Volkswagen Corp. v. Woodson*, 444 U.S. 286 (1980)). Without minimum contacts, the Court does not have the "power" to adjudicate the action. *Cockrell*, 363 S.C. at 492, 611 S.E.2d at 508. Finally, the Court must also find that the exercise of jurisdiction is "reasonable" or "fair." *Id.*

The Court must assess individually each defendant's contacts with South Carolina. *Cockrell*, 363 S.C. at 492, 611 S.E.2d at 508 (citing *Rush v. Savchuk*, 444 U.S. 320 (1980)). The focus of the Court's analysis must center on the contacts generated by the defendant, not on the unilateral actions of some other entity. *Cockrell*, 363 S.C. at 492, 611 S.E.2d at 508-509 (citing

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Helicopteros Nacionales de Colombia, S.A. v. Hall, 466 U.S. 408 (1984) (holding "unilateral activity of another party or a third person is not an appropriate consideration")). The foreseeability that is critical to due process analysis is not the mere likelihood that a product could find its way into the forum state. Rather, it is that the defendant's own conduct and connections with the forum state are such that he should reasonably anticipate being haled into court there. *Cockrell*, 363 S.C. at 492, 611 S.E.2d at 509 (citing *World-Wide Volkswagen Corp.*, 444 U.S. at 297).

Here, the Court has neither general nor specific jurisdiction over Fabi USA and, therefore, Plaintiffs' claims against Fabi USA must be dismissed.

ii. Fabi USA is Not Subject to General Jurisdiction in South Carolina.

Fabi USA is not incorporated in South Carolina, does not maintain its principal place of business in South Carolina, and does not have such substantial contacts that it is "at home" in South Carolina; therefore, it is not subject to general personal jurisdiction in this State.

A court may assert general jurisdiction over foreign corporations when their affiliations with the forum state "are so 'continuous and systematic' as to render them essentially at home in the forum State." *Daimler AG v. Bauman*, 571 U.S. 117, 127 (2014) (quoting *Goodyear Dunlop Tires Operations, S.A. v. Brown*, 564 U.S. 915, 925 (2011)); *see also Coggeshall*, 376 S.C. 12, 16, 655 S.E.2d 476, 478; S.C. Code Ann. §36-2-802. Only in an "exceptional case" can a court exercise general jurisdiction in a forum that is not "the corporation's place of incorporation [or] its principal place of business." *BNSF Ry. Co. v. Tyrrell*, 137 S. Ct. 1549, 1558 (2017). An example of the "exceptional case" where general jurisdiction may be exercised over a corporation that is neither incorporated in nor has its principal place of business in a state is the United States Supreme Court holding in *Perkins v. Benguet Consol. Min. Co.*, 342 U.S. 347. In *Perkins* the defendant, a foreign mining company forced to flee the Philippines during World War II, operated entirely from

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Ohio for several years. The company's president and principal stockholder relocated to Ohio and set up an office, where he maintained corporate files, carried on the company's correspondence, issued checks on behalf of the company, employed two corporate secretaries, maintained bank accounts, purchased company equipment, and held director's meetings for the duration of the company's exile. Under these circumstances, where Ohio became the business' *de facto* operating headquarters, the Court found general jurisdiction proper. None of these facts are present here.

Fabi USA is not "at home" in South Carolina. It is undisputed that Fabi USA is not incorporated in South Carolina and its principal place of business is not in South Carolina. Further, it has no "enduring" relationship with South Carolina. *See Cockrell*, 363 S.C. at 495, 611 S.E.2d at 510. Moreover, no "exceptional" circumstances, such as those present in *Perkins*, exist that would render Fabi USA "at home" in South Carolina, nor do Plaintiffs allege any such exceptional circumstances. Accordingly, Fabi USA is not subject to general personal jurisdiction in this State.

iii. Fabi USA is not Subject to Specific Personal Jurisdiction in South Carolina.

Fabi USA has never conducted business activities within South Carolina or purposefully directed business activities towards South Carolina and, therefore, it does not meet the requirements of South Carolina's long-arm statute or have sufficient minimum contacts with the State for the exercise of jurisdiction to satisfy due process. Moreover, because Fabi USA has never conducted business in South Carolina or purposefully directed business activities towards South Carolina, it is impossible for Plaintiffs' claims to arise out of Fabi USA's conduct within the State. Consequently, Fabi USA is not subject to the exercise of specific personal jurisdiction in this case.

The determination of whether a court may exercise personal jurisdiction over a non-resident defendant has traditionally involved a two-step analysis; first, the court must determine if the long-arm statute applies, and second, the court must determine whether the nonresident's

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contacts with this State are sufficient to satisfy due process requirements. *Power Prods. & Servs. Co., Inc.*, 379 S.C. at 431, 665 S.E.2d at 664. However, "Because South Carolina treats its long-arm statute as coextensive with the due process clause, the sole question becomes whether the exercise of personal jurisdiction would violate due process." *Cockrell*, 363 S.C. at 491, 611 S.E.2d at 508 (citing *Moosally v. W.W. Norton & Co.*, 358 S.C. 320, 329, 594 S.E.2d 878, 883 (Ct. App. 2004)); *See also Power Prods. & Servs. Co., Inc.*, 379 S.C. at 431, 665 S.E.2d at 664.

1. ***Plaintiffs Have Not Alleged Specific Facts Necessary to Establish Personal Jurisdiction Under South Carolina's Long-Arm Statute.***

In this case, Plaintiffs have failed to allege specific facts that subject Fabi USA to jurisdiction under S.C. Code Ann. § 36-2-803(A)(1)-(8). Plaintiffs' First Amended Complaint makes generic, conclusory allegations as to jurisdiction which are insufficient to show specific actions taken by Fabi USA which would subject it to personal jurisdiction under South Carolina's long-arm statute. *See* Sullivan, 397 S.C. at 150–51, 723 S.E.2d at 839 (affirming dismissal for lack of personal jurisdiction where the plaintiff merely recited the elements of the long-arm statute and failed to allege facts showing the defendant's conduct subjected it to jurisdiction). *See also Power Prods. & Servs. Co., Inc.*, 379 S.C. at 433–36, 665 S.E.2d at 665–67 (affirming trial court's dismissal based on lack of personal jurisdiction because plaintiff did not establish facts—either through the complaint or affidavits—to confer jurisdiction). Here, the allegations in Plaintiffs' First Amended Complaint are pled in the same way that the *Sullivan* Court found to be insufficient to meet a *prima facie* showing of personal jurisdiction; merely making conclusory allegations couched as "fact" does not meet the fact-pleading standard required by South Carolina courts.

The facts, as attested in Ms. Zuppini's affidavit, are that the sole business of Fabi USA is to hold all membership interest in IMI Fabi, LLC. It has never (1) transacted business in this

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State; (2) contracted to supply services or things in this State; (3) committed a tortious act in whole or in part in this State; (4) regularly done or solicited business or engaged in any persistent course of conduct, or derived substantial revenue from goods used or consumed or services rendered, in this State; (5) had an interest in and has never used or possessed real property in this State; (6) contracted to insure any person, property or risk located within this State at the time of contracting; (7) entered into a contract to be performed in whole or in part by either party in this State; (8) and has never produced, manufactured, or distributed goods with the reasonable expectation that those goods were to be used or consumed in this State. *See* Exhibit A.

Plaintiffs' conclusory allegations, in the face of specific facts to the contrary, are insufficient to establish a *prima facie* showing of jurisdiction and, therefore, Plaintiffs have not met their burden and their claims must be dismissed.

2. *Plaintiffs Have Not Shown Sufficient Minimum Contacts Between Fabi USA and South Carolina Necessary to Satisfy Due Process.*

Assuming for the sake of argument that Plaintiffs' allegations could meet the requirements of S.C. Code Ann. § 36-2-803, the exercise of personal jurisdiction over Fabi USA is nonetheless improper because Plaintiffs cannot show that the exercise of personal jurisdiction in this matter satisfies the requirements of due process.

Due process requires that there exist sufficient minimum contacts with the forum state such that the exercise of jurisdiction does not "offend traditional notions of fair play and substantial justice" and that the defendant can "reasonably anticipate being haled into court in the forum." *E.g.*, *Cockrell*, 363 S.C. at 491-492, 611 S.E.2d at 508 (citing *Burger King Corp. v. Rudzewicz*, 471 U.S. 462, 105 S.Ct. 2174, 85 L.Ed.2d 528 (1985); *World–Wide Volkswagen Corp. v. Woodson*, 444 U.S. 286, 100 S.Ct. 559, 62 L.Ed.2d 490 (1980); *Atlantic Soft Drink Co. v. South Carolina Nat'l Bank*, 287 S.C. 228, 336 S.E.2d 876 (1985)).

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"A minimum contacts analysis requires a court to find the defendant directed its activities to a resident of this State and that the cause of action arises out of or relates to those activities." *S. Plastics Co. v. S. Commerce Bank*, 310 S.C. 256, 260, 423 S.E.2d 128, 131 (1992). *See also Bristol-Meyers Squibb Co. v. Superior Court of California, San Francisco County*, 137 S.Ct. 1773, 1780 (2017); *World-Wide Volkswagen Corp.*, 444 U.S. at 296-297; *Hanson v. Denckla*, 257 U.S. 235, 251, 253 (1958). The minimum contacts analysis must focus on the defendant's own actions, not the "unilateral actions of some other entity." *Cockrell,* 363 S.C. at 492, 611 S.E.2d at 508–09 ("The foreseeability that is critical to due process analysis is not the mere likelihood that a product will find its way into the forum state. Rather, it is that the defendant's conduct and connection with the forum state are such that he should reasonably anticipate being haled into court there."); *Coggeshall*, 376 S.C. at 16, 655 S.E.2d at 478 ("Due process requires some act by which the defendant purposefully avails itself of the privilege of conducting activities within the forum state."). If the Court finds minimum contacts exist, it must further determine whether the exercise of jurisdiction is "reasonable" or "fair" by considering "(1) the duration of the activity of the nonresident within the state; (2) the character and circumstances of the commission of the nonresident's acts; (3) the inconvenience resulting to the parties by conferring or refusing to confer jurisdiction over the nonresident; and (4) the State's interest in exercising jurisdiction." *Id.* at 492, 611 S.E.2d at 508.

Plaintiffs have not shown, and cannot show, that Fabi USA has sufficient minimum contacts with South Carolina. The facts here, as attested in Ms. Zuppini's affidavit, are that the sole business of Fabi USA is to hold all membership in IMI Fabi, LLC. It has no business or operations, holds no other property or assets, and has never sold any product. Fabi USA has never manufactured, sold, or distributed any products in South Carolina or shipped any products

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to South Carolina. Simply stated, Fabi USA has *no* contacts with the State of South Carolina and has never purposefully directed *any* activities at South Carolina. Consequently, there are not sufficient minimum contacts with South Carolina to render this Court's exercise of personal jurisdiction permissible under the Due Process Clause. Further, because Fabi USA has no contact with South Carolina, Plaintiffs' cause of action cannot arise out of or relate to any alleged contacts with South Carolina.

Because Plaintiffs have not, and cannot, show that Fabi USA has minimum contacts with South Carolina necessary for the exercise of personal jurisdiction to meet the requirements of due process, their claims against Fabi USA must be dismissed.

II. Motion for Protective Order Staying Discovery

Fabi USA has also moved the Court for a Protective Order staying discovery in this matter as to Fabi USA pursuant to Rule 26(c) of the South Carolina Rules of Civil Procedure. Because Plaintiffs' First Amended Complaint is entirely conclusory and lacks factual support for its jurisdictional claims, the Court should grant Fabi USA's motion and stay discovery pending adjudication of Fabi USA's motion to dismiss.

Rule 26 of the South Carolina Rules of Civil Procedure provides that, upon motion by the party from whom discovery is sought, the Court may limit discovery or order that discovery not be had to protect the party from "annoyance, embarrassment, oppression, or undue burden by expense." Rule 26(c), SCRCP. "A stay of discovery until the determination of a dispositive motion is appropriate when (1) the issue raised is strictly one of law, (2) the motion, if successful, would be dispositive of the entire action, (3) the issue is one that cannot be cured by amending the pleadings, and (4) there is no showing of any prejudice if the Court were to stay discovery." *Allen v. South*

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Carolina Budget and Control Bd. Employee Ins. Program, No. 2009CP1007404, 2010 WL 11579841, at *5 (S.C.Com.Pl. Oct. 12, 2010). An order under Rule 26(c) staying discovery pending a dispositive motion is an appropriate exercise of the Court's discretion. *Id.* Further, "[W]here a plaintiff's claim of personal jurisdiction appears to be both attenuated and based on bare allegations in the face of denials made by defendants, the court need not permit even limited discovery confined to issues of personal jurisdiction if it will be a fishing expedition." *Sullivan,* 397 S.C. at 151–52, 723 S.E 2d at 839–40. When a plaintiff offers only speculation or conclusory assertions about contacts with a forum state, a court is within its discretion in denying jurisdictional discovery. *Id.*

In this case, as discussed above in Fabi USA's memorandum supporting its motion to dismiss, Plaintiffs' jurisdictional claims are conclusory and lack any factual support. Permitting Plaintiffs to conduct discovery where it is readily apparent Fabi USA is not subject to this Court's jurisdiction in this matter would cause undue expense and serve only as a fishing expedition intended to annoy, oppress, and harass Fabi USA. *See Cannon v. United Ins. Co. of Am.*, 352 F. Supp. 1212, 1215 (D.S.C. 1973) ("[C]ourt[s] should not order extended discovery when jurisdiction is doubtful").

Applying the factors set forth in *Allen*, an order staying discovery is appropriate in this case because the issue of this Court's jurisdiction over Fabi USA is purely a question of law and, if successful, Fabi USA's motion would be dispositive of Plaintiffs' entire case against it. Further, because Plaintiffs have not and cannot show any facts that would establish Fabi USA had minimum contacts with South Carolina, the issue of personal jurisdiction is one that cannot be cured by amending the pleadings. Finally, there is no showing of any prejudice if the Court were to stay discovery; the requested stay would only apply to Fabi USA, permitting Plaintiffs to conduct discovery against other parties, and would only be in effect for a brief time while the Court addresses the threshold issue of jurisdiction.

Because Plaintiffs' jurisdictional claims are conclusory allegations without any factual support which have been directly rebutted by Ms. Zuppini's affidavit, the Court should grant Fabi USA's motion and stay discovery pending a decision on its motion to dismiss.

CONCLUSION

Fabi USA is not subject to general jurisdiction because it cannot fairly be said to be "at home" in South Carolina at any time. Fabi USA is not subject to specific jurisdiction because Plaintiffs' claims do not satisfy S.C. Code Ann. § 36-2-803 and because Fabi USA has no minimum contacts with South Carolina that gave rise to Plaintiffs' claims. Plaintiffs have presented the Court with nothing but conclusory, speculative allegations with no supporting facts to support personal jurisdiction. Accordingly, Defendant Fabi USA is entitled to an order dismissing Plaintiffs' claims against it, and in the interim, an order staying discovery as to it until the Court enters an Order on Fabi USA's Motion to Dismiss for lack of personal jurisdiction.

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Columbia, South Carolina

July 13, 2022

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EXHIBIT A

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STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF RICHLAND	)	FOR THE FIFTH JUDICIAL CIRCUIT
SARAH J. PLANT and PARKER PLANT	)	C/A NO. 2022-CP-40-01265
Plaintiffs,	)	
v.	)	
AVON PRODUCTS, INC., et al.	)	
Defendants.	)	

AFFIDAVIT OF PATRIZIA ZUPPINI IN SUPPORT OF SPECIALLY APPEARING DEFENDANT IMI FABI (USA), INC'S MOTION TO DISMISS FOR LACK OF PERSONAL JURISDICTION

I, Patrizia Zuppini declare as follows:

1. My name is Patrizia Zuppini. I am over the age of eighteen years old (18) and I am competent to give this Affidavit.

2. I am the Vice President of IMI Fabi (USA), Inc. (hereinafter referred to as "Fabi USA"). I make the following statements based upon my own personal knowledge, and, if called as a witness, could and would testify competently to such facts under oath.

3. Fabi USA is a Delaware corporation incorporated on January 26, 1999. Fabi USA is not qualified to transact business in any other jurisdiction. The sole business of Fabi USA is to hold all membership interest in IMI Fabi, LLC. Fabi USA has no business or operations, and it holds no other property or assets.

4. Fabi USA has never had a registered agent in any state other than Delaware.

5. Fabi USA has never owned or operated any manufacturing, sales, or distribution facilities in any state.

6. Fabi USA has never had employees.

7. Fabi USA has never recruited any South Carolina residents, directly or through an intermediary located in the State of South Carolina, for employment inside or outside of the

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State of South Carolina.

8. Fabi USA has never had a mailing address, post office box, or bank account in South Carolina.

9. Fabi USA has never owed or paid corporate taxes, sales taxes, or other taxes in South Carolina.

10. Fabi USA has never had insurance policies which afford coverage of any kind for specific entities located in South Carolina.

11. Fabi USA has never invested any dollars in business operations in South Carolina.

12. Fabi USA has never transacted any business in South Carolina.

13. Fabi USA has never contracted to supply services or goods in the State of South Carolina.

14. Fabi USA has never marketed or advertised its products in the State of South Carolina.

15. Fabi USA has not received tax deductions as a result of contributions made to any organizations in the State of South Carolina.

16. Fabi USA has never received any business incentives or tax credit from the State of South Carolina to conduct business in South Carolina.

17. Fabi USA has never sold any product.

18. Consequently, Fabi USA has never delivered any products in the State of South Carolina.

19. Fabi USA has never appeared in a case in South Carolina, including but not limited to, any matrimonial actions or family court proceedings.

20. Fabi USA has never had an interest in, using or possessing real property in the State of South Carolina.

21. Fabi USA has never owned, used, possessed, or held a mortgage or other lien on any real property in the State of South Carolina.

22. Fabi USA has never owned, leased, or operated any real property or any offices in

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the State of South Carolina.

23. Fabi USA has never paid real estate tax to any municipality or town in any state.

24. Fabi USA has never owned a motorized vehicle registered in South Carolina and has never paid any automobile excise tax to any municipality or town located in South Carolina.



25. Fabi USA has never owned a water vessel (boat) registered in South Carolina and has never paid any boat excise tax to any municipality or town located in South Carolina.

26. Fabi USA has never acquired ownership, possession or control of any asset or thing of value present within the State of South Carolina.

27. Fabi USA has had no contracts, by mail or otherwise, with a South Carolina resident to be performed in the State of South Carolina.

28. Fabi USA has never had any affiliates, subsidiaries or corporately related companies in the State of South Carolina, or elsewhere.

29. Fabi USA has never entered into any franchise agreements between it and any entities licensed to do business in South Carolina.

30. Fabi USA has never mined, milled, processed, tested, screened, analyzed, blended, supplied and/or distributed talc in South Carolina.

31. Fabi USA has never manufactured, sold, or distributed any products in the State of South Carolina.

32. Fabi USA has never shipped any products to the State of South Carolina.

33. Fabi USA has never operated, conducted, engaged in, or carried on a business or business venture in the State of South Carolina.

34. Fabi USA has never had an office or agency in the State of South Carolina.

35. Fabi USA has never committed a tortious act in whole or in part in the State of South Carolina.

36. Fabi USA has never caused tortious injury or death to persons or property within the State of South Carolina arising out of an act or omission committed outside the State of

South Carolina.

37. Fabi USA has never engaged in solicitation or service activities within the State of South Carolina.

38. Fabi USA has never entered into a contract or breached a contract in the State of South Carolina or that is to be performed in whole or in part in the State of South Carolina.

39. Fabi USA has never contracted to insure any person, property or risk located within the State of South Carolina at the time of contracting.

40. Fabi USA has never produced, manufactured, or distributed goods with the reasonable expectation that those goods are to be used or consumed in the State of Carolina, and are so used or consumed.

I declare under penalty of perjury under the laws of the State of South Carolina that the foregoing is true and correct and that this declaration was executed on May____, 2022 at _____.

Patrizia Zuppini, Vice President
IMI Fabi (USA), Inc.

SIGNATURE AUTHENTICATION

I, the undersigned Dr. Franco Cederna, public notary in Sondrio and registered with the Notary Collegiate of Sondrio, hereby certify that Mrs. ZUPPINI PATRIZIA, born in Milano on 29th March 1965, whose personal identity I, the Notary, am certain, I warned about the criminal responsibility for the statements that do not correspond to the truth, provided for by art. 76 of the D.P.R. December 28th 2000 n. 445, she has made and signed the declaration at the bottom of each sheet in my presence.
(Exempt from registration to repertory and registration pursuant to Article 1 of Law 11 May 1971, No. 390).
Sondrio, in my study in Street Trento No. 31, 19th May 2022.

APOSTILLE
(Convention de La Haye du 5 Octobre 1961)

1. Paese: ITALIA
   Il presente Atto Pubblico
2. è stato firmato da DOTT. FRANCO CEDERNA
3. agendo in qualità di NOTAIO
4. è rivestito del sigillo/timbro di NOTAIO IN SONDRIO

ATTESTATO

5. a SONDRIO 6. il 21 MAG. 2022
7. dal DOTT. PIERO BASILONE
   PROCURATORE REPUBBL. C/O TRIB. SONDRIO
8. sotto n. 131/2022
9. Sigillo / Timbro 10. Firma:

IL PROCURATORE DELLA REPUBBLICA
Dott. Piero Basilone

R. 210884

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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., et al., Defendants.	)))))))))	Civil Action No. 2022 CP 40 01265 **IMI FABI (DIANA) LLC'S MOTION FOR SUMMARY JUDGMENT**

Defendant IMI Fabi (Diana) LLC ("Defendant"), moves for an order granting summary judgment pursuant to Rule 56 of the South Carolina Rules of Civil Procedure on the grounds that there are no genuine issues of material fact and summary judgment is appropriate as a matter of law.

Specifically, the Court lacks personal jurisdiction over Defendant.[1] Further, Plaintiffs' claims are barred by South Carolina's Door Closing Statute. In addition, Plaintiffs cannot meet the threshold requirements of actionable asbestos exposure identified in *Lohrmann v. Pittsburgh Corning Corp.*, 782 F.2d 1156, 1162–63 (4th Cir. 1986), *Henderson v. Allied Signal*, 373 S.C. 179, 644 S.E.2d 724 (2007) and like cases, such that there is no genuine issue of material fact and Defendant is entitled to judgment as a matter of law.

This motion is also made on additional alternative grounds that there is no proof supporting particular individual causes of action, as described in the Memorandum of Law filed in support of this motion. Further, choice of law issues may exist in this case and Defendant submits this Motion

[1] On May 13, 2022, Defendant filed a Motion to Dismiss for Lack of Personal Jurisdiction. On July 13, 2022, Defendant filed its Memorandum in Support of Motion to Dismiss for Lack of Personal Jurisdiction with supporting affidavit. Defendant incorporates its prior Motion to Dismiss, supporting memorandum and affidavit herein in support of its current Motion for Summary Judgment.

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without waiver of any rights to raise choice of law issues in the event that it becomes relevant. *See Rogers v. Lee,* 414 S.C. 225, 230, 777 S.E.2d 402, 405 (Ct. App. 2015); *Boone v. Boone,* 345 S.C. 8, 13, 546 S.E.2d 191, 193 (2001). This motion is supported by the Affidavit of Michael Brown attached as Exhibit A. This motion is further supported by the pleadings that have been filed in this action, discovery conducted or to be conducted in the future, depositions taken and yet to be taken in this case, the attached Memorandum of Law in Support of Defendant's Motion for Summary Judgment, the South Carolina Rules of Civil Procedure, arguments of counsel, and applicable common and statutory law.

Respectfully submitted this, the 13th day of January, 2023.

WOMBLE BOND DICKINSON (US) LLP

s/ M. Elizabeth O'Neill
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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., et al., Defendants.	))))))))))	Civil Action No. 2022 CP 40 01265 **IMI FABI (DIANA) LLC'S MEMORANDUM OF LAW IN SUPPORT OF MOTION FOR SUMMARY JUDGMENT**

Defendant IMI Fabi (Diana) LLC ("Defendant" or "Fabi Diana"), pursuant to Rule 56 of the South Carolina Rules of Civil Procedure, respectfully submits this Memorandum of Law in Support of its Motion for Summary Judgment.

Defendant is entitled to judgment on all claims because: 1) the Court lacks personal jurisdiction over Defendant;[1] 2) Plaintiffs' claims are barred by South Carolina's Door Closing Statute; and 3) Plaintiffs do not have evidence that Sarah Plant was exposed to any product attributable to Defendant, let alone evidence of exposure to asbestos-containing products, with the "frequency, regularity and proximity" required by the South Carolina Supreme Court in *Henderson v. Allied Signal*, 373 S.C. 179, 644 S.E.2d 724 (2007), to establish causation. Alternatively, for the reasons detailed below, Defendant is entitled to summary judgment on specific claims.

[1] On May 13, 2022, Defendant filed a Motion to Dismiss for Lack of Personal Jurisdiction. On July 13, 2022, Defendant filed its Memorandum in Support of Motion to Dismiss for Lack of Personal Jurisdiction with supporting affidavit. Defendant incorporates its prior Motion to Dismiss, supporting memorandum and affidavit herein in support of its current Motion for Summary Judgment.

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STATEMENT OF FACTS

Plaintiffs allege that Sarah Plant was diagnosed with mesothelioma from exposure to various asbestos-containing talc products. (First Amended Complaint (FAC) ¶ 1, 6, 24, 25) Plaintiffs' causes of action against Defendant are negligence, strict liability, breach of implied warranty of merchantability, fraudulent misrepresentation, and loss of consortium.

Mr. and Ms. Plant were deposed and did not testify to exposure to any alleged asbestos-containing product attributable to Defendant. The depositions of Ms. Plant's parents, Patrice and Eric Johnson, have been taken and they did not testify to exposure to any alleged asbestos-containing product attributable to Defendant. There has been no other relevant fact witness depositions taken in this case. As such, there is no evidence that Sarah Plant was exposed to asbestos from a product allegedly attributable to Defendant at all, let alone on a regular, frequent and proximate basis.

Plaintiffs' First Amended Complaint alleges that Plaintiffs are currently residents of Tennessee and that Sarah Plant developed mesothelioma as the result of exposure to various asbestos-containing talc products in several states, including South Carolina. (First Amended Complaint (FAC at ¶ 1, 6, 24, 25.) Plaintiffs do not assert that Fabi Diana is a South Carolina limited liability company or that its principal place of business was ever in South Carolina. (FAC at ¶ 51.) Rather, Plaintiffs assert generally that this Court has personal jurisdiction over all Defendants because Plaintiffs' claims arise from Defendants' conduct in (a) transacting business in the 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; and (d) having an interest in, using, or possessing real property in this State. Further, Plaintiffs allege generally that "all" defendants "purposefully

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availed themselves of the privilege of doing business in this State" and engaged in "substantial and/or systematic business in South Carolina." (FAC at ¶ 2, 5)

Specifically as to Fabi Diana, Plaintiffs list it as a "Product Defendant" and allege Ms. Plant was exposed to asbestos-containing talc "mined . . . processed . . . imported . . . supplied ... and or retailed" by Fabi Diana. Plaintiffs further allege that their claim against Fabi Diana arises out of Fabi Diana's "business activities" and Ms. Plant's exposure to Fabi Diana products in the State of South Carolina as well as other states. (FAC at ¶ 51)

However, as attested to in the Affidavit of Michael Brown ("Mr. Brown"), attached to Defendant's Motion for Summary Judgment as Exhibit A, these jurisdictional allegations as to Fabi Diana are unsupported by fact. Mr. Brown's Affidavit sets forth the following relevant facts on the issue of personal jurisdiction:

- Mr. Brown is the former general manager and current caretaker of Fabi Diana. (Exhibit A at ¶ 2.)
- Fabi Diana is not a South Carolina limited liability company and never had its principal place of business in South Carolina. (Exhibit A at ¶¶ 3, 5; *see also* FAC at ¶ 51.)
- Fabi Diana began operations in 2001 and ceased operations on December 31, 2004. (Exhibit A at ¶¶ 3, 4.)
- Fabi Diana sold refined talc to cosmetic, personal care, pharmaceutical, and food industries and sold industrial talc for the manufacture of various products. (Exhibit A at ¶ 6.)
- Fabi Diana has never been licensed to do business in South Carolina and has never had a registered agent in South Carolina. (Exhibit A at ¶¶ 7, 8.)

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- Fabi Diana has never owned or operated any manufacturing, sales, or distribution facilities in South Carolina; transacted business in South Carolina; contracted to supply goods or services in South Carolina; or marketed or advertised products in South Carolina. (Exhibit A at ¶¶ 9, 17-19.)
- Until Fabi Diana closed its facility in Diana Township, New York, all products sold by Fabi Diana were delivered F.O.B. Origin, Freight Collect, Diana Township, New York. In every instance, the Buyer made all arrangements for shipment of the products off of Fabi Diana's premises. In every instance, possession of the product and risk of loss in transit transferred from Fabi Diana to the Buyer at the Fabi Diana loading dock. In every instance, the Buyer paid for and bore the freight charges. In every instance, the Buyer, not Fabi Diana, filed claims (if any) if the product was damaged, destroyed, or lost in transit. Consequently, Fabi Diana has never delivered any products to South Carolina. (Exhibit A at ¶ 22, 23.)
- Fabi Diana has never had an interest in, used, or possessed real property in South Carolina. (Exhibit A at ¶ 25.)
- Fabi Diana has never committed a tortious act in whole or in part in South Carolina. (Exhibit A at ¶ 41.)
- Fabi Diana has never manufactured, sold, or distributed any products to South Carolina and has never shipped any products to South Carolina. (Exhibit A at ¶¶ 37, 38.)
- Fabi Diana has never produced, manufactured, or distributed goods with the reasonable expectation that those goods are to be used or consumed in the State of South Carolina and were so used and consumed. (Exhibit A at ¶ 46.)

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Accordingly, this Court lacks jurisdiction over Fabi Diana. Further, as detailed below, there is no evidence in the record to raise an issue of material fact that Sarah Plant was exposed to asbestos from any product attributable to Defendant.

STANDARD OF REVIEW

In South Carolina, summary judgment is appropriate when there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law. *Shaw v. City of Charleston*, 351 S.C. 32, 567 S.E.2d 530 (2002). Under Rule 56(c) of the South Carolina Rules of Civil Procedure, summary judgment "shall be rendered forthwith if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact." Rule 56(c), SCRCP. In determining whether any triable issues of fact exist, the evidence and all inferences which can be reasonably drawn [therefrom] must be viewed in the light most favorable to the non-moving party." See *Shaw,* 351 S.C. at 38, 567, S.E.2d at 534. The burden is on the moving party to demonstrate the absence of a genuine issue of material fact. *Baughman v. American Tel. & Tel Co.*, 306 S.C. 101, 115, 410 S.E.2d 537, 545 (1991). An important distinction to make is that the moving party's burden is not to disprove the claims, but to instead show that the plaintiff has no evidence to support his claims. *Id*.

In order to avoid summary judgment, a non-moving party must demonstrate a genuine existence of triable issues on all essential elements of his case. See *Celotex Corp. v. Catrett*, 477 U.S. 317 (1986). A non-moving party must go beyond the pleadings, as "summary judgment should be granted when plain, palpable and undisputable facts exist on which reasonable minds cannot differ." *Nations Bank v. Scott Farm*, 320 S.C. 299, 302–03, 465 S.E.2d 98, 100 (1995).

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In the present case, Plaintiffs have not produced sufficient evidence to establish jurisdiction or the elements necessary to pursue and prove the claims against Defendant. Therefore, Defendant is entitled to summary judgment.

ARGUMENT

I. CHOICE OF LAW.

Under South Carolina choice of law principles, the substantive law governing a tort action is determined by the state in which the injury occurred, commonly referred to as the *lex loci delicti* rule. *Rogers v. Lee*, 414 S.C. 225, 230, 777 S.E.2d 402, 405 (Ct. App. 2015); *Boone v. Boone*, 345 S.C. 8, 13, 546 S.E.2d 191, 193 (2001). South Carolina law provides that *lex loci delicti* is determined by the state in which the injury occurred, not where the results of the injury were felt or where the damages manifested themselves. *Rogers,* 414 S.C. at 231. In this case, the Court should apply the substantive law of the state where the exposure occurred. *See also, Bannister v. Hertz Corp.*, 316 S.C. 513, 450 S.E.2d 629 (Ct.App.1994)(applying North Carolina law); *Dawkins v. State*, 306 S.C. 391, 412 S.E.2d 407 (1991) (applying Georgia law); *Oshiek v. Oshiek*, 244 S.C. 249, 136 S.E.2d 303 (1964) (applying Georgia law); *Woolard v. Carrier Corp.*, No. 1:18CV410, 2020 WL 2572278, n.2 (M.D.N.C. May 21, 2020) (applying North Carolina law because the asbestos exposure occurred in North Carolina); *Cox v. AGCO Corp.*, No. 4:16-CV-00084-M, 2020 WL 3473636, at *4 (E.D.N.C. June 25, 2020) (same).

Plaintiffs allege exposure occurred in various states, although there is no evidence to date as to any exposure to a product attributable to Defendant. Plaintiffs have not put forth any evidence to show that Sarah Plant was exposed to any asbestos attributable to Defendant in South Carolina (or any other state). Accordingly, the law of other states may apply in this case and Defendant

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submits this motion without waiver of any rights to raise choice of law issues and expressly preserves its rights regarding the same.

II. THIS COURT LACKS PERSONAL JURISDICTION OVER DEFENDANT.

A. Legal Standard

"The question of personal jurisdiction over a nonresident defendant is one which must be resolved upon the facts of each particular case." *Cockrell v. Hillerich & Bradsby Co*., 363 S.C. 485, 491, 611 S.E.2d 505, 508 (2005). "The party seeking to invoke personal jurisdiction over a non-resident defendant . . . bears the burden of establishing jurisdiction." *Power Prods. & Servs. Co., Inc. v. Kozma*, 379 S.C. 423, 430, 665 S.E.2d 660, 664 (Ct. App. 2008). At the pretrial stage, plaintiffs may meet their burden of proving personal jurisdiction over a nonresident defendant by a prima facie showing of jurisdiction either (1) in the complaint or (2) in affidavits. *See Cockrell*, 363 S.C. at 491, 611 S.E.2d at 508; *Sullivan v. Hawker Beechcraft Corp*., 397 S.C. 143, 150, 723 S.E.2d 835, 839 (Ct. App. 2012). However, a plaintiff must allege *specific facts* to establish the contacts necessary to invoke either general or specific jurisdiction. *See Power Prods. & Servs. Co. Inc.*, 379 S.C. at 433–36, 665 S.E.2d at 665–67 (affirming trial court's dismissal based on lack of personal jurisdiction because plaintiff did not establish facts—either through the complaint or affidavits—to confer jurisdiction). Conclusory allegations will not suffice. *Id*. at 433–35, 665 S.E.2d at 665–66. Moreover, "[w]hen a motion to dismiss attacks the allegations of the complaint on the issue of jurisdiction, the court is not confined to the allegations of the complaint but may resort to affidavits or other evidence to determine jurisdiction." *Sullivan*, 397 S.C. at 150, 723 S.E.2d at 839 (quoting *Coggeshall v. Reprod. Endocrine Assocs. of Charlotte*, 376 S.C. 12, 16, 655 S.E.2d 476, 478 (2007)).

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"Personal jurisdiction is exercised as either 'general jurisdiction' or 'specific jurisdiction.'" *Coggeshall*, 376 S.C. at 16, 655 S.E.2d at 478. "General jurisdiction is the State's right to exercise personal jurisdiction over a defendant even though the suit does not arise out of or relate to the defendant's contacts with the forum . . . ; general jurisdiction is determined under S.C. Code Ann. §36-2-802…." *Id*. "Specific jurisdiction is the State's right to exercise personal jurisdiction because the cause of action arises specifically from a defendant's contacts with the forum . . . ; specific jurisdiction is determined under S.C. Code Ann. § 36-2-803…." *Id*. The exercise of personal jurisdiction under either statute must comport with due process requirements and must not offend traditional notions of fair play and substantial justice. *Id*. Due process requires some act by which the defendant purposefully avails itself of the privilege of conducting activities within the forum state. *Id*.

Further, due process mandates that the defendant possess sufficient minimum contacts with the forum state, so that it could reasonably anticipate being haled into court there. *Cockrell*, 363, S.C. at 491-492, 611 S.E.2d at 508 (citing *World-Wide Volkswagen Corp. v. Woodson*, 444 U.S. 286 (1980)). Without minimum contacts, the Court does not have the "power" to adjudicate the action. *Cockrell*, 363 S.C. at 492, 611 S.E.2d at 508. Finally, the Court must also find that the exercise of jurisdiction is "reasonable" or "fair." *Id*.

The Court must assess individually each defendant's contacts with South Carolina. *Cockrell*, 363 S.C. at 492, 611 S.E.2d at 508 (citing *Rush v. Savchuk*, 444 U.S. 320 (1980)). The focus of the Court's analysis must center on the contacts generated by the defendant, not on the unilateral actions of some other entity. *Cockrell*, 363 S.C. at 492, 611 S.E.2d at 508-509 (citing *Helicopteros Nacionales de Colombia, S.A. v. Hall*, 466 U.S. 408 (1984) (holding "unilateral activity of another party or a third person is not an appropriate consideration")). The foreseeability

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that is critical to due process analysis is not the mere likelihood that a product could find its way into the forum state. Rather, it is that the defendant's own conduct and connections with the forum state are such that he should reasonably anticipate being haled into court there. *Cockrell*, 363 S.C. at 492, 611 S.E.2d at 509 (citing *World-Wide Volkswagen Corp*., 444 U.S. at 297).

Here, the Court has neither general nor specific jurisdiction over Fabi Diana and, therefore, Fabi Diana is entitled to summary judgment.

B. Fabi Diana is Not Subject to General Jurisdiction in South Carolina.

Fabi Diana is not a South Carolina limited liability company, its principal place of business was never in South Carolina, and it does not have such substantial contacts that it is "at home" in South Carolina; therefore, it is not subject to general personal jurisdiction in this state.

A court may assert general jurisdiction over foreign corporations when their affiliations with the forum state "are so 'continuous and systematic' as to render them essentially at home in the forum State." *Daimler AG v. Bauman*, 571 U.S. 117, 127 (2014) (quoting *Goodyear Dunlop Tires Operations, S.A. v. Brown*, 564 U.S. 915, 925 (2011)); *see also Coggeshall*, 376 S.C. 12, 16, 655 S.E.2d 476, 478; S.C. Code Ann. §36-2-802. Only in an "exceptional case" can a court exercise general jurisdiction in a forum that is not "the corporation's place of incorporation [or] its principal place of business." *BNSF Ry. Co. v. Tyrrell*, 137 S. Ct. 1549, 1558 (2017). An example of the "exceptional case" where general jurisdiction may be exercised over a corporation that is neither incorporated in nor has its principal place of business in a state is the United States Supreme Court holding in *Perkins v. Benguet Consol. Min. Co*., 342 U.S. 347. In *Perkins* the defendant, a foreign mining company forced to flee the Philippines during World War II, operated entirely from Ohio for several years. The company's president and principal stockholder relocated to Ohio and set up an office, where he maintained corporate files, carried on the company's correspondence,

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issued checks on behalf of the company, employed two corporate secretaries, maintained bank accounts, purchased company equipment, and held director's meetings for the duration of the company's exile. Under these circumstances, where Ohio became the business' *de facto* operating headquarters, the Court found general jurisdiction proper. None of these facts are present here.

Fabi Diana is not "at home" in South Carolina. It is undisputed that Fabi Diana is not a South Carolina limited liability company and its principal place of business has never been in South Carolina. It has no "enduring" relationship with South Carolina. *See Cockrell*, 363 S.C. at 495, 611 S.E.2d at 510. Furthermore, no "exceptional" circumstances, such as those present in *Perkins*, exist that would render Fabi Diana "at home" in South Carolina, nor do Plaintiffs allege any such exceptional circumstances. Accordingly, Fabi Diana is not subject to general personal jurisdiction in this State.

C. Fabi Diana is not Subject to Specific Personal Jurisdiction in South Carolina.

Fabi Diana has never conducted business activities within South Carolina or purposefully directed business activities towards South Carolina and, therefore, does not meet the requirements of South Carolina's long-arm statute or have sufficient minimum contacts with the State for the exercise of jurisdiction to satisfy due process. Moreover, because Fabi Diana has never conducted business in South Carolina or purposefully directed business activities towards South Carolina, it is impossible for Plaintiffs' claims to arise out of Fabi Diana's conduct within the State. Consequently, Fabi Diana is not subject to the exercise of specific personal jurisdiction in this case.

The determination of whether a court may exercise personal jurisdiction over a nonresident defendant has traditionally involved a two-step analysis; first, the court must determine if the long-arm statute applies, and second, the court must determine whether the nonresident's contacts with

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this State are sufficient to satisfy due process requirements. *Power Prods. & Servs. Co., Inc*., 379 S.C. at 431, 665 S.E.2d at 664. "Because South Carolina treats its long-arm statute as coextensive with the due process clause, the sole question becomes whether the exercise of personal jurisdiction would violate due process." *Cockrell*, 363 S.C. at 491, 611 S.E.2d at 508 (citing *Moosally v. W.W. Norton & Co*., 358 S.C. 320, 329, 594 S.E.2d 878, 883 (Ct. App. 2004)); *See also Power Prods. & Servs. Co., Inc*., 379 S.C. at 431, 665 S.E.2d at 664; *State v. NV Sumatra Tobacco Trading, Co*., 379 S.C. 81, 89, 666 S.E.2d 218, 222 (2008).

1. *Plaintiffs Have Not Demonstrated Specific Facts Necessary to Establish Personal Jurisdiction Under South Carolina's Long-Arm Statute.*

In this case, Plaintiffs have failed to demonstrate specific facts that subject Fabi Diana to jurisdiction under S.C. Code Ann. § 36-2-803(A)(1)-(8). Plaintiffs' generic, conclusory allegations are insufficient to show specific actions taken by Fabi Diana which would subject it to personal jurisdiction under the long-arm statute. *See Sullivan,* 397 S.C. at 150–51, 723 S.E.2d at 839 (affirming dismissal for lack of personal jurisdiction where the plaintiff merely recited the elements of the long-arm statute and failed to allege facts showing the defendant's conduct subjected it to jurisdiction). *See also Power Prods. & Servs. Co., Inc*., 379 S.C. at 433–36, 665 S.E.2d at 665–67 (affirming trial court's dismissal based on lack of personal jurisdiction because plaintiff did not establish facts—either through the complaint or affidavits—to confer jurisdiction). Here, the allegations in Plaintiffs' First Amended Complaint are pled in the same way that the *Sullivan* Court found to be insufficient to meet a prima facie showing of personal jurisdiction; merely alleging legal conclusions in the First Amended Complaint does not meet the fact-pleading standard required by South Carolina courts.

The facts, as attested in Mr. Brown's affidavit, are that Fabi Diana has never (1) transacted business in this State; (2) contracted to supply services or things in this State; (3) committed a

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tortious act in whole or in part in this State; (4) regularly done or solicited business or engaged in any persistent course of conduct, or derived substantial revenue from goods used or consumed or services rendered, in this State; (5) had an interest in and has never used or possessed real property in this State; (6) contracted to insure any person, property or risk located within this State at the time of contracting; (7) entered into a contract to be performed in whole or in part by either party in this State; or (8) produced, manufactured, or distributed goods with the reasonable expectation that those goods were to be used or consumed in this State and were so used or consumed. *See* Exhibit A.

Plaintiffs' conclusory allegations, in the face of specific facts to the contrary, are insufficient to establish a *prima facie* showing of jurisdiction and, therefore, Plaintiffs have not met their burden and summary judgment is proper.

2. *Plaintiffs Have Not Shown Sufficient Minimum Contacts Between Fabi Diana and South Carolina Necessary to Satisfy Due Process.*

Assuming for the sake of argument that Plaintiffs' allegations meet the requirements of S.C. Code Ann. § 36-2-803, the exercise of personal jurisdiction over Fabi Diana is improper because Plaintiffs cannot show that the exercise of personal jurisdiction in this matter satisfies the requirements of due process.

Due process requires that there exist sufficient minimum contacts with the forum state such that the exercise of jurisdiction does not "offend traditional notions of fair play and substantial justice" and that the defendant can "reasonably anticipate being haled into court in the forum." *E.g., Cockrell*, 363 S.C. at 491-492, 611 S.E.2d at 508 (citing *Burger King Corp. v. Rudzewicz*, 471 U.S. 462, 105 S.Ct. 2174, 85 L.Ed.2d 528 (1985); *World–Wide Volkswagen Corp. v. Woodson*, 444 U.S. 286, 100 S.Ct. 559, 62 L.Ed.2d 490 (1980); *Atlantic Soft Drink Co. v. South Carolina Nat'l Bank*, 287 S.C. 228, 336 S.E.2d 876 (1985)). The Court must further determine whether the

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exercise of jurisdiction is "reasonable" or "fair" by considering (1) the duration of the activity of the nonresident within the state; (2) the character and circumstances of the commission of the nonresident's acts; (3) the inconvenience resulting to the parties by conferring or refusing to confer jurisdiction over the nonresident; and (4) the State's interest in exercising jurisdiction. *Id*. at 492, 611 S.E.2d at 508.

Plaintiffs have not shown, and cannot show, that Fabi Diana has sufficient minimum contacts with South Carolina. "A minimum contacts analysis requires a court to find the defendant directed its activities to a resident of this State and that the cause of action arises out of or relates to those activities." *S. Plastics Co. v. S. Commerce Bank*, 310 S.C. 256, 260, 423 S.E.2d 128, 131 (1992). *See also Bristol-Meyers Squibb Co. v. Superior Court of California, San Francisco County*, 137 S.Ct. 1773, 1780 (2017); *World-Wide Volkswagen Corp*., 444 U.S. at 296-297; *Hanson v. Denckla*, 257 U.S. 235, 251, 253 (1958). Fabi Diana has not purposefully directed <u>any</u> activities at South Carolina and, therefore, there are not sufficient minimum contacts with South Carolina to render this Court's exercise of personal jurisdiction permissible under the Due Process Clause. *See Coggeshall*, 376 S.C. at 16, 655 S.E.2d at 478 ("Due process requires some act by which the defendant purposefully avails itself of the privilege of conducting activities within the forum state.")

The Supreme Court of South Carolina has consistently held the focus of the minimum contacts analysis must be on each defendant's own actions, not the "unilateral actions of some other entity." *Cockrell*, 363 S.C. at 492, 611 S.E.2d at 508–09 ("The foreseeability that is critical to due process analysis is not the mere likelihood that a product will find its way into the forum state. Rather, it is that the defendant's conduct and connection with the forum state are such that he should reasonably anticipate being haled into court there"); *S. Plastics Co*., 310 S.C. at 261,

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423 S.E.2d at 131 ("[T]he defendant's activities directed to a resident of this State must be its own and not the unilateral activities of some other entity."). Likewise, the United States Supreme Court has held the defendant's actions, not those of downstream manufacturers, are determinative in a minimum contacts analysis. *E.g., Asahi Metal Indus. Co. v. Superior Ct. of California, Solano Cty*., 480 U.S. 102, 112, 107 S.Ct. 1026, 1032, 94 L. Ed. 2d 92 (1987) ("The substantial connection… for a finding of minimum contacts must come about by *an action of the defendant purposefully directed toward the forum State*. The placement of a product into the stream of commerce, without more, is not an act of the defendant purposefully directed toward the forum State.") (internal quotations and citations omitted) (emphasis in original).

While Fabi Diana did sell refined and industrial talc, none of its sales were to South Carolina and it neither marketed nor advertised its products for sale in South Carolina. Exhibit A at ¶ 6, 17, 18, 19. Fabi Diana has also never shipped any products to South Carolina. As attested in Mr. Brown's affidavit, all products sold by Fabi Diana were delivered F.O.B. Origin, Freight Collect, Diana Township, New York. Exhibit A at ¶ 22. The buyer made all shipping arrangements, bore all shipping costs, took possession of the product, and assumed all risk of loss at Fabi Diana's loading dock in Diana Township, New York. Id. Even assuming, arguendo, that Fabi Diana's talc was later used by another unrelated entity as an ingredient in a final product that allegedly was later sold in South Carolina, specific jurisdiction does not exist where the independent, unilateral actions of a third party, rather than those of Fabi Diana, caused the talc to be incorporated into a final product that may have ended up in South Carolina. *See Cockrell*, 363 S.C. at 492, 611 S.E.2d at 508-09.

The Supreme Court of South Carolina examined the "stream of commerce" theory of personal jurisdiction in *State v. NV Sumatra Tobacco Trading, Co*., 379 S.C. 81, 666 S.E.2d 218

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(2008). The Court held that Sumatra, a foreign tobacco company who sold its products in the United States through a distributor, had sufficient minimum contacts and was, therefore, subject to personal jurisdiction in South Carolina because it: (1) admitted to manufacturing United brand cigarettes; (2) admitted it owned the United States trademark for that brand; (3) sold 6,868,000 United brand cigarettes in South Carolina in 2001; (4) filed an ingredient report for the United brand cigarettes; (5) admitted it packaged its cigarettes in packs and cartons bearing the United States-required health warnings; and (6) the United brand packaging identified the cigarettes as an "American blend," had a Surgeon General's warning, and showed an eagle and striped packaging. *NV Sumatra Tobacco Trading, Co*., 379 S.C. at 90, 666 S.E.2d at 223. Based on these facts, the Court held that even though Sumatra used an independent distributor it had "purposely availed itself of conducting business in all 50 states, including South Carolina" and that minimum contacts with South Carolina existed regardless of how the products arrived in the State. *Id.* The facts presented in the instant case are readily distinguished. Unlike the facts presented in Sumatra, Fabi Diana did not manufacture or sell a final product that was allegedly sold in South Carolina, and Fabi Diana had no control over the manufacture or distribution of the final product. The final product did not allegedly arrive in South Carolina through any efforts of Fabi Diana. *See Cockrell*, 363 S.C. at 494, 611 S.E.2d at 510. In addition, the concern present in Sumatra that a company located outside the United States could avoid suit in every state is not applicable here because Fabi Diana would be subject to jurisdiction in both North Carolina and New York.

Subsequent to the *Sumatra* holding, the United States Supreme Court examined the stream of commerce theory and, in a plurality opinion authored by Justice Kennedy, held that "[a] defendant's transmission of goods permits the exercise of jurisdiction only where the defendant can be said to have targeted the forum; as a general rule, it is not enough that the defendant might

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have predicted that its goods will reach the forum State." *J. McIntyre Mach., Ltd. v. Nicastro*, 564 U.S. 873, 882, 131 S. Ct. 2780, 2788, 180 L. Ed. 2d 765 (2011). Justice Bryer, in his concurring opinion, found jurisdiction lacking where there was no "regular flow or regular course of business in [the forum state]; and there is no "something more," such as a special state-related design, advertising, advice, marketing, or anything else" and the defendant had not "purposefully avail[ed] itself of the privilege of conducting activities within [the forum state], or that it delivered its goods in the stream of commerce with the expectation that they will be purchased by [forum state] users." *Id*. at 889 (Bryer, J. concurring) (internal citations and quotations mitted). The concurrence further stated disagreement with the concept that a party could be subject to jurisdiction in a products liability case "so long as it knows or reasonably should know that its products are distributed through a nationwide distribution system that might lead to those products being sold in any of the fifty states." *Id*. at 891 (Bryer, J. concurring) (internal citations and quotations omitted) (emphasis in original).

Applying the *J. McIntyre* Court's analysis to the facts here, it is readily apparent Fabi Diana lacks sufficient minimum contacts with South Carolina. Fabi Diana never marketed, sold, or shipped any products to South Carolina and did not engage a distributor to do so on its behalf and, therefore, cannot be said to have "targeted" the State. Fabi Diana did not sell any products with any intention or expectation that they would eventually be purchased by residents of South Carolina. Moreover, whether some other entity may have used Fabi Diana talc as an ingredient in a product that may have eventually been sold in South Carolina is irrelevant in determining whether Fabi Diana has minimum contacts with the State; the proper inquiry must focus solely on whether Fabi Diana directed its activities to residents of South Carolina. The facts here unequivocally show it did not. Absent a specific connection between Plaintiffs' claims, Fabi

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Diana's alleged conduct, and the State of South Carolina, there can be no specific jurisdiction over Fabi Diana.

Because Plaintiffs have not, and cannot, show that Fabi Diana has minimum contacts with South Carolina necessary for the exercise of personal jurisdiction to meet the requirements of due process, their claims against Fabi Diana must be dismissed.

3. The exercise of jurisdiction over Fabi LLC would be neither reasonable nor fair

When deciding whether specific jurisdiction exists, the Court must consider whether the exercise of jurisdiction over the party would be "reasonable" or "fair." *State v. NV Sumatra Tobacco Trading Co.*, 379 S.C. 81, 91 (2008) (citations omitted). Such considerations include

> (1) the duration of the activity of the nonresident within the state; (2) the character and circumstances of the commission of the nonresident's acts; (3) the inconvenience resulting to the parties by considering or refusing to confer jurisdiction over the nonresident; and (4) the State's interest in exercising jurisdiction.

Id. In this case, none of the fairness factors suggest it is reasonable to impose jurisdiction on Fabi LLC.

As mentioned above, Fabi Diana's has not transacted any business in South Carolina and there is not contact with South Carolina that relates to any facts of this case. In particular, Fabi Diana has never transacted business, contracted to supply services or goods or delivered any products to South Carolina. Exhibit at ¶¶ 17, 18, 23. Fabi Diana's business certainly cannot be properly characterized as having a character of circumstance that the exercise of jurisdiction would be either foreseeable, fair or reasonable in South Carolina as it has had no business contacts with the State.

In addition, the Complaint in this case indicates that Plaintiffs are not citizens or domiciled in South Carolina and Fabi Diana was likewise not domiciled in South Carolina. (FAC at ¶ 24;

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Exhibit A at ¶¶ 3-5.) The exercise of jurisdiction over Fabi, Diana will be inconvenient as it has no operations, employees, documents or other information related to this case in South Carolina and it will be forced to defend a case in a jurisdiction where it has no presence or facts that bind it to South Carolina. Plaintiffs share this inconvenience. They are domiciled in Tennessee. The suggestion that South Carolina is somehow more convenient is a dubious argument at best when they are not even residents of the State.

Lastly, South Carolina has minimal interest in the exercise of jurisdiction. South Carolina jurors and this Court will be required to expend time and resources to resolve a conflict between residents of foreign states for activities that happened largely outside of South Carolina. It is much more reasonable to have jurors and courts that are more centered around this litigation hear this case.

Overall, both fairness and reasonableness suggest that the exercise of jurisdiction over Fabi Diana would be inappropriate in this case.

III. PLAINTIFFS' CLAIMS ARE BARRED BY SOUTH CAROLINA'S DOOR CLOSING STATUTE.

All of Plaintiffs' causes of action against Defendant are barred by South Carolina's Door Closing Statute, which provides that:

> An action against a corporation created by or under the laws of any other state, government or country may be brought in the circuit court:
>
> (1) By any resident of this State for any cause of action; or
> (2) By a plaintiff not a resident of this State when the cause of action shall have arisen, or the subject of the action shall be situated within this State.

S.C. Code § 15-5-150.

The Door Closing Statute broadly applies to any "action" brought in a South Carolina circuit court against an out-of-state corporation and, therefore, applies to all of Plaintiffs' claims.

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Id. Summary judgment should be granted on all claims because: (1) Defendant is incorporated outside of South Carolina; (2) Plaintiffs are not residents of South Carolina, and (3) Plaintiffs have not produced any evidence that Sarah Plant was injured by any asbestos-containing product attributable to Defendant in South Carolina. Plaintiffs concede the first two points in the Complaint. (FAC ¶¶ 24, 51)

As to the third point, Subsection (2) of the Door Closing Statute provides that an out-of-state corporation may be sued in a circuit court by a non-resident plaintiff only when "the cause of action shall have arisen or the subject of the action shall be situated within the State." S.C. Code §15-5-150 (2). The South Carolina Supreme Court has explained that the statute is intended to allow resolution of wrongs connected with South Carolina "while avoiding the resolution of wrongs in which the State has little interest" and to encourage foreign corporation activity in the State "without subjecting them to actions unrelated to their activity within the State." *Murphy v. Owens-Corning Fiberglas Corp*., 356 S.C. 592, 597, 590 S.E.2d 479, 481 (2003) (quoting *Farmer v. Monsanto Corp.*, 353 S.C. 553, 558, 579 S.E.2d 325, 328 (2003)).

When analyzing subsection (2) of the Door-Closing Statute in an alleged exposure case, "the proper inquiry is whether the foreign corporation's activities that allegedly exposed the victim to the injurious substance, and the exposure itself, occurred within the State. If so, then the legal wrong was committed here." *Id.* at 598, 590 S.E.2d at 482. Summary judgment must be granted where, as here, Plaintiffs "failed to show any actionable exposure in South Carolina." *See Henderson v. Allied Signal, Inc.*, 373 S.C. 179, 185, 644 S.E.2d 724, 727 (2007). Whether there is "actionable exposure" is an inquiry that must be made for each defendant, and not on the case as a whole. *Id.* ("Due to the lack of evidence Mr. Henderson was exposed to the Respondents' asbestos containing products in South Carolina, we affirm the trial court's holding."). Thus, the

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inquiry here is whether Plaintiffs have proof of exposures within South Carolina which give rise to Plaintiffs' claims against Defendant. *See id.*; *Murphy*, 356 S.C. at 598, 590 S.E.2d at 482. As discussed below, Plaintiffs cannot meet the burden of showing actionable exposure in South Carolina to satisfy the *Henderson* standard. Thus, Plaintiffs' claims against Defendant are barred by South Carolina's Door Closing Statute and summary judgment is proper.

IV. PLAINTIFFS CANNOT SATISFY THE "FREQUENCY, REGULARITY AND PROXIMITY" REQUIREMENT UNDER SOUTH CAROLINA LAW.

To establish liability in an asbestos case, the plaintiff must present "evidence of exposure to a specific product on a regular basis over some extended period of time in proximity to where the plaintiff actually worked." *Lohrmann v. Pittsburg Corning, Corp.*, 782 F.2d 1156, 1162–63 (4th Cir. 1986). If the plaintiff does not present evidence showing the "frequency, regularity, and proximity" of exposure to a specific product manufactured by the defendant, summary judgment should be granted in favor of the defendant. *Henderson v. Allied Signal, Inc.,* 373 S.C. 179, 185, 644 S.E.2d 724, 727 (2007). There must be some evidence of exposure to a specific product on a regular basis over some extended period of time in proximity to the plaintiff. *Id.* Proximate cause is determined by proving more than a casual or minimum contact with the product containing asbestos in order to hold the manufacturer of that product liable. *Lohrmann,* 782 F.2d at 1163. One's mere "presence in the vicinity of static asbestos" does not constitute actionable exposure to asbestos. *Henderson*, 373 S.C. at 185, 644 S.E.2d at 727.

The basis of product liability law in this jurisdiction is that the plaintiff has the burden of proof in showing that he or she was exposed to a particular defendant's asbestos-containing product. *Ryan v. Eli Lilly & Co.*, 514 F. Supp. 1004, 1006 (D.S.C. 1981). In the present case, Plaintiffs are unable to meet that burden. As will be outlined further below, Plaintiffs simply do not have the requisite evidence to support the claims.

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A. Plaintiffs Have Failed to Establish Defendant Proximately Caused Sarah Plant's Injury.

Under South Carolina law, a "products liability case may be brought under several theories, including negligence, strict liability, and warranty." *Rife v. Hitachi Constr. Mach. Co.*, 363 S.C. 209, 609 S.E.2d 565, 568 (2005). Regardless of the particular theory under which the plaintiff proceeds, he must establish "(1) that he was injured by the product; (2) that the product, at the time of the accident, was in essentially the same condition as when it left the hands of the defendant; and (3) that the injury occurred because the product was in a defective condition unreasonably dangerous to the user." *Holst v. KCI Konecranes Int'l Corp.*, 390 S.C. 29, 699 S.E.2d 715, 719 (2010). Plaintiffs must show more than mere speculation, but must also show that a particular product contained asbestos, that plaintiff breathed in that asbestos and that it caused disease and/or death. *See Pace v. Air & Liquid Systems Corp.*, 624 Fed. Appx. 244 (4th 2016).

Further a plaintiff's exposure to asbestos must be more than a casual or minimal exposure. Citing the *Lohrmann* decision, the Court in *Henderson* explained the standard as follows:

> To support a reasonable inference of substantial causation from circumstantial evidence, there must be evidence of exposure to a specific product on a regular basis over some extended period of time in proximity to where the plaintiff actually worked.

Henderson, 373 S.C. at 185, 644 S.E.2d at 727.

Here, there is no testimony that Sarah Plant was exposed to asbestos-containing products attributable to Defendant. The case law is clear, in order for a Defendant to be held liable, plaintiff must prove exposure to a *specific* product on a *regular* basis. Plaintiffs are simply unable to do so in the present case.

Because Plaintiffs have failed to put forth any evidence to show that Sarah Plant was exposed to any product attributable to Defendant, Plaintiffs have failed to meet their burden. Here,

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even assuming that Plaintiffs are later able to present some evidence that a product attributable to Defendant was used by Sarah Plant, and that such product contained asbestos, that evidence would not be enough to withstand summary judgment because plaintiff "must prove more than a casual or minimum contact with the product containing asbestos in order to hold the manufacturer of that product liable." *Jones v. Owens-Corning Fiberglas Corp.*, 69 F.3d 712, 716 (4th Cir. 1995). Thus, in order to meet the requirements of *Lohrmann*, Plaintiffs must present evidence of significant exposures. No such evidence has been proffered by the Plaintiffs in this case against Defendant.

As of the time specified for filing summary judgment motions in this case, there is no evidence establishing that asbestos was in or released from any product attributable to Defendant and which was inhaled by Sarah Plant. For the above stated reasons, Defendant is entitled to summary judgment as a matter of law.

B. There Is No Evidence to Establish Sarah Plant Was Exposed to Asbestos from Any Product Attributable to Defendant.

Under the *Lohrmann* test, "[t]o support a reasonable inference of substantial causation from circumstantial evidence, there must be evidence of exposure to a specific product on a regular basis over some extended period of time in proximity to where the plaintiff actually worked." *Lohrmann*, 782 F.2d 1156, 1162–63. The Supreme Court of South Carolina has adopted a standard that in order to support a reasonable inference of substantial causation from circumstantial evidence, there must be evidence of exposure to a specific product on a regular basis over an extended period of time in proximity to where plaintiff actually worked. *Henderson*, 373 S.C. at 185, 644 S.E.2d at 727. In order to recover against Defendant, Plaintiffs must present some evidence that Sarah Plant was substantially exposed to asbestos from an asbestos-containing product for which Defendant is legally responsible. In this case, Plaintiffs cannot.

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The evidence in this case does not pass the *Lohrmann* test. A complete review of the evidence submitted by Plaintiffs shows there is no evidence that would support a finding under the "frequency, regularity and proximity test." For the above reasons, Defendant is entitled to summary judgment as a matter of law.

V. PLAINTIFFS' REMAINING CLAIMS FAIL AS A MATTER OF LAW.

A. Post-Sale Duty to Warn

While the above arguments are sufficient to warrant summary judgment for Defendant as to all of Plaintiffs' claims, alternatively, specific claims should be dismissed for independent reasons.

South Carolina does not recognize a post-sale duty to warn or retrofit. *See Bragg, supra*; *Andrews v. CBS Corp.*, No. 2:13-CV-2055-RMG, 2015 WL 12831309, at *1 (D.S.C. June 24, 2015). In *Bragg*, the court stated that a product must be "measured against a standard existing at the time of sale or against reasonable customer expectations held at the time of sale." *Bragg*, 462 at 331. Even if it is assumed that Defendant sold products used by Sarah Plant, there is no evidence that any product for which Defendant is responsible, was defective at the time it left Defendant's control. Further, Defendant would have been under no duty to retrofit or warn of any dangers that were not present at the time of shipping. As such, any claims against Defendant based on a post-sale duty to warn must fail as a matter of law.

B. Implied Warranty of Merchantability

Plaintiffs seek damages based on alleged breach of implied warranty under S.C. Code Ann. § 36-2-314. Section 36-2-314 states:

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(1) Unless excluded or modified (§ 36-2-316), a warranty that the goods shall be merchantable is implied in a contract for their sale if the seller is a merchant with respect to goods of that kind.

(2) Goods to be merchantable must be at least such as:

(a) pass without objection in the trade under the contract description; and

(b) in the case of fungible goods, are of fair average quality within the description; and

(c) are fit for the ordinary purposes for which such goods are used; and

(d) run, within the variations permitted by the agreement, of even kind, quality and quantity within each unit and among all units involved; and

(e) are adequately contained, packaged, and labeled as the agreement may require.

(3) Unless excluded or modified (§ 36-2-316), other implied warranties may arise from course of dealing or usage of trade.

In this case, Plaintiffs have failed to put forth evidence that a product attributable to Defendant was in a defective, unreasonably dangerous condition, or that it was in the same condition at the time of the alleged injury. As a result, there is no genuine issue of material fact regarding Plaintiffs' claim for breach of implied warranty against Defendant and, as such, Defendant is entitled to summary judgment as a matter of law.

C. Fraudulent Misrepresentation

The Court should dismiss Plaintiffs' cause of action for false or fraudulent misrepresentation. Rule 9(b) requires Plaintiffs to plead the circumstances constituting fraud with particularity. The Fourth Circuit held that the facts required to be pled with particularity under

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Rule 9(b) are "the time, place, and contents of the false representations, as well as the identity of the person making the misrepresentation and what he obtained thereby." *Harrison v. Westinghouse Savannah River Co.,* 176 F.3d 776, 784 (4th Cir.1999), citing, 5 Charles Alan Wright and Arthur R. Miller, FEDERAL PRACTICE AND PROCEDURE: CIVIL § 1297, at 590 (2d ed.1990). This is especially critical when a complaint asserts claims against multiple defendants.

Rule 9(b) has four purposes: 1) it ensures that the defendant has sufficient information to formulate a defense by putting it on notice of the conduct complained of; 2) to protect defendants from frivolous suits; 3) to eliminate fraud actions in which all the facts are learned after discovery; and 4) to protect defendant from harm to their goodwill and reputation. *Id.*

In order to plead a proper claim for fraudulent misrepresentation in South Carolina, a plaintiff must allege *with particularity*: (1) a representation; (2) falsity of representation; (3) materiality of representation; (4) the defendant's knowledge of the falsity of the representation or reckless disregard of its truth or falsity; (5) defendant's intent that the representation should be acted upon; (6) the hearer's ignorance of the falsity; (7) hearer's reliance on the truth of the representation; (8) hearer's right to so rely; and (9) the hearer's consequent and proximate injury to plaintiff. *DeHart v. Dodge City of Spartanburg, Inc.*, 311 S.C. 135, 427 S.E.2d 720 (Ct. App. 1993); *M. B. Kahn Const. Co., Inc. v. South Carolina Nat. Bank of Charleston*, 275 S.C. 381, 271 S.E.2d 414 (1980). Failure to properly plead any of these elements with particularity is fatal to Plaintiff's fraud claim. *Ardis v. Cox*, 314 S.C. 512, 515, 431 S.E.2d 267, 269 (Ct. App. 1993).

More importantly, when a fraud claim involves multiple defendants, the complaint must also state with particularity each defendant's role in the alleged fraud. *Mincey v. World Savings Bank, FSB*, 614 F. Supp. 2d 610, 627 (D.S.C. 2008). Plaintiffs failed to identify with particularity any facts specific to any of the numerous Defendants. Plaintiffs have not pled or put forth any

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evidence that even begins to inform Defendant of its role in the alleged fraud, let alone allege, with particularity, any facts to support the elements required by South Carolina law.

In *Mincey,* the District Court dismissed a fraud claim under Rule 9(b), where the plaintiffs failed to allege fraud with particularity and simply "lumped all defendants together in a manner that is impermissible for purposes of Rule 9(b)." *See also*, *Vicom, Inc. v. Harbridge Merch. Servs., Inc.,* 20 F.3d 771, 778 (7th Cir. 1994), quoting *Di Vittorio v. Equidyne Extractive Indus.,* 822 F.2d 1242, 1247 (2d Cir. 1987) ("where multiple defendants are asked to respond to allegations of fraud, the complaint should inform each defendant of the nature of his alleged participation in the fraud); *Goldstein v. Malcolm G. Fries & Assocs., Inc.,* 72 F. Supp. 2d 620, 627 (E.D. Va. 1999) ("A plaintiff may not group all wrongdoers together in a single set of allegations.")

Here, Plaintiffs simply lumped all Defendants together and restated the elements of a fraudulent misrepresentation claim without setting forth any particularized allegations against Defendant as required by Rule 9(b). Plaintiffs also have not produced any evidence to support this claim.

As discussed above, an action for fraudulent misrepresentation is predicated on a false statement. Plaintiffs have not produced any evidence to support this claim. Plaintiffs have no proof of what representations were allegedly made, when they occurred, how they occurred, how Defendant allegedly knew or recklessly disregarded the alleged falsity of the representations, how or when Sarah Plant relied on them, what basis she had to rely on them, or even how Defendant knew that any such representation was false. Therefore, Defendant is entitled to summary judgment on this claim.

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D. Strict Liability

A cause of action resting upon strict liability under South Carolina's strict liability statute does not exist where a product entering the stream of commerce prior to July 9, 1974, is alleged to have caused injury thereafter. *Schall v. Sturm, Ruger Co.*, 278 S.C. 646, 650, 300 S.E.2d 735, 737 (1983). South Carolina did not recognize strict liability until it adopted the strict liability statute on July 9, 1974. To bring a strict liability claim against Defendant, Plaintiffs must show that Sarah Plant was: (1) exposed to an asbestos-containing product; (2) manufactured by Defendant; and (3) that was placed in the stream of commerce after July 9, 1974. Here, Plaintiff has failed to do so. As discussed, there is no evidence in the record that Sarah Plant was exposed to any asbestos-containing product attributable to Defendant.

Without proof that Sarah Plant was exposed to asbestos from a product attributable to Defendant and said product was placed in the stream of commerce after July 9, 1974, Plaintiffs cannot establish a strict liability claim under South Carolina law. *Id.* Therefore, Defendant must be granted summary judgment on Plaintiffs' strict liability action.

CONCLUSION

Defendant is entitled to summary judgment based on any one of three grounds: 1) the Court lacks personal jurisdiction over Defendant; 2) Plaintiffs' claims are barred by South Carolina's Door Closing Statute; and 3) Plaintiffs are unable to meet the burden to prove that Sarah Plant was exposed to asbestos from any product for which Defendant is alleged to be responsible. There is no basis to establish that Defendant breached any duty owed to Plaintiffs, or that any acts or omissions by Defendant served as a proximate cause of Sarah Plant's alleged asbestos-related disease. For these reasons, Defendant respectfully requests that this Honorable Court enter an Order granting its Motion for Summary Judgment, and that all claims be dismissed.

Respectfully submitted this, the 13th day of January, 2023.

WOMBLE BOND DICKINSON (US) LLP

s/ M. Elizabeth O'Neill
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EXHIBIT A

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STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF RICHLAND	)	FOR THE FIFTH JUDICIAL CIRCUIT
SARAH J. PLANT and	)	C/A NO. 2022-CP-40-01265
PARKER PLANT	)	
	)	
Plaintiffs,	)	
v.	)	
	)	
AVON PRODUCTS, INC., et al.	)	
	)	
Defendants.		

AFFIDAVIT OF MICHAEL BROWN IN SUPPORT OF SPECIALLY APPEARING DEFENDANT IMI FABI (DIANA), LLC'S MOTION TO DISMISS FOR LACK OF PERSONAL JURISDICTION

I, MICHAEL BROWN, declare as follows:

1. My name is Michael Brown. I am over the age of eighteen years old (18) and I am competent to give this Affidavit.

2. I am the Former General Manager of IMI Fabi (Diana) LLC and current caretaker (hereinafter referred to as "Fabi Diana"). I make the following statements based upon my own personal knowledge, and, if called as a witness, could and would testify competently to such facts under oath.

3. On November 20, 2001, IMI Fabi (Diana) LLC was organized under the laws of North Carolina as a limited liability company.

4. IMI Fabi (Diana) LLC operated until December 31, 2004, when it closed its operations.

5. Fabi Diana's principal and only place of business was located in Diana Township, New York.

6. Fabi Diana sold refined talc to the cosmetic, personal care, pharmaceutical, food industries, and industrial talc used for the manufacture of various products.

7. Fabi Diana has never been licensed to do business in South Carolina.

8. Fabi Diana has never had a registered agent in South Carolina.

9. Fabi Diana has never owned or operated any manufacturing, sales, or distribution facilities in South Carolina.

10. Fabi Diana has never had any employees working or residing in South Carolina.

11. Fabi Diana has never recruited any South Carolina residents, directly or through an intermediary located in the State of South Carolina, for employment inside or outside of the State of South Carolina.

12. Fabi Diana has never had a mailing address, post office box, or bank account in South Carolina.

13. Fabi Diana has never owed or paid corporate taxes in South Carolina.

14. Fabi Diana has never had insurance policies, which afford coverage of any kind for specific entities located in South Carolina.

15. Fabi Diana has never paid sales tax to South Carolina.

16. Fabi Diana has never invested any dollars in business operations in South Carolina because it has never had business operations in any state other than New York.

17. Fabi Diana has never transacted any business in the State of South Carolina.

18. Fabi Diana has never contracted to supply services or goods in the State of South Carolina.

19. Fabi Diana has never marketed or advertised its products in the State of South

Carolina.

20. Fabi Diana has not received tax deductions as a result of contributions made to any organizations in the State of South Carolina.

21. Fabi Diana has never received any business incentives or tax credit from the State of South Carolina to conduct business in South Carolina.

22. Until Fabi Diana closed its facility in Diana Township, New York, all products sold by Fabi Diana were delivered F.O.B. Origin, Freight Collect, Diana Township, New York. In every instance, the Buyer made all of the arrangements for the shipment of the products off of Fabi Diana's premises. In every instance, possession of the product bought from Fabi Diana and the risk of loss in transit transferred from Fabi Diana to the Buyer at the Fabi Diana loading dock in Diana Township, New York. In every instance, the Buyer paid for and bore the freight charges. In every instance, the Buyer, not Fabi Diana, filed claims (if any) if the product was damaged, destroyed, or lost in transit.

23. Consequently, Fabi Diana has never delivered any products in the State of South Carolina.

24. Fabi Diana has never appeared in a case in South Carolina, including but not limited to, any matrimonial actions or family court proceedings.

25. Fabi Diana has never had an interest in, using or possessing real property in the State of South Carolina.

26. Fabi Diana has never owned, used, possessed, or held a mortgage or other lien on any real property in the State of South Carolina.

27. Fabi Diana has never owned, leased, or operated any real property or any offices in South Carolina.

28. Fabi Diana has never paid real estate tax to any municipality or town in South Carolina.

29. Fabi Diana has never owned a motorized vehicle registered in South Carolina and has never paid any automobile excise tax to any municipality or town located in South Carolina.

30. Fabi Diana has never owned a water vessel (boat) registered in South Carolina and has never paid any boat excise tax to any municipality or town located in South Carolina.

31. Fabi Diana has never acquired ownership, possession or control of any asset or thing of value present within the State of South Carolina.

32. Fabi Diana has had no contracts, by mail or otherwise, with a South Carolina resident to be performed in the State of South Carolina.

33. Fabi Diana has never had any affiliates, subsidiaries or corporately related companies in the State of South Carolina, or elsewhere.

34. Fabi Diana has never entered into any franchise agreements between it and any entities licensed to do business in South Carolina.

35. Fabi Diana has never had actual or constructive knowledge that its products would be used in whole or in part as an ingredient in a cosmetic product manufactured, sold or distributed in South Carolina.

36. Fabi Diana has never mined, milled, processed, tested, screened, analyzed, blended, supplied and/or distributed talc in South Carolina.

37. Fabi Diana has never manufactured, sold, or distributed any products in the State of South Carolina.

38. Fabi Diana has never shipped any products to the State of South Carolina.

39. Fabi Diana has never operated, conducted, engaged in, or carried on a business or business venture in the State of South Carolina.

40. Fabi Diana has never had an office or agency in the State of South Carolina.

41. Fabi Diana has never committed a tortious act in whole or in part in the State of South Carolina.

42. Fabi Diana has never caused tortious injury or death to persons or property within the State of South Carolina arising out of an act or omission committed outside the State of South Carolina.

43. Fabi Diana has never engaged in solicitation or service activities within the State of South Carolina.

44. Fabi Diana has never entered into a contract or breached a contract in the State of South Carolina or that is to be performed in whole or in part in the State of South Carolina.

45. Fabi Diana has never contracted to insure any person, property or risk located within the State of South Carolina at the time of contracting.

46. Fabi Diana has never produced, manufactured, or distributed goods with the reasonable expectation that those goods are to be used or consumed in the State of Carolina, and are so used or consumed.

I declare under penalty of perjury under the laws of the State of South Carolina that the foregoing is true and correct and that this declaration was executed on June 22, 2022 at Diana Township, New York.

Mark P. Ozimek

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SWORN TO AND SUBSCRIBED BEFORE ME,
ON THIS THE 7th DAY OF JUNE, 2022.

NOTARY PUBLIC

PRINT NAME: Megan Brotherton

BAR/NOTARY NUMBER: 01BR6392543

Megan Brotherton
NOTARY PUBLIC, STATE OF NEW YORK
Registration No. 01BR6392543
Qualified in Jefferson County
Commission Expires 05/28/2023

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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., et al., Defendants.	)))))))))	Civil Action No. 2022 CP 40 01265 **IMI FABI (USA) INC.'S MOTION FOR SUMMARY JUDGMENT**

Defendant IMI Fabi (USA) Inc. ("Defendant"), moves for an order granting summary judgment pursuant to Rule 56 of the South Carolina Rules of Civil Procedure on the grounds that there are no genuine issues of material fact and summary judgment is appropriate as a matter of law.

Specifically, the Court lacks personal jurisdiction over Defendant.[1] Further, Plaintiffs' claims are barred by South Carolina's Door Closing Statute. In addition, Plaintiffs cannot meet the threshold requirements of actionable asbestos exposure identified in *Lohrmann v. Pittsburgh Corning Corp.*, 782 F.2d 1156, 1162–63 (4th Cir. 1986), *Henderson v. Allied Signal*, 373 S.C. 179, 644 S.E.2d 724 (2007) and like cases, such that there is no genuine issue of material fact and Defendant is entitled to judgment as a matter of law.

This motion is also made on additional alternative grounds that there is no proof supporting particular individual causes of action, as described in the Memorandum of Law filed in support of this motion. Further, choice of law issues may exist in this case and Defendant submits this Motion

[1] On May 13, 2022, Defendant filed a Motion to Dismiss for Lack of Personal Jurisdiction. On July 13, 2022, Defendant filed its Memorandum in Support of Motion to Dismiss for Lack of Personal Jurisdiction with supporting affidavit. Defendant incorporates its prior Motion to Dismiss, supporting memorandum and affidavit herein in support of its current Motion for Summary Judgment.

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without waiver of any rights to raise choice of law issues in the event that it becomes relevant. *See Rogers v. Lee,* 414 S.C. 225, 230, 777 S.E.2d 402, 405 (Ct. App. 2015); *Boone v. Boone,* 345 S.C. 8, 13, 546 S.E.2d 191, 193 (2001). This motion is supported by the Affidavit of Patrizia Zuppini attached as Exhibit A. This motion is further supported by the pleadings that have been filed in this action, discovery conducted or to be conducted in the future, depositions taken and yet to be taken in this case, the attached Memorandum of Law in Support of Defendant's Motion for Summary Judgment, the South Carolina Rules of Civil Procedure, arguments of counsel, and applicable common and statutory law.

Respectfully submitted this, the 13th day of January, 2023.

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STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF RICHLAND	)	FOR THE FIFTH JUDICIAL CIRCUIT
SARAH J. PLANT and PARKER PLANT, Plaintiffs, v. AVON PRODUCTS, INC., et al., Defendants.	)	Civil Action No. 2022 CP 40 01265 **IMI FABI (USA) INC.'S MEMORANDUM OF LAW IN SUPPORT OF MOTION FOR SUMMARY JUDGMENT**

Defendant IMI Fabi (USA) Inc. ("Defendant" or "Fabi USA"), pursuant to Rule 56 of the South Carolina Rules of Civil Procedure, respectfully submits this Memorandum of Law in Support of its Motion for Summary Judgment.

Defendant is entitled to judgment on all claims because: 1) the Court lacks personal jurisdiction over Defendant;[1] 2) Plaintiffs' claims are barred by South Carolina's Door Closing Statute; and 3) Plaintiffs do not have evidence that Sarah Plant was exposed to any product attributable to Defendant, let alone evidence of exposure to asbestos-containing products, with the "frequency, regularity and proximity" required by the South Carolina Supreme Court in *Henderson v. Allied Signal*, 373 S.C. 179, 644 S.E.2d 724 (2007), to establish causation. Alternatively, for the reasons detailed below, Defendant is entitled to summary judgment on specific claims.

[1] On May 13, 2022, Defendant filed a Motion to Dismiss for Lack of Personal Jurisdiction. On July 13, 2022, Defendant filed its Memorandum in Support of Motion to Dismiss for Lack of Personal Jurisdiction with supporting affidavit. Defendant incorporates its prior Motion to Dismiss, supporting memorandum and affidavit herein in support of its current Motion for Summary Judgment.

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STATEMENT OF FACTS

Plaintiffs allege that Sarah Plant was diagnosed with mesothelioma from exposure to various asbestos-containing talc products. (First Amended Complaint (FAC) ¶ 1, 6, 24, 25) Plaintiffs' causes of action against Defendant are negligence, strict liability, breach of implied warranty of merchantability, fraudulent misrepresentation, and loss of consortium.

Mr. and Ms. Plant were deposed and did not testify to exposure to any alleged asbestos-containing product attributable to Defendant. The depositions of Ms. Plant's parents, Patrice and Eric Johnson, have been taken and they did not testify to exposure to any alleged asbestos-containing product attributable to Defendant. There has been no other relevant fact witness depositions taken in this case. As such, there is no evidence that Sarah Plant was exposed to asbestos from a product allegedly attributable to Defendant at all, let alone on a regular, frequent and proximate basis.

Plaintiffs' First Amended Complaint alleges that Plaintiffs are currently residents of Tennessee and that Sarah Plant developed mesothelioma as the result of exposure to various asbestos-containing talc products in several states, including South Carolina. (First Amended Complaint (FAC at ¶ 1, 6, 24, 25.) Plaintiffs do not assert that Fabi USA is a South Carolina limited liability company or that its principal place of business was ever in South Carolina. (FAC at ¶ 52.) Rather, Plaintiffs assert generally that this Court has personal jurisdiction over all Defendants because Plaintiffs' claims arise from Defendants' conduct in (a) transacting business in the 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; and (d) having an interest in, using, or possessing real property in this State. Further, Plaintiffs allege generally that "all" defendants "purposefully

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availed themselves of the privilege of doing business in this State" and engaged in "substantial and/or systematic business in South Carolina." (FAC at ¶ 2, 5)

Specifically as to Fabi USA, Plaintiffs list it as a "Product Defendant" and allege Ms. Plant was exposed to asbestos-containing talc "mined . . . processed . . . imported . . . supplied ... and or retailed" by Fabi USA. Plaintiffs further allege that their claim against Fabi USA arises out of Fabi USA's "business activities" and Ms. Plant's exposure to Fabi USA products in the State of South Carolina as well as other states. (FAC at ¶ 51)

However, as attested to in the Affidavit of Patrizia Zuppini ("Ms. Zuppini"), attached to Defendant's Motion for Summary Judgment as Exhibit A, these jurisdictional allegations as to Fabi USA are unsupported by fact. Ms. Zuppinni's Affidavit sets forth the following relevant facts on the issue of personal jurisdiction:

- Ms. Zuppini is the Vice President of IMI Fabi (USA), Inc. (Exhibit A at ¶ 2.)
- Fabi USA is a Delaware corporation. It is not qualified to transact business in any other jurisdiction. (Exhibit A at ¶ 3, 6)
- Fabi USA's sole business is to hold all membership interest in IMI Fabi, LLC. Fabi USA has no business or operations, and it holds no other property or assets. Fabi USA has never owned or operated any manufacturing, sales, or distribution facilities in any state. It has never had a registered agent in any state other than Delaware. It has never sold any product. (Exhibit A at ¶¶ 3, 4, 5, 17.)
- Fabi USA has never had a mailing address, post office box, or bank account in South Carolina; transacted business in South Carolina; contracted to supply services or goods in South Carolina; marketed or advertised products in South Carolina; or delivered any products in South Carolina. (Exhibit A at ¶¶ 8, 12, 13, 14, 18.)

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- Fabi USA has never had an interest in, used, or possessed real property in South Carolina; owned, used, possessed, or held a mortgage or other lien on any real property in South Carolina; or owned, leased, or operated any real property or any offices in South Carolina. (Exhibit A at ¶¶ 20, 21, 22.)
- Fabi USA has never had any contracts with a South Carolina resident to be performed in South Carolina; entered into a contract or breached a contract in South Carolina or that is to be performed in whole or in part in South Carolina; or contracted to insure a person, property, or risk located in South Carolina. (Exhibit A at ¶¶ 27, 38, 39.)
- Fabi USA has never mined, milled, processed, tested, screened, analyzed, blended, supplied, and/or distributed talc in South Carolina; manufactured, sold, or distributed any products in South Carolina; shipped any products to South Carolina; engaged in solicitation or service activities in South Carolina; produced, manufactured, or distributed goods with the reasonable expectation that those goods were to be used in South Carolina. (Exhibit A at ¶¶ 30, 31, 32, 37, 40.)
- Fabi USA has never committed a tortious act in whole or in part in South Carolina and has never caused tortious injury or death to persons or property within South Carolina arising out of an act or omission committed outside of South Carolina. (Exhibit A at ¶¶ 35, 36.)

Accordingly, this Court lacks jurisdiction over Fabi USA. Further, as detailed below, there is no evidence in the record to raise an issue of material fact that Sarah Plant was exposed to asbestos from any product attributable to Defendant.

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STANDARD OF REVIEW

In South Carolina, summary judgment is appropriate when there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law. *Shaw v. City of Charleston*, 351 S.C. 32, 567 S.E.2d 530 (2002). Under Rule 56(c) of the South Carolina Rules of Civil Procedure, summary judgment "shall be rendered forthwith if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact." Rule 56(c), SCRCP. In determining whether any triable issues of fact exist, the evidence and all inferences which can be reasonably drawn [therefrom] must be viewed in the light most favorable to the non-moving party." See *Shaw,* 351 S.C. at 38, 567, S.E.2d at 534. The burden is on the moving party to demonstrate the absence of a genuine issue of material fact. *Baughman v. American Tel. & Tel Co.*, 306 S.C. 101, 115, 410 S.E.2d 537, 545 (1991). An important distinction to make is that the moving party's burden is not to disprove the claims, but to instead show that the plaintiff has no evidence to support his claims. *Id*.

In order to avoid summary judgment, a non-moving party must demonstrate a genuine existence of triable issues on all essential elements of his case. See *Celotex Corp. v. Catrett*, 477 U.S. 317 (1986). A non-moving party must go beyond the pleadings, as "summary judgment should be granted when plain, palpable and undisputable facts exist on which reasonable minds cannot differ." *Nations Bank v. Scott Farm*, 320 S.C. 299, 302–03, 465 S.E.2d 98, 100 (1995).

In the present case, Plaintiffs have not produced sufficient evidence to establish jurisdiction or the elements necessary to pursue and prove the claims against Defendant. Therefore, Defendant is entitled to summary judgment.

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ARGUMENT

I. CHOICE OF LAW.

Under South Carolina choice of law principles, the substantive law governing a tort action is determined by the state in which the injury occurred, commonly referred to as the *lex loci delicti* rule. *Rogers v. Lee*, 414 S.C. 225, 230, 777 S.E.2d 402, 405 (Ct. App. 2015); *Boone v. Boone*, 345 S.C. 8, 13, 546 S.E.2d 191, 193 (2001). South Carolina law provides that *lex loci delicti* is determined by the state in which the injury occurred, not where the results of the injury were felt or where the damages manifested themselves. *Rogers,* 414 S.C. at 231. In this case, the Court should apply the substantive law of the state where the exposure occurred. *See also, Bannister v. Hertz Corp.*, 316 S.C. 513, 450 S.E.2d 629 (Ct.App.1994)(applying North Carolina law); *Dawkins v. State*, 306 S.C. 391, 412 S.E.2d 407 (1991) (applying Georgia law); *Oshiek v. Oshiek*, 244 S.C. 249, 136 S.E.2d 303 (1964) (applying Georgia law); *Woolard v. Carrier Corp.*, No. 1:18CV410, 2020 WL 2572278, n.2 (M.D.N.C. May 21, 2020) (applying North Carolina law because the asbestos exposure occurred in North Carolina); *Cox v. AGCO Corp.*, No. 4:16-CV-00084-M, 2020 WL 3473636, at *4 (E.D.N.C. June 25, 2020) (same).

Plaintiffs allege exposure occurred in various states, although there is no evidence to date as to any exposure to a product attributable to Defendant. Plaintiffs have not put forth any evidence to show that Sarah Plant was exposed to any asbestos attributable to Defendant in South Carolina (or any other state). Accordingly, the law of other states may apply in this case and Defendant submits this motion without waiver of any rights to raise choice of law issues and expressly preserves its rights regarding the same.

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II. THIS COURT LACKS PERSONAL JURISDICTION OVER DEFENDANT.

This Court has neither general jurisdiction nor specific jurisdiction over Fabi USA. General jurisdiction does not exist as Fabi USA is not a South Carolina corporation, does not have a principal place of business in South Carolina and has no enduring relationship with South Carolina. Without such facts, Fabi USA is not "at home" in South Carolina and general jurisdiction does not exist.

In addition, there is no specific jurisdiction over Fabi USA. Fabi USA has virtually no contact with South Carolina and any contact with South Carolina has no relation to this case or Plaintiffs' causes of action. This lack of contact is insufficient to establish the required "minimum contacts" with South Carolina to exercise personal jurisdiction. In addition, it would be neither reasonable nor fair to exercise jurisdiction considering Fabi USA has virtually no contact with South Carolina and certainly no contact has any relation to the allegations of wrongdoing in Plaintiff's Complaint.

A. Legal Standard

"The question of personal jurisdiction over a nonresident defendant is one which must be resolved upon the facts of each particular case." *Cockrell v. Hillerich & Bradsby Co*., 363 S.C. 485, 491, 611 S.E.2d 505, 508 (2005). "The party seeking to invoke personal jurisdiction over a non-resident defendant . . . bears the burden of establishing jurisdiction." *Power Prods. & Servs. Co., Inc. v. Kozma*, 379 S.C. 423, 430, 665 S.E.2d 660, 664 (Ct. App. 2008). At the pretrial stage, plaintiffs may meet their burden of proving personal jurisdiction over a nonresident defendant by a prima facie showing of jurisdiction either (1) in the complaint or (2) in affidavits. *See Cockrell*, 363 S.C. at 491, 611 S.E.2d at 508; *Sullivan v. Hawker Beechcraft Corp*., 397 S.C. 143, 150, 723 S.E.2d 835, 839 (Ct. App. 2012). However, a plaintiff must allege *specific facts* to establish the

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contacts necessary to invoke either general or specific jurisdiction. *See Power Prods. & Servs. Co. Inc.*, 379 S.C. at 433–36, 665 S.E.2d at 665–67 (affirming trial court's dismissal based on lack of personal jurisdiction because plaintiff did not establish facts—either through the complaint or affidavits—to confer jurisdiction). Conclusory allegations will not suffice. *Id*. at 433–35, 665 S.E.2d at 665–66. Moreover, "[w]hen a motion to dismiss attacks the allegations of the complaint on the issue of jurisdiction, the court is not confined to the allegations of the complaint but may resort to affidavits or other evidence to determine jurisdiction." *Sullivan*, 397 S.C. at 150, 723 S.E.2d at 839 (quoting *Coggeshall v. Reprod. Endocrine Assocs. of Charlotte*, 376 S.C. 12, 16, 655 S.E.2d 476, 478 (2007)).

"Personal jurisdiction is exercised as either 'general jurisdiction' or 'specific jurisdiction.'" *Coggeshall*, 376 S.C. at 16, 655 S.E.2d at 478. "General jurisdiction is the State's right to exercise personal jurisdiction over a defendant even though the suit does not arise out of or relate to the defendant's contacts with the forum . . . ; general jurisdiction is determined under S.C. Code Ann. §36-2-802…." *Id*. "Specific jurisdiction is the State's right to exercise personal jurisdiction because the cause of action arises specifically from a defendant's contacts with the forum . . . ; specific jurisdiction is determined under S.C. Code Ann. § 36-2-803…." *Id*. The exercise of personal jurisdiction under either statute must comport with due process requirements and must not offend traditional notions of fair play and substantial justice. *Id*. Due process requires some act by which the defendant purposefully avails itself of the privilege of conducting activities within the forum state. *Id*.

Further, due process mandates that the defendant possess sufficient minimum contacts with the forum state, so that it could reasonably anticipate being haled into court there. *Cockrell*, 363, S.C. at 491-492, 611 S.E.2d at 508 (citing *World-Wide Volkswagen Corp. v. Woodson*, 444 U.S.

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286 (1980)). Without minimum contacts, the Court does not have the "power" to adjudicate the action. *Cockrell*, 363 S.C. at 492, 611 S.E.2d at 508. Finally, the Court must also find that the exercise of jurisdiction is "reasonable" or "fair." *Id*.

The Court must assess individually each defendant's contacts with South Carolina. *Cockrell*, 363 S.C. at 492, 611 S.E.2d at 508 (citing *Rush v. Savchuk*, 444 U.S. 320 (1980)). The focus of the Court's analysis must center on the contacts generated by the defendant, not on the unilateral actions of some other entity. *Cockrell*, 363 S.C. at 492, 611 S.E.2d at 508-509 (citing *Helicopteros Nacionales de Colombia, S.A. v. Hall*, 466 U.S. 408 (1984) (holding "unilateral activity of another party or a third person is not an appropriate consideration")). The foreseeability that is critical to due process analysis is not the mere likelihood that a product could find its way into the forum state. Rather, it is that the defendant's own conduct and connections with the forum state are such that he should reasonably anticipate being haled into court there. *Cockrell*, 363 S.C. at 492, 611 S.E.2d at 509 (citing *World-Wide Volkswagen Corp*., 444 U.S. at 297).

Here, the Court has neither general nor specific jurisdiction over Fabi USA and, therefore, Fabi USA is entitled to summary judgment.

B. Fabi USA is Not Subject to General Jurisdiction in South Carolina.

Fabi USA is not incorporated in South Carolina, does not maintain its principal place of business in South Carolina, and does not have such substantial contacts that it is "at home" in South Carolina; therefore, it is not subject to general personal jurisdiction in this State.

A court may assert general jurisdiction over foreign corporations when their affiliations with the forum state "are so 'continuous and systematic' as to render them essentially at home in the forum State." *Daimler AG v. Bauman*, 571 U.S. 117, 127 (2014) (quoting *Goodyear Dunlop Tires Operations, S.A. v. Brown*, 564 U.S. 915,925 (2011)); *see also Coggeshall*, 376 S.C. 12, 16,

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655 S.E.2d 476, 478; S.C. Code Ann. §36-2-802. Only in an "exceptional case" can a court exercise general jurisdiction in a forum that is not "the corporation's place of incorporation [or] its principal place of business." *BNSF Ry. Co. v. Tyrrell*, 137 S. Ct. 1549, 1558 (2017). An example of the "exceptional case" where general jurisdiction may be exercised over a corporation that is neither incorporated in nor has its principal place of business in a state is the United States Supreme Court holding in *Perkins v. Benguet Consol. Min. Co*., 342 U.S. 347. In *Perkins* the defendant, a foreign mining company forced to flee the Philippines during World War II, operated entirely from Ohio for several years. The company's president and principal stockholder relocated to Ohio and set up an office, where he maintained corporate files, carried on the company's correspondence, issued checks on behalf of the company, employed two corporate secretaries, maintained bank accounts, purchased company equipment, and held director's meetings for the duration of the company's exile. Under these circumstances, where Ohio became the business' *de facto* operating headquarters, the Court found general jurisdiction proper. None of these facts are present here.

Fabi USA is not "at home" in South Carolina. It is undisputed that Fabi USA is not incorporated in South Carolina and its principal place of business is not in South Carolina. Further, it has no "enduring" relationship with South Carolina. *See Cockrell*, 363 S.C. at 495, 611 S.E.2d at 510. Moreover, no "exceptional" circumstances, such as those present in *Perkins*, exist that would render Fabi USA "at home" in South Carolina, nor do Plaintiffs allege any such exceptional circumstances. Accordingly, Fabi USA is not subject to general personal jurisdiction in this State.

C. Fabi USA is not Subject to Specific Personal Jurisdiction in South Carolina.

Fabi USA has never conducted business activities within South Carolina or purposefully directed business activities towards South Carolina and, therefore, it does not meet the requirements of South Carolina's long-arm statute or have sufficient minimum contacts with the

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State for the exercise of jurisdiction to satisfy due process. Moreover, because Fabi USA has never conducted business in South Carolina or purposefully directed business activities towards South Carolina, it is impossible for Plaintiffs' claims to arise out of Fabi USA's conduct within the State. Consequently, Fabi USA is not subject to the exercise of specific personal jurisdiction in this case.

The determination of whether a court may exercise personal jurisdiction over a non-resident defendant has traditionally involved a two-step analysis; first, the court must determine if the long-arm statute applies, and second, the court must determine whether the nonresident's contacts with this State are sufficient to satisfy due process requirements. *Power Prods. & Servs. Co., Inc.*, 379 S.C. at 431,665 S.E.2d at 664. However, "Because South Carolina treats its long-arm statute as coextensive with the due process clause, the sole question becomes whether the exercise of personal jurisdiction would violate due process." Cockrell, 363 S.C. at 491, 611 S.E.2d at 508 (citing *Moosally v. WW Norton & Co*., 358 S.C. 320, 329, 594 S.E.2d 878, 883 (Ct. App. 2004)); *See also Power Prods. & Servs. Co., Inc*., 379 S.C. at 431,665 S.E.2d at 664.

1. *Plaintiffs Have Not Alleged Specific Facts Necessary to Establish Personal Jurisdiction Under South Carolina's Long-Arm Statute.*

In this case, Plaintiffs have failed to allege specific facts that subject Fabi USA to jurisdiction under S.C. Code Ann. § 36-2-803(A)(l)-(8). Plaintiffs' First Amended Complaint makes generic, conclusory allegations as to jurisdiction which are insufficient to show specific actions taken by Fabi USA which would subject it to personal jurisdiction under South Carolina's long-arm statute. *See Sullivan*, 397 S.C. at 150-51, 723 S.E.2d at 839 (affirming dismissal for lack of personal jurisdiction where the plaintiff merely recited the elements of the long-arm statute and failed to allege facts showing the defendant's conduct subjected it to jurisdiction). *See also Power Prods. & Servs. Co., Inc*., 379 S.C. at 433-36, 665 S.E.2d at 665-67 (affirming trial court's

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dismissal based on lack of personal jurisdiction because plaintiff did not establish facts-either through the complaint or affidavits-to confer jurisdiction). Here, the allegations in Plaintiffs' First Amended Complaint are pled in the same way that the Sullivan Court found to be insufficient to meet a *prima facie* showing of personal jurisdiction; merely making conclusory allegations couched as "fact" does not meet the fact-pleading standard required by South Carolina courts.

The facts, as attested in Ms. Zuppini's affidavit, are that the sole business of Fabi USA is to hold all membership interest in IMI Fabi, LLC. It has never (1) transacted business in this State; (2) contracted to supply services or things in this State; (3) committed a tortious act in whole or in part in this State; (4) regularly done or solicited business or engaged in any persistent course of conduct, or derived substantial revenue from goods used or consumed or services rendered, in this State; (5) had an interest in and has never used or possessed real property in this State; (6) contracted to insure any person, property or risk located within this State at the time of contracting; (7) entered into a contract to be performed in whole or in part by either party in this State; (8) and has never produced, manufactured, or distributed goods with the reasonable expectation that those goods were to be used or consumed in this State. *See* Exhibit A.

Plaintiffs' conclusory allegations, in the face of specific facts to the contrary, are insufficient to establish a *prima facie* showing of jurisdiction and, therefore, Plaintiffs have not met their burden and their claims must be dismissed.

2. Plaintiffs Have Not Shown Sufficient Minimum Contacts Between Fabi USA and South Carolina Necessary to Satisfy Due Process.

Assuming for the sake of argument that Plaintiffs' allegations could meet the requirements of S.C. Code Ann.§ 36-2-803, the exercise of personal jurisdiction over Fabi USA is nonetheless improper because Plaintiffs cannot show that the exercise of personal jurisdiction in this matter satisfies the requirements of due process.

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Due process requires that there exist sufficient minimum contacts with the forum state such that the exercise of jurisdiction does not "offend traditional notions of fair play and substantial justice" and that the defendant can "reasonably anticipate being haled into court in the forum." *E.g., Cockrell*, 363 S.C. at 491-492, 611 S.E.2d at 508 (citing *Burger King Corp. v. Rudzewicz*, 471 U.S. 462, 105 S.Ct. 2174, 85 L.Ed.2d 528 (1985); *World-Wide Volkswagen Corp. v. Woodson*, 444 U.S. 286, 100 S.Ct. 559, 62 L.Ed.2d 490 (1980); *Atlantic Soft Drink Co. v. South Carolina Nat'l Bank*, 287 S.C. 228, 336 S.E.2d 876 (1985)).

"A minimum contacts analysis requires a court to find the defendant directed its activities to a resident of this State and that the cause of action arises out of or relates to those activities." *S. Plastics Co. v. S. Commerce Bank*, 310 S.C. 256, 260, 423 S.E.2d 128, 131 (1992). *See also Bristol-Meyers Squibb Co. v. Superior Court of California, San Francisco County*, 137 S.Ct. 1773, 1780 (2017); *World-Wide Volkswagen Corp*., 444 U.S. at 296-297; *Hanson v. Denckla*, 257 U.S. 235,251, 253 (1958). The minimum contacts analysis must focus on the defendant's own actions, not the "unilateral actions of some other entity." *Cockrell*, 363 S.C. at 492, 611 S.E.2d at 508-09 ("The foreseeability that is critical to due process analysis is not the mere likelihood that a product will find its way into the forum state. Rather, it is that the defendant's conduct and connection with the forum state are such that he should reasonably anticipate being haled into court there."); *Coggeshall*, 376 S.C. at 16, 655 S.E.2d at 478 ("Due process requires some act by which the defendant purposefully avails itself of the privilege of conducting activities within the forum state."). If the Court finds minimum contacts exist, it must further determine whether the exercise of jurisdiction is "reasonable" or "fair" by considering "(1) the duration of the activity of the nonresident within the state; (2) the character and circumstances of the commission of the nonresident's acts; (3) the inconvenience resulting to the parties by conferring or refusing to confer

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jurisdiction over the nonresident; and (4) the State's interest in exercising jurisdiction." *Id*. at 492, 611 S.E.2d at 508.

Plaintiffs have not shown, and cannot show, that Fabi USA has sufficient minimum contacts with South Carolina. The facts here, as attested in Ms. Zuppini's affidavit, are that the sole business of Fabi USA is to hold all membership in IMI Fabi, LLC. It has no business or operations, holds no other property or assets, and has never sold any product. Fabi USA has never manufactured, sold, or distributed any products in South Carolina or shipped any products to South Carolina. Simply stated, Fabi USA has *no* contacts with the State of South Carolina and has never purposefully directed *any* activities at South Carolina. Consequently, there are not sufficient minimum contacts with South Carolina to render this Court's exercise of personal jurisdiction permissible under the Due Process Clause. Further, because Fabi USA has no contact with South Carolina, Plaintiffs' cause of action cannot arise out of or relate to any alleged contacts with South Carolina.

Because Plaintiffs have not, and cannot, show that Fabi USA has minimum contacts with South Carolina necessary for the exercise of personal jurisdiction to meet the requirements of due process, their claims against Fabi USA must be dismissed.

III. PLAINTIFFS' CLAIMS ARE BARRED BY SOUTH CAROLINA'S DOOR CLOSING STATUTE.

All of Plaintiffs' causes of action against Defendant are barred by South Carolina's Door Closing Statute, which provides that:

> An action against a corporation created by or under the laws of any other state, government or country may be brought in the circuit court:
>
> (1) By any resident of this State for any cause of action; or
> (2) By a plaintiff not a resident of this State when the cause of action shall have arisen, or the subject of the action shall be situated within this State.

S.C. Code § 15-5-150.

The Door Closing Statute broadly applies to any "action" brought in a South Carolina circuit court against an out-of-state corporation and, therefore, applies to all of Plaintiffs' claims. *Id*. Summary judgment should be granted on all claims because: (1) Defendant is incorporated outside of South Carolina; (2) Plaintiffs are not residents of South Carolina, and (3) Plaintiffs have not produced any evidence that Sarah Plant was injured by any asbestos-containing product attributable to Defendant in South Carolina. Plaintiffs concede the first two points in the Complaint. (FAC ¶¶ 24, 52)

As to the third point, Subsection (2) of the Door Closing Statute provides that an out-of-state corporation may be sued in a circuit court by a non-resident plaintiff only when "the cause of action shall have arisen or the subject of the action shall be situated within the State." S.C. Code §15-5-150 (2). The South Carolina Supreme Court has explained that the statute is intended to allow resolution of wrongs connected with South Carolina "while avoiding the resolution of wrongs in which the State has little interest" and to encourage foreign corporation activity in the State "without subjecting them to actions unrelated to their activity within the State." *Murphy v. Owens-Corning Fiberglas Corp*., 356 S.C. 592, 597, 590 S.E.2d 479, 481 (2003) (quoting *Farmer v. Monsanto Corp.*, 353 S.C. 553, 558, 579 S.E.2d 325, 328 (2003)).

When analyzing subsection (2) of the Door-Closing Statute in an alleged exposure case, "the proper inquiry is whether the foreign corporation's activities that allegedly exposed the victim to the injurious substance, and the exposure itself, occurred within the State. If so, then the legal wrong was committed here." *Id.* at 598, 590 S.E.2d at 482. Summary judgment must be granted where, as here, Plaintiffs "failed to show any actionable exposure in South Carolina." *See Henderson v. Allied Signal, Inc.*, 373 S.C. 179, 185, 644 S.E.2d 724, 727 (2007). Whether there is

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"actionable exposure" is an inquiry that must be made for each defendant, and not on the case as a whole. *Id.* ("Due to the lack of evidence Mr. Henderson was exposed to the Respondents' asbestos containing products in South Carolina, we affirm the trial court's holding."). Thus, the inquiry here is whether Plaintiffs have proof of exposures within South Carolina which give rise to Plaintiffs' claims against Defendant. *See id.*; *Murphy*, 356 S.C. at 598, 590 S.E.2d at 482. As discussed below, Plaintiffs cannot meet the burden of showing actionable exposure in South Carolina to satisfy the *Henderson* standard. Thus, Plaintiffs' claims against Defendant are barred by South Carolina's Door Closing Statute and summary judgment is proper.

IV. PLAINTIFFS CANNOT SATISFY THE "FREQUENCY, REGULARITY AND PROXIMITY" REQUIREMENT UNDER SOUTH CAROLINA LAW.

To establish liability in an asbestos case, the plaintiff must present "evidence of exposure to a specific product on a regular basis over some extended period of time in proximity to where the plaintiff actually worked." *Lohrmann v. Pittsburg Corning, Corp.*, 782 F.2d 1156, 1162–63 (4th Cir. 1986). If the plaintiff does not present evidence showing the "frequency, regularity, and proximity" of exposure to a specific product manufactured by the defendant, summary judgment should be granted in favor of the defendant. *Henderson v. Allied Signal, Inc.,* 373 S.C. 179, 185, 644 S.E.2d 724, 727 (2007). There must be some evidence of exposure to a specific product on a regular basis over some extended period of time in proximity to the plaintiff. *Id.* Proximate cause is determined by proving more than a casual or minimum contact with the product containing asbestos in order to hold the manufacturer of that product liable. *Lohrmann,* 782 F.2d at 1163. One's mere "presence in the vicinity of static asbestos" does not constitute actionable exposure to asbestos. *Henderson*, 373 S.C. at 185, 644 S.E.2d at 727.

The basis of product liability law in this jurisdiction is that the plaintiff has the burden of proof in showing that he or she was exposed to a particular defendant's asbestos-containing

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product. *Ryan v. Eli Lilly & Co.*, 514 F. Supp. 1004, 1006 (D.S.C. 1981). In the present case, Plaintiffs are unable to meet that burden. As will be outlined further below, Plaintiffs simply do not have the requisite evidence to support the claims.

A. Plaintiffs Have Failed to Establish Defendant Proximately Caused Sarah Plant's Injury.

Under South Carolina law, a "products liability case may be brought under several theories, including negligence, strict liability, and warranty." *Rife v. Hitachi Constr. Mach. Co.*, 363 S.C. 209, 609 S.E.2d 565, 568 (2005). Regardless of the particular theory under which the plaintiff proceeds, he must establish "(1) that he was injured by the product; (2) that the product, at the time of the accident, was in essentially the same condition as when it left the hands of the defendant; and (3) that the injury occurred because the product was in a defective condition unreasonably dangerous to the user." *Holst v. KCI Konecranes Int'l Corp.*, 390 S.C. 29, 699 S.E.2d 715, 719 (2010). Plaintiffs must show more than mere speculation, but must also show that a particular product contained asbestos, that plaintiff breathed in that asbestos and that it caused disease and/or death. *See Pace v. Air & Liquid Systems Corp.*, 624 Fed. Appx. 244 (4th 2016).

Further a plaintiff's exposure to asbestos must be more than a casual or minimal exposure. Citing the *Lohrmann* decision, the Court in *Henderson* explained the standard as follows:

> To support a reasonable inference of substantial causation from circumstantial evidence, there must be evidence of exposure to a specific product on a regular basis over some extended period of time in proximity to where the plaintiff actually worked.

Henderson, 373 S.C. at 185, 644 S.E.2d at 727.

Here, there is no testimony that Sarah Plant was exposed to asbestos-containing products attributable to Defendant. The case law is clear, in order for a Defendant to be held liable, plaintiff

must prove exposure to a *specific* product on a *regular* basis. Plaintiffs are simply unable to do so in the present case.

Because Plaintiffs have failed to put forth any evidence to show that Sarah Plant was exposed to any product attributable to Defendant, Plaintiffs have failed to meet their burden. Here, even assuming that Plaintiffs are later able to present some evidence that a product attributable to Defendant was used by Sarah Plant, and that such product contained asbestos, that evidence would not be enough to withstand summary judgment because plaintiff "must prove more than a casual or minimum contact with the product containing asbestos in order to hold the manufacturer of that product liable." *Jones v. Owens-Corning Fiberglas Corp.*, 69 F.3d 712, 716 (4th Cir. 1995). Thus, in order to meet the requirements of *Lohrmann*, Plaintiffs must present evidence of significant exposures. No such evidence has been proffered by the Plaintiffs in this case against Defendant.

As of the time specified for filing summary judgment motions in this case, there is no evidence establishing that asbestos was in or released from any product attributable to Defendant and which was inhaled by Sarah Plant. For the above stated reasons, Defendant is entitled to summary judgment as a matter of law.

B. There Is No Evidence to Establish Sarah Plant Was Exposed to Asbestos from Any Product Attributable to Defendant.

Under the *Lohrmann* test, "[t]o support a reasonable inference of substantial causation from circumstantial evidence, there must be evidence of exposure to a specific product on a regular basis over some extended period of time in proximity to where the plaintiff actually worked." *Lohrmann*, 782 F.2d 1156, 1162–63. The Supreme Court of South Carolina has adopted a standard that in order to support a reasonable inference of substantial causation from circumstantial evidence, there must be evidence of exposure to a specific product on a regular basis over an extended period of time in proximity to where plaintiff actually worked. *Henderson*, 373 S.C. at

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185, 644 S.E.2d at 727. In order to recover against Defendant, Plaintiffs must present some evidence that Sarah Plant was substantially exposed to asbestos from an asbestos-containing product for which Defendant is legally responsible. In this case, Plaintiffs cannot.

The evidence in this case does not pass the *Lohrmann* test. A complete review of the evidence submitted by Plaintiffs shows there is no evidence that would support a finding under the "frequency, regularity and proximity test." For the above reasons, Defendant is entitled to summary judgment as a matter of law.

V. PLAINTIFFS' REMAINING CLAIMS FAIL AS A MATTER OF LAW.

A. Post-Sale Duty to Warn

While the above arguments are sufficient to warrant summary judgment for Defendant as to all of Plaintiffs' claims, alternatively, specific claims should be dismissed for independent reasons.

South Carolina does not recognize a post-sale duty to warn or retrofit. *See Bragg, supra*; *Andrews v. CBS Corp.*, No. 2:13-CV-2055-RMG, 2015 WL 12831309, at *1 (D.S.C. June 24, 2015). In *Bragg*, the court stated that a product must be "measured against a standard existing at the time of sale or against reasonable customer expectations held at the time of sale." *Bragg*, 462 at 331. Even if it is assumed that Defendant sold products used by Sarah Plant, there is no evidence that any product for which Defendant is responsible, was defective at the time it left Defendant's control. Further, Defendant would have been under no duty to retrofit or warn of any dangers that were not present at the time of shipping. As such, any claims against Defendant based on a post-sale duty to warn must fail as a matter of law.

B. Implied Warranty of Merchantability

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Plaintiffs seek damages based on alleged breach of implied warranty under S.C. Code Ann. § 36-2-314. Section 36-2-314 states:

> (1) Unless excluded or modified (§ 36-2-316), a warranty that the goods shall be merchantable is implied in a contract for their sale if the seller is a merchant with respect to goods of that kind.
>
> (2) Goods to be merchantable must be at least such as:
>
> (a) pass without objection in the trade under the contract description; and
>
> (b) in the case of fungible goods, are of fair average quality within the description; and
>
> (c) are fit for the ordinary purposes for which such goods are used; and
>
> (d) run, within the variations permitted by the agreement, of even kind, quality and quantity within each unit and among all units involved; and
>
> (e) are adequately contained, packaged, and labeled as the agreement may require.
>
> (3) Unless excluded or modified (§ 36-2-316), other implied warranties may arise from course of dealing or usage of trade.

In this case, Plaintiffs have failed to put forth evidence that a product attributable to Defendant was in a defective, unreasonably dangerous condition, or that it was in the same condition at the time of the alleged injury. As a result, there is no genuine issue of material fact regarding Plaintiffs' claim for breach of implied warranty against Defendant and, as such, Defendant is entitled to summary judgment as a matter of law.

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C. Fraudulent Misrepresentation

The Court should dismiss Plaintiffs' cause of action for false or fraudulent misrepresentation. Rule 9(b) requires Plaintiffs to plead the circumstances constituting fraud with particularity. The Fourth Circuit held that the facts required to be pled with particularity under Rule 9(b) are "the time, place, and contents of the false representations, as well as the identity of the person making the misrepresentation and what he obtained thereby." *Harrison v. Westinghouse Savannah River Co.,* 176 F.3d 776, 784 (4th Cir.1999), citing, 5 Charles Alan Wright and Arthur R. Miller, FEDERAL PRACTICE AND PROCEDURE: CIVIL § 1297, at 590 (2d ed.1990). This is especially critical when a complaint asserts claims against multiple defendants.

Rule 9(b) has four purposes: 1) it ensures that the defendant has sufficient information to formulate a defense by putting it on notice of the conduct complained of; 2) to protect defendants from frivolous suits; 3) to eliminate fraud actions in which all the facts are learned after discovery; and 4) to protect defendant from harm to their goodwill and reputation. *Id.*

In order to plead a proper claim for fraudulent misrepresentation in South Carolina, a plaintiff must allege *with particularity*: (1) a representation; (2) falsity of representation; (3) materiality of representation; (4) the defendant's knowledge of the falsity of the representation or reckless disregard of its truth or falsity; (5) defendant's intent that the representation should be acted upon; (6) the hearer's ignorance of the falsity; (7) hearer's reliance on the truth of the representation; (8) hearer's right to so rely; and (9) the hearer's consequent and proximate injury to plaintiff. *DeHart v. Dodge City of Spartanburg, Inc.*, 311 S.C. 135, 427 S.E.2d 720 (Ct. App. 1993); *M. B. Kahn Const. Co., Inc. v. South Carolina Nat. Bank of Charleston*, 275 S.C. 381, 271

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S.E.2d 414 (1980). Failure to properly plead any of these elements with particularity is fatal to Plaintiff's fraud claim. *Ardis v. Cox*, 314 S.C. 512, 515, 431 S.E.2d 267, 269 (Ct. App. 1993).

More importantly, when a fraud claim involves multiple defendants, the complaint must also state with particularity each defendant's role in the alleged fraud. *Mincey v. World Savings Bank, FSB*, 614 F. Supp. 2d 610, 627 (D.S.C. 2008). Plaintiffs failed to identify with particularity any facts specific to any of the numerous Defendants. Plaintiffs have not pled or put forth any evidence that even begins to inform Defendant of its role in the alleged fraud, let alone allege, with particularity, any facts to support the elements required by South Carolina law.

In *Mincey,* the District Court dismissed a fraud claim under Rule 9(b), where the plaintiffs failed to allege fraud with particularity and simply "lumped all defendants together in a manner that is impermissible for purposes of Rule 9(b)." *See also*, *Vicom, Inc. v. Harbridge Merch. Servs., Inc.,* 20 F.3d 771, 778 (7th Cir. 1994), quoting *Di Vittorio v. Equidyne Extractive Indus.,* 822 F.2d 1242, 1247 (2d Cir. 1987) ("where multiple defendants are asked to respond to allegations of fraud, the complaint should inform each defendant of the nature of his alleged participation in the fraud); *Goldstein v. Malcolm G. Fries & Assocs., Inc.,* 72 F. Supp. 2d 620, 627 (E.D. Va. 1999) ("A plaintiff may not group all wrongdoers together in a single set of allegations.")

Here, Plaintiffs simply lumped all Defendants together and restated the elements of a fraudulent misrepresentation claim without setting forth any particularized allegations against Defendant as required by Rule 9(b). Plaintiffs also have not produced any evidence to support this claim.

As discussed above, an action for fraudulent misrepresentation is predicated on a false statement. Plaintiffs have not produced any evidence to support this claim. Plaintiffs have no proof of what representations were allegedly made, when they occurred, how they occurred, how

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Defendant allegedly knew or recklessly disregarded the alleged falsity of the representations, how or when Sarah Plant relied on them, what basis she had to rely on them, or even how Defendant knew that any such representation was false. Therefore, Defendant is entitled to summary judgment on this claim.

D. Strict Liability

A cause of action resting upon strict liability under South Carolina's strict liability statute does not exist where a product entering the stream of commerce prior to July 9, 1974, is alleged to have caused injury thereafter. *Schall v. Sturm, Ruger Co.*, 278 S.C. 646, 650, 300 S.E.2d 735, 737 (1983). South Carolina did not recognize strict liability until it adopted the strict liability statute on July 9, 1974. To bring a strict liability claim against Defendant, Plaintiffs must show that Sarah Plant was: (1) exposed to an asbestos-containing product; (2) manufactured by Defendant; and (3) that was placed in the stream of commerce after July 9, 1974. Here, Plaintiff has failed to do so. As discussed, there is no evidence in the record that Sarah Plant was exposed to any asbestos-containing product attributable to Defendant.

Without proof that Sarah Plant was exposed to asbestos from a product attributable to Defendant and said product was placed in the stream of commerce after July 9, 1974, Plaintiffs cannot establish a strict liability claim under South Carolina law. *Id.* Therefore, Defendant must be granted summary judgment on Plaintiffs' strict liability action.

CONCLUSION

Defendant is entitled to summary judgment based on any one of three grounds: 1) the Court lacks personal jurisdiction over Defendant; 2) Plaintiffs' claims are barred by South Carolina's Door Closing Statute; and 3) Plaintiffs are unable to meet the burden to prove that Sarah Plant was exposed to asbestos from any product for which Defendant is alleged to be responsible. There is

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no basis to establish that Defendant breached any duty owed to Plaintiffs, or that any acts or omissions by Defendant served as a proximate cause of Sarah Plant's alleged asbestos-related disease. For these reasons, Defendant respectfully requests that this Honorable Court enter an Order granting its Motion for Summary Judgment, and that all claims be dismissed.

Respectfully submitted this, the 13th day of January, 2023.

WOMBLE BOND DICKINSON (US) LLP

s/ M. Elizabeth O'Neill
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Counsel for Defendant IMI Fabi (USA) Inc.

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STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF RICHLAND	)	FOR THE FIFTH JUDICIAL CIRCUIT
	)	
SARAH J. PLANT and PARKER PLANT	)	C/A NO. 2022-CP-40-01265
	)	
Plaintiffs,	)	
v.	)	
	)	
AVON PRODUCTS, INC., et al.	)	
	)	
Defendants.		

AFFIDAVIT OF PATRIZIA ZUPPINI IN SUPPORT OF SPECIALLY APPEARING DEFENDANT IMI FABI (USA), INC.'S MOTION TO DISMISS FOR LACK OF PERSONAL JURISDICTION

I, Patrizia Zuppini declare as follows:

1. My name is Patrizia Zuppini. I am over the age of eighteen years old (18) and I am competent to give this Affidavit.

2. I am the Vice President of IMI Fabi (USA), Inc. (hereinafter referred to as "Fabi USA"). I make the following statements based upon my own personal knowledge, and, if called as a witness, could and would testify competently to such facts under oath.

3. Fabi USA is a Delaware corporation incorporated on January 26, 1999. Fabi USA is not qualified to transact business in any other jurisdiction. The sole business of Fabi USA is to hold all membership interest in IMI Fabi, LLC. Fabi USA has no business or operations, and it holds no other property or assets.

4. Fabi USA has never had a registered agent in any state other than Delaware.

5. Fabi USA has never owned or operated any manufacturing, sales, or distribution facilities in any state.

6. Fabi USA has never had any employees.

7. Fabi USA has never recruited any South Carolina residents, directly or through an intermediary located in the State of South Carolina, for employment inside or outside of the

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State of South Carolina.

8. Fabi USA has never had a mailing address, post office box, or bank account in South Carolina.

9. Fabi USA has never owed or paid corporate taxes, sales taxes, or other taxes in South Carolina.

10. Fabi USA has never had insurance policies which afford coverage of any kind for specific entities located in any state other than Delaware.

11. Fabi USA has never invested any dollars in business operations in South Carolina.

12. Fabi USA has never transacted any business in South Carolina.

13. Fabi USA has never contracted to supply services or goods in any state.

14. Fabi USA has never marketed or advertised its products in any state.

15. Fabi USA has not received tax deductions as a result of contributions made to any organizations in the State of South Carolina.

16. Fabi USA has never received any business incentives or tax credit from the State of South Carolina to conduct business in South Carolina.

17. Fabi USA has never sold any product.

18. Consequently, Fabi USA has never delivered any products to any state.

19. Fabi USA has never appeared in a case in South Carolina, including but not limited to, any matrimonial actions or family court proceedings.

20. Fabi USA has never had an interest in, using or possessing real property in the State of South Carolina.

21. Fabi USA has never owned, used, possessed, or held a mortgage or other lien on any real property in the State of South Carolina.

22. Fabi USA has never owned, leased, or operated any real property or any offices in any state.

23. Fabi USA has never paid real estate tax to any municipality or town in any state.

24. Fabi USA has never owned a motorized vehicle registered in any state and has

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never paid any automobile excise tax to any municipality or town located in any state.

25. Fabi USA has never owned a water vessel (boat) registered in any state and has never paid any boat excise tax to any municipality or town located in any state.

26. Fabi USA has never acquired ownership, possession or control of any asset or thing of value present within the State of South Carolina.

27. Fabi USA has had no contracts, by mail or otherwise, with any resident to be performed in any state.

28. Fabi USA has never had any affiliates, subsidiaries or corporately related companies in the State of South Carolina.

29. Fabi USA has never entered into any franchise agreements between it and any entities licensed to do business in any state.

30. Fabi USA has never mined, milled, processed, tested, screened, analyzed, blended, supplied and/or distributed talc in any state.

31. Fabi USA has never manufactured, sold, or distributed any products in any state.

32. Fabi USA has never shipped any products to any state.

33. Fabi USA has never operated, conducted, engaged in, or carried on a business or business venture in any state.

34. Fabi USA has never had an office or agency in the State of South Carolina.

35. Fabi USA has never committed a tortious act in whole or in part in the State of South Carolina.

36. Fabi USA has never caused tortious injury or death to persons or property within the State of South Carolina arising out of an act or omission committed outside the State of South Carolina.

37. Fabi USA has never engaged in solicitation or service activities within any state.

38. Fabi USA has never entered into a contract or breached a contract in South Carolina or that is to be performed in whole or in part in the State of South Carolina.

39. Fabi USA has never contracted to insure any person, property or risk located

within the State of South Carolina at the time of contracting.

40. Fabi USA has never produced, manufactured, or distributed goods with the reasonable expectation that those goods are to be used or consumed in any state, and are so used or consumed.

I declare under penalty of perjury under the laws of the State of South Carolina that the foregoing is true and correct and that this declaration was executed on October 28, 2022 at 11:30am.

Patrizia Zuppini, Vice President of
IMI Fabi (USA), Inc.

STATE OF WEST VIRGINIA

COUNTY OF MARSHALL:

The foregoing instrument was acknowledged before me this 28 day of October, 2022 by Patrizia Zuppini, Vice President of IMI Fabi (USA), Inc., on behalf of the said corporation.

Michael Roth
Notary Public

OFFICIAL SEAL
NOTARY PUBLIC
STATE OF WEST VIRGINIA
MICHAEL ROTH
Johnson Boiler Works Inc.
53 Marshall Street
Benwood, West Virginia 26031
My Commission Expires Apr 07 2024

My Commission Expires: April 7, 2024

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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., et al., Defendants.	)))))))))	Civil Action No. 2022 CP 40 01265 **IMI FABI, LLC'S MOTION FOR SUMMARY JUDGMENT**

Defendant IMI Fabi, LLC ("Defendant"), moves for an order granting summary judgment pursuant to Rule 56 of the South Carolina Rules of Civil Procedure on the grounds that there are no genuine issues of material fact and summary judgment is appropriate as a matter of law.

Specifically, the Court lacks personal jurisdiction over Defendant.[1] Further, Plaintiffs' claims are barred by South Carolina's Door Closing Statute. In addition, Plaintiffs cannot meet the threshold requirements of actionable asbestos exposure identified in *Lohrmann v. Pittsburgh Corning Corp.*, 782 F.2d 1156, 1162–63 (4th Cir. 1986), *Henderson v. Allied Signal*, 373 S.C. 179, 644 S.E.2d 724 (2007) and like cases, such that there is no genuine issue of material fact and Defendant is entitled to judgment as a matter of law.

This motion is also made on additional alternative grounds that there is no proof supporting particular individual causes of action, as described in the Memorandum of Law filed in support of this motion. Further, choice of law issues may exist in this case and Defendant submits this Motion without waiver of any rights to raise choice of law issues in the event that it becomes relevant.

[1] On May 13, 2022, Defendant filed a Motion to Dismiss for Lack of Personal Jurisdiction. On July 13, 2022, Defendant filed its Memorandum in Support of Motion to Dismiss for Lack of Personal Jurisdiction with supporting affidavit. Defendant incorporates its prior Motion to Dismiss, supporting memorandum and affidavit herein in support of its current Motion for Summary Judgment.

See Rogers v. Lee, 414 S.C. 225, 230, 777 S.E.2d 402, 405 (Ct. App. 2015); *Boone v. Boone,* 345 S.C. 8, 13, 546 S.E.2d 191, 193 (2001). This motion is supported by the Affidavit of James Woods attached as Exhibit A. This motion is further supported by the pleadings that have been filed in this action, discovery conducted or to be conducted in the future, depositions taken and yet to be taken in this case, the attached Memorandum of Law in Support of Defendant's Motion for Summary Judgment, the South Carolina Rules of Civil Procedure, arguments of counsel, and applicable common and statutory law.

Respectfully submitted this, the 13th day of January, 2023.

WOMBLE BOND DICKINSON (US) LLP

s/ M. Elizabeth O'Neill
M. Elizabeth O'Neill (S.C. Bar No. 104013)
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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., et al., Defendants.	)))))))))	Civil Action No. 2022 CP 40 01265 **IMI FABI, LLC'S MEMORANDUM OF LAW IN SUPPORT OF MOTION FOR SUMMARY JUDGMENT**

Defendant IMI Fabi, LLC ("Defendant" or "Fabi LLC"), pursuant to Rule 56 of the South Carolina Rules of Civil Procedure, respectfully submits this Memorandum of Law in Support of its Motion for Summary Judgment.

Defendant is entitled to judgment on all claims because: 1) the Court lacks personal jurisdiction over Defendant;[1] 2) Plaintiffs' claims are barred by South Carolina's Door Closing Statute; and 3) Plaintiffs do not have evidence that Sarah Plant was exposed to any product attributable to Defendant, let alone evidence of exposure to asbestos-containing products, with the "frequency, regularity and proximity" required by the South Carolina Supreme Court in *Henderson v. Allied Signal*, 373 S.C. 179, 644 S.E.2d 724 (2007), to establish causation. Alternatively, for the reasons detailed below, Defendant is entitled to summary judgment on specific claims.

[1] On May 13, 2022, Defendant filed a Motion to Dismiss for Lack of Personal Jurisdiction. On July 13, 2022, Defendant filed its Memorandum in Support of Motion to Dismiss for Lack of Personal Jurisdiction with supporting affidavit. Defendant incorporates its prior Motion to Dismiss, supporting memorandum and affidavit herein in support of its current Motion for Summary Judgment.

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STATEMENT OF FACTS

Plaintiffs allege that Sarah Plant was diagnosed with mesothelioma from exposure to various asbestos-containing talc products. (First Amended Complaint (FAC) ¶ 1, 6, 24, 25) Plaintiffs' brought causes of action against Defendant for negligence, strict liability, breach of implied warranty of merchantability, fraudulent misrepresentation, and loss of consortium.

Mr. and Ms. Plant were deposed and did not testify to exposure to any alleged asbestos-containing product attributable to Defendant. The depositions of Ms. Plant's parents, Patrice and Eric Johnson, have also been taken and they did not testify to exposure to any alleged asbestos-containing product attributable to Defendant. There are no other relevant fact witness depositions taken in this case. As such, there is no evidence that Sarah Plant was exposed to asbestos from a product allegedly attributable to Defendant at all, let alone on a regular, frequent and proximate basis.

Plaintiffs' First Amended Complaint alleges that Plaintiffs are currently residents of Tennessee and that Sarah Plant developed mesothelioma as the result of exposure to various asbestos-containing talc products in several states, including South Carolina. (FAC at ¶ 1, 6, 24, 25.) Plaintiffs do not assert that Fabi LLC is a South Carolina limited liability company or that its principal place of business was ever in South Carolina. (FAC at ¶ 53.) Rather, Plaintiffs assert generally that this Court has personal jurisdiction over all Defendants because Plaintiffs' claims arise from Defendants' conduct in (a) transacting business in the 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; and (d) having an interest in, using, or possessing real property in this State. Further, Plaintiffs allege generally that "all" defendants "purposefully availed themselves of the privilege of doing business

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in this State" and engaged in "substantial and/or systematic business in South Carolina." (FAC at ¶ 2, 5)

Specifically, as to Fabi LLC, Plaintiffs list it as a "Product Defendant" and allege Ms. Plant was exposed to asbestos-containing talc "mined . . . processed . . . imported . . . supplied ... and or retailed" by Fabi LLC. Plaintiffs further allege that their claim against Fabi LLC arises out of Fabi LLC's "business activities" and Ms. Plant's exposure to Fabi LLC products in the State of South Carolina as well as other states. (FAC at ¶ 53)

However, as attested to in the Affidavit of James Woods ("Mr. Woods"), attached to Defendant's Motion for Summary Judgment as Exhibit A, these jurisdictional allegations as to Fabi LLC are unsupported by fact. Mr. Wood's Affidavit sets forth the following relevant facts on the issue of personal jurisdiction:

- Mr. Woods is Fabi LLC's manager. (Exhibit A at ¶ 2.)
- Neither Fabi LLC nor any of its predecessor entities were ever South Carolina limited liability companies or had their principal place of business in South Carolina. (Exhibit A at ¶¶ 3-5; *see also* FAC at ¶ 53.)
- Fabi LLC sells refined talc to the cosmetic, personal care, pharmaceutical, and food industries and sells industrial grade talc to be used in non-cosmetic applications. (Exhibit A at ¶ 6.)
- Fabi LLC has never been licensed to do business in South Carolina and has never had a registered agent in South Carolina. (Exhibit A at ¶¶ 7, 8.)
- Fabi LLC has never owned or operated any manufacturing, sales, or distribution facilities in South Carolina; had any employees working or residing in South Carolina; had a mailing address, post office box, or bank account in South Carolina; had an interest in, used or

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possessed real property in South Carolina; owned, used, possessed or held a mortgage or other lien on any real property in South Carolina; owned, leased or operated any real property or offices in South Carolina; acquired ownership, possession or control of any asset or thing of value present in South Carolina; entered into any franchise agreements between it and any entities licensed to do business in South Carolina; operated, conducted, engaged in, or carried on a business or business venture in South Carolina; or had an office or agency in South Carolina. (Exhibit A at ¶¶ 9, 10, 12, 25, 26, 27, 31, 34, 38, 39.)

- Fabi LLC has never mined, milled, processed, tested, screened, analyzed, and/or blended talc in South Carolina. (Exhibit A at ¶ 36.)
- Until January 2020, Fabi LLC never contracted to supply any goods or services in the State of South Carolina. Until January 2020, Fabi LLC never marketed, advertised, sold, or delivered its industrial grade talc products in South Carolina. In fact, Fabi LLC has only sold industrial grade talc products for incorporation in the manufacture of plastic and rubber products to consumers in South Carolina. (Exhibit A at ¶¶ 17, 18, 19, .)
- Fabi LLC has never advertised, marketed, sold or shipped cosmetic grade talc in the State of South Carolina. Fabi LLC had no contracts to sell cosmetic grade talc, by mail or otherwise, with a South Carolina resident to be performed in the State of South Carolina. Fabi LLC has never had actual or constructive knowledge that its products would be used in whole or in part as an ingredient in a cosmetic product manufactured, sold, or distributed in South Carolina. Fabi LLC never shipped any cosmetic grade talc products to the State of South Carolina. Fabi LLC has never produced, manufactured, or distributed cosmetic grade talc with the reasonable expectation that those goods are to be used or consumed in

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the State of South Carolina, and are so used or consumed. (Exhibit A at ¶¶ 20, 32, 35, 37, 42.)

- Until late 2018, all cosmetic grade talc products sold by Fabi LLC were delivered EXW or F.O.B. Origin, Freight Collect, West Virginia. In every instance, the Buyer made all of the arrangements for the shipment of the products off of Fabi LLC's premises. In every instance, possession of the product bought from Fabi LLC and the risk of loss in transit transferred from Fabi LLC to the Buyer at the Fabi LLC loading dock in West Virginia. In every instance, the Buyer paid for and bore the freight charges. In every instance, the Buyer, not Fabi LLC, filed claims (if any) if the product was damaged, destroyed, or lost in transit. (Exhibit A at ¶ 23.)

Accordingly, this Court lacks jurisdiction over Fabi LLC. Further, as detailed below, there is no evidence in the record to raise an issue of material fact that Sarah Plant was exposed to asbestos from any product attributable to Defendant.

STANDARD OF REVIEW

In South Carolina, summary judgment is appropriate when there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law. *Shaw v. City of Charleston*, 351 S.C. 32, 567 S.E.2d 530 (2002). Under Rule 56(c) of the South Carolina Rules of Civil Procedure, summary judgment "shall be rendered forthwith if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact." Rule 56(c), SCRCP. In determining whether any triable issues of fact exist, the evidence and all inferences which can be reasonably drawn [therefrom] must be viewed in the light most favorable to the non-moving party." See *Shaw,* 351 S.C. at 38, 567, S.E.2d at 534. The burden is on the moving party to demonstrate the absence of

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a genuine issue of material fact. *Baughman v. American Tel. & Tel Co.*, 306 S.C. 101, 115, 410 S.E.2d 537, 545 (1991). An important distinction to make is that the moving party's burden is not to disprove the claims, but to instead show that the plaintiff has no evidence to support his claims. *Id*.

In order to avoid summary judgment, a non-moving party must demonstrate a genuine existence of triable issues on all essential elements of his case. See *Celotex Corp. v. Catrett*, 477 U.S. 317 (1986). A non-moving party must go beyond the pleadings, as "summary judgment should be granted when plain, palpable and undisputable facts exist on which reasonable minds cannot differ." *Nations Bank v. Scott Farm*, 320 S.C. 299, 302–03, 465 S.E.2d 98, 100 (1995).

In the present case, Plaintiffs have not produced sufficient evidence to establish jurisdiction or the elements necessary to pursue and prove the claims against Defendant. Therefore, Defendant is entitled to summary judgment.

ARGUMENT

I. CHOICE OF LAW

Under South Carolina choice of law principles, the substantive law governing a tort action is determined by the state in which the injury occurred, commonly referred to as the *lex loci delicti* rule. *Rogers v. Lee*, 414 S.C. 225, 230, 777 S.E.2d 402, 405 (Ct. App. 2015); *Boone v. Boone*, 345 S.C. 8, 13, 546 S.E.2d 191, 193 (2001). South Carolina law provides that *lex loci delicti* is determined by the state in which the injury occurred, not where the results of the injury were felt or where the damages manifested themselves. *Rogers,* 414 S.C. at 231. In this case, the Court should apply the substantive law of the state where the exposure occurred. *See also, Bannister v. Hertz Corp.*, 316 S.C. 513, 450 S.E.2d 629 (Ct.App.1994)(applying North Carolina law); *Dawkins v. State*, 306 S.C. 391, 412 S.E.2d 407 (1991) (applying Georgia law); *Oshiek v. Oshiek*, 244 S.C.

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249, 136 S.E.2d 303 (1964) (applying Georgia law); *Woolard v. Carrier Corp.*, No. 1:18CV410, 2020 WL 2572278, n.2 (M.D.N.C. May 21, 2020) (applying North Carolina law because the asbestos exposure occurred in North Carolina); *Cox v. AGCO Corp.*, No. 4:16-CV-00084-M, 2020 WL 3473636, at *4 (E.D.N.C. June 25, 2020) (same).

Plaintiffs allege exposure occurred in various states, although there is no evidence to date as to any exposure to a product attributable to Defendant. Plaintiffs have not put forth any evidence to show that Sarah Plant was exposed to any asbestos attributable to Defendant in South Carolina (or any other state). Accordingly, the law of other states may apply in this case and Defendant submits this motion without waiver of any rights to raise choice of law issues and expressly preserves its rights regarding the same.

II. THIS COURT LACKS PERSONAL JURISDICTION OVER DEFENDANT

This Court has neither general jurisdiction nor specific jurisdiction over Fabi, LLC. General jurisdiction does not exist as Fabi LLC is not a South Carolina corporation, does not have a principal place of business in South Carolina and has no enduring relationship with South Carolina. Without such facts, Fabi LLC is not "at home" in South Carolina and general jurisdiction does not exist.

In addition, there is no specific jurisdiction over Fabi LLC. Fabi LLC has only limited contact with South Carolina and such contact has no relation to this case or Plaintiffs' causes of action. This limited and unrelated contact is insufficient to establish the required "minimum contacts" with South Carolina to exercise personal jurisdiction. In addition, it would be neither reasonable nor fair to exercise jurisdiction considering Fabi LLC's limited contact with South Carolina has no relation to the allegations of wrongdoing in Plaintiff's Complaint.

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A. Legal Standard

"The question of personal jurisdiction over a nonresident defendant is one which must be resolved upon the facts of each particular case." *Cockrell v. Hillerich & Bradsby Co*., 363 S.C. 485, 491, 611 S.E.2d 505, 508 (2005). "The party seeking to invoke personal jurisdiction over a non-resident defendant . . . bears the burden of establishing jurisdiction." *Power Prods. & Servs. Co., Inc. v. Kozma*, 379 S.C. 423, 430, 665 S.E.2d 660, 664 (Ct. App. 2008). At the pretrial stage, plaintiffs may meet their burden of proving personal jurisdiction over a nonresident defendant by a prima facie showing of jurisdiction either (1) in the complaint or (2) in affidavits. *See Cockrell*, 363 S.C. at 491, 611 S.E.2d at 508; *Sullivan v. Hawker Beechcraft Corp*., 397 S.C. 143, 150, 723 S.E.2d 835, 839 (Ct. App. 2012). However, a plaintiff must allege *specific facts* to establish the contacts necessary to invoke either general or specific jurisdiction. *See Power Prods. & Servs. Co. Inc.*, 379 S.C. at 433–36, 665 S.E.2d at 665–67 (affirming trial court's dismissal based on lack of personal jurisdiction because plaintiff did not establish facts—either through the complaint or affidavits—to confer jurisdiction). Conclusory allegations will not suffice. *Id*. at 433–35, 665 S.E.2d at 665–66. Moreover, "[w]hen a motion to dismiss attacks the allegations of the complaint on the issue of jurisdiction, the court is not confined to the allegations of the complaint but may resort to affidavits or other evidence to determine jurisdiction." *Sullivan*, 397 S.C. at 150, 723 S.E.2d at 839 (quoting *Coggeshall v. Reprod. Endocrine Assocs. of Charlotte*, 376 S.C. 12, 16, 655 S.E.2d 476, 478 (2007)).

"Personal jurisdiction is exercised as either 'general jurisdiction' or 'specific jurisdiction.'" *Coggeshall*, 376 S.C. at 16, 655 S.E.2d at 478. "General jurisdiction is the State's right to exercise personal jurisdiction over a defendant even though the suit does not arise out of or relate to the defendant's contacts with the forum . . . ; general jurisdiction is determined under S.C. Code Ann.

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§36-2-802…." *Id*. "Specific jurisdiction is the State's right to exercise personal jurisdiction because the cause of action arises specifically from a defendant's contacts with the forum . . . ; specific jurisdiction is determined under S.C. Code Ann. § 36-2-803…." *Id*. The exercise of personal jurisdiction under either statute must comport with due process requirements and must not offend traditional notions of fair play and substantial justice. *Id*. Due process requires some act by which the defendant purposefully avails itself of the privilege of conducting activities within the forum state. *Id*.

Further, due process mandates that the defendant possess sufficient minimum contacts with the forum state, so that it could reasonably anticipate being haled into court there. *Cockrell*, 363, S.C. at 491-492, 611 S.E.2d at 508 (citing *World-Wide Volkswagen Corp. v. Woodson*, 444 U.S. 286 (1980)). Without minimum contacts, the Court does not have the "power" to adjudicate the action. *Cockrell*, 363 S.C. at 492, 611 S.E.2d at 508. Finally, the Court must also find that the exercise of jurisdiction is "reasonable" or "fair." *Id*.

The Court must assess individually each defendant's contacts with South Carolina. *Cockrell*, 363 S.C. at 492, 611 S.E.2d at 508 (citing *Rush v. Savchuk*, 444 U.S. 320 (1980)). The focus of the Court's analysis must center on the contacts generated by the defendant, not on the unilateral actions of some other entity. *Cockrell*, 363 S.C. at 492, 611 S.E.2d at 508-509 (citing *Helicopteros Nacionales de Colombia, S.A. v. Hall*, 466 U.S. 408 (1984) (holding "unilateral activity of another party or a third person is not an appropriate consideration")). The foreseeability that is critical to due process analysis is not the mere likelihood that a product could find its way into the forum state. Rather, it is that the defendant's own conduct and connections with the forum state are such that he should reasonably anticipate being haled into court there. *Cockrell*, 363 S.C. at 492, 611 S.E.2d at 509 (citing *World-Wide Volkswagen Corp*., 444 U.S. at 297).

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Here, the Court has neither general nor specific jurisdiction over Fabi LLC and, therefore, Fabi LLC is entitled to summary judgment.

B. Fabi LLC is Not Subject to General Jurisdiction in South Carolina.

Fabi LLC is not a South Carolina limited liability company, its principal place of business was never in South Carolina, it is not domiciled in South Carolina and it does not have enduring, substantial, continuous or systematic contacts with South Carolina; therefore, it is not subject to general personal jurisdiction in this state.

A court may assert general jurisdiction over foreign corporations when their affiliations with the forum state "are so 'continuous and systematic' as to render them essentially at home in the forum State." *Daimler AG v. Bauman*, 571 U.S. 117, 127 (2014) (quoting *Goodyear Dunlop Tires Operations, S.A. v. Brown*, 564 U.S. 915, 925 (2011)); *see also Coggeshall*, 376 S.C. 12, 16, 655 S.E.2d 476, 478; S.C. Code Ann. §36-2-802. Under S.C. Code Ann. §36-2-802, generally a "court may exercise personal jurisdiction over a person domiciled in, organized under the laws of, doing business, or maintaining his or its principal place of business in, this State as to any cause of action."[2] There is not precise formula to determine what constitutes "doing business" in the State, but S.C. Code Ann. §36-2-802 suggests that general jurisdiction is based upon "'an enduring relationship' with the state . . . [meaning] contacts that are substantial, continuous, and systematic." *Coggeshall v. Reprod. Endocrine Assocs*., 376 S.C. 12, 17, (2007).

The U.S. Supreme Court explained that when the party is not domiciled in the State, general jurisdiction can only be found in the exceptional cases where the contacts are "'so substantial and of such a nature as to justify suit against [the respondents] on causes of action arising from dealings entirely different from those activities.'" BNSF Ry v. Tyrrell, 137 S. Ct. 1549, 1558 (2017);

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Cockrell, 363 S.C. 485, 495, 611 S.E.2d at 510 (quoting *International Shoe Co. v. Washington*, 326 U.S. 310, 318 (1945)). An example of such an "exceptional case" is the United States Supreme Court holding in *Perkins v. Benguet Consol. Min. Co*., 342 U.S. 437 (1952). In *Perkins* the defendant, a foreign mining company forced to flee the Philippines during World War II, operated entirely from Ohio for several years. The company's president and principal stockholder relocated to Ohio and set up an office, where he maintained corporate files, carried on the company's correspondence, issued checks on behalf of the company, employed two corporate secretaries, maintained bank accounts, purchased company equipment, and held director's meetings for the duration of the company's exile. Under these circumstances, where Ohio became the business' *de facto* operating headquarters, the Court found general jurisdiction proper.

None of these facts are present here. Fabi LLC's contact with South Carolina does not suggest that general jurisdiction exists over it in South Carolina. It is undisputed that Fabi LLC is not a South Carolina limited liability company and its principal place of business has never been in South Carolina. It likewise has no "enduring" relationship with South Carolina. *See Cockrell*, 363 S.C. at 495, 611 S.E.2d at 510. Fabi LLC's contacts with South Carolina are minimal at best as it has never had any employees or physical presence in the state, paid taxes in South Carolina, never sought a license to do business in South Carolina. *See* Exhibit A. Such facts show that any contact Fabi LLC had with South Carolina was minimal rather than substantial, continuous or systematic. Accordingly, Fabi LLC is not subject to general personal jurisdiction in South Carolina.

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C. Fabi LLC is not Subject to Specific Personal Jurisdiction in South Carolina.

Plaintiffs allegations in this case revolves around Sarah Plant's use of cosmetic and art clay products that contain talc. (FAC at ¶¶ 1, 6, 24, 25). Fabi LLC has never advertised, marketed, nor sold cosmetic grade talc in South Carolina. Exhibit A ¶ 19. There is likewise no evidence that Fabi LLC ever sold talc for use in art clay products. No act by Fabi LLC in South Carolina relates to any of the allegations made by Plaintiffs in this case. As a result, Fabi LLC is not subject to specific jurisdiction because it does not have sufficient minimum contacts with South Carolina that relate to cosmetic talc or talc used in art clay. In addition, it would not be "fair" or "reasonable" to subject Fabi LLC to the jurisdiction of the Court in South Carolina.

The determination of whether a court may exercise personal jurisdiction over a nonresident defendant has traditionally involved a two-step analysis; first, the court must determine if the long-arm statute applies, and second, the court must determine whether the nonresident's contacts with this State are sufficient to satisfy due process requirements. *Power Prods. & Servs. Co., Inc*., 379 S.C. at 431, 665 S.E.2d at 664. "Because South Carolina treats its long-arm statute as coextensive with the due process clause, the sole question becomes whether the exercise of personal jurisdiction would violate due process." *Cockrell*, 363 S.C. at 491, 611 S.E.2d at 508 (citing *Moosally v. W.W. Norton & Co*., 358 S.C. 320, 329, 594 S.E.2d 878, 883 (Ct. App. 2004)); *See also Power Prods. & Servs. Co., Inc*., 379 S.C. at 431, 665 S.E.2d at 664; *State v. NV Sumatra Tobacco Trading, Co*., 379 S.C. 81, 89, 666 S.E.2d 218, 222 (2008).

1. Fabi LLC does not have "sufficient minimum contacts" with South Carolina to establish specific jurisdiction

Due process requires that there exist sufficient minimum contacts with the forum state such that the exercise of jurisdiction does not "offend traditional notions of fair play and substantial justice" and that the defendant can "reasonably anticipate being haled into court in the forum."

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E.g., Cockrell, 363 S.C. at 491-492, 611 S.E.2d at 508 (citing *Burger King Corp. v. Rudzewicz*, 471 U.S. 462, 105 S.Ct. 2174, 85 L.Ed.2d 528 (1985); *World–Wide Volkswagen Corp. v. Woodson*, 444 U.S. 286, 100 S.Ct. 559, 62 L.Ed.2d 490 (1980); *Atlantic Soft Drink Co. v. South Carolina Nat'l Bank*, 287 S.C. 228, 336 S.E.2d 876 (1985)). Establishing minimum contacts requires a showing that the defendant (1) directed its activities to a resident of South Carolina and (2) that the Plaintiffs' claims arise out of or relate to those activities. *S. Plastics Co*., 310 S.C. at 260, 423 S.E.2d at 131; *Coggeshall*, 376 S.C. at 16, 655 S.E.2d at 478 ("Specific jurisdiction is the State's right to exercise personal jurisdiction because the cause of action arises specifically from a defendant's contacts with the forum"); *See also Bristol-Meyers Squibb Co. v. Superior Court of California, San Francisco County*, 137 S.Ct. 1773, 1780 (2017); *World-Wide Volkswagen Corp*., 444 U.S. at 296-297; *Hanson v. Denckla*, 257 U.S. 235, 251, 253 (1958). The requirement that the plaintiff's cause of action arise out of the defendant's actions within the state for specific jurisdiction to exist is codified in South Carolina's long-arm statute. S.C. Code Ann. § 36-2-803(A) ("A court may exercise personal jurisdiction over a person who acts directly or by an agent as to a cause of action *arising from the person's*: (1) transacting any business in this State…").

In *Bristol-Myers Squibb Co. v. Superior Ct. of California, San Francisco Cnty*., 137 S. Ct. 1773 (2017) the United States Supreme Court examined the requirement that plaintiff's claims arise out of the defendant's contacts with the forum for personal jurisdiction to exist. At issue in *Bristol-Myers Squibb* was whether a California state court could exercise personal jurisdiction over nearly 600 non-resident plaintiffs' state-law based tort claims against Bristol Myers Squibb Company ("BMS"). *Bristol-Myers Squibb Co*., 137 S. Ct. at 1777. The Court noted BMS, a Delaware corporation with its principal place of business in New York, had a significant amount of business in California, including research and laboratory facilities employing approximately

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160 people, a sales operation consisting of 250 employees, and a small advocacy office in Sacramento. *Id*. at 1777-78. While nearly 187 million Plavix pills (the drug plaintiffs alleged caused their harm) were sold in California, the nonresident plaintiffs did not allege they were prescribed or purchased Plavix in California or that they were injured by Plavix or treated for their injuries in California. *Id*. Examining whether the California courts exercise of personal jurisdiction was proper, the Court reiterated the distinction between general and specific jurisdiction:

> A court with general jurisdiction may hear any claim against that defendant, even if all the incidents underlying the claim occurred in a different State. But only a limited set of affiliations with a forum will render a defendant amenable to general jurisdiction in that State. Specific jurisdiction is very different. In order for a state court to exercise specific jurisdiction, the *suit* must arise out of or relate to the defendant's contacts with the *forum*. In other words, there must be an affiliation between the forum and the underlying controversy, principally, an activity or an occurrence that takes place in the forum State and is therefore subject to the State's regulation. For this reason, specific jurisdiction is confined to adjudication of issues deriving from, or connected with, the very controversy that establishes jurisdiction.

Id. at 1780 (internal citations and quotations omitted) (emphasis in original). The Court went on to note that "settled principles" mandate that where no affiliation or connection exists between the defendant's contacts with the forum and the underlying claims "specific jurisdiction is lacking regardless of the extent of a defendant's unconnected activities in the State." *Id*. at 1781 (citing *Goodyear Dunlop Tires Operations, S.A*., 564 U.S. at 919; 931; n. 6.) ("[R]egularly occurring sales of a product in a State do not justify the exercise of jurisdiction over a claim unrelated to those sales"). The Supreme Court reversed the California Court's holding and specifically rejected its "sliding scale approach," holding that:

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> [T]he California Supreme Court's "sliding scale approach" is difficult to square with our precedents. Under the California approach, the strength of the requisite connection between the forum and the specific claims at issue is relaxed if the defendant has extensive forum contacts that are unrelated to those claims. Our cases provide no support for this approach, which resembles a loose and spurious form of general jurisdiction. For specific jurisdiction, a defendant's general connections with the forum are not enough. As we have said, "[a] corporation's 'continuous activity of some sorts within a state ... is not enough to support the demand that the corporation be amenable to suits unrelated to that activity.

Id. at 1781 (citing *Goodyear Dunlop Tires Operations, S.A*., 564 U.S. at 927). The Court further stated that BMS's activities in California which were unrelated to the plaintiffs' claims, such as sales of other products and research unrelated to Plavix, were not only insufficient to establish jurisdiction, but were not even relevant to the discussion. *Id*. at 1781.

In this case, Plaintiffs have not shown that Fabi LLC has sufficient minimum contacts with South Carolina for the exercise of jurisdiction to satisfy due process because their cause of action does not arise out of or relate to Fabi LLC's sales of industrial talc in the State. Plaintiffs allege Ms. Plant was exposed to asbestos-containing cosmetic and body talc products through her and her family's personal use and to asbestos-containing art clay from her participation in art classes. (FAC ¶ 6.) Plaintiffs go on to list multiple "powder products," "makeup products," and "ceramic products" which they claim contained asbestos and which they claim Ms. Plant used on a regular basis. (FAC ¶¶ 7-15.) Plaintiffs do not allege, however, any direct or take-home exposure since from talc at plants that manufacture plastic or rubber products; their pleadings are devoid of any claim or allegation that Ms. Plant worked in any such plants, had family members who worked in any such plants, or set forth any other way Ms. Plant could have been exposed to Fabi LLC's industrial talc. Simply stated, there is no connection between Fabi LLC's activity in South Carolina (sales of industrial talc to plants that manufacture plastic and rubber products) and Ms.

Plant's claimed exposure to asbestos-containing cosmetics and clay. Consequently, none of Ms. Plant's alleged exposures "arise out of" Fabi LLC's sales of industrial talc within the State, and the exercise of personal jurisdiction over it would be improper.

2. Fabi LLC's sale of cosmetic talc in West Virginia has no relationship to South Carolina and does not establish specific jurisdiction

Fabi LLC's sale of refined or "cosmetic grade" talc in West Virginia is insufficient to establish jurisdiction over it in South Carolina. The Supreme Court of South Carolina has consistently held the focus of the minimum contacts analysis must be on each defendant's own actions, not the "unilateral actions of some other entity." *Cockrell*, 363 S.C. at 492, 611 S.E.2d at 508–09 ("The foreseeability that is critical to due process analysis is not the mere likelihood that a product will find its way into the forum state. Rather, it is that the defendant's conduct and connection with the forum state are such that he should reasonably anticipate being haled into court there"); *S. Plastics Co*., 310 S.C. at 261, 423 S.E.2d at 131 ("[T]he defendant's activities directed to a resident of this State must be its own and not the unilateral activities of some other entity."). Likewise, the United States Supreme Court has held the defendant's actions, not those of downstream manufacturers, are determinative in a minimum contacts analysis. *E.g., Asahi Metal Indus. Co. v. Superior Ct. of California, Solano Cty*., 480 U.S. 102, 112, 107 S.Ct. 1026, 1032, 94 L. Ed. 2d 92 (1987) ("The substantial connection… for a finding of minimum contacts must come about by *an action of the defendant purposefully directed toward the forum State*. The placement of a product into the stream of commerce, without more, is not an act of the defendant purposefully directed toward the forum State.") (internal quotations and citations omitted) (emphasis in original).

As attested in Mr. Woods' affidavit, Fabi LLC never advertised, marketed, sold or shipped cosmetic grade talc to South Carolina. Exhibit A at ¶ 19. Fabi LLC had no contracts to sell

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cosmetic grade talc, by mail or otherwise, with a South Carolina resident to be performed in South Carolina. Exhibit A at ¶ 32. Fabi LLC has never had actual or constructive knowledge that its products would be used in whole or in part as an ingredient in a cosmetic product manufactured, sold, or distributed in South Carolina. Exhibit A at ¶ 35. Fabi LLC has never shipped any cosmetic grade talc products to South Carolina. Exhibit A at ¶ 37. Fabi LLC has never produced, manufactured, or distributed cosmetic grade talc with the reasonable expectation that those goods were to be used or consumed in South Carolina, which were so used or consumed. Exhibit A at ¶ 44. Furthermore, all cosmetic talc sold by Fabi LLC until late 2018 was delivered EXW or F.O.B. Origin, Freight Collect, West Virginia. Exhibit A at ¶ 22. The buyer made all shipping arrangements, bore all shipping costs, took possession of the product, and assumed all risk of loss at Fabi LLC's loading dock in West Virginia. *Id*.

Even assuming, *arguendo*, that Fabi LLC's cosmetic talc was later used by another unrelated entity or entities as an ingredient in a final product that later was allegedly sold in South Carolina, specific jurisdiction does not exist where the unilateral actions of a third party, rather than those of Fabi LLC, caused the talc to be incorporated into a final product that may have ended up in South Carolina. *See Cockrell*, 365 S.C. at 492, 611 S.E.2d at 508-09.

The Supreme Court of South Carolina examined the "stream of commerce" theory of personal jurisdiction in *State v. NV Sumatra Tobacco Trading, Co*., 379 S.C. 81, 666 S.E.2d 218 (2008). The Court held that Sumatra, a foreign tobacco company who sold its products in the United States through a distributor, had sufficient minimum contacts and was, therefore, subject to personal jurisdiction in South Carolina because it: (1) admitted to manufacturing United brand cigarettes; (2) admitted it owned the United States trademark for that brand; (3) sold 6,868,000 United brand cigarettes in South Carolina in 2001; (4) filed an ingredient report for the United

brand cigarettes; (5) admitted it packaged its cigarettes in packs and cartons bearing the United States-required health warnings; and (6) the United brand packaging identified the cigarettes as an "American blend," had a Surgeon General's warning, and showed an eagle and striped packaging. *NV Sumatra Tobacco Trading, Co*., 379 S.C. at 90, 666 S.E.2d at 223. Based on these facts, the Court held that even though Sumatra used an independent distributor it had "purposely availed itself of conducting business in all 50 states, including South Carolina" and that minimum contacts with South Carolina existed regardless of how the products arrived in the State. *Id*. The facts presented in the instant case are readily distinguished. Unlike the facts presented in *Sumatra*, Fabi LLC did not manufacture or sell a final product that was allegedly sold in South Carolina and Fabi LLC had no control over the manufacture or distribution of the final product. The final product did not allegedly arrive in South Carolina through any efforts of Fabi LLC. *See Cockrell*, 365 S.C. at 494, 611 S.E.2d at 510. In addition, the concern present in *Sumatra* that a company located outside the United States could avoid suit in every state is not applicable here because Fabi LLC would be subject to jurisdiction in West Virginia.

Subsequent to the *Sumatra* holding, the United States Supreme Court examined the stream of commerce theory and, in a plurality opinion authored by Justice Kennedy, held that "[a] defendant's transmission of goods permits the exercise of jurisdiction only where the defendant can be said to have targeted the forum; as a general rule, it is not enough that the defendant might have predicted that its goods will reach the forum State." *J. McIntyre Mach., Ltd. v. Nicastro*, 564 U.S. 873, 882, 131 S. Ct. 2780, 2788, 180 L. Ed. 2d 765 (2011). Justice Bryer, in his concurring opinion, found jurisdiction lacking where there was no "regular flow or regular course of business in [the forum state]; and there is no "something more," such as a special state-related design, advertising, advice, marketing, or anything else" and the defendant had not "purposefully avail[ed]

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itself of the privilege of conducting activities within [the forum state], or that it delivered its goods in the stream of commerce with the expectation that they will be purchased by [forum state] users." *Id*. at 889 (Bryer, J. concurring) (internal citations and quotations omitted). The concurrence further stated disagreement with the concept that a party could be subject to jurisdiction in a products liability case "so long as it knows or reasonably should know that its products are distributed through a nationwide distribution system that *might* lead to those products being sold in any of the fifty states." *Id*. at 891 (Bryer, J. concurring) (internal citations and quotations omitted) (emphasis in original).

Applying the *J. McIntyre* Court's analysis to the facts here, it is readily apparent Fabi LLC's lacks sufficient minimum contacts with South Carolina. Fabi LLC cannot be said to have "targeted" South Carolina where it never marketed, advertised, sold, or shipped any products to the State and did not engage a distributor to do so on its behalf. Fabi LLC did not sell products with any intention or expectation that they would eventually be purchased by residents of South Carolina. Moreover, whether some other entity may have used Fabi LLC's cosmetic grade talc as an ingredient in a product that was eventually sold in South Carolina is irrelevant in determining whether Fabi LLC has minimum contacts with the State; the proper inquiry must focus solely on whether Fabi LLC directed its activities to residents of South Carolina. The facts here unequivocally show it did not. Absent a specific connection between Plaintiffs' claims, Fabi LLC's alleged conduct, and the State of South Carolina, there can be no specific jurisdiction.

Because Plaintiffs have not, and cannot, show that Fabi LLC has minimum contacts with South Carolina necessary for the exercise of personal jurisdiction to meet the requirements of due process, their claims against Fabi LLC must be dismissed.

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3. The exercise of jurisdiction over Fabi LLC would be neither reasonable nor fair

When deciding whether specific jurisdiction exists, the Court must consider whether the exercise of jurisdiction over the party would be "reasonable" or "fair." *State v. NV Sumatra Tobacco Trading Co.*, 379 S.C. 81, 91 (2008) (citations omitted). Such considerations include

> (1) the duration of the activity of the nonresident within the state; (2) the character and circumstances of the commission of the nonresident's acts; (3) the inconvenience resulting to the parties by considering or refusing to confer jurisdiction over the nonresident; and (4) the State's interest in exercising jurisdiction.

Id. In this case, none of the fairness factors suggest it is reasonable to impose jurisdiction on Fabi LLC.

As mentioned above, Fabi LLC's contact with South Carolina is extremely limited and does not relate to any facts of this case. In particular, Fabi LLC did not ever sell, advertise or market cosmetic grade talc in South Carolina and there is no indication that Fabi LLC ever sold talc for use in art clay in South Carolina. Exhibit at ¶ 19. Fabi LLC's contacts certainly cannot be properly characterized as having a long duration or otherwise of a character of circumstance that the exercise of jurisdiction would be either foreseeable, fair or reasonable.

In addition, the Complaint in this case indicates that Plaintiffs are not citizens or domiciled in South Carolina and Fabi LLC is likewise not domiciled in South Carolina. (FAC at ¶ 24; Exhibit A at ¶¶ 3-5.) The exercise of jurisdiction over Fabi, LLC will be inconvenient as it has no operations, employees, documents or other information related to this case in South Carolina and it will be forced to defend a case in a jurisdiction where it has no presence or facts that bind it to South Carolina. Plaintiffs share this inconvenience. They are domiciled in Tennessee. The suggestion that South Carolina is somehow more convenient is a dubious argument at best when they are not even residents of the State.

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Lastly, South Carolina has minimal interest in the exercise of jurisdiction. South Carolina jurors and this Court will be required to expend time and resources to resolve a conflict between residents of foreign states for activities that happened largely outside of South Carolina. It is much more reasonable to have jurors and courts that are more centered around this litigation hear this case.

Overall, both fairness and reasonableness suggest that the exercise of jurisdiction over Fabi LLC would be inappropriate in this case.

III. PLAINTIFFS' CLAIMS ARE BARRED BY SOUTH CAROLINA'S DOOR CLOSING STATUTE.

All of Plaintiffs' causes of action against Defendant are barred by South Carolina's Door Closing Statute, which provides that:

> An action against a corporation created by or under the laws of any other state, government or country may be brought in the circuit court:
>
> (1) By any resident of this State for any cause of action; or
> (2) By a plaintiff not a resident of this State when the cause of action shall have arisen, or the subject of the action shall be situated within this State.

S.C. Code § 15-5-150.

The Door Closing Statute broadly applies to any "action" brought in a South Carolina circuit court against an out-of-state corporation and, therefore, applies to all of Plaintiffs' claims. *Id*. Summary judgment should be granted on all claims because: (1) Defendant is incorporated outside of South Carolina; (2) Plaintiffs are not residents of South Carolina, and (3) Plaintiffs have not produced any evidence that Sarah Plant was injured by any asbestos-containing product attributable to Defendant in South Carolina. Plaintiffs concede the first two points in the Complaint. (FAC ¶¶ 24, 53)

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As to the third point, Subsection (2) of the Door Closing Statute provides that an out-of-state corporation may be sued in a circuit court by a non-resident plaintiff only when "the cause of action shall have arisen or the subject of the action shall be situated within the State." S.C. Code §15-5-150 (2). The South Carolina Supreme Court has explained that the statute is intended to allow resolution of wrongs connected with South Carolina "while avoiding the resolution of wrongs in which the State has little interest" and to encourage foreign corporation activity in the State "without subjecting them to actions unrelated to their activity within the State." *Murphy v. Owens-Corning Fiberglas Corp.*, 356 S.C. 592, 597, 590 S.E.2d 479, 481 (2003) (quoting *Farmer v. Monsanto Corp.*, 353 S.C. 553, 558, 579 S.E.2d 325, 328 (2003)).

When analyzing subsection (2) of the Door-Closing Statute in an alleged exposure case, "the proper inquiry is whether the foreign corporation's activities that allegedly exposed the victim to the injurious substance, and the exposure itself, occurred within the State. If so, then the legal wrong was committed here." *Id.* at 598, 590 S.E.2d at 482. Summary judgment must be granted where, as here, Plaintiffs "failed to show any actionable exposure in South Carolina." *See Henderson v. Allied Signal, Inc.*, 373 S.C. 179, 185, 644 S.E.2d 724, 727 (2007). Whether there is "actionable exposure" is an inquiry that must be made for each defendant, and not on the case as a whole. *Id.* ("Due to the lack of evidence Mr. Henderson was exposed to the Respondents' asbestos containing products in South Carolina, we affirm the trial court's holding."). Thus, the inquiry here is whether Plaintiffs have proof of exposures within South Carolina which give rise to Plaintiffs' claims against Defendant. *See id.*; *Murphy*, 356 S.C. at 598, 590 S.E.2d at 482. As discussed below, Plaintiffs cannot meet the burden of showing actionable exposure in South Carolina to satisfy the *Henderson* standard. Thus, Plaintiffs' claims against Defendant are barred by South Carolina's Door Closing Statute and summary judgment is proper.

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IV. PLAINTIFFS CANNOT SATISFY THE "FREQUENCY, REGULARITY AND PROXIMITY" REQUIREMENT UNDER SOUTH CAROLINA LAW.

To establish liability in an asbestos case, the plaintiff must present "evidence of exposure to a specific product on a regular basis over some extended period of time in proximity to where the plaintiff actually worked." *Lohrmann v. Pittsburg Corning, Corp.*, 782 F.2d 1156, 1162–63 (4th Cir. 1986). If the plaintiff does not present evidence showing the "frequency, regularity, and proximity" of exposure to a specific product manufactured by the defendant, summary judgment should be granted in favor of the defendant. *Henderson v. Allied Signal, Inc.,* 373 S.C. 179, 185, 644 S.E.2d 724, 727 (2007). There must be some evidence of exposure to a specific product on a regular basis over some extended period of time in proximity to the plaintiff. *Id.* Proximate cause is determined by proving more than a casual or minimum contact with the product containing asbestos in order to hold the manufacturer of that product liable. *Lohrmann,* 782 F.2d at 1163. One's mere "presence in the vicinity of static asbestos" does not constitute actionable exposure to asbestos. *Henderson*, 373 S.C. at 185, 644 S.E.2d at 727.

The basis of product liability law in this jurisdiction is that the plaintiff has the burden of proof in showing that he or she was exposed to a particular defendant's asbestos-containing product. *Ryan v. Eli Lilly & Co.*, 514 F. Supp. 1004, 1006 (D.S.C. 1981). In the present case, Plaintiffs are unable to meet that burden. As will be outlined further below, Plaintiffs simply do not have the requisite evidence to support the claims.

A. Plaintiffs Have Failed to Establish Defendant Proximately Caused Sarah Plant's Injury.

Under South Carolina law, a "products liability case may be brought under several theories, including negligence, strict liability, and warranty." *Rife v. Hitachi Constr. Mach. Co.*, 363 S.C. 209, 609 S.E.2d 565, 568 (2005). Regardless of the particular theory under which the plaintiff

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proceeds, he must establish "(1) that he was injured by the product; (2) that the product, at the time of the accident, was in essentially the same condition as when it left the hands of the defendant; and (3) that the injury occurred because the product was in a defective condition unreasonably dangerous to the user." *Holst v. KCI Konecranes Int'l Corp.*, 390 S.C. 29, 699 S.E.2d 715, 719 (2010). Plaintiffs must show more than mere speculation, but must also show that a particular product contained asbestos, that plaintiff breathed in that asbestos and that it caused disease and/or death. *See Pace v. Air & Liquid Systems Corp.*, 624 Fed. Appx. 244 (4th 2016).

Further a plaintiff's exposure to asbestos must be more than a casual or minimal exposure. Citing the *Lohrmann* decision, the Court in *Henderson* explained the standard as follows:

> To support a reasonable inference of substantial causation from circumstantial evidence, there must be evidence of exposure to a specific product on a regular basis over some extended period of time in proximity to where the plaintiff actually worked.

Henderson, 373 S.C. at 185, 644 S.E.2d at 727.

Here, there is no testimony that Sarah Plant was exposed to asbestos-containing products attributable to Defendant. The case law is clear, in order for a Defendant to be held liable, plaintiff must prove exposure to a *specific* product on a *regular* basis. Plaintiffs are simply unable to do so in the present case.

Because Plaintiffs have failed to put forth any evidence to show that Sarah Plant was exposed to any product attributable to Defendant, Plaintiffs have failed to meet their burden. Here, even assuming that Plaintiffs are later able to present some evidence that a product attributable to Defendant was used by Sarah Plant, and that such product contained asbestos, that evidence would not be enough to withstand summary judgment because plaintiff "must prove more than a casual or minimum contact with the product containing asbestos in order to hold the manufacturer of that product liable." *Jones v. Owens-Corning Fiberglas Corp.*, 69 F.3d 712, 716 (4th Cir. 1995). Thus,

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in order to meet the requirements of *Lohrmann*, Plaintiffs must present evidence of significant exposures. No such evidence has been proffered by the Plaintiffs in this case against Defendant.

As of the time specified for filing summary judgment motions in this case, there is no evidence establishing that asbestos was in or released from any product attributable to Defendant and which was inhaled by Sarah Plant. For the above stated reasons, Defendant is entitled to summary judgment as a matter of law.

B. There Is No Evidence to Establish Sarah Plant Was Exposed to Asbestos from Any Product Attributable to Defendant.

Under the *Lohrmann* test, "[t]o support a reasonable inference of substantial causation from circumstantial evidence, there must be evidence of exposure to a specific product on a regular basis over some extended period of time in proximity to where the plaintiff actually worked." *Lohrmann*, 782 F.2d 1156, 1162–63. The Supreme Court of South Carolina has adopted a standard that in order to support a reasonable inference of substantial causation from circumstantial evidence, there must be evidence of exposure to a specific product on a regular basis over an extended period of time in proximity to where plaintiff actually worked. *Henderson*, 373 S.C. at 185, 644 S.E.2d at 727. In order to recover against Defendant, Plaintiffs must present some evidence that Sarah Plant was substantially exposed to asbestos from an asbestos-containing product for which Defendant is legally responsible. In this case, Plaintiffs cannot.

The evidence in this case does not pass the *Lohrmann* test. A complete review of the evidence submitted by Plaintiffs shows there is no evidence that would support a finding under the "frequency, regularity and proximity test." For the above reasons, Defendant is entitled to summary judgment as a matter of law.

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V. PLAINTIFFS' REMAINING CLAIMS FAIL AS A MATTER OF LAW.

A. Post-Sale Duty to Warn

While the above arguments are sufficient to warrant summary judgment for Defendant as to all of Plaintiffs' claims, alternatively, specific claims should be dismissed for independent reasons.

South Carolina does not recognize a post-sale duty to warn or retrofit. *See Bragg, supra*; *Andrews v. CBS Corp.*, No. 2:13-CV-2055-RMG, 2015 WL 12831309, at *1 (D.S.C. June 24, 2015). In *Bragg*, the court stated that a product must be "measured against a standard existing at the time of sale or against reasonable customer expectations held at the time of sale." *Bragg*, 462 at 331. Even if it is assumed that Defendant sold products used by Sarah Plant, there is no evidence that any product for which Defendant is responsible, was defective at the time it left Defendant's control. Further, Defendant would have been under no duty to retrofit or warn of any dangers that were not present at the time of shipping. As such, any claims against Defendant based on a post-sale duty to warn must fail as a matter of law.

B. Implied Warranty of Merchantability

Plaintiffs seek damages based on alleged breach of implied warranty under S.C. Code Ann. § 36-2-314. Section 36-2-314 states:

> (1) Unless excluded or modified (§ 36-2-316), a warranty that the goods shall be merchantable is implied in a contract for their sale if the seller is a merchant with respect to goods of that kind.

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(2) Goods to be merchantable must be at least such as:

(a) pass without objection in the trade under the contract description; and

(b) in the case of fungible goods, are of fair average quality within the description; and

(c) are fit for the ordinary purposes for which such goods are used; and

(d) run, within the variations permitted by the agreement, of even kind, quality and quantity within each unit and among all units involved; and

(e) are adequately contained, packaged, and labeled as the agreement may require.

(3) Unless excluded or modified (§ 36-2-316), other implied warranties may arise from course of dealing or usage of trade.

In this case, Plaintiffs have failed to put forth evidence that a product attributable to Defendant was in a defective, unreasonably dangerous condition, or that it was in the same condition at the time of the alleged injury. As a result, there is no genuine issue of material fact regarding Plaintiffs' claim for breach of implied warranty against Defendant and, as such, Defendant is entitled to summary judgment as a matter of law.

C. Fraudulent Misrepresentation

The Court should dismiss Plaintiffs' cause of action for false or fraudulent misrepresentation. Rule 9(b) requires Plaintiffs to plead the circumstances constituting fraud with particularity. The Fourth Circuit held that the facts required to be pled with particularity under Rule 9(b) are "the time, place, and contents of the false representations, as well as the identity of the person making the misrepresentation and what he obtained thereby." *Harrison v. Westinghouse Savannah River Co.,* 176 F.3d 776, 784 (4th Cir.1999), citing, 5 Charles Alan Wright and Arthur

R. Miller, FEDERAL PRACTICE AND PROCEDURE: CIVIL § 1297, at 590 (2d ed.1990). This is especially critical when a complaint asserts claims against multiple defendants.

Rule 9(b) has four purposes: 1) it ensures that the defendant has sufficient information to formulate a defense by putting it on notice of the conduct complained of; 2) to protect defendants from frivolous suits; 3) to eliminate fraud actions in which all the facts are learned after discovery; and 4) to protect defendant from harm to their goodwill and reputation. *Id.*

In order to plead a proper claim for fraudulent misrepresentation in South Carolina, a plaintiff must allege *with particularity*: (1) a representation; (2) falsity of representation; (3) materiality of representation; (4) the defendant's knowledge of the falsity of the representation or reckless disregard of its truth or falsity; (5) defendant's intent that the representation should be acted upon; (6) the hearer's ignorance of the falsity; (7) hearer's reliance on the truth of the representation; (8) hearer's right to so rely; and (9) the hearer's consequent and proximate injury to plaintiff. *DeHart v. Dodge City of Spartanburg, Inc.*, 311 S.C. 135, 427 S.E.2d 720 (Ct. App. 1993); *M. B. Kahn Const. Co., Inc. v. South Carolina Nat. Bank of Charleston*, 275 S.C. 381, 271 S.E.2d 414 (1980). Failure to properly plead any of these elements with particularity is fatal to Plaintiff's fraud claim. *Ardis v. Cox*, 314 S.C. 512, 515, 431 S.E.2d 267, 269 (Ct. App. 1993).

More importantly, when a fraud claim involves multiple defendants, the complaint must also state with particularity each defendant's role in the alleged fraud. *Mincey v. World Savings Bank, FSB*, 614 F. Supp. 2d 610, 627 (D.S.C. 2008). Plaintiffs failed to identify with particularity any facts specific to any of the numerous Defendants. Plaintiffs have not pled or put forth any evidence that even begins to inform Defendant of its role in the alleged fraud, let alone allege, with particularity, any facts to support the elements required by South Carolina law.

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In *Mincey,* the District Court dismissed a fraud claim under Rule 9(b), where the plaintiffs failed to allege fraud with particularity and simply "lumped all defendants together in a manner that is impermissible for purposes of Rule 9(b)." *See also*, *Vicom, Inc. v. Harbridge Merch. Servs., Inc.,* 20 F.3d 771, 778 (7th Cir. 1994), quoting *Di Vittorio v. Equidyne Extractive Indus.,* 822 F.2d 1242, 1247 (2d Cir. 1987) ("where multiple defendants are asked to respond to allegations of fraud, the complaint should inform each defendant of the nature of his alleged participation in the fraud); *Goldstein v. Malcolm G. Fries & Assocs., Inc.,* 72 F. Supp. 2d 620, 627 (E.D. Va. 1999) ("A plaintiff may not group all wrongdoers together in a single set of allegations.")

Here, Plaintiffs simply lumped all Defendants together and restated the elements of a fraudulent misrepresentation claim without setting forth any particularized allegations against Defendant as required by Rule 9(b). Plaintiffs also have not produced any evidence to support this claim.

As discussed above, an action for fraudulent misrepresentation is predicated on a false statement. Plaintiffs have not produced any evidence to support this claim. Plaintiffs have no proof of what representations were allegedly made, when they occurred, how they occurred, how Defendant allegedly knew or recklessly disregarded the alleged falsity of the representations, how or when Sarah Plant relied on them, what basis she had to rely on them, or even how Defendant knew that any such representation was false. Therefore, Defendant is entitled to summary judgment on this claim.

D. Strict Liability

A cause of action resting upon strict liability under South Carolina's strict liability statute does not exist where a product entering the stream of commerce prior to July 9, 1974, is alleged to have caused injury thereafter. *Schall v. Sturm, Ruger Co.*, 278 S.C. 646, 650, 300 S.E.2d 735, 737

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(1983). South Carolina did not recognize strict liability until it adopted the strict liability statute on July 9, 1974. To bring a strict liability claim against Defendant, Plaintiffs must show that Sarah Plant was: (1) exposed to an asbestos-containing product; (2) manufactured by Defendant; and (3) that was placed in the stream of commerce after July 9, 1974. Here, Plaintiff has failed to do so. As discussed, there is no evidence in the record that Sarah Plant was exposed to any asbestos-containing product attributable to Defendant.

Without proof that Sarah Plant was exposed to asbestos from a product attributable to Defendant and said product was placed in the stream of commerce after July 9, 1974, Plaintiffs cannot establish a strict liability claim under South Carolina law. *Id.* Therefore, Defendant must be granted summary judgment on Plaintiffs' strict liability action.

CONCLUSION

Defendant is entitled to summary judgment based on any one of three grounds: 1) the Court lacks personal jurisdiction over Defendant; 2) Plaintiffs' claims are barred by South Carolina's Door Closing Statute; and 3) Plaintiffs are unable to meet the burden to prove that Sarah Plant was exposed to asbestos from any product for which Defendant is alleged to be responsible. There is no basis to establish that Defendant breached any duty owed to Plaintiffs, or that any acts or omissions by Defendant served as a proximate cause of Sarah Plant's alleged asbestos-related disease. For these reasons, Defendant respectfully requests that this Honorable Court enter an Order granting its Motion for Summary Judgment, and that all claims be dismissed.

Respectfully submitted this, the 13th day of January, 2023.

WOMBLE BOND DICKINSON (US) LLP

s/ M. Elizabeth O'Neill
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Counsel for Defendant IMI Fabi, LLC

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STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF RICHLAND	)	FOR THE FIFTH JUDICIAL CIRCUIT
	)	
SARAH J. PLANT and PARKER PLANT	)	C/A NO. 2022-CP-40-01265
	)	
Plaintiffs,	)	
v.	)	
	)	
AVON PRODUCTS, INC., et al.	)	
	)	
Defendants.		

AFFIDAVIT OF JAMES WOODS IN SUPPORT OF SPECIALLY APPEARING DEFENDANT IMI FABI, LLC'S MOTION TO DISMISS FOR LACK OF PERSONAL JURISDICTION

I, James Woods, declare as follows:

1. My name is James Woods. I am over the age of eighteen years old (18) and I am competent to give this Affidavit.

2. I am the Manager of IMI Fabi, LLC (hereinafter referred to as "Fabi LLC"). I make the following statements based upon my own personal knowledge, and, if called as a witness, could and would testify competently to such facts under oath.

3. On December 18, 1997, Zemex Fabi Benwood, LLC, a North Carolina limited liability company, was created.

4. On April 4, 2001, Zemex Fabi Benwood LLC changed its name to IMI Fabi, LLC by Amendment to its Articles of Organization.

5. On January 1, 2020, a new IMI Fabi, LLC was established in West Virginia. IMI Fabi LLC, a North Carolina limited liability company, and was merged with and into IMI Fabi, LLC, a West Virginia limited liability company.

6. Fabi LLC sells refined talc to the cosmetic, personal care, pharmaceutical, food industry, and industrial grade talc to be used in non-cosmetic applications.

7. Fabi LLC has never been licensed to do business in any state other than North

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Carolina and West Virginia.

8. Fabi LLC has never had a registered agent in any state other than North Carolina and West Virginia.

9. Fabi LLC has never owned or operated any manufacturing, sales, or distribution facilities in South Carolina.

10. Fabi LLC has never had any employees working or residing in South Carolina.

11. Fabi LLC has never recruited any South Carolina residents, directly or through an intermediary located in the State of South Carolina, for employment inside or outside of the State of South Carolina.

12. Fabi LLC has never had a mailing address, post office box, or bank account in South Carolina.

13. Fabi LLC has never owed or paid corporate taxes in South Carolina.

14. Fabi LLC has never had insurance policies which afford coverage of any kind for specific entities located in South Carolina.

15. Fabi LLC has never paid sales tax to South Carolina.

16. Fabi LLC has never invested any dollars in business operations in South Carolina.

17. Until January 1, 2020, Fabi LLC never contracted to supply services or goods in the State of South Carolina.

18. Until January 1, 2020, Fabi LLC never marketed or advertised its cosmetic grade talc products in the State of South Carolina.

19. Neither before January 1, 2020 nor after January 1, 2020 has Fabi LLC advertised, marketed nor sold cosmetic grade talc in the State of South Carolina.

20. Fabi LLC has not received tax deductions as a result of contributions made to any organizations in the State of South Carolina.

21. Fabi LLC has never received any business incentives or tax credit from the State of South Carolina to conduct business in South Carolina.

22. Until late 2018, all cosmetic grade talc products sold by Fabi LLC were delivered

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EXW or F.O.B. Origin, Freight Collect, West Virginia. In every instance, the Buyer made all of the arrangements for the shipment of the products off of Fabi LLC's premises. In every instance, possession of the product bought from Fabi LLC and the risk of loss in transit transferred from Fabi LLC to the Buyer at the Fabi LLC loading dock in West Virginia. In every instance, the Buyer paid for and bore the freight charges. In every instance, the Buyer, not Fabi LLC, filed claims (if any) if the product was damaged, destroyed, or lost in transit.

23. Consequently, until late 2018, Fabi LLC never delivered any cosmetic grade talc products to the State of South Carolina.

24. Fabi LLC has never appeared in a case in South Carolina, including but not limited to, any matrimonial actions or family court proceedings.

25. Fabi LLC has never had an interest in, using or possessing real property in the State of South Carolina.

26. Fabi LLC has never owned, used, possessed, or held a mortgage or other lien on any real property in the State of South Carolina.

27. Fabi LLC has never owned, leased, or operated any real property or any offices in South Carolina.

28. Fabi LLC has never paid real estate tax to any municipality or town in South Carolina.

29. Fabi LLC has never owned a motorized vehicle registered in South Carolina and has never paid any automobile excise tax to any municipality or town located in South Carolina.

30. Fabi LLC has never owned a water vessel (boat) registered in South Carolina and has never paid any boat excise tax to any municipality or town located in South Carolina.

31. Fabi LLC has never acquired ownership, possession or control of any asset or thing of value present within the State of South Carolina.

32. Fabi LLC had no contracts to sell cosmetic grade talc, by mail or otherwise, with a South Carolina resident to be performed in the State of South Carolina.

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33. Fabi LLC has never had any subsidiaries or corporately related companies in the State of South Carolina, or elsewhere.

34. Fabi LLC has never entered into any franchise agreements between it and any entities licensed to do business in South Carolina.

35. Fabi LLC has never had actual or constructive knowledge that its products would be used in whole or in part as an ingredient in a cosmetic product manufactured, sold or distributed in South Carolina.

36. Fabi LLC has never mined, milled, processed, tested, screened, analyzed, and/or blended talc in South Carolina.

37. Fabi LLC has never manufactured, sold, or distributed any cosmetic grade talc products in the State of South Carolina.

38. Fabi LLC never shipped any cosmetic grade talc products to the State of South Carolina.

39. Fabi LLC has sold only industrial grade talc products for incorporation in the manufacture of plastic and rubber products to customers in South Carolina.

40. Fabi LLC has never operated, conducted, engaged in, or carried on a business or business venture in the State of South Carolina.

41. Fabi LLC has never had an office or agency in the State of South Carolina.

42. Fabi LLC has never committed a tortious act in whole or in part in the State of South Carolina.

43. Fabi LLC has never caused tortious injury or death to persons or property within the State of South Carolina arising out of an act or omission committed outside the State of South Carolina.

44. Fabi LLC has never produced, manufactured, or distributed cosmetic grade talc with the reasonable expectation that those goods are to be used or consumed in the State of Carolina, and are so used or consumed.

I declare under penalty of perjury under the laws of the State of South Carolina that the foregoing is true and correct and that this declaration was executed on June 27, 2022 at West Virginia.

James Woods, Manager of Fabi, LLC

SWORN TO AND SUBSCRIBED BEFORE ME,
ON THIS THE 27 DAY OF JUNE, 2022.

NOTARY PUBLIC

PRINT NAME: Michael Roth

BAR/NOTARY NUMBER: _____

OFFICIAL SEAL
NOTARY PUBLIC
STATE OF WEST VIRGINIA
MICHAEL ROTH
Johnson Boiler Works Inc.
53 Marshall Street
Benwood, West Virginia 26031
My Commission Expires Apr 07 2024

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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. 2022 CP 40 01265
Plaintiffs,	)	
	)	**NOTICE OF PARTIAL WITHDRAWAL OF MOTIONS FOR SUMMARY JUDGMENT, WITHOUT PREJUDICE**
v.	)	
	)	
AVON PRODUCTS, INC., et al.,	)	
	)	
Defendants.	)	
	)	

Subject to and without waiving its objections to personal jurisdiction, please take notice that Defendants IMI Fabi (USA) Inc.; IMI Fabi (Diana) LLC; and IMI Fabi, LLC (collectively "IMI Fabi") hereby withdraw their pending motions for summary judgment to the extent those motions relate to the merits of this case. IMI Fabi makes this partial withdrawal without prejudice to re-asserting arguments regarding the merits of the Plaintiffs' claims at the close of discovery or at any other future point in the litigation.

For clarity's sake, through this notice, IMI Fabi is not withdrawing its motions for summary judgment with respect to arguments regarding personal jurisdiction and the South Carolina Door-Closing Statute. Those arguments remain pending before the Court, and IMI Fabi reserves the right to further supplement those arguments with additional legal authorities and relevant evidence in the event such evidence becomes available.

Additionally, nothing in this notice should be construed as a waiver of any objection or argument by IMI Fabi with respect to this matter.

Respectfully submitted this 6th day of February, 2023.

WOMBLE BOND DICKINSON (US) LLP

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