

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas
Jean H. Toal, Circuit Court Judge

Appellate Case No. 2025-000065
Civil Action No. 2023-CP-40-04072

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SC Court of Appeals

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

Respondents,

v.

American International Industries et al.

Of whom Johnson & Johnson; LLT Management, LLC
f/k/a LTL Management, LLC; Kenvue, Inc.; and Johnson
& Johnson Holdco (NA), Inc. are the

Appellants.

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I certify that this Designation does not contain any matters which are irrelevant to this appeal.

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF RICHLAND	)	FOR THE FIFTH JUDICIAL CIRCUIT
	)	
MICHAEL L. PERRY and	)	C/A NO. 2023-CP-40-04072
LONNIE L. LONG,	)	
	)	<i>In Re:</i>
Plaintiffs,	)	Asbestos Personal Injury Litigation
	)	Coordinated Docket
v.	)	
	)	
AMERICAN INTERNATIONAL	)	ORDER GRANTING DEFAULT
INDUSTRIES, et al.	)	AGAINST AMERICAN
	)	INTERNATIONAL INDUSTRIES
Defendants.	)	

This matter comes before the Court by way of Plaintiffs' Motion for Default Judgment as to American International Industries pursuant to Rule 55 of the South Carolina Rules of Civil Procedure. The Complaint alleged injury relating to asbestos exposure to Michael L. Perry by American International Industries.

A sworn affidavit by counsel for Plaintiffs indicate Plaintiffs properly served Defendant American International Industries through its authorized representative Terri Cooper at 2220 Gaspar Avenue, Los Angeles, California, 90040, by personal process service on August 9, 2023. No answer has been filed by American International Industries as of September 25, 2023.

I THEREFORE FIND AND CONCLUDE:

1. That Defendant American International Industries failed to timely answer the Complaint that was properly served on August 9, 2023.
2. The Plaintiffs are entitled to a default judgment against American International Industries.

3. That a damages hearing will be scheduled upon request by Plaintiffs' counsel and Plaintiff's counsel shall provide notice of the hearing to American International Industries pursuant to Rule 55(b)(2).

AND IT SO ORDERED.

[JUDGE'S SIGNATURE PAGE FOLLOWS]



Richland Common Pleas

Case Caption: Michael L Perry , plaintiff, et al vs American International Industries ,
defendant, et al
Case Number: 2023CP4004072
Type: Order/Entry of Default

So Ordered

Jean H. Toal

Electronically signed on 2023-10-03 11:45:04 page 3 of 3

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF RICHLAND	)	FOR THE FIFTH JUDICIAL CIRCUIT
	)	
MICHAEL L. PERRY and	)	C/A NO. 2023-CP-40-04072
LONNIE L. LONG,	)	
	)	<i>In Re:</i>
Plaintiffs,	)	Asbestos Personal Injury Litigation
	)	Coordinated Docket
v.	)	
	)	
AMERICAN INTERNATIONAL	)	
INDUSTRIES, et al.	)	
	)	
Defendants.	)	

ORDER DENYING AII/CLUBMAN'S MOTION TO LIFT DEFAULT

Michael Perry ("Perry" or "Plaintiff") filed this lawsuit on August 4, 2023. On August 10, 2023, service was obtained on American International Industries ("AII") at 2220 Gaspar Avenue, Los Angeles, CA 90040 by serving AII's Executive Vice President, Terri Cooper. An affidavit of good service was signed and returned by the process server.

AII's answer was due on September 11, 2023. AII did not file an answer or an appearance in the case, nor had AII reached out to Plaintiffs' counsel seeking an extension to answer. Several other Defendants had requested such an extension and each and every time the request was granted.

On September 26, 2023, Plaintiffs filed the instant Motion for Default as a result of AII's failure to answer the complaint. On September 29, 2023, AII filed an answer to Plaintiffs' Original Complaint that was served on August 10, 2023.

On October 10, 2023, two weeks following the filing of the Default Motion, AII filed a Motion to Lift Default. In its motion AII contends, among other things¹, that “Plaintiffs served an individual who was not authorized to accept service.” The Court disagrees.

APPLICABLE LAW

South Carolina Rule of Civil Procedure 4(d)(3) provides that service shall be made

Upon a corporation or upon a partnership or other unincorporated association which is subject to suit under a common name, by delivering a copy of the summons and complaint to an officer, a managing or general agent or to any other agent authorized by appointment or by law to receive service of process and if the agent is one authorized by statute to receive service and the statute so requires, by also mailing a copy to the defendant.

SCRCP 4(d)(3). As set forth above, Terri Cooper is the Executive Vice President of AII. Rule 4 provides that a summons and complaint served on a corporate officer is valid. Thus, AII’s complaint about valid service necessarily fails. Moreover, AII has previously accepted service via service at the exact same address in a Connecticut matter in which they have answered and are defending.

The decision about whether to set aside a default is within the sound discretion of the trial judge. *Richardson v. P.V.*, 383 S.C. 610 (2006). AII contends that Terri Cooper was not authorized to accept service for AII arguing that because she was not listed as an officer of AII at the California Secretary of State’s office, Ms. Cooper is not really an officer. Of course, SCRCP 4(d)(3) does not mandate that an officer be identified at a government office. Clearly, an Executive Vice President is an officer of the corporation.

¹ The other contentions made via affidavit in the first Motion to Lift Default focus on attacking plaintiff’s counsel for AII’s failure to answer the complaint. A supplemental motion to lift default and the accompanying affidavits materially change the allegations made by AII. AII concedes that any complaints they had about plaintiffs’ counsel conduct occurred after the company was already in default. Plaintiffs’ counsel vigorously disputes those allegations. Because I find the issues raised in the affidavits occurred after the default was already in place, I do not consider, in any way, the affidavits submitted by AII.

In *Richardson*, the South Carolina Supreme Court wrote that: “apparent authority is when . . . the principal holds the agent out as possessing such authority.” *Id.* at 615. Thus, even if AII did not expressly authorize Cooper to accept service, by virtue of Cooper’s title, AII provided all the apparent authority Cooper needed to accept service under the South Carolina rules.

Next, as AII acknowledges in its motion, its national lawyers received the complaint and turned the complaint over to AII’s insurer prior to the time to answer. Yet no one sought an extension to answer until after the Plaintiffs sought default. These two facts clearly demonstrate that AII had notice that the complaint had been served and that an answer would be due. “In South Carolina, negligence on the part of an attorney is imputable to the client and will not be the basis for finding good cause to set aside entry of default.” *Limehouse v. Hulsey*, 397 S.C. 49 (Ct. App. 2010). The *Limehouse* court went on to find “that negligence on the part of an insurance company or attorney will be imputed to a defaulting litigant and negligence does not constitute good cause to relieve an appellant from entry of default.” *Id.* at 72.

As AII notes in on pages 4-5 of their Amended Motion to Lift Default:

The decision to set aside an entry of default judgment lies within the sound discretion of the trial judge. *Robertson v. S. Fin. Of S.C., Inc.*, 365 S.C. 6,9 (2005). The standard for granting relief from an entry of default under Rule 55(c) is merely “good cause.” *Wham v. Shearson Lehman Bros., Inc.*, 298 S.C. 462, 465 (Ct.App. 1989). “This standard requires a party seeking relief from an entry of default under Rule 55(c) to provide an explanation for default and give reasons why vacation of the default entry would serve the interests of justice.” *Sundown Operating Co. v. Intedge Indus., Inc.*, 383 S.C. 601, 607 (2009) Thereafter, “once a party has put forth a satisfactory explanation for the default, the trial court must also consider: (1) the timing of the motion for relief; (2) whether the defendant has a meritorious defense; and (3) the degree of prejudice to the plaintiff if relief is granted.” *Id.* at 607-608).

Here, AII has not put forth a satisfactory explanation for the default. Terri Cooper was an officer of the company and therefore was an appropriate person to serve under SCRCP 4(d)(3). AII admits that the Complaint was given to its national counsel the day after service. AII further

admits that the Complaint was then passed on to the Insurer. AII gives no reason, much less a satisfactory explanation for the default. Therefore, the Court does not need to reach the *Wham* factors.

CONCLUSION

Plaintiffs indisputably served AII's corporate officer. Even if she did not possess actual authority, her title alone confers apparent authority. Rule 4 further confirms that service on Cooper was proper. Therefore, the Court DENIES AII's Motion to Lift Default.

IT IS SO ORDERED.

[JUDGE'S E-SIGNATURE PAGE FOLLOWS]



Richland Common Pleas

Case Caption: Michael L Perry , plaintiff, et al vs American International Industries ,
defendant, et al
Case Number: 2023CP4004072
Type: Order/Other

So Ordered

Jean H. Toal

Electronically signed on 2023-11-02 15:35:12 page 5 of 5

FORM 4

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND
IN THE COURT OF COMMON PLEASJUDGMENT IN A CIVIL CASE
CASE NUMBER 2023CP4004072Michael L Perry
Jamie Rae Rutkoski

Lonnie L Long

American International
Industries
Himmel Media Llc
Himmel Management Co Llc
Walgreen Co
Block Drug Company IncBristol Myers Squibb
Company
Brenntag Specialties Llc
Brenntag North America
Inc
Hawthorne Pharmacy Inc

PLAINTIFF(S)

DEFENDANT(S)

Submitted by:

Attorney for: ☐ Plaintiff ☐ Defendant
☐ Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

- ☐ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- ☒ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered. ☐ See Page 2 for additional information.
- ☐ **ACTION DISMISSED (CHECK REASON):** ☐ Rule 12(b), SCRCP; ☐ Rule 41(a), SCRCP (Vol. Nonsuit);
☐ Rule 43(k), SCRCP (Settled); ☐ Other: _____
- ☐ **ACTION STRICKEN (CHECK REASON):** ☐ Rule 40(j) SCRCP; ☐ Bankruptcy;
☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other: _____
- ☐ **STAYED DUE TO BANKRUPTCY**
- ☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**
☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other: _____

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: ☐ See attached order; (formal order to follow) ☐ Statement of Judgment by the Court:

ORDER INFORMATION

Defendants Janssen Pharmaceuticals'(NA), Johnson & Johnson Holdco, Inc, and Kenvue, Inc's Motion to Dismiss is DENIED. The Plaintiff's complaint includes specific allegations regarding the continuity between Old JJCI and these defendants of management, personnel, operating locations, business operations, shareholders and control. Plaintiff's have also submitted 25 exhibits of factual material and court orders which support the allegations of their complaint. Construing these materials in the light most favorable to non moving parties, which are the Plaintiffs, this court is required to deny Defendants Motion to Dismiss.

This order ☐ ends ☐ does not end the case.

Additional Information for the Clerk: _____

INFORMATION FOR THE JUDGMENT INDEX

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

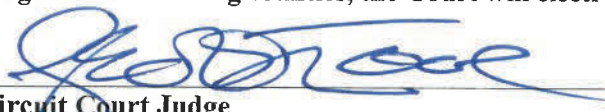
Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)

If applicable, describe the property, including tax map information and address, referenced in the order:

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk.

Note: Title abstractors and researchers should refer to the official court order for judgment details.

E-Filing Note: In E-Filing counties, the Court will electronically sign this form using a separate electronic signature page.


Circuit Court Judge

2758
Judge Code

7/2/2024
Date

For Clerk of Court Office Use Only

This judgment was entered on , and a copy mailed first class or placed in the appropriate attorney's box on , to attorneys of record or to parties (when appearing pro se) as follows:

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100 Mt. Pleasant, SC 29464
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SC 29204
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Charlotte, NC 28202
A. Victor Rawl Jr. 677 King Street Suite 450 Charleston, SC
29403
William Henry Kleindienst 677 King Street Suite 450
Charleston, SC 29403

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

Court Reporter

Jeanette W. McBride - Clerk of Court

Court Reporter:

E-Filing Note: In E-Filing counties, the date of Entry of Judgment is the same date as reflected on the Electronic File Stamp and the clerk's entering of the date of judgment above is not required in those counties. The clerk will mail a copy of the judgement to parties who are not E-Filers or who are appearing pro se. See Rule 77(d), SCRCP.

ADDITIONAL INFORMATION REGARDING DECISION BY THE COURT AS REFERENCED ON PAGE 1.

This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.

FORM 4

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

JUDGMENT IN A CIVIL CASE
CASE NUMBER 2023CP4004072

Michael L Perry
Jamie Rae Rutkoski

Lonnie L Long

American International
Industries
Himmel Media Llc
Himmel Management Co Llc
Walgreen Co
Block Drug Company Inc

Bristol Myers Squibb
Company
Brenntag Specialties Llc
Brenntag North America
Inc
Hawthorne Pharmacy Inc

PLAINTIFF(S)

DEFENDANT(S)

Submitted by:

Attorney for: ☐ Plaintiff ☐ Defendant
☐ Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

- ☐ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
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- ☐ **ACTION DISMISSED (CHECK REASON):** ☐ Rule 12(b), SCRPC; ☐ Rule 41(a), SCRPC (Vol. Nonsuit);
☐ Rule 43(k), SCRPC (Settled); ☐ Other: _____
- ☐ **ACTION STRICKEN (CHECK REASON):** ☐ Rule 40(j) SCRPC; ☐ Bankruptcy;
☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other: _____
- ☐ **STAYED DUE TO BANKRUPTCY**
- ☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**
☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other: _____

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: ☐ See attached order; (formal order to follow) ☐ Statement of Judgment by the Court:

ORDER INFORMATION

Plaintiffs Motion to Compel against Defendants Janssen Pharmaceuticals'(NA), Johnson & Johnson Holdco, Inc, and Kenvue, Inc is GRANTED. Defendants have refused to designate a 30(b)(6) witness and notified Plaintiff they would not appear or produce a witness. This matter is scheduled for pretrial July 30, 2024 and trial beginning August 5, 2024. The Defendants shall immediately designate it's 30(b)(6) witness, produce all documents requested, answer interrogatories and cooperate with scheduling a deposition.

This order ☐ ends ☐ does not end the case.

Additional Information for the Clerk: _____

INFORMATION FOR THE JUDGMENT INDEX

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)

If applicable, describe the property, including tax map information and address, referenced in the order:

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk.

Note: Title abstractors and researchers should refer to the official court order for judgment details.

E-Filing Note: In E-Filing counties, the Court will electronically sign this form using a separate electronic signature page.


Circuit Court Judge

2758
Judge Code

7/2/2024
Date

For Clerk of Court Office Use Only

This judgment was entered on , and a copy mailed first class or placed in the appropriate attorney's box on , to attorneys of record or to parties (when appearing pro se) as follows:

Theile Branham McVey Kassel Mcvey PO Box 1476
Columbia, SC 29202
John D. Kassel PO Box 1476 1330 Laurel Street Columbia,
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ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

Court Reporter

Jeanette W. McBride - Clerk of Court

Court Reporter:

E-Filing Note: In E-Filing counties, the date of Entry of Judgment is the same date as reflected on the Electronic File Stamp and the clerk's entering of the date of judgment above is not required in those counties. The clerk will mail a copy of the judgement to parties who are not E-Filers or who are appearing pro se. See Rule 77(d), SCRCP.

ADDITIONAL INFORMATION REGARDING DECISION BY THE COURT AS REFERENCED ON PAGE 1.

This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

MICHAEL L. PERRY and
LONNIE L. LONG

Plaintiffs,

v.

AMERICAN INTERNATIONAL
INDUSTRIES; et al.,

Defendants.

IN THE COURT OF COMMON PLEAS
FOR THE FIFTH JUDICIAL CIRCUIT

Case No.: 2023-CP-40-04072

ORDER GRANTING JOINT MOTION
REQUESTING THE DIVISION OF PLAINTIFF MICHAEL L. PERRY'S TISSUE

This matter came before the Court on July 9, 2024, on the Motion of Plaintiffs and Defendants Johnson & Johnson; LLT Management, LLC, formerly known as LTL Management, LLC; Kenvue, Inc.; and Johnson & Johnson Holdco (NA) Inc. ("J&J Defendants"), requesting the division of block(s) of Plaintiff Michael L. Perry's ("Plaintiff") lung tissue.

IT IS THEREFORE ORDERED:

The Court hereby appoints the Pathology Department at the Medical University of South Carolina Department of Pathology and Laboratory Medicine, as the independent third-party, disinterested pathologists to divide block(s) of lung tissue for digestion per the protocol outlined in this Order. The assigned pathologist shall not make any diagnosis or records of any impressions.

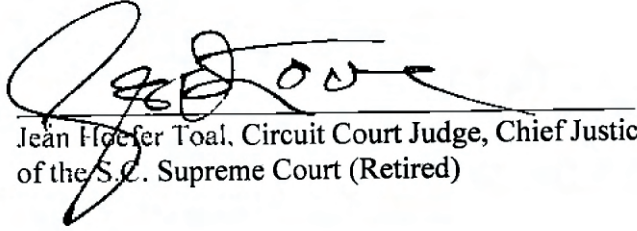
The assigned pathologist is to collect the block(s) of lung tissue of Plaintiff, under the

following conditions:

1. The assigned pathologist shall divide the lung tissue block(s) into two (2) equal parts, preserving one-half for Plaintiff and one-half for Defendants. The divided block(s) shall be as qualitatively and quantitatively equal as possible under the circumstances.

2. The assigned pathologist is to take two sets of pictures of the block(s) of lung tissue. One set of pictures will be taken before division of the block(s) and a set of pictures will be taken after division.
3. The assigned pathologist is to send the respective equal parts of the block(s), the pictures noted above, and chain of custody documentation to the following individuals:
- Stanley J. Geyer, M.D.
Geyer Pathology Services, LLC
3 Willow Farms Lane
Pittsburgh, PA 15238
(412) 406-7354
 - Kathy Molyneaux
MAS
3945 Lakefield Court
Suwanee, Georgia 80024
(770) 866-3208
4. The remainder of the lung tissue is to be returned by the assigned pathologist to Rachel Gross at:
- Dean Omar Branham Shirley, LLP
302 N. Market Street, Suite 300
Dallas, TX 75202
5. The assigned pathologist is to submit half of his/her total invoice to Attorney Rachel Gross at the address above. The other half of his/her total invoice should be directed to Attorney Kim Bueno at:
- Butler Snow LLP
1400 Lavaca Street, Suite 1000
Austin, TX 78701
6. Counsel for the respective parties are to exchange the digestion reports of Dr. Stanley J. Geyer and Dr. William Longo as soon as practical after the digestions have been performed.
7. No grids will be exchanged unless by further order of this Court upon the showing that there is some necessity for the exchange of grids.
8. If any issues arise concerning the contamination of the samples provided to Drs. Geyer and Longo after the samples are received by their facilities, said issues will be addressed at a pretrial hearing by the Court, including claims for sanctions, if any.

AND IT IS SO ORDERED.


Jean Hoefler Toal, Circuit Court Judge, Chief Justice
of the S.C. Supreme Court (Retired)

Date: July 9, 2024

#13



Richland Common Pleas

Case Caption: Michael L Perry , plaintiff, et al vs American International Industries ,
defendant, et al
Case Number: 2023CP4004072
Type: Order/Other

So Ordered

Jean H. Toal

Electronically signed on 2024-07-10 08:44:06 page 4 of 4

ELECTRONICALLY FILED - 2024 Jul 10 9:53 AM - RICHLAND - COMMON PLEAS - CASE#2023CP4004072

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STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF RICHLAND	)	FIFTH JUDICIAL CIRCUIT
	)	
Michael L Perry and Lonnie L Long,	)	C/A No. 2023-CP-40-04072
	)	
	)	
Plaintiff,	)	
v.	)	ORDER REGARDING AII'S
	)	FINANCIAL DISCOVERY
	)	
American International Industries et al,	)	
	)	
Defendants.	)	
	)	

The Court finds that the Plaintiffs are entitled to the following financial information of AII to be used in the punitive phase of the trial scheduled to begin on August 5, 2024. AII shall produce to the Plaintiffs, no later than the morning of August 8, 2024 the following documents:

1. AII's Income Statements for the five fiscal years typically ending 12/31/2019 through the present.
2. AII's 10-K annual report filed with the U.S. Securities and Exchange Commission for the five fiscal years typically ending 12/31/2019 through present.
3. AII's Balance Sheets for the five fiscal years typically ending 12/31/2019 through present (including those showing an entry for "Cash and Cash Equivalents", as well as for "Stockholders Equity").
4. AII's Cash Flow Statements for the five fiscal years typically ending 12/31/2019 through present.
5. AII's Statement of Comprehensive Income for the five fiscal years typically ending 12/31/2019 through present.
6. AII's Statements of Changes in Owners' Equity for the five fiscal years typically ending 12/31/2019 through present.
7. Details of any transactions, loans, and payments (including dividends), between AII and AII's parent company for the five fiscal years typically ending 12/31/2019 through present.
8. Any and all Advertising Expenditures, Research and Development Expenditures, and Capital Expenditures for the five fiscal years typically ending 12/31/2019 through present.

9. Any Lines of Credit or Credit Facilities extended or established specifically for AII's and AII's parent company for the five fiscal years typically ending 12/31/2019 through present.
10. Any and all explanatory notes that accompany the above records (notes to financial statements, etc.). Explanations of any and all cash management policies between AII and AII's parent company.
11. Total compensation for AII's president and/or chief executive officer for the five fiscal years typically ending 12/31/2019 through present.
12. Any and all of AII's filings with the U.S. Securities Exchange Commission for the five fiscal years typically ending 12/31/2019 through present.
13. All economic documents containing any information that pertains in any way to AII's profits gained by the sale, supply, distribution and marketing of talc and products containing talc.

While not all of the financial information may be admissible in the punitive phase, the Court finds that the ordered documents are discoverable so that Plaintiffs' economist may evaluate the net worth of AII.

IT IS SO ORDERED.



Richland Common Pleas

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

Case Number: 2023CP4004072

Type: Order/Other

So Ordered

Jean H. Toal

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STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF RICHLAND	)	FOR THE FIFTH JUDICIAL CIRCUIT
	)	
MICHAEL L. PERRY and	)	C/A NO. 2023-CP-40-04072
LONNIE L. LONG,	)	
	)	<i>In Re:</i>
Plaintiffs,	)	Asbestos Personal Injury Litigation
	)	Coordinated Docket
v.	)	
	)	ORDER ON PLAINTIFFS' MOTION TO
AMERICAN INTERNATIONAL	)	COMPEL AND MOTION FOR
INDUSTRIES, et al.	)	SANCTIONS AGAINST DEFENDANTS
	)	KENVUE, INC. AND JOHNSON &
Defendants.	)	JOHNSON HOLDCO (NA) INC.

Before the Court is Plaintiffs' Motion to Compel and Motion for Sanctions Against Defendants Kenvue, Inc. and Johnson & Johnson Holdco (NA) Inc. (hereinafter "Kenvue", "Holdco" or "Defendants"). The Court received briefs from Plaintiffs and from Defendants and heard argument from the parties on August 7, 2024. The motion is granted.

BACKGROUND

The testimony of a Rule 30(b)(6) witness represents the collective knowledge of the organization, not the specific witness's knowledge. Regardless of whether the people whom the corporation designates have any personal knowledge of the matters in the deposition notice, the responding party must prepare its witnesses to provide non-evasive, complete and binding answers for the organization. The corporate representative for both Defendants failed to comply with this court's order.

APPLICABLE LAW

SCRCP Rule 30(b)(6) specifically requires a corporation to find requested information not just what is known to a company, but what is *knowable* to a company. In this case, this certainly applies to Defendants' predecessors, subsidiaries and parent companies including but not limited

to Johnson & Johnson. Kenvue and Holdco's refusal to provide a witness who took seriously the order of the court to inform himself of what is known at the company (from its own employees) or from information readily knowable. This is unreasonable conduct similar to what required an order compelling the depositions in the first place. That order was disregarded repeatedly.

Pursuant to Rule 37(b)(2)(C), SCRCP, when a party fails to obey an order to provide or permit discovery, the court may "make such orders in regard to the failure as are just," including an order dismissing the action or proceeding, or any part thereof. *Temple v. Tec-Fab, Inc.*, 370 S.C. 383, 390, 635 S.E.2d 541, 544 (Ct. App 2006). Here sanctions are appropriate. However, the amount of sanctions will be deferred to a later date. Neither defendant has been deposed before in litigation regarding talc. Neither Defendant cooperated with proper discovery requests, willfully ignoring a court order and did so when the timing was obviously extremely prejudicial to Plaintiffs.

CONCLUSION AND ORDER

Defendants abuse of discovery and failure to prepare both corporate representatives as ordered by this court warrant the imposition of sanctions. Defendants unilaterally and, in violation of the Order granting the Plaintiffs' Motion to Compel, failed to prepare the corporate representatives on numerous topics.

For these reasons, the Court **GRANTS** Plaintiffs' motion, and **IT IS HEREBY ORDERED** that:

1. Defendants are ordered to produce a fully prepared witness to be deposed this Saturday or Sunday, August 10th or August 11th based on availability of Plaintiffs' counsel. The deponent shall identify employees at Kenvue and Holdco with knowledge on the noticed subject and educate

himself on what is known by those employees in addition to doing an inquiry with entities that are reasonably available to Defendants such as J&J and JJCI-3.

2. The corporate designee shall appear for trial as the last witness to take the stand in the pre-punitive stage should the Plaintiffs wish to call the witness. Plaintiffs' case-in-chief will not be completed until this witness is heard.

3. The court will also consider evidentiary sanctions after the continued deposition is complete to extent the witness is not prepared or Plaintiff is prejudiced by the timing of the evidence.

AND IT IS SO ORDERED.



Richland Common Pleas

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

Case Number: 2023CP4004072

Type: Order/Compel

So Ordered

Jean H. Toal

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STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF RICHLAND	)	FOR THE FIFTH JUDICIAL CIRCUIT
	)	
MICHAEL L. PERRY and	)	C/A NO. 2023-CP-40-04072
LONNIE L. LONG,	)	
	)	<i>In Re:</i>
Plaintiffs,	)	Asbestos Personal Injury Litigation
	)	Coordinated Docket
v.	)	
	)	
AMERICAN INTERNATIONAL	)	
INDUSTRIES, et al.,	)	
	)	
Defendants.	)	

**ORDER ON DEFENDANT AMERICAN
INTERNATIONAL INDUSTRIES' POST-TRIAL MOTIONS**

In this asbestos case, the jury returned a Plaintiffs' verdict on August 15, 2024 in favor of Michael L. Perry and Lonnie L. Long. Defendant American International Industries ("A-I-I") moves to set aside or vacate the default judgment against it, for judgment notwithstanding the verdict, a new trial absolute, a new trial *nisi remittitur*, for a setoff of Plaintiffs' settlements as to the verdict against it, and for a stay of execution of the judgment. The motions have been fully briefed, and the Court heard oral arguments on September 24, 2024. For the reasons set forth below and on the record during oral arguments, A-I-I's motions to set aside or vacate the default judgment, for JNOV, for a new trial absolute, and to stay the execution of judgment are DENIED. A-I-I's motion for new trial *nisi remittitur* as to actual damages and motion for setoff are GRANTED.

I. MOTION TO SET ASIDE OR VACATE OR VACATE DEFAULT

A-I-I argues that the default judgment against it must be vacated or set aside because it answered amended complaints and because procedural deficiencies require it. A-I-I is incorrect.

A. Factual Background

To address the issues raised by A-I-I's motion, some background is necessary. Plaintiffs filed suit against A-I-I and several other defendants on August 4, 2023. A-I-I was served on August 10, 2023. A-I-I's answer was due on September 11, 2023, but it did not file an answer. On September 26, 2023, Plaintiffs filed a motion for default judgment as to A-I-I. On September 29, 2023, A-I-I filed an answer to the complaint. This Court granted default against A-I-I on October 3, 2023. On October 10, 2023, A-I-I moved to set aside the entry of default, which was denied on November 2, 2023.

After entry of default, on November 9, 2024, Plaintiffs moved to amend the complaint solely "to add an additional Defendant responsible for Mr. Perry's exposures to asbestos in South Carolina." The motion was granted on November 21, 2023, and the first amended complaint was filed on November 30, 2023. A-I-I was not served with the first amended complaint because it was in default. Despite the lack of service, A-I-I answered the first amended complaint on December 8, 2023.

On January 31, 2024, Plaintiffs moved to file a second amended complaint, again solely "to add an additional Defendant responsible for Mr. Perry's exposures to asbestos in South Carolina." The motion was granted on February 1, 2024, and the second amended complaint was filed the same day. As before, A-I-I was not served with the second amended complaint because it was in default. Despite the lack of service, A-I-I answered the second amended complaint on February 16, 2024.

From evidence produced to the Court, I find that Plaintiffs consistently communicated their understanding to A-I-I that it was in default. Plaintiffs' counsel sent numerous emails between March 27, 2024 and May 14, 2024, repeating to A-I-I that it was in default. A-I-I did not seek

relief or clarification from the Court. On May 9, 2024, Plaintiffs filed a motion for protective order to quash A-I-I's subpoena for employee records. A-I-I did not file a response before Plaintiffs filed their motion for protective order to prohibit A-I-I from participating in expert discovery except on the issue of damages. A-I-I responded with the argument it has made here—that responding to the amended complaints cured its default. The Court granted the motion for protective order on May 29, 2024, finding that A-I-I remained in default.

A-I-I filed a petition for writ of certiorari on this issue on June 28, 2024. The petition was denied on August 13, 2024. On July 29, 2024, A-I-I also requested a stay in this Court, which was denied.

B. Legal Standard

“The decision whether to set aside an entry of default or a default judgment lies solely within the sound discretion of the trial judge.” *Sundown Operating Co. v. Intedg Indus., Inc.*, 383 S.C. 601, 606, 681 S.E.2d 885, 888 (2009) (citing *Harbor Island Owners' Ass'n v. Preferred Island Props., Inc.*, 369 S.C. 540, 544, 633 S.E.2d 497, 499 (2006)). An appellate court will not disturb the trial court's decision “absent a clear showing of an abuse of that discretion.” *Id.* at 606–607 (citing *Mitchell Supply Co., Inc. v. Gaffney*, 297 S.C. 160, 162–63, 375 S.E.2d 321, 322–23 (Ct.App.1988)). A trial court abuses its discretion “when the judge issuing the order was controlled by some error of law or when the order, based upon factual, as distinguished from legal conclusions, is without evidentiary support.” *Id.* at 607 (citing *In re Estate of Weeks*, 329 S.C. 251, 259, 495 S.E.2d 454, 459 (Ct.App.1997)).

C. A-I-I remained in default despite answering amended complaints.

A-I-I argues that it could cure its default by answering an amended complaint that made the same allegations against it. A-I-I is incorrect. Once it defaulted as to the original complaint,

that default could not be cured absent new allegations against A-I-I. While there is no clear authority on this point in South Carolina, this result is consistent with South Carolina's Rules of Civil Procedure. Pursuant to Rule 5(a), SCRPC, Plaintiffs did not need to serve A-I-I with the amended complaints because they did not change the allegations against A-I-I, to which A-I-I had already defaulted:

No service need be made on parties in default for failure to appear, except that pleadings asserting new or additional claims for relief against them shall be served upon them in the manner provided for serving of summons in Rule 4, and notice of any trial or hearing on unliquidated damages shall also be given to parties in default.

Plaintiffs' amended complaints simply added additional defendants to the case. They did not change the claims, substantive or otherwise, against A-I-I in any way. Thus, Plaintiffs were not required to, and did not, serve A-I-I with the amended complaints. A-I-I had no right to service and no right to answer. Nothing about the amended complaints changed the status quo or gave A-I-I the ability to cure its default.

There is authority from other states consistent with the Court's ruling. For example, in Wisconsin, "a defaulting party cannot answer an amended complaint, thereby attempting to cure its default, when the party is already in default at the time the amended complaint is filed, unless the amended complaint relates to a new or additional claim for relief." *Ness v. Digital Dial Commc'ns, Inc.*, 227 Wis. 2d 592, 607–08, 596 N.W.2d 365, 373 (1999). The court "recognize[d] an exception to the basic rule that an amended complaint supersedes an original complaint." *Id.* at 600, 596 N.W.2d at 370. Like this Court, the *Ness* court considered it important that the amended complaint did not need to be served on the defaulting defendants because it did not assert new or additional claims for relief. *Id.* at 601, 596 N.W.2d at 370. Essentially, a defaulting defendant halts the action with regard to it at the time of the original complaint. *See id.* at 602–03, 596 N.W.2d at 371. In *Ness*, as here, the defendants "propose[d] a bright-line rule that whenever a plaintiff files

an amended complaint, regardless of the defendant's timing, the defendant receives a new time period to answer.” *Id.* at 603, 596 N.W.2d at 371. The *Ness* court found the argument unpersuasive and inequitable. *Id.* at 605, 596 N.W.2d at 372 (quoting *Ness v. Digital Dial Commc'ns, Inc.*, 222 Wis. 2d 374, 382–83, 588 N.W.2d 63 (Ct. App. 1998), *aff'd*, 227 Wis. 2d 592, 596 N.W.2d 365 (1999)). The court was also concerned with the “serious conflict for a plaintiff who would be torn between taking a default judgment and correcting the pleadings through amendment,” as well as “inefficient judicial administration” from the defendants’ proposed rule. *Id.* at 606, 596 N.W.2d at 372. These are valid concerns that the Court finds persuasive.¹

The claims against A-I-I were not changed by the amended complaints, and A-I-I, having “previously disregarded its opportunity for defending itself or presenting additional issues or claims in the action,” should not be “fortuitously allowed to ‘restart the clock’ for filing a response.”” *Ness*, 227 Wis. 2d at 605, 596 N.W.2d at 372 (citation omitted). The plaintiff should not have to choose between amending the complaint as to other parties and taking a default judgment against the party who “previously disregarded its opportunity for defending itself.” *Id.* at 606, 596 N.W.2d at 372. For the policy reasons stated in *Ness*, the Court’s finds that answering the amended complaints did not relieve A-I-I of its default.

Again, under Rule 60, “the power to set aside a default judgment is addressed to the sound discretion of the trial court whose decision will not be disturbed on appeal absent a clear showing of an abuse of that discretion.” *Fassett v. Evans*, 364 S.C. 42, 49, 610 S.E.2d 841, 845 (Ct. App. 2005) (citing *Mitchell Supply Co., Inc. v. Gaffney*, 297 S.C. 160, 162–63, 375 S.E.2d 321, 322–23 (Ct.App.1988)). “The standard for granting relief from an entry of default is good cause under

¹ Other states take the same position. See, e.g., *Wells Fargo Bank, N.A. v. Dechert*, 12 N.E.3d 262, 267 (Ind. Ct. App. 2014); *Spilke v. Wicklow*, 138 Conn. App. 251, 270, 53 A.3d 245, 256 (2012); *Brown v. Funk*, No. 2023-CA-0576-MR, -- S.W.3d --, 2024 WL 2096892, at *5–6 (Ky. Ct. App. May 10, 2024); *Stack v. Welder*, 3 Cal. 2d 71, 75, 43 P.2d 270, 272 (1935).

Rule 55(c), SCRCPP, while the standard is more rigorous for granting relief from a default judgment under Rule 60(b), SCRCPP.” *Richardson v. P.V., Inc.*, 383 S.C. 610, 616, 682 S.E.2d 263, 266 (2009) (citing *Sundown*, 681 S.E.2d 885). “Rule 60(b) requires a more particularized showing of mistake, inadvertence, excusable neglect, surprise, newly discovered evidence, fraud, misrepresentation, or ‘other misconduct of an adverse party.’” *Sundown*, 383 S.C. at 608, 681 S.E.2d at 888 (2009). For the same reasons the Court declined to set aside entry of default, the Court finds that A-I-I has failed to meet the heightened standard for relief from the default judgment. A-I-I’s request to set aside the default judgment based on its answers to the amended complaints is DENIED.

D. Alleged Procedural Defects Do Not Relieve A-I-I of Default Judgment.

1. A-I-I Had Actual Notice of the Damages Trial.

A-I-I argues that it must be relieved of its default because Plaintiffs did not serve it with notice of the damages hearing by first class mail. Rule 5(a), SCRCPP provides that “notice of any trial or hearing on unliquidated damages shall also be given to parties in default.” Rule 55(b)(2) directs that this notice shall be given by first class mail. However, there is no question that A-I-I had actual notice of the damages trial. On June 28, 2024, A I-I stated in its Petition for a Writ of Certiorari that the trial was scheduled for August 5, 2024. On June 29, 2024, A-I-I moved this Court to stay the trial against it, which it acknowledged at the pre-trial hearing. At the pretrial hearing, A-I-I’s counsel stated that A-I-I would “definitely be here” for trial. It participated in the pretrial hearing and at trial regarding damages. Plaintiffs served A-I-I with a trial subpoena by way of Federal Express sent to A-I-I’s counsel at Fox Rothschild LLP in Greenville, SC. There is no question, and A-I-I does not contest, that it had actual notice of the damages trial months before the date of trial. A-I-I cites no case, and this Court is aware of none, where a default judgment was

vacated for a new damages trial or hearing when the defendant was present at the damages trial or hearing.

Moreover, A-I-I did not raise the issue of inadequate notice at any point before the trial in this case. A-I-I “denied the trial judge an opportunity to cure any alleged error by failing to contemporaneously object,” and so it cannot to raise the issue for the first time when cure is no longer possible. *State v. Pauling*, 322 S.C. 95, 100, 470 S.E.2d 106, 109 (1996). For example, in *State v. Ariail*, the supreme court held that, by proceeding to trial, the defendant waived any objection concerning waiver of arraignment. 311 S.C. 35, 37, 426 S.E.2d 751, 753 (1993). Likewise, by proceeding to trial here, A-I-I waived any objection to notice.

The purpose of the notice rule is to “ensur[e] that notice is properly received by all entitled to it.” *McCall v. IKON*, 363 S.C. 646, 655, 611 S.E.2d 315, 319 (Ct. App. 2005). In *McCall*, the court underlined that the purpose is that the defaulting defendants “actually receive notice” and not some “arcane or highly technical application of the rules.” *Id.* In this case, where A-I-I had actual notice and appeared and participated at the trial, granting a new damages trial for lack of notice would indeed be “an arcane and highly technical application of the rules.” *Id.* In *Lewis v. Congress of Racial Equality and/or C.O.R.E., Inc.* also, the court’s concern was whether the defaulting defendant was “given an opportunity to participate in the damages hearing.” 275 S.C. 556, 561, 274 S.E.2d 287, 290 (1981). Again, none of these concerns arise when the defendant actually participates in the damages trial, as A-I-I did.

Even if A-I-I were correct, the purpose of granting a new damages hearing when the defendant did not receive notice is so that the defendant is able to participate. But A-I-I already has participated. There has been no prejudice to A-I-I. Moreover, A-I-I would not be relieved of

its default. If it were correct in its argument, it would be entitled solely to a new damages hearing. See *McCall*, 363 S.C. at 648, 655, 611 S.E.2d at 316, 319.

A-I-I's request to vacate or set aside the default judgment on the basis of lack of notice is DENIED.

2. Plaintiffs Were Not Required to Make a Post-Verdict Request for Default Judgment.

Rule 55 does not provide the means by which the plaintiff must request default judgment. It provides merely that “the party entitled to a judgment by default shall apply to the court therefor.” Rule 55(b)(2), SCRPC. There is no requirement that this request be made after the verdict. Indeed, Rule 55 presumes that the request be made and the court then conduct a damages hearing or trial if necessary. Rule 55(b)(2), SCRPC. At the pretrial hearing, Plaintiffs' counsel reminded the Court that A-I-I was in default. The word default appears 119 times in the trial transcripts. The Court was aware that Plaintiffs sought a default judgment against A-I-I, which was the purpose of the damages trial. The Court was fully apprised that Plaintiffs were seeking default judgment, A-I-I was aware that Plaintiffs were seeking default judgment, and a formal request post-verdict was not required.

A-I-I's motion as to this issue is DENIED.

E. Plaintiffs' Pleadings Support the Default Judgment.

A-I-I also complains that it was barred from challenging the sufficiency of Plaintiffs' complaint. In fact, A-I-I did not *try* to challenge the sufficiency of the complaint until directed verdict—several months after it could have and should have made such a challenge and nearly two months after it took a writ on the validity of the default. For example, A-I-I moved for summary judgment, but it did not argue that the pleadings were insufficient to support claims for fraudulent

misrepresentation or punitive damages. Instead, it simply argued that Plaintiffs did not have evidence to support the pleadings.

“The defendant, by waiving a contest and suffering a default to be taken against him, admits the truth of the allegations, set out in the plaintiff's declaration or complaint.... Hence the default authorizes the entry of any judgment warranted by the facts alleged.” *State ex rel. Medlock v. Love Shop, Ltd.*, 286 S.C. 486, 489, 334 S.E.2d 528, 530 (Ct. App. 1985) (quoting *Gadsden v. Home Fertilizer & Chemical Co.*, 89 S.C. 483, 487–88, 72 S.E. 15, 17 (1911), quoting *Gillian v. Gillian*, 65 S.C. 129, 132, 43 S.E. 386, 387 (1903)). When A-I-I did file the directed verdict motion challenging the pleadings, the Court found that the facts were well pleaded. TT 8/13/24 at 1818:19-20.

The pleadings support the claim for fraudulent misrepresentation. In the original complaint, Plaintiffs alleged that:

- “...defendants manufactured products composed of talc that were sold and marketed as safe for daily use by consumers on their person....” Complaint at ¶ 148.
- Defendants “made false statements to plaintiff, the general public, news media and government agencies” as part of “intentional efforts to deceive the general public as to the safety of and presence of carcinogens, including asbestos, in talc-containing products.” *Id.* at ¶ 149.
- Plaintiffs alleged that Defendants “have represented to various news media outlets and the public at large that their products are ‘asbestos-free,’ when, in fact, their products did test positive for asbestos and those that did not were merely the result of inadequate and imprecise testing methods.” *Id.* at ¶ 183.
- Plaintiffs alleged at length Defendants’ knowledge of the risk and the basis for that knowledge. *Id.* at ¶¶ 150-159, 161-165, 174.
- “Plaintiff Michael L. Perry and other exposed persons did not know of the substantial danger of using Defendants’ asbestos, asbestos-containing talc products, and products manufactured for foreseeable personal use by individuals like Plaintiff.” *Id.* at ¶ 115.

- “Plaintiff, directly and/or indirectly relied upon CTFA’s and defendants’ false representations regarding the safety of cosmetic talc.” Id. at ¶ 199.
- “Plaintiff Michael L. Perry act upon the representations by continuing his personal use of, and thereby exposure to, the asbestos-containing talc products.” Id. at ¶ 145.
- “Plaintiff Michael L. Perry was ignorant of the falsity of Defendants’ representations and rightfully relied upon the representations.” Id. at ¶ 145.

These allegations, among others, support Plaintiffs’ claim for fraudulent misrepresentation and punitive damages.

A-I-I has presented no authority for its argument that Plaintiffs cannot make allegations against Defendants collectively, and the allegations gave A-I-I fair notice of the facts supporting the claim against it for fraudulent misrepresentation. *See, e.g., Green v. Indus. Life & Health Ins. Co.*, 199 S.C. 262, 18 S.E.2d 873, 875–76 (1942) (finding allegations adequate to state cause of action when plaintiff alleged conduct of defendants acting together); *McKellar v. Stanton*, 104 S.C. 248, 88 S.E. 527, 527 (1916) (same).

Finally, A-I-I challenges only the fraudulent misrepresentation and punitive damages pleadings. It does not and did not challenge the sufficiency of the pleadings with regard to Plaintiffs’ negligence or strict liability claims. These claims fully support judgment against A-I-I for Plaintiffs’ actual damages. Thus, even if A-I-I were correct that the allegations of fraudulent misrepresentation were insufficient, the judgment would be supported by the negligence and strict liability claims.

A-I-I’s motion as to the sufficiency of the pleadings is DENIED.

F. Because of Its Default, A-I-I Admitted Willful, Wanton, and/or Reckless Conduct.

A-I-I contends that Plaintiffs were required to prove its willful, wanton, and reckless conduct at the damages trial. However, when the defendant has defaulted, “the plaintiff must prove

by competent evidence the amount of his damages, ... Although the defendant is in default as to liability, the award of damages must be in keeping not only with the allegations of the complaint and the prayer for relief, but also with the proof that has been submitted.” *Jackson v. Midlands Hum. Res. Ctr.*, 296 S.C. 526, 529, 374 S.E.2d 505, 506 (Ct. App. 1988). Thus, the well-pleaded allegations of the complaint are sufficient to support the defaulting defendant’s liability, and proof is only required to establish the plaintiff’s damages. *Lewis v. Cong. of Racial Equal. &/or C. O. R. E., Inc.*, 275 S.C. 556, 561, 274 S.E.2d 287, 289 (1981) (in case involving actual and punitive damages, “[w]hether a defendant is or is not in default, it is incumbent upon the judge and/or the jury to make a judicial determination of the amount of damages based on the proof....”).

A-I-I’s argument ignores that it was found in default, resulting in its admitting liability to all the well-pleaded facts. The fact that a case involves punitive damages is no barrier to finding a defendant in default. *See Roche v. Young Bros., of Florence*, 332 S.C. 75, 79, 504 S.E.2d 311, 313 (1998) (not distinguishing between default resulting in actual and punitive damages). In *Lewis* as well, a case involving punitive damages, the supreme court reiterated that “where a defendant has made an appearance but is in default, liability is admitted but the amount of damages is not; the amount must be proved.” 275 S.C. at 561, 274 S.E.2d at 289 (remanding for damages hearing only on actual and punitive damages because award was excessive in light of allegations).

The pleadings in the case support the finding of willful, wanton, or reckless conduct, and the evidence presented supports the amount of punitive damages. In the original complaint, as noted above, Plaintiffs alleged Defendants’ knowledge of the risk of talcum powder products that they marketed as safe for daily use. Original Complaint at ¶ 148. Plaintiffs alleged Defendants’ knowledge of carcinogens, including asbestos, in talc. *Id.* at ¶ 150. Plaintiffs alleged that Defendants “have represented to various news media outlets and the public at large that their

products are ‘asbestos-free,’ when, in fact, their products did test positive for asbestos and those that did not were merely the result of inadequate and imprecise testing methods.” *Id.* at ¶ 183. There are nearly 20 pages of allegations concerning Defendants’ knowledge and bad acts with respect to the hazards of asbestos in their products. *See id.* at pp. 67-86. These allegations, among others, support Plaintiffs’ claim for punitive damages.

A-I-I’s argument that the Court improperly found it defaulted on allegations of willful, wanton, and reckless behavior is DENIED.

II. MOTION FOR JUDGMENT NON OBSTANTE VEREDICTO (JUDGMENT NOTWITHSTANDING THE VERDICT) (“JNOV”)

A. Legal Standard

“In ruling on motions for directed verdict and JNOV, the trial court is required to view the evidence and the inferences that reasonably can be drawn therefrom in the light most favorable to the party opposing the motions and to deny the motions where either the evidence yields more than one inference or its inference is in doubt.” *Helms Realty, Inc. v. Gibson-Wall Co.*, 363 S.C. 334, 338, 611 S.E.2d 485, 487 (2005) (quoting *Jinks v. Richmond Cty.*, 355 S.C.341, 345, 585 S.E.2d 281, 283 (2003)). In the context of a default judgment, the complaint constitutes the “evidence” of liability, while the evidence presented to the jury constitutes the evidence of damages. An appellate court will not reverse a trial court’s ruling on a JNOV motion “unless there is no evidence to support the ruling or where the ruling is controlled by an error of law.” *Gause v. Smithers*, 403 S.C. 140, 149, 742 S.E.2d 644, 649 (2013) (citation omitted).

B. The Pleadings Support the Fraudulent Misrepresentation Claim.

The Court has addressed the pleadings supporting Plaintiffs’ claim. For the reasons stated above, the allegations supporting the fraudulent misrepresentation claim are well-pleaded and fully

support the claim. Because A-I-I was in default, the Court found that A-I-I was liable for fraudulent misrepresentation in accordance with the pleadings.

Moreover, A-I-I does not and did not challenge the sufficiency of the pleadings with regard to Plaintiffs' negligence or strict liability claims. These claims fully support judgment against A-I-I for Plaintiffs' actual damages. Even when a general verdict is returned, where any theory supports the verdict, any error is harmless. *See Piedmont Aviation, Inc. v. Quinn*, 294 S.C. 502, 504, 366 S.E.2d 31, 32 (Ct. App. 1988). Thus, even if A-I-I were correct that the allegations of fraudulent misrepresentation were insufficient, the judgment would be supported by the negligence and strict liability claims.

A-I-I's motion for JNOV on this issue is DENIED.

C. A-I-I Is Not Entitled to JNOV on the Award of Punitive Damages.

The Court addressed the allegations supporting the punitive damages claim above and found that they were sufficient to support willful, wanton, and reckless conduct. Because A-I-I was in default, Plaintiffs were not required to prove its willful, wanton, and reckless conduct. *See Lewis*, 275 S.C. at 561, 274 S.E.2d at 289; *Roche*, 332 S.C. at 79, 504 S.E.2d at 313. A-I-I admitted the allegations of the pleadings, which supported a claim for punitive damages. Nothing more was required.

A-I-I contends that federal due process requires that it receive notice of the factual basis for the punitive damages claim against it and an opportunity to defend itself against that claim. In light of A-I-I's default, holding that it had admitted allegations of willful, wanton, and reckless conduct did not violate its due process rights. A-I-I quotes the following language from *BMW of North America, Inc. v. Gore*: "Elementary notions of fairness enshrined in our constitutional jurisprudence dictate that a person receive fair notice not only of the conduct that will subject him

to punishment....” 517 U.S. 559, 574, 116 S. Ct. 1589, 1598, 134 L. Ed. 2d 809 (1996). A-I-I received notice of the claims against it and the facts underlying those claims through Plaintiffs’ complaint, and it defaulted. The United States Supreme Court has held that due process requires notice of the claims against a defendant and the opportunity to be heard, but a defendant gives up the right to be heard on liability when it defaults: “This right to be heard has little reality or worth unless one is informed that the matter is pending and can choose for himself whether to appear or default, acquiesce or contest.” *Mullane v. Cent. Hanover Bank & Tr. Co.*, 339 U.S. 306, 314 (1950). Thus, A-I-I acquiesced to the allegations of the complaint and declined the opportunity to be heard on liability, including liability for punitive damages. At that point, it had the right to be heard on one matter: the amount of damages.

Branham v. Ford Motor Co., cited by A-I-I, was concerned with two aspects of due process protections relevant to punitive damages. First, the South Carolina Supreme Court noted that harm to others was not a valid basis for punitive damages. 390 S.C. 203, 238, 701 S.E.2d 5, 23–24 (2010) (quoting *Philip Morris USA v. Williams*, 549 U.S. 346, 350 (2007)). In this case, the jury heard no evidence of harm to others, and A-I-I has not alleged that Plaintiffs’ counsel argued harm to others as a basis for the punitive damages award or that the complaint included allegations of harm to others. This issue is not implicated in the instant case.

The *Branham* court also was concerned with evidence relevant to the amount of punitive damages, specifically what evidence could be admitted consistent with due process in the jury’s evaluation of the proper amount of punitive damages: “Because the United States Supreme Court has discovered that a state court’s punitive damages award implicates federal substantive due process, this Court is not the final arbiter of determining what financial evidence is proper in assessing punitive damages.” 390 S.C. 203, 240, 701 S.E.2d 5, 25 (2010). A-I-I has also not alleged

that any financial or other evidence was improperly presented in the punitive damages phase of the trial.

A-I-I argues that the allegations against it were not sufficient to apprise it of the conduct for which it is being punished because Plaintiffs made the allegations against Defendants' collectively. First, Plaintiffs alleged that Defendants acted collectively in many cases, and Plaintiffs alleged that they acted "individually and collectively." *See, e.g.*, Complaint at ¶¶ 177, 179, 188, 198. As noted above, A-I-I has presented no authority for its argument that Plaintiffs cannot make allegations against Defendants collectively, and the allegations gave A-I-I fair notice of the facts supporting the claim against it for punitive damages. *See, e.g., Green*, 199 S.C. 262, 18 S.E.2d 873, 875–76 (1942); *McKellar*, 104 S.C. 248, 88 S.E. at 527.

A-I-I's motion for JNOV on this issue is DENIED.

D. A-I-I Is Not Entitled to JNOV Because the Initial Complaint Was Operative as to It as a Defaulting Party.

A-I-I argues that it could cure its default by answering an amended complaint that made the exact same allegations against it. In addressing the motion to vacate or set aside the default judgment, the Court has addressed in some detail why this contention is incorrect.

Although the second amended complaint governs the claims against the Johnson & Johnson Defendants ("J&J"), it does not apply to the claims against A-I-I. "The amended complaint ... supersedes the original as to any other party except the defaulting party." *Ness*, 227 Wis. 2d at 602–03, 596 N.W.2d at 371. Thus, A-I-I was not relieved of its default by answering amended complaints, and the original complaint remained operative as to it.²

A-I-I's motion for JNOV on the issue of its default is DENIED.

² Moreover, if A-I-I were correct, the remedy would be a new trial.

III. NEW TRIAL ABSOLUTE

“Upon review, a trial judge's order granting or denying a new trial will be upheld unless the order is ‘wholly unsupported by the evidence, or the conclusion reached was controlled by an error of law.’” *Youmans ex rel. Elmore v. S.C. Dep't of Transp.*, 380 S.C. 263, 271, 670 S.E.2d 1, 4 (Ct. App. 2008) (quoting *Norton v. Norfolk S. Ry. Co.*, 350 S.C. 473, 479, 567 S.E.2d 851, 854 (2002); *Folkens v. Hunt*, 300 S.C. 251, 254–55, 387 S.E.2d 265, 267 (1990); *S.C. State Hwy. Dep't v. Clarkson*, 267 S.C. 121, 126, 226 S.E.2d 696, 697 (1976); *Vinson v. Hartley*, 324 S.C. 389, 403, 477 S.E.2d 715, 722 (Ct. App.1996); *Sorin Equip. Co., Inc. v. The Firm, Inc.*, 323 S.C. 359, 364, 474 S.E.2d 819, 822 (Ct. App.1996)). The appellate court’s “review is limited to consideration of whether evidence exists to support the trial court's order.” *Id.* (quoting *Folkens*, 300 S.C. at 255, 387 S.E.2d at 267; *Vinson*, 324 S.C. at 403, 477 S.E.2d at 722).

A. A-I-I Had Notice of the Damages Trial.

A-I-I again complains that it did not receive proper notice of the damages trial against it. The Court addressed this argument in response to A-I-I’s motion to vacate or set aside the default judgment. A-I-I has demonstrated and admitted that it had actual notice of the damages trial, and it participated in the damages trial. The purposes of Rule 5(a), SCRCP, and Rule 55(b)(2), SCRCP, have been met. Moreover, because it participated in the damages trial, A-I-I was not prejudiced by any technical defect in the notice. The notice rule is intended to provide the defaulting party the opportunity to participate in the damages hearing, and A-I-I exercised that opportunity.

A-I-I’s motion for new trial for alleged lack of notice is DENIED.

B. Trial Against Defendants on the Operative Complaints as to Each Defendant Was Appropriate.

In addition to arguing that the original complaint was not operative as to it, A-I-I also argues that trial against it and J&J on different operative complaints was improper. It was

appropriate to go to trial against Defendants based on different operative complaints. As the Wisconsin Supreme Court noted, “The amended complaint ... supersedes the original as to any other party except the defaulting party.” *Ness v. Digital Dial Commc'ns, Inc.*, 227 Wis. 2d 592, 602–03, 596 N.W.2d 365, 371 (1999) (emphasis added).

Moreover, there was no difference in the substantive allegations against A-I-I in the original complaint or the second amended complaint. Although A-I-I claims the second amended complaint was “more robust,” the allegations in both complaints were identical as to A-I-I. Indeed, this is the reason that A-I-I remained in default after Plaintiffs amended the complaint.

A-I-I also argues that trying the case under different operative complaints was confusing. There was no confusion. Certainly, A-I-I should not have been confused because the Court’s order of May 29, 2024 made clear that the Court considered A-I-I to remain in default for failure to timely answer the original complaint. As noted above, the allegations against A-I-I were identical in the two complaints. Neither could the jury have been confused since they never saw the complaints, which were inadmissible.

A-I-I’s motion for new trial on this issue is DENIED.

C. Based on Its Default, A-I-I Was Deemed to Have Acted Willfully, Wantonly, and Recklessly, and the Jury Was Properly Instructed About that Fact.

A-I-I argues that the jury was improperly instructed that it was liable for willful, wanton, and reckless conduct. Again, A-I-I ignores the fact that it was in default. Plaintiffs did not have to prove A-I-I’s willful, wanton, or reckless conduct because A-I-I admitted the allegations of such conduct through its default. *See Jackson*, 296 S.C. at 529, 374 S.E.2d at 506. The allegations of the complaint are sufficient to support the defaulting defendant’s liability, and proof is only required to establish the plaintiff’s damages. *Lewis*, 275 S.C. at 561, 274 S.E.2d at 289.

The fact that a case involves punitive damages is no barrier to finding a defendant in default. *See Roche v. Young Bros., of Florence*, 332 S.C. 75, 79, 504 S.E.2d 311, 313 (1998) (not distinguishing between default resulting in actual and punitive damages). In *McEachern v. Poston*, the court stated “that even if respondent is in default, the award of actual and punitive damages must be set aside under our recent decision of *Howard v. Holiday Inns, Inc.*, S.C., 246 S.E.2d 880 (1978), where we held under similar circumstances that a defendant in default was entitled to an opportunity to participate in the hearing to assess damages.” 273 S.C. 122, 126, 254 S.E.2d 796, 798 (1979). In *Lewis* as well, a case involving punitive damages, the supreme court reiterated that “where a defendant has made an appearance but is in default, liability is admitted but the amount of damages is not; the amount must be proved.” 275 S.C. at 561, 274 S.E.2d at 289 (remanding for damages hearing only on actual and punitive damages because award was excessive in light of allegations). South Carolina law supports holding that A-I-I has admitted the allegations of willful, wanton, and reckless conduct, and the jury was rightly directed that A-I-I was deemed to have acted willfully, wantonly, and recklessly.

A-I-I’s motion for new trial on this issue is DENIED.

IV. THE CLAIMS AGAINST A-I-I AND J&J DEFENDANTS WERE PROPERLY TRIED TOGETHER, AND A-I-I SUFFERED NO PREJUDICE AS A RESULT.

Again, A-I-I defaulted, so that liability on the claims against it was established as a matter of law. This determination necessarily includes that A-I-I caused the Plaintiffs’ damages. A-I-I seems to be complaining that J&J was prejudiced by having its liability determined in the presence of a defaulting Defendant. A-I-I then makes the argument that it was prejudiced because, if J&J won on liability, A-I-I would be relieved of its default to avoid an inconsistent verdict. Counsel for A-I-I contends that there should have been a liability phase against J&J and then actual and punitive damages phases against J&J and A-I-I. Counsel for A-I-I proposed this tri-part division

in the middle of trial. TT 8/9/24 at 1369:9-1370:1. The jury had already been instructed on Defendants' status in the case. The suggestion came too late to be feasible even if it were advisable.

In fact, A-I-I cannot show that it was prejudiced by including it in the trial of this matter. First, the Court's instructions made it clear that Defendants were to be considered separately: "You should decide the case against each defendant separately as if it were a separate lawsuit." TT 8/14/24 at 2070:6-8. At the end of the trial, the Court instructed the jury, "Now, while these [liability issues] are issues you must decide against Johnson & Johnson, you are instructed that American International Industries is liable to the plaintiffs in this case." TT 8/14/24 at 2071:7-11. It was clear from this instruction that all of Plaintiffs' claims against J&J would be presented to the jury for resolution. Nothing about the trial Court's instruction to the jury indicated that it should also find J&J liable for Plaintiffs' injuries because of A-I-I. It was equally clear from the instruction that only liability as to A-I-I had been resolved by the trial court. Again, the jury was instructed that these two defendants were to be considered separately. TT 8/14/24 at 2070:6-8.

Moreover, A-I-I would not have escaped liability if J&J had been found not liable. There would be nothing inconsistent about the jury finding that exposure to J&J's product did not cause Mr. Perry's mesothelioma while exposure to Clubman did. These two Defendants did not always use the same talc sources, for example. Clubman talc incorporated Montana and North Carolina talc for certain periods of time, which Johnson's Baby Powder did not. J&J's and A-I-I's liability is not truly joint, and so there would be no reason that a J&J verdict would relieve A-I-I of liability.

The circumstances were entirely different in *Frow v. De La Vega*, 82 U.S. 552 (1872), on which A-I-I relies. In that case, the plaintiff had alleged a joint fraud against the defendants, so that if there was no joint fraud, the defaulting defendants should also be found not liable. A-I-I

suggests that *Frow* would relieve it of liability if J&J won on liability, but in fact, *Frow* is considerably more narrow than that. The Third Circuit has held:

...*Frow* stands for the proposition that if at trial facts are proved that exonerate certain defendants and that as a matter of logic preclude the liability of another defendant, the plaintiff should be collaterally estopped from obtaining a judgment against the latter defendant, even though it failed to participate in the proceeding in which the exculpatory facts were proved.

Farzetta v. Turner & Newall, Ltd., 797 F.2d 151, 154 (3d Cir. 1986). The Eighth Circuit has also limited *Frow* to circumstances of joint liability: “Although [the defendants] share closely related interests, they were not codefendants facing lawsuit on a theory of joint liability, where ‘no one defendant may be liable unless all defendants are liable.’” *McMillian/McMillian, Inc. v. Monticello Ins. Co.*, 116 F.3d 319, 321 (8th Cir. 1997). The District of Columbia Circuit has also found that “a default order that is inconsistent with a judgment on the merits must be set aside only when liability is truly joint—that is, when the theory of recovery requires that all defendants be found liable if any one of them is liable....” *Whelan v. Abell*, 953 F.2d 663, 674–75 (D.C. Cir. 1992). Thus, “when different results as to different parties are not logically inconsistent or contradictory, the rationale for the *Frow* rule is lacking.” *In re Uranium Antitrust Litig.*, 617 F.2d 1248, 1257–58 (7th Cir. 1980). Again, here it is entirely possible that J&J might have been found not liable, for example, because its product did not cause Mr. Perry’s mesothelioma while Clubman’s did. There was no error and no prejudice to A-I-I in including it in the trial.

A-I-I’s motion for new trial on this issue is DENIED.

V. THE JURY WAS INFORMED ABOUT THE ECONOMIC DAMAGES AND THE DEFENDANTS’ STIPULATIONS REGARDING ECONOMIC DAMAGES.

A-I-I argues that the Court’s instructions regarding the stipulation regarding medical expenses were in error and prejudiced it, so that the jury awarded an unjustified amount of economic damages. In fact, the jury saw the joint stipulation, which was entered into evidence. It

clearly identified which Defendants stipulated to which amounts. TT 8/12/24 at 1589:1-23. And the stipulation addressed only current economic damages, not future damages.

As to the identity of Defendants who were parties to the economic damages stipulation, the Court told the jury that “AII, which is the other defendant before you, has not stipulated to the amount of Mr. Perry's economic loss; and, therefore, plaintiff is calling an economist to testify as to the economic loss.” TT 8/12/24 at 1590:7-11. The economist testified, consistent with the stipulation between Plaintiffs and J&J Entities, that Mr. Perry's economic damages, minus medical expenses, were \$2,819,353. TT 8/12/24 at 1611:23-1612:5. A-I-I questioned Plaintiffs' economist, challenging his assumptions. The jury was later told that Plaintiffs and A-I-I had stipulated that “the reasonable and necessary past medical bills as a result of Michael Perry's mesothelioma diagnosis and treatment are \$510,620.05.” TT 8/14/24 at 1879:3-8.

In closing counsel for A-I-I asked the jury to question his assumptions and presumably to reject his testimony:

We so too talked to Robert Johnson. You remember the plaintiffs' economist. We did that -- we hoped it wasn't a waste of time. The reason we did that is because we had concerns about his underlying assumptions that make up the numbers. And we hope that you will also take that to heart and really look at the numbers and question his assumptions as well.

TT 8/14/24 at 1965:18-25. Thus, A-I-I also made clear that it did not accept the economic damages calculated by Plaintiffs' economist and stipulated to by the J&J Defendants. Given that the jury was told A-I-I did not stipulate to economic damages other than medical expenses, which A-I-I underscored in closing argument, there was no prejudice to A-I-I in the Court's instructions.

As to the amount of the stipulations, the Court referred briefly to adding the numbers: “when you saw those two figures added together in argument.” TT 8/14/24 at 2063:23-24. But the

argument on economic damages and in particular medical expenses was clear. Plaintiffs' counsel stated:

And then we had a stipulation read this morning. I know it kind of whizzed by us. I saw somebody trying to write it down. I don't know if you got it all down -- it's in her instruction -- was about \$510,000 more. So 2.8 million plus 510,000, that's how we get the 3.3 number. That's what that means.

It's only the current economic loss. But the number that you have to write down is for the past and the future. And I hate to say it out loud with Michael in here, but there's going to be a lot of medical expenses in Michael's future. A lot. He's already had 510,000, and this has barely started. You heard it came back, and his pleura is twice the size it was. This is going to keep coming back. And it's never going to stop coming back.

And so I think, conservatively, Michael has another half a million dollars of medical expenses in his future. I think the number you should write down is \$3.8 million.

TT 8/14/24 at 1928:24-1929:20. Plaintiffs' counsel's explanation was consistent with the stipulation provided to the jury that economic damages, including medical expenses, were \$3.3 million. Future medical expenses are an aspect of economic damages as well, and Plaintiffs' counsel asked for \$3.8 million to include future medical expenses of \$500,000. The jury's award was for past and future economic damages. The fact that the jury awarded \$3.8 million does not definitively show that the jury added current economic damages and past medical expenses in their award. It is more likely that the award for past and future economic damages reflects the damages stipulated by Plaintiffs and J&J Entities and testified to by Plaintiffs' economist, along with the \$500,000 requested in future medical expenses.

Any error in jury instructions supports granting a new trial only if the movant can show prejudice, as A-I-I acknowledges. "An erroneous jury instruction... is not grounds for reversal unless the appellant can show prejudice from the erroneous instruction." *Cole v. Raut*, 378 S.C. 398, 405, 663 S.E.2d 30, 33 (2008) (citing *Ellison v. Simmons*, 238 S.C. 364, 372, 120 S.E.2d 209, 213 (1961); see also *Ardis v. Sessions*, 383 S.C. 528, 682 S.E.2d 249, 250 (2009)). In addition,

when reviewing a jury charge, the court “must consider the court’s jury charge as a whole in light of the evidence and issues presented at trial. If, as a whole, the charges are reasonably free from error, isolated portions which might be misleading do not constitute reversible error.” *Id.* (quoting *Keaton ex rel. Foster v. Greenville Hosp. Sys.*, 334 S.C. 488, 497, 514 S.E.2d 570, 575 (1999)). In *Cole v. Raut*, the court determined, “Considering the entire jury charge in light of the evidence and issues presented at trial, we conclude that the erroneous charge ... was not prejudicial to the [plaintiffs].” 378 S.C. at 406, 663 S.E.2d at 34 (emphasis added). In this case, even if the charge was misleading, A-I-I cannot show it was prejudiced. The stipulations were admitted into evidence. The closing argument was also clear about what had been stipulated to and what additional economic damages were requested, and the jury’s verdict appears to accord with that request. A-I-I is not entitled to a new trial based on the jury instructions.

A-I-I’s motion for new trial based on the jury instructions concerning economic damages is DENIED.

VI. The Verdict Form Reflected A-I-I’s Default.

A-I-I contends that the verdict form was incorrect because “it made it a foregone conclusion that asbestos-containing talc was a cause of Mr. Perry’s mesothelioma and that A-I-I’s conduct was willful, wanton, and reckless.” In fact, it was a foregone conclusion because A-I-I was in default. The jury was instructed:

Now, I have found as a matter of law that American International Industries, AII, is liable. So you don't have to make that liability determination. They are liable.

The Court has already determined that American International Industries, the company responsible for Clubman talc products, is liable to Michael Perry on each of the causes of action pled against them, specifically negligence, strict liability, fraudulent misrepresentation.

The Court has determined that Clubman asbestos-containing talc products was defective and unreasonably dangerous and was a substantial factor in the development of Michael Perry's mesothelioma.

The Court has determined that American International Industry's conduct was willful, wanton, and reckless, meaning American International Industries acted with a conscious indifference to the rights and safety of others.

Now, while these are issues you must decide against Johnson & Johnson, you are instructed that American International Industries is liable to the plaintiffs in this case. Your task -- your only task as to AII is to determine the total amount of damages that Michael Perry and Lonnie Long have suffered.

TT 8/14/24 at 2070:10-2071:13. It was appropriate for the verdict form to be checked as to A-I-I's liability because it was in default and had admitted the allegations of the complaint. The allegations were sufficient to support A-I-I's liability. As discussed *supra*, there was no need for Plaintiffs to prove A-I-I's willful, wanton, or reckless conduct because A-I-I admitted that conduct when it defaulted.

A-I-I also suggests that finding it liable for willful, wanton, or reckless conduct was improper because "the complaint was neither entered into evidence nor read into the record." There was no reason for the complaint to be entered into evidence or read into the record. It is already part of the Court's record, and it is the Court's province to determine that A-I-I defaulted and thus admitted liability—not the jury's.

A-I-I's motion for new trial on this point is DENIED.

VII. THE JURY WAS PROPERLY INSTRUCTED WITH RESPECT TO PUNITIVE DAMAGES, AND NO LIMITING INSTRUCTION WAS NECESSARY.

A-I-I argues that there was no evidence from which a jury could base an award of punitive damages against it. However, by operation of law, it was established that A-I-I behaved willfully, wantonly, and/or recklessly. This is the basis for punitive damages. As noted above in response to A-I-I's motion for JNOV, there was no due process violation in holding that A-I-I had admitted

the allegations of the complaint and acted willfully, wantonly, and recklessly. In addition, the jury heard by stipulation that A-I-I's net worth was \$76 million. There was evidence by virtue of A-I-I's default to support the award of punitive damages against A-I-I that was entirely separate from the facts proven as to J&J.

At the beginning of deliberations, the Court instructed the jury, "You should decide the case against each defendant separately as if it were a separate lawsuit." TT 8/14/24 at 2070:6-8. Later, the Court went through punitive damages verdict form and pointed out the separate language as to each Defendant, separately noting that the jury could put \$0 in the blank as to J&J or A-I-I. TT 8/15/24 at 2262:20-2263:10. In light of these instructions, there was no need for an additional limiting instruction. In addition, counsel for A-I-I reminded the jury, "Please understand that AII is not associated with Johnson & Johnson, and the evidence that you saw does not apply to us and should not be considered against American International Industries." TT 8/15/24 at 2272:19-24.

A-I-I's motion for new trial on this point is DENIED.

VIII. DR. HABER TESTIFIED ABOUT DAMAGES AND HEALTH CONDITIONS THAT MIGHT HAVE IMPACTED LIFE EXPECTANCY, AND THERE WAS NO PREJUDICE TO A-I-I.

At the end of J&J's cross-examination of Dr. Haber, counsel for A-I-I asked to cross-examine Dr. Haber. Counsel for A-I-I said that she had some additional topics she was ready to proffer. The Court invited her to make her proffer as soon as Plaintiffs' counsel finished redirect examination. TT 8/6/24 at 517:14-518:3. After redirect, Ms. Flynn made an extensive argument about separating the liability evidence regarding J&J from A-I-I.

As to damages, she stated in one sentence, "And in addition to that, he's got a long list of prior medical history that we would have raised to -- just to go to quality of life and/or possible life expectancy issues." TT 8/6/24 at 541:18-22. This comment was buried in A-I-I's argument

about and request for “a limiting instruction so that the jury understands that this is the liability portion of the trial as it relates to Johnson & Johnson on the second amended complaint,” which the Court said would be provided. TT 8/6/24 at 536:2-537:18, 539:1-541:17, 542:14-21.

Again, counsel for A-I-I was invited to make a proffer concerning its proposed questions for Dr. Haber at the end of Dr. Haber’s testimony, which counsel stated she was ready to do. TT 8/6/24 at 517:19-518:3. J&J did make such a proffer. TT 8/6/24 at 642:7-645:20. A-I-I did not. The next morning, A-I-I requested “a proffer of what we could do with the economist,” and the Court asked that it be put in writing for review. TT 8/7/24 at 656:19-23. Also, the day after Dr. Haber’s testimony was over and he could not be feasibly recalled, A-I-I made its proffer concerning his testimony. TT 8/7/24 at 668:5-11.

In fact, Dr. Haber did testify at some length about medical conditions that could have impacted Mr. Perry’s life expectancy. Plaintiffs’ counsel asked him about health and impact on life expectancy:

Q. Did you evaluate Mr. Perry's overall health before he was diagnosed with mesothelioma?

A. I did.

Q. Can you tell us about that?

A. Sure. So the first one, dyslipidemia, that's a fancy medical term for high cholesterol. So he had high cholesterol. He had GERD or acid reflux disease, very common.

AR is allergic rhinitis. That basically is -- you know, when it's seasonal, when you go out and -- pollens and you get watery eyes and runny nose. Very, very common.

And he had diverticulosis. Diverticulosis is where in the -- in the colon there are little outpouchings that can become inflamed sometimes. It can cause swelling in the -- in the abdomen and pain, and he did have diverticulosis. Again, a very, very common condition. But it was not of any limitation.

He had really no significant lung issues, except he did have a little bit of seasonal asthma, which means that -- you know, during certain seasons, when the allergies -- he would get a little congested, a little short of breath and wheezy. But he was on no chronic medications for any lung condition and, really, a quite healthy man.

TT 8/6/24 at 356:2-357:3.

Dr. Haber also testified about Mr. Perry's social history, family history, and genetic issues.

Q. Did you evaluate other --

A. Yeah. So I looked at social history. So he -- he never smoked. This is in the records as well as I talked with him. He had never had any cancer before. And he really had no family history to suggest any sort of a concern.

Q. It says: No family history c/w germline mutation. What does that mean?

A. Consistent with. So there are -- there are certain types of genetic abnormalities. There's a very small number of people in families that they've -- they've been able to find from the past ten years or so across the world.

It's just a handful of -- of these cases. But they can have this genetic defect that causes them to have a number of certain types of rare cancers: cancers of the eye, cancer of the kidney, mesothelioma, certain types of skin cancers. And a lot of people in the family all have -- they'll have multiple cancers, multiple, five, six, seven cancers. And there was nothing his family history that suggested anything like that.

...

Q. And just -- Mr. Perry had no history consistent with having that type of mutation?

A. Correct. And nor did he -- in fact, he -- he absolutely did not, because in the medical record we -- they actually did tests, and he didn't.

TT 8/6/24 at 357:3-358:18. Counsel for J&J also questioned Dr. Haber at length about Mr. Perry's family history of cancer. TT 8/6/24 at 472:5-479:5.

Dr. Haber was asked directly whether anything in Mr. Perry's health condition that would have shortened his life expectancy, and he replied that there was not.

Q. Was there anything in your review of Mr. Perry's health condition overall before his diagnosis with mesothelioma that would have shortened his normal life expectancy?

A. No. I mean, he was just a very typical individual. If anything, here, you know, maybe even on the healthier side, but certainly thing that would -- that would make you concerned that he wouldn't just be an average man of his age.

TT 8/6/24 at 358:19-359:3.

“The admissibility of evidence is within the trial court's discretion.” *Haselden v. Davis*, 341 S.C. 486, 497, 534 S.E.2d 295, 301 (Ct. App. 2000), *aff'd*, 353 S.C. 481, 579 S.E.2d 293 (2003). “Generally, there is no abuse of discretion where the excluded testimony is merely cumulative of other evidence proffered to the jury.” *Com. Ctr. of Greenville, Inc. v. W. Powers McElveen & Assocs., Inc.*, 347 S.C. 545, 559, 556 S.E.2d 718, 726 (Ct. App. 2001) (citing *Ott v. Pittman*, 320 S.C. 72, 79, 463 S.E.2d 101, 105 (Ct.App.1995)). Further cross-examination on these points would have yielded only cumulative testimony.

Counsel for A-I-I did cross-examine Dr. Gibney, but she did not ask whether she could explore these issues with him. She asked only to cross-examine Dr. Gibney about the relative aggressiveness of Mr. Perry's mesothelioma. TT 8/7/24 at 728:15-25. Moreover, she asked Dr. Gibney if Mr. Perry was a surgical candidate because he was in “relatively good health.” TT 8/7/24 at 732:10-15.

Even if the Court should have permitted the cross-examination, which was cumulative of the testimony already given, “[t]o warrant reversal based on the admission or exclusion of evidence, the appellant must prove both the error of the ruling and the resulting prejudice, *i.e.*, that there is a reasonable probability the jury's verdict was influenced by the challenged evidence or lack thereof.” *Turner v. Med. Univ. of S.C.*, 430 S.C. 569, 589, 846 S.E.2d 1, 11 (Ct. App. 2020) (quoting *Fowler v. Nationwide Mut. Fire Ins. Co.*, 410 S.C. 403, 408, 764 S.E.2d 249, 251 (Ct.

App. 2014)). In this case, because the proposed examination was largely duplicative of the examination that had already occurred, there was no prejudice to A-I-I, and for this reason as well, no new trial is warranted.

A-I-I's motion for new trial based on this point is DENIED.

IX. THERE WAS NO CUMULATIVE ERROR THAT DENIED A-I-I A FAIR DAMAGES HEARING.

No cumulative errors justify granting a new trial to A-I-I. First, it is not clear that the cumulative error doctrine applies in civil cases. *See Lynch v. Carolina Self Storage Centers, Inc.*, 409 S.C. 146, 163, 760 S.E.2d 111, 121 (Ct. App. 2014) ("The cumulative error doctrine, if it applies in civil cases, is inapplicable in this case...."). Even if it does apply, to succeed on a cumulative error claim, the movant must show that the errors had "the effect of preventing the party from receiving a fair trial, and the cumulative effect of the errors affects the outcome of the trial." *State v. Beekman*, 405 S.C. 225, 237, 746 S.E.2d 483, 490 (Ct. App. 2013), *aff'd*, 415 S.C. 632, 785 S.E.2d 202 (2016) (citing *State v. Johnson*, 334 S.C. 78, 93, 512 S.E.2d 795, 803 (1999)); *see also State v. Daise*, 421 S.C. 442, 467, 807 S.E.2d 710, 722 (Ct. App. 2017) (finding "any errors by the circuit court were not prejudicial and did not combine to affect [the defendant's] right to a fair trial.").

As to A-I-I's argument that the jury should have been instructed that the basis of its liability was its default, the trial court has discretion with regard to jury instructions. *See Clark v. Cantrell*, 339 S.C. 369, 389, 529 S.E.2d 528, 539 (2000) (citations omitted). "A trial court's decision regarding jury charges will not be reversed where the charges, as a whole, properly charged the law to be applied." *State v. Sanchez*, 435 S.C. 468, 474, 867 S.E.2d 595, 598 (Ct. App. 2021). The instruction simply stated that the Court had determined as a matter of law that A-I-I was liable on the causes of action pleaded against it in the complaint, specifying those claims. TT 8/5/24 at

156:10-157:3. This was an accurate statement of the law, and nothing further needed to be said about it to the jury because there was no decision for the jury to make concerning A-I-I's liability. Nevertheless, counsel for A-I-I violated the Court's directive and shared this information with the jury during her closing argument.

There is no reason the jury should not have been instructed from the beginning of trial and at the end of the actual damages phase that A-I-I had been determined as a matter of law to have behaved willfully, wantonly, and/or recklessly. It was a question for the first phase of the trial, and because A-I-I was in default, it was determined as a matter of law. The Court did make clear that there had been no determination as to actual or punitive damages: "the amount of damages has not been determined. Much less has it been determined that any actual or punitive damages should be awarded. That is for the evidence to proceed and determine." TT 8/5/24 at 167:8-12.

A-I-I again complains of the economic damages instruction, but, as noted above, it has not shown prejudice from the Court's instructions. Because there was no prejudice shown, the instructions do not justify a new trial or contribute to a cumulative error analysis.

A-I-I's motion for new trial based on cumulative error is DENIED.

X. RULING ON MOTION FOR SET OFF

A-I-I contends that they are entitled to a full set-off for Plaintiffs' entire settlement amount and Plaintiffs do not object. A-I-I further contends that Plaintiffs should have to produce their settlement agreements with various co-defendants, with which the Court disagrees. Plaintiffs' settlement releases are not discoverable. Rule 408, SCRE. The Court has reviewed Plaintiffs' settlement agreements in camera and finds they are fair and reasonable. *See Glenn v. 3M Co.*, 440 S.C. 34, 86, 890 S.E.2d 569, 596 (Ct. App. 2023). The Court therefore rules that the amount of

\$11,255,000 in Plaintiffs' pre-trial settlements will be set-off from Plaintiffs' compensatory damages award.

XI. A-I-I IS ENTITLED TO A NEW TRIAL *NISI REMITTITUR* AS TO PLAINTIFFS' ACTUAL DAMAGES.

A new trial nisi remittitur may be granted "when the verdict indicates the jury was unduly liberal in determining damages." *Welch v. Epstein*, 342 S.C. 279, 303, 536 S.E.2d 408, 420 (Ct. App. 2000). "A motion for new trial *nisi remittitur* asks the trial court in its discretion to reduce the verdict because it is merely excessive, although not motivated by considerations such as passion, caprice or prejudice." *Id.*

When reviewing a request for new trial nisi remittitur, substantial deference must be given to the jury's determination of damages. *Hassell v. City of Columbia*, 430 S.C. 620, 635, 846 S.E.2d 373, 381 (Ct. App. 2020). The consideration of a motion for a new trial nisi remittitur requires the trial judge to consider the adequacy of the verdict in light of the evidence presented. *Proctor v. Dep't of Health & Envtl. Control*, 368 S.C. 279, 320–21, 628 S.E.2d 496, 518 (Ct. App. 2006). "Compelling reasons must be given to justify invading the jury's province by granting a new trial *nisi remittitur*." *Id.*

The jury award against A-I-I, along with J&J, was for \$23,037,500 in actual damages to Michael Perry, \$30 million in punitive damages to Plaintiffs Michael Perry and Lonnie Long, and \$9,618,750 to Lonnie Long in loss of consortium damages.

In support of its request for remittitur, A-I-I argues:

While the jury had nothing more than this Court's statements upon which to base a verdict against A-I-I, the jury had ample evidence of conduct as it relates to the J&J defendants. Indeed. The entirety of the evidence presented at trial by Plaintiffs was directed to J&J's conduct. There can be no question that the actual damages verdict rendered by the jury was largely, if not entirely, based on Plaintiffs' evidence as to J&J. A-I-I was just "along for the ride," making it wholly unfair to saddle A-I-I with damages the jury found to be appropriate as a result of Plaintiffs' characterization of the J&J defendants' acts and omissions.

A-I-I's Post Trial Motions: Judgment Notwithstanding the Verdict, New Trial Absolute and/or New Trial *Nisi Remittitur* at 35.

A. Analysis of other cases.

- *Firth v. Garlock Sealing Technologies, LLC*, Civil Action No. 2008-CP-23-09186 (Greenville Cty. 2009), involved a 72-year-old deceased mesothelioma. The jury awarded \$300,000 for survival and \$400,000 for wrongful death, for a total of \$700,000 in compensatory damages. The jury declined to award damages for loss of consortium.
- *Garvin v. AGCO Corporation, et al.*, Civil Action No. 2012-CP-40-06675 (Richland Cty. 2013), involved a 74-year-old living mesothelioma who worked on pumps and valves as a millwright for thirty years. The jury awarded \$10 million for pain and suffering and \$1 million for loss of consortium, for a total of \$11 million in compensatory damages. The jury also awarded an aggregate of \$27 million in punitive damages against three defendant parties. After a trial defendant challenged the verdict, and the trial court granted a new trial *nisi remittitur* reducing the compensatory damages award from \$11 million to \$1.5 million (a remittitur of slightly more than 85%) and reducing the punitive damages award against the challenging defendant from \$11 million to \$3.5 million, commensurate with the statutory cap on punitive damages.
- *Keene v. CNA Holdings, LLC*, Civil Action No. 2013-CP-42-03915 (Spartanburg Cty. 2015), involved a 70-year-old deceased mesothelioma who worked as a millwright for Daniel Construction at the Celanese Spartanburg facility from 1969 to 1978. The jury awarded \$2 million for pain and suffering, \$5 million for wrongful death, and \$5 million for loss of consortium, for a total of \$12 million in compensatory damages. The jury also awarded \$2 million in punitive damages.
- *Jolly v. General Electric Co., et al.*, Civil Action No. 2016-CP-42-01592 (Spartanburg Cty. 2017), involved a 73-year-old living mesothelioma who worked for Duke Power as a mechanical inspector around other trades engaged in tearing-out asbestos insulation and gaskets from 1980 to 1984. The jury awarded \$200,000 for pain and suffering and \$100,000 for loss of consortium, for a total of \$300,000 in compensatory damages. This Court granted a new trial *nisi additur*, increasing the compensatory damages award to a total of \$1,870,000.
- *Edwards v. Scapa Waycross, Inc.*, Civil Action No. 2013-CP-46-00368 (York Cty. 2018), involved a 60-year-old deceased mesothelioma who worked at Bowater Paper Mill on a paper machine from 1963 to 2002. The jury awarded \$600,000 in survival and \$100,000 in wrongful death damages. This Court granted a new trial *nisi additur*,

increasing the survival award by \$400,000 to \$1 million and sustaining the damages awarded for wrongful death. After additur, the compensatory damages totaled \$1,100,000.

- *Glenn v. 3M Co., et al.*, Civil Action No. 2015-CP-04-01607 (Anderson Cty. 2019), involved a 69-year-old deceased mesothelioma who worked for Duke Power as an instrumentation worker around trades tearing-out asbestos insulation and gaskets from 1970 through 1996. The jury awarded \$1 million for pain and suffering, \$1 million for wrongful death, and \$1 million for loss of consortium, for a total of \$3 million in compensatory damages. The jury also awarded \$2,125,000 in punitive damages.
- *Weist v. Kraft Heinz Company, et al.*, Civil Action No. 2020-CP-40-01597 (Richland Cty. 2021), involved the death of Kathy Weist. The jury awarded \$11 million for Kathy Weist's survival damages, \$10 million for the wrongful death damages and \$1 million for the loss of consortium damages. The jury also awarded \$10 million in punitive damages.
- *Plant v. Whittaker Clarke & Daniel et al*, Civil Action No. 2022-CP-40-01265 (Richland Cty. 2023), involved a 35 year old living mesothelioma who was exposed to talcum powder and cosmetic products. The jury awarded \$871,356 in past medical expenses, \$3,368,336 in future medical expenses, \$20 million in other damages, and \$5 million in loss of consortium.

1. ***Garvin v. Crane Co.***

This Court points to now-Justice Hill's prior order in the *Garvin v. Crane Co.* case. *Order Denying in Part and Granting in Part Defendant Crane Co.'s Motion for Post-Trial Relief, Garvin v. AGCO Corporation*, No. 2012-CP-40-6675, Richland County Court of Common Pleas of South Carolina (Nov. 10, 2014)). After Mr. Garvin's trial, Justice Hill remitted the jury finding from \$10,000,000 in compensatory damages to \$1,500,000. The reasons for this remittitur were that Mr. Garvin was 74 years old, had testicular mesothelioma, and had several other serious medical conditions unrelated to his testicular mesothelioma. Additionally, Mr. Garvin was cancer-free and only had economic damages in the amount of \$149,000. Justice Hill noted that based on Mr. Garvin's pecuniary damages, the nature of his injury (testicular mesothelioma), his treatments, his age, and his life expectancy, there were compelling reasons to remit Mr. Garvin's verdict.

2. *Seay v. CNA Holdings, LLC*

Justice Hill also evaluated a request for new trial nisi remittitur in the *Seay v. CNA Holdings, LLC* case. *Order Denying Defendant CNA Holding, LLC's Motion for Post-Trial Relief, Angie Keene, Individually and as Personal Representative of the Estate of Dennis Seay, Decased, and Linda Seay v. CNA Holdings, LLC*, No. 2013-CP-42-03915, Richland County Court of Common Pleas of South Carolina (Jan. 8, 2016)). Celanese requested that Justice Hill remit the jury's compensatory verdict from \$2,000,000 to \$1,500,000, which Justice Hill declined to do. *Id.* at *31. In support of his ruling, Justice Hill noted that Mr. Seay had pleural mesothelioma and suffered with chest and lung pain before his diagnosis. He noted all of Mr. Seay's pain and suffering, including all of his medical treatments and surgeries to try and prolong his life. He noted that before his pleural mesothelioma diagnosis, Mr. Seay was "strong and in very good physical shape," Justice Hill noted that Mr. Seay suffered from excruciating pain and mental distress, and that he found no compelling reason to reduce the compensatory verdict. Justice Hill further noted that the compensatory verdict was similar to other jury awards for someone with pleural mesothelioma.

Justice Hill further elaborated in his *Seay* post-trial order that:

As Celanese points out, in Garvin, this Court did remit the pain and suffering awarded to Mr. Garvin from \$10 million to \$1.5 million. But the cases are very different. Mr. Garvin was alive and cancer free at the time of his trial, whereas Mr. Seay suffered unrelenting pain until his mesothelioma killed him. Mr. Garvin was four years older at the time of trial than Mr. Seay was at his death, and Mr. Garvin's life expectancy was a number of years shorter. Mr. Garvin suffered from a testicular form of mesothelioma, while Mr. Seay suffered from pleural mesothelioma that caused his death by suffocation.

Id. at *35.

Justice Hill also affirmed the jury's award of \$5,000,000 for loss of consortium damages to Mr. Seay's widow because she "suffered extreme hardship and loss" because of her husband's

mesothelioma. *Id.* at *36. Justice Hill noted how much time Mr. and Mrs. Seay spent together and the fact that Mrs. Seay took care of her husband when he was sick because he “always wanted her right beside him.” *Id.* at *36. Justice Hill noted that the loss of consortium award was supported by the trial evidence and was not unduly liberal. *Id.* at *37. Justice Hill acknowledged that, same as in *Garvin*, there was no compelling reason to disturb the loss of consortium verdict.

Justice Hill also affirmed the award of \$5,000,000 to the wrongful death claim noting that Mr. Seay would have had a life expectancy of 13 years had he not developed mesothelioma.

Finally, Justice Hill declined to remit the jury’s punitive verdict, finding of \$2,000,000 in total, or in the alternative to \$50,000. *Id.* at *43. Justice Hill walked through all of the evidence that had been presented to the jury about how long Celanese had known about asbestos causing disease, how long Celanese had known that the asbestos on its premise exposed people to high enough levels of asbestos to cause disease, and that Celanese had knowingly and consciously disregarded the rights and safety of Mr. Seay and other workers on its premise and never warned anyone of asbestos hazards. Justice Hill wrote that:

...evidence included Celanese’s decision to continue using asbestos products when there were available alternatives, and deliberately concealing the nature of the danger from contract workers like Mr. Seay. This was not isolated conduct, but continued for almost a decade...

Id. at *45.

3. Michael Perry and Lonnie Long

The evidence shows that Mr. Perry’s injuries are very different from Mr. Garvin’s. Mr. Perry was 53 years old at the time of his diagnosis in 2023, more than 20 years younger than Mr. Garvin at the time of his trial. Mr. Perry has pleural mesothelioma and, as the jury heard from Dr. Haber, is facing a resurgence of his disease. He has no other severe medical conditions aside from his pleural mesothelioma and was in good physical health before his cancer diagnosis.

Mr. Perry is more similar to Mr. Seay. Mr. Perry, like Mr. Seay, has pleural mesothelioma. He has suffered extreme chest and lung pain. He has had extensive medical treatments, including but not limited to chemotherapy, radiation, and a six-to-eight surgery during which his back muscle was cut in half, his cancer-ridden lung lining was peeled off like an orange rind, his rib was removed, and his diaphragm was removed and reconstructed with mesh. The jury heard from Dr. Gibney that Mr. Perry's mesothelioma will recur, will be aggressive, and that when that happens Mr. Perry will suffocate to death with a sensation of "drowning."

Relevant to both *Garvin* and *Seay* prior orders, Mr. Perry's loss of life expectancy was approximately 26 years. Mr. Perry had \$510,620.05 in medical bills, an amount that was stipulated to as fair and reasonable by J&J. The record also shows that Mr. Perry had an economic loss of \$2,819,353, an amount also stipulated to by J&J as fair and reasonable. Therefore, Mr. Perry had a total economic loss of \$3,329,973.05, an amount that J&J stipulated to which was then presented to the jury. This is contrasted with Mr. Garvin's economic loss of \$149,000.

Evidence supports the fact that Mr. Long has felt the loss of his husband, and will continue to feel it long after Mr. Perry dies. The jury heard evidence that his husband gives him strength, and his entire life revolves around his relationship with Mr. Perry. The jury heard that Mr. Long takes Mr. Perry to every single doctor's appointment without fail, and loves his husband so much he could not even watch him testify at trial because it would be too painful to watch Mr. Perry be cross-examined.

As Justice Hill noted in his prior post-trial order in *Garvin*, "While the jury did decide on a large award, the Court has no reason to conclude it was the result of any improper motive or outside consideration. Placing a value on pain and suffering is inherently subjective." *Order*

Denying in Part and Granting in Part Defendant Crane Co. 's Motion for Post-Trial Relief, Garvin v. AGCO Corporation, at *32 (Nov. 10, 2014)).

However, the Court does find the verdict should be reduced because it is “merely excessive, although not motivated by considerations such as passion, caprice or prejudice.” *Welch v. Epstein*, 342 S.C. 279, 303, 536 S.E.2d 408, 420 (Ct. App. 2000). The verdict to Mr. Perry of \$23,037,500 shall be reduced by \$4,000,000 thereby leaving a verdict of \$19,037,500.

The Court finds the loss of consortium award shall be reduced because it is “merely excessive although not motivated by considerations such as passion, caprice or prejudice.” *Id.* The verdict to Mr. Long of \$9,618,750 shall be reduced by \$3,000,000 thereby leaving a verdict of \$6,618,750.

B. Punitive Damages

A-I-I also argues that the punitive damages award of \$760,000 against it should be reduced. Again A-I-I ignores that, as a matter of law, its conduct was found to be willful, wanton, and/or reckless, which is the predicate for punitive damages. The jury was instructed about this fact. The jury awarded \$760,000 in punitive damages against A-I-I. Defendant A-I-I, as a matter of law, admitted the allegations of the complaint, which fully support the imposition of punitive damages.

In *Gamble v. Stevenson*, the South Carolina Supreme Court directed:

[T]o ensure that a punitive damage award is proper, the trial court shall conduct a post-trial review and may consider the following: (1) defendant's degree of culpability; (2) duration of the conduct; (3) defendant's awareness or concealment; (4) the existence of similar past conduct; (5) likelihood the award will deter the defendant or others from like conduct; (6) whether the award is reasonably related to the harm likely to result from such conduct; (7) defendant's ability to pay; and finally, (8) as noted in *Haslip*, “other factors” deemed appropriate.

Gamble v. Stevenson, 305 S.C. 104, 111–12, 406 S.E.2d 350, 354 (1991). However, in *Mitchell, Jr. v. Fortis Insurance Co.*, the supreme court held “that *Gamble* remains relevant to the post-

judgment due process analysis, but only insofar as it adds substance to the *Gore* guideposts.” 385 S.C. 570, 587, 686 S.E.2d 176, 185 (2009). Thus, in *Mitchell*, the court considered reprehensibility, ratio, and comparative penalty awards.

1. Reprehensibility

A number of the *Gamble* factors are relevant to reprehensibility and will be addressed below. While the jury did not see the allegations in the complaint, they are available and relevant to the Court’s review. As noted above, Plaintiffs alleged Defendants’ knowledge of the risk of talcum powder products that they marketed as safe for daily use. Original Complaint at ¶ 148. Plaintiffs alleged Defendants’ knowledge of carcinogens, including asbestos, in talc. *Id.* at ¶ 150. Plaintiffs alleged that Defendants “have represented to various news media outlets and the public at large that their products are ‘asbestos-free,’ when, in fact, their products did test positive for asbestos and those that did not were merely the result of inadequate and imprecise testing methods.” *Id.* at ¶ 183. Again, there are nearly 20 pages of allegations concerning Defendants’ knowledge and bad acts with respect to the hazards of asbestos in their products. *See id.* at pp. 67-86. A-I-I’s conduct, as admitted by its default, demonstrates a high degree of culpability.

A-I-I’s conduct, as alleged in the complaint, went on for decades. Plaintiffs alleged that “For decades, defendants manufactured products composed of talc that were sold and marketed as safe for daily use by consumers on their person....” Complaint at ¶ 148. Plaintiffs also alleged that “Defendants and CTFA, for decades before Plaintiff Michael L. Perry was born, possessed medical and scientific data that raised concerns regarding the presence of carcinogens, including asbestos, in talc and that demonstrated the existence of health hazards to those exposed to asbestos-containing talcum powder products.” *Id.* at ¶ 150. Plaintiffs alleged that “Defendants ... have long

known that the deposits in the earth that are associated with talc are also associated with the formation of asbestos.” *Id.* at ¶ 152.

The crux of the conduct alleged, as shown above, is that Defendants, including A-I-I, knew of the dangers of their products but did not warn, instead marketing their products as safe and trying to conceal the hazards. The alleged awareness and concealment of the danger, which A-I-I admitted through its default, demonstrates the reprehensibility of A-I-I’s conduct.

Plaintiffs alleged that Defendants engaged in the same conduct with awareness of the risks for decades before Michael Perry was born, showing that they engaged in similar past conduct as well. Complaint at ¶¶ 148, 150, 152. Because these allegations support the finding of willful, wanton, and reckless conduct, they support the punitive damages award in this case.

2. Ratio

“The second and perhaps most commonly cited indicium of an unreasonable or excessive punitive damages award is its ratio to the actual harm inflicted on the plaintiff.” *BMW of N. Am., Inc. v. Gore*, 517 U.S. 559, 580 (1996) (citing *TXO Prod. Corp. v. All. Res. Corp.*, 509 U.S. 443, 459 (1993); *Pac. Mut. Life Ins. Co. v. Haslip*, 499 U.S. 1, 23 (1991)). The punitive damages award must bear a “reasonable relationship” to the compensatory damages award. *Id.* “Scholars have identified a number of early English statutes authorizing the award of multiple damages for particular wrongs. Some 65 different enactments during the period between 1275 and 1753 provided for double, treble, or quadruple damages.” *Id.* at 580–81. “In *Haslip*, [the Supreme Court] concluded that even though a punitive damages award of ‘more than 4 times the amount of compensatory damages’ might be ‘close to the line,’ it did not ‘cross the line into the area of constitutional impropriety.’” *Gore*, 517 U.S. at 581 (quoting *Haslip*, 499 U.S. at 23–24). In *Campbell*, the Supreme Court returned to the 4:1 ratio as instructive:

Our jurisprudence and the principles it has now established demonstrate, however, that, in practice, few awards exceeding a single-digit ratio between punitive and compensatory damages, to a significant degree, will satisfy due process. In *Haslip*, in upholding a punitive damages award, we concluded that an award of more than four times the amount of compensatory damages might be close to the line of constitutional impropriety. We cited that 4-to-1 ratio again in *Gore*. The Court further referenced a long legislative history, dating back over 700 years and going forward to today, providing for sanctions of double, treble, or quadruple damages to deter and punish. While these ratios are not binding, they are instructive. They demonstrate what should be obvious: Single-digit multipliers are more likely to comport with due process, while still achieving the State's goals of deterrence and retribution, than awards with ratios in range of 500 to 1 or, in this case, of 145 to 1.

538 U.S. at 425. Here, where the jury awarded punitive damages of little more than 2% of the actual damages, the ratio tends to show that the punitive damages award is not excessive.

3. Comparative penalty awards

As to comparative penalty awards, the South Carolina Supreme Court has directed:

Third, the court should consider the difference between the punitive damages awarded by the jury and the civil penalties authorized or imposed in comparable cases. When identifying “comparable cases” a court may consider: the type of harm suffered by the plaintiff or plaintiffs; the reprehensibility of the defendant’s conduct; the ratio of actual or potential harm to the punitive damages award; the size of the award; and any other factors the court may deem relevant.

Mitchell, 385 S.C. at 588–89, 686 S.E.2d at 186.

There appear to be no civil penalties that clearly apply to the facts of this case. In a case against cigarette manufacturer Phillip Morris, the Oregon Supreme Court noted that, rather than a civil penalty, Philip Morris’s conduct in hiding the cancer risks of its product and misleading the public “would constitute at least second-degree manslaughter, a Class B felony.” *Williams v. Philip Morris Inc.*, 340 Or. 35, 59, 127 P.3d 1165, 1179 (2006), *vacated on other grounds sub nom. Philip Morris USA v. Williams*, 549 U.S. 346 (2007), *and adhered to on reconsideration*, 344 Or. 45, 176 P.3d 1255 (2008). In South Carolina involuntary manslaughter involves “criminal negligence,”

which is “the reckless disregard of the safety of others.” S.C. Code § 16-3-60. It is punishable by up to five years in prison, however, and not by fine. *Id.*

In *Mitchell*, the court also could not find examples of civil penalties in equivalent circumstances but looked to punitive damage awards that had previously been upheld in similar circumstances. 385 S.C. at 592–93, 686 S.E.2d at 187–88. Certainly, larger punitive damages awards have been upheld in asbestos cases where, like here, the plaintiff alleged that the manufacturer knew and did not warn of the hazard of its product. *See, e.g., Keene v. CNA Holdings, LLC*, 426 S.C. 357, 384–85, 827 S.E.2d 183, 198 (Ct. App. 2019), *aff’d*, 436 S.C. 1, 870 S.E.2d 156 (2021) (upholding awards of \$12 million in compensatory damages and \$2 million in punitive damages against premises owner in asbestos exposure case).

Consequently, this Court will not invade the province of the jury in determining damages, and the jury’s awards to Michael Perry and Lonnie Long will stand.

A-I-I’s request for *nisi remittitur* as to Plaintiffs’ compensatory awards is GRANTED and A-I-I’s request for *nisi remittitur* as to the punitive damages award is DENIED.

XII. A-I-I’s ADOPTED ARGUMENTS ARE ALSO DENIED

A-I-I adopts certain arguments made by J&J:³

- Section IV.B.1.: This Court Erred By Denying J&J Defendants’ Motion to Sever and Compelling J&J Defendants to Try Their Case Along With American International Industries (A-I-I) Without a Proper Limiting Instruction.
- Section IV.C.: J&J Defendants Are Entitled to a New Trial Because Of The Cumulative Impact Of This Court’s Errors.
- Section IV.D.: The Court Should Grant A New Trial Absolute Under The “Thirteenth Juror” Doctrine Because The Evidence Did Not Justify The Verdict.
- Section IV.E.: A New Trial Must be Ordered Because the Verdict Shocks The Conscience and Because the Punitive Damages Award is Unconstitutional and Shockingly Excessive.

³ These are arguments made in J&J’s post trial motions and briefings.

- Section V.: Failing All of the Above, The Court Should Grant a New Trial *Nisi Remittitur*.

To the extent J&J Defendants' motions apply to A-I-I, they are DENIED for the same reasons put forth in the Court's Order on Defendants Johnson & Johnson; LLT Management, LLC; Johnson & Johnson Holdco (NA) Inc.; and Kenvue, Inc.'s Motions for JNOV, New Trial Absolute Based on Errors of Law, and New Trial Absolute Based on the Thirteenth Juror Doctrine, excepting that

I GRANT J&J's motion for New Trial *Nisi Remittitur*, which grant of such motion directed to Plaintiffs' actual damages also applies to A-I-I by virtue of joint and several liability for an indivisible injury.

Plaintiffs' verdict of \$19,037,500 for Mr. Perry's past and future total loss, \$6,618,750 for Mr. Long's loss of consortium shall be set off by the fair and reasonable setoff of \$11,255,000, resulting in a compensatory judgment of \$14,401,250. The total punitive judgment is \$760,000. Therefore, the total judgment to be entered against A-I-I is \$15,161,250.

XIII. RULING ON STAY OF EXECUTION FOR JUDGMENT AND BOND

A-I-I requests a stay of judgment pursuant to Rule 62, SCRCP. The Court agrees that A-I-I is entitled to a ten-day automatic stay of judgment pursuant to Rule 62(a).

There is no automatic stay of execution of a money judgment during the pendency of appeal. S.C. Code § 18-9-130(A)(1); *see also* Rule 241(b)(1), SCACR (providing that money judgments are an exception to the general rule that service of a notice of appeal automatically stays matters decided in the judgment). Rather, a stay of execution is within the trial court's discretion: "A notice of appeal from a judgment directing the payment of money does not stay the execution of the judgment unless the presiding judge before whom the judgment was obtained grants a stay of execution." S.C. Code § 18-9-130(A)(1). Rule 62(d) provides that a stay of execution of judgment is predicated on posting a supersedeas bond.

The Court exercises its discretion to deny A-I-I's request for a stay order without the requirement of an appeal bond. In the event of an appeal, the Court orders that A-I-I post a supersedeas bond in the full amount of the judgment, pursuant to SCRCP 62(d).

IT IS SO ORDERED.

[JUDGE'S ELECTRONIC SIGNATURE PAGE TO FOLLOW]



Richland Common Pleas

Case Caption: Michael L Perry , plaintiff, et al vs American International Industries ,
defendant, et al
Case Number: 2023CP4004072
Type: Order/Other

So Ordered

Jean H. Toal

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STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF RICHLAND	)	FOR THE FIFTH JUDICIAL CIRCUIT
	)	
MICHAEL L. PERRY and	)	C/A NO. 2023-CP-40-04072
LONNIE L. LONG,	)	
	)	<i>In Re:</i>
Plaintiffs,	)	Asbestos Personal Injury Litigation
	)	Coordinated Docket
v.	)	
	)	
AMERICAN INTERNATIONAL	)	
INDUSTRIES, et al.,	)	
	)	
Defendants.	)	

**ORDER ON DEFENDANTS JOHNSON & JOHNSON; LLT MANAGEMENT, LLC;
JOHNSON & JOHNSON HOLDCO (NA) INC.; AND KENVUE, INC.'S POST-TRIAL
MOTIONS**

Defendants Johnson & Johnson; LLT Management, LLC; Johnson & Johnson Holdco (NA) Inc., and Kenvue, Inc. (collectively “J&J”) move for relief from the jury’s August 15, 2024 verdict in favor of Plaintiffs Michael L. Perry and Lonnie L. Long. For the reasons set forth below, J&J’s motions for judgment notwithstanding the verdict, new trial absolute based on errors of law, new trial absolute based on the thirteenth juror doctrine is DENIED, and new trial *nisi remittitur* are GRANTED. Separately, J&J’s motion for setoff and production of settlement agreements is GRANTED as to setoff, but DENIED as to the production of settlement agreements. Finally, J&J’s motion for stay of execution on the judgment is GRANTED, in part.

I. EVIDENCE AT TRIAL

Viewing the record in the light most favorable to Plaintiffs, sufficient evidence supports the jury’s finding that Michael Perry’s malignant pleural mesothelioma was proximately caused by exposure to asbestos in Johnson’s Baby Powder (“JBP”). Mr. Perry and his husband, Lonnie Long, brought this action against multiple defendants, including but not limited to J&J. Evidence

at trial demonstrated that Mr. Perry was exposed to asbestos by using JBP on himself on a daily basis, multiple times a day, from 1974 through 2019. His mother also used JBP on him during diaper changes from the day of his birth on December 20, 1969. Three of Plaintiffs' causes of action were placed before the jury: negligence, strict liability, and fraudulent misrepresentation. J&J did not put on a case-in-chief.

A. Liability and Punitive Damages

1. Mr. Perry testified to his decades-long use of JBP on a daily basis.

Mr. Perry testified that his earliest memory of using talcum powder on himself was from 1974, when he was four or five years old, through 2019. He also testified that, after he was born in 1969, his mother used JBP on him during diaper changes when he was an infant and that his use of the baby powder "didn't just start at the age of five." This is all undisputed. He explained that he was using Johnson's Baby Powder two to four times per day. The jury further heard that Mr. Perry used a minimum of ten bottles of JBP per year. Use of JBP was part of Mr. Perry's daily hygiene routine because he was allergic to deodorant. The jury heard that this also was undisputed.

The jury was shown images of two bottles of JBP Mr. Perry found in his home. There was no warning of any kind on the first bottle. The second bottle had a small warning regarding keeping the bottle away from small children to avoid inhalation. Neither bottle found in his home had a warning that JBP could contain asbestos. Mr. Perry further testified to the jury about what was written on the bottles of JBP found in his home, including the phrases "purest protection", indicating that "pure" was synonymous with "safe," and "clinically proven mildness," indicating once more that "clinically proven" meant scientifically safe.

2. JBP contained asbestos.

It was undisputed that throughout Michael Perry's use of JBP, the specifications for the powder called for talc sourced from different mines including but not limited to mines in Val Chisone, Italy, Vermont, and China. Plaintiffs' expert, Dr. William Longo, testified that he has analyzed talc from each source that J&J used in its baby powder. His test results showed the presence of asbestos in each of the mines utilized by J&J in its baby powder throughout time. He confirmed that he found tremolite and other asbestos fibers, including winchite/richterite, over and over in JBP. Dr. Longo further testified that he found asbestos in JBP throughout each of the decades in which Mr. Perry used JBP – 1960s through the late 2000s. He confirmed that he found tremolite asbestos, anthophyllite, richterite, and actinolite in JBP. Battelle Memorial Labs also found tremolite asbestos in JBP 153 times as early as the 1950s. By the early 1970s, J&J had numerous reports showing the presence of tremolite in its Vermont and Italian talc ore. Additionally, even with "poor analytical sensitivity", the FDA's contract lab found asbestos in the talc used in JBP in 2019. Despite J&J having this knowledge, J&J admitted through its former corporate representative, Dr. John Hopkins, that there has never been a warning about asbestos on JBP or any J&J talc product.

3. Michael Perry was exposed to asbestos from JBP.

The testimony established that Mr. Perry's use of JBP exposed him to visible asbestos-containing dust. Plaintiffs' expert Dr. Steven Haber testified that once talc is used in a powder form inside the home, often in enclosed spaces such as a bedroom or bathroom, it is impossible to get the asbestos from that talc powder out of the home. There was uncontradicted evidence regarding re-entrainment. Dr. Haber explained that once asbestos settles down to the ground or to a surface, anyone walking by it or brushing it can put the asbestos fibers back into the air inside

the home. He elaborated that even if one were to vacuum or sweep up the talc dust with asbestos in it that is all over the home, that process is simply blowing the asbestos back into the air. Once it's in the air, it can be breathed in. Dr. Haber cited an authoritative, peer-reviewed and published paper by Dr. Hillerdal that studied these very concepts.

Dr. Haber additionally testified that OSHA began regulating asbestos exposure in the workplace in the early 1970s and that while the permissible exposure limit eventually was set at .1 fiber per cubic centimeter of air (fiber/cc) time -weighted average, that level was not safe for mesothelioma and people exposed at this level would still develop the disease. Dr. Haber testified about his reliance on the Steffen study, which the jury heard showed that when individuals used JBP for 40 years, their exposure level to asbestos is between .38 to 5.18 fibers/cc years. This exposure level substantially increases the user's risk of developing mesothelioma. Dr. Haber opined, to a reasonable degree of medical certainty, that Mr. Perry's range of exposures from his use of JBP was between .1 to 4 fibers per cc. Epidemiological studies have established that these levels are sufficient to cause mesothelioma, including studies by Gardner, Ferrante, Jiang, LaCourt, Roland, Iwatsubo, and Rodelsperger.

The jury heard testimony from Dr. Madigan, who testified that he did a dose calculation immediately prior to this trial for someone who applied JBP twice a day for 30 years. He testified that "there is an estimate of the fibers per cc of asbestos that a person was exposed to by using talc for one minute. And it's 1.9 fibers per cc." He further testified that this was the equivalent to .35 fiber years. Mr. Perry used even more talc than the hypothetical person utilized in Dr. Madigan's calculation, and his calculation demonstrated an increased risk. Dr. Madigan's dose testimony was undisputed.

The jury also heard testimony from Dr. Haber, who testified that OSHA concluded that there is no safe level of exposure to asbestos and that mesothelioma requires the least amount of asbestos exposure to develop. Dr. Haber testified to the jury about the *Steffen, et al.* peer-reviewed published paper and explained the levels of exposure that occur when someone uses J&J's talc. He explained to the jury that the study showed that individuals who used J&J's talc for 40 years had an exposure level to asbestos between .38 to 5.18 fibers/cc years, which substantially increases the user's risk of developing mesothelioma. Dr. Haber testified that Mr. Perry's range of exposures to asbestos from JBP was between .1 to 4 fibers per cc. He clarified that 1 fiber per cc meant breathing "10,000 fibers every minute, millions or billions in a year."

4. Plaintiffs' experts considered Mr. Perry's frequent use of JBP.

The jury heard testimony from Dr. Haber that Mr. Perry was "an above-average user" of JBP and he was "not only using it two to four times a day, but he was putting it on his whole body, and . . . at times he was actually putting it on his . . . face." He also explained that Mr. Perry's use of JBP was "a repeated use" and, because Mr. Perry is "a big guy" that "the amount of talc that he uses . . . is going to be more than . . . a smaller-framed individual." The testimony established that Mr. Perry's exposures to asbestos from JBP were a "substantial contributing factor to" the "development of [his] mesothelioma." The jury also heard evidence that J&J used talc in JBP from Italy before 1966/1967, talc "mostly" from Vermont from 1966 to 2003, talc from Italy for seven months in 1979, and talc from China from 2003 to 2020 – and each of these mines have tested positive for asbestos. The uncontradicted evidence was that Mr. Perry inhaled talc from JBP from each of these mine sources.

5. Mr. Perry's lung tissue contained amphibole asbestos fibers found in JBP.

Plaintiffs' material scientist expert Dr. Longo performed a tissue digestion on Mr. Perry's tissue. The tissue digestion revealed the presence of tremolite asbestos, winchite asbestos, and talc particles in Mr. Perry's lungs. The jury heard from Dr. Longo that the tremolite in Mr. Perry's lungs was consistent with what he has previously and repeatedly found in his testing of JBP, and it is also consistent with "Johnson & Johnson's own internal documents from decades ago that said when you find tremolite in talc in people's lungs with mesothelioma, it's a fingerprint for exposure to asbestos." Dr. Longo further explained to the jury that J&J's own experts have found winchite in JBP, that winchite has been found in the talc sourced from the Italian mine used by J&J, that he has found richterite in JBP and that J&J's own expert refers to "richterite" as "winchite" as finding the same thing because the chemistry is so close. The jury then heard, uncontradicted, that Dr. Longo has never found tremolite or winchite in any of his testing of brakes.

B. Successor Liability

Prior to the trial of this matter, the parties agreed that the issue of successor liability would not be tried to the jury. Therefore, no evidence was put forth to the jury throughout trial as to the successor liability of any J&J entities, even though J&J continued to make objections on the record regarding certain evidence. Plaintiffs and J&J jointly stipulated that the verdict form submitted to the jury would read "J&J Entities" so that this Court could rule on the successor liability post-trial. As such, the parties have since submitted extensive briefing regarding the successor liability issue to this Court and reserved that issue for the Court's ruling.

C. Jury Trial

A jury trial was held against J&J and a co-defendant, American International Industries, in August, 2024. The jury found that (1) J&J was negligent and that its negligence proximately caused

Mr. Perry's mesothelioma; (2) J&J was strictly liable for selling defective products that were a proximate cause of Mr. Perry's mesothelioma; and (3) J&J was willful, wanton, and reckless in its conduct. The jury returned a verdict of \$23,037,500 for Mr. Perry's past and future loss and of \$9,618,750 for Lonnie Long on his loss of consortium claim. After a bifurcated trial on punitive damages, the jury found that J&J had acted willfully, wantonly, and recklessly and awarded \$30,000,000 in punitive damages against J&J.

J&J now seeks judgment notwithstanding the verdict, a new trial absolute, and a new trial *nisi remittitur*. J&J contends that there was no evidence to support any part of the jury's verdict, and challenges the amounts of the compensatory and punitive damages awards.

II. RULING ON SUCCESSOR LIABILITY

A. Standard of Review

In South Carolina, successor liability arises when: (a) there was an agreement to assume such debts; (b) the circumstances surrounding the transaction indicate a consolidation of the two corporations; (c) the successor company was a mere continuation of the predecessor company; or (d) the transaction was fraudulently entered into for the purpose of wrongfully defeating creditor claims. *Nationwide Mutual Ins. Co. v. Eagle Window & Door, Inc.*, 424 S.C. 256, 263, 818 S.E.2d 447, 451 (2018); *Walton v. Mazda of Rock Hill*, 376 S.C. 301, 305-06, 657 S.E.2d 67, 69 (Ct. App. 2008); *Simmons v. Mark Lift Indus.*, 366 S.C. 308, 312, 622 S.E.2d 213, 215 (2005); *Brown v. American Ry. Express Co.*, 128 S.C. 428, 123 S.E. 97 (1924). A successor corporation is a mere continuation of its predecessor when the predecessor and successor corporations have substantially the same officers, directors, and shareholders. *Simmons*, at 366 S.C. at 313, 622 S.E.2d at 216. Where the changing of corporate hats is tainted by such fraudulent intent, the successor corporation remains liable, even when the test for mere continuation is not otherwise

satisfied. *Nationwide Mutual*, 424 S.C. at 269-70, 818 S.E.2d at 454-55. South Carolina recognizes this exception when a predecessor's assets are specifically transferred or moved to place the predecessor's assets out of the reach of creditors and/or third parties. *Nationwide Mutual*, 424 S.C. at 256.

B. Creation of the Successor Defendants

Johnson & Johnson alone made and sold JBP from the 1890s to 1978. From 1979 to 2021, subsidiaries under Johnson & Johnson's direction sold JBP (collectively "Old JJCI").

In October 2021, Johnson & Johnson devised a scheme called "Project Plato" with the stated purpose of avoiding talc liabilities. Defendants admitted they did it to (a) "allocate the talc liabilities," (b) "stop litigation completely" and (c) prevent an "outflow of revenue." On October 12, 2021, through a series of intercompany transactions (called the "Texas Two Step"), Old JJCI ceased to exist, and two new companies were created (a) LTL Management ("LTL") holding all the talc liabilities (per Johnson & Johnson), no productive assets and no ongoing business and (b) Johnson & Johnson Consumer Inc. ("New JJCI"), holding the productive business assets.

Two days after its creation, LTL declared Chapter 11 bankruptcy. LTL requested a bankruptcy stay of litigation to apply not only to LTL, but to Johnson & Johnson, New JJCI and various other parties. In November 2021, the request was granted. In early 2023, the Third Circuit reversed the Bankruptcy Court, holding LTL's bankruptcy was filed in bad faith. On April 4, 2023, the Bankruptcy Court formally dismissed the case. LTL re-filed a second bankruptcy a few hours later on April 4, 2023. Ultimately, the Bankruptcy Court held that LTL filed the second bankruptcy in bad faith. On August 11, 2023, the second bankruptcy attempt was formally dismissed, ending all litigation stays. There is no dispute that Old JJCI is not a viable entity as it ceased to exist in October 2021.

After its creation in October of 2021, New JJCI continued to operate Johnson & Johnson's Consumer Health business in the U.S. without interruption. The manufacturing, marketing and distribution assets that Old JJCI used to make baby powder went to New JJCI. New JJCI maintained and continued (a) Old JJCI's business contracts (manufacturing, licensing, supply, vendor, etc.), (b) the same ownership (Johnson & Johnson as grandparent, Janssen Pharmaceuticals as parent), (c) the same management, (d) the same employees in the same positions, (e) the same operating locations, (f) the same business operations and (g) making the same products, including JBP. New JJCI changed its name to Johnson & Johnson Holdco (NA) Inc. ("New JJCI/Holdco") in December 2022.

In early 2023, Johnson & Johnson spun off its consumer business segment to defendant Kenvue, Inc. ("Kenvue"):

- New JJCI/Holdco formed a subsidiary, Johnson & Johnson Consumer, Inc. ("JJCI 3.") in June 2022
- New JJCI/Holdco transferred New JJCI 3 to Janssen Pharmaceuticals in Feb. 2023.
- Janssen transferred "JJCI 3" to a holding company, JNTL Holdings 2, Inc.
- JNTL Holdings 2, Inc. (parent of JJCI 3), along with other entities, were ultimately transferred to Johnson & Johnson by early April 2023.
- Johnson & Johnson spun off these entities to Kenvue in April 2023.

According to testimony from Kenvue's corporate representatives, Kenvue held itself out as essentially the same company that was operating the Consumer Health Division inside of Johnson & Johnson. Kenvue's SEC filings present itself as the same company that sold JBP for decades. Kenvue maintained the (a) same business contracts, permits, licensing, etc. as Old JJCI and New JJCI/Holdco, (b) same ownership (both before and after an August 2023 "stock swap"), (c) same management, (d) same employees, (e) same operating locations, (f) same business operations and (g) same products, including JBP.

C. Other issues impacting successor liability.

J&J's business used to consist of three segments: Consumer, Pharmaceutical and Medical Devices. The consumer segment was composed of numerous legal entities, Old JJCI being only one. While over 10,000 employees worked in the consumer segment, allegedly Old JJCI employed about 3,000. Executives testified that they conducted business by segment, sharing employees and resources without regard for the legal entities:

- *Mr. Mongon (President of the consumer segment and then Kenvue):* They operated business segment, not “through the lens of legal entities;”
- *Mr. Ruh (CFO of the consumer segment and then Kenvue):* He did not know “what legal entities were under my purview” because it operated by segment;
- *Dr. Kuffner (Medical Officer of the consumer segment):* They oversaw and monitored products sold across all legal subsidiary entities of the segment;
- *Ms. Goodridge (President of Old JJCI and New JJCI):* She worked for the consumer segment consisting of multiple legal entities.

The officers and directors of Old JJCI and New JJCI were all employees of Johnson & Johnson. Ms. Goodridge simultaneously held positions as president of (a) a unit of Johnson & Johnson's consumer segment and (b) Old JJCI. She never participated in any board meetings for Old JJCI. Ms. Goodridge explained that the president of Old JJCI was not an “operational role,” but instead a “corporate officer role” consisting of signing legal transactions. The consumer health segment of J&J was spun off to the Kenvue enterprise.

Johnson & Johnson dictated the October 2021 “Texas Two Step.” The president of the Consumer segment (and then Kenvue) testified that the Legal Department of Johnson & Johnson handled the decisions of “Project Plato” in October 2021. Ms. Goodridge, president of Old JJCI, confirmed that Johnson & Johnson (the parent) controlled the creation of LTL and New JJCI. Ms. Goodridge testified that (a) Johnson & Johnson made her president of the other newly created entities in the transactions and instructed her to sign the instruments, (b) Johnson & Johnson

established the entities, (c) she only spoke with Johnson & Johnson attorneys (and no businessperson) and (d) she cannot identify any business purpose for the transactions.

Similarly, Johnson & Johnson dictated the April 2023 Kenvue spinoff. Both Kenvue's CEO and CFO confirmed that Johnson & Johnson made all decisions; the Kenvue Board had no say. The entire transaction was under the control and direction of Johnson & Johnson.

In the instant case, Plaintiffs deposed Kenvue Inc. first through its corporate representative James Mittenthal. Mr. Mittenthal testified the Vice President of Global Risk Management for Kenvue once worked for Johnson & Johnson. Additionally, according to Kenvue, Teddy Reed, Kenvue's vice president and corporate secretary, also worked for Johnson & Johnson before coming to Kenvue. Further, Mr. Mittenthal, as corporate representative for Kenvue, has no knowledge of the logic behind the "restructuring" transactions and cannot testify that anything substantive occurred in Texas.

Kenvue later designated John Kim as its corporate representative in this case after this Court found the preparation of Kenvue lacking. He was also designated as the corporate representative for Johnson & Johnson Holdco (NA) Inc. Mr. Kim has never worked for Kenvue or Holdco. He was, however, head of product liability litigation at Johnson & Johnson. Mr. Kim confirmed that the 2021 transaction created two entities from Old JJCI—LTL and New JJCI. New JJCI later became Holdco.

Mr. Kim testified that he was personally involved in Project Plato, along with Chris Andrew, who is currently at Kenvue. According to Mr. Kim, there are documents associated with Project Plato which refer to the J&J family or the "J&J enterprise" and he noted that the term is used to denote a company that shares some common ownership with, at the top—basically—generally, they're owned by Johnson & Johnson shareholders, ultimately.

In 2023, Johnson & Johnson initiated “Project Diamond” which concerned the spinoff of the Consumer Health business segment from Johnson & Johnson to the Kenvue enterprise. Kenvue’s CEO admitted that (a) Kenvue has held itself out to investors as essentially the same company that was operating the Consumer Health Division inside Johnson & Johnson and (b) Kenvue has held itself out as the former Johnson & Johnson consumer business. Despite forming in February 2022, Kenvue publicly referred to its portfolio of iconic and modern brands that has been built over 135 years, including JBP. In other words, Kenvue held itself out as the same company that made JBP for generations.

Similarly, corporate representatives for the companies admitted that all of the employees were transferred from Johnson & Johnson’s consumer segment to Kenvue, unless they were designated as shared employed. The executive officers for Kenvue had previously held the same or substantially similar positions for the Johnson & Johnson consumer segment. The manufacturing facilities remained the same and all of the manufacturing assets were transferred to Kenvue. According to Kenvue’s corporate representatives, everything under the consumer health sector was transferred over to Kenvue, including assets, trademarks, people, manufacturing facilities, and brands. Nothing related to the manufacture of JBP was left with Johnson & Johnson’s prior consumer health division. Through mid-August 2023, Johnson & Johnson still owned close to 90% of Kenvue. After mid-August 2023, Kenvue continued to have the same ownership because Johnson & Johnson shareholders became Kenvue shareholders through a stock swap. Johnson & Johnson shares were converted to Kenvue shares.

As to the commonality of directors, employees, officers, and/or managers, Kenvue testified during its deposition that currently two members of Kenvue’s current Board of Directors previously held positions at Johnson & Johnson. Kenvue made no effort to confirm which of its

current board members held positions with Johnson & Johnson. During Kenvue's deposition in this case, Kenvue confirmed the connections of each current member of Kenvue's executive team to prior Johnson & Johnson and/or Old JJCI:

Name	Kenvue Position	JJCI or J&J Position
Thibaut Mongon	CEO	Executive VP and Worldwide Chairman of Consumer Health
Paul Ruh	CFO	CFO
Luani Alvarado	Chief People Officer	Global Leader of Human Resources
Carlton Lawson	Group President, Europe, Middle East and Africa & Latin America	Group Chairman for Europe, Middle East, and Africa
Charmaine England	Chief Growth Officer	Global Head of Strategy, Consumer Health
Matthew Orlando	General Counsel	General Counsel
Meri Stevens	Chief Operations Officer	Worldwide Vice President, Consumer Health Chain and Delivery
Bernardo Tavaras	Chief Technology & Data Officer	Chief Information Officer
Ellie Bing Xie	Group President, Asia Pacific	Company Group Chairman, Asia Pacific

After their creation, Holdco and Kenvue continued the baby powder line. Talcum-based baby powder was sold internationally after the spinoff of Johnson & Johnson's consumer segment from Holdco to Kenvue.

III. CHOICE OF LAW

As a threshold matter, this Court must decide which state's substantive law will apply to the issue of successor liability. The Successor Defendants contend that Texas substantive law should apply to the issue because the restructuring of companies occurred under Texas law.

Plaintiffs disagree and argue that either South Carolina or New Jersey substantive law should apply to this issue. The Court agrees with Plaintiffs.

Under South Carolina's choice-of-law rules, the analysis necessarily begins with the question of whether a cause of action - in this instance successor liability - sounds in contract or tort. *Lister v. NationsBank of Delaware, N.A.* 329 S.C. 133, 141, 494 S.E.2d 449, 454 (S.C. App. 1997) ("Before determining choice of law, this Court must first decide if the cause of action . . . is an action in contract or in tort.").

If successor liability is properly characterized as a contract-based theory, South Carolina law provides that "contracts are to be governed as to their nature, validity and interpretation by the law of the place where they are made, unless the contracting parties clearly appear to have had some other place in view." *Livingston v. Atlantic Coast Line R.R.*, 176 S.C. 385, 391, 180 S.E. 343, 345 (1935); *see also Albermarle Corp. v. Astrazeneca UK Ltd.*, 628 F.3d 643 (4th Cir. 2010) (observing that the law gives effect to the parties' choice of law as set forth in the contract if reasonable); S.C. Code Ann. § 36-1-105 (1) (providing that when a transaction bears a reasonable relation to this state and to another state or nation, the parties may agree on the law that governs their rights and duties). On the other hand, if successor liability is properly characterized as a tort-based theory, South Carolina choice-of-law rules look to the law of the state in which the injury occurred. *Bannister v. Hertz Corp.*, 316 S.C. 513, 450 S.E.2d 629 (Ct. App. 1994).

Contrary to argument from J&J, South Carolina courts have not clarified whether successor liability claims should be evaluated using the choice-of-law rules governing tort or corporate/contract law and the Successor Defendants' reliance on the Supreme Court of South Carolina's statements in *Pertuis v. Front Roe Restaurants, Inc.*, 423 S.C. 640 (2018) is inapposite. *Pertuis* was an action for stockholder oppression. 423 S.C. at 628. This case, unlike *Pertuis*, is

focused on determining which of the many entities organized underneath the Johnson & Johnson Enterprise can or should be held liable for the injuries suffered by Plaintiffs. Plaintiffs' issue regarding successor liability does not seek to "regulate the organization or [the] internal affairs of a foreign corporation[.]" *Pertuis*, at 423 S.C. at 650.

The Successor Defendants presume the Court must abide by their preferences for which entity (and only one entity) bears responsibility for the harm they caused. However, they overlook two distinctions. The import of a choice-of-law provision differs in disputes between (a) parties to the contract or transaction and (b) non-parties to the contract or transaction who are alleging injury in tort (*e.g.*, Plaintiffs here). *See, e.g., Berg Chilling Sys., Inc. v. Hull Corp.*, 435 F.3d 455, 465 (3d Cir. 2006) (applying an "interest-based analysis" to conclude that contractual choice-of-law provisions do not apply to choice of law in "de facto merger" analyses). Likewise, choice-of-law law analysis differs when analyzing disputes about the standard of care for (a) internal affairs of a corporation and (b) injuries caused by those corporations. While Johnson & Johnson can choose to apply Texas law in disputes between and amongst its own internal subsidiaries, Plaintiffs here are not bound by that choice.

Plaintiffs do not contend that Kenvue or Holdco expressly assumed liability. Similarly, Plaintiffs do not contend that Kenvue or Holdco are successors in interest to LTL/LLT/Pecos River (or any new entity with no ongoing business concerns that expressly assumes liabilities for talc). Rather, Plaintiffs contend Kenvue and Holdco are successors in interest to Johnson & Johnson Consumer Inc. and Johnson & Johnson.

I find that the successor-liability issue in this case is tort-based, as the question to be resolved is not one of contract interpretation or contract validity. Instead, the focus is on which entity in a chain of entities is and/or can be held liable for the injuries suffered by Plaintiffs.

Because this issue is tort-based, the laws of the state where Plaintiffs' injuries occurred—South Carolina—will apply.

IV. SUCCESSOR LIABILITY UNDER SOUTH CAROLINA LAW

In South Carolina, in the absence of a statute, a successor company is not ordinarily liable for the debts of a predecessor company under a theory of successor liability unless: (a) there was an agreement to assume such debts; (b) the circumstances surrounding the transaction indicate a consolidation of the two corporations; (c) the successor company was a mere continuation of the predecessor company; or (d) the transaction was fraudulently entered into for the purpose of wrongfully defeating creditor claims. *Nationwide Mutual Insurance Company v. Eagle Window & Door, Inc.*, 424 S.C. 256, 263, 818 S.E.2d 447, 451; *Walton v. Mazda of Rock Hill*, 376 S.C. 301, 305-06, 657 S.E.2d 67, 69 (Ct. App. 2008); *Simmons v. Mark Lift Indus.*, 366 S.C. 308, 312, 622 S.E.2d 213, 215 (2005); *Brown v. American Ry. Express Co.*, 128 S.C. 428, 123 S.E. 97 (1924).

Importantly, a plaintiff may maintain a product liability claim under a successor liability theory against a defendant when there are one or more other viable product liability defendants. *Simmons*, 622 S.E.2d at 97. The status and availability of other potential defendants is irrelevant in determining the issue of a successor corporation's liability in a product liability action. Here, the predecessor entity—Old JJCI—no longer exists and is not a viable defendant. Rather than focus on viability of others a plaintiff must fall within one of the four exceptions set forth in *Brown*. See, *Nationwide*, supra, 424 S.C. at 264, 818 S.E.2d at 451.

A. An agreement to assume the debts

As to the Successor Defendants, Plaintiffs do not contend that the first exception applies. It is undisputed that LLT (now Pecos River Talc) was sued because of an agreement to assume the

debts of Old JJCI. This exception does not apply to the inquiry of whether **Holdco and Kenvue** may be held as successors in interest to Old JJCI.

B. Mere Continuation

A successor corporation is a mere continuation of its predecessor when the predecessor and successor corporations have substantially the same officers, directors, and shareholders. *Simmons*, at 366 S.C. at 313, 622 S.E.2d at 216. The mere continuation test is a strict one, but not completely inflexible. While commonality of ownership is a keystone of the analysis and almost always sufficient to establish mere continuation when paired with common directors and officers, South Carolina courts have stressed that control is an essential consideration as well. Typically, ownership and control are found in tandem; however, there may be instances where directors or officers—lacking ownership—exert such control and influence over a corporation that their continued presence after a corporate acquisition is sufficient to establish successor liability. Although the mere continuation test is a high burden for a plaintiff to meet, it is intentionally so, as corporate law generally favors the free transfer of assets and disfavors successor liability. However, South Carolina's successor liability doctrine affords protection for plaintiffs in those cases where a corporate sale is driven by a desire to escape the predecessor's liabilities and obligations. Where the changing of corporate hats is tainted by such fraudulent intent, the successor corporation remains liable, even when the test for mere continuation is not otherwise satisfied. *Nationwide Mutual Insurance Company v. Eagle Window & Door, Inc.*, 424 S.C. 256, 269-70, 818 S.E.2d 447, 454-55 (S.C. 2018).

The Court finds that the mere continuation theory, as addressed in *Nationwide*, is satisfied. The business of Old JJCI continued without interruption in New JJCI via Holdco and Kenvue. The shareholders of Old JJCI became the shareholders of Holdco/Kenvue. The companies shared

employees, including members of their leadership teams and boards of directors. The majority of the individuals on Kenvue's current Board of Directors got their start at Johnson & Johnson or Old JJCI. Kenvue has even admitted in official documents that it is the same company as Old JJCI.

This Court finds continuity of enterprise management. Kenvue's representative created a chart of the overlap of leaders as of July 2024. However, each person currently in a leadership position at Kenvue held the same or a similar leadership position at Johnson & Johnson or JJCI prior to Kenvue's creation. Some changes occurred such as changing the title from "human resources" to "People Officer," but Defendants could not identify any substantive changes.

The Court further finds that the creation of these various corporate entities by J&J was done to escape its predecessor's liabilities and obligations with the intent to defeat creditors, such as Mr. Perry, and evade liability.

C. Holdco and Kenvue are liable as successors under the fraudulent transfer and blurred corporate identifies exceptions to non-liability.

Holdco and Kenvue are also liable as successors based on fraud and the use of the corporate form to escape liability. Here, the entity who had the liability for JBP for decades ceased to exist and assets were transferred to other entities. Additionally, Johnson & Johnson, Holdco, and Kenvue, along with other entities, have intermingled and blurred corporate interests, entities, and activities such that there is no legal distinction between the corporations involved in the consumer products business. *Mid-South Mgt. Co. Inc. v. Sherwood Development Corp.*, 374 S.C. 588, 604-605 (Ct. App. 2007); see also *Kincaid v. Landing Dev. Corp.*, 289 S.C. 89, 96, 344 S.E.2d 869, 874 (Ct. App. 1986) (finding a sibling company liable for the obligation of another sibling company due to the evidence revealing an "amalgamation of corporate interests, entities, and activities so as to blur the legal distinction between the corporations and their activities' where the companies shared officers, shareholders, and location).

In *Schmoll v. AcandS, Inc.*, Raymark Industries transferred its assets to Raytech—a company owned by Raymark Industries’ shareholders—through asset transfers and corporate restructurings. 703 F. Supp. 868, 872-73 (D. Or. 1988). As a result of the transfers and corporate restructurings, Raymark Industries was left with “staggering asbestos liabilities, unprofitable operations, unsecured notes, and stock which could not be sold in large blocks without a deep discount.” *Id.* at 873. Meanwhile, Raytech received Raymark Industries valuable assets. *Id.* This left present and future asbestos tort claimants with little chance of compensation. *Id.* Based on this context and statements made by those involved, the court concluded, “the elaborate transfer of assets was designed to escape liability[.]” and held Raytech liable as a successor of Raymark Industries. *Id.*

Like *Schmoll*, Johnson & Johnson, Kenvue, and Holdco have engaged in an elaborate corporate fiction to avoid liabilities associated with and from asbestos-containing Johnson’s Baby Powder. Johnson & Johnson has been “transparent” about using the bankruptcy process as a vehicle “to address the company’s growing talc-related liability exposures and costs in defending the tens of thousands of pending ovarian cancer claims and hundreds of mesothelioma cases, as well as future claims.” *In re LTL Management, LLC*, 637 B.R. 396, 407 (Bankr. D.N.J. 2022), *rev’d and remanded*, 58 F.4th 738, *rev’d and remanded*, 64 F.4th 84 (3d Cir. 2023). The corporate restructure was “designed to allow ‘New JJCI to continue to operate Johnson & Johnson’s Consumer Health business in the United States without interruption[.]’” *Id.* Despite being amply solvent, Johnson & Johnson sought to use the bankruptcy system to limit and redefine the rights of the people its products harmed. While it sought refuge in the bankruptcy system for talc-based liabilities, Kenvue and Holdco continued to make, sell, and profit from Johnson & Johnson’s talc-based product line for some time and in some locations. Here, even more so than the defendants

in *Schmoll*, Johnson & Johnson's, Kenvue's, and Holdco's conduct, both before the Texas Two Step and after, shows that these entities were created to avoid and eliminate liability.

Additionally, like the companies in *Kincaid v. Landing Development Corporation*, 289 S.C. 89, 344 S.E.2d 869 (Ct. App. 1986) here too, J&J and these defendants have common shareholders, common officers and directors, and a blurred corporate distinction amongst the entities involved in the consumer products business.¹

D. Amalgamation

J&J argues that the Plaintiffs did not plead an amalgamation theory in their complaint. The Court agrees that the amalgamation theory was not plead in the complaint, and therefore, the Court does not address this issue.

V. SUCCESSOR LIABILITY AND PUNITIVE DAMAGES

Plaintiffs and J&J jointly stipulated to have the verdict form submitted to the jury to read "J&J Entities". Because of this, the jury's finding of punitive damages was against J&J Entities. Because the Successor Defendants are successors-in-interest to Old JJCI, they are also liable for any portion of punitive damages assessed to Old JJCI. Punitive damages are likewise recoverable against LLT because it agreed to assume the talc liabilities, debts, and obligations of its predecessor.

Successor liability does not allow the successor to pick and choose which of its predecessor's obligations follow it. Successor Defendants argue that South Carolina courts have yet to address the issue of whether punitive damages are recoverable against a successor corporation. Courts in other jurisdictions have held that punitive damages may be assessed against a successor corporation. *See Aurora Loan Servs., LLC v. Hirsch*, 170 Conn. App. 439, 456 (2017)

¹ Because the Court has concluded that South Carolina law will apply to the successor-liability issue, the Court declines to address Plaintiffs' alternatively contention that the issue be resolved pursuant to New Jersey law.

(defendant can be held vicariously liable for punitive damages when it ratified or approved the act); *Bankhead v. ArvinMeritor, Inc.* (2012) 205 Cal.App.4th 68, 73-75; *Man v. Raymark Indus.*, 728 F.Supp.1461, 1471 (D. Haw. 1989) (imposing successor liability, including punitive damages, and stating acquiring corporation cannot accept the good without the bad, absent an unlikely agreement with the acquired entity, and jettison inchoate liabilities into a never-never land of transcorporate limbo); *Krull v. Celotex Corp.*, 611 F.Supp. 146,148 (N.D. Ill. 1985) (applying Delaware law; the universal rule applicable to mergers or consolidations is that, by operation of law, the successor corporation assumes all debts and liabilities of the predecessor corporation precisely as if it had incurred those liabilities itself).

The Successor Defendants cite a litany of cases from other jurisdictions that have found that punitive damages are not recoverable against a corporate successor. *See e.g., In re Related Asbestos Cases*, 566 F. Supp. 818 (N.D. Cal. 1983) (reasoning that, because the successor was doing nothing to perpetuate the alleged malicious conduct of the predecessor, no award of punitive was warranted); *Catasauqua Area School District v. Raymark Industries*, 662 F. Supp. 64 (E.D. Penn. 1987) (holding that punitive damages were not allowed against successor entities where the plaintiff failed to present evidence that asbestos products manufactured by a successor entity were actually used); *Drayton v. Jiffee Chemical Corp.*, 395 F. Supp. 1081 (N.D. Ohio 1975), *modified*, 591 F.2d 352 (6th Cir. 1978) (refusing to award exemplary damages when the successor company improved the injury-causing product).

The Court finds the cases cited by the Successor Defendants inapposite because, based on the evidence presented. Kenvue and Holdco stepped into the shoes of Old JJCI and continued to manufacture, sell, market, and distribute the exact same asbestos-containing talc products once manufactured and/or distributed by Old JJCI. Kenvue and Holdco continued these sales with the

same knowledge that its' JBP contained asbestos as Old JJCI. Thus, Holdco, Kenvue, and Old JJCI were “effectively one and the same entity” in the way they sold asbestos containing talc and hid that its baby powder contained asbestos.

Therefore, Successor Defendants’ request that punitive damages not be assessed against them is DENIED.

VI. RULING ON JUDGMENT NON OBSTANTE VEREDICTO (NOT WITHSTANDING THE VERDICT) (“JNOV”)

A. Standard of Review

In ruling on a JNOV motion, the trial court is required to view the evidence and the inferences that reasonably can be drawn therefrom in the light most favorable to the non-moving party. *Law v. S.C. Dept. of Corrections*, 368 S.C. 424, 434, 629 S.E.2d 642, 648 (2006); *Swicegood v. Lott*, 379 S.C. 346, 351, 665 S.E.2d 211, 213 (Ct. App. 2008); *Israel v. Carolina Bar-B-Que, Inc.*, 292 S.C. 282, 287, 356 S.E.2d 123, 127 (Ct. App. 1987). The court must deny the motion for JNOV when the evidence yields more than one inference, or its inference is in doubt. *Id.*; *Steinke v. South Carolina Dep’t of Labor, Licensing, & Regulation*, 336 S.C. 373, 386, 520 S.E.2d 142, 148 (1999). The jury’s verdict may not be overturned if *any evidence* sustains the factual findings implicit in its decision. *Welch v. Epstein*, 342 S.C. 279, 300, 536 S.W.2d 408, 419 (Ct. App. 2000); *Smalls v. South Carolina Dep’t of Educ.*, 339 S.C. 208, 215, 528 S.E.2d 682, 686 (Ct. App. 2000).

A new trial is warranted only if the trial court determines that the verdict is contrary to the fair preponderance of the evidence. *See Dent v. Redd*, 270 S.C. 585, 243 S.E.2d 460 (1978). Similarly, “[a] circuit court may grant a new trial absolute on the ground that the verdict is excessive or inadequate.” *Brinkley v. South Carolina Dep’t. of Corrections*, 687 S.E.2d 54 (S.C. 2009) (citations omitted). “The jury’s determination of damages, however, is entitled to substantial deference. The circuit court should grant a new trial absolute on the excessiveness of the verdict

only if the amount is so grossly inadequate or excessive so as to shock the conscious of the court and clearly indicates that the figure reached was the result of passion, caprice, prejudice, partiality, corruption, or some other improper motives.” *Id.*

“The trial judge, sitting as the thirteenth juror charged with the duty of seeing that justice is done, has the authority to grant new trials when he is convinced that a new trial is necessitated on the basis of the facts in the case.” *Graham v. Whitaker*, 282 S.C. 393, 321 S.E.2d 40 (1984). “Traditionally, in South Carolina, circuit court judges have the authority to grant a new trial upon the judge's finding that justice has not prevailed.” *Todd v. Owen Indus. Prods., Inc.*, 315 S.C. 34, 431 S.E.2d 596 (Ct. App. 1993); *see also Johnson v. Hoechst Celanese Corp.*, 317 S.C. 415, 453 S.E.2d 908 (Ct. App. 1995) (under “thirteenth juror doctrine,” the trial court may grant a new trial if she believes the verdict is unsupported by evidence or if the verdict is inconsistent and reflects jury’s confusion).

A new trial *nisi remittitur* may be granted “when the verdict indicates the jury was unduly liberal in determining damages.” *Welch v. Epstein*, 342 S.C. 279, 303, 536 S.E.2d 408, 420 (Ct. App. 2000). “A motion for new trial *nisi remittitur* asks the trial court in its discretion to reduce the verdict because it is merely excessive, although not motivated by considerations such as passion, caprice or prejudice.” *Id.*

“Compelling reasons must be given to justify invading the jury’s province by granting a new trial *nisi remittitur*.” *Proctor v. Dep’t of Health & Env’tl. Control*, 368 S.C. 279, 320–21, 628 S.E.2d 496, 518 (Ct. App. 2006). The consideration for a motion for a new trial *nisi remittitur* requires the trial judge to consider the adequacy of the verdict in light of the evidence presented. *Id.*

B. J&J is not entitled to JNOV as to Plaintiffs' design defect claims.

The record supports the jury's finding that JBP was designed to contain talc, which J&J knew contained asbestos. As the Court of Appeals of South Carolina has recently acknowledged:

"A product can be defective because of a flaw in its design." *Madden v. Cox*, 284 S.C. 574, 579, 328 S.E.2d 108, 112 (Ct. App. 1985). "Liability for a design defect may be based on negligence, strict tort, or warranty." *Id.* "In an action based on strict tort or warranty, **plaintiff's case is complete when he has proved the product, as designed, was in a defective condition *unreasonably dangerous* to the user when it left the control of the defendant, and the defect caused his injuries.**" *Id.* at 579–80, 328 S.E.2d at 112 (emphasis added). "Liability for negligence requires, in addition to the above, proof that the manufacturer breached its duty to exercise reasonable care to adopt a safe design." *Id.* at 580, 328 S.E.2d at 112. "This burden may be met by showing that the manufacturer was aware of the danger and failed to take reasonable steps to correct it." *Id.*

Jolly v. General Electric Company, 435 S.C. 607, 648-49, 869 S.E.2d 819, 841-42 (Ct. App. 2021).

In 2010, the South Carolina Supreme Court held that the exclusive test in a products liability design case is the risk-utility test. *Branham v. Ford Motor Co.*, 390 S.C. 203, 220, 701 S.E.2d 5, 14 (S.C. 2010). According to the Restatement (Third) of Torts: Products Liability §2(b), adopted by the Supreme Court in *Branham*:

A product ... is defective in design when the foreseeable risks of harm posed by the product could have been reduced or avoided by the adoption of a reasonable alternative design by the seller or other distributor, or a predecessor in the commercial chain of distribution, and the omission of the alternative design renders the product not reasonably safe.

Branham, 390 S.C. at 223-24, 701 S.E.2d at 16 (quoting Restatement (Third) of Torts: Products Liability §2 (b) (1998).

The evidence presented at trial demonstrated that throughout the time period of Mr. Perry's use of JBP, from 1969 through 2019, the specifications for JBP called for talc sourced from mines in Italy, Vermont, and China. Plaintiffs' expert, Dr. William Longo, testified that he has analyzed talc from all of the sources that J&J used in its baby powder and that his test results showed the

presence of asbestos in each of the mines utilized by J&J in its baby powder throughout time. Dr. Longo testified to the jury that he found tremolite and other asbestos fibers repeatedly in JBP throughout each decade in which Mr. Perry used JBP.

The jury also heard at trial that other scientists found asbestos in the talc used to manufacture JBP. Battelle Memorial Labs found tremolite asbestos in Johnson's Baby Powder 153 times as early as the 1950s. Even with "poor analytical sensitivity" the FDA's contract lab found asbestos in the talc used in JBP in 2019. The jury heard Dr. Hopkins' testimony that there was never a warning about asbestos on any Johnson & Johnson product, despite knowing that by the early 1970s there were numerous reports of tremolite in J&J's Vermont and Italian talc ore. Dr. Hopkins further testified to the jury about several positive tests for asbestos in JBP throughout the decades that the talc powder was for sale.

The jury had this evidence and more in front of them when considering Plaintiffs' strict liability—design defect claim. Contrary to argument from J&J, Plaintiffs were not required to demonstrate that J&J intentionally added asbestos to their product. J&J's specifications for JBP—which called for the use of talc from mines which contained asbestos—created an unreasonable risk of harm to Mr. Perry.

J&J's motion for JNOV on Plaintiffs' design defect claim is DENIED.

C. J&J is not entitled to JNOV as to Plaintiffs' failure to warn claim.

"A supplier and manufacturer of a product are liable for failing to warn if they know or have reason to know the product is or is likely to be dangerous for its intended use; they have no reason to believe the user will realize the potential danger; and, they fail to exercise reasonable care to inform of its dangerous condition or of the facts which make it likely to be dangerous. *Livingston v. Noland Corp.*, 293 S.C. 521, 525, 362 S.E.2d 16, 18 (1987). Plaintiffs presented

evidence that J&J, after multiple tests of the talc used in JBP, knew that the talc contained asbestos. J&J presented no evidence to the jury that there was reason to believe that any of its JBP users, including Mr. Perry, would know that the product likely contained asbestos and still failed to warn of the hazards associated with the foreseeable use of the product.

In 1958, J&J knew its talc contained tremolite asbestos. By the early 1970s, J&J had received numerous additional reports that tremolite asbestos was found in the talc used in JBP. Despite this knowledge, the jury heard that bottles of JBP never displayed a warning about asbestos.

The jury also saw photos of two different bottles of JBP Mr. Perry found in his home. One of Mr. Perry's bottles had no warning on it about anything. The second of Mr. Perry's bottles had a small warning about infant's inhaling JBP generally. It was undisputed that neither of Mr. Perry's bottles of JBP had a warning about asbestos, and it is undisputed that one of Mr. Perry's JBP bottles had no warning at all.

J&J's motion as to this issue is DENIED.

D. J&J is not entitled to JNOV as to proximate cause.

J&J contends that Plaintiffs failed to establish that JBP was a proximate cause of Mr. Perry's mesothelioma. The evidence presented at trial, however, was sufficient for the jury to conclude that Mr. Perry's exposure to JBP was a substantial factor in the development of his mesothelioma.

As the South Carolina Court of Appeals affirmed in *Jolly v. General Electric Company*, 435 S.C. 607, 869 S.E.2d 819 (2021)², "when there are multiple possible sources of the plaintiff's

² The South Carolina Supreme Court granted certiorari only on the issue of additur and set off. It affirmed the trial court and the Ct. of App on additur and set off. Thus, the Court of Appeal's analysis on all other issues stands as though it was reviewed by the Supreme Court. *Jolly v. General Electric Co.*, __S.C.__, 905 S.E.2d 380 (2024).

exposure to a toxin . . . the plaintiff must also show that his exposure to a particular defendants' product was a 'substantial factor' in the development of the plaintiff's disease." *Id.* at 435 S.C. at 625, 869 S.E.2d at 829 (citing David E. Bernstein, *Getting to Causation in Toxic Tort Cases*, 74 Brook. L. Rev. 51, 52 (2008)). South Carolina adopted the "substantial factor test" in *Henderson v. Allied Signal, Inc.*, 373 S.C. 179, 644 S.E.2d 724 (2007), where the Supreme Court held that a plaintiff in an asbestos case need only present evidence of "actionable exposure" to a defendant's asbestos product. *Henderson v. Allied Signal, Inc.*, 373 S.C. 179, 185, 644 S.E.2d 724, 727 (2007). To determine whether exposure is actionable, South Carolina courts apply the "frequency, regularity and proximity" factors set forth in *Lohrmann v. Pittsburgh Corning Corp.*, 782 F.2d 1156 (4th Cir. 1986). *Id.* Therefore, "[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 . . . the plaintiff[.]" *Id.* (quoting *Lohrmann*, 782 F.2d at 1162).

Plaintiffs' extensive causation evidence includes testimony from Mr. Perry regarding his lifelong daily use of JBP; testing of JBP establishing that the talc ore and finished product contained asbestos during the years Mr. Perry used JBP; Dr. Haber's testimony regarding talc exposure studies indicating that Mr. Perry's range of exposures to asbestos from JBP was between .1 to 4 fibers/cc, resulting in cumulative exposures over 40 years of .38 to 5.18 fiber-cc years; Dr. Madigan's similar testimony that Mr. Perry's dose of asbestos from JBP was .35 fiber years; Dr. Madigan's testimony that this exposure level is within the range found to cause mesothelioma in numerous epidemiological studies; and Dr. Haber's opinion that Mr. Perry's exposure to JBP was a substantial factor in causing his disease.

The record supports the jury's finding that Mr. Perry had frequent, regular, and proximate exposure to asbestos from JBP that contained asbestos over the course of many years. Evidence at trial demonstrated more than just a casual or minimum contact with JBP from which the jury could conclude that Mr. Perry's exposure to JBP was a substantial factor in the development of his mesothelioma.

J&J's request for JNOV on this issue is DENIED.

E. J&J is not entitled to JNOV on Lonnie Long's loss of consortium claim.

J&J's request for JNOV as to Lonnie Long's loss of consortium claim is based on, and derivative of, the jury's liability and causation findings for Mr. Perry's mesothelioma, which the Court has denied.

Therefore, this request is DENIED.

F. J&J is not entitled to JNOV as to punitive damages.

The jury in this matter assessed punitive damages against J&J in the amount of \$30 million. J&J argues that this amount was grossly excessive and that there was no evidence of J&J's reprehensible conduct in the record. The Court disagrees. The record supports the jury's finding that J&J's conduct was willful, wanton, or in reckless disregard of Mr. Perry's rights in connection with Plaintiffs' negligence claim.

Under South Carolina law, punitive damages may be awarded to punish tortfeasors who have acted in a "reckless, willful, or wanton" manner. S.C. Code Ann. § 15-32-520(D); *Duncan v. Ford Motor Co.*, 385 S.C. 119, 138, 682 S.E.2d 877, 886 (Ct. App. 2009) (citing *Taylor v. Medenica*, 324 S.C. 200, 221, 479 S.E.2d 35, 46 (1996)); *see also Berberich v. Jack*, 392 S.C. 278, 288, 709 S.E.2d 607, 612 (2011). The South Carolina Court of Appeals recently wrote that "[t]he purposes of punitive damages are to punish the wrongdoer and deter the wrongdoer and others

from engaging in similar reckless, willful, wanton, or malicious conduct in the future.” *Portrait Homes-South Carolina, LLC v. Pennsylvania National Mutual Casualty Insurance Company, et al.*, 442 S.C. 515, 587, 900 S.E.2d 245, 284 (Ct. App. 2023) (quoting *Clark v. Cantrell*, 339 S.C. 369, 378-379, 529 S.E.2d 528, 533 (2000)). Additionally, punitive damages “serve to vindicate a private right of the injured party[.]” *Id.* “A tort is characterized as reckless, willful or wanton if it was committed in such a manner or under such circumstances that a person of ordinary reason and prudence would have been conscious of it as an invasion of the plaintiff’s rights. A conscious failure to exercise due care constitutes willfulness.” *Taylor*, 324 S.C. at 221, 479 S.E.2d at 46 (citations omitted); see also *Berberich*, 392 S.C. at 288, 709 S.E.2d at 612. When evidence exists that suggest a defendant is aware of a dangerous condition and does not take action to minimize or avoid the danger, sufficient evidence exists to create a jury issue as to whether there is clear and convincing evidence of willfulness and recklessness. *Mishoe v. QHG of Lake City, Inc.*, 366 S.C. 195, 201, 621 S.E.2d 363, 366 (Ct. App. 2005) (citing *McGee v. Bruce Hosp., Sys.*, 321 S.C. 340, 346, 468 S.E.2d 633, 637 (1996)). The jury has considerable discretion to determine the amount of damages. See *Hollis v. Stonington Dev., LLC*, 394 S.C. 383, 404-05, 714 S.E.2d 904, 915 (Ct. App. 2011) (noting the deference due to the jury on punitive damages).

The evidence at trial showed that J&J knew asbestos, including asbestos in talc, could cause fatal disease. The jury heard that since the 1800s geology texts have reported asbestos in talc. Since the early 1930s, it has been known that asbestos causes deadly diseases. J&J’s own documents as well as J&J’s corporate representative, Dr. Hopkins’ testimony to the jury revealed that J&J has known that asbestos causes cancer since the 1930s. It was even further established by the 1960s that mesothelioma was caused by asbestos exposure.

The evidence at trial showed that J&J knew its talc contained asbestos and took no corrective action. By the 1940s, it was known that asbestos was a common impurity in cosmetic talc. By 1958, J&J knew they had fibrous tremolite asbestos in their talc. The jury heard from Dr. Hopkins about all of the testings done on J&J's talc throughout the 1970s that were positive for asbestos done by multiple scientists. The jury also heard about the 2019 FDA finding in which asbestos was, once again, found in JBP.

The evidence at trial showed that J&J had actual knowledge of asbestos in its talc before, and during, the time Mr. Perry was exposed to JBP. The jury saw an internal document from J&J in 1997 in which J&J was analyzing the tissue of women who had mesothelioma and finding tremolite and talc fibers. The jury saw that J&J wrote that both tremolite and anthophyllite are known contaminants of talc, and that the cases of mesothelioma among women with no other identifiable exposures to asbestos could be related to cosmetic talc exposure. The jury also saw an internal document from 1973 in which J&J notes that its "clean mine approach to asbestos is over."

The evidence at trial showed that J&J knew infants inhale talc during JBP application. By 1969, J&J knew the "needle shape of tremolite" made it especially respirable and capable of entering "pulmonary alveoli."

The evidence at trial showed that J&J failed to adequately test by transmission electron microscopy ("TEM"), which it knew was the most sensitive method for identifying asbestos in talc. The jury heard testimony and saw evidence that J&J chose not to adopt heavy liquid density separation techniques for asbestos detection because the method was too sensitive. The jury also heard about, and saw documents about, J&J's TM7024 testing method, which J&J intentionally designed in such a manner that 16 various kinds of asbestos fibers could be found in a small sample from a bottle of JBP and still be reported as non-detect.

The jury also heard from Dr. Hopkins that J&J knew there would be negative consequences for its business if people found out there was asbestos in JBP. Evidence at trial showed J&J's tactics aimed at defending the safety image of JBP, including (1) monitoring and defending against adverse scientific, consumerist, and regulatory trends; (2) quelling questions and data about asbestos in talc; (3) promoting less sensitive FDA regulations by advocating for less sensitive test methods and (4) withholding positive asbestos test results. The jury saw J&J documents in which J&J touted the safety of asbestos in talc, such as the 1974 document in which J&J told the FDA that a substantial amount of asbestos could be safely allowed in baby powder. The jury then saw evidence that, despite this, J&J continued to advertise JBP throughout the decades by seeking to capitalize on the mother-infant bond and promote JBP as a safe product that mothers should use on their babies to show love.

The evidence at trial further showed that J&J knew cornstarch was an available substitute for talc since the late 1800s. J&J was evaluating an alternative to talc throughout the 1960s, 1970s, and 1980s.

The evidence at trial supported the jury's finding that J&J was willful, wanton, or reckless. J&J knew there were multiple tests showing that the talc used to make JBP contained asbestos, and was present even in the final product sold to the American public. Dr. Hopkins then testified that J&J never put any warning about asbestos on JBP despite this knowledge. Regardless of this information, J&J continued to sell asbestos-containing JBP until 2020 in the United States.

Therefore, J&J's request for JNOV on Plaintiffs' punitive damages award is DENIED.

G. J&J is not entitled to a JNOV on punitive damages as to successor entities because punitive damages are recoverable against successor entities.

Plaintiffs and J&J jointly stipulated to have the verdict form submitted to the jury to read J&J Entities. The determination of successor liability was reserved for determination by the Court

post-trial. Because of this, the jury's finding of punitive damages was against J&J Entities. Because Kenvue and Holdco are successors-in-interest to Old JJCI, they are also liable for any portion of punitive damages assessed to Old JJCI. Punitive damages are likewise recoverable against LLT because it agreed to assume the talc liabilities, debts, and obligations of its predecessor. The J&J Defendants have requested that newly-formed Pecos River Talc, LLC ("Pecos River") be substituted as a party defendant for LLT. Plaintiffs have objected to this substitution. The Court DENIES J&J's request for substitution, but will permit Pecos River to be added as an additional party defendant.

Successor liability does not allow the successor to pick and choose which of its predecessor's obligations follow it. J&J argues that South Carolina court have yet to address the issue of whether punitive damages are recoverable against a successor corporation. Courts in other jurisdictions have held that punitive damages may be assessed against a successor corporation. *See Aurora Loan Servs., LLC v. Hirsch*, 170 Conn. App. 439, 456 (2017) (defendant can be held vicariously liable for punitive damages when it ratified or approved the act); *Bankhead v. ArvinMeritor, Inc.* (2012) 205 Cal.App.4th 68, 73-75; *Man v. Raymark Indus.*, 728 F.Supp.1461, 1471 (D. Haw. 1989) (imposing successor liability, including punitive damages, and stating acquiring corporation cannot accept the good without the bad, absent an unlikely agreement with the acquired entity, and jettison inchoate liabilities into a never-never land of transcorporate limbo); *Krull v. Celotex Corp.*, 611 F.Supp. 146,148 (N.D. Ill. 1985) (applying Delaware law; the universal rule applicable to mergers or consolidations is that, by operation of law, the successor corporation assumes all debts and liabilities of the predecessor corporation precisely as if it had incurred those liabilities itself).

This Court finds that Kenvue and Holdco stepped into the shoes of Old JJCI and continued to manufacture, sell, market, and distribute the exact same asbestos-containing talc products which in turn gave Mr. Perry cancer. Thus, Holdco, Kenvue, and Old JJCI were “effectively one and the same entity” in the way they sold asbestos containing talc and hid that its baby powder contained asbestos.

Therefore, J&J’s request that it have, in effect, a JNOV as to the award of punitive damages against its successor entities is DENIED.

VII. RULING ON MOTION FOR NEW TRIAL

J&J contends that a new trial is warranted because the jury instructions given to the jury were improper and that the Court improperly limited J&J’s evidence such that J&J had an unfair trial due to prejudicial error. The Court disagrees.

A new trial is warranted only if the trial court determines that the verdict is contrary to the fair preponderance of the evidence. *See Dent v. Redd*, 270 S.C. 585, 243 S.E.2d 460 (1978). Similarly, “[a] circuit court may grant a new trial absolute on the ground that the verdict is excessive or inadequate.” *Brinkley v. South Carolina Dep’t. of Corrections*, 687 S.E.2d 54 (S.C. 2009) (citations omitted). “The jury’s determination of damages, however, is entitled to substantial deference. The circuit court should grant a new trial absolute on the excessiveness of the verdict only if the amount is so grossly inadequate or excessive so as to shock the conscience of the court and clearly indicates that the figure reached was the result of passion, caprice, prejudice, partiality, corruption, or some other improper motives.” *Id.* The decision to grant a new trial rests within the discretion of the court. *Id.* The Court of Appeals has stated when reviewing whether the trial court committed error in exercising that discretion, “we must consider the testimony and reasonable inferences to be drawn therefrom in the light most favorable to the nonmoving party.” *Id.*; see

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

A. The jury instructions given in this case were proper.

1. The jury instructions on punitive damages correctly stated the law.

J&J contends the Court improperly charged the jury as to punitive damages because the Court permitted the jury to award punitive damages based on third-party harm. A jury charge is correct if, when read as a whole, it contains correct definitions and adequately covers the law.

Keaton ex rel. Foster v. Greenville Hosp. System, 334 S.C. 488, 514 S.E.2d 570 (1999).

As to punitive damages, the jury was charged, in part, as follows:

So we will begin with these instructions. As I have told you, if you award actual damages against the defendant, you may also consider and award punitive damages. You've already crossed the first hurdle, which is you have found that the conduct was willful, reckless, and wanton. Punitive damages are intended to punish a defendant for willful, reckless, and wanton misconduct and to prevent the defendant and others from committing similar acts in the future. Punitive damages can only be awarded when the conduct of the defendant has been something more than mere negligence. The evidence must clearly and convincingly establish that the defendant was reckless or willful or wanton, meaning there was a conscious failure to exercise due care or a conscious indifference to the rights and safety of others or reckless disregard for the safety of others.

The Court also read pertinent portions of S.C. Code Ann. § 15-32-520 to the jury. The trial court may charge the jury regarding the factors which would justify a punitive damages award in the case. A punitive damages award survives constitutional scrutiny if: (1) the trial court's jury instruction explains the nature, purpose and basis for the award; (2) post-trial procedures enable the court to scrutinize the award; and (3) an appellate review process ensures that the award is reasonable and rational. *Gamble v. Stevenson*, 305 S.C. 104, 406 S.E.2d 350 (1991); *Kinard v. Crosby*, 315 S.C. 237, 433 S.E.2d 835 (1993); *Orangeburg Sausage Co. v. Cincinnati Ins. Co.*, 316 S.C. 331, 450 S.E.2d 66 (Ct. App. 1994).

J&J argues that Plaintiffs' punitive award was the result of Plaintiffs being able to introduce evidence of third-party harm related to ovarian cancer. The Court disagrees. It was made clear repeatedly throughout trial that Mr. Perry suffers from mesothelioma and not any other asbestos-related disease. Additionally, there is no evidence that the jury was encouraged to award punitive damages against J&J for harm done to others. Plaintiffs' told the jury that the punitive phase was for what J&J had done to Mr Perry, emphasizing that punitive damages are for "[w]hat Michael Perry is going through."

The punitive damages instruction explained the nature, purpose, and basis for the punitive damages award. The instruction was the same as the instruction given to the jury when it was to determine whether J&J's conduct was reckless, willful, and wanton. The record shows that the jury understood that punitive damages are paid to Mr. Perry.

2. There was no error regarding the effect of "Question 8" on the jury form.

At the end of the liability phase of trial, the Court instructed the jury, in part, as follows:

In addition, if you find that the defendant's conduct was willful, wanton, or reckless, the plaintiff must also prove that by clear and convincing evidence, that is, that 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 a conscious indifference to the rights and safety of others or reckless disregard of the rights and safety of others.

* * *

Willful and wanton and reckless conduct. There's one question on the jury form that asks about willful, wanton, or reckless conduct. A defendant's conduct is reckless or willful or wanton if there was a conscious failure to exercise due care or conscious indifference to the rights and safety of others or reckless disregard to the rights and safety of others. This must be established by clear and convincing evidence, which is something more than simple greater weight of the evidence and 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 that it is highly probable.

Prior to charging the jury, the Court and counsel for the parties discussed the verdict form and the propriety of telling the jury the purpose of Question 8. J&J agreed to include Question 8 on the verdict form.

The record shows that a punitive damages phase would not be necessary if the jury returned a “no” verdict as to negligence. The verdict form was not defective, it did not prejudice J&J, and the Court gave clear instructions to the jury regarding completing the form. J&J has failed to demonstrate how the failure to tell the jury that a “yes” as to Question 8 would trigger a punitive damages phase trial resulted in prejudice. Quite to the contrary, the South Carolina General Assembly, by statute³, now mandates a bifurcated trial for punitive damages in cases of this kind. The jury must make the predicate finding that the Defendant’s conduct was willful, wanton and reckless. This does not dictate that a jury must find punitive damages. The Court’s decision not to discuss punitive damages until after the jury made its decision as to the character of the conduct is completely consistent with the provisions of the statute governing this matter. Finally, the Court’s preliminary instructions in the punitive phase made it clear that it was up to the jury whether to award any amount of punitive damages after a finding of willful, wanton and reckless conduct.

J&J’s motion for a new trial on this issue is DENIED.

3. There was no error in declining to charge J&J’s requested “But-For” Causation instruction.

J&J contends it was prejudicial for the Court to refuse to instruct the jury using its suggested causation charge, wherein it stated as follows:

Proximate cause requires proof of both causation in fact and legal cause. Causation in fact is proved by establishing the injury would not have occurred “but for” the defendant’s acts. Legal cause is proved by establishing foreseeability. If there is not

³ See S.C. Code Ann §15-32-520

sufficient evidence to conclude that, but for a defendant's conduct the injury would not have occurred, then you must find in favor of the defendant.

"[A] trial court's refusal to give a properly requested charge is reversible error only when the requesting party can demonstrate prejudice from the refusal." *Pittman v. Stevens*, 364 S.C. 337, 340, 613 S.E.2d 378, 380 (2005). "[T]he substance of the law is what must be instructed to the jury, not any particular verbiage." *Marin*, 415 S.C. at 482, 783 S.E.2d at 812.

J&J's instruction sought to have the jury determine causation in this case using a strict but-for causation standard. That is not the proper standard in asbestos cases in South Carolina. This Court, instead, charged the jury as to causation according to *Henderson v. Allied Signal, Inc.*, 373 S.C. 179, 644 S.E.2d 724 (2007). In *Henderson*, the Supreme Court of South Carolina held that in asbestos cases:

In determining whether exposure is actionable, we adopt the "frequency, regularity, and proximity test" set forth in *Lohrmann v. Pittsburgh Corning Corp.*, 782 F.2d 1156, 1162[-63] (4th Cir. 1986): "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."

373 S.C. at 185, 644 S.E.2d at 727 (emphases added). The Supreme Court reaffirmed this standard in *Edwards v. Scapa Waycross, Inc.*, 442 S.C. 387, 899 S.E.2d 597 (2024). Notably, in *Edwards*, the Supreme Court explained that "the *Lohrmann* substantial factor test relaxes the 'but-for' requirement that applies in traditional tort cases [but] still requires the plaintiff to show "more than a casual or minimum contact with the product.'" 442, S.C. at 391, 899 S.E.2d at 599 (quoting *Lohrmann*, 782 F.2d at 1162)).

J&J's proposed instruction was an incorrect statement of law. There can be no prejudice from the Court's proper decision not to misinform the jury about the controlling law.

J&J's motion for a new trial on this issue is DENIED.

4. There was no error in declining to give J&J's requested instruction on specific causation.

J&J contends this Court failed to properly instruct the jury as to “specific causation” and argued that this Court should have accepted its instruction on specific causation. J&J also contends that Plaintiffs failed to present sufficient evidence of specific causation to the jury. The Court disagrees.

“Specific causation is whether a substance caused particular individual’s injury.” *Jolly*, 435 S.C. at 625, 869 S.E.2d at 828 (quoting *In re Bausch & Lomb Inc. Contacts Lens Solution Prods. Liab. Litig.*, 693 F. Supp. 2d 515, 518 (D.S.C. 2010)).

The Court instructed the jury as to causation, in part, as follows:

Plaintiff must prove that the defendant -- that the plaintiffs' exposure to asbestos in the defendant's product was of such a frequency, regularity, and duration that it was a substantial factor in bringing about the disease or injury. The mere fact that an injury or accident occurred standing alone does not permit you to draw the conclusion that the injury or accident was caused by anyone's negligence or breach of warranty of strict liability.

The Court finds that the instructions given to the jury as to causation were proper statements of the law. J&J has not and cannot demonstrate any prejudice to it resulting from the Court’s properly worded instruction. *Pittman v. Stevens*, 364 S.C. 337, 340, 613 S.E.2d 378, 380 (2005).

The evidence satisfied the *Henderson* causation standard. A plaintiff in an asbestos case need only present evidence of “actionable exposure” to a defendant’s asbestos product. *Henderson v. Allied Signal, Inc.*, 373 S.C. at 185, 644 S.E.2d at 727. To determine whether exposure is actionable, South Carolina courts apply the “frequency, regularity and proximity” factors set forth in *Lohrmann v. Pittsburgh Corning Corp.*, 782 F.2d 1156 (4th Cir. 1986). *Id.* Therefore, “[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.”” *Id.* (quoting *Lohrmann*, 782 F.2d at 1162).

Plaintiffs’ presented sufficient evidence to support the jury’s causation finding. The evidence in this case was that Mr. Perry was exposed to visible dust while applying JBP on a daily basis for 50 years. Plaintiffs’ experts presented circumstantial evidence from which the jury could have concluded that the JBP that Michael Perry used for 50 years contained asbestos. The jury also heard testimony about the range of exposure to asbestos that Mr. Perry had while using JBP, and was further told that Mr. Perry’s asbestos exposure level was many orders above background levels.

The jury could thus have easily concluded that Mr. Perry had frequent, regular, and proximate exposure to asbestos from his use of JBP over the course of many decades. This evidence is more than sufficient to support the jury’s determination that Mr. Perry’s mesothelioma was caused by his exposure to asbestos from Johnson’s Baby Powder.

J&J’s motion on this issue is DENIED.

5. The Court properly instructed the jury on substantial factor causation.

As noted in *Edwards*, the “substantial factor” test requires demonstration of frequency, regularity, and proximity. 442 S.C. at 391, 899 S.E.2d at 599. The Court instructed the jury as to substantial factor. The Court instructed the jury, in part, as follows:

Plaintiff must prove that the defendant -- that the **plaintiffs' exposure to asbestos in the defendant's product was of such a frequency, regularity, and duration that it was a substantial factor in bringing about the disease or injury.** The mere fact that an injury or accident occurred standing alone does not permit you to draw the conclusion that the injury or accident was caused by anyone's negligence or breach of warranty of strict liability.

In this instruction, the Court told the jury that substantial factor meant “frequency, regularity, and duration.” This was a correct statement of law.

J&J's request for a new trial on this issue is DENIED.

6. The jury instruction as to “component parts” was proper.

It was not error for the Court to instruct the jury as to component parts. As to component parts, the Court instructed the jury that:

If a reasonable inspection or test would have disclosed a defect, a manufacturer who incorporates a defective component into its finished product and places the finished product into the stream of commerce is liable for the injuries caused by defect in that component part.

But defendant can, however, be liable for an alleged 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.

This instruction was given in order to address J&J's argument at trial that it did not intend for asbestos to be in its talc. This instruction informed the jury that J&J could still be found liable for Mr. Perry's mesothelioma even though it did not intentionally add asbestos to its product. The instruction also noted that once J&J was on notice that its product contained a defective component (asbestos) and still placed the product into the stream of commerce, J&J could be held liable for injuries caused by exposure to that defective component.

J&J's request for a new trial on this issue is DENIED.

7. The “eggshell plaintiff” instruction was proper.

J&J contends that the Court committed error when it instructed the jury on the “eggshell plaintiff.” The Court disagrees. This instruction was necessary because of J&J's suggestion that Mr. Perry's individual susceptibility would have been the reason he developed mesothelioma. J&J put on evidence at trial about Mr. Perry's family history of cancer. The jury heard from J&J that Mr. Perry's mother had ovarian/uterine cancer. J&J cross-examined Mr. Perry's treating thoracic

surgeon expert, Dr. Barry Gibney, at length on Mr. Perry's genetic makeup and what kinds of genetic testing were either done, or not done, on Mr. Perry.

South Carolina has adopted the "eggshell plaintiff" rule which states a "defendant takes the plaintiff as [she] is found." *Raino v. Goodyear Tire and Rubber Co.*, 309 S.C. 255, 259, 422 S.E.2d 98, 100 (1992). "As a general rule, liability for the consequences of one's tortious act is not lessened by reason of the fact that the injuries were aggravated by plaintiff's unhealthy conditions . . ." *Id.*, citing 22 Am.Jur.2d Damages §282 (1988).

J&J's request for a new trial on this issue is DENIED.

8. The jury was not given a "blended" products liability charge.

J&J contends that the Court committed error by providing a "blended" products liability charge to the jury. This Court disagrees.

Plaintiffs alleged both a design defect and manufacturing defect claim against J&J and was given the proper test for each. In *Branham v. Ford Motor Co.*, 390 S.C. 203, 220, 701 S.E.2d 5, 14 (2010), the Supreme Court clearly stated that "the consumer expectations test fits well in manufacturing defect cases" but is "ill-suited in design defect cases."

The instruction was not blended. The jury was instructed as to "manufacturing defect," in part, as follows:

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 the use of the product.

The jury was charged separately as to design defect. When instructing the jury as to design defect, the Court included language reflecting the risk-utility test, which is the proper test for design defect claims. *Branham*, 390 S.C. at 220, 701 S.E.2d at 14.

J&J's request for a new trial on this issue is DENIED.

9. There was no error in declining to charge the jury as to “hindsight opinions,” that more could have been done, or “post distribution” evidence.

J&J contends that the Court committed error by failing to charge the jury as to “hindsight opinions.” The Court disagrees. J&J has cited no authority which would require this Court to instruct the jury as to “hindsight opinions,” or that the jury should have considered that “more could have been done.”

The admission of post-distribution evidence in this case was not prejudicial. Mr. Perry used JBP until shortly before J&J removed the product from the shelves. South Carolina’s Supreme Court defined “post-distribution” evidence as “evidence of facts neither known nor available at the time of distribution.” See *Branham*, 390 S.C. at 227, 701 S.E.2d at 17. In a footnote, the Court clarified that:

If information on a product is reasonably attainable, then a manufacturer is charged with such knowledge at the time of manufacture. The rule prohibiting the introduction of post-distribution evidence does not permit a manufacturer to turn a blind eye to reasonably available information regarding the safety or danger of its product.

Id. at n. 17. The evidence supports a finding that J&J knew of the presence of asbestos not only in the talc that it put into its powder but also the presence of asbestos in its finished product. The information regarding the presence of asbestos in JBP was available to J&J prior to Mr. Perry’s initial exposure.

J&J’s request for a new trial on this issue is DENIED.

B. None of the alleged structural, evidentiary, or expert witness errors identified by J&J warrant post-trial relief.

1. J&J was not entitled to severance.

J&J contends that the Court committed error by denying its request to sever trial from co-defendant American International Industries (“AII”). The Court disagrees. Trial judges, in their

discretion, are responsible for determining whether trial issues are distinct enough to warrant severability. *Flagstar Corp. v. Royal Surplus Lines*, 341 S.C. 68, 533 S.E.2d 331 (2000). In this case, the claims against J&J and AII were largely identical. The issues to be determined by the jury in this matter as to both of these defendants were not so distinct as to warrant severability.

By the time of trial, the Court had resolved Plaintiffs' liability claims against AII as a matter of law as a result of AII being in default. Before opening statements, the Court informed the jury as follows:

It has been determined as a matter of law that American International Industries, AII, which is a company responsible for Clubman talc products, is liable to Mr. Michael Perry on each of the causes of action pled against them in this case, specifically negligence, strict liability, fraud, conspiracy and implied warranty of merchantability. It has been determined as a matter of law that Clubman's asbestos-containing talc product was defective and unreasonably dangerous and was a substantial factor in the development of Michael Perry's mesothelioma. It has been determined as a matter of law that American International Industries' conduct was willful, wanton, and reckless, meaning American International Industries acted with conscious indifference to the rights and safety of others.

You are instructed that American International Industries is liable to the plaintiffs in this case. Your only task as to American International Industries are to determine the total amount of damages that Michael Perry and Lonnie Long have suffered.

It was clear from this instruction that the jury understood that all of Plaintiffs' claims against J&J were to be decided by the jury. Nothing about the Court's instruction to the jury indicated that it should also find J&J liable for Plaintiffs' injuries because of AII. The jury was instructed that these two defendants were to be considered separately.

J&J's request for a new trial on this issue is DENIED.

2. Defendants' experts did not have a proper scientific foundation for their opinions that Mr. Perry's mesothelioma was idiopathic or spontaneous.

In accordance with its "gatekeeping" function, the Court prevented J&J's experts from opining that Mr. Perry's mesothelioma was idiopathic and/or spontaneous. J&J's experts were

permitted, however, to testify at trial about spontaneous mesotheliomas generally.

The trial court must act as a gatekeeper over scientific evidence and make three preliminary findings before expert testimony may be admitted. *Watson v. Ford Motor Co.*, 389 S.C. 434, 446, 699 S.E.2d 169, 175 (2010). The Court must find “that expert testimony is necessary to assist the jury in resolving factual questions, the expert is qualified in the particular area, and the testimony is reliable.” *Id.* at 446-47, 699 S.E.2d at 175. “In South Carolina, a trial court minding the Rule 702 gate must assess not only (1) whether the expert’s method is reliable (i.e., valid), but also (2) whether the substance of the expert’s testimony is reliable.” *State v. Warner*, 430 S.C. 76, 86, 842 S.E.2d 361, 365–66 (Ct. App. 2020), *aff’d in part and remanded*, 436 S.C. 395, 872 S.E.2d 638 (2022). A trial court does not abuse its discretion under Rule 702 by excluding the testimony of medical experts whose conclusions were not supported by the data and experiments upon which they relied. *Id.* (citing *Gen. Elec. Co. v. Joiner*, 522 U.S. 136, 146 (1997)). ““A court may conclude that there is simply too great an analytical gap between the data and the opinion proffered.”” *Id.* (quoting *Joiner*, 522 U.S. at 146).

Dr. Weill is a pulmonologist who J&J intended to have testify that Mr. Perry’s mesothelioma was spontaneous because he saw no exposure to asbestos that Mr. Perry would have had, including any exposure to talc. While Dr. Weill reviewed the reports of the parties’ experts, he did not review any internal testing documents from J&J. He didn’t review any J&J documents at all. The Court finds that Dr. Weill’s opinion regarding spontaneous mesothelioma is unsupported in any recognized scientific community, and that his conclusions regarding the “cause” of Mr. Perry’s mesothelioma would have been unsupported and merely a diagnosis of exclusion. His methodology was not reliable or consistent with recognized scientific principles. Additionally, Dr. Weill’s anticipated testimony that Mr. Perry had no exposure to asbestos

throughout his life is unreliable given that he has not reviewed any J&J documents, including J&J's internal testing documents – some of which found asbestos in J&J's talc that Mr. Perry used.

Dr. Diette's opinions also lack an adequate foundation to opine that that Mr. Perry's mesothelioma was either spontaneous or "naturally occurring." The Court finds that Dr. Diette's opinion regarding spontaneous mesothelioma is unsupported in any recognized scientific community, and that his conclusions regarding the "cause" of Mr. Perry's mesothelioma would have been unsupported and merely a diagnosis of exclusion. His methodology was not reliable or consistent with recognized scientific principles. Additionally, Dr. Diette's anticipated testimony that Mr. Perry had no exposure to asbestos throughout his life is unreliable given that he has not reviewed any J&J documents, including J&J's internal testing documents – some of which found asbestos in J&J's talc that Mr. Perry used. In fact, Dr. Diette has previously opined that there is no scientific literature to support the conclusion that a mesothelioma can occur spontaneously when there is a history of asbestos exposure.

Drs. Diette and Weill were not excluded completely from testifying. Their only limitation was that they could not use a diagnosis of exclusion and testify that Mr. Perry's mesothelioma was spontaneous. J&J has not provided any explanation as to how it was prejudiced by these rulings. J&J chose not to call Dr. Weill and Dr. Diette as witnesses in its case-in-chief.

South Carolina precedent makes clear that "it is not sufficient for the doctors to say simply that the ailment in question 'possibly' or 'might have' resulted from the accident, but the medical experts must go further and testify at least that in their professional opinions the result in question 'most probably' came from the alleged cause." *Windham v. City of Florence*, 221 S.C. 350, 358, 70 S.E.2d 553, 556 (1952). The Court finds that any opinions from J&J's experts that Mr. Perry's

mesothelioma was “spontaneous” were scientifically unsupported, lacking in factual foundation, and unreliable.

J&J’s request for a new trial on this issue is DENIED.

3. Testimony from Plaintiffs’ experts complied with the South Carolina causation standard.

J&J contends that the causation testimony of Plaintiffs’ medical experts Dr. Arnold Brody and Dr. Steven Haber is unreliable and insufficient to establish substantial factor causation. The Court disagrees. Plaintiffs’ experts do not hold the opinion that “any exposure” or “every exposure” or “every asbestos fiber” causes mesothelioma generally or caused Mr. Perry’s mesothelioma. They testified that Mr. Perry’s mesothelioma was caused by his cumulative asbestos exposure, and that given the specific facts of his exposure to visible asbestos dust from JBP regularly over the course of several decades, these exposures were a substantial factor in causing Mr. Perry’s disease.

a. Standard of Review

The admissibility of expert testimony is governed by South Carolina Rule of Evidence 702. That rule provides that “[i]f scientific, technical, or other specialized knowledge will assist the trier of fact to understand the evidence or to determine a fact in issue, a witness qualified as an expert by knowledge, skill, experience, training, or education, may testify thereto in the form of an opinion or otherwise.” Rule 702, SCRE.

Courts evaluating the admissibility of scientific expert evidence “must find the evidence will assist the trier of fact, the expert witness is qualified, and the underlying science is reliable.” *State v. Council*, 335 S.C. 1, 20, 515 S.E.2d 508 (S.C. 1999). The reliability of scientific evidence is evaluated based on several factors, including: (1) the publications and peer review of the technique; (2) prior application of the method to the type of evidence involved in the case; (3) the

quality control procedures used to ensure reliability; and (4) the consistency of the method with recognized scientific laws and procedures. *State v. White*, 382 S.C. 265, 274, 676 S.E.2d 684 (S.C. 2009) (citing *Council*, 335 S.C. at 19).

“[C]ross-examination, presentation of contrary evidence, and careful instruction on the burden of proof” are the ordinary means to attack an opposing expert. *Daubert v. Merrell Dow Pharmaceuticals, Inc.*, 509 U.S. 579, 596 (1993). Courts should not exercise their gatekeeping responsibility by excluding expert testimony that falls within the range of matters on which reasonable experts can disagree. *See Milward v. Acuity Specialty Prods. Group, Inc.*, 639 F.3d 11, 22 (1st Cir. 2011). While the trial court may look at the reliability of the expert’s methodology, it is for the jury to determine the soundness of the facts underlying the expert’s opinion and the correctness of the expert’s conclusions. *See id.* 22.

b. JNOV is an improper vehicle for the court to reconsider a *motion in limine*.

J&J offers no authority for the proposition that a JNOV motion is the appropriate vehicle for requesting a Court reconsider its evidentiary rulings. To the contrary, South Carolina Courts have found that a JNOV motion is not the appropriate vehicle to address errors in the admission of evidence. *Johnson v. Hoechst Celanese Corp.* 317 S.C. 415, 420 (1995) (“a motion for judgment notwithstanding the verdict was not the appropriate vehicle to address the alleged error,” in submitting a color-coded map to the jury which the moving parties contended showed their properties in the wrong color classification.).

In ruling on a JNOV, the Court is required to review *all* the evidence and consider it in the light most favorable to the nonmoving party. *Welch*, 342 S.C. at 299. South Carolina law does not contemplate revisiting evidentiary rulings when deciding a JNOV motion.

For this initial reasons, J&J's request that this Court belatedly exclude Plaintiffs' experts' testimony is DENIED.

c. Plaintiffs' experts had a reliable scientific basis for their opinions.

Plaintiffs' experts provided identical and/or similar causation opinions to the jury as at the trial of *Jolly v. General Electric Co.*, 435 S.C. 607, 869 S.E.2d 819 (S.C. Ct. App 2021), aff'd *Jolly v. General Electric Co.*, ___S.C. ___, 905 S.E.2d 380 (2024). In *Jolly*, this Court allowed expert testimony that mesothelioma can be caused by brief or low-level cumulative exposures, finding that the plaintiffs' "experts were entitled to rely on this basic medical fact in reaching their opinion in this case." *Id.* at 30. The Court recognized that testimony about this basic medical fact is not the same thing as testimony that "each and every exposure" is a substantial factor in causing disease. *Id.* Dr. Brody's testimony was similarly allowed in the *Howe* trial 2015-CP-46-03456 in March 2018, the *Crawford* trial 2017-CP-42-04429 in July 2018, the *Glenn* 440 S.C. 34, 890 S.E.2d 560 (Ct. App 2023), trial in January 2019, and the *Plant* trial 2022-CP-40-01265 in 2023.

In *Jolly*, the Court found that the plaintiffs' experts had utilized a reliable methodology in that they "relied on their many years of experience in the area of asbestos-related diseases, as well as a broad range of evidence including epidemiology and other scientific literature, the dose-response relationship, the science regarding the low levels of exposure that can cause mesothelioma, the exposure levels documented from working with gaskets and packing in the manner described by [the plaintiff and his co-worker], and the facts surrounding [the plaintiff's] exposure to visible dust from Defendants' valves." *Id.* at 31. The Court ruled that because the experts' causation opinions were supported by the scientific literature as well as relevant exposure facts, their testimony was admissible, relevant, and helpful to the jury. *Id.* at 32.

The Court of Appeals affirmed this Court’s *Jolly* Order. Considering the same arguments raised by Defendants in this matter, it ruled, “[t]o the extent Appellants challenge the admissibility of Respondents’ experts’ testimony on the ground that it was unreliable, *they have failed to show any significant part of the testimony that could be reasonably characterized as espousing the ‘each and every exposure’ theory.*” *Jolly v. General Electric*, 435 S.C. 607, 639; 869 S.E.2d 819, 836 (Ct. App. 2021) (emphasis added).⁴

The Court of Appeals agreed with Mrs. Jolly that her “experts relied on the cumulative dose theory and that their reliance on basic science in reaching their opinions is not the equivalent of testifying that ‘each and every exposure’ was a substantial factor in causing Dale’s mesothelioma.” *Id.* at 634, 869 S.E.2d at 833-34.

The Court of Appeals also noted its disagreement with Defendants’ contention that “the cumulative dose theory conflicts with the *Henderson/Lohrmann* substantial factor standard.” *Id.* at 635, 869 S.E.2d at 834. “Stating that a certain exposure *contributes* to an individual’s cumulative dose does not espouse the view that ‘each and every breath’ of asbestos is ‘substantially’ causative of mesothelioma or imply that one exposure meets the legal requirement for causation.” *Id.* at 635-36, 869 S.E.2d at 834. “We view the testimony concerning cumulative dose as background information essential for the jury’s understanding of medical causation, which must be based on science. We do not interpret this presentation as an attempt to supplant the *Henderson/Lohrmann* test.” *Id.* at 636, 869 S.E.2d at 834-35.

The Court of Appeals ultimately concluded, “the cumulative dose theory on which Respondents’ experts relied *easily meets* the standard for reliability set forth in *State v. Council*, 335 S.C. 1, 515 S.E.2d 508 (1999).” *Id.* at 639, 869 S.E.2d at 836 (emphasis added).

⁴ The Supreme Court granted review on other grounds and affirmed. *Jolly v. General Electric*, ___ S.C. ___, 905 S.E.2d 380 (2024).

“Respondents’ experts were guided by the facts specific to Dale’s exposure to Appellants’ products in forming their opinions concerning causation.” *Id.* at 637, 869 S.E.2d at 835. Finally, the Court recognized Plaintiff’s experts relied on “numerous peer-reviewed, published epidemiological studies, case series, and case reports,” as well as other scientific criteria impacting causation of disease, and follows the weight-of-the-evidence methodology used by national and international public health organizations for evaluating the health effects of asbestos.” *Id.* at 640-41, 869 S.E.2d at 837.

South Carolina’s Court of Appeals again rejected Defendants’ attempts to conflate “cumulative dose” testimony with the “each and every exposure” theory in *Edwards v. Scapa Waycross, Inc.*:

[Defendant] Scapa argues the trial court erred in failing to grant its motion for JNOV because Stewart employed the “each and every exposure” theory of causation at trial. Scapa states that Dr. Frank explained the cumulative dose or “cumulative exposure” theory to the jury and utilized that theory in reaching his opinion as to whether Scapa’s dryer felts were a substantial factor in causing Stewart’s mesothelioma. Scapa conflates these two theories and claims they are inconsistent with the specific causation standard set forth in *Henderson*. We disagree.

“The ‘each and every exposure’ theory espouses the view that ‘each and every breath’ of asbestos is substantially causative of mesothelioma.” *Jolly*, 435 S.C. at 633, 869 S.E.2d at 833 (quoting *Rost v. Ford Motor Co.*, 151 A.3d 1032, 1044 (2016)); see also *Yates v. Ford Motor Co.*, 113 F. Supp. 3d 841, 846 (E.D.N.C. 2015) (“Also referred to as ‘any exposure’ theory, or ‘single fiber’ theory, it represents the viewpoint that, because science has failed to establish that any specific dosage of asbestos causes injury, every exposure to asbestos should be considered a cause of injury.”). This court has recently refused to conflate the cumulative dose theory with the each and every exposure theory, concluding that an expert’s opinion which states “that a certain exposure contributes to an individual’s cumulative dose does not espouse the view that ‘each and every breath’ of asbestos is ‘substantially’ causative of mesothelioma or imply that one exposure meets the legal requirement for causation.” *Jolly*, 435 S.C. at 635–36, 869 S.E.2d at 834. Rather, this court viewed testimony regarding a plaintiff’s cumulative dose as “background information essential for the jury’s understanding of medical causation, which must be based on science.” *Id.* at 636, 869 S.E.2d at 834–35.

437 S.C. 396, 416-17, 878 S.E.2d 696, 707 (Ct. App. Aug. 3, 2022), *aff'd*, 442 S.C. 387, 899 S.E.2d 5976 (2024); see also, *Glenn v. 3M Company*, 440 S.C. 34, 64-68, 890 S.E.2d 569, 585-587 (Ct. App. 2023).

Consistent with years of South Carolina law, Plaintiffs' experts' opinions regarding the cumulative nature of asbestos diseases and the lack of any safe threshold of exposure are not "unreliable," but are generally accepted medical facts that have long been established by a significant body of peer-reviewed medical and scientific literature. In addition, Dr. Haber and Dr. Brody relied on their many years of experience in the area of asbestos-related diseases, as well as a broad range of evidence including animal studies, epidemiology, and other scientific literature, the dose-response relationship, and the science regarding the low levels of exposure that can cause mesothelioma. As in *Jolly*, *Edwards*, and *Glenn*, the opinions of Plaintiffs' experts are reliable and admissible expert opinion testimony.

J&J's request that this Court find Plaintiffs' experts' unreliable and inadmissible is DENIED.

d. Dr. Haber's specific causation opinion was based on the exposure evidence in this case.

Dr. Haber's specific causation opinion is firmly grounded in the exposure evidence presented at trial. Dr. Haber was offered and qualified as an expert in internal medicine and pulmonology. J&J objected to anything outside of internal medicine and pulmonology. This objection was partially overruled because Dr. Haber had read and relied on those materials in forming his specific causation opinion about what caused Mr. Perry's mesothelioma.

Dr. Haber testified that Mr. Perry was suffering from mesothelioma caused by asbestos. Dr. Haber testified to the jury that the JBP that Mr. Perry used for five decades played a role in the development of his mesothelioma. In reaching his conclusions, Dr. Haber reviewed Mr. Perry's

medical records, including X-rays and scans of his chest, conducted a personal interview with Mr. Perry, reviewed reports of other experts designated in this matter, reviewed the deposition testimony in this case, and “other materials.” Dr. Haber also reviewed and evaluated Mr. Perry’s clinical course of care and treatment post-diagnosis.

Dr. Haber explained that mesothelioma is a “signal tumor” for asbestos exposure. The average life expectancy for epithelioid mesothelioma is 18 months. Dr. Haber told the jury that Mr. Perry’s cancer was extensive and invasive and that it had spread into the soft tissues of the chest wall, including into his lymph node and lung. Dr. Haber also testified that Mr. Perry’s pleura had doubled in size as of April, which likely meant a recurrence of his mesothelioma. Dr. Haber then discussed asbestos and how the different asbestos types were used commercially and noncommercially. He testified that all fiber types cause mesothelioma.

Dr. Haber also testified to the jury that he reviewed J&J’s internal records finding tremolite asbestos in its talc and he reviewed published medical and scientific literature on the definition of asbestos. He also noted that J&J’s own internal documents confirm that exposure to fibrous tremolite is a cause of mesothelioma because it is asbestos. He explained that for asbestos to attack the body the asbestos fibers had to be in respirable form and, if there is asbestos in talc powder the asbestos is by its nature already in a respirable form.

Dr. Haber explained what he refers to as the “onion properties” when explaining whether asbestos harms a person as soon as it’s breathed in. He also testified that there is no safe level of exposure to asbestos even at the 0.1 fibers-per-cc- level established by OSHA. Dr. Haber also explained that multiple studies and multiple health organizations have concluded that there is no threshold level below which there is no risk of developing an asbestos-related disease.

Dr. Haber also reviewed and testified about case reports which look at people who had mesothelioma. He told the jury that there are case reports based on certain occupations that work with talc which indicate concerns about the development of mesothelioma and case reports of individuals exposed to cosmetic talc who develop mesothelioma. During autopsies of people who died of mesothelioma, Dr. Haber testified that talc, anthophyllite, and tremolite have been repeatedly found. Dr. Haber later noted that background asbestos is mostly composed of small amounts of chrysotile and that anthophyllite and tremolite are not found in background levels.

Dr. Haber also considered whether Mr. Perry had exposures to asbestos from sources other than talc. He concluded that Mr. Perry had some exposure to chrysotile asbestos from brake work and that this contributed to cause his disease.

In Dr. Haber's opinion, JBP was Mr. Perry's first and primary exposure to asbestos. As to frequency and quantity, Dr. Haber testified that Mr. Perry was "an above-average user" of JBP, using it "two to four times a day", "putting it on his whole body" and occasionally "actually putting it on his . . . face." Dr. Haber concluded that Mr. Perry's exposure to asbestos from JBP was a substantial contributing factor to the development of his mesothelioma.

Dr. Haber's causation opinion was expressed the jury to a reasonable degree of scientific and medical certainty. His causation opinions are based on the record of Mr. Perry's repeated exposures to asbestos from JBP, as well as the scientific literature and other evidence presented to the jury. Dr. Haber's methodology therefore is identical to the methodology affirmed in *Jolly*, *Edwards*, and *Glenn*.

J&J's request for a new trial on this issue is DENIED.

4. The Court did not commit error by admitting Plaintiffs' tissue digestion.

On July 10, 2024, this Court ordered the division of Mr. Perry's lung tissue for digestion. At the pre-trial hearing on July 30, 2024, J&J moved to exclude the tissue digestion. J&J argued that its expert, Dr. Victor Roggli, could not perform the digestion prior to trial. J&J then claimed to have found a second expert, Dr. Stanley Geyer, who could perform the digestion prior to trial.

After this Court signed the order permitting the tissue split to occur, it took several days for Medical University of South Carolina ("MUSC") to divide the tissue as instructed by the Court's order. On the day before the pre-trial hearing, the tissue was divided and MUSC sent the tissue to the experts designated by the parties in this Court's order. Each tissue division arrived at each of the parties' respective experts on the same day at the same time – the morning of the pre-trial hearing in this case. J&J argued that the tissue digestion should not be allowed because the parties were out of time to perform the testing. This Court overruled J&J's objection, and ordered that the tissue digestion could proceed.

On the first morning of trial, J&J informed the Court that its expert could not perform the tissue digestion. Plaintiffs' informed the court that its expert who was performing the tissue digestion, Dr. Longo, was in the process of concluding the tissue digestion and offered to make Dr. Longo available for a deposition on his findings before he testified so that there was no surprise.

Dr. Longo's report on his tissue digestion findings was produced to J&J on August 5, 2024. Plaintiffs tendered Dr. Longo for deposition on August 6, 2024, at 4:00 pm by phone as he was traveling to testify in trial that evening. Dr. Longo's deposition was conducted via zoom at 10:00 pm on August 6, 2024, at J&J's request.

Dr. Longo testified to the jury that he tested Mr. Perry's lung tissue. He told the jury that he and his lab had analyzed over 400,000 different individual asbestos samples, including testing human lung tissue referred to as a "lung burden" to see what, if anything, is in the lung. Dr. Longo testified that the tissue digestion revealed the presence of tremolite asbestos, winchite asbestos, and talc in Mr. Perry's lungs. The evidence supported Dr. Longo's testimony that the presence of tremolite asbestos in Mr. Perry's lungs was consistent with what had repeatedly found in Dr. Longo's historical testing of JBP. J&J cross-examined Dr. Longo regarding his findings of the presence of asbestos in Mr. Perry's lungs.

The Court prohibited J&J from asking questions regarding when Dr. Longo received the lung tissue for testing. J&J had two experts at its disposal that could have performed the tissue digestion yet did not make the time. J&J had every opportunity to cross-examine Dr. Longo on his methodology of performing the tissue digestion. They chose not to and this Court does not find compelling reasons to allow J&J to challenge Dr. Longo's findings in a post-trial motion.

The Court prohibited J&J, through its corporate representative Dr. Edwin Kuffner, from discussing the results of the tissue digestion. Dr. Kuffner was not designated as an expert witness in this case. J&J contends that the Court improperly prohibited Dr. Kuffner from testifying about Dr. Longo's winchite finding in Mr. Perry's lungs to the jury, and that this prohibition was error. The Court disagrees.

Dr. Kuffner was designated as the corporate representative and was a fact witness. J&J did not list him as an expert nor did it seek to qualify him as an expert. As he was not designated or qualified as an expert, this Court ruled that Dr. Kuffner could not testify about topics of which he had no special knowledge, skill, or training to discuss with the jury. The Court did allow Dr. Kuffner to testify about what he had seen in J&J documents regarding winchite asbestos in JBP,

but the Court ruled that J&J could not use Dr. Kuffner to testify about geological concepts to the jury, as J&J sought to have Dr. Kuffner testify to the jury what Dr. Longo's finding of winchite meant.

"To be competent to testify as an expert, 'a witness must have acquired by reason of study or experience or both such knowledge and skill in a profession or science that he is better qualified than the jury to form an opinion on the particular subject of his testimony.'" *Gooding v. St. Francis Xavier Hospital*, 326 S.C. 248, 252-53, 487 S.E.2d 596, 598 (1997). As a fact witness, Dr. Kuffner's testimony was properly limited by South Carolina Rule of Evidence 701, which provides:

If the witness is not testifying as an expert, the witness' testimony in the form of opinions or inferences is limited to those opinions or inferences which (a) are rationally based on the perception of the witness, (b) are helpful to a clear understanding of the witness' testimony or the determination of a fact in issue, and (c) do not require special knowledge, skill, experience or training.

Dr. Kuffner's was not an expert in microscopy or geology and was not tendered as an expert. Dr. Kuffner had already been permitted to explain to the jury that the minerals found in Mr. Perry's lungs did not come from JBP based upon his review of J&J documents. If J&J intended to have Dr. Kuffner testify as to the geology, mineralogy, and findings of winchite asbestos, he should have been offered and qualified as an expert witness with the training, skill, and education to do so. Alternatively, J&J could have called its geologist expert, Dr. Sanchez, to testify at trial. J&J chose not to do either.

J&J further argues that Plaintiffs' counsel statement in closing argument regarding J&J's failure to call an expert witness to rebut Dr. Longo's in Mr. Perry's lungs was an improper invocation of the missing witness rule. The jury was instructed that a comment on the failure to call an expert is permitted, but that Plaintiffs' assertion that J&J could not find an expert was

stricken. This instruction cured any potential prejudice to J&J. As such, the Court finds that J&J has failed to demonstrate any prejudice from admitting Plaintiffs' tissue digestion.

J&J's request for a new trial on this issue is DENIED.

5. Dr. Haber did not testify outside of his qualifications.

Dr. Haber was qualified as an expert by reason of his training, education, and experience, as an expert in the areas of internal medicine and pulmonology. He was also permitted to testify about the information that he relied on in forming his conclusions. Dr. Haber repeatedly testified that he had evaluated and reviewed thousands of J&J's internal documents on various topics. "Expert testimony may be based partially on information received from other sources if such facts and data are of a type reasonably relied upon by experts in the particular field in forming opinions or inferences upon the subject." *Lucas v. Sara Lee Corp.*, 307 S.C. 495, 501, 415 S.E.2d 837, 841 (Ct. App. 1992).

J&J's request for a new trial on this issue is DENIED.

6. The Court's exclusion of the 1986 Citizens Petition and J&J 2019 Health Hazard Evaluation was proper.

J&J contends that this Court improperly excluded the 1986 Citizens Petition and the 2019 Health Hazard Evaluation ("HHE") and that these exclusions were error warranting a new trial. The Court disagrees.

J&J sought to present to the jury that the FDA's position was that there is "no risk" from asbestos in talc by admitting the 1986 document into evidence. The Court found the 1986 Citizens Petition contains inaccurate and unreliable expert opinion information which made its probative value substantially outweighed by the risk of confusion to the jury, and therefore unfair prejudicial under South Carolina Rule of Evidence 403.

The Court finds that the statements in the 1986 document are based on false information that J&J provided to the FDA. For example, in one of the documents Donald Kennedy, the then–Commissioner of the FDA, attempts to justify the 0.1% level by relying in part on J&J’s “extensive testing for asbestiform particles in cosmetic-grade talc; all results to date have been negative.” But all results of J&J’s talc had not been negative. The evidence showed that by 1979, J&J was aware that asbestos minerals had been found in its talc over 400 times.

J&J offered this document as the FDA’s official position and use it support its argument that any and all use of cosmetic talcum powder – no matter how long, how heavy, or how consistent – is without risk and cannot increase a person’s risk of mesothelioma at all. The document was not admitted because it contained false and unreliable expert opinion information which the risk of confusion to the jury substantially outweighed by any probative value. J&J had other avenues to present their position regarding the FDA’s position on asbestos in their talc, including through Dr. Barlow, J&J’s toxicologist.

Despite this Court striking the 1986 document, J&J still was able to present evidence to the jury regarding its theory as to the FDA’s position on the safety of talc. Dr. Kuffner testified that it was untrue that J&J hid information from the FDA. He also testified that J&J’s testing method was created with consultation from the FDA, so J&J’s testing method was the industry standard. Additionally, Dr. Kuffner testified that the FDA conducted studies of JBP in the 1970s and found no asbestos. Dr. Kuffner also testified that as of 1994, the FDA had concluded that “talc has proved to be among the safest of consumer products.”

This Court finds no prejudice from the exclusion of the 1986 Citizens Petition.

With regard to the 2019 HHE, the Court’s ruling was limited to Dr. Kuffner, a lay witness. Laypersons can provide opinion or inferences only if they (a) are rationally based on the

perception of the witness; (b) are helpful to a clear understanding of the witness' testimony or the determination of a fact in issue; and (c) do not require special knowledge, skill, experience or training. Rule 701, SCRE. Any opinions or conclusions about the HHE would require special knowledge, skill, experience, or training.

Dr. Kuffner testified that he was involved in preparing and writing the HHE, but as a lay witness he could not give toxicology testimony based upon this document as J&J sought to do. J&J could not use Dr. Kuffner to provide toxicology expert testimony to the jury. J&J could have called a properly qualified expert, including its toxicologist Dr. Barlow, but chose not to do so.

J&J has not shown that exclusion of the 1986 Citizens Petition and the 2019 HHE were so prejudicial that a new trial is warranted. J&J's request for a new trial on this issue is DENIED.

7. Plaintiffs' counsel's closing argument was not prejudicial such that J&J is entitled to a new trial.

"It has long been settled that closing arguments and objections thereto are left largely to the sound discretion of the trial judge 'who is on the scene and in much better position than an appellate court to judge as to what is improper argument under the circumstances.'" *Howle v. PYA/Monarch, Inc.*, 288 S.C. 586, 599, 344 S.E.2d 157, 164 (Ct. App. 1986) (quoting *Lesley v. Am. Sec. Ins. Co.*, 261 S.C. 178, 185, 199 S.E.2d 82, 86 (1973)). "[C]onsiderable latitude is allowed counsel in drawing inferences and deductions from the evidence and in arguing the same to the jury." *Lesley*, 261 S.C. at 185, 199 S.E.2d at 85. "When [an] objection is timely made to improper remarks of counsel, the judge should rule on the objection, give a curative charge to the jury, and instruct offending counsel to desist from improper remarks." *McElveen v. Ferre*, 299 S.C. 377, 381, 385 S.E.2d 39, 41 (Ct. App. 1989).

J&J contends that several statements from Plaintiffs' counsel during his closing argument were prejudicial. To the extent that J&J did not object during Plaintiffs' closing argument when

certain terms were used, J&J has waived its argument as to these statements. *S.C. Dep't of Transp. v. First Carolina Corp. of S.C.*, 372 S.C. 295, 301, 641 S.E.2d 903, 907 (2007) (“It is well settled that an issue may not be raised for the first time in a post-trial motion.”); *Webb v. CSX Transp., Inc.*, 364 S.C. 639, 657, 615 S.E.2d 440, 450 (2005) (rejecting argument regarding improper closing argument: “Since there was no contemporaneous objection, this issue is not preserved for appellate review.”); *Moore v. Florence School Dist. No. 1*, 314 S.C. 335, 339, 444 S.E.2d 498, 500 (1994) (“[T]he record indicates no objection to counsel's argument to the jury regarding consent and this issue is not preserved for review”); *State v. Walker*, 366 S.C. 643, 660, 623 S.E.2d 122, 131 (Ct. App. 2005) (“Failure to object to comments made during [closing] argument precludes appellate review of the issue.”).

“[G]reat latitude is accorded counsel in presenting closing arguments to a jury.” *United States v. Johnson*, 587 F.3d 625, 632 (4th Cir. 2009) (citation omitted); *see also id.* at 633 (“[T]o parse through a prosecutor's closing statement for minor infelicities loses sight of the function of our adversary system, which is to engage opposing views in a vigorous manner.”). “Thus, while courts should not hesitate to condemn those prosecutorial comments that truly offend constitutional norms, neither shall we attach constitutional significance to every verbal fillip, lest we unduly censor the clash of viewpoints that is essential to adversarial proceedings.” *United States v. Runyon*, 707 F.3d 475, 507 (4th Cir. 2013).

J&J has failed to demonstrate that Plaintiffs’ closing argument was designed to inflame the jury or encourage the jury to rule in Plaintiffs’ favor on an improper basis. This Court gave proper curative instructions when it found they were warranted.

J&J’s request for a new trial on this issue is DENIED.

8. There was no error in the verdict form submitted to the jury.

J&J contends that it is entitled to a new trial because, while Plaintiffs' claims against J&J included design defect and manufacturing defect theories, the verdict form did not include separate questions on those issues. The Court disagrees.

J&J did not object to the questions on the verdict form, after being given an opportunity to object, prior to its submission to the jury. Because its post-trial motion is the first time that J&J objected to questions on the final verdict form, its objection is waived. *Jackson v. Speed*, 326 S.C. 289, 304, 486 S.E.2d 750, 757 (1997) (finding appellant waived claim of lack of notice of cause of action by failing to object to having his name included on the verdict form); *Johnson v. Hoechst Celanese Corp.*, 317 S.C. 415, 421, 453 S.E.2d 908, 912 (Ct. App. 1995) (holding by failing to object to a verdict form until after a liability verdict had been reached, appellant failed to preserve any issue relating to the verdict form).

The Court finds that neither the verdict form nor the instructions to the jury created confusion about the jury's role in this case. The jury was instructed regarding Plaintiffs' claims that J&J sold a product that was defective in multiple ways: the product had a manufacturing defect, had a design defect, and/or a warning defect. The instructions specifically stated:

Plaintiffs' claims in this case are based on several theories: negligence, strict liability, and fraudulent misrepresentation.

The instructions went on to explain the different ways J&J could be found strictly liable in South Carolina.

A trial judge has discretion to determine how a case is submitted to the jury and error, if any, in the refusal of using J&J's proposed verdict form would only constitute grounds for a new trial if prejudice resulted from that failure. *See Freeman v. J.L.H. Investments, LP*, 414 S.C. 362, 386, 778 S.E.2d 902, 914 (2015); *Steele v. Dillard*, 327 S.C. 340, 343, 486 S.E.2d 278, 280 (Ct.

App. 1997) (quoting 5A C.J.S. *Appeal & Error* § 1762(b), at 1136 (1958)). The Court finds that J&J has not demonstrated any prejudice that it suffered as a result of this Court not separating the question on the verdict form regarding strict liability into multiple questions.

J&J's request for a new trial on this issue is DENIED.

VIII. RULING ON NEW TRIAL BASED ON CUMULATIVE ERROR

Where there has been no error, there cannot be cumulative error. "The cumulative error doctrine provides relief to a party when a combination of errors, insignificant by themselves, has the effect of preventing the party from receiving a fair trial, and the cumulative effect of the errors affects the outcome of the trial. *State v. Beekman*, 405 S.C. 225, 237, 746 S.E.2d 483, 490 (Ct. App. 2013). "An appellant must demonstrate more than error in order to qualify for reversal pursuant to the cumulative error doctrine; rather, he must show the errors adversely affected his right to a fair trial to qualify for reversal on this ground." *Id.* The Court finds J&J has not shown that it did not receive a fair trial or that cumulative errors affected the outcome.

J&J's request for a new trial on this issue is DENIED.

IX. RULING ON NEW TRIAL PURSUANT TO THE THIRTEENTH JUROR DOCTRINE

In South Carolina, the thirteenth juror doctrine is a long-standing means by which a trial court may grant a new trial absolute. *See Folkens v. Hunt*, 300 S.C. 251, 387 S.E.2d 265 (S.C. 1990). "Under the "thirteenth juror doctrine," a trial judge may grant a new trial absolute when he finds the evidence does not justify the verdict. This ruling has also been termed a granting of a new trial upon the facts.'" *Haselden v. Davis*. 341 S.C. 486, 534 S.E.2d 295 (S.C. Ct. App. 2000) (quoting *Vinson v. Hartley*, 324 S.C. 389, 477 S.E.2d 715 (S.C. Ct. App. 1996)). Stated differently, a trial judge may grant a new trial under the thirteenth juror doctrine if the judge determines the verdict "is contrary to the fair preponderance of the evidence." *Dent v. Redd*, 270 S.C. 585, 243

S.E.2d 460 (S.C. 1978); see also *Vinson*, 324 S.C. at 404, 477 S.E.2d at 722 (“Traditionally, in South Carolina, circuit court judges have the authority to grant a new trial upon the judge’s finding that justice has not prevailed.”). “[T]he trial Judge is the thirteenth juror, possessing the veto power to the nth degree....” *Worrell v. S.C. Power Co.*, 186 S.C. 306, 195 SE. 638 (S.C. 1938).

“Unlike a motion for directed verdict, the trial judge weighs the evidence under the thirteenth juror doctrine and need not view the evidence in the light most favorable to the opposing party.” *McEntire v. Mooregard Exterminating Servs., Inc.*, 353 S.C. 629, 578 SE.2d 746 (S.C. Ct. App. 2003); see also *Parker v. Evening Post Publ’g Co.*, 317 S.C. 236, 452 SE.2d 640 (S.C. Ct. App. 1994) (stating the trial court may take its own view of the evidence). Furthermore, the decision of whether to grant a new trial upon the facts is one addressed to the sound discretion of the trial judge. *S.C. State Highway Dep’t v. Clarkson*, 267 S.C. 121, 226 S.E.2d 696 (S.C. 1976).

“South Carolina’s thirteenth juror doctrine is so named because it entitles the trial judge to sit, in essence, as the thirteenth juror when he finds ‘the evidence does not justify the verdict,’ and then to grant a new trial based solely ‘upon the facts.’” *Norton v. Norfolk S. Ry. Co.*, 350 S.C. 473, 567 S.E.2d 851 (S.C. 2002) (quoting *Folkens*, 300 S.C. at 254, 387 S.E.2d at 267). By sitting “[a]s the ‘thirteenth juror,’ the trial judge can hang the jury by refusing to agree to the jury’s otherwise unanimous verdict.” *Id.* at 478, 567 S.E.2d at 854. As stated by the South Carolina Supreme Court in *Folkens*,

The effect is the same as if the jury failed to reach a verdict.... When a jury fails to reach a verdict, a new trial is ordered. Neither judge nor the jury is required to give reasons for this outcome. Similarly, because the result of the “thirteenth juror” vote by the judge is a new trial rather than an adjustment to the verdict, no purpose would be served by requiring the trial judge to make factual findings.

300 S.C. at 254, 387 S.E.2d at 267.

The jury returned a verdict finding that J&J was negligent, and that J&J was strictly liable for Mr. Perry's mesothelioma. The Court finds that the evidence at trial supported the jury's verdict. The Court declines to use the thirteenth juror to interfere with the decision made by the jury.

J&J's request for a new trial on this issue is DENIED.

X. RULING ON MOTION FOR SETOFF

J&J contends that it is entitled to a full set-off for Plaintiffs' entire settlement amount and Plaintiffs do not object. J&J further contends that Plaintiffs should have to produce their settlement agreements with various co-defendants, with which the Court disagrees. Plaintiffs' settlement releases are not discoverable. Rule 408, SCRE. The Court has reviewed Plaintiffs' settlement agreements in camera and finds they are fair and reasonable. *See Glenn v. 3M Co.*, 440 S.C. 34, 86, 890 S.E.2d 569, 596 (Ct. App. 2023). The Court therefore rules that the amount of \$11,255,000 in Plaintiffs' pre-trial settlements will be set-off from Plaintiffs' compensatory damages award.

XI. RULING ON STAY OF EXECUTION OF JUDGMENT AND BOND

J&J requests a stay of judgment pursuant to Rule 62, SCRCP. The Court agrees that J&J is entitled to a ten-day automatic stay of judgment pursuant to Rule 62(a).

There is no automatic stay of execution of a money judgment during the pendency of appeal. S.C. Code § 18-9-130(A)(1); *see also* Rule 241(b)(1), SCACR (providing that money judgments are an exception to the general rule that service of a notice of appeal automatically stays matters decided in the judgment). Rather, a stay of execution is within the trial court's discretion: "A notice of appeal from a judgment directing the payment of money does not stay the execution of the judgment unless the presiding judge before whom the judgment was obtained grants a stay

of execution.” S.C. Code § 18-9-130(A)(1). Rule 62(d) provides that a stay of execution of judgment is predicated on posting a supersedeas bond.

The Court exercises its discretion to deny J&J’s request for a stay order without the requirement of an appeal bond. In the event of an appeal, the Court orders that J&J post a supersedeas bond in the full amount of the judgment, pursuant to SCRCP 62(d).

XII. RULING ON A NEW TRIAL BASED ON VERDICT SIZE

A. Actual Damages

“When a party moves for a new trial based on a challenge that the verdict is either excessive or inadequate, the trial judge must distinguish between awards that are merely unduly liberal or conservative and awards that are actuated by passion, caprice, or prejudice.” *Allstate Ins. Co. v. Durham*, 314 S.C. 529, 530, 431 S.E.2d 557, 558 (1993). Likewise, the circuit court must avoid conflating the constitutionality of a damages award with an award motivated by passion or prejudice. *See e.g., Mitchell, Jr. v. Fortis Ins. Co.*, 385 S.C. 570, 592-96, 686 S.E.2d 176, 187-190 (2009) (finding a \$15 million punitive damages award to be “grossly excessive” such that it rose to the level of a due process violation but finding “no credible evidence anywhere in the record” to support the defendant’s contention that the compensatory or punitive damages award resulted from passion, caprice, or prejudice).

Further, the amount of unliquidated damages that “a jury might properly award ... is largely a matter of judgment based upon the facts and circumstances of each case.” *Watson v. Wilkinson Trucking Co.*, 244 S.C. 217, 224, 136 S.E.2d 286, 289 (1964). “In determining the question, the facts must be viewed in the light most favorable to the plaintiff[,] and[] whe[n] the amount of a verdict bears a reasonable relationship to the character and extent of the injury sustained, it is not excessive.” *Id.* Moreover, “the jury’s determination of damages is entitled to substantial

deference[,]” and the circuit court's decision on whether to grant a new trial based on the amount of the verdict “will not be disturbed on appeal unless it clearly appears the exercise of discretion was controlled by a manifest error of law.” *Welch v. Epstein*, 342 S.C. 279, 303, 536 S.E.2d 408, 420 (Ct. App. 2000).

Here, as to the award of compensatory damages, the jury was informed that Plaintiffs and J&J stipulated to \$3,329,973.05 in economic loss, which including Mr. Perry’s economic loss and costs of his medical treatment. After this stipulation, Plaintiffs requested \$2 million for every year of his life that Mr. Perry will lose pursuant to the South Carolina life expectancy tables, which this Court finds to be slightly less than 27 years and reasonable. The jury returned a verdict lower than Plaintiffs’ request.

The jury heard testimony about Mr. Perry’s pain and suffering extensively. The jury heard from Mr. Perry’s treating thoracic surgeon, Dr. Gibney, who testified that published scientific data indicates that it is an average of 50% of mesothelioma patients that will survive between 12 to 18 months, and then confirmed that this survival period applies to Mr. Perry. Dr. Gibney testified that people with mesothelioma suffer from extreme chest pain, restrictive air disease that leads to heart problems and extreme shortness of breath that makes the patient feel as though they are drowning. Dr. Gibney testified that mesothelioma almost always recurs and is aggressive. The jury then heard about the 6-8 surgeries Dr. Gibney performed on Mr. Perry in great detail, testifying that: (1) he had to cut Michael open from behind his shoulder blade all the way around to the front of his body to access the chest wall; (2) cut his large back muscle in half to access his chest where the cancer was; and (3) removed one of his ribs. Indeed, Dr. Gibney testified that he had to use his hands to “peel the pleura off the chest wall and then off the lungs. I liken it most to removing the peel off of an orange.” Dr. Gibney further testified that he had to remove Mr. Perry’s entire diaphragm and

rebuild it with mesh. Dr. Gibney told the jury about Mr. Perry's post-surgical recovery, describing it as significantly painful due to the removal of the pleura where the mesothelioma is. He also testified that Mr. Perry would die from his mesothelioma and that he would experience shortness of breath and chest pain until he died.

Evidence was also presented to the jury showing Mr. Perry's loss of life expectancy by over two decades, the anxiety and mental anguish he will suffer before he dies, and the fact that his mesothelioma will cause his death. Evidence demonstrated that J&J knew that asbestos caused cancer and despite knowing that the talc it used in JBP had repeatedly tested positive for asbestos, J&J continued to use that talc in JBP. Mr. Perry used JBP for 50 years and his use of that powder has significantly shortened his life. Thus, the Court finds that the jury's award was not the result of passion or prejudice.

The jury also heard testimony from Lonnie Long relevant to his loss of consortium claim. Mr. Long testified that he and Mr. Perry met over 20 years ago and talked about the life they had together prior to Mr. Perry's mesothelioma diagnosis. Mr. Long told the jury about sharing the holidays with Mr. Perry, and how Mr. Perry would decorate and do things with the neighborhood kids for the holidays. He talked about their honeymoon in Hawaii and how much they enjoyed traveling together. Lonnie described Mr. Perry as his "savior" because when they met Mr. Long was suffering with low self-esteem and depression and Mr. Perry showed him the strength to keep going. The jury heard that their conversations since Mr. Perry got mesothelioma have turned to "how we're going to fight this and how we're going to get through it." Mr. Perry then testified that Mr. Long takes him to all of his doctors' appointments and that he has never missed a single appointment. He noted that his husband did not stay in the courtroom for his testimony because he was "very protective."

The jury then considered the relationship that Mr. Perry and Mr. Long had experienced for over 20 years, what they lost as a result of Mr. Perry's mesothelioma, and what they would lose when Mr. Perry inevitably died. The jury's loss of consortium award reflects the jury's deliberation on that life, the loss of that life, and the loss that Mr. Long has suffered, and will suffer, as a result of Mr. Perry's inevitable death. The jury's award of loss of consortium damages was not the result of passion or prejudice.

B. The jury's award of punitive damages satisfies Constitutional standards.

J&J contends that the size of the jury's punitive damages award is grossly excessive and violated J&J's constitutional right to procedural and substantive due process. The Court disagrees.

"The purposes of punitive damages are to punish the wrongdoer and deter the wrongdoer and others from engaging in similar reckless, willful, wanton, or malicious conduct in the future" as well as "to vindicate a private right of the injured party by requiring the wrongdoer to pay money to the injured party." *Clark v. Cantrell*, 339 S.C. 369, 378-79, 529 S.E.2d 528, 533 (2000). "At least three important purposes are served by a punitive damages award: (1) punishment of the defendant's reckless, willful, wanton, or malicious conduct; (2) deterrence of similar future conduct by the defendant or others; and (3) compensation for the reckless or willful invasion of the plaintiff's private rights." *Mellen v. Lane*, 377 S.C. 261, 290, 659 S.E.2d 236, 251 (Ct. App. 2008). "The paramount purpose for awarding punitive damages is not to compensate the plaintiff but to punish and set an example for others." *Id.*

To receive a punitive damages award, "the plaintiff has the burden of proving by clear and convincing evidence the defendant's misconduct was willful, wanton, or in reckless disregard of the plaintiff's rights." *Welch v. Epstein*, 342 S.C. 279, 301, 536 S.E.2d 408, 419 (Ct. App. 2000). "A tort is characterized as reckless, willful[,] or wanton if it was committed in such a manner or

under such circumstances that a person of ordinary reason and prudence would have been conscious of it as an invasion of the plaintiff's rights." *Taylor v. Medenica*, 324 S.C. 200, 221, 479 S.E.2d 35, 46 (1996). "A conscious failure to exercise due care constitutes willfulness." *McCourt ex rel. McCourt v. Abernathy*, 318 S.C. 301, 308, 457 S.E.2d 603, 607 (1995).

"In South Carolina, 'punitive damages are allowed in the interest of society in the nature of punishment and as a warning and example to deter the wrongdoer and others from committing like offenses in the future.'" *Gamble v. Stevenson*, 305 S.C. 104, 110, 406 S.E.2d 350, 354 (1991) (quoting *Laird v. Nationwide Ins. Co.*, 243 S.C. 388, 396, 134 S.E.2d 206, 210 (1964)). The amount of the punitive damages award is largely within the discretion of the jury, and, like the compensatory award, is entitled to substantial deference. *McCourt By and Through McCourt v. Abernathy*, 318 S.C. 301, 309-10, 457 S.E.2d 603, 608 (1995).

Punitive damages awards should be reviewed for compliance with the Due Process Clause. *James v. Horace Mann Ins. Co.*, 371 S.C. 187, 194, 638 S.E.2d 667, 670 (2006). In *Mitchell v. Fortis Ins. Co.*, 385 S.C. 570, 686 S.E.2d 176 (2009), the South Carolina Supreme Court set forth three guideposts to be applied in conducting a post-judgment review of a punitive damages award: "(1) the degree of reprehensibility of the defendant's misconduct; (2) the disparity between the actual and potential harm suffered by the plaintiff and the amount of the punitive damages award; and (3) the difference between the punitive damages awarded by the jury and the civil penalties authorized or imposed in comparable cases." *Austin v. Stokes-Craven Holding Corp.*, 387 S.C. 22, 691 S.E.2d 135, 150-151 (2010). These guideposts incorporate the relevant factors set forth in *Gamble v. Stevenson*, 305 S.C. 104, 406 S.E.2d 350 (1991) and *BMW of North America v. Gore*, 517 U.S. 559 (1996). See *Mitchell*, 385 S.C. at 587, 686 S.E.2d at 185.

Reprehensibility is the most important consideration. *Mitchell*, 385 S.C. at 587, 686 S.E.2d at 185. A number of factors are relevant to reprehensibility, including whether: “(i) the harm caused was physical as opposed to economic; (ii) the tortious conduct evinced an indifference to or a reckless disregard for the health or safety of others; (iii) the target of the conduct had financial vulnerability; (iv) the conduct involved repeated actions or was an isolated incident; and (v) the harm was the result of intentional malice, trickery, or deceit, rather than mere accident.” *Id.*

The evidence supports the jury’s finding that J&J’s conduct was reprehensible. Evidence showed to the jury showed that Mr. Perry is expected to die a very premature and painful death despite having a life expectancy—in the absence of mesothelioma—of about 26 years. Thus, the harm caused to Mr. Perry was physical as opposed to solely economic.

J&J has been selling baby powder since 1894. The serious health risks of inhaling asbestos dust from talc were well-published in the scientific literature, and actually known by J&J decades before Mr. Perry was ever born, let alone exposed to asbestos from JBP. The jury saw advertisement by J&J in which it advocated that JBP was safe and pure, and used both language and images to capitalize on the mother-baby bond in order to make J&J money off the reputation of JBP. Mr. Perry was first exposed to JBP through his mother’s use and then continued using JBP repeatedly and on a daily basis for almost 50 years. Throughout the time that he used JBP, J&J never warned Mr. Perry, nor any other customer, of the potential asbestos exposure from the foreseeable use of JBP. The jury also saw documents and heard testimony that J&J misled the FDA as to the asbestos content of JBP, including telling the FDA that a substantial amount of asbestos can be allowed safely in a baby powder.

The jury found J&J negligent, and that it engaged in conduct that was willful, wanton, and reckless related to its negligence finding. This Court finds that the jury’s assessment is appropriate

considering the devastating physical and emotional losses that Mr. Perry and Mr. Long have suffered and will continue to suffer due to J&J's willful, wanton, and reckless conduct.

As to ratio, due process requires consideration of the ratio between the compensatory damages award and the punitive damages award. *Mitchell*, 385 S.C. at 588, 686 S.E.2d at 185. A single-digit ratio is generally thought to comport with due process. *Id.* The South Carolina Supreme Court has upheld verdicts with a 6.82 to 1 ratio, 3.75 to 1 ratio, 2.54 to 1 ratio, 9.96 to 1 ratio, and a 28 to 1 ratio. *Id.* at 593, 686 S.E.2d at 188 (collecting cases). In *Mitchell*, the Court remitted a punitive damages award from \$15 million to \$10 million so that it would be a 9.2 to 1 ratio. *Id.* at 594, 686 S.E.2d at 188.

The Court finds the ratio between the jury's compensatory and punitive award is well within the acceptable ratio as defined by South Carolina law. The Court also finds that the jury's award of punitive damages is well within the legislative cap of three times the compensatory award pursuant to S.C. Code Ann. §15-32-530.

The final *Gamble* factor is an evaluation of like awards in similar cases. The Court may properly consider the similarity between the punitive damages awarded by the jury in the case under review as compared to punitive damages awards in other cases. *Mitchell*, 385 S.C. at 588, 686 S.E.2d at 186. Relevant points of comparison are "the type of harm suffered by the plaintiff or plaintiffs; the reprehensibility of the defendant's conduct; the ratio of actual or potential harm to the punitive damages award; the size of the award; and any other factors the court may deem relevant." *Id.* at 588-89, 686 S.E.2d at 186.

Mr. Perry's award is comparable to awards in other talc cases with young plaintiffs.

In the Theresa Garcia case tried earlier this year in Chicago, the jury awarded \$45 million in compensatory damages to her estate (\$33 million for noneconomic damages) and to her children

(\$12 million). Ms. Garcia had a very similar profile to Mr. Perry – she was only 52 years old and her primary exposure was to JBP.

In another reported decision from 2021, a California jury awarded \$29,490,000 in compensatory damages to Teresa Leavitt and her husband in their case against J&J, again pre-bankruptcy. *Leavitt v. Johnson & Johnson*, No. A157572, 2021 WL 3418410, at *2 (Cal. Ct. App. Aug. 5, 2021). Mrs. Leavitt was exposed to Johnson’s Baby Powder as an infant and adult and was diagnosed with mesothelioma at only 51 years old. *Id.*

There are not a large number of verdicts against J&J because its multiple bankruptcies stayed litigation for almost two years. Talc verdicts against other companies have been substantially similar to the verdict reached in this case. In 2021, Nedelka Vanklive was awarded \$75 million in noneconomic damages in a talc case in Alameda County California. The case was started against both J&J and Whitaker, Clark & Daniels but J&J declared bankruptcy in the middle of trial. The verdict is against Whitaker, Clark & Daniels but the jury assigned 60% liability to J&J. Ms. Vanklive was exposed to JBP as an infant and child and developed mesothelioma at 48 years old.

In a talc trial in California in 2022, the jury awarded \$32 million in noneconomic damages to Rita-Ann Chapman, and \$8 million to her husband, and a total of \$11.3 million in punitive damages in a case involving exposure to body powders made by Avon and J&J. Mrs. Chapman used both J&J and Avon body powders as a child and adult and was 75 years old at the time of her mesothelioma diagnosis.

In the *Plant* case tried before this Court in 2023, the jury awarded \$20 million in noneconomic damages to Sarah Plant, \$3.5 million in future medical expenses, and \$5 million to

her husband, in a trial against talc supplier Whitaker, Clark & Daniels. Mrs. Plant was only in her thirties when she developed mesothelioma from her use of asbestos-containing talc powders.

These recent talc verdicts against J&J and others establish that the award to Mr. Perry is consistent with verdicts in other talc cases across the country.

Finally, J&J contends that the jury's punitive damages award in this case is either unsupported or unconstitutional because it no longer sells the talc-based version of JBP. The Court disagrees as this argument fails to account for one of the purposes of punitive damages pursuant to South Carolina law—to deter the wrongdoer **and others** from engaging in similar reckless, wanton, willful, or malicious conduct in the future. *See Portrait Homes—South Carolina, LLC v. Pennsylvania National Mutual Insurance Company*, 442 S.C. 215, 900 S.E.2d 245 (Ct. App. 2023).

The evidence was that J&J sold talc-based JBP for over 100 years, with no warning of potential asbestos exposure, despite actual knowledge that both its talc ore and its finished JBP product had asbestos in it. Additionally, according to J&J, the decision to stop selling JBP was not based on safety reasons. The Court finds that the jury's punitive damages award was proper and does not violate any Constitutional bounds.

J&J's request to eliminate the jury's verdict as to punitive damages is DENIED. However, the Court will reduce the amount of the punitive damages award from \$30,000,000 to \$25,000,000.

XIII. J&J IS NOT ENTITLED TO A NEW TRIAL BASED ON *STATE V. WRIGHT*.

J&J contends that this Court prevented it from being able to present a defense at trial and thus is entitled to a new trial pursuant to *State v. Wright*, 271 S.C. 534, 248 S.E.2d 490 (1978). The Court disagrees.

J&J was not prevented from presenting a defense, nor did the Court make comments that affected the outcome of the case or the effectiveness of counsel's presentation. Unlike counsel in *Wright*, J&J chose to not put on its case and instead try this case solely through Plaintiffs' case-in-chief. J&J's defense was that JBP does not have enough asbestos in it to have been a substantial contributing factor in the development of Mr. Perry's mesothelioma. J&J's additional defense was that JBP does not have asbestos in it. This Court did not strike any of J&J's experts and they were all free to testify at trial. The only limitation was that Dr. Weill and Dr. Diette could not testify that Mr. Perry's mesothelioma was spontaneous. J&J chose not to call any of its experts.

J&J further argues that it could not try its case because of the potential for a spoliation order and the Court's exchanges with Dr. Kuffner. The Court disagrees on both counts.

A. The *Hood-McBrayer* Spoliation Order

The *Hood-McBrayer* Spoliation Order was entered on November 5, 2021, in another case involving decades of use of JBP. While there was discussion during the pre-trial hearing of this Order, it was never entered. No such order was ever signed in this trial, and no adverse instructions were given in this trial. The Court's potential consideration of entering the *Hood-McBrayer* Order did not change the outcome of Mr. Perry's trial or J&J's defense. J&J has failed to identify any witness that could not be called to testify as a result of the *Hood-McBrayer* Order. Critically, the potential for this order did not stop J&J from discussing negative test results with the jury in Mr. Perry's trial. J&J questioned Dr. Haber about tests, from the FDA and others, which did not detect asbestos in either the talc used in JBP or the finished product. The record also shows that Dr. Hopkins testified to the jury, through videotaped deposition, about J&J's negative testing results that it now argues the potential for this Order kept it from doing.

The Court made clear multiple times throughout this trial that J&J could call whatever witnesses it chose. J&J contends that it could not call *any* witnesses because it could not discuss negative testing. This is incorrect. The Court afforded J&J the opportunity to call expert witnesses with no notice to Plaintiffs' counsel, which J&J chose not to do. J&J was given every opportunity by this Court to put on its case with expert witnesses.

B. The Court's exchanges with Dr. Kuffner.

Dr. Kuffner was not an expert witness in this case. Because of this, the Court did not allow Dr. Kuffner to give opinions that would have been based on his skill, knowledge, training, and education because that testimony is not the testimony of a fact witness. J&J, during its questioning of Dr. Kuffner, made clear that his role of corporate representative was separate from his role as chief medical officer. He was permitted to testify as to what J&J documents say about the presence of asbestos in its talc and in the finished talc products. He also testified as to what documents were produced in litigation and not destroyed or concealed.

Beyond being able to testify as an expert on issues outside of his role as a fact witness or corporate representative, J&J does not identify any other topic on which the trial court prevented Dr. Kuffner from testifying to justify its request for a new trial.

C. Different standard as to J&J

J&J contends the Court treated J&J so differently from Plaintiffs, and applied a different standard of law, that it affected the verdict in Mr. Perry's case and J&J is entitled to a new trial. The Court disagrees.

First, the Court's comments regarding the years that LTL spent in bankruptcy neither reflect a different standard for J&J nor did the comments infect the trial such that J&J is entitled to a new trial. The record reflects the uncontradicted fact that any such discussion did not happen

in the presence of the jury at any point in time. There is no precedent preventing this Court from disagreeing with the steps taken by a defendant to avoid talc liabilities, and J&J has provided none.

Second, the Court's comments regarding the opinions that J&J intended to have its experts offer, including Dr. Sanchez's definition of asbestos, were not improper or prejudicial. The Court does not agree that the comments prevented J&J from presenting a defense to Plaintiffs' claims at trial and they were not made in the presence of the jury. This Court's discussion of Dr. Sanchez's anticipated testimony was made as part of this Court's gatekeeping function. the Court, in minding the Rule 702 gate, must assess not only (1) whether the expert's *method* is reliable (i.e., valid), but also (2) whether the *substance* of the expert's testimony is reliable." *State v. Warner*, 430 S.C. 76, 86, 842 S.E.2d 361, 365–66 (Ct. App. 2020), *aff'd in part and remanded*, 436 S.C. 395, 872 S.E.2d 638 (2022). A trial court does not abuse its discretion under Rule 702 by excluding the testimony of medical experts whose conclusions were not supported by the data and experiments upon which they relied. *Id.* (citing *Gen. Elec. Co. v. Joiner*, 522 U.S. 136, 146 (1997)). "A court may conclude that there is simply too great an analytical gap between the data and the opinion proffered." *Id.* (quoting *Joiner*, 522 U.S. at 146).

J&J knew that this Court did not prohibit any of its experts testifying to the jury because as of Saturday, August 3, 2024, J&J intended to call at least 5 witnesses, including Dr. Sanchez, Dr. Diette, and/or Dr. Weill, during its case-in-chief.

For more than 50 years, it has been well settled that a Court is entitled to ask a witness questions to get to the truth. In *Williams v. South Carolina Farm Bureau Mut. Ins. Co.*, 251 S.C. 464 (1968), our Supreme Court held:

The trial judge, of course, has the right, in [her] discretion, and in a proper manner, to question witnesses during a trial, in order to elicit the truth. This discretion will not be controlled except where it appears that the manner in which the judge exercised the right tended to unduly impress the jury with the importance of the

testimony elicited, or would be likely to lead the jury to suppose that the judge was of the opinion that one party rather than the other was correct upon a particular issue of fact.

If a trial judge in the exercise of his discretion feels called upon, in the interest of justice, to question witnesses to elicit the truth, he should be cautious to see that such questions are propounded in a fair and impartial manner, and should not express or indicate to the jury the judge's opinion as to the facts of the case or the weight or sufficiency of the evidence.

The Court questioned Dr. Kuffner during both direct and cross. When the Court believed the jury needed clarity on a position taken by Plaintiffs during the questioning of Dr. Kuffner, the record shows that the Court asked counsel for clarity and then instructed the jury.

None of the discussions that J&J takes issue with occurred in front of the jury. J&J's counsel even stated during its closing argument that J&J did not need to present any witnesses because it had proven its case through Plaintiffs' own witnesses. J&J chose not to call its expert witnesses.

D. Exchanges between attorneys for Plaintiffs and J&J

This Court finds that there is no authority or compelling evidence to grant a new trial based on a single exchange between counsel outside of the presence of the Court and outside of the presence of the jury. On Friday, August 9, 2024, Plaintiffs played the videotaped portion of the testimony of J&J's corporate representative, John Hopkins. This portion of the videotaped deposition had been edited and cut by J&J. During the re-direct, plaintiff's counsel at the deposition questioned Dr. Hopkins about the 1972 Report from Dr. Hutchinson, finding asbestos in J&J's talc repeatedly. Dr. Hutchinson took pictures of the actual asbestos fibers he found in J&J's talc. During the re-direct, plaintiff's counsel on the video not only discussed the results from Dr. Hutchinson's testing, but also displayed the pictures of the asbestos fibers Dr. Hutchinson found on the video. The video that was cut and played by counsel for J&J, however, omitted the

photographs of the asbestos found in J&J's talc by Dr. Hutchinson to the jury. During the break, Plaintiffs' counsel and counsel for J&J spoke about Plaintiffs' concerns regarding the way in which J&J presented evidence to the jury. The entire exchange with J&J's counsel lasted less than a minute.

The Court does not find that this single incident with Plaintiffs' counsel resulted in such intimidation that J&J's counsel could not effectively represent their clients. J&J has provided no such evidence justifying its request for a new trial based on *State v. Wright*. Unlike the circumstances in *State v. Wright*, this Court does not find that a single incident outside the presence of the jury, for which counsel was reprimanded, rises to any level sufficient to justify a new trial.

The Court has treated all parties and their counsel fairly. Throughout this trial, the Court disagreed with all parties on various issues. The Court was evenhanded when it came to ruling on objections. The Court reprimanded counsel on both sides when necessary. J&J has therefore failed to identify any incident which negatively affected its counsel's effectiveness as discussed in *State v. Wright*.

J&J's request for a new trial pursuant to *State v. Wright* is DENIED.

XIV. RULING ON NEW TRIAL *NISI REMITTITUR*

A new trial nisi remittitur may be granted "when the verdict indicates the jury was unduly liberal in determining damages." *Welch v. Epstein*, 342 S.C. 279, 303, 536 S.E.2d 408, 420 (Ct. App. 2000). "A motion for new trial *nisi remittitur* asks the trial court in its discretion to reduce the verdict because it is merely excessive, although not motivated by considerations such as passion, caprice or prejudice." *Id.*

When reviewing a request for new trial nisi remittitur, substantial deference must be given to the jury's determination of damages. *Hassell v. City of Columbia*, 430 S.C. 620, 635, 846 S.E.2d

373, 381 (Ct. App. 2020). The consideration of a motion for a new trial nisi remittitur requires the trial judge to consider the adequacy of the verdict in light of the evidence presented. *Proctor v. Dep't of Health & Env'tl. Control*, 368 S.C. 279, 320–21, 628 S.E.2d 496, 518 (Ct. App. 2006). “Compelling reasons must be given to justify invading the jury’s province by granting a new trial nisi remittitur.” *Id.*

The jury award against J&J, along with AII, was for \$23,037,500 in actual damages to Mr. Perry, \$9,618,750 to Mr. Long in loss of consortium damages, and \$30,000,000 in punitive damages against J&J. This Court also recognizes Plaintiffs’ settlement setoff in the amount of \$11,255,000 to be fair and reasonable.

As reasons to remit this jury award of actual damages to Mr. Perry and Mr. Long, J&J argued the following:

For example, the evidence simply does not support the massive loss of consortium award to Mr. Long. Nothing unusual about his loss of services of explained to in detail to justify a \$9M loss. Again, there is no attempt here to deny that he has suffered loss. But the jury’s award is grossly excessive or, failing that, overly liberal. The award to Mr. Perry is also shockingly excessive and, failing that, overly liberal. Mr. Perry’s disease has, fortunately, been treated at least temporarily by his treating doctors and he appeared for most of the two-week trial in court in Richland County. While without question he suffers from a terrible disease, he is ambulatory and self-sufficient, and was physically well-composed and able to testify during the trial, demonstrating his current state of health.

A. Analysis of other cases.

- *Firth v. Garlock Sealing Technologies, LLC*, Civil Action No. 2008-CP-23-09186 (Greenville Cty. 2009), involved a 72-year-old deceased mesothelioma. The jury awarded \$300,000 for survival and \$400,000 for wrongful death, for a total of \$700,000 in compensatory damages. The jury declined to award damages for loss of consortium.
- *Garvin v. AGCO Corporation, et al.*, Civil Action No. 2012-CP-40-06675 (Richland Cty. 2013), involved a 74-year-old living mesothelioma who worked on pumps and valves as a millwright for thirty years. The jury awarded \$10 million for pain and suffering and \$1 million for loss of consortium, for a total of \$11 million in compensatory damages. The jury also awarded an aggregate of \$27 million in

punitive damages against three defendant parties. After a trial defendant challenged the verdict, and the trial court granted a new trial *nisi remittitur* reducing the compensatory damages award from \$11 million to \$1.5 million (a remittitur of slightly more than 85%) and reducing the punitive damages award against the challenging defendant from \$11 million to \$3.5 million, commensurate with the statutory cap on punitive damages.

- *Keene v. CNA Holdings, LLC*, Civil Action No. 2013-CP-42-03915 (Spartanburg Cty. 2015), involved a 70-year-old deceased mesothelioma who worked as a millwright for Daniel Construction at the Celanese Spartanburg facility from 1969 to 1978. The jury awarded \$2 million for pain and suffering, \$5 million for wrongful death, and \$5 million for loss of consortium, for a total of \$12 million in compensatory damages. The jury also awarded \$2 million in punitive damages.
- *Jolly v. General Electric Co., et al.*, Civil Action No. 2016-CP-42-01592 (Spartanburg Cty. 2017), involved a 73-year-old living mesothelioma who worked for Duke Power as a mechanical inspector around other trades engaged in tearing-out asbestos insulation and gaskets from 1980 to 1984. The jury awarded \$200,000 for pain and suffering and \$100,000 for loss of consortium, for a total of \$300,000 in compensatory damages. This Court granted a new trial *nisi additur*, increasing the compensatory damages award to a total of \$1,870,000.
- *Edwards v. Scapa Waycross, Inc.*, Civil Action No. 2013-CP-46-00368 (York Cty. 2018), involved a 60-year-old deceased mesothelioma who worked at Bowater Paper Mill on a paper machine from 1963 to 2002. The jury awarded \$600,000 in survival and \$100,000 in wrongful death damages. This Court granted a new trial *nisi additur*, increasing the survival award by \$400,000 to \$1 million and sustaining the damages awarded for wrongful death. After additur, the compensatory damages totaled \$1,100,000.
- *Glenn v. 3M Co., et al.*, Civil Action No. 2015-CP-04-01607 (Anderson Cty. 2019), involved a 69-year-old deceased mesothelioma who worked for Duke Power as an instrumentation worker around trades tearing-out asbestos insulation and gaskets from 1970 through 1996. The jury awarded \$1 million for pain and suffering, \$1 million for wrongful death, and \$1 million for loss of consortium, for a total of \$3 million in compensatory damages. The jury also awarded \$2,125,000 in punitive damages.
- *Weist v. Kraft Heinz Company, et al.*, Civil Action No. 2020-CP-40-01597 (Richland Cty. 2021), involved the death of Kathy Weist. The jury awarded \$11 million for Kathy Weist's survival damages, \$10 million for the wrongful death damages and \$1 million for the loss of consortium damages. The jury also awarded \$10 million in punitive damages.

- *Plant v. Whittaker Clarke & Daniel et al*, Civil Action No. 2022-CP-40-01265 (Richland Cty. 2023), involved a 35 year old living mesothelioma who was exposed to talcum powder and cosmetic products. The jury awarded \$871,356 in past medical expenses, \$3,368,336 in future medical expenses, \$20 million in other damages, and \$5 million in loss of consortium.

B. *Garvin v. Crane Co.*

This Court points to now-Justice Hill's prior order in the *Garvin v. Crane Co.* case. *Order Denying in Part and Granting in Part Defendant Crane Co.'s Motion for Post-Trial Relief, Garvin v. AGCO Corporation*, No. 2012-CP-40-6675, Richland County Court of Common Pleas of South Carolina (Nov. 10, 2014)). After Mr. Garvin's trial, Justice Hill remitted the jury finding from \$10,000,000 in compensatory damages to \$1,500,000. The reasons for this remittitur were that Mr. Garvin was 74 years old, had testicular mesothelioma, and had several other serious medical conditions unrelated to his testicular mesothelioma. Additionally, Mr. Garvin was cancer-free and only had economic damages in the amount of \$149,000. Justice Hill noted that based on Mr. Garvin's pecuniary damages, the nature of his injury (testicular mesothelioma), his treatments, his age, and his life expectancy, there were compelling reasons to remit Mr. Garvin's verdict.

C. *Seay v. CNA Holdings, LLC*

Justice Hill also evaluated a request for new trial nisi remittitur in the *Seay v. CNA Holdings, LLC* case. *Order Denying Defendant CNA Holding, LLC's Motion for Post-Trial Relief, Angie Keene, Individually and as Personal Representative of the Estate of Dennis Seay, Deceased, and Linda Seay v. CNA Holdings, LLC*, No. 2013-CP-42-03915, Richland County Court of Common Pleas of South Carolina (Jan. 8, 2016)). Celanese requested that Justice Hill remit the jury's compensatory verdict from \$2,000,000 to \$1,500,000, which Justice Hill declined to do. *Id.* at *31. In support of his ruling, Justice Hill noted that Mr. Seay had pleural mesothelioma and suffered with chest and lung pain before his diagnosis. He noted all of Mr. Seay's pain and

suffering, including all of his medical treatments and surgeries to try and prolong his life. He noted that before his pleural mesothelioma diagnosis, Mr. Seay was “strong and in very good physical shape,” Justice Hill noted that Mr. Seay suffered from excruciating pain and mental distress, and that he found no compelling reason to reduce the compensatory verdict. Justice Hill further noted that the compensatory verdict was similar to other jury awards for someone with pleural mesothelioma.

Justice Hill further elaborated in his *Seay* post-trial order that:

As Celanese points out, in *Garvin*, this Court did remit the pain and suffering awarded to Mr. Garvin from \$10 million to \$1.5 million. But the cases are very different. Mr. Garvin was alive and cancer free at the time of his trial, whereas Mr. Seay suffered unrelenting pain until his mesothelioma killed him. Mr. Garvin was four years older at the time of trial than Mr. Seay was at his death, and Mr. Garvin’s life expectancy was a number of years shorter. Mr. Garvin suffered from a testicular form of mesothelioma, while Mr. Seay suffered from pleural mesothelioma that caused his death by suffocation.

Id. at *35.

Justice Hill also affirmed the jury’s award of \$5,000,000 for loss of consortium damages to Mr. Seay’s widow because she “suffered extreme hardship and loss” because of her husband’s mesothelioma. *Id.* at *36. Justice Hill noted how much time Mr. and Mrs. Seay spent together and the fact that Mrs. Seay took care of her husband when he was sick because he “always wanted her right beside him.” *Id.* at *36. Justice Hill noted that the loss of consortium award was supported by the trial evidence and was not unduly liberal. *Id.* at *37. Justice Hill acknowledged that, same as in *Garvin*, there was no compelling reason to disturb the loss of consortium verdict.

Justice Hill also affirmed the award of \$5,000,000 to the wrongful death claim noting that Mr. Seay would have had a life expectancy of 13 years had he not developed mesothelioma.

Finally, Justice Hill declined to remit the jury’s punitive verdict, finding of \$2,000,000 in total, or in the alternative to \$50,000. *Id.* at *43. Justice Hill walked through all of the evidence

that had been presented to the jury about how long Celanese had known about asbestos causing disease, how long Celanese had known that the asbestos on its premise exposed people to high enough levels of asbestos to cause disease, and that Celanese had knowingly and consciously disregarded the rights and safety of Mr. Seay and other workers on its premise and never warned anyone of asbestos hazards. Justice Hill wrote that:

...evidence included Celanese's decision to continue using asbestos products when there were available alternatives, and deliberately concealing the nature of the danger from contract workers like Mr. Seay. This was not isolated conduct, but continued for almost a decade...

Id. at *45.

D. Mr. Perry

The evidence shows that Mr. Perry's injuries are very different from Mr. Garvin's. Mr. Perry was 53 years old at the time of his diagnosis in 2023, more than 20 years younger than Mr. Garvin at the time of his trial. Mr. Perry has pleural mesothelioma and, as the jury heard from Dr. Haber, is facing a resurgence of his disease. He has no other severe medical conditions aside from his pleural mesothelioma and was in good physical health before his cancer diagnosis.

Mr. Perry is more similar to Mr. Seay. Mr. Perry, like Mr. Seay, has pleural mesothelioma. He has suffered extreme chest and lung pain. He has had extensive medical treatments, including but not limited to chemotherapy, radiation, and a six-to-eight surgery during which his back muscle was cut in half, his cancer-ridden lung lining was peeled off like an orange rind, his rib was removed, and his diaphragm was removed and reconstructed with mesh. The jury heard from Dr. Gibney that Mr. Perry's mesothelioma will recur, will be aggressive, and that when that happens, Mr. Perry will suffocate to death with a sensation of "drowning."

Relevant to both *Garvin* and *Seay* prior orders, Mr. Perry's loss of life expectancy was approximately 26 years. Mr. Perry had \$510,620.05 in medical bills, an amount that was stipulated

to as fair and reasonable by J&J. The record also shows that Mr. Perry had an economic loss of \$2,819,353, an amount also stipulated to by J&J as fair and reasonable. Therefore, Mr. Perry had a total economic loss of \$3,329,973.05, an amount that J&J stipulated to which was then presented to the jury. This is contrasted with Mr. Garvin's economic loss of \$149,000.

Evidence supports the fact that Mr. Long has felt the loss of his husband, and will continue to feel it long after Mr. Perry dies. The jury heard evidence that his husband gives him strength, and his entire life revolves around his relationship with Mr. Perry. The jury heard that Mr. Long takes Mr. Perry to every single doctor's appointment without fail, and loves his husband so much he could not even watch him testify at trial because it would be too painful to watch Mr. Perry be cross-examined.

Similar to the *Seay* order, the jury heard evidence that J&J continued to sell JBP knowing that it had asbestos in it and knowing that there was an alternative available in cornstarch the entire time JBP was sold. The jury also heard evidence that J&J deliberately misled the FDA as to the asbestos in its talc and deliberately designed, and advocated for the use of, underpowered testing methods so that the asbestos in its talc either would not be found or could be designated as "non-detect." The jury also heard evidence that J&J hid the fact that it had asbestos in its talc powder from the American public, including Mr. Perry. Finally, the jury heard evidence that J&J persisted in this conduct for decades – long after it first learned in the 1950s that its talc had tremolite asbestos in it.

As Justice Hill noted in his prior post-trial order in *Garvin*, "While the jury did decide on a large award, the Court has no reason to conclude it was the result of any improper motive or outside consideration. Placing a value on pain and suffering is inherently subjective." *Order*

Denying in Part and Granting in Part Defendant Crane Co. 's Motion for Post-Trial Relief, Garvin v. AGCO Corporation, at *32 (Nov. 10, 2014)).

However, the Court does find the verdict should be reduced because it is “merely excessive, although not motivated by considerations such as passion, caprice or prejudice.” *Welch v. Epstein*, 342 S.C. 279, 303, 536 S.E.2d 408, 420 (Ct. App. 2000). The verdict to Mr. Perry of \$23,037,500 shall be reduced by \$4,000,000 thereby leaving a verdict of \$19,037,500.

The Court finds the loss of consortium award shall be reduced because it is “merely excessive although not motivated by considerations such as passion, caprice or prejudice.” *Id.* The verdict to Mr. Long of \$9,618,750 shall be reduced by \$3,000,000 thereby leaving a verdict of \$6,618,750.

Finally, the Court finds that the jury’s punitive damages award is reasonable given the evidence at trial and that it is within the 3:1 ratio pursuant to S.C. Code Ann. §15-32-530. However, the Court finds that the punitive verdict against the Defendant shall be reduced by \$5,000,000, thereby leaving a punitive damage verdict of \$25,000,000. Against J&J.

Plaintiffs’ verdict of \$19,037,500 for Mr. Perry’s past and future total loss, \$6,618,750 for Mr. Long’s loss of consortium shall be set off by the fair and reasonable setoff of \$11,255,000, resulting in a compensatory judgment of \$14,401,250. The total punitive judgment, after reduction is \$25,000,000. Therefore, the total judgment to be entered against the J & J entities is \$39,401,250.

J&J’s request for nisi remittitur as to Plaintiffs’ compensatory awards and the punitive damages award is GRANTED.

[JUDGE’S SIGNATURE PAGE TO FOLLOW]



Richland Common Pleas

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

Case Number: 2023CP4004072

Type: Order/Other

So Ordered

Jean H. Toal

Electronically signed on 2024-12-10 16:43:06 page 86 of 86

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF RICHLAND	)	FOR THE FIFTH JUDICIAL CIRCUIT
	)	
MICHAEL L. PERRY and	)	C/A NO. 2023-CP-40-04072
LONNIE L. LONG,	)	
	)	<i>In Re:</i>
Plaintiffs,	)	Asbestos Personal Injury Litigation
	)	Coordinated Docket
v.	)	
	)	
AMERICAN INTERNATIONAL	)	
INDUSTRIES, et al.,	)	
	)	
Defendants.	)	

**AMENDED ORDER¹ ON DEFENDANTS JOHNSON & JOHNSON; LLT
MANAGEMENT, LLC; JOHNSON & JOHNSON HOLDCO (NA) INC.; AND KENVUE,
INC.'S POST-TRIAL MOTIONS**

Defendants Johnson & Johnson; LLT Management, LLC; Johnson & Johnson Holdco (NA) Inc., and Kenvue, Inc. (collectively “J&J”) move for relief from the jury’s August 15, 2024 verdict in favor of Plaintiffs Michael L. Perry and Lonnie L. Long. For the reasons set forth below, J&J’s motions for judgment notwithstanding the verdict, new trial absolute based on errors of law, new trial absolute based on the thirteenth juror doctrine is DENIED, and new trial *nisi remittitur* are GRANTED. Separately, J&J’s motion for setoff and production of settlement agreements is GRANTED as to setoff, but DENIED as to the production of settlement agreements. Finally, J&J’s motion for stay of execution on the judgment is GRANTED, in part.

I. EVIDENCE AT TRIAL

Viewing the record in the light most favorable to Plaintiffs, sufficient evidence supports the jury’s finding that Michael Perry’s malignant pleural mesothelioma was proximately caused

¹ This Order is amended per the Order on Remand filed today, February 28, 2025, at page 6 to reflect the deletion, in the description of Dr. Longo’s findings of the words “tremolite or”.

by exposure to asbestos in Johnson's Baby Powder ("JBP"). Mr. Perry and his husband, Lonnie Long, brought this action against multiple defendants, including but not limited to J&J. Evidence at trial demonstrated that Mr. Perry was exposed to asbestos by using JBP on himself on a daily basis, multiple times a day, from 1974 through 2019. His mother also used JBP on him during diaper changes from the day of his birth on December 20, 1969. Three of Plaintiffs' causes of action were placed before the jury: negligence, strict liability, and fraudulent misrepresentation. J&J did not put on a case-in-chief.

A. Liability and Punitive Damages

1. Mr. Perry testified to his decades-long use of JBP on a daily basis.

Mr. Perry testified that his earliest memory of using talcum powder on himself was from 1974, when he was four or five years old, through 2019. He also testified that, after he was born in 1969, his mother used JBP on him during diaper changes when he was an infant and that his use of the baby powder "didn't just start at the age of five." This is all undisputed. He explained that he was using Johnson's Baby Powder two to four times per day. The jury further heard that Mr. Perry used a minimum of ten bottles of JBP per year. Use of JBP was part of Mr. Perry's daily hygiene routine because he was allergic to deodorant. The jury heard that this also was undisputed.

The jury was shown images of two bottles of JBP Mr. Perry found in his home. There was no warning of any kind on the first bottle. The second bottle had a small warning regarding keeping the bottle away from small children to avoid inhalation. Neither bottle found in his home had a warning that JBP could contain asbestos. Mr. Perry further testified to the jury about what was written on the bottles of JBP found in his home, including the phrases "purest protection", indicating that "pure" was synonymous with "safe," and "clinically proven mildness," indicating once more that "clinically proven" meant scientifically safe.

2. JBP contained asbestos.

It was undisputed that throughout Michael Perry's use of JBP, the specifications for the powder called for talc sourced from different mines including but not limited to mines in Val Chisone, Italy, Vermont, and China. Plaintiffs' expert, Dr. William Longo, testified that he has analyzed talc from each source that J&J used in its baby powder. His test results showed the presence of asbestos in each of the mines utilized by J&J in its baby powder throughout time. He confirmed that he found tremolite and other asbestos fibers, including winchite/richterite, over and over in JBP. Dr. Longo further testified that he found asbestos in JBP throughout each of the decades in which Mr. Perry used JBP – 1960s through the late 2000s. He confirmed that he found tremolite asbestos, anthophyllite, richterite, and actinolite in JBP. Battelle Memorial Labs also found tremolite asbestos in JBP 153 times as early as the 1950s. By the early 1970s, J&J had numerous reports showing the presence of tremolite in its Vermont and Italian talc ore. Additionally, even with "poor analytical sensitivity", the FDA's contract lab found asbestos in the talc used in JBP in 2019. Despite J&J having this knowledge, J&J admitted through its former corporate representative, Dr. John Hopkins, that there has never been a warning about asbestos on JBP or any J&J talc product.

3. Michael Perry was exposed to asbestos from JBP.

The testimony established that Mr. Perry's use of JBP exposed him to visible asbestos-containing dust. Plaintiffs' expert Dr. Steven Haber testified that once talc is used in a powder form inside the home, often in enclosed spaces such as a bedroom or bathroom, it is impossible to get the asbestos from that talc powder out of the home. There was uncontradicted evidence regarding re-entrainment. Dr. Haber explained that once asbestos settles down to the ground or to a surface, anyone walking by it or brushing it can put the asbestos fibers back into the air inside

the home. He elaborated that even if one were to vacuum or sweep up the talc dust with asbestos in it that is all over the home, that process is simply blowing the asbestos back into the air. Once it's in the air, it can be breathed in. Dr. Haber cited an authoritative, peer-reviewed and published paper by Dr. Hillerdal that studied these very concepts.

Dr. Haber additionally testified that OSHA began regulating asbestos exposure in the workplace in the early 1970s and that while the permissible exposure limit eventually was set at .1 fiber per cubic centimeter of air (fiber/cc) time -weighted average, that level was not safe for mesothelioma and people exposed at this level would still develop the disease. Dr. Haber testified about his reliance on the Steffen study, which the jury heard showed that when individuals used JBP for 40 years, their exposure level to asbestos is between .38 to 5.18 fibers/cc years. This exposure level substantially increases the user's risk of developing mesothelioma. Dr. Haber opined, to a reasonable degree of medical certainty, that Mr. Perry's range of exposures from his use of JBP was between .1 to 4 fibers per cc. Epidemiological studies have established that these levels are sufficient to cause mesothelioma, including studies by Gardner, Ferrante, Jiang, LaCourt, Roland, Iwatsubo, and Rodelsperger.

The jury heard testimony from Dr. Madigan, who testified that he did a dose calculation immediately prior to this trial for someone who applied JBP twice a day for 30 years. He testified that "there is an estimate of the fibers per cc of asbestos that a person was exposed to by using talc for one minute. And it's 1.9 fibers per cc." He further testified that this was the equivalent to .35 fiber years. Mr. Perry used even more talc than the hypothetical person utilized in Dr. Madigan's calculation, and his calculation demonstrated an increased risk. Dr. Madigan's dose testimony was undisputed.

The jury also heard testimony from Dr. Haber, who testified that OSHA concluded that there is no safe level of exposure to asbestos and that mesothelioma requires the least amount of asbestos exposure to develop. Dr. Haber testified to the jury about the *Steffen, et al.* peer-reviewed published paper and explained the levels of exposure that occur when someone uses J&J's talc. He explained to the jury that the study showed that individuals who used J&J's talc for 40 years had an exposure level to asbestos between .38 to 5.18 fibers/cc years, which substantially increases the user's risk of developing mesothelioma. Dr. Haber testified that Mr. Perry's range of exposures to asbestos from JBP was between .1 to 4 fibers per cc. He clarified that 1 fiber per cc meant breathing "10,000 fibers every minute, millions or billions in a year."

4. Plaintiffs' experts considered Mr. Perry's frequent use of JBP.

The jury heard testimony from Dr. Haber that Mr. Perry was "an above-average user" of JBP and he was "not only using it two to four times a day, but he was putting it on his whole body, and . . . at times he was actually putting it on his . . . face." He also explained that Mr. Perry's use of JBP was "a repeated use" and, because Mr. Perry is "a big guy" that "the amount of talc that he uses . . . is going to be more than . . . a smaller-framed individual." The testimony established that Mr. Perry's exposures to asbestos from JBP were a "substantial contributing factor to" the "development of [his] mesothelioma." The jury also heard evidence that J&J used talc in JBP from Italy before 1966/1967, talc "mostly" from Vermont from 1966 to 2003, talc from Italy for seven months in 1979, and talc from China from 2003 to 2020 – and each of these mines have tested positive for asbestos. The uncontradicted evidence was that Mr. Perry inhaled talc from JBP from each of these mine sources.

5. Mr. Perry's lung tissue contained amphibole asbestos fibers found in JBP.

Plaintiffs' material scientist expert Dr. Longo performed a tissue digestion on Mr. Perry's tissue. The tissue digestion revealed the presence of tremolite asbestos, winchite asbestos, and talc particles in Mr. Perry's lungs. The jury heard from Dr. Longo that the tremolite in Mr. Perry's lungs was consistent with what he has previously and repeatedly found in his testing of JBP, and it is also consistent with "Johnson & Johnson's own internal documents from decades ago that said when you find tremolite in talc in people's lungs with mesothelioma, it's a fingerprint for exposure to asbestos." Dr. Longo further explained to the jury that J&J's own experts have found winchite in JBP, that winchite has been found in the talc sourced from the Italian mine used by J&J, that he has found richterite in JBP and that J&J's own expert refers to "richterite" as "winchite" as finding the same thing because the chemistry is so close. The jury then heard, uncontradicted, that Dr. Longo has never found winchite in any of his testing of brakes.

B. Successor Liability

Prior to the trial of this matter, the parties agreed that the issue of successor liability would not be tried to the jury. Therefore, no evidence was put forth to the jury throughout trial as to the successor liability of any J&J entities, even though J&J continued to make objections on the record regarding certain evidence. Plaintiffs and J&J jointly stipulated that the verdict form submitted to the jury would read "J&J Entities" so that this Court could rule on the successor liability post-trial. As such, the parties have since submitted extensive briefing regarding the successor liability issue to this Court and reserved that issue for the Court's ruling.

C. Jury Trial

A jury trial was held against J&J and a co-defendant, American International Industries, in August, 2024. The jury found that (1) J&J was negligent and that its negligence proximately caused

Mr. Perry's mesothelioma; (2) J&J was strictly liable for selling defective products that were a proximate cause of Mr. Perry's mesothelioma; and (3) J&J was willful, wanton, and reckless in its conduct. The jury returned a verdict of \$23,037,500 for Mr. Perry's past and future loss and of \$9,618,750 for Lonnie Long on his loss of consortium claim. After a bifurcated trial on punitive damages, the jury found that J&J had acted willfully, wantonly, and recklessly and awarded \$30,000,000 in punitive damages against J&J.

J&J now seeks judgment notwithstanding the verdict, a new trial absolute, and a new trial *nisi remittitur*. J&J contends that there was no evidence to support any part of the jury's verdict, and challenges the amounts of the compensatory and punitive damages awards.

II. RULING ON SUCCESSOR LIABILITY

A. Standard of Review

In South Carolina, successor liability arises when: (a) there was an agreement to assume such debts; (b) the circumstances surrounding the transaction indicate a consolidation of the two corporations; (c) the successor company was a mere continuation of the predecessor company; or (d) the transaction was fraudulently entered into for the purpose of wrongfully defeating creditor claims. *Nationwide Mutual Ins. Co. v. Eagle Window & Door, Inc.*, 424 S.C. 256, 263, 818 S.E.2d 447, 451 (2018); *Walton v. Mazda of Rock Hill*, 376 S.C. 301, 305-06, 657 S.E.2d 67, 69 (Ct. App. 2008); *Simmons v. Mark Lift Indus.*, 366 S.C. 308, 312, 622 S.E.2d 213, 215 (2005); *Brown v. American Ry. Express Co.*, 128 S.C. 428, 123 S.E. 97 (1924). A successor corporation is a mere continuation of its predecessor when the predecessor and successor corporations have substantially the same officers, directors, and shareholders. *Simmons*, at 366 S.C. at 313, 622 S.E.2d at 216. Where the changing of corporate hats is tainted by such fraudulent intent, the successor corporation remains liable, even when the test for mere continuation is not otherwise

satisfied. *Nationwide Mutual*, 424 S.C. at 269-70, 818 S.E.2d at 454-55. South Carolina recognizes this exception when a predecessor's assets are specifically transferred or moved to place the predecessor's assets out of the reach of creditors and/or third parties. *Nationwide Mutual*, 424 S.C. at 256.

B. Creation of the Successor Defendants

Johnson & Johnson alone made and sold JBP from the 1890s to 1978. From 1979 to 2021, subsidiaries under Johnson & Johnson's direction sold JBP (collectively "Old JJCI").

In October 2021, Johnson & Johnson devised a scheme called "Project Plato" with the stated purpose of avoiding talc liabilities. Defendants admitted they did it to (a) "allocate the talc liabilities," (b) "stop litigation completely" and (c) prevent an "outflow of revenue." On October 12, 2021, through a series of intercompany transactions (called the "Texas Two Step"), Old JJCI ceased to exist, and two new companies were created (a) LTL Management ("LTL") holding all the talc liabilities (per Johnson & Johnson), no productive assets and no ongoing business and (b) Johnson & Johnson Consumer Inc. ("New JJCI"), holding the productive business assets.

Two days after its creation, LTL declared Chapter 11 bankruptcy. LTL requested a bankruptcy stay of litigation to apply not only to LTL, but to Johnson & Johnson, New JJCI and various other parties. In November 2021, the request was granted. In early 2023, the Third Circuit reversed the Bankruptcy Court, holding LTL's bankruptcy was filed in bad faith. On April 4, 2023, the Bankruptcy Court formally dismissed the case. LTL re-filed a second bankruptcy a few hours later on April 4, 2023. Ultimately, the Bankruptcy Court held that LTL filed the second bankruptcy in bad faith. On August 11, 2023, the second bankruptcy attempt was formally dismissed, ending all litigation stays. There is no dispute that Old JJCI is not a viable entity as it ceased to exist in October 2021.

After its creation in October of 2021, New JJCI continued to operate Johnson & Johnson's Consumer Health business in the U.S. without interruption. The manufacturing, marketing and distribution assets that Old JJCI used to make baby powder went to New JJCI. New JJCI maintained and continued (a) Old JJCI's business contracts (manufacturing, licensing, supply, vendor, etc.), (b) the same ownership (Johnson & Johnson as grandparent, Janssen Pharmaceuticals as parent), (c) the same management, (d) the same employees in the same positions, (e) the same operating locations, (f) the same business operations and (g) making the same products, including JBP. New JJCI changed its name to Johnson & Johnson Holdco (NA) Inc. ("New JJCI/Holdco") in December 2022.

In early 2023, Johnson & Johnson spun off its consumer business segment to defendant Kenvue, Inc. ("Kenvue"):

- New JJCI/Holdco formed a subsidiary, Johnson & Johnson Consumer, Inc. ("JJCI 3.") in June 2022
- New JJCI/Holdco transferred New JJCI 3 to Janssen Pharmaceuticals in Feb. 2023.
- Janssen transferred "JJCI 3" to a holding company, JNTL Holdings 2, Inc.
- JNTL Holdings 2, Inc. (parent of JJCI 3), along with other entities, were ultimately transferred to Johnson & Johnson by early April 2023.
- Johnson & Johnson spun off these entities to Kenvue in April 2023.

According to testimony from Kenvue's corporate representatives, Kenvue held itself out as essentially the same company that was operating the Consumer Health Division inside of Johnson & Johnson. Kenvue's SEC filings present itself as the same company that sold JBP for decades. Kenvue maintained the (a) same business contracts, permits, licensing, etc. as Old JJCI and New JJCI/Holdco, (b) same ownership (both before and after an August 2023 "stock swap"), (c) same management, (d) same employees, (e) same operating locations, (f) same business operations and (g) same products, including JBP.

C. Other issues impacting successor liability.

J&J's business used to consist of three segments: Consumer, Pharmaceutical and Medical Devices. The consumer segment was composed of numerous legal entities, Old JJCI being only one. While over 10,000 employees worked in the consumer segment, allegedly Old JJCI employed about 3,000. Executives testified that they conducted business by segment, sharing employees and resources without regard for the legal entities:

- *Mr. Mongon (President of the consumer segment and then Kenvue):* They operated business segment, not “through the lens of legal entities;”
- *Mr. Ruh (CFO of the consumer segment and then Kenvue):* He did not know “what legal entities were under my purview” because it operated by segment;
- *Dr. Kuffner (Medical Officer of the consumer segment):* They oversaw and monitored products sold across all legal subsidiary entities of the segment;
- *Ms. Goodridge (President of Old JJCI and New JJCI):* She worked for the consumer segment consisting of multiple legal entities.

The officers and directors of Old JJCI and New JJCI were all employees of Johnson & Johnson. Ms. Goodridge simultaneously held positions as president of (a) a unit of Johnson & Johnson's consumer segment and (b) Old JJCI. She never participated in any board meetings for Old JJCI. Ms. Goodridge explained that the president of Old JJCI was not an “operational role,” but instead a “corporate officer role” consisting of signing legal transactions. The consumer health segment of J&J was spun off to the Kenvue enterprise.

Johnson & Johnson dictated the October 2021 “Texas Two Step.” The president of the Consumer segment (and then Kenvue) testified that the Legal Department of Johnson & Johnson handled the decisions of “Project Plato” in October 2021. Ms. Goodridge, president of Old JJCI, confirmed that Johnson & Johnson (the parent) controlled the creation of LTL and New JJCI. Ms. Goodridge testified that (a) Johnson & Johnson made her president of the other newly created entities in the transactions and instructed her to sign the instruments, (b) Johnson & Johnson

established the entities, (c) she only spoke with Johnson & Johnson attorneys (and no businessperson) and (d) she cannot identify any business purpose for the transactions.

Similarly, Johnson & Johnson dictated the April 2023 Kenvue spinoff. Both Kenvue's CEO and CFO confirmed that Johnson & Johnson made all decisions; the Kenvue Board had no say. The entire transaction was under the control and direction of Johnson & Johnson.

In the instant case, Plaintiffs deposed Kenvue Inc. first through its corporate representative James Mittenthal. Mr. Mittenthal testified the Vice President of Global Risk Management for Kenvue once worked for Johnson & Johnson. Additionally, according to Kenvue, Teddy Reed, Kenvue's vice president and corporate secretary, also worked for Johnson & Johnson before coming to Kenvue. Further, Mr. Mittenthal, as corporate representative for Kenvue, has no knowledge of the logic behind the "restructuring" transactions and cannot testify that anything substantive occurred in Texas.

Kenvue later designated John Kim as its corporate representative in this case after this Court found the preparation of Kenvue lacking. He was also designated as the corporate representative for Johnson & Johnson Holdco (NA) Inc. Mr. Kim has never worked for Kenvue or Holdco. He was, however, head of product liability litigation at Johnson & Johnson. Mr. Kim confirmed that the 2021 transaction created two entities from Old JJCI—LTL and New JJCI. New JJCI later became Holdco.

Mr. Kim testified that he was personally involved in Project Plato, along with Chris Andrew, who is currently at Kenvue. According to Mr. Kim, there are documents associated with Project Plato which refer to the J&J family or the "J&J enterprise" and he noted that the term is used to denote a company that shares some common ownership with, at the top—basically—generally, they're owned by Johnson & Johnson shareholders, ultimately.

In 2023, Johnson & Johnson initiated “Project Diamond” which concerned the spinoff of the Consumer Health business segment from Johnson & Johnson to the Kenvue enterprise. Kenvue’s CEO admitted that (a) Kenvue has held itself out to investors as essentially the same company that was operating the Consumer Health Division inside Johnson & Johnson and (b) Kenvue has held itself out as the former Johnson & Johnson consumer business. Despite forming in February 2022, Kenvue publicly referred to its portfolio of iconic and modern brands that has been built over 135 years, including JBP. In other words, Kenvue held itself out as the same company that made JBP for generations.

Similarly, corporate representatives for the companies admitted that all of the employees were transferred from Johnson & Johnson’s consumer segment to Kenvue, unless they were designated as shared employed. The executive officers for Kenvue had previously held the same or substantially similar positions for the Johnson & Johnson consumer segment. The manufacturing facilities remained the same and all of the manufacturing assets were transferred to Kenvue. According to Kenvue’s corporate representatives, everything under the consumer health sector was transferred over to Kenvue, including assets, trademarks, people, manufacturing facilities, and brands. Nothing related to the manufacture of JBP was left with Johnson & Johnson’s prior consumer health division. Through mid-August 2023, Johnson & Johnson still owned close to 90% of Kenvue. After mid-August 2023, Kenvue continued to have the same ownership because Johnson & Johnson shareholders became Kenvue shareholders through a stock swap. Johnson & Johnson shares were converted to Kenvue shares.

As to the commonality of directors, employees, officers, and/or managers, Kenvue testified during its deposition that currently two members of Kenvue’s current Board of Directors previously held positions at Johnson & Johnson. Kenvue made no effort to confirm which of its

current board members held positions with Johnson & Johnson. During Kenvue's deposition in this case, Kenvue confirmed the connections of each current member of Kenvue's executive team to prior Johnson & Johnson and/or Old JJCI:

Name	Kenvue Position	JJCI or J&J Position
Thibaut Mongon	CEO	Executive VP and Worldwide Chairman of Consumer Health
Paul Ruh	CFO	CFO
Luani Alvarado	Chief People Officer	Global Leader of Human Resources
Carlton Lawson	Group President, Europe, Middle East and Africa & Latin America	Group Chairman for Europe, Middle East, and Africa
Charmaine England	Chief Growth Officer	Global Head of Strategy, Consumer Health
Matthew Orlando	General Counsel	General Counsel
Meri Stevens	Chief Operations Officer	Worldwide Vice President, Consumer Health Chain and Delivery
Bernardo Tavaras	Chief Technology & Data Officer	Chief Information Officer
Ellie Bing Xie	Group President, Asia Pacific	Company Group Chairman, Asia Pacific

After their creation, Holdco and Kenvue continued the baby powder line. Talcum-based baby powder was sold internationally after the spinoff of Johnson & Johnson's consumer segment from Holdco to Kenvue.

III. CHOICE OF LAW

As a threshold matter, this Court must decide which state's substantive law will apply to the issue of successor liability. The Successor Defendants contend that Texas substantive law should apply to the issue because the restructuring of companies occurred under Texas law.

Plaintiffs disagree and argue that either South Carolina or New Jersey substantive law should apply to this issue. The Court agrees with Plaintiffs.

Under South Carolina's choice-of-law rules, the analysis necessarily begins with the question of whether a cause of action - in this instance successor liability - sounds in contract or tort. *Lister v. NationsBank of Delaware, N.A.* 329 S.C. 133, 141, 494 S.E.2d 449, 454 (S.C. App. 1997) ("Before determining choice of law, this Court must first decide if the cause of action . . . is an action in contract or in tort.").

If successor liability is properly characterized as a contract-based theory, South Carolina law provides that "contracts are to be governed as to their nature, validity and interpretation by the law of the place where they are made, unless the contracting parties clearly appear to have had some other place in view." *Livingston v. Atlantic Coast Line R.R.*, 176 S.C. 385, 391, 180 S.E. 343, 345 (1935); *see also Albermarle Corp. v. Astrazeneca UK Ltd.*, 628 F.3d 643 (4th Cir. 2010) (observing that the law gives effect to the parties' choice of law as set forth in the contract if reasonable); S.C. Code Ann. § 36-1-105 (1) (providing that when a transaction bears a reasonable relation to this state and to another state or nation, the parties may agree on the law that governs their rights and duties). On the other hand, if successor liability is properly characterized as a tort-based theory, South Carolina choice-of-law rules look to the law of the state in which the injury occurred. *Bannister v. Hertz Corp.*, 316 S.C. 513, 450 S.E.2d 629 (Ct. App. 1994).

Contrary to argument from J&J, South Carolina courts have not clarified whether successor liability claims should be evaluated using the choice-of-law rules governing tort or corporate/contract law and the Successor Defendants' reliance on the Supreme Court of South Carolina's statements in *Pertuis v. Front Roe Restaurants, Inc.*, 423 S.C. 640 (2018) is inapposite. *Pertuis* was an action for stockholder oppression. 423 S.C. at 628. This case, unlike *Pertuis*, is

focused on determining which of the many entities organized underneath the Johnson & Johnson Enterprise can or should be held liable for the injuries suffered by Plaintiffs. Plaintiffs' issue regarding successor liability does not seek to "regulate the organization or [the] internal affairs of a foreign corporation[.]" *Pertuis*, at 423 S.C. at 650.

The Successor Defendants presume the Court must abide by their preferences for which entity (and only one entity) bears responsibility for the harm they caused. However, they overlook two distinctions. The import of a choice-of-law provision differs in disputes between (a) parties to the contract or transaction and (b) non-parties to the contract or transaction who are alleging injury in tort (*e.g.*, Plaintiffs here). *See, e.g., Berg Chilling Sys., Inc. v. Hull Corp.*, 435 F.3d 455, 465 (3d Cir. 2006) (applying an "interest-based analysis" to conclude that contractual choice-of-law provisions do not apply to choice of law in "de facto merger" analyses). Likewise, choice-of-law law analysis differs when analyzing disputes about the standard of care for (a) internal affairs of a corporation and (b) injuries caused by those corporations. While Johnson & Johnson can choose to apply Texas law in disputes between and amongst its own internal subsidiaries, Plaintiffs here are not bound by that choice.

Plaintiffs do not contend that Kenvue or Holdco expressly assumed liability. Similarly, Plaintiffs do not contend that Kenvue or Holdco are successors in interest to LTL/LLT/Pecos River (or any new entity with no ongoing business concerns that expressly assumes liabilities for talc). Rather, Plaintiffs contend Kenvue and Holdco are successors in interest to Johnson & Johnson Consumer Inc. and Johnson & Johnson.

I find that the successor-liability issue in this case is tort-based, as the question to be resolved is not one of contract interpretation or contract validity. Instead, the focus is on which entity in a chain of entities is and/or can be held liable for the injuries suffered by Plaintiffs.

Because this issue is tort-based, the laws of the state where Plaintiffs' injuries occurred—South Carolina—will apply.

IV. SUCCESSOR LIABILITY UNDER SOUTH CAROLINA LAW

In South Carolina, in the absence of a statute, a successor company is not ordinarily liable for the debts of a predecessor company under a theory of successor liability unless: (a) there was an agreement to assume such debts; (b) the circumstances surrounding the transaction indicate a consolidation of the two corporations; (c) the successor company was a mere continuation of the predecessor company; or (d) the transaction was fraudulently entered into for the purpose of wrongfully defeating creditor claims. *Nationwide Mutual Insurance Company v. Eagle Window & Door, Inc.*, 424 S.C. 256, 263, 818 S.E.2d 447, 451; *Walton v. Mazda of Rock Hill*, 376 S.C. 301, 305-06, 657 S.E.2d 67, 69 (Ct. App. 2008); *Simmons v. Mark Lift Indus.*, 366 S.C. 308, 312, 622 S.E.2d 213, 215 (2005); *Brown v. American Ry. Express Co.*, 128 S.C. 428, 123 S.E. 97 (1924).

Importantly, a plaintiff may maintain a product liability claim under a successor liability theory against a defendant when there are one or more other viable product liability defendants. *Simmons*, 622 S.E.2d at 97. The status and availability of other potential defendants is irrelevant in determining the issue of a successor corporation's liability in a product liability action. Here, the predecessor entity—Old JJCI—no longer exists and is not a viable defendant. Rather than focus on viability of others a plaintiff must fall within one of the four exceptions set forth in *Brown*. See, *Nationwide*, supra, 424 S.C. at 264, 818 S.E.2d at 451.

A. An agreement to assume the debts

As to the Successor Defendants, Plaintiffs do not contend that the first exception applies. It is undisputed that LLT (now Pecos River Talc) was sued because of an agreement to assume the

debts of Old JJCI. This exception does not apply to the inquiry of whether **Holdco and Kenvue** may be held as successors in interest to Old JJCI.

B. Mere Continuation

A successor corporation is a mere continuation of its predecessor when the predecessor and successor corporations have substantially the same officers, directors, and shareholders. *Simmons*, at 366 S.C. at 313, 622 S.E.2d at 216. The mere continuation test is a strict one, but not completely inflexible. While commonality of ownership is a keystone of the analysis and almost always sufficient to establish mere continuation when paired with common directors and officers, South Carolina courts have stressed that control is an essential consideration as well. Typically, ownership and control are found in tandem; however, there may be instances where directors or officers—lacking ownership—exert such control and influence over a corporation that their continued presence after a corporate acquisition is sufficient to establish successor liability. Although the mere continuation test is a high burden for a plaintiff to meet, it is intentionally so, as corporate law generally favors the free transfer of assets and disfavors successor liability. However, South Carolina's successor liability doctrine affords protection for plaintiffs in those cases where a corporate sale is driven by a desire to escape the predecessor's liabilities and obligations. Where the changing of corporate hats is tainted by such fraudulent intent, the successor corporation remains liable, even when the test for mere continuation is not otherwise satisfied. *Nationwide Mutual Insurance Company v. Eagle Window & Door, Inc.*, 424 S.C. 256, 269-70, 818 S.E.2d 447, 454-55 (S.C. 2018).

The Court finds that the mere continuation theory, as addressed in *Nationwide*, is satisfied. The business of Old JJCI continued without interruption in New JJCI via Holdco and Kenvue. The shareholders of Old JJCI became the shareholders of Holdco/Kenvue. The companies shared

employees, including members of their leadership teams and boards of directors. The majority of the individuals on Kenvue's current Board of Directors got their start at Johnson & Johnson or Old JJCI. Kenvue has even admitted in official documents that it is the same company as Old JJCI.

This Court finds continuity of enterprise management. Kenvue's representative created a chart of the overlap of leaders as of July 2024. However, each person currently in a leadership position at Kenvue held the same or a similar leadership position at Johnson & Johnson or JJCI prior to Kenvue's creation. Some changes occurred such as changing the title from "human resources" to "People Officer," but Defendants could not identify any substantive changes.

The Court further finds that the creation of these various corporate entities by J&J was done to escape its predecessor's liabilities and obligations with the intent to defeat creditors, such as Mr. Perry, and evade liability.

C. Holdco and Kenvue are liable as successors under the fraudulent transfer and blurred corporate identifies exceptions to non-liability.

Holdco and Kenvue are also liable as successors based on fraud and the use of the corporate form to escape liability. Here, the entity who had the liability for JBP for decades ceased to exist and assets were transferred to other entities. Additionally, Johnson & Johnson, Holdco, and Kenvue, along with other entities, have intermingled and blurred corporate interests, entities, and activities such that there is no legal distinction between the corporations involved in the consumer products business. *Mid-South Mgt. Co. Inc. v. Sherwood Development Corp.*, 374 S.C. 588, 604-605 (Ct. App. 2007); see also *Kincaid v. Landing Dev. Corp.*, 289 S.C. 89, 96, 344 S.E.2d 869, 874 (Ct. App. 1986) (finding a sibling company liable for the obligation of another sibling company due to the evidence revealing an "amalgamation of corporate interests, entities, and activities so as to blur the legal distinction between the corporations and their activities' where the companies shared officers, shareholders, and location).

In *Schmoll v. AcandS, Inc.*, Raymark Industries transferred its assets to Raytech—a company owned by Raymark Industries’ shareholders—through asset transfers and corporate restructurings. 703 F. Supp. 868, 872-73 (D. Or. 1988). As a result of the transfers and corporate restructurings, Raymark Industries was left with “staggering asbestos liabilities, unprofitable operations, unsecured notes, and stock which could not be sold in large blocks without a deep discount.” *Id.* at 873. Meanwhile, Raytech received Raymark Industries valuable assets. *Id.* This left present and future asbestos tort claimants with little chance of compensation. *Id.* Based on this context and statements made by those involved, the court concluded, “the elaborate transfer of assets was designed to escape liability[.]” and held Raytech liable as a successor of Raymark Industries. *Id.*

Like *Schmoll*, Johnson & Johnson, Kenvue, and Holdco have engaged in an elaborate corporate fiction to avoid liabilities associated with and from asbestos-containing Johnson’s Baby Powder. Johnson & Johnson has been “transparent” about using the bankruptcy process as a vehicle “to address the company’s growing talc-related liability exposures and costs in defending the tens of thousands of pending ovarian cancer claims and hundreds of mesothelioma cases, as well as future claims.” *In re LTL Management, LLC*, 637 B.R. 396, 407 (Bankr. D.N.J. 2022), *rev’d and remanded*, 58 F.4th 738, *rev’d and remanded*, 64 F.4th 84 (3d Cir. 2023). The corporate restructure was “designed to allow ‘New JJCI to continue to operate Johnson & Johnson’s Consumer Health business in the United States without interruption[.]’” *Id.* Despite being amply solvent, Johnson & Johnson sought to use the bankruptcy system to limit and redefine the rights of the people its products harmed. While it sought refuge in the bankruptcy system for talc-based liabilities, Kenvue and Holdco continued to make, sell, and profit from Johnson & Johnson’s talc-based product line for some time and in some locations. Here, even more so than the defendants

in *Schmoll*, Johnson & Johnson's, Kenvue's, and Holdco's conduct, both before the Texas Two Step and after, shows that these entities were created to avoid and eliminate liability.

Additionally, like the companies in *Kincaid v. Landing Development Corporation*, 289 S.C. 89, 344 S.E.2d 869 (Ct. App. 1986) here too, J&J and these defendants have common shareholders, common officers and directors, and a blurred corporate distinction amongst the entities involved in the consumer products business.²

D. Amalgamation

J&J argues that the Plaintiffs did not plead an amalgamation theory in their complaint. The Court agrees that the amalgamation theory was not plead in the complaint, and therefore, the Court does not address this issue.

V. SUCCESSOR LIABILITY AND PUNITIVE DAMAGES

Plaintiffs and J&J jointly stipulated to have the verdict form submitted to the jury to read "J&J Entities". Because of this, the jury's finding of punitive damages was against J&J Entities. Because the Successor Defendants are successors-in-interest to Old JJCI, they are also liable for any portion of punitive damages assessed to Old JJCI. Punitive damages are likewise recoverable against LLT because it agreed to assume the talc liabilities, debts, and obligations of its predecessor.

Successor liability does not allow the successor to pick and choose which of its predecessor's obligations follow it. Successor Defendants argue that South Carolina courts have yet to address the issue of whether punitive damages are recoverable against a successor corporation. Courts in other jurisdictions have held that punitive damages may be assessed against a successor corporation. *See Aurora Loan Servs., LLC v. Hirsch*, 170 Conn. App. 439, 456 (2017)

² Because the Court has concluded that South Carolina law will apply to the successor-liability issue, the Court declines to address Plaintiffs' alternatively contention that the issue be resolved pursuant to New Jersey law.

(defendant can be held vicariously liable for punitive damages when it ratified or approved the act); *Bankhead v. ArvinMeritor, Inc.* (2012) 205 Cal.App.4th 68, 73-75; *Man v. Raymark Indus.*, 728 F.Supp.1461, 1471 (D. Haw. 1989) (imposing successor liability, including punitive damages, and stating acquiring corporation cannot accept the good without the bad, absent an unlikely agreement with the acquired entity, and jettison inchoate liabilities into a never-never land of transcorporate limbo); *Krull v. Celotex Corp.*, 611 F.Supp. 146,148 (N.D. Ill. 1985) (applying Delaware law; the universal rule applicable to mergers or consolidations is that, by operation of law, the successor corporation assumes all debts and liabilities of the predecessor corporation precisely as if it had incurred those liabilities itself).

The Successor Defendants cite a litany of cases from other jurisdictions that have found that punitive damages are not recoverable against a corporate successor. *See e.g., In re Related Asbestos Cases*, 566 F. Supp. 818 (N.D. Cal. 1983) (reasoning that, because the successor was doing nothing to perpetuate the alleged malicious conduct of the predecessor, no award of punitive was warranted); *Catasauqua Area School District v. Raymark Industries*, 662 F. Supp. 64 (E.D. Penn. 1987) (holding that punitive damages were not allowed against successor entities where the plaintiff failed to present evidence that asbestos products manufactured by a successor entity were actually used); *Drayton v. Jiffee Chemical Corp.*, 395 F. Supp. 1081 (N.D. Ohio 1975), *modified*, 591 F.2d 352 (6th Cir. 1978) (refusing to award exemplary damages when the successor company improved the injury-causing product).

The Court finds the cases cited by the Successor Defendants inapposite because, based on the evidence presented. Kenvue and Holdco stepped into the shoes of Old JJCI and continued to manufacture, sell, market, and distribute the exact same asbestos-containing talc products once manufactured and/or distributed by Old JJCI. Kenvue and Holdco continued these sales with the

same knowledge that its' JBP contained asbestos as Old JJCI. Thus, Holdco, Kenvue, and Old JJCI were "effectively one and the same entity" in the way they sold asbestos containing talc and hid that its baby powder contained asbestos.

Therefore, Successor Defendants' request that punitive damages not be assessed against them is DENIED.

VI. RULING ON JUDGMENT NON OBSTANTE VEREDICTO (NOT WITHSTANDING THE VERDICT) ("JNOV")

A. Standard of Review

In ruling on a JNOV motion, the trial court is required to view the evidence and the inferences that reasonably can be drawn therefrom in the light most favorable to the non-moving party. *Law v. S.C. Dept. of Corrections*, 368 S.C. 424, 434, 629 S.E.2d 642, 648 (2006); *Swicegood v. Lott*, 379 S.C. 346, 351, 665 S.E.2d 211, 213 (Ct. App. 2008); *Israel v. Carolina Bar-B-Que, Inc.*, 292 S.C. 282, 287, 356 S.E.2d 123, 127 (Ct. App. 1987). The court must deny the motion for JNOV when the evidence yields more than one inference, or its inference is in doubt. *Id.*; *Steinke v. South Carolina Dep't of Labor, Licensing, & Regulation*, 336 S.C. 373, 386, 520 S.E.2d 142, 148 (1999). The jury's verdict may not be overturned if *any evidence* sustains the factual findings implicit in its decision. *Welch v. Epstein*, 342 S.C. 279, 300, 536 S.W.2d 408, 419 (Ct. App. 2000); *Smalls v. South Carolina Dep't of Educ.*, 339 S.C. 208, 215, 528 S.E.2d 682, 686 (Ct. App. 2000).

A new trial is warranted only if the trial court determines that the verdict is contrary to the fair preponderance of the evidence. *See Dent v. Redd*, 270 S.C. 585, 243 S.E.2d 460 (1978). Similarly, "[a] circuit court may grant a new trial absolute on the ground that the verdict is excessive or inadequate." *Brinkley v. South Carolina Dep't. of Corrections*, 687 S.E.2d 54 (S.C. 2009) (citations omitted). "The jury's determination of damages, however, is entitled to substantial deference. The circuit court should grant a new trial absolute on the excessiveness of the verdict

only if the amount is so grossly inadequate or excessive so as to shock the conscious of the court and clearly indicates that the figure reached was the result of passion, caprice, prejudice, partiality, corruption, or some other improper motives.” *Id.*

“The trial judge, sitting as the thirteenth juror charged with the duty of seeing that justice is done, has the authority to grant new trials when he is convinced that a new trial is necessitated on the basis of the facts in the case.” *Graham v. Whitaker*, 282 S.C. 393, 321 S.E.2d 40 (1984). “Traditionally, in South Carolina, circuit court judges have the authority to grant a new trial upon the judge's finding that justice has not prevailed.” *Todd v. Owen Indus. Prods., Inc.*, 315 S.C. 34, 431 S.E.2d 596 (Ct. App. 1993); *see also Johnson v. Hoechst Celanese Corp.*, 317 S.C. 415, 453 S.E.2d 908 (Ct. App. 1995) (under “thirteenth juror doctrine,” the trial court may grant a new trial if she believes the verdict is unsupported by evidence or if the verdict is inconsistent and reflects jury’s confusion).

A new trial *nisi remittitur* may be granted “when the verdict indicates the jury was unduly liberal in determining damages.” *Welch v. Epstein*, 342 S.C. 279, 303, 536 S.E.2d 408, 420 (Ct. App. 2000). “A motion for new trial *nisi remittitur* asks the trial court in its discretion to reduce the verdict because it is merely excessive, although not motivated by considerations such as passion, caprice or prejudice.” *Id.*

“Compelling reasons must be given to justify invading the jury’s province by granting a new trial *nisi remittitur*.” *Proctor v. Dep’t of Health & Env’tl. Control*, 368 S.C. 279, 320–21, 628 S.E.2d 496, 518 (Ct. App. 2006). The consideration for a motion for a new trial *nisi remittitur* requires the trial judge to consider the adequacy of the verdict in light of the evidence presented. *Id.*

B. J&J is not entitled to JNOV as to Plaintiffs' design defect claims.

The record supports the jury's finding that JBP was designed to contain talc, which J&J knew contained asbestos. As the Court of Appeals of South Carolina has recently acknowledged:

"A product can be defective because of a flaw in its design." *Madden v. Cox*, 284 S.C. 574, 579, 328 S.E.2d 108, 112 (Ct. App. 1985). "Liability for a design defect may be based on negligence, strict tort, or warranty." *Id.* "In an action based on strict tort or warranty, **plaintiff's case is complete when he has proved the product, as designed, was in a defective condition *unreasonably dangerous* to the user when it left the control of the defendant, and the defect caused his injuries.**" *Id.* at 579–80, 328 S.E.2d at 112 (emphasis added). "Liability for negligence requires, in addition to the above, proof that the manufacturer breached its duty to exercise reasonable care to adopt a safe design." *Id.* at 580, 328 S.E.2d at 112. "This burden may be met by showing that the manufacturer was aware of the danger and failed to take reasonable steps to correct it." *Id.*

Jolly v. General Electric Company, 435 S.C. 607, 648-49, 869 S.E.2d 819, 841-42 (Ct. App. 2021).

In 2010, the South Carolina Supreme Court held that the exclusive test in a products liability design case is the risk-utility test. *Branham v. Ford Motor Co.*, 390 S.C. 203, 220, 701 S.E.2d 5, 14 (S.C. 2010). According to the Restatement (Third) of Torts: Products Liability §2(b), adopted by the Supreme Court in *Branham*:

A product ... is defective in design when the foreseeable risks of harm posed by the product could have been reduced or avoided by the adoption of a reasonable alternative design by the seller or other distributor, or a predecessor in the commercial chain of distribution, and the omission of the alternative design renders the product not reasonably safe.

Branham, 390 S.C. at 223-24, 701 S.E.2d at 16 (quoting Restatement (Third) of Torts: Products Liability §2 (b) (1998).

The evidence presented at trial demonstrated that throughout the time period of Mr. Perry's use of JBP, from 1969 through 2019, the specifications for JBP called for talc sourced from mines in Italy, Vermont, and China. Plaintiffs' expert, Dr. William Longo, testified that he has analyzed talc from all of the sources that J&J used in its baby powder and that his test results showed the

presence of asbestos in each of the mines utilized by J&J in its baby powder throughout time. Dr. Longo testified to the jury that he found tremolite and other asbestos fibers repeatedly in JBP throughout each decade in which Mr. Perry used JBP.

The jury also heard at trial that other scientists found asbestos in the talc used to manufacture JBP. Battelle Memorial Labs found tremolite asbestos in Johnson's Baby Powder 153 times as early as the 1950s. Even with "poor analytical sensitivity" the FDA's contract lab found asbestos in the talc used in JBP in 2019. The jury heard Dr. Hopkins' testimony that there was never a warning about asbestos on any Johnson & Johnson product, despite knowing that by the early 1970s there were numerous reports of tremolite in J&J's Vermont and Italian talc ore. Dr. Hopkins further testified to the jury about several positive tests for asbestos in JBP throughout the decades that the talc powder was for sale.

The jury had this evidence and more in front of them when considering Plaintiffs' strict liability—design defect claim. Contrary to argument from J&J, Plaintiffs were not required to demonstrate that J&J intentionally added asbestos to their product. J&J's specifications for JBP—which called for the use of talc from mines which contained asbestos—created an unreasonable risk of harm to Mr. Perry.

J&J's motion for JNOV on Plaintiffs' design defect claim is DENIED.

C. J&J is not entitled to JNOV as to Plaintiffs' failure to warn claim.

"A supplier and manufacturer of a product are liable for failing to warn if they know or have reason to know the product is or is likely to be dangerous for its intended use; they have no reason to believe the user will realize the potential danger; and, they fail to exercise reasonable care to inform of its dangerous condition or of the facts which make it likely to be dangerous. *Livingston v. Noland Corp.*, 293 S.C. 521, 525, 362 S.E.2d 16, 18 (1987). Plaintiffs presented

evidence that J&J, after multiple tests of the talc used in JBP, knew that the talc contained asbestos. J&J presented no evidence to the jury that there was reason to believe that any of its JBP users, including Mr. Perry, would know that the product likely contained asbestos and still failed to warn of the hazards associated with the foreseeable use of the product.

In 1958, J&J knew its talc contained tremolite asbestos. By the early 1970s, J&J had received numerous additional reports that tremolite asbestos was found in the talc used in JBP. Despite this knowledge, the jury heard that bottles of JBP never displayed a warning about asbestos.

The jury also saw photos of two different bottles of JBP Mr. Perry found in his home. One of Mr. Perry's bottles had no warning on it about anything. The second of Mr. Perry's bottles had a small warning about infant's inhaling JBP generally. It was undisputed that neither of Mr. Perry's bottles of JBP had a warning about asbestos, and it is undisputed that one of Mr. Perry's JBP bottles had no warning at all.

J&J's motion as to this issue is DENIED.

D. J&J is not entitled to JNOV as to proximate cause.

J&J contends that Plaintiffs failed to establish that JBP was a proximate cause of Mr. Perry's mesothelioma. The evidence presented at trial, however, was sufficient for the jury to conclude that Mr. Perry's exposure to JBP was a substantial factor in the development of his mesothelioma.

As the South Carolina Court of Appeals affirmed in *Jolly v. General Electric Company*, 435 S.C. 607, 869 S.E.2d 819 (2021)³, "when there are multiple possible sources of the plaintiff's

³ The South Carolina Supreme Court granted certiorari only on the issue of additur and set off. It affirmed the trial court and the Ct. of App on additur and set off. Thus, the Court of Appeal's analysis on all other issues stands as though it was reviewed by the Supreme Court. *Jolly v. General Electric Co.*, __S.C.__, 905 S.E.2d 380 (2024).

exposure to a toxin . . . the plaintiff must also show that his exposure to a particular defendants' product was a 'substantial factor' in the development of the plaintiff's disease." *Id.* at 435 S.C. at 625, 869 S.E.2d at 829 (citing David E. Bernstein, *Getting to Causation in Toxic Tort Cases*, 74 Brook. L. Rev. 51, 52 (2008)). South Carolina adopted the "substantial factor test" in *Henderson v. Allied Signal, Inc.*, 373 S.C. 179, 644 S.E.2d 724 (2007), where the Supreme Court held that a plaintiff in an asbestos case need only present evidence of "actionable exposure" to a defendant's asbestos product. *Henderson v. Allied Signal, Inc.*, 373 S.C. 179, 185, 644 S.E.2d 724, 727 (2007). To determine whether exposure is actionable, South Carolina courts apply the "frequency, regularity and proximity" factors set forth in *Lohrmann v. Pittsburgh Corning Corp.*, 782 F.2d 1156 (4th Cir. 1986). *Id.* Therefore, "[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 . . . the plaintiff[.]" *Id.* (quoting *Lohrmann*, 782 F.2d at 1162).

Plaintiffs' extensive causation evidence includes testimony from Mr. Perry regarding his lifelong daily use of JBP; testing of JBP establishing that the talc ore and finished product contained asbestos during the years Mr. Perry used JBP; Dr. Haber's testimony regarding talc exposure studies indicating that Mr. Perry's range of exposures to asbestos from JBP was between .1 to 4 fibers/cc, resulting in cumulative exposures over 40 years of .38 to 5.18 fiber-cc years; Dr. Madigan's similar testimony that Mr. Perry's dose of asbestos from JBP was .35 fiber years; Dr. Madigan's testimony that this exposure level is within the range found to cause mesothelioma in numerous epidemiological studies; and Dr. Haber's opinion that Mr. Perry's exposure to JBP was a substantial factor in causing his disease.

The record supports the jury's finding that Mr. Perry had frequent, regular, and proximate exposure to asbestos from JBP that contained asbestos over the course of many years. Evidence at trial demonstrated more than just a casual or minimum contact with JBP from which the jury could conclude that Mr. Perry's exposure to JBP was a substantial factor in the development of his mesothelioma.

J&J's request for JNOV on this issue is DENIED.

E. J&J is not entitled to JNOV on Lonnie Long's loss of consortium claim.

J&J's request for JNOV as to Lonnie Long's loss of consortium claim is based on, and derivative of, the jury's liability and causation findings for Mr. Perry's mesothelioma, which the Court has denied.

Therefore, this request is DENIED.

F. J&J is not entitled to JNOV as to punitive damages.

The jury in this matter assessed punitive damages against J&J in the amount of \$30 million. J&J argues that this amount was grossly excessive and that there was no evidence of J&J's reprehensible conduct in the record. The Court disagrees. The record supports the jury's finding that J&J's conduct was willful, wanton, or in reckless disregard of Mr. Perry's rights in connection with Plaintiffs' negligence claim.

Under South Carolina law, punitive damages may be awarded to punish tortfeasors who have acted in a "reckless, willful, or wanton" manner. S.C. Code Ann. § 15-32-520(D); *Duncan v. Ford Motor Co.*, 385 S.C. 119, 138, 682 S.E.2d 877, 886 (Ct. App. 2009) (citing *Taylor v. Medenica*, 324 S.C. 200, 221, 479 S.E.2d 35, 46 (1996)); *see also Berberich v. Jack*, 392 S.C. 278, 288, 709 S.E.2d 607, 612 (2011). The South Carolina Court of Appeals recently wrote that "[t]he purposes of punitive damages are to punish the wrongdoer and deter the wrongdoer and others

from engaging in similar reckless, willful, wanton, or malicious conduct in the future.” *Portrait Homes-South Carolina, LLC v. Pennsylvania National Mutual Casualty Insurance Company, et al.*, 442 S.C. 515, 587, 900 S.E.2d 245, 284 (Ct. App. 2023) (quoting *Clark v. Cantrell*, 339 S.C. 369, 378-379, 529 S.E.2d 528, 533 (2000)). Additionally, punitive damages “serve to vindicate a private right of the injured party[.]” *Id.* “A tort is characterized as reckless, willful or wanton if it was committed in such a manner or under such circumstances that a person of ordinary reason and prudence would have been conscious of it as an invasion of the plaintiff’s rights. A conscious failure to exercise due care constitutes willfulness.” *Taylor*, 324 S.C. at 221, 479 S.E.2d at 46 (citations omitted); *see also Berberich*, 392 S.C. at 288, 709 S.E.2d at 612. When evidence exists that suggest a defendant is aware of a dangerous condition and does not take action to minimize or avoid the danger, sufficient evidence exists to create a jury issue as to whether there is clear and convincing evidence of willfulness and recklessness. *Mishoe v. QHG of Lake City, Inc.*, 366 S.C. 195, 201, 621 S.E.2d 363, 366 (Ct. App. 2005) (citing *McGee v. Bruce Hosp., Sys.*, 321 S.C. 340, 346, 468 S.E.2d 633, 637 (1996)). The jury has considerable discretion to determine the amount of damages. *See Hollis v. Stonington Dev., LLC*, 394 S.C. 383, 404-05, 714 S.E.2d 904, 915 (Ct. App. 2011) (noting the deference due to the jury on punitive damages).

The evidence at trial showed that J&J knew asbestos, including asbestos in talc, could cause fatal disease. The jury heard that since the 1800s geology texts have reported asbestos in talc. Since the early 1930s, it has been known that asbestos causes deadly diseases. J&J’s own documents as well as J&J’s corporate representative, Dr. Hopkins’ testimony to the jury revealed that J&J has known that asbestos causes cancer since the 1930s. It was even further established by the 1960s that mesothelioma was caused by asbestos exposure.

The evidence at trial showed that J&J knew its talc contained asbestos and took no corrective action. By the 1940s, it was known that asbestos was a common impurity in cosmetic talc. By 1958, J&J knew they had fibrous tremolite asbestos in their talc. The jury heard from Dr. Hopkins about all of the testings done on J&J's talc throughout the 1970s that were positive for asbestos done by multiple scientists. The jury also heard about the 2019 FDA finding in which asbestos was, once again, found in JBP.

The evidence at trial showed that J&J had actual knowledge of asbestos in its talc before, and during, the time Mr. Perry was exposed to JBP. The jury saw an internal document from J&J in 1997 in which J&J was analyzing the tissue of women who had mesothelioma and finding tremolite and talc fibers. The jury saw that J&J wrote that both tremolite and anthophyllite are known contaminants of talc, and that the cases of mesothelioma among women with no other identifiable exposures to asbestos could be related to cosmetic talc exposure. The jury also saw an internal document from 1973 in which J&J notes that its "clean mine approach to asbestos is over."

The evidence at trial showed that J&J knew infants inhale talc during JBP application. By 1969, J&J knew the "needle shape of tremolite" made it especially respirable and capable of entering "pulmonary alveoli."

The evidence at trial showed that J&J failed to adequately test by transmission electron microscopy ("TEM"), which it knew was the most sensitive method for identifying asbestos in talc. The jury heard testimony and saw evidence that J&J chose not to adopt heavy liquid density separation techniques for asbestos detection because the method was too sensitive. The jury also heard about, and saw documents about, J&J's TM7024 testing method, which J&J intentionally designed in such a manner that 16 various kinds of asbestos fibers could be found in a small sample from a bottle of JBP and still be reported as non-detect.

The jury also heard from Dr. Hopkins that J&J knew there would be negative consequences for its business if people found out there was asbestos in JBP. Evidence at trial showed J&J's tactics aimed at defending the safety image of JBP, including (1) monitoring and defending against adverse scientific, consumerist, and regulatory trends; (2) quelling questions and data about asbestos in talc; (3) promoting less sensitive FDA regulations by advocating for less sensitive test methods and (4) withholding positive asbestos test results. The jury saw J&J documents in which J&J touted the safety of asbestos in talc, such as the 1974 document in which J&J told the FDA that a substantial amount of asbestos could be safely allowed in baby powder. The jury then saw evidence that, despite this, J&J continued to advertise JBP throughout the decades by seeking to capitalize on the mother-infant bond and promote JBP as a safe product that mothers should use on their babies to show love.

The evidence at trial further showed that J&J knew cornstarch was an available substitute for talc since the late 1800s. J&J was evaluating an alternative to talc throughout the 1960s, 1970s, and 1980s.

The evidence at trial supported the jury's finding that J&J was willful, wanton, or reckless. J&J knew there were multiple tests showing that the talc used to make JBP contained asbestos, and was present even in the final product sold to the American public. Dr. Hopkins then testified that J&J never put any warning about asbestos on JBP despite this knowledge. Regardless of this information, J&J continued to sell asbestos-containing JBP until 2020 in the United States.

Therefore, J&J's request for JNOV on Plaintiffs' punitive damages award is DENIED.

G. J&J is not entitled to a JNOV on punitive damages as to successor entities because punitive damages are recoverable against successor entities.

Plaintiffs and J&J jointly stipulated to have the verdict form submitted to the jury to read J&J Entities. The determination of successor liability was reserved for determination by the Court

post-trial. Because of this, the jury's finding of punitive damages was against J&J Entities. Because Kenvue and Holdco are successors-in-interest to Old JJCI, they are also liable for any portion of punitive damages assessed to Old JJCI. Punitive damages are likewise recoverable against LLT because it agreed to assume the talc liabilities, debts, and obligations of its predecessor. The J&J Defendants have requested that newly-formed Pecos River Talc, LLC ("Pecos River") be substituted as a party defendant for LLT. Plaintiffs have objected to this substitution. The Court DENIES J&J's request for substitution, but will permit Pecos River to be added as an additional party defendant.

Successor liability does not allow the successor to pick and choose which of its predecessor's obligations follow it. J&J argues that South Carolina court have yet to address the issue of whether punitive damages are recoverable against a successor corporation. Courts in other jurisdictions have held that punitive damages may be assessed against a successor corporation. *See Aurora Loan Servs., LLC v. Hirsch*, 170 Conn. App. 439, 456 (2017) (defendant can be held vicariously liable for punitive damages when it ratified or approved the act); *Bankhead v. ArvinMeritor, Inc.* (2012) 205 Cal.App.4th 68, 73-75; *Man v. Raymark Indus.*, 728 F.Supp.1461, 1471 (D. Haw. 1989) (imposing successor liability, including punitive damages, and stating acquiring corporation cannot accept the good without the bad, absent an unlikely agreement with the acquired entity, and jettison inchoate liabilities into a never-never land of transcorporate limbo); *Krull v. Celotex Corp.*, 611 F.Supp. 146,148 (N.D. Ill. 1985) (applying Delaware law; the universal rule applicable to mergers or consolidations is that, by operation of law, the successor corporation assumes all debts and liabilities of the predecessor corporation precisely as if it had incurred those liabilities itself).

This Court finds that Kenvue and Holdco stepped into the shoes of Old JJCI and continued to manufacture, sell, market, and distribute the exact same asbestos-containing talc products which in turn gave Mr. Perry cancer. Thus, Holdco, Kenvue, and Old JJCI were “effectively one and the same entity” in the way they sold asbestos containing talc and hid that its baby powder contained asbestos.

Therefore, J&J’s request that it have, in effect, a JNOV as to the award of punitive damages against its successor entities is DENIED.

VII. RULING ON MOTION FOR NEW TRIAL

J&J contends that a new trial is warranted because the jury instructions given to the jury were improper and that the Court improperly limited J&J’s evidence such that J&J had an unfair trial due to prejudicial error. The Court disagrees.

A new trial is warranted only if the trial court determines that the verdict is contrary to the fair preponderance of the evidence. *See Dent v. Redd*, 270 S.C. 585, 243 S.E.2d 460 (1978). Similarly, “[a] circuit court may grant a new trial absolute on the ground that the verdict is excessive or inadequate.” *Brinkley v. South Carolina Dep’t. of Corrections*, 687 S.E.2d 54 (S.C. 2009) (citations omitted). “The jury’s determination of damages, however, is entitled to substantial deference. The circuit court should grant a new trial absolute on the excessiveness of the verdict only if the amount is so grossly inadequate or excessive so as to shock the conscience of the court and clearly indicates that the figure reached was the result of passion, caprice, prejudice, partiality, corruption, or some other improper motives.” *Id.* The decision to grant a new trial rests within the discretion of the court. *Id.* The Court of Appeals has stated when reviewing whether the trial court committed error in exercising that discretion, “we must consider the testimony and reasonable inferences to be drawn therefrom in the light most favorable to the nonmoving party.” *Id.*; *see*

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

A. The jury instructions given in this case were proper.

1. The jury instructions on punitive damages correctly stated the law.

J&J contends the Court improperly charged the jury as to punitive damages because the Court permitted the jury to award punitive damages based on third-party harm. A jury charge is correct if, when read as a whole, it contains correct definitions and adequately covers the law.

Keaton ex rel. Foster v. Greenville Hosp. System, 334 S.C. 488, 514 S.E.2d 570 (1999).

As to punitive damages, the jury was charged, in part, as follows:

So we will begin with these instructions. As I have told you, if you award actual damages against the defendant, you may also consider and award punitive damages. You've already crossed the first hurdle, which is you have found that the conduct was willful, reckless, and wanton. Punitive damages are intended to punish a defendant for willful, reckless, and wanton misconduct and to prevent the defendant and others from committing similar acts in the future. Punitive damages can only be awarded when the conduct of the defendant has been something more than mere negligence. The evidence must clearly and convincingly establish that the defendant was reckless or willful or wanton, meaning there was a conscious failure to exercise due care or a conscious indifference to the rights and safety of others or reckless disregard for the safety of others.

The Court also read pertinent portions of S.C. Code Ann. § 15-32-520 to the jury. The trial court may charge the jury regarding the factors which would justify a punitive damages award in the case. A punitive damages award survives constitutional scrutiny if: (1) the trial court's jury instruction explains the nature, purpose and basis for the award; (2) post-trial procedures enable the court to scrutinize the award; and (3) an appellate review process ensures that the award is reasonable and rational. *Gamble v. Stevenson*, 305 S.C. 104, 406 S.E.2d 350 (1991); *Kinard v. Crosby*, 315 S.C. 237, 433 S.E.2d 835 (1993); *Orangeburg Sausage Co. v. Cincinnati Ins. Co.*, 316 S.C. 331, 450 S.E.2d 66 (Ct. App. 1994).

J&J argues that Plaintiffs' punitive award was the result of Plaintiffs being able to introduce evidence of third-party harm related to ovarian cancer. The Court disagrees. It was made clear repeatedly throughout trial that Mr. Perry suffers from mesothelioma and not any other asbestos-related disease. Additionally, there is no evidence that the jury was encouraged to award punitive damages against J&J for harm done to others. Plaintiffs' told the jury that the punitive phase was for what J&J had done to Mr Perry, emphasizing that punitive damages are for "[w]hat Michael Perry is going through."

The punitive damages instruction explained the nature, purpose, and basis for the punitive damages award. The instruction was the same as the instruction given to the jury when it was to determine whether J&J's conduct was reckless, willful, and wanton. The record shows that the jury understood that punitive damages are paid to Mr. Perry.

2. There was no error regarding the effect of "Question 8" on the jury form.

At the end of the liability phase of trial, the Court instructed the jury, in part, as follows:

In addition, if you find that the defendant's conduct was willful, wanton, or reckless, the plaintiff must also prove that by clear and convincing evidence, that is, that 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 a conscious indifference to the rights and safety of others or reckless disregard of the rights and safety of others.

* * *

Willful and wanton and reckless conduct. There's one question on the jury form that asks about willful, wanton, or reckless conduct. A defendant's conduct is reckless or willful or wanton if there was a conscious failure to exercise due care or conscious indifference to the rights and safety of others or reckless disregard to the rights and safety of others. This must be established by clear and convincing evidence, which is something more than simple greater weight of the evidence and 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 that it is highly probable.

Prior to charging the jury, the Court and counsel for the parties discussed the verdict form and the propriety of telling the jury the purpose of Question 8. J&J agreed to include Question 8 on the verdict form.

The record shows that a punitive damages phase would not be necessary if the jury returned a “no” verdict as to negligence. The verdict form was not defective, it did not prejudice J&J, and the Court gave clear instructions to the jury regarding completing the form. J&J has failed to demonstrate how the failure to tell the jury that a “yes” as to Question 8 would trigger a punitive damages phase trial resulted in prejudice. Quite to the contrary, the South Carolina General Assembly, by statute⁴, now mandates a bifurcated trial for punitive damages in cases of this kind. The jury must make the predicate finding that the Defendant’s conduct was willful, wanton and reckless. This does not dictate that a jury must find punitive damages. The Court’s decision not to discuss punitive damages until after the jury made its decision as to the character of the conduct is completely consistent with the provisions of the statute governing this matter. Finally, the Court’s preliminary instructions in the punitive phase made it clear that it was up to the jury whether to award any amount of punitive damages after a finding of willful, wanton and reckless conduct.

J&J’s motion for a new trial on this issue is DENIED.

3. There was no error in declining to charge J&J’s requested “But-For” Causation instruction.

J&J contends it was prejudicial for the Court to refuse to instruct the jury using its suggested causation charge, wherein it stated as follows:

Proximate cause requires proof of both causation in fact and legal cause. Causation in fact is proved by establishing the injury would not have occurred “but for” the defendant’s acts. Legal cause is proved by establishing foreseeability. If there is not

⁴ See S.C. Code Ann §15-32-520

sufficient evidence to conclude that, but for a defendant's conduct the injury would not have occurred, then you must find in favor of the defendant.

"[A] trial court's refusal to give a properly requested charge is reversible error only when the requesting party can demonstrate prejudice from the refusal." *Pittman v. Stevens*, 364 S.C. 337, 340, 613 S.E.2d 378, 380 (2005). "[T]he substance of the law is what must be instructed to the jury, not any particular verbiage." *Marin*, 415 S.C. at 482, 783 S.E.2d at 812.

J&J's instruction sought to have the jury determine causation in this case using a strict but-for causation standard. That is not the proper standard in asbestos cases in South Carolina. This Court, instead, charged the jury as to causation according to *Henderson v. Allied Signal, Inc.*, 373 S.C. 179, 644 S.E.2d 724 (2007). In *Henderson*, the Supreme Court of South Carolina held that in asbestos cases:

In determining whether exposure is actionable, we adopt the "frequency, regularity, and proximity test" set forth in *Lohrmann v. Pittsburgh Corning Corp.*, 782 F.2d 1156, 1162[-63] (4th Cir. 1986): "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."

373 S.C. at 185, 644 S.E.2d at 727 (emphases added). The Supreme Court reaffirmed this standard in *Edwards v. Scapa Waycross, Inc.*, 442 S.C. 387, 899 S.E.2d 597 (2024). Notably, in *Edwards*, the Supreme Court explained that "the *Lohrmann* substantial factor test relaxes the 'but-for' requirement that applies in traditional tort cases [but] still requires the plaintiff to show "more than a casual or minimum contact with the product.'" 442, S.C. at 391, 899 S.E.2d at 599 (quoting *Lohrmann*, 782 F.2d at 1162)).

J&J's proposed instruction was an incorrect statement of law. There can be no prejudice from the Court's proper decision not to misinform the jury about the controlling law.

J&J's motion for a new trial on this issue is DENIED.

4. There was no error in declining to give J&J's requested instruction on specific causation.

J&J contends this Court failed to properly instruct the jury as to “specific causation” and argued that this Court should have accepted its instruction on specific causation. J&J also contends that Plaintiffs failed to present sufficient evidence of specific causation to the jury. The Court disagrees.

“Specific causation is whether a substance caused particular individual’s injury.” *Jolly*, 435 S.C. at 625, 869 S.E.2d at 828 (quoting *In re Bausch & Lomb Inc. Contacts Lens Solution Prods. Liab. Litig.*, 693 F. Supp. 2d 515, 518 (D.S.C. 2010)).

The Court instructed the jury as to causation, in part, as follows:

Plaintiff must prove that the defendant -- that the plaintiffs' exposure to asbestos in the defendant's product was of such a frequency, regularity, and duration that it was a substantial factor in bringing about the disease or injury. The mere fact that an injury or accident occurred standing alone does not permit you to draw the conclusion that the injury or accident was caused by anyone's negligence or breach of warranty of strict liability.

The Court finds that the instructions given to the jury as to causation were proper statements of the law. J&J has not and cannot demonstrate any prejudice to it resulting from the Court’s properly worded instruction. *Pittman v. Stevens*, 364 S.C. 337, 340, 613 S.E.2d 378, 380 (2005).

The evidence satisfied the *Henderson* causation standard. A plaintiff in an asbestos case need only present evidence of “actionable exposure” to a defendant’s asbestos product. *Henderson v. Allied Signal, Inc.*, 373 S.C. at 185, 644 S.E.2d at 727. To determine whether exposure is actionable, South Carolina courts apply the “frequency, regularity and proximity” factors set forth in *Lohrmann v. Pittsburgh Corning Corp.*, 782 F.2d 1156 (4th Cir. 1986). *Id.* Therefore, “[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.”” *Id.* (quoting *Lohrmann*, 782 F.2d at 1162).

Plaintiffs’ presented sufficient evidence to support the jury’s causation finding. The evidence in this case was that Mr. Perry was exposed to visible dust while applying JBP on a daily basis for 50 years. Plaintiffs’ experts presented circumstantial evidence from which the jury could have concluded that the JBP that Michael Perry used for 50 years contained asbestos. The jury also heard testimony about the range of exposure to asbestos that Mr. Perry had while using JBP, and was further told that Mr. Perry’s asbestos exposure level was many orders above background levels.

The jury could thus have easily concluded that Mr. Perry had frequent, regular, and proximate exposure to asbestos from his use of JBP over the course of many decades. This evidence is more than sufficient to support the jury’s determination that Mr. Perry’s mesothelioma was caused by his exposure to asbestos from Johnson’s Baby Powder.

J&J’s motion on this issue is DENIED.

5. The Court properly instructed the jury on substantial factor causation.

As noted in *Edwards*, the “substantial factor” test requires demonstration of frequency, regularity, and proximity. 442 S.C. at 391, 899 S.E.2d at 599. The Court instructed the jury as to substantial factor. The Court instructed the jury, in part, as follows:

Plaintiff must prove that the defendant -- that the **plaintiffs' exposure to asbestos in the defendant's product was of such a frequency, regularity, and duration that it was a substantial factor in bringing about the disease or injury.** The mere fact that an injury or accident occurred standing alone does not permit you to draw the conclusion that the injury or accident was caused by anyone's negligence or breach of warranty of strict liability.

In this instruction, the Court told the jury that substantial factor meant “frequency, regularity, and duration.” This was a correct statement of law.

J&J's request for a new trial on this issue is DENIED.

6. The jury instruction as to “component parts” was proper.

It was not error for the Court to instruct the jury as to component parts. As to component parts, the Court instructed the jury that:

If a reasonable inspection or test would have disclosed a defect, a manufacturer who incorporates a defective component into its finished product and places the finished product into the stream of commerce is liable for the injuries caused by defect in that component part.

But defendant can, however, be liable for an alleged 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.

This instruction was given in order to address J&J's argument at trial that it did not intend for asbestos to be in its talc. This instruction informed the jury that J&J could still be found liable for Mr. Perry's mesothelioma even though it did not intentionally add asbestos to its product. The instruction also noted that once J&J was on notice that its product contained a defective component (asbestos) and still placed the product into the stream of commerce, J&J could be held liable for injuries caused by exposure to that defective component.

J&J's request for a new trial on this issue is DENIED.

7. The “eggshell plaintiff” instruction was proper.

J&J contends that the Court committed error when it instructed the jury on the “eggshell plaintiff.” The Court disagrees. This instruction was necessary because of J&J's suggestion that Mr. Perry's individual susceptibility would have been the reason he developed mesothelioma. J&J put on evidence at trial about Mr. Perry's family history of cancer. The jury heard from J&J that Mr. Perry's mother had ovarian/uterine cancer. J&J cross-examined Mr. Perry's treating thoracic

surgeon expert, Dr. Barry Gibney, at length on Mr. Perry's genetic makeup and what kinds of genetic testing were either done, or not done, on Mr. Perry.

South Carolina has adopted the "eggshell plaintiff" rule which states a "defendant takes the plaintiff as [she] is found." *Raino v. Goodyear Tire and Rubber Co.*, 309 S.C. 255, 259, 422 S.E.2d 98, 100 (1992). "As a general rule, liability for the consequences of one's tortious act is not lessened by reason of the fact that the injuries were aggravated by plaintiff's unhealthy conditions . . ." *Id.*, citing 22 Am.Jur.2d Damages §282 (1988).

J&J's request for a new trial on this issue is DENIED.

8. The jury was not given a "blended" products liability charge.

J&J contends that the Court committed error by providing a "blended" products liability charge to the jury. This Court disagrees.

Plaintiffs alleged both a design defect and manufacturing defect claim against J&J and was given the proper test for each. In *Branham v. Ford Motor Co.*, 390 S.C. 203, 220, 701 S.E.2d 5, 14 (2010), the Supreme Court clearly stated that "the consumer expectations test fits well in manufacturing defect cases" but is "ill-suited in design defect cases."

The instruction was not blended. The jury was instructed as to "manufacturing defect," in part, as follows:

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 the use of the product.

The jury was charged separately as to design defect. When instructing the jury as to design defect, the Court included language reflecting the risk-utility test, which is the proper test for design defect claims. *Branham*, 390 S.C. at 220, 701 S.E.2d at 14.

J&J's request for a new trial on this issue is DENIED.

9. There was no error in declining to charge the jury as to “hindsight opinions,” that more could have been done, or “post distribution” evidence.

J&J contends that the Court committed error by failing to charge the jury as to “hindsight opinions.” The Court disagrees. J&J has cited no authority which would require this Court to instruct the jury as to “hindsight opinions,” or that the jury should have considered that “more could have been done.”

The admission of post-distribution evidence in this case was not prejudicial. Mr. Perry used JBP until shortly before J&J removed the product from the shelves. South Carolina’s Supreme Court defined “post-distribution” evidence as “evidence of facts neither known nor available at the time of distribution.” See *Branham*, 390 S.C. at 227, 701 S.E.2d at 17. In a footnote, the Court clarified that:

If information on a product is reasonably attainable, then a manufacturer is charged with such knowledge at the time of manufacture. The rule prohibiting the introduction of post-distribution evidence does not permit a manufacturer to turn a blind eye to reasonably available information regarding the safety or danger of its product.

Id. at n. 17. The evidence supports a finding that J&J knew of the presence of asbestos not only in the talc that it put into its powder but also the presence of asbestos in its finished product. The information regarding the presence of asbestos in JBP was available to J&J prior to Mr. Perry’s initial exposure.

J&J’s request for a new trial on this issue is DENIED.

B. None of the alleged structural, evidentiary, or expert witness errors identified by J&J warrant post-trial relief.

1. J&J was not entitled to severance.

J&J contends that the Court committed error by denying its request to sever trial from co-defendant American International Industries (“AII”). The Court disagrees. Trial judges, in their

discretion, are responsible for determining whether trial issues are distinct enough to warrant severability. *Flagstar Corp. v. Royal Surplus Lines*, 341 S.C. 68, 533 S.E.2d 331 (2000). In this case, the claims against J&J and AII were largely identical. The issues to be determined by the jury in this matter as to both of these defendants were not so distinct as to warrant severability.

By the time of trial, the Court had resolved Plaintiffs' liability claims against AII as a matter of law as a result of AII being in default. Before opening statements, the Court informed the jury as follows:

It has been determined as a matter of law that American International Industries, AII, which is a company responsible for Clubman talc products, is liable to Mr. Michael Perry on each of the causes of action pled against them in this case, specifically negligence, strict liability, fraud, conspiracy and implied warranty of merchantability. It has been determined as a matter of law that Clubman's asbestos-containing talc product was defective and unreasonably dangerous and was a substantial factor in the development of Michael Perry's mesothelioma. It has been determined as a matter of law that American International Industries' conduct was willful, wanton, and reckless, meaning American International Industries acted with conscious indifference to the rights and safety of others.

You are instructed that American International Industries is liable to the plaintiffs in this case. Your only task as to American International Industries are to determine the total amount of damages that Michael Perry and Lonnie Long have suffered.

It was clear from this instruction that the jury understood that all of Plaintiffs' claims against J&J were to be decided by the jury. Nothing about the Court's instruction to the jury indicated that it should also find J&J liable for Plaintiffs' injuries because of AII. The jury was instructed that these two defendants were to be considered separately.

J&J's request for a new trial on this issue is DENIED.

2. Defendants' experts did not have a proper scientific foundation for their opinions that Mr. Perry's mesothelioma was idiopathic or spontaneous.

In accordance with its "gatekeeping" function, the Court prevented J&J's experts from opining that Mr. Perry's mesothelioma was idiopathic and/or spontaneous. J&J's experts were

permitted, however, to testify at trial about spontaneous mesotheliomas generally.

The trial court must act as a gatekeeper over scientific evidence and make three preliminary findings before expert testimony may be admitted. *Watson v. Ford Motor Co.*, 389 S.C. 434, 446, 699 S.E.2d 169, 175 (2010). The Court must find “that expert testimony is necessary to assist the jury in resolving factual questions, the expert is qualified in the particular area, and the testimony is reliable.” *Id.* at 446-47, 699 S.E.2d at 175. “In South Carolina, a trial court minding the Rule 702 gate must assess not only (1) whether the expert’s method is reliable (i.e., valid), but also (2) whether the substance of the expert’s testimony is reliable.” *State v. Warner*, 430 S.C. 76, 86, 842 S.E.2d 361, 365–66 (Ct. App. 2020), *aff’d in part and remanded*, 436 S.C. 395, 872 S.E.2d 638 (2022). A trial court does not abuse its discretion under Rule 702 by excluding the testimony of medical experts whose conclusions were not supported by the data and experiments upon which they relied. *Id.* (citing *Gen. Elec. Co. v. Joiner*, 522 U.S. 136, 146 (1997)). ““A court may conclude that there is simply too great an analytical gap between the data and the opinion proffered.”” *Id.* (quoting *Joiner*, 522 U.S. at 146).

Dr. Weill is a pulmonologist who J&J intended to have testify that Mr. Perry’s mesothelioma was spontaneous because he saw no exposure to asbestos that Mr. Perry would have had, including any exposure to talc. While Dr. Weill reviewed the reports of the parties’ experts, he did not review any internal testing documents from J&J. He didn’t review any J&J documents at all. The Court finds that Dr. Weill’s opinion regarding spontaneous mesothelioma is unsupported in any recognized scientific community, and that his conclusions regarding the “cause” of Mr. Perry’s mesothelioma would have been unsupported and merely a diagnosis of exclusion. His methodology was not reliable or consistent with recognized scientific principles. Additionally, Dr. Weill’s anticipated testimony that Mr. Perry had no exposure to asbestos

throughout his life is unreliable given that he has not reviewed any J&J documents, including J&J's internal testing documents – some of which found asbestos in J&J's talc that Mr. Perry used.

Dr. Diette's opinions also lack an adequate foundation to opine that that Mr. Perry's mesothelioma was either spontaneous or "naturally occurring." The Court finds that Dr. Diette's opinion regarding spontaneous mesothelioma is unsupported in any recognized scientific community, and that his conclusions regarding the "cause" of Mr. Perry's mesothelioma would have been unsupported and merely a diagnosis of exclusion. His methodology was not reliable or consistent with recognized scientific principles. Additionally, Dr. Diette's anticipated testimony that Mr. Perry had no exposure to asbestos throughout his life is unreliable given that he has not reviewed any J&J documents, including J&J's internal testing documents – some of which found asbestos in J&J's talc that Mr. Perry used. In fact, Dr. Diette has previously opined that there is no scientific literature to support the conclusion that a mesothelioma can occur spontaneously when there is a history of asbestos exposure.

Drs. Diette and Weill were not excluded completely from testifying. Their only limitation was that they could not use a diagnosis of exclusion and testify that Mr. Perry's mesothelioma was spontaneous. J&J has not provided any explanation as to how it was prejudiced by these rulings. J&J chose not to call Dr. Weill and Dr. Diette as witnesses in its case-in-chief.

South Carolina precedent makes clear that "it is not sufficient for the doctors to say simply that the ailment in question 'possibly' or 'might have' resulted from the accident, but the medical experts must go further and testify at least that in their professional opinions the result in question 'most probably' came from the alleged cause." *Windham v. City of Florence*, 221 S.C. 350, 358, 70 S.E.2d 553, 556 (1952). The Court finds that any opinions from J&J's experts that Mr. Perry's

mesothelioma was “spontaneous” were scientifically unsupported, lacking in factual foundation, and unreliable.

J&J’s request for a new trial on this issue is DENIED.

3. Testimony from Plaintiffs’ experts complied with the South Carolina causation standard.

J&J contends that the causation testimony of Plaintiffs’ medical experts Dr. Arnold Brody and Dr. Steven Haber is unreliable and insufficient to establish substantial factor causation. The Court disagrees. Plaintiffs’ experts do not hold the opinion that “any exposure” or “every exposure” or “every asbestos fiber” causes mesothelioma generally or caused Mr. Perry’s mesothelioma. They testified that Mr. Perry’s mesothelioma was caused by his cumulative asbestos exposure, and that given the specific facts of his exposure to visible asbestos dust from JBP regularly over the course of several decades, these exposures were a substantial factor in causing Mr. Perry’s disease.

a. Standard of Review

The admissibility of expert testimony is governed by South Carolina Rule of Evidence 702. That rule provides that “[i]f scientific, technical, or other specialized knowledge will assist the trier of fact to understand the evidence or to determine a fact in issue, a witness qualified as an expert by knowledge, skill, experience, training, or education, may testify thereto in the form of an opinion or otherwise.” Rule 702, SCRE.

Courts evaluating the admissibility of scientific expert evidence “must find the evidence will assist the trier of fact, the expert witness is qualified, and the underlying science is reliable.” *State v. Council*, 335 S.C. 1, 20, 515 S.E.2d 508 (S.C. 1999). The reliability of scientific evidence is evaluated based on several factors, including: (1) the publications and peer review of the technique; (2) prior application of the method to the type of evidence involved in the case; (3) the

quality control procedures used to ensure reliability; and (4) the consistency of the method with recognized scientific laws and procedures. *State v. White*, 382 S.C. 265, 274, 676 S.E.2d 684 (S.C. 2009) (citing *Council*, 335 S.C. at 19).

“[C]ross-examination, presentation of contrary evidence, and careful instruction on the burden of proof” are the ordinary means to attack an opposing expert. *Daubert v. Merrell Dow Pharmaceuticals, Inc.*, 509 U.S. 579, 596 (1993). Courts should not exercise their gatekeeping responsibility by excluding expert testimony that falls within the range of matters on which reasonable experts can disagree. *See Milward v. Acuity Specialty Prods. Group, Inc.*, 639 F.3d 11, 22 (1st Cir. 2011). While the trial court may look at the reliability of the expert’s methodology, it is for the jury to determine the soundness of the facts underlying the expert’s opinion and the correctness of the expert’s conclusions. *See id.* 22.

b. JNOV is an improper vehicle for the court to reconsider a *motion in limine*.

J&J offers no authority for the proposition that a JNOV motion is the appropriate vehicle for requesting a Court reconsider its evidentiary rulings. To the contrary, South Carolina Courts have found that a JNOV motion is not the appropriate vehicle to address errors in the admission of evidence. *Johnson v. Hoechst Celanese Corp.* 317 S.C. 415, 420 (1995) (“a motion for judgment notwithstanding the verdict was not the appropriate vehicle to address the alleged error,” in submitting a color-coded map to the jury which the moving parties contended showed their properties in the wrong color classification.).

In ruling on a JNOV, the Court is required to review *all* the evidence and consider it in the light most favorable to the nonmoving party. *Welch*, 342 S.C. at 299. South Carolina law does not contemplate revisiting evidentiary rulings when deciding a JNOV motion.

For this initial reasons, J&J's request that this Court belatedly exclude Plaintiffs' experts' testimony is DENIED.

c. Plaintiffs' experts had a reliable scientific basis for their opinions.

Plaintiffs' experts provided identical and/or similar causation opinions to the jury as at the trial of *Jolly v. General Electric Co.*, 435 S.C. 607, 869 S.E.2d 819 (S.C. Ct. App 2021), aff'd *Jolly v. General Electric Co.*, ___S.C. ___, 905 S.E.2d 380 (2024). In *Jolly*, this Court allowed expert testimony that mesothelioma can be caused by brief or low-level cumulative exposures, finding that the plaintiffs' "experts were entitled to rely on this basic medical fact in reaching their opinion in this case." *Id.* at 30. The Court recognized that testimony about this basic medical fact is not the same thing as testimony that "each and every exposure" is a substantial factor in causing disease. *Id.* Dr. Brody's testimony was similarly allowed in the *Howe* trial 2015-CP-46-03456 in March 2018, the *Crawford* trial 2017-CP-42-04429 in July 2018, the *Glenn* 440 S.C. 34, 890 S.E.2d 560 (Ct. App 2023), trial in January 2019, and the *Plant* trial 2022-CP-40-01265 in 2023.

In *Jolly*, the Court found that the plaintiffs' experts had utilized a reliable methodology in that they "relied on their many years of experience in the area of asbestos-related diseases, as well as a broad range of evidence including epidemiology and other scientific literature, the dose-response relationship, the science regarding the low levels of exposure that can cause mesothelioma, the exposure levels documented from working with gaskets and packing in the manner described by [the plaintiff and his co-worker], and the facts surrounding [the plaintiff's] exposure to visible dust from Defendants' valves." *Id.* at 31. The Court ruled that because the experts' causation opinions were supported by the scientific literature as well as relevant exposure facts, their testimony was admissible, relevant, and helpful to the jury. *Id.* at 32.

The Court of Appeals affirmed this Court’s *Jolly* Order. Considering the same arguments raised by Defendants in this matter, it ruled, “[t]o the extent Appellants challenge the admissibility of Respondents’ experts’ testimony on the ground that it was unreliable, *they have failed to show any significant part of the testimony that could be reasonably characterized as espousing the ‘each and every exposure’ theory.*” *Jolly v. General Electric*, 435 S.C. 607, 639; 869 S.E.2d 819, 836 (Ct. App. 2021) (emphasis added).⁵

The Court of Appeals agreed with Mrs. Jolly that her “experts relied on the cumulative dose theory and that their reliance on basic science in reaching their opinions is not the equivalent of testifying that ‘each and every exposure’ was a substantial factor in causing Dale’s mesothelioma.” *Id.* at 634, 869 S.E.2d at 833-34.

The Court of Appeals also noted its disagreement with Defendants’ contention that “the cumulative dose theory conflicts with the *Henderson/Lohrmann* substantial factor standard.” *Id.* at 635, 869 S.E.2d at 834. “Stating that a certain exposure *contributes* to an individual’s cumulative dose does not espouse the view that ‘each and every breath’ of asbestos is ‘substantially’ causative of mesothelioma or imply that one exposure meets the legal requirement for causation.” *Id.* at 635-36, 869 S.E.2d at 834. “We view the testimony concerning cumulative dose as background information essential for the jury’s understanding of medical causation, which must be based on science. We do not interpret this presentation as an attempt to supplant the *Henderson/Lohrmann* test.” *Id.* at 636, 869 S.E.2d at 834-35.

The Court of Appeals ultimately concluded, “the cumulative dose theory on which Respondents’ experts relied *easily meets* the standard for reliability set forth in *State v. Council*, 335 S.C. 1, 515 S.E.2d 508 (1999).” *Id.* at 639, 869 S.E.2d at 836 (emphasis added).

⁵ The Supreme Court granted review on other grounds and affirmed. *Jolly v. General Electric*, ___ S.C. ___, 905 S.E.2d 380 (2024).

“Respondents’ experts were guided by the facts specific to Dale’s exposure to Appellants’ products in forming their opinions concerning causation.” *Id.* at 637, 869 S.E.2d at 835. Finally, the Court recognized Plaintiff’s experts relied on “numerous peer-reviewed, published epidemiological studies, case series, and case reports,” as well as other scientific criteria impacting causation of disease, and follows the weight-of-the-evidence methodology used by national and international public health organizations for evaluating the health effects of asbestos.” *Id.* at 640-41, 869 S.E.2d at 837.

South Carolina’s Court of Appeals again rejected Defendants’ attempts to conflate “cumulative dose” testimony with the “each and every exposure” theory in *Edwards v. Scapa Waycross, Inc.*:

[Defendant] Scapa argues the trial court erred in failing to grant its motion for JNOV because Stewart employed the “each and every exposure” theory of causation at trial. Scapa states that Dr. Frank explained the cumulative dose or “cumulative exposure” theory to the jury and utilized that theory in reaching his opinion as to whether Scapa’s dryer felts were a substantial factor in causing Stewart’s mesothelioma. Scapa conflates these two theories and claims they are inconsistent with the specific causation standard set forth in *Henderson*. We disagree.

“The ‘each and every exposure’ theory espouses the view that ‘each and every breath’ of asbestos is substantially causative of mesothelioma.” *Jolly*, 435 S.C. at 633, 869 S.E.2d at 833 (quoting *Rost v. Ford Motor Co.*, 151 A.3d 1032, 1044 (2016)); see also *Yates v. Ford Motor Co.*, 113 F. Supp. 3d 841, 846 (E.D.N.C. 2015) (“Also referred to as ‘any exposure’ theory, or ‘single fiber’ theory, it represents the viewpoint that, because science has failed to establish that any specific dosage of asbestos causes injury, every exposure to asbestos should be considered a cause of injury.”). This court has recently refused to conflate the cumulative dose theory with the each and every exposure theory, concluding that an expert’s opinion which states “that a certain exposure contributes to an individual’s cumulative dose does not espouse the view that ‘each and every breath’ of asbestos is ‘substantially’ causative of mesothelioma or imply that one exposure meets the legal requirement for causation.” *Jolly*, 435 S.C. at 635–36, 869 S.E.2d at 834. Rather, this court viewed testimony regarding a plaintiff’s cumulative dose as “background information essential for the jury’s understanding of medical causation, which must be based on science.” *Id.* at 636, 869 S.E.2d at 834–35.

437 S.C. 396, 416-17, 878 S.E.2d 696, 707 (Ct. App. Aug. 3, 2022), *aff'd*, 442 S.C. 387, 899 S.E.2d 5976 (2024); see also, *Glenn v. 3M Company*, 440 S.C. 34, 64-68, 890 S.E.2d 569, 585-587 (Ct. App. 2023).

Consistent with years of South Carolina law, Plaintiffs' experts' opinions regarding the cumulative nature of asbestos diseases and the lack of any safe threshold of exposure are not "unreliable," but are generally accepted medical facts that have long been established by a significant body of peer-reviewed medical and scientific literature. In addition, Dr. Haber and Dr. Brody relied on their many years of experience in the area of asbestos-related diseases, as well as a broad range of evidence including animal studies, epidemiology, and other scientific literature, the dose-response relationship, and the science regarding the low levels of exposure that can cause mesothelioma. As in *Jolly*, *Edwards*, and *Glenn*, the opinions of Plaintiffs' experts are reliable and admissible expert opinion testimony.

J&J's request that this Court find Plaintiffs' experts' unreliable and inadmissible is DENIED.

d. Dr. Haber's specific causation opinion was based on the exposure evidence in this case.

Dr. Haber's specific causation opinion is firmly grounded in the exposure evidence presented at trial. Dr. Haber was offered and qualified as an expert in internal medicine and pulmonology. J&J objected to anything outside of internal medicine and pulmonology. This objection was partially overruled because Dr. Haber had read and relied on those materials in forming his specific causation opinion about what caused Mr. Perry's mesothelioma.

Dr. Haber testified that Mr. Perry was suffering from mesothelioma caused by asbestos. Dr. Haber testified to the jury that the JBP that Mr. Perry used for five decades played a role in the development of his mesothelioma. In reaching his conclusions, Dr. Haber reviewed Mr. Perry's

medical records, including X-rays and scans of his chest, conducted a personal interview with Mr. Perry, reviewed reports of other experts designated in this matter, reviewed the deposition testimony in this case, and “other materials.” Dr. Haber also reviewed and evaluated Mr. Perry’s clinical course of care and treatment post-diagnosis.

Dr. Haber explained that mesothelioma is a “signal tumor” for asbestos exposure. The average life expectancy for epithelioid mesothelioma is 18 months. Dr. Haber told the jury that Mr. Perry’s cancer was extensive and invasive and that it had spread into the soft tissues of the chest wall, including into his lymph node and lung. Dr. Haber also testified that Mr. Perry’s pleura had doubled in size as of April, which likely meant a recurrence of his mesothelioma. Dr. Haber then discussed asbestos and how the different asbestos types were used commercially and noncommercially. He testified that all fiber types cause mesothelioma.

Dr. Haber also testified to the jury that he reviewed J&J’s internal records finding tremolite asbestos in its talc and he reviewed published medical and scientific literature on the definition of asbestos. He also noted that J&J’s own internal documents confirm that exposure to fibrous tremolite is a cause of mesothelioma because it is asbestos. He explained that for asbestos to attack the body the asbestos fibers had to be in respirable form and, if there is asbestos in talc powder the asbestos is by its nature already in a respirable form.

Dr. Haber explained what he refers to as the “onion properties” when explaining whether asbestos harms a person as soon as it’s breathed in. He also testified that there is no safe level of exposure to asbestos even at the 0.1 fibers-per-cc- level established by OSHA. Dr. Haber also explained that multiple studies and multiple health organizations have concluded that there is no threshold level below which there is no risk of developing an asbestos-related disease.

Dr. Haber also reviewed and testified about case reports which look at people who had mesothelioma. He told the jury that there are case reports based on certain occupations that work with talc which indicate concerns about the development of mesothelioma and case reports of individuals exposed to cosmetic talc who develop mesothelioma. During autopsies of people who died of mesothelioma, Dr. Haber testified that talc, anthophyllite, and tremolite have been repeatedly found. Dr. Haber later noted that background asbestos is mostly composed of small amounts of chrysotile and that anthophyllite and tremolite are not found in background levels.

Dr. Haber also considered whether Mr. Perry had exposures to asbestos from sources other than talc. He concluded that Mr. Perry had some exposure to chrysotile asbestos from brake work and that this contributed to cause his disease.

In Dr. Haber's opinion, JBP was Mr. Perry's first and primary exposure to asbestos. As to frequency and quantity, Dr. Haber testified that Mr. Perry was "an above-average user" of JBP, using it "two to four times a day", "putting it on his whole body" and occasionally "actually putting it on his . . . face." Dr. Haber concluded that Mr. Perry's exposure to asbestos from JBP was a substantial contributing factor to the development of his mesothelioma.

Dr. Haber's causation opinion was expressed the jury to a reasonable degree of scientific and medical certainty. His causation opinions are based on the record of Mr. Perry's repeated exposures to asbestos from JBP, as well as the scientific literature and other evidence presented to the jury. Dr. Haber's methodology therefore is identical to the methodology affirmed in *Jolly*, *Edwards*, and *Glenn*.

J&J's request for a new trial on this issue is DENIED.

4. The Court did not commit error by admitting Plaintiffs' tissue digestion.

On July 10, 2024, this Court ordered the division of Mr. Perry's lung tissue for digestion. At the pre-trial hearing on July 30, 2024, J&J moved to exclude the tissue digestion. J&J argued that its expert, Dr. Victor Roggli, could not perform the digestion prior to trial. J&J then claimed to have found a second expert, Dr. Stanley Geyer, who could perform the digestion prior to trial.

After this Court signed the order permitting the tissue split to occur, it took several days for Medical University of South Carolina ("MUSC") to divide the tissue as instructed by the Court's order. On the day before the pre-trial hearing, the tissue was divided and MUSC sent the tissue to the experts designated by the parties in this Court's order. Each tissue division arrived at each of the parties' respective experts on the same day at the same time – the morning of the pre-trial hearing in this case. J&J argued that the tissue digestion should not be allowed because the parties were out of time to perform the testing. This Court overruled J&J's objection, and ordered that the tissue digestion could proceed.

On the first morning of trial, J&J informed the Court that its expert could not perform the tissue digestion. Plaintiffs' informed the court that its expert who was performing the tissue digestion, Dr. Longo, was in the process of concluding the tissue digestion and offered to make Dr. Longo available for a deposition on his findings before he testified so that there was no surprise.

Dr. Longo's report on his tissue digestion findings was produced to J&J on August 5, 2024. Plaintiffs tendered Dr. Longo for deposition on August 6, 2024, at 4:00 pm by phone as he was traveling to testify in trial that evening. Dr. Longo's deposition was conducted via zoom at 10:00 pm on August 6, 2024, at J&J's request.

Dr. Longo testified to the jury that he tested Mr. Perry's lung tissue. He told the jury that he and his lab had analyzed over 400,000 different individual asbestos samples, including testing human lung tissue referred to as a "lung burden" to see what, if anything, is in the lung. Dr. Longo testified that the tissue digestion revealed the presence of tremolite asbestos, winchite asbestos, and talc in Mr. Perry's lungs. The evidence supported Dr. Longo's testimony that the presence of tremolite asbestos in Mr. Perry's lungs was consistent with what had repeatedly found in Dr. Longo's historical testing of JBP. J&J cross-examined Dr. Longo regarding his findings of the presence of asbestos in Mr. Perry's lungs.

The Court prohibited J&J from asking questions regarding when Dr. Longo received the lung tissue for testing. J&J had two experts at its disposal that could have performed the tissue digestion yet did not make the time. J&J had every opportunity to cross-examine Dr. Longo on his methodology of performing the tissue digestion. They chose not to and this Court does not find compelling reasons to allow J&J to challenge Dr. Longo's findings in a post-trial motion.

The Court prohibited J&J, through its corporate representative Dr. Edwin Kuffner, from discussing the results of the tissue digestion. Dr. Kuffner was not designated as an expert witness in this case. J&J contends that the Court improperly prohibited Dr. Kuffner from testifying about Dr. Longo's winchite finding in Mr. Perry's lungs to the jury, and that this prohibition was error. The Court disagrees.

Dr. Kuffner was designated as the corporate representative and was a fact witness. J&J did not list him as an expert nor did it seek to qualify him as an expert. As he was not designated or qualified as an expert, this Court ruled that Dr. Kuffner could not testify about topics of which he had no special knowledge, skill, or training to discuss with the jury. The Court did allow Dr. Kuffner to testify about what he had seen in J&J documents regarding winchite asbestos in JBP,

but the Court ruled that J&J could not use Dr. Kuffner to testify about geological concepts to the jury, as J&J sought to have Dr. Kuffner testify to the jury what Dr. Longo's finding of winchite meant.

"To be competent to testify as an expert, 'a witness must have acquired by reason of study or experience or both such knowledge and skill in a profession or science that he is better qualified than the jury to form an opinion on the particular subject of his testimony.'" *Gooding v. St. Francis Xavier Hospital*, 326 S.C. 248, 252-53, 487 S.E.2d 596, 598 (1997). As a fact witness, Dr. Kuffner's testimony was properly limited by South Carolina Rule of Evidence 701, which provides:

If the witness is not testifying as an expert, the witness' testimony in the form of opinions or inferences is limited to those opinions or inferences which (a) are rationally based on the perception of the witness, (b) are helpful to a clear understanding of the witness' testimony or the determination of a fact in issue, and (c) do not require special knowledge, skill, experience or training.

Dr. Kuffner's was not an expert in microscopy or geology and was not tendered as an expert. Dr. Kuffner had already been permitted to explain to the jury that the minerals found in Mr. Perry's lungs did not come from JBP based upon his review of J&J documents. If J&J intended to have Dr. Kuffner testify as to the geology, mineralogy, and findings of winchite asbestos, he should have been offered and qualified as an expert witness with the training, skill, and education to do so. Alternatively, J&J could have called its geologist expert, Dr. Sanchez, to testify at trial. J&J chose not to do either.

J&J further argues that Plaintiffs' counsel statement in closing argument regarding J&J's failure to call an expert witness to rebut Dr. Longo's in Mr. Perry's lungs was an improper invocation of the missing witness rule. The jury was instructed that a comment on the failure to call an expert is permitted, but that Plaintiffs' assertion that J&J could not find an expert was

stricken. This instruction cured any potential prejudice to J&J. As such, the Court finds that J&J has failed to demonstrate any prejudice from admitting Plaintiffs' tissue digestion.

J&J's request for a new trial on this issue is DENIED.

5. Dr. Haber did not testify outside of his qualifications.

Dr. Haber was qualified as an expert by reason of his training, education, and experience, as an expert in the areas of internal medicine and pulmonology. He was also permitted to testify about the information that he relied on in forming his conclusions. Dr. Haber repeatedly testified that he had evaluated and reviewed thousands of J&J's internal documents on various topics. "Expert testimony may be based partially on information received from other sources if such facts and data are of a type reasonably relied upon by experts in the particular field in forming opinions or inferences upon the subject." *Lucas v. Sara Lee Corp.*, 307 S.C. 495, 501, 415 S.E.2d 837, 841 (Ct. App. 1992).

J&J's request for a new trial on this issue is DENIED.

6. The Court's exclusion of the 1986 Citizens Petition and J&J 2019 Health Hazard Evaluation was proper.

J&J contends that this Court improperly excluded the 1986 Citizens Petition and the 2019 Health Hazard Evaluation ("HHE") and that these exclusions were error warranting a new trial. The Court disagrees.

J&J sought to present to the jury that the FDA's position was that there is "no risk" from asbestos in talc by admitting the 1986 document into evidence. The Court found the 1986 Citizens Petition contains inaccurate and unreliable expert opinion information which made its probative value substantially outweighed by the risk of confusion to the jury, and therefore unfair prejudicial under South Carolina Rule of Evidence 403.

The Court finds that the statements in the 1986 document are based on false information that J&J provided to the FDA. For example, in one of the documents Donald Kennedy, the then–Commissioner of the FDA, attempts to justify the 0.1% level by relying in part on J&J’s “extensive testing for asbestiform particles in cosmetic-grade talc; all results to date have been negative.” But all results of J&J’s talc had not been negative. The evidence showed that by 1979, J&J was aware that asbestos minerals had been found in its talc over 400 times.

J&J offered this document as the FDA’s official position and use it support its argument that any and all use of cosmetic talcum powder – no matter how long, how heavy, or how consistent – is without risk and cannot increase a person’s risk of mesothelioma at all. The document was not admitted because it contained false and unreliable expert opinion information which the risk of confusion to the jury substantially outweighed by any probative value. J&J had other avenues to present their position regarding the FDA’s position on asbestos in their talc, including through Dr. Barlow, J&J’s toxicologist.

Despite this Court striking the 1986 document, J&J still was able to present evidence to the jury regarding its theory as to the FDA’s position on the safety of talc. Dr. Kuffner testified that it was untrue that J&J hid information from the FDA. He also testified that J&J’s testing method was created with consultation from the FDA, so J&J’s testing method was the industry standard. Additionally, Dr. Kuffner testified that the FDA conducted studies of JBP in the 1970s and found no asbestos. Dr. Kuffner also testified that as of 1994, the FDA had concluded that “talc has proved to be among the safest of consumer products.”

This Court finds no prejudice from the exclusion of the 1986 Citizens Petition.

With regard to the 2019 HHE, the Court’s ruling was limited to Dr. Kuffner, a lay witness. Laypersons can provide opinion or inferences only if they (a) are rationally based on the

perception of the witness; (b) are helpful to a clear understanding of the witness' testimony or the determination of a fact in issue; and (c) do not require special knowledge, skill, experience or training. Rule 701, SCRE. Any opinions or conclusions about the HHE would require special knowledge, skill, experience, or training.

Dr. Kuffner testified that he was involved in preparing and writing the HHE, but as a lay witness he could not give toxicology testimony based upon this document as J&J sought to do. J&J could not use Dr. Kuffner to provide toxicology expert testimony to the jury. J&J could have called a properly qualified expert, including its toxicologist Dr. Barlow, but chose not to do so.

J&J has not shown that exclusion of the 1986 Citizens Petition and the 2019 HHE were so prejudicial that a new trial is warranted. J&J's request for a new trial on this issue is DENIED.

7. Plaintiffs' counsel's closing argument was not prejudicial such that J&J is entitled to a new trial.

"It has long been settled that closing arguments and objections thereto are left largely to the sound discretion of the trial judge 'who is on the scene and in much better position than an appellate court to judge as to what is improper argument under the circumstances.'" *Howle v. PYA/Monarch, Inc.*, 288 S.C. 586, 599, 344 S.E.2d 157, 164 (Ct. App. 1986) (quoting *Lesley v. Am. Sec. Ins. Co.*, 261 S.C. 178, 185, 199 S.E.2d 82, 86 (1973)). "[C]onsiderable latitude is allowed counsel in drawing inferences and deductions from the evidence and in arguing the same to the jury." *Lesley*, 261 S.C. at 185, 199 S.E.2d at 85. "When [an] objection is timely made to improper remarks of counsel, the judge should rule on the objection, give a curative charge to the jury, and instruct offending counsel to desist from improper remarks." *McElveen v. Ferre*, 299 S.C. 377, 381, 385 S.E.2d 39, 41 (Ct. App. 1989).

J&J contends that several statements from Plaintiffs' counsel during his closing argument were prejudicial. To the extent that J&J did not object during Plaintiffs' closing argument when

certain terms were used, J&J has waived its argument as to these statements. *S.C. Dep't of Transp. v. First Carolina Corp. of S.C.*, 372 S.C. 295, 301, 641 S.E.2d 903, 907 (2007) (“It is well settled that an issue may not be raised for the first time in a post-trial motion.”); *Webb v. CSX Transp., Inc.*, 364 S.C. 639, 657, 615 S.E.2d 440, 450 (2005) (rejecting argument regarding improper closing argument: “Since there was no contemporaneous objection, this issue is not preserved for appellate review.”); *Moore v. Florence School Dist. No. 1*, 314 S.C. 335, 339, 444 S.E.2d 498, 500 (1994) (“[T]he record indicates no objection to counsel's argument to the jury regarding consent and this issue is not preserved for review”); *State v. Walker*, 366 S.C. 643, 660, 623 S.E.2d 122, 131 (Ct. App. 2005) (“Failure to object to comments made during [closing] argument precludes appellate review of the issue.”).

“[G]reat latitude is accorded counsel in presenting closing arguments to a jury.” *United States v. Johnson*, 587 F.3d 625, 632 (4th Cir. 2009) (citation omitted); *see also id.* at 633 (“[T]o parse through a prosecutor's closing statement for minor infelicities loses sight of the function of our adversary system, which is to engage opposing views in a vigorous manner.”). “Thus, while courts should not hesitate to condemn those prosecutorial comments that truly offend constitutional norms, neither shall we attach constitutional significance to every verbal fillip, lest we unduly censor the clash of viewpoints that is essential to adversarial proceedings.” *United States v. Runyon*, 707 F.3d 475, 507 (4th Cir. 2013).

J&J has failed to demonstrate that Plaintiffs’ closing argument was designed to inflame the jury or encourage the jury to rule in Plaintiffs’ favor on an improper basis. This Court gave proper curative instructions when it found they were warranted.

J&J’s request for a new trial on this issue is DENIED.

8. There was no error in the verdict form submitted to the jury.

J&J contends that it is entitled to a new trial because, while Plaintiffs' claims against J&J included design defect and manufacturing defect theories, the verdict form did not include separate questions on those issues. The Court disagrees.

J&J did not object to the questions on the verdict form, after being given an opportunity to object, prior to its submission to the jury. Because its post-trial motion is the first time that J&J objected to questions on the final verdict form, its objection is waived. *Jackson v. Speed*, 326 S.C. 289, 304, 486 S.E.2d 750, 757 (1997) (finding appellant waived claim of lack of notice of cause of action by failing to object to having his name included on the verdict form); *Johnson v. Hoechst Celanese Corp.*, 317 S.C. 415, 421, 453 S.E.2d 908, 912 (Ct. App. 1995) (holding by failing to object to a verdict form until after a liability verdict had been reached, appellant failed to preserve any issue relating to the verdict form).

The Court finds that neither the verdict form nor the instructions to the jury created confusion about the jury's role in this case. The jury was instructed regarding Plaintiffs' claims that J&J sold a product that was defective in multiple ways: the product had a manufacturing defect, had a design defect, and/or a warning defect. The instructions specifically stated:

Plaintiffs' claims in this case are based on several theories: negligence, strict liability, and fraudulent misrepresentation.

The instructions went on to explain the different ways J&J could be found strictly liable in South Carolina.

A trial judge has discretion to determine how a case is submitted to the jury and error, if any, in the refusal of using J&J's proposed verdict form would only constitute grounds for a new trial if prejudice resulted from that failure. *See Freeman v. J.L.H. Investments, LP*, 414 S.C. 362, 386, 778 S.E.2d 902, 914 (2015); *Steele v. Dillard*, 327 S.C. 340, 343, 486 S.E.2d 278, 280 (Ct.

App. 1997) (quoting 5A C.J.S. *Appeal & Error* § 1762(b), at 1136 (1958)). The Court finds that J&J has not demonstrated any prejudice that it suffered as a result of this Court not separating the question on the verdict form regarding strict liability into multiple questions.

J&J's request for a new trial on this issue is DENIED.

VIII. RULING ON NEW TRIAL BASED ON CUMULATIVE ERROR

Where there has been no error, there cannot be cumulative error. "The cumulative error doctrine provides relief to a party when a combination of errors, insignificant by themselves, has the effect of preventing the party from receiving a fair trial, and the cumulative effect of the errors affects the outcome of the trial. *State v. Beekman*, 405 S.C. 225, 237, 746 S.E.2d 483, 490 (Ct. App. 2013). "An appellant must demonstrate more than error in order to qualify for reversal pursuant to the cumulative error doctrine; rather, he must show the errors adversely affected his right to a fair trial to qualify for reversal on this ground." *Id.* The Court finds J&J has not shown that it did not receive a fair trial or that cumulative errors affected the outcome.

J&J's request for a new trial on this issue is DENIED.

IX. RULING ON NEW TRIAL PURSUANT TO THE THIRTEENTH JUROR DOCTRINE

In South Carolina, the thirteenth juror doctrine is a long-standing means by which a trial court may grant a new trial absolute. *See Folkens v. Hunt*, 300 S.C. 251, 387 S.E.2d 265 (S.C. 1990). "Under the "thirteenth juror doctrine," a trial judge may grant a new trial absolute when he finds the evidence does not justify the verdict. This ruling has also been termed a granting of a new trial upon the facts.'" *Haselden v. Davis*. 341 S.C. 486, 534 S.E.2d 295 (S.C. Ct. App. 2000) (quoting *Vinson v. Hartley*, 324 S.C. 389, 477 S.E.2d 715 (S.C. Ct. App. 1996)). Stated differently, a trial judge may grant a new trial under the thirteenth juror doctrine if the judge determines the verdict "is contrary to the fair preponderance of the evidence." *Dent v. Redd*, 270 S.C. 585, 243

S.E.2d 460 (S.C. 1978); see also *Vinson*, 324 S.C. at 404, 477 S.E.2d at 722 (“Traditionally, in South Carolina, circuit court judges have the authority to grant a new trial upon the judge’s finding that justice has not prevailed.”). “[T]he trial Judge is the thirteenth juror, possessing the veto power to the nth degree....” *Worrell v. S.C. Power Co.*, 186 S.C. 306, 195 SE. 638 (S.C. 1938).

“Unlike a motion for directed verdict, the trial judge weighs the evidence under the thirteenth juror doctrine and need not view the evidence in the light most favorable to the opposing party.” *McEntire v. Mooregard Exterminating Servs., Inc.*, 353 S.C. 629, 578 SE.2d 746 (S.C. Ct. App. 2003); see also *Parker v. Evening Post Publ’g Co.*, 317 S.C. 236, 452 SE.2d 640 (S.C. Ct. App. 1994) (stating the trial court may take its own view of the evidence). Furthermore, the decision of whether to grant a new trial upon the facts is one addressed to the sound discretion of the trial judge. *S.C. State Highway Dep’t v. Clarkson*, 267 S.C. 121, 226 S.E.2d 696 (S.C. 1976).

“South Carolina’s thirteenth juror doctrine is so named because it entitles the trial judge to sit, in essence, as the thirteenth juror when he finds ‘the evidence does not justify the verdict,’ and then to grant a new trial based solely ‘upon the facts.’” *Norton v. Norfolk S. Ry. Co.*, 350 S.C. 473, 567 S.E.2d 851 (S.C. 2002) (quoting *Folkens*, 300 S.C. at 254, 387 S.E.2d at 267). By sitting “[a]s the ‘thirteenth juror,’ the trial judge can hang the jury by refusing to agree to the jury’s otherwise unanimous verdict.” *Id.* at 478, 567 S.E.2d at 854. As stated by the South Carolina Supreme Court in *Folkens*,

The effect is the same as if the jury failed to reach a verdict.... When a jury fails to reach a verdict, a new trial is ordered. Neither judge nor the jury is required to give reasons for this outcome. Similarly, because the result of the “thirteenth juror” vote by the judge is a new trial rather than an adjustment to the verdict, no purpose would be served by requiring the trial judge to make factual findings.

300 S.C. at 254, 387 S.E.2d at 267.

The jury returned a verdict finding that J&J was negligent, and that J&J was strictly liable for Mr. Perry's mesothelioma. The Court finds that the evidence at trial supported the jury's verdict. The Court declines to use the thirteenth juror to interfere with the decision made by the jury.

J&J's request for a new trial on this issue is DENIED.

X. RULING ON MOTION FOR SETOFF

J&J contends that it is entitled to a full set-off for Plaintiffs' entire settlement amount and Plaintiffs do not object. J&J further contends that Plaintiffs should have to produce their settlement agreements with various co-defendants, with which the Court disagrees. Plaintiffs' settlement releases are not discoverable. Rule 408, SCRE. The Court has reviewed Plaintiffs' settlement agreements in camera and finds they are fair and reasonable. *See Glenn v. 3M Co.*, 440 S.C. 34, 86, 890 S.E.2d 569, 596 (Ct. App. 2023). The Court therefore rules that the amount of \$11,255,000 in Plaintiffs' pre-trial settlements will be set-off from Plaintiffs' compensatory damages award.

XI. RULING ON STAY OF EXECUTION OF JUDGMENT AND BOND

J&J requests a stay of judgment pursuant to Rule 62, SCRCP. The Court agrees that J&J is entitled to a ten-day automatic stay of judgment pursuant to Rule 62(a).

There is no automatic stay of execution of a money judgment during the pendency of appeal. S.C. Code § 18-9-130(A)(1); *see also* Rule 241(b)(1), SCACR (providing that money judgments are an exception to the general rule that service of a notice of appeal automatically stays matters decided in the judgment). Rather, a stay of execution is within the trial court's discretion: "A notice of appeal from a judgment directing the payment of money does not stay the execution of the judgment unless the presiding judge before whom the judgment was obtained grants a stay

of execution.” S.C. Code § 18-9-130(A)(1). Rule 62(d) provides that a stay of execution of judgment is predicated on posting a supersedeas bond.

The Court exercises its discretion to deny J&J’s request for a stay order without the requirement of an appeal bond. In the event of an appeal, the Court orders that J&J post a supersedeas bond in the full amount of the judgment, pursuant to SCRCP 62(d).

XII. RULING ON A NEW TRIAL BASED ON VERDICT SIZE

A. Actual Damages

“When a party moves for a new trial based on a challenge that the verdict is either excessive or inadequate, the trial judge must distinguish between awards that are merely unduly liberal or conservative and awards that are actuated by passion, caprice, or prejudice.” *Allstate Ins. Co. v. Durham*, 314 S.C. 529, 530, 431 S.E.2d 557, 558 (1993). Likewise, the circuit court must avoid conflating the constitutionality of a damages award with an award motivated by passion or prejudice. *See e.g., Mitchell, Jr. v. Fortis Ins. Co.*, 385 S.C. 570, 592-96, 686 S.E.2d 176, 187-190 (2009) (finding a \$15 million punitive damages award to be “grossly excessive” such that it rose to the level of a due process violation but finding “no credible evidence anywhere in the record” to support the defendant’s contention that the compensatory or punitive damages award resulted from passion, caprice, or prejudice).

Further, the amount of unliquidated damages that “a jury might properly award ... is largely a matter of judgment based upon the facts and circumstances of each case.” *Watson v. Wilkinson Trucking Co.*, 244 S.C. 217, 224, 136 S.E.2d 286, 289 (1964). “In determining the question, the facts must be viewed in the light most favorable to the plaintiff[,] and[] whe[n] the amount of a verdict bears a reasonable relationship to the character and extent of the injury sustained, it is not excessive.” *Id.* Moreover, “the jury’s determination of damages is entitled to substantial

deference[,]” and the circuit court's decision on whether to grant a new trial based on the amount of the verdict “will not be disturbed on appeal unless it clearly appears the exercise of discretion was controlled by a manifest error of law.” *Welch v. Epstein*, 342 S.C. 279, 303, 536 S.E.2d 408, 420 (Ct. App. 2000).

Here, as to the award of compensatory damages, the jury was informed that Plaintiffs and J&J stipulated to \$3,329,973.05 in economic loss, which including Mr. Perry’s economic loss and costs of his medical treatment. After this stipulation, Plaintiffs requested \$2 million for every year of his life that Mr. Perry will lose pursuant to the South Carolina life expectancy tables, which this Court finds to be slightly less than 27 years and reasonable. The jury returned a verdict lower than Plaintiffs’ request.

The jury heard testimony about Mr. Perry’s pain and suffering extensively. The jury heard from Mr. Perry’s treating thoracic surgeon, Dr. Gibney, who testified that published scientific data indicates that it is an average of 50% of mesothelioma patients that will survive between 12 to 18 months, and then confirmed that this survival period applies to Mr. Perry. Dr. Gibney testified that people with mesothelioma suffer from extreme chest pain, restrictive air disease that leads to heart problems and extreme shortness of breath that makes the patient feel as though they are drowning. Dr. Gibney testified that mesothelioma almost always recurs and is aggressive. The jury then heard about the 6-8 surgeries Dr. Gibney performed on Mr. Perry in great detail, testifying that: (1) he had to cut Michael open from behind his shoulder blade all the way around to the front of his body to access the chest wall; (2) cut his large back muscle in half to access his chest where the cancer was; and (3) removed one of his ribs. Indeed, Dr. Gibney testified that he had to use his hands to “peel the pleura off the chest wall and then off the lungs. I liken it most to removing the peel off of an orange.” Dr. Gibney further testified that he had to remove Mr. Perry’s entire diaphragm and

rebuild it with mesh. Dr. Gibney told the jury about Mr. Perry's post-surgical recovery, describing it as significantly painful due to the removal of the pleura where the mesothelioma is. He also testified that Mr. Perry would die from his mesothelioma and that he would experience shortness of breath and chest pain until he died.

Evidence was also presented to the jury showing Mr. Perry's loss of life expectancy by over two decades, the anxiety and mental anguish he will suffer before he dies, and the fact that his mesothelioma will cause his death. Evidence demonstrated that J&J knew that asbestos caused cancer and despite knowing that the talc it used in JBP had repeatedly tested positive for asbestos, J&J continued to use that talc in JBP. Mr. Perry used JBP for 50 years and his use of that powder has significantly shortened his life. Thus, the Court finds that the jury's award was not the result of passion or prejudice.

The jury also heard testimony from Lonnie Long relevant to his loss of consortium claim. Mr. Long testified that he and Mr. Perry met over 20 years ago and talked about the life they had together prior to Mr. Perry's mesothelioma diagnosis. Mr. Long told the jury about sharing the holidays with Mr. Perry, and how Mr. Perry would decorate and do things with the neighborhood kids for the holidays. He talked about their honeymoon in Hawaii and how much they enjoyed traveling together. Lonnie described Mr. Perry as his "savior" because when they met Mr. Long was suffering with low self-esteem and depression and Mr. Perry showed him the strength to keep going. The jury heard that their conversations since Mr. Perry got mesothelioma have turned to "how we're going to fight this and how we're going to get through it." Mr. Perry then testified that Mr. Long takes him to all of his doctors' appointments and that he has never missed a single appointment. He noted that his husband did not stay in the courtroom for his testimony because he was "very protective."

The jury then considered the relationship that Mr. Perry and Mr. Long had experienced for over 20 years, what they lost as a result of Mr. Perry's mesothelioma, and what they would lose when Mr. Perry inevitably died. The jury's loss of consortium award reflects the jury's deliberation on that life, the loss of that life, and the loss that Mr. Long has suffered, and will suffer, as a result of Mr. Perry's inevitable death. The jury's award of loss of consortium damages was not the result of passion or prejudice.

B. The jury's award of punitive damages satisfies Constitutional standards.

J&J contends that the size of the jury's punitive damages award is grossly excessive and violated J&J's constitutional right to procedural and substantive due process. The Court disagrees.

"The purposes of punitive damages are to punish the wrongdoer and deter the wrongdoer and others from engaging in similar reckless, willful, wanton, or malicious conduct in the future" as well as "to vindicate a private right of the injured party by requiring the wrongdoer to pay money to the injured party." *Clark v. Cantrell*, 339 S.C. 369, 378-79, 529 S.E.2d 528, 533 (2000). "At least three important purposes are served by a punitive damages award: (1) punishment of the defendant's reckless, willful, wanton, or malicious conduct; (2) deterrence of similar future conduct by the defendant or others; and (3) compensation for the reckless or willful invasion of the plaintiff's private rights." *Mellen v. Lane*, 377 S.C. 261, 290, 659 S.E.2d 236, 251 (Ct. App. 2008). "The paramount purpose for awarding punitive damages is not to compensate the plaintiff but to punish and set an example for others." *Id.*

To receive a punitive damages award, "the plaintiff has the burden of proving by clear and convincing evidence the defendant's misconduct was willful, wanton, or in reckless disregard of the plaintiff's rights." *Welch v. Epstein*, 342 S.C. 279, 301, 536 S.E.2d 408, 419 (Ct. App. 2000). "A tort is characterized as reckless, willful[,] or wanton if it was committed in such a manner or

under such circumstances that a person of ordinary reason and prudence would have been conscious of it as an invasion of the plaintiff's rights." *Taylor v. Medenica*, 324 S.C. 200, 221, 479 S.E.2d 35, 46 (1996). "A conscious failure to exercise due care constitutes willfulness." *McCourt ex rel. McCourt v. Abernathy*, 318 S.C. 301, 308, 457 S.E.2d 603, 607 (1995).

"In South Carolina, 'punitive damages are allowed in the interest of society in the nature of punishment and as a warning and example to deter the wrongdoer and others from committing like offenses in the future.'" *Gamble v. Stevenson*, 305 S.C. 104, 110, 406 S.E.2d 350, 354 (1991) (quoting *Laird v. Nationwide Ins. Co.*, 243 S.C. 388, 396, 134 S.E.2d 206, 210 (1964)). The amount of the punitive damages award is largely within the discretion of the jury, and, like the compensatory award, is entitled to substantial deference. *McCourt By and Through McCourt v. Abernathy*, 318 S.C. 301, 309-10, 457 S.E.2d 603, 608 (1995).

Punitive damages awards should be reviewed for compliance with the Due Process Clause. *James v. Horace Mann Ins. Co.*, 371 S.C. 187, 194, 638 S.E.2d 667, 670 (2006). In *Mitchell v. Fortis Ins. Co.*, 385 S.C. 570, 686 S.E.2d 176 (2009), the South Carolina Supreme Court set forth three guideposts to be applied in conducting a post-judgment review of a punitive damages award: "(1) the degree of reprehensibility of the defendant's misconduct; (2) the disparity between the actual and potential harm suffered by the plaintiff and the amount of the punitive damages award; and (3) the difference between the punitive damages awarded by the jury and the civil penalties authorized or imposed in comparable cases." *Austin v. Stokes-Craven Holding Corp.*, 387 S.C. 22, 691 S.E.2d 135, 150-151 (2010). These guideposts incorporate the relevant factors set forth in *Gamble v. Stevenson*, 305 S.C. 104, 406 S.E.2d 350 (1991) and *BMW of North America v. Gore*, 517 U.S. 559 (1996). See *Mitchell*, 385 S.C. at 587, 686 S.E.2d at 185.

Reprehensibility is the most important consideration. *Mitchell*, 385 S.C. at 587, 686 S.E.2d at 185. A number of factors are relevant to reprehensibility, including whether: “(i) the harm caused was physical as opposed to economic; (ii) the tortious conduct evinced an indifference to or a reckless disregard for the health or safety of others; (iii) the target of the conduct had financial vulnerability; (iv) the conduct involved repeated actions or was an isolated incident; and (v) the harm was the result of intentional malice, trickery, or deceit, rather than mere accident.” *Id.*

The evidence supports the jury’s finding that J&J’s conduct was reprehensible. Evidence showed to the jury showed that Mr. Perry is expected to die a very premature and painful death despite having a life expectancy—in the absence of mesothelioma—of about 26 years. Thus, the harm caused to Mr. Perry was physical as opposed to solely economic.

J&J has been selling baby powder since 1894. The serious health risks of inhaling asbestos dust from talc were well-published in the scientific literature, and actually known by J&J decades before Mr. Perry was ever born, let alone exposed to asbestos from JBP. The jury saw advertisement by J&J in which it advocated that JBP was safe and pure, and used both language and images to capitalize on the mother-baby bond in order to make J&J money off the reputation of JBP. Mr. Perry was first exposed to JBP through his mother’s use and then continued using JBP repeatedly and on a daily basis for almost 50 years. Throughout the time that he used JBP, J&J never warned Mr. Perry, nor any other customer, of the potential asbestos exposure from the foreseeable use of JBP. The jury also saw documents and heard testimony that J&J misled the FDA as to the asbestos content of JBP, including telling the FDA that a substantial amount of asbestos can be allowed safely in a baby powder.

The jury found J&J negligent, and that it engaged in conduct that was willful, wanton, and reckless related to its negligence finding. This Court finds that the jury’s assessment is appropriate

considering the devastating physical and emotional losses that Mr. Perry and Mr. Long have suffered and will continue to suffer due to J&J's willful, wanton, and reckless conduct.

As to ratio, due process requires consideration of the ratio between the compensatory damages award and the punitive damages award. *Mitchell*, 385 S.C. at 588, 686 S.E.2d at 185. A single-digit ratio is generally thought to comport with due process. *Id.* The South Carolina Supreme Court has upheld verdicts with a 6.82 to 1 ratio, 3.75 to 1 ratio, 2.54 to 1 ratio, 9.96 to 1 ratio, and a 28 to 1 ratio. *Id.* at 593, 686 S.E.2d at 188 (collecting cases). In *Mitchell*, the Court remitted a punitive damages award from \$15 million to \$10 million so that it would be a 9.2 to 1 ratio. *Id.* at 594, 686 S.E.2d at 188.

The Court finds the ratio between the jury's compensatory and punitive award is well within the acceptable ratio as defined by South Carolina law. The Court also finds that the jury's award of punitive damages is well within the legislative cap of three times the compensatory award pursuant to S.C. Code Ann. §15-32-530.

The final *Gamble* factor is an evaluation of like awards in similar cases. The Court may properly consider the similarity between the punitive damages awarded by the jury in the case under review as compared to punitive damages awards in other cases. *Mitchell*, 385 S.C. at 588, 686 S.E.2d at 186. Relevant points of comparison are "the type of harm suffered by the plaintiff or plaintiffs; the reprehensibility of the defendant's conduct; the ratio of actual or potential harm to the punitive damages award; the size of the award; and any other factors the court may deem relevant." *Id.* at 588-89, 686 S.E.2d at 186.

Mr. Perry's award is comparable to awards in other talc cases with young plaintiffs.

In the Theresa Garcia case tried earlier this year in Chicago, the jury awarded \$45 million in compensatory damages to her estate (\$33 million for noneconomic damages) and to her children

(\$12 million). Ms. Garcia had a very similar profile to Mr. Perry – she was only 52 years old and her primary exposure was to JBP.

In another reported decision from 2021, a California jury awarded \$29,490,000 in compensatory damages to Teresa Leavitt and her husband in their case against J&J, again pre-bankruptcy. *Leavitt v. Johnson & Johnson*, No. A157572, 2021 WL 3418410, at *2 (Cal. Ct. App. Aug. 5, 2021). Mrs. Leavitt was exposed to Johnson’s Baby Powder as an infant and adult and was diagnosed with mesothelioma at only 51 years old. *Id.*

There are not a large number of verdicts against J&J because its multiple bankruptcies stayed litigation for almost two years. Talc verdicts against other companies have been substantially similar to the verdict reached in this case. In 2021, Nedelka Vanklive was awarded \$75 million in noneconomic damages in a talc case in Alameda County California. The case was started against both J&J and Whitaker, Clark & Daniels but J&J declared bankruptcy in the middle of trial. The verdict is against Whitaker, Clark & Daniels but the jury assigned 60% liability to J&J. Ms. Vanklive was exposed to JBP as an infant and child and developed mesothelioma at 48 years old.

In a talc trial in California in 2022, the jury awarded \$32 million in noneconomic damages to Rita-Ann Chapman, and \$8 million to her husband, and a total of \$11.3 million in punitive damages in a case involving exposure to body powders made by Avon and J&J. Mrs. Chapman used both J&J and Avon body powders as a child and adult and was 75 years old at the time of her mesothelioma diagnosis.

In the *Plant* case tried before this Court in 2023, the jury awarded \$20 million in noneconomic damages to Sarah Plant, \$3.5 million in future medical expenses, and \$5 million to

her husband, in a trial against talc supplier Whitaker, Clark & Daniels. Mrs. Plant was only in her thirties when she developed mesothelioma from her use of asbestos-containing talc powders.

These recent talc verdicts against J&J and others establish that the award to Mr. Perry is consistent with verdicts in other talc cases across the country.

Finally, J&J contends that the jury's punitive damages award in this case is either unsupported or unconstitutional because it no longer sells the talc-based version of JBP. The Court disagrees as this argument fails to account for one of the purposes of punitive damages pursuant to South Carolina law—to deter the wrongdoer **and others** from engaging in similar reckless, wanton, willful, or malicious conduct in the future. *See Portrait Homes—South Carolina, LLC v. Pennsylvania National Mutual Insurance Company*, 442 S.C. 215, 900 S.E.2d 245 (Ct. App. 2023).

The evidence was that J&J sold talc-based JBP for over 100 years, with no warning of potential asbestos exposure, despite actual knowledge that both its talc ore and its finished JBP product had asbestos in it. Additionally, according to J&J, the decision to stop selling JBP was not based on safety reasons. The Court finds that the jury's punitive damages award was proper and does not violate any Constitutional bounds.

J&J's request to eliminate the jury's verdict as to punitive damages is DENIED. However, the Court will reduce the amount of the punitive damages award from \$30,000,000 to \$25,000,000.

XIII. J&J IS NOT ENTITLED TO A NEW TRIAL BASED ON *STATE V. WRIGHT*.

J&J contends that this Court prevented it from being able to present a defense at trial and thus is entitled to a new trial pursuant to *State v. Wright*, 271 S.C. 534, 248 S.E.2d 490 (1978). The Court disagrees.

J&J was not prevented from presenting a defense, nor did the Court make comments that affected the outcome of the case or the effectiveness of counsel's presentation. Unlike counsel in *Wright*, J&J chose to not put on its case and instead try this case solely through Plaintiffs' case-in-chief. J&J's defense was that JBP does not have enough asbestos in it to have been a substantial contributing factor in the development of Mr. Perry's mesothelioma. J&J's additional defense was that JBP does not have asbestos in it. This Court did not strike any of J&J's experts and they were all free to testify at trial. The only limitation was that Dr. Weill and Dr. Diette could not testify that Mr. Perry's mesothelioma was spontaneous. J&J chose not to call any of its experts.

J&J further argues that it could not try its case because of the potential for a spoliation order and the Court's exchanges with Dr. Kuffner. The Court disagrees on both counts.

A. The *Hood-McBrayer* Spoliation Order

The *Hood-McBrayer* Spoliation Order was entered on November 5, 2021, in another case involving decades of use of JBP. While there was discussion during the pre-trial hearing of this Order, it was never entered. No such order was ever signed in this trial, and no adverse instructions were given in this trial. The Court's potential consideration of entering the *Hood-McBrayer* Order did not change the outcome of Mr. Perry's trial or J&J's defense. J&J has failed to identify any witness that could not be called to testify as a result of the *Hood-McBrayer* Order. Critically, the potential for this order did not stop J&J from discussing negative test results with the jury in Mr. Perry's trial. J&J questioned Dr. Haber about tests, from the FDA and others, which did not detect asbestos in either the talc used in JBP or the finished product. The record also shows that Dr. Hopkins testified to the jury, through videotaped deposition, about J&J's negative testing results that it now argues the potential for this Order kept it from doing.

The Court made clear multiple times throughout this trial that J&J could call whatever witnesses it chose. J&J contends that it could not call *any* witnesses because it could not discuss negative testing. This is incorrect. The Court afforded J&J the opportunity to call expert witnesses with no notice to Plaintiffs' counsel, which J&J chose not to do. J&J was given every opportunity by this Court to put on its case with expert witnesses.

B. The Court's exchanges with Dr. Kuffner.

Dr. Kuffner was not an expert witness in this case. Because of this, the Court did not allow Dr. Kuffner to give opinions that would have been based on his skill, knowledge, training, and education because that testimony is not the testimony of a fact witness. J&J, during its questioning of Dr. Kuffner, made clear that his role of corporate representative was separate from his role as chief medical officer. He was permitted to testify as to what J&J documents say about the presence of asbestos in its talc and in the finished talc products. He also testified as to what documents were produced in litigation and not destroyed or concealed.

Beyond being able to testify as an expert on issues outside of his role as a fact witness or corporate representative, J&J does not identify any other topic on which the trial court prevented Dr. Kuffner from testifying to justify its request for a new trial.

C. Different standard as to J&J

J&J contends the Court treated J&J so differently from Plaintiffs, and applied a different standard of law, that it affected the verdict in Mr. Perry's case and J&J is entitled to a new trial. The Court disagrees.

First, the Court's comments regarding the years that LTL spent in bankruptcy neither reflect a different standard for J&J nor did the comments infect the trial such that J&J is entitled to a new trial. The record reflects the uncontradicted fact that any such discussion did not happen

in the presence of the jury at any point in time. There is no precedent preventing this Court from disagreeing with the steps taken by a defendant to avoid talc liabilities, and J&J has provided none.

Second, the Court's comments regarding the opinions that J&J intended to have its experts offer, including Dr. Sanchez's definition of asbestos, were not improper or prejudicial. The Court does not agree that the comments prevented J&J from presenting a defense to Plaintiffs' claims at trial and they were not made in the presence of the jury. This Court's discussion of Dr. Sanchez's anticipated testimony was made as part of this Court's gatekeeping function. the Court, in minding the Rule 702 gate, must assess not only (1) whether the expert's *method* is reliable (i.e., valid), but also (2) whether the *substance* of the expert's testimony is reliable." *State v. Warner*, 430 S.C. 76, 86, 842 S.E.2d 361, 365–66 (Ct. App. 2020), *aff'd in part and remanded*, 436 S.C. 395, 872 S.E.2d 638 (2022). A trial court does not abuse its discretion under Rule 702 by excluding the testimony of medical experts whose conclusions were not supported by the data and experiments upon which they relied. *Id.* (citing *Gen. Elec. Co. v. Joiner*, 522 U.S. 136, 146 (1997)). "A court may conclude that there is simply too great an analytical gap between the data and the opinion proffered." *Id.* (quoting *Joiner*, 522 U.S. at 146).

J&J knew that this Court did not prohibit any of its experts testifying to the jury because as of Saturday, August 3, 2024, J&J intended to call at least 5 witnesses, including Dr. Sanchez, Dr. Diette, and/or Dr. Weill, during its case-in-chief.

For more than 50 years, it has been well settled that a Court is entitled to ask a witness questions to get to the truth. In *Williams v. South Carolina Farm Bureau Mut. Ins. Co.*, 251 S.C. 464 (1968), our Supreme Court held:

The trial judge, of course, has the right, in [her] discretion, and in a proper manner, to question witnesses during a trial, in order to elicit the truth. This discretion will not be controlled except where it appears that the manner in which the judge exercised the right tended to unduly impress the jury with the importance of the

testimony elicited, or would be likely to lead the jury to suppose that the judge was of the opinion that one party rather than the other was correct upon a particular issue of fact.

If a trial judge in the exercise of his discretion feels called upon, in the interest of justice, to question witnesses to elicit the truth, he should be cautious to see that such questions are propounded in a fair and impartial manner, and should not express or indicate to the jury the judge's opinion as to the facts of the case or the weight or sufficiency of the evidence.

The Court questioned Dr. Kuffner during both direct and cross. When the Court believed the jury needed clarity on a position taken by Plaintiffs during the questioning of Dr. Kuffner, the record shows that the Court asked counsel for clarity and then instructed the jury.

None of the discussions that J&J takes issue with occurred in front of the jury. J&J's counsel even stated during its closing argument that J&J did not need to present any witnesses because it had proven its case through Plaintiffs' own witnesses. J&J chose not to call its expert witnesses.

D. Exchanges between attorneys for Plaintiffs and J&J

This Court finds that there is no authority or compelling evidence to grant a new trial based on a single exchange between counsel outside of the presence of the Court and outside of the presence of the jury. On Friday, August 9, 2024, Plaintiffs played the videotaped portion of the testimony of J&J's corporate representative, John Hopkins. This portion of the videotaped deposition had been edited and cut by J&J. During the re-direct, plaintiff's counsel at the deposition questioned Dr. Hopkins about the 1972 Report from Dr. Hutchinson, finding asbestos in J&J's talc repeatedly. Dr. Hutchinson took pictures of the actual asbestos fibers he found in J&J's talc. During the re-direct, plaintiff's counsel on the video not only discussed the results from Dr. Hutchinson's testing, but also displayed the pictures of the asbestos fibers Dr. Hutchinson found on the video. The video that was cut and played by counsel for J&J, however, omitted the

photographs of the asbestos found in J&J's talc by Dr. Hutchinson to the jury. During the break, Plaintiffs' counsel and counsel for J&J spoke about Plaintiffs' concerns regarding the way in which J&J presented evidence to the jury. The entire exchange with J&J's counsel lasted less than a minute.

The Court does not find that this single incident with Plaintiffs' counsel resulted in such intimidation that J&J's counsel could not effectively represent their clients. J&J has provided no such evidence justifying its request for a new trial based on *State v. Wright*. Unlike the circumstances in *State v. Wright*, this Court does not find that a single incident outside the presence of the jury, for which counsel was reprimanded, rises to any level sufficient to justify a new trial.

The Court has treated all parties and their counsel fairly. Throughout this trial, the Court disagreed with all parties on various issues. The Court was evenhanded when it came to ruling on objections. The Court reprimanded counsel on both sides when necessary. J&J has therefore failed to identify any incident which negatively affected its counsel's effectiveness as discussed in *State v. Wright*.

J&J's request for a new trial pursuant to *State v. Wright* is DENIED.

XIV. RULING ON NEW TRIAL *NISI REMITTITUR*

A new trial nisi remittitur may be granted "when the verdict indicates the jury was unduly liberal in determining damages." *Welch v. Epstein*, 342 S.C. 279, 303, 536 S.E.2d 408, 420 (Ct. App. 2000). "A motion for new trial *nisi remittitur* asks the trial court in its discretion to reduce the verdict because it is merely excessive, although not motivated by considerations such as passion, caprice or prejudice." *Id.*

When reviewing a request for new trial nisi remittitur, substantial deference must be given to the jury's determination of damages. *Hassell v. City of Columbia*, 430 S.C. 620, 635, 846 S.E.2d

373, 381 (Ct. App. 2020). The consideration of a motion for a new trial nisi remittitur requires the trial judge to consider the adequacy of the verdict in light of the evidence presented. *Proctor v. Dep't of Health & Env'tl. Control*, 368 S.C. 279, 320–21, 628 S.E.2d 496, 518 (Ct. App. 2006). “Compelling reasons must be given to justify invading the jury’s province by granting a new trial nisi remittitur.” *Id.*

The jury award against J&J, along with AII, was for \$23,037,500 in actual damages to Mr. Perry, \$9,618,750 to Mr. Long in loss of consortium damages, and \$30,000,000 in punitive damages against J&J. This Court also recognizes Plaintiffs’ settlement setoff in the amount of \$11,255,000 to be fair and reasonable.

As reasons to remit this jury award of actual damages to Mr. Perry and Mr. Long, J&J argued the following:

For example, the evidence simply does not support the massive loss of consortium award to Mr. Long. Nothing unusual about his loss of services of explained to in detail to justify a \$9M loss. Again, there is no attempt here to deny that he has suffered loss. But the jury’s award is grossly excessive or, failing that, overly liberal. The award to Mr. Perry is also shockingly excessive and, failing that, overly liberal. Mr. Perry’s disease has, fortunately, been treated at least temporarily by his treating doctors and he appeared for most of the two-week trial in court in Richland County. While without question he suffers from a terrible disease, he is ambulatory and self-sufficient, and was physically well-composed and able to testify during the trial, demonstrating his current state of health.

A. Analysis of other cases.

- *Firth v. Garlock Sealing Technologies, LLC*, Civil Action No. 2008-CP-23-09186 (Greenville Cty. 2009), involved a 72-year-old deceased mesothelioma. The jury awarded \$300,000 for survival and \$400,000 for wrongful death, for a total of \$700,000 in compensatory damages. The jury declined to award damages for loss of consortium.
- *Garvin v. AGCO Corporation, et al.*, Civil Action No. 2012-CP-40-06675 (Richland Cty. 2013), involved a 74-year-old living mesothelioma who worked on pumps and valves as a millwright for thirty years. The jury awarded \$10 million for pain and suffering and \$1 million for loss of consortium, for a total of \$11 million in compensatory damages. The jury also awarded an aggregate of \$27 million in

punitive damages against three defendant parties. After a trial defendant challenged the verdict, and the trial court granted a new trial *nisi remittitur* reducing the compensatory damages award from \$11 million to \$1.5 million (a remittitur of slightly more than 85%) and reducing the punitive damages award against the challenging defendant from \$11 million to \$3.5 million, commensurate with the statutory cap on punitive damages.

- *Keene v. CNA Holdings, LLC*, Civil Action No. 2013-CP-42-03915 (Spartanburg Cty. 2015), involved a 70-year-old deceased mesothelioma who worked as a millwright for Daniel Construction at the Celanese Spartanburg facility from 1969 to 1978. The jury awarded \$2 million for pain and suffering, \$5 million for wrongful death, and \$5 million for loss of consortium, for a total of \$12 million in compensatory damages. The jury also awarded \$2 million in punitive damages.
- *Jolly v. General Electric Co., et al.*, Civil Action No. 2016-CP-42-01592 (Spartanburg Cty. 2017), involved a 73-year-old living mesothelioma who worked for Duke Power as a mechanical inspector around other trades engaged in tearing-out asbestos insulation and gaskets from 1980 to 1984. The jury awarded \$200,000 for pain and suffering and \$100,000 for loss of consortium, for a total of \$300,000 in compensatory damages. This Court granted a new trial *nisi additur*, increasing the compensatory damages award to a total of \$1,870,000.
- *Edwards v. Scapa Waycross, Inc.*, Civil Action No. 2013-CP-46-00368 (York Cty. 2018), involved a 60-year-old deceased mesothelioma who worked at Bowater Paper Mill on a paper machine from 1963 to 2002. The jury awarded \$600,000 in survival and \$100,000 in wrongful death damages. This Court granted a new trial *nisi additur*, increasing the survival award by \$400,000 to \$1 million and sustaining the damages awarded for wrongful death. After additur, the compensatory damages totaled \$1,100,000.
- *Glenn v. 3M Co., et al.*, Civil Action No. 2015-CP-04-01607 (Anderson Cty. 2019), involved a 69-year-old deceased mesothelioma who worked for Duke Power as an instrumentation worker around trades tearing-out asbestos insulation and gaskets from 1970 through 1996. The jury awarded \$1 million for pain and suffering, \$1 million for wrongful death, and \$1 million for loss of consortium, for a total of \$3 million in compensatory damages. The jury also awarded \$2,125,000 in punitive damages.
- *Weist v. Kraft Heinz Company, et al.*, Civil Action No. 2020-CP-40-01597 (Richland Cty. 2021), involved the death of Kathy Weist. The jury awarded \$11 million for Kathy Weist's survival damages, \$10 million for the wrongful death damages and \$1 million for the loss of consortium damages. The jury also awarded \$10 million in punitive damages.

- *Plant v. Whittaker Clarke & Daniel et al*, Civil Action No. 2022-CP-40-01265 (Richland Cty. 2023), involved a 35 year old living mesothelioma who was exposed to talcum powder and cosmetic products. The jury awarded \$871,356 in past medical expenses, \$3,368,336 in future medical expenses, \$20 million in other damages, and \$5 million in loss of consortium.

B. *Garvin v. Crane Co.*

This Court points to now-Justice Hill's prior order in the *Garvin v. Crane Co.* case. *Order Denying in Part and Granting in Part Defendant Crane Co.'s Motion for Post-Trial Relief, Garvin v. AGCO Corporation*, No. 2012-CP-40-6675, Richland County Court of Common Pleas of South Carolina (Nov. 10, 2014)). After Mr. Garvin's trial, Justice Hill remitted the jury finding from \$10,000,000 in compensatory damages to \$1,500,000. The reasons for this remittitur were that Mr. Garvin was 74 years old, had testicular mesothelioma, and had several other serious medical conditions unrelated to his testicular mesothelioma. Additionally, Mr. Garvin was cancer-free and only had economic damages in the amount of \$149,000. Justice Hill noted that based on Mr. Garvin's pecuniary damages, the nature of his injury (testicular mesothelioma), his treatments, his age, and his life expectancy, there were compelling reasons to remit Mr. Garvin's verdict.

C. *Seay v. CNA Holdings, LLC*

Justice Hill also evaluated a request for new trial nisi remittitur in the *Seay v. CNA Holdings, LLC* case. *Order Denying Defendant CNA Holding, LLC's Motion for Post-Trial Relief, Angie Keene, Individually and as Personal Representative of the Estate of Dennis Seay, Deceased, and Linda Seay v. CNA Holdings, LLC*, No. 2013-CP-42-03915, Richland County Court of Common Pleas of South Carolina (Jan. 8, 2016)). Celanese requested that Justice Hill remit the jury's compensatory verdict from \$2,000,000 to \$1,500,000, which Justice Hill declined to do. *Id.* at *31. In support of his ruling, Justice Hill noted that Mr. Seay had pleural mesothelioma and suffered with chest and lung pain before his diagnosis. He noted all of Mr. Seay's pain and

suffering, including all of his medical treatments and surgeries to try and prolong his life. He noted that before his pleural mesothelioma diagnosis, Mr. Seay was “strong and in very good physical shape,” Justice Hill noted that Mr. Seay suffered from excruciating pain and mental distress, and that he found no compelling reason to reduce the compensatory verdict. Justice Hill further noted that the compensatory verdict was similar to other jury awards for someone with pleural mesothelioma.

Justice Hill further elaborated in his *Seay* post-trial order that:

As Celanese points out, in *Garvin*, this Court did remit the pain and suffering awarded to Mr. Garvin from \$10 million to \$1.5 million. But the cases are very different. Mr. Garvin was alive and cancer free at the time of his trial, whereas Mr. Seay suffered unrelenting pain until his mesothelioma killed him. Mr. Garvin was four years older at the time of trial than Mr. Seay was at his death, and Mr. Garvin’s life expectancy was a number of years shorter. Mr. Garvin suffered from a testicular form of mesothelioma, while Mr. Seay suffered from pleural mesothelioma that caused his death by suffocation.

Id. at *35.

Justice Hill also affirmed the jury’s award of \$5,000,000 for loss of consortium damages to Mr. Seay’s widow because she “suffered extreme hardship and loss” because of her husband’s mesothelioma. *Id.* at *36. Justice Hill noted how much time Mr. and Mrs. Seay spent together and the fact that Mrs. Seay took care of her husband when he was sick because he “always wanted her right beside him.” *Id.* at *36. Justice Hill noted that the loss of consortium award was supported by the trial evidence and was not unduly liberal. *Id.* at *37. Justice Hill acknowledged that, same as in *Garvin*, there was no compelling reason to disturb the loss of consortium verdict.

Justice Hill also affirmed the award of \$5,000,000 to the wrongful death claim noting that Mr. Seay would have had a life expectancy of 13 years had he not developed mesothelioma.

Finally, Justice Hill declined to remit the jury’s punitive verdict, finding of \$2,000,000 in total, or in the alternative to \$50,000. *Id.* at *43. Justice Hill walked through all of the evidence

that had been presented to the jury about how long Celanese had known about asbestos causing disease, how long Celanese had known that the asbestos on its premise exposed people to high enough levels of asbestos to cause disease, and that Celanese had knowingly and consciously disregarded the rights and safety of Mr. Seay and other workers on its premise and never warned anyone of asbestos hazards. Justice Hill wrote that:

...evidence included Celanese's decision to continue using asbestos products when there were available alternatives, and deliberately concealing the nature of the danger from contract workers like Mr. Seay. This was not isolated conduct, but continued for almost a decade...

Id. at *45.

D. Mr. Perry

The evidence shows that Mr. Perry's injuries are very different from Mr. Garvin's. Mr. Perry was 53 years old at the time of his diagnosis in 2023, more than 20 years younger than Mr. Garvin at the time of his trial. Mr. Perry has pleural mesothelioma and, as the jury heard from Dr. Haber, is facing a resurgence of his disease. He has no other severe medical conditions aside from his pleural mesothelioma and was in good physical health before his cancer diagnosis.

Mr. Perry is more similar to Mr. Seay. Mr. Perry, like Mr. Seay, has pleural mesothelioma. He has suffered extreme chest and lung pain. He has had extensive medical treatments, including but not limited to chemotherapy, radiation, and a six-to-eight surgery during which his back muscle was cut in half, his cancer-ridden lung lining was peeled off like an orange rind, his rib was removed, and his diaphragm was removed and reconstructed with mesh. The jury heard from Dr. Gibney that Mr. Perry's mesothelioma will recur, will be aggressive, and that when that happens, Mr. Perry will suffocate to death with a sensation of "drowning."

Relevant to both *Garvin* and *Seay* prior orders, Mr. Perry's loss of life expectancy was approximately 26 years. Mr. Perry had \$510,620.05 in medical bills, an amount that was stipulated

to as fair and reasonable by J&J. The record also shows that Mr. Perry had an economic loss of \$2,819,353, an amount also stipulated to by J&J as fair and reasonable. Therefore, Mr. Perry had a total economic loss of \$3,329,973.05, an amount that J&J stipulated to which was then presented to the jury. This is contrasted with Mr. Garvin's economic loss of \$149,000.

Evidence supports the fact that Mr. Long has felt the loss of his husband, and will continue to feel it long after Mr. Perry dies. The jury heard evidence that his husband gives him strength, and his entire life revolves around his relationship with Mr. Perry. The jury heard that Mr. Long takes Mr. Perry to every single doctor's appointment without fail, and loves his husband so much he could not even watch him testify at trial because it would be too painful to watch Mr. Perry be cross-examined.

Similar to the *Seay* order, the jury heard evidence that J&J continued to sell JBP knowing that it had asbestos in it and knowing that there was an alternative available in cornstarch the entire time JBP was sold. The jury also heard evidence that J&J deliberately misled the FDA as to the asbestos in its talc and deliberately designed, and advocated for the use of, underpowered testing methods so that the asbestos in its talc either would not be found or could be designated as "non-detect." The jury also heard evidence that J&J hid the fact that it had asbestos in its talc powder from the American public, including Mr. Perry. Finally, the jury heard evidence that J&J persisted in this conduct for decades – long after it first learned in the 1950s that its talc had tremolite asbestos in it.

As Justice Hill noted in his prior post-trial order in *Garvin*, "While the jury did decide on a large award, the Court has no reason to conclude it was the result of any improper motive or outside consideration. Placing a value on pain and suffering is inherently subjective." *Order*

Denying in Part and Granting in Part Defendant Crane Co. 's Motion for Post-Trial Relief, Garvin v. AGCO Corporation, at *32 (Nov. 10, 2014)).

However, the Court does find the verdict should be reduced because it is “merely excessive, although not motivated by considerations such as passion, caprice or prejudice.” *Welch v. Epstein*, 342 S.C. 279, 303, 536 S.E.2d 408, 420 (Ct. App. 2000). The verdict to Mr. Perry of \$23,037,500 shall be reduced by \$4,000,000 thereby leaving a verdict of \$19,037,500.

The Court finds the loss of consortium award shall be reduced because it is “merely excessive although not motivated by considerations such as passion, caprice or prejudice.” *Id.* The verdict to Mr. Long of \$9,618,750 shall be reduced by \$3,000,000 thereby leaving a verdict of \$6,618,750.

Finally, the Court finds that the jury’s punitive damages award is reasonable given the evidence at trial and that it is within the 3:1 ratio pursuant to S.C. Code Ann. §15-32-530. However, the Court finds that the punitive verdict against the Defendant shall be reduced by \$5,000,000, thereby leaving a punitive damage verdict of \$25,000,000. Against J&J.

Plaintiffs’ verdict of \$19,037,500 for Mr. Perry’s past and future total loss, \$6,618,750 for Mr. Long’s loss of consortium shall be set off by the fair and reasonable setoff of \$11,255,000, resulting in a compensatory judgment of \$14,401,250. The total punitive judgment, after reduction is \$25,000,000. Therefore, the total judgment to be entered against the J & J entities is \$39,401,250.

J&J’s request for nisi remittitur as to Plaintiffs’ compensatory awards and the punitive damages award is GRANTED.

[JUDGE’S SIGNATURE PAGE TO FOLLOW]



Richland Common Pleas

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

Case Number: 2023CP4004072

Type: Order/Amend

So Ordered

Jean H. Toal

Electronically signed on 2025-02-28 13:08:57 page 86 of 86

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

**MICHAEL L. PERRY and
LONNIE L. LONG,**

Plaintiffs,

v.

**AMERICAN INTERNATIONAL
INDUSTRIES, et al.,**

Defendants.

IN THE COURT OF COMMON PLEAS

FOR THE FIFTH JUDICIAL CIRCUIT

C/A NO. 2023-CP-40-04072

In Re:

Asbestos Personal Injury Litigation
Coordinated Docket

**ORDER ON REMAND FROM THE
SOUTH CAROLINA COURT OF APPEALS
REGARDING DEFENDANTS JOHNSON &
JOHNSON'S MOTION TO RECONSIDER OR
TO ALTER AND AMEND THIS COURT'S
DECEMBER 11, 2024 ORDER**

BACKGROUND

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

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

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

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

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

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

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

WILLFUL, WANTON OR RECKLESS CONDUCT

If you answered "Yes" to Questions 1, 2, 5, or 6, please answer this question as to any Defendant for which you answered "Yes." We, the jury, find by clear and convincing evidence that the conduct of the following Defendants was willful, wanton, or reckless:

Johnson & Johnson

AII

_____ Yes

_____ Yes

_____ No

_____ No

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

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

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

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

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

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

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

RULING ON THE MERITS

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

LEGAL STANDARD

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

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

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

ANALYSIS

I. SUCCESSOR LIABILITY

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

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

A. Project Plato

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

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

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

² J&J Defendants' *Mode of Trial Motion Regarding Successor Liability and Amalgamation*, filed 8/3/24, at pgs. 1-2.

³ Trial Transcript (hereinafter referred to as "TT") Day I, 8/5/24, at 10:2-11.

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

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

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

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

⁴ TT Day I, 8/5/24, 17:18-25.

⁵ Hearing on Post-Trial Motions, Vol. II, 9/25/24, at 162:16-19.

⁶ Verdict Form, Ct Ex. 4, 8/19/24, at pg. 3.

⁷ TT Day VI, 8/13/24, 1775:14-20.

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

D. Successor liability governed by South Carolina law.

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

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

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

⁸ See J&J Defendants’ Objections to this Court’s Final Jury Charges and Related Final Court Verdict Form, filed 8/14/24; and J&J Defendants’ Objections to Plaintiffs’ Proposed Verdict Form, filed 8/12/24.

⁹ Order on Defendants Johnson & Johnson; LLT Management, LLC; Johnson & Johnson Holdco (NA) Inc.; and Kenvue, Inc.’s Post-Trial Motions, filed 12/11/24, at pgs. 13-16.

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

F. Mere Continuation Theory

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

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

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

G. Kincaid Citation

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

¹⁰ Order, filed 12/11/24, at pgs. 17-18.

¹¹ Order, filed 12/11/24, at pg. 20.

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

H. Fraud exception for successor liability.

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

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

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

I. Blurred Corporate Distinction

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

II. PUNITIVE DAMAGES

A. Strict Liability

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

¹² Order, filed 12/11/24, at pg. 18.

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

B. Loss of Consortium

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

C. Deterrence

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

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

D. Comparative Fault

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

E. Punitive Damage Instructions

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

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

¹⁴ Order, filed 12/11/24, at pg. 35.

F. *Mitchell v. Fortis* Review

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

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

III. OTHER J&J OBJECTIONS

A. Dr. Longo's Testimony

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

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

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

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

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

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

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

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

¹⁶ This Court has today, February 28, 2025, filed an Amended Order reflecting this ruling.

¹⁷ TT Day II, 8/6/24, at 414:12-18.

¹⁸ *Id.* at 414:2-6.

¹⁹ *Id.* at 426:8-14.

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

IV. STAY

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

²⁰ TT Day III, 8/7/24 at 802:24-803:9.

²¹ *Id.* at 803:14-17.

²² *Id.* at 803:22-24.

CONCLUSION

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

AND IT IS SO ORDERED.

[JUDGE'S ELECTRONIC SIGNATURE PAGE TO FOLLOW]



Richland Common Pleas

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

Case Number: 2023CP4004072

Type: Order/Other

So Ordered

Jean H. Toal

Electronically signed on 2025-02-28 13:57:06 page 19 of 19

(STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

Michael L Perry and Lonnie L Long,

Plaintiffs,

v.

Johnson & Johnson and American
International Industries et al,

Defendants.

) IN THE COURT OF COMMON PLEAS

) FIFTH JUDICIAL CIRCUIT

) C/A No. 2023-CP-40-04072

VERDICT FORM

JEANETTE W. McBRIDE
C.C.P., G.S., & F.C.

2024 AUG 19 AM 9:05

RICHLAND COUNTY
FILED

VERDICT FORM

NEGLIGENCE

1. We, the jury, find that Defendant the Johnson & Johnson entities were negligent, and its negligence was a proximate cause of Plaintiff Michael Perry's injuries:

☒ Yes

☐ No

2. We, the jury, find that Defendant American International Industries (AII), was negligent, and its negligence was a proximate cause of Plaintiff Michael Perry's injuries:

☒ Yes

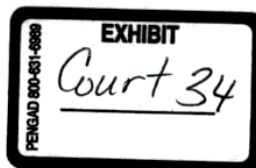
☐ No

STRICT LIABILITY

3. We, the jury, find that Defendant the Johnson & Johnson entities are strictly liable for selling defective products that was a proximate cause of Plaintiff Michael Perry's injuries:

☒ Yes

☐ No



4. We, the jury, find that Defendant American International Industries (AII) is strictly liable for selling defective products that was a proximate cause of Plaintiff Michael Perry's injuries:

☒ Yes

☐ No

FRAUDULENT MISREPRESENTATION

5. We, the jury, find that Defendant the Johnson & Johnson entities engaged in fraudulent misrepresentation in selling its products and that fraudulent misrepresentation was a proximate cause of Plaintiff Michael Perry's injuries:

☐ Yes

☒ No

6. We, the jury, find that Defendant American International Industries (AII) engaged in fraudulent misrepresentation in selling its products and that fraudulent misrepresentation was a proximate cause of Plaintiff Michael Perry's injuries:

☒ Yes

☐ No

DAMAGES

7. If you answered "Yes" to any of Questions 1-6, please state the amount of actual damages that have been proven by the greater weight of the evidence:

Michael Perry's economic loss (past & future) \$ 3,800,000

Michael Perry's other damages (past & future) \$ 19,237,500

Lonnie Long's loss of consortium damages (past & future) \$ 9,618,750

WILLFUL, WANTON OR RECKLESS CONDUCT

8. If you answered "Yes" to Questions 1, 2, 5, or 6, please answer this question as to any Defendant for which you answered "Yes." We, the jury, find by clear and convincing evidence that the conduct of the following Defendants was willful, wanton, or reckless:

Johnson & Johnson

☒ Yes

☐ No

American International Industries (AII)

☒ Yes

☐ No

Foreperson _____

August 15, 2024
Date

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

Michael L Perry and Lonnie L Long,

Plaintiffs,

v.

American International Industries et al,

Defendants.

) IN THE COURT OF COMMON PLEAS

) FIFTH JUDICIAL CIRCUIT

) C/A No. 2023-CP-40-04072

) PLAINTIFFS' REQUESTED
) JURY CHARGES

RICHLAND COUNTY
FILED
2024 AUG 19 AM 9:08
JEANETTE W. MCBRIDE
C.C.P., G.S., & F.C.

PUNITIVE DAMAGES VERDICT FORM

1. As to Plaintiff Michael Perry's claims against Defendant Johnson & Johnson entities for punitive damages, we, the jury, by unanimous consent, find:

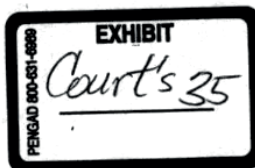
✓ for Michael Perry in the amount of \$ 30,000,000 punitive damages
(\$30 Million)

3. As to Plaintiff Michael Perry's claims against Defendant American International Industries for punitive damages, we, the jury, by unanimous consent, find:

✓ for Michael Perry in the amount of \$ 700,000 punitive damages

Foreperson

August 15, 2024
Date



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

MICHAEL L. PERRY and
LONNIE L. LONG,

Plaintiffs,

v.

AMERICAN INTERNATIONAL
INDUSTRIES

AMERICAN INTERNATIONAL
INDUSTRIES, INC.

ATLAS TURNER INC.

AVON PRODUCTS, INC.

BARRETT'S MINERALS INC.

BLOCK DRUG COMPANY, INC.

BRENNTAG NORTH AMERICA, INC.

BRENNTAG SPECIALTIES, LLC

BRISTOL-MYERS SQUIBB COMPANY

C&S WHOLESALE GROCERS, LLC

CALVIN KLEIN INC.

CHANEL INC.

CHARLES B. CHRYSTAL COMPANY, INC.

CHATTEM, INC.

COLGATE-PALMOLIVE COMPANY

COLOR TECHNIQUES, INC.

COTY INC.

C/A NO. 2023-CP-40-_____

In Re:
Asbestos Personal Injury Litigation
Coordinated Docket

SUMMONS

(Jury Trial Demanded)

CVS HEALTH CORPORATION	)
	)
CVS PHARMACY, INC.	)
	)
EDC DRUG STORES, INC.	)
	)
ESTÉE LAUDER INC.	)
	)
ESTÉE LAUDER INTERNATIONAL, INC.	)
	)
THE ESTÉE LAUDER COMPANIES INC.	)
	)
FOOD LION, LLC	)
	)
GENUINE PARTS COMPANY	)
	)
GLAMOUR INDUSTRIES CO.	)
	)
HAWTHORNE PHARMACY, INC.	)
	)
HIMMEL MANAGEMENT CO. LLC	)
	)
HIMMEL MEDIA LLC	)
	)
HONEYWELL INTERNATIONAL, INC.	)
	)
IDELLE LABS, LTD.	)
	)
IMI FABI (DIANA) LLC	)
	)
IMI FABI (USA) INC.	)
	)
IMI FABI, LLC	)
	)
JANSSEN PHARMACEUTICALS, INC.	)
	)
JOHNSON & JOHNSON	)
	)
JOHNSON & JOHNSON HOLDCO (NA) INC.	)
	)
KENVUE INC.	)
	)
L'ORÉAL USA, INC.	)
	)
L'ORÉAL USA PRODUCTS, INC.	)
	)
LTL MANAGEMENT LLC	)

MINERALS TECHNOLOGIES INC.
THE NESLEMUR COMPANY
PFIZER INC.
PIGGLY WIGGLY, LLC
PNEUMO ABEX LLC
PRESPERSE CORPORATION
THE PROCTER & GAMBLE COMPANY
PTI ROYSTON, LLC
PTI UNION LLC
RALPH LAUREN CORPORATION
RITE AID OF SOUTH CAROLINA, INC.
SHULTON, INC.
SPECIALTY MINERALS INC.
SUMITOMO CORPORATION OF
AMERICAS
TRUE PHARMACY
UNION CARBIDE CORPORATION
VI-JON, LLC
WALGREEN CO.
WALMART INC.
Defendants.

SUMMONS

TO DEFENDANTS ABOVE-NAMED:

YOU ARE HEREBY SUMMONED and required to answer the Complaint in this action, a copy of which is herewith served upon you, and to serve a copy of your answer to this complaint upon the Plaintiffs' counsel, at the address shown below, within thirty (30) days after service hereof, exclusive of the day of such service. If you fail to answer the complaint, judgment by default will be rendered against you for the relief demanded in the complaint.

Respectfully submitted,

/s/ Theile B. McVey

Theile B. McVey (SC Bar No. 16682)

Jamie D. Rutkoski (SC Bar No. 103270)

KASSEL MCVEY ATTORNEYS AT LAW

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Columbia, South Carolina 29202-1476

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tmcvey@kassellaw.com

jrutkoski@kassellaw.com

Other email: emoultrie@kassellaw.com

and

Rachel A. Gross (TX Bar 24073608)

(To Be Admitted *Pro Hac Vice*)

DEAN OMAR BRANHAM SHIRLEY, LLP

302 N. Market Street, Suite 300

Dallas, TX 75202

T: 214-722-5990

F: 214-722-5991

rgross@dobslegal.com

Other email: tgilliland@dobslegal.com

ATTORNEYS FOR PLAINTIFFS

August 3, 2023

Columbia, South Carolina

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

**MICHAEL L. PERRY and
LONNIE L. LONG**

Plaintiffs,

v.

**AMERICAN INTERNATIONAL
INDUSTRIES**, individually and as successor-
in-interest to PINAUD, INC., BARBARA
ALICE, INC., ED. PINAUD, INC. d/b/a ED.
PINAUD, and NESTLE-LE MUR COMPANY,
all for the CLUBMAN line of products

**AMERICAN INTERNATIONAL
INDUSTRIES, INC.**, individually and as
successor-in-interest to PINAUD, INC.,
BARBARA ALICE, INC., ED. PINAUD, INC.
d/b/a ED. PINAUD, and NESTLE-LE MUR
COMPANY, all for the CLUBMAN line of
products

ATLAS TURNER INC.
f/k/a ATLAS ASBESTOS COMPANY LTD.

AVON PRODUCTS, INC.

BARRETTS MINERALS INC.

BLOCK DRUG COMPANY, INC.
individually and as successor to THE GOLD
BOND STERILIZING POWDER CO. a/k/a
THE GOLD BOND CO.

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

BRENNTAG SPECIALTIES, LLC
f/k/a BRENNTAG SPECIALTIES, INC.
f/k/a MINERAL AND PIGMENT

C/A NO. 2023-CP-40-_____

In Re:
Asbestos Personal Injury Litigation
Coordinated Docket

Living Mesothelioma

COMPLAINT

(Jury Trial Demanded)

SOLUTIONS, INC., as successor-in-interest to)
 WHITTAKER, CLARK & DANIELS, INC.)
)
BRISTOL-MYERS SQUIBB COMPANY)
)
C&S WHOLESALE GROCERS, LLC)
 f/k/a C&S WHOLESALE GROCERS, INC.)
 individually and as successor-in-interest to)
 FLEMING COMPANIES, INC., successor-in-)
 interest to PIGGLY WIGGLY COMPANY)
)
CALVIN KLEIN INC.)
)
CHANEL INC.)
)
CHARLES B. CHRYSTAL COMPANY,)
INC.)
)
CHATTEM, INC.)
 individually and as successor to MARTIN)
 HIMMEL, INC., successor to BLOCK DRUG)
 COMPANY INC., successor to THE GOLD)
 BOND STERILIZING POWDER COMPANY)
 a/k/a THE GOLD BOND COMPANY,)
 successor to GOLD BOND)
 PHARMACEUTICAL CORPORATION)
)
COLGATE-PALMOLIVE COMPANY)
 individually and as successor-in-interest to)
 THE MENNEN COMPANY)
)
COLOR TECHNIQUES, INC.)
)
COTY INC.)
)
CVS HEALTH CORPORATION)
)
CVS PHARMACY, INC.)
)
EDC DRUG STORES, INC.)
 f/k/a KERR DRUG STORES, INC.)
)
ESTÉE LAUDER INC.)
)
ESTÉE LAUDER INTERNATIONAL, INC.)
)
THE ESTÉE LAUDER COMPANIES INC.)

FOOD LION, LLC

GENUINE PARTS COMPANY

d/b/a NATIONAL AUTOMOTIVE PARTS
ASSOCIATION (NAPA)

GLAMOUR INDUSTRIES CO.

individually and as an S-corporation of
AMERICAN INTERNATIONAL
INDUSTRIES successor-in-interest to PINAUD,
INC., BARBARA ALICE, INC., ED. PINAUD,
INC. d/b/a ED. PINAUD, and NESTLE-LE
MUR COMPANY, all for the CLUBMAN line
of products

HAWTHORNE PHARMACY, INC.

HIMMEL MANAGEMENT CO. LLC

a/k/a HIMMEL GROUP, formerly d/b/a
MARTIN HIMMEL INC., individually and as
successor to BLOCK DRUG COMPANY INC.,
successor to THE GOLD BOND STERILIZING
POWDER CO. a/k/a THE GOLD BOND CO.

HIMMEL MEDIA LLC

individually and as successor to BLOCK DRUG
COMPANY INC., successor to THE GOLD
BOND STERILIZING POWDER CO. a/k/a
THE GOLD BOND CO.

HONEYWELL INTERNATIONAL, INC.

individually and as successor-in-interest to
ALLIED SIGNAL, INC., as successor to
BENDIX CORPORATION

IDELLE LABS, LTD.

IMI FABI (DIANA) LLC

IMI FABI (USA) INC.

IMI FABI, LLC

JANSSEN PHARMACEUTICALS, INC.

individually and as successor-in-interest to
Johnson & Johnson subsidiaries named

JOHNSON & JOHNSON CONSUMER INC.,)
both prior to and after its 2021 restructurings)
and colloquially known as “Old JJCI” and “New)
JJCI”)
))
JOHNSON & JOHNSON)
))
JOHNSON & JOHNSON HOLDCO (NA))
INC., f/k/a JOHNSON & JOHNSON)
CONSUMER INC., individually and as)
successor-in-interest to Johnson & Johnson)
subsidiary “Old JJCI”)
))
KENVUE INC.)
individually and as successor-in-interest to)
JOHNSON & JOHNSON CONSUMER INC.)
))
L’ORÉAL USA, INC.)
))
L’ORÉAL USA PRODUCTS, INC.)
))
LTL MANAGEMENT LLC)
))
MINERALS TECHNOLOGIES INC.)
))
THE NESLEMUR COMPANY)
f/k/a THE NESTLE-LEMUR COMPANY)
))
PFIZER INC.)
))
PIGGLY WIGGLY, LLC)
a subsidiary of C&S WHOLESALE GROCERS,)
INC. sued individually and as successor-in-)
interest to FLEMING COMPANIES, INC.,)
successor-in-interest to PIGGLY WIGGLY)
COMPANY)
))
PNEUMO ABEX LLC)
individually and as successor-in-interest to)
ABEX CORPORATION)
))
PRESERSE CORPORATION)
))
THE PROCTER & GAMBLE COMPANY)
individually and as successor-in-interest to)
SHULTON, INC.)
))

PTI ROYSTON, LLC	)
d/b/a PHARMA TECH INDUSTRIES	)
f/k/a PHARMA TECH INDUSTRIES, INC.	)
f/k/a BLACK CREEK CORPORATION	)
	)
PTI UNION LLC	)
d/b/a PHARMA TECH INDUSTRIES	)
individually and as successor-in-interest to	)
PHARMA TECH INDUSTRIES, INC. f/k/a	)
BLACK CREEK CORPORATION, as	)
successor-in-interest to DIRECT	)
PHARMACEUTICAL CORPORATION and as	)
successor-in interest to ENVI DIVERSIFIED,	)
INC. f/k/a PHARMA-TECH INDUSTRIES,	)
INC.	)
	)
RALPH LAUREN CORPORATION	)
	)
RITE AID OF SOUTH CAROLINA, INC.	)
	)
SHULTON, INC.	)
a subsidiary of THE PROCTER & GAMBLE	)
COMPANY	)
	)
SPECIALTY MINERALS INC.	)
	)
SUMITOMO CORPORATION OF	)
AMERICAS	)
	)
TRUE PHARMACY	)
	)
UNION CARBIDE CORPORATION	)
	)
VI-JON, LLC	)
f/k/a VI-JON, INC. f/k/a CUMBERLAND	)
SWAN	)
	)
WALGREEN CO.	)
	)
WALMART INC.	)
	)
Defendants.	)
	)

PLAINTIFFS' ORIGINAL COMPLAINT

Plaintiffs, MICHAEL L. PERRY and LONNIE L. LONG (hereinafter "Plaintiffs"), sue the named Defendants for compensatory and punitive damages, by and through their attorneys, and come before this court and allege as follows:

GENERAL ALLEGATIONS

1. Plaintiff Michael L. Perry has been diagnosed with mesothelioma caused by asbestos dust and fibers.

2. This Court has personal jurisdiction over Defendants because Plaintiffs' claims arise from Defendants' conduct in:

- (a) Transacting business in this State, including the sale, supply, purchase, and/or use of asbestos and/or asbestos-containing products, within this State;
- (b) Contracting to supply services or things in the State;
- (c) Commission of a tortious act in whole or in part in this State;
- (d) Having an interest in, using, or possessing real property in this State;
- (e) Entering into a contract to be performed in whole or in part by either party in this State; and/or
- (f) Exposing Plaintiff to asbestos dust, fibers and/or particles generated from the ordinary and foreseeable use of the asbestos-containing products it sold, supplied, distributed, incorporated, and/or otherwise placed in the stream of commerce in the State of South Carolina and/or other states at times relevant to this action.

3. Every Defendant that has obtained a certificate of authority to transact business in South Carolina has thereby agreed that it is amenable to suit in this State. This Court may exercise general jurisdiction over such foreign corporations consistent with due process.

4. At all times material hereto, Defendants acted through their agents, servants or employees who were acting within the scope of their employment on the business of the Defendants.

5. The Defendants are corporations, companies or other business entities which, during all times material hereto, and for a long time prior thereto have been, and/or are now engaged, directly or indirectly, in the manufacturing, producing, selling, merchandising, supplying, distributing, installing, removing, and/or otherwise placing in the stream of commerce, asbestos-containing products. Courts of the State of South Carolina have personal jurisdiction over all Defendants.

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

7. Plaintiffs' claims against the Product Defendants, as defined herein, arise out of Defendants' purposeful efforts to serve directly or indirectly the market for their asbestos and/or asbestos-containing products in this State, either through direct sales or through utilizing an

established distribution channel with the expectation that their products would be purchased and/or used within South Carolina.

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

9. Plaintiff Michael L. Perry was exposed to asbestos and/or asbestos-containing body talc products from his birth until approximately 2018 through his personal use, and his family's use, of asbestos-containing body talc products throughout his life, his use and his family's use of asbestos-containing body talc products. These asbestos-containing talcum products were designed, advertised, marketed, and sold as being appropriate for use in the ordinary course by Defendants identified above. It was foreseeable Defendants' asbestos-containing talcum products would be sold for personal use by individuals like Plaintiff Michael L. Perry on himself. Plaintiff Michael L. Perry was thereby exposed to defendants' asbestos-containing talcum products in the State of South Carolina.

10. Plaintiff was further exposed to asbestos through his employment at various hotel locations where asbestos and asbestos-containing products were removed, replaced, and present in certain facilities.

11. Plaintiff was also exposed to asbestos-containing products at various times throughout his life from his non-occupation work maintaining his vehicles working with asbestos-containing friction products.

12. Plaintiff Michael L. Perry has suffered personal injuries as a proximate result of his regular and prolonged use of, inhalation, ingestion, absorption, and exposure to a variety of asbestos-containing products¹ where asbestos-containing talc was a constituent ingredient.

13. Plaintiff, Michael L. Perry, was exposed to asbestos through his personal daily use, and his family's use, of a variety of talc-based body products including, but not limited to, Ammens body powders, Avon body powders, Calvin Klein talc powder, Cashmere Bouquet talc powders, Chanel talc products, Clubman talc products, Coty talc products, Drakkar Noir talc powder, Estee Lauder talc products, Gold Bond body powders, Johnson and Johnson Baby Powder, Shower to Shower body powder, Mennen talc products, Old Spice talc products, Pinaud talc products, Polo talc powder, Stetson talc products, Walgreens body powders, Walmart body powders, and White Linen talcum powder, ("Talc Powder Products") throughout his life. These products were manufactured, marketed, sold and/or distributed by Defendants.

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

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

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

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

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

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

DEFENDANT	ALTERNATE ENTITY
AMERICAN INTERNATIONAL INDUSTRIES	PINAUD, INC., BARBARA ALICE, INC., ED. PINAUD, INC., ED. PINAUD, NESTLE-LE MUR COMPANY, and CLUBMAN
AMERICAN INTERNATIONAL INDUSTRIES, INC.	PINAUD, INC., BARBARA ALICE, INC., ED. PINAUD, INC., ED. PINAUD, NESTLE-LE MUR COMPANY, and CLUBMAN
ATLAS TURNER INC.	ATLAS ASBESTOS COMPANY LTD.
BLOCK DRUG COMPANY, INC.	THE GOLD BOND STERILIZING POWDER CO. and THE GOLD BOND CO.
BRENNTAG NORTH AMERICA, INC.	MINERAL AND PIGMENT SOLUTIONS, INC. and WHITTAKER, CLARK & DANIELS, INC.

DEFENDANT	ALTERNATE ENTITY
BRENNTAG SPECIALTIES, LLC	BRENNTAG SPECIALTIES, INC., MINERAL AND PIGMENT SOLUTIONS, INC. and WHITTAKER, CLARK & DANIELS, INC
C&S WHOLESALE GROCERS, LLC	C&S WHOLESALE GROCERS, INC., FLEMING COMPANIES, INC. and PIGGLY WIGGLY COMPANY
CHATTEM, INC.	MARTIN HIMMEL, INC., BLOCK DRUG COMPANY INC., THE GOLD BOND STERILIZING POWDER COMPANY, THE GOLD BOND COMPANY, and GOLD BOND PHARMACEUTICAL CORPORATION
COLGATE-PALMOLIVE COMPANY	THE MENNEN COMPANY
EDC DRUG STORES, INC.	KERR DRUG STORES, INC.
GENUINE PARTS COMPANY	NATIONAL AUTOMOTIVE PARTS ASSOCIATION (NAPA)
GLAMOUR INDUSTRIES CO.	PINAUD, INC., BARBARA ALICE, INC., ED. PINAUD, INC., ED. PINAUD, NESTLE-LE MUR COMPANY, and CLUBMAN
HIMMEL MANAGEMENT CO. LLC	HIMMEL GROUP, MARTIN HIMMEL INC., BLOCK DRUG COMPANY INC., THE GOLD BOND STERILIZING POWDER CO., and THE GOLD BOND CO.
HIMMEL MEDIA LLC	BLOCK DRUG COMPANY INC., THE GOLD BOND STERILIZING POWDER CO., and THE GOLD BOND CO.
HONEYWELL INTERNATIONAL, INC	ALLIED SIGNAL, INC. and BENDIX CORPORATION
JANSSEN PHARMACEUTICALS, INC.	JOHNSON & JOHNSON CONSUMER INC.
JOHNSON & JOHNSON HOLDCO (NA) INC.	JOHNSON & JOHNSON CONSUMER INC.

DEFENDANT	ALTERNATE ENTITY
KENVUE INC.	JOHNSON & JOHNSON CONSUMER INC.
LTL MANAGEMENT LLC	JOHNSON & JOHNSON CONSUMER INC.
THE NESLEMUR COMPANY	THE NESTLE-LEMUR COMPANY
PIGGLY WIGGLY, LLC	C&S WHOLESALE GROCERS, INC., FLEMING COMPANIES, INC. and PIGGLY WIGGLY COMPANY
PNEUMO ABEX LLC	ABEX CORPORATION
THE PROCTER & GAMBLE COMPANY	SHULTON, INC.
PTI ROYSTON, LLC	PHARMA TECH INDUSTRIES, PHARMA TECH INDUSTRIES, INC. and BLACK CREEK CORPORATION
PTI UNION LLC	PHARMA TECH INDUSTRIES, PHARMA TECH INDUSTRIES, INC., BLACK CREEK CORPORATION, DIRECT PHARMACEUTICAL CORPORATION, ENVI DIVERSIFIED, INC., and PHARMA-TECH INDUSTRIES, INC.
SHULTON, INC.	THE PROCTER & GAMBLE COMPANY
VI-JON, LLC	VI-JON, INC. and CUMBERLAND SWAN

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

state or foreign jurisdiction, and that said Defendants were and/or are authorized to do business in the State of South Carolina, and that said Defendants have regularly conducted business in the State of South Carolina.

20. Plaintiffs have been informed and believe, and thereon allege, that at all times herein mentioned, certain Defendants are subject to the following facts relating to their successor liability status, as stated below:

- (a) The Declaration of John K. Kim in Support of First Day Pleadings in LTL's second Bankruptcy filing on April 4, 2023 ("**Kim LTL Decl.**"), *In re: LTL Management LLC*, Case No.: 23-12825, United States Bankruptcy Court District of New Jersey ("**LTL 2**"), summarizes J&J's and its affiliates' corporate history that is pertinent to the claims alleged herein against the Defendants as follows:
 - (i) "J&J, a New Jersey company incorporated in 1887, first began selling JOHNSON'S® Baby Powder in 1894, launching its baby care line of products."
 - (ii) "In 1972, J&J established a formal operating division for its baby products business, which included JOHNSON'S® Baby Powder.... J&J transferred all its assets and liabilities associated with the baby products division to J&J Baby Products."
 - (iii) "In 1981, J&J Baby Products transferred all its assets, except those assets allocated to its diaper programs, to Omni Education Corporation ("Omni"), a wholly owned subsidiary of J&J Baby Products. In turn, Omni assumed all liabilities of J&J Baby Products except those liabilities related to its diaper program. Immediately following the transaction, J&J Baby Products merged into another subsidiary of J&J and was renamed Personal Products Company, and Omni changed its name to Johnson & Johnson Baby Products Company."
 - (iv) "In 1988, Johnson & Johnson Baby Products Company transferred all its assets in respect of its baby products business to Johnson & Johnson Dental Products Company, which assumed all of its liabilities and was renamed Johnson & Johnson Consumer Products, Inc."
 - (v) "In 1997, Johnson & Johnson Consumer Products, Inc. changed its name to Johnson & Johnson Consumer Companies, Inc. ("J&J Consumer Companies")."

- (vi) “In 2015, J&J Consumer Companies merged with and into an affiliate, which then merged into McNeil-PPC, Inc. The resulting entity was renamed Johnson & Johnson Consumer Inc. (including all former names and historical forms, “Old JJCI”).”
- (vii) “Old JJCI became responsible for all claims alleging that JOHNSON’S® Baby Powder and other talc-containing products cause cancer or other diseases.... Old JJCI also became responsible for all claims alleging that Shower to Shower products, which contained talc, cause cancer or other diseases.”
- (b) J&J and its subsidiary, “Johnson & Johnson Consumer, Inc.,” both in the form of “Old JJCI” and “New JJCI” (which is identified and described below), were at all times material responsible for the design, labeling, marketing, distribution, and sale of J&J’s body powder product lines, including the iconic Johnson & Johnson Baby Powder product line.
- (c) Each and every one of the J&J’s corporate entities, including itself and its affiliated companies involved or associated with talc business and PRODUCTS, were at all times material to this case aware that raw talc ingredient and/or resulting talc-based PRODUCTS contained asbestos, and each and all collectively actively concealed such fact from the public for decades.
- (d) Prior to the implementation of J&J’s multifaceted restructuring of its consumer product subsidiaries in 2021, Old JJCI and its predecessors milled, manufactured, labeled, sold, supplied, distributed, and/or marketed asbestos-containing PRODUCTS to which Plaintiff was exposed.
- (e) In an effort to avoid or eliminate J&J and Old JJCI’s respective responsibility and liability for injuries and harm caused by Johnson & Johnson Baby Powder, as well as other talc PRODUCTS, in or about October 2021, Old JJCI underwent a series of corporate restructuring transactions under Texas state corporation and business law in which it split itself into two separate entities through a device referred to as a “divisive merger,” more commonly known as the “Texas Two Step.”
- (f) The corporate restructuring was designed and undertaken with the intent to isolate the talc liabilities of Old JJCI into a newly invented company created by J&J called “LTL Management LLC” (“LTL”). “LTL” is an acronym for “Legacy Talc Liability.”
- (g) LTL was immediately thereafter put into a Chapter 11 Bankruptcy wherein LTL and other J&J entities sought the protection of the Bankruptcy Code’s processes and machinery to obtain a stay of all pending litigation and construct an aggregate resolution of its outstanding present and future

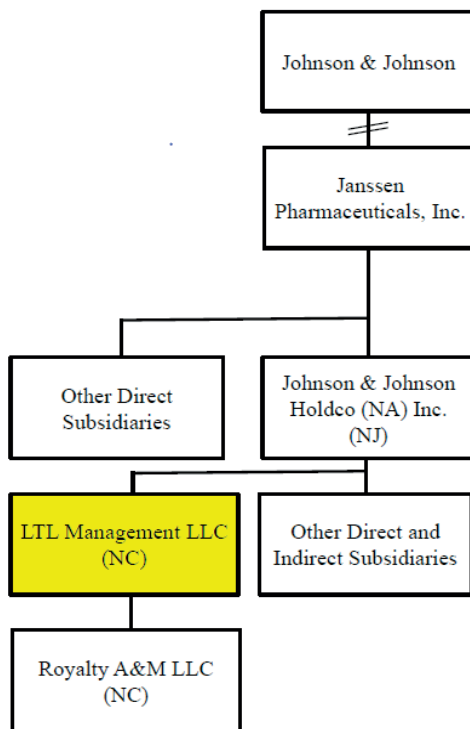
asbestos liabilities that would foreclose jury trials and reduce the compensation they would owe to those harmed by its PRODUCTS and their families, given that J&J and its subsidiaries were increasingly being held liable by juries in lawsuits brought by talc asbestos claimants and were being ordered to pay compensatory and exemplary damages.

- (h) As part of J&J's liability avoidance/limiting corporate restructuring, all of the productive assets of Old JJCI, including those used to manufacture and market J&J Baby Powder, were transferred to a newly minted corporate entity named "Johnson & Johnson Consumer Inc." ("New JJCI"). New JJCI upon receipt of the Old JJCI's operating assets continued to sell J&J Baby Powder, as had Old JJCI previously before when J&J itself directly marketed the product line through an internal division.
- (i) Over the objection of tens of thousands of personal injury and wrongful death tort plaintiffs, the Bankruptcy Court presiding over LTL's 2021 bankruptcy case stayed and enjoined prosecution of all litigation against not only the Debtor LTL but all cosmetic talc injury related litigation involving J&J and New JJCI.
- (j) During LTL's bankruptcy proceedings, representatives of the affected personal injury and wrongful death tort victims challenged J&J's Texas Two Step scheme before the Bankruptcy Court. After losing their challenges before the Bankruptcy Court, they were ultimately successful on appeal before the United States Court of Appeals for the Third Circuit, which on January 30, 2023, ruled that the Bankruptcy filing by LTL was not proper and ordered that LTL's 2021 Bankruptcy case be dismissed. In re: LTL Management, LLC, No. 22-0007, 2023 WL 2760479 (3d Cir., decided Jan. 30, 2023; opinion entered Mar. 31, 2023).
- (k) LTL's efforts to obtain re-argument before the Third Circuit panel hearing its appeal or an en banc hearing were denied, and the Appeals Court's mandate to the Bankruptcy Court was issued by the Third Circuit Clerk on March 31, 2023, thereby triggering the lower court's duty to enter an order dismissing the case.
- (l) Within hours of the LTL Bankruptcy Court issuing its ensuing dismissal order on April 4, 2023, LTL filed a second Chapter 11 petition for bankruptcy protection in the same court seeking the same relief as in the dismissed case, claiming its funding sources and arrangements had been replaced and reconfigured in such way that purportedly overcomes the Third Circuit's reasons for ordering the earlier bankruptcy case be dismissed.
- (m) Unbeknownst to Plaintiff, during the time the Third Circuit Court of Appeals was considering the propriety of LTL's bankruptcy filing, New JJCI began the process of moving its assets and business to yet another J&J

subsidiary, Defendant Kenvue, Inc., by transfers through JJCI's direct parent, Janssen Pharmaceuticals, Inc.

- (n) According to the Kim Declaration, as part of J&J's further corporate restructuring, New JJCI changed its name to "Johnson & Johnson Holdco (NA) Inc." ("Holdco"), a New Jersey corporation. His declaration before the Bankruptcy Court additionally revealed that "in early January 2023, [New JJCI] transferred its Consumer Business assets to its parent entity." See Kim LTL Decl. at ¶ 26.
- (o) While Mr. Kim's declaration does not expressly state who the parent entity is, a careful examination of the affidavit demonstrates that Janssen Pharmaceuticals, Inc. is the parent entity of Defendant New JJCI. *Id.* Figure 1 below is from an Exhibit to Mr. Kim's Declaration and shows that Janssen is the parent that received all of the JJCI assets used to manufacture, market, and sell J&J Baby Powder.

Figure 1



- (p) Accordingly, under South Carolina law, both Holdco and Janssen are successors to Old JJCI and responsible for the contractual undertakings and tortious conduct of Old JJCI.

- (q) The information gleaned from Mr. Kim’s Declaration and a J&J subsidiary’s SEC filings shows that J&J is in the process once again of manipulating assets and responsibilities related to the sale of J&J’s Baby Powder.
- (r) On January 4, 2023, Defendant Kenvue, another J&J subsidiary, submitted its first filing with the Securities and Exchange Commission (“SEC”), an S-1 registration of securities form. Kenvue Inc. Form S-1 Registration Statement Under the Securities Act of 1933 (Jan. 4, 2023). Figure 2 below reproduces a portion of the filing’s cover page.

Figure 2

As filed with the Securities and Exchange Commission on January 4, 2023.			Registration No. 333-
UNITED STATES SECURITIES AND EXCHANGE COMMISSION Washington, D.C. 20549 FORM S-1 REGISTRATION STATEMENT UNDER THE SECURITIES ACT OF 1933 Kenvue Inc. (Exact name of registrant as specified in its charter) 2844 (Primary Standard Industrial Classification Code Number) 88-1032011 (I.R.S. Employer Identification Number) 199 Grandview Road Skillman, NJ 08558 (732) 524-0400 (Address, including zip code, and telephone number, including area code, of registrant's principal executive offices)			
Delaware (State or other jurisdiction of incorporation or organization)			

- (s) In its SEC registration filing, Kenvue sets forth the products that it claims to manufacture and sell in the United States. In this regard, Kenvue represented to the SEC and the public: “A number of our products marketed in the United States, including many of our products in our Skin Health and Beauty segment, are considered cosmetics regulated by the FDA through the Federal Food, Drug, and Cosmetic Act and the Fair Packaging and Labeling Act. Our cosmetic products include Aveeno Restorative Skin Therapy Oat Repairing Cream, Aveeno Restorative Skin Therapy Sulfate-Free Body Wash, Johnson’s Baby Powder and certain of our Listerine mouthwash products.” *Id.* (emphasis added).
- (t) Kenvue acknowledged in its SEC S-1 filing that it may be held accountable for the harm caused by the talc-based PRODUCTS it is responsible for: “It is also possible that various parties will seek to bring **and will be successful** in bringing claims against us, including by raising allegations that we are liable for the Talc-Related Liabilities” *Id.* (emphasis added).
- (u) Kenvue further acknowledges itself as the company responsible for the manufacture of Johnson’s Baby Powder indicating that it “may be subject to additional claims . . . related to the sale of talc-based Johnson’s Baby Powder in markets where we have discontinued this product (such as in the United States and Canada), including potential governmental inquiries,

investigations, claims and consumer protection cases from state attorneys general.” Id. (emphasis added).

- (v) Kenvue also acknowledges that it is “responsible for all liabilities on account of or relating to harm arising out of, based upon, or resulting from, directly or indirectly, the presence of or exposure to talc or talc-containing products sold outside the United States or Canada.” Id.
- (w) As such, Kenvue is responsible individually and as successor to all predecessor entities involved in the manufacturing, marketing, and sale of the asbestos-containing talc PRODUCTS to which the Plaintiff was exposed.

21. For purposes of clarity and avoidance of doubt, this Complaint is not asserting and does not assert claims against, or seek any relief from Imerys Talc Vermont, Inc., or any of its affiliates (collectively, “Imerys”), and not relief obtained by Plaintiff pursuant to this Complaint will be used by the Plaintiff against Imerys in any manner.

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

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

24. As a direct and proximate result of the conduct as hereinafter alleged, Plaintiff Michael L. Perry incurred liability for physicians, surgeons, nurses, hospital care, medicine, hospices, x-rays and other medical treatment, the true and exact amount thereof being unknown to

Plaintiffs at this time. Plaintiffs request leave to supplement this Court and all parties accordingly when the true and exact cost of Plaintiff Michael L. Perry's medical treatment is ascertained.

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

THE PARTIES

26. Plaintiffs, Michael L. Perry and Lonnie L. Long, are currently residents of the State of South Carolina. Plaintiff Michael L. Perry was exposed to asbestos during the course of his career at various job sites, including but not limited to, locations in South Carolina and Illinois.

27. Plaintiff Michael L. Perry was also exposed to asbestos from his personal use, and his family's use, of asbestos-containing talc-based powder products throughout his life in his Illinois, Florida and South Carolina homes beginning in the 1960s. The dust and fibers from the asbestos-containing talc products permeated his person and clothes. As a direct and proximate result of Michael L. Perry's inhalation and ingestion of dust particles and fibers, he was diagnosed with Mesothelioma on or about July 7, 2023.

28. Defendant, **AMERICAN INTERNATIONAL INDUSTRIES**, individually and as successor-in-interest to PINAUD, INC., BARBARA ALICE, INC., ED. PINAUD, INC. d/b/a ED. PINAUD, and NESTLE-LE MUR COMPANY, all for the CLUBMAN line of products, was and is a California General Partnership with its principal place of business in California. At all times material hereto, AMERICAN INTERNATIONAL INDUSTRIES was authorized to do business in the State of South Carolina and Illinois while engaged, directly or indirectly, in the business of mining, designing, manufacturing, processing, importing, converting, compounding,

supplying, installing, replacing, repairing, using, and/or retailing substantial amounts of asbestos-containing talc products, including, but not limited to, asbestos-containing Clubman talc products and Pinaud talc products used by Plaintiff and others living in the same household with Plaintiff. AMERICAN INTERNATIONAL INDUSTRIES is sued as a Product Defendant. Furthermore, this Defendant has done and does substantial business in the State of South Carolina, including the sale and distribution of its dangerous and/or defective products and services. The exposures to this Defendant's products, actions, inactions, and/or other activities, which caused or contributed to cause Plaintiff Michael L. Perry's disease and injury.

29. Defendant, **AMERICAN INTERNATIONAL INDUSTRIES INC.**, individually and as successor-in-interest to PINAUD, INC., BARBARA ALICE, INC., ED. PINAUD, INC. d/b/a ED. PINAUD, and NESTLE-LE MUR COMPANY, all for the CLUBMAN line of products, was and is a Nevada corporation with its principal place of business in Nevada. At all times material hereto, AMERICAN INTERNATIONAL INDUSTRIES INC. was authorized to do business in the State of South Carolina and Illinois while engaged, directly or indirectly, in the business of mining, designing, manufacturing, processing, importing, converting, compounding, supplying, installing, replacing, repairing, using, and/or retailing substantial amounts of asbestos-containing talc products, including, but not limited to, asbestos-containing Clubman talc products and Pinaud talc products used by Plaintiff and others living in the same household with Plaintiff. AMERICAN INTERNATIONAL INDUSTRIES INC. is sued as a Product Defendant. Furthermore, this Defendant has done and does substantial business in the State of South Carolina, including the sale and distribution of its dangerous and/or defective products and services. The exposures to this Defendant's products, actions, inactions, and/or other activities, which caused or contributed to cause Plaintiff Michael L. Perry's disease and injury.

30. Defendant, **ATLAS TURNER INC.**, f/k/a ATLAS ASBESTOS COMPANY LTD., was and is a Canadian corporation with its principal place of business in Canada. At all times material hereto, ATLAS TURNER INC. was authorized to do business in the State of South Carolina and Illinois while engaged, directly or indirectly, in the business of mining, designing, manufacturing, processing, importing, converting, compounding, supplying, installing, replacing, repairing, using, and/or retailing substantial amounts of asbestos, asbestos-containing talc and/or asbestos-containing talc products including, but not limited to, raw asbestos fibers sold to various manufacturers of asbestos products including, but not limited to, asbestos friction, drywall, fireproofing, and insulation products. ATLAS TURNER INC. is sued as a Product Defendant. Furthermore, this Defendant has done and does substantial business in the State of South Carolina, including the sale and distribution of its dangerous and/or defective products and services. The exposures to this Defendant's products, actions, inactions, and/or other activities, which caused or contributed to cause Plaintiff Michael L. Perry's disease and injury.

31. Defendant, **AVON PRODUCTS, INC.**, was and is a New York corporation with its principal place of business in New York. At all times material hereto, AVON PRODUCTS, INC. was authorized to do business in the State of South Carolina and Illinois while engaged, directly or indirectly, in the business of mining, designing, manufacturing, processing, importing, converting, compounding, supplying, installing, replacing, repairing, using, and/or retailing substantial amounts of asbestos-containing talc products, including, but not limited to, asbestos-containing Avon talc products used by Plaintiff and others living in the same household with Plaintiff. AVON PRODUCTS, INC. is sued as a Product Defendant. Furthermore, this Defendant has done and does substantial business in the State of South Carolina, including the sale and distribution of its dangerous and/or defective products and services. The exposures to this

Defendant's products, actions, inactions, and/or other activities, which caused or contributed to cause Plaintiff Michael L. Perry's disease and injury.

32. Defendant, **BARRETT'S MINERALS INC.**, was and is a Delaware corporation with its principal place of business in New York. At all times material hereto, BARRETT'S MINERALS INC. was authorized to do business in the State of South Carolina and Illinois while engaged, directly or indirectly, in the business of mining, designing, manufacturing, processing, importing, converting, compounding, supplying, installing, replacing, repairing, using, and/or retailing substantial amounts of asbestos-containing talc and/or asbestos-containing talc products, including, but not limited to, asbestos-containing Clubman talc products used by Plaintiff and others living in the same household with Plaintiff. BARRETT'S MINERALS INC. is sued as a Product Defendant. Furthermore, this Defendant has done and does substantial business in the State of South Carolina, including the sale and distribution of its dangerous and/or defective products and services. The exposures to this Defendant's products, actions, inactions, and/or other activities, which caused or contributed to cause Plaintiff Michael L. Perry's disease and injury.

33. Defendant, **BLOCK DRUG COMPANY, INC.**, individually and as successor to THE GOLD BOND STERILIZING POWDER CO. a/k/a THE GOLD BOND CO., was and is a New Jersey corporation with its principal place of business in Pennsylvania. At all times material hereto, BLOCK DRUG COMPANY, INC. was authorized to do business in the State of South Carolina and Illinois while engaged, directly or indirectly, in the business of mining, designing, manufacturing, processing, importing, converting, compounding, supplying, installing, replacing, repairing, using, and/or retailing substantial amounts of asbestos-containing talc products, including, but not limited to, asbestos-containing Gold Bond talc products used by Plaintiff and others living in the same household with Plaintiff. BLOCK DRUG COMPANY, INC. is sued as a Product Defendant. Furthermore, this Defendant has done and does substantial business in the

State of South Carolina, including the sale and distribution of its dangerous and/or defective products and services. The exposures to this Defendant's products, actions, inactions, and/or other activities, which caused or contributed to cause Plaintiff Michael L. Perry's disease and injury.

34. Defendant, **BRENNTAG NORTH AMERICA, INC.**, individually and as successor-in-interest to MINERAL AND PIGMENT SOLUTIONS, INC., as successor-in-interest to WHITTAKER, CLARK & DANIELS, INC., was and is a Delaware corporation with its principal place of business in Pennsylvania. At all times material hereto, BRENNTAG NORTH AMERICA, INC. was authorized to do business in the State of South Carolina and Illinois while engaged, directly or indirectly, in the business of mining, designing, manufacturing, processing, importing, converting, compounding, supplying, installing, replacing, repairing, using, and/or retailing substantial amounts of asbestos-containing talc and/or asbestos-containing talc products including, but not limited to, asbestos-containing Johnson & Johnson, Cashmere Bouquet talc products and Estee Lauder talc products, including but not limited to White Linen perfumed talc, used by others living in the same household with Plaintiff. BRENNTAG NORTH AMERICA, INC. is sued as a Product Defendant. Furthermore, this Defendant has done and does substantial business in the State of South Carolina, including the sale and distribution of its dangerous and/or defective products and services. The exposures to this Defendant's products, actions, inactions, and/or other activities, which caused or contributed to cause Plaintiff Michael L. Perry's disease and injury.

35. Defendant, **BRENNTAG SPECIALTIES, LLC** f/k/a BRENNTAG SPECIALTIES, INC. f/k/a MINERAL AND PIGMENT SOLUTIONS, INC., as successor-in-interest to WHITTAKER, CLARK & DANIELS, INC., was and is a Delaware limited liability company with its principal place of business in New Jersey. At all times material hereto, BRENNTAG SPECIALTIES, LLC was authorized to do business in the State of South Carolina

and Illinois while engaged, directly or indirectly, in the business of mining, designing, manufacturing, processing, importing, converting, compounding, supplying, installing, replacing, repairing, using, and/or retailing substantial amounts of asbestos-containing talc and/or asbestos-containing talc products including, but not limited to, asbestos-containing Johnson & Johnson, Cashmere Bouquet talc products and Estee Lauder talc products, including but not limited to White Linen perfumed talc, used by others living in the same household with Plaintiff. BRENNTAG SPECIALTIES, LLC is sued as a Product Defendant. Furthermore, this Defendant has done and does substantial business in the State of South Carolina, including the sale and distribution of its dangerous and/or defective products and services. The exposures to this Defendant's products, actions, inactions, and/or other activities, which caused or contributed to cause Plaintiff Michael L. Perry's disease and injury.

36. Defendant, **BRISTOL-MYERS SQUIBB COMPANY**, was and is a Delaware corporation with its principal place of business in New York. At all times material hereto, BRISTOL-MYERS SQUIBB COMPANY was authorized to do business in the State of South Carolina and Illinois while engaged, directly or indirectly, in the business of mining, designing, manufacturing, processing, importing, converting, compounding, supplying, installing, replacing, repairing, using, and/or retailing substantial amounts of asbestos-containing talc and/or asbestos-containing talc products including, but not limited to, asbestos-containing Ammens Medicated talc powder, used by Plaintiff and others living in the same household with Plaintiff. BRISTOL-MYERS SQUIBB COMPANY is sued as a Product Defendant. Furthermore, this Defendant has done and does substantial business in the State of South Carolina, including the sale and distribution of its dangerous and/or defective products and services. The exposures to this Defendant's products, actions, inactions, and/or other activities, which caused or contributed to cause Plaintiff Michael L. Perry's disease and injury.

37. Defendant, **C&S WHOLESALE GROCERS, LLC** f/k/a C&S WHOLESALE GROCERS, INC., individually and as successor-in-interest to FLEMING COMPANIES, INC. successor-in-interest to PIGGLY WIGGLY COMPANY, was and is a Delaware limited liability company with its principal place of business in New Hampshire. At all times material hereto, C&S WHOLESALE GROCERS, LLC was authorized to do business in the State of South Carolina engaged, directly or indirectly, in the business of mining, designing, manufacturing, processing, importing, converting, compounding, supplying, installing, replacing, repairing, using, and/or retailing substantial amounts of asbestos-containing talc products including, but not limited to, Johnson & Johnson and Gold Bond talc products, purchased and used by Plaintiff. C&S WHOLESALE GROCERS, LLC is sued as a Product Defendant. Furthermore, this Defendant has done and does substantial business in the State of South Carolina, including the sale and distribution of its dangerous and/or defective products and services. The exposures to this Defendant's products, actions, inactions, and/or other activities, which caused or contributed to cause Plaintiff Michael L. Perry's disease and injury.

38. Defendant, **CALVIN KLEIN INC.**, was and is a New York corporation with its principal place of business in New York. At all times material hereto, CALVIN KLEIN INC. was authorized to do business in the State of South Carolina engaged, directly or indirectly, in the business of mining, designing, manufacturing, processing, importing, converting, compounding, supplying, installing, replacing, repairing, using, and/or retailing substantial amounts of asbestos-containing talc products including, but not limited to, asbestos-containing Calvin Klein talc powder, used by others living in the same household with Plaintiff. CALVIN KLEIN INC. is sued as a Product Defendant. Furthermore, this Defendant has done and does substantial business in the State of South Carolina, including the sale and distribution of its dangerous and/or defective

products and services. The exposures to this Defendant's products, actions, inactions, and/or other activities, which caused or contributed to cause Plaintiff Michael L. Perry's disease and injury.

39. Defendant, **CHANEL INC.**, was and is a New York corporation with its principal place of business in New York. At all times material hereto, CHANEL INC. was authorized to do business in the State of South Carolina and Illinois while engaged, directly or indirectly, in the business of mining, designing, manufacturing, processing, importing, converting, compounding, supplying, installing, replacing, repairing, using, and/or retailing substantial amounts of asbestos-containing talc products including, but not limited to, asbestos-containing Chanel talc products, including but not limited to Chanel No. 5 perfumed talc powder, used by others living in the same household with Plaintiff. CHANEL INC. is sued as a Product Defendant. Furthermore, this Defendant has done and does substantial business in the State of South Carolina, including the sale and distribution of its dangerous and/or defective products and services. The exposures to this Defendant's products, actions, inactions, and/or other activities, which caused or contributed to cause Plaintiff Michael L. Perry's disease and injury.

40. Defendant, **CHARLES B. CHRYSTAL COMPANY, INC.**, was and is a New York corporation with its principal place of business in Connecticut. At all times material hereto, CHARLES B. CHRYSTAL COMPANY, INC. was authorized to do business in the State of South Carolina, Florida, and Illinois while engaged, directly or indirectly, in the business of mining, designing, manufacturing, processing, importing, converting, compounding, supplying, installing, replacing, repairing, using, and/or retailing substantial amounts of asbestos-containing talc and/or asbestos-containing talc products including, but not limited to, asbestos-containing Gold Bond talc products and Estee Lauder talc products, including but not limited to White Linen perfumed talc, used by Plaintiff and others living in the same household with Plaintiff. CHARLES B. CHRYSTAL COMPANY, INC. is sued as a Product Defendant. Furthermore, this Defendant has

done and does substantial business in the State of South Carolina, including the sale and distribution of its dangerous and/or defective products and services. The exposures to this Defendant's products, actions, inactions, and/or other activities, which caused or contributed to cause Plaintiff Michael L. Perry's disease and injury.

41. Defendant, **CHATTEM, INC.**, individually and as successor to MARTIN HIMMEL, INC., successor to BLOCK DRUG COMPANY INC., successor to THE GOLD BOND STERILIZING POWDER COMPANY a/k/a THE GOLD BOND COMPANY, successor to GOLD BOND PHARMACEUTICAL CORPORATION, was and is a Tennessee corporation with its principal place of business in New Jersey. At all times material hereto, CHATTEM, INC. was authorized to do business in the State of South Carolina, Florida, and Illinois while engaged, directly or indirectly, in the business of mining, designing, manufacturing, processing, importing, converting, compounding, supplying, installing, replacing, repairing, using, and/or retailing substantial amounts of asbestos-containing talc products including, but not limited to, asbestos-containing Gold Bond talc products used by Plaintiff and others living in the same household with Plaintiff. CHATTEM, INC. is sued as a Product Defendant. Furthermore, this Defendant has done and does substantial business in the State of South Carolina, including the sale and distribution of its dangerous and/or defective products and services. The exposures to this Defendant's products, actions, inactions, and/or other activities, which caused or contributed to cause Plaintiff Michael L. Perry's disease and injury.

42. Defendant, **COLGATE-PALMOLIVE COMPANY**, individually and as successor-in-interest to THE MENNEN COMPANY, was and is a Delaware corporation with its principal place of business in New York. At all times material hereto, COLGATE-PALMOLIVE COMPANY was authorized to do business in the State of South Carolina and Illinois while engaged, directly or indirectly, in the business of mining, designing, manufacturing, processing, importing, converting,

compounding, supplying, installing, replacing, repairing, using, and/or retailing substantial amounts of asbestos-containing talc products including, but not limited to, asbestos-containing Cashmere Bouquet talc products and Mennen talc products, used by others living in the same household with Plaintiff. COLGATE-PALMOLIVE COMPANY is sued as a Product Defendant. Furthermore, this Defendant has done and does substantial business in the State of South Carolina, including the sale and distribution of its dangerous and/or defective products and services. The exposures to this Defendant's products, actions, inactions, and/or other activities, which caused or contributed to cause Plaintiff Michael L. Perry's disease and injury.

43. Defendant, **COLOR TECHNIQUES, INC.**, was and is a New Jersey corporation with its principal place of business in New Jersey. At all times material hereto, COLOR TECHNIQUES, INC. was authorized to do business in the State of South Carolina and Illinois while engaged, directly or indirectly, in the business of mining, designing, manufacturing, processing, importing, converting, compounding, supplying, installing, replacing, repairing, using, and/or retailing substantial amounts of asbestos-containing talc and/or asbestos-containing talc products including, but not limited to, asbestos-containing Cashmere Bouquet talc products, Estee Lauder talc products and Coty talc products, used by Plaintiff and others living in the same household with Plaintiff. COLOR TECHNIQUES, INC. is sued as a Product Defendant. Furthermore, this Defendant has done and does substantial business in the State of South Carolina, including the sale and distribution of its dangerous and/or defective products and services. The exposures to this Defendant's products, actions, inactions, and/or other activities, which caused or contributed to cause Plaintiff Michael L. Perry's disease and injury.

44. Defendant, **COTY INC.**, was and is a Delaware corporation with its principal place of business in New York. At all times material hereto, COTY INC. was authorized to do business in the State of South Carolina while engaged, directly or indirectly, in the business of mining,

designing, manufacturing, processing, importing, converting, compounding, supplying, installing, replacing, repairing, using, and/or retailing substantial amounts of asbestos-containing talc products including, but not limited to, asbestos-containing Stetson talc products, used by Plaintiff and others living in the same household with Plaintiff. COTY INC. is sued as a Product Defendant. Furthermore, this Defendant has done and does substantial business in the State of South Carolina, including the sale and distribution of its dangerous and/or defective products and services. The exposures to this Defendant's products, actions, inactions, and/or other activities, which caused or contributed to cause Plaintiff Michael L. Perry's disease and injury.

45. Defendant, **CVS HEALTH CORPORATION**, was and is a Delaware corporation with its principal place of business in Rhode Island. At all times material hereto, CVS HEALTH CORPORATION was authorized to do business in the State of South Carolina, Florida, and Illinois while engaged, directly or indirectly, in the business of mining, designing, manufacturing, processing, importing, converting, compounding, supplying, installing, replacing, repairing, using, and/or retailing substantial amounts of asbestos-containing talc products including, but not limited to, Johnson & Johnson, Ammens, and Gold Bond talc products, purchased and used by Plaintiff. CVS HEALTH CORPORATION is sued as a Product Defendant. Furthermore, this Defendant has done and does substantial business in the State of South Carolina, including the sale and distribution of its dangerous and/or defective products and services. The exposures to this Defendant's products, actions, inactions, and/or other activities, which caused or contributed to cause Plaintiff Michael L. Perry's disease and injury.

46. Defendant, **CVS PHARMACY, INC.**, was and is a Rhode Island corporation with its principal place of business in Rhode Island. At all times material hereto, CVS PHARMACY, INC. was authorized to do business in the State of South Carolina and Florida while engaged, directly or indirectly, in the business of mining, designing, manufacturing, processing, importing,

converting, compounding, supplying, installing, replacing, repairing, using, and/or retailing substantial amounts of asbestos-containing talc products including, but not limited to, Johnson & Johnson, Ammens, and Gold Bond talc products, purchased and used by Plaintiff. CVS PHARMACY, INC. is sued as a Product Defendant. Furthermore, this Defendant has done and does substantial business in the State of South Carolina, including the sale and distribution of its dangerous and/or defective products and services. The exposures to this Defendant's products, actions, inactions, and/or other activities, which caused or contributed to cause Plaintiff Michael L. Perry's disease and injury.

47. Defendant, **EDC DRUG STORES, INC.**, f/k/a KERR DRUG STORES, INC., was and is a North Carolina corporation with its principal place of business in North Carolina. At all times material hereto, EDC DRUG STORES, INC. was authorized to do business in the State of South Carolina engaged, directly or indirectly, in the business of mining, designing, manufacturing, processing, importing, converting, compounding, supplying, installing, replacing, repairing, using, and/or retailing substantial amounts of asbestos-containing talc products including, but not limited to, Johnson & Johnson, Ammens, and Gold Bond talc products, purchased and used by Plaintiff. EDC DRUG STORES, INC. is sued as a Product Defendant. Furthermore, this Defendant has done and does substantial business in the State of South Carolina, including the sale and distribution of its dangerous and/or defective products and services. The exposures to this Defendant's products, actions, inactions, and/or other activities, which caused or contributed to cause Plaintiff Michael L. Perry's disease and injury.

48. Defendant, **ESTÉE LAUDER INC.**, was and is a Delaware corporation with its principal place of business in New York. At all times material hereto, ESTÉE LAUDER INC. was authorized to do business in the State of South Carolina and Illinois while engaged, directly or indirectly, in the business of mining, designing, manufacturing, processing, importing, converting,

compounding, supplying, installing, replacing, repairing, using, and/or retailing substantial amounts of asbestos-containing talc products including, but not limited to, asbestos-containing Estee Lauder talc products, including but not limited to White Linen perfumed talc, used by others living in the same household with Plaintiff. ESTÉE LAUDER INC. is sued as a Product Defendant. Furthermore, this Defendant has done and does substantial business in the State of South Carolina, including the sale and distribution of its dangerous and/or defective products and services. The exposures to this Defendant's products, actions, inactions, and/or other activities, which caused or contributed to cause Plaintiff Michael L. Perry's disease and injury.

49. Defendant, **ESTÉE LAUDER INTERNATIONAL, INC.**, individually and as successor to CLINIQUE, was and is a Delaware corporation with its principal place of business in New York. At all times material hereto, ESTÉE LAUDER INTERNATIONAL INC. was authorized to do business in the State of South Carolina and Illinois while engaged, directly or indirectly, in the business of mining, designing, manufacturing, processing, importing, converting, compounding, supplying, installing, replacing, repairing, using, and/or retailing substantial amounts of asbestos-containing talc products including, but not limited to, asbestos-containing Estee Lauder talc products, including but not limited to White Linen perfumed talc, used by others living in the same household with Plaintiff. ESTÉE LAUDER INTERNATIONAL INC. is sued as a Product Defendant. Furthermore, this Defendant has done and does substantial business in the State of South Carolina, including the sale and distribution of its dangerous and/or defective products and services. The exposures to this Defendant's products, actions, inactions, and/or other activities, which caused or contributed to cause Plaintiff Michael L. Perry's disease and injury.

50. Defendant, **THE ESTÉE LAUDER COMPANIES INC.**, individually and as successor to CLINIQUE, was and is a Delaware corporation with its principal place of business in New York. At all times material hereto, THE ESTÉE LAUDER COMPANIES INC. was

authorized to do business in the State of South Carolina and Illinois while engaged, directly or indirectly, in the business of mining, designing, manufacturing, processing, importing, converting, compounding, supplying, installing, replacing, repairing, using, and/or retailing substantial amounts of asbestos-containing talc products including, but not limited to, asbestos-containing Estee Lauder talc products, including but not limited to White Linen perfumed talc, used by others living in the same household with Plaintiff. THE ESTÉE LAUDER COMPANIES INC. is sued as a Product Defendant. Furthermore, this Defendant has done and does substantial business in the State of South Carolina, including the sale and distribution of its dangerous and/or defective products and services. The exposures to this Defendant's products, actions, inactions, and/or other activities, which caused or contributed to cause Plaintiff Michael L. Perry's disease and injury.

51. Defendant, **FOOD LION, LLC**, was and is a North Carolina limited liability company with its principal place of business in North Carolina. At all times material hereto, FOOD LION, LLC was authorized to do business in the State of South Carolina while engaged, directly or indirectly, in the business of mining, designing, manufacturing, processing, importing, converting, compounding, supplying, installing, replacing, repairing, using, and/or retailing substantial amounts of asbestos-containing talc products including, but not limited to, Johnson & Johnson, Ammens, and Gold Bond talc products, purchased and used by Plaintiff. FOOD LION, LLC is sued as a Product Defendant. Furthermore, this Defendant has done and does substantial business in the State of South Carolina, including the sale and distribution of its dangerous and/or defective products and services. The exposures to this Defendant's products, actions, inactions, and/or other activities, which caused or contributed to cause Plaintiff Michael L. Perry's disease and injury.

52. Defendant, **GENUINE PARTS COMPANY**, d/b/a NATIONAL AUTOMOTIVE PARTS ASSOCIATION (NAPA), was and is a Georgia corporation with its principal place of

business in Georgia. At all times material hereto, GENUINE PARTS COMPANY was authorized to do business in the State of South Carolina and Illinois while engaged, directly or indirectly, in the business of mining, designing, manufacturing, processing, importing, converting, compounding, supplying, installing, replacing, repairing, using, and/or retailing substantial amounts of asbestos-containing products, materials, or equipment including, but not limited to, asbestos-containing friction products, including but not limited to NAPA and Raylock brakes, and NAPA gaskets purchased and used by Plaintiff on his personal and family vehicles. GENUINE PARTS COMPANY is sued as a Product Defendant. Furthermore, this Defendant has done and does substantial business in the State of South Carolina, including the sale and distribution of its dangerous and/or defective products and services. The exposures to this Defendant's products, actions, inactions, and/or other activities, which caused or contributed to cause Plaintiff Michael L. Perry's disease and injury.

53. Defendant, **GLAMOUR INDUSTRIES CO.**, individually and as an S-corporation of AMERICAN INTERNATIONAL INDUSTRIES successor-in-interest to PINAUD, INC., BARBARA ALICE, INC., ED. PINAUD, INC. d/b/a ED. PINAUD, and NESTLE-LE MUR COMPANY, all for the CLUBMAN line of products, was and is a California corporation with its principal place of business in California. At all times material hereto, GLAMOUR INDUSTRIES CO. was authorized to do business in the State of South Carolina while engaged, directly or indirectly, in the business of mining, designing, manufacturing, processing, importing, converting, compounding, supplying, installing, replacing, repairing, using, and/or retailing substantial amounts of asbestos-containing talc products including, but not limited to, asbestos-containing Clubman talc products used by Plaintiff and others living in the same household with Plaintiff. GLAMOUR INDUSTRIES CO. is sued as a Product Defendant. Furthermore, this Defendant has done and does substantial business in the State of South Carolina, including the sale and

distribution of its dangerous and/or defective products and services. The exposures to this Defendant's products, actions, inactions, and/or other activities, which caused or contributed to cause Plaintiff Michael L. Perry's disease and injury.

54. Defendant, **HAWTHORNE PHARMACY, INC.**, was and is a South Carolina corporation with its principal place of business in South Carolina. At all times material hereto, HAWTHORNE PHARMACY, INC. was authorized to do business in the State of South Carolina engaged, directly or indirectly, in the business of mining, designing, manufacturing, processing, importing, converting, compounding, supplying, installing, replacing, repairing, using, and/or retailing substantial amounts of asbestos-containing talc products including, but not limited to, Johnson & Johnson and Gold Bond talc products, purchased and used by Plaintiff. HAWTHORNE PHARMACY, INC. is sued as a Product Defendant. Furthermore, this Defendant has done and does substantial business in the State of South Carolina, including the sale and distribution of its dangerous and/or defective products and services. The exposures to this Defendant's products, actions, inactions, and/or other activities, which caused or contributed to cause Plaintiff Michael L. Perry's disease and injury.

55. Defendant, **HIMMEL MANAGEMENT CO. LLC** a/k/a HIMMEL GROUP, formerly d/b/a MARTIN HIMMEL INC., individually and as successor to BLOCK DRUG COMPANY INC., successor to THE GOLD BOND STERILIZING POWDER CO. a/k/a THE GOLD BOND CO., was and is a Florida limited liability company with its principal place of business in New York. At all times material hereto, HIMMEL MANAGEMENT CO. LLC was authorized to do business in the State of South Carolina while engaged, directly or indirectly, in the business of mining, designing, manufacturing, processing, importing, converting, compounding, supplying, installing, replacing, repairing, using, and/or retailing substantial amounts of asbestos-containing talc and/or asbestos-containing talc products including, but not

limited to, asbestos-containing Gold Bond talc products, used by Plaintiff and others living in the same household with Plaintiff. HIMMEL MANAGEMENT CO. LLC is sued as a Product Defendant. Furthermore, this Defendant has done and does substantial business in the State of South Carolina, including the sale and distribution of its dangerous and/or defective products and services. The exposures to this Defendant's products, actions, inactions, and/or other activities, which caused or contributed to cause Plaintiff Michael L. Perry's disease and injury.

56. Defendant, **HIMMEL MEDIA LLC.**, individually and as successor to BLOCK DRUG COMPANY INC., successor to THE GOLD BOND STERILIZING POWDER CO. a/k/a THE GOLD BOND CO., was and is a Delaware limited liability company with its principal place of business in New York. At all times material hereto, HIMMEL MEDIA LLC was authorized to do business in the State of South Carolina while engaged, directly or indirectly, in the business of mining, designing, manufacturing, processing, importing, converting, compounding, supplying, installing, replacing, repairing, using, and/or retailing substantial amounts of asbestos-containing talc and/or asbestos-containing talc products including, but not limited to, asbestos-containing Gold Bond talc products, used by Plaintiff and others living in the same household with Plaintiff. HIMMEL MEDIA LLC is sued as a Product Defendant. Furthermore, this Defendant has done and does substantial business in the State of South Carolina, including the sale and distribution of its dangerous and/or defective products and services. The exposures to this Defendant's products, actions, inactions, and/or other activities, which caused or contributed to cause Plaintiff Michael L. Perry's disease and injury.

57. Defendant, **HONEYWELL INTERNATIONAL, INC.**, individually and as successor-in-interest to ALLIED SIGNAL, INC., as successor to BENDIX CORPORATION, was and is a Delaware corporation with its principal place of business in North Carolina. At all times material hereto, HONEYWELL INTERNATIONAL, INC. was authorized to do business in the

State of South Carolina and Illinois while engaged, directly or indirectly, in the business of mining, designing, manufacturing, processing, importing, converting, compounding, supplying, installing, replacing, repairing, using, and/or retailing substantial amounts of asbestos-containing products, materials, or equipment including, but not limited to, asbestos-containing friction products, including but not limited to Bendix brakes, purchased and used by Plaintiff on his personal and family vehicles. HONEYWELL INTERNATIONAL, INC. is sued as a Product Defendant. Furthermore, this Defendant has done and does substantial business in the State of South Carolina, including the sale and distribution of its dangerous and/or defective products and services. The exposures to this Defendant's products, actions, inactions, and/or other activities, which caused or contributed to cause Plaintiff Michael L. Perry's disease and injury.

58. Defendant, **IDELLE LABS, LTD.**, was and is a Texas corporation with its principal place of business in Texas. At all times material hereto, IDELLE LABS, LTD. was authorized to do business in the State of South Carolina and Florida while engaged, directly or indirectly, in the business of mining, designing, manufacturing, processing, importing, converting, compounding, supplying, installing, replacing, repairing, using, and/or retailing substantial amounts of asbestos-containing talc and/or asbestos-containing talc products including, but not limited to, asbestos-containing Ammens Medicated talc powder, used by Plaintiff and others living in the same household with Plaintiff. IDELLE LABS, LTD. is sued as a Product Defendant. Furthermore, this Defendant has done and does substantial business in the State of South Carolina, including the sale and distribution of its dangerous and/or defective products and services. The exposures to this Defendant's products, actions, inactions, and/or other activities, which caused or contributed to cause Plaintiff Michael L. Perry's disease and injury.

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

FABI (DIANA) LLC was authorized to do business in the State of South Carolina and Illinois while engaged, directly or indirectly, in the business of mining, designing, manufacturing, processing, importing, converting, compounding, supplying, installing, replacing, repairing, using, and/or retailing substantial amounts of asbestos-containing talc including, but not limited to, asbestos-containing talc fiber supplied to Estee Lauder talc products, used by others living in the same household with Plaintiff. IMI FABI (DIANA) LLC is sued as a Product Defendant. Furthermore, this Defendant has done and does substantial business in the State of South Carolina, including the sale and distribution of its dangerous and/or defective products and services. The exposures to this Defendant's products, actions, inactions, and/or other activities, which caused or contributed to cause Plaintiff Michael L. Perry's disease and injury.

60. Defendant, **IMI FABI (USA) INC.**, was and is a Delaware corporation with its principal place of business in West Virginia. At all times material hereto, IMI FABI (USA) INC. was authorized to do business in the State of South Carolina and Illinois while engaged, directly or indirectly, in the business of mining, designing, manufacturing, processing, importing, converting, compounding, supplying, installing, replacing, repairing, using, and/or retailing substantial amounts of asbestos-containing talc including, but not limited to, asbestos-containing talc fiber supplied to Estee Lauder talc products, used by others living in the same household with Plaintiff. IMI FABI (USA) INC. is sued as a Product Defendant. Furthermore, this Defendant has done and does substantial business in the State of South Carolina, including the sale and distribution of its dangerous and/or defective products and services. The exposures to this Defendant's products, actions, inactions, and/or other activities, which caused or contributed to cause Plaintiff Michael L. Perry's disease and injury.

61. Defendant, **IMI FABI, LLC**, was and is a West Virginia limited liability company with its principal place of business in West Virginia. At all times material hereto, IMI FABI, LLC

was authorized to do business in the State of South Carolina and Illinois while engaged, directly or indirectly, in the business of mining, designing, manufacturing, processing, importing, converting, compounding, supplying, installing, replacing, repairing, using, and/or retailing substantial amounts of asbestos-containing talc including, but not limited to, asbestos-containing talc fiber supplied to Estee Lauder talc products, used by others living in the same household with Plaintiff. IMI FABI, LLC is sued as a Product Defendant. Furthermore, this Defendant has done and does substantial business in the State of South Carolina, including the sale and distribution of its dangerous and/or defective products and services. The exposures to this Defendant's products, actions, inactions, and/or other activities, which caused or contributed to cause Plaintiff Michael L. Perry's disease and injury.

62. Defendant, **JANSSEN PHARMACEUTICALS, INC.**, individually and as successor-in-interest to Johnson & Johnson subsidiaries named JOHNSON & JOHNSON CONSUMER INC., both prior to and after its 2021 restructurings and colloquially known as "Old JJCI" and "New JJCI", was and is a Pennsylvania corporation with its principal place of business in New Jersey. At all times material hereto, JANSSEN PHARMACEUTICALS, INC. was authorized to do business in the State of South Carolina, Florida and Illinois while engaged, directly or indirectly, in the business of mining, designing, manufacturing, processing, importing, converting, compounding, supplying, installing, replacing, repairing, using, and/or retailing substantial amounts of asbestos-containing talc and/or asbestos-containing talc products including, but not limited to, asbestos-containing Johnson & Johnson Baby Powder and Shower to Shower talc products, used by Plaintiff and others living in the same household with Plaintiff. JANSSEN PHARMACEUTICALS, INC. is sued as a Product Defendant. Furthermore, this Defendant has done and does substantial business in the State of South Carolina, including the sale and distribution of its dangerous and/or defective products and services. The exposures to this

Defendant's products, actions, inactions, and/or other activities, which caused or contributed to cause Plaintiff Michael L. Perry's disease and injury.

63. Defendant, **JOHNSON & JOHNSON**, was and is a New Jersey corporation with its principal place of business in New Jersey. At all times material hereto, JOHNSON & JOHNSON was authorized to do business in the State of South Carolina, Florida, and Illinois while engaged, directly or indirectly, in the business of mining, designing, manufacturing, processing, importing, converting, compounding, supplying, installing, replacing, repairing, using, and/or retailing substantial amounts of asbestos-containing talc and/or asbestos-containing talc products including, but not limited to, asbestos-containing Johnson & Johnson Baby Powder and Shower to Shower talc products, used by Plaintiff and others living in the same household with Plaintiff. JOHNSON & JOHNSON is sued as a Product Defendant. Furthermore, this Defendant has done and does substantial business in the State of South Carolina, including the sale and distribution of its dangerous and/or defective products and services. The exposures to this Defendant's products, actions, inactions, and/or other activities, which caused or contributed to cause Plaintiff Michael L. Perry's disease and injury.

64. Defendant, **JOHNSON & JOHNSON HOLDCO (NA) INC.**, f/k/a JOHNSON & JOHNSON CONSUMER INC., individually and as successor-in-interest to Johnson & Johnson subsidiary "Old JJCI", was and is a New Jersey corporation with its principal place of business in New Jersey. At all times material hereto, JOHNSON & JOHNSON HOLDCO (NA) INC. was authorized to do business in the State of South Carolina, Florida, and Illinois while engaged, directly or indirectly, in the business of mining, designing, manufacturing, processing, importing, converting, compounding, supplying, installing, replacing, repairing, using, and/or retailing substantial amounts of asbestos-containing talc and/or asbestos-containing talc products including, but not limited to, asbestos-containing Johnson & Johnson Baby Powder and Shower to Shower

talc products, used by Plaintiff and others living in the same household with Plaintiff. JOHNSON & JOHNSON HOLDCO (NA) INC. is sued as a Product Defendant. Furthermore, this Defendant has done and does substantial business in the State of South Carolina, including the sale and distribution of its dangerous and/or defective products and services. The exposures to this Defendant's products, actions, inactions, and/or other activities, which caused or contributed to cause Plaintiff Michael L. Perry's disease and injury.

65. Defendant, **KENVUE INC.**, individually and as successor-in-interest to JOHNSON & JOHNSON CONSUMER INC., was and is a Delaware corporation with its principal place of business in New Jersey. At all times material hereto, KENVUE INC. was authorized to do business in the State of South Carolina, Florida, and Illinois while engaged, directly or indirectly, in the business of mining, designing, manufacturing, processing, importing, converting, compounding, supplying, installing, replacing, repairing, using, and/or retailing substantial amounts of asbestos-containing talc and/or asbestos-containing talc products including, but not limited to, asbestos-containing Johnson & Johnson Baby Powder and Shower to Shower talc products, used by Plaintiff and others living in the same household with Plaintiff. KENVUE INC. is sued as a Product Defendant. Furthermore, this Defendant has done and does substantial business in the State of South Carolina, including the sale and distribution of its dangerous and/or defective products and services. The exposures to this Defendant's products, actions, inactions, and/or other activities, which caused or contributed to cause Plaintiff Michael L. Perry's disease and injury.

66. Defendant, **L'ORÉAL USA, INC.**, was and is a Delaware corporation with its principal place of business in New York. At all times material hereto, L'ORÉAL USA, INC. was authorized to do business in the State of South Carolina while engaged, directly or indirectly, in the business of mining, designing, manufacturing, processing, importing, converting,

compounding, supplying, installing, replacing, repairing, using, and/or retailing substantial amounts of asbestos-containing talc and/or asbestos-containing talc products including, but not limited to, asbestos-containing Drakkar Noir talc powder, used by Plaintiff and others living in the same household with Plaintiff. L'ORÉAL USA, INC. is sued as a Product Defendant. Furthermore, this Defendant has done and does substantial business in the State of South Carolina, including the sale and distribution of its dangerous and/or defective products and services. The exposures to this Defendant's products, actions, inactions, and/or other activities, which caused or contributed to cause Plaintiff Michael L. Perry's disease and injury.

67. Defendant, **L'ORÉAL USA PRODUCTS, INC.**, was and is a Delaware corporation with its principal place of business in New York. At all times material hereto, L'ORÉAL USA PRODUCTS, INC. was authorized to do business in the State of South Carolina while engaged, directly or indirectly, in the business of mining, designing, manufacturing, processing, importing, converting, compounding, supplying, installing, replacing, repairing, using, and/or retailing substantial amounts of asbestos-containing talc and/or asbestos-containing talc products including, but not limited to, asbestos-containing Drakkar Noir talc powder, used by Plaintiff and others living in the same household with Plaintiff. L'ORÉAL USA PRODUCTS, INC. is sued as a Product Defendant. Furthermore, this Defendant has done and does substantial business in the State of South Carolina, including the sale and distribution of its dangerous and/or defective products and services. The exposures to this Defendant's products, actions, inactions, and/or other activities, which caused or contributed to cause Plaintiff Michael L. Perry's disease and injury.

68. Defendant, **LTL MANAGEMENT, LLC**, is a North Carolina limited liability company with its principal place of business and headquarters in the State of New Jersey. Although other Defendants in this Complaint have acquired the assets and continued the business operations pertaining to Products, LTL MANAGEMENT, LLC is sued herein as the other Defendants have

each asserted as between themselves that LTL MANAGEMENT, LLC has also assumed the liabilities for those Products and claim that LTL MANAGEMENT, LLC is a party responsible and liable to Plaintiff for their injuries as it relates to Johnson & Johnson Baby Powder, Shower to Shower and possibly other talc products used by Plaintiff in the State of South Carolina, Florida and Illinois. The exposures to this Defendant's products, actions, inactions, and/or other activities, which caused or contributed to cause Plaintiff Michael L. Perry's disease and injury.

69. Defendant, **MINERALS TECHNOLOGIES INC.**, was and is a Delaware corporation with its principal place of business in New York. At all times material hereto, MINERALS TECHNOLOGIES INC. was authorized to do business in the State of South Carolina Florida, and Illinois while engaged, directly or indirectly, in the business of mining, designing, manufacturing, processing, importing, converting, compounding, supplying, installing, replacing, repairing, using, and/or retailing substantial amounts of asbestos-containing talc and/or asbestos-containing talc products, including, but not limited to, asbestos-containing talc fiber supplied to Clubman talc products and Gold Bond talc products, used by Plaintiff and others living in the same household with Plaintiff. MINERALS TECHNOLOGIES INC. is sued as a Product Defendant. Furthermore, this Defendant has done and does substantial business in the State of South Carolina, including the sale and distribution of its dangerous and/or defective products and services. The exposures to this Defendant's products, actions, inactions, and/or other activities, which caused or contributed to cause Plaintiff Michael L. Perry's disease and injury.

70. Defendant, **THE NESLEMUR COMPANY**, f/k/a THE NESTLE-LEMUR COMPANY, was and is a Delaware corporation with its principal place of business in New York. At all times material hereto, THE NESLEMUR COMPANY was authorized to do business in the State of South Carolina and Illinois while engaged, directly or indirectly, in the business of mining, designing, manufacturing, processing, importing, converting, compounding, supplying, installing,

replacing, repairing, using, and/or retailing substantial amounts of asbestos-containing talc and/or asbestos-containing talc products including, but not limited to, asbestos-containing talc fiber supplied to Clubman talc products, used by Plaintiff and others living in the same household with Plaintiff. THE NESLEMUR COMPANY is sued as a Product Defendant. Furthermore, this Defendant has done and does substantial business in the State of South Carolina, including the sale and distribution of its dangerous and/or defective products and services. The exposures to this Defendant's products, actions, inactions, and/or other activities, which caused or contributed to cause Plaintiff Michael L. Perry's disease and injury.

71. Defendant, **PFIZER INC.**, was and is a Delaware corporation with its principal place of business in New York. At all times material hereto, PFIZER INC. was authorized to do business in the State of South Carolina while engaged, directly or indirectly, in the business of mining, designing, manufacturing, processing, importing, converting, compounding, supplying, installing, replacing, repairing, using, and/or retailing substantial amounts of asbestos-containing talc and/or asbestos-containing talc products including, but not limited to, asbestos-containing talc fiber supplied to Coty talc products, including but not limited to Stetson talc products, used by Plaintiff and others living in the same household with Plaintiff. PFIZER INC. is sued as a Product Defendant. Furthermore, this Defendant has done and does substantial business in the State of South Carolina, including the sale and distribution of its dangerous and/or defective products and services. The exposures to this Defendant's products, actions, inactions, and/or other activities, which caused or contributed to cause Plaintiff Michael L. Perry's disease and injury.

72. Defendant, **PIGGLY WIGGLY, LLC**, a subsidiary of C&S WHOLESALE GROCERS, LLC., individually and as successor-in-interest to FLEMING COMPANIES, INC. successor-in-interest to PIGGLY WIGGLY COMPANY, was and is a New Hampshire limited liability company with its principal place of business in New Hampshire. At all times material

hereto, PIGGLY WIGGLY, LLC was authorized to do business in the State of South Carolina while engaged, directly or indirectly, in the business of mining, designing, manufacturing, processing, importing, converting, compounding, supplying, installing, replacing, repairing, using, and/or retailing substantial amounts of asbestos-containing talc products including, but not limited to, Johnson & Johnson, Ammens and Gold Bond talc products, purchased and used by Plaintiff. PIGGLY WIGGLY, LLC is sued as a Product Defendant. Furthermore, this Defendant has done and does substantial business in the State of South Carolina, including the sale and distribution of its dangerous and/or defective products and services. The exposures to this Defendant's products, actions, inactions, and/or other activities, which caused or contributed to cause Plaintiff Michael L. Perry's disease and injury.

73. Defendant, **PNEUMO ABEX LLC**, individually and as successor-in-interest to ABEX CORPORATION, was and is a Delaware limited liability company with its principal place of business in Texas. At all times material hereto, PNEUMO ABEX LLC was authorized to do business in the State of South Carolina and Illinois while engaged, directly or indirectly, in the business of mining, designing, manufacturing, processing, importing, converting, compounding, supplying, installing, replacing, repairing, using, and/or retailing substantial amounts of asbestos-containing products, materials, or equipment including, but not limited to, asbestos-containing friction products, including but not limited to Abex/Raylock brakes, purchased and used by Plaintiff on his personal and family vehicles. PNEUMO ABEX LLC is sued as a Product Defendant. Furthermore, this Defendant has done and does substantial business in the State of South Carolina, including the sale and distribution of its dangerous and/or defective products and services. The exposures to this Defendant's products, actions, inactions, and/or other activities, which caused or contributed to cause Plaintiff Michael L. Perry's disease and injury.

74. Defendant, **PRESERSE CORPORATION**, was and is a Delaware corporation with its principal place of business in New Jersey. At all times material hereto, PRESERSE CORPORATION was authorized to do business in the State of South Carolina and Illinois while engaged, directly or indirectly, in the business of mining, designing, manufacturing, processing, importing, converting, compounding, supplying, installing, replacing, repairing, using, and/or retailing substantial amounts of asbestos-containing talc and/or asbestos-containing talc products, including, but not limited to, asbestos-containing talc fiber supplied to Avon, Chanel, Coty and Estee Lauder for use in their talc products used by Plaintiff and others living in the same household with Plaintiff. PRESERSE CORPORATION is sued as a Product Defendant. Furthermore, this Defendant has done and does substantial business in the State of South Carolina, including the sale and distribution of its dangerous and/or defective products and services. The exposures to this Defendant's products, actions, inactions, and/or other activities, which caused or contributed to cause Plaintiff Michael L. Perry's disease and injury.

75. Defendant, **THE PROCTER & GAMBLE COMPANY**, individually and as successor-in-interest to SHULTON INC., was and is an Ohio corporation with its principal place of business in Ohio. At all times material hereto, THE PROCTER & GAMBLE COMPANY was authorized to do business in the State of South Carolina and Illinois while engaged, directly or indirectly, in the business of mining, designing, manufacturing, processing, importing, converting, compounding, supplying, installing, replacing, repairing, using, and/or retailing substantial amounts of asbestos-containing talc and/or asbestos-containing talc products, including, but not limited to, asbestos-containing Old Spice talc products and Ammens Medicated talc powder, used by Plaintiff and others living in the same household with Plaintiff. THE PROCTER & GAMBLE COMPANY is sued as a Product Defendant. Furthermore, this Defendant has done and does substantial business in the State of South Carolina, including the sale and distribution of its

dangerous and/or defective products and services. The exposures to this Defendant's products, actions, inactions, and/or other activities, which caused or contributed to cause Plaintiff Michael L. Perry's disease and injury.

76. Defendant, **PTI ROYSTON, LLC** d/b/a PHARMA TECH INDUSTRIES f/k/a PHARMA TECH INDUSTRIES, INC. f/k/a BLACK CREEK CORPORATION, was and is a Delaware limited liability company with its principal place of business in Georgia. At all times material hereto, PTI ROYSTON, LLC was authorized to do business in the State of South Carolina Florida, and Illinois while engaged, directly or indirectly, in the business of mining, designing, manufacturing, processing, importing, converting, compounding, supplying, installing, replacing, repairing, using, and/or retailing substantial amounts of asbestos-containing talc and/or asbestos-containing talc products including, but not limited to, asbestos-containing Johnson & Johnson Baby Powder and Shower to Shower talc products, used by Plaintiff and others living in the same household with Plaintiff. PTI ROYSTON, LLC is sued as a Product Defendant. Furthermore, this Defendant has done and does substantial business in the State of South Carolina, including the sale and distribution of its dangerous and/or defective products and services. The exposures to this Defendant's products, actions, inactions, and/or other activities, which caused or contributed to cause Plaintiff Michael L. Perry's disease and injury.

77. Defendant, **PTI UNION LLC** d/b/a PHARMA TECH INDUSTRIES, individually and as successor-in-interest to PHARMA TECH INDUSTRIES, INC. f/k/a BLACK CREEK CORPORATION, as successor-in-interest to DIRECT PHARMACEUTICAL CORPORATION and as successor-in interest to ENVI DIVERSIFIED, INC. f/k/a PHARMA-TECH INDUSTRIES, INC., was and is a Delaware limited liability company with its principal place of business in Missouri. At all times material hereto, PTI UNION LLC was authorized to do business in the State of South Carolina, Florida and Illinois while engaged, directly or indirectly, in the business of

mining, designing, manufacturing, processing, importing, converting, compounding, supplying, installing, replacing, repairing, using, and/or retailing substantial amounts of asbestos-containing talc and/or asbestos-containing talc products including, but not limited to, asbestos-containing talc fiber supplied, distributed and/or manufactured for Gold Bond talc products and Ammens Medicated talc powder, used by Plaintiff and others living in the same household with Plaintiff. PTI UNION LLC is sued as a Product Defendant. Furthermore, this Defendant has done and does substantial business in the State of South Carolina, including the sale and distribution of its dangerous and/or defective products and services. The exposures to this Defendant's products, actions, inactions, and/or other activities, which caused or contributed to cause Plaintiff Michael L. Perry's disease and injury.

78. Defendant, **RALPH LAUREN CORPORATION**, was and is a Delaware corporation with its principal place of business in New Jersey. At all times material hereto, RALPH LAUREN CORPORATION was authorized to do business in the State of South Carolina while engaged, directly or indirectly, in the business of mining, designing, manufacturing, processing, importing, converting, compounding, supplying, installing, replacing, repairing, using, and/or retailing substantial amounts of asbestos-containing talc products including, but not limited to, asbestos-containing Polo talc powder, used by Plaintiff and others living in the same household with Plaintiff. RALPH LAUREN CORPORATION is sued as a Product Defendant. Furthermore, this Defendant has done and does substantial business in the State of South Carolina, including the sale and distribution of its dangerous and/or defective products and services. The exposures to this Defendant's products, actions, inactions, and/or other activities, which caused or contributed to cause Plaintiff Michael L. Perry's disease and injury.

79. Defendant, **RITE AID OF SOUTH CAROLINA, INC.**, was and is a South Carolina corporation with its principal place of business in Pennsylvania. At all times material

hereto, RITE AID OF SOUTH CAROLINA, INC. was authorized to do business in the State of South Carolina while engaged, directly or indirectly, in the business of mining, designing, manufacturing, processing, importing, converting, compounding, supplying, installing, replacing, repairing, using, and/or retailing substantial amounts of asbestos-containing talc products including, but not limited to, Gold Bond, Johnson & Johnson, Shower to Shower, Stetson, Old Spice, Ammens, and Clubman, purchased and used by Plaintiff and others living in the same household with Plaintiff. RITE AID OF SOUTH CAROLINA, INC. is sued as a Product Defendant. Furthermore, this Defendant has done and does substantial business in the State of South Carolina, including the sale and distribution of its dangerous and/or defective products and services. The exposures to this Defendant's products, actions, inactions, and/or other activities, which caused or contributed to cause Plaintiff Michael L. Perry's disease and injury.

80. Defendant, **SHULTON INC.**, was and is an New Jersey corporation with its principal place of business in Ohio. At all times material hereto, SHULTON INC. was authorized to do business in the State of South Carolina and Illinois while engaged, directly or indirectly, in the business of mining, designing, manufacturing, processing, importing, converting, compounding, supplying, installing, replacing, repairing, using, and/or retailing substantial amounts of asbestos-containing talc and/or asbestos-containing talc products, including, but not limited to, asbestos-containing Old Spice talc products used by Plaintiff and others living in the same household with Plaintiff. SHULTON INC. is sued as a Product Defendant. Furthermore, this Defendant has done and does substantial business in the State of South Carolina, including the sale and distribution of its dangerous and/or defective products and services. The exposures to this Defendant's products, actions, inactions, and/or other activities, which caused or contributed to cause Plaintiff Michael L. Perry's disease and injury.

81. Defendant, **SPECIALTY MINERALS INC.**, was and is a Delaware corporation with its principal place of business in New York. At all times material hereto, SPECIALTY MINERALS INC. was authorized to do business in the State of South Carolina, Florida, and Illinois while engaged, directly or indirectly, in the business of mining, designing, manufacturing, processing, importing, converting, compounding, supplying, installing, replacing, repairing, using, and/or retailing substantial amounts of asbestos-containing talc and/or asbestos-containing talc products, including, but not limited to, asbestos-containing talc fiber supplied, distributed and/or manufactured for to Gold Bond, Clubman and Coty talc products used by Plaintiff and others living in the same household with Plaintiff. SPECIALTY MINERALS INC. is sued as a Product Defendant. Furthermore, this Defendant has done and does substantial business in the State of South Carolina, including the sale and distribution of its dangerous and/or defective products and services. The exposures to this Defendant's products, actions, inactions, and/or other activities, which caused or contributed to cause Plaintiff Michael L. Perry's disease and injury.

82. Defendant, **SUMITOMO CORPORATION OF AMERICAS**, was and is a Delaware corporation with its principal place of business in New Jersey. At all times material hereto, SUMITOMO CORPORATION OF AMERICAS was authorized to do business in the State of South Carolina and Illinois while engaged, directly or indirectly, in the business of mining, designing, manufacturing, processing, importing, converting, compounding, supplying, installing, replacing, repairing, using, and/or retailing substantial amounts of asbestos-containing talc and/or asbestos-containing talc products, including, but not limited to, asbestos-containing talc fiber supplied to Avon, Chanel, Coty and Estee Lauder for use in their talc products used by Plaintiff and others living in the same household with Plaintiff. SUMITOMO CORPORATION OF AMERICAS is sued as a Product Defendant. Furthermore, this Defendant has done and does substantial business in the State of South Carolina, including the sale and distribution of its

dangerous and/or defective products and services. The exposures to this Defendant's products, actions, inactions, and/or other activities, which caused or contributed to cause Plaintiff Michael L. Perry's disease and injury.

83. Defendant, **TRUE PHARMACY**, was and is a South Carolina company with its principal place of business in South Carolina. At all times material hereto, TRUE PHARMACY was authorized to do business in the State of South Carolina engaged, directly or indirectly, in the business of mining, designing, manufacturing, processing, importing, converting, compounding, supplying, installing, replacing, repairing, using, and/or retailing substantial amounts of asbestos-containing talc products including, but not limited to, Johnson & Johnson and Gold Bond talc products, purchased and used by Plaintiff. TRUE PHARMACY is sued as a Product Defendant. Furthermore, this Defendant has done and does substantial business in the State of South Carolina, including the sale and distribution of its dangerous and/or defective products and services. The exposures to this Defendant's products, actions, inactions, and/or other activities, which caused or contributed to cause Plaintiff Michael L. Perry's disease and injury.

84. Defendant, **UNION CARBIDE CORPORATION**, was and is a New York corporation with its principal place of business in Texas. At all times material hereto, UNION CARBIDE CORPORATION was authorized to do business in the State of South Carolina and Illinois while engaged, directly or indirectly, in the business of mining, designing, manufacturing, processing, importing, converting, compounding, supplying, installing, replacing, repairing, using, and/or retailing substantial amounts of asbestos-containing talc and/or asbestos-containing talc products including, but not limited to, Calidria asbestos fibers sold to US Gypsum, National Gypsum, Gold Bond, Georgia Pacific, Kelly Moore and others, for use in drywall joint compounds and other construction materials. UNION CARBIDE CORPORATION is sued as a Product Defendant. Furthermore, this Defendant has done and does substantial business in the State of

South Carolina, including the sale and distribution of its dangerous and/or defective products and services. The exposures to this Defendant's products, actions, inactions, and/or other activities, which caused or contributed to cause Plaintiff Michael L. Perry's disease and injury.

85. Defendant, **VI-JON, LLC** f/k/a VI-JON, INC. f/k/a CUMBERLAND SWAN, was and is a Delaware limited liability company with its principal place of business in Missouri. At all times material hereto, VI-JON, LLC was authorized to do business in the State of South Carolina Florida and Illinois while engaged, directly or indirectly, in the business of mining, designing, manufacturing, processing, importing, converting, compounding, supplying, installing, replacing, repairing, using, and/or retailing substantial amounts of asbestos-containing talc sold and bottled for Walgreens and other retailers of talc products including, but not limited to, Gold Bond, Johnson & Johnson, Shower to Shower, Stetson, Old Spice, Ammens, and Clubman, purchased and used by Plaintiff and others living in the same household with Plaintiff. VI-JON, LLC is sued as a Product Defendant. Furthermore, this Defendant has done and does substantial business in the State of South Carolina, including the sale and distribution of its dangerous and/or defective products and services. The exposures to this Defendant's products, actions, inactions, and/or other activities, which caused or contributed to cause Plaintiff Michael L. Perry's disease and injury.

86. Defendant, **WALGREEN CO.**, was and is an Illinois corporation with its principal place of business in Illinois. At all times material hereto, WALGREEN CO. was authorized to do business in the State of South Carolina, Florida, and Illinois while engaged, directly or indirectly, in the business of mining, designing, manufacturing, processing, importing, converting, compounding, supplying, installing, replacing, repairing, using, and/or retailing substantial amounts of asbestos-containing talc products including, but not limited to, Gold Bond, Johnson & Johnson, Shower to Shower, Stetson, Old Spice, Ammens, and Clubman, purchased and used by Plaintiff and others living in the same household with Plaintiff. WALGREEN CO. is sued as a

Product Defendant. Furthermore, this Defendant has done and does substantial business in the State of South Carolina, including the sale and distribution of its dangerous and/or defective products and services. The exposures to this Defendant's products, actions, inactions, and/or other activities, which caused or contributed to cause Plaintiff Michael L. Perry's disease and injury.

87. Defendant, **WALMART INC.**, was and is a Delaware corporation with its principal place of business in Arkansas. At all times material hereto, WALMART INC. was authorized to do business in the State of South Carolina, Florida, and Illinois while engaged, directly or indirectly, in the business of mining, designing, manufacturing, processing, importing, converting, compounding, supplying, installing, replacing, repairing, using, and/or retailing substantial amounts of asbestos-containing talc products including, but not limited to, Gold Bond, Johnson & Johnson, Shower to Shower, Stetson, Old Spice, Ammens, and Clubman, purchased and used by Plaintiff and others living in the same household with Plaintiff. WALMART INC. is sued as a Product Defendant. Furthermore, this Defendant has done and does substantial business in the State of South Carolina, including the sale and distribution of its dangerous and/or defective products and services. The exposures to this Defendant's products, actions, inactions, and/or other activities, which caused or contributed to cause Plaintiff Michael L. Perry's disease and injury.

BACKGROUND FACTS

88. Plaintiff Michael L. Perry brings this action for monetary damages as a result of contracting an asbestos-related disease.

89. Plaintiff Michael L. Perry was diagnosed with Mesothelioma on or about July 7, 2023.

90. Plaintiff Michael L. Perry's mesothelioma was caused by his exposure to asbestos through his personal use, and his family's use, of asbestos-containing Talc Powder Products where asbestos-containing talc was a constituent ingredient throughout his life.

91. During his work history, Plaintiff was exposed to Defendants' asbestos-containing construction materials removed and replaced as a bystander to construction work and remodel performed in some of the hotels where he worked in various capacities of employment and management from approximately mid 1980s to approximately 1998 and in the early 2000s. These facilities were located in South Carolina and Illinois.

92. Plaintiff also was exposed to Defendants' asbestos-containing friction products during various times throughout his life while performing maintenance and changing the brakes on his personal vehicles and his family's vehicles from approximately 1984-1987. These activities exposed Plaintiff to asbestos, asbestos dust and fibers.

93. Plaintiff Michael L. Perry used, or had used on him by his parents and grandparents, the Talc Powder Products from 1969 continuously until approximately 2018, but does not know the precise date he stopped. He frequently and regularly dusted the Talc Powder Products on various parts of his body which at varying times may have included amongst other areas: neck, shoulders, collarbones, chest, arms, armpits, legs, genital area, and feet. During this time he repeatedly inhaled, ingested, and was regularly exposed to asbestos dust emanating from the asbestos laden talc within the Talc Powder Products permeating his person and clothes in his Illinois, Florida and South Carolina homes. All of these activities exposed Plaintiff to asbestos, asbestos dust and fibers.

94. Plaintiff also claims exposure from the Defendant talc suppliers, mines, mills, and labs named in his complaint that provided asbestos-containing talc as a constituent ingredient to the Talc Powder Products that he used.

95. Each use of the Talc Powder Products was an intended and foreseeable use of the products based on the advertising, marketing and labeling of the product. It was foreseeable Defendants' asbestos-containing talc products would be sold for personal use by individuals like

Plaintiff Michael L. Perry on himself. Plaintiff was thereby exposed to defendants' asbestos-containing Talc Powder Products in the State of South Carolina and other states at times relevant to this action.

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

97. Plaintiff Michael L. Perry was not aware at the time of exposure that asbestos or asbestos-containing talc products presented any risk of injury and/or disease.

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

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

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

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

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

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

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

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

104. At all times herein mentioned, Defendants, and/or their “alternate entities” singularly and jointly, negligently and carelessly researched, manufactured, fabricated, designed, modified, tested or failed to test, abated or failed to abate, inadequately warned or failed to warn

of the health hazards, failed to provide adequate use instructions for eliminating the health risks inherent in the use of the products, labeled, distributed, bought, offered for sale, supplied, sold, inspected, marketed, rebranded, manufactured for others, packaged and advertised, a certain product, namely asbestos-containing talc products manufactured for foreseeable personal use by individuals like Plaintiff Michael L. Perry, in that said products caused personal injuries to Plaintiff Michael L. Perry and others similarly situated, (hereinafter collectively called “exposed persons”), while being used for their intended purpose and in a manner that was reasonably foreseeable.

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

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

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

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

109. Plaintiff Michael L. Perry suffers from mesothelioma, a cancer related to exposure to asbestos and asbestos-containing products. Plaintiff Michael L. Perry was not aware at the time of exposure that asbestos or asbestos-containing talc products presented any risk of injury or disease.

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

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

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

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

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

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

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

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

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

FOR A SECOND CAUSE OF ACTION

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

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

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

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

120. The Products Defendants’ conduct and defective products as described above were a direct cause of Plaintiff Michael L. Perry’s injuries, and the injuries and damages thereby sustained by Plaintiffs.

121. Furthermore, the Defendants’ conduct and that of their “alternate entities” in continuing to market and sell products which they knew were dangerous to Plaintiff Michael L. Perry and the public without adequate warnings or proper use instructions, was done in a conscious

disregard and indifference to the safety and health of Plaintiff Michael L. Perry and others similarly situated.

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

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

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

125. The asbestos and asbestos-containing talc products were defective and unsafe for their intended purpose in that there was an alternative for asbestos that could have been used as the product or as a component instead of asbestos within a normally asbestos-containing/utilizing product. Said alternatives would have prevented Defendants’ asbestos, asbestos-containing talc

products, and products manufactured for foreseeable personal use by individuals from causing Plaintiff Michael L. Perry's mesothelioma, due to an inability of any asbestos-alternative to penetrate the pleural lining of Plaintiff's lung, even if inhaled. Said alternatives came at a comparable cost to each of the Defendants and/or their "alternate entities." Said alternatives were of comparable utility to the asbestos or asbestos-containing talc products of Defendants and/or their "alternate entities." The gravity of the potential harm resulting from the use of Defendants' asbestos or asbestos-containing talc products, and the likelihood such harm would occur, far outweighed any additional cost or marginal loss of functionality in creating and/or utilizing an alternative design, providing adequate warning of such potential harm, and/or providing adequate use instructions for eliminating the health risks inherent in the use of their products, thereby rendering the same defective, unsafe and dangerous for use.

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

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

128. Defendants' defective products as described above were a direct cause of Plaintiff Michael L. Perry's injuries, and the damages thereby sustained.

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

130. Defendants and/or their "alternate entities" were aware that members of the general public and other exposed persons, who would come in contact with their asbestos and asbestos-containing talc products, had no knowledge or information indicating that asbestos or asbestos-containing talc products or products manufactured for foreseeable personal use by individuals like Plaintiff Michael L. Perry could cause injury. Defendants and/or their "alternate entities" further knew that members of the general public and other exposed persons, who came in contact with asbestos, asbestos-containing talc products, and products manufactured for foreseeable personal use by individuals like Plaintiff Michael L. Perry would assume, and in fact did assume, that

exposure to asbestos and asbestos- containing products was safe, when in fact exposure was extremely hazardous to health and human life.

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

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

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

134. At all times herein mentioned, each of the named Defendants, and/or their “alternate entities,” was an entity and/or the successor, successor in business, successor in product

line or a portion thereof, assign, predecessor, predecessor in business, predecessor in product line or a portion thereof, parent, subsidiary, or division of an entity, hereinafter referred to collectively as “alternate entities,” engaged in the business of researching, studying, manufacturing, fabricating, designing, modifying, labeling, instructing, distributing, buying, offering for sale, supplying, selling, inspecting, servicing, marketing, warranting, re-branding, manufacturing for others, packaging and advertising a certain product, namely products containing asbestos and talc products manufactured for foreseeable personal use by individuals like Plaintiff Michael L. Perry.

FOR A THIRD CAUSE OF ACTION
(Negligence Per Se)

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

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

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

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

138. The negligence per se of Defendants was a proximate cause of Plaintiff Michael L. Perry’s injuries.

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

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

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

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

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

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

FOR A FIFTH CAUSE OF ACTION
(Fraudulent Misrepresentation)

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

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

144. That during, before and after Plaintiff Michael L. Perry’s exposure to asbestos products manufactured by Defendants and/or their “alternate entities”, the Defendants and/or their

“alternate entities” falsely represented facts, including the dangers of asbestos exposure to Plaintiff Michael L. Perry in the particulars alleged in the paragraphs above, while Defendants each had actual knowledge of said dangers of asbestos exposure to persons such as Plaintiff Michael L. Perry. At the same time of these misrepresentations, Defendants each knew of the falsity of their representations and/or made the representations in reckless disregard of their truth or falsity.

145. The foregoing representations were material conditions precedent to Plaintiff Michael L. Perry’s continued exposure to asbestos-containing talc products. Defendants and/or their “alternate entities” each intended that Plaintiff Michael L. Perry act upon the representations by continuing his personal use of, and thereby exposure to, the asbestos-containing talc products. Plaintiff Michael L. Perry was ignorant of the falsity of Defendants’ representations and rightfully relied upon the representations.

146. As a direct and proximate result, Plaintiff Michael L. Perry’s reliance upon Defendants’ false representations, Plaintiff has suffered injury and damages as described herein.

FOR A SIXTH CAUSE OF ACTION

(Fraudulent Misrepresentation and Conspiracy/Concert Action as to Talc Manufacturers, Miners, Millers, Sellers, Compounders, and Distributors)

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

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

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

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

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

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

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

presence of tremolite, anthophyllite and chrysotile commonly among those minerals found within talc deposits.

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

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

155. Defendants and their affiliates, employees, agents and/or suppliers were members of the National Safety Council. In March of 1933, Waldemar C. Dreesen of the United States Public Health Service reported to the National Safety Council the results of a study conducted among tremolite, talc and slate workers. The study indicated that the talc was a hydrous calcium magnesium silicate, being 45% talc and 45% tremolite, and the National Safety Council stated, "The results of the study seemed to indicate a relationship between the amount of dust inhaled and the effect of this dust on the lungs of the workers." As early as 1934, the National Safety Council was publishing that "a cause of severe pulmonary injury is asbestos, a silicate of magnesium." In the September 1935 issue of National Safety News, an article entitled "No Halfway Measures in Dust Control" by Arthur S. Johnson reported lowered lung capacity resulting from "asbestosis"

and “similar conditions” that developed “from exposure to excess of many mineral dusts relatively low in free silica content.” The article further noted that claims for disabilities from workers who alleged exposure to “clay, talc, emery, and carborundum dusts” had “claims prosecuted successfully.” The article concluded that “[i]n the absence of adequate diagnoses, occupational histories and a more satisfactory method of adjudicating claims than prosecution at common law, we must conclude that it is necessary to find a practical method for controlling all mineral dusts.”

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

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

158. In 1968, a scientific study of store-bought, commercially available talcum powders conducted by the Occupational Health Program, National Center for Urban Industrial Health, was published and presented by the American Industrial Hygiene Association. Defendants were aware of this study. The study revealed that, contrary to popular belief, talcum powders were not entirely

pure, but rather contained various fibrous minerals, including tremolite, anthophyllite and chrysotile. The study explained that such fibrous content was not unexpected because these types of fibers are often present in fibrous talc mineral deposits. Available documents indicate that during the same year and in the years following, at least one company began testing store-bought talcum powders for asbestos content. Despite tests showing some talcum powders contained asbestos, there is no evidence that positive results or the brand names of contaminated products were communicated to any governmental agency, the media or the public.

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

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

161. In 1971, the New York City of Environmental Protection Administration Air Resources Board conducted a study of two “leading” brands of talcum powder using transmission

electron microscopy (“TEM”) and X-ray diffraction (“XRD”) analysis, and found them to contain 5-25% tremolite and anthophyllite asbestos.

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

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

164. Dr. Lewin of New York University disclosed twice in 1972 that asbestos had been found in cosmetic talc. In a report to the FDA on August 3, 1972, Dr. Lewin reported that of 195 talc products, 20 had tremolite, 7 had chrysotile, 9 had both tremolite and chrysotile, and 7 had substantial percentages of one of both. XRD had been used as the first step in analysis and the

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

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

166. In the early 1970s, the FDA began an inquiry into whether to regulate and require warnings on consumer talcum powder products. CTFA, an exclusive lobbying and advocacy group representing companies engaged in the cosmetic products industry, including many of the

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

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

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

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

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

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

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

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

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

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

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

177. Defendants and third parties collectively met with and corresponded with CTFA, as well as collectively met with the FDA and other government agencies, to individually and collectively advocate for the use of "voluntary" XRD testing of miniscule portions of the tons of talc to be used in consumer products. Defendants' "voluntary" method—that was developed collectively by defendants and CTFA and advocated to the FDA in lieu of regulations requiring asbestos labeling or warnings on talcum powder products—was inadequate because levels of asbestos contamination in talc commonly fell below the detection limit of the testing methods.

Defendants and CTFA also knew that asbestos contamination was not uniformly distributed, such that the miniscule amounts tested would not reveal the true level of contamination in talc products, such as those to which Plaintiff Michael L. Perry was exposed.

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

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

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

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

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

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

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

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

185. Defendants and CTFA's failure to disclose these positive results and the inadequacies of their testing protocols continued through the 1980s, 1990s and 2000s, even when

various government agencies raised concerns about the safety of talc, including the issue of asbestos content.

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

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

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

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

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

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

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

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

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

195. Defendants and CTFA, while cognizant of the aforementioned data, deliberately chose to ignore the health and safety issues raised in said data and embarked upon a plan of deception intended to deprive the public at large, including plaintiff, of alarming medical and

scientific findings, many of which remained in their exclusive possession and under their exclusive control.

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

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

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

198. CTFA, as well as defendants and other entities in the talc industry and cosmetic industries, individually and collectively, failed to report to the FDA tests performed both internally and by outside laboratories confirming the presence of asbestos in defendants' and other CTFA members' finished products as well as talc shipments from talc suppliers and other sources that were used to produce finished products. Instead, CTFA sent letters to the FDA stating that results of testing of talc used by the industry after 1972 had not revealed the presence of amphiboles or

chrysotile, when in fact all of these entities had received or performed tests indicating the contrary by 1976, when such intentionally false misrepresentations were made. CTFA and defendants made and published such representations claiming that their collective testing method was adequate, they were ensuring that talcum powder products were safe, and that their testing of talc reaching consumers was “safe,” despite knowing the contrary.

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

200. CTFA and defendants, collectively and through explicit agreement and consciously parallel behavior, controlled industry standards regarding the testing, manufacture, sale, marketing, distribution and use of asbestos-containing talcum powder products, and controlled the

level of knowledge and information available to the public regarding the hazards of exposure to asbestos and other carcinogens from talc and talc-containing products.

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

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

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

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

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

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

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

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

209. As a direct and proximate consequence of the foregoing acts and omissions by the defendants, Plaintiff Michael L. Perry used or was otherwise exposed to defendants' products and inhaled and/or ingested asbestos resulting from the ordinary and foreseeable use thereof.

FOR A SEVENTH CAUSE OF ACTION

**(Fraud as to Defendants Johnson & Johnson,
Johnson & Johnson Holdco (NA) Inc., Janssen Pharmaceuticals Inc., Kenvue Inc., and
LTL Management LLC)**

For a Seventh Distinct Cause of Action for Fraud, Plaintiffs Complain of Defendants, and Allege as Follows:

210. Defendants JOHNSON & JOHNSON, JOHNSON & JOHNSON HOLDCO (NA) INC., f/k/a Johnson & Johnson Consumer Inc., individually and successor-in-interest to Johnson & Johnson subsidiary "Old JJCI", JANSSEN PHARMACEUTICALS INC., individually and as successor-in-interest to Johnson & Johnson subsidiaries named Johnson & Johnson Consumer Inc., both prior to and after its 2021 restructurings and colloquially known as "Old JJCI" and "New JJCI", KENVUE INC., individually and as successor-in-interest to Johnson & Johnson Consumer

Inc., and LTL MANAGEMENT LLC (collectively “J&J”) made false representations regarding the asbestos content of their talc products, including Johnson’s Baby Powder and Shower to Shower used by Plaintiff Michael L. Perry, misrepresentations that Plaintiff relied on to his detriment and which caused the development of his mesothelioma. J&J’s misrepresentations were deliberate and were effectuated through a campaign to hide and destroy laboratory testing detecting asbestos in Johnson’s Baby Powder and Shower to Shower, to manipulate the protocols for such testing to falsely suggest no asbestos was found in Johnson’s Baby Powder and Shower to Shower, and to repeatedly assert to the public and federal regulatory agencies that Johnson’s Baby Powder and Shower to Shower were safe.

211. Johnson’s Baby Powder was a critical cornerstone product for J&J, referenced as the company’s “golden egg” and “sacred cow.” See Exhibit 1 (04/28/1997 The Johnson & Johnson Advantage: Emotional Trust); see also Exhibit 2 (08/18/1997 Mother-Baby Strategic Mission); see also Exhibit 3 (08/20/1997 Johnson & Johnson "Golden Egg" Advertising Strategy); see also Exhibit 4 (excerpt of 08/04/1999 Johnson & Johnson Baby Camp PowerPoint); see also Exhibit 5 (excerpt of 08/10/1999 Johnson & Johnson Baby Camp PowerPoint with Koffman (Golden Egg presentation)).

212. J&J knew that its cosmetic talc products, including Johnson’s Baby Powder and Shower to Shower, contained asbestos fibers, knew those asbestos fibers could cause cancer, and knew that it was not safe to be selling such products to the public for use on babies, children, and adults. In a memorandum dated April 9, 1969, J&J internally expressed concern that the presence of tremolite asbestos in its talc products would cause pulmonary diseases and cancer and increased the risk that the company would be drawn into litigation. J&J acknowledged that trace amounts of tremolite were unavoidable, and that efforts should be made to keep the amount of tremolite to a minimum.

213. In a memorandum dated July 30, 1971, J&J was informed that there is no place for asbestos in talc, trace amounts were not acceptable, and any talc with asbestos should be removed from the market. J&J was informed that no level of asbestos in talc is acceptable for cosmetic use.

214. In a memorandum dated October 16, 1997, J&J acknowledged that there is no doubt that “mesothelioma can be caused by non-occupational exposure to mineral fibers” and that “mesothelioma may occur after brief or indirect exposure to asbestos.” This memorandum further stated that tremolite is considered one of “the most potent mesothelioma producers” and that scientists contend that trace amounts of tremolite in other minerals is responsible for mesotheliomas.

215. In its memorandum of October 16, 1997, J&J acknowledged that “in several mesothelioma patients studied, both talc fibers and tremolite were detected. In fact, the majority of asbestos bodies isolated from the lungs of women in the general population have tremolite or anthophyllite and because tremolite and anthophyllite are known contaminants of talc, this data suggests that rare cases of mesothelioma among women with no other identifiable exposure might be related to exposure to cosmetic talc.” Further, an environmental factor that must be given “major consideration in the incidence of Mesothelioma” includes “tremolite asbestos” which “is a known contaminant [of] some deposits of talc.”

216. J&J’s corporate representative has acknowledged in litigation that it has known for years that the talc used in Johnson’s Baby Powder could be inhaled and reach deep into the lung. For decades, J&J has known about the dangers of talc powder inhalation during the normal use of its talc-based cosmetic products, especially to babies.

217. The relationship between asbestos exposure and mesothelioma has been well understood since the 1960s and numerous studies confirm that causal relationship. J&J was aware of this causal relationship through its knowledge of the scientific literature and its membership in trade organizations through which such knowledge was distributed.

218. Beginning at least in the 1950s, J&J tested its talc for impurities or comineral, including “asbestos” and “tremolite,” because the company knew they are deleterious minerals that could be harmful to a person’s health and thus should not be found in talc-based cosmetic products. At all relevant times, J&J understood the dangers posed by asbestos exposure and that asbestos was a known impurity of talc.

219. J&J, internally and through hired testing laboratories such as the Battelle Memorial Institute, McCrone Associates, and the Colorado School of Mines Research Institute, tested for asbestos impurities in the source talc ore, processed ore, and finished products used to manufacture J&J cosmetic talc products. All of these testing laboratories found asbestos minerals in J&J source talc ore or cosmetic talc products. Independent labs have also found asbestos in the talc used in J&J cosmetic talc products.

220. The existence of laboratory tests finding asbestos in J&J cosmetic talc products and source talc used in those products has been verified by J&J under cross examination in recent litigation. J&J knew about these positive test results all along. In 1972, J&J executives acknowledged internally that the results of testing demonstrating the presence of asbestos in J&J’s cosmetic talc products and the source ore used to make these products. At that time, J&J confirmed that McCrone found trace tremolite and that these findings are “not new.”

221. In May 1973, Roger Miller, the President of J&J’s mining company, Windsor Minerals, informed J&J that “the ore body contains actinolite.” This talc ore body was actively used to produce J&J’s cosmetic talc products. One week later, J&J’s records note that “[t]he first showing of actinolite we know about is October 1972.”

222. J&J consistently lied about these positive test results for decades. In response to consumer inquiries, J&J has assured consumers that “asbestos has never been found in Johnson’s Baby Powder and it never will.” In print advertisements as late as December 19, 2018, J&J told the public

that “Baby Powder does not contain asbestos and never will. We test every single lot to ensure it.” The Johnson’s Baby Powder product label says it was the “Purest Protection” and it was advertised as “the best you can buy” and “the purest.”

223. J&J has acknowledged that the intent of these representations to consumers has always been to “to reassure them they could feel safe and comfortable using Johnson’s Baby Powder because it does not contain asbestos” and to convey that in using Johnson’s Baby Powder, there was “zero chance” of exposing their families to asbestos. The statements that Johnson’s Baby Powder and Shower to Shower does not contain asbestos, that there was “zero chance” consumers were exposing their families to asbestos were false when they were made, and J&J knew they were false when they made those statements. As a direct result of J&J’s false representations that Johnson’s Baby Powder and Shower to Shower never contained asbestos, millions of people, including babies, were unwittingly and needlessly exposed to asbestos.

224. J&J has never placed warnings on its talc-based powder products about the potential hazards presented by the product being aerosolized in normal application. J&J never placed warnings on its powder products about the risk of asbestos exposure or cancer.

225. Instead, J&J represented to the public that Johnson’s Baby Powder was safe. J&J withheld from their spokespeople whose job it was to communicate the “no evidence of asbestos” message any reports indicating there was in fact evidence of asbestos in Johnson’s Baby Powder. J&J’s misrepresentations and omissions regarding the safety of Johnson’s Baby Powder and Shower to Shower has resulted in consumer use of this and other cosmetic talc products in a potentially lethal way without any knowledge of the danger.

226. Since the early 1970s the FDA has repeatedly asked J&J whether there was any evidence of any amount of asbestos in any J&J cosmetic talc product. J&J’s answer to the FDA’s inquiries was always the same: there is no evidence of any amount of asbestos in any J&J cosmetic

talc product. Over the course of more than four decades, J&J represented to the FDA over and over again that there is not a single instance or report of asbestos – including chrysotile asbestos – in its products.

227. In a letter dated September 21, 1971, J&J represented to the FDA that its data “conclusively proves that Johnson’s Baby Powder is free of asbestos.” J&J has represented to the FDA that “no amphibole materials have been detected” in the company’s talc-based products. Documentation of a meeting between J&J and the FDA in 1972 shows that, when pressed, J&J went so far as to represent to the FDA that “there wasn’t a shred of evidence to support the idea that either our Johnson’s Baby Powder or Shower to Shower contained any chrysotile asbestos.”

228. Although aware of repeated McCrone reports over the course of years to the contrary, J&J falsely represented to the FDA that its consultant McCrone never found asbestos in the talc ore that was used to make Johnson’s Baby Powder and Shower to Shower. In 1976, J&J rejected the FDA’s request to provide the results of its respective periodic monitoring for asbestos.

229. J&J also submitted false and misleading statements through its trade association, the Cosmetic, Toiletry & Fragrance Association (“CTFA”) (n/k/a Personal Care Products Council) (“PCPC”). The CTFA made false statements to Plaintiff, the general public, news media, and government agencies, including, but not limited to the FDA, the National Institute of Occupational Health and Safety (“OSHA”), the National Institute for Occupational Safety and Health (“NIOSH”), the Mine Health and Safety Administration (“MHSA”), and the National Toxicology Program (“NTP”), which, in turn, proximately caused Plaintiff’s harm through intentional efforts to deceive the general public and regulatory authorities as to the safety of and presence of carcinogens in Johnson’s Baby Powder and Shower to Shower.

230. J&J used the CTFA to communicate false information about the purity of its talc and lack of asbestos content, as evidenced by a letter dated March 15, 1976. This false information was

then transmitted by the CTFA to the FDA to “give assurance as to the freedom from contamination by asbestos form materials of cosmetic talc products.” This was done after J&J was aware of over 50 reports about asbestos minerals and fibers in the talc it used for cosmetic talc products. Two weeks after relaying this false information, J&J met privately in Hillside, New Jersey and congratulated themselves on the “success” of the “presentations” to the FDA and agreed that they should not bind themselves to having to further update the FDA.

231. J&J and other industry members agreed to do testing on their respective cosmetic talc products in a “round robin” format. The testing was done using a table that identified the manufacturer of the samples that were tested. Multiple samples contained asbestos. In a letter dated March 1, 1978, the Chairman of the CTFA Task Force on Round Robin Testing and then current employee of J&J instructed the CTFA to “destroy your copy of the table” containing the results finding asbestos in cosmetic talcs.

232. Although possessing test results indicating that the talc used in its talc-based products contained tremolite and chrysotile asbestos — reportable as asbestos under federal regulations — J&J represented to the NTP that there was never any evidence of asbestos in the talc used in Johnson’s Baby Powder and Shower to Shower. And decades after asbestos was first reported, J&J continued to represent to the FDA that it had confirmed “the absence of asbestiform minerals” in its finished talc-based products. It did so in the CTFA’s Comments in Response to a Citizens Petition dated June 27, 1995.

233. As recently as 2016, in a document dated March 17, 2016, J&J represented to the FDA that no asbestos structures have ever been found in its talc-based products in any testing anywhere in the world. This statement made to the FDA was false.

234. In an advertisement to the public dated December 19, 2018, J&J falsely claimed that it has cooperated fully and openly with the FDA and other regulators. In fact, J&J did not provide

the FDA with positive asbestos tests from its hired consultants, including McCrone, and the Colorado School of Mines. J&J did not tell the FDA that it possessed test results finding asbestos in the mine ore and the finished talc product nor did it give those results to the FDA.

235. J&J also used its consultants as vehicles to intentionally mislead the FDA. A letter dated October 12, 1971, evidences that J&J knew that its standby consultant McCrone purposely omitted findings of asbestos in its talc-based products because it “would only tend to confuse the issue perhaps with the FDA” and that McCrone offered that if J&J “decide[d] to use these reports with the FDA” to “please call us.”

236. As a part of its testing protocol for J&J’s talc products, McCrone would segregate any test results that were positive for the presence of asbestos in talc ore or cosmetic talc products from those that allegedly found “no quantifiable” asbestos. For instance, on April 29, 1986, under McCrone Project No. ME-2275 and Purchase Order WS-0503, McCrone authored two separate reports of test results for Windsor Minerals. The first was for 11 talc samples in which “no quantifiable” amounts of asbestiform were found. The second was for the three talc samples (noticeably extracted from the numbering sequence) in which traces of chrysotile were found.

237. McCrone and J&J worked together to manipulate the asbestos testing results of J&J products done by outside laboratories and reported those manipulated findings to the FDA as negative results. For example, in a report dated October 27, 1972, McCrone found tremolite asbestos in J&J talc products but a handwritten note was written in large print on the front of the report stating: “DO NOT USE THIS REPORT.” The report was revised to remove the quantification of asbestos found.

238. Similar asbestos findings by other J&J consultants were also hidden from the FDA. J&J submitted to the FDA testing performed by Professor Hutchinson from the Minnesota Space Center only in excerpts that removed all references to his “incontrovertible” findings of chrysotile asbestos. J&J did not submit a March 1974 test results from Professor Reynolds at Dartmouth College

that “Actinolite is the dominant fiberform amphibole in the ore and talc product provided by Windsor Minerals.” Instead, J&J submitted test results to the FDA from Dartmouth claiming that no amphiboles were found in the company’s talc products.

239. J&J had its consultants use purposefully misleading laboratory tests to support its false claims that its talc ore and talc products were free of any asbestos. Since at least 1971, J&J has known that transmission electron microscopy (“TEM” or electron microscopy) is the superior microscope to detect asbestos in talc and was its consultants’ recommended testing method. In fact, the positive asbestos results obtained by Professor Hutchinson utilized the TEM method. But J&J convinced the FDA that lesser test methods were effective, knowing that those lesser methods had failed to detect asbestos that was verified to be present in J&J’s cosmetic talc products. J&J routinely submitted test reports to the FDA as proof that its talc was asbestos free knowing that the methods used would not detect asbestos at low levels and thus were not reliable to rule out the presence of asbestos. For example, a McCrone report dated April 24, 1974, noted that lesser methods failed to find asbestos in over a dozen samples where the asbestos was confirmed when using the correct tool – TEM.

240. Despite J&J’s knowledge that other testing methods missed verified asbestos in its talc, J&J advocated an industry standard using one of the weaker/lesser methods and claimed it would ensure the talc was asbestos free. This method is known as J4-1. The J4-1 testing method utilized x-ray diffraction (“XRD”) as the initial screen to determine if any further testing was necessary. The limit of detection was between .5% and 5% and ensured that millions to trillions of asbestos fibers in a gram of talc could escape detection. Using the J4-1 method, if the XRD test result was negative, no more testing would occur, and the sample would be reported as “none detected.” This process virtually guaranteed that low levels of asbestos would never be found. J&J also knew that XRD could not detect chrysotile at levels below two percent of the talc product and was also incapable of detecting low levels of tremolite. In the unlikely event an XRD test result was positive, J&J’s second step

utilized polarized light microscopy (“PLM”), also a lesser testing method, and J&J instructed the PLM analyst not to count all of the fibers he or she would actually see under the microscope. Short fibers, below a defined size, recognized as carcinogenic, were excluded from any reporting.

241. The CTFA’s December 10, 1973 report confirmed that multiple talc sources, including Italian and Vermont talc, failed the proposed FDA’s method because of elevated chrysotile concentrations. Thereafter, the CTFA proposed J4-1 knowing it was a “unreliable” testing method for asbestos in talc. The first “round robin” tests, which analyzed a “CTFA Tremolite-Spiked Talc,” resulted in six of seven participating laboratories failing to detect the tremolite. In other words, 84% of the industry’s laboratories failed to detect asbestos in a sample known to contain tremolite asbestos while using the CTFA’s J4-1 method. There is no evidence that CTFA or J&J ever shared this remarkable failure with the FDA or the public.

242. J&J also knew that the “concentration method” of sample preparation was most able to detect the presence of asbestos in its talc and thus provide more accurate results. Internal memorandums from 1973 show that J&J understood that the concentration method was “much more sensitive than our proposed specifications” and when used found traces of tremolite which the J&J testing methods would fail to expose. J&J’s stated concern with using a concentration method, set forth in a memorandum dated May 16, 1973, was that it was too good at detecting asbestos – it was too sensitive. Correspondence dated February 18, 1975 indicates that J&J rejected the concentration method because the effective and sensitive testing was not “in the worldwide company interest.” Indeed, many of J&J’s consultants — including the Colorado School of Mines, Professor Pooley of Cardiff University, Professor Reynolds of Dartmouth College, and Professor Alice Blount of Rutgers University — found asbestos in J&J’s talc-based cosmetic products using the concentration method. J&J did not provide any of those test results to the FDA, however.

243. When J&J finally decided to use TEM on a limited basis in 1995, it implemented a TEM reporting methodology designed to yield negative, rather than accurate results. J&J called its method TM7024. According to this method, a lab would report the test results as negative and “not quantifiable” unless the scientist counted 5 or more asbestos fibers of the same variety in an incredibly small sample (it varied but was well under 50 milligrams). Thus, even if the examiner identified, counted and quantified as many as 16 asbestos fibers (four fibers of tremolite, four fibers of actinolite, four fibers of anthophyllite, and four fibers of chrysotile) the finding of asbestos was not to be reported. This method instructed labs who confirm the presence of asbestos in incredibly small samples to “couch” the results in specific and deceptive language that the lab “did not find any quantifiable amount of asbestosforms minerals.” J&J’s position about the scientific propriety of its TM7024 testing protocol was and remains inconsistent with EPA protocols for counting asbestos fibers.

244. Even though J&J tested miniscule amounts of product, and utilized methods specifically designed to yield negative results, asbestos was still found in J&J’s cosmetic talc. J&J never produced these test results to the public until 2017. In editing information for its website in about 2016, J&J acknowledged internally that it “cannot say our talc-based consumer products have always been asbestos free.”

245. J&J represented to the FDA that the most sensitive testing was not needed because “substantial asbestos can be allowed safely in baby powder.” J&J also claimed that “extensive” animal studies of its Vermont and Italian talc revealed no cancer risk from their talc. J&J now admits that only one study was done of its Vermont talc and only one study of its Italian talc as it relates to the risk of cancer from talc. The FDA was not told tests were conducted on a special lot of “extremely clean” talc. This information was first disclosed in litigation from J&J internal records, first produced no earlier than 2017.

246. J&J knew that it had liability to persons who developed asbestos-related diseases as a result of exposure to its cosmetic talc products. In an internal communication dated April 15, 1969, the Medical Director for J&J wrote to advise the company of danger relative to “inhalation” of the “needle-like” crystals of tremolite asbestos in J&J’s talc. J&J was cautioned that “since the usage of these products is so widespread, and the existence of pulmonary disease is increasing, it is not inconceivable that [J&J] could become involved in litigation in which pulmonary fibrosis or other changes might be rightfully or wrongfully attributed to inhalation of our powder formulations.” To that end, Dr. Thompson recommended that “someone in the Law Department should be consulted with regard to the defensibility of our position in the event that such a situation could ever arise.” The medical director further forewarned J&J that the company could confront a situation where the company would be more or less compelled to remove its talc products “if it became known that our talc formulations contained any significant amount of Tremolite.” This prediction of litigation came to fruition shortly thereafter. J&J has reported that during the 1970s alone, the company was sued in talc-based cases in 1971, 1972, 1973 1974, 1976, 1977, 1978, and 1979.

247. Due to the litigation process, J&J has been forced to identify documents from as early as 1971 (and every year thereafter) relating to “ongoing,” “pending,” and “anticipated” litigation regarding Johnson’s Baby Powder. Since at least 1971, J&J has known that information in the company’s possession relevant to or produced in any particular talc-based lawsuit would be relevant to discovery in future talc-based cases. Although J&J was legally obligated to retain the evidence, it does not know where the documents and evidence related to these cases are located or whether they even exist. Entries on J&J’s privilege log indicate that samples of talcum powder used in litigation existed at the time the litigation in the 1970s was pending but are no longer available.

248. Despite being involved in litigation for decades, J&J never produced a single asbestos test in any case prior to 2017, even when specifically requested. J&J was repeatedly asked in litigation

whether the talc used in any of its talc-based cosmetic products contained any amount of asbestos. J&J represented to plaintiffs' counsel that "there was no evidence" of asbestos in its cosmetic talc. These representations exemplified J&J's pattern and practice in defending talc-injury litigation, which was to conceal evidence of asbestos in its cosmetic talc products and represent that no such evidence ever existed. Many of the same J&J executives who were involved in discussions with the FDA about the company's talc-based cosmetic products were involved in defending J&J in litigation alleging asbestos-related injuries from talc-based cosmetic products.

249. J&J routinely provided sworn affidavits from company executives falsely asserting that there was no evidence of asbestos in the talc used for J&J cosmetic products. In addition to submitting false affidavits, J&J repeatedly certified answers to interrogatories stating that there was never any evidence of asbestos in any J&J cosmetic talc product when it knew the truth to be otherwise. J&J knew there was tremolite in Johnson's Baby Powder when responding to discovery requests in the Krushinski case. J&J has been forced to admit that these interrogatories, which were answered in conjunction with the company's lawyers, were false.

250. J&J concealed and refused to produce in response to plaintiffs' discovery requests any documents evidencing or relating to tests, studies, investigations, and analyses of Johnson's Baby Powder and Shower to Shower for the presence of asbestos, despite its knowledge that relevant and material documents existed and were in its possession and that it had the duty to disclose them.

251. Although J&J by its own admission had an obligation to preserve evidence once litigation concerning the health effects of its talc products was foreseeable, it failed to do so. J&J knew that evidence adduced in litigation concerning the health effects of its talc products would be material and relevant to other anticipated cases. Yet J&J failed to preserve records from any of the lawsuits that alleged injuries as a result of Johnson's Baby Powder, Shower to Shower, talc, or asbestos, even though J&J knew that relevant and material documents existed and were in its possession.

252. J&J did not retain any samples of its talc ore and milled talc used in its talc-based cosmetic products, which it tested regularly for the presence of asbestos and asbestiform minerals at any time until 2017. Although litigation was pending and anticipated, the samples chosen by J&J specifically to create test results were not retained under the company's evidence retention schedules and were not subject to any litigation-hold. J&J also failed to retain all test results for the presence of asbestos and asbestiform minerals of the talc ore and milled talc used in its talc-based cosmetic products. The failure to institute a litigation hold made certain that the testing results were destroyed in accordance with its document retention policy. In 2008, nearly ten years after the first litigation hold, when asked about retention time for "information related to the CTFA ingredient surveys" J&J directed its employees to "PITCH them." Any test results that J&J has not yet produced are presumed to be destroyed, as the disposal of these results were mandated by the company's evidence retention scheduled absent a litigation hold, which J&J never issued.

253. The limited underlying scientific data that still exists of J&J's consultants confirms that the reports of "no detectable" asbestos are belied by the underlying scientific data, which shows evidence of asbestos. There are countless similar non-detect letters with no underlying data.

254. In 1989, after facing litigation related to its talc-based products for nearly two decades and anticipating further litigation, J&J destroyed records relating to its Hammondsville, Vermont mining operations.

255. J&J historically preserved no records from the majority of cases in which it has been sued for causing talc related injuries. For those cases where there is at least some documentation, J&J either lost or destroyed most of the material evidence related to historical litigation alleging asbestos-related disease from its talc products. Despite being involved in many cases dating back to 1971, J&J could only locate two sets of discovery responses for its corporate representative to review.

256. J&J once maintained a paper file documenting all of its telephone conversations with the FDA related to its talc-based cosmetic products dating to the early 1970s. The “FDA Call File” no longer exists.

**J&J is Fully Responsible for Conduct
Fraudulent Misrepresentation**

257. J&J intentionally and fraudulently continued to misrepresent to the public that Johnson’s Baby Powder and Shower to Shower were safe, concealing the dangers of asbestos exposure and evidence of asbestos in J&J’s talc product. J&J’s misrepresentations and omissions regarding the safety of Johnson’s Baby Powder and Shower to Shower have resulted in consumer use of cosmetic talc products in a potentially lethal way without any knowledge of the danger, thus denying Plaintiff the knowledge with which to avoid further exposure. Specifically, J&J’s intentional and fraudulent conduct included the following acts and omissions:

- (a) J&J made a material representation;
- (b) The representation was false;
- (c) J&J knew it was false when made or made it recklessly without knowing it was true as a material positive assertion;
- (d) J&J made the misrepresentation intending that Plaintiff act on the representation;
- (e) Plaintiff acted in reliance on it; and
- (f) Plaintiff, as a result, suffered damage.

**J&J is Fully Responsible for Conduct
Silent Fraud (a/k/a Fraudulent Concealment)**

258. J&J intentionally and fraudulently concealed the dangers of asbestos exposure and continued to represent to the public that Johnson’s Baby Powder and Shower to Shower were safe, concealing the evidence of asbestos in J&J’s talc product. J&J’s concealment and omissions regarding the safety of Johnson’s Baby Powder and Shower to Shower have resulted in consumer use of cosmetic talc products in a potentially lethal way without any knowledge of the danger, thus denying

Plaintiff the knowledge with which to avoid further exposure. Specifically, J&J's intentional and fraudulent conduct included the following acts and omissions:

- (a) J&J suppressed a material fact;
- (b) J&J had a duty to disclose the fact; and
- (c) J&J concealed the fact with the intent to defraud.

259. Plaintiff Michael L. Perry trusted Johnson's Baby Powder and Shower to Shower. He used it on himself, believing it to be safe. Plaintiff trusted that the talc products used on himself were safe and did not have any carcinogens. He relied on J&J to provide any safety information to him and his family and to make sure any life-threatening hazards were communicated to her. Had the Plaintiff known the true facts, he would never have purchased or used the products.

260. Plaintiff Michael L. Perry developed malignant mesothelioma, a fatal cancer, as a direct and proximate cause of the misrepresentations made by J&J regarding the safety of Johnson's Baby Powder and Shower to Shower and its concealment of evidence that its cosmetic talc products utilized talc that contained asbestos fibers that could cause cancer.

WHEREFORE, Plaintiffs demand judgment against defendants Johnson & Johnson, Johnson & Johnson Holdco (NA) Inc., Janssen Pharmaceuticals Inc., and Kenvue Inc. for a reasonable amount plus statutory interest and costs, and for such other relief as shall be deemed appropriate.

FOR AN EIGHTH CAUSE OF ACTION
(Loss of Consortium)

For an Eighth Distinct Cause of Action for Loss of Consortium, Plaintiff Lonnie L. Long Complains of Defendants, and Alleges as Follows:

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

262. Plaintiffs Michael L. Perry and Lonnie L. Long were married on June 20, 2009 and at all times relevant to their action were legally married.

263. Prior to his injuries as alleged, Plaintiff Michael L. Perry was able and did perform his spousal duties. As a proximate result thereof, subsequent to the injuries, Plaintiff Michael L. Perry has been unable to perform his spousal duties and the work and service usually performed in the care, maintenance and management of the family home. As a proximate result thereof, Plaintiff Lonnie L. Long was deprived of the consortium of his spouse, including the performance of duties, all to Plaintiffs' damages, in an amount presently unknown to Plaintiffs but which will be proven at time of trial.

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

PRAYER FOR RELIEF

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

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

7. For damages for fraudulent misrepresentation according to proof; and
8. For such other and further relief as the Court may deem just and proper, including costs and prejudgment interest as provided by South Carolina law.

A JURY IS RESPECTFULLY DEMANDED TO TRY THESE ISSUES.

Respectfully submitted,

/s/ Theile B. McVey

Theile B. McVey (SC Bar No. 16682)

Jamie D. Rutkoski (SC Bar No. 103270)

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ATTORNEYS FOR PLAINTIFFS

August 3, 2023
Columbia, South Carolina

EXHIBIT 1

The Johnson & Johnson Advantage: Emotional Trust

Many Companies Have Rational Trust

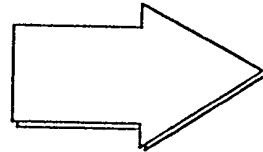
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Colgate

Bristol-Myers Squibb

Glaxo Wellcome

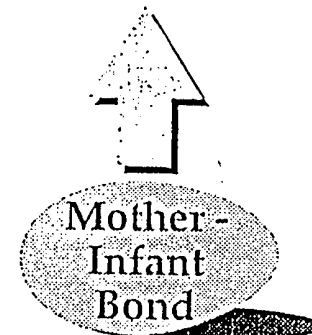


Only Johnson & Johnson Also Has Real Emotional Trust

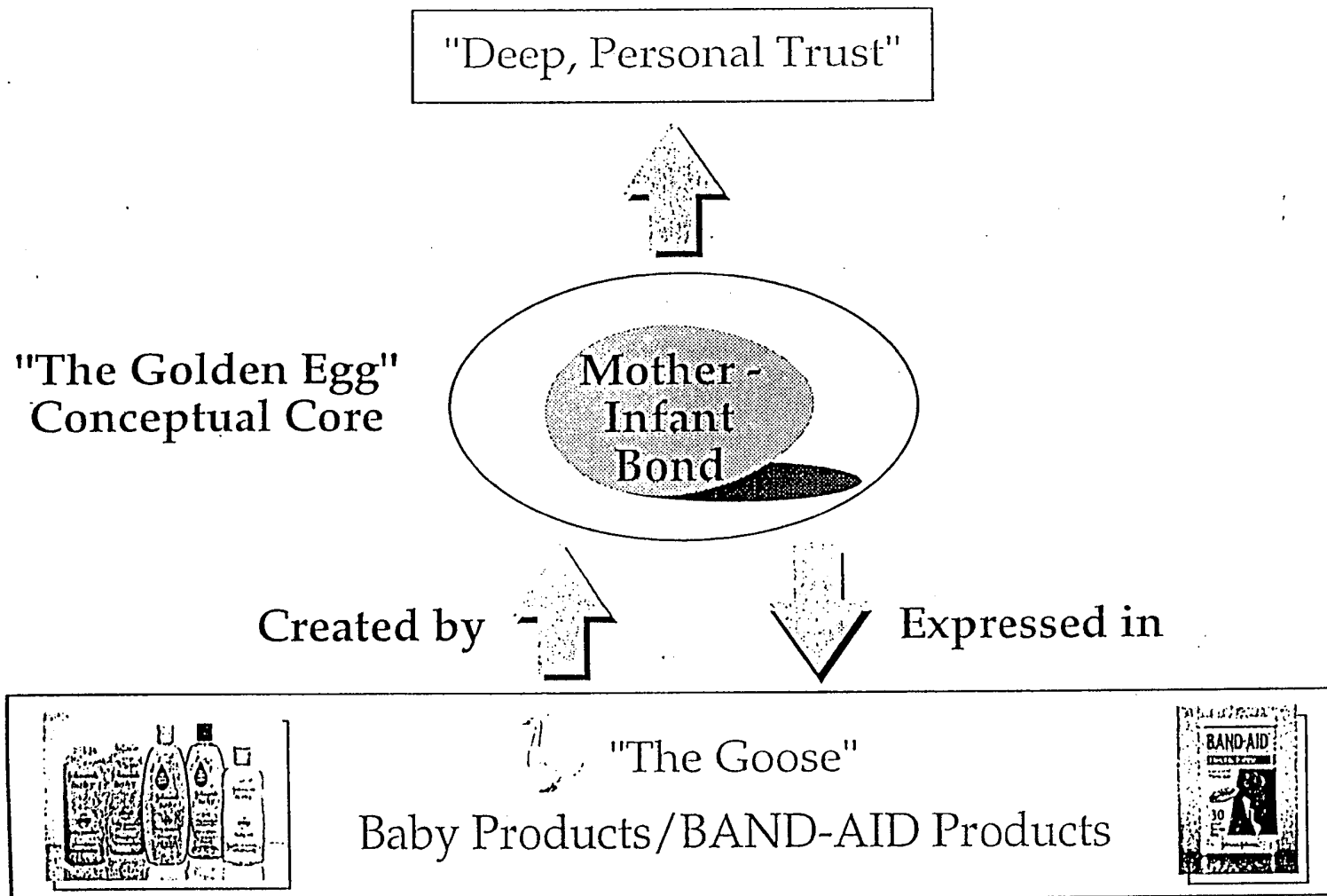
Safe + Personal

Won't
hurt me

"Familial"
intimacy with
the company



"The Goose That Laid the Golden Egg"



JNJTALC000000066

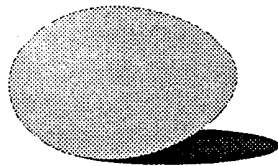
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EXHIBIT 2

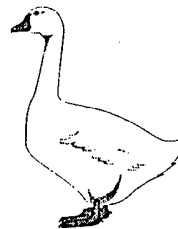
Mother-Baby Strategic Mission

Objective: Reinforce the superiority of Johnson & Johnson as the most trustworthy, caring *health care products* company worldwide. These values constitute a key competitive advantage, and are rooted in our heritage as the mother - baby company.



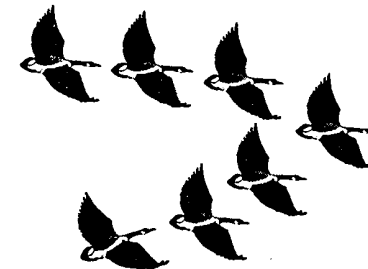
Burnish the Golden Egg

- ◆ Express the mother-infant bond and reinforce our caring and trustworthiness
- ◆ Reinforce the link between the bond and the Johnson & Johnson name



Feed the Goose

- ◆ Increase the leadership share of mind of JOHNSON'S/Johnson & Johnson in the baby category among consumers, medical professionals and selected opinion leaders



Lead the Flock

- ◆ Solidify and be recognized for our leadership as the best source for products, information, support and services which empower and enable parents, particularly mothers, to take the best care of their healthy babies under three.

JNJTALC000000068

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EXHIBIT 3

Johnson & Johnson “Golden Egg” Advertising Strategy

August 20, 1997

Advertising Objective:

To “Burnish the Egg,” i.e., to enhance the Johnson & Johnson Core Equity of Caring and Deep Personal Trust.

Insights:

Research has determined that the Core Equity is most accurately captured in the mother/baby bond.

Bonding helps babies relate to their world. It stimulates growth and brain development.

Touch is essential to bonding. (Babies deprived of touch suffer developmental problems.)

New parents have an increased need for information and reassurance.

The role of the father in nurturing is increasing and is viewed by mothers as supportive of their role.

Target:

Parents of babies
Opinion leaders, including healthcare providers and government influencers

Benefit:

Johnson & Johnson gives me the information and encouragement I need to bond with my baby.

Support:

Touch is the first communication between parent and child.
It is the way babies learn to bond.
Touch promotes both emotional and physical development.

JNJTALC000000097

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EXHIBIT 4



Summary

- JOHNSON'S Baby is the corporation's #1 equity and the mother-infant bond is at its core.
- JOHNSON'S Baby is 50% heart and 50%mind.
- We MUST protect and enhance the JOHNSON'S Baby Equity.



In Summary

- We are called JOHNSON'S Baby
- We are a baby product
- Adults use us because we are a baby product
- This adult usage drives volume in most of our categories
- Our point of difference from other mild products
 - Rational
 - Emotional
- It is an ownable and distinctive proposition that must be reinforced in any JOHNSON'S Baby communication



babycamp 
HOME



File Provided Natively

JNJTALC000353919

Metadata

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EXHIBIT 5



RoA_00387



Christian Koffman



babycamp 
HOME

RoA 00388



Baby Care Franchise

- **Big**
- **Profitable**
- **Good Geographic Spread**



babycamp



RoA 00389

TOUCH IS...

- **Mother - Baby Bonding - Central to the Meaning of JOHNSON'S Baby**
...emotional
- **Benefits of Infant Massage - Central to Our Equity as Baby Care Expert**
...rational
- **A program and a platform which combines both**
 - professional
 - consumer



babycamp 
RoA 00390 HOME

Our Objective:

Establish
Johnson & Johnson
as the leading
global babycare company



babycamp



RoA_00391



File Provided Natively

JNJTALC000643847

Metadata

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Department of Pathology

Roper Hospital
316 Calhoun Street
Charleston, SC 29401
Tel: (843) 724-2260 Fax: (843) 737-8535

SURGICAL PATHOLOGY CONSULTATION REPORT

Patient Name:	PERRY, MICHAEL L.	Accession #:	SR23-3043
Med. Rec. #:	001580364	Financial #:	464139428
DOB/Age/Gender:	(Age: 53) / M	Date of Service:	6/30/2023
Client:	Roper Hospital	Received:	6/30/2023
Location:	RH 3 HVT CT INTERMED	Reported:	7/5/2023
Patient Type:	Inpatient Epic		
Physicians:	KLINE, ELIZABETH M-MD		

DIAGNOSIS

A. PLEURA, LEFT, BIOPSIES:

**NON SMALL CELL MALIGNANCY, MOST COMPATIBLE WITH MALIGNANT MESOTHELIOMA
SEE MICROSCOPIC DESCRIPTION**

B. PLEURA, LEFT, BIOPSY FOR FROZEN SECTION:

**NON SMALL CELL MALIGNANCY, MOST COMPATIBLE WITH MALIGNANT MESOTHELIOMA
SEE MICROSCOPIC DESCRIPTION**

Electronically Signed By SANFRANCESCO, JOSEPH MICHAEL-MD 7/5/2023 14:20

joe/7/3/2023

INTERPRETATION LOCATION

Primary professional interpretation performed at Roper Hospital, 316 Calhoun Street, Charleston, SC 29401.

COMMENT

Diagnostic findings were relayed to Dr. Lingerfelt by Dr. Sanfrancesco on July 5, 2023 via the Telmediq application.

MICROSCOPIC DESCRIPTION:

A-B: Sections (including frozen section slides) demonstrate an infiltrative non-small cell malignancy comprised of moderate to markedly atypical cells arranged predominantly in infiltrative sheets with prominent nucleoli. Keratinization is absent. Gland formation is not identified. Overtly sarcomatoid differentiation or features of a high-grade sarcoma are not appreciated. To further differentiate the lineage of these malignant cells, a panel of qualitative immunohistochemical stains (with appropriate positive controls) was performed on block A2:

Cytokeratin AE1/3: Positive
Cytokeratin 7: Positive
Cytokeratin 5/6: Positive
Calretinin: Positive
WT1: Positive
Desmin: Negative
PSA: Negative
CK20: Negative
SOX10: Negative
TTF-1: Negative

Overall, coexpression of cytokeratins and mesothelial markers favors mesothelioma with extensively epithelioid features. There is no evidence of a pulmonary non-small cell carcinoma or metastatic colorectal carcinoma. Despite the prominent nucleoli, findings

PERRY, MICHAEL L.

SURGICAL PATHOLOGY CONSULTATION REPORT

SR23-3043

argue against metastatic prostatic adenocarcinoma. There is no evidence of metastatic melanoma. The frozen section diagnosis is confirmed.

CLINICAL INFORMATION

Pleural mass [J94.8]

Pleural effusion, left [J90]

SPECIMEN(S) RECEIVED:

A: Left pleural biopsies

B: Pleural biopsy

INTRAOPERATIVE CONSULTATION

B. FROZEN SECTION DIAGNOSIS -LEFT PLEURAL BIOPSIES: MALIGNANT-DEFER TO PERMANENTS FOR FINAL CLASSIFICATION

Dr. Hannay, Dr. Worsham (consultant)

Frozen Section interpretation performed at Roper Hospital, 316 Calhoun Street, Charleston, SC 29401.

Interpreted By: HANNAY, MADISON E-DO

WORSHAM, GEORGE FREDERICK-MD

jc/6/30/2023

GROSS DESCRIPTION

A. (L pleural biopsies) Received in formalin is a 3.3 x 2.6 x 1.2 cm aggregate of friable pink-tan tissue fragments. The specimen is submitted entirely in blocks A1 and A2. m/2/ng

B. (Left pleural biopsies) Received without fixative for intraoperative frozen section are 3 pieces of yellow-tan fibrofatty tissue ranging from 1.0 x 1.0 x 0.3 cm to 1.5 x 0.9 x 0.3 cm. The specimen is submitted entirely for intraoperative frozen section with the frozen section control submitted entirely in block BFS1. m/1/ng

Gross examination and description performed at Roper Hospital, 316 Calhoun Street, Charleston, SC 29401.

cc/6/30/2023

WORSHAM, GEORGE FREDERICK-MD / Cole, Chanell

All special stains (including histochemical stains) and immunohistochemical/cytochemical stains are performed on separate slides for each different stain/antibody unless the report documents multiplex stain(s) were performed. Positive control slides with each special stain and/or immunohistochemical stain were examined by a pathologist or qualified designee and each showed appropriate reactivity.

STATE OF SOUTH CAROLINA
PLEASCOUNTY OF RICHLAND

IN THE COURT OF COMMON
FOR THE FIFTH JUDICIAL

MICHAEL L. PERRY and
LONNIE L. LONG

C/A NO. 2023-CP-40-04072

Plaintiffs,

v.

AMERICAN INTERNATIONAL
INDUSTRIES, individually and as successor-
in-interest to Pinaud, Inc., Barbara Alice, Inc.,
Ed. Pinaud, Inc. d/b/a Ed. Pinaud, and Nestle-Le
Mur Company, all for the Clubman line of
products, *et al.*

PLAINTIFFS' MOTION TO
EXPEDITE

Defendants.

TO: ALL DEFENDANTS AND THEIR ATTORNEYS:

YOU WILL PLEASE TAKE NOTICE that on the tenth day hence, or as soon thereafter as counsel may be heard, pursuant to Rule 7(b) of the *South Carolina Rules of Civil Procedure*, Plaintiffs will move this Honorable Court for its Order setting an expedited date for the trial of this matter.

Plaintiffs in this matter, by and through their undersigned counsel, will respectfully show unto this Honorable Court as follows:

Michael L. Perry has been diagnosed with malignant mesothelioma, a universally fatal disease caused by exposure to asbestos. According to the British Thoracic Society Standards of Care Committee (Thorax. 2007 Nov; 62 Suppl 2(): ii1-ii19), the life expectancy of patients with malignant mesothelioma is poor, with median survival between eight and fourteen months.

Recognizing the rapid progression of the fatal disease mesothelioma, the South Carolina legislature has established procedures to protect the opportunity of mesothelioma victims to appear

in court to redress their grievances. Specifically, the Asbestos and Silica Claims Procedure Act of 2006 (the “Act”) provides as follows:

In any action covered by the provision of this act in which the exposed person has received a diagnosis of mesothelioma . . . the claimant may petition the court requesting that a trial date be set on an expedited basis. The court may, in its discretion, provide for an expedited trial setting, if the claimant demonstrates good cause for such an expedited trial setting and the defendant(s) is/are not prejudiced by such an expedited trial setting. In no event shall a trial date be set less than one hundred twenty days from the date of an order granting such a motion

S.C. CODE ANN. § 44-135-80 (2006).

Granting Plaintiffs’ request for an expedited trial will not prejudice the Defendants in this case. This is not Defendants’ first asbestos lawsuit, on facts substantially similar to those in the case at bar and Defendants are represented by counsel well-versed in asbestos litigation. Moreover, Plaintiffs will, within ten days of receipt of Defendants’ Answers (or other responsive pleadings), provide the Defendants with authorizations for release of medical records and/or medical records, as well as with releases to obtain Plaintiffs’ social security records. The authorizations for the release of information presently in possession of Plaintiff are attached as Exhibit A, hereto. Should Plaintiffs presently not be in possession of some or all authorizations to release information they will be provided as soon as practical, but not greater than ten days from the date that Defendants file their Answers. Additionally, Plaintiffs will, within the next thirty days, provide the Defendants with responses to Standard Interrogatories and Request for Production. Plaintiffs intend to conduct Mr. Perry’s deposition within the next forty-five days.

Defendants will have ample time to develop their defenses if the Court sets this matter for trial in one hundred and twenty days from the date this motion is granted, as permitted under the Act. An expedited trial setting will not deprive Defendants of a meaningful opportunity to develop

their defenses; in contrast, denying Plaintiffs' request would in effect deprive the Perry family of its day in court.

Accordingly, Plaintiffs submit that good cause has been shown for an expedited trial setting in this case and request the Court to exercise its discretion and grant Plaintiffs' Motion for an Expedited Trial and set this matter for trial in one hundred and twenty days from the date this motion is granted so that the Perry family can have its day in Court.

WHEREFORE, PREMISES CONSIDERED, Plaintiffs respectfully request the Court to grant an expedited trial setting in the above-styled case and set this matter for trial in one hundred and twenty days from the date that this motion is granted.

Respectfully submitted,

/s/ Theile B. McVey

Theile B. McVey (SC Bar No. 16682)

Jamie D. Rutkoski (SC Bar No. 103270)

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F: 803-256-1952

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(To Be Admitted *Pro Hac Vice*)

DEAN OMAR BRANHAM SHIRLEY, LLP

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Dallas, TX 75202

T: 214-722-5990

F: 214-722-5991

rgross@dobslegal.com

Other email: tgilliland@dobslegal.com

ATTORNEYS FOR PLAINTIFF

August 7, 2023
Columbia, South Carolina.

EXHIBIT A

LAW OFFICES OF

**Dean
Omar
Branham
Shirley**

AUTHORIZATION PACKET

executed by

Michael Perry

AUTHORIZATION FOR THE RELEASE OF PROTECTED HEALTH INFORMATION

TO: _____

I hereby authorize the above named facility, any parent company, and any other health plan, physician, health care professional, hospital, clinic, laboratory, pharmacy, medical facility, or other health care provider that has provided payment, treatment or services to me or on my behalf to release all medical information to _____
 _____ for use in pending litigation.

This document authorizes the release of all medical information including Immunodeficiency disorders (HIV/AIDS), substance abuse and treatment, mental health/psychiatric treatment, radiology films, pathology materials, billing and insurance records, patient histories, prescription records, diagnosis, prognosis, admission notes, messages, correspondence, CDs, DVDs, floppy disks, photos and all other documents, electronic media and tangible items maintained by the facility as a designated record set (Provide in electronic / digital format, if available) pertaining to:

_____, _____, ____/____/____
 (NAME) (SSN) (DOB)

 (ADDRESS) (PHONE)

The treatment dates to be released: (Check One) ☐ From ____/____/____ to ____/____/____
☐ All records retained by the facility

This authorization is continuing in nature and remains effective until the conclusion of litigation without the necessity for further authorization.

A copy of this authorization shall be considered as effective as the original.

I, the undersigned, have read the above and authorize the staff of the above named facility to disclose such information as herein contained. I have the right to revoke this authorization in writing at any time by submitting a revocation in writing to the facility named above. If I revoke this authorization, the revocation will not apply to information already released in good faith before the revocation was received. I understand that when this information is used or disclosed pursuant to this authorization, it may be subject to re-disclosure and may no longer be protected. I hereby hold harmless the above named facility and any parent company from all liability and damages resulting from the lawful release of my Protected Health Information and understand that treatment, payment, enrollment or eligibility may not be conditioned on signing of this authorization.

The covered entity cannot require the patient to sign the authorization in order to receive treatment or payment or to enroll or be eligible for benefits.

X

 (DATE) (SIGNATURE OF PATIENT/PARENT/GUARDIAN) (RELATIONSHIP TO PATIENT)

AUTHORIZATION FOR THE RELEASE OF EMPLOYMENT INFORMATION

TO: _____

I hereby authorize the above named facility or any parent company, to release all requested information to _____
 for use in pending litigation.

This document authorizes the release of any and all personnel and payroll records such as time cards, time sheets, records relating to lost wages and/or days absent, salary records, payroll records, W-2 forms, W-4 forms, application for employment, records relating to days absent and/or time lost, correspondence and/or memoranda, records relating to reviews and/or promotions, workers' compensation records and/or claims, insurance records and/or claims, pre-employment physical(s), medical records, including but not limited to any and all personnel and payroll records contained in your office(s) pertaining to the employment of:

_____, _____, ____/____/____
 (NAME) (SSN) (DOB)

 (ADDRESS) (PHONE)

The dates to be released: (Check One) _____ From ____/____/____ to ____/____/____
 _____ All records retained by the facility

This authorization is continuing in nature and remains effective until the conclusion of litigation without the necessity for further authorization.

A copy of this authorization shall be considered as effective as the original.

I, the undersigned, have read the above and authorize the staff of the above named facility to disclose such information as herein contained. I have the right to revoke this authorization in writing at any time except to the extent that action has been taken in reliance upon it. I understand that when this information is used or disclosed pursuant to this authorization, it may be subject to re-disclosure and may no longer be protected. I hereby hold harmless the above named facility and any parent company from all liability and damages resulting from the lawful release of my Protected Health Information and understand that treatment, payment, enrollment or eligibility may not be conditioned on signing of this authorization.

X

 (Date) (Signature of Employee/Parent/Guardian) (Relationship to Employee)

This authorization complies with 45 CFR 164.508.

5.

I authorize 1-800-MEDICARE to disclose my personal health information listed above to the person(s) or organization(s) I have named on this form. I understand that my personal health information may be re-disclosed by the person(s) or organization(s) and may no longer be protected by law.

X

Signature

Telephone Number

Date (mm/dd/yyyy)

Print the address of the person with Medicare (Street Address, City, State, and ZIP)

☐ Check here if you are signing as a personal representative and complete below.
Please attach the appropriate documentation (for example, Power of Attorney).
This only applies if someone other than the person with Medicare signed above.

Print the Personal Representative's Address (Street Address, City, State, and ZIP)

Telephone Number of Personal Representative: _____

Personal Representative's Relationship to the Beneficiary: _____



Authorization to Release Protected Health Information to a Third Party

**TO BE
SCANNED**

Form content retained in medical record.
Route to HIMS Scanning.

Instructions: This form is to be used by a patient or legal representative to authorize the release of information to a third party (other than a family member or friend) such as an insurance company, employer, or for legal purposes, etc. Print clearly; each section needs to be completed to be valid.

2. Additional Patient Information

Previous or Maiden Name (if applies) <i>(First, Middle, Last)</i>	Daytime Phone	☐ Check this box if patient is deceased.
Patient Address <i>(Street, City, State, ZIP Code)</i>		

3. Release Purpose

Check appropriate box or write in other purpose.

- ☐ Continuing care ☐ Disability ☐ Forms completion ☐ Insurance ☐ Legal ☐ Workers' compensation
☐ Other, specify _____

4. Release Information FROM

Check one box and complete if applicable.

- ☐ **Mayo Clinic**
Includes all Mayo Clinic and Mayo Clinic Health System locations
- ☐ **Other**, specify organization, department, or individual (complete each line below)

Street _____
City _____
State _____ ZIP Code _____
Phone _____
Fax _____

5. Release/Send Information TO

Check one box and complete each line for box checked.

- ☐ **Mayo Clinic**
Dept. _____ Attn. _____
Fax _____
- ☐ **Other**, specify organization, department, or individual (complete each line below)

Street _____
City _____
State _____ ZIP Code _____
Phone _____
Fax _____

This authorization will expire in 1 year from date of signature *unless another date is specified*: _____

- ☐ **By checking this box** I allow the ongoing exchange of information between the above parties until this authorization expires or is revoked.
- ☐ **By checking this box** I also authorize the release of records for future visits or stays after the date of my signature until this authorization expires or is revoked.

6. Delivery of Information

Preferred Method ☐ Written copy (may include completed forms) ☐ Verbal only	Date Information Needed by <i>(mm-dd-yyyy)</i>
Written information will be mailed unless an alternate method is checked. ☐ Patient Portal – Mayo Clinic Patient Online Services ☐ Fax (number listed above in section 5) ☐ Email address _____ ☐ Pick-up at a Mayo Clinic location, specify _____ ☐ CD/DVD ☐ USB flash/thumb drive ☐ Other, specify _____	

Authorization to Release Protected Health Information to a Third Party (continued)

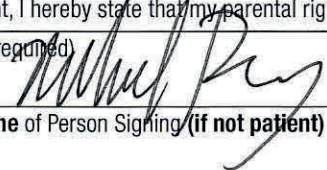
(complete fields or place patient label here)

Patient Name (First, Middle, Last)
Birth Date (mm-dd-yyyy)
Mayo Clinic Number

7. Records or Reports to Be Released

Timeframe to Be Released	
Date(s) _____	or Year(s) _____
(mm-dd-yyyy) (yyyy)	
Document/Note(s) (check all that apply)	
☐ Behavioral health/Mental/Psychological notes	☐ Emergency department/Urgent care notes
☐ Operative/Procedure notes	☐ Provider notes
☐ Therapy notes (physical, occupational, speech)	☐ Other, specify _____
I understand the information to be released may include behavior and/or mental health care, and HIV test results.	
Additional Records (check all that apply)	
☐ Allergy list	☐ Laboratory results
☐ Immunizations	☐ HIV lab test results
☐ Medication list	☐ Genetic testing
☐ Billing information for records checked	☐ Pathology report(s)
	☐ EKG(s)/Cardio/Echo
	☐ Radiology report(s)
	☐ Radiology image(s), specify exam(s)/body part(s)
Substance Abuse and Addiction Treatment Records (check all that apply)	
☐ Assessment/Evaluation	☐ Family participation invitation
☐ History and physical exam	☐ Questionnaires
☐ Multidisciplinary notes	☐ Treatment/Discharge summary
☐ Treatment plans	☐ Other, specify _____
Other, specify if applicable _____	

8. Signature and Date The patient or legal representative must sign and date this authorization.

- This authorization may be revoked at any time by providing a written notice of revocation to the Health Information Management Services (HIMS) Release of Information (ROI) department at the facility releasing the information, except to the extent that the Providers have already taken action in reliance on it. - Information used or disclosed pursuant to this authorization may be subject to re-disclosure by the recipient and may no longer be protected by the Federal Privacy Law (42 CFR Part 2) (HIPAA). - I understand that Mayo Clinic will not condition treatment on whether I sign this authorization. - I may request a copy of the signed authorization. - I may be charged for copies in accordance with state law. - I have a right to inspect and receive a copy of the material to be disclosed.	
Note: A patient (18 years or older) must authorize the release of their own information unless patient is incapacitated or deceased. If signing for a minor patient, I hereby state that my parental rights have not been revoked by a court of law. Specific situation(s) may require minor's authorization.	
Signature (required)	Date (required) (mm-dd-yyyy)
	
Printed Name of Person Signing (if not patient) (First, Middle, Last)	
Relationship if Not Patient (legal documentation of the right of access by the signing individual may be required)	
☐ Parent ☐ Stepparent ☐ Legal guardian ☐ Foster parent ☐ Health care power of attorney/agent ☐ Other _____	

HIMS* Release of Information Contact Information

Arizona	Florida	Rochester	MCHS MN	MCHS WI
13400 East Shea Boulevard Scottsdale, AZ 85259 Phone 480-301-4211 Fax 480-301-7282	4500 San Pablo Road Jacksonville, FL 32224 Phone 904-953-2022 Fax 904-953-2242	200 First Street SW Rochester, MN 55905 Phone 507-284-4594 Fax 507-284-0161	1025 Marsh Street Mankato, MN 56001 Phone 507-594-2621 Fax 507-422-0902	1400 Bellinger Street Eau Claire, WI 54703-5211 Phone 715-838-6395 Fax 715-838-3058

Reminder: If sending records TO Mayo Clinic, fax records to number indicated in section 5 on page 1.

*Health Information Management Services



DukeHealth

**AUTHORIZATION FOR RELEASE
OF INFORMATION**



Place Patient Label Here

ELECTRONICALLY FILED - 2023 Aug 07 9:21 AM - RICHLAND - COMMON PLEAS - CASE#2023CP4004072

PART A: PATIENT INFORMATION		
Patient Name:	Phone:	Email:
Address:		
Date of Birth:	SS# (last 4 digits):	Medical Record #:
PART B: PERSON OR COMPANY WHO WILL RECEIVE INFORMATION		
☐ Self (same info as above)		
☐ Person or Entity:	Phone:	Email:
Address:		Fax:
PART C: INFORMATION TO BE RELEASED (check all that apply)		
Records or Information:		
☐ Abstract/Summary (Discharge Summary, Operative/Procedure Notes, Pathology, Laboratory, ED Notes, Clinic Visits, Consults)	☐ Discharge Summary ☐ History and Physical ☐ Consultation Report ☐ Operative Report ☐ Laboratory Reports ☐ Pathology Reports	☐ Radiology Reports ☐ Radiology Images ☐ Physical/Occupational Therapy ☐ Immunization Record ☐ Emergency Department Record
☐ Clinic Visit (Specify Provider/Clinic) _____ ☐ Other (please specify) _____		☐ Entire Record ☐ Billing Records
Treatment Location:		
☐ All Duke Health Enterprise Entities ☐ Duke University Hospital ☐ Duke Regional Hospital ☐ Duke Raleigh Hospital ☐ Duke Clinic (specify provider / location) _____		
Treatment Date(s):		
☐ From _____ to _____ (please be specific) ☐ All Treatment Dates		
PART D: PURPOSE OF REQUEST		
☐ Personal ☐ Legal ☐ Insurance ☐ Continuation of Care ☐ Other (specify): _____		
PART E: FORMAT AND DELIVERY OF INFORMATION		
Format (select only one) ☐ MyChart ☐ Encrypted Email ☐ Paper ☐ CD ☐ Thumb drive (flash drive) ☐ Fax		Other ☐ Oral Communication
Delivery Method (select only one) ☐ Electronic (MyChart, encrypted email) ☐ Mail ☐ In-Person Pick up (Name: _____)		
PART F: REVIEW AND APPROVAL		
I understand that the information to be released may include reference to sensitive information related to mental and behavioral health, genetic testing, HIV/AIDS or other communicable diseases, and drug or alcohol abuse. I specifically approve the release of the following information that has been marked as sensitive and/or restricted (check all that apply):		
☐ Mental and Behavioral Health ☐ Substance Use Disorder ☐ Genetic Testing		
I understand that I may revoke this Authorization in writing at any time, except to the extent that action has already been taken in response to the Authorization. I understand that the information disclosed pursuant to this Authorization may be subject to re-disclosure by the recipient and may no longer be protected under federal privacy law. I understand that I may refuse to sign this Authorization. If I do not sign this Authorization, Duke Health will continue to provide treatment and seek payment for services provided. Duke Health may charge a fee for providing the information specified above.		
<u>This Authorization will automatically expire one year from the date signed below unless revoked or another date or event is written here</u>		
Signature	Printed Name	Date
Witness Signature	ID #	Date
PART G: REPRESENTATIVE (complete if signed by personal or authorized representative)		
Representative Full Name (please print)	Relationship to Patient	Phone Number
If you are not the patient or the parent of a minor patient, you MUST attach documentation of your authority to act on behalf of the patient (Power of Attorney, Court Order, Legal Guardian Documentation, Executor/Administrator Documentation)		

SEND COMPLETED FORM TO: ROI-requestor3@dm.duke.edu; Fax: 919-620-5165 OR
 Duke University Hospital - HIM, DUMC Box 3016, Durham, NC 27710; For Questions Call: 919-684-1700

RoA_00406

REQUEST FOR SOCIAL SECURITY EARNING INFORMATION

1. Provide your name as it appears on your most recent Social Security card or the name of the individual whose earnings you are requesting.

[illegible]

Last Name:

[illegible]

Date of Birth:

Date of Death:

Other Name(s) Used
Maiden Name

2. What kind of earnings information do you need? (Choose **ONE** of the following types of earnings or SSA must return this request.)

☐ Itemized Statement of Earnings \$100.00

(Includes the names and addresses of employers)

If you check this box, tell us why you need this information below.

Year(s) Requested:

 to

Year(s) Requested:

 to

☐ Check this box if you want the earnings information **CERTIFIED** for an additional \$44.00 fee.

☐ Certified Yearly Totals of Earnings \$44.00

(Does not include the names and addresses of employers) Yearly earnings totals are FREE to the public if you do not require certification. To obtain FREE yearly totals of earnings, visit our website at www.ssa.gov/myaccount.

Year(s) Requested:

 to

Year(s) Requested:

 to

3. If you would like this information **sent to someone else**, please fill in the information below.

I authorize the Social Security Administration to release the earnings information to:

Name

Address

State

City

ZIP Code

4. I am the individual to whom the record pertains (or a person authorized to sign on behalf of that individual).
I declare under penalty of perjury that I have examined all the information on this form, and on any accompanying statements or forms, and it is true and correct to the best of my knowledge.

Signature AND Printed Name of Individual or Legal Guardian

SSA must receive this form within 120 days from the date signed

Date _____

Relationship (if applicable, you must attach proof)

Daytime Phone:

Address

State

City

ZIP Code

Witnesses must sign this form **ONLY** if the above signature is by marked (X). If signed by mark (X), two witnesses to the signing who know the signee must sign below and provide their full addresses. Please print the signee's name next to the mark (X) on the signature line above.

1. Signature of Witness

2. Signature of Witness

Address (Number and Street, City, State and ZIP Code)

Address (Number and Street, City, State and ZIP Code)

Consent for Release of Information

Instructions for Using this Form

Complete this form only if you want us to give information or records about you, a minor, or a legally incompetent adult, to an individual or group (for example, a doctor or an insurance company). You may complete this form to release only the minor's non-medical records, if you are the natural or adoptive parent or legal guardian, acting on behalf of a minor child. We require proof of relationship, if you are not the subject of the record. We may charge a fee for providing the information, if you are requesting the information for a purpose unrelated to the administration of a program under the Social Security Act. If you are requesting information, such as a Social Security Statement or benefit verification letter, you can also access this information by creating an account at <https://www.ssa.gov/myaccount/>.

NOTE: Do NOT use this form to request:

- The release of a minor child's medical records. Instead, visit your local Social Security office or call our toll-free number, 1-800-772-1213 (TTY-1-800-325-0778), or
- Detailed information about your earnings or employment history. Instead, complete and mail form SSA-7050-F4. You can obtain form SSA-7050-F4 from your local Social Security office or online at www.ssa.gov/online/ssa-7050.pdf.

How to Complete this Form

We will not honor this form unless all required fields are completed. An asterisk (*) indicates a required field. Also, we will not honor blanket requests for "any and all records" or the "entire file." You must specify the information you are requesting and you must sign and date this form.

- Fill in the name, date of birth, and social security number of the subject of the record.
- Fill in the name and address of the person or organization of where you want us to send the requested information.
- Specify the reason you want us to release the information (e.g., litigation, investigation, determining eligibility for benefits). If you are the natural or adoptive parent or legal guardian, acting on behalf of a minor child or legally incompetent adult, you must state how the release of information is in the best interest of the minor child or legally incompetent adult.
- Check the box next to the type(s) of information you want us to release including specific date ranges, where applicable.

NOTE: Unless otherwise specified, the consent form is valid for one-time use only. Also, it is valid for one year from the date of signature, unless you are requesting medical records. A consent form that includes a request for medical records is valid for 90 days from the date of signature.

Send or bring the completed form to the subject of the record's local servicing office. To locate the appropriate servicing office, visit <https://secure.ssa.gov/ICON/main.jsp>, and input the subject of the record's ZIP code.

Consent for Release of Information

You must complete all required fields. We will not honor your request unless all required fields are completed. (*Signifies a required field. **These are not mandatory fields for the consent form to be acceptable. Please complete these fields in case we need to contact you about the consent form).

TO: Social Security Administration

*Full Name

*Date of Birth
(MM/DD/YYYY)

*Full Social Security Number

I authorize the Social Security Administration to release information or records about me to:

*NAME OF PERSON OR ORGANIZATION:

*ADDRESS OF PERSON OR ORGANIZATION:

** PHONE NUMBER OF PERSON OR ORGANIZATION:

*I want this information released because:

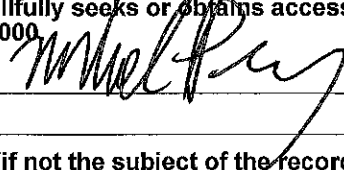
We may charge a fee to release information for non-program purposes.

*Please release the following information selected from the list below:

Check at least one box. If requesting medical records, do not check both boxes 7 and 8. We will not disclose records unless you include specific date ranges where applicable.

1. ☐ Verification of Social Security Number
2. ☐ Current monthly Social Security benefit amount
3. ☐ Current monthly Supplemental Security Income payment amount
4. ☐ Social Security benefit amounts from date _____ to date _____
5. ☐ Supplemental Security Income payment amounts from date _____ to date _____
6. ☐ Medicare entitlement from date _____ to date _____
7. ☐ Medical records from date _____ to date _____
8. ☐ Complete medical records
9. ☐ Other Social Security record(s) (We will not honor a request for "any and all records" or "the entire file." You must specify which records you are seeking. For example, award/denial notices, benefit applications, appeals)

I am the individual, to whom the requested information or record applies, or the parent or legal guardian of a minor, or the legal guardian of a legally incompetent adult. I declare under penalty of perjury (28 CFR § 1746) that I have examined all the information on this form and it is true and correct to the best of my knowledge. I understand that anyone who knowingly or willfully seeks or obtains access to records about another person under false pretenses is punishable by a fine of up to \$5,000.

*Signature: 

*Date: _____

**Address: _____

**Daytime Phone: _____

**Relationship (if not the subject of the record): _____

**Daytime Phone: _____

Witnesses must sign this form ONLY if the above signature is by mark (X). If signed by mark (X), two witnesses to the signing who know the signee must sign below and provide their full addresses. Please print the signee's name next to the mark (X) on the signature line above.

1. Signature of witness	2. Signature of witness
Address (Number and street, City, State, and ZIP Code)	Address (Number and street, City, State, and ZIP Code)

Privacy Act Statement
Collection and Use of Personal Information

The Privacy Act (5 U.S.C. 552a) and Section 205(a) of the Social Security Act, as amended, allow us to collect this information. Furnishing us this information is voluntary. However, failing to provide all or part of the information may prevent us from honoring the request to release information or records about you. We will use the information you provide to respond to the request for Social Security Administration (SSA) records. We may share the information for the following purposes, called routine uses:

- To contractors and other Federal agencies, as necessary, for the purpose of assisting SSA in the efficient administration of its programs.

In addition, we may share this information in accordance with the Privacy Act and other Federal laws. For example, where authorized, we may use and disclose this information in computer matching programs, in which our records are compared with other records to establish or verify a person's eligibility for Federal benefit programs and for repayment of incorrect or delinquent debts under these programs.

A list of additional routine uses is available in our Privacy Act System of Records Notices (SORN) 60-0089, entitled Claims Folders System, as published in the Federal Register (FR) on April 1, 2003, at 68 FR 15784; 60-0320, entitled Electronic Disability Claim File, as published in the FR on December 22, 2003, at 68 FR 71210; and 60-0340, entitled FOIA and Privacy Act Record Request and Appeal System, as published in the FR on July 13, 2016, at 81 FR 45352. Additional information, and a full listing of all our SORNs, is available on our website at www.ssa.gov/privacy.

Paperwork Reduction Act Statement

This information collection meets the requirements of 44 U.S.C. § 3507, as amended by section 2 of the Paperwork Reduction Act of 1995. You do not need to answer these questions unless we display a valid Office of Management and Budget control number. We estimate that it will take about 5 minutes to read the instructions, gather the facts, and answer the questions. You may send comments on our time estimate above to: SSA, 6401 Security Blvd., Baltimore, MD 21235-6401. ***Send only comments relating to our time estimate to this address, not the completed form.***

REQUEST PERTAINING TO MILITARY RECORDS

Requests can be submitted online using eVetRecs at <https://www.archives.gov/veterans/military-service-records/>

To ensure the best possible service, please thoroughly review the accompanying instructions before filling out this form. PLEASE PRINT LEGIBLY OR TYPE BELOW.

SECTION I - INFORMATION NEEDED TO LOCATE RECORDS (Furnish as much information as possible.)

1. NAME USED DURING SERVICE (last, first, full middle)	2. SOCIAL SECURITY #	3. DATE OF BIRTH	4. PLACE OF BIRTH			
5. SERVICE, PAST AND PRESENT (For an effective records search, it is important that ALL service be shown below.)						
	BRANCH OF SERVICE	DATE ENTERED	DATE RELEASED	OFFICER	ENLISTED	SERVICE NUMBER (If unknown, write "unknown")
a. ACTIVE				☐	☐	
b. RESERVE				☐	☐	
c. NATIONAL GUARD				☐	☐	
6. PLEASE LIST LAST FOUR DUTY STATIONS, IF KNOWN: 1. _____ 2. _____ 3. _____ 4. _____						
7. IS THIS PERSON DECEASED? ☐ NO ☐ YES - MUST provide Date of Death if veteran is deceased: _____						
8. DID THIS PERSON RETIRE FROM MILITARY SERVICE? ☐ NO ☐ YES						

SECTION II - INFORMATION AND/OR DOCUMENTS REQUESTED

1. CHECK THE ITEM(S) YOU ARE REQUESTING:

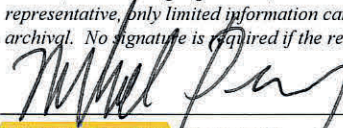
- ☐ **DD Form 214 or equivalent:** Year(s) in which form(s) issued to veteran (Date of Separation):
This form contains information used to verify military service. An UNDELETED DD Form 214 is ordinarily required to determine eligibility for benefits. If you request a DELETED copy, the following items will be blacked out: authority for separation, reason for separation, reenlistment eligibility code, separation (SPD/SPN) code, and, for separations after June 30, 1979, character of separation and dates of time lost. Please note - recent veterans may be able to request a DD Form 214 through milConnect by visiting: <https://www.va.gov/records/get-military-service-records/>
An UNDELETED copy will be sent UNLESS YOU SPECIFY A DELETED COPY by checking this box: ☐ I want a DELETED copy.
- ☐ **Official Military Personnel File (OMPF):** The OMPF may include duty stations and assignments, training and qualifications, awards and decorations received, disciplinary actions, administrative remarks, enlistment and/or discharge information (including DD Form 214, Report of Separation, or equivalent), and other personnel actions. Detailed information about the veteran's participation in battles and their military engagements is NOT contained in the record.
- ☐ **Medical Records:** Includes health (outpatient), extended ambulatory, and dental records. If inpatient/hospitalization records are requested, please specify below.
☐ I request inpatient/hospitalization records from _____ (facility), last treated in _____ (year). (NOTE: Fields are required)
If available, you may receive copies of inpatient narrative summaries, operative reports, discharge summaries, etc. contained in the record.
- ☐ **Dental Records:** Please check this box if ONLY dental records are needed from the medical record.
- ☐ **Other (Please Specify):** _____

2. **PURPOSE:** (Providing information about the purpose of the request is **voluntary**; however, it may help to provide the best possible response and may result in a faster reply. Information provided will in no way be used to make a decision to deny the request.)

- ☐ Benefits (explain) ☐ Employment ☐ VA Loan Programs ☐ Medical ☐ Genealogy ☐ Correction ☐ Personal ☐ Other (explain)

Explain here: _____

SECTION III - RETURN ADDRESS AND SIGNATURE

1. REQUESTER NAME: _____	2. RELATIONSHIP TO VETERAN: _____
3. ☐ I am the MILITARY SERVICE MEMBER OR VETERAN identified in Section I, above. ☐ I am the DECEASED VETERAN'S NEXT-OF-KIN (MUST submit Proof of Death. See item 2a on instruction sheet.)	☐ I am the VETERAN'S LEGAL GUARDIAN (MUST submit copy of Court Appointment) or AUTHORIZED REPRESENTATIVE (MUST submit copy of Authorization Letter or Power of Attorney) ☐ OTHER (Specify): _____
4. SEND INFORMATION/DOCUMENTS TO: (Please print or type. See item 4 on accompanying instructions.)	
5. AUTHORIZATION SIGNATURE: I declare (or certify, verify, or state) under penalty of perjury under the laws of the United States of America that the information in this Section 3 is true and correct and that I authorize the release of the requested information. (See items 2a or 3a on the accompanying instructions sheet. Without the Authorization Signature of the veteran, next-of-kin of deceased veteran, veteran's legal guardian, authorized government agent, or other authorized representative, only limited information can be released unless the request is archival. No signature is required if the request is for archival records.)	
Name _____	Signature Required  Do not print _____ Date _____
Street Address _____ Apt. # _____	
City _____ State _____ ZIP Code _____	
Daytime Phone _____ Fax Number _____	
Email Address _____	

* This form is available at <https://www.archives.gov/veterans-military-service-records/standard-form-180.pdf> on the National Archives and Records Administration (NARA) web site. *

RoA_00411



Department of Veterans Affairs

REQUEST FOR AND AUTHORIZATION TO RELEASE HEALTH INFORMATION

PRIVACY ACT AND PAPERWORK REDUCTION ACT INFORMATION: The Paperwork Reduction Act of 1995 requires us to notify you that this information collection is in accordance with the clearance requirements of section 3507 of the Act. We may not conduct or sponsor, and you are not required to respond to, a collection of information unless it displays a valid OMB number. We anticipate that the time expended by all individuals who must complete this form will average 2 minutes. This includes the time it will take to read the instructions, gather the necessary facts and fill out this form. The execution of this form does not authorize the release of information other than that specifically described below.

The information requested on this form is solicited under Title 38 U.S.C. The form authorizes release of information in accordance with the Health Insurance Portability and Accountability Act, 45 CFR Parts 160 and 164; 5 U.S.C. 552a; and 38 U.S.C. 5701 and 7332 that you specify. Your disclosure of the information requested on this form is voluntary. However, if information needed to locate records for release is not furnished completely and accurately, VA will be unable to comply with the request. The Veterans Health Administration may not condition the provision of treatment, payment, enrollment in the VA Health Care Program, or eligibility for benefits on the signing of an authorization, except for research-related treatment where an authorization for the use or disclosure of individually-identifiable health information for such research is required. VA may disclose the information that you put on the form as permitted by law. VA may make a "routine use" disclosure of the information as outlined in the Privacy Act system of records notices identified as 24VA10A7 "Patient Medical Record - VA", 08VA05 "Employee Medical File System Records (Title 38)-VA" and in accordance with the Notice of Privacy Practices. VA may also use this information to identify Veterans and person claiming or receiving VA benefits and their records, and for other purposes authorized or required by law.

TO: DEPARTMENT OF VETERANS AFFAIRS (Name and Location of the VA Health Care Facility)

LAST NAME- FIRST NAME- MIDDLE NAME

DATE OF BIRTH (mm/dd/yyyy)

PATIENT'S MAILING ADDRESS (including City, State and Zip Code)

NAME AND ADDRESS OF ORGANIZATION, INDIVIDUAL, OR TITLE OF INDIVIDUAL TO WHOM INFORMATION IS TO BE RELEASED

PURPOSE(S) OR NEED: Information is to be used by the requestor for:

☐ TREATMENT ☐ BENEFITS ☐ LEGAL ☐ EMPLOYMENT ☐ OTHER (Please specify below):

INFORMATION REQUESTED: Check applicable box(es) and state the extent or nature of information to be provided:

☐ HEALTH SUMMARY (Prior 2 Years)

☐ PATIENT MEDICAL RECORDS (Dates):

☐ INPATIENT DISCHARGE SUMMARY (Dates):

☐ PROGRESS NOTES:

☐ SPECIFIC CLINICS (Name & Date Range):

☐ SPECIFIC PROVIDERS (Name & Date Range):

☐ DATE RANGE:

☐ OPERATIVE/CLINICAL PROCEDURES (Name & Date):

☐ LAB RESULTS:

☐ SPECIFIC TESTS (Name & Date):

☐ DATE RANGE:

☐ RADIOLOGY REPORTS (Name & Date):

☐ LIST OF ACTIVE MEDICATIONS:

☐ VACCINATION (Dose, Lot Number, Date & Location):

☐ ADMINISTRATIVE RECORDS:

☐ OTHER (Describe):

[illegible]

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
COUNTY OF RICHLAND	)	FOR THE FIFTH JUDICIAL CIRCUIT
	)	
MICHAEL L. PERRY and	)	
LONNIE L. LONG,	)	
	)	
Plaintiffs,	)	
	)	Case No.: 2023-CP-40-04072
v.	)	
	)	
AMERICAN INTERNATIONAL	)	
INDUSTRIES; et al.,	)	
	)	
Defendants.	)	
	)	

**DEFENDANT JOHNSON & JOHNSON'S
ANSWER TO PLAINTIFF'S COMPLAINT**

The Defendant, Johnson & Johnson (hereinafter "Johnson & Johnson" or "Defendant"), responds to Plaintiffs' Complaint ("Complaint") as follows by denying each and every allegation not specifically admitted herein and by further responding as follows:

GENERAL ALLEGATIONS

1. Johnson & Johnson is without sufficient knowledge or information to form a belief as to the truth of the allegations contained in Paragraph 1 of the Complaint. To the extent an answer is required, the allegations are denied insofar as they are directed to Johnson & Johnson.

2. The allegations of Paragraph 2 of the Complaint, including its subparts (a) through (f), set forth legal conclusions concerning jurisdiction and other matters which Johnson & Johnson is required to neither admit nor deny. To the extent a response is deemed to be required, Johnson & Johnson denies the allegations of this Paragraph.

3. Paragraph 3 sets forth legal conclusions concerning the Court's jurisdiction to which no response is required. To the extent a response is deemed required, Johnson & Johnson denies these allegations.

4. Paragraph 4 is denied.

5. In response to Paragraph 5, Johnson & Johnson admits only that it is a corporation that is incorporated under the laws of a state other than South Carolina. The final sentence of Paragraph 5 states legal conclusions concerning the Court's jurisdiction to which no response is required. To the extent a response is deemed required, Johnson & Johnson denies these allegations and denies any remaining allegations contained in Paragraph 5.

6. Johnson & Johnson denies the allegations of Paragraphs 6 and 7 of the Complaint insofar as they are directed to Johnson & Johnson. Johnson & Johnson is without information sufficient to form a belief as to the allegations of this Paragraph as they pertain to other Defendants and, therefore, those allegations are also denied.

7. Paragraph 8 sets forth legal conclusions concerning the Court's jurisdiction to which no response is required. To the extent a response is deemed required, Johnson & Johnson denies these allegations.

8. To the extent the allegations contained in Paragraphs 9, 10, 11, 12, and 13 are directed to Johnson & Johnson, they are denied. Johnson & Johnson is without information or knowledge sufficient to form a belief as to the remaining allegations contained in these Paragraphs and therefore those allegations are also denied.

9. Paragraph 14 contains a statement to which no response is required. To the extent a response is deemed necessary and to the extent the allegations are directed to Johnson & Johnson, they are denied. Johnson & Johnson is without information or knowledge sufficient to form a belief as to the remaining allegations contained in this Paragraph and therefore those allegations are also denied.

10. To the extent the allegations contained in Paragraph 15 are directed to Johnson & Johnson, they are denied. Johnson & Johnson is without information or knowledge sufficient to form a belief as to the remaining allegations contained in this Paragraph and therefore those allegations are also denied.

11. Paragraph 16 contains a legal conclusion to which no response is required. To the extent a response is deemed necessary, Johnson & Johnson denies the allegations of this Paragraph. Johnson & Johnson is without information sufficient to form a belief as to the allegations of this Paragraph as they pertain to other Defendants and, therefore, those allegations are also denied.

12. Johnson & Johnson is without information or knowledge sufficient to form a belief as to the allegations contained in Paragraphs 17, and, therefore, these allegations are denied.

13. Johnson & Johnson denies the allegations contained in Paragraph 18 to the extent they are directed to Johnson & Johnson. To the extent the allegations of this Paragraph are directed to other Defendants, Johnson & Johnson is without knowledge or information sufficient to form a belief as to the truth of those allegations and they are, therefore, also denied.

14. In response to Paragraph 19, Johnson & Johnson admits only that it is a corporation that is incorporated under the laws of a state other than South Carolina. The remaining allegations of this Paragraph, to the extent they pertain to Johnson & Johnson, are denied. To the extent the allegations of this Paragraph are directed to other Defendants, Johnson & Johnson is without knowledge or information sufficient to form a belief as to the truth of those allegations and they are, therefore, also denied.

15. Johnson & Johnson admits in part and denies in part the allegations contained in Paragraph 20, as detailed below. Responding to each of the enumerated subparts contained in this Paragraph, Johnson & Johnson further responds that:

- a. The allegations contained in Paragraph 20 sub-paragraph (a), and all sub-parts numbered (i) through (vii) contained thereunder, are quoted passages from a legal filing. Johnson & Johnson craves reference to that document, which speaks for itself, and denies any allegations inconsistent therewith. Johnson & Johnson denies any remaining allegations in Paragraph 20 (a).
- b. Responding to Paragraph 20 (b) Johnson & Johnson admits only that it, and at times its subsidiary entities, produced, marketed, and sold Johnson & Johnson branded powders, including Johnson & Johnson Baby Powder.
- c. Johnson & Johnson denies the allegations contained in Paragraph 20 (c).
- d. Johnson & Johnson denies the allegations contained in Paragraph 20 (d).
- e. Paragraph 20 (e) references corporate filings and associated documents which speak for themselves and Johnson & Johnson denies any allegation inconsistent therewith. To the extent the contents of this Paragraph allege Johnson & Johnson engaged in any wrongful or illegal act, Johnson & Johnson denies any wrongdoing. Johnson & Johnson denies any remaining allegations in Paragraph 20 (e).
- f. Paragraph 20 (f) contains a legal conclusion to which no response is required. To the extent a response is deemed necessary, Johnson and Johnson denies these allegations. To the extent the contents of this Paragraph allege or imply Johnson & Johnson engaged in any wrongful conduct or illegal act, those allegations or implications are denied.
- g. In response to Paragraph 20 (g), Johnson & Johnson admits only LTL filed a petition for Chapter 11 Bankruptcy. To the extent the contents of this Paragraph allege or imply Johnson & Johnson engaged in any wrongful conduct or illegal act,

those allegations or implications are denied. Johnson & Johnson denies any remaining allegations in Paragraph 20 (g).

- h. Paragraph 20 (h) references court filings and corporate documents which speak for themselves and Johnson & Johnson denies any allegation inconsistent therewith. To the extent the contents of this Paragraph allege Johnson & Johnson engaged in any wrongful or illegal act, Johnson & Johnson denies any wrongdoing. Johnson & Johnson denies any remaining allegations in Paragraph 20 (h).
- i. In response to Paragraph 20 (i) Johnson & Johnson admits only that the Bankruptcy Court enforced the automatic stay provisions set forth in 11 U.S.C.A. § 362 over objections. To the extent the contents of this Paragraph allege or imply Johnson & Johnson engaged in any wrongful conduct or illegal act, those allegations or implications are denied. Johnson & Johnson denies any remaining allegations in Paragraph 20 (i).
- j. Paragraph 20 (j) references court filings which speak for themselves and Johnson & Johnson denies any allegation inconsistent therewith. To the extent the contents of this Paragraph allege Johnson & Johnson engaged in any wrongful or illegal act, Johnson & Johnson denies any wrongdoing. Johnson & Johnson denies any remaining allegations in Paragraph 20 (j).
- k. Paragraph 20 (k) and 20 (l) reference court filings and legal proceedings which speak for themselves and Johnson & Johnson denies any allegation inconsistent therewith. To the extent the contents of this Paragraph allege Johnson & Johnson engaged in any wrongful or illegal act, Johnson & Johnson denies any wrongdoing.

Johnson & Johnson denies any remaining allegations in Paragraphs 20 (k) and 20 (l).

- l. Responding to Paragraph 20 (m), Johnson & Johnson is without information or knowledge sufficient to form a belief as to what was known or unknown to the Decedent and denies the allegations of Paragraph 20 (m) on that basis.
- m. Paragraphs 20 (n) and 20 (o) reference a court filing which speaks for itself and Johnson & Johnson denies any allegation inconsistent therewith. To the extent the contents of these Paragraphs allege Johnson & Johnson engaged in any wrongful or illegal act, Johnson & Johnson denies any wrongdoing. Johnson & Johnson denies any remaining allegations in Paragraphs 20 (n) and 20 (o).
- n. Paragraph 20 (p) sets forth legal conclusions to which no response is required. To the extent a response is deemed required, Johnson & Johnson denies these allegations.
- o. Johnson & Johnson denies the allegations contained in Paragraph 20 (q).
- p. In response to the allegations contained in Paragraphs 20 (r), 20 (s), 20 (t), 20 (u), and 20 (v), Johnson & Johnson would refer to the referenced SEC filing in its entirety, which speaks for itself and Johnson & Johnson denies any allegation inconsistent therewith. Johnson & Johnson denies any remaining allegations in Paragraphs 20 (r), 20 (s), 20 (t), 20 (u), and 20 (v).
- q. Paragraph 20 (w) contains a legal conclusion to which no response is required. To the extent a response is deemed required, and to the extent they are directed to Johnson & Johnson, they are denied.

16. Paragraph 21 contains a statement to which no response is required. To the extent a response is deemed necessary, Johnson & Johnson admits that Plaintiffs have stated that he is not seeking relief from Imerys.

17. In response to Paragraph 22, Johnson & Johnson admits in general terms that mesothelioma and other diseases may be caused by inhalation of asbestos fibers. Johnson & Johnson denies, however, that it caused the Decedent's mesothelioma or any other injuries or damages claimed by Plaintiffs. Johnson & Johnson denies all remaining allegations contained in this Paragraph.

18. Responding to Paragraph 23, Johnson & Johnson admits, upon information and belief, that the Decedent was diagnosed with mesothelioma. Johnson & Johnson denies the remaining allegations contained in this Paragraph.

19. Responding to Paragraph 24, Johnson & Johnson admits, upon information and belief, that the Decedent incurred medical expenses as a result of his illness. Johnson & Johnson denies the remaining allegations contained in this Paragraph.

20. Johnson & Johnson denies the allegations contained in Paragraph 25.

THE PARTIES

21. Johnson & Johnson hereby incorporates by reference the preceding paragraphs as if stated verbatim herein.

22. Johnson & Johnson is without sufficient knowledge or information to form a belief as to the truth of the allegations contained in Paragraphs 26 and 27 of the Complaint and, therefore, can neither admit nor deny said allegations. To the extent an answer is required, the allegations are denied insofar as they are directed to Johnson & Johnson.

23. Paragraphs 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, 57, 58, 59, 60, 61, and 62 are directed at other Defendants and, therefore, no response is required from Johnson & Johnson. To the extent a response is deemed required, Johnson & Johnson is without sufficient knowledge or information to form a belief as to the truth of these allegations and they are, therefore, denied.

24. Responding to Paragraph 63 of the Complaint, Johnson & Johnson admits only so much as alleged that it is incorporated under the laws of a state other than South Carolina. Johnson & Johnson denies the remaining allegations of Paragraph 63.

25. Paragraphs 64, 65, 66, 67, 68, 69, 70, 71, 72, 73, 74, 75, 76, 77, 78, 79, 80, 81, 82, 83, 84, 85, 86, and 87 are directed at other Defendants and, therefore, no response is required from Johnson & Johnson. To the extent a response is deemed required, Johnson & Johnson is without sufficient knowledge or information to form a belief as to the truth of these allegations and they are, therefore, denied.

BACKGROUND FACTS

26. Johnson & Johnson hereby incorporates by reference the preceding paragraphs as if stated verbatim herein.

27. Paragraph 88 is a statement which requires no response. To the extent a response is deemed necessary, Johnson & Johnson denies the allegations contained in this Paragraph.

28. Johnson & Johnson is without sufficient knowledge or information to form a belief as to the truth of the allegations contained in Paragraphs 89, 90, 91, and 92, therefore, can neither admit nor deny said allegations. To the extent an answer is required, the allegations are denied insofar as they are directed to Johnson & Johnson.

29. Johnson & Johnson denies the allegations of Paragraph 93 of the Complaint insofar as they are directed to Johnson & Johnson. Johnson & Johnson is without sufficient information or knowledge to form a belief as to the truth of the allegations contained in this Paragraph as they pertain to other Defendants and, therefore, these allegations are denied.

30. Paragraph 94 is a statement which requires no response. To the extent a response is deemed necessary, Johnson & Johnson denies the allegations contained in this Paragraph.

31. Johnson & Johnson denies the allegations of Paragraph 95 of the Complaint insofar as they are directed to Johnson & Johnson. Johnson & Johnson is without sufficient information or knowledge to form a belief as to the truth of the allegations contained in this Paragraph as they pertain to other Defendants and, therefore, these allegations are denied.

32. Paragraph 96 contains a legal conclusion to which no response is required. To the extent a response is deemed required, Johnson & Johnson denies these allegations.

33. Johnson & Johnson is without information or knowledge sufficient to form a belief as to the allegations contained in Paragraph 97 and, therefore, these allegations are denied.

34. Responding to Paragraph 98, Johnson & Johnson admits in general terms that mesothelioma and other diseases may be caused by inhalation of asbestos fibers. Johnson & Johnson denies, however, that it caused the Decedent's mesothelioma or any other injuries or damages claimed by Plaintiffs.

35. Responding to Paragraph 99, to the extent the allegations contained in this Paragraph are directed to Johnson & Johnson they are denied. Johnson & Johnson is without information or knowledge sufficient to form a belief as to the truth of these allegations as they pertain to other Defendants and, therefore, the remaining allegations contained in this Paragraph are also denied.

36. Responding to Paragraph 100, Johnson & Johnson admits, upon information and belief, the Decedent incurred medical expenses related to his disease, but specifically denies that it was the cause of any of the injuries or damages claimed by Plaintiffs. To the extent the remaining allegations contained in this Paragraph are directed to Johnson & Johnson they are denied. Johnson & Johnson is without information or knowledge sufficient to form a belief as to the truth of these allegations as they pertain to other Defendants and, therefore, the remaining allegations contained in this Paragraph are also denied.

37. Responding to Paragraph 101, to the extent the allegations contained in this Paragraph are directed to Johnson & Johnson they are denied. Johnson & Johnson is without information or knowledge sufficient to form a belief as to the truth of these allegations as they pertain to other Defendants and, therefore, the remaining allegations contained in this Paragraph are also denied.

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

38. Johnson & Johnson hereby incorporates by reference the preceding Paragraphs as if stated verbatim herein.

39. Paragraph 102 is Plaintiffs' incorporation of their preceding allegations to which no response is required.

40. To the extent the allegations contained in Paragraphs 103, 104, 105, 106, 107, and 108 are directed to Johnson & Johnson, they are denied. Johnson & Johnson is without knowledge or information sufficient to form a belief as to the truth of these allegations as they pertain to other defendants and, therefore, those allegations are likewise denied.

41. Responding to Paragraph 109, Johnson & Johnson admits, upon information and belief, that the Decedent was diagnosed with mesothelioma. Johnson & Johnson further admits in

general terms that mesothelioma and other diseases may be caused by inhalation of asbestos fibers. Johnson & Johnson is without sufficient information or knowledge to form a belief as to the truth of the remaining allegations contained in this Paragraph and they are, therefore, denied.

42. Johnson & Johnson denies the allegations of Paragraphs 110, 111, 112, 113, 114, 115, 116, and 117 of the Complaint insofar as they are directed to Johnson & Johnson. Johnson & Johnson is without sufficient information or knowledge to form a belief as to the truth of the allegations contained in these Paragraphs as they pertain to other Defendants and, therefore, these allegations are denied.

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

43. Johnson & Johnson hereby incorporates by reference the preceding Paragraphs as if stated verbatim herein.

44. Paragraph 118 is Plaintiffs' incorporation of their preceding allegations to which no response is required.

45. Responding to Paragraph 119, Johnson & Johnson admits, upon information and belief, that the Decedent was diagnosed with mesothelioma. Johnson & Johnson further admits in general terms that mesothelioma and other diseases may be caused by inhalation of asbestos fibers. Johnson & Johnson is without sufficient information or knowledge to form a belief as to the truth of the remaining allegations contained in this Paragraph and they are, therefore, denied.

46. Johnson & Johnson denies the allegations of Paragraphs 120, 121, 122, 123, 124, 125, 126, 127, 128, 129, 130, 131, 132, 133, and 134 of the Complaint insofar as they are directed to Johnson & Johnson. Johnson & Johnson is without sufficient information or knowledge to form a belief as to the truth of the allegations contained in these Paragraphs as they pertain to other Defendants and, therefore, these allegations are denied.

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

47. Johnson & Johnson hereby incorporates by reference the preceding Paragraphs as if stated verbatim herein.

48. Paragraph 135 is Plaintiffs' incorporation of their preceding allegations to which no response is required

49. Johnson & Johnson denies the allegations of Paragraphs 136, 137, and 138 of the Complaint insofar as they are directed to Johnson & Johnson. Johnson & Johnson is without sufficient information or knowledge to form a belief as to the truth of the allegations contained in these Paragraphs as they pertain to other Defendants and, therefore, these allegations are denied.

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

50. Johnson & Johnson hereby incorporates by reference the preceding Paragraphs as if stated verbatim herein.

51. Paragraph 139 is Plaintiffs' incorporation of their preceding allegations to which no response is required.

52. Johnson & Johnson denies the allegations of Paragraphs 140, 141, and 142 of the Complaint insofar as they are directed to Johnson & Johnson. Johnson & Johnson is without sufficient information or knowledge to form a belief as to the truth of the allegations contained in these Paragraphs as they pertain to other Defendants and, therefore, these allegations are denied.

AS TO THE FIFTH CAUSE OF ACTION
(Fraudulent Misrepresentation)

53. Johnson & Johnson hereby incorporates by reference the preceding Paragraphs as if stated verbatim herein.

54. Paragraph 143 is Plaintiffs' incorporation of their preceding allegations to which no response is required.

55. Johnson & Johnson denies the allegations of Paragraphs 144, 145, and 146 of the Complaint insofar as they are directed to Johnson & Johnson. Johnson & Johnson is without sufficient information or knowledge to form a belief as to the truth of the allegations contained in these Paragraphs as they pertain to other Defendants and, therefore, these allegations are denied.

AS TO THE SIXTH CAUSE OF ACTION
(Fraudulent Misrepresentation and Conspiracy/Concert Action as to Talc Manufacturers, Miners, Millers, Sellers, Compounders, and Distributors)

56. Johnson & Johnson hereby incorporates by reference the preceding Paragraphs as if stated verbatim herein.

57. Paragraph 147 is Plaintiffs' incorporation of their preceding allegations to which no response is required.

58. Responding to Paragraph 148 Johnson & Johnson admits only that it produced and marketed talc containing products for consumer use. To the extent the remaining allegations contained in this paragraph are directed to Johnson & Johnson, they are denied. Johnson & Johnson is without sufficient information or knowledge to form a belief as to the truth of the allegations contained in this Paragraph as they pertain to other Defendants and, therefore, these allegations are denied.

59. Johnson & Johnson denies the allegations contained in Paragraph 149 to the extent the allegations contained in this Paragraph are directed to Johnson & Johnson. Johnson & Johnson is without sufficient information or knowledge to form a belief as to the truth of the allegations contained in this Paragraph as they pertain to other Defendants and, therefore, these allegations are denied.

60. The allegations contained in Paragraphs 150 reference “medical and scientific data” which speaks for itself. Johnson & Johnson denies any and all allegations inconsistent therewith, and denies any remaining allegations contained in the Paragraphs insofar as they are directed to Johnson & Johnson. Johnson & Johnson is without sufficient information or knowledge to form a belief as to the truth of the allegations contained in this Paragraph as they pertain to other Defendants and, therefore, these allegations are denied.

61. Paragraph 151 contains a purported statement of fact to which no response is necessary.

62. The allegations contained in Paragraphs 152 reference scientific data, reports, and documents which speak for themselves. Johnson & Johnson denies any and all allegations inconsistent therewith, and denies any remaining allegations contained in the Paragraphs insofar as they are directed to Johnson & Johnson. Johnson & Johnson is without sufficient information or knowledge to form a belief as to the truth of the allegations contained in this Paragraph as they pertain to other Defendants and, therefore, these allegations are denied.

63. To the extent the allegations contained in Paragraph 153 are directed to Johnson & Johnson, Johnson & Johnson admits only that it has employed or consulted with various individuals regarding the safety of its products throughout its existence. The remaining allegations of this Paragraph, to the extent they are directed to Johnson & Johnson, are denied. Johnson & Johnson is without sufficient information or knowledge to form a belief as to the truth of the allegations contained in this Paragraph as they pertain to other Defendants and, therefore, these allegations are denied.

64. Paragraphs 154, 155, 156, 157, 158, 159, 160, 161, 162, 163, 164, 165, 166, and 167 reference various testing results, reports and publications, documents, communications, and

alleged statements. Johnson & Johnson would refer to those various testing results, reports and publications, documents, communications, and alleged statements in their entirety, all of which speak for themselves. Johnson & Johnson denies any and all allegations inconsistent therewith and denies any remaining allegations contained in these Paragraphs to the extent they are directed to Johnson & Johnson. Johnson & Johnson is without knowledge or information sufficient to form a belief as to the truth of these allegations as they pertain to other Defendants and, therefore, those allegations are also denied.

65. Johnson & Johnson denies the allegations contained in Paragraph 168 to the extent the allegations contained in this Paragraph are directed to Johnson & Johnson. Johnson & Johnson is without sufficient information or knowledge to form a belief as to the truth of the allegations contained in these Paragraphs as they pertain to other Defendants and, therefore, these allegations are denied.

66. Paragraphs 169, 170, 171, 172, 173, 174, 175, 176, 177, 178, 179, 180, 181, 182, 183, and 184 reference various testing results, reports and publications, documents, communications, and alleged statements. Johnson & Johnson would refer to those various testing results, reports and publications, documents, communications, and alleged statements in their entirety, all of which speak for themselves. Johnson & Johnson denies any and all allegations inconsistent therewith and denies any remaining allegations contained in these Paragraphs to the extent they are directed to Johnson & Johnson. Johnson & Johnson is without knowledge or information sufficient to form a belief as to the truth of these allegations as they pertain to other Defendants and, therefore, those allegations are also denied.

67. Johnson & Johnson denies the allegations contained in Paragraphs 185 and 186 to the extent the allegations contained in these Paragraphs are directed to Johnson & Johnson.

Johnson & Johnson is without sufficient information or knowledge to form a belief as to the truth of the allegations contained in these Paragraphs as they pertain to other Defendants and, therefore, these allegations are denied.

68. Paragraphs 187, 188, 189, 190, and 191 reference various testing results, reports and publications, documents, communications, and alleged statements. Johnson & Johnson would refer to those various testing results, reports and publications, documents, communications, and alleged statements in their entirety, all of which speak for themselves. Johnson & Johnson denies any and all allegations inconsistent therewith and denies any remaining allegations contained in these Paragraphs to the extent they are directed to Johnson & Johnson. Johnson & Johnson is without knowledge or information sufficient to form a belief as to the truth of these allegations as they pertain to other Defendants and, therefore, those allegations are also denied.

69. Johnson & Johnson denies the allegations contained in Paragraphs 192, 193, 194, 195, and 196 (including its subparagraphs (a) through (d)) to the extent the allegations contained in these Paragraphs are directed to Johnson & Johnson. Johnson & Johnson is without sufficient information or knowledge to form a belief as to the truth of the allegations contained in these Paragraphs as they pertain to other Defendants and, therefore, these allegations are denied.

70. Johnson & Johnson is without information or knowledge sufficient to form a belief as to the truth of the allegations contained in Paragraph 197 as to what the Decedent relied on and, therefore, these allegations are denied. Johnson & Johnson denies any remaining allegations in Paragraph 197.

71. Paragraphs 198 and 199 reference various testing results, reports, documents, communications, and alleged statements. Johnson & Johnson would refer to those test results, reports, documents, communications, and statements in their entirety, all of which speak for

themselves. Johnson & Johnson denies any and all allegations inconsistent therewith and denies any remaining allegations contained in these Paragraphs to the extent they are directed to Johnson & Johnson. Johnson & Johnson is without knowledge or information sufficient to form a belief as to the truth of these allegations as they pertain to other Defendants and, therefore, those allegations are also denied.

72. To the extent the allegations contained in Paragraphs 200, 201, 202, 203, and 204 are directed to Johnson & Johnson, they are denied. Johnson & Johnson is without knowledge or information sufficient to form a belief as to the truth of these allegations as they pertain to other Defendants and, therefore, those allegations are also denied.

73. Paragraph 205 references a written publication which speaks for itself. Johnson & Johnson denies any and all allegations inconsistent therewith and denies any remaining allegation in Paragraph 205.

74. To the extent the allegations contained in Paragraphs 206, 207 (including its subparts (i) through (iii)), 208, and 209 are directed to Johnson & Johnson, they are denied. Johnson & Johnson is without knowledge or information sufficient to form a belief as to the truth of these allegations as they pertain to other Defendants and, therefore, those allegations are also denied.

AS TO THE SEVENTH CAUSE OF ACTION

(Fraud as to Johnson & Johnsons Johnson & Johnson, Johnson & Johnson Holdco (NA) Inc., Janssen Pharmaceuticals Inc., Kenvue Inc., and LTL Management LLC)

75. Johnson & Johnson hereby incorporates by reference the preceding paragraphs as if stated verbatim herein.

76. The allegations contained in Paragraph 210 are denied to the extent they are directed to Johnson & Johnson. As to the remaining allegations, Johnson & Johnson is without

sufficient knowledge for form a belief as to the truth of these allegations as they pertain to other Defendants and, therefore, denies the same.

77. Paragraphs 211, 212, 213, 214, and 215 reference documents attached as Exhibits to Plaintiffs' Complaint as well as various testing results, reports, documents, advertisements, and alleged statements, all of which speak for themselves. Johnson & Johnson denies any and all allegations inconsistent therewith and denies any remaining allegations contained in these Paragraphs to the extent they are directed to Johnson & Johnson.

78. The allegations contained in Paragraph 216 references statements purportedly made by Johnson & Johnson in previous litigation. Johnson & Johnson refers to those purported statements in their entirety, which speak for themselves, and denies any allegations inconsistent therewith. The remaining allegations contained in this Paragraph are denied.

79. Johnson & Johnson denies the allegations contained in Paragraph 217.

80. The allegations contained in Paragraphs 218, 219, 220, 221, 222, and 223 refer to various test results, reports, documents, and alleged statements which all speak for themselves. Johnson & Johnson refers to each of these test results, reports, documents, or alleged statements in their entirety and denies any and all allegations inconsistent therewith. Johnson & Johnson denies all remaining allegations contained in these Paragraphs.

81. Johnson & Johnson denies the allegations contained in Paragraphs 224 and 225.

82. The allegations contained in Paragraphs 226, 227, 228, 229, 230, 231, 232, 233, 234, 235, 236, 237, 238, 239, 240, 241, 242, 243, 244, 245, and 246 reference test results, reports, documents, advertisements, and alleged statements which all speak for themselves. Johnson & Johnson refers to these results, reports, documents, advertisements, and alleged statements in their

entirety and denies any and all allegations inconsistent therewith. Johnson & Johnson denies all remaining allegations contained in these Paragraphs.

83. The allegations contained in Paragraphs 247, 248, 249, 250, 251, 252, and 253 reference litigation documents, filings, discovery materials, and purported statements, all of which speak for themselves. Johnson & Johnson refers to those litigation documents, filings, discovery materials, and statements in their entirety and denies any and all allegations inconsistent therewith. All remaining allegations contained in these Paragraphs are denied.

84. Johnson & Johnson denies the allegations contained in Paragraphs 254 and 255.

85. Johnson & Johnson is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 256 of the Complaint and, therefore, can neither admit nor deny said allegations. To the extent a response is required, Johnson & Johnson denied the allegations of Paragraph 256.

As to the Paragraphs beneath the title “Fraudulent Misrepresentation”

86. Johnson & Johnson denies the allegations contained in Paragraph 257 including subparts (a) through (f).

As to the Paragraphs beneath the title “Silent Fraud (a/k/a Fraudulent Concealment)”

87. Johnson & Johnson denies the allegations contained in Paragraph 258, including subparts (a) through (c) thereof.

88. Johnson & Johnson is without sufficient knowledge or information to form a belief as to the truth of the allegations contained in Paragraph 259 and, therefore, these allegations are denied.

89. Responding to Paragraph 260, Johnson & Johnson admits, upon information and belief, the Decedent was diagnosed with mesothelioma. Johnson & Johnson denies the remaining allegations of this paragraph.

90. Johnson & Johnson denies the allegations contained in the unnumbered Paragraph set forth below Paragraph 260 of Plaintiffs' Complaint beginning with "WHEREFORE."

AS TO THE EIGHTH CAUSE OF ACTION
(Loss of Consortium)

91. Johnson & Johnson hereby incorporates by reference the preceding paragraphs as if stated verbatim herein.

92. Paragraph 261 is Plaintiffs' incorporation of their preceding allegations to which no response is required.

93. Johnson & Johnson is without sufficient knowledge or information to form a belief as to the truth of the allegations contained in Paragraphs 262 and 263 of the Complaint. To the extent an answer is required, the allegations are denied insofar as they are directed to Johnson & Johnson.

94. To the extent the allegations contained within Paragraph 264 are directed to Johnson & Johnson, they are denied. Johnson & Johnson is without knowledge or information sufficient to form a belief as to the truth of these allegations as they pertain to other Defendants and, therefore, those allegations are also denied.

AS TO THE PRAYER FOR RELIEF

95. Responding to unnumbered Paragraph beginning with "WHEREFORE" and the enumerated sub-parts numbered 1 through 8, Johnson & Johnson denies that Plaintiffs are entitled to the relief sought, denies it is liable for any and all injuries and damages claimed by Plaintiffs,

and in reply asserts all applicable defenses it is entitled to assert in either law or equity, including but not limited to those set forth below.

FOR A FIRST DEFENSE

The Complaint, and each purported cause of action contained therein, is barred because it is ambiguous and uncertain.

FOR A SECOND DEFENSE

The Complaint and each purported cause of action contained therein should be dismissed pursuant to Rule 12(b)(6) of the South Carolina Rules of Civil Procedure because each fails to allege specific facts sufficient to constitute a valid cause of action against Johnson & Johnson. Specifically, Plaintiffs fail to allege facts sufficient to show Johnson & Johnson had any duty to Plaintiffs, that Johnson & Johnson breached any such duty, or that the injuries alleged by Plaintiffs were caused by exposure to any products or materials Johnson & Johnson is liable for.

FOR A THIRD DEFENSE

If Plaintiffs suffered any injuries or damages the proximate cause of such injuries and damages was the negligence, recklessness, willfulness, and wantonness of persons or entities other than Johnson & Johnson, over whom Johnson & Johnson had not control and, therefore, Johnson & Johnson is not liable for any such injuries or damages.

FOR A FOURTH DEFENSE

This Defendant would show that the claims set forth in the Complaint are barred by the applicable South Carolina statute of limitations, statute of repose and laches, as well as in any other states where it may be claimed that the Plaintiffs was exposed to any products allegedly supplied by this Defendant.

FOR A FIFTH DEFENSE

That Plaintiffs were not in privity with this Defendant and Plaintiffs may not rely upon any warranties which may have been implied or imposed by law upon this Defendant; this Defendant affirmatively states that it breached no warranty.

FOR A SIXTH DEFENSE

That if Plaintiff sustained any injuries or illness as set forth in the Complaint, the same were due to his own willful, wanton, reckless, careless and negligent acts and conduct which combined and concurred with any willful, wanton, reckless or negligent acts and conduct on the part of this Defendant (which is specifically denied) to bring about the said illness or injuries, if any, as the proximate cause thereof and without which the same would not have occurred.

FOR A SEVENTH DEFENSE

That Plaintiff had actual knowledge of and voluntarily assumed the risk incident in repeated use and exposure to asbestos or the products and processes involving the use of asbestos or asbestos-related products or materials which were known to him to be dangerous and further voluntarily adopted a dangerous, willful, wanton, reckless, careless, and negligent and hazardous method or manner of performing the task assigned to him when safer methods of performing the tasks assigned were available, and he thereby assumed the risk of injury in so performing his undertaking in such a hazardous and dangerous manner and that he had actual knowledge of the same perils, if any, or the imminence of danger, if any, which were of such a nature that a prudent person would not have incurred the risk and Plaintiff thereby assumed the risk of exposing himself in working in close proximity to asbestos or the products and processes involving asbestos or asbestos-related insulation materials

FOR AN EIGHTH DEFENSE

That Plaintiff failed to properly use the product or products in question and abused the product or products and subjected them to abnormal use at the time or times and places alleged in the Complaint, thereby rendering his conduct or misconduct the sole proximate cause or an intervening or superseding cause of his alleged damages.

FOR A NINTH DEFENSE

That if Plaintiff used the product or products supplied by this Defendant (which is denied) the same was used for a purpose not intended by this Defendant and contrary to any instructions or normal method of using the same in such a way as to constitute his conduct by omission and commission as the sole proximate cause or an intervening or superseding cause of his alleged damages

FOR A TENTH DEFENSE

That if Plaintiff sustained any injuries or damages as set forth in the Complaint, which is denied, the same were due to and caused solely by the acts and/or omissions of recklessness, willfulness and negligence of Plaintiff and Plaintiff's employer and that the acts and/or omission of recklessness, negligence, willfulness and wantonness upon the part of Plaintiff and Plaintiff's employer were the sole and proximate cause of Plaintiff's injuries and damages, if any.

FOR AN ELEVENTH DEFENSE

That if Plaintiff sustained any injuries or damages as set forth in the Complaint, which is denied, the same were due to and caused solely by the acts and/or omissions of recklessness, willfulness and negligence of Plaintiff's labor union, and that the acts and/or omissions of recklessness, negligence, willfulness and wantonness upon the part of the labor union were the sole and proximate cause of Plaintiff injuries and damages, if any.

FOR A TWELFTH DEFENSE

That if Plaintiff was injured by any products supplied or manufactured by this Defendant, which is denied, Plaintiff discovered any defect in the products and was aware of the dangers thereof but nevertheless proceeded unreasonably to make use of the same and is therefore barred from recovery by South Carolina Code of Laws Section 15-73-20 (1976).

FOR A THIRTEENTH DEFENSE

That if Plaintiff used any product or products supplied by or manufactured by this Defendant, it was while employed by Defendant or a predecessor company. Therefore, Plaintiff cannot maintain this tort action against this Defendant for the reason that the South Carolina Workmen's Compensation Act provides that it is the sole and exclusive remedy for injuries or death sustained by an employee when the employer and employee are governed under the terms of that Act, South Carolina Code Section 42-1-540. This Defendant also raises the same defense, workmen's compensation, if applicable, under the laws of any other state which may apply or the Longshoremen and Harbor Worker's Compensation Act.

FOR A FOURTEENTH DEFENSE

That the alleged injuries to Plaintiff occurred or were allegedly sustained prior to the enactment of Section 15-73-10 of the South Carolina Code of Laws (1976), and Plaintiff therefore is prohibited by law from asserting a cause of action based on strict liability for either actual or punitive damages.

FOR A FIFTEENTH DEFENSE

That Plaintiff did not notify the Defendant within a reasonable period of time after he discovered or should have discovered the alleged defect in the products, and therefore is barred from recovery.

FOR A SIXTEENTH DEFENSE

If Plaintiff sustained injuries as a result of exposure to asbestos or asbestos-containing products, which is denied, then such injuries were or may have been due to exposure to products of manufacturers not named as defendants in this action, including but not limited to Johns-Manville, Unarco, Amatex, The Celotex Corporation, Carey Canada, Inc. and Eagle-Picher Industries, Inc.

FOR A SEVENTEENTH DEFENSE

This Defendant alleges that by virtue of the doctrine of judicial estoppel Plaintiff is precluded from taking a position inconsistent with one taken with respect to the same facts in earlier litigation and is, therefore, precluded from alleging the material facts necessary to state a cause of action against this Defendant.

FOR AN EIGHTEENTH DEFENSE

In the event it is determined that any product manufactured or sold by this Defendant was dangerous, which danger is specifically denied, this Defendant was unaware of such danger as it would apply to any conceivable use of the products by Plaintiff. In addition, the discovery of such danger was beyond the state of the art at the time such product or products were manufactured, distributed, sold, or installed. Further, such products were manufactured, distributed, sold, and installed in conformity with the state of the art and/or prevailing industry standards at the time.

FOR A NINETEENTH DEFENSE

This Defendant states that if Plaintiff was exposed to any asbestos-containing products, said products at the time were manufactured in conformity with federal and state regulations, standards, specifications and laws. Consequently, recovery by Plaintiff herein is barred.

FOR A TWENTIETH DEFENSE

Plaintiff's employer was and is a sophisticated user and knew independently, or should have known, of any danger or hazard associated with the use of a product containing asbestos and of exposure to asbestos dust or fibers. Furthermore, Plaintiff and/or Plaintiff's employer was warned of the danger or hazard associated with the use of asbestos-containing products, and Plaintiff and/or Plaintiff's employer failed to rely upon such warning, resulting in alleged damages to Plaintiff due to Plaintiff and/or Plaintiff's employer's acts and omissions and failure to act as a sophisticated user.

FOR A TWENTY-FIRST DEFENSE

Plaintiff's Complaint should be dismissed for its failure to comply with the requirements of Section 44-135-10 et seq., of the South Carolina Code, also known as the "Asbestos and Silica Claims Procedure Act of 2006", as Plaintiffs have failed to make the prima facie showing required by the Act.

FOR A TWENTY-SECOND DEFENSE

Plaintiffs may not have standing to bring this claim pursuant to Section 15-5-150 of the South Carolina Code, also referred to as South Carolina's Door Closing Statute.

FOR A TWENTY-THIRD DEFENSE

There are no allegations against this Defendant stated with sufficient particularity to constitute a cause of action for fraud, fraudulent concealment, concert of action, conspiracy or the like which would meet the requirement of Rule 9(b) of the South Carolina Rules of Civil Procedure.

FOR A TWENTY-FOURTH DEFENSE

This Defendant is entitled to a set-off from any and all sums recovered by or on behalf of Plaintiffs by way of any settlement, judgment, claim, or otherwise which were or are entered into or received by Plaintiffs from any party or non-party to this action.

FOR A TWENTY-FIFTH DEFENSE

The Defendant asserts and would show that venue is improper with respect to this Defendant.

FOR A TWENTY-SIXTH DEFENSE

Defendant asserts and would show that this Court lacks personal jurisdiction over the person of this Defendant and Plaintiff's claims should be dismissed pursuant to Rule 12(b)(2) of the South Carolina Rules of Civil Procedure.

FOR A TWENTY-SEVENTH DEFENSE

Defendant asserts there has been an insufficiency of process and an insufficiency of service of process as to this Defendant.

FOR A TWENTY-EIGHTH DEFENSE

That the Plaintiff failed to exercise ordinary care for his own protection, or was otherwise contributorily and/or comparatively negligent, and such failure occasioned some or all of the alleged injury and damage to Plaintiff, if any.

FOR A TWENTY-NINTH DEFENSE

The Defendant shows that it has not engaged in any activity which would entitle the plaintiff to punitive or exemplary damages.

FOR A THIRTIETH DEFENSE

The Defendant shows that Plaintiffs' claims for punitive damages are barred by the Fifth, Eighth, and Fourteenth Amendments to the United States Constitution and comparable provisions of the South Carolina Constitution.

FOR A THIRTY-FIRST DEFENSE

The Defendant shows that any exposure of Plaintiff to asbestos-containing products for which this Defendant is alleged to be liable was so minimal as to be insufficient to establish a reasonable degree of certainty or probability that the injuries and damages complained of resulted from any exposure to, or defects from, said products.

FOR A THIRTY-SECOND DEFENSE

The Defendant shows that it has breached neither express nor implied warranties.

FOR A THIRTY-THIRD DEFENSE

The Defendant shows that any oral warranties upon which Plaintiff allegedly relied are unavailable as violative of the provisions of the applicable Status of Frauds.

FOR A THIRTY-FOURTH DEFENSE

The Defendant shows that no implied warranties, including the warranties of merchantability and fitness for a particular purpose, became a part of the basis of the bargain in the sale by Defendant.

FOR A THIRTY-FIFTH DEFENSE

The Defendant shows that the damages alleged in the Complaint are not recoverable under an express warranty theory.

FOR A THIRTY-SIXTH DEFENSE

The Defendant denies that it gave, made or otherwise extended any warranties, whether express or implied, upon which Plaintiff had a right to rely.

FOR A THIRTY-SEVENTH DEFENSE

The Defendant shows that it has committed no negligence, whether by act of commission, or act of omission.

FOR A THIRTY-EIGHTH DEFENSE

The Defendant denies any and all liability to the extent that Plaintiffs asserts this Defendant's alleged liability as a successor, successor in business, successor in product line, assignee, predecessor, predecessor in business, predecessor in product line, parent, alter ego, subsidiary, or other derivative status as a theory of liability.

FOR A THIRTY-NINTH DEFENSE

The Defendant shows that there was no concert of action between this Defendant and any other Defendants herein, therefore, the Defendants are not joint tort-feasors and this Defendant may not be held jointly and severally liable with other the Defendants.

FOR A FORTIETH DEFENSE

The Defendant shows that its liability, if any, in this matter is extremely minor relative to the liability of various other parties and, therefore, the damages, if any, assessed against it should be proportionate to the degree, nature, and extent of its fault.

FOR A FORTY-FIRST DEFENSE

The Defendant shows that no conduct by or attributable to it was the cause in fact, the proximate cause, or a substantial factor in bringing about the damages, if any, suffered by Plaintiff.

FOR A FORTY-SECOND DEFENSE

To the extent Plaintiffs' Complaint asserts a demand for punitive damages, this Defendant specifically incorporates by reference any and all standards of limitations regarding the determination and/or enforceability of punitive damage awards that arose in the decisions of *BMW of North America, Inc. v. Gore*, 517 U.S. 559 (1966); *Cooper Industries, Inc. v. Leatherman Tool Group, Inc.*, 532 U.S. 424 (2001); and *State Farm Mutual Automobile Insurance Co. v. Campbell*, 538 U.S. 408 (2003).

FOR A FORTY-THIRD DEFENSE

To the extent the Court submits the question of punitive damages to the jury, any award of punitive damages is subject to the caps and limitations set forth in S.C. Code Ann. § 15-32-530, and Defendant pleads and incorporates all defenses, limitations on damages, and other privileges set forth in S.C. Code Ann. § 15-32-530 as if fully stated verbatim herein.

FOR A FORTY-FOURTH DEFENSE

Plaintiffs' claim is reduced or eliminated by the "Limitation of Cumulative Successor Asbestos-Related Liabilities of Corporation" appearing at South Carolina Code Section 15-81-140 et seq. and similar or related provisions of the common law, statutes and regulations of South Carolina law or the law of any other state that may be applicable.

FOR A FORTY-FIFTH DEFENSE

Plaintiffs' claims are barred or reduced by the doctrines of res judicata, waiver, release, laches, and/or conditions precedent or subsequent.

FOR A FORTY-SIXTH DEFENSE

Upon information and belief, the injuries and damages alleged by Plaintiff were proximately caused by the intervening and superseding negligence, recklessness, willfulness,

wantonness, and fault of parties or entities other than this Defendant. Such intervening and superseding negligence, recklessness, willfulness, wantonness, and fault are the sole cause of the injuries and damages for which Plaintiff seeks recovery. Therefore, this Defendant is not liable.

FOR A FORTY-SEVENTH DEFENSE

Any claim by Plaintiffs for punitive damages under strict liability or breach of warranty causes of actions are precluded by South Carolina law.

FOR A FORTY-EIGHTH DEFENSE

This Defendant denies that it designed, manufactured, sold, or otherwise placed into the stream of commerce any products or materials which could have caused Plaintiff to be exposed to asbestos. Nonetheless, insofar as the Complaint may be construed to allege product liability claims against this Defendant on a theory of strict liability, this Defendant avers all defenses that are, or may become available to it under Restatement (Second) of Torts, §402A and the comments thereto, as codified by S. C. Code Ann. § 15-73-30.

FOR A FORTY-NINTH DEFENSE

This Defendant denies that it designed, manufactured, sold, or otherwise placed into the stream of commerce any products or materials which could have caused Plaintiff to be exposed to asbestos. Nonetheless, insofar as the Complaint may be construed to allege product liability claims against this Defendant on any theory, this Defendant avers that any such products or materials, and any conduct of this Defendant were in conformity with the state of the art in science, medicine, technology, and prevailing regulations, industry standards, customs, and practices at all times material to Plaintiffs' claims. This Defendant further avers that the state of medical, scientific, and technological knowledge at all times material to Plaintiffs' claims was such that this Defendant

neither knew, nor could reasonably have known of the risks alleged in the Complaint, which are denied. Therefore, this Defendant is not liable to Plaintiffs.

FOR A FIFTIETH DEFENSE

Under the South Carolina Contribution Among Tortfeasors Act, S.C. Code Ann. §15-38-15 (2005), the damages for which Plaintiffs seek recovery against this Defendant are limited to the percentage of fault, if any, attributable to the conduct of this Defendant.

FOR A FIFTY-FIRST DEFENSE

Defendant would show that Plaintiffs' claims for punitive damages is barred, reduced, bifurcated, capped, or otherwise impacted by the South Carolina Fairness in Civil Justice Act of 2011 and/or similar and/or related statutes and limitations.

FOR A FIFTY-SECOND DEFENSE

Plaintiff was employed by a knowledgeable and sophisticated user/employer and any duty this Defendant may have had to warn Plaintiff of any potential dangers incident to use of this Defendant's products, which duty is denied, was discharged by the employer's intervening duty to give Plaintiff warning.

FOR A FIFTY-THIRD DEFENSE

Upon information and belief, Plaintiff has failed to mitigate or otherwise act to lessen or reduce the injuries and disabilities alleged in the Complaint.

FOR A FIFTY-FOURTH DEFENSE

This Defendant states that at all times alleged in the Complaint the products alleged to have caused Plaintiff's injuries were manufactured, supplied and/or installed in compliance with reasonably precise government specifications and contracts and conform to those specifications and contracts. Said specification and contract requirements were for a specific intended use by the

United States government and there were not known or perceived dangers in the use of said materials that were not equally known and perceived by the United States government.

FOR A FIFTY-FIFTH DEFENSE

This Defendant reserves the right to assert all other defenses available to it under law at the time of trial and reserves the right to amend this Answer to include additional defenses that discovery may reveal to be appropriate.

FOR A FIFTY-SIXTH DEFENSE

This Defendant incorporates by reference any and all affirmative defenses not adverse to this Defendant asserted by other Defendants in this action as though the same were set forth fully herein.

WHEREFORE, having fully answered Plaintiffs' Complaint, Johnson & Johnson respectfully prays that the Court:

- A. Dismiss Plaintiffs' claims with prejudice;
- B. Enter judgment in favor of Johnson & Johnson against all Plaintiffs' claims;
- C. Award Johnson & Johnson attorneys' fees and costs incurred in defending the claims set forth in Plaintiffs' Complaint and all previous pleadings; and
- D. Grant such other and further relief as the Court deems just and proper.

THIS DEFENDANT RESPECTFULLY DEMANDS A JURY TRIAL.

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September 7, 2023

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
COUNTY OF RICHLAND	)	FOR THE FIFTH JUDICIAL CIRCUIT
	)	
MICHAEL L. PERRY and	)	
LONNIE L. LONG,	)	
	)	
Plaintiffs,	)	
	)	Case No.: 2023-CP-40-04072
v.	)	
	)	
AMERICAN INTERNATIONAL	)	
INDUSTRIES; et al.,	)	
	)	
Defendants.	)	
	)	

DEFENDANT LTL MANAGEMENT LLC'S
ANSWER TO PLAINTIFF'S COMPLAINT

The Defendant, LTL Management LLC (hereinafter "LTL" or "Defendant"), responds to Plaintiffs' Complaint ("Complaint") as follows by denying each and every allegation not specifically admitted herein and by further responding as follows:

GENERAL ALLEGATIONS

1. LTL is without sufficient knowledge or information to form a belief as to the truth of the allegations contained in Paragraph 1 of the Complaint. To the extent an answer is required, the allegations are denied insofar as they are directed to LTL.

2. The allegations of Paragraph 2 of the Complaint, including its subparts (a) through (f), set forth legal conclusions concerning jurisdiction and other matters which LTL is required to neither admit nor deny. To the extent a response is deemed to be required, LTL denies the allegations of this Paragraph.

3. Paragraph 3 sets forth legal conclusions concerning the Court's jurisdiction to which no response is required. To the extent a response is deemed required, LTL denies these allegations.

4. Paragraph 4 is denied.

5. In response to Paragraph 5, LTL admits only that it is a limited liability company that is organized under the laws of a state other than South Carolina. The final sentence of Paragraph 5 states legal conclusions concerning the Court's jurisdiction to which no response is required. To the extent a response is deemed required, LTL denies these allegations and denies any remaining allegations contained in Paragraph 5.

6. LTL denies the allegations of Paragraphs 6 and 7 of the Complaint insofar as they are directed to LTL. LTL is without information sufficient to form a belief as to the allegations of this Paragraph as they pertain to other Defendants and, therefore, those allegations are also denied.

7. Paragraph 8 sets forth legal conclusions concerning the Court's jurisdiction to which no response is required. To the extent a response is deemed required, LTL denies these allegations.

8. To the extent the allegations contained in Paragraphs 9, 10, 11, 12, and 13 are directed to LTL, they are denied. LTL is without information or knowledge sufficient to form a belief as to the remaining allegations contained in these Paragraphs and therefore those allegations are also denied.

9. Paragraph 14 contains a statement to which no response is required. To the extent a response is deemed necessary and to the extent the allegations are directed to LTL, they are denied. LTL is without information or knowledge sufficient to form a belief as to the remaining allegations contained in this Paragraph and therefore those allegations are also denied.

10. To the extent the allegations contained in Paragraph 15 are directed to LTL, they are denied. LTL is without information or knowledge sufficient to form a belief as to the remaining allegations contained in this Paragraph and therefore those allegations are also denied.

11. Paragraph 16 contains a legal conclusion to which no response is required. To the extent a response is deemed necessary, LTL denies the allegations of this Paragraph. LTL is without information sufficient to form a belief as to the allegations of this Paragraph as they pertain to other Defendants and, therefore, those allegations are also denied.

12. LTL is without information or knowledge sufficient to form a belief as to the allegations contained in Paragraphs 17, and, therefore, these allegations are denied.

13. LTL denies the allegations contained in Paragraph 18 to the extent they are directed to LTL. To the extent the allegations of this Paragraph are directed to other Defendants, LTL is without knowledge or information sufficient to form a belief as to the truth of those allegations and they are, therefore, also denied.

14. In response to Paragraph 19, LTL admits only that it is a limited liability company that is organized under the laws of a state other than South Carolina. The remaining allegations of this Paragraph, to the extent they pertain to LTL, are denied. To the extent the allegations of this Paragraph are directed to other Defendants, LTL is without knowledge or information sufficient to form a belief as to the truth of those allegations and they are, therefore, also denied.

15. LTL admits in part and denies in part the allegations contained in Paragraph 20, as detailed below. Responding to each of the enumerated subparts contained in this Paragraph, LTL further responds that:

- a. The allegations contained in Paragraph 20 sub-paragraph (a), and all sub-parts numbered (i) through (vii) contained thereunder, are quoted passages from a legal filing. LTL craves reference to that document, which speaks for itself, and denies any allegations inconsistent therewith. LTL denies any remaining allegations in Paragraph 20 (a).

- b. Responding to Paragraph 20 (b) LTL admits only that Johnson & Johnson, and at times its subsidiary entities, produced, marketed, and sold Johnson & Johnson branded powders, including Johnson & Johnson Baby Powder.
- c. LTL denies the allegations contained in Paragraph 20 (c).
- d. LTL denies the allegations contained in Paragraph 20 (d).
- e. Paragraph 20 (e) references corporate filings and associated documents which speak for themselves and LTL denies any allegation inconsistent therewith. To the extent the contents of this Paragraph allege LTL engaged in any wrongful or illegal act, LTL denies any wrongdoing. LTL denies any remaining allegations in Paragraph 20 (e).
- f. Paragraph 20 (f) contains a legal conclusion to which no response is required. To the extent a response is deemed necessary, Johnson and Johnson denies these allegations. To the extent the contents of this Paragraph allege or imply LTL engaged in any wrongful conduct or illegal act, those allegations or implications are denied.
- g. In response to Paragraph 20 (g), LTL admits only that it filed a petition for Chapter 11 Bankruptcy. To the extent the contents of this Paragraph allege or imply LTL engaged in any wrongful conduct or illegal act, those allegations or implications are denied. LTL denies any remaining allegations in Paragraph 20 (g).
- h. Paragraph 20 (h) references court filings and corporate documents which speak for themselves and LTL denies any allegation inconsistent therewith. To the extent the contents of this Paragraph allege LTL engaged in any wrongful or illegal act, LTL denies any wrongdoing. LTL denies any remaining allegations in Paragraph 20 (h).

- i. In response to Paragraph 20 (i) LTL admits only that the Bankruptcy Court enforced the automatic stay provisions set forth in 11 U.S.C.A. § 362 over objections. To the extent the contents of this Paragraph allege or imply LTL engaged in any wrongful conduct or illegal act, those allegations or implications are denied. LTL denies any remaining allegations in Paragraph 20 (i).
- j. Paragraph 20 (j) references court filings which speak for themselves and LTL denies any allegation inconsistent therewith. To the extent the contents of this Paragraph allege LTL engaged in any wrongful or illegal act, LTL denies any wrongdoing. LTL denies any remaining allegations in Paragraph 20 (j).
- k. Paragraph 20 (k) and 20 (l) reference court filings and legal proceedings which speak for themselves and LTL denies any allegation inconsistent therewith. To the extent the contents of this Paragraph allege LTL engaged in any wrongful or illegal act, LTL denies any wrongdoing. LTL denies any remaining allegations in Paragraphs 20 (k) and 20 (l).
- l. Responding to Paragraph 20 (m), LTL is without information or knowledge sufficient to form a belief as to what was known or unknown to the Decedent and denies the allegations of Paragraph 20 (m) on that basis.
- m. Paragraphs 20 (n) and 20 (o) reference a court filing which speaks for itself and LTL denies any allegation inconsistent therewith. To the extent the contents of these Paragraphs allege LTL engaged in any wrongful or illegal act, LTL denies any wrongdoing. LTL denies any remaining allegations in Paragraphs 20 (n) and 20 (o).

- n. Paragraph 20 (p) sets forth legal conclusions to which no response is required. To the extent a response is deemed required, LTL denies these allegations.
- o. LTL denies the allegations contained in Paragraph 20 (q).
- p. In response to the allegations contained in Paragraphs 20 (r), 20 (s), 20 (t), 20 (u), and 20 (v), LTL would refer to the referenced SEC filing in its entirety, which speaks for itself and LTL denies any allegation inconsistent therewith. LTL denies any remaining allegations in Paragraphs 20 (r), 20 (s), 20 (t), 20 (u), and 20 (v).
- q. Paragraph 20 (w) contains a legal conclusion to which no response is required. To the extent a response is deemed required, and to the extent they are directed to LTL, they are denied.

16. Paragraph 21 contains a statement to which no response is required. To the extent a response is deemed necessary, LTL admits that Plaintiffs have stated that they are not seeking relief from Imerys.

17. In response to Paragraph 22, LTL admits in general terms that mesothelioma and other diseases may be caused by inhalation of asbestos fibers. LTL denies, however, that it caused the Decedent's mesothelioma or any other injuries or damages claimed by Plaintiffs. LTL denies all remaining allegations contained in this Paragraph.

18. Responding to Paragraph 23, LTL admits, upon information and belief, that the Decedent was diagnosed with mesothelioma. LTL denies the remaining allegations contained in this Paragraph.

19. Responding to Paragraph 24, LTL admits, upon information and belief, that the Decedent incurred medical expenses as a result of his illness. LTL denies the remaining allegations contained in this Paragraph.

20. LTL denies the allegations contained in Paragraph 25.

THE PARTIES

21. LTL hereby incorporates by reference the preceding paragraphs as if stated verbatim herein.

22. LTL is without sufficient knowledge or information to form a belief as to the truth of the allegations contained in Paragraphs 26 and 27 of the Complaint and, therefore, can neither admit nor deny said allegations. To the extent an answer is required, the allegations are denied insofar as they are directed to LTL.

23. Paragraphs 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, 57, 58, 59, 60, 61, 62, 63, 64, 65, 66, and 67 are directed at other Defendants and, therefore, no response is required from LTL. To the extent a response is deemed required, LTL is without sufficient knowledge or information to form a belief as to the truth of these allegations and they are, therefore, denied.

24. Responding to Paragraph 68 of the Complaint, LTL admits only so much as alleged that it is organized under the laws of a state other than South Carolina. LTL denies the remaining allegations of Paragraph 68.

25. Paragraphs 69, 70, 71, 72, 73, 74, 75, 76, 77, 78, 79, 80, 81, 82, 83, 84, 85, 86, and 87 are directed at other Defendants and, therefore, no response is required from LTL. To the extent a response is deemed required, LTL is without sufficient knowledge or information to form a belief as to the truth of these allegations and they are, therefore, denied.

BACKGROUND FACTS

26. LTL hereby incorporates by reference the preceding paragraphs as if stated verbatim herein.

27. Paragraph 88 is a statement which requires no response. To the extent a response is deemed necessary, LTL denies the allegations contained in this Paragraph.

28. LTL is without sufficient knowledge or information to form a belief as to the truth of the allegations contained in Paragraphs 89, 90, 91, and 92, therefore, can neither admit nor deny said allegations. To the extent an answer is required, the allegations are denied insofar as they are directed to LTL.

29. LTL denies the allegations of Paragraph 93 of the Complaint insofar as they are directed to LTL. LTL is without sufficient information or knowledge to form a belief as to the truth of the allegations contained in this Paragraph as they pertain to other Defendants and, therefore, these allegations are denied.

30. Paragraph 94 is a statement which requires no response. To the extent a response is deemed necessary, LTL denies the allegations contained in this Paragraph.

31. LTL denies the allegations of Paragraph 95 of the Complaint insofar as they are directed to LTL. LTL is without sufficient information or knowledge to form a belief as to the truth of the allegations contained in this Paragraph as they pertain to other Defendants and, therefore, these allegations are denied.

32. Paragraph 96 contains a legal conclusion to which no response is required. To the extent a response is deemed required, LTL denies these allegations.

33. LTL is without information or knowledge sufficient to form a belief as to the allegations contained in Paragraph 97 and, therefore, these allegations are denied.

34. Responding to Paragraph 98, LTL admits in general terms that mesothelioma and other diseases may be caused by inhalation of asbestos fibers. LTL denies, however, that it caused the Decedent's mesothelioma or any other injuries or damages claimed by Plaintiffs.

35. Responding to Paragraph 99, to the extent the allegations contained in this Paragraph are directed to LTL they are denied. LTL is without information or knowledge sufficient to form a belief as to the truth of these allegations as they pertain to other Defendants and, therefore, the remaining allegations contained in this Paragraph are also denied.

36. Responding to Paragraph 100, LTL admits, upon information and belief, the Decedent incurred medical expenses related to his disease, but specifically denies that it was the cause of any of the injuries or damages claimed by Plaintiffs. To the extent the remaining allegations contained in this Paragraph are directed to LTL they are denied. LTL is without information or knowledge sufficient to form a belief as to the truth of these allegations as they pertain to other Defendants and, therefore, the remaining allegations contained in this Paragraph are also denied.

37. Responding to Paragraph 101, to the extent the allegations contained in this Paragraph are directed to LTL they are denied. LTL is without information or knowledge sufficient to form a belief as to the truth of these allegations as they pertain to other Defendants and, therefore, the remaining allegations contained in this Paragraph are also denied.

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

38. LTL hereby incorporates by reference the preceding Paragraphs as if stated verbatim herein.

39. Paragraph 102 is Plaintiffs' incorporation of their preceding allegations to which no response is required.

40. To the extent the allegations contained in Paragraphs 103, 104, 105, 106, 107, and 108 are directed to LTL, they are denied. LTL is without knowledge or information sufficient to

form a belief as to the truth of these allegations as they pertain to other defendants and, therefore, those allegations are likewise denied.

41. Responding to Paragraph 109, LTL admits, upon information and belief, that the Decedent was diagnosed with mesothelioma. LTL further admits in general terms that mesothelioma and other diseases may be caused by inhalation of asbestos fibers. LTL is without sufficient information or knowledge to form a belief as to the truth of the remaining allegations contained in this Paragraph and they are, therefore, denied.

42. LTL denies the allegations of Paragraphs 110, 111, 112, 113, 114, 115, 116, and 117 of the Complaint insofar as they are directed to LTL. LTL is without sufficient information or knowledge to form a belief as to the truth of the allegations contained in these Paragraphs as they pertain to other Defendants and, therefore, these allegations are denied.

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

43. LTL hereby incorporates by reference the preceding Paragraphs as if stated verbatim herein.

44. Paragraph 118 is Plaintiffs' incorporation of their preceding allegations to which no response is required.

45. Responding to Paragraph 119, LTL admits, upon information and belief, that the Decedent was diagnosed with mesothelioma. LTL further admits in general terms that mesothelioma and other diseases may be caused by inhalation of asbestos fibers. LTL is without sufficient information or knowledge to form a belief as to the truth of the remaining allegations contained in this Paragraph and they are, therefore, denied.

46. LTL denies the allegations of Paragraphs 120, 121, 122, 123, 124, 125, 126, 127, 128, 129, 130, 131, 132, 133, and 134 of the Complaint insofar as they are directed to LTL. LTL

is without sufficient information or knowledge to form a belief as to the truth of the allegations contained in these Paragraphs as they pertain to other Defendants and, therefore, these allegations are denied.

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

47. LTL hereby incorporates by reference the preceding Paragraphs as if stated verbatim herein.

48. Paragraph 135 is Plaintiffs' incorporation of their preceding allegations to which no response is required

49. LTL denies the allegations of Paragraphs 136, 137, and 138 of the Complaint insofar as they are directed to LTL. LTL is without sufficient information or knowledge to form a belief as to the truth of the allegations contained in these Paragraphs as they pertain to other Defendants and, therefore, these allegations are denied.

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

50. LTL hereby incorporates by reference the preceding Paragraphs as if stated verbatim herein.

51. Paragraph 139 is Plaintiffs' incorporation of their preceding allegations to which no response is required.

52. LTL denies the allegations of Paragraphs 140, 141, and 142 of the Complaint insofar as they are directed to LTL. LTL is without sufficient information or knowledge to form a belief as to the truth of the allegations contained in these Paragraphs as they pertain to other Defendants and, therefore, these allegations are denied.

AS TO THE FIFTH CAUSE OF ACTION
(Fraudulent Misrepresentation)

53. LTL hereby incorporates by reference the preceding Paragraphs as if stated verbatim herein.

54. Paragraph 143 is Plaintiffs' incorporation of their preceding allegations to which no response is required.

55. LTL denies the allegations of Paragraphs 144, 145, and 146 of the Complaint insofar as they are directed to LTL. LTL is without sufficient information or knowledge to form a belief as to the truth of the allegations contained in these Paragraphs as they pertain to other Defendants and, therefore, these allegations are denied.

AS TO THE SIXTH CAUSE OF ACTION
(Fraudulent Misrepresentation and Conspiracy/Concert Action as to Talc Manufacturers, Miners, Millers, Sellers, Compounders, and Distributors)

56. LTL hereby incorporates by reference the preceding Paragraphs as if stated verbatim herein.

57. Paragraph 147 is Plaintiffs' incorporation of their preceding allegations to which no response is required.

58. LTL denies the allegations contained in Paragraphs 148 and 149 to the extent the allegations contained in these Paragraphs are directed to LTL. LTL is without sufficient information or knowledge to form a belief as to the truth of the allegations contained in these Paragraphs as they pertain to other Defendants and, therefore, these allegations are denied.

59. The allegations contained in Paragraphs 150 reference "medical and scientific data" which speaks for itself. LTL denies any and all allegations inconsistent therewith, and denies any remaining allegations contained in the Paragraphs insofar as they are directed to LTL. LTL is without sufficient information or knowledge to form a belief as to the truth of the allegations

contained in this Paragraph as they pertain to other Defendants and, therefore, these allegations are denied.

60. Paragraph 151 contains a purported statement of fact to which no response is necessary.

61. The allegations contained in Paragraphs 152 reference scientific data, reports, and documents which speak for themselves. LTL denies any and all allegations inconsistent therewith, and denies any remaining allegations contained in the Paragraphs insofar as they are directed to LTL. LTL is without sufficient information or knowledge to form a belief as to the truth of the allegations contained in this Paragraph as they pertain to other Defendants and, therefore, these allegations are denied.

62. The allegations of this Paragraph, to the extent they are directed to LTL, are denied. LTL is without sufficient information or knowledge to form a belief as to the truth of the allegations contained in this Paragraph as they pertain to other Defendants and, therefore, these allegations are denied.

63. Paragraphs 154, 155, 156, 157, 158, 159, 160, 161, 162, 163, 164, 165, 166, and 167 reference various testing results, reports and publications, documents, communications, and alleged statements. LTL would refer to those various testing results, reports and publications, documents, communications, and alleged statements in their entirety, all of which speak for themselves. LTL denies any and all allegations inconsistent therewith and denies any remaining allegations contained in these Paragraphs to the extent they are directed to LTL. LTL is without knowledge or information sufficient to form a belief as to the truth of these allegations as they pertain to other Defendants and, therefore, those allegations are also denied.

64. LTL denies the allegations contained in Paragraph 168 to the extent the allegations contained in this Paragraph are directed to LTL. LTL is without sufficient information or knowledge to form a belief as to the truth of the allegations contained in these Paragraphs as they pertain to other Defendants and, therefore, these allegations are denied.

65. Paragraphs 169, 170, 171, 172, 173, 174, 175, 176, 177, 178, 179, 180, 181, 182, 183, and 184 reference various testing results, reports and publications, documents, communications, and alleged statements. LTL would refer to those various testing results, reports and publications, documents, communications, and alleged statements in their entirety, all of which speak for themselves. LTL denies any and all allegations inconsistent therewith and denies any remaining allegations contained in these Paragraphs to the extent they are directed to LTL. LTL is without knowledge or information sufficient to form a belief as to the truth of these allegations as they pertain to other Defendants and, therefore, those allegations are also denied.

66. LTL denies the allegations contained in Paragraphs 185 and 186 to the extent the allegations contained in these Paragraphs are directed to LTL. LTL is without sufficient information or knowledge to form a belief as to the truth of the allegations contained in these Paragraphs as they pertain to other Defendants and, therefore, these allegations are denied.

67. Paragraphs 187, 188, 189, 190, and 191 reference various testing results, reports and publications, documents, communications, and alleged statements. LTL would refer to those various testing results, reports and publications, documents, communications, and alleged statements in their entirety, all of which speak for themselves. LTL denies any and all allegations inconsistent therewith and denies any remaining allegations contained in these Paragraphs to the extent they are directed to LTL. LTL is without knowledge or information sufficient to form a

belief as to the truth of these allegations as they pertain to other Defendants and, therefore, those allegations are also denied.

68. LTL denies the allegations contained in Paragraphs 192, 193, 194, 195, and 196 (including its subparagraphs (a) through (d)) to the extent the allegations contained in these Paragraphs are directed to LTL. LTL is without sufficient information or knowledge to form a belief as to the truth of the allegations contained in these Paragraphs as they pertain to other Defendants and, therefore, these allegations are denied.

69. LTL is without information or knowledge sufficient to form a belief as to the truth of the allegations contained in Paragraph 197 as to what the Decedent relied on and, therefore, these allegations are denied. LTL denies any remaining allegations in Paragraph 197.

70. Paragraphs 198 and 199 reference various testing results, reports, documents, communications, and alleged statements. LTL would refer to those test results, reports, documents, communications, and statements in their entirety, all of which speak for themselves. LTL denies any and all allegations inconsistent therewith and denies any remaining allegations contained in these Paragraphs to the extent they are directed to LTL. LTL is without knowledge or information sufficient to form a belief as to the truth of these allegations as they pertain to other Defendants and, therefore, those allegations are also denied.

71. To the extent the allegations contained in Paragraphs 200, 201, 202, 203, and 204 are directed to LTL, they are denied. LTL is without knowledge or information sufficient to form a belief as to the truth of these allegations as they pertain to other Defendants and, therefore, those allegations are also denied.

72. Paragraph 205 references a written publication which speaks for itself. LTL denies any and all allegations inconsistent therewith and denies any remaining allegation in Paragraph 205.

73. To the extent the allegations contained in Paragraphs 206, 207 (including its subparts (i) through (iii)), 208, and 209 are directed to LTL, they are denied. LTL is without knowledge or information sufficient to form a belief as to the truth of these allegations as they pertain to other Defendants and, therefore, those allegations are also denied.

AS TO THE SEVENTH CAUSE OF ACTION
(Fraud as to Johnson & Johnsons Johnson & Johnson, Johnson & Johnson Holdco (NA) Inc., Janssen Pharmaceuticals Inc., Kenvue Inc., and LTL Management LLC)

74. LTL hereby incorporates by reference the preceding paragraphs as if stated verbatim herein.

75. The allegations contained in Paragraph 210 are denied to the extent they are directed to LTL. As to the remaining allegations, LTL is without sufficient knowledge for form a belief as to the truth of these allegations as they pertain to other Defendants and, therefore, denies the same.

76. Paragraphs 211, 212, 213, 214, and 215 reference documents attached as Exhibits to Plaintiffs' Complaint as well as various testing results, reports, documents, advertisements, and alleged statements, all of which speak for themselves. LTL denies any and all allegations inconsistent therewith and denies any remaining allegations contained in these Paragraphs to the extent they are directed to LTL.

77. The allegations contained in Paragraph 216 references statements purportedly made in previous litigation. LTL refers to those purported statements in their entirety, which speak for

themselves, and denies any allegations inconsistent therewith. The remaining allegations contained in this Paragraph are denied.

78. LTL denies the allegations contained in Paragraph 217.

79. The allegations contained in Paragraphs 218, 219, 220, 221, 222, and 223 refer to various test results, reports, documents, and alleged statements which all speak for themselves. LTL refers to each of these test results, reports, documents, or alleged statements in their entirety and denies any and all allegations inconsistent therewith. LTL denies all remaining allegations contained in these Paragraphs.

80. LTL denies the allegations contained in Paragraphs 224 and 225.

81. The allegations contained in Paragraphs 226, 227, 228, 229, 230, 231, 232, 233, 234, 235, 236, 237, 238, 239, 240, 241, 242, 243, 244, 245, and 246 reference test results, reports, documents, advertisements, and alleged statements which all speak for themselves. LTL refers to these results, reports, documents, advertisements, and alleged statements in their entirety and denies any and all allegations inconsistent therewith. LTL denies all remaining allegations contained in these Paragraphs.

82. The allegations contained in Paragraphs 247, 248, 249, 250, 251, 252, and 253 reference litigation documents, filings, discovery materials, and purported statements, all of which speak for themselves. LTL refers to those litigation documents, filings, discovery materials, and statements in their entirety and denies any and all allegations inconsistent therewith. All remaining allegations contained in these Paragraphs are denied.

83. LTL denies the allegations contained in Paragraphs 254 and 255.

84. LTL is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 256 of the Complaint and, therefore, can neither admit

nor deny said allegations. To the extent a response is required, LTL denied the allegations of Paragraph 256.

As to the Paragraphs beneath the title “Fraudulent Misrepresentation”

85. LTL denies the allegations contained in Paragraph 257 including subparts (a) through (f).

As to the Paragraphs beneath the title “Silent Fraud (a/k/a Fraudulent Concealment)”

86. LTL denies the allegations contained in Paragraph 258, including subparts (a) through (c) thereof.

87. LTL is without sufficient knowledge or information to form a belief as to the truth of the allegations contained in Paragraph 259 and, therefore, these allegations are denied.

88. Responding to Paragraph 260, LTL admits, upon information and belief, the Decedent was diagnosed with mesothelioma. LTL denies the remaining allegations of this paragraph.

89. LTL denies the allegations contained in the unnumbered Paragraph set forth below Paragraph 260 of Plaintiffs’ Complaint beginning with “WHEREFORE.”

AS TO THE EIGHTH CAUSE OF ACTION
(Loss of Consortium)

90. LTL hereby incorporates by reference the preceding paragraphs as if stated verbatim herein.

91. Paragraph 261 is Plaintiffs’ incorporation of their preceding allegations to which no response is required.

92. LTL is without sufficient knowledge or information to form a belief as to the truth of the allegations contained in Paragraphs 262 and 263 of the Complaint. To the extent an answer is required, the allegations are denied insofar as they are directed to LTL.

93. To the extent the allegations contained within Paragraph 264 are directed to LTL, they are denied. LTL is without knowledge or information sufficient to form a belief as to the truth of these allegations as they pertain to other Defendants and, therefore, those allegations are also denied.

AS TO THE PRAYER FOR RELIEF

94. Responding to unnumbered Paragraph beginning with “WHEREFORE” and the enumerated sub-parts numbered 1 through 8, LTL denies that Plaintiffs are entitled to the relief sought, denies it is liable for any and all injuries and damages claimed by Plaintiffs, and in reply asserts all applicable defenses it is entitled to assert in either law or equity, including but not limited to those set forth below.

FOR A FIRST DEFENSE

The Complaint, and each purported cause of action contained therein, is barred because it is ambiguous and uncertain.

FOR A SECOND DEFENSE

The Complaint and each purported cause of action contained therein should be dismissed pursuant to Rule 12(b)(6) of the South Carolina Rules of Civil Procedure because each fails to allege specific facts sufficient to constitute a valid cause of action against LTL. Specifically, Plaintiffs fail to allege facts sufficient to show LTL had any duty to Plaintiffs, that LTL breached any such duty, or that the injuries alleged by Plaintiffs were caused by exposure to any products or materials LTL is liable for.

FOR A THIRD DEFENSE

If Plaintiffs suffered any injuries or damages the proximate cause of such injuries and damages was the negligence, recklessness, willfulness, and wantonness of persons or entities other

than LTL, over whom LTL had not control and, therefore, LTL is not liable for any such injuries or damages.

FOR A FOURTH DEFENSE

This Defendant would show that the claims set forth in the Complaint are barred by the applicable South Carolina statute of limitations, statute of repose and laches, as well as in any other states where it may be claimed that the Plaintiffs was exposed to any products allegedly supplied by this Defendant.

FOR A FIFTH DEFENSE

That Plaintiffs were not in privity with this Defendant and Plaintiffs may not rely upon any warranties which may have been implied or imposed by law upon this Defendant; this Defendant affirmatively states that it breached no warranty.

FOR A SIXTH DEFENSE

That if Plaintiff sustained any injuries or illness as set forth in the Complaint, the same were due to his own willful, wanton, reckless, careless and negligent acts and conduct which combined and concurred with any willful, wanton, reckless or negligent acts and conduct on the part of this Defendant (which is specifically denied) to bring about the said illness or injuries, if any, as the proximate cause thereof and without which the same would not have occurred.

FOR A SEVENTH DEFENSE

That Plaintiff had actual knowledge of and voluntarily assumed the risk incident in repeated use and exposure to asbestos or the products and processes involving the use of asbestos or asbestos-related products or materials which were known to him to be dangerous and further voluntarily adopted a dangerous, willful, wanton, reckless, careless, and negligent and hazardous method or manner of performing the task assigned to him when safer methods of performing the

tasks assigned were available, and he thereby assumed the risk of injury in so performing his undertaking in such a hazardous and dangerous manner and that he had actual knowledge of the same perils, if any, or the imminence of danger, if any, which were of such a nature that a prudent person would not have incurred the risk and Plaintiff thereby assumed the risk of exposing himself in working in close proximity to asbestos or the products and processes involving asbestos or asbestos-related insulation materials

FOR AN EIGHTH DEFENSE

That Plaintiff failed to properly use the product or products in question and abused the product or products and subjected them to abnormal use at the time or times and places alleged in the Complaint, thereby rendering his conduct or misconduct the sole proximate cause or an intervening or superseding cause of his alleged damages.

FOR A NINTH DEFENSE

That if Plaintiff used the product or products supplied by this Defendant (which is denied) the same was used for a purpose not intended by this Defendant and contrary to any instructions or normal method of using the same in such a way as to constitute his conduct by omission and commission as the sole proximate cause or an intervening or superseding cause of his alleged damages

FOR A TENTH DEFENSE

That if Plaintiff sustained any injuries or damages as set forth in the Complaint, which is denied, the same were due to and caused solely by the acts and/or omissions of recklessness, willfulness and negligence of Plaintiff and Plaintiff's employer and that the acts and/or omission of recklessness, negligence, willfulness and wantonness upon the part of Plaintiff and Plaintiff's employer were the sole and proximate cause of Plaintiff's injuries and damages, if any.

FOR AN ELEVENTH DEFENSE

That if Plaintiff sustained any injuries or damages as set forth in the Complaint, which is denied, the same were due to and caused solely by the acts and/or omissions of recklessness, willfulness and negligence of Plaintiff's labor union, and that the acts and/or omissions of recklessness, negligence, willfulness and wantonness upon the part of the labor union were the sole and proximate cause of Plaintiff injuries and damages, if any.

FOR A TWELFTH DEFENSE

That if Plaintiff was injured by any products supplied or manufactured by this Defendant, which is denied, Plaintiff discovered any defect in the products and was aware of the dangers thereof but nevertheless proceeded unreasonably to make use of the same and is therefore barred from recovery by South Carolina Code of Laws Section 15-73-20 (1976).

FOR A THIRTEENTH DEFENSE

That if Plaintiff used any product or products supplied by or manufactured by this Defendant, it was while employed by Defendant or a predecessor company. Therefore, Plaintiff cannot maintain this tort action against this Defendant for the reason that the South Carolina Workmen's Compensation Act provides that it is the sole and exclusive remedy for injuries or death sustained by an employee when the employer and employee are governed under the terms of that Act, South Carolina Code Section 42-1-540. This Defendant also raises the same defense, workmen's compensation, if applicable, under the laws of any other state which may apply or the Longshoremen and Harbor Worker's Compensation Act.

FOR A FOURTEENTH DEFENSE

That the alleged injuries to Plaintiff occurred or were allegedly sustained prior to the enactment of Section 15-73-10 of the South Carolina Code of Laws (1976), and Plaintiff therefore

is prohibited by law from asserting a cause of action based on strict liability for either actual or punitive damages.

FOR A FIFTEENTH DEFENSE

That Plaintiff did not notify the Defendant within a reasonable period of time after he discovered or should have discovered the alleged defect in the products, and therefore is barred from recovery.

FOR A SIXTEENTH DEFENSE

If Plaintiff sustained injuries as a result of exposure to asbestos or asbestos-containing products, which is denied, then such injuries were or may have been due to exposure to products of manufacturers not named as defendants in this action, including but not limited to Johns-Manville, Unarco, Amatex, The Celotex Corporation, Carey Canada, Inc. and Eagle-Picher Industries, Inc.

FOR A SEVENTEENTH DEFENSE

This Defendant alleges that by virtue of the doctrine of judicial estoppel Plaintiff is precluded from taking a position inconsistent with one taken with respect to the same facts in earlier litigation and is, therefore, precluded from alleging the material facts necessary to state a cause of action against this Defendant.

FOR AN EIGHTEENTH DEFENSE

In the event it is determined that any product manufactured or sold by this Defendant was dangerous, which danger is specifically denied, this Defendant was unaware of such danger as it would apply to any conceivable use of the products by Plaintiff. In addition, the discovery of such danger was beyond the state of the art at the time such product or products were manufactured,

distributed, sold, or installed. Further, such products were manufactured, distributed, sold, and installed in conformity with the state of the art and/or prevailing industry standards at the time.

FOR A NINETEENTH DEFENSE

This Defendant states that if Plaintiff was exposed to any asbestos-containing products, said products at the time were manufactured in conformity with federal and state regulations, standards, specifications and laws. Consequently, recovery by Plaintiff herein is barred.

FOR A TWENTIETH DEFENSE

Plaintiff's employer was and is a sophisticated user and knew independently, or should have known, of any danger or hazard associated with the use of a product containing asbestos and of exposure to asbestos dust or fibers. Furthermore, Plaintiff and/or Plaintiff's employer was warned of the danger or hazard associated with the use of asbestos-containing products, and Plaintiff and/or Plaintiff's employer failed to rely upon such warning, resulting in alleged damages to Plaintiff due to Plaintiff and/or Plaintiff's employer's acts and omissions and failure to act as a sophisticated user.

FOR A TWENTY-FIRST DEFENSE

Plaintiff's Complaint should be dismissed for its failure to comply with the requirements of Section 44-135-10 et seq., of the South Carolina Code, also known as the "Asbestos and Silica Claims Procedure Act of 2006", as Plaintiffs have failed to make the prima facie showing required by the Act.

FOR A TWENTY-SECOND DEFENSE

Plaintiffs may not have standing to bring this claim pursuant to Section 15-5-150 of the South Carolina Code, also referred to as South Carolina's Door Closing Statute.

FOR A TWENTY-THIRD DEFENSE

There are no allegations against this Defendant stated with sufficient particularity to constitute a cause of action for fraud, fraudulent concealment, concert of action, conspiracy or the like which would meet the requirement of Rule 9(b) of the South Carolina Rules of Civil Procedure.

FOR A TWENTY-FOURTH DEFENSE

This Defendant is entitled to a set-off from any and all sums recovered by or on behalf of Plaintiffs by way of any settlement, judgment, claim, or otherwise which were or are entered into or received by Plaintiffs from any party or non-party to this action.

FOR A TWENTY-FIFTH DEFENSE

The Defendant asserts and would show that venue is improper with respect to this Defendant.

FOR A TWENTY-SIXTH DEFENSE

Defendant asserts and would show that this Court lacks personal jurisdiction over the person of this Defendant and Plaintiff's claims should be dismissed pursuant to Rule 12(b)(2) of the South Carolina Rules of Civil Procedure.

FOR A TWENTY-SEVENTH DEFENSE

Defendant asserts there has been an insufficiency of process and an insufficiency of service of process as to this Defendant.

FOR A TWENTY-EIGHTH DEFENSE

That the Plaintiff failed to exercise ordinary care for his own protection, or was otherwise contributorily and/or comparatively negligent, and such failure occasioned some or all of the alleged injury and damage to Plaintiff, if any.

FOR A TWENTY-NINTH DEFENSE

The Defendant shows that it has not engaged in any activity which would entitle the plaintiff to punitive or exemplary damages.

FOR A THIRTIETH DEFENSE

The Defendant shows that Plaintiffs' claims for punitive damages are barred by the Fifth, Eighth, and Fourteenth Amendments to the United States Constitution and comparable provisions of the South Carolina Constitution.

FOR A THIRTY-FIRST DEFENSE

The Defendant shows that any exposure of Plaintiff to asbestos-containing products for which this Defendant is alleged to be liable was so minimal as to be insufficient to establish a reasonable degree of certainty or probability that the injuries and damages complained of resulted from any exposure to, or defects from, said products.

FOR A THIRTY-SECOND DEFENSE

The Defendant shows that it has breached neither express nor implied warranties.

FOR A THIRTY-THIRD DEFENSE

The Defendant shows that any oral warranties upon which Plaintiff allegedly relied are unavailable as violative of the provisions of the applicable Status of Frauds.

FOR A THIRTY-FOURTH DEFENSE

The Defendant shows that no implied warranties, including the warranties of merchantability and fitness for a particular purpose, became a part of the basis of the bargain in the sale by Defendant.

FOR A THIRTY-FIFTH DEFENSE

The Defendant shows that the damages alleged in the Complaint are not recoverable under an express warranty theory.

FOR A THIRTY-SIXTH DEFENSE

The Defendant denies that it gave, made or otherwise extended any warranties, whether express or implied, upon which Plaintiff had a right to rely.

FOR A THIRTY-SEVENTH DEFENSE

The Defendant shows that it has committed no negligence, whether by act of commission, or act of omission.

FOR A THIRTY-EIGHTH DEFENSE

The Defendant denies any and all liability to the extent that Plaintiffs asserts this Defendant's alleged liability as a successor, successor in business, successor in product line, assignee, predecessor, predecessor in business, predecessor in product line, parent, alter ego, subsidiary, or other derivative status as a theory of liability.

FOR A THIRTY-NINTH DEFENSE

The Defendant shows that there was no concert of action between this Defendant and any other Defendants herein, therefore, the Defendants are not joint tort-feasors and this Defendant may not be held jointly and severally liable with other the Defendants.

FOR A FORTIETH DEFENSE

The Defendant shows that its liability, if any, in this matter is extremely minor relative to the liability of various other parties and, therefore, the damages, if any, assessed against it should be proportionate to the degree, nature, and extent of its fault.

FOR A FORTY-FIRST DEFENSE

The Defendant shows that no conduct by or attributable to it was the cause in fact, the proximate cause, or a substantial factor in bringing about the damages, if any, suffered by Plaintiff.

FOR A FORTY-SECOND DEFENSE

To the extent Plaintiffs' Complaint asserts a demand for punitive damages, this Defendant specifically incorporates by reference any and all standards of limitations regarding the determination and/or enforceability of punitive damage awards that arose in the decisions of *BMW of North America, Inc. v. Gore*, 517 U.S. 559 (1966); *Cooper Industries, Inc. v. Leatherman Tool Group, Inc.*, 532 U.S. 424 (2001); and *State Farm Mutual Automobile Insurance Co. v. Campbell*, 538 U.S. 408 (2003).

FOR A FORTY-THIRD DEFENSE

To the extent the Court submits the question of punitive damages to the jury, any award of punitive damages is subject to the caps and limitations set forth in S.C. Code Ann. § 15-32-530, and Defendant pleads and incorporates all defenses, limitations on damages, and other privileges set forth in S.C. Code Ann. § 15-32-530 as if fully stated verbatim herein.

FOR A FORTY-FOURTH DEFENSE

Plaintiffs' claim is reduced or eliminated by the "Limitation of Cumulative Successor Asbestos-Related Liabilities of Corporation" appearing at South Carolina Code Section 15-81-140 et seq. and similar or related provisions of the common law, statutes and regulations of South Carolina law or the law of any other state that may be applicable.

FOR A FORTY-FIFTH DEFENSE

Plaintiffs' claims are barred or reduced by the doctrines of res judicata, waiver, release, laches, and/or conditions precedent or subsequent.

FOR A FORTY-SIXTH DEFENSE

Upon information and belief, the injuries and damages alleged by Plaintiff were proximately caused by the intervening and superseding negligence, recklessness, willfulness, wantonness, and fault of parties or entities other than this Defendant. Such intervening and superseding negligence, recklessness, willfulness, wantonness, and fault are the sole cause of the injuries and damages for which Plaintiff seeks recovery. Therefore, this Defendant is not liable.

FOR A FORTY-SEVENTH DEFENSE

Any claim by Plaintiffs for punitive damages under strict liability or breach of warranty causes of actions are precluded by South Carolina law.

FOR A FORTY-EIGHTH DEFENSE

This Defendant denies that it designed, manufactured, sold, or otherwise placed into the stream of commerce any products or materials which could have caused Plaintiff to be exposed to asbestos. Nonetheless, insofar as the Complaint may be construed to allege product liability claims against this Defendant on a theory of strict liability, this Defendant avers all defenses that are, or may become available to it under Restatement (Second) of Torts, §402A and the comments thereto, as codified by S. C. Code Ann. § 15-73-30.

FOR A FORTY-NINTH DEFENSE

This Defendant denies that it designed, manufactured, sold, or otherwise placed into the stream of commerce any products or materials which could have caused Plaintiff to be exposed to asbestos. Nonetheless, insofar as the Complaint may be construed to allege product liability claims

against this Defendant on any theory, this Defendant avers that any such products or materials, and any conduct of this Defendant were in conformity with the state of the art in science, medicine, technology, and prevailing regulations, industry standards, customs, and practices at all times material to Plaintiffs' claims. This Defendant further avers that the state of medical, scientific, and technological knowledge at all times material to Plaintiffs' claims was such that this Defendant neither knew, nor could reasonably have known of the risks alleged in the Complaint, which are denied. Therefore, this Defendant is not liable to Plaintiffs.

FOR A FIFTIETH DEFENSE

Under the South Carolina Contribution Among Tortfeasors Act, S.C. Code Ann. §15-38-15 (2005), the damages for which Plaintiffs seek recovery against this Defendant are limited to the percentage of fault, if any, attributable to the conduct of this Defendant.

FOR A FIFTY-FIRST DEFENSE

Defendant would show that Plaintiffs' claims for punitive damages is barred, reduced, bifurcated, capped, or otherwise impacted by the South Carolina Fairness in Civil Justice Act of 2011 and/or similar and/or related statutes and limitations.

FOR A FIFTY-SECOND DEFENSE

Plaintiff was employed by a knowledgeable and sophisticated user/employer and any duty this Defendant may have had to warn Plaintiff of any potential dangers incident to use of this Defendant's products, which duty is denied, was discharged by the employer's intervening duty to give Plaintiff warning.

FOR A FIFTY-THIRD DEFENSE

Upon information and belief, Plaintiff has failed to mitigate or otherwise act to lessen or reduce the injuries and disabilities alleged in the Complaint.

FOR A FIFTY-FOURTH DEFENSE

This Defendant states that at all times alleged in the Complaint the products alleged to have caused Plaintiff's injuries were manufactured, supplied and/or installed in compliance with reasonably precise government specifications and contracts and conform to those specifications and contracts. Said specification and contract requirements were for a specific intended use by the United States government and there were not known or perceived dangers in the use of said materials that were not equally known and perceived by the United States government.

FOR A FIFTY-FIFTH DEFENSE

This Defendant reserves the right to assert all other defenses available to it under law at the time of trial and reserves the right to amend this Answer to include additional defenses that discovery may reveal to be appropriate.

FOR A FIFTY-SIXTH DEFENSE

This Defendant incorporates by reference any and all affirmative defenses not adverse to this Defendant asserted by other Defendants in this action as though the same were set forth fully herein.

WHEREFORE, having fully answered Plaintiffs' Complaint, LTL respectfully prays that the Court:

- A. Dismiss Plaintiffs' claims with prejudice;
- B. Enter judgment in favor of LTL against all Plaintiffs' claims;
- C. Award LTL attorneys' fees and costs incurred in defending the claims set forth in Plaintiffs' Complaint and all previous pleadings; and
- D. Grant such other and further relief as the Court deems just and proper.

THIS DEFENDANT RESPECTFULLY DEMANDS A JURY TRIAL.

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