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**SC Court of Appeals**

THE STATE OF SOUTH CAROLINA  
In The Court of Appeals

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

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

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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.

# EXHIBIT 120

SUPERIOR COURT OF NEW JERSEY  
LAW DIVISION - MIDDLESEX COUNTY  
DOCKET NO. MID-L-3095-18 AS

- - -

MARIA FOLEY AND JOSEPH FOLEY,  
husband and wife,

Plaintiffs,

vs.

AVON PRODUCTS, INC., et al.,

Defendants.

(Caption continued on following  
page)

- - -

Friday, March 8, 2019

- - -

VOLUME II

Videotaped deposition of NANCY  
MUSCO, taken pursuant to Notice at the 1  
Middlesex County Courthouse, 56 Paterson  
Street, New Brunswick, New Jersey 08901,  
commencing at 10:19 AM, on the above date,  
before Constance S. Kent, Certified Court  
Reporter and Notary Public for the State of  
New Jersey.

\* \* \*

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1 SUPERIOR COURT OF NEW JERSEY  
2 LAW DIVISION - MIDDLESEX COUNTY  
3 DOCKET NO. MID-L-600-18 AS  
4 LISA FRACE, Individually :  
5 and as representative of the :  
6 Estate of Carole DiCerbo, :  
7 deceased. :

8 Plaintiffs, :

9 vs. :

10 BRENNTAG NORTH AMERICA, :  
11 et al., :

12 Defendants. :

13  
14 SUPERIOR COURT OF NEW JERSEY  
15 LAW DIVISION - MIDDLESEX COUNTY  
16 DOCKET NO. MID-L-4252-18 AS

17 VICMAR GATMAITAN, :  
18 individually and as :  
19 Representative of the :  
20 Estate OF MELISSA E. :  
21 ROONEY, deceased, :

22 Plaintiffs, :

23 vs. :

24 IMERYS TALC AMERICA, INC., :  
25 et al., :

Defendants. :

(Caption continued on following page.)  
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1 SUPERIOR COURT OF NEW JERSEY  
2 LAW DIVISION - MIDDLESEX COUNTY  
3 DOCKET NO. MID-L-4826-18 AS  
4 EMMA GRIFFIN and WALTER :  
5 GRIFFIN, husband and wife, :

6 Plaintiffs, :

7 v. :

8 CYPRUS AMAX MINERALS :  
9 COMPANY, et al., :

10 Defendants. :

11  
12 SUPERIOR COURT OF NEW JERSEY  
13 LAW DIVISION - MIDDLESEX COUNTY  
14 DOCKET NO. MID-L-5368-17 AS

15 MATTHEW HODJERA and :  
16 SYLVIA DUFF-PETO, :

17 Plaintiffs, :

18 v. :

19 BORGWARNER MORSE TEC, :  
20 LLC, et al, :

21 Defendants. :

(Caption continued on following page.)  
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1 SUPERIOR COURT OF NEW JERSEY  
2 LAW DIVISION - MIDDLESEX COUNTY  
3 DOCKET NO. MID-L-6805-18 AS

4 ANITA GRABOWSKI and ALFRED :  
5 GRABOWSKI, husband and wife, :

6 Plaintiffs, :

7 v. :

8 BRENNTAG NORTH AMERICA, :  
9 et al., :

10 Defendants. :

11  
12 SUPERIOR COURT OF NEW JERSEY  
13 LAW DIVISION - MIDDLESEX COUNTY  
14 DOCKET NO. MID-L-2456-18 AS

15 ROBERT GREENE, III, :  
16 individually and as :  
17 Administrator of the :  
18 Estate of Deborah :  
19 Greene Brake, deceased, :  
20 Stephen A. Brake, and :  
21 the individual heirs of :  
22 the Estate of Deborah :  
23 Green Brake, :

24 Plaintiffs, :

25 v. :

26 BRENNTAG NORTH AMERICA, :  
27 et al., :

28 Defendants. :

(Captioned continued on following page.)  
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1 SUPERIOR COURT OF NEW JERSEY  
2 LAW DIVISION - MIDDLESEX COUNTY  
3 DOCKET NO. MID-L-7049-16 AS  
4 D'ANGELA M. McNEILL- :  
5 GEORGE, :

6 Plaintiff, :

7 v. :

8 BRENNTAG NORTH AMERICA, :  
9 et al., :

10 Defendants. :

11  
12 SUPERIOR COURT OF NEW JERSEY  
13 LAW DIVISION - MIDDLESEX COUNTY  
14 DOCKET NO. MID-L-598-18 AS

15 LORETTA SELVAGGIO, :

16 Plaintiff, :

17 v. :

18 BRENTAG NORTH AMERICA, :  
19 et al., :

20 Defendants. :

21  
22 SUPERIOR COURT OF NEW JERSEY  
23 LAW DIVISION - MIDDLESEX COUNTY  
24 DOCKET NO. MID-L-6635-18 AS

25 LEONARD E. WENDOWSKI, SR., :  
26 and KATHLEEN WENDOWSKI, :  
27 husband and wife, :

28 Plaintiff, :

29 v. :

30 IMERYS TALC AMERICA, INC., :  
31 et al., :

32 Defendants. :

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19 Inc.

20 ALSO PRESENT:  
21  
22 Lea Callahan, Paralegal  
23  
24 Ray Moore, Video Specialist  
25

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|    | that asbestos lurked in          |
|    | its baby powder"                 |
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1 Q. Okay. What specifically did  
2 you review?  
3 A. I specifically asked to see the  
4 Joly file.  
5 Q. Okay. And is there a Joly  
6 file?  
7 A. When I say the file, I wanted  
8 to see what the actual complaint was in  
9 that case.  
10 Q. So when you said you reviewed  
11 the Joly file, the only thing you asked for  
12 was the complaint, nothing else?  
13 A. Well, I was curious to see what  
14 the complaint was. In this case it was not  
15 talcosis, I believe it was an acute  
16 bronchitis.  
17 Q. Did you understand my question?  
18 A. I believe so, yes.  
19 Q. Okay. My question to you was:  
20 Did you review -- did you ask to see  
21 anything other than the complaint filed?  
22 A. I asked to see the complaint  
23 filed, that was it.  
24 Q. Did you ask to see any of the  
25 discovery from the Joly case?

MAGNA LEGAL SERVICES

1. No, I did not because when I  
2 saw the complaint and saw it was acute  
3 bronchitis, I didn't think it was within  
4 the scope.  
5 Q. Okay. Let me ask the question  
6 again: Did you ask to see any of the  
7 discovery from the Joly case?  
8 MR. BERNARDO: Object to the  
9 form of the question.  
10 THE WITNESS: No, I did not.  
11 BY MR. PLACITELLA:  
12 Q. Okay. And you understand that  
13 the Joly case involved alleged injury to  
14 exposure to baby powder, correct?  
15 A. That was the alleged  
16 allegation, yes.  
17 Q. In addition to the Joly  
18 complaint, what other documents did you  
19 look at?  
20 A. As I said earlier, my  
21 deposition from last time we met.  
22 Q. So just the Joly complaint and  
23 your deposition?  
24 A. That's correct.  
25 Q. Okay. And did you speak to any  
MAGNA LEGAL SERVICES

1 fact witnesses?  
2 A. No, I did not.  
3 Q. Okay. Did you discuss your --  
4 the substance of your testimony with  
5 Counsel?  
6 A. In general terms, yes.  
7 Q. Okay. Did anything that -- any  
8 of those discussions cause you to change  
9 your testimony in any material way?  
10 MR. BERNARDO: Object to the  
11 form of the question.  
12 THE WITNESS: No.  
13 BY MR. PLACITELLA:  
14 Q. Okay. And how much more time  
15 did you spend between the last deposition  
16 and today's deposition preparing?  
17 A. It was about three hours.  
18 Q. Three hours.  
19 And during the last -- it's  
20 been about three weeks since you were  
21 deposed the last time?  
22 A. I believe so, yes.  
23 Q. Did you check with the Law  
24 Department for any responsive answers that  
25 were called for that we discussed the last  
MAGNA LEGAL SERVICES

1 time in your deposition?  
2 A. No, I had no communications  
3 with them.  
4 Q. Did you check -- the last time  
5 you told us that there -- there may be  
6 materials that were responsive with outside  
7 counsel.  
8 Do you recall that?  
9 MR. BERNARDO: Object to the  
10 form of the question.  
11 THE WITNESS: Yes.  
12 BY MR. PLACITELLA:  
13 Q. Okay. Did you check with  
14 outside counsel to determine what  
15 responsive materials were in possession of  
16 your lawyers?  
17 A. No, I did not check with any  
18 outside counsels.  
19 Q. Last time you told us you  
20 verified interrogatories on more than one  
21 occasion.  
22 Do you recall that?  
23 A. Yes.  
24 Q. Did you look for any additional  
25 interrogatories that you verified in  
MAGNA LEGAL SERVICES

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1 addition to the Krushinski case?  
 2 A. No, I did not.  
 3 Q. Why not?  
 4 A. Because I did not believe that  
 5 they were within the scope.  
 6 Q. Okay. And you, the witness,  
 7 were making a determination about what was  
 8 within and not within the scope of the  
 9 subpoena served on Johnson & Johnson?  
 10 A. Yes, my interpretation of it  
 11 and also with advice of Counsel.  
 12 Q. Okay. Now, last time we  
 13 addressed a number of topics. We addressed  
 14 Johnson & Johnson litigation history.  
 15 Do you recall that?  
 16 A. Yes.  
 17 Q. Okay. We addressed discovery  
 18 Johnson -- discovery responses that Johnson  
 19 & Johnson says they were able to locate.  
 20 Do you recall that?  
 21 A. Yes.  
 22 Q. Okay. We addressed  
 23 representations that were made in some of  
 24 those discovery responses.  
 25 Do you recall that?  
 MAGNA LEGAL SERVICES

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1 BY MR. PLACITELLA:  
 2 Q. And you understand that that's  
 3 why we're here in the courthouse having  
 4 your deposition taken as opposed to  
 5 Counsel's office, correct?  
 6 MR. BERNARDO: Object to the  
 7 form of the question.  
 8 THE WITNESS: I know that the  
 9 venue was changed at the suggestion of the  
 10 court, but...  
 11 BY MR. PLACITELLA:  
 12 Q. Okay. Well -- so I'm going to  
 13 tell you what I'm going to do today so  
 14 we're all on the same page. I'm going to  
 15 address the objections that you raised  
 16 directly and see if we can sort them out.  
 17 Okay?  
 18 A. Okay.  
 19 MR. BERNARDO: Objection.  
 20 BY MR. PLACITELLA:  
 21 Q. And I'm going to hope to make  
 22 clear exactly what information you reviewed  
 23 in preparation for your deposition and what  
 24 was made available to you. Okay?  
 25 A. Okay.  
 MAGNA LEGAL SERVICES

Page 312

1 A. Yes.  
 2 Q. Okay. We also discussed the  
 3 basis for the representations that were  
 4 made in Johnson & Johnson's discovery  
 5 responses, correct?  
 6 A. Yes.  
 7 Q. Okay. Now, you understand  
 8 that -- and during the course of that  
 9 deposition, both you and your counsel  
 10 objected to the scope of a number of  
 11 questions that I asked you, correct?  
 12 A. Yes.  
 13 MR. BERNARDO: Object to the  
 14 form of the question.  
 15 BY MR. PLACITELLA:  
 16 Q. Correct?  
 17 A. Yes.  
 18 Q. Okay. And you understand that  
 19 we appeared before the court here in  
 20 Middlesex County to address the concerns  
 21 raised by your counsel, correct?  
 22 MR. BERNARDO: Object to the  
 23 form of the question.  
 24 THE WITNESS: I understand that  
 25 there was a conversation, yes.  
 MAGNA LEGAL SERVICES

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1 MR. BERNARDO: Object to the  
 2 form of the question.  
 3 BY MR. PLACITELLA:  
 4 Q. And when I'm done with that,  
 5 I'm going to finish going through the  
 6 information that we believe is relevant to  
 7 this deposition. Okay?  
 8 A. Okay.  
 9 Q. Okay. So the last time we were  
 10 together, at the end of the deposition,  
 11 you, Johnson & Johnson, produced a number  
 12 of binders that were in a Bankers box.  
 13 Do you recall that?  
 14 A. Yes, I do.  
 15 Q. And you testified that those  
 16 binders were documents that you reviewed  
 17 and considered in conjunction with your  
 18 preparation for the deposition, correct?  
 19 MR. BERNARDO: Object to the  
 20 form of the question and the  
 21 characterization of her testimony.  
 22 THE REPORTER: I'm sorry. Can  
 23 we go off the record for a second?  
 24 THE VIDEOGRAPHER: The time is  
 25 now 10:27 AM. We're going off the record.  
 MAGNA LEGAL SERVICES

1 (Discussion held off the  
2 record.)  
3 THE VIDEOGRAPHER: The time is  
4 now 10:28 AM. We are back on the record.  
5 BY MR. PLACITELLA:  
6 Q. You and your counsel  
7 represented at the end of the deposition  
8 that the binders that you produced were  
9 documents that you reviewed and considered  
10 in connection with your preparation for the  
11 deposition, correct?  
12 MR. BERNARDO: Object to the  
13 form of the question.  
14 THE WITNESS: Yes, there were a  
15 number of binders that were in that box,  
16 yes.  
17 BY MR. PLACITELLA:  
18 Q. Okay. And that you also sent  
19 all of those binders with -- to John  
20 Hopkins and had a conversation about them,  
21 correct?  
22 MR. BERNARDO: Object to the  
23 form of the question.  
24 And Mr. Placitella, if we could  
25 be specific because there are a lot of  
MAGNA LEGAL SERVICES

1 binders and I don't think her testimony was  
2 that all of them were sent.  
3 I'm just asking that you let  
4 her see so we can be clear as to what was  
5 sent and not sent to have a clear record.  
6 MR. PLACITELLA: Okay.  
7 BY MR. PLACITELLA:  
8 Q. So you have all the binders in  
9 front of you to your right.  
10 Do you see them?  
11 A. I see binders, yes.  
12 Q. Okay. And do we need to go  
13 through them again so we're all on the  
14 same --  
15 A. Well, I need to be familiar  
16 with what specifically they are, yes.  
17 Q. Okay. So why don't we start  
18 with the lowest numbered binder, which I  
19 think is 6.  
20 A. Yes, 6 is the lowest.  
21 Q. Okay. So what is 6?  
22 A. It is the deposition of  
23 Dr. Hopkins --  
24 Q. Okay.  
25 A. -- and testimony.

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1 Q. And you reviewed that?  
2 A. I reviewed that, yes. This --  
3 I did not send this or we did not send this  
4 to Dr. Hopkins, but I reviewed it.  
5 Q. Okay. And then the next binder  
6 is what?  
7 A. This would be P-7.  
8 Q. Uh-huh. And P-7 is what?  
9 A. This looks to be different  
10 complaint cases, first one being Selby.  
11 Q. Do you recall reviewing this  
12 binder?  
13 A. Yes.  
14 Q. Okay. And did you send this to  
15 Dr. Hopkins?  
16 A. No.  
17 Q. Okay. But it was one of the  
18 binders that you --  
19 A. It was in the box that we  
20 presented to you.  
21 Q. And that you relied upon?  
22 MR. BERNARDO: Object to the  
23 form of the question.  
24 BY MR. PLACITELLA:  
25 Q. You reviewed it in preparation  
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1 for your deposition?  
2 A. I reviewed, yes.  
3 Q. Okay. And what's the next  
4 numbered binder?  
5 A. P-8A.  
6 Q. All right. Is there an 8A and  
7 an 8B?  
8 A. Yes, there is.  
9 Q. And what are they collectively?  
10 A. They are a lot of it looks like  
11 testing material.  
12 Q. And this -- did you review 8A  
13 and 8B in preparation for your deposition?  
14 A. I did not review each one of  
15 these, but I was familiar with these and I  
16 believe these were sent to Dr. Hopkins.  
17 Q. And then you had a conversation  
18 with Dr. Hopkins about those binders?  
19 A. We had a conversation -- a  
20 specific conversation about certain  
21 testing.  
22 Q. But -- so those binders were  
23 produced as documents you relied upon for  
24 your deposition, correct?  
25 MR. BERNARDO: Object to the  
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1 form of the question.  
2 THE WITNESS: I looked at them,  
3 I cannot tell you everything that's in  
4 them, and they were a basis, yes.  
5 BY MR. PLACITELLA:  
6 Q. Okay. And all those binders  
7 were also sent to -- those binders were  
8 sent to Dr. Hopkins, correct?  
9 A. Yes, 8A and 8B.  
10 Q. Okay. And you identified them  
11 at the end of the last deposition as part  
12 of your reliance materials, correct?  
13 MR. BERNARDO: Object to the  
14 form of the question.  
15 THE WITNESS: They're part of  
16 what I saw, yes.  
17 BY MR. PLACITELLA:  
18 Q. Okay. And then what's the next  
19 numbered --  
20 A. P-9.  
21 Q. P-9 is what?  
22 A. This was something that you  
23 sent to -- to my counsel right before our  
24 last deposition I believe.  
25 Q. Right. You understand that I  
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1 had an agreement with your counsel that any  
2 document that Johnson & Johnson did not  
3 produce directly and was not admitted into  
4 a trial or prior deposition that I located  
5 I would send to Counsel so they could share  
6 it with you.

7 You understand that, correct?

8 MR. BERNARDO: Object to the  
9 form of the question.

10 THE WITNESS: I don't know  
11 exactly what your agreement was.

12 BY MR. PLACITELLA:

13 Q. Okay. Well, did you review  
14 that binder?

15 A. I did see this, yes.

16 Q. Okay. Now, in the last  
17 deposition, you were asked specific  
18 questions about the Edley -- the Edley  
19 case.

20 Do you recall that?

21 A. I remember the name.

22 Q. Correct?

23 A. I remember that name, yes.

24 Q. Okay. In fact, I asked you  
25 multiple questions about the Edley case,

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1 correct?  
2 A. I believe so.  
3 Q. And every time I asked you a  
4 question about the Edley case, your  
5 response to me was basically you don't know  
6 anything about the Edley case, you've never  
7 seen anything about the Edley case,  
8 correct?  
9 MR. BERNARDO: Object to the  
10 form of the question.  
11 THE WITNESS: Yes, because my  
12 understanding was it was not within the  
13 scope of the notice.  
14 BY MR. PLACITELLA:  
15 Q. Okay. Well, let's make sure  
16 we're on the same page here. So if --  
17 MR. PLACITELLA: Do you have  
18 the iPad?  
19 BY MR. PLACITELLA:  
20 Q. Under oath on page 105, you  
21 state: I'm not familiar with the cases,  
22 and that includes the Edley and the Yuhas  
23 case, right?  
24 A. That's correct.  
25 Q. Okay. And then on page 220 and  
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221, you were asked again whether in  
preparation for the deposition you ever  
reviewed any information concerning the  
Edley case and you said no, correct?

A. That's correct.

Q. And then on 21, I said:

"So Johnson & Johnson doesn't  
know anything about the Edley case?"

Mr. -- Mr. Bernardo objected  
that it was beyond the scope, and you said:

"In preparation for today, I  
did not review that case."

Correct?

MR. BERNARDO: Objection to the  
form of the question.

THE WITNESS: That's correct.

BY MR. PLACITELLA:

Q. And you repeated again in  
response to questions on 221, that you knew  
nothing about the Edley case, correct?

A. That's correct.

Q. And then on -- I'm sorry.  
That's the problem. Then on 2 -- page  
223 or 224, I asked you -- and 225, I asked  
you questions about an affidavit that was

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1 filed in the Edley case by Roger Miller.  
2 Do you recall that?  
3 MR. BERNARDO: Object to the  
4 form of the question.  
5 And I'm just going to renew the  
6 same objections I made in the transcript  
7 that you're referring to --  
8 MR. PLACITELLA: Okay.  
9 MR. BERNARDO: -- so as not to  
10 interrupt these questions.  
11 MR. PLACITELLA: All right.  
12 BY MR. PLACITELLA:  
13 Q. Correct? I asked you about the  
14 Miller affidavit --  
15 A. Yes, you did.  
16 Q. -- from the Edley case?  
17 And I showed you the affidavit  
18 and you said you didn't know anything about  
19 it, right?  
20 MR. BERNARDO: Object to the  
21 form of the question.  
22 THE WITNESS: I was not  
23 familiar with it, no.  
24 BY MR. PLACITELLA:  
25 Q. Okay. And then on page 227, I  
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1 asked you again about the Miller affidavit  
2 submitted in the Edley case.  
3 Do you see that?  
4 A. Yes.  
5 MR. BERNARDO: Object to the  
6 form of the question. Same objection.  
7 BY MR. PLACITELLA:  
8 Q. And then again your counsel  
9 objected and you said you didn't know  
10 anything about it, right?  
11 MR. BERNARDO: Object to the  
12 form of the question. Same objection.  
13 THE WITNESS: Yes, because I  
14 did not believe it was in the scope, so I  
15 had not reviewed it, no.  
16 BY MR. PLACITELLA:  
17 Q. Okay. Can you go to the 8A  
18 binder, please?  
19 This is one of the binders you  
20 reviewed in preparation for your  
21 deposition, correct?  
22 A. This was the basis of one --  
23 one of -- some of the conversations that I  
24 had in preparation for this.  
25 Q. Okay.

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1 A. Yes.  
2 Q. And under 8A, can you go to tab  
3 33, please?  
4 A. 33 in 8A?  
5 Q. 33 in 8A.  
6 Now, 33 in the -- in your  
7 binder, 8A, is captioned in the Edley case,  
8 correct?  
9 A. I'm not seeing that it says  
10 Edley here. Oh, yes, okay.  
11 Q. Edley. And can you turn to the  
12 next page in your binder? You see there's  
13 an affidavit in the Edley case?  
14 A. Yes.  
15 Q. Right? And that affidavit is  
16 sworn to by Roger Miller, correct?  
17 A. I see that, yes.  
18 Q. All right. And the date for  
19 that affidavit -- and that's his signature,  
20 and the date for that affidavit is 1991,  
21 correct?  
22 A. Yes.  
23 Q. Okay. And he was the president  
24 of your mining company, correct?  
25 MR. BERNARDO: Object to the  
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1 of the question and beyond the scope  
2 of the notice.  
3 The witness can answer in her  
4 personal capacity, and I'll assert this for  
5 any questions on --  
6 MR. PLACITELLA: You can assert  
7 all you want, but --  
8 MR. BERNARDO: Mr.  
9 Placitella --  
10 MR. PLACITELLA: -- it's in her  
11 review materials.  
12 I just want to make clear so I  
13 court that listens to your objections about  
14 scope understands exactly what we're  
15 talking about.  
16 MR. BERNARDO: And I appreciate  
17 that, Mr. Placitella. I'm not trying to  
18 pick a fight here and you seem to be  
19 getting angry.  
20 MR. PLACITELLA: I'm not angry.  
21 MR. BERNARDO: But you  
22 interrupted my objection, and I'm simply  
23 trying to preserve it for the record so  
24 that I don't repeat it and interrupt your  
25 questioning.



1 So I'm asking for a running  
2 objection with respect to questions about  
3 this affidavit.  
4 MR. PLACITELLA: Okay. You  
5 have any running objection you want about  
6 what's ever in the books that she reviewed.  
7 How's that?  
8 MR. BERNARDO: Thank you.  
9 MR. PLACITELLA: Okay.  
10 BY MR. PLACITELLA:  
11 Q. So what he says is:  
12 "I'm the president of Windsor  
13 Minerals."  
14 Correct?  
15 A. I see that in the second  
16 paragraph, yes.  
17 Q. And what he says is that:  
18 "The exclusive business of  
19 Windsor Minerals has been for the last  
20 18 years, the mining and milling of talc  
21 from a single mining district in Windsor,  
22 Vermont."  
23 Correct?  
24 A. That's what it says here.  
25 Q. Okay. And:  
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1 "The mining district is the  
2 exclusive source for all of the Johnson's  
3 Baby Powder sold in the United States."  
4 Correct?  
5 A. That's what it says here.  
6 Q. Okay. It says:  
7 "In addition to supplying the  
8 talc for Johnson's Baby Powder, Windsor  
9 Minerals also sells a portion of its  
10 product to independent industrial users."  
11 Correct?  
12 A. That's what it says.  
13 Q. Okay. And what he swears to  
14 under oath, he says:  
15 "All of the talc mined by  
16 Windsor Minerals, Inc., whether it is  
17 ultimately sold to industrial users or used  
18 in Johnson's Baby Powder, is sampled and  
19 tested for the presence of asbestos."  
20 Correct?  
21 A. That's what he says.  
22 Q. And he swears under oath:  
23 "No evidence of the presence of  
24 asbestos in Windsor Minerals product has  
25 ever been revealed by this testing."  
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1 Correct?

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

3 Q. Okay. And then this affidavit

4 was then used to have Mr. Edley, right here

5 in this courthouse, dismiss his lawsuit

6 based upon the representations made by

7 Windsor Minerals and Johnson & Johnson,

8 correct?

9 MR. BERNARDO: Object to --

10 object to the form of the question. Well

11 beyond the scope of the notice.

12 You can answer in your

13 individual capacity.

14 THE WITNESS: I -- that seems

15 to be a legal question. I don't know what

16 was used or what wasn't used.

17 BY MR. PLACITELLA:

18 Q. Okay. Well, let's go to the

19 cover letter that's in your binder.

20 You see there's a binder

21 here -- a letter on July 23rd, 1997?

22 A. Which tab is that?

23 Q. It's still under tab 33.

24 MR. BERNARDO: And same

25 objection with respect to the use of this

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1 document and questions pertaining to it.  
2 MR. PLACITELLA: You can have a  
3 running objection to every question I ask  
4 about what's in her binder.  
5 MR. BERNARDO: Okay. From time  
6 to time --  
7 MR. PLACITELLA: You don't have  
8 to keep doing it.  
9 MR. BERNARDO: From time to  
10 time, I will renew it.  
11 MR. PLACITELLA: Okay.  
12 THE WITNESS: What are you  
13 referring to here?  
14 BY MR. PLACITELLA:  
15 Q. The July 23rd, 1987 letter.  
16 A. I see that, yes.  
17 Q. Okay. And these -- this is  
18 from your lawyers to Ronald Grayzel, who  
19 has an office right here in Edison,  
20 New Jersey.  
21 Do you see that?  
22 A. I see that's the address here,  
23 yes.  
24 Q. Right. And your lawyer's  
25 offices are right here two blocks from the  
MAGNA LEGAL SERVICES

1 courthouse.

2 Do you see that?

3 A. I don't -- I see that there's

4 some of the addresses. I don't even know

5 who any of these people are, so that's what

6 it says here.

7 Q. And it says:

8 "Dear Mr. Grayzel, Enclosed

9 please find the affidavit on behalf of

10 Windsor Minerals signed by Roger Miller,

11 president of Windsor Minerals since 1968.

12 Also enclosed you'll find an assay from

13 McCrone Environmental Services."

14 Do you see that?

15 A. That's what it says.

16 Q. "I trust that these documents

17 will now enable you to sign a dismissal as

18 was done in the Yuhas file."

19 Do you see that?

20 A. That's what it says.

21 Q. Okay. And then if you go to

22 the first page in your tab 33, on the same

23 exact date that your letter was sent,

24 Mr. Grayzel signed a stipulation of

25 dismissal with prejudice dismissing his

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1. Q. Now, do you recall I asked you  
2 last time whether Mr. Miller had signed  
3 other similar affidavits during the course  
4 of the litigation that were used to get  
5 people to dismiss their cases.  
6 Do you recall that?  
7 A. I don't recall that specific  
8 question, no.  
9 Q. Do you recall whether I asked  
10 you about the Faye Miller case?  
11 A. I don't remember that, no.  
12 Q. Can you go to your binder, P-9.  
13 P-9, if you flip to, like, the third page  
14 is an affidavit in the Faye Miller case  
15 signed by Roger Miller.  
16 Do you see that? I put it up  
17 on the screen.  
18 A. I see that on the screen, yes.  
19 Q. All right. And again, Roger  
20 Miller states under oath:  
21 "All of the talc mined by  
22 Windsor Minerals has been regularly sampled  
23 and tested for the presence of asbestos.  
24 No evidence of the presence of asbestos in  
25 Windsor Minerals product has ever been

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1 client's case against your company,  
2 correct?

3 MR. BERNARDO: Object to the  
4 form of the question.

5 THE WITNESS: That's what it  
6 says here.

7 BY MR. PLACITELLA:

8 Q. Right. Now, you also stated in  
9 your prior deposition that you have no  
10 knowledge of the Yuhas case and what  
11 happened to it, correct?

12 A. And that's correct.

13 Q. But actually you do know what  
14 happened to it because in your tab 33, your  
15 lawyers make clear what happened to the  
16 Yuhas file, it was dismissed just like the  
17 Edley case, correct?

18 MR. BERNARDO: Object --

19 BY MR. PLACITELLA:

20 Q. That's what it says.

21 MR. BERNARDO: Object to the  
22 form of the question.

23 THE WITNESS: That's what it  
24 says here, yes.

25 BY MR. PLACITELLA:

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1 revealed by this testing."  
2 Correct?  
3 MR. BERNARDO: Object to the  
4 form of the question.  
5 BY MR. PLACITELLA:  
6 Q. That's what he says, right?  
7 MR. BERNARDO: Beyond the  
8 scope.  
9 You can answer in your  
10 individual capacity if you can.  
11 THE WITNESS: I see that it  
12 says that there, yes.  
13 BY MR. PLACITELLA:  
14 Q. Okay. And the last time we  
15 were together, you also testified under  
16 oath that the only thing you reviewed in  
17 reference to the Gambino case was the  
18 complaint as that was all that was  
19 available.  
20 Do you recall that testimony?  
21 A. I remember talking about the  
22 Gambino, yes. And I reviewed -- or I --  
23 the things that I reviewed were any  
24 responses to discovery questions or  
25 interrogatories.

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1 MR. BERNARDO: Object to the  
2 form of the question.  
3 THE WITNESS: I did not see  
4 these before, no.  
5 BY MR. PLACITELLA:  
6 Q. Okay. So when you testified  
7 before under oath that Johnson & Johnson  
8 did not have any discovery responses as it  
9 related to the Gambino case, that was, in  
10 fact, a false statement, correct?  
11 MR. BERNARDO: Object to the  
12 form of the question.  
13 THE WITNESS: To the best of my  
14 understanding, it was true at the time.  
15 BY MR. PLACITELLA:  
16 Q. But what -- but it really was a  
17 false statement, ma'am. I'm not talking  
18 about you, Nancy Musco, I'm talking about  
19 Johnson & Johnson. You're here on behalf  
20 of Johnson & Johnson, and clearly Johnson &  
21 Johnson had this information in its  
22 possession when you testified the first  
23 time that there were no discovery responses  
24 available from the Gambino case, correct?  
25 MR. BERNARDO: Object to the  
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1 form of the question and to the  
2 characterization of her prior testimony.  
3 THE WITNESS: I don't know  
4 that.  
5 BY MR. PLACITELLA:  
6 Q. Okay. You -- last time I asked  
7 you about --  
8 MR. PLACITELLA: Do you have  
9 the Hopkins chart?  
10 BY MR. PLACITELLA:  
11 Q. Last time I asked you some  
12 questions about a chart that Dr. Hopkins  
13 prepared during his testimony.  
14 Do you recall that?  
15 A. Yes.  
16 Q. And what you told me under oath  
17 was that you never looked at the Hopkins  
18 chart in preparation for your deposition,  
19 correct?  
20 A. That was correct, yes.  
21 Q. And you said that you were  
22 never shown the Hopkins chart in  
23 preparation for your deposition, correct?  
24 A. I had not seen it specifically,  
25 no.

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1 Q. And you further testified under  
2 oath that you never discussed the Hopkins  
3 chart with Dr. Hopkins himself, correct?  
4 A. No, I did not.  
5 Q. Okay. Now, can you go to book  
6 8B? And can you turn to tab 78, please?  
7 Now, in your book that you gave  
8 me last -- at the end of the last  
9 deposition -- are you with me? Are you on  
10 tab 78? Yes?  
11 A. I am.  
12 Q. And what you have on tab 78 is  
13 a chart with Exhibit No. Hopkins 28,  
14 correct?  
15 A. That's what it says, yes.  
16 Q. Okay. And what you have in  
17 front of you, can you hold it up, is the  
18 big version of that chart so you can read  
19 it, correct? I have one here.  
20 A. It looks to be the same, yes.  
21 Q. All right. Hopkins-28, right?  
22 A. That's what it's called, yes.  
23 Q. Hopkins-28, the big version I  
24 have, is the blowup of the same chart in  
25 your book tab No. 78, correct?

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1 A. Yes.

2 Q. Okay. And the last time we

3 were together I asked you questions about

4 the Westfall case.

5 Do you recall that?

6 A. Yes, I do.

7 Q. Okay. And I think you said

8 that you were vaguely familiar with the

9 Westfall case, is that fair?

10 A. Yes.

11 Q. And that you denied any

12 knowledge that the mine at issue in the

13 Westfall case had asbestos in it, correct?

14 MR. BERNARDO: Object to the

15 form of the question, beyond the scope of

16 the notice, and the witness --

17 THE REPORTER: I'm sorry, sir?

18 MR. BERNARDO: Object to the

19 form of the question, beyond the scope of

20 the notice.

21 The witness may answer in her

22 personal capacity if she knows.

23 THE WITNESS: What was the

24 question?

25 BY MR. PLACITELLA:

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1 Q. In your -- well, let's just go  
2 to your testimony.  
3 I asked you on page 85:  
4 "You knew the mine that was  
5 owned by Johnson & Johnson that was the  
6 issue in the Westfall case had asbestos in  
7 it."  
8 Mr. Bernardo objected. I  
9 responded again:  
10 "You knew that?"  
11 And your response was:  
12 "No, I did not. I did not go  
13 into that detail with this because it was  
14 industrial talc."  
15 Do you see that?  
16 A. Yes.  
17 Q. Okay. And I then asked you if  
18 you ever read the deposition of the  
19 scientist who was deposed in the -- in the  
20 Westfall case.  
21 Do you recall that?  
22 A. Specifically, no.  
23 Q. Okay. Well, let's go to your  
24 testimony.  
25 You see that on page 206, I  
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1 said:  
2 "You never knew before you came  
3 here today that Johnson & Johnson's lawyers  
4 sat in a deposition where the scientists  
5 who did the tests on the Johnson & Johnson  
6 mine said they found asbestos in the mine?  
7 You never knew that?"  
8 And then there was an objection  
9 by Mr. Bernardo, artfully so, and --  
10 MR. BERNARDO: Which he renews  
11 here.  
12 MR. PLACITELLA: Which he can  
13 renew here all he wants. Thank you.  
14 BY MR. PLACITELLA:  
15 Q. And I handed you the transcript  
16 of Dr. Glen Hemstock.  
17 Do you see that?  
18 A. I see that, yes.  
19 Q. And then when I handed it to  
20 you, your attorney, Mr. Bernardo said:  
21 "And the same objection to  
22 asking the witness about depositions. It's  
23 beyond the scope and she's not read the  
24 deposition."  
25 Do you see that?  
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1 A. Yes.  
2 Q. Okay. And then I actually  
3 pulled out the Hemstock deposition and  
4 showed it to you and showed you where the  
5 general counsel from Johnson & Johnson was  
6 sitting in a deposition.  
7 Do you recall that?  
8 A. I recall you showing me that,  
9 yes.  
10 Q. Okay.  
11 MR. BERNARDO: Same objections  
12 as stated in that transcript.  
13 BY MR. PLACITELLA:  
14 Q. And do you recall that I --  
15 that I --  
16 MR. BERNARDO: Same objections  
17 as stated in that transcript.  
18 BY MR. PLACITELLA:  
19 Q. That I pointed to you on page  
20 17 of the transcript, and showed you where  
21 the scientist testified under oath that he  
22 found asbestos in the Johnson mine?  
23 Do you see that?  
24 A. I see that conversation --  
25 Q. Okay.  
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1 A. -- from last time, yes.  
2 Q. And I asked you:  
3 "That information was never  
4 relayed to you as the person who was either  
5 testifying here today or who certified  
6 interrogatory answers on behalf of Johnson  
7 & Johnson, correct?"  
8 And your answer to me was,  
9 under oath:  
10 "I have not seen this before,  
11 no. "  
12 Correct?  
13 A. I had not seen what you showed  
14 me, no.  
15 Q. Okay. Can you go to, in your  
16 book, in your reliance book, 8B, tab 55.  
17 You see at tab 55 in your  
18 reliance materials --  
19 A. I see --  
20 Q. -- is the deposition in the  
21 Westfall case of Glen Hemstock?  
22 MR. BERNARDO: Object to the  
23 form of the question.  
24 BY MR. PLACITELLA:  
25 Q. Do you see that?  
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1 A. I see that.  
2 Q. Okay. And do you see that  
3 present at the deposition was the general  
4 counsel for Johnson & Johnson?  
5 A. Where -- where am I seeing  
6 that?  
7 Q. The third page, you flip it  
8 over, and in your book it says, John M.  
9 Beidler, Esquire, General Counsel, Johnson  
10 & Johnson.  
11 Do you see that?  
12 A. Yes.  
13 Q. Okay. And then if you flip to  
14 your tab 57, there's the continuation of  
15 Dr. Hemstock's deposition in the Westfall  
16 case, correct?  
17 A. That's what it says, yes.  
18 Q. Okay. And if you turn to page  
19 17 of the deposition in your book. Got it?  
20 A. Yes.  
21 Q. The scientist is asked:  
22 "Now, you testified that your  
23 department has tested both processed talc  
24 and raw talc ore from the Emtal mine for  
25 the presence of chrysotile asbestos; is

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1 that correct?  
2 "Answer: Yes.  
3 "Has your department in its  
4 research found chrysotile asbestos in both  
5 processed talc and raw ore from the Emtal  
6 mine?  
7 "Answer: Yes."  
8 Do you see that?  
9 A. I see it says that, yes.  
10 Q. Okay. Now, in your deposition  
11 at page 268, I asked you under oath if you  
12 had any information related to the  
13 affidavit signed by your scientist, William  
14 Ashton.  
15 Do you recall that?  
16 A. Yes.  
17 MR. BERNARDO: Object to the  
18 form of the question, and a running  
19 objection with respect to this affidavit  
20 beyond the scope --  
21 MR. PLACITELLA: Okay.  
22 MR. BERNARDO: -- of the  
23 notice.  
24 BY MR. PLACITELLA:  
25 Q. Do you see that?  
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1 MR. BERNARDO: She can answer  
2 in her individual capacity.  
3 THE REPORTER: I'm so sorry.  
4 Can we go off the record?  
5 THE VIDEOGRAPHER: The time is  
6 now 11:05 AM. We are going off the record.  
7 (Discussion held off the  
8 record.)  
9 THE VIDEOGRAPHER: The time is  
10 now 11:07 AM. We are back on the record.  
11 BY MR. PLACITELLA:  
12 Q. Okay. So I'm going to go to --  
13 I asked you questions, if you recall, about  
14 what was attached to Dr. Ashton's  
15 affidavit, and I asked you whether he  
16 had -- attached to that affidavit was  
17 testimony from the Westfall case.  
18 Do you recall that?  
19 A. I recall discussing IT, yes.  
20 Q. Okay. And do you recall your  
21 telling me you had no idea what was  
22 attached to the Ashton affidavit?  
23 A. I had not seen it before.  
24 Q. Right. And what you testified  
25 to under oath was that you had -- you had  
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1 never seen and had -- did not have the  
2 Ashton affidavit available to you, correct?  
3 MR. BERNARDO: Object to the  
4 form of the question.  
5 THE WITNESS: I believe I told  
6 you in the beginning when we talked about  
7 Westfall that because it was dealing with  
8 industrial talc, I did not feel it was  
9 within -- within the scope of the notice  
10 that you had sent.  
11 BY MR. PLACITELLA:  
12 Q. Ma'am, you testified under oath  
13 that you had never seen the Ashton  
14 affidavit and you didn't know anything  
15 about it, correct?  
16 MR. BERNARDO: Object to the  
17 form of the question.  
18 THE WITNESS: Yes, that's  
19 correct.  
20 BY MR. PLACITELLA:  
21 Q. Okay. So can we go to your  
22 reliance materials on 8B, No. 53.  
23 MR. BERNARDO: Object to the  
24 form of the question.  
25 BY MR. PLACITELLA:  
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1 Q. And actually, in your reliance  
2 materials under tab 53 is the Ashton  
3 affidavit, correct?  
4 MR. BERNARDO: Object to the  
5 form of the question.  
6 THE WITNESS: That's what it  
7 says here.  
8 BY MR. PLACITELLA:  
9 Q. Okay. And what Dr. Ashton says  
10 in his affidavit is:  
11 "From the 1940s through the  
12 1980s, talc mined in Vermont, and  
13 specifically the talc mined by Engelhard  
14 and its predecessors from the talc mine  
15 located in Johnson, Vermont, (the Johnson  
16 mine), has been considered to be talc-free  
17 from contamination by asbestos."  
18 Correct?  
19 A. That's what it says.  
20 Q. Okay. And in paragraph 8 of  
21 your executive's affidavit, Mr. Ashton, he  
22 talks about attaching the testimony of  
23 Dr. Chidester.  
24 Do you see that?  
25 A. I see it says that.  
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1 BY MR. PLACITELLA:  
2 Q. Well, let's take a look. I  
3 flipped it for you. You see Westfall,  
4 Docket No. 0269?  
5 A. Yes, I see it says that.  
6 Q. Right. You see the Chidester  
7 deposition, Docket No. 0269 in your  
8 reliance materials?  
9 A. Uh-huh, yes.  
10 Q. Okay. Now, when you attached  
11 that affidavit -- when you attached that  
12 transcript to the -- to the -- to your  
13 affidavit, I mean, you, Johnson & Johnson,  
14 you knew that Dr. Chidester had told you  
15 privately that he actually found asbestos  
16 in Vermont mines, correct?  
17 MR. BERNARDO: Object to the  
18 form of the question, beyond the scope of  
19 the notice.  
20 You can answer in your  
21 individual capacity if you can.  
22 THE WITNESS: I know nothing  
23 about that, no.  
24 BY MR. PLACITELLA:  
25 Q. Okay. Well --  
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1 Q. It says:  
2 "Dr. Chidester stated that he  
3 never found veins of chrysotile asbestos in  
4 talc located in Vermont."  
5 Do you see that?  
6 A. I see that sentence, yes.  
7 Q. Okay. And then what one of the  
8 documents that you, Johnson & Johnson,  
9 attached to this affidavit was the  
10 deposition of Dr. Chidester from the  
11 Westfall case, correct?  
12 MR. BERNARDO: Object to the  
13 form of the question. Also object to the  
14 use of this document, beyond the scope of  
15 the notice.  
16 THE WITNESS: I guess that's  
17 attached. I -- I don't know.  
18 BY MR. PLACITELLA:  
19 Q. And that's the same case -- the  
20 same docket number as the Hemstock  
21 deposition that you have also attached to  
22 your reliance materials as tab 57, right?  
23 MR. BERNARDO: Object to the  
24 form of the question.  
25 THE WITNESS: I don't know.  
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1 MR. PLACITELLA: Can you give  
2 me P-7?  
3 BY MR. PLACITELLA:  
4 Q. Can you go to your binder P-7,  
5 please?  
6 P-7, by the way, was this one  
7 of the reliance documents that you sent to  
8 Dr. Hopkins?  
9 MR. BERNARDO: Objection to the  
10 form of the question.  
11 THE WITNESS: No. 8A and 8B  
12 were sent to Dr. Hopkins.  
13 BY MR. PLACITELLA:  
14 Q. Okay. So can we go to tab 25?  
15 A. In P-7?  
16 Q. Yes, in P-7. You see tab 25 in  
17 P-7 are actually your answers to  
18 interrogatories in the Westfall case?  
19 Do you see that?  
20 A. Yes, they seem to be.  
21 Q. Okay. And if you go to page  
22 5 -- there's a thing that says, "As to AH  
23 Chidester."  
24 Do you see that?  
25 A. Yes.  
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1 Q. And it says, under Q5:  
2 "Have you ever found asbestos  
3 present in any testing of minerals taken  
4 from Vermont?"  
5 Do you see that?  
6 A. I see that question, yes.  
7 Q. And he -- and the response from  
8 Dr. Chidester is:  
9 "Yes. Asbestos is not found  
10 in -- is not found in a mineral, asbestos  
11 was tested by chemical analysis, x-ray and  
12 differential thermo analysis. The asbestos  
13 found was chrysotile."  
14 Correct?  
15 MR. BERNARDO: Object to the  
16 form of the question, beyond the scope of  
17 the notice.  
18 She can answer in her  
19 individual capacity if she can.  
20 THE WITNESS: I see all that  
21 written here.  
22 BY MR. PLACITELLA:  
23 Q. That statement is directly  
24 contrary to the sworn affidavit of Johnson  
25 & Johnson in the Ashton affidavit saying  
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1 asbestos was never found in Vermont,  
2 correct?

3 MR. BERNARDO: Object to the  
4 form of the question.

5 THE WITNESS: I can't answer  
6 because it's taken out of content (sic). I  
7 don't know what came before or after.

8 BY MR. PLACITELLA:

9 Q. Okay. Well, what content (sic)  
10 do you need? These are your answers.

11 MR. BERNARDO: Object to the  
12 form of the question.

13 THE WITNESS: The complete  
14 studies and what he's referring to and --

15 BY MR. PLACITELLA:

16 Q. Well, where are they?

17 A. Well, what was done, when I  
18 talked to Dr. Hopkins, I wanted to make  
19 sure that he was familiar with any  
20 allegations and evidence that had been  
21 brought forth, and so we had conversations  
22 about all this and really renewed my  
23 understanding that there is no asbestos in  
24 the cosmetic talc used in Johnson's Baby  
25 Powder.

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1 Q. Okay. Ma'am, your -- I move to  
2 strike your answer as non-responsive.  
3 Let me move further to Section  
4 C, page 9.  
5 Do you see that? In your  
6 answers to interrogatories. Do you see  
7 that?  
8 A. I see Section C, yes.  
9 Q. And you see this goes -- and  
10 it -- these are questions as it relates to  
11 Dr. Frederick Pooley.  
12 Do you see that?  
13 A. I see that name, yes.  
14 Q. He's your expert, right?  
15 MR. BERNARDO: Object to the  
16 form of the question.  
17 THE WITNESS: I don't know who  
18 he is.  
19 BY MR. PLACITELLA:  
20 Q. He -- well, you signed lots of  
21 interrogatories with his name in it, didn't  
22 you?  
23 MR. BERNARDO: Object to the  
24 form of the question.  
25 THE WITNESS: I did not sign  
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1 interrogatories with his name.  
2 BY MR. PLACITELLA:  
3 Q. You're sure?  
4 A. I don't remember doing that.  
5 Q. Okay. You don't know that he  
6 served as a consulting expert to Johnson &  
7 Johnson in talc cases from the 1980s well  
8 into the 2000s? You didn't know that?  
9 MR. BERNARDO: Object to the  
10 form of the question.  
11 THE WITNESS: I don't remember  
12 his name specifically, no.  
13 BY MR. PLACITELLA:  
14 Q. Did you know that he testified  
15 as little as a year ago on behalf of  
16 Johnson & Johnson under oath in -- in  
17 New York?  
18 A. He may have. I don't know  
19 that.  
20 Q. Okay. Did you -- you see here  
21 where it talks about what he did? It asks  
22 if he ever actually looked at the tissue of  
23 Mr. Westfall as the expert for Johnson &  
24 Johnson?  
25 MR. BERNARDO: Object to the  
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1 form of the question.  
2 BY MR. PLACITELLA:  
3 Q. See here it says:  
4 "How many tissue samples were  
5 you" -- "were obtained from the autopsy  
6 specimen for testing?"  
7 Do you see that?  
8 A. I see that question, yes.  
9 Q. And it says:  
10 "The tissue specimen from the  
11 left lung included a mixture of lung tissue  
12 and also tumor material."  
13 Do you see that?  
14 A. I see the sentence, yes.  
15 Q. Okay. And in question 5, they  
16 asked you to detail the procedures that  
17 were used in looking at the tissue and what  
18 was found.  
19 Do you see that?  
20 A. I'm reading it now.  
21 Q. And it talks about that they  
22 took a sample and they used x-rays and  
23 cameras and took all kinds of pictures, and  
24 they also used a transmission electron  
25 microscope.

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1 Do you see that?

2 MR. BERNARDO: Object to the

3 form of the question, beyond the scope of

4 the notice.

5 The witness can answer in her

6 individual capacity if she can.

7 THE WITNESS: I see that that's

8 what they're talking about, yes.

9 BY MR. PLACITELLA:

10 Q. Okay. And on the next page,

11 they talk about:

12 "The definition of fibrous

13 particles adopted for the first stage

14 examination was that of a particle with a

15 3-to-1 axial ratio."

16 Do you see that?

17 MR. BERNARDO: Object to the

18 form.

19 THE WITNESS: I see it says

20 that, yes.

21 BY MR. PLACITELLA:

22 Q. It says:

23 "In total, over 200 fibrous

24 particles were detected, analyzed and

25 sized, and the results are shown in Table 1

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1 attached to these answers."  
2 Do you see that?  
3 A. I see it says that, yes.  
4 Q. And it says:  
5 "It can be seen in Table 1 that  
6 the asbestos minerals were chrysotile,  
7 amosite, tremolite and crocidolite."  
8 Do you see that?  
9 A. I see that, yes.  
10 Q. And it says:  
11 "They were detected in dust" --  
12 "dust extracts with chrysotile being the  
13 most commonly observed fiber, followed by  
14 amosite, while fibers of tremolite and  
15 crocidolite were scarce."  
16 Do you see that?  
17 MR. BERNARDO: Object to the  
18 form of the question, beyond the scope of  
19 the notice.  
20 The witness can answer in her  
21 individual capacity if she can.  
22 THE WITNESS: I see these  
23 sentences, yes.  
24 BY MR. PLACITELLA:  
25 Q. Okay. And if you flip to A-12,  
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1 they asked Dr. Pooley if he ever took any  
2 photographs of what he saw.  
3 Do you see that?  
4 MR. BERNARDO: Same objection.  
5 THE WITNESS: Yes.  
6 BY MR. PLACITELLA:  
7 Q. And it says -- he asks the  
8 photographs -- the lawyers have the  
9 photographs, right?  
10 A. It says they're in the custody  
11 of counsel, yes.  
12 Q. Okay. So where are those  
13 photographs today?  
14 MR. BERNARDO: Object to the  
15 form of the question.  
16 THE WITNESS: I guess they're  
17 in the custody of counsel.  
18 BY MR. PLACITELLA:  
19 Q. Okay. And if we flip to the  
20 end, you can see Table 1. You see where it  
21 says:  
22 "Number of fibers per gram  
23 times ten to the sixth in dried tissue."  
24 Do you see that?  
25 MR. BERNARDO: Same objections.  
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1 THE WITNESS: I see it says  
2 that, yes.  
3 BY MR. PLACITELLA:  
4 Q. Right. So in a gram of  
5 Mr. Westfall's tissue, your expert found 29  
6 million chrysotile fibers, right?  
7 A. I can't comment on this. I  
8 don't understand any of this. This is not  
9 within my expertise.  
10 Q. He also found 9,400,000 talc  
11 fibers, correct, in the lung of  
12 Mr. Westfall?  
13 MR. BERNARDO: Same objections.  
14 THE WITNESS: Again, I can't  
15 interpret what this table is.  
16 BY MR. PLACITELLA:  
17 Q. And he also found tremolite in  
18 the lung of Mr. Westfall, correct?  
19 A. No, I cannot comment on what  
20 any of this is.  
21 Q. Okay. Now, in --  
22 MR. PLACITELLA: Give me back  
23 8A and 8B.  
24 BY MR. PLACITELLA:  
25 Q. When you, Johnson & Johnson,  
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1 was no evidence, when you had the person  
2 signing the affidavit with contrary  
3 information?  
4 MR. BERNARDO: Object to the  
5 form of the question, beyond the scope.  
6 BY MR. PLACITELLA:  
7 Q. Was that okay?  
8 A. I can't answer that question.  
9 Q. Well, why not? You're Johnson  
10 & Johnson. You're here to talk about what  
11 you did right and what you did wrong.  
12 MR. BERNARDO: Object to the  
13 form.  
14 BY MR. PLACITELLA:  
15 Q. Are you saying that it was okay  
16 or not okay --  
17 MR. BERNARDO: Object to the  
18 form of the question.  
19 BY MR. PLACITELLA:  
20 Q. -- to have your executive sign  
21 this affidavit saying there was no proof  
22 when, in fact, you know there was proof?  
23 MR. BERNARDO: Object to the  
24 form of the question.  
25 THE WITNESS: I don't know that  
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1 signed the affidavit -- when William Ashton  
2 signed the affidavit on behalf of Johnson &  
3 Johnson, he never mentioned the fact that  
4 he was aware, as was your general counsel,  
5 that the scientists in the Westfall case  
6 found chrysotile asbestos in the Johnson  
7 mine, correct? It was never mentioned.  
8 MR. BERNARDO: Object to the  
9 form of the question, beyond the scope of  
10 the notice.  
11 The witness can answer in her  
12 individual capacity if she knows.  
13 THE WITNESS: I can't comment  
14 on that.  
15 BY MR. PLACITELLA:  
16 Q. Okay. Now, that would be a  
17 non-truth. Do you agree?  
18 MR. BERNARDO: Object to the  
19 form of the question. Same objection.  
20 BY MR. PLACITELLA:  
21 Q. Well, let me ask you the  
22 question this way: Do you think that was  
23 an okay thing to do, you, Johnson &  
24 Johnson, to do that, to have -- to sign an  
25 affidavit saying there was no proof, there  
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1 there indeed is proof, and I can't answer  
2 that.  
3 BY MR. PLACITELLA:  
4 Q. Well, do I have to show you  
5 anything other than the transcripts that  
6 you didn't attach to your affidavit or the  
7 interrogatory answers that your company  
8 filled out to tell you -- show what the  
9 truth was?  
10 MR. BERNARDO: Object to the  
11 form of the question.  
12 THE WITNESS: The proof is a  
13 scientific proof, and I have had  
14 conversations with the scientists who have  
15 reviewed that, and I'm -- I'm comfortable  
16 with what we have always believed.  
17 BY MR. PLACITELLA:  
18 Q. So you talked to scientists who  
19 reviewed the transcripts here and your own  
20 interrogatory answers and they told you  
21 everything you did was fine, is that what  
22 you're saying?  
23 MR. BERNARDO: Object to the  
24 form of the question, beyond the scope of  
25 the notice.  
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1 THE WITNESS: That's not what  
2 I'm saying, no.  
3 BY MR. PLACITELLA:  
4 Q. Okay. Now, you know, right,  
5 you, Johnson & Johnson, know that you used  
6 this affidavit to extricate yourself and  
7 have thousands of cases dismissed that you  
8 were involved in?  
9 MR. BERNARDO: Object to --  
10 BY MR. PLACITELLA:  
11 Q. That was the point, you knew  
12 that, correct?  
13 MR. BERNARDO: Object to the  
14 form of the question.  
15 Mr. Placitella, you asked her  
16 this line of questioning at the last  
17 deposition and I objected to it, you asked  
18 her this question about an hour ago and she  
19 said she doesn't know, and you asked it  
20 again.  
21 I think this is becoming  
22 argumentative and harassing and I do  
23 question whether at a break we ought to ask  
24 Judge Visconti to discuss this because I  
25 don't think this is appropriate in light of  
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1 the testimony that's been given.  
2 MR. PLACITELLA: Okay. Please,  
3 don't do that. If you want to make a  
4 speaking objection, dismiss the witness  
5 from the stand. Okay? Let's not do that.  
6 BY MR. PLACITELLA:  
7 Q. Now, you know, you, Johnson &  
8 Johnson know -- let me just -- can you go  
9 to your 8 -- your tab -- your folder 8B  
10 again? And can you go to tab 58?  
11 First of all, before we do  
12 that, I apologize. Can you go to tab 54?  
13 Tab 54 in your reliance materials is a  
14 privilege log of Johnson & Johnson.  
15 Do you see that?  
16 MR. BERNARDO: Object to the  
17 form of the question.  
18 THE WITNESS: I see it says  
19 that, yes.  
20 BY MR. PLACITELLA:  
21 Q. Okay. And do you see all of  
22 these entries related to Ashton?  
23 A. I see what you're highlighting,  
24 yes.  
25 Q. And you see that they pre- --  
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1 MR. PLACITELLA: Let's do that  
2 after the break.  
3 BY MR. PLACITELLA:  
4 Q. And now, if you go to your tab  
5 58, please, in your binder? You see this  
6 is a letter from May 17th, 1989?  
7 This is in your binder,  
8 correct?  
9 MR. BERNARDO: Object to the  
10 form of the question.  
11 THE WITNESS: Yes, it's in the  
12 binder.  
13 BY MR. PLACITELLA:  
14 Q. Okay. And can you see here  
15 that what's sent to these lawyers is the  
16 affidavit of -- your affidavit, your  
17 Johnson & Johnson affidavit, and what's  
18 represented is:  
19 "The unequivocal conclusion as  
20 set forth in Ashton affidavit is that the  
21 talc from the Johnson Vermont mine did not  
22 contain asbestos."  
23 Do you see that?  
24 MR. BERNARDO: Object to the  
25 form of the question, beyond the scope of  
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1 the notice.  
2 The witness can answer in her  
3 individual capacity if she can.  
4 THE WITNESS: I see those  
5 words, yes.  
6 BY MR. PLACITELLA:  
7 Q. And then what is urged here is  
8 that:  
9 "After you review this  
10 affidavit, will you voluntarily agree to  
11 voluntarily dismiss your case?"  
12 Do you see that?  
13 A. I see it says that, yes.  
14 Q. Now, can you go to P-9 again?  
15 Folder P-9.  
16 MR. BERNARDO: Chris, when  
17 you're at a breaking point.  
18 MR. PLACITELLA: I'm almost  
19 done.  
20 MR. BERNARDO: We've been going  
21 for over an hour.  
22 MR. PLACITELLA: I'm almost  
23 done.  
24 MR. BERNARDO: That's fine.  
25 BY MR. PLACITELLA:  
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|                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                          |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                           |
|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <p>Page 371</p> <p>1 Q. P-9 is an -- the first page is<br/>2 an August 4th, 1992 letter.<br/>3 Do you see that?<br/>4 A. I'm sorry?<br/>5 Q. In your folder -- in your book,<br/>6 P-9?<br/>7 A. In P-9.<br/>8 Q. Right?<br/>9 A. Where in P-9 is it?<br/>10 Q. The very first -- the flip-side<br/>11 of the very first page.<br/>12 A. Oh, okay. Yes, I see that.<br/>13 Q. It says:<br/>14 "We recently learned that your<br/>15 firm voluntarily dismissed Windsor<br/>16 Mineral," that's you, right, Johnson &amp;<br/>17 Johnson, Windsor Mineral, right?<br/>18 MR. BERNARDO: Object to the<br/>19 form of the question, beyond the scope of<br/>20 the notice.<br/>21 The witness can answer in her<br/>22 individual capacity if she can.<br/>23 BY MR. PLACITELLA:<br/>24 Q. That's you, right? Windsor<br/>25 Minerals is you?<br/>MAGNA LEGAL SERVICES</p>                                                                                                                  | <p>Page 372</p> <p>1 A. Yes.<br/>2 Q. Okay.<br/>3 "From the Akron cases some time<br/>4 ago after reviewing an affidavit supplied<br/>5 by Windsor."<br/>6 Do you see that?<br/>7 A. It says that, yes.<br/>8 Q. Okay. It says:<br/>9 "No evidence of the presence of<br/>10 asbestos in Windsor Minerals' product has<br/>11 ever been revealed by this testing."<br/>12 That's right out of Miller's<br/>13 affidavit, correct?<br/>14 MR. BERNARDO: Object to the<br/>15 form of the question. Same objections with<br/>16 respect to scope.<br/>17 BY MR. PLACITELLA:<br/>18 Q. Right out of your president's<br/>19 affidavit?<br/>20 A. I can't comment on that.<br/>21 Q. Okay. And can you see that the<br/>22 affidavit is right on the very next page,<br/>23 ma'am? It's the Faye Miller affidavit that<br/>24 we went through that was in your other<br/>25 reliance materials, and the quote is<br/>MAGNA LEGAL SERVICES</p> |
| <p>Page 373</p> <p>1 directly from paragraph 4 of your company's<br/>2 affidavit:<br/>3 "No evidence of the presence of<br/>4 asbestos in Windsor Minerals' products has<br/>5 ever been revealed by this testing."<br/>6 And that's what's quoted in<br/>7 this letter asking these lawyers to dismiss<br/>8 their cases; is that right?<br/>9 MR. BERNARDO: Same objection.<br/>10 THE WITNESS: They -- they<br/>11 attached that, yes.<br/>12 BY MR. PLACITELLA:<br/>13 Q. And do you recall last time we<br/>14 actually went through and I showed you the<br/>15 dismissal notices filed in the Miller case<br/>16 that were -- do you remember us doing that?<br/>17 A. Yes.<br/>18 Q. Okay.<br/>19 MR. PLACITELLA: This is a good<br/>20 time to break.<br/>21 THE VIDEOGRAPHER: The time is<br/>22 now 11:32 AM. We are going off the record.<br/>23 (Recess.)<br/>24 THE VIDEOGRAPHER: The time is<br/>25 now 11:46 AM. We are back on the record.<br/>MAGNA LEGAL SERVICES</p> | <p>Page 374</p> <p>1 BY MR. PLACITELLA:<br/>2 Q. Okay. I just have a few more<br/>3 questions on this then I'm going to move<br/>4 on.<br/>5 MR. PLACITELLA: Can you give<br/>6 me the Elmo?<br/>7 BY MR. PLACITELLA:<br/>8 Q. Going back to your affidavit,<br/>9 when I say you, I mean Johnson &amp; Johnson,<br/>10 that affidavit was signed by your<br/>11 Mr. Ashton on May 8th, 1989, correct?<br/>12 A. That appears to be the name and<br/>13 the date, yes.<br/>14 Q. Okay. And if you go to the<br/>15 next tab in your reliance materials --<br/>16 A. Would you tell me what tab it<br/>17 is again, please?<br/>18 Q. Yes, ma'am, 54.<br/>19 MR. BERNARDO: Object to the<br/>20 form of the question.<br/>21 BY MR. PLACITELLA:<br/>22 Q. 8B-54. That's the log -- your<br/>23 log. It has an Exhibit No. 69.<br/>24 Do you know what that exhibit<br/>25 number is from, by the way?<br/>MAGNA LEGAL SERVICES</p>         |

21 (Pages 371 to 374)

1 A. I have no idea, and I don't  
2 even know what a privilege log is.  
3 Q. Okay. Well, you see in your  
4 privilege log on the same date, May 8,  
5 1989.  
6 Do you see that?  
7 A. I see what you're pointing to.  
8 Q. Okay. And you see where it's  
9 from an Ira Dembrow?  
10 Do you see that?  
11 A. I see that name, yes.  
12 Q. To William Ashton.  
13 Do you see that?  
14 A. I see the name, yes.  
15 Q. To John O'Shaughnessy?  
16 Do you see that?  
17 A. Yes.  
18 Q. He's the one of the lawyers who  
19 worked with you in defending the talc  
20 cases, right?  
21 A. Yes, he's one of the lawyers I  
22 worked with.  
23 Q. Bruce Sempel, he was your  
24 medical director?  
25 A. That's correct.

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1 Q. Howard Sloan, who is he?  
2 A. I don't know.  
3 Q. Okay. And then again on the  
4 same date is another memo between  
5 Mr. Dembrow, Mr. Ashton, your lawyer and  
6 your medical director, correct?  
7 A. I see those names listed, yes.  
8 Q. Okay. And then there are a  
9 number of other entries leading up to  
10 May 8th.  
11 Do you see that?  
12 A. I see lots of different dates,  
13 yes.  
14 Q. Okay. And then keeping in mind  
15 those names, Dembrow, Sloan. Do you see  
16 that?  
17 If you go to your tab --  
18 MR. PLACITELLA: What's the tab  
19 number? Hold on.  
20 BY MR. PLACITELLA:  
21 Q. If you go to your tab No. 58,  
22 this is a letter that attaches the  
23 affidavit.  
24 Do you recall that? We just  
25 went through that?  
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1 A. We just talked about this, yes.  
2 Q. All right.  
3 MR. BERNARDO: Same objections  
4 as previously noted.  
5 BY MR. PLACITELLA:  
6 Q. And you see that Mr. Dembrow  
7 and Mr. Sloan, the people on your privilege  
8 log, are on this letter?  
9 A. I saw the name Sloan before. I  
10 don't know about who the other people are.  
11 Q. Dembrow? Do you remember I  
12 showed you he --  
13 A. Yeah.  
14 Q. He corresponded with Mr. Ashton  
15 the day it was signed?  
16 A. I see those names, yes.  
17 Q. And he was one of the people  
18 who was corresponding with Mr. Ashton along  
19 with Mr. O'Shaughnessy and your medical  
20 director.  
21 Do you recall that?  
22 A. I saw those names on that log,  
23 but again, I don't know what any of that  
24 means.  
25 Q. Okay.

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1 MR. PLACITELLA: So give me my  
2 notes back.  
3 BY MR. PLACITELLA:  
4 Q. Okay. New subject.  
5 Last time we spoke about -- or  
6 you mentioned the Selby case.  
7 Do you recall that?  
8 Well, before that. Do you  
9 recall last time we went through various  
10 discovery responses that spanned from,  
11 like, 1971 to 1992?  
12 Do you recall that?  
13 A. I recall I was talking about  
14 different complaints, yes.  
15 MR. BERNARDO: Can we go off  
16 the record for a moment?  
17 MR. PLACITELLA: Yeah.  
18 THE VIDEOGRAPHER: The time  
19 is --  
20 MR. BERNARDO: I just want to  
21 make sure you understand your outline is  
22 being --  
23 MR. PLACITELLA: That's okay.  
24 Thank you. Nothing to be hidden here.  
25 MR. BERNARDO: I just wanted  
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1 you to know.  
 2 MR. PLACITELLA: Okay. But  
 3 thank you.  
 4 MR. BERNARDO: And me.  
 5 MR. PLACITELLA: That's fine.  
 6 Thank you, though.  
 7 BY MR. PLACITELLA:  
 8 Q. And we ended up in 1992.  
 9 Do you recall that?  
 10 A. I don't remember the specific  
 11 dates, no.  
 12 Q. All right. The Faye Miller  
 13 case was 1992. Do you remember we went  
 14 through them, the Faye Miller case?  
 15 A. I remember we now discussed  
 16 that, yes.  
 17 Q. Okay. And then the next case I  
 18 wanted to talk to you about was from 1993  
 19 and that was the Selby case.  
 20 Do you recall that?  
 21 A. Yes.  
 22 Q. And that's one of the responses  
 23 that you reviewed, correct?  
 24 A. Yes.  
 25 Q. Okay. And --  
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1 this action as to JJCPI nor is it  
 2 reasonably calculated to lead to  
 3 discoverable evidence."  
 4 Do you see that?  
 5 A. I see that it says that, yes.  
 6 Q. Okay. And it says:  
 7 If plaintiff has evidence that  
 8 the product has contained asbestos at any  
 9 time that you, Johnson & Johnson, will  
 10 reconsider whether you're going to turn  
 11 over the information, right?  
 12 MR. BERNARDO: Object to the  
 13 form of the question.  
 14 THE WITNESS: That's not what  
 15 it says.  
 16 BY MR. PLACITELLA:  
 17 Q. It says, "Will reconsider this  
 18 response."  
 19 A. Yes.  
 20 Q. That's what it says, right?  
 21 A. Yes.  
 22 Q. And who was Thomas Pulliam?  
 23 A. I do not know.  
 24 Q. Okay.  
 25 MR. PLACITELLA: Can you give  
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1 MR. PLACITELLA: Can you give  
 2 the witness 337? I'm going to the Elmo.  
 3 THE WITNESS: Thank you.  
 4 BY MR. PLACITELLA:  
 5 Q. 337 -- 337 are Johnson &  
 6 Johnson's answers to interrogatories in the  
 7 Selby case.  
 8 Do you see that?  
 9 A. Yes.  
 10 Q. You've seen these before,  
 11 correct?  
 12 A. Yes.  
 13 Q. Okay. And if you go to the  
 14 final page, which is interrogatory answer  
 15 No. 36. It says:  
 16 "Do you have any knowledge of  
 17 any tests and/or studies conducted  
 18 concerning the health effects of asbestos  
 19 on humans."  
 20 And your response is:  
 21 "There has been no asbestos in  
 22 the product during the time plaintiff  
 23 claims to have used it. Accordingly, the  
 24 information sought by this interrogatory is  
 25 neither relevant to the subject matter of  
 MAGNA LEGAL SERVICES

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1 Ms. Musco J&J-326? Give a copy to Counsel.  
 2 MR. BERNARDO: Thank you.  
 3 BY MR. PLACITELLA:  
 4 Q. J&J-326 is a June 27th, 1995  
 5 memo entitled, "CTFA Response to Cancer  
 6 Prevention Coalition Citizen's Petition."  
 7 Did you see that?  
 8 A. Yes.  
 9 Q. And on here you're copied?  
 10 A. Yes.  
 11 Q. Right? Mr. O'Shaughnessy  
 12 copied?  
 13 A. Yes.  
 14 Q. Right? Mr. -- Dr. Hopkins is  
 15 copied, correct?  
 16 A. Yes.  
 17 Q. Do you recall this?  
 18 A. A long time ago.  
 19 Q. Okay. Down at the bottom, also  
 20 is copied Mr. Ashton, Mr. Chudkowski and A.  
 21 Winner.  
 22 Do you see that?  
 23 A. Yes.  
 24 Q. Okay. And who is A. Winner, do  
 25 you know?  
 MAGNA LEGAL SERVICES



1 MR. BERNARDO: Object to the  
2 form of the question. That's not the  
3 document that's on the screen.  
4 MR. PLACITELLA: I'm putting it  
5 up. Let me see if I can help her out.  
6 Wait, hold on.  
7 Why don't we do it this way and  
8 we'll come back to try to save some time.  
9 BY MR. PLACITELLA:  
10 Q. You see that the material here,  
11 there's a lot of material here related to  
12 the Coker case, correct?  
13 A. Yeah, I'm seeing a lot of  
14 medical records or requests for them.  
15 Q. Right. And I'm going to come  
16 back to that in a minute, but can you go to  
17 your book 8B and go to tab 76, please?  
18 In your book at tab 76 is a  
19 letter from Alice Blount, April 23rd, 1998,  
20 to your lawyers.  
21 Do you see that?  
22 MR. BERNARDO: Object to the  
23 form of the question, beyond the scope.  
24 The witness can answer in her  
25 individual capacity with respect to this  
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document.  
THE WITNESS: I see that it's a  
letter signed by an Alice Blount.  
BY MR. PLACITELLA:  
Q. You've seen this letter before,  
right?  
A. Yes.  
Q. Okay.  
A. At the last deposition.  
Q. Right. And in this letter  
that -- Alice Blount told you that she had  
analyzed Johnson & Johnson's Vermont talc,  
right? That's what she told you, right?  
A. That's what it seems to say,  
yes.  
Q. And it says:  
"As I told you, I believe that  
Johnson & Johnson's Vermont talc contains  
trace amounts of asbestos which are well  
below those specified by OSHA."  
Do you see that?  
A. I see that sentence, yes.  
Q. Okay. And so that was part of  
the Coker file that was available to you as  
part of your review in this case, correct?  
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1 MR. BERNARDO: Object to the  
2 form of the question.  
3 THE WITNESS: This letter was  
4 part of the files that I sent to  
5 Dr. Hopkins after our first deposition.  
6 BY MR. PLACITELLA:  
7 Q. Yes, ma'am. And so this letter  
8 was one of the letters that was available  
9 to you in preparing for today's deposition,  
10 correct?  
11 A. It was in the binder, yes.  
12 Q. Right. And this is about  
13 what -- in essence what your expert was  
14 telling you in the Coker case about what  
15 she found in the baby powder, right?  
16 MR. BERNARDO: Object to the  
17 form of the question.  
18 THE WITNESS: I see that it's a  
19 letter from her. I don't know anything  
20 else other than that.  
21 BY MR. PLACITELLA:  
22 Q. Well, you're here -- this is  
23 not about Nancy Musco, whether she knows.  
24 This came from Johnson & Johnson's files.  
25 Johnson & Johnson was certainly aware that  
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1 Dr. Alice Blount right here from Rutgers  
2 University told them in the context of the  
3 Coker case she found asbestos in Johnson's  
4 Baby Powder. Johnson & Johnson was  
5 certainly aware of that, correct?

6 MR. BERNARDO: Object to the  
7 form of the question, beyond the scope of  
8 the notice.

9 THE WITNESS: I see that what  
10 she has said in the letter here.

11 BY MR. PLACITELLA:

12 Q. Okay. And --

13 MR. PLACITELLA: Where is my  
14 book. Can you give me 216?

15 MR. BERNARDO: I'll also put an  
16 objection on the record with respect to the  
17 use of this document beyond the scope of  
18 the notice.

19 BY MR. PLACITELLA:

20 Q. In preparing your -- being  
21 prepared for today's deposition to testify  
22 about information that was available to  
23 Johnson & Johnson when responding to  
24 discovery, did you review this file from  
25 the Johnson -- from Johnson & Johnson's

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1 records dated (sic) J&J-216?  
2 Did you review this?  
3 MR. BERNARDO: Object to the  
4 form of the question.  
5 THE WITNESS: I have not seen  
6 this, no.  
7 BY MR. PLACITELLA:  
8 Q. Okay. So in preparing you for  
9 today's deposition concerning what  
10 information was available to Johnson &  
11 Johnson when preparing responses to  
12 discovery, this document was not provided  
13 to you, correct?  
14 MR. BERNARDO: Object to the  
15 form of the question.  
16 THE WITNESS: I had not seen  
17 this before, but my understanding was that  
18 I was here to talk about the answers to the  
19 interrogatories.  
20 BY MR. PLACITELLA:  
21 Q. We're going to get to it.  
22 Ma'am, this was not provided to  
23 you, correct?  
24 A. No. As I said, I had -- this  
25 is the first I've seen it.  
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1 Q. Okay. And if we go to the  
2 second page, you see the paragraph that  
3 talks about reports of patients with  
4 mesothelioma.

5 Do you see that?

6 A. I see that it says that, yes.

7 Q. And then it talks about,  
8 "Mesothelioma can be caused by non-  
9 occupational exposure to mineral fibers is  
10 not in doubt."

11 Do you see that?

12 A. I see the sentences you're  
13 highlighting, yes.

14 Q. And it says:  
15 "In addition, communities built  
16 around natural sources of tremolite have  
17 experienced incidents of the disease  
18 through non-occupational exposure."

19 Do you see that?

20 A. I see that sentence, yes.

21 Q. You go on to state:  
22 "Mesothelioma may occur after  
23 brief or indirect exposure to asbestos."  
24 Do you see that yes?

25 A. Yes, I see these sentences,

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1 yes. I don't know who wrote this.  
2 Q. Well, do you have any doubt  
3 that it came from your files and it was  
4 written on behalf of for Johnson & Johnson?  
5 A. I don't know that it was.  
6 Q. Okay. Then we go to the next  
7 section on talc.  
8 By the way, there's no question  
9 it's labeled Coker versus Johnson &  
10 Johnson, right?  
11 A. It says that, yes.  
12 Q. Okay. So let's go onto the  
13 section about talc, and it says:  
14 "However, in several  
15 mesothelioma patients studied, both talc  
16 fibers and tremolite were detected. In  
17 fact, the majority of asbestos bodies  
18 isolated from the lungs of women in the  
19 general population have tremolite or  
20 anthophyllite, and because tremolite and  
21 anthophyllite are known contaminants of  
22 talc, this data suggests that rare cases of  
23 mesothelioma among women with no other  
24 identifiable exposure might be related to  
25 exposure to cosmetic talc."

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1 Did you see that?

2 A. I see it says that, yes.

3 Q. And then underneath that it

4 says:

5 "Environmental factors must be

6 given a mayor consideration in the

7 incidents of mesothelioma."

8 Do you see that?

9 A. I see these sentences, yes.

10 Q. And it talks about one of the

11 environmental factors being talc miners.

12 It says:

13 "Tremolite asbestos is a known

14 contaminant of some deposits of talc."

15 Do you see that?

16 A. I see it says that, yes.

17 Q. And my question to you is:

18 When you were relying upon the experts in

19 verifying answers to interrogatories, was

20 any of this information in this internal

21 Johnson & Johnson memo ever made known to

22 you?

23 A. I was not the one supplying the

24 answers. The appropriate person for that

25 particular issue would be supplying it, and

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|                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                       |
|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <p style="text-align: right;">Page 399</p> <p>1 asked for me to repeat it, I do. And then<br/> 2 I go on and I say:<br/> 3 "When does your research or<br/> 4 when does Johnson &amp; Johnson maintain is the<br/> 5 first time that it turned over testing data<br/> 6 concerning asbestos in Johnson &amp; Johnson<br/> 7 talc in litigation? When is the first time<br/> 8 that happened?"<br/> 9 And you say:<br/> 10 "I -- again, it will be<br/> 11 whenever it was requested."<br/> 12 And I asked you again:<br/> 13 "But from your knowledge, so<br/> 14 you believe the first time it was requested<br/> 15 it was turned over?"<br/> 16 And you -- after an objection,<br/> 17 you say:<br/> 18 "If there were specific<br/> 19 documents requested, they would have been<br/> 20 if I were talking generally, so I don't<br/> 21 know the answer to this."<br/> 22 And then I asked you:<br/> 23 "Well, you know, for example<br/> 24 when lawyers in cases involving cancer and<br/> 25 baby powder asked for testing data, Johnson<br/> MAGNA LEGAL SERVICES</p> | <p style="text-align: right;">Page 400</p> <p>1 &amp; Johnson took the position that they<br/> 2 weren't going to turn it over because it<br/> 3 was privileged."<br/> 4 And there's an objection. And<br/> 5 you said:<br/> 6 "I don't know this, no."<br/> 7 And I said:<br/> 8 "Well, that would be wrong,<br/> 9 wouldn't you say?"<br/> 10 And you said:<br/> 11 "I can't comment on that."<br/> 12 Now, in your review of the<br/> 13 materials in relation to the Coker case,<br/> 14 you're aware, are you not, that you<br/> 15 defended the Coker case exactly the same<br/> 16 way that you defended every other case,<br/> 17 which is, it was your position that there<br/> 18 was no evidence of any asbestos in any<br/> 19 Johnson &amp; Johnson Baby Powder or Shower to<br/> 20 Shower, correct?<br/> 21 MR. BERNARDO: Object to the<br/> 22 form of the question.<br/> 23 THE WITNESS: I don't know.<br/> 24 You know, I can't comment on the legal<br/> 25 basis for it, but I do know that there is<br/> MAGNA LEGAL SERVICES</p>                |
| <p style="text-align: right;">Page 401</p> <p>1 no asbestos in the cosmetic talc for<br/> 2 Johnson's Baby Powder.<br/> 3 BY MR. PLACITELLA:<br/> 4 Q. Right. So in the context of<br/> 5 the Coker case, you didn't change your<br/> 6 position from prior cases, your position<br/> 7 still was there was no evidence, correct?<br/> 8 A. Correct.<br/> 9 MR. BERNARDO: Object to the<br/> 10 form of the question.<br/> 11 BY MR. PLACITELLA:<br/> 12 Q. Okay. And that's what was<br/> 13 related (sic) to the plaintiffs' lawyers,<br/> 14 correct?<br/> 15 A. Yes.<br/> 16 Q. Okay. Now, if I go back to<br/> 17 319. I want to make sure I get this right.<br/> 18 MR. PLACITELLA: I'm sorry,<br/> 19 give her 319. That's part of the --<br/> 20 MR. BERNARDO: I'm sorry? Can<br/> 21 I just see what it is?<br/> 22 MR. PLACITELLA: Sure. It was<br/> 23 in the binder.<br/> 24 MR. BERNARDO: That's what I<br/> 25 was going to ask.<br/> MAGNA LEGAL SERVICES</p>                                                                                                   | <p style="text-align: right;">Page 402</p> <p>1 MR. PLACITELLA: It's in the<br/> 2 binder.<br/> 3 BY MR. PLACITELLA:<br/> 4 Q. I'm -- I am referring<br/> 5 specifically in -- to the document in the<br/> 6 Coker case that says, "Defendants'<br/> 7 Objections to Plaintiff's Deposition on<br/> 8 Written Questions to the Commission of Nell<br/> 9 McCallum &amp; Associates."<br/> 10 Do you see that?<br/> 11 A. I see that it says that, yes.<br/> 12 Q. And it says:<br/> 13 "Comes now Johnson &amp; Johnson<br/> 14 Companies, a defendant in the above<br/> 15 lawsuit, and files this objection to<br/> 16 depositions on written questions to the<br/> 17 Colorado School of Mines Research Institute<br/> 18 and to the Commission of Nell McCallum &amp;<br/> 19 Associates."<br/> 20 You've seen testing results in<br/> 21 the binders that you sent to Dr. Hopkins<br/> 22 related to Colorado School of Mines,<br/> 23 correct?<br/> 24 A. I believe there were some, yes.<br/> 25 Q. Right. And on the next page,<br/> MAGNA LEGAL SERVICES</p> |

28 (Pages 399 to 402)

1 we're looking at --  
 2 MR. BERNARDO: While you are  
 3 looking at -- I'm going to object to the  
 4 form of the question.  
 5 But I'm also going to object --  
 6 I'm sorry. I'm not going to object to the  
 7 form of the question, I'm going to object  
 8 to the use of this document as beyond the  
 9 scope of the notice.  
 10 MR. PLACITELLA: Okay.  
 11 BY MR. PLACITELLA:  
 12 Q. On the next page, it -- let's  
 13 start with question 3 that you were  
 14 objecting to.  
 15 I'm sorry. Let's look at 4.  
 16 I'm sorry. It says:  
 17 "Please state if you found the  
 18 presence of asbestos or asbestiform  
 19 materials" -- "minerals."  
 20 Do you see that?  
 21 A. I see it says that, yes.  
 22 Q. And you -- and Johnson &  
 23 Johnson's response is, after saying it's  
 24 vague and ambiguous and assumes facts not  
 25 in evidence:  
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1 "Furthermore, the question  
 2 requires witness to speculate and provide  
 3 an expert opinion that witness is not  
 4 qualified to express. Finally, the  
 5 information requested from the witness is  
 6 subject to proprietary and trade secret  
 7 privileges of the defendant."  
 8 Do you see that?  
 9 A. Yes, I see that.  
 10 Q. And then when it asks you to  
 11 produce documents, you further state that  
 12 the request violates the Texas Rules of  
 13 Civil Procedure, and you complain about the  
 14 subpoena, and then you say:  
 15 "Finally, the information  
 16 requested from the witness is subject to  
 17 propriety" -- "proprietary and trade secret  
 18 privileges of the defendant."  
 19 Do you see that?  
 20 A. I see it says that, yes.  
 21 Q. Okay. And in the same group of  
 22 documents, you filed similar objections as  
 23 it relates to getting discovery from  
 24 McCrone and Associates.  
 25 Do you see that?  
 MAGNA LEGAL SERVICES

1 MR. BERNARDO: Object to the  
 2 form of the question. Same objection with  
 3 respect to the scope of the notice.  
 4 THE WITNESS: I see it says  
 5 that.  
 6 BY MR. PLACITELLA:  
 7 Q. Right. And this is in the  
 8 Coker case, and you know from your review  
 9 of the binders you gave to Dr. Hopkins,  
 10 that there is testing information in those  
 11 binders related to work that was done by  
 12 McCrone and Associates, correct?  
 13 A. Yes, I believe so.  
 14 Q. Okay. And Johnson & Johnson's  
 15 position in the Coker case as related to  
 16 getting information from McCrone and  
 17 Associates was that that information was  
 18 proprietary and a trade secret according to  
 19 your responses, correct?  
 20 A. That's what the sentence says,  
 21 yes.  
 22 Q. Now, as you sit here, do you  
 23 have any evidence that any information  
 24 related to McCrone or Colorado School of  
 25 Mines was ever turned over to the plaintiff  
 MAGNA LEGAL SERVICES

1 in the Coker case?  
 2 A. I don't know what was turned  
 3 over.  
 4 Q. As you sit here, do you have  
 5 any evidence to prove that you turned over  
 6 any evidence to the plaintiff in the Coker  
 7 case related to the testing of asbestos?  
 8 MR. BERNARDO: Object to the  
 9 form of the question.  
 10 THE WITNESS: I don't know what  
 11 was turned over. If it was appropriate to  
 12 be turned over, I would assume it would be.  
 13 BY MR. PLACITELLA:  
 14 Q. But you don't know?  
 15 A. No, I do not.  
 16 Q. So Johnson & Johnson, as it  
 17 sits here, does not know what evidence it  
 18 turned over in the Coker case?  
 19 MR. BERNARDO: Object to the  
 20 form of the question, beyond the scope of  
 21 the notice.  
 22 The witness can answer in her  
 23 individual capacity.  
 24 THE WITNESS: I don't know.  
 25 BY MR. PLACITELLA:  
 MAGNA LEGAL SERVICES

1 Q. Okay. And do you have any  
2 evidence, as you sit here, today that the  
3 information that Alice Blount gave you  
4 during the Coker case was ever turned over  
5 to the plaintiff in that case?

6 MR. BERNARDO: Same objections.

7 THE WITNESS: Again, I do not  
8 know what was turned over.

9 BY MR. PLACITELLA:

10 Q. Does that mean that Johnson &  
11 Johnson does not know or you don't know?

12 A. Since it's not within the scope  
13 of the notice, I can't comment on it and I  
14 don't know.

15 Q. Ma'am, with all due respect, I  
16 move to strike your answer, "It's not  
17 within the scope of the notice." That's  
18 what the judge will decide.

19 My question to you was: Do you  
20 have any evidence, as you sit here today,  
21 that Johnson & Johnson turned over any  
22 evidence concerning asbestos testing to the  
23 plaintiff in the Coker case?

24 A. I do not know what was turned  
25 over and what was not.

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1 Q. Okay. And when you say you do  
2 not know, does that mean you do not know,  
3 Nancy Musco, or Johnson & Johnson does not  
4 know?

5 MR. BERNARDO: Object to the  
6 form of the question.

7 THE WITNESS: Since I'm right  
8 now answering for myself, I do not know.

9 BY MR. PLACITELLA:

10 Q. No, ma'am, with all due  
11 respect, you're here answering for Johnson  
12 & Johnson, but somebody else will make that  
13 determination, and I strike -- I move to  
14 strike your response.

15 Now, let's talk about a case,  
16 we spent a couple minutes on it, so I'm not  
17 going to spend a lot of time on it here.  
18 The next case after 1998 -- by the way, do  
19 you know what happened to the Coker case?

20 A. No, I do not.

21 Q. Okay.

22 MR. PLACITELLA: Can you give  
23 me 482?

24 BY MR. PLACITELLA:

25 Q. 482. Marked J&J-482 is an  
MAGNA LEGAL SERVICES

1 article that recently appeared in the  
2 Reuters -- by Reuters entitled, "Johnson &  
3 Johnson knew for decades that asbestos  
4 lurked in its baby powder."  
5 Have you ever seen this before?  
6 A. Yes, I have.  
7 Q. Okay. And when?  
8 A. Soon after it came out.  
9 Q. Did you ever read it in  
10 preparation for today's deposition?  
11 A. No.  
12 Q. Okay. I just want to ask you  
13 one question just in terms of information  
14 on the Coker case. I don't want to ask you  
15 about the article itself.  
16 MR. BERNARDO: Object to the  
17 question --  
18 BY MR. PLACITELLA:  
19 Q. In the section --  
20 MR. BERNARDO: -- as beyond the  
21 scope of the notice.  
22 BY MR. PLACITELLA:  
23 Q. Herschel Hobson, who was the  
24 lawyer in the Coker case, is quoted in this  
25 article and he said that he asked Johnson &  
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1 Johnson for any research it had into the  
2 health of mine workers, top production  
3 records from the mid-'40s through the '80s,  
4 depositions from managers of three labs  
5 that tested talc for J&J, and any documents  
6 related to testing for fibrous or  
7 asbestiform materials.

8 Do you have any information, as  
9 you sit here today, to say that that is  
10 incorrect?

11 MR. BERNARDO: Object to the  
12 form of the question. Object, beyond the  
13 scope of the notice.

14 THE WITNESS: As I already told  
15 you, I do not know what was or wasn't  
16 handed over.

17 BY MR. PLACITELLA:

18 Q. Okay. And -- sorry, my last  
19 question on this and I'll move on.

20 According to the article  
21 Mr. Hobson said that:  
22 "Without the evidence from  
23 Johnson & Johnson and no hope of getting  
24 any, he advised Coker to drop the suit."  
25 Do you see that?

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1 MR. BERNARDO: Same objection.  
2 THE WITNESS: That's what it  
3 says here.  
4 BY MR. PLACITELLA:  
5 Q. Do you have any information, as  
6 you sit here today, on behalf of Johnson &  
7 Johnson to rebut that statement by Mr.  
8 Hobson that he dismissed the case because  
9 he just didn't have the proof and Johnson &  
10 Johnson didn't turn anything over?  
11 A. Sounds like it would be kind of  
12 a legal conclusion and I can't comment on  
13 that.  
14 Q. I'm just saying, do you have  
15 any evidence, as you sit here today, to  
16 disprove what Mr. Hobson is saying here is  
17 that he dropped the case because you didn't  
18 turn any evidence over?  
19 MR. BERNARDO: Beyond the scope  
20 of the notice.  
21 The witness can answer in her  
22 individual capacity.  
23 THE WITNESS: As I said, I  
24 can't comment. I don't know his reasonings  
25 or what he did or didn't do.  
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1 BY MR. PLACITELLA:  
2 Q. Okay. And now I want to just  
3 talk to you hopefully about something  
4 because we went through this, I just want  
5 to put it in context.  
6 You actually certified the  
7 answers to interrogatories in the  
8 Krushinski case, correct?  
9 A. That's correct.  
10 Q. Okay. And came -- that case  
11 was filed right after the Coker case was  
12 dismissed, correct?  
13 A. I don't remember the dates.  
14 Q. Okay. Do you remember it was  
15 filed sometime in the late 1990s?  
16 A. Again, I would not say for  
17 sure. Whatever --  
18 Q. Do you remember that you  
19 certified answers to interrogatories in the  
20 year 2000 in those cases?  
21 A. I know I certified them. I  
22 guess that's the date, yes.  
23 Q. Right. And --  
24 MR. PLACITELLA: Do you have  
25 277?

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1 BY MR. PLACITELLA:  
2 Q. Okay. 277, and I think you  
3 have these in your binders, are the answers  
4 to interrogatories that you certified.  
5 Do you recognize those?  
6 A. Yes.  
7 Q. Okay. And specifically -- and  
8 let me just go to the end.  
9 This is your signature?  
10 A. Yes, it is.  
11 Q. Correct? Make sure I got it.  
12 And you say:  
13 "The foregoing answers are true  
14 and accurate to the best of my knowledge.  
15 I am aware that if any of the foregoing  
16 statements made by me are willfully false,  
17 I may be subject to punishment."  
18 Correct?  
19 MR. BERNARDO: Object to the  
20 form of the question.  
21 THE WITNESS: Yes, that's what  
22 it says.  
23 BY MR. PLACITELLA:  
24 Q. And I'm not going to go over  
25 all of the things, we asked you about them  
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1 the last time, just in context, and answer  
2 to Interrogatory 17, says:  
3 "Describe in detail all  
4 processes, procedures and testing performed  
5 upon talc used" -- "the talc used in the  
6 manufacture of Johnson's Baby Powder to  
7 reduce or eliminate the existence of  
8 asbestos, tremolite or other contaminants  
9 in Johnson's Baby Powder."  
10 Correct?  
11 A. Yes.  
12 Q. And what you state specifically  
13 in the beginning of that answer is:  
14 "To the best of defendant's  
15 knowledge, talc used in the manufacture of  
16 Johnson & Johnson's Baby Powder never  
17 contained asbestos in any form or  
18 tremolite."  
19 Correct?  
20 MR. BERNARDO: Object to the  
21 form of the question.  
22 THE WITNESS: That's what it  
23 says, yes.  
24 BY MR. PLACITELLA:  
25 Q. Okay. Now, I forgot to ask you  
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|                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                       |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                     |
|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <p style="text-align: right;">Page 415</p> <p>1 last time and then I'm going to move off of<br/>2 these.<br/>3 Did you ever -- before signing<br/>4 these interrogatories, did you ever<br/>5 actually read the questions and answers<br/>6 before signing them?<br/>7 A. Yes, I did.<br/>8 Q. Okay. Now --<br/>9 MR. PLACITELLA: Can you give<br/>10 me 230?<br/>11 I'll just do this one and maybe<br/>12 we'll break, Rich?<br/>13 MR. BERNARDO: Sure.<br/>14 MR. PLACITELLA: So you can do<br/>15 lunch.<br/>16 BY MR. PLACITELLA:<br/>17 Q. 230 is an affidavit filed by<br/>18 John Hopkins in the Durham case.<br/>19 Do you see this?<br/>20 A. Yes.<br/>21 Q. In preparation and in<br/>22 discussing -- let's just go to the -- and<br/>23 you see on the last page, the affidavit is<br/>24 signed by John Hopkins.<br/>25 Do you see that?<br/>MAGNA LEGAL SERVICES</p>                                                                                                                                   | <p style="text-align: right;">Page 416</p> <p>1 A. Yes.<br/>2 Q. And he concludes saying:<br/>3 "It may be concluded that there<br/>4 has never been asbestos contamination of<br/>5 the talc used by Johnson &amp; Johnson in the<br/>6 United States from the period in question,<br/>7 1955 to 2002."<br/>8 Correct?<br/>9 A. Yes.<br/>10 Q. And that's essentially what<br/>11 Roger Miller signed in his affidavits,<br/>12 correct?<br/>13 MR. BERNARDO: Object to the<br/>14 form of the question, beyond the scope.<br/>15 The witness may answer in her<br/>16 individual capacity with respect to the<br/>17 affidavit.<br/>18 THE WITNESS: Yes, this is the<br/>19 position that there is no asbestos.<br/>20 BY MR. PLACITELLA:<br/>21 Q. And it's consistent with the<br/>22 affidavit signed by Mr. Ashton as well,<br/>23 correct?<br/>24 A. This is the general statement,<br/>25 yes.<br/>MAGNA LEGAL SERVICES</p>                                 |
| <p style="text-align: right;">Page 417</p> <p>1 Q. And in preparing for today's<br/>2 deposition, did Dr. Hopkins ever tell you<br/>3 that he, himself, certified under oath that<br/>4 there was no evidence of any asbestos at<br/>5 any time in Johnson -- in Johnson &amp;<br/>6 Johnson's cosmetic talc?<br/>7 A. Yes, we did discuss that.<br/>8 Q. Okay.<br/>9 A. And I know that is what is his<br/>10 understanding.<br/>11 Q. All right. So he told you<br/>12 about this affidavit?<br/>13 A. Not specifically about the<br/>14 affidavit, no, but I know that that is his<br/>15 understanding, but we did not discuss the<br/>16 specific affidavit.<br/>17 Q. Did he tell you that based upon<br/>18 this affidavit, the Durham case was<br/>19 dismissed?<br/>20 MR. BERNARDO: Object to the<br/>21 form of the question, beyond the scope of<br/>22 the notice.<br/>23 You can answer in your<br/>24 individual capacity if you know.<br/>25 THE WITNESS: No, we did not<br/>MAGNA LEGAL SERVICES</p> | <p style="text-align: right;">Page 418</p> <p>1 discuss that.<br/>2 BY MR. PLACITELLA:<br/>3 Q. Okay. Now -- and then we're<br/>4 going to break for lunch. I just want to<br/>5 make sure I kind of -- I have some<br/>6 questions.<br/>7 Currently there is an appeal<br/>8 before the New Jersey Appellate Division<br/>9 related to Johnson &amp; Johnson's Baby Powder<br/>10 and talc.<br/>11 Do you -- do you know about<br/>12 that?<br/>13 MR. BERNARDO: Object to the<br/>14 form of the question.<br/>15 THE WITNESS: I don't know what<br/>16 specifically there is, no.<br/>17 BY MR. PLACITELLA:<br/>18 Q. Do you know anything about the<br/>19 appeal?<br/>20 A. No.<br/>21 Q. There's an issue before the<br/>22 Appellate Division as to when or if Johnson<br/>23 &amp; Johnson ever told anybody before 2017<br/>24 that they had testing evidence related to<br/>25 Johnson &amp; Johnson's talc or cosmetic talc<br/>MAGNA LEGAL SERVICES</p> |

32 (Pages 415 to 418)





1 A. Okay. Are you trying to block  
2 me?  
3 Q. No. This is the testing  
4 evidence from Dr. Hopkins?  
5 MR. BERNARDO: Object to the  
6 form of the question.  
7 THE WITNESS: It seems to be a  
8 mixture of a lot of things from  
9 Dr. Hopkins.  
10 BY MR. PLACITELLA:  
11 Q. Okay. Am I correct that none  
12 of this evidence, to your knowledge, he was  
13 ever turned over to any plaintiff or you  
14 have no evidence that any of this was ever  
15 turned over to any plaintiff before 2017,  
16 correct?  
17 MR. BERNARDO: Object to the  
18 form of the question.  
19 THE WITNESS: I do not know.  
20 BY MR. PLACITELLA:  
21 Q. As you sit here today, do you  
22 have any evidence to prove that any of this  
23 was ever turned over to any plaintiff  
24 before 2017?  
25 MR. BERNARDO: Object to the  
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1 form of the question.  
2 THE WITNESS: I do not know  
3 what was turned over or not turned over.  
4 BY MR. PLACITELLA:  
5 Q. As you sit here today, do you  
6 have any contemporaneous evidence to prove  
7 that any of this was ever turned over to  
8 any plaintiff before 2017?  
9 MR. BERNARDO: Object to the  
10 form of the question, beyond the scope of  
11 the notice.  
12 THE WITNESS: I do not know  
13 what was turned over.  
14 BY MR. PLACITELLA:  
15 Q. So Johnson & Johnson does not  
16 know whether any of this evidence was ever  
17 turned over to any plaintiff before 2017?  
18 MR. BERNARDO: Object to the  
19 form of the question, beyond the scope of  
20 the notice.  
21 You can answer in your  
22 individual capacity if you can.  
23 THE WITNESS: I don't know.  
24 It's not something I had prepared for  
25 within the scope for today.  
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1 MR. PLACITELLA: I'll pass the  
2 witness and reserve the right for redirect.  
3 MR. BERNARDO: All right.  
4 Could we go off the record?  
5 THE VIDEOGRAPHER: The time is  
6 now 1:37 PM. We are going off the record.  
7 (Discussion held with the  
8 Court.)  
9 THE VIDEOGRAPHER: The time is  
10 now 1:44 PM. We are back on the record.  
11 - - -  
12 EXAMINATION  
13 - - -  
14 BY MR. BERNARDO:  
15 Q. Good afternoon, Ms. Musco. We  
16 obviously already know each other, but let  
17 me just introduce myself for the record  
18 here.  
19 I'm Rich Bernardo, and I'm  
20 going to ask you some questions on behalf  
21 of the Johnson & Johnson defendants.  
22 And first, I appreciate you've  
23 been here for now this is the second day  
24 and there's been a passage of some time  
25 between your first day and your second day,  
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1 so if I ask you something that you don't  
2 recall, let me know and I can help you  
3 refresh your recollection perhaps with a  
4 transcript or otherwise.

5 A. Okay.

6 Q. First, we didn't really get an  
7 opportunity for you to introduce yourself  
8 to the jury, Ms. Musco. Just if you  
9 wouldn't mind, tell the jury a little about  
10 yourself, where you grew up, where you went  
11 to school?

12 A. Born and raised in New Jersey  
13 so I'm a Jersey girl.

14 I went to college in  
15 Connecticut, University of Bridgeport in  
16 Connecticut.

17 I am a registered nurse. That  
18 is something I always wanted to be ever  
19 since I was a little girl, so my first jobs  
20 all revolved around that from volunteering  
21 to working in the hospital.

22 I went from my clinical  
23 experience taking care of severely burned  
24 patients in St. Barnabas in Livingston. So  
25 I had skin trauma to taking care of healthy

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1 better where the requested information may  
2 be found, did we search everywhere possible  
3 for it, where was there even the  
4 information that was requested, did it even  
5 exist. I did that.

6 I asked to look at some of the  
7 complaint files really just to remind  
8 myself. I wasn't familiar with all the  
9 cases. I wanted to see what the complaints  
10 were.

11 I read different documents. In  
12 particular, the last time I was deposed  
13 there were a number of documents, a lot of  
14 them that Mr. Placitella had presented to  
15 me, that I had not seen before and I wasn't  
16 familiar with, so I did ask that they be  
17 sent to Dr. John Hopkins, who is the expert  
18 on these matters, to make sure that he had  
19 seen them.

20 And then I followed that up and  
21 I had about an hour conversation with  
22 Dr. Hopkins. He went through specific  
23 tests or allegations that had been  
24 presented and explained them to me, not  
25 that I remember them, because a little

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1 familiar with them.

2 Q. And during the deposition,  
3 Mr. Placitella referred to Exhibit 8A and  
4 8B as reliance materials.

5 Do you agree with that  
6 characterization?

7 MR. PLACITELLA: Objection to  
8 the form of the question.

9 THE WITNESS: I didn't agree  
10 with the word "reliance." They were a  
11 basis, but I did not rely on them for my  
12 responses. As I said, those were the  
13 documents that I asked to be shared with  
14 Dr. Hopkins because I wanted to feel  
15 comfortable that he was familiar with them,  
16 that this was nothing new.

17 BY MR. BERNARDO:

18 Q. Okay. During your deposition,  
19 you discussed the fact that from time to  
20 time you signed or certified or verified, I  
21 think different words were used, responses  
22 to interrogatories.

23 Do you recall that?

24 A. Yes.

25 Q. I'd like to take a step back  
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1 highly scientific, but it reassured what  
2 I've always known. So you know, I felt  
3 much more comfortable after that.

4 O. Let me back up.

5 Ms. Musco, the documents that  
6 you sent or asked to be sent to  
7 Dr. Hopkins, can you identify them for the  
8 record by exhibit number so we're clear  
9 here?

10 A. Oh, yes. That would be  
11 Exhibit 8 -- P-8A and P-8B.

12 Q. Okay. Thank you.

13 And Ms. Musco, did you  
14 personally review each of the documents in  
15 Exhibits 8A and 8B?

16                      A.    No.

17 Q. Did you -- did you conduct any  
18 review of them?

19 A. I looked at them to see what  
20 they were. There were a lot of things that  
21 I don't understand so I certainly could not  
22 tell you everything that was in there, but  
23 because a lot of them had been brought up,  
24 that's why I asked that they be sent to  
25 Dr. Hopkins because he would be the most

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1 and can you explain in your own  
2 understanding what an interrogatory is in  
3 case the jury is not familiar with that  
4 term?

5           A. My understanding is that  
6       interrogatories are questions asked when a  
7       complaint has been filed.

8 Q. And do you have an  
9 understanding of the process through which  
10 interrogatory responses that are the  
11 subject of the deposition notice were  
12 prepared?

13 A. Well, yes, I know that -- the  
14 process that we used. I was not always  
15 involved in the process, but if there were  
16 questions that Counsel needed direction who  
17 the best person to speak with was, I would  
18 direct them to that appropriate person.

19 Q. Why -- why were you in  
20 particular involved, if you know,  
21 Ms. Musco?

22 A. I was really involved because  
23 throughout my tenure, I had the opportunity  
24 to work with just about every department in  
25 the company and the different experts that  
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|                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                             |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                   |
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| <p style="text-align: right;">Page 435</p> <p>1 would be the best ones to answer. So it's</p> <p>2 a big company, and I would help make that</p> <p>3 process easier and direct Counsel to those</p> <p>4 appropriate people.</p> <p>5 Q. Did you interview the</p> <p>6 individuals yourself?</p> <p>7 A. No.</p> <p>8 Q. Why not?</p> <p>9 A. Because it wouldn't make sense,</p> <p>10 you know, it was best that they speak</p> <p>11 directly to Counsel because I -- I couldn't</p> <p>12 relay their message. It was a conversation</p> <p>13 that needed to happen between Counsel and</p> <p>14 the expert.</p> <p>15 Q. Why is that?</p> <p>16 A. Because I knew that the people</p> <p>17 that I was choosing were the experts. I --</p> <p>18 as I said before, I wasn't just going down</p> <p>19 the hall and grabbing somebody, you know,</p> <p>20 Hey, can you answer this? I carefully</p> <p>21 chose the people that could best answer and</p> <p>22 could best supply that answer to Counsel,</p> <p>23 and my position was not to interview them.</p> <p>24 That wasn't my responsibility.</p> <p>25 Q. We discussed from time to time</p> <p style="text-align: center;">MAGNA LEGAL SERVICES</p>                                    | <p style="text-align: right;">Page 436</p> <p>1 you -- you signed or certified or verified.</p> <p>2 What does that mean to you to have done</p> <p>3 that?</p> <p>4 A. It means that I did read every</p> <p>5 answer -- every question, every answer to</p> <p>6 help ensure that they had all been</p> <p>7 answered, that I had directed Counsel to</p> <p>8 the appropriate person.</p> <p>9 Q. How do you know the individuals</p> <p>10 that you identified were providing accurate</p> <p>11 information or do you know that?</p> <p>12 A. Because again, I knew the</p> <p>13 people that I was directing Counsel to</p> <p>14 speak with. These were people I worked</p> <p>15 with again throughout 30 years, and I knew</p> <p>16 that they were the appropriate people. I</p> <p>17 got to work with them, I got to listen to</p> <p>18 them. I'd hear them at internal meetings,</p> <p>19 I'd hear them at professional meetings. So</p> <p>20 I trusted that they had the complete</p> <p>21 answers.</p> <p>22 Q. I want -- I want to move</p> <p>23 forward to the present time as opposed to</p> <p>24 talking now -- I think we've been talking</p> <p>25 about your time when you were assisting</p> <p style="text-align: center;">MAGNA LEGAL SERVICES</p> |
| <p style="text-align: right;">Page 437</p> <p>1 in -- in providing information or providing</p> <p>2 access to individuals for the responses.</p> <p>3 So when you were preparing for</p> <p>4 this deposition, did you do anything to</p> <p>5 ascertain the basis of the responses that</p> <p>6 you identified that were responsive to the</p> <p>7 notice?</p> <p>8 A. Well, again, you know, the</p> <p>9 conversations that I had reviewing them,</p> <p>10 the conversations that I had with</p> <p>11 Dr. Hopkins to just solidify what I always</p> <p>12 knew, that these were the correct</p> <p>13 responses.</p> <p>14 Q. Did -- did you make any efforts</p> <p>15 to identify if there were any compilations</p> <p>16 of documents linked to these responses?</p> <p>17 MR. PLACITELLA: Objection to</p> <p>18 form.</p> <p>19 THE WITNESS: Yes, that was</p> <p>20 part of my original conversation with one</p> <p>21 of the people who was responsible for the</p> <p>22 searches. I didn't think there were, but I</p> <p>23 wanted to make sure that there was no pile</p> <p>24 anywhere that was responsible for each</p> <p>25 answer. These were what people did every</p> <p style="text-align: center;">MAGNA LEGAL SERVICES</p> | <p style="text-align: right;">Page 438</p> <p>1 day in their work, so it's not like they</p> <p>2 opened a drawer and said, you know, Here's</p> <p>3 the page that answers that.</p> <p>4 BY MR. BERNARDO:</p> <p>5 Q. Let me -- let me take an aside</p> <p>6 here for a minute.</p> <p>7 At the end of your questioning</p> <p>8 by Mr. Placitella before I began, he asked</p> <p>9 you a number of questions about whether you</p> <p>10 have any knowledge of any documents that</p> <p>11 were produced or when they were produced.</p> <p>12 Do you recall those questions?</p> <p>13 A. Yes, I do.</p> <p>14 Q. In connection with preparing</p> <p>15 for this deposition, did you make any</p> <p>16 efforts to determine what documents were</p> <p>17 produced by Johnson &amp; Johnson in response</p> <p>18 to discovery requests, to document</p> <p>19 requests?</p> <p>20 A. No, I specifically looked at</p> <p>21 the notice and stayed within the scope of</p> <p>22 the notice. So my understanding of that</p> <p>23 was it had to do with the discovery</p> <p>24 responses.</p> <p>25 Q. Go back to, you mentioned you</p> <p style="text-align: center;">MAGNA LEGAL SERVICES</p>                                                                       |

37 (Pages 435 to 438)

1 looked for or asked somebody to look for  
2 documents. Who did you ask, by the way, to  
3 understand if there were documents that  
4 were linked up to these responses?

5 A. Well, the person I spoke to, I  
6 can't right now think of her last name,  
7 it's Pam. As I said, she was one of the  
8 people responsible for the searches, and in  
9 understanding, you know, how she did the  
10 searches, was there anything else, was  
11 there any other file to understand that  
12 better. So that's the person I spoke with.

13 Q. Okay. Mr. Placitella asked you  
14 a number of specific document -- I'm sorry,  
15 specific questions about documents that you  
16 couldn't answer, in particular documents in  
17 binders 8A and 8B.

18 Do you recall that?

19 A. Yes, I do.

20 Q. Why didn't you conduct a  
21 further review of those once you sent them  
22 to Dr. Hopkins?

23 MR. PLACITELLA: Objection,  
24 mischaracterizes her prior testimony.  
25 Object to form.

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1 that there may not have been -- in the  
2 first place there may not have been  
3 discovery responses, or they may have been  
4 with an outside counsel and we didn't know  
5 where they were. So you know, and I  
6 believe that we had agreed that we weren't  
7 going to search outside counsels, but every  
8 attempt was made to find whatever was  
9 available.

10 Q. On the first day of your  
11 testimony, Ms. Musco, a number of times you  
12 testified that documents were not available  
13 in one case or another other than the  
14 complaint.

15 Do you -- do you recall --  
16 first, do you recall that testimony?

17 A. Yes.

18 Q. And what -- what did you mean  
19 by that?

20 A. I meant the spec- -- I mean,  
21 there may have been documents, but the  
22 specific documents that had been requested  
23 in the notice, which were answers to  
24 interrogatories in discovery.

25 Q. Do you have any knowledge one  
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1 THE WITNESS: Well, some of  
2 them that he asked I didn't feel were in  
3 the scope because they had to do with  
4 industrial talc, and my understanding was  
5 that the notice had to do with cosmetic  
6 talc and Johnson's Baby Powder and Shower  
7 to Shower.

8 BY MR. BERNARDO:

9 Q. Okay. Also, Mr. Placitella  
10 raised with you a number of affidavits.

11 Do you recall that?

12 A. Yes.

13 Q. Did you review those?

14 A. No, I did not.

15 Q. And why hadn't you reviewed  
16 those?

17 A. For the reason that I just  
18 said, that these had to do with cases with  
19 industrial talc and I didn't believe they  
20 were within the scope.

Q. Do you have any understanding of why only a few sets of responses that discuss the issue of asbestos and talc were located?

25 A. No, but my understanding is  
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1 way or the other if there were documents  
2 pertaining to those cases other than  
3 whether there were discovery responses or  
4 discovery correspondence?

5           A. The other documents, no.

6 Q. Did you make any efforts to  
7 look for that?

8           A. Other than discovery responses,  
9       no, I did not.

Q. Why not?

11 A. Because, again, my

12 interpretation of the notice was that we  
13 were talking about discovery responses.

Q. Okay. And do you have any knowledge as to whether there were searches that were done in addition to the searches of the company files of the cases specifically cited in the notices to see if there were discovery responses?

20 MR. PLACITELLA: Object to the  
21 form.

22 THE WITNESS: Could you ask  
23 that again, please?

24 BY MR. BERNARDO:

25 Q. Sure.

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1 MR. PLACITELLA: Do you object,  
2 too?  
3 MR. BERNARDO: She objects,  
4 too.  
5 MR. PLACITELLA: Okay.  
6 BY MR. BERNARDO:  
7 Q. Ms. -- Ms. Musco, you testified  
8 during your deposition that searches were  
9 made with respect to the specific cases  
10 listed in the notice.  
11 Do you recall that?  
12 A. Yes.  
13 Q. Okay. Do you have knowledge as  
14 to whether there were searches done for  
15 discovery -- responsive discovery responses  
16 other than with respect to ones in those  
17 cases?  
18 MR. PLACITELLA: Objection to  
19 the form.  
20 THE WITNESS: No, I do not.  
21 BY MR. BERNARDO:  
22 Q. Okay. I'm going to switch  
23 gears a little bit.  
24 On the first day of your  
25 deposition, Mr. Placitella asked you about  
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1 the Johnson mine and whether talc from the  
2 Johnson mine was used in Johnson's Baby  
3 Powder.  
4 Do you recall that testimony?  
5 A. Yes, I do.  
6 Q. And you said you believed it  
7 did.  
8 Do you recall that?  
9 A. Yes.  
10 Q. What did you mean by that?  
11 A. Well, now I -- my understanding  
12 at the time was that when Mr. Placitella  
13 said Johnson's mine, I thought he meant the  
14 mines owned by Johnson's under the  
15 Johnson's umbrella, you know, the  
16 numerous -- the different ones that were  
17 owned by Johnson & Johnson or used by  
18 Johnson & Johnson.  
19 Q. Are you aware that there's a  
20 mine that's actually called the Johnson  
21 mine?  
22 A. I am now.  
23 Q. When did you first become aware  
24 that there's a mine called the Johnson  
25 mine?

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1 A. Yesterday.  
2 Q. And how did you become aware of  
3 that?  
4 A. In discussions with you.  
5 MR. PLACITELLA: What?  
6 MR. BERNARDO: In discussions  
7 with Counsel.  
8 MR. PLACITELLA: Can you mark  
9 that, please?  
10 BY MR. BERNARDO:  
11 Q. Do you have an understanding of  
12 whether the Johnson mine supplied talc for  
13 Johnson Baby Powder?  
14 A. No, I don't. I'm not really  
15 familiar which mine supplied what. I'm not  
16 an expert on the mines, and I think that's  
17 why I just heard Johnson's, you know,  
18 thinking like we say Johnson's Baby Powder,  
19 it's Johnson's mine.  
20 Q. And last, Ms. Musco, you talked  
21 about a number of discovery interrogatory  
22 responses, I think there were a couple in  
23 the Selby case and some in the Krushinski  
24 case during your deposition.  
25 Do you recall that?  
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1 A. Yes.  
2 Q. As you sit here today, do you  
3 believe that those responses are truthful  
4 and accurate?  
5 A. Yes.  
6 MR. BERNARDO: I don't have any  
7 further questions.  
8 MR. PLACITELLA: Okay. I'm  
9 going to need five to ten minutes.  
10 THE VIDEOGRAPHER: The time is  
11 now 2:02 PM. We are going off the record.  
12 (Recess.)  
13 THE VIDEOGRAPHER: The time is  
14 now 2:16 PM. We are back on the record.  
15 - - -  
16 EXAMINATION  
17 - - -  
18 BY MR. PLACITELLA:  
19 Q. Ma'am, do you have an  
20 understanding of what the penalty of  
21 perjury is in the state of New Jersey?  
22 MR. BERNARDO: Object to --  
23 BY MR. PLACITELLA:  
24 Q. What it is?  
25 MR. BERNARDO: Object to the  
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1 form of the question.  
2 THE WITNESS: I don't know the  
3 exact punishment, no.  
4 BY MR. PLACITELLA:  
5 Q. And you, in fact, signed  
6 certifications indicating that you knew  
7 that if you told a non-truth, you were  
8 subject to punishment and could go to jail,  
9 correct?  
10 MR. BERNARDO: Object to the  
11 form of the question.  
12 THE WITNESS: Yes.  
13 BY MR. PLACITELLA:  
14 Q. And you knew that when you were  
15 testifying here under oath that if you  
16 perjured yourself, you could be subject to  
17 penalties, correct?  
18 A. That's my understanding, yes.  
19 Q. Now, do you recall that when we  
20 started this deposition, I was very  
21 specific with you and I asked you questions  
22 about whether you had spoken with anybody,  
23 including your lawyers, and whether, based  
24 on that discussion, you were going to  
25 change your testimony in any way.  
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1 Do you recall me asking those  
2 questions?  
3 MR. BERNARDO: Object to the  
4 form of the question, mischaracterizes the  
5 question, mischaracterizes the statement.  
6 BY MR. PLACITELLA:  
7 Q. Do you recall me asking that  
8 question?  
9 A. I know you asked me whether I  
10 had conversations, yes.  
11 MR. PLACITELLA: Okay. Can you  
12 please, Court -- Madam Court Reporter, read  
13 back the question and answer I asked you to  
14 find in the -- that we started this  
15 deposition with?  
16 (Pertinent portion of the  
17 record is read.)  
18 BY MR. PLACITELLA:  
19 Q. Do you recall giving that  
20 testimony under oath, ma'am --  
21 A. That's what I said.  
22 Q. -- here on the witness stand in  
23 Middlesex County?  
24 A. That's what I said, yes.  
25 Q. Okay. I'm going to show you  
MAGNA LEGAL SERVICES

1 your testimony from the last time.  
2 MR. PLACITELLA: Are you ready?  
3 THE VIDEOGRAPHER: There's no  
4 speakers hooked up to it.  
5 MR. PLACITELLA: Right. Why  
6 are we getting no sound?  
7 THE VIDEOGRAPHER: The time is  
8 now 2:18 PM. We're going off the record.  
9 (Recess.)  
10 THE VIDEOGRAPHER: The time is  
11 now 2:22 PM. We are back on the record.  
12 BY MR. PLACITELLA:  
13 Q. This is your testimony from  
14 last time. I want to play it for you.  
15 (Audio played.)  
16 Okay. That was your testimony  
17 before you had a conversation with your  
18 lawyer and you changed your testimony,  
19 correct?  
20 MR. BERNARDO: Object to the  
21 form of the question, and object to not  
22 showing the witness the transcript in which  
23 there is obviously important testimony  
24 right before what you just showed her.  
25 BY MR. PLACITELLA:  
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1 Q. Ma'am, do you recall giving  
2 that testimony?  
3 Here, I'll play it again?  
4 (Audio played.)  
5 MR. BERNARDO: Same objection.  
6 BY MR. PLACITELLA:  
7 Q. Do you recall giving that  
8 testimony, ma'am?  
9 A. That is my voice there. I also  
10 remember saying that I really don't know  
11 much about the mines at all.  
12 Q. Ma'am, do you recall giving --  
13 let me play it again for the record.  
14 (Audio played.)  
15 MR. BERNARDO: Object to the  
16 continued playing of the testimony in --  
17 BY MR. PLACITELLA:  
18 Q. Do you recall giving that  
19 testimony, ma'am?  
20 MR. BERNARDO: -- that is not  
21 the prior statement.  
22 BY MR. PLACITELLA:  
23 Q. Do you recall giving that  
24 testimony under oath, ma'am?  
25 A. Yes, I -- that's what I said.  
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1 MR. BERNARDO: Object to the  
2 form of the question.  
3 THE WITNESS: As I told you  
4 earlier, we discussed my deposition  
5 generally, yes.  
6 BY MR. PLACITELLA:  
7 Q. Okay. Now -- and just so the  
8 record is clear, and based upon those  
9 discussions with your lawyers, you have  
10 changed your testimony here today?  
11 MR. BERNARDO: Object to the  
12 form.  
13 BY MR. PLACITELLA:  
14 Q. True or false?  
15 MR. BERNARDO: Object to the  
16 form of the question.  
17 THE WITNESS: False.  
18 BY MR. PLACITELLA:  
19 Q. You haven't changed your  
20 testimony?  
21 A. No.  
22 MR. BERNARDO: Objection to  
23 form of the question.  
24 MR. PLACITELLA: Okay.  
25 BY MR. PLACITELLA:  
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1 Q. So let's have the record clear.  
2 On the record, tell me everything you  
3 discussed with your lawyers about your  
4 testimony --  
5 MR. BERNARDO: Object --  
6 BY MR. PLACITELLA:  
7 Q. -- that you gave the last time?  
8 MR. BERNARDO: Object to the  
9 form of the question and instruct the  
10 witness not to answer. I'm asking that  
11 this stop and that we call in Judge Visconti  
12 right now. I'm making that request.  
13 MR. PLACITELLA: Well, I'm  
14 not -- I'm done. I'm going to file a  
15 motion.  
16 MR. BERNARDO: No, no.  
17 MR. PLACITELLA: There's no  
18 reason to do it now.  
19 MR. BERNARDO: No, no, no.  
20 MR. PLACITELLA: No, I'm not  
21 doing it now.  
22 MR. BERNARDO: Mr. Placitella,  
23 I'm asking --  
24 MR. PLACITELLA: I'm sorry.  
25 It's my -- you can do whatever you want  
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1 when I'm done with my questioning. I'm  
2 done.  
3 MR. BERNARDO: That's fine.  
4 MR. PLACITELLA: I'm done.  
5 Okay? All right? I'm done with asking the  
6 question. You've directed her not to  
7 answer it and -- and we're going to deal  
8 with it --  
9 MR. BERNARDO: No, we're going  
10 to --  
11 MR. PLACITELLA: -- in a motion  
12 practice. Yes, we are.  
13 MR. BERNARDO: We're going  
14 to --  
15 MR. PLACITELLA: It's my  
16 motion. No, we're not dealing with it now.  
17 MR. BERNARDO: And I'm going to  
18 ask if I'm allowed to redirect the witness,  
19 and I'm planning to do that. And in  
20 connection with that, I'm going to ask for  
21 Judge Viscomi.  
22 And in fact, before I redirect  
23 the witness, I think I'm going to take a  
24 brief break and try to find the judge.  
25 THE VIDEOGRAPHER: The time is  
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1 now 2:29 PM.  
2 We're going off the record.  
3 MR. PLACITELLA: I'm not done.  
4 MR. BERNARDO: You just said  
5 you were.  
6 MR. PLACITELLA: I'm not done  
7 with my questions. I have a lot more  
8 questions. I'm not done. I'm done with  
9 this line of questioning. You directed her  
10 not to answer and I'll file a motion and  
11 I'm going to keep asking my questions.  
12 MR. BERNARDO: I'm going to ask  
13 for Judge Viscomi in any event.  
14 (Discussion held with the  
15 Court.)  
16 THE VIDEOGRAPHER: The time is  
17 now 2:48 PM. We are back on the record.  
18 BY MR. PLACITELLA:  
19 Q. Okay. We had a conversation  
20 with the judge so I'm going to ask you this  
21 question: Did you understand it was a  
22 material issue as to whether -- well,  
23 scratch that.  
24 When we started the deposition,  
25 do you recall giving the following  
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1 testimony, and I'm going to play it out  
 2 loud because the video doesn't work, okay?  
 3 In terms of scope of the deposition.  
 4 Do you recall this?  
 5 (Audio played.)  
 6 Do you recall giving that  
 7 testimony?  
 8 A. Yes, I do.  
 9 Q. Okay. Now, you recall from the  
 10 affidavits that I showed you from  
 11 Mr. Miller where he said under oath that  
 12 the cosmetic talc and the industrial talc  
 13 came from the same mine.  
 14 Do you recall that?  
 15 MR. BERNARDO: Object to the  
 16 form of the question.  
 17 THE WITNESS: I don't recall  
 18 that he said that, no.  
 19 BY MR. PLACITELLA:  
 20 Q. Okay. We went through this, do  
 21 you remember the Edley affidavit from this  
 22 morning?  
 23 MR. PLACITELLA: Can I --  
 24 THE WITNESS: I remember the  
 25 name, yes.  
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1 Q. This is the affidavit from the  
 2 president of your company we went through  
 3 this morning.  
 4 Do you see that?  
 5 A. Yes, president of the mine,  
 6 yes.  
 7 Q. Right.  
 8 MR. PLACITELLA: This is --  
 9 BY MR. PLACITELLA:  
 10 Q. And in the affidavit,  
 11 Mr. Miller states:  
 12 "The mining district is  
 13 exclusive source of talc for all Johnson's  
 14 Baby Powder sold in the United States. In  
 15 addition to supplying the talc for  
 16 Johnson's Baby Powder, Windsor Minerals  
 17 also sells a portion of its products to  
 18 independent industrial users."  
 19 Do you see that?  
 20 A. Yes, I see that.  
 21 MR. BERNARDO: Objection.  
 22 BY MR. PLACITELLA:  
 23 Q. On the back he says:  
 24 "All of the talc mined by  
 25 Windsor Minerals, Inc., whether it is  
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1 BY MR. PLACITELLA:  
 2 Q. Do you recall --  
 3 THE VIDEOGRAPHER: The time is  
 4 now 2:51 PM. We're going off the record.  
 5 BY MR. PLACITELLA:  
 6 Q. I'll read -- I'll read it while  
 7 you're trying to figure it out.  
 8 The affidavit that's in your  
 9 book --  
 10 MR. BERNARDO: I'm sorry, are  
 11 we on the record, Chris?  
 12 MR. PLACITELLA: Yes.  
 13 MR. BERNARDO: I thought he  
 14 just said we're going off the record.  
 15 MR. PLACITELLA: I'm trying to  
 16 finish this. The judge told me I had an  
 17 hour.  
 18 MR. BERNARDO: I know, Chris.  
 19 I'm not trying to be argumentative, but I  
 20 thought he said we're off the record. I  
 21 thought you wanted to be on the record.  
 22 THE WITNESS: He did say that.  
 23 THE VIDEOGRAPHER: The time is  
 24 now 2:52 PM. We are back on the record.  
 25 BY MR. PLACITELLA:  
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1 ultimately sold to industrial users or used  
 2 in Johnson's Baby Powder, is sampled and  
 3 tested for presence of asbestos."  
 4 Right?  
 5 A. Yes.  
 6 Q. Okay. Now, you have binders --  
 7 your attorney asked you about binders 8A  
 8 and 8B.  
 9 Do you see them in front of  
 10 you?  
 11 A. Yes.  
 12 Q. Who selected what was going to  
 13 be put in those binders, you or your  
 14 lawyers?  
 15 A. Well, a lot of it was based on  
 16 my first deposition with you. I had asked  
 17 that those things be sent to Dr. Hopkins so  
 18 that I would understand them, and as I  
 19 explained earlier, to make sure that he was  
 20 well aware of them. So that's really what  
 21 a lot of it is.  
 22 Q. I'm not asking -- who made the  
 23 selection, ma'am, as to what was going to  
 24 go in those binders?  
 25 A. My attorneys and myself.  
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|                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                  |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                             |
|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <p>Page 463</p> <p>1 Q. So your lawyers made the</p> <p>2 selection with you and that was what was</p> <p>3 sent to Dr. Hopkins, correct?</p> <p>4 MR. BERNARDO: Object to the</p> <p>5 form of the question.</p> <p>6 BY MR. PLACITELLA:</p> <p>7 Q. Correct?</p> <p>8 A. This is what was sent, yes.</p> <p>9 Q. And it did not include all of</p> <p>10 the information that was -- is in Musco-2,</p> <p>11 does it?</p> <p>12 A. What's Musco-2?</p> <p>13 Q. The big fat binder in front of</p> <p>14 you. All of that information is not in the</p> <p>15 binders you sent to Dr. Hopkins, is it?</p> <p>16 A. You mean all of this</p> <p>17 information?</p> <p>18 Q. Yes, ma'am.</p> <p>19 A. I don't believe so. I don't</p> <p>20 know.</p> <p>21 Q. So what happened was your</p> <p>22 lawyers determined what was going -- what</p> <p>23 you were going to review, they put it in 8A</p> <p>24 and 8B, and then you sent that off to</p> <p>25 Dr. Hopkins, correct?</p> <p>MAGNA LEGAL SERVICES</p>                                                                                                                                             | <p>Page 464</p> <p>1 MR. BERNARDO: Object to the</p> <p>2 form of the question.</p> <p>3 THE WITNESS: Based -- based on</p> <p>4 our understanding of the notice, that</p> <p>5 material was sent to Mr. -- Dr. Hopkins.</p> <p>6 BY MR. PLACITELLA:</p> <p>7 Q. And that included the very</p> <p>8 first document in your binder that talked</p> <p>9 about the Johnson mine talc being used in</p> <p>10 cosmetic talc, right?</p> <p>11 MR. BERNARDO: Object to the</p> <p>12 form of the question.</p> <p>13 THE WITNESS: What's in 8A and</p> <p>14 8B was sent to Dr. Hopkins.</p> <p>15 BY MR. PLACITELLA:</p> <p>16 Q. Right. And it's the very first</p> <p>17 document in your binder that talks about</p> <p>18 talc from the Johnson mine, we just went</p> <p>19 through this, used in cosmetic talc, right?</p> <p>20 Very first document.</p> <p>21 A. That's in here, yes.</p> <p>22 Q. Okay. And then you called</p> <p>23 Dr. Hopkins after you sent the material,</p> <p>24 correct?</p> <p>25 A. Correct.</p> <p>MAGNA LEGAL SERVICES</p>              |
| <p>Page 465</p> <p>1 Q. Okay. And Dr. Hopkins is not a</p> <p>2 Johnson &amp; Johnson employee, correct?</p> <p>3 A. Not at this time, no.</p> <p>4 Q. And he never worked with you</p> <p>5 personally in answering any discovery</p> <p>6 related to lawsuits involving talc that you</p> <p>7 were involved with, correct?</p> <p>8 A. Not directly, no.</p> <p>9 Q. All right. You never had a</p> <p>10 single conversation with him about lawsuits</p> <p>11 involving talc until Johnson &amp; Johnson</p> <p>12 arranged for you to call him in preparation</p> <p>13 for this deposition, correct?</p> <p>14 MR. BERNARDO: Object to the</p> <p>15 form of the question.</p> <p>16 THE WITNESS: We had had</p> <p>17 conversations through the course of my</p> <p>18 tenure at Johnson &amp; Johnson, but not</p> <p>19 directly related to any particular</p> <p>20 complaints.</p> <p>21 BY MR. PLACITELLA:</p> <p>22 Q. My question was, ma'am: You</p> <p>23 never had a conversation with Dr. Hopkins</p> <p>24 about any lawsuit whatsoever until such</p> <p>25 time that counsel for Johnson &amp; Johnson put</p> <p>MAGNA LEGAL SERVICES</p> | <p>Page 466</p> <p>1 in touch with Dr. Hopkins, correct?</p> <p>2 MR. BERNARDO: Object to the</p> <p>3 form of the question.</p> <p>4 THE WITNESS: That's correct.</p> <p>5 BY MR. PLACITELLA:</p> <p>6 Q. And Dr. Hopkins is not an</p> <p>7 employee of Johnson &amp; Johnson, is he?</p> <p>8 A. Not at this time, no.</p> <p>9 Q. And what happened was that</p> <p>10 Johnson &amp; Johnson then paid Dr. Hopkins to</p> <p>11 look at the material that you sent him and</p> <p>12 then have a conversation to tell you what</p> <p>13 he thinks the material means, correct?</p> <p>14 MR. BERNARDO: Object to the</p> <p>15 form of the question.</p> <p>16 THE WITNESS: I don't know.</p> <p>17 I'm sure he was paid for his time like all</p> <p>18 of us, but I -- I don't know anything about</p> <p>19 that.</p> <p>20 BY MR. PLACITELLA:</p> <p>21 Q. Well, how much was he getting</p> <p>22 paid in order to brief you for this</p> <p>23 deposition?</p> <p>24 MR. BERNARDO: Object to the</p> <p>25 form of the question.</p> <p>MAGNA LEGAL SERVICES</p> |

44 (Pages 463 to 466)

1 THE WITNESS: I have no idea.  
2 BY MR. PLACITELLA:  
3 Q. And as a result of -- as a  
4 result of your conversation, you took down  
5 notes, correct?  
6 A. That's correct.  
7 Q. Okay.  
8 MR. PLACITELLA: Do you have  
9 her notes?  
10 MR. BERNARDO: And I'm going to  
11 object for the record. This is not  
12 something new that came up on her direct.  
13 This is something that could have been  
14 asked before and should have been asked  
15 before.  
16 Go ahead.  
17 MR. PLACITELLA: Okay. Give  
18 the witness a copy of her notes.  
19 BY MR. PLACITELLA:  
20 Q. Okay. You have in front of you  
21 your notes?  
22 A. Yes.  
23 Q. Okay. I have them here under  
24 the Elmo.  
25 These are your notes, correct?  
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1 A. Yes.  
2 Q. And they're P-14, correct?  
3 A. Yes.  
4 Q. And they're taken on Drinker,  
5 Biddle & Reath station -- notepads?  
6 A. Yes, they are.  
7 Q. So did you take these while you  
8 were at the law firm of Drinker, Biddle &  
9 Reath?  
10 A. Yes, I did.  
11 Q. And was anybody in the room  
12 with you while you were taking these notes?  
13 A. Yes.  
14 Q. And who was in the room with  
15 you while you were taking these notes?  
16 A. Both my attorneys, Mr. Karp and  
17 Mr. Bernardo.  
18 Q. So Mr. Bernardo and Mr. Karp  
19 were in the room while you were speaking to  
20 Dr. Hopkins and he was briefing you on his  
21 perceptions of what was in the documents  
22 you sent him, correct?  
23 MR. BERNARDO: Object to form  
24 of the question.  
25 THE WITNESS: They were both in  
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1 the room at the other end of the table, but  
2 I was having a conversation with  
3 Dr. Hopkins.  
4 BY MR. PLACITELLA:  
5 Q. Right. And did your lawyers at  
6 any point in time during your conversation  
7 with Dr. Hopkins provide any additional  
8 information or input?  
9 A. No, they did not.  
10 Q. So they sat there quietly the  
11 whole time and listened?  
12 A. They were talking amongst  
13 themselves.  
14 Q. Okay. So did they have any --  
15 did they say anything to Dr. Hopkins?  
16 A. No, they did not.  
17 Q. Okay. And so -- and the  
18 information you received from Dr. Hopkins  
19 with the lawyers in the room was part of  
20 the basis for the testimony that you've  
21 given in this deposition, correct?  
22 MR. BERNARDO: Object to the  
23 form of the question.  
24 THE WITNESS: I don't know that  
25 I would call it the basis for the  
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1 testimony. I -- the reason that I spoke to  
2 Dr. Hopkins is because I wanted, as I've  
3 said before, to make sure that this was  
4 nothing new, that he had reviewed -- he was  
5 familiar with all the allegations and I  
6 wanted to make sure of that.

7 BY MR. PLACITELLA:

8 Q. Okay. But then you wrote down  
9 notes based on your conversation with  
10 Dr. Hopkins while your lawyer was in the  
11 room and you brought them to the -- to the  
12 deposition to -- if I asked you questions,  
13 you were going to refer to the notes,  
14 right?

15 MR. BERNARDO: Object to the  
16 form of the question.

17 THE WITNESS: No, I was told  
18 that they had to be brought to the  
19 deposition so they're here.

20 BY MR. PLACITELLA:

21 Q. Okay. So whatever is in these  
22 notes is not the basis for anything you had  
23 to say in this deposition?

24 A. I really took notes. I do this  
25 every time I'm on the phone automatically.

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1 It's just to focus myself in the  
2 conversation. So I heard a lot from  
3 Dr. Hopkins, a lot of it was science. As I  
4 said, I'm not the expert in that, so I  
5 couldn't repeat back really what he said.  
6 Q. So do you remember what you  
7 said about your notes the last time we were  
8 together?  
9 A. Not exactly, no.  
10 Q. Okay. And -- well, let's just  
11 look at your notes. Okay? Let's -- so  
12 let's look at your notes where it talks  
13 about No. 6.  
14 Do you see that?  
15 MR. PLACITELLA: Can you give  
16 me book 6?  
17 BY MR. PLACITELLA:  
18 Q. You see No. 6?  
19 A. Yes.  
20 Q. Okay. And what that does is  
21 that refers to Exhibit 6 in tab 5, correct?  
22 A. No, I -- this was numbers that  
23 Dr. Hopkins was using on the phone, so  
24 perhaps it was just his way of referring.  
25 I don't know exactly what he was tying it  
MAGNA LEGAL SERVICES

1 into. I just wrote it down as he said it.  
2 Q. Well, here, I'm looking at it.  
3 Here's 1971, Colorado mine, right? Your  
4 notes. And there's an Exhibit No. 6,  
5 right? Your notes say No. 6, 1971, and you  
6 wrote down Colorado mine, correct?  
7 A. As I said, I wrote down what  
8 Dr. Hopkins said, which was No. 6.  
9 Q. And then tell me what your  
10 notes say about what Dr. Hopkins said.  
11 A. I have, "Colorado mine, trace  
12 tremolite 1971. Ashton, one sample that  
13 Langer found. Several labs. Princeton,  
14 MIT, FDA, Dartmouth all confirmed no  
15 asbestos."  
16 Q. Okay. And --  
17 MR. PLACITELLA: Sorry.  
18 J&J-65. My fault. I'm sorry. I should  
19 let you know that I -- hold on. It's still  
20 not here. Let's go to 22.  
21 BY MR. PLACITELLA:  
22 Q. Can you go to your tab 8A-19?  
23 MR. BERNARDO: I'm sorry, 8A-  
24 19?  
25 MR. PLACITELLA: Uh-huh.  
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1 BY MR. PLACITELLA:  
2 Q. November 5th, 1975.  
3 MR. PLACITELLA: That's what  
4 I'm missing, I'm doing this wrong. I'm  
5 back in sync.  
6 BY MR. PLACITELLA:  
7 Q. All right. So in your -- in  
8 your notes you have a No. 25, "Don't know  
9 if industrial or cosmetic."  
10 Do you see that?  
11 A. Yes.  
12 Q. And 25 is at 8A-19, correct?  
13 A. It says Exhibit 25.  
14 Q. Correct? And so I'm clear that  
15 this exhibit under the Elmo, 25,  
16 corresponds to your notes with Dr. Hopkins,  
17 correct?  
18 A. As I said earlier, these were  
19 the numbers that Dr. Hopkins gave me, so I  
20 do not know for sure if it's -- that's what  
21 it relates to.  
22 Q. Okay. Let's go to -- let's go  
23 to your notes 22. Okay? No. 22 talks  
24 about what? What does that say, 22?  
25 A. It says, "Imerys 1976, Vermont."  
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1 Don't know what the sample is. Sediment  
2 returned to test tube. No baby powder  
3 talc."

4 Q. Right. And is that your tab  
5 No. 17, Exhibit 22?

6 A. As I said earlier, I don't know  
7 specifically. These numbers were given to  
8 me by Dr. Hopkins.

9 Q. So although -- well, maybe I  
10 can shortcut all this.

11 Although you wrote down notes  
12 based on your conversations with  
13 Dr. Hopkins, you have no idea what exhibits  
14 in the binder you sent him they actually  
15 refer to, correct?

16 A. As I said earlier, these were  
17 his numbers. He specifically talked about  
18 these kind of testing where there were  
19 allegations to make it a little clearer to  
20 me and reassure me, but I can't say for  
21 sure what his numbering system was.

22 Q. Okay. So you don't know what  
23 he was going through having a conversation  
24 with him -- just so we're clear, you have  
25 no idea from looking at anything in 8A or

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1 8B what he was talking about, correct?  
2 A. I don't know specifically his  
3 numbering system, but you know, as you have  
4 pointed out, the number, the place, it  
5 seems to it, but it's Dr. Hopkins numbers,  
6 you know, he gave me.  
7 Q. Right. But you never connected  
8 the two?  
9 A. No.  
10 Q. Okay. So all you did was  
11 basically listen to Dr. Hopkins, he gave  
12 you a number, he told you what he thought  
13 about that number and you wrote it down,  
14 correct?  
15 A. Yes. I asked for his  
16 interpretation of the different allegations  
17 and that's what he gave me.  
18 Q. Okay. But you have no idea,  
19 just so we're clear, what tab in either one  
20 of these binders those notes even refer to,  
21 correct?  
22 A. I don't know specifically. He  
23 gave me these numbers, yes.  
24 Q. Okay. So we'd have to ask  
25 Dr. Hopkins?

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1 A. Yes.  
2 Q. Okay. So did you ever ask  
3 Dr. Hopkins whether the -- by the way,  
4 did -- did -- were your lawyers taking  
5 notes while this was going on?  
6 A. I don't think so. As I said,  
7 they were at the other end of the table  
8 talking amongst themselves. They were not  
9 part of the conversation.  
10 Q. Okay. And -- okay.  
11 MR. PLACITELLA: So give me the  
12 Hopkins chart.  
13 BY MR. PLACITELLA:  
14 Q. This is a big copy of the  
15 Hopkins chart, J&J-414, Hopkins-28 that was  
16 in your binder.  
17 Do you see that?  
18 A. Yes.  
19 Q. Okay. Will you take the big  
20 copy out? And let's just talk about it.  
21 You see -- first of all, can  
22 you look through this chart and you see how  
23 the chart is headed, it's date, exhibit  
24 number, testing entity, author, recipient,  
25 purpose stated, test method, mine, what was  
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1 tested, special preparation, what test  
2 revealed, Hopkins comments.  
3 Do you see that?  
4 A. I see that, yes.  
5 MR. BERNARDO: Object to the  
6 form of the question.  
7 BY MR. PLACITELLA:  
8 Q. And can you tell me -- so for  
9 example, under J&J-257, it talks about  
10 McCrone.  
11 Do you see that?  
12 A. I see that, yes.  
13 Q. And by the way, when you talked  
14 to Dr. Hopkins about this chart, did he  
15 tell you how he created this chart?  
16 MR. BERNARDO: Object to the  
17 form of the question.  
18 THE WITNESS: I did not talk to  
19 him about this chart. I don't know if he  
20 created it or you created it based on his  
21 comments, so I didn't talk to him  
22 specifically about this.  
23 BY MR. PLACITELLA:  
24 Q. So where he talks about find --  
25 where the chart talks about chrysotile

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1 being found in Shower, you don't  
2 know anything about that, correct?  
3 MR. BERNARDO: Object to the  
4 form of the question.  
5 THE WITNESS: I don't know what  
6 this is referring to here, no.  
7 BY MR. PLACITELLA:  
8 Q. Okay. So maybe I can get us  
9 out of here early.  
10 Am I correct that you don't  
11 have any evidence, as you sit here today,  
12 on behalf of Johnson & Johnson that a  
13 single one of the tests that are set forth  
14 in this chart were ever supplied to any  
15 plaintiff before 2017 as part of discovery,  
16 correct?  
17 MR. BERNARDO: Object to the  
18 form of the question.  
19 BY MR. PLACITELLA:  
20 Q. Take a look at it --  
21 MR. BERNARDO: Asked and  
22 answered.  
23 BY MR. PLACITELLA:  
24 Q. -- 'cause I don't -- I don't  
25 want you -- I don't want you to do it  
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1 haphazardly. Take a look at the chart,  
 2 please.  
 3 A. I don't know what was supplied  
 4 to the plaintiffs.  
 5 Q. Please take a look at the  
 6 chart.  
 7 A. I don't have to look at it  
 8 because I really do not know what was  
 9 supplied to the plaintiff.  
 10 Q. As you sit here today  
 11 testifying on behalf of Johnson & Johnson,  
 12 am I correct that you don't have any  
 13 evidence that you can show the court that  
 14 any of the tests that are set forth in this  
 15 chart were ever provided to a single  
 16 plaintiff before 2017, correct?  
 17 MR. BERNARDO: Object to the  
 18 form of the question, beyond the scope of  
 19 the notice.  
 20 You can answer in your  
 21 individual capacity.  
 22 THE WITNESS: I don't know  
 23 because my understanding was that was not  
 24 what I was here to talk about today.  
 25 BY MR. PLACITELLA:  
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1 form of the question.  
 2 THE WITNESS: My understanding  
 3 that I was here today to discuss the  
 4 discovery responses.  
 5 BY MR. PLACITELLA:  
 6 Q. Ma'am, do you remember the  
 7 first question I asked you and I just  
 8 played it for you again, that you are here  
 9 to testify about what information was in  
 10 possession of Johnson & Johnson and what  
 11 was turned over in the course of discovery?  
 12 Do you recall that?  
 13 A. The specific discovery  
 14 responses.  
 15 Q. Yes, ma'am. And as you sit  
 16 here today, you don't have a single piece  
 17 of evidence to indicate that you ever  
 18 turned any test over related to the testing  
 19 of asbestos in Johnson & Johnson talc to a  
 20 single plaintiff, correct?  
 21 MR. BERNARDO: Object to the  
 22 form of the question.  
 23 THE WITNESS: My understanding  
 24 if it was appropriate to be turned over,  
 25 that it would have been, but I do not know  
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1 Q. Okay. And would you agree that  
 2 all of the test results, whether you agree  
 3 with them or not, on this chart are  
 4 evidence?  
 5 MR. BERNARDO: Object to the  
 6 form of the question.  
 7 THE WITNESS: That's kind of  
 8 hard for me to answer because I think of  
 9 evidence as proof, but if it was  
 10 appropriate for them to be given to the  
 11 plaintiffs and discussed, then I would  
 12 think they would be.  
 13 BY MR. PLACITELLA:  
 14 Q. But you have no proof to that  
 15 effect at all, correct?  
 16 A. No, I do not.  
 17 Q. All right. And you were the  
 18 one that was here produced by Johnson &  
 19 Johnson to testify under oath as to what  
 20 was in the possession of Johnson & Johnson  
 21 and what was turned over to the plaintiffs  
 22 as part of discovery? That's the part I  
 23 just read you in the first question I asked  
 24 you in the deposition, correct?  
 25 MR. BERNARDO: Object to the  
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1 what was or was not turned over.  
 2 BY MR. PLACITELLA:  
 3 Q. Ma'am, I'm going to ask the  
 4 question again: As you sit here today, you  
 5 do not have any evidence to prove that you  
 6 ever turned over a single test concerning  
 7 asbestos and Johnson & Johnson talc to any  
 8 plaintiff before 2017, correct?  
 9 MR. BERNARDO: Object to the  
 10 form of the question.  
 11 THE WITNESS: Again, I do not  
 12 know what was turned over or what was not  
 13 turned over.  
 14 BY MR. PLACITELLA:  
 15 Q. Ma'am, I promise you you'll get  
 16 out of here on time. Just please try to  
 17 answer my question.  
 18 MR. BERNARDO: I believe she  
 19 has a couple times.  
 20 BY MR. PLACITELLA:  
 21 Q. As you sit here today, you do  
 22 not have any evidence that any test related  
 23 to asbestos and Johnson & Johnson talc was  
 24 ever turned over to any plaintiff in any  
 25 case before 2017. You have no evidence  
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1 with you, do you?

2 MR. BERNARDO: Object to the

3 form of the question.

4 THE WITNESS: I'm trying to

5 answer it. I don't know what was or

6 wasn't. I did not come today prepared to

7 show you evidence of what was or was not

8 turned over.

9 BY MR. PLACITELLA:

10 Q. Ma'am, all I'm asking you, as

11 you sit here today, do you have any

12 evidence that you turned over a single one

13 of these tests set forth in Musco-2 or on

14 this chart to any plaintiff before 2017?

15 That's my question.

16 A. And my answer is still the

17 same: I don't know what was or was not

18 turned over.

19 Q. But, ma'am, you're here on

20 behalf of Johnson & Johnson as the person

21 to testify about what was and what was not

22 turned over. And are you saying that you,

23 Johnson & Johnson, have no idea what was

24 turned over or not?

25 MR. BERNARDO: Object to the

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1 turned over, you, Johnson & Johnson, any

2 evidence related to the testing of Johnson

3 & Johnson talc for asbestos?

4 MR. BERNARDO: Object to the

5 form of the question.

6 THE WITNESS: If it was

7 requested and it was appropriate to send,

8 then it would have been sent. So I do not

9 know if it was sent or not.

10 BY MR. PLACITELLA:

11 Q. Ma'am, you certified answers to

12 interrogatories under oath, under penalty

13 of perjury in numerous cases, did you not?

14 A. Yes. There were different

15 ones, yes.

16 Q. And what I'm asking you is: Do

17 you have any proof, as you sit here today,

18 that when you did that, you ever turned

19 over a single document in conjunction with

20 those responses related to the testing of

21 Johnson Baby Powder for asbestos?

22 MR. BERNARDO: Object to the

23 form of the question.

24 THE WITNESS: I don't remember

25 turning it over. I don't remember what was

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1 form of the question.

2 THE WITNESS: My understanding

3 is that I'm here today to discuss the

4 discovery responses.

5 BY MR. PLACITELLA:

6 Q. Ma'am, yes or no: Do you have

7 any evidence that you ever turned over a

8 single test for asbestos in Johnson &

9 Johnson talc before 2017? Do you have any

10 evidence whatsoever?

11 MR. BERNARDO: Object to the

12 form of the question.

13 THE WITNESS: I can't answer

14 that because I don't know what was handed

15 over or what was not.

16 I'm trying to be helpful, but

17 I -- I do not have any knowledge of that

18 and I was not prepared to discuss that

19 today.

20 BY MR. PLACITELLA:

21 Q. Okay. Ma'am, in the

22 interrogatory responses that you signed,

23 and you said you verified a number of them,

24 do you have any evidence that when you

25 signed answers to interrogatories, that you

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1 turned over. Again, that was not my

2 responsibilities. I'm not here to discuss

3 that. I don't know what was turned over or

4 not.

5 BY MR. PLACITELLA:

6 Q. Ma'am, do you have any

7 evidence, as you sit here today, that in

8 any of the discovery responses that you

9 certified as true and accurate ever turned

10 over testing evidence related to Johnson &

11 Johnson Baby Powder for asbestos? It's a

12 simple yes or no question.

13 MR. BERNARDO: Object to the

14 form of the question. She's answered it

15 multiple times.

16 BY MR. PLACITELLA:

17 Q. Do you have any evidence?

18 MR. BERNARDO: And she's

19 answered why she can't answer it yes or no

20 as well.

21 MR. PLACITELLA: Please don't

22 do that. That is not a form objection.

23 Please don't do that.

24 MR. BERNARDO: Then please

25 don't harass the witness.

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1 MR. PLACITELLA: Please don't  
2 do that. I'm just trying to get an answer  
3 to my question.  
4 THE WITNESS: And I'm really  
5 trying to answer it. I don't believe it's  
6 a yes or no. I don't know one way or the  
7 other.  
8 BY MR. PLACITELLA:  
9 Q. Okay. So as you sit here  
10 today, Johnson & Johnson does not know  
11 whether, when they were responding to  
12 discovery -- because this is not Nancy  
13 Musco. I'm asking you, Johnson & Johnson,  
14 as you sit here today, Johnson & Johnson  
15 cannot produce any evidence that they ever  
16 turned over a single test concerning  
17 asbestos in Johnson & Johnson talc at any  
18 point in time to any plaintiff, correct?  
19 MR. BERNARDO: Object to the  
20 form of the question.  
21 THE WITNESS: Again, I can't  
22 answer because my it's understanding today  
23 that I was here to discuss the discovery  
24 interrogatory responses.  
25 BY MR. PLACITELLA:  
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1 Q. Yes, 'ma'am, and in conjunction  
2 with the discovery responses, even under  
3 your understanding, no discovery response  
4 ever attached a single test that you  
5 certified, a single test related to testing  
6 of Johnson & Johnson Baby Powder for  
7 asbestos, correct?

8 MR. BERNARDO: Object to the  
9 form of the question.

10 THE WITNESS: At this point, I  
11 don't even know what the question is.  
12 BY MR. PLACITELLA:

13 Q. Ma'am, when you signed  
14 interrogatories, did you ever attach to any  
15 of the interrogatories that you certified  
16 as true and accurate under oath, did you  
17 ever attach or supply a single test of  
18 Johnson & Johnson talc for asbestos?

19 Did you ever do it?

20 A. It wasn't my responsibility to  
21 do that. The questions were given to the  
22 appropriate person, and if there was an  
23 appropriate response that required testing  
24 to be sent and it felt it was appropriate  
25 to answer and send, it would have been.

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1 Q. Ma'am --  
2 A. But I do not know whether they  
3 were sent or not.  
4 Q. Ma'am, I'm not asking you,  
5 Nancy Musco, I'm asking you, Johnson &  
6 Johnson.  
7 You, Johnson & Johnson, have no  
8 idea whether you ever sent a single test to  
9 any plaintiff concerning testing for  
10 asbestos in Johnson & Johnson talc,  
11 correct?  
12 MR. BERNARDO: Object to the  
13 form of the question.  
14 BY MR. PLACITELLA:  
15 Q. You, Johnson & Johnson. Not  
16 Nancy Musco.  
17 MR. BERNARDO: Object to the  
18 form of the question, beyond the scope of  
19 the notice.  
20 You can answer it if you can.  
21 THE WITNESS: I have -- because  
22 I'm answering as Johnson & Johnson, it's  
23 beyond the scope of what we're here to talk  
24 about --  
25 BY MR. PLACITELLA:  
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1 Q. Ma'am --  
2 A. -- so I do not know.  
3 Q. Ma'am, you believe that it was  
4 your determination to figure out what the  
5 scope of this deposition was? You thought  
6 that was your role?  
7 A. That was part of my role, yes.  
8 Q. Not your lawyers? You didn't  
9 think your lawyers made that determination?  
10 In preparing for this deposition, you made  
11 the determination what the scope of the  
12 deposition notice was.  
13 MR. BERNARDO: Object to the  
14 form.  
15 BY MR. PLACITELLA:  
16 Q. Is that -- is that your  
17 testimony under oath?  
18 MR. BERNARDO: Object to the  
19 form of the question.  
20 THE WITNESS: We both did.  
21 BY MR. PLACITELLA:  
22 Q. So you decided what -- you,  
23 based upon this notice -- is this marked by  
24 the way?  
25 MS. CALLAHAN: P-2 I believe.  
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1 MR. PLACITELLA: Okay.  
2 BY MR. PLACITELLA:  
3 Q. Based upon P-1 -- P-1 says,  
4 you're the person -- the representative of  
5 Johnson & Johnson with the most knowledge  
6 concerning discovery responses historically  
7 provided by Johnson & Johnson and Windsor  
8 Minerals concerning the asbestos content of  
9 talc, Johnson's Baby Powder, Shower to  
10 Shower sold by Johnson & Johnson, Windsor  
11 Minerals and Eastern Magnesia Talc Company.  
12 Do you see that?  
13 A. Yes, I do.  
14 Q. And you understand that  
15 discovery responses involve more than just  
16 interrogatory answers, correct?  
17 A. My understanding is that  
18 they're the direct responses to the  
19 interrogatories in discovery.  
20 Q. Ma'am, you understand that  
21 discovery responses are more than answers  
22 to interrogatories, correct?  
23 A. My understanding is that these  
24 were direct responses that was requested.  
25 Q. Well, you see on the very next  
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1 Q. That's it?

2 A. My understanding is that I was

3 to review and respond to discovery

4 responses and they were not available to me

5 any other discovery responses.

6 Q. Okay. Ma'am, let me ask the

7 question again.

8 Although Johnson & Johnson was

9 involved in litigation based on what we did

10 from 1971 to the present involving

11 Johnson's Baby Powder, you only reviewed

12 two interrogatory responses in preparation

13 for the -- this deposition, correct?

14 A. That's correct.

15 Q. Okay.

16 MR. BERNARDO: Object to the

17 form of the question.

18 BY MR. PLACITELLA:

19 Q. And you -- and out of all of

20 the interrogatory responses that you

21 certified yourself, you only reviewed one

22 set of interrogatory responses, correct?

23 MR. BERNARDO: Object to the

24 form of the question.

25 THE WITNESS: I believe there

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1 page it actually details information that  
2 you were asked to bring and consider. It  
3 included correspondence related to  
4 discovery, correct?  
5 A. For the specific complaints,  
6 yes.  
7 Q. Okay. Discovery responses,  
8 ma'am, correct?  
9 A. For the specific cases, yes.  
10 Q. All right. Affidavits, ma'am?  
11 A. Yes.  
12 Q. All right. Certifications,  
13 correct?  
14 A. Yes.  
15 Q. Okay. And just so the record  
16 is clear, although Johnson & Johnson was  
17 involved based upon what we went through  
18 last time in litigation involving baby  
19 powder from 1971 to the present, you only  
20 reviewed two sets of interrogatories in  
21 order to prepare for your deposition,  
22 correct?  
23 MR. BERNARDO: Object to the  
24 form of the question.  
25 BY MR. PLACITELLA:  
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1 was only one specific one that I did  
2 certify myself.  
3 BY MR. PLACITELLA:  
4 Q. You told me that you certified  
5 multiple --  
6 A. Of the baby powder.  
7 Q. Right. I'm sorry, what did you  
8 say?  
9 A. Of the baby powder, yes.  
10 Q. Right.  
11 A. There's one.  
12 Q. Right.  
13 A. There's one. And there may  
14 have been others throughout the years that  
15 I did.  
16 Q. Right. And that --  
17 A. But they weren't necessarily  
18 baby powder.  
19 Q. You don't have any  
20 recollection?  
21 A. No, I don't.  
22 Q. Okay. All right. Well, then,  
23 how do you know if they're baby powder or  
24 not?  
25 A. Because I know that these were  
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1 the ones that were discussed. I mean,  
2 30 years, there was a lot of products, a  
3 lot of cases.

4 Q. Okay. So let me ask you the  
5 following questions on behalf of Johnson &  
6 Johnson.

7 Did Johnson & Johnson make any  
8 mistakes in how they supplied discovery  
9 responses in lawsuits involving baby powder  
10 from your perspective on behalf of Johnson  
11 & Johnson?

12 MR. BERNARDO: Object to the  
13 form of the question, beyond the scope of  
14 the notice.

15 You can answer in your  
16 individual capacity.

17 THE WITNESS: I don't know what  
18 you mean by mistakes.

19 BY MR. PLACITELLA:

20 Q. Well, did they -- should they  
21 have provided certain information that they  
22 didn't -- did they make any mistakes?

23 MR. BERNARDO: Same objection.

24 BY MR. PLACITELLA:

25 Q. Here's what I'm trying to  
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1 avoid, ma'am, to be clear. I don't want to  
2 see your lawyer get up in a -- in a -- in a  
3 trial and say mistakes were made, but they  
4 were innocent mistakes, and so I'm just  
5 asking you: From your -- from the  
6 perspective of Johnson & Johnson, were any  
7 mistakes made in how you responded to  
8 discovery in terms of the information you  
9 supplied related to Johnson's Baby Powder  
10 and testing for asbestos? Were any  
11 mistakes made?

12 MR. BERNARDO: Object to the  
13 form of the question, beyond the scope of  
14 the notice.

15 THE WITNESS: I can't answer  
16 that.

17 BY MR. PLACITELLA:

18 Q. You can't answer it?

19 A. No.

20 Q. Okay.

21 MR. PLACITELLA: Just give me  
22 two minutes to look at my notes.

23 THE VIDEOGRAPHER: Off the  
24 record?

25 MR. PLACITELLA: Yeah, you can  
MAGNA LEGAL SERVICES

go off the record.

THE VIDEOGRAPHER: The time is now 3:29 PM. We are going off the record.

(Brief recess.)

THE VIDEOGRAPHER: The time is now 3:31 PM. We are back on the record.

BY MR. PLACITELLA:

Q. Okay. Do you have 8A-32 in front of you?

A. From where?

Q. From your books.

A. 8A you said?

Q. 8A, No. 32. This is from the books that you and your counsel selected to send to Dr. Hopkins, correct?

A. This is the book sent to Dr. Hopkins, yes.

Q. Okay. And 8A-32 is entitled, "What does testing reveal?"

Do you see that?

A. I see it says that, yes.

Q. And over here on the left side is a date and on the right is a result.

Do you see that?

A. That's what it says, yes.

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1 Q. And over here it says, for  
2 example, date, 12/4/70, and the result is 5  
3 to 10 percent fibrous talc, tremolite,  
4 actinolite.  
5 Do you see that?  
6 A. That's what it says, yes.  
7 Q. Were these results ever  
8 provided to any plaintiff, to your  
9 knowledge?  
10 MR. BERNARDO: Objection to the  
11 form of the question.  
12 THE WITNESS: I do not know.  
13 BY MR. PLACITELLA:  
14 Q. Okay. Next, 7/7/71 under "What  
15 did the testing reveal? Tremolite and  
16 actinolite."  
17 Do you see that?  
18 A. I see it says that, yes.  
19 Q. Okay. The next one, it says,  
20 7/29/71, Johnson & Johnson. Fibrous  
21 minerals, tremolite, actinolite in terms of  
22 what did the testing reveal.  
23 Do you see that?  
24 A. I see it says that, yes.  
25 Q. Do you have any evidence that  
MAGNA LEGAL SERVICES

1 this test was turned over to any plaintiff  
2 at any point in time?  
3 MR. BERNARDO: Object to the  
4 form of question, beyond the scope of the  
5 notice.  
6 You can answer in your  
7 individual capacity if you know.  
8 THE WITNESS: I don't know what  
9 this is and what it was from and who wrote  
10 it.  
11 BY MR. PLACITELLA:  
12 Q. Ma'am, this is in your book  
13 that you sent to Dr. Hopkins, so you and  
14 your lawyers put this together. You must  
15 have thought it was important or you  
16 wouldn't have sent it. So let me ask you  
17 the questions.  
18 Let's go to 2/26/73. This  
19 talks about from Colorado to Ashton,  
20 tremolite, actinolite, asbestos-type  
21 materials.  
22 Was this test ever sent to any  
23 plaintiff?  
24 A. I don't know.  
25 Q. Okay. Next is a report -- I'll  
MAGNA LEGAL SERVICES

1 skip down.  
2 Reference, 4/24/74, McCrone.  
3 On the chart What the tests reveal, and it  
4 talks about chrysotile, Argonaut.  
5 Do you see that?  
6 A. I see it says that.  
7 Q. Does -- was this test ever  
8 supplied to any plaintiff?  
9 A. I don't know.  
10 Q. Okay. And the next is a --  
11 under "What did the test reveal" chart,  
12 there is a mention of a report from  
13 McCrone.  
14 Do you see that? 10/10/74?  
15 A. I see it says that, yes.  
16 Q. And it says chrysotile fibers.  
17 Do you have any evidence that  
18 this report was ever supplied to a single  
19 plaintiff?  
20 MR. BERNARDO: Same objection  
21 with respect to this entire document and  
22 scope.  
23 You may answer.  
24 THE WITNESS: I don't know.  
25 BY MR. PLACITELLA:  
MAGNA LEGAL SERVICES

1 Q. Okay. Next is 2/2/75, entitled  
2 Cyprus. Result: Asbestos mineral  
3 tremolite, possibly chrysotile.  
4 Do you have any evidence that  
5 this test result --  
6 MR. BERNARDO: Object to the  
7 form --  
8 BY MR. PLACITELLA:  
9 Q. -- was supplied to any  
10 plaintiff?  
11 MR. BERNARDO: Object to the  
12 form of the question.  
13 THE WITNESS: I do not know.  
14 BY MR. PLACITELLA:  
15 Q. Okay. Next is a listing  
16 10/8/65, Miller to McCrone, under Result:  
17 Fibers of asbestos.  
18 Do you have any evidence that  
19 the test that was sent from Miller to  
20 McCrone talking about fibers of asbestos  
21 was ever turned over to a single plaintiff?  
22 A. I don't know.  
23 Q. Okay. Next is 1/15/75 from  
24 McCrone to Zeitz. Under Result: Fibers of  
25 asbestos 10 times.  
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1 Do you have any evidence that  
2 this test was ever turned over to a single  
3 plaintiff?  
4 A. I --  
5 MR. BERNARDO: Same objection.  
6 THE WITNESS: I do not know.  
7 BY MR. PLACITELLA:  
8 Q. Okay. Next is a date, 1/25/77,  
9 Pooley to Roll (ph). Under Result: Fibers  
10 of antigorite.  
11 Do you have any evidence that  
12 this test was ever turned over to a single  
13 plaintiff?  
14 A. I do not know.  
15 Q. Okay. Next -- I'm skipping a  
16 little bit because I was told by the judge  
17 I had to get done by quarter of, so let's  
18 just go from -- to -- skip up to 1978.  
19 10/6/78, McCrone to Windsor.  
20 Result: Chrysotile fibers.  
21 Do you have any evidence that  
22 this test was ever turned over to a single  
23 plaintiff?  
24 A. I do not, no.  
25 Q. Okay. Next is a -- well, the  
MAGNA LEGAL SERVICES



1 next two say mine unknown, so I'm going to  
2 skip those.

3 Then it says 9/1/83, McCrone,  
4 and under Result, it says: Fibers at  
5 Argonaut.

6 Do you know Argonaut was a mine  
7 that was used for Johnson Baby Powder?

8 MR. BERNARDO: Object to the  
9 form of the question.

10 THE WITNESS: As I said  
11 earlier, I am not familiar with all the  
12 names of the mines.

13 BY MR. PLACITELLA:

14 Q. Do you have any evidence that  
15 this test was ever turn over to a single  
16 plaintiff?

17 A. I do not know.

18 Q. Okay. There's another test  
19 here, 11/2/84 from McCrone. Chrysotile  
20 fibers.

21 Do you see that result?

22 A. I see it says that.

23 Q. Is that the same McCrone that  
24 you filed discovery responses saying that  
25 the information that they had was a trade

MAGNA LEGAL SERVICES

1 secret?  
2 MR. BERNARDO: Object to the  
3 form of the question.  
4 THE WITNESS: I -- again, I  
5 don't know what this is and what it relates  
6 to.  
7 BY MR. PLACITELLA:  
8 Q. But McCrone, that's the company  
9 that you filed discovery responses in the  
10 Coker case and said that information from  
11 McCrone was a trade secret, right?  
12 MR. BERNARDO: Object to the  
13 form of the question.  
14 BY MR. PLACITELLA:  
15 Q. That's what you said, you  
16 Johnson & Johnson.  
17 Do you remember that?  
18 A. I don't believe -- I don't know  
19 that that was said.  
20 Q. Okay. You don't remember that  
21 document?  
22 A. I remember there were  
23 documents. I don't remember what they  
24 said.  
25 Q. All right. A few more.  
MAGNA LEGAL SERVICES

8/22/85, test from McCrone.  
Result: Chrysotile asbestos.  
Do you have any evidence that  
this test was ever sent to a single  
plaintiff?  
MR. BERNARDO: Object to the  
form of the question.  
THE WITNESS: I do not know.  
BY MR. PLACITELLA:  
Q. Okay. And 4/26/86, McCrone to  
Miller, chrysotile asbestos. Do you have  
any evidence this test was ever sent to a  
single plaintiff?  
A. I do not know.  
Q. Okay. The next test, 9/8/86,  
McCrone to Miller, Windsor Hammonsville,  
Goodrock exposed to -- George Goodrock  
exposed to fibers.  
Do you know who that is --  
A. No.  
Q. -- who worked for you?  
Okay. And then the last one,  
3/30/1987, tremolite, correct?  
A. That's what it says.  
Q. All right. One more question,  
MAGNA LEGAL SERVICES

1 ma'am. One more question and I'm done.  
2 MR. PLACITELLA: Tab 33 and 34.  
3 BY MR. PLACITELLA:  
4 Q. All of these tests that we just  
5 went through, ma'am, every one of them  
6 predated the affidavit signed by the  
7 president of your company in July 1987  
8 where you said that there was no testing  
9 evidence ever showing asbestos in any  
10 Johnson & Johnson product, correct?  
11 MR. BERNARDO: Object to the  
12 form.  
13 BY MR. PLACITELLA:  
14 Q. Every one of the tests we just  
15 went through?  
16 MR. BERNARDO: Object to the  
17 form of the question, beyond the scope of  
18 the notice.  
19 You can answer in your  
20 individual capacity if you know.  
21 THE WITNESS: The dates seem to  
22 be before, yes.  
23 MR. PLACITELLA: Okay. That's  
24 all the questions I have. Thank you.  
25 THE VIDEOGRAPHER: The time is  
MAGNA LEGAL SERVICES

CERTIFICATE

I, CONSTANCE S. KENT, a Notary Public and Certified Court Reporter of the State of New Jersey, do hereby certify that prior to the commencement of the examination, NANCY MUSCO, was duly sworn by me to testify to the truth, the whole truth and nothing but the truth.

I DO FURTHER CERTIFY that I am neither a relative nor employee nor attorney nor counsel of any of the parties to this action, and that I am neither a relative nor employee of such attorney or counsel, and that I am not financially interested in the action.



| 1  | LAWYER'S NOTES |      |  |
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# EXHIBIT 121

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Attorney(s): LEVINSON, CONOVER, AXELROD, WHEATON & GRAYZEL  
Office Address & Tel. No.: 2 Lincoln Highway, Edison, New Jersey 08818-2905  
(201)494-2727  
Attorney(s) for Plaintiff

LOUIS EDLEY

SUPERIOR COURT OF NEW JERSEY  
LAW DIVISION  
MIDDLESEX COUNTY

Plaintiff(s)

vs.

E & B MILL SUPPLY, et als

Defendant(s)

DOCKET NO. L-075913-86

CIVIL ACTION

Stipulation of Dismissal  
with prejudice

(as to defendant, Windsor Minerals, Inc.)

*The matter in difference in the above entitled action having been amicably adjusted by and between the parties, it is hereby stipulated and agreed that the same be and it is hereby dismissed without costs against either party, with prejudice as to defendant, Windsor Minerals, Inc.*



Dated: July 23, 19 87

By \_\_\_\_\_  
RONALD S. LEVITT  
Attorney(s) for Defendant(s)  
WINDSOR MINERALS, INC.

By  \_\_\_\_\_  
RONALD B. GRAYZEL  
Attorney(s) for Plaintiff(s)  
LOUIS EDLEY

NEWMAN, HERMAN, SALTMAN, LEVITT AND FEINSON

## A PROFESSIONAL ASSOCIATION

**ATTORNEYS AT LAW**

**Please Reply To:**

P.O. Box 769  
East Windsor, New Jersey 08520

**New Brunswick Office:**

**47 Paterson Street  
(201) 745-9005**

**East Windsor Office:**

**339 Princeton-Hightstown Road**  
**(609) 443-4900**

**Somerville Area:**

**By Appointment Only**  
**(201) 725-4257**

OUR FILE NO.  
11092-L

**EDWARD H. HERMAN**  
**JAY J. NEWMAN**  
(N.J. & D.C. Bar)  
**DAVID A. SALTMAN**  
(N.J. & Fla. Bar)  
**RONALD S. LEVITT**  
(N.J. & N.Y. Bar)  
**JULIUS J. FEINSON**  
**JULIE VACCHER GOLDSTEIN**  
(N.J. & Pa. Bar)

ISRAEL H. SALTMAN (1914-1982)

## Of Counsel

**ALLEN J. SIMONSON**  
**DONALD J. PERRELLA**  
(N.J. & N.Y. Bar)  
**ROBERT J. PINTO**

July 23, 1987

Ronald B. Grayzel, Esq.  
Levinson, Conover, Axelrod, Wheaton & Grayzel  
Lincoln Plaza, 2 Lincoln Highway  
PO Box 2905  
Edison, New Jersey 08818-2905

RE: Edley -v- Madsen & Howell, Windsor Minerals, Inc., et als

Dear Mr. Grayzel:

Enclosed please find an Affidavit on behalf of Windsor Minerals, Inc., signed by Roger N. Miller, President of Windsor Minerals, Inc. since 1968. Also enclosed you will find an assay from McCrone Environmental Services, Inc. I trust that these documents will now enable you to sign a Dismissal as was done in the Yuhas file. I have taken the liberty of drafting the Dismissal and enclosing the same for your signature along with a self-addressed stamped envelope.

If you are still unable or unwilling to sign the Dismissal, please forward immediately your client's answers to supplemental interrogatories which were served upon you almost one year ago.

Very truly yours,

Ronald S. Levitt

RSL/gbf  
Encl.

cc: Michael M. Tanenbaum, Esq., McCarter & English  
Thomas M. Kelly, Esq., Morley, Cramer, Tansey, Haggarty & Fanning  
Anthony Luongo, Esq., Donington, Leroe, Toland & Luongo

Certified Mail, Return Receipt Requested

**RoA 04380**

-----  
LOUIS EDLEY, :  
 :  
 Plaintiff, :  
 :  
 vs. :  
 :  
 WINDSOR MINERALS, INC.; :  
 NICOLET, INC., as Successor- :  
 in-Interest to Keasby & :  
 Mattison; GAF CORP., RUBEROID, :  
 GAF CORP., as Successor-in- :  
 Interest to Ruberoid; MADSEN :  
 & HOWELL, INC.; JOHN DOE #1 :  
 to #50 (Fifty Unidentified :  
 Manufacturers and Distributors :  
 of asbestos-containing :  
 products), :  
 :  
 Defendants. :  
-----

SUPERIOR COURT  
OF NEW JERSEY  
LAW DIVISION  
MIDDLESEX COUNTY

DOCKET NO. L-075913-86

CIVIL ACTION

AFFIDAVIT

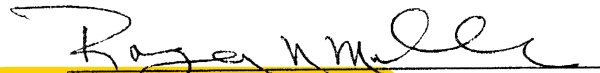
STATE OF VERMONT :  
 : SS.  
COUNTY OF WINDSOR :

ROGER N. MILLER, of full age, being duly sworn, according to law, upon his oath, deposes and says:

1. I am the President of Windsor Minerals, Inc. and have held that position since 1968 when Windsor Minerals, Inc. was first formed.

2. The exclusive business of Windsor Minerals, Inc. is, and has been for the last eighteen years, the mining and milling of talc from a single mining district in Windsor, Vermont. That mining district is the exclusive source of talc for all of the Johnson's Baby Powder sold in the United States. In addition to supplying the talc for Johnson's Baby Powder, Windsor Minerals, Inc. also sells a portion of its product to independent industrial users.

3. All of the talc mined by Windsor Minerals, Inc., whether it is ultimately sold to industrial users or used in Johnson's Baby Powder, is sampled and tested for the presence of asbestos. No evidence of the presence of asbestos in Windsor Minerals' product has ever been revealed by this testing. Attached hereto as Exhibit "A" is a true copy of a recent report of such testing.

  
ROGER N. MILLER

Sworn to and subscribed  
before me this 13 day  
of July, 1987.

  
Notary Public  
My Commission Expires:  
Feb. 10, 1991



Windsor Minerals, Inc.  
P. O. Box 680  
Windsor, Vermont 05089

FEB 2 1987

W. M. I.

Re: McCrone Project No. ME-3241

Under your Purchase Order QC-0548, we received nineteen talc samples for asbestos analysis by transmission electron microscopy. The samples were labelled as follows:

|           |           |           |           |           |
|-----------|-----------|-----------|-----------|-----------|
| WMI 86-10 | WMI 86-14 | WMI 86-18 | WMI 86-22 | WMI 86-26 |
| WMI 86-11 | WMI 86-15 | WMI 86-19 | WMI 86-23 | WMI 86-27 |
| WMI 86-12 | WMI 86-16 | WMI 86-20 | WMI 86-24 | WMI 86-32 |
| WMI 86-13 | WMI 86-17 | WMI 86-21 | WMI 86-25 |           |

Examination found no quantifiable amounts of asbestiform minerals. The limit of detection for each sample is below 0.001 weight percent.

Thank you for consulting McCrone Environmental Services, Inc.

Thomas Kremer  
Thomas Kremer  
Electron Microscopist

James R. Millette, Ph.D.  
Manager, Laboratory Services

cc: 1) Windsor Minerals, Inc.  
Windsor VT  
1) Mr. Roger N. Miller, President

EXHIBIT A

a subsidiary of **walter c. mccrone associates, inc.**

2820 SOUTH MICHIGAN AVENUE • CHICAGO, ILLINOIS 60616 • 312-842-7100

**RoA 04383**

ELI@CROCODACAMPI.EDU 2020 Feb 27 12:22 PM CRIARLESTON-CONDOMINILHAS-SC-ASASIZ023020200003246

# EXHIBIT 122



DRINKER BIDDLE & SHANLEY LLP  
 A Pennsylvania Limited Liability Partnership  
 500 Campus Drive  
 Florham Park, New Jersey 07932-1047  
 (973) 360-1100  
 Attorneys for Defendants  
 JOHNSON & JOHNSON CONSUMER COMPANIES, INC.  
 AND JOHNSON & JOHNSON

THERESA KRUSHINSKI and FRANK  
 KRUSHINSKI,

Plaintiffs,

v.

JOHNSON & JOHNSON BABY  
 PRODUCTS COMPANY, A DIVISION OF  
 JOHNSON & JOHNSON CONSUMER  
 PRODUCTS COMPANY, INC., a subsidiary  
 of JOHNSON & JOHNSON, INC.;  
 JOHNSON & JOHNSON, INC.; ABC  
 CORPORATIONS (fictitious corporations,  
 subsidiaries and or divisions of JOHNSON &  
 JOHNSON, INC.); THE ESTEE LAUDER  
 COMPANIES, INC.; DEF  
 CORPORATIONS (fictitious corporations);  
 THE PUIG GROUP, trading as NINA  
 RICCI; XYZ CORPORATIONS (fictitious  
 corporations or business entities, trading as  
 JEAN PATOU),

Defendants.

SUPERIOR COURT OF NEW JERSEY  
 LAW DIVISION: MIDDLESEX COUNTY  
 DOCKET NUMBER MID-L-9389-99

CIVIL ACTION

DEFENDANTS JOHNSON & JOHNSON  
 CONSUMER COMPANIES, INC. AND  
 JOHNSON & JOHNSON'S ANSWERS TO  
 PLAINTIFFS' SUPPLEMENTAL  
 INTERROGATORIES

#### OBJECTIONS AND ANSWERS TO SUPPLEMENTAL INTERROGATORIES

1. If you contend that Johnson's Baby Powder was the subject of pre-market approval or licensure by the Federal Food and Drug Administration under the "Federal Food, Drug, and Cosmetic Act," 52 Stat. 1040, 21 U.S.C. § 301 et seq. or the "Public Health Service Act," 58 Stat. 682, 42 U.S.C. § 201 and was approved or licensed; or is generally recognized as safe and effective pursuant to conditions established by the Food and Drug Administration and applicable regulations,

J&J-0162339

ELECTRONIC FILING OF DOCUMENTS IN THE SUPERIOR COURT OF NEW JERSEY, LAW DIVISION, MIDDLESEX COUNTY, DOCKET NUMBER MID-L-9389-99, J&J-0162339, 01/10/01 13:07 FAX 973 360 9831

JNJ 000065002

4. Define the term "normal and expected use" of Johnson's Baby Powder as used by Defendant in Defendant's response to Demands #23, #24, #25, #26, #27, #28, and #29 of Plaintiffs Demand for Admissions by Johnson & Johnson, Inc. dated February 23, 2000.

**RESPONSE:** Johnson's Baby Powder is expected to be used by shaking the powder into the hand of the consumer and applied to the skin.

5. Identify all written warnings contained on labels affixed to containers of Johnson's Baby Powder containing talc by setting forth all language contained on the label(s); the date each label was first placed upon containers of Johnson's Baby Powder containing talc, the dimensions of the label and the size of the type used for each portion of the label and the reason the language was incorporated.

**RESPONSE:** See labeling documents found among the documents produced in response to plaintiffs' document demand.

6. Identify all studies performed by Johnson & Johnson, Johnson & Johnson Consumer Product or any of their subsidiaries, divisions, affiliates or any agent, or outside consultant designed to determine manner in which consumers apply and or use Johnson's Baby Powder.

**RESPONSE:** Defendant objects to this interrogatory as over broad, vague and ambiguous. Furthermore, the documents requested by plaintiffs may be confidential, proprietary, and subject to trade secret privileges. Subject to the foregoing objections, see documents provided in responses to request for production.

7. Identify all scientific testing performed by Johnson & Johnson, any of its subsidiaries, divisions, affiliates or any agent, or outside consultant designed to determine whether there are any health risks posed to users of Johnson's Baby Powder or any other cosmetic powders containing talc.

**RESPONSE:** Defendant objects to this interrogatory as overly broad, vague, and ambiguous. Specifically, plaintiffs use of "health risks" include a myriad of conditions unrelated to any issue in this lawsuit. Furthermore, the documents requested by plaintiffs may be confidential, proprietary, and subject to trade secret privileges. Subject to the foregoing objections, defendant refers plaintiff to the studies provided in response to plaintiffs requests for production.

8. Identify and describe all clinical testing performed by Johnson & Johnson, any of its subsidiaries, divisions, affiliates or any agent, or outside consultant upon Johnson's Baby Powder.

**RESPONSE:** Defendant objects to this interrogatory as overly broad, vague, and ambiguous. Specifically, plaintiffs use of "all clinical testing" include a myriad of testing unrelated to any issue in this lawsuit. Furthermore, the documents requested by plaintiffs may be confidential, proprietary, and subject to trade secret privileges. Subject to the foregoing objections, defendant refers plaintiff to the studies provided in response to plaintiffs requests for production.

9. Describe all refining processes undergone by the "highly refined cosmetic talc" contained in Johnson's Baby Powder prior to shipment for distribution for sale to consumers and identify the person or entity responsible for performing such process and the location where such processes are performed.

**RESPONSE:** Defendant objects to further response to this interrogatory on the grounds that it requests confidential and proprietary information subject to trade secret privileges. Further, this interrogatory is not relevant as plaintiffs have not made any manufacturing defect claim. Subject to the foregoing objections, the talc used in Johnson & Johnson's Baby Powder is selected from specific sources based on material specifications. Talc ore containing approximately 50% talc is taken from specific mining sites and is introduced into the refining process. Ore is crushed, dried and rolled to form a powder. Wetting is introduced to obtain a slurry which is introduced into a multiple horizontal float cell process which removes non talc particles. Talc is sampled at routine intervals and is prepared for shipping with methodology to retain aseptic qualities. Talc is maintained in dedicated silos and transported by air veying system for fragrance blending then filling and capping with routine sampling. The bottles are then packaged for shipping. These processes occur at the West Windsor Vermont purification plant and at the packaging facility in Royston GA. The individual with significant knowledge of these items is Randy Corder, an employee of defendant.

10. Describe all refining processes which the talc contained in Johnson's Baby Powder has undergone prior to receipt by Johnson & Johnson in complete detail and identify all individuals or entities involved in or responsible for performing such processes, by name and address.

**RESPONSE:** Defendant objects to further response to this interrogatory on the grounds that it requests confidential and proprietary information subject to trade secret privileges. Further, this interrogatory is not relevant as plaintiffs have not made any manufacturing defect claim. Subject to the foregoing objections, the talc used in Johnson & Johnson's Baby Powder is selected from specific sources based on material specifications. Talc ore containing approximately 50% talc is taken from specific mining sites and is introduced into the refining process.

Ore is crushed, dried and rolled to form a powder. Wetting is introduced to obtain a slurry which is introduced into a multiple horizontal float cell process which removes non talc particles. Talc is sampled at routine intervals and is prepared for shipping with methodology to retain aseptic qualities. Talc is maintained in dedicated silos and transported by air veying system for fragrance blending then filling and capping with routine sampling. The bottles are then packaged for shipping. These processes occur at the West Windsor Vermont purification plant and at the packaging facility in Royston GA. The individual with significant knowledge of these items is Randy Corder, an employee of defendant.

11. Is Defendant Johnson & Johnson aware of the existence of any studies which have been conducted to determine whether any adverse health effects have been associated with the long term use of cosmetic powders which contain talc? If so please identify each such study by setting forth the identity of the individual(s) or entity responsible for conducting such study, whether such study has been published, where such study has been published and whether or not the results of the study have been subject to peer review.

**RESPONSE:** Defendant objects to this interrogatory in that it is overly broad, vague, ambiguous, and unduly burdensome. Specifically, "adverse health effects" is overly broad in that it calls for the identification of documents unrelated to any condition at issue in this lawsuit. In addition, such documents may be confidential or subject to a protective order. Subject to the foregoing objections, medical literature concerning talc and talcosis are available in the public domain. In addition, Defendant refers you to studies provided in response to plaintiffs' request for production.

12. Is Defendant Johnson & Johnson aware of the existence of any studies which have been conducted to determine whether any adverse health effects have been associated with the long term use of cosmetic powders which contain corn starch? If so please identify each such study by setting forth the identity of the individual(s) or entity responsible for conducting such study, whether such study has been published, where such study has been published and whether or not the results of the study have been subject to peer review.

**RESPONSE:** Defendant objects to this interrogatory as overly broad and vague in that it does not define "adverse health effects," and that it seeks discovery related to a product not at issue in this case. "Adverse health effects" could include the identification of documents unrelated to any condition or product at issue in this lawsuit. Subject to the foregoing objection, medical literature related to cornstarch is available in the public domain.

13. Is Defendant Johnson & Johnson aware of the existence of any studies which have been conducted to determine whether Johnson's Baby Powder containing talc is effective in reducing the likelihood of infants developing diaper rash or reducing its effects? If so please identify each such study by setting forth the identity of the individual(s) or entity responsible for conducting such study, whether such study has been published, where such study has been published and whether or not the results of the study have been subject to peer review.

**RESPONSE:** Defendant objects to this interrogatory as irrelevant. Specifically, this interrogatory calls for information that is not relevant to any condition at issue in this lawsuit.

14. Is Defendant Johnson & Johnson aware of the existence of any study conducted to determine whether Johnson's Baby Powder containing corn starch is effective in reducing or likelihood of developing diaper rash or its effects? If so please identify each such study by setting forth the identity of the individual(s) or entity responsible for conducting such study, whether such study has been published, where such study has been published and whether or not the results of the study have been subject to peer review.

**RESPONSE:** Defendant objects to this interrogatory as irrelevant. Specifically, this interrogatory calls for information that is not relevant to any condition or product at issue in this lawsuit.

15. State the name, address and title of the individual(s) employed by Defendant who are most knowledgeable concerning the refining processes and procedures employed by Defendant or defendant's suppliers of the talc contained in Johnson's Baby Powder.

**RESPONSE:** Defendant objects to this interrogatory as overly broad and vague. Defendant has had hundreds of employees involved in the production of Johnson & Johnson's Baby Powder of its 50+ year history. It is not possible to identify one person or even a small group of persons with complete knowledge of all aspects of production over the years. Furthermore, this interrogatory calls for information that is not likely to lead to the discovery of any evidence that is relevant to any issue in this lawsuit.

Subject to the above stated objections, individuals knowledgeable to this area would be Roger Miller, former President of Windsor Minerals, Inc. and Randy Corder, Quality Assurance, Johnson & Johnson.

These individuals may be contacted only through counsel for Johnson & Johnson.

16. State the name, address and title of the individual(s) employed by Defendant who are most knowledgeable concerning the incidence of talcosis and/or pulmonary fibrosis among employees of Johnson & Johnson engaged in the refining talc of used in the manufacture of Johnson's Baby Powder.

**RESPONSE:** Defendant objects to this interrogatory as overly broad and vague. Defendant has had hundreds of employees involved in the production of Johnson & Johnson's Baby Powder of its 50 + year history. It is not possible to identify one person or small group of persons with complete knowledge worker related injuries over the years. Furthermore, this interrogatory calls for information that is not likely to lead to the discovery of any evidence that is relevant to any issue in this lawsuit. Subject to this objection, see those individuals listed in response to # 15, above.

17. Describe in detail all processes, procedures and testing performed upon the talc used in the manufacture of Johnson's Baby Powder to reduce or eliminate the existence of asbestos, tremolite or other contaminants in Johnson's Baby Powder.

**RESPONSE:** To the best of defendant's knowledge talc used in the manufacture of Johnson & Johnson's Baby Powder never contained asbestos in any form, or tremolite. Defendant's sources of talc were selected for their lack of contaminants and further, testing was performed over a significant number of years by outside laboratories which verified that defendant's talc sources did not contain asbestos or tremolite. Defendant objects to providing further information as overbroad and irrelevant. Plaintiff has made no claim of an asbestos-related illness.

18. Is Defendant Johnson & Johnson aware of the existence of any studies or tests conducted for the purpose of determining whether Johnson's Baby Powder containing talc contains any asbestos, tremolite or other contaminants? If so please identify each such study or test by setting forth the identity of the individual(s) or entity responsible for conducting such study or performing such testing, whether the results of such study or tests have been published, where such study or the results of such test(s) has been published and whether or not the results of the study or testing have been subject to peer review.

**RESPONSE:** Over a number of years, defendant had an ongoing process of testing its source talc for Johnson & Johnson's Baby Powder for asbestos, tremolite or other contaminants. This testing was performed by outside laboratories both McCrone and R.J. Lee. For a significant period of time this testing was directed by Ian Stewart, a former employer of McCrone. Mr. Stewart is a consultant for defendant and may be contacted only through its counsel.



**Defendant-objects to providing further information as it is overly broad and irrelevant. Plaintiff has made no claim for an asbestos-related illness.**

19. Has Johnson & Johnson ever received notice of any claim(s) made by any individual other than Plaintiff, Theresa Krushinski who claimed or alleged that they developed talcosis and/or pulmonary fibrosis through exposure to Johnson's Baby Powder? If so, for each such claim set forth the date upon which Defendant received notice of such claim, the name and address of the claimant, and whether or not such claim resulted in litigation. If the claimant was represented by counsel, set forth the name and address of the attorney who represented the claimant, the name of the court in which such claim was venued, the caption of the action, the docket number or case number identifying such action and the identity of the attorney or attorneys who represented Johnson & Johnson in that action. If any employee gave deposition or trial testimony in connection with such action, set forth the name and address of the employee who testified, the date and place where such testimony was given and the name and address of the court reporter who recorded such testimony. Please attach a copy of the transcript of such testimony to your responses to these Interrogatories.

**RESPONSE:** Defendant objects to this interrogatory to the extent it calls for information irrelevant to any matter at issue in this lawsuit. Subject to the foregoing objections, defendant has been sued in the following cases.

**No. L 064208-83; Selby v. Johnson & Johnson Consumer Products, Inc.**  
**California Superior Court, San Diego County - Filed 12-22-93**

No. 670577; **Gambino v. Johnson & Johnson Baby Products, Co.**  
Superior Court, New Jersey, Middlesex County - Filed 10-12-83

20. If Defendant has had any lung tissue sample alleged by any individual to evidence the existence of talcosis or pulmonary fibrosis caused by Plaintiff's exposure to Johnson's Baby Powder subject to scientific analysis, set forth the name and address of the individual whose tissue sample was tested, the name and address of the individual who performed such testing, the date such testing was performed and the result of such testing. Please attach a copy of the results of such testing or analysis to your responses to these Interrogatories.

**RESPONSE:** Objection. Improper. The Judge in this case has ruled that the plaintiff is not entitled to this information unless or until an individual reviews tissues samples from the plaintiff and is identified as an expert.

21. If you contend that the risk of developing talcosis and/or pulmonary fibrosis through the use of Johnson's Baby Powder was known to the average or ordinary consumer set forth, in complete detail, all facts upon which you intend to rely to establish that the characteristics of talc are known to the average or ordinary consumer.

**RESPONSE:** Defendant objects to this interrogatory on the grounds that it is over broad, vague, and irrelevant. Plaintiff attempts to improperly shift the burden to defendant to prove that its product was safe. Subject to the foregoing objections, the normal and expected use of Johnson's Baby Powder poses no health risks.

22. If you contend that exposure to "highly refined cosmetic talc" poses a reduced risk of developing pulmonary fibrosis or talcosis set forth all facts and identify all studies upon which you intend to rely to establish this fact at the time of trial.

**RESPONSE:** Defendant objects to this interrogatory on the grounds that it is over broad, vague, and irrelevant. Plaintiff attempts to improperly shift the burden to defendant to prove that its product was safe. Subject to the foregoing objections, the normal and expected use of Johnson's Baby Powder poses no health risks.

23. If you contend that Plaintiff developed talcosis by exposure to talc other than through the use of Johnson's Baby Powder set forth in complete detail all facts upon which you rely to establish this contention.

**RESPONSE:** Defendant disputes the contention that plaintiff developed talcosis by exposure to talc produced by Johnson & Johnson. Further information will be provided in response to this interrogatory when discovery is completed.

24. Identify all individuals employed by Defendant, by name, address and job title who provided information necessary to respond to these Interrogatories and identify the individual, by name address and job title with Defendant, who Certified these Answers to Interrogatories on behalf of Defendants.

**RESPONSE:** Defendant objects to this interrogatory as over broad, harassing, and requests information subject to the attorney client, work product, and investigative privileges. Subject to the foregoing objection, these answers to interrogatories were compiled from numerous sources and the investigation by counsel.

25. If any individual employed by Defendant consulted in connection with providing Defendant's answers to these Interrogatories or provided information necessary to respond to these Interrogatories is licensed to practice medicine in this or any other state, or is a scientist with experience or training in the field of inhalation toxicology, set forth the name and address of such

physician, whether such physician has been Board Certified in any area of medicine and attach a copy of the current curriculum vitae for such individuals.

**RESPONSE:** Defendant objects to this interrogatory as over broad, harassing, and requests information subject to the attorney client, work product, and investigative privileges. These answers to interrogatories were compiled from numerous sources and the investigation of counsel.

- 10 -

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J&J-0162348

## CERTIFICATION

I am employed by Johnson & Johnson Consumer Companies, Inc. (JJCCI), a defendant in the above-entitled action. The foregoing answers to interrogatories were prepared with the assistance and advice of counsel for JJCCI, upon whose advice and information JJCCI and I relied. The foregoing answers are true and correct to the best of my knowledge, information and belief. I am aware that if any of the foregoing statements made by me are willfully false, I may be subject to punishment.

Nancy C. Munn

**Dated: 5/23/00**

# EXHIBIT 123

ELEGERONOCALMILHIDE-2020-2364272101201PM4 CRIARILESIDNCCOMMONORLEASASCASB#20200200003946

1 IN THE CIRCUIT COURT OF THE CITY OF ST. LOUIS  
STATE OF MISSOURI

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VICKIE FORREST, et al.,  
Plaintiffs,  
vs.

Cause No.  
1522-CC0419-02

6

JOHNSON & JOHNSON, et al.  
Defendants.

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UNITED STATES DISTRICT COURT  
DISTRICT OF NEW JERSEY

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IN RE: JOHNSON & JOHNSON MDL NO:  
TALCUM POWDER PRODUCTS 16-2738 (FLW)(LGH)  
MARKETING, SALES PRACTICES,  
AND PRODUCTS LIABILITY  
LITIGATION

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Wednesday, June 30, 2021

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Continued Videotaped Oral Deposition of  
JOHN C. O'SHAUGHNESSY, taken at the Crowne Plaza  
Princeton, 900 Scudders Mill Road, Plainsboro, New  
Jersey, commencing at 9:35 a.m., by and before Robin  
L. Clark, Registered Professional Reporter and  
Notary Public in and for the State of New Jersey.

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|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <p style="text-align: right;">Page 420</p> <p>1 APPEARANCES:</p> <p>2</p> <p>3 LEVIN, PAPATONIO, RAFFERTY, PROCTOR,<br/>BUCHANAN, O'BRIEN, BARR &amp; MOUGEY, P.A.<br/>BY: CHRISTOPHER V. TISI, ESQ.<br/>316 South Baylen Street, Suite 600<br/>Pensacola, Florida 32502-5996<br/>850-435-7176<br/>ctisi@levinlaw.com<br/>For the Plaintiff, Vickie<br/>Forrest</p> <p>7 COHEN, PLACITELLA &amp; ROTH<br/>BY: CHRISTOPHER M. PLACITELLA, ESQ.<br/>127 Maple Avenue<br/>Red Bank, New Jersey 07701<br/>732-749-9003<br/>cplacitella@cprlaw.com<br/>For the MDL Plaintiffs</p> <p>13 SKADDEN, ARPS, SLATE, MEAGHER &amp; FLOM LLP<br/>BY: ALLISON M. BROWN, ESQ.<br/>and RICHARD T. BERNARDO, ESQ.<br/>One Manhattan West<br/>New York, New York 10001-8602<br/>212-735-3000<br/>allison.brown@skadden.com<br/>richard.bernardo@skadden.com<br/>For the Defendant,<br/>Johnson &amp; Johnson</p> <p>19 YETTER COLEMAN LLP<br/>BY: COLLIN J. COX, ESQ.<br/>811 Main Street, Suite 4100<br/>Houston, Texas 77002<br/>713-632-8000<br/>ccox@yettercoleman.com<br/>For the Witness</p> <p>23 ALSO PRESENT:<br/>24 JOEL SCHNEIDER, USMJ (Retired)</p> | <p style="text-align: right;">Page 422</p> <p>1 REMOTE APPEARANCES, continued:</p> <p>2</p> <p>3 BARNES LAW GROUP, LLP<br/>BY: JOHN R. BEVIS, ESQ.<br/>31 Atlanta Street<br/>Marietta, Georgia 30060<br/>678-290-2240<br/>bevis@barneslawgroup.com<br/>For the Plaintiffs</p> <p>7 ROBINSON CALCAGNIE, INC.<br/>BY: GENEVIEVE OUTLAW, ESQ.<br/>19 Corporate Plaza Drive<br/>Newport Beach, California 92660<br/>949-720-1288<br/>goutlaw@robinsonfirm.com<br/>For the Plaintiffs in JCCP 4872</p> <p>12 BLASINGAME, BURCH, GARRARD &amp; ASHLEY, PC<br/>BY: LEANNA BAKESTER PITTARD, ESQ.<br/>and SARA SCHRAMM, ESQ.<br/>2100 Southbridge Parkway<br/>Suite 650<br/>Birmingham, Alabama 35209<br/>866-354-3544<br/>lpittard@bbga.com<br/>sschramm@bbga.com<br/>For the MDL Plaintiffs</p> <p>18 SKADDEN, ARPS, SLATE, MEAGHER &amp; FLOM LLP<br/>BY: CATHERINE I. MULLALEY, ESQ.<br/>500 Boylston Street<br/>Boston, Massachusetts 02116<br/>617-573-4851<br/>kate.mullaley@skadden.com<br/>For the Defendant,<br/>Johnson &amp; Johnson</p> |
| <p style="text-align: right;">Page 421</p> <p>1 ALSO PRESENT, continued:</p> <p>2</p> <p>3 WILLIAM GEIGERT, VIDEOGRAPHER</p> <p>4 MICHAEL KUTYS, EXHIBIT TECH</p> <p>5 REMOTE APPEARANCES:</p> <p>6</p> <p>7 BEASLEY, ALLEN, CROW, METHVIN, PORTIS &amp;<br/>MILES, P.C.<br/>BY: LEIGH O'DELL, ESQ.<br/>218 Commerce Street<br/>Montgomery, Alabama 36104<br/>800-898-2034<br/>leigh.odell@beasleyallen.com<br/>For the Plaintiff, Vickie<br/>Forrest</p> <p>12 ASHCRAFT &amp; GEREL, LLP<br/>BY: MICHELLE A. PARFITT, ESQ.<br/>1825 K Street, N.W., Suite 700<br/>Washington, D.C. 20006<br/>202-759-7648<br/>mparfitt@ashcraftlaw.com<br/>For the Plaintiff, Vickie<br/>Forrest</p> <p>17 COHEN, PLACITELLA &amp; ROTH<br/>BY: DENNIS M. GEIER, ESQ.<br/>and HARRY M. ROTH, ESQ.<br/>127 Maple Avenue<br/>Red Bank, New Jersey 07701<br/>732-749-9003<br/>dgeier@cprlaw.com<br/>hroth@cprlaw.com<br/>For the MDL Plaintiffs</p>                                                                                                                                                                                                              | <p style="text-align: right;">Page 423</p> <p>1 REMOTE APPEARANCES, continued:</p> <p>2</p> <p>3 FAEGRE DRINKER BIDDLE &amp; REATH LLP<br/>BY: SUSAN M. SHARKO, ESQ.<br/>600 Campus Drive<br/>Florham Park, New Jersey 07932<br/>susan.sharko@faegredrinker.com<br/>973-549-7000<br/>For the Defendant, Johnson &amp;<br/>Johnson</p> <p>8 SEYFARTH SHAW LLP<br/>BY: THOMAS T. LOCKE, ESQ.<br/>975 F Street, N.W.<br/>Washington, D.C. 20004<br/>202-828-5376<br/>tlocke@seyfarth.com<br/>Appearing on behalf of Personal<br/>Care Products Council</p> <p>13 TUCKER ELLIS, LLP<br/>BY: ELIZABETH J. CUMMINGS, ESQ.<br/>100 South 4th Street<br/>St. Louis, Missouri 63102<br/>314-571-4969<br/>elizabeth.cummings@tuckerellis.com<br/>For the Defendants, PTI<br/>Royston, LLC and PTI Union, LLC</p> <p>18 ALSO PRESENT:<br/>19 LEA CALLAHAN, Paralegal<br/>20 JEN SECRIST, Paralegal<br/>21 STEPHANIE E. MARTIN<br/>22 -----<br/>23<br/>24</p>                                                                                            |



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| 4        | BY MR. PLACITELLA:                                                                                              | 430, 879, 903 | 4        | Exhibit 472 Photograph                                                      | 900 |
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1  
2 REDACTED PORTION OF TRANSCRIPT  
Page 586, Line 9 to Page 589, Line 6  
3  
4 SEALED PORTION OF TRANSCRIPT  
Page 601, Line 7 to Page 614, Line 10  
5  
6  
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1 DEPOSITION SUPPORT INDEX  
2  
3  
4  
5 Direction to Witness Not to Answer  
Page Line  
6 432 20  
7 522 21  
8 560 20  
9 751 14  
10 766 17  
11 778 23  
12 Request for Production of Documents  
13 Page Line  
14 NONE  
15 Question Marked  
16 Page Line  
17 NONE  
18  
19  
20  
21  
22  
23  
24

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1  
2 -----  
3 (Binders premarked  
4 O'Shaughnessy Exhibits JOS 2A, JOS  
5 2B, and JOS 3 for identification.)  
6 -----  
7 THE VIDEOGRAPHER: Good  
8 morning. We are now on the record.  
9 My name is Bill Geigert. I'm a  
10 videographer for Golkow Litigation  
11 Services. Today's date is June 30,  
12 2021, and the time is 9:35 a.m.  
13 This is the continuation of the  
14 deposition of John C.  
15 O'Shaughnessy. Sir, I want to  
16 remind you, you are still under  
17 oath. Counsel, please proceed.  
18 -----  
19 JOHN C. O'SHAUGHNESSY, having been  
20 duly previously sworn, was examined  
21 and testified as follows:  
22 -----  
23 BY MR. PLACITELLA:  
24 Q. Good morning,  
Mr. O'Shaughnessy. How are you?

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1 A. Good, Mr. Placitella.  
2 Q. We've met informally.  
3 A. Yes.  
4 Q. I'm here now formally on behalf  
5 of the 30000-plus women who have cases  
6 filed who believe that their ovarian cancer  
7 is a result of their unwaning use of  
8 Johnson's Baby Powder or Shower to Shower.  
9 Do you understand that?  
10 A. I understand who you represent.  
11 Q. Okay. Now, in preparation for  
12 today's deposition or yesterday, did you  
13 review your transcript from last week?  
14 A. No.  
15 Q. Okay. I want to spend a little  
16 time just talking to you about your active  
17 involvement in the cases that you worked  
18 on. Okay?  
19 When you were working on the  
20 talc cases for Johnson & Johnson, you were  
21 aware of the evidence available to respond  
22 to requests made in litigation?  
23 A. I was --  
24 Q. Were you aware --

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1 A. Of what?  
 2 Q. The evidence that was available  
 3 to respond to requests for evidence made in  
 4 litigation?  
 5 A. Like --  
 6 MS. BROWN: I object as  
 7 vague. I don't understand the  
 8 question.  
 9 THE WITNESS: Discovery  
 10 requests?  
 11 BY MR. PLACITELLA:  
 12 Q. Yes.  
 13 A. Yes. I was, yeah.  
 14 Q. And you took and defended  
 15 depositions?  
 16 A. Rarely.  
 17 Q. Okay. Did you decide what  
 18 evidence would be turned over in the course  
 19 of litigation?  
 20 MS. BROWN: I object and  
 21 instruct Mr. O'Shaughnessy not to  
 22 answer that. You're asking him a  
 23 question about his role as counsel  
 24 for Johnson & Johnson in

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1 determining what would be provided  
 2 in litigation.  
 3 MR. PLACITELLA: I'll  
 4 ask for a ruling.  
 5 JUDGE SCHNEIDER: I  
 6 think that Plaintiffs are entitled  
 7 to know who provided information in  
 8 order to answer interrogatories.  
 9 That is not a work product  
 10 question. So I would phrase it --  
 11 if it's phrased that way, I think  
 12 it's an appropriate question.  
 13 Let's -- can we hear the question  
 14 again?  
 15 - - - - -  
 16 (Whereupon, the reporter read  
 17 back as requested.)  
 18 - - - - -  
 19 JUDGE SCHNEIDER: I  
 20 think that particular question does  
 21 ask for work product, but it's a  
 22 perfectly appropriate interrogatory  
 23 to ask a company who supplied  
 24 information in response to

Page 434

1 interrogatories. So if that's the  
 2 question, that can be asked or what  
 3 persons participated or supplied  
 4 information to answer  
 5 interrogatories, that is an  
 6 appropriate question. Questions of  
 7 that ilk are appropriate, but the  
 8 particular question as phrased does  
 9 ask for work product, because it  
 10 asks for the ultimate  
 11 decision-maker and that's a work  
 12 product issue.  
 13 BY MR. PLACITELLA:  
 14 Q. Did you decide what evidence  
 15 must preserved in the context of  
 16 litigation? Did you decide? That's all  
 17 I'm asking?  
 18 MS. BROWN: I object as  
 19 well, your Honor, for the same  
 20 reasons. This is work product,  
 21 decisions made by Johnson &  
 22 Johnson's attorney in terms of how  
 23 to defend litigation.  
 24 JUDGE SCHNEIDER: I

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1 think that particular question is  
 2 privileged, but I think if Mr.  
 3 Placitella asks who decided to  
 4 preserve evidence, that is an  
 5 appropriate discovery question.  
 6 BY MR. PLACITELLA:  
 7 Q. Well, who made the decision  
 8 what evidence should be preserved for  
 9 litigation?  
 10 MS. BROWN: Vague as to  
 11 litigation.  
 12 THE WITNESS: A hold  
 13 notice would typically be used to  
 14 hold, to send to the company to  
 15 instruct them to hold documents  
 16 that may be relevant to the  
 17 litigation and, I believe, I signed  
 18 the hold notices for that. But it  
 19 all depends on the point in time.  
 20 BY MR. PLACITELLA:  
 21 Q. Okay. During the time that you  
 22 worked on the talc litigation, who made the  
 23 decision as to what evidence had to be  
 24 preserved?

1 A. The hold notice would have been  
2 issued by me.

3 Q. Okay. And the first hold  
4 notice that you issued was, what, in 1997?

5 A. I don't recall.

6 Q. Okay. And you were involved in  
7 verifying the accuracy of discovery  
8 responses you said the other day, true?

9 A. Yes, I worked with, along with  
10 outside counsel, yes.

11 Q. And you ensured that the  
12 discovery responses that were provided had  
13 a proper factual basis?

14 A. Along with outside counsel,  
15 based on our work, and yes.

16 Q. Okay. Did you ever make  
17 representation of facts to litigants or  
18 courts concerning talc and its safety?

19 A. Other than what's in the file  
20 documents, I'm not sure what you mean.

21 Q. Right, in file documents.

22 A. Whatever was filed was filed.  
23 I don't know.

24 Q. Okay. Nancy Musco testified

1 that you were the one who decided what  
2 information would be turned over in  
3 litigation. Was she wrong about that?

4 MS. BROWN: I object.  
5 Misstates the evidence and lacks  
6 foundation.

7 MR. PLACITELLA: All  
8 right. I'm going to play you  
9 her -- from her transcript. Hold  
10 on.

11 - - - - -

12 (Whereupon, a video clip was played.)

13 - - - - -

14 BY MR. PLACITELLA:

15 Q. Is that accurate?

16 MS. BROWN: Same  
17 objection to a selective playing of  
18 Ms. Musco's testimony that  
19 Mr. O'Shaughnessy has not reviewed.

20 THE WITNESS: I believe  
21 the discovery was phrased that it  
22 was based on the advice and  
23 assistance of counsel and that was  
24 true.

1 BY MR. PLACITELLA:

2 Q. Okay. Before sworn statements  
3 from Johnson & Johnson employees went out  
4 in litigation, were they reviewed and  
5 approved by you?

6 A. If it was my litigation,  
7 generally, yes.

8 Q. And did that include talc  
9 litigation?

10 A. Yes.

11 Q. Okay. And did you have  
12 something known as a talc litigation guide  
13 for outside counsel?

14 MS. BROWN: I object and  
15 instruct not to answer. Work  
16 product.

17 MR. PLACITELLA: I'm  
18 just asking if it existed. I'm not  
19 asking what was in it.

20 MS. BROWN: I object.  
21 The existence of any materials that  
22 were provided by in-house counsel  
23 for J&J to outside counsel for J&J  
24 in furtherance of defending

1 litigation is work product.

2 JUDGE SCHNEIDER: Is  
3 this something that some other  
4 witness had identified in  
5 deposition testimony?

6 MR. PLACITELLA: Not to  
7 my knowledge.

8 JUDGE SCHNEIDER: Can  
9 you repeat the question, please,  
10 Court Reporter?

11 - - - - -

12 (Whereupon, the reporter read  
13 back as requested.)

14 - - - - -

15 JUDGE SCHNEIDER: I  
16 think that's plainly work product.  
17 Objection sustained.

18 BY MR. PLACITELLA:

19 Q. Okay. Did Johnson & Johnson  
20 corporate, that meaning you, receive  
21 records of pleadings and discovery requests  
22 that were made in talc litigation?

23 A. I received those requests  
24 through local counsel on a case.

1 Q. Okay. And who was in charge of  
2 gathering evidence to supply answers to  
3 discovery in talc litigation?

4 MS. BROWN: I object,  
5 Your Honor, for the same reasons,  
6 work product.

7 JUDGE SCHNEIDER: Can I  
8 ask the court reporter to repeat  
9 the question?

10 - - - -

11 (Whereupon, the reporter read  
12 back as requested.)

13 - - - -

14 JUDGE SCHNEIDER: Okay.  
15 Is the question who was in charge,  
16 is that what it said? I think the  
17 question who was in charge is  
18 objectionable as work product, but  
19 I don't think the question of who  
20 supplied information to answer  
21 interrogatories is work product.  
22 That's clearly discoverable and is  
23 an appropriate interrogatory that's  
24 typically asked. So if the

1 question is who supplied  
2 information rather than the person  
3 who was in charge, that can be  
4 asked, but the question who was in  
5 charge is work product.

6 BY MR. PLACITELLA:

7 Q. Okay. Can you answer Judge  
8 Schneider's question? He's been around,  
9 you know, on the bench, so he's a little  
10 better at that than me.

11 A. When we answered discovery in  
12 general, what would happen is outside  
13 counsel in coordination with me would  
14 interview appropriate people at the company  
15 who had knowledge of the product or the  
16 issues in the lawsuit. They would be  
17 tasked also with collecting relevant  
18 documents and assembling them for use in  
19 the litigation.

20 Q. And that by name is who?

21 A. Early on, it would have been  
22 Mr. Williams and the MehaffyWeber firm. It  
23 also would have been to the extent if there  
24 were any other firms that were handling

1 talc litigation, they might have played a  
2 role in that, I just don't recollect, but  
3 as time went on and the litigation grew,  
4 then, you know, then the legal team grew  
5 and there was more responsibility  
6 concerning ongoing discovery through the  
7 legal team and collecting and interviewing,  
8 you know, again, people at the company to  
9 obtain the information.

10 Q. When evidence was turned over  
11 in talc litigation, where was it stored,  
12 within what Johnson & Johnson?

13 MS. BROWN: I object.  
14 Work product, Your Honor.

15 JUDGE SCHNEIDER:  
16 Objection overruled. That's not  
17 work product.

18 THE WITNESS: Typically,  
19 the documents would be collected  
20 and maintained by outside counsel.

21 BY MR. PLACITELLA:

22 Q. So they would be kept with  
23 outside counsel and would you at Johnson &  
24 Johnson keep copies?

1 A. No, there was too many of them.

2 Q. Okay. And when there was  
3 information from prior litigation, like, a  
4 case was closed, a talc case, for example,  
5 was closed, what was done with those files?

6 A. The Johnson & Johnson files  
7 or --

8 Q. Yes.

9 A. -- the outside counsel files?

10 Q. Both.

11 A. Johnson & Johnson had a file  
12 system where the summons and complaint were  
13 filed to it, so there would be a file for a  
14 case name and a general file where papers  
15 would be filed to that. And then they  
16 would be maintained there, whatever papers  
17 were filed, including the closing  
18 documents.

19 Q. So, for example, if a witness  
20 in a Johnson & Johnson talc case provided a  
21 sworn statement that you reviewed, where  
22 would that be -- where would that be saved  
23 at Johnson & Johnson when the case was  
24 over?



|                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                       |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                         |
|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <p style="text-align: right;">Page 444</p> <p>1 A. It might not have been kept at<br/> 2 Johnson &amp; Johnson. It might have been kept<br/> 3 by outside counsel and it might not have<br/> 4 been kept at Johnson &amp; Johnson. Johnson &amp;<br/> 5 Johnson did not keep, generally speaking,<br/> 6 as far as I am aware, like, a mirror file<br/> 7 of what outside counsel has.<br/> 8 Q. Well, if someone made a request<br/> 9 in a case and they said give me all of the<br/> 10 prior statements on this issue that were<br/> 11 made by Johnson &amp; Johnson employees, either<br/> 12 in terms of interrogatories or affidavits,<br/> 13 you would have to go to outside counsel and<br/> 14 get them?<br/> 15 A. I maybe would have it in a file<br/> 16 and know where it was or, yeah, we would go<br/> 17 to outside counsel for it, yes.<br/> 18 Q. And you kept track of what<br/> 19 outside counsel was in possession of, what<br/> 20 statements and what discovery responses?<br/> 21 MS. BROWN: I object<br/> 22 Your Honor, work product in terms<br/> 23 of what outside counsel had versus<br/> 24 Mr. O'Shaughnessy.</p> | <p style="text-align: right;">Page 446</p> <p>1 A. Up until about 2012, I was<br/> 2 responsible for the day to day.<br/> 3 Q. But you were involved after<br/> 4 2012. I saw you at a deposition.<br/> 5 A. Yes, I had a limited role after<br/> 6 that.<br/> 7 Q. Okay. And when documents were<br/> 8 produced in the ovarian cancer talc<br/> 9 litigation, did you go to all of the<br/> 10 outside counsel and say give me all of the<br/> 11 prior sworn statements from Johnson &amp;<br/> 12 Johnson?<br/> 13 MS. BROWN: Objection,<br/> 14 Your Honor, work product.<br/> 15 JUDGE SCHNEIDER: Same<br/> 16 ruling, overruled, because again,<br/> 17 this is akin to document custodian<br/> 18 questions, which is an appropriate<br/> 19 area of inquiry.<br/> 20 THE WITNESS: I don't<br/> 21 recall that I did that and I don't<br/> 22 recall whether I had any<br/> 23 responsibility for discovery, I<br/> 24 don't know what stage discovery was</p>                                                  |
| <p style="text-align: right;">Page 445</p> <p>1 JUDGE SCHNEIDER:<br/> 2 Objection overruled. I think this<br/> 3 is akin to document custodian<br/> 4 questions which are appropriate for<br/> 5 discovery to find out the location<br/> 6 and existence of discoverable<br/> 7 documents and whether they can<br/> 8 search for and produce in discovery<br/> 9 and I think that is an appropriate<br/> 10 area of discovery.<br/> 11 THE WITNESS: I'm sorry,<br/> 12 can --<br/> 13 MR. PLACITELLA: Can you<br/> 14 read the question back, please?<br/> 15 - - - - -<br/> 16 (Whereupon, the reporter read<br/> 17 back as requested.)<br/> 18 - - - - -<br/> 19 THE WITNESS: Not<br/> 20 really.<br/> 21 BY MR. PLACITELLA:<br/> 22 Q. So you were in charge for a<br/> 23 while at least before you retired of the<br/> 24 ovarian cancer talc litigation, right?</p>                                                                                                                                                                                                                                                                            | <p style="text-align: right;">Page 447</p> <p>1 at in the ovarian cancer litigation<br/> 2 by the time I had left supervising.<br/> 3 BY MR. PLACITELLA:<br/> 4 Q. Well, who was in charge at that<br/> 5 point that made those calls?<br/> 6 A. It would have been, it would<br/> 7 have been for Johnson &amp; Johnson, it would<br/> 8 have been Denise Houghton in conjunction,<br/> 9 again, with Gene Williams and his firm,<br/> 10 which by then might have been Shook Hardy.<br/> 11 Q. So as you sit here today, you<br/> 12 cannot testify under oath that in the<br/> 13 ovarian cancer litigation you have produced<br/> 14 all of the prior sworn statements given by<br/> 15 Johnson &amp; Johnson employees in talc<br/> 16 litigation, correct?<br/> 17 MS. BROWN: I object as<br/> 18 vague. Are we talking about in<br/> 19 response to a particular discovery<br/> 20 request.<br/> 21 THE WITNESS: All I --<br/> 22 MR. PLACITELLA: You can<br/> 23 answer it.<br/> 24 THE WITNESS: What I can</p> |

1 notice that people were alleging injuries  
2 associated with talc, true?  
3 MS. BROWN: Same  
4 objection.  
5 THE WITNESS: Sure, to  
6 the extent they sued Johnson &  
7 Johnson, yes.  
8 BY MR. PLACITELLA:  
9 Q. And in fact, lawsuits alleging  
10 injury from cosmetic talc were reportable  
11 by Johnson & Johnson to the FDA in terms of  
12 adverse event reports, correct?  
13 A. I don't know the specific  
14 requirements for the FDA.  
15 Q. Okay. Can you go in your book  
16 to Exhibit 525. And it's 525.758.  
17 A. What volume is it in, do you  
18 know?  
19 Q. It should be in book two. 525,  
20 I'll pull it up, it's up on the screen,  
21 it's in front of you. This is an adverse  
22 event report dated January 9, 2017. Do you  
23 see that?  
24 A. I do.

1                               - - - - -  
2                               (Event Report dated 1/9/17  
3                               Bates JNJTALC000125625 to 125632  
4                               marked O'Shaughnessy Exhibit 525  
5                               for identification.)  
6                               - - - - -  
7 BY MR. PLACITELLA:  
8               Q. And it's for somebody who  
9 brought a case for ovarian cancer related  
10 to Johnson & Johnson's Baby Powder. Do you  
11 see that?  
12              A. Yes.  
13              Q. And it says the information was  
14 supplied by the Johnson & Johnson law  
15 department. Do you see that? I blew it  
16 up, if you look right on the screen.  
17              A. I just want to make sure, is it  
18 525?  
19              Q. Yeah.  
20              A. Got it. Got it. I'm sorry. I  
21 was on the wrong one.  
22              Q. Yeah, no problem.  
23              A. It says these documents were  
24 received by the J&J law department on



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1 January 9, 2017.  
 2 Q. That's you, right, the law  
 3 department?  
 4 A. It's the J&J law department, I  
 5 was not handling the cases at that time.  
 6 Q. But generally speaking, you  
 7 knew that was the procedure, right, that a  
 8 complaint came in and you sent it to an  
 9 independent analyst hired by Johnson &  
 10 Johnson to assess causality for purposes of  
 11 reporting to the FDA.  
 12 A. I don't know that.  
 13 MS. BROWN: Objection,  
 14 foundation.  
 15 BY MR. PLACITELLA:  
 16 Q. You don't know that?  
 17 A. No.  
 18 Q. Okay. Do you see, go to the  
 19 next page. If you see on the bottom, it  
 20 says case medically confirmed. And it says  
 21 reportable to FDA, yes. Do you see that?  
 22 A. Yeah.  
 23 Q. Okay. And your independent  
 24 consultant actually evaluated this case and

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1 determined that casualty was actually  
 2 possible, correct?  
 3 MS. BROWN: Objection.  
 4 Misstates the document.  
 5 THE WITNESS: I'm --  
 6 this is a document -- you know  
 7 what, I don't recognize what the  
 8 document is. It looks like a  
 9 regulatory document and they had  
 10 their own procedures about what  
 11 they had to do when they received  
 12 complaints. So you would have to  
 13 ask someone in the regulatory  
 14 function about this.  
 15 BY MR. PLACITELLA:  
 16 Q. Okay. So you have no knowledge  
 17 of Johnson & Johnson having the complaints  
 18 that were filed that you were in charge of  
 19 making an independent evaluation about  
 20 whether causation was possible?  
 21 MS. BROWN: Objection.  
 22 Misstates the document and the  
 23 evidence and lacks foundation.  
 24 THE WITNESS: At this

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1 time, I was not responsible for  
 2 processing complaints, but I know  
 3 that the Johnson & Johnson law  
 4 department had complaints and they  
 5 were appropriately reported by the  
 6 company to wherever it had to be  
 7 reported. How the company handled  
 8 that and what consultants they  
 9 used, I don't have any knowledge of  
 10 that.  
 11 BY MR. PLACITELLA:  
 12 Q. Well, in 2012 when you were  
 13 sued in an ovarian cancer case, you  
 14 understood that that complaint was going to  
 15 be used as a basis for independent  
 16 evaluation and submitted to the FDA,  
 17 correct?  
 18 MS. BROWN: Object,  
 19 foundation.  
 20 THE WITNESS: The  
 21 company had their procedures about  
 22 what to do with complaints and I  
 23 assume they followed them. I  
 24 didn't have any insight into that.

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1 BY MR. PLACITELLA:  
 2 Q. So they kept that from you?  
 3 A. I didn't say that --  
 4 Q. (MS. BROWN) Objection,  
 5 argumentative.  
 6 BY MR. PLACITELLA:  
 7 Q. So you do know?  
 8 MS. BROWN: Wait, wait,  
 9 wait. Hold on. Hold on.  
 10 THE WITNESS: They  
 11 didn't keep anything from me.  
 12 That's not a proper way to put it.  
 13 I said I didn't know what they did,  
 14 they had their own procedures.  
 15 BY MR. PLACITELLA:  
 16 Q. Okay. They shared, they shared  
 17 these reports with you as they came in?  
 18 MS. BROWN: Objection.  
 19 Misstates the testimony.  
 20 THE WITNESS: I didn't  
 21 see all documents from the company,  
 22 no.  
 23 BY MR. PLACITELLA:  
 24 Q. Okay. Now, information

1 available to answer questions in one case  
2 would be relevant to answer similar  
3 questions in other cases, do you agree with  
4 that?

5 MS. BROWN: Objection,  
6 Your Honor, work product.

7 JUDGE SCHNEIDER: I  
8 think that's a general question not  
9 asking about specific case  
10 preparation and litigation, so  
11 objection overruled.

12 THE WITNESS: I do  
13 believe, yes, it is a general  
14 question. I can't answer it in  
15 that form. Each case is treated  
16 individually.

17 BY MR. PLACITELLA:

18 Q. So, for example, when you had  
19 your deposition taken last week by  
20 Mr. Block, you don't think that's relevant  
21 to what you might have to talk about here  
22 today?

23 A. That's not for me to decide.  
24 That's for the judge to decide.

1 Q. Okay. But you understood as a  
2 lawyer in charge of the litigation that if  
3 somebody provided sworn testimony under  
4 oath, that might be evidence in another  
5 case with similar allegations, correct?

6 MS. BROWN: Objection,  
7 vague. Doesn't make sense.

8 THE WITNESS: I can't  
9 speculate as to where it may be  
10 used or where it may --

11 BY MR. PLACITELLA:

12 Q. I'm not asking you to  
13 speculate. I'm asking --

14 A. Well, then, I don't know.

15 Q. You don't know. Okay. That's  
16 fine. Last week you testified that in  
17 cases that you supervised, Johnson &  
18 Johnson swore under oath that Johnson's  
19 Baby Powder's never contained asbestos in  
20 any form or tremolite. Do you recall that?

21 A. Yes, I do.

22 Q. Okay. And you indicated that  
23 in making that statement that you relied  
24 upon Dr. Hopkins, true?

1 A. I think I stated we relied on  
2 all the people we spoke to at the company  
3 and he would be one of them.

4 Q. Well, Mr. Block asked you for  
5 specific names and you gave him Dr.  
6 Hopkins, Mr. Ashton, and Mr. Chudkowski,  
7 correct?

8 A. Those are the names I could  
9 remember, but our lawyers when they went  
10 and did their research to respond to this  
11 or to prepare themselves for litigation  
12 would have talked to way more than those  
13 people.

14 Q. That's fine. I'm just asking  
15 you. You recall that Dr. Hopkins,  
16 Mr. Ashton, and Chudkowski were at least  
17 some of the people that you relied upon,  
18 correct?

19 A. Yes.

20 Q. Okay. What about Roger Miller?

21 A. Him too.

22 Q. What about Bruce Semple?

23 A. I don't recall, I know Bruce,  
24 Dr. Semple, and we certainly interviewed

1 him. I don't recall when he was there,  
2 because I know he left the company, so I'm  
3 not sure.

4 Q. And wasn't he the medical  
5 director at Johnson & Johnson?

6 A. He was at one point, I think,  
7 yeah.

8 Q. Now, I wouldn't ordinarily ask  
9 you this question, I don't want to insult  
10 you, but at the end of the last deposition,  
11 Ms. Brown asked you this question, so I  
12 want to get it up front so I'm not accused  
13 of being unfair, because you accused  
14 Mr. Block of being unfair. Do you remember  
15 that?

16 MS. BROWN: Object to  
17 the argumentative nature of these  
18 questions.

19 BY MR. PLACITELLA:

20 Q. Do you remember accusing  
21 Mr. Block of being unfair --

22 A. I thought the inference was  
23 unfair.

24 Q. Okay. You believe you had a

1 duty to provide truthful and accurate  
2 information to all parties including  
3 courts, correct?

4 A. Yes, yes.

5 Q. Okay. And that would include  
6 not withholding any evidence that might  
7 lead to the discovery of relevant  
8 admissible evidence, correct?

9 A. Whatever was required by the  
10 cases.

11 MR. PLACITELLA: Okay.  
12 Can you read my question back,  
13 please?

14 - - - - -

15 (Whereupon, the reporter read  
16 back as requested.)

17 - - - - -

18 THE WITNESS: In  
19 general, yeah.

20 BY MR. PLACITELLA:

21 Q. Okay. And the ability to  
22 provide truthful and accurate information  
23 is entirely dependent on whether the  
24 scientists and executives at Johnson &

1 Johnson were entirely truthful and  
2 forthright with you, right?

3 MS. BROWN: Objection,  
4 speculation, foundation.

5 THE WITNESS: We  
6 depended on them to provide us with  
7 the information.

8 BY MR. PLACITELLA:

9 Q. Okay. Let me ask the question  
10 again. Your ability in the context of  
11 litigation to provide truthful and accurate  
12 information is entirely and was entirely  
13 dependent on whether the scientists and  
14 executives at Johnson & Johnson were  
15 entirely truthful and forthright with you?

16 MS. BROWN: Same  
17 objections and asked and answered.

18 THE WITNESS: Yeah, you  
19 know, in general, yes, but I'm  
20 having trouble with entirely,  
21 because there could have been other  
22 sources of information that we  
23 relied on to provide answers, I  
24 just don't --

1 BY MR. PLACITELLA:

2 Q. I understand that part, but you  
3 depended on them to --

4 A. We did.

5 Q. -- tell you the truth and the  
6 whole truth when you were asking for  
7 information to respond to discovery, true?

8 A. Yes.

9 Q. Okay. Now, you go to your book  
10 number one and take out Exhibit 188. And  
11 I'm going to put it up on the screen. And  
12 I'm putting up, the first page I'm going to  
13 put up is 188.2. And 188.2 is a July 23,  
14 1987, letter from Ronald Levitt to a  
15 Mr. Ronald Grayzel.

16 A. I'm just having trouble.

17 Q. Yeah, I know, it's a lot of  
18 stuff.

19 A. It's falling apart.

20 MS. BROWN: You know  
21 what, I'm going to switch binders  
22 with you, John.

23 THE WITNESS: Yeah,  
24 thanks.

1 MS. BROWN: Yeah, of  
2 course.

3 - - - - -

4 (Stipulation of Dismissal,  
5 Letter dated 7/23/87, Affidavit of  
6 Roger Miller, and Letter dated  
7 1/28/87 marked O'Shaughnessy  
8 Exhibit 188 for identification.)

9 - - - - -

10 BY MR. PLACITELLA:

11 Q. See, Lea, I told you the  
12 binders are too fat. Okay. This is a  
13 letter from Ronald Levitt to Mr. Ron  
14 Grayzel. He was a lawyer with an office in  
15 Edison, New Jersey. Do you see that?

16 A. I do.

17 Q. And he -- and it's written, it  
18 says enclosed please find -- here, let me  
19 get -- blow that up. "Enclosed please find  
20 an affidavit on behalf of Windsor Minerals,  
21 Inc. signed by Roger Miller, president of  
22 Windsor Minerals since 1968." Do you see  
23 that?

24 A. I do.

1 Q. He was one of the people you  
2 relied on to tell you the truth and the  
3 whole truth?

4 A. Yes.

5 Q. Okay. It says "Also enclosed  
6 you will find an assay from McCrone  
7 Environmental Services. I trust that these  
8 documents will now unable to sign a  
9 dismissal as was done in the Yuhas file."  
10 Do you see that?

11 A. Yes.

12 Q. And now I want to go to the  
13 actual affidavit of Mr. Miller. That's the  
14 next page. He says that -- and Mr. Miller  
15 was the president of Johnson & Johnson,  
16 correct -- of Windsor Minerals, correct?

17 A. Yes.

18 Q. And that was a wholly-owned  
19 subsidiary of Johnson & Johnson, correct?

20 A. Yes.

21 Q. And you worked as a lawyer, you  
22 worked as a lawyer for both Windsor  
23 Minerals and Johnson & Johnson at the same  
24 time?

1 A. Yes.

2 Q. Okay. And Mr. Miller says "I  
3 am the president of Windsor Minerals." Do  
4 you see that?

5 A. Yes.

6 Q. And then he goes on and he says  
7 "The exclusive business of Windsor  
8 Minerals, Inc. is and has been for the last  
9 18 years the mining and milling of talc  
10 from a single mining district in Windsor,  
11 Vermont. The mining district is the  
12 exclusive source of talc for all Johnson's  
13 Baby Powder sold in the United States."  
14 That was your understanding, correct?

15 A. Yes.

16 Q. Okay. He goes on to say, "In  
17 addition to supplying the talc for  
18 Johnson's Baby Powder, Windsor Minerals  
19 also sells a portion of its product to  
20 independent industrial users." Do you see  
21 that?

22 A. I do.

23 Q. Okay. Go to the next page,  
24 please. He states "All of the talc mined

1 by Windsor Minerals, Inc., whether it is  
2 ultimately sold to industrial users or used  
3 in Johnson's Baby Powder, is sampled and  
4 tested for the presence of asbestos." Do  
5 you see that?

6 A. I do.

7 Q. "No evidence of the presence of  
8 asbestos in Windsor Minerals' product has  
9 ever be revealed by this testing." Do you  
10 see that?

11 A. Yes.

12 Q. And you understand there's a  
13 difference between saying no evidence, but  
14 there is evidence, but we don't agree with  
15 it? You understand there's a difference,  
16 right?

17 MS. BROWN: Objection,  
18 vague.

19 THE WITNESS: Yeah, I  
20 guess so, yeah.

21 BY MR. PLACITELLA:

22 Q. Okay. And what he does is he  
23 attaches a report. Do you see that?  
24 That's the next page.

1 A. I do, yes.

2 Q. And you've seen reports like  
3 this before in defending Johnson & Johnson,  
4 correct?

5 A. I've seen testing reports from  
6 time to time, yes.

7 Q. Okay. And what the report  
8 says, it gives a whole bunch of numbers and  
9 it says "examination found no quantifiable  
10 amounts of asbestiform minerals." Do you  
11 see that?

12 A. I do.

13 Q. Now, have you ever been  
14 involved in drafting similar affidavits?  
15 Were you involved in drafting this  
16 affidavit?

17 A. No, it was before my time  
18 there.

19 Q. Were you ever involved in  
20 drafting similar affidavits?

21 A. I believe so.

22 Q. Okay. And do you know what the  
23 factual predicate is for this affidavit?  
24 What's the factual basis for it?

1 MS. BROWN: I object,  
2 that last foundation, he said he  
3 wasn't involved in this affidavit.

4 MR. PLACITELLA: You can  
5 answer it.

6 THE WITNESS: I don't  
7 know the factual -- for this  
8 particular affidavit, I don't know.  
9 I mean, I didn't prepare it, so I  
10 don't know that I had any  
11 discussions around it, et cetera.

12 BY MR. PLACITELLA:

13 Q. Okay. Can you go to Johnson &  
14 Johnson 1054, which is in book two? While  
15 you're looking, can you tell me who John N.  
16 Beidler is?

17 A. He was an attorney with Johnson  
18 & Johnson.

19 - - - - -

20 (Letter dated 8/27/86 marked  
21 O'Shaughnessy Exhibit 1054 for  
22 identification.)  
23 - - - - -  
24

1 allegation in the Complaint, does not now  
2 engage or has never engaged in the  
3 manufacture or supply of  
4 asbestos-containing products." Do you see  
5 that?

6 A. Yes.

7 Q. And then he goes on to say  
8 "Rather, the exclusive business of Windsor  
9 Minerals is and has been the mining and  
10 milling of talc from a single mining  
11 district in Windsor, Vermont. That mining  
12 district is the exclusive source of the  
13 talc for all of the Johnson's Baby Powder  
14 sold in the United States as well as a  
15 source of pure talc sold to independent  
16 industrial users." Did I read that  
17 correctly?

18 A. Yes.

19 Q. "All of the talc mined by  
20 Windsor Minerals, whether ultimately sold  
21 to industrial users or used in Johnson's  
22 Baby Powder, is sampled and tested for the  
23 presence of asbestos and no evidence of the  
24 presence of asbestos in any Windsor Mineral

1 BY MR. PLACITELLA:

2 Q. He worked with you in defending  
3 talc cases?

4 A. No, he handled it before I came  
5 to the company.

6 Q. Okay. And did he work for the  
7 office of general counsel?

8 A. He did.

9 Q. All right. 1054 is a letter  
10 from John Beidler to the same Ronald  
11 Grayzel in the Edley case. Do you see  
12 that?

13 A. Yes.

14 Q. And it's on Johnson & Johnson  
15 letterhead indicating it came from the  
16 office of the general counsel, correct?

17 A. Yes.

18 Q. Okay. And what Mr. Beidler --

19 MS. BROWN: Object to  
20 this document as lacking  
21 foundation.

22 BY MR. PLACITELLA:

23 Q. States is "Please be advised  
24 that Windsor Minerals Inc., contrary to the

1 product has ever been revealed." Do you  
2 see that?

3 A. I do.

4 Q. That's the same exact language  
5 that ended up in Mr. Miller's affidavit,  
6 isn't it?

7 A. If you say so, I didn't compare  
8 them. It's similar, certainly.

9 Q. So now we know where Mr. Miller  
10 got the information?

11 MS. BROWN: I object,  
12 speculation, foundation.

13 THE WITNESS: No. I  
14 wasn't employed by the company at  
15 this time, so you're asking me  
16 questions that I don't know.

17 BY MR. PLACITELLA:

18 Q. It goes on to say "Under the  
19 circumstances, there obviously can be no  
20 reasonable knowledge, information or belief  
21 which provides good ground to support to  
22 pleading under Rule 1:48." Do you see  
23 that?

24 A. I do.



1 Q. You were a New Jersey lawyer,  
2 correct?  
3 A. I was, yeah.  
4 Q. And you know that that is the  
5 citation to the New Jersey frivolous  
6 lawsuit statute, right?  
7 A. I don't recall it.  
8 Q. And you understand that the  
9 frivolous lawsuit statute, when you write a  
10 letter like this, you are threatening a  
11 lawyer with sanctions if they don't dismiss  
12 the complaint?  
13 MS. BROWN: I object.  
14 That misstates the evidence and  
15 lacks foundation.  
16 THE WITNESS: I didn't  
17 write this letter.  
18 BY MR. PLACITELLA:  
19 Q. Did you ever write similar  
20 letters?  
21 A. I don't believe I did.  
22 Q. Okay. Now, I want to go back  
23 to 188. When we talked about the  
24 information that was in the letter where

1 Miller attached the tests from McCrone.  
2 A. Yes.  
3 Q. Okay. And he used a  
4 nonquantifiable, no quantifiable amount  
5 language?  
6 A. Yes.  
7 MS. BROWN: Objection,  
8 vague.  
9 BY MR. PLACITELLA:  
10 Q. And that's language that you're  
11 familiar with, correct?  
12 MS. BROWN: Objection,  
13 foundation.  
14 THE WITNESS: I know  
15 it's language used in testing  
16 reports.  
17 BY MR. PLACITELLA:  
18 Q. Okay. And but before we get  
19 there, let's just go to the front of this.  
20 The very first page of 188.  
21 A. Yes.  
22 Q. Do you see that after this  
23 affidavit was produced, Mr. Grayzel agreed  
24 to dismiss this case?

1 MS. BROWN: Objection,  
2 foundation, speculation.  
3 THE WITNESS: I don't  
4 know. What I'm looking at is a  
5 Stipulation of Dismissal.  
6 BY MR. PLACITELLA:  
7 Q. Right. And this Stipulation of  
8 Dismissal was actually filed with the judge  
9 in charge of all the asbestos cases in the  
10 State of New Jersey, Judge Keefe. Did you  
11 know Judge Keefe?  
12 MS. BROWN: Objection,  
13 speculation, foundation.  
14 THE WITNESS: I don't  
15 know judge -- did Judge Keefe  
16 retire and become a mediator?  
17 BY MR. PLACITELLA:  
18 Q. Eventually, yes, after he went  
19 to the appellate division with a very fine  
20 career.  
21 A. That's how I know Judge Keefe.  
22 Q. Okay. And if you look at 1053,  
23 J&J 1053, which should be in your book two.  
24 You will see that the Stipulation of

1 Dismissal was filed with Judge Keefe. Do  
2 you see that?  
3 A. I do.  
4 - - - - -  
5 (Letter dated 6/6/88 marked  
6 O'Shaughnessy Exhibit 1053 for  
7 identification.)  
8 - - - - -  
9 BY MR. PLACITELLA:  
10 Q. Okay. And one of the people  
11 that you say you relied upon was John  
12 Hopkins, correct?  
13 A. Yes.  
14 Q. Are you aware that in trial  
15 before a jury, John Hopkins testified that  
16 this document, this affidavit was false on  
17 its face?  
18 MS. BROWN: I object.  
19 Misstates the evidence. Lacks  
20 foundation.  
21 BY MR. PLACITELLA:  
22 Q. Okay. I'll show you the  
23 evidence. Can you go to your transcript  
24 book, please, where it says Hopkins TR?

1 A. One or two?  
 2 Q. Yeah, hold on. It's 1060 in  
 3 the transcript book. It says trial  
 4 testimony in the Barden case and I'll put  
 5 it up. And I'll put it up on the screen  
 6 for you, if you need to look at it later --  
 7 MS. BROWN: Well, can he  
 8 review, hear the entirety of the  
 9 testimony?  
 10 MR. PLACITELLA: The  
 11 whole transcript, I think we don't  
 12 have time for that, but --  
 13 MS. BROWN: I want to  
 14 know where this is talked about on  
 15 redirect.  
 16 MR. PLACITELLA: You can  
 17 ask him all that on redirect.  
 18 MS. BROWN: Are you  
 19 putting that up or can he --  
 20 MR. PLACITELLA: I'm  
 21 putting the whole document into  
 22 evidence, so no problem.  
 23 THE WITNESS: I'm just  
 24 trying to find the document.

1 MR. PLACITELLA: I put  
 2 it up on the transcript --  
 3 MS. BROWN: Right, I  
 4 just wanted to go to the document  
 5 and see the cover sheet. Oh, that  
 6 single sheet is the exhibit?  
 7 - - - - -  
 8 (Transcript of John Hopkins  
 9 marked O'Shaughnessy Exhibit 1060  
 10 for identification.)  
 11 - - - - -  
 12 BY MR. PLACITELLA:  
 13 Q. Yes, sir. I'll put the whole  
 14 transcript into evidence.  
 15 A. Okay.  
 16 MS. BROWN: I'll just  
 17 object to selective reading --  
 18 THE WITNESS: I'm just  
 19 trying to go to your sheet.  
 20 MS. BROWN: -- of this  
 21 questioning. That's incomplete.  
 22 THE WITNESS: 1068?  
 23 MR. PLACITELLA: 1060.  
 24 THE WITNESS: I have

1 1060A.  
 2 BY MR. PLACITELLA:  
 3 Q. You know what, we'll come back  
 4 to it, because I'm trying to get this done  
 5 today. Did John Hopkins ever have a  
 6 conversation with you and tell you that  
 7 affidavits like this were untrue?  
 8 A. I had many conversations with  
 9 John. I never had a discussion with him  
 10 about an untrue affidavit.  
 11 Q. Okay. In 188, do you see where  
 12 Johnson & Johnson told Mr. Grayzel that  
 13 they wanted a dismissal in this case just  
 14 like he gave in the other cases?  
 15 A. Can you put it up? I'm having  
 16 trouble with -- I'm sorry.  
 17 Q. That's okay, I put it right in  
 18 front of you.  
 19 MS. BROWN: So, John, if  
 20 you want the hard copy, I think we  
 21 are now back in binder one and  
 22 we're looking at 188, which you  
 23 probably still have open or close  
 24 to open.

1 MR. PLACITELLA: You can  
 2 look at the hard copy, but I'm  
 3 not --  
 4 THE WITNESS: You know,  
 5 part of the problem is, it says  
 6 '88, but there's a handwritten one  
 7 and that gets confusing.  
 8 BY MR. PLACITELLA:  
 9 Q. I understand.  
 10 A. I got it. I got it.  
 11 Q. Do you see where it says "I  
 12 trust these documents will now enable you  
 13 to sign a dismissal." And when they say  
 14 these documents, they're talking about the  
 15 Miller affidavit, right?  
 16 MS. BROWN: I object,  
 17 foundation.  
 18 BY MR. PLACITELLA:  
 19 Q. "As was done in the Yuhas  
 20 file". Do you see that?  
 21 A. Yes, you read that to me  
 22 before.  
 23 Q. So this was a second case that  
 24 was dismissed based upon the representation



1 documents, McCrone test results that were  
2 provided predating the Edley report, the  
3 Edley affidavit with one exception. And  
4 there's a copy for you behind you.

5 MS. BROWN: Okay. Can  
6 we hang on, so we can grab copies  
7 of this?

8 MR. PLACITELLA: Yeah,  
9 there's McCrone 1 and 2 and there's  
10 a copy behind you as well on the  
11 radiator.

12 MR. BERNARDO: All  
13 right. Chris, McCrone 1 and 2?

14 MR. PLACITELLA:  
15 Correct.

16 MR. BERNARDO: Thanks.

17 - - - - -

18 (McCrone Binders marked  
19 O'Shaughnessy Exhibits JOS 1 and 2  
20 for identification.)

21 - - - - -

22 BY MR. PLACITELLA:  
23 Q. And can you, in McCrone number  
24 1, can you go to Exhibit 180.2?

1 A. Got it.  
2 MR. COX: I have 180.  
3 MS. BROWN: Oh, the  
4 second page of 180.  
5 MR. PLACITELLA: It  
6 says, I put numbers so people can  
7 see it.  
8 MS. BROWN: We got it.  
9 BY MR. PLACITELLA:  
10 Q. You can see that this report is  
11 from August 1985, correct?  
12 A. That's what it says here.  
13 Q. Okay. And that was -- and it's  
14 a letter from McCrone, correct?  
15 A. That's right.  
16 Q. All right. And that predates  
17 the Miller affidavit, correct?  
18 MS. BROWN: Object as  
19 lacking foundation.  
20 THE WITNESS: It's 1985.  
21 BY MR. PLACITELLA:  
22 Q. Okay. And can we go to the  
23 second page? Do you see where it says "The  
24 presence of asbestos minerals was verified

1 by selected area electron diffraction,  
 2 (SAED), energy dispersive X-ray analysis  
 3 and by morphology." Did I read that  
 4 correct?  
 5 A. Yes.  
 6 Q. It says "Chrysotile asbestos  
 7 was detected only in the samples labeled  
 8 WMI 85-28 and WMI 85-30." Do you see that?  
 9 A. I do.  
 10 Q. Okay. Now, I'm going to leave  
 11 that. And if you can now go to book two in  
 12 your J&J books. Okay. And go to  
 13 Exhibit 1048. And I'm going to put it up  
 14 on the screen. I'm going to show you the  
 15 whole thing.  
 16 A. I got it.  
 17 -----  
 18 (Letter dated 9/10/85 Bates JNJ  
 19 000064652 marked O'Shaughnessy  
 20 Exhibit 1048 for identification.)  
 21 -----  
 22 BY MR. PLACITELLA:  
 23 Q. And do you see this is a letter  
 24 a month later from Roger Miller, right?

1 A. Yes.  
 2 Q. All right. And the date is  
 3 September 10, 1985, right?  
 4 A. Yes.  
 5 Q. And Roger Miller is one of the  
 6 people that you depended upon to tell you  
 7 the whole truth, right?  
 8 A. Yes.  
 9 Q. And Roger Miller writes to  
 10 McCrone. Do you see that?  
 11 A. Yes.  
 12 Q. And he writes and he says "I am  
 13 touching base with you on methodology and  
 14 reports by your representatives on analysis  
 15 of our products. I also want to complain  
 16 on their failure to read our  
 17 correspondence." Did I read that correct?  
 18 A. You did.  
 19 Q. It says, I'm sorry, "We  
 20 submitted, on July 11, to Mark Palenik,  
 21 seven samples." Do you see that?  
 22 A. Yeah.  
 23 Q. And you got -- and he got a  
 24 report back on August 22. Do you see that?

1 A. Uh-huh.  
 2 Q. All right. And that's the  
 3 August 22 report up on the screen to the  
 4 left. Do you see that?  
 5 MS. BROWN: That lacks  
 6 foundation.  
 7 THE WITNESS: You know,  
 8 I don't know, this is before I was  
 9 with Johnson & Johnson, but, you  
 10 know, it's connected to it, I  
 11 guess.  
 12 BY MR. PLACITELLA:  
 13 Q. Yeah, I'm just trying to figure  
 14 out if they told you the whole truth.  
 15 MS. BROWN: Well, that's  
 16 argumentative.  
 17 MR. PLACITELLA: So let  
 18 me ask you --  
 19 MS. BROWN: Wait, hold  
 20 on, hold on.  
 21 THE WITNESS: They did,  
 22 as far as I'm concerned.  
 23 MR. PLACITELLA: Well,  
 24 let's find out.

1 MS. BROWN: Chris  
 2 Placitella, let him finish. I  
 3 object as argumentative and I  
 4 object to both of these documents  
 5 as lacking foundation.  
 6 BY MR. PLACITELLA:  
 7 Q. Okay. It says on the next  
 8 paragraph, "The August 22 report is couched  
 9 in substantially different language than  
 10 earlier reports. As I explained to you on  
 11 my visit to Chicago it is a very important  
 12 that specific language be used." Do you  
 13 see that?  
 14 A. I do.  
 15 Q. Okay. And now I'm going to  
 16 show you, can you go to J&J 181 in the  
 17 McCrone book of testing.  
 18 A. Got it.  
 19 Q. Okay. Do you see this is a  
 20 subsequent report now written by McCrone to  
 21 Mr. Miller. Do you see that?  
 22 A. Yes.  
 23 Q. Okay. And it references the  
 24 same exact samples from the August 22,

1 1985, report where McCrone reported  
 2 asbestos in the testing, right?  
 3 MS. BROWN: Lacks  
 4 foundation.  
 5 THE WITNESS: I didn't  
 6 check, but I assume you're right.  
 7 BY MR. PLACITELLA:  
 8 Q. It says, look, I don't want to  
 9 assume anything. The samples were  
 10 identified as WMI85-25 through 31, right.  
 11 And that's the same one, I have it up on  
 12 the screen right in front of you, it's the  
 13 same samples?  
 14 A. Yes.  
 15 Q. But after being admonished by  
 16 Mr. Miller, the new letter says the  
 17 following, correct. "Under your purchase  
 18 order, WS-17577, we received seven talc  
 19 samples for asbestos analysis. The samples  
 20 were identified as WMI85-25 through  
 21 WMI85-31. Examination by transmission  
 22 election microscopy did not find any  
 23 quantifiable amount of asbestiform minerals  
 24 in any of the samples." Did I read that

1 correct?  
 2 MS. BROWN: Object to  
 3 the question as argumentative and  
 4 lacking foundation.  
 5 THE WITNESS: What is  
 6 the question, did you read it  
 7 correctly?  
 8 BY MR. PLACITELLA:  
 9 Q. Yes, sir.  
 10 A. You read it correct.  
 11 Q. And the report was changed from  
 12 finding asbestos to finding no asbestos  
 13 after Roger Miller weighed in and  
 14 admonished McCrone for using asbestos  
 15 findings in the report. Isn't that what  
 16 happened?  
 17 MS. BROWN: Incorrect,  
 18 misstates the evidence. Lacks  
 19 foundation. Calls for speculation.  
 20 THE WITNESS: You're  
 21 asking me for what happened two  
 22 years before I was at the company,  
 23 so I don't know that happened. I  
 24 don't know if there was an

1 admonishment. I saw a letter from  
 2 Mr. Miller to him, so you know,  
 3 you're asking me to interpret  
 4 something, you know, I have no  
 5 familiarity with.  
 6 BY MR. PLACITELLA:  
 7 Q. Well, that's the issue I'm  
 8 having. Was this ever shared with you by  
 9 Mr. Miller?  
 10 MS. BROWN: Objection to  
 11 the speech.  
 12 THE WITNESS: I don't  
 13 know if I saw these documents  
 14 before. I saw a lot of documents.  
 15 I don't know.  
 16 BY MR. PLACITELLA:  
 17 Q. Well, would you allow  
 18 Mr. Miller to sign an affidavit saying  
 19 there was absolutely no evidence if you had  
 20 seen these reports before he signed the  
 21 affidavit?  
 22 MS. BROWN: Objection.  
 23 Misstates the evidence.  
 24 THE WITNESS: It's a

1 hypothetical I can't answer.  
 2 MS. BROWN: Lacks  
 3 foundation.  
 4 THE WITNESS: Because I  
 5 would have to have him explain to  
 6 me, you know, these documents.  
 7 BY MR. PLACITELLA:  
 8 Q. Did he ever explain to you  
 9 these documents?  
 10 A. Like I said, I don't know if I  
 11 ever discussed it with him or not.  
 12 Q. So you have no recollection of  
 13 him explaining these documents to you?  
 14 A. No, it has been, you know, over  
 15 30 years since I worked on these cases.  
 16 Q. You don't think you would  
 17 remember if somebody was filing an  
 18 affidavit that said there was no evidence  
 19 and they actually showed you evidence?  
 20 MS. BROWN: That lacks  
 21 foundation.  
 22 THE WITNESS: Well,  
 23 that's easy, because I never was  
 24 aware of any evidence that showed

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1 that anything that the company was  
 2 stating in its affidavits was not  
 3 truthful.  
 4 BY MR. PLACITELLA:  
 5 Q. Okay. You didn't see the  
 6 McCrone report reporting asbestos then?  
 7 MS. BROWN: That  
 8 misstates testimony.  
 9 THE WITNESS: No, I  
 10 don't know if I did or didn't.  
 11 MS. BROWN: Can we take  
 12 a break and figure out why there's  
 13 no air conditioning in this room  
 14 right now?  
 15 MR. PLACITELLA: Sure.  
 16 MS. BROWN: Thank you.  
 17 THE VIDEOGRAPHER: Off  
 18 the record, 10:28 a.m.  
 19 - - - - -  
 20 (A recess was taken at this time.)  
 21 - - - - -  
 22 THE VIDEOGRAPHER: We  
 23 are back on the record at  
 24 10:43 a.m.

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1 BY MR. PLACITELLA:  
 2 Q. Okay. Would you agree that  
 3 when witnesses die, unless there's  
 4 something in writing, their personal  
 5 knowledge concerning the facts related to a  
 6 case die with them?  
 7 MS. BROWN: Foundation.  
 8 THE WITNESS: You know,  
 9 I don't know what, you know,  
 10 unfortunately, look, this is  
 11 obvious, when a person dies,  
 12 whatever they know or knowledge  
 13 with them as a source has ended.  
 14 So I don't know, I'm agreeing  
 15 with --  
 16 BY MR. PLACITELLA:  
 17 Q. So, for example, with  
 18 Mr. Miller, he's dead, right?  
 19 A. I believe he is. I was never  
 20 told that, but I just, based on his age, it  
 21 does --  
 22 Q. So the only thing we have left,  
 23 because we didn't have a chance to take  
 24 this deposition, was the letters he wrote

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1 and his testimony or sworn affidavits,  
 2 correct?  
 3 MS. BROWN: Objection,  
 4 foundation, speculation.  
 5 THE WITNESS: I don't  
 6 know if there's anything else.  
 7 That sounds right, but you know,  
 8 there may other things I just  
 9 sitting here can't think of.  
 10 BY MR. PLACITELLA:  
 11 Q. Okay. That's fair. Before I  
 12 move to the next topic, going back to 1054,  
 13 this is the letter to Mr. Grayzel where  
 14 Johnson & Johnson's threatened Mr. Grayzel  
 15 with frivolous lawsuit sanctions?  
 16 MS. BROWN: Well, that  
 17 misstates the document. I object.  
 18 MR. PLACITELLA: Oh, I  
 19 don't think it misstates anything.  
 20 MS. BROWN: It's your  
 21 interpretation.  
 22 BY MR. PLACITELLA:  
 23 Q. It says on the bottom  
 24 "Parenthetically, we received a Complaint

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1 several months ago filed by the Wysoker  
 2 firm here in New Brunswick," because the  
 3 Wysoker firm was right down the street from  
 4 Johnson & Johnson, wasn't it?  
 5 A. I don't know. I don't know.  
 6 Q. And the courthouse where these  
 7 affidavits were filed and these letters  
 8 related to, that was, like, two or three  
 9 blocks from your headquarters, right?  
 10 A. If they were filed in Middlesex  
 11 County Courthouse, yes.  
 12 Q. And it says we received a  
 13 Complaint from the Wysoker firm a few  
 14 months ago from another employee who worked  
 15 at the same place, we told them the same  
 16 thing and the plaintiff lawyer dismissed  
 17 his case, right?  
 18 MS. BROWN: Lacks  
 19 foundation. Misstates the  
 20 document.  
 21 THE WITNESS: I don't  
 22 know, I don't know the facts of the  
 23 case and you just kind of summed it  
 24 up, I don't --

1 BY MR. PLACITELLA:

2 Q. I don't want to misstate so --

3 MS. BROWN: Let him  
4 finish his answer.

5 THE WITNESS: I'm not  
6 saying you misstated anything, it's  
7 just that I don't know. I don't  
8 know Bird & Son. I don't know the  
9 Wysoker firm and I don't know this  
10 other complaint that is mentioned  
11 by complaint. Again, this is  
12 before my time there. I have no  
13 knowledge of this.

14 BY MR. PLACITELLA:

15 Q. Well, now I've counted three  
16 cases that were apparently dismissed based  
17 upon the representation that there's no  
18 evidence of asbestos in Johnson & Johnson's  
19 talc, right?

20 MS. BROWN: That  
21 assumes, misstates the evidence and  
22 lacks foundation.

23 THE WITNESS: That could  
24 be true. I don't know.

1 BY MR. PLACITELLA:

2 Q. Okay. And what happened to the  
3 file from the Wysoker firm's file when the  
4 case was dismissed? What happened to that  
5 file?

6 MS. BROWN: Foundation.

7 THE WITNESS: I have no  
8 idea. I don't know.

9 BY MR. PLACITELLA:

10 Q. Now, there was a case named  
11 Andonian, A-N-D-O-N-I-A-N. You know that  
12 case, correct?

13 A. I don't believe so.

14 Q. Okay. Can you go to 1061,  
15 please?

16 A. Okay.

17 - - - - -

18 (Andonian Case Witness List  
19 Bates JNJ 000065334 to 65339 marked  
20 O'Shaughnessy Exhibit 1061 for  
21 identification.)

22 - - - - -

23 BY MR. PLACITELLA:

24 Q. And 1061 is a document dated

1 March 28, 1995, with your stamp received on  
2 it. Do you see that?

3 A. I do.

4 Q. And it's a witness list in the  
5 Andonian case, correct?

6 A. Yes.

7 Q. Okay. And can you go to 282 in  
8 book one, please, and I'll put it up. 282,  
9 while you're looking for it, and I'll  
10 identify it is an affidavit filed by Roger  
11 Miller, July 8, 1988, in the Andonian case.  
12 Do you see that?

13 A. My book seems to skip.

14 Q. It should be 282.

15 A. 259 to 297. Does that sound  
16 right?

17 Q. It doesn't sound right, but  
18 maybe I can fix it at the break. I'll show  
19 you the whole thing here.

20 MS. BROWN: I'm going to  
21 give you my copy, John, 282.

22 THE WITNESS: Just pile  
23 it on.

24 MS. BROWN: Are we done

1 with the McCrone books or do we  
2 keep them?

3 MR. PLACITELLA: I think  
4 you keep them handy.

5 THE WITNESS: Okay.

6 - - - - -

7 (Roger Miller Affidavit in  
8 Andonian case Bates  
9 JNJ-WIL\_\_0000094 to 95 marked  
10 O'Shaughnessy Exhibit 282 for  
11 identification.)

12 - - - - -

13 BY MR. PLACITELLA:

14 Q. This an affidavit filed by  
15 Mr. Miller in a case that you worked on.

16 A. That's right.

17 Q. Okay. And if you go to the  
18 second page, Mr. Miller -- this is a year  
19 after the Edley case, right?

20 A. Yes.

21 Q. Mr. Miller states under oath  
22 "All of the talc mined by Windsor Minerals  
23 has been regularly sampled and tested for  
24 the presence of asbestos. No evidence of



1 the presence of asbestos in Windsor  
2 Minerals, Inc.'s products has ever been  
3 revealed by this testing." Did I read that  
4 correctly?

5 A. Yes.

6 Q. And this affidavit, however,  
7 doesn't attach any documents, correct?

8 MS. BROWN: Objection,  
9 foundation.

10 THE WITNESS: Not, I  
11 don't see any others.

12 BY MR. PLACITELLA:

13 Q. Okay. So do you have the  
14 McCrone reports?

15 A. I have those two binders you  
16 gave me.

17 Q. Yes.

18 A. Yes.

19 Q. Could we just put them over  
20 here to your right, if you wouldn't mind.  
21 There should be two.

22 MS. BROWN: There's one  
23 behind you.

24 THE WITNESS: Oh, I put

1 it on the floor, I'm sorry.

2 BY MR. PLACITELLA:

3 Q. So here's one and two.

4 A. Okay.

5 Q. And my question to you is did  
6 you turn over any of those documents in the  
7 Andonian case?

8 MS. BROWN: Objection.

9 MR. PLACITELLA: In  
10 McCrone 1 and 2.

11 MS. BROWN: Number one,  
12 I object. We don't know what's in  
13 those binders, and number two, I  
14 object as lacking foundation.

15 MR. PLACITELLA: Well,  
16 they're all the McCrone reports.  
17 I'll represent that to you. Did  
18 you turn over any McCrone reports  
19 in the Andonian case?

20 MS. BROWN: Objection to  
21 form. Lacks foundation.

22 THE WITNESS: I don't  
23 recall what was or was not turned  
24 over in the Andonian case or what

1 the state of the discovery was, so  
2 I really can't answer the question.

3 BY MR. PLACITELLA:

4 Q. Well, in the context of  
5 submitting to the plaintiffs -- and by the  
6 way, there were hundreds of plaintiffs in  
7 the Andonian case, right?

8 A. I don't recall.

9 Q. In the context of submitting an  
10 affidavit saying that there was no testing  
11 available in the Andonian case, right, no  
12 testing has ever revealed anything, did you  
13 turn over any of the testing documents?

14 MS. BROWN: Hold on. I  
15 object as lacking foundation that  
16 there was even a request to Johnson  
17 & Johnson.

18 THE WITNESS: I don't  
19 recall what was turned over in  
20 discovery or not.

21 BY MR. PLACITELLA:

22 Q. Okay. Now, if I might, I'm  
23 going to show you a book I went over with  
24 Ms. Musco in her deposition and with Dr.

1 Hopkins in his deposition. And I spent  
2 three days, yeah, you can put it aside, I'm  
3 just going to put it right here. You can  
4 take a look at it. And tell me if perusing  
5 through it, did you turn any of these  
6 testing documents in the Andonian case?

7 MS. BROWN: I object, we  
8 have -- lacking foundation that J&J  
9 was even a defendant in that case  
10 or that there were even any  
11 requests.

12 MR. PLACITELLA: So you  
13 are --

14 MS. BROWN: This whole  
15 line of questioning lacks --

16 MR. PLACITELLA: You are  
17 representing on the record you were  
18 not a defendant in the case now?

19 MS. BROWN: I am saying  
20 your question lacks foundation --

21 MR. PLACITELLA: Oh,  
22 okay.

23 MS. BROWN: -- as you  
24 have not even shown this witness a

1 request in that case.  
 2 BY MR. PLACITELLA:  
 3 Q. Okay. Why don't we just --  
 4 I'll represent to you, Mr. Hopkins -- I'm  
 5 sorry, Mr. O'Shaughnessy, these are all the  
 6 testing documents I went over with Dr.  
 7 Hopkins for three days. Do you have any  
 8 recollection of turning any of those  
 9 documents over, any documents over in the  
 10 Andonian case when you submitted the  
 11 affidavit saying that there was no testing  
 12 available?

13 MS. BROWN: The  
 14 affidavit does not say there's no  
 15 testing available.

16 MR. PLACITELLA: You're  
 17 right.

18 MS. BROWN: So you're  
 19 misstating the evidence.

20 BY MR. PLACITELLA:  
 21 Q. When you submitted the  
 22 affidavit that said no evidence of the  
 23 presence of asbestos in Windsor Minerals  
 24 products has ever been revealed, did you

1 turn over any of those documents?

2 MS. BROWN: I object,  
 3 this whole line of questioning  
 4 assume facts and misstates the  
 5 evidence, and we have no idea  
 6 what's in those binders.

7 THE WITNESS: I don't  
 8 recall what the state of discovery  
 9 was in the Andonian case. And by  
 10 that I mean, I don't know what they  
 11 requested or what was turned over  
 12 or even if they requested anything.  
 13 That would have been a matter of  
 14 record at the time. You asked me  
 15 if I turned over any of these  
 16 documents and you point to me three  
 17 binders and I take you at your  
 18 word. I respect that they are  
 19 Johnson & Johnson testing. And you  
 20 asked me if I turned over any of  
 21 these documents. It's impossible  
 22 for me to answer that question,  
 23 because, A, I don't recall as I  
 24 previously stated, but B, there's

1 about a foot and a half of  
 2 documents here. I would have to go  
 3 through them to see if I recognize  
 4 them and I don't recall, you know,  
 5 things from 30 years ago.

6 BY MR. PLACITELLA:

7 Q. Okay.

8 A. But my answer is, I go back to  
 9 the beginning, my answer is I don't recall  
 10 what the state of discovery may have been.

11 Q. In the context of supplying  
 12 this affidavit saying that no evidence of  
 13 the presence was ever revealed, do you have  
 14 a recollection of turning any of those  
 15 testing documents?

16 MS. BROWN: I object,  
 17 again, as lacking foundation that  
 18 this affidavit was even supplied by  
 19 us.

20 THE WITNESS: I give the  
 21 same answer.

22 BY MR. PLACITELLA:

23 Q. Okay. Can you go to 1047.

24 A. Got it.

1 Q. Okay. 1047 is an affidavit  
 2 submitted by Roger Miller on the exhibit  
 3 same day as the Andonian case. Do you see  
 4 that?

5 A. I do.

6 Q. Yes?

7 A. I do.

8 - - - - -

9 (Affidavit of Roger Miller in  
 10 Miller case marked O'Shaughnessy  
 11 Exhibit 1047 for identification.)

12 - - - - -

13 BY MR. PLACITELLA:

14 Q. Okay. And he represents in the  
 15 Faye Miller case the same exact thing and  
 16 he's talking -- and he's referencing here  
 17 directly Windsor Minerals, that's you,  
 18 right?

19 A. That's the --

20 MS. BROWN: Objection.  
 21 Lacking foundation as to who  
 22 submitted this affidavit.

23 THE WITNESS: That's the  
 24 subsidiary of Johnson & Johnson.



1 BY MR. PLACITELLA:

2 Q. Right. And again, Roger Miller  
3 on behalf of the subsidiary of Johnson &  
4 Johnson represents in the sworn testimony  
5 no evidence of the presence of asbestos in  
6 Windsor Minerals' products has ever been  
7 revealed, correct?

8 A. That's right.

9 Q. Do you have any recollection of  
10 turning over any of the testing documents  
11 to your right in the Faye Miller case?

12 MS. BROWN: Objection as  
13 assuming facts that there were  
14 requests and lacking foundation  
15 that we were involved.

16 THE WITNESS: My same  
17 answer as to the other questions, I  
18 don't want to repeat. If it's okay  
19 if I don't repeat it.

20 BY MR. PLACITELLA:

21 Q. Okay.

22 A. I can if you want me to.

23 Q. That's fine. Can you go to --  
24 by the way, what happened to the Andonian

1 files when the case was terminated?

2 MS. BROWN: Lacks  
3 foundation.

4 BY MR. PLACITELLA:

5 Q. Because they weren't turned  
6 over in discovery.

7 MS. BROWN: To who -- I  
8 object. That lacks foundation on  
9 so many levels and it's vague as to  
10 turning over in discovery.

11 BY MR. PLACITELLA:

12 Q. Well, let me just -- let me  
13 withdraw the question. What happened to  
14 the Andonian files when the case was  
15 terminated?

16 A. I don't know. I mean, they  
17 could be there or they could have been  
18 processed according to the document  
19 retention policy.

20 Q. But you didn't have a document  
21 retention policy back then?

22 A. I think what happened in -- at  
23 some point in time, cases that were in the  
24 file room would come up to the attorneys'

1 attention over whether do we need to keep  
2 this file for a reason or not and it would  
3 be put in off-site storage.

4 Q. Okay. Can you produce for me a  
5 hold notice or a document retention notice  
6 from the 1980s when these cases were filed  
7 and terminated?

8 A. I wasn't with the company until  
9 1987. I'm not sure if there were hold  
10 notices, if that was a tool we were using.  
11 I don't know when we began to use that  
12 tool. So you're asking me for the first  
13 hold notice, I don't -- I can't -- by the  
14 way, I don't have any of the documents --

15 Q. Okay.

16 A. -- myself.

17 Q. What about the documents from  
18 the Faye Miller case, what happened to  
19 those?

20 A. When you say documents, you  
21 mean the pleadings and that sort of thing?

22 Q. Yeah.

23 A. Again, it was the practice to  
24 keep it in a file room and then when the

1 case was filed, the case was closed and it  
2 eventually went to off-site storage.

3 Q. Now, can you go to J&J 446,  
4 which is in your book two.

5 A. Got it.

6 Q. J&J 446 is an agreement between  
7 Cyprus Mines and Johnson & Johnson dated  
8 January 6, 1989, correct?

9 A. Yes.

10 - - - - -

11 (Agreement Between Cyprus & J&J  
12 dated 1/6/89 marked O'Shaughnessy  
13 Exhibit 446 for identification.)  
14 - - - - -

15 BY MR. PLACITELLA:

16 Q. And you were working on the  
17 cases at that point, correct?

18 A. The talc cases, yes.

19 Q. And you recall that the mine,  
20 the Windsor Mineral mines were sold to  
21 Cyprus on or about that date?

22 A. They were sold probably on or  
23 about that date, yeah.

24 Q. And what I want to you to look

1 at is 446.111, page 111 on the exhibit tab.

2 A. Got it.

3 Q. Okay. And it states "Windsor,"  
4 that's Johnson & Johnson, right?

5 A. Yes.

6 Q. "Has been named as a defendant  
7 in various lawsuits which allege injuries  
8 related to exposure to asbestos and/or talc  
9 primarily by rubber/tire industry  
10 employees. The following cases are  
11 currently pending." Do you see that?

12 A. Yes.

13 Q. And you were in charge of all  
14 these cases, correct?

15 A. You know, I'm just thinking at  
16 that time, '89, I might not have been  
17 formally in charge of all the talc cases,  
18 but I might have been.

19 Q. Well, we know you worked on the  
20 Andonian and the Miller case, right?

21 A. I'm just I'm thinking about  
22 that now. It depends on when they were  
23 filed. Because Mr. Beidler might have  
24 still been handling them for a while. I

1 just don't recall when the transition was.

2 It wasn't when I immediately went to the  
3 company, which was in '87, it took a while  
4 after that.

5 Q. Is he dead now, Mr. Beidler?

6 A. I don't know.

7 Q. And what it states here is that  
8 the cases that were currently pending were  
9 Andonian, which looks like 277 people,  
10 correct?

11 A. Yes.

12 Q. And another one from Miller,  
13 that was only one person, right?

14 A. Yes.

15 Q. Adkins was 474 different  
16 people, correct?

17 A. Yes.

18 Q. And Akers was 229 different  
19 people, right?

20 A. Yes.

21 Q. And in all of those cases,  
22 Windsor Minerals asserted the same thing,  
23 there's no evidence whatsoever of asbestos  
24 in the talc, right?

1 MS. BROWN: That lacks  
2 foundation.

3 THE WITNESS: We covered  
4 some documents where they did do  
5 that, I'm not sure about all the  
6 cases.

7 BY MR. PLACITELLA:

8 Q. Okay. Remember I asked you  
9 about hundreds of cases before. This looks  
10 like thousands of cases, no?

11 A. Well, you can add them up, it  
12 looks like it's maybe just a little under a  
13 thousand.

14 Q. Okay. And what happened to the  
15 files in the Adkins and the Akers case for  
16 the 700 people?

17 A. Well, it would have been one  
18 file for us.

19 Q. Okay. Where is that file?

20 A. Like I said, I don't know.

21 Q. What did you do with it when  
22 the case was over?

23 MS. BROWN: Objection.

24 THE WITNESS: I didn't

1 do anything with it.

2 BY MR. PLACITELLA:

3 Q. Well, what happened to it?

4 MS. BROWN: Asked and  
5 answered.

6 THE WITNESS: I don't  
7 know if I was even responsible for  
8 it. I don't know.

9 BY MR. PLACITELLA:

10 Q. Okay. And by the way, if I go  
11 to 1042, I don't know if you have to pull  
12 it from your book, do you see that this is  
13 the actual dismissal of the Andonian and  
14 Miller case?

15 A. I can't see the whole thing,  
16 but I take your word for it, sure.

17 MS. BROWN: It's 1042 in  
18 book two?

19 - - - - -

20 (Dismissal Order marked  
21 O'Shaughnessy Exhibit 1042 for  
22 identification.)  
23 - - - - -  
24

1 BY MR. PLACITELLA:

2 Q. Right. And that was after you  
3 submitted the affidavit saying there's no  
4 evidence of asbestos, right?

5 MS. BROWN: Lacks  
6 foundation. Assumes facts.

7 THE WITNESS: I'm not  
8 seeing the name of the case. It  
9 says Ohio asbestos litigation --

10 BY MR. PLACITELLA:

11 Q. Yeah, do you see the docket  
12 numbers, if you match them up. Here, I'll  
13 do it --

14 A. I'll take your word for it.

15 MS. BROWN: Lacks  
16 foundation.

17 BY MR. PLACITELLA:

18 Q. Well, I can match them up and  
19 spend the time or I can --

20 MS. BROWN: Lacks  
21 foundation.

22 MR. PLACITELLA: -- play  
23 match up. Okay. I'll tell you  
24 that.

1 MS. BROWN: With this  
2 witness, it lacks foundation.

3 BY MR. PLACITELLA:

4 Q. Okay. Now, in any of the  
5 cases, this under 1,000 cases that were  
6 pending in 1989, do you have any evidence,  
7 as you sit here today, that any of the  
8 testing documents to your right were turned  
9 over in those cases?

10 MS. BROWN: I object.  
11 It assumes facts that they were  
12 requested and lacks foundation with  
13 this witness.

14 THE WITNESS: Like I  
15 said before, I don't know the state  
16 of discovery of these cases. Some  
17 of them at least I'm pretty sure I  
18 was not handling at the time. So I  
19 don't know whether or not anything  
20 was turned over or if in fact  
21 anything was requested to be turned  
22 over.

23 BY MR. PLACITELLA:

24 Q. Okay. Let's go to Exhibit --

1 let's go to Exhibit 195. And do you know  
2 whether, before you look at that, do you  
3 know whether any of those testing documents  
4 were reviewed by the scientists that you  
5 relied upon before Miller submitted those  
6 affidavits?

7 MS. BROWN: Objection,  
8 lacks foundation, vague.

9 THE WITNESS: I don't  
10 have personal knowledge. I just  
11 know the practice of the company  
12 was to send out testing and to  
13 review the results, if that was  
14 your question.

15 -----  
16 (Affidavit of William H. Ashton  
17 marked O'Shaughnessy Exhibit 195  
18 for identification.)  
19 -----

20 BY MR. PLACITELLA:

21 Q. Actually, my question was --  
22 well, let me ask you a different question.  
23 Do you know whether Mr. Miller reviewed any  
24 of those testing documents to your right

1 before he signed those affidavits and  
2 submitted them to courts and counsel?

3 MS. BROWN: Foundation,  
4 speculation.

5 THE WITNESS: I don't  
6 know exactly what he reviewed, but  
7 he would have reviewed -- I mean,  
8 you showed me some documents where  
9 he did look at the testing.

10 BY MR. PLACITELLA:

11 Q. Okay. Now, let's go to 195.  
12 195 is an affidavit -- by the way, you  
13 testified, I think the last time, that  
14 William Ashton was somebody that you relied  
15 upon heavily when you made statements that  
16 there's no evidence of asbestos in Vermont  
17 talc, right?

18 A. He was one of the people we  
19 relied on, among others, including, you  
20 know, the people I mentioned and I said  
21 including other people at the company that  
22 our attorneys would interview.

23 Q. So the answer is yes?

24 MS. BROWN: Asked and



1 except him?

2 MR. PLACITELLA: You can

3 answer that.

4 THE WITNESS: Yeah,

5 there were attorneys for the

6 Engelhard Corporation.

7 BY MR. PLACITELLA:

8 Q. Right. They were not lawyers

9 working for Johnson & Johnson, correct?

10 A. No, they were not.

11 Q. Right. And what happened, the

12 back story is that they threatened to sue

13 Johnson & Johnson for selling them a pig in

14 a poke with the Johnson mine, right?

15 MS. BROWN: I object to

16 the form of that question as

17 argumentative, misstating the

18 evidence, and assuming facts.

19 THE WITNESS: They

20 threatened a lawsuit against

21 Johnson & Johnson for exposures to

22 talc mined from the Johnson &

23 Johnson mine at the time it was

24 owned by Johnson & Johnson and

1 before. So it probably --

2 BY MR. PLACITELLA:

3 Q. Correct.

4 A. Yeah.

5 Q. And as a result of that threat,

6 you got together with the lawyers from

7 Engelhard and helped prepare this affidavit

8 in order to deal with the cases, right?

9 MS. BROWN: I object.

10 Lacks foundation.

11 THE WITNESS: What we

12 did was we participated in this

13 affidavit and Mr. Ashton wrote the

14 affidavit to protect Johnson &

15 Johnson's interests.

16 BY MR. PLACITELLA:

17 Q. Okay. Now, and so if we can go

18 back -- by the way, can you go to

19 Exhibit 1039, I'm assuming it's in book

20 two. And I'm looking specifically at

21 1039.12.

22 MS. BROWN: Counsel, can

23 you identify for the record what

24 this is?

1 MR. PLACITELLA: Yes,

2 it's an excerpt from the Johnson &

3 Johnson privilege log.

4 - - - -

5 (Excerpt for J&J Privilege Log

6 marked O'Shaughnessy Exhibit 1039

7 for identification.)

8 - - - -

9 MS. BROWN: I object.

10 Lacks foundation.

11 MR. PLACITELLA: I'm not

12 going to ask privileged questions,

13 I'm just going to ask about

14 people --

15 MS. BROWN: Same

16 objection.

17 MR. PLACITELLA: -- as

18 identified on the log. You got it?

19 MS. BROWN: Same

20 objection.

21 THE WITNESS: Yeah.

22 BY MR. PLACITELLA:

23 Q. Do you see 5/5/1989 and it

24 lists Ira Dembrow, William Ashton, John

1 O'Shaughnessy, and Howard Sloane?

2 A. Yes.

3 Q. They were people who worked on

4 the affidavit, right?

5 A. I remember working on it with

6 Mr. Dembrow.

7 Q. Right. And do you see where

8 your description says "memorandum with

9 attachment" and it refers directly to baby

10 powder litigation?

11 MS. BROWN: I object.

12 Lacks foundation. Misstates the

13 document and vague.

14 MR. PLACITELLA: Well,

15 it says "Memorandum with attachment

16 prepared by counsel pursuant to

17 pending and anticipated litigation

18 regarding baby powder litigation."

19 THE WITNESS: I see

20 that. I do.

21 BY MR. PLACITELLA:

22 Q. So Johnson & Johnson has listed

23 this affidavit as relevant to baby powder

24 litigation. Do you see that?



1 MS. BROWN: No, that  
2 assumes facts and misstates the  
3 document and lacks foundation.  
4 THE WITNESS: No, this  
5 is a description in the privilege  
6 log.  
7 BY MR. PLACITELLA:  
8 Q. Okay.  
9 A. That's all it is.  
10 Q. Oh, that's all. Didn't  
11 somebody take care in putting this log  
12 together?  
13 A. You would hope so, but  
14 oftentimes, maybe a description of a  
15 document is not totally accurate. I'm not  
16 sure this isn't, I'm just saying --  
17 Q. Well, I'm skipping down to  
18 another entry, 5/5/1989, that also lists  
19 Johnson's Baby Powder as relevant to this  
20 affidavit, correct?  
21 A. Yeah and see --  
22 MS. BROWN: No, hang on  
23 a second. That misstates the  
24 document and lacks foundation and

1 assumes facts.  
2 THE WITNESS: I'm sorry.  
3 I've never seen this, but I'm  
4 looking at all sorts of different  
5 descriptions. It says talc  
6 litigation, anticipated talc  
7 litigation, baby powder litigation,  
8 so it describes it in a number of  
9 different ways.  
10 BY MR. PLACITELLA:  
11 Q. Okay. And on the date that the  
12 affidavit was signed, 5/18/1989, there's an  
13 entry from Ira Dembrow to you and Ashton  
14 listing specifically that the affidavit  
15 relates to Johnson's Baby Powder  
16 litigation, correct?  
17 MS. BROWN: Foundation,  
18 speculation, misstates the  
19 documents and assumes facts.  
20 THE WITNESS: I'm not  
21 sure which, it's like 25 boxes  
22 here. I'm trying to figure out --  
23 BY MR. PLACITELLA:  
24 Q. I'm looking at the very last

1 one.  
2 A. On the page?  
3 Q. Yes. I have blown up --  
4 MS. BROWN: I can't even  
5 see it. There's an exhibit  
6 sticker.  
7 BY MR. PLACITELLA:  
8 Q. Here I'll blow it up.  
9 A. That's better, which one?  
10 Q. Do you see that?  
11 MS. BROWN: For the  
12 record, I can't tell from this, can  
13 you identify when this privilege  
14 log was served and the date of it?  
15 MR. PLACITELLA: I have  
16 to tell you, I can go back and do  
17 it, but you've served so many  
18 versions of these logs, it's hard  
19 to keep track of.  
20 MS. BROWN: Well, I want  
21 to make sure --  
22 MR. PLACITELLA: They  
23 change every other week.  
24 MS. BROWN: I want to

1 make sure we're looking at the --  
2 MR. PLACITELLA: I think  
3 your entries are still the same if  
4 you go back and look at the one you  
5 sent, like, a couple of weeks ago.  
6 MS. BROWN: Okay. If  
7 you could just, it doesn't have to  
8 be now, but if we can identify what  
9 we're looking at for the record,  
10 that would be great. Thank you.  
11 BY MR. PLACITELLA:  
12 Q. Okay. So you see 5/18/89, the  
13 date the affidavit was signed, you list  
14 Johnson's Baby Powder litigation?  
15 A. I think you're mixing two  
16 things. And maybe you're not. So if you  
17 mind, so 5/18/89 is the date the affidavit  
18 was signed. And so I think that appears on  
19 this, because that's the date of the  
20 document, right, I believe. And yeah, if  
21 you go to the right on any of those, you  
22 know, it makes different statements, but  
23 the one you highlighted says Johnson's Baby  
24 Powder litigation.



1 Q. Okay. Fair enough. And I just  
2 want to look at this group. If you keep  
3 looking at the screen.

4 A. Sure.

5 Q. Listed as people who worked on  
6 this included from Johnson & Johnson  
7 yourself, Mr. Ashton, and Bruce Semple,  
8 correct?

9 MS. BROWN: Foundation,  
10 speculation. Misstates the  
11 document.

12 THE WITNESS: It lists  
13 people. I don't know where they  
14 got Bruce Semple's name on it. I  
15 don't recall him having anything to  
16 do with the affidavit.

17 BY MR. PLACITELLA:

18 Q. Well, that's what's listed on  
19 your --

20 A. It's listed on this privilege  
21 log once.

22 Q. And he was the medical director  
23 of Johnson & Johnson, right?

24 A. He was.

1 Q. At any time, at any time, did  
2 Mr. Ashton, Mr. Semple or anybody else who  
3 you said you relied upon tell you that the  
4 information in this affidavit is false?

5 MS. BROWN: Assumes  
6 facts, misstates the evidence,  
7 lacks foundation.

8 THE WITNESS: Never.

9 BY MR. PLACITELLA:

10 Q. Okay. So you understand that  
11 this affidavit was used by Johnson &  
12 Johnson to try to extricate itself from  
13 talc litigation pending at the time the  
14 affidavit was executed, correct?

15 MS. BROWN: Assumes  
16 facts, misstates the evidence,  
17 lacks foundation.

18 THE WITNESS: Yeah, that  
19 was one of the purposes of the  
20 affidavit, yes.

21 BY MR. PLACITELLA:

22 Q. Okay. Now, in the affidavit,  
23 if you go to -- give me one second here.  
24 If you go to 195.59, do you see that it's

1 in the same affidavit?

2 A. I'm on the way. I'm there.

3 Q. Okay. One of the things that  
4 you attach is testimony from your expert in  
5 the Westfall case, correct, Alfred  
6 Chidester?

7 A. Yes, I think so.

8 Q. And in fact, if you go to the  
9 next page, you can see the direct  
10 examination of Mr. Chidester by your  
11 lawyer, right?

12 A. Yes.

13 Q. Okay. Now --

14 A. And just as a qualification,  
15 this was before I was at Johnson & Johnson.  
16 It's 1983.

17 Q. I understand.

18 A. But I do know that he was the  
19 lawyer for Johnson & Johnson.

20 Q. All right. And you're familiar  
21 with the Westfall case?

22 A. I know of it, yes. I'm not  
23 intimately familiar with it. I think it  
24 was over by the time I started.

1 Q. It was, sir. But I'm asking  
2 the questions because in support for the  
3 proposition for the affidavit that there's  
4 no asbestos in Vermont talc, you attached  
5 testimony from the Westfall case, we agree?

6 A. Yes.

7 MS. BROWN: That  
8 misstates the evidence.

9 BY MR. PLACITELLA:

10 Q. Okay. So and were you aware  
11 that Mr. Miller, who you relied upon, also  
12 testified in the Westfall case?

13 A. I don't recall if I knew that  
14 or not.

15 Q. Can you go to Exhibit 172 in  
16 the transcript binder.

17 MS. BROWN: I think it's  
18 these, John.

19 BY MR. PLACITELLA:

20 Q. And 172 --

21 A. I see that.

22 Q. -- is the deposition in the  
23 Westfall case of Glenn Hemstock. Do you  
24 see that?

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1 MS. BROWN: Object to  
2 the document as lacking foundation.  
3 -----  
4 (Deposition of Glenn A.  
5 Hemstock dated 1/28/83 marked  
6 O'Shaughnessy Exhibit 172 for  
7 identification.)  
8 -----  
9 BY MR. PLACITELLA:  
10 Q. I'm going to lay a foundation.  
11 Do you see that?  
12 A. Yes.  
13 Q. Okay. And do you see that on  
14 the second page appearing at that  
15 deposition is the general counsel for  
16 Johnson & Johnson. Do you see that?  
17 A. No.  
18 Q. Do you see 172.3?  
19 A. Yes.  
20 Q. Look at the bottom.  
21 A. Oh, I see. That's a typo, Mr.  
22 Beidler was not general counsel.  
23 Q. He worked for Johnson & Johnson  
24 as in-house counsel, right?

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1 MS. BROWN: Hold on, his  
2 mic is off.  
3 MR. PLACITELLA: He  
4 worked --  
5 THE WITNESS: He was in  
6 the Johnson & Johnson law  
7 department.  
8 BY MR. PLACITELLA:  
9 Q. And also present was the  
10 Johnson & Johnson local lawyer. Do you see  
11 that?  
12 A. From Nutter McClennen & Fish.  
13 Q. And this is the same Mr.  
14 Beidler who threatened Mr. Grayzel in 1987  
15 with sanctions, correct?  
16 MS. BROWN: That  
17 misstates the document and lacks  
18 foundation. I object.  
19 THE WITNESS: I don't  
20 think he threatened anyone.  
21 BY MR. PLACITELLA:  
22 Q. He's the one that wrote  
23 Mr. Grayzel a letter saying there's no  
24 evidence whatsoever and if you don't

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1 dismiss your case, we're going to seek  
2 sanctions under the frivolous lawsuit  
3 statute. That's what the letter said,  
4 right?  
5 MS. BROWN: Again, it  
6 misstates the document and lacks  
7 foundation.  
8 THE WITNESS: I don't  
9 think he said it. He did mention  
10 the rule that you spoke about.  
11 BY MR. PLACITELLA:  
12 Q. Okay. Now, can you go to 173,  
13 please; in the transcript binder, the  
14 second day of Mr. Hemstock's deposition?  
15 A. Okay.  
16 -----  
17 (Deposition of Glenn A.  
18 Hemstock dated 3/16/83 marked  
19 O'Shaughnessy Exhibit 173 for  
20 identification.)  
21 -----  
22 BY MR. PLACITELLA:  
23 Q. And can you go to 173.23?  
24 A. Yes.

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1 Q. Okay. It says now, and this is  
2 Dr. Hemstock, he's the chief scientist at  
3 Engelhard, did you know that?  
4 MS. BROWN: Lacks  
5 foundation.  
6 THE WITNESS: I don't  
7 know who he is.  
8 BY MR. PLACITELLA:  
9 Q. Did you know his testimony was  
10 actually quoted by the Third Circuit in a  
11 reported decision while you were there?  
12 MS. BROWN: Oh my  
13 goodness. Hold on a second. I  
14 object. This lacks foundation.  
15 And, Judge, further to our  
16 discussion yesterday, I do want to  
17 raise that we are down a rabbit  
18 hole with another litigation  
19 regarding industrial talc that was  
20 never used in Johnson's Baby  
21 Powder. We are showing --  
22 MR. PLACITELLA: Excuse  
23 me, that's a speaking objection and  
24 can we have the witness leave the

1 room if we're going to do this?

2 MS. BROWN: Sure.

3 Thanks, John.

4 JUDGE SCHNEIDER: Maybe  
5 close the door, Mr. O'Shaughnessy.

6 MS. BROWN: Thank you.

7 Your Honor, further to  
8 our discussion yesterday, I do want  
9 to raise an objection. We are now  
10 nearly two hours into this  
11 deposition and the majority of  
12 questioning and certainly within  
13 the last half hour has dealt with  
14 the Engelhard litigation, which, of  
15 course, Mr. Placitella is  
16 intimately familiar with. But what  
17 we are doing is showing this  
18 witness other people's testimony in  
19 that case. This involves the  
20 Johnson mine, which was never used  
21 in Johnson's Baby Powder.

22 MR. PLACITELLA: Are you  
23 sure about that?

24 MS. BROWN: The most

1 recent question to the witness is  
2 asking if he's familiar with the  
3 fact that this testimony was cited  
4 in the Third Circuit decision about  
5 BASS. And so I do want to appeal  
6 to Your Honor pursuant to our  
7 discussion yesterday that this has  
8 nothing to do with ovarian cancer  
9 and nothing to do with Johnson's  
10 Baby Powder. And so, you know, I  
11 respectfully submit we are wasting  
12 time here.

13 MR. PLACITELLA: It has  
14 everything to do with Johnson's  
15 Baby Powder. It has everything to  
16 do with his statements about who he  
17 relied upon. Their own log says it  
18 relates directly to Johnson's Baby  
19 Powder. And if they ask those  
20 questions on their direct, I will  
21 prove that it relates to Johnson's  
22 Baby Powder with their own  
23 documents --

24 MS. BROWN: Shouldn't we

1 do that first?

2 MR. PLACITELLA: -- but  
3 I don't want to spend the time  
4 doing that now.

5 JUDGE SCHNEIDER:  
6 Counsel, for discovery purposes,  
7 it's unquestionably the case that  
8 this is a relevant area of inquiry.  
9 Mr. Placitella is directing his  
10 questioning to the accuracy of  
11 affidavits and statements made by  
12 Johnson & Johnson regarding the  
13 presence of asbestos in talc. He's  
14 attempting to show that there was,  
15 whether it's true or not, it's not  
16 for me to decide, but it's plain to  
17 me, he's directing his questions to  
18 try and prove that there's factual  
19 evidence that is inconsistent with  
20 representations made by Johnson &  
21 Johnson in affidavits that there  
22 was no asbestos in its talc.

23 Ultimately, the trial  
24 judge is going to decide whether

1 this is admissible evidence at  
2 trial, but for discovery purposes,  
3 under Rule 26, it's plainly a  
4 relevant area of inquiry. And to  
5 the extent there's a request to  
6 limit or bar Mr. Placitella from  
7 directing his questions to this  
8 area of inquiry, it's denied. Of  
9 course, all of your objections to  
10 the admissibility of this evidence  
11 at trial is preserved. That's not  
12 my role. But for discovery  
13 purposes, it's unquestionably  
14 relevant.

15 MS. BROWN: Understood.

16 JUDGE SCHNEIDER: If he  
17 doesn't know the answer to the  
18 question, Mr. O'Shaughnessy is  
19 perfectly capable of saying he  
20 doesn't know the answer.

21 MS. BROWN: Understood.

22 MR. PLACITELLA: Okay.

23 MS. BROWN: Thank you.

1 BY MR. PLACITELLA:

2 Q. Okay. I'm going to withdraw  
3 the last question and ask another question.  
4 I want to read the testimony for you from  
5 Dr. Hemstock, the lead scientist.

6 "Now, you testified that your  
7 department has tested both processed talc  
8 and raw talc ore from the Emtal mine for  
9 the presence of chrysotile asbestos; is  
10 that correct?"

11 Answer: "Yes.

12 "Has your department in its  
13 research found chrysotile asbestos in both  
14 processed talc and raw ore from the Emtal  
15 mine?"

16 Do you see that?

17 Answer: "Yes."

18 Do you see that?

19 A. Yes.

20 Q. Did anybody in the Johnson &  
21 Johnson law department, including Mr.  
22 Beidler, tell you about this testimony  
23 before you submitted doctor -- Mr. Ashton's  
24 affidavit?

1 MS. BROWN: I object.

2 It misstates the evidence and lacks  
3 foundation. And is an incomplete  
4 reading from this deposition.

5 THE WITNESS: No, and I  
6 wouldn't expect him to.

7 BY MR. PLACITELLA:

8 Q. Okay. What about Mr. Ashton  
9 who worked on the Westfall case, did he  
10 tell you about the testimony from the chief  
11 scientist that said they found asbestos in  
12 the talc that he said was asbestos free?

13 MS. BROWN: It misstates  
14 the evidence. Lacks foundation.

15 THE WITNESS: I don't  
16 recall any conversations one way or  
17 the other on this.

18 BY MR. PLACITELLA:

19 Q. Okay.

20 A. I don't recall this at all.

21 Q. Okay. Well, Mr. Ashton, who is  
22 unfortunately gone, he was one of the  
23 people that you relied upon to tell you the  
24 truth, right?

1 A. Absolutely.

2 Q. Okay. And what about the  
3 medical director, Bruce Semple, did you  
4 know he worked on the Westfall case?

5 MS. BROWN: Objection,  
6 assumes facts.

7 THE WITNESS: That  
8 doesn't sound familiar to me, but  
9 you know, this is a long time ago  
10 and before I was there even, so I  
11 wouldn't know.

12 BY MR. PLACITELLA:

13 Q. Okay. Did Bruce Semple tell  
14 you anything about this testimony?

15 MS. BROWN: Objection,  
16 assumes facts.

17 THE WITNESS: I don't  
18 recall that.

19 BY MR. PLACITELLA:

20 Q. Okay. Now, go to J&J 436.

21 MS. BROWN: Not in the  
22 testimony binder, right?

23 MR. PLACITELLA: It's in  
24 the testimony binder.

1 MS. BROWN: Do I have a  
2 copy of these transcripts?

3 MR. PLACITELLA: Yes,  
4 you do.

5 MS. BROWN: Okay. Thank  
6 you.

7 MR. PLACITELLA: There's  
8 a copy behind you as well.

9 THE WITNESS: I have it.

10 MS. BROWN: And what  
11 number were we just on?

12 THE WITNESS: We're on  
13 436. I don't know what we were on  
14 now.

15 MS. BROWN: Chris, what  
16 was the previous transcript number  
17 in this binder?

18 MR. PLACITELLA: It was  
19 172 and 173.

20 MS. BROWN: Thank you.

21 - - - -

22 (Deposition of Peter N. Gale  
23 dated 4/26/83 marked O'Shaughnessy  
24 Exhibit 436 for identification.)

1 -----

2 BY MR. PLACITELLA:

3 Q. By the way, you didn't attach  
4 the Hemstock transcript to the Ashton  
5 affidavit, did you?

6 MS. BROWN: Assumes  
7 facts.

8 THE WITNESS: It wasn't  
9 attached. We attached what  
10 Mr. Ashton wanted to rely on.

11 BY MR. PLACITELLA:

12 Q. So my question -- the answer is  
13 no, you never attached the Hemstock  
14 transcript?

15 A. It was not attached to that  
16 transcript.

17 Q. Okay. Now, you have before you  
18 436, which is the deposition of Peter Gale.  
19 Do you see that?

20 A. I do.

21 Q. Taken in the Westfall case. Do  
22 you see that?

23 A. Yup.

24 Q. Okay. And if you look at the

1 A. No.

2 Q. Look at page 436.19.

3 A. Okay.

4 Q. Line 7.

5 A. Samples from the Johnson mine.

6 Q. Right. And he says the  
7 question is "What analysis did you run on  
8 the second round of studies?" Do you see  
9 that?

10 A. Yes, I do.

11 Q. And there's some objection and  
12 then it says, "The Witness: Scanning  
13 electron microscopy, transmission electron  
14 microscopy, selected area electric  
15 diffraction." Do you see that?

16 A. Yes.

17 Q. And it says "Where did you  
18 perform those tests?"

19 Answer: "Georgia Tech."

20 Question: "When those tests  
21 were performed -- when were those tests  
22 performed?"

23 "Late fall of '78 and January  
24 and February of '79 I believe.

1 436.2?

2 A. Yes.

3 Q. You will see that Windsor  
4 Minerals was present at this deposition as  
5 well, correct? For the defendant, Windsor  
6 Minerals, Brian T. Kenner.

7 A. Yes, I see that.

8 Q. Okay. And also on the bottom  
9 is Howard Sloane. Do you see that?

10 A. Yes.

11 Q. He's one of the people who  
12 helped you work on the affidavit, right?

13 A. I don't recall dealing with him  
14 on the affidavit. I recall Mr. Dembrow.

15 Q. And they work for the same law  
16 firm?

17 A. They did.

18 Q. Okay. And if you go to -- and  
19 did you know that Mr. Gale was the  
20 mineralogist that worked for Engelhard?

21 A. I don't know that.

22 Q. Okay. If you go to 436.19. Do  
23 you see where Mr. Gale talks about taking  
24 samples from the Johnson mine?

1 "Do you recall today what  
2 those tests revealed?" Do you see that?

3 A. Yes.

4 Q. "I recall that there were  
5 fibers found in those," go to the next  
6 page, "talcs, yes.

7 "Did you identify the nature,  
8 mineralogic nature of the fibers that were  
9 found?"

10 Answer: "Yes.

11 "What was the nature of those  
12 fibers?"

13 "I determined those fibers  
14 were chrysotile fibers."

15 Question: "How did you  
16 determine those were -- those fibers were  
17 chrysotile fibers?"

18 Answer: "Using selected area  
19 electron diffraction in conjunction with  
20 transmission electron microscopy."

21 Do you see that?

22 MS. BROWN: All of this  
23 lacks foundation.  
24



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1 BY MR. PLACITELLA:  
 2 Q. Do you see that?  
 3 A. I see it.  
 4 Q. Is this the first time you ever  
 5 saw this?  
 6 A. Yes.  
 7 Q. So Mr. Ashton never shared this  
 8 with you?  
 9 A. I don't even know if he had it.  
 10 MS. BROWN: Lacks  
 11 foundation. Assumes facts.  
 12 BY MR. PLACITELLA:  
 13 Q. Okay. Nobody at Johnson &  
 14 Johnson shared this with you, correct?  
 15 MS. BROWN: Lacks  
 16 foundation.  
 17 THE WITNESS: I never  
 18 saw it before.  
 19 BY MR. PLACITELLA:  
 20 Q. And it's not attached to the  
 21 affidavit that attaches other transcripts  
 22 from the Westfall case, is it?  
 23 A. I think the only attachment of  
 24 a transcript was Dr. Chidester.

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1 Q. Right.  
 2 A. Chidester.  
 3 Q. Right.  
 4 A. That's the only one.  
 5 Q. You didn't attach the Gale  
 6 transcript where he reports asbestos in the  
 7 mine to the Ashton affidavit, correct?  
 8 MS. BROWN: Misstates,  
 9 facts. Lacks foundation.  
 10 THE WITNESS: It wasn't  
 11 and I know that it's 1978 also --  
 12 BY MR. PLACITELLA:  
 13 Q. Okay.  
 14 A. -- we're talking about here.  
 15 Q. So after --  
 16 A. After Johnson & Johnson owned  
 17 the mine.  
 18 Q. After these people testified  
 19 that they found asbestos in the mine, what  
 20 happened in that case, do you know?  
 21 MS. BROWN: Lacks  
 22 foundation.  
 23 THE WITNESS: I don't  
 24 know.

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1 MS. BROWN: Assumes  
 2 facts.  
 3 THE WITNESS: I don't  
 4 know.  
 5 BY MR. PLACITELLA:  
 6 Q. Okay. Can you look at 441.  
 7 MR. COX: Which binder,  
 8 I'm sorry?  
 9 MR. PLACITELLA: I think  
 10 it's in binder two.  
 11 MR. COX: Okay. Not the  
 12 transcripts.  
 13 MR. PLACITELLA: No.  
 14 THE WITNESS: Can I put  
 15 the transcripts away?  
 16 BY MR. PLACITELLA:  
 17 Q. Yes.  
 18 A. Thank you.  
 19 MS. BROWN: Do you want  
 20 mine?  
 21 THE WITNESS: I'm  
 22 finally at it.  
 23 -----  
 24 (Stipulation and

Page 555

1 Confidentiality Order marked  
 2 O'Shaughnessy Exhibit 441 for  
 3 identification.)  
 4 -----  
 5 BY MR. PLACITELLA:  
 6 Q. 441 is a stipulation and  
 7 confidentiality order entered into in the  
 8 Westfall case. Do you see that?  
 9 A. I see it, yes.  
 10 MS. BROWN: I object.  
 11 Lacks foundation.  
 12 BY MR. PLACITELLA:  
 13 Q. Okay. And if you go to the  
 14 last page, which was 441.7.  
 15 A. Yes.  
 16 Q. You see it was signed off on by  
 17 your lawyers. Do you see that?  
 18 A. It's signed by, yeah, another  
 19 McClennen & Fish lawyer.  
 20 Q. And what the confidentiality  
 21 order provided, if you go to 441.5, is that  
 22 at the conclusion of the case, the  
 23 plaintiff's lawyer had to return all the  
 24 evidence, right?



1 MS. BROWN: Objection.  
 2 Lacks foundation.  
 3 THE WITNESS: It says  
 4 "at the conclusion," that one?  
 5 BY MR. PLACITELLA:  
 6 Q. Yes, sir.  
 7 A. Well, this one says at the  
 8 conclusion, all documents subject shall be  
 9 returned to Cahill Gordon, to Cahill  
 10 Gordon.  
 11 Q. Right. And did you know that  
 12 the depositions and all the testing  
 13 documents were returned to Cahill Gordon  
 14 and never saw the light of day?  
 15 MS. BROWN: That assumes  
 16 facts and lacks foundation.  
 17 THE WITNESS: This is  
 18 1983. I have no familiarity with  
 19 any of that.  
 20 BY MR. PLACITELLA:  
 21 Q. No one ever told you that  
 22 Johnson & Johnson entered into a  
 23 confidentiality order in the Westfall case  
 24 to keep the evidence in that case secret?

1 MS. BROWN: That  
 2 misstates the facts and lacks  
 3 foundation.  
 4 THE WITNESS: I might  
 5 have been aware, you know, going  
 6 back in time that Westfall was a  
 7 case that was -- I don't know what  
 8 happened to it, if there was a  
 9 Stipulation of Dismissal, so it was  
 10 either settled or dismissed. But I  
 11 wouldn't have any knowledge over,  
 12 you know, what happened to  
 13 particular documents, especially  
 14 concerning a client that wasn't  
 15 Johnson & Johnson.  
 16 BY MR. PLACITELLA:  
 17 Q. Well, Windsor Minerals was you?  
 18 A. Engelhard --  
 19 Q. No, no.  
 20 A. Cahill Gordon didn't represent  
 21 Johnson & Johnson.  
 22 Q. But you signed the  
 23 confidentiality order that says all the  
 24 documents have to go back to Cahill Gordon?

1 A. I wasn't even at the company at  
 2 the time.  
 3 MR. PLACITELLA: I  
 4 object.  
 5 THE WITNESS: I'm  
 6 talking about me too.  
 7 MS. BROWN: That  
 8 misstates the document.  
 9 THE WITNESS: I'm  
 10 talking about me too. I didn't  
 11 sign this. I wasn't even at the  
 12 company.  
 13 BY MR. PLACITELLA:  
 14 Q. Yeah, one of your lawyers  
 15 signed it though, right?  
 16 MS. BROWN: Misstates  
 17 the evidence.  
 18 THE WITNESS: A lawyer  
 19 signed this agreement --  
 20 BY MR. PLACITELLA:  
 21 Q. One of the Johnson & Johnson  
 22 lawyers signed the confidentiality order  
 23 that they knew that at the end of the case  
 24 the evidence was going to be returned never

1 to see the light of day, right?  
 2 MS. BROWN: That's  
 3 argumentative and misstates the  
 4 document and lacks foundation.  
 5 THE WITNESS: No, as I  
 6 read it and, again, I'm  
 7 interpreting a document I had  
 8 nothing to do with or the  
 9 Stipulation of Dismissal or  
 10 whatever agreements the parties  
 11 came to, but you're asking me about  
 12 the behavior of the party  
 13 represented by Cahill Gordon.  
 14 BY MR. PLACITELLA:  
 15 Q. No, I'm asking about Johnson &  
 16 Johnson, sir.  
 17 A. I'm sorry, I don't see anything  
 18 in here about Johnson & Johnson.  
 19 Q. Well, when you and Mr. Ashton  
 20 put your affidavit together, and cited the  
 21 Westfall transcripts, you didn't also  
 22 produce at that time any of the testing or  
 23 any of the testimony showing that  
 24 unequivocally, there was asbestos in that

1 mine, correct?  
 2 MS. BROWN: That  
 3 misstates the evidence and that  
 4 lacks foundation.  
 5 BY MR. PLACITELLA:  
 6 Q. You can answer it.  
 7 A. Mr. Ashton submitted the  
 8 Ashton -- the Chidester testimony to  
 9 support his affidavit with respect to his  
 10 knowledge of that mine, the Johnson mine.  
 11 Q. How sad.  
 12 MS. BROWN: What?  
 13 MR. PLACITELLA: No, how  
 14 sad. Don't you agree?  
 15 MS. BROWN: How sad, is  
 16 that what you just said? Hold on,  
 17 hold on. I object.  
 18 MR. PLACITELLA: Don't  
 19 you agree, how sad?  
 20 MS. BROWN: No, no, do  
 21 not answer that. This is  
 22 argumentative.  
 23 BY MR. PLACITELLA:  
 24 Q. Okay. We'll go to the next

1 question. That affidavit that you put  
 2 together was sent to plaintiffs' lawyers  
 3 across the country to try to get them to  
 4 get -- dismiss their cases, correct?  
 5 MS. BROWN: Objection,  
 6 argumentative, assumes facts, lacks  
 7 foundation.  
 8 THE WITNESS: It was  
 9 used to obtain dismissals in cases  
 10 that Johnson & Johnson had some  
 11 liability for, potential liability  
 12 for. It was used in that fashion,  
 13 yes. I don't know how many or  
 14 where.  
 15 BY MR. PLACITELLA:  
 16 Q. You even sent a copy or you  
 17 were aware that a copy of the affidavit was  
 18 sent to the chief judge of the federal  
 19 court in charge of all the cases nationwide  
 20 and cited for the proposition that there  
 21 was no evidence. Did you know that?  
 22 A. No, but that wouldn't --  
 23 MS. BROWN: Objection,  
 24 lacks foundation.

1 THE WITNESS: No, I  
 2 don't know exactly who sent it,  
 3 but.  
 4 BY MR. PLACITELLA:  
 5 Q. That there was no evidence of  
 6 asbestos in that mine. Did you know that  
 7 the chief judge for all the cases in the  
 8 United States got a copy of that affidavit?  
 9 MS. BROWN: Lacks  
 10 foundation. Misstates the  
 11 evidence.  
 12 THE WITNESS: I don't --  
 13 you asked me three questions there.  
 14 BY MR. PLACITELLA:  
 15 Q. That's one question.  
 16 A. I'm going to respond to the  
 17 last one, do I know if the federal judge  
 18 had a copy of the affidavit. I don't know  
 19 that. If he did, he did.  
 20 Q. Can you go to Exhibit 1040. It  
 21 should be in book two.  
 22 Exhibit 1040 is an August 14,  
 23 19 -- it looks like '89 or August 15, 1989,  
 24 letter to Judge Weiner. Do you see that?

1 MS. BROWN: It looks  
 2 like '88 and I object.  
 3 MR. PLACITELLA: It's  
 4 hard to tell.  
 5 MS. BROWN: It's  
 6 impossible to read. I object. It  
 7 lacks foundation.  
 8 - - - - -  
 9 (Letter dated 8/14/89 marked  
 10 O'Shaughnessy Exhibit 1040 for  
 11 identification.)  
 12 - - - - -  
 13 BY MR. PLACITELLA:  
 14 Q. Do you see that?  
 15 A. I see it, but I can't read the  
 16 date.  
 17 MS. BROWN: No one can  
 18 read this.  
 19 BY MR. PLACITELLA:  
 20 Q. Is your recollection at the  
 21 time that you were defending cases that  
 22 Judge Weiner, who was in Philadelphia, was  
 23 in charge for the entire MDL for asbestos  
 24 cases?

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1 A. I don't recall that.  
 2 Q. And go to the second page,  
 3 please. And I'm going to blow it up,  
 4 because it's hard to read. Do you see  
 5 where it says "By letter dated May 17,  
 6 1989, we provided plaintiffs' counsel with  
 7 such report, the affidavit of William H.  
 8 Ashton who has been involved in  
 9 investigating and studying talc for over 35  
 10 years"?  
 11 A. I see that, yeah.  
 12 Q. Do you see that and it says  
 13 "Mr. Ashton concludes our client's talc did  
 14 not contain asbestos," right?  
 15 MS. BROWN: This whole  
 16 document lacks foundation.  
 17 THE WITNESS: That's  
 18 what it says. The Ashton affidavit  
 19 though speaks for itself.  
 20 BY MR. PLACITELLA:  
 21 Q. In all the cases that you  
 22 defended related to the Johnson mine, did  
 23 you ever turn over any of the documents  
 24 from the Westfall case?

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1 MS. BROWN: Objection,  
 2 lacks foundation. Misstates the  
 3 evidence.  
 4 THE WITNESS: I don't  
 5 know what was turned over in the  
 6 individual case.  
 7 BY MR. PLACITELLA:  
 8 Q. When Cyprus purchased the mines  
 9 from you and the liabilities from you, did  
 10 you tell them about the evidence from the  
 11 Westfall case?  
 12 MS. BROWN: Objection,  
 13 vague, lacks foundation.  
 14 THE WITNESS: The  
 15 Johnson mine, I believe, was not  
 16 part of the sale to Cyprus.  
 17 BY MR. PLACITELLA:  
 18 Q. Okay. So can we go back to  
 19 that Cyprus agreement for a second. That's  
 20 Exhibit I, I put up on the --  
 21 MS. BROWN: What's the  
 22 number, Chris?  
 23 MR. PLACITELLA:  
 24 446.111. And it's page, it's at

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1 446.111. I just blew up there --  
 2 it says --  
 3 MS. BROWN: Hold on, let  
 4 him get there.  
 5 THE WITNESS: Let me  
 6 just go there, please. 446.11?  
 7 MS. BROWN: 111.  
 8 BY MR. PLACITELLA:  
 9 Q. 111.  
 10 A. I'm sorry. Okay. I have it.  
 11 Q. Do you see where it says  
 12 "Engelhard asserts that Windsor is  
 13 responsible for any liability due to  
 14 exposure provided." Do you see that?  
 15 A. Yes.  
 16 Q. Okay. So it was part of the  
 17 agreement. Do you see that?  
 18 MS. BROWN: What about  
 19 the next sentence.  
 20 THE WITNESS: What do  
 21 you mean?  
 22 MS. BROWN: Can we read  
 23 what goes on to the --  
 24

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1 BY MR. PLACITELLA:  
 2 Q. "To the rubber and tire  
 3 industry by Eastern Magnesia Talc prior to  
 4 July 24, 1967." Do you see that?  
 5 MS. BROWN: Right, but  
 6 the next question. I object to  
 7 this --  
 8 THE WITNESS: I don't  
 9 know what the question is.  
 10 MR. PLACITELLA: Did I  
 11 read that correct so far?  
 12 THE WITNESS: I'm sorry  
 13 to do this, but can you do it  
 14 again.  
 15 BY MR. PLACITELLA:  
 16 Q. Yeah, no problem. It talks  
 17 here about Engelhard asserting that Windsor  
 18 is responsible for --  
 19 A. Yes, I see it. I'm sorry.  
 20 Q. Do you see that?  
 21 A. Yes.  
 22 Q. So let's go to the next page.  
 23 And the actions pending that were part of  
 24 the subject of this agreement --

1 MS. BROWN: I mean, can  
2 we just --  
3 BY MR. PLACITELLA:  
4 Q. It says "The actions pending  
5 against Engelhard and/or EMTC as of  
6 December 14, 1988 are as follows." Do you  
7 see that?  
8 THE WITNESS: I do.  
9 MS. BROWN: I object.  
10 BY MR. PLACITELLA:  
11 Q. And it lists 1800 separate  
12 cases. Do you see that?  
13 MS. BROWN: I object to  
14 the sentence you left out. This is  
15 intentionally misleading.  
16 MR. PLACITELLA: I'm not  
17 trying to mislead anybody. You can  
18 do whatever you need to do.  
19 MS. BROWN: Can you  
20 read the complete -- you skipped  
21 over --  
22 BY MR. PLACITELLA:  
23 Q. "Responsibility for the  
24 aforementioned liability is currently

1 disputed by Windsor." Oh, okay. That's  
2 because they didn't tell anybody anything.  
3 Okay. So then it says "The actions pending  
4 against Engelhard and/or EMTC as of  
5 December 14, 1988 are as follows." Do you  
6 see that?  
7 A. Yes.  
8 Q. And then you list 1800 separate  
9 cases, right?  
10 MS. BROWN: Lacks  
11 foundation. All this lacks  
12 foundation.  
13 THE WITNESS: That's the  
14 total number of plaintiffs.  
15 BY MR. PLACITELLA:  
16 Q. You submitted that Ashton  
17 affidavit to dismiss the cases of 1800  
18 different people, didn't you?  
19 MS. BROWN: No, that  
20 misstates the evidence and lacks  
21 foundation.  
22 THE WITNESS: I don't  
23 recall how many, but I know it was  
24 used to obtain dismissals in cases.

1 BY MR. PLACITELLA:  
2 Q. Okay. And what happened to  
3 those files? The 1800 people, what  
4 happened to those files?  
5 A. You say 1800 people?  
6 Q. It says total 1827.  
7 A. Can I finish, can I just  
8 finish?  
9 Q. Sure.  
10 A. And it says total number of  
11 actions 467. So what I think, these  
12 complaints, and I'm trying to remember, but  
13 in these asbestos complaints, there would  
14 often be complaints, I think, as you  
15 mentioned before, with hundreds of people  
16 in the complaint against scores of  
17 companies.  
18 Q. Right.  
19 A. And so the liability here that  
20 we were getting caught up in was about  
21 that.  
22 Q. I understand.  
23 A. Now you're asking me for files  
24 on these. I don't know if we had files on

1 them, because our liability here was going  
2 to be through Engelhard, so they might have  
3 had actual files. I don't believe we had  
4 all files. Certainly, if J&J was named as  
5 a defendant, we would have some file around  
6 that.  
7 Q. Well, you know they were  
8 named -- I mean, I can show them to you,  
9 but you know they were named directly as  
10 defendants in the case, right?  
11 MS. BROWN: That  
12 misstates the evidence.  
13 THE WITNESS: I know in  
14 some cases, they were not, but it,  
15 you know, has been so long since I  
16 looked at this.  
17 BY MR. PLACITELLA:  
18 Q. Who is "they"?  
19 A. Johnson & Johnson.  
20 Q. Okay. So let me turn the page  
21 here. Well, let me ask a question. I see  
22 you guys talking. Do you want, how do you  
23 want to handle --  
24 MS. BROWN: Lunch.

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1 MR. PLACITELLA: -- the  
2 logistics here? Do you want to go  
3 to 12:30 and then break,  
4 12:00 o'clock? What do you want to  
5 do?  
6 MS. BROWN: I think we  
7 should go to 12:00 and take a lunch  
8 break, so you have 13 minutes.  
9 BY MR. PLACITELLA:  
10 Q. Okay. Well, put me on a clock.  
11 You worked on a case called Ritter. Do you  
12 recall that?  
13 A. I recall that.  
14 Q. Okay. And you worked on that  
15 case with Mr. Ashton. Do you recall that?  
16 A. I don't recall, but that's  
17 entirely possible.  
18 Q. Okay. And can you go -- I  
19 think you were shown this last week, but  
20 can you go to Exhibit 1035. I'm sorry.  
21 Let me, yeah, 1035. 1035, for the record,  
22 is a January 3, 1995, letter from Laurie  
23 Bain of McCrone Environmental Services to  
24 you. Do you see that?

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1 A. Yes.  
2 - - - - -  
3 (Letter dated 1/3/95 marked  
4 O'Shaughnessy Exhibit 1035 for  
5 identification.)  
6 - - - - -  
7 BY MR. PLACITELLA:  
8 Q. Okay. And the re: up in the  
9 right-hand corner is Ritter. Do you see  
10 that?  
11 A. Yes.  
12 Q. Okay. And in that letter, what  
13 McCrone did was they said they gave you a  
14 copy of their entire file?  
15 A. Yes.  
16 Q. Do you see that?  
17 A. Yes.  
18 Q. Did you read it when you got  
19 it?  
20 A. I probably did, yeah.  
21 Q. Okay. And what happened to  
22 that file?  
23 A. I don't have any specific  
24 recollection, but what would have happened

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1 is I would have turned it over to our  
2 attorneys for Ritter and Mr. Williams as  
3 well.  
4 Q. Okay. And in the context of  
5 the Ritter case, you learned that the  
6 McCrone reports that you received reported  
7 asbestos in the Johnson & Johnson mines,  
8 correct?  
9 A. No.  
10 MS. BROWN: Objection.  
11 Misstates the evidence. What is  
12 the -- and vague as to the Johnson  
13 & Johnson mines.  
14 BY MR. PLACITELLA:  
15 Q. The Johnson & Johnson talc.  
16 MS. BROWN: Same  
17 objection.  
18 THE WITNESS: No is the  
19 answer.  
20 BY MR. PLACITELLA:  
21 Q. Okay. And you also learned  
22 during the course of the Ritter case that  
23 when you were mining the talc from the  
24 Johnson mine, there was no way in heaven

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1 you could avoid mining the tremolite in the  
2 mine at the same time, correct?  
3 MS. BROWN: Assumes  
4 facts, misstates the evidence,  
5 lacks foundation.  
6 THE WITNESS: When you  
7 say "you," I assume you mean the  
8 Johnson & Johnson people?  
9 BY MR. PLACITELLA:  
10 Q. Yes, sir.  
11 A. No, no, I don't recall.  
12 Q. Okay. Who is Barry Doolan?  
13 A. Barry Doolan was a geologist, I  
14 believe, with the University of Vermont.  
15 Q. Okay. And he is someone that  
16 you consulted during the course of the  
17 Ritter case?  
18 A. He was a litigation consultant,  
19 yes.  
20 Q. And can you go to 1055, please.  
21 MS. BROWN: Your Honor,  
22 this is a privileged document. Can  
23 we have a moment?  
24 JUDGE SCHNEIDER: You



1 want to go --

2 MS. BROWN: Can I confer  
3 with my co-counsel? This appears  
4 on its face to me to be a  
5 privileged document that I just  
6 want to find out if it has been  
7 clawed back.

8 JUDGE SCHNEIDER: Sure.

9 MS. BROWN: Thanks.

10 MR. PLACITELLA: Well,  
11 no one sent any clause my way.

12 MS. BROWN: Let's go off  
13 for a second.

14 THE VIDEOGRAPHER: Off  
15 the record 11:51.

16 - - - -

17 (Discussion was held off the record.)

18 - - - -

19 MR. PLACITELLA: So this  
20 document does have J&J Bates  
21 numbers on it. It was in the  
22 packet that Mr. Block submitted  
23 with his deposition that you've had  
24 now for a week and it contradicts

1 what the witness just said. It  
2 clearly contradicts what the  
3 witness just said.

4 JUDGE SCHNEIDER: First,  
5 let's find out. Is there an  
6 objection to the use of this  
7 exhibit?

8 MS. BROWN: Yes.

9 MR. BERNARDO: Yes. And  
10 to explain, it was our  
11 understanding that we were not to  
12 advance and look at the documents  
13 that were not being used and this  
14 was not one of the documents being  
15 used, so I did not go through the  
16 binder to ascertain. I will say  
17 that as I was going through another  
18 one, I do recall opening and  
19 thinking, I think this is a  
20 document to recall, but I  
21 intentionally followed  
22 instructions --

23 JUDGE SCHNEIDER: In  
24 fairness, that was the right thing

1 to do.

2 MR. BERNARDO: Right.

3 JUDGE SCHNEIDER: You're  
4 not going to be blamed for that.

5 MR. BERNARDO: And I  
6 will explain what I think is  
7 appropriate to put on the record  
8 and then, Your Honor, if you  
9 require additional information as  
10 we did during the privilege  
11 hearing, there were other, say,  
12 privilege facts I can explain to  
13 Your Honor that would further  
14 explain this, but let me state at a  
15 very high level things that I'm  
16 comfortable saying on the record.

17 This was not a document  
18 produced by Johnson & Johnson in  
19 its document production. This is a  
20 document that I, having looked at  
21 it now, do recall several years ago  
22 learning that there was some  
23 inadvertent disclosure of it, but  
24 based upon what we learned and

1 understood, we were under the  
2 impression that it never made its  
3 way out to plaintiffs' counsel or  
4 wouldn't otherwise be in  
5 plaintiffs' counsel's hands.  
6 Obviously, we were wrong in that  
7 investigation and understanding.  
8 So we didn't see a need to claw it  
9 back, because it was our  
10 impression, based upon facts I can  
11 be happy to tell you, that it had  
12 never been disclosed. The  
13 document, I've just confirmed with  
14 Mr. Fine, continues to be on our  
15 privilege log. I actually asked  
16 him, Your Honor, if it was among  
17 the documents that are being  
18 challenged and I haven't received  
19 an answer of that yet.

20 JUDGE SCHNEIDER: Not in  
21 the federal MDL?

22 MR. BERNARDO: It may be  
23 among Mr. Block's, it may be as  
24 part of the larger group, that's



1 why the binder --

2 JUDGE SCHNEIDER: The  
3 156 documents?

4 MR. BERNARDO: Yeah, I  
5 confirmed, it's not among those.  
6 So, again, Your Honor, I would be  
7 happy to provide additional details  
8 that would sort of substantiate the  
9 top line information I provided.

10 JUDGE SCHNEIDER: Are  
11 you at liberty to say who did  
12 produce this document?

13 MR. BERNARDO: I would  
14 rather disclose that --

15 MS. BROWN: I wouldn't  
16 even say produced, Judge. It was  
17 never produced. There is a  
18 situation where the document was --

19 MR. BERNARDO: I would  
20 rather --

21 MR. PLACITELLA: I can  
22 leave the room.

23 JUDGE SCHNEIDER: Before  
24 you leave, I have a question.

1 were not at all responsive, some of  
2 which are withheld on the basis of  
3 privilege. That was an internal  
4 way of just tracking documents.  
5 Some of the documents that have  
6 that designation are in the  
7 production. This goes back more  
8 than a decade, and again, Your  
9 Honor, this goes in part with  
10 something I explained the other  
11 day, but I'm very comfortable in  
12 saying that not every document that  
13 has that on it was produced, number  
14 one. And number two, as Plaintiffs  
15 probably know, most documents that  
16 have that designation also have  
17 another number on it.

18 JUDGE SCHNEIDER: That  
19 appears to be a different format  
20 from at least one other J&J Bates  
21 number, which is J, the letter N,  
22 J.

23 MR. TISI: Yeah, but  
24 we've had -- if I can just weigh in

1 MR. BERNARDO: Sure.

2 MR. PLACITELLA: I would  
3 rather not leave, but I can leave.

4 MR. TISI: It does have  
5 a J&J Bates number.

6 MR. PLACITELLA: It does  
7 have a J&J Bates number.

8 MS. BROWN: No.

9 MR. BERNARDO: No, no,  
10 it doesn't. It has an internal J  
11 ampersand J on it, right?

12 MR. TISI: We can look  
13 at it right here. We can give you  
14 the number.

15 MR. PLACITELLA: I can  
16 put it up if you want.

17 JUDGE SCHNEIDER: I  
18 would like to see it.

19 MR. BERNARDO: Right.  
20 So I can state with certainty,  
21 because I personally investigated  
22 that J ampersand J reflects an  
23 endorsement that was put on a large  
24 swath of materials, some of which

1 on that.

2 JUDGE SCHNEIDER: Sure.

3 MR. TISI: As I think  
4 Mr. Bernardo explained last time  
5 and, again, I'm just saying this as  
6 a matter of fact. When they were  
7 originally produced in the initial  
8 state litigation, Mr. Bernardo, I  
9 don't think was even involved in  
10 the production at that point.  
11 There was another firm involved in  
12 the production. There was a  
13 production of documents that had  
14 different Bates numbers. Over  
15 time, as that number grew, as the  
16 number of documents grew, we had a  
17 big fight in the MDL about, you  
18 know, the number of documents  
19 produced and it went from, you  
20 know, 36,000 to hundreds of  
21 thousands of documents. I mean, it  
22 grew over time and I think when Mr.  
23 Bernardo became involved, and  
24 you'll correct me if I'm wrong, the

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1 numbers changed. So some of these  
 2 documents have different, multiple  
 3 different Bates numbers over time,  
 4 because of the way in which they  
 5 were produced originally in an  
 6 individual state litigation,  
 7 actually, starting in South Dakota,  
 8 and then expanded over time and I  
 9 think that they used different  
 10 systems. It has been confusing to  
 11 us, candidly, because we never know  
 12 which Bates number to use when  
 13 we're referring to it. But the  
 14 fact that this is in a different  
 15 format, Judge, and this is all I'm  
 16 going to say, the fact that this is  
 17 isn't a different format doesn't  
 18 raise any red flags to me, because  
 19 some of these documents have four  
 20 or five different Bates numbers on  
 21 it because they were produced under  
 22 different circumstances in  
 23 different litigations. Does that  
 24 make sense?

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1 JUDGE SCHNEIDER: Fair  
 2 enough.  
 3 MR. BERNARDO: And I  
 4 completely agree with what Mr. Tisi  
 5 said. I'm making the point simply  
 6 that not every document that has  
 7 that designation was a document  
 8 that was intended to be produced.  
 9 Some of those are on the privilege  
 10 log. Some of those were deemed to  
 11 be completely not responsive to  
 12 anything. So --  
 13 MR. TISI: And some of  
 14 them have been produced.  
 15 MR. BERNARDO:  
 16 Absolutely, Chris, I'm agreeing  
 17 with you. I'm simply saying that  
 18 that does not indicate that it was  
 19 produced. That's my only --  
 20 MR. PLACITELLA: Here's  
 21 where we are.  
 22 MR. BERNARDO: Excuse  
 23 me?  
 24 MR. PLACITELLA: I

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1 accept whatever you say. I'm not  
 2 fighting with you over it. I got  
 3 it. It was in Jerry's packet. I  
 4 read it. I used it. But here's  
 5 the problem. The witness has said  
 6 that he never learned this  
 7 information during the course of  
 8 the case or from Doolan.  
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| Page 588                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                   | Page 590                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                 |
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| <p>1</p> <p>2</p> <p>3</p> <p>4</p> <p>5</p> <p>6</p> <p>7</p> <p>8</p> <p>9</p> <p>10</p> <p>11</p> <p>12</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                     | <p>1 procedurally doing this by the</p> <p>2 books, because I can expect, I'm</p> <p>3 not saying that I'm anticipating</p> <p>4 Judge Schneider is going to rule</p> <p>5 against us, but if he does, I can</p> <p>6 anticipate that this might be</p> <p>7 something we would want to appeal.</p> <p>8 This is a very important issue,</p> <p>9 it's a threshold issue, and I just</p> <p>10 want to make sure we're creating an</p> <p>11 appropriate record --</p> <p>12 MR. TISI: I just want</p> <p>13 to make sure when you say the word</p> <p>14 "privilege," I think we have to</p> <p>15 indicate, because one privilege is</p> <p>16 much more absolute than another</p> <p>17 privilege. I want to make sure</p> <p>18 when you say "privilege," what</p> <p>19 we're actually talking about.</p> <p>20 MR. PLACITELLA: Yeah,</p> <p>21 so if we're stepping through the</p> <p>22 paces trying to do what you're</p> <p>23 saying, okay, you want a ruling</p> <p>24 whether it's privileged or not --</p> |
| Page 589                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                   | Page 591                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                 |
| <p>1</p> <p>2</p> <p>3</p> <p>4</p> <p>5</p> <p>6</p> <p>7 MR. BERNARDO: Chris, my</p> <p>8 only point is, procedurally, I feel</p> <p>9 like we need a ruling so we can</p> <p>10 decide what that is and decide</p> <p>11 whether we appeal it or not on</p> <p>12 whether this is or isn't</p> <p>13 privileged. If it is and it's work</p> <p>14 product and that's what the judge</p> <p>15 decides, you can make that</p> <p>16 argument. Although, I don't think</p> <p>17 you're supposed to be making</p> <p>18 arguments based upon the actual</p> <p>19 content of an otherwise privileged</p> <p>20 document. I really --</p> <p>21 MR. TISI: No, I hear</p> <p>22 you --</p> <p>23 MR. BERNARDO: I just</p> <p>24 want to make sure we're</p> | <p>1 MR. BERNARDO: Work</p> <p>2 product --</p> <p>3 MR. PLACITELLA: Work</p> <p>4 product privilege --</p> <p>5 THE STENOGRAPHER: One</p> <p>6 at a time. Okay.</p> <p>7 MR. BERNARDO: I first</p> <p>8 want a ruling as to whether or not</p> <p>9 this document should even be in</p> <p>10 your hands, because it was -- look,</p> <p>11 if the ruling is that we waived</p> <p>12 whatever we asserted, then we go to</p> <p>13 the next step.</p> <p>14 JUDGE SCHNEIDER: Can I</p> <p>15 ask a question?</p> <p>16 MR. BERNARDO: Sure.</p> <p>17 JUDGE SCHNEIDER: I</p> <p>18 think you're right. I think we</p> <p>19 have to decide if it's work product</p> <p>20 or not. And then we have the other</p> <p>21 issue about whether there's a</p> <p>22 substantial need for it and whether</p> <p>23 you can rely on content of a work</p> <p>24 product document to prove</p>                                                                                                                                  |

1 substantial need.

2 MR. BERNARDO: Which  
3 under the federal rules, you  
4 cannot.

5 JUDGE SCHNEIDER: Yeah,  
6 I don't have a case at my  
7 fingertips, but it doesn't --

8 MR. BERNARDO: I'll get  
9 you one.

10 JUDGE SCHNEIDER: I  
11 don't know, but here's the question  
12 I have --

13 MR. PLACITELLA: Well,  
14 there's one more piece of the  
15 analysis. I would rather not go  
16 there.

17 JUDGE SCHNEIDER: I  
18 would just like to get your  
19 representation. Is it your  
20 representation that it wasn't until  
21 Jerry Block's binder that you  
22 realized that this document was in  
23 Johnson & Johnson's -- Plaintiffs'  
24 exhibits?

1 MS. BROWN: Yes.

2 MR. BERNARDO: Correct,  
3 it was my understanding and  
4 impression when we did our  
5 investigation of circumstances when  
6 this first came to my attention  
7 several years ago that it never  
8 made its way out there. We took  
9 appropriate steps to avoid it from  
10 even getting there.

11 JUDGE SCHNEIDER: Maybe  
12 we need to have an ex parte  
13 conversation too, without revealing  
14 the answer, do you know how this  
15 document came to be in your hands  
16 other than --

17 MR. TISI: It was in the  
18 production. It was in the  
19 production of documents.

20 JUDGE SCHNEIDER: What  
21 production of documents?

22 MR. TISI: The regular,  
23 the normal in the course of  
24 business production of documents.

1 MR. PLACITELLA: First  
2 of all, I don't know that --

3 MR. TISI: Well, that's  
4 what I understand.

5 MR. PLACITELLA: I don't  
6 know that.

7 JUDGE SCHNEIDER: Isn't  
8 that a critical question --

9 MR. PLACITELLA: I don't  
10 know that. So I just want to back  
11 up for a second before we --

12 JUDGE SCHNEIDER: When  
13 you say it was in the normal  
14 course, Chris, do you mean by J&J  
15 or somebody else?

16 MR. TISI: It would only  
17 come from J&J. But the other  
18 question that I have, and let me  
19 double check, because I don't  
20 know where else we would have  
21 gotten it --

22 MR. BERNARDO: And to be  
23 honest, I did not reconfirm that,  
24 which I can do --

1 MR. TISI: Let me go  
2 check.

3 MR. BERNARDO: We spent  
4 significant time --

5 MR. TISI: Let me go and  
6 check.

7 MR. BERNARDO: I think  
8 it might just help and we can  
9 probably figure out where they got  
10 it if we can have a very brief ex  
11 parte and then we have one with  
12 them --

13 MR. TISI: But let me  
14 ask one question. When you --

15 MR. PLACITELLA: You can  
16 read between the lines where I got  
17 it. I'm not --

18 MR. BERNARDO: I think I  
19 can figure it out.

20 MR. TISI: But let me  
21 ask you one question. When you  
22 inadvertently realized that it was  
23 in the binder or whatever you -- I  
24 think you had indicated it was

1 inadvertent. You didn't go back  
2 and look any further --

3 MR. BERNARDO: Chris, I  
4 didn't write down the date. I  
5 didn't do anything. It was one of  
6 those under the rules, you see  
7 something, you realize --

8 MR. TISI: I totally get  
9 it. I totally get it --

10 THE STENOGRAPHER: You  
11 know what, I can't take this. I  
12 cannot take this back and forth,  
13 because you're not going to get a  
14 record.

15 MR. BERNARDO: I  
16 apologize.

17 MR. TISI: And I totally  
18 understand that. My question is,  
19 did you recognize that this  
20 document, even if you don't go any  
21 further, at some earlier point was  
22 in our hands?

23 MS. BROWN: No.

24 MR. TISI: Okay. That

1 was my question.

2 MR. BERNARDO: My  
3 representation and maybe you can  
4 prove me wrong --

5 MR. TISI: I'm not  
6 trying to prove you wrong.

7 MR. BERNARDO: No, no, I  
8 know you're not. I'm just giving  
9 you the benefit of the doubt.

10 JUDGE SCHNEIDER: But at  
11 the earliest, it was a week ago,  
12 right?

13 MR. TISI: Well, we know  
14 at least a week ago, right, at  
15 least, I think that's what I'm  
16 asking is, you know, if you had a  
17 week to claw it back and you knew  
18 for either advertent or  
19 inadvertent, why is it now we're a  
20 week later?

21 MS. BROWN: Well, I can  
22 tell you this, because these  
23 binders also went to an associate  
24 who saw it and raised with us they

1 have a privileged document and we  
2 said, oh, my goodness, we're not  
3 supposed to be looking ahead in the  
4 binder. So we knew that there was  
5 a suggestion there might be a  
6 privileged document in there.

7 MR. TISI: But you  
8 didn't know which one?

9 MS. BROWN: No, because  
10 I instructed her, she told me tab  
11 24. So I know -- I suspect it was  
12 tab 24 and we both said to her, you  
13 are not supposed to look ahead, so  
14 that's where we left it.

15 MR. BERNARDO: Maybe I'm  
16 the last lawyer who does this, but  
17 I, genuinely, when I get something  
18 and realize I'm not supposed to  
19 have it --

20 MR. TISI: I'm with you.  
21 I don't do it either. You and I  
22 have had this discussion.

23 MS. BROWN: And that's  
24 how we knew, and we took steps

1 pursuant to what was asked of us --

2 JUDGE SCHNEIDER: I  
3 don't think that's a concern --

4 MR. TISI: It's not a  
5 concern on my part either. You're  
6 an honorable person.

7 JUDGE SCHNEIDER: I  
8 credit -- I credit that they closed  
9 the book after a fleeting  
10 reference, but Chris, I would like  
11 to know if you can document that  
12 J&J produced that, because that  
13 might be the answer to this.

14 MR. BERNARDO: And if it  
15 is, it is. I mean --

16 JUDGE SCHNEIDER: If J&J  
17 produced it --

18 MR. TISI: Let me see if  
19 I can check right now, but what I'm  
20 concerned about, Judge, and this is  
21 an important issue, right, and it's  
22 in the flow of Chris' deposition,  
23 from just a practical standpoint,  
24 we're eating up time that we want

| Page 600 |                                       | Page 602 |  |
|----------|---------------------------------------|----------|--|
| 1        | to -- you know, you were very         | 1        |  |
| 2        | concerned about time and I don't      | 2        |  |
| 3        | want to prejudice us in getting       | 3        |  |
| 4        | through this examination.             | 4        |  |
| 5        | JUDGE SCHNEIDER: Let's                | 5        |  |
| 6        | do this --                            | 6        |  |
| 7        | MR. PLACITELLA: Well,                 | 7        |  |
| 8        | I'm going to take you at your word.   | 8        |  |
| 9        | You don't need to prove anything to   | 9        |  |
| 10       | me. Okay. Let them figure out,        | 10       |  |
| 11       | you know. So I don't know that you    | 11       |  |
| 12       | want to -- you need ex parte, if      | 12       |  |
| 13       | you think you do, you do. If you      | 13       |  |
| 14       | say it is, it is. Okay. That's        | 14       |  |
| 15       | how I see the world, you know.        | 15       |  |
| 16       | Because our lives are way too long    | 16       |  |
| 17       | to go up and eat the sheets on        | 17       |  |
| 18       | that.                                 | 18       |  |
| 19       | JUDGE SCHNEIDER: You                  | 19       |  |
| 20       | meant to say way too short.           | 20       |  |
| 21       | MR. PLACITELLA:                       | 21       |  |
| 22       | Unfortunately, we're all --           | 22       |  |
| 23       | MR. BERNARDO: I agree                 | 23       |  |
| 24       | with everything you said up to        | 24       |  |
| Page 601 |                                       | Page 603 |  |
| 1        | there, Chris.                         | 1        |  |
| 2        | -----                                 | 2        |  |
| 3        | (Discussion was held off the record.) | 3        |  |
| 4        | -----                                 | 4        |  |
| 5        | (Sealed Portion of Transcript.)       | 5        |  |
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| Page 612                                                                                                                                                          | Page 614                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                  |
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| <p>1<br/>2<br/>3<br/>4<br/>5<br/>6<br/>7<br/>8<br/>9<br/>10<br/>11<br/>12<br/>13<br/>14<br/>15<br/>16<br/>17<br/>18<br/>19<br/>20<br/>21<br/>22<br/>23<br/>24</p> | <p>1<br/>2<br/>3<br/>4<br/>5<br/>6<br/>7<br/>8<br/>9<br/>10<br/>11<br/>12 (Whereupon, sealed portion of transcript concluded.)<br/>13<br/>14 (A recess was taken at this time.)<br/>15<br/>16 JUDGE SCHNEIDER: This<br/>17 is Special Master Schneider, Judge<br/>18 Schneider, before our lunch break,<br/>19 an issue came up about a particular<br/>20 document. It's claimed that the<br/>21 document is work product, but<br/>22 there's an issue whether the work<br/>23 product has been waived and there<br/>24 was an inadvertent production.</p>                                                                                                                                                                                                                                                                                                                                                                                                |
| Page 613                                                                                                                                                          | Page 615                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                  |
| <p>1<br/>2<br/>3<br/>4<br/>5<br/>6<br/>7<br/>8<br/>9<br/>10<br/>11<br/>12<br/>13<br/>14<br/>15<br/>16<br/>17<br/>18<br/>19<br/>20<br/>21<br/>22<br/>23<br/>24</p> | <p>1 After speaking ex parte with<br/>2 defense counsel, and I could<br/>3 represent we only talked about<br/>4 privileged information, and talking<br/>5 with Plaintiffs' counsel, it's my<br/>6 determination that the record is<br/>7 not complete enough to make an<br/>8 informed decision as to whether<br/>9 this document should be used, so<br/>10 we're going to table the use of<br/>11 this document for purposes of this<br/>12 deposition. At the conclusion of<br/>13 the deposition, or shortly<br/>14 thereafter, we'll discuss with<br/>15 counsel a briefing schedule and get<br/>16 a determinative ruling on the<br/>17 issue, but for purposes of this<br/>18 afternoon, this document will not<br/>19 be used. And this is for the<br/>20 record Exhibit J&amp;J 1055.1.<br/>21 MR. PLACITELLA: Could I<br/>22 add something just so that there's<br/>23 no missteps? There was certain<br/>24 argument under seal. So, Robin,</p> |

1 before you send the transcript out  
 2 to anybody else, including me,  
 3 could you send it to Alli and Rich  
 4 only so they can make sure that  
 5 it's appropriately -- whatever  
 6 needs to be done.  
 7 MS. BROWN: Thank you.  
 8 MR. PLACITELLA: I don't  
 9 want it to be inadvertent.  
 10 MS. BROWN: That's  
 11 great.  
 12 MR. PLACITELLA: We have  
 13 enough inadvertence.  
 14 MS. BROWN: Yeah,  
 15 thanks, Chris, I appreciate that.  
 16 MR. TISI: We would  
 17 agree to that.  
 18 THE VIDEOGRAPHER: We  
 19 are back on the record at 1:23 p.m.  
 20 BY MR. PLACITELLA:  
 21 Q. All right. I thought I was  
 22 doing great on time, but I'm going to try  
 23 to make up some of it so this could be your  
 24 last day.

1 A. Thanks a lot.  
 2 Q. I'm trying. Remember we just  
 3 went over the document where they sent you  
 4 the McCrone file? McCrone sent you their  
 5 entire file.  
 6 A. Leslie Bain or something, yes.  
 7 Q. Yes. What happened to that  
 8 file?  
 9 A. I would have given the  
 10 documents to our lawyers, our outside  
 11 counsel.  
 12 Q. Who would that be?  
 13 A. If that was under the Ritter  
 14 case, it would have been to Ritter and to  
 15 Gene Williams as well.  
 16 Q. Okay. Now, I mentioned  
 17 Professor Doolan, is he dead or alive?  
 18 A. I don't know.  
 19 Q. In the Ritter case, you  
 20 defended Mr. Miller's deposition, correct?  
 21 A. I don't recall, but if you say  
 22 so.  
 23 Q. Okay. If you look at 1043 in  
 24 your transcript binder. I want to put it

1 up on the screen. This is the deposition  
 2 of Roger Miller, April 6, 1995. Do you see  
 3 that?  
 4 A. Yes, I see it.  
 5 -----  
 6 (Deposition Of Roger N. Miller  
 7 dated 4/6/95 marked O'Shaughnessy  
 8 Exhibit 1043 for identification.)  
 9 -----  
 10 BY MR. PLACITELLA:  
 11 Q. And do you see on the second  
 12 page of the deposition you're listed as  
 13 counsel?  
 14 A. I am.  
 15 Q. Okay. So you're actually  
 16 participating in this dep, correct?  
 17 A. The transcript will show. I  
 18 don't recall.  
 19 Q. And in this deposition, if you  
 20 go to 26, it's 1043.26.  
 21 A. Yes.  
 22 Q. Mr. Miller is asked "And is  
 23 there any fiber material in the talc that  
 24 Windsor Minerals has sold over the years

1 since you have been with the Windsor  
 2 Minerals -- with Windsor Minerals?"  
 3 Answer: "We had no fiber  
 4 form materials in our product." Do you see  
 5 that?  
 6 A. Yes.  
 7 Q. In the -- what happened to the  
 8 file from the Ritter case?  
 9 A. The Johnson & Johnson file?  
 10 Q. Yeah.  
 11 A. It would have been, like I  
 12 said, in the central file room for a period  
 13 of time and then moved over to outside  
 14 storage.  
 15 Q. Okay. And where are all the  
 16 testing documents, I thought there were --  
 17 A. I have some below here.  
 18 Q. Okay. Can you put them back up  
 19 for a second?  
 20 A. Sure.  
 21 Q. That's fine. Just make it so  
 22 it doesn't fall on you.  
 23 A. That's what I tried to do.  
 24 This is Musco 2.

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1 Q. Yeah, that's right.  
 2 A. Okay.  
 3 Q. Do you have any evidence that  
 4 any of those testing documents in those  
 5 binders to your right were produced in the  
 6 Ritter case?  
 7 MS. BROWN: Objection.  
 8 Assumes facts and lacks foundation.  
 9 THE WITNESS: I have --  
 10 I don't have any specific recall of  
 11 what was produced in the Ritter  
 12 case, but we would have been -- our  
 13 practice would have been to have  
 14 been responsive to discovery  
 15 requests in light of whatever rules  
 16 were present in the court at the  
 17 time and agreements with counsel.  
 18 BY MR. PLACITELLA:  
 19 Q. Well, did you ever claim that  
 20 any of those testing documents were subject  
 21 to -- that they were your trade secrets at  
 22 Johnson & Johnson?  
 23 A. I don't recall positions taken.  
 24 Q. It wouldn't have been a fair

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1 thing to do, to say that those documents  
 2 were trade secrets, do you agree?  
 3 MS. BROWN: Objection.  
 4 Assumes facts. Lacks foundation.  
 5 THE WITNESS: Well,  
 6 you're pointing to three binders  
 7 and I don't know exactly what's in  
 8 all of them. Oftentimes, and I  
 9 can't talk specifically, but  
 10 oftentimes in litigation, trade  
 11 secret is a -- is a type of  
 12 document that we would bring to the  
 13 attention of the court and the  
 14 counsel in discovery. So we may  
 15 denominate something as trade  
 16 secret. And I'm not sure what else  
 17 I can say.  
 18 BY MR. PLACITELLA:  
 19 Q. I'll come back to that.  
 20 A. Okay.  
 21 Q. Just for context, at the same  
 22 time that the Ritter case, that what Roger  
 23 Miller testified under oath that there was  
 24 no minerals, fiber in any of the Windsor

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1 mines, that was the same year as the  
 2 citizens' petition that you went over with  
 3 Mr. Tisi yesterday, right?  
 4 A. I assume, you know, I take your  
 5 word for it, but I don't recall.  
 6 Q. And in the citizens' petition,  
 7 the CTFA took the position with Johnson &  
 8 Johnson's input that there was no evidence  
 9 of asbestos in any of the talc products at  
 10 issue, right?  
 11 MS. BROWN: Objection.  
 12 Lacks foundation. Misstates the  
 13 evidence.  
 14 THE WITNESS: That would  
 15 have been our position with respect  
 16 to our own talc.  
 17 BY MR. PLACITELLA:  
 18 Q. Okay.  
 19 A. I'm sorry, Johnson & Johnson's  
 20 talc.  
 21 Q. Now, when you made those  
 22 representations to the FDA -- by the way,  
 23 was that -- Mr. Tisi sent me a note. Was  
 24 that the same year that Mr. -- that Dr.

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1 Muscat proposed his study?  
 2 A. I don't know.  
 3 MS. BROWN: Objection.  
 4 Lacks foundation.  
 5 BY MR. PLACITELLA:  
 6 Q. Okay. So did you know, because  
 7 you say you rely upon the people at J&J,  
 8 did you know that Johnson & Johnson's never  
 9 gave another -- a testing report to the FDA  
 10 after 1973?  
 11 MS. BROWN: Objection.  
 12 Lacks foundation.  
 13 THE WITNESS: I would  
 14 have no knowledge what the company  
 15 did with respect to its dealings  
 16 with the FDA. You would have to  
 17 ask someone in their regulatory  
 18 group over there.  
 19 BY MR. PLACITELLA:  
 20 Q. Okay. I want to just show you  
 21 the testimony of -- why am I getting no  
 22 sound here?  
 23 THE VIDEOGRAPHER: It's  
 24 super duper low, I hear it, but

1 it's very low.  
 2 MR. PLACITELLA: Why is  
 3 that?  
 4 THE VIDEOGRAPHER: Is  
 5 the volume all the way up?  
 6 BY MR. PLACITELLA:  
 7 Q. It's all the way up. I'll try  
 8 it one more time, if not, I'm just going to  
 9 have to move on. Do you know who Susan  
 10 Nicholson is?  
 11 A. I do.  
 12 Q. She testified in a deposition  
 13 that no test was provided -- no asbestos  
 14 testing documents were provided to the FDA  
 15 after 1973. Do you have any reason to  
 16 dispute that?  
 17 MS. BROWN: Objection.  
 18 Lacks foundation.  
 19 THE WITNESS: No, I'm  
 20 not familiar with the deposition or  
 21 testimony. I don't have any  
 22 different reason to -- I would have  
 23 no knowledge of that whole area,  
 24 so, you know, I don't know.

1 BY MR. PLACITELLA:  
 2 Q. Okay. So if they're asking you  
 3 to go to tell the FDA there's no evidence  
 4 of asbestos, but they didn't tell you that  
 5 they never gave the FDA any tests after  
 6 1973?  
 7 MS. BROWN: I object.  
 8 Lacks foundation. Assumes facts.  
 9 THE WITNESS: You're  
 10 asking me about going to the FDA, I  
 11 don't deal with the FDA in my  
 12 position.  
 13 BY MR. PLACITELLA:  
 14 Q. Well, you did as it related to  
 15 the citizen petition, you were on the  
 16 committee.  
 17 MS. BROWN: Objection.  
 18 Misstates the evidence.  
 19 THE WITNESS: No, I was  
 20 familiar with the citizens'  
 21 petition and what they were doing,  
 22 I was copied on it, but I didn't  
 23 have any responsibility or input to  
 24 it or not. That was a regulatory

1 matter with the FDA.  
 2 BY MR. PLACITELLA:  
 3 Q. But you were on the committee  
 4 that provided input by Johnson & Johnson  
 5 and took a position before the FDA, right?  
 6 A. They denominated me on that  
 7 Worldwide Talc Committee that, you know,  
 8 you guys have shown me documents about.  
 9 Q. Yes, sir.  
 10 A. I don't know if that committee  
 11 dealt with the citizens' petition. I think  
 12 that's probably putting form over  
 13 substance, because clearly the same people  
 14 would probably be involved. What I'm  
 15 telling you is that the regulatory  
 16 attorneys would take the laboring more in  
 17 dealing with the citizens' petition and the  
 18 response and the substance of it.  
 19 Q. Okay. Is it fair to say today  
 20 is the first time you ever heard that  
 21 Johnson & Johnson never gave the FDA an  
 22 asbestos test after 1973?  
 23 MS. BROWN: Objection.  
 24 Misstates the evidence and lacks

1 foundation.  
 2 THE WITNESS: I'm sorry.  
 3 MS. BROWN: Go ahead.  
 4 THE WITNESS: I don't  
 5 have any knowledge of that whole  
 6 area.  
 7 BY MR. PLACITELLA:  
 8 Q. Okay. The next thing I want to  
 9 talk to you about is, and I promise you I  
 10 will not spend the same amount of time as  
 11 everybody else did. The next thing I want  
 12 to talk to you --  
 13 A. Bless you.  
 14 Q. -- about is the Coker case in  
 15 the context of the timeline. Okay.  
 16 A. I was responding to the court  
 17 reporter.  
 18 Q. Yeah, I understand.  
 19 A. I'm sorry. Could you repeat  
 20 it?  
 21 Q. The next thing I want to talk  
 22 to you about is the Coker case and the  
 23 context of the timeline of cases that you  
 24 worked on. Okay?



1 A. I worked on the Coker case.  
 2 Q. Okay. And if you can go to  
 3 1039, which is in your book two. And while  
 4 you're looking for that, when you were  
 5 defending the Coker case, Johnson & Johnson  
 6 had all hands on deck to defend that case,  
 7 do you agree?  
 8 MS. BROWN: Objection.  
 9 Lacks foundation.  
 10 THE WITNESS: I don't  
 11 know what you mean by that.  
 12 BY MR. PLACITELLA:  
 13 Q. Well, everybody who could help  
 14 did help?  
 15 A. There's a lot of people who had  
 16 input into the case. I can't answer that  
 17 question.  
 18 Q. Okay. Can you go to 1039.19?  
 19 A. Got it.  
 20 Q. Okay.  
 21 A. I'm sorry 1039, it's an  
 22 exhibit.  
 23 Q. Right. Right.  
 24 A. Number 19.

1 Q. Put it up, I put it up on the  
 2 screen to make it easy for you. Okay.  
 3 According to your privilege log, the  
 4 following people worked on the Coker case.  
 5 Michael Chudkowski, John Hopkins, Randy  
 6 Corder, James Molnar, Al Wehner, Nancy  
 7 Musco, Jeff F. Slade, Sam Jiwarjka,  
 8 Marjorie McTernan, right?  
 9 MS. BROWN: The question  
 10 misstates the document.  
 11 THE WITNESS: No, that's  
 12 not correct. You didn't misstate  
 13 any names, but that's not what the  
 14 document says.  
 15 BY MR. PLACITELLA:  
 16 Q. It says "Emails from inside  
 17 counsel to company personnel providing  
 18 legal advice in connection with the Coker  
 19 case." And then to the left for 1998,  
 20 which is when Coker was pending, you have  
 21 all those names that we just read?  
 22 A. Right, but I believe, Mr.  
 23 Placitella, maybe I heard it wrong, that  
 24 your question was these people worked on

1 the Coker case.  
 2 Q. Well, they assisted you.  
 3 A. I might have asked them for  
 4 information like I would on any other case.  
 5 Q. Well, that's my point. So --  
 6 A. But I don't know, because I  
 7 don't see the document.  
 8 Q. My point is they were all  
 9 involved somehow in the defense of the  
 10 Coker case?  
 11 MS. BROWN: Objection.  
 12 Misstates the document. Lacks  
 13 foundation.  
 14 THE WITNESS: No, I  
 15 wouldn't characterize it that way.  
 16 The lawyers were involved in the  
 17 defense of it and the company helps  
 18 the lawyers and assists.  
 19 BY MR. PLACITELLA:  
 20 Q. Okay. So were you keeping all  
 21 these people apprised on what was going on  
 22 in the Coker case?  
 23 A. I don't see the emails, so I  
 24 don't know. It's a privileged email, so I

1 was probably telling them --  
 2 MS. BROWN: Well, hold a  
 3 second, John, don't.  
 4 THE WITNESS: That's  
 5 right, I can't --  
 6 MS. BROWN: I'll  
 7 instruct you not to answer that.  
 8 BY MR. PLACITELLA:  
 9 Q. I don't want to know what you  
 10 asked them about. I really don't. Your  
 11 privilege log indicates that all these  
 12 people were somehow involved in the Coker  
 13 case, right?  
 14 MS. BROWN: Well, that  
 15 misstates the document.  
 16 THE WITNESS: No, it  
 17 doesn't.  
 18 BY MR. PLACITELLA:  
 19 Q. Well, it says --  
 20 A. It says --  
 21 Q. You sent them emails. They  
 22 sent you emails. There were letters. All  
 23 that, right?  
 24 A. What it says is these people,

1 I'm trying to read, so it lists me as the  
2 author and the recipients that you had  
3 mentioned and it describes the -- and it  
4 gives a description of the subject and I  
5 assume that's what it was about, legal  
6 advice.

7 Q. Okay. Dr. Hopkins who you say  
8 you rely upon and Wehner, they worked on  
9 the Coker case with you, correct?

10 A. Dr. Hopkins would have been one  
11 of the people I would have consulted with,  
12 you know, in terms of company contact, not  
13 Dr. Wehner, no.

14 Q. Okay. Can you go to  
15 Exhibit 274.2, which would be book one.

16 MS. BROWN: Do you have  
17 it? I'll give you my copy.

18 THE WITNESS: I think I  
19 got it.

20 MS. BROWN: Okay. I  
21 think you're in the transcript  
22 binder, John.

23 THE WITNESS: Oh, all  
24 right.

1 MS. BROWN: Right.

2 MR. PLACITELLA: A lot  
3 of binders.

4 THE WITNESS: I'm sorry,  
5 it's just a normal document binder?  
6 It's probably the bottom one.  
7 Thanks.

8 MR. PLACITELLA: 274.2,  
9 not the deposition binder.

10 MS. BROWN: I think we  
11 got it now.

12 MR. PLACITELLA: Okay.

13 THE WITNESS: I have it.

14 - - - - -

15 (Letter dated 1/23/88 Bates JNJ  
16 000024573 to 24576 marked  
17 O'Shaughnessy Exhibit 274 for  
18 identification.)  
19 - - - - -

20 BY MR. PLACITELLA:

21 Q. Okay. So see if this refreshes  
22 your recollection. I have in front of you  
23 a January 23, 1998, letter from Dr. Wehner  
24 to John Hopkins about the Coker case,

1 correct?

2 A. I don't know.

3 MS. BROWN: Object.

4 Lacks foundation.

5 BY MR. PLACITELLA:

6 Q. Well, let me go to the second  
7 paragraph.

8 A. Yeah, I'm just reading the  
9 first, it's related to the Coker case. It  
10 says, with letter from Dr. Abraham to  
11 Mr. Hobson, attorney at law.

12 Q. Next line, "Knowing as little  
13 as I do about this case at present,  
14 specifically Mrs. Coker's history." Do you  
15 see that, Mrs. Coker's history?

16 A. Right.

17 Q. So not to belabor the point,  
18 because it's in evidence, but during the  
19 course of that case, you learned that Alice  
20 Blount found asbestos in her testing of the  
21 Johnson's Baby Powder, correct?

22 MS. BROWN: Objection.

23 Misstates the evidence.

24 THE WITNESS: I received

1 that letter from MehaffyWeber  
2 regarding Dr. Blount.

3 BY MR. PLACITELLA:

4 Q. So the answer is yes?

5 A. If that's the letter you're  
6 referring to, yes.

7 Q. Okay.

8 A. I forget the date.

9 Q. And all those, Mr. Tisi put  
10 them in the record. I don't want to spend  
11 time on that. But I just want to be clear  
12 on what was going on here with Dr. Blount.  
13 Okay. Dr. Blount did not test the  
14 Johnson's Baby Powder as a consultant for  
15 Johnson & Johnson in litigation involving  
16 the Coker case, true?

17 MS. BROWN: Objection.

18 Lacks foundation.

19 THE WITNESS: I don't  
20 have the letter in front of me, but  
21 I don't believe -- oh, for the  
22 Coker case?

23 BY MR. PLACITELLA:

24 Q. Yes.

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1 A. No. No, I think her testing  
2 was on her own accord.  
3 Q. Correct.  
4 A. And she published a study on  
5 it, I think, in 1991.  
6 Q. Exactly. So it was no secret  
7 that Dr. Blount found asbestos in cosmetic  
8 talc, it was in her published article,  
9 correct?  
10 MS. BROWN: Objection.  
11 Speculation.  
12 THE WITNESS: I don't  
13 recall the article, but I think she  
14 did report that.  
15 BY MR. PLACITELLA:  
16 Q. All right. And if you go to  
17 322 in book one?  
18 A. I have it.  
19 - - - - -  
20 (IARC Monograph marked  
21 O'Shaughnessy Exhibit 322 for  
22 identification.)  
23 - - - - -  
24

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1 BY MR. PLACITELLA:  
2 Q. Okay. This is a monograph that  
3 was published by IARC and you know that's  
4 an international working group on cancer,  
5 right?  
6 A. Yes.  
7 Q. And Dr. Blount, if you go to  
8 322.246. Dr. Blount's testing results were  
9 so important in finding asbestos in the  
10 cosmetic talc that it was actually  
11 published by IARC in 2012, some, what,  
12 20-plus years after?  
13 MS. BROWN: I object.  
14 It misstates the evidence and lacks  
15 foundation with this witness.  
16 THE WITNESS: It appears  
17 in the monograph.  
18 BY MR. PLACITELLA:  
19 Q. Right.  
20 A. I don't know if it makes it  
21 more important or less important, but it  
22 certainly appears there.  
23 Q. Okay. So it was no secret that  
24 Dr. Blount and the significance of her

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1 tests, finding asbestos in cosmetic talc,  
2 you agree that was no secret?  
3 MS. BROWN: I object.  
4 Lacks foundation.  
5 THE WITNESS: No, she  
6 published on it.  
7 BY MR. PLACITELLA:  
8 Q. What was secret was that the  
9 positive results were for Johnson's Baby  
10 Powder, right, that was a secret?  
11 MS. BROWN: That assumes  
12 facts and misstates the evidence.  
13 THE WITNESS: No, I  
14 can't agree with that.  
15 BY MR. PLACITELLA:  
16 Q. Well, after you were told that  
17 she found asbestos in your baby powder, the  
18 very subject of her article, who did you  
19 tell outside of Johnson & Johnson?  
20 MS. BROWN: I object to  
21 that question. And instruct you,  
22 Mr. O'Shaughnessy, if you did  
23 anything in connection with  
24 litigation where Dr. Blount was a

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1 consulting expert not to answer  
2 that question.  
3 BY MR. PLACITELLA:  
4 Q. Okay. Who did you tell outside  
5 of Johnson & Johnson or the experts that  
6 were working for Johnson & Johnson about  
7 the secret that Johnson & Johnson -- that  
8 Alice Blount found asbestos in Johnson's  
9 Baby Powder?  
10 MS. BROWN: I object to  
11 the form of the question. It  
12 assumes facts and misstates the  
13 evidence.  
14 THE WITNESS: Yeah, I  
15 didn't consider anything like that  
16 a secret and I wouldn't have  
17 normally discussed any company  
18 business with people outside the  
19 company.  
20 BY MR. PLACITELLA:  
21 Q. Who did you tell inside Johnson  
22 & Johnson that Dr. Blount found asbestos in  
23 Johnson's Baby Powder?  
24 MS. BROWN: And I

1 object. Your Honor, Dr. Blount was  
2 a consulting expert in a litigation  
3 and so to the extent that  
4 Mr. O'Shaughnessy did work in  
5 connection with that litigation, I  
6 would object on work product  
7 grounds.

8 MR. PLACITELLA: Well,  
9 he just testified that she did no  
10 testing for them in the context of  
11 the case. And this is just a fact  
12 that was related to  
13 Mr. O'Shaughnessy that he admits  
14 happened.

15 JUDGE SCHNEIDER: I  
16 agree. Objection overruled.

17 THE WITNESS: You're  
18 asking me as an attorney --

19 BY MR. PLACITELLA:

20 Q. Yes.

21 A. -- who I discussed the Blount  
22 article with at the company?

23 Q. No, not the Blount article.

24 Who did you tell at the company that Alice

1 Blount told you by way of letter through  
2 your counsel that the asbestos, that the  
3 asbestos she found in the cosmetic talc was  
4 in fact Johnson's Baby Powder?

5 MS. BROWN: Your Honor,  
6 a renewed objection here. This  
7 information came to  
8 Mr. O'Shaughnessy from outside  
9 counsel in connection with a  
10 litigation that he was litigation  
11 counsel for Johnson & Johnson.  
12 What he did with that information  
13 about a consulting expert in a  
14 pending case is privileged. It's  
15 his work product.

16 JUDGE SCHNEIDER: Query,  
17 you say this information came to  
18 Mr. O'Shaughnessy in connection  
19 with a pending case?

20 MS. BROWN: Right.

21 JUDGE SCHNEIDER: But  
22 isn't that reflected in a document  
23 that's already been used during  
24 this and/or Mr. Block's deposition?

1 MR. PLACITELLA:

2 Absolutely.

3 JUDGE SCHNEIDER: So the  
4 work product protection that  
5 applied to it, wasn't it waived?

6 MS. BROWN: Well, your  
7 Honor, as to the four corners of  
8 the document. This question goes  
9 beyond the four corners of the  
10 document, as we discussed with Your  
11 Honor last week. So certainly, if  
12 counsel wants to put the document  
13 in front of him and ask about --

14 MR. PLACITELLA: You  
15 want to do that all over again?

16 MS. BROWN: -- what is  
17 contained in that document. But my  
18 objection is that this question  
19 goes beyond the document and asks  
20 what he did after that.

21 JUDGE SCHNEIDER: I  
22 think if I recall correctly and we  
23 can always ask the court reporter  
24 to read it back, I think the

1 question was, did Mr. O'Shaughnessy  
2 tell anyone about what Mr.  
3 Placitella had questioned about and  
4 I suppose he can answer that  
5 question. And then if he recalls,  
6 then we'll have to inquire further  
7 whether it's in connection with  
8 litigation preparation, et  
9 cetera --

10 MS. BROWN: Understood.

11 JUDGE SCHNEIDER: -- or  
12 whether there was a conversation at  
13 the water cooler perhaps. So I  
14 would suggest, Mr. Placitella, you  
15 ask the witness does he recall or  
16 have any recollection regarding  
17 conversations with anyone regarding  
18 what you inquired about and then if  
19 the answer is yes, he does recall,  
20 then we have to proceed slowly.

21 BY MR. PLACITELLA:

22 Q. Okay. Are you able to flip --  
23 give me the Elmo? Can I have a piece of  
24 paper? It doesn't matter.

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1 THE VIDEOGRAPHER: Yeah,  
 2 Elmo is up.  
 3 BY MR. PLACITELLA:  
 4 Q. Secret, Alice Blount found  
 5 asbestos in Johnson's Baby Powder. Do you  
 6 see that?  
 7 MS. BROWN: I object.  
 8 Misstating the evidence, lacks  
 9 foundation, and is argumentative.  
 10 BY MR. PLACITELLA:  
 11 Q. Do you see that?  
 12 A. I do.  
 13 - - - - -  
 14 (Handwritten Document marked  
 15 O'Shaughnessy Exhibit 4 for  
 16 identification.)  
 17 - - - - -  
 18 BY MR. PLACITELLA:  
 19 Q. Who did you tell outside of the  
 20 lawyers working on the case that secret?  
 21 A. You're asking me about events  
 22 that happened about 25 years ago, so I  
 23 don't have any specific recollection. But  
 24 it would have been our practice at the time

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1 in handling litigation and within the  
 2 context of the litigation, to discuss  
 3 subject focus with the people at the  
 4 company.  
 5 Q. Okay. Did you disclose at any  
 6 point in time during your defense of the  
 7 Johnson & Johnson company the fact, the  
 8 fact that Alice Blount told you she found  
 9 asbestos in Johnson's Baby Powder?  
 10 MS. BROWN: Objection.  
 11 Misstates the evidence. Lacks  
 12 foundation.  
 13 THE WITNESS: Like I  
 14 said, I don't have any specific  
 15 recollection of any discussions  
 16 about Blount or that letter. But  
 17 as a matter of practice as a lawyer  
 18 defending the case, I or  
 19 Mr. Williams would have discussed  
 20 it with company people we were  
 21 working with in the defense of the  
 22 litigation.  
 23 BY MR. PLACITELLA:  
 24 Q. Did you disclose that to any

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1 litigant or jurist in the context of  
 2 defending of the case that Alice Blount  
 3 disclosed to you that her tests  
 4 demonstrated asbestos in Johnson's Baby  
 5 Powder?  
 6 MS. BROWN: That  
 7 misstates the evidence and lacks  
 8 foundation and assumes facts.  
 9 THE WITNESS: I don't  
 10 recall doing that.  
 11 BY MR. PLACITELLA:  
 12 Q. Okay. Now, that secret was not  
 13 the only secret that you asserted in the  
 14 Coker case, correct?  
 15 MS. BROWN: I object to  
 16 the form of the question as  
 17 argumentative as to secret,  
 18 misstating the facts and the  
 19 evidence.  
 20 THE WITNESS: I don't  
 21 regard it as a secret, so your  
 22 premise to the question, I don't  
 23 accept.  
 24

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1 BY MR. PLACITELLA:  
 2 Q. Before I go to the next  
 3 question, did you disclose to any doctors  
 4 or outside scientists the information you  
 5 learned from Dr. Blount that she found  
 6 asbestos in Johnson's Baby Powder?  
 7 MS. BROWN: That assumes  
 8 facts. Misstates the evidence.  
 9 THE WITNESS: Like I  
 10 said, I don't recall any specific  
 11 discussions, but it would have been  
 12 our practice to discuss this with  
 13 company people.  
 14 BY MR. PLACITELLA:  
 15 Q. Okay. And did that include the  
 16 people who recommended the Muscat study?  
 17 A. I don't recall who it was.  
 18 Q. Okay. Now, those testing  
 19 documents to your right, in the Coker case,  
 20 you made a decision, an affirmative  
 21 decision not to turn those documents over,  
 22 true?  
 23 MS. BROWN: Objection.  
 24 Misstates facts, assumes facts, and



1 lacks foundation.

2 THE WITNESS: I don't  
3 recall specific decisions in the  
4 Coker case, but it would have been  
5 the practice at the time to, in  
6 responding to discovery, to list,  
7 respond to discovery within the  
8 context of the local jurisdiction,  
9 our input from outside counsel with  
10 respect to local obligations under  
11 discovery and the answers would  
12 speak for themselves along with  
13 their objections.

14 BY MR. PLACITELLA:

15 Q. Okay.

16 A. So -- sorry, can I finish?

17 Q. Sure.

18 A. You asked me whether any of  
19 these were produced, I don't know, but  
20 discovery, as you know, is a very  
21 sophisticated process and, you know,  
22 requests are made, formal requests, like  
23 interrogatories and requests for production  
24 of documents and the attorneys look at it,

1 assess it, and they respond in light of the  
2 local rules and what we know about the case  
3 and the specific question.

4 Q. Okay. In the Coker case, the  
5 plaintiff's lawyer found out about the  
6 McCrone tests and the tests by the Colorado  
7 School of Mines. Do you recall that?

8 MS. BROWN: I object,  
9 lacks foundation.

10 THE WITNESS: I don't  
11 know what, I don't know what that  
12 attorney knew or didn't know.

13 BY MR. PLACITELLA:

14 Q. And when he asked you, and when  
15 he went to find out what the results of  
16 those tests were, you determined that you  
17 weren't going to turn them over and  
18 asserted they were trade secrets, right?

19 MS. BROWN: I object.  
20 Lacks foundation, misstates the  
21 evidence, and assumes facts.

22 THE WITNESS: I never  
23 dealt with that attorney, so I  
24 never had any direct conversation

1 with him.

2 BY MR. PLACITELLA:

3 Q. Before you would assert that  
4 relevant evidence is a trade secret, would  
5 you actually review the evidence?

6 MS. BROWN: Object.

7 THE WITNESS: When you  
8 say assert --

9 BY MR. PLACITELLA:

10 Q. You, Johnson & Johnson.

11 A. You mean John O'Shaughnessy  
12 or --

13 MS. BROWN: Hold on.

14 Hold on. He is here as an  
15 individual testifying to his own  
16 knowledge, nonprivilege knowledge  
17 as a fact witness. He is not here  
18 too as a corporate representative  
19 for Johnson & Johnson. So when  
20 you're asking him you, you're  
21 asking Mr. O'Shaughnessy, not  
22 Johnson & Johnson.

23 MR. PLACITELLA: Oh, I  
24 thought he worked for Johnson &

1 Johnson, he didn't? Who was he  
2 working for?

3 MS. BROWN: You  
4 understand my objection. He's  
5 not --

6 MR. PLACITELLA: Was he  
7 working for my firm? I didn't  
8 think so.

9 MS. BROWN: -- speaking  
10 on behalf of Johnson & Johnson,  
11 he's speaking as himself and you're  
12 entitled to inquire into  
13 nonprivileged information and  
14 that's my objection.

15 BY MR. PLACITELLA:

16 Q. Well, thanks for that. When  
17 you were working for Johnson & Johnson on  
18 the Coker case, did you actually review the  
19 material before asserting that it was a  
20 trade secret?

21 MS. BROWN: I object.

22 Your Honor, what he did in  
23 connection with his work on the  
24 Coker case and determinations he



|                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                            |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                            |
|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <p style="text-align: right;">Page 652</p> <p>1 made is work product.<br/> 2 BY MR. PLACITELLA:<br/> 3 Q. Okay. Let me go to -- go<br/> 4 ahead.<br/> 5 JUDGE SCHNEIDER: Can<br/> 6 you repeat the question?<br/> 7 -----<br/> 8 (Whereupon, the reporter read<br/> 9 back as requested.)<br/> 10 -----<br/> 11 JUDGE SCHNEIDER: Give<br/> 12 me one moment. It's a close call,<br/> 13 but I think it does ask for work<br/> 14 product information, so the<br/> 15 objection is sustained.<br/> 16 BY MR. PLACITELLA:<br/> 17 Q. Okay. Can you go to 319,<br/> 18 please, in book number one.<br/> 19 A. I have it.<br/> 20 -----<br/> 21 (Letter dated 10/27/97 and<br/> 22 Attachments marked O'Shaughnessy<br/> 23 Exhibit 319 for identification.)<br/> 24 -----</p>                                                                                                                                                 | <p style="text-align: right;">Page 654</p> <p>1 Please state if you ever visited or<br/> 2 analyzed talc from Val Chisone Mine, yes.<br/> 3 Q. Then the next page asks if you<br/> 4 did it, turn the documents over. Do you<br/> 5 see that?<br/> 6 MS. BROWN: Objection.<br/> 7 Misstates the evidence.<br/> 8 THE WITNESS: Please<br/> 9 produce any and all documents<br/> 10 responses six through eight, yes.<br/> 11 BY MR. PLACITELLA:<br/> 12 Q. Okay. So now go to 106 in the<br/> 13 same document. Let me know when you're<br/> 14 there?<br/> 15 A. I will.<br/> 16 Q. Actually go to 105.<br/> 17 A. Okay.<br/> 18 Q. And these are the objections<br/> 19 that Johnson &amp; Johnson filed to the<br/> 20 questions that were asked of McCrone. Do<br/> 21 you see that?<br/> 22 A. Yes.<br/> 23 Q. Okay. And when it came to<br/> 24 producing the documents that were</p> |
| <p style="text-align: right;">Page 653</p> <p>1 BY MR. PLACITELLA:<br/> 2 Q. Okay. And can you go to 319,<br/> 3 28. Actually, 319.26.<br/> 4 A. Okay.<br/> 5 Q. Do you see 319.26 is a<br/> 6 deposition on written questions in the<br/> 7 Coker case served on McCrone. Do you see<br/> 8 that?<br/> 9 A. Yes.<br/> 10 Q. Okay. And if you look at the<br/> 11 319.28, the questions are "Did you ever<br/> 12 visit and test talc from the Val Chisone<br/> 13 Mine and the Hammondsville Mine for Johnson<br/> 14 &amp; Johnson?" Do you see that?<br/> 15 A. I'm going to it. 319.28.<br/> 16 Q. Uh-huh. I put it up on the<br/> 17 screen to make it easy for you.<br/> 18 A. Yeah, all right. I like to<br/> 19 look at here, because the screen --<br/> 20 Q. Yeah, go ahead.<br/> 21 A. Okay. Oh, it's backwards, all<br/> 22 right. Number two.<br/> 23 Q. Yeah.<br/> 24 A. Deposition directed to McCrone.</p> | <p style="text-align: right;">Page 655</p> <p>1 requested, your response was that you<br/> 2 weren't turning them over because it was a<br/> 3 trade secret, right?<br/> 4 MS. BROWN: Objection.<br/> 5 Misstates the document.<br/> 6 BY MR. PLACITELLA:<br/> 7 Q. It says "Finally, the<br/> 8 information requested from the witness is<br/> 9 subject to proprietary and trade secret<br/> 10 privileges of Defendant." That's you?<br/> 11 MS. BROWN: I object.<br/> 12 You're misstating the document.<br/> 13 THE WITNESS: I'm in the<br/> 14 process of reading it.<br/> 15 BY MR. PLACITELLA:<br/> 16 Q. Sure.<br/> 17 A. So you want me to go to, on<br/> 18 .106, it's number four? Is that what it<br/> 19 is?<br/> 20 Q. Four and five.<br/> 21 A. Okay. If I can read it.<br/> 22 MS. BROWN: Yeah, take<br/> 23 as long as you need,<br/> 24 Mr. O'Shaughnessy.</p>          |

1 THE WITNESS: So it  
2 looks like, I don't recall this  
3 document, but it looks like to me  
4 that questions were directed to  
5 McCrone.  
6 BY MR. PLACITELLA:  
7 Q. Correct.  
8 A. And so the Johnson & Johnson  
9 lawyers objected to the questions to  
10 McCrone.  
11 Q. Correct.  
12 A. And on the basis of the  
13 objections, including -- I mean, there are  
14 a lot of objections here and a lot of this  
15 goes to, I guess, the procedure involved in  
16 Texas for these sorts of questions to a  
17 nonparty.  
18 Q. Okay.  
19 A. And part of that refers to  
20 Texas law --  
21 Q. Yup.  
22 A. -- that the request was in  
23 violation of the Texas law.  
24 Q. Yeah. Go ahead.

1 A. And in terms of the form it was  
2 used, so that was an objection. And then  
3 they add, among other objections, that "the  
4 information requested is subject to  
5 proprietary and trade secret privileges of  
6 Defendant." So yes, we did assert that.  
7 Q. So now we have two sets of  
8 secrets in the Coker case, the Blount  
9 article, and all the testing documents,  
10 right?  
11 MS. BROWN: I object.  
12 Argumentative, misstates the  
13 evidence.  
14 BY MR. PLACITELLA:  
15 Q. The fact -- I'm sorry, I  
16 misspoke, we have two secrets. One, Alice  
17 Blount found asbestos in Johnson's Baby  
18 Powder; and two, all the testing documents  
19 on your right?  
20 MS. BROWN: Objection.  
21 Misstates the evidence,  
22 argumentative.  
23 THE WITNESS: No, like I  
24 said before, the Blount issue was

1 not a secret. And number two, what  
2 you call a second secret is a trade  
3 secret. Now, there's a whole law  
4 around trade secret. It's a term  
5 of art that applies to a company's  
6 documents that I believe are so  
7 sensitive that disclosure of them  
8 without certain protections would  
9 harm the business of the company.  
10 So it's not a secret. It's a trade  
11 secret and it's recognized and it's  
12 often made in objections.  
13 BY MR. PLACITELLA:  
14 Q. Okay. Did you turn the  
15 documents over then?  
16 MS. BROWN: Objection.  
17 Assumes facts.  
18 THE WITNESS: I don't  
19 know. I mean, you're showing me  
20 one snippet of this discovery  
21 record and I'm not sure if it was  
22 or wasn't, because if we raised the  
23 trade secret objection, then a lot  
24 of things could have happened and I

1 don't recall what. But the  
2 plaintiff who wanted the documents  
3 could say, well, no, we don't agree  
4 with Johnson & Johnson and take it  
5 into the court and the court would  
6 have ruled on it. I don't know if  
7 any of that happened, but there's a  
8 whole procedure involved here.  
9 BY MR. PLACITELLA:  
10 Q. All my question is, sir, do you  
11 have any proof, as you sit here today, that  
12 you turned any of those documents over on  
13 your right in the Coker case?  
14 MS. BROWN: Objection.  
15 Assumes facts.  
16 THE WITNESS: I don't  
17 recall what we did in the Coker  
18 case. I don't recall a discovery  
19 record. We may not have with the  
20 court's permission or we may have  
21 had to turn them over with the  
22 court's ruling.  
23 BY MR. PLACITELLA:  
24 Q. Okay. Well, you said that --

1 you said they were trade secrets was they  
2 were so sensitive they could hurt the  
3 company. How could they hurt the company?

4 MS. BROWN: Objection.

5 Misstates the testimony and the  
6 evidence.

7 THE WITNESS: I don't  
8 know what documents were requested,  
9 so I can't comment on that now, but  
10 it could be something about the  
11 procedure or the methods that was  
12 proprietary.

13 BY MR. PLACITELLA:

14 Q. Well, you had the McCrone file,  
15 they handed it to you.

16 A. You handed me three  
17 documents --

18 Q. No, no, sir, let me back up.  
19 You had the McCrone file, they sent it to  
20 you, correct? In the Ritter case, they  
21 sent you their entire file.

22 A. No, what she sent me was  
23 elaborated on in that letter, I don't know  
24 if it's the entire file.

1 Q. It says the entire file in the  
2 document, sir.

3 A. Let's go see the document,  
4 please.

5 Q. Okay. I want to make sure I  
6 don't screw something up here. Here's the  
7 letter, 1035.

8 A. Yeah.

9 Q. "A copy of our entire file has  
10 been enclosed for your review." Do you see  
11 that?

12 A. The McCrone file number  
13 ME-4055, I have no idea if that's anything  
14 to do with the trade secrets that's under  
15 discussion in that legal document.

16 Q. But you didn't turn this file  
17 over either in the Coker case, did you?

18 A. I don't know if we did.

19 MS. BROWN: Objection,  
20 wait, hold on.

21 THE WITNESS: I'm sorry.

22 MS. BROWN: Lacks  
23 foundation, misstates the evidence,  
24 and assumes facts.

1 THE WITNESS: Like I  
2 say, I don't know if we did or we  
3 didn't.

4 BY MR. PLACITELLA:

5 Q. Okay. Krushinski, you were  
6 asked questions about that in your prior  
7 deposition. Do you recall that?

8 A. Yes, I do.

9 Q. Okay.

10 A. Can I put this binder way,  
11 please?

12 Q. As long as 277 is not in that  
13 binder, because that's my next question.

14 A. Oh, okay. Got it.

15 MR. TISI: I did put a  
16 chair next to you if you want to  
17 move the binders.

18 MS. BROWN: John, do you  
19 want me to move some of that stuff  
20 over for you?

21 THE WITNESS: No, it is  
22 in that same binder. Yeah, thanks,  
23 Mr. Tisi. 277.  
24 - - - - -

1 (Answers to Interrogatories In  
2 Krushinski Case Bates JNJ 000065001  
3 to 650011 marked O'Shaughnessy  
4 Exhibit 277 for identification.)  
5 - - - - -

6 BY MR. PLACITELLA:

7 Q. Yes. And, again, 277, it was  
8 marked before, it's the Answers to  
9 Interrogatories that were shown to you in  
10 the last deposition?

11 A. Okay, yes.

12 Q. In Krushinski, do you recall  
13 that?

14 A. Yes.

15 Q. And do you recall you were  
16 asked, I think it's 17, at 17?

17 A. Number 17?

18 Q. Yes which would be 277.7.

19 A. Yes.

20 Q. And you approved answers that  
21 said that the defendant's talc source,  
22 defendant is you, correct?

23 A. Yes.

24 Q. Did not contain asbestos or

1 tremolite. You approved those answers,  
2 right?

3 A. This is 17, this is the one we  
4 read the other day, yes.

5 Q. Yes. Okay. Now, what was the  
6 factual source for that statement?

7 A. The source would have been, as  
8 I said before, it would have been  
9 discussions with people at the company in  
10 general and in preparation of the defense  
11 as well as the examination of documents  
12 that the company had.

13 Q. Okay. What documents did you  
14 look at?

15 A. Well, this would include all of  
16 the documents that were collected and the  
17 synthesis of that with knowledge of  
18 counsel, and the knowledge of our counsel.

19 Q. Did it include all of those  
20 documents that were to your right?

21 A. I don't know specifically what  
22 was collected at that time.

23 Q. Okay. And who was the exact  
24 person who told you as a factual basis that

1 the talc sources that you used did not  
2 contain asbestos or tremolite?

3 A. This would have been based on  
4 discussions -- I don't recall any specific  
5 discussions for this. But it would have  
6 been -- I'm not finished, but it would have  
7 been based on the discussions and  
8 investigations that we do in terms of  
9 defending the litigation and interviewing  
10 witnesses and looking at documents. So the  
11 attorneys synthesize that and then they use  
12 that information to answer the questions.

13 Q. And you told Judge Keefe the  
14 exact same thing, right, there's no  
15 asbestos in Johnson's Baby Powder?

16 MS. BROWN: Objection,  
17 vague.

18 THE WITNESS: That is  
19 the position of the company.

20 BY MR. PLACITELLA:

21 Q. The answer is yes, you told  
22 Judge Keefe that?

23 A. I don't know what was told to  
24 Judge Keefe.

1 Q. Do you remember you testified  
2 about that the last time, it was the  
3 mediation memo you sent to him?

4 A. I don't -- if it was in there,  
5 it was in there.

6 Q. Okay. And I'll mark my  
7 Exhibit 1052, which is the  
8 2/24/2003 mediation memo into the record  
9 and I won't ask any more questions to keep  
10 this thing going.

11 - - - - -

12 (Mediation Memo dated 2/4/03  
13 Bates JNJTALC001243929 to 1243949  
14 marked O'Shaughnessy Exhibit 1052  
15 for identification.)

16 - - - - -

17 BY MR. PLACITELLA:

18 Q. In the Krushinski case, do you  
19 have any proof that you turned over any of  
20 the testing records that are on your  
21 right-hand side today?

22 MS. BROWN: Objection.

23 Assumes facts, lacks foundation.

24 THE WITNESS: No,

1 again --

2 BY MR. PLACITELLA:

3 Q. That show asbestos, I'm sorry.

4 MS. BROWN: Same  
5 objections.

6 THE WITNESS: Can you  
7 ask it?

8 BY MR. PLACITELLA:

9 Q. Let me ask you, did you turn  
10 over any of the McCrone, any McCrone  
11 records in the Krushinski case?

12 MS. BROWN: It assumes  
13 facts and misstates the evidence.

14 THE WITNESS: I have no  
15 specific recollection of what was  
16 turned over or not turned over in  
17 these cases.

18 BY MR. PLACITELLA:

19 Q. As you sit here today, do you  
20 have any proof that you turned over any  
21 testing records at all in the Krushinski  
22 case?

23 MS. BROWN: That assumes  
24 facts. Lacks foundation.

1 THE WITNESS: You know,  
2 you're asking me 20-plus years  
3 later whether I have any proof that  
4 I turned over certain documents and  
5 sitting here today, I don't. But I  
6 know that our practice was to, as  
7 we went over before, to comply with  
8 discovery requests to the best of  
9 our ability and I don't recall  
10 exactly what was done in each  
11 particular case or what documents  
12 were produced or not produced.  
13 That's specific to the case. It's  
14 specific to the request in the  
15 case, the local law, input from  
16 counsel and our objections.

17 BY MR. PLACITELLA:

18 Q. Okay. So what did you do with  
19 the file from the Krushinski case?

20 A. The Johnson & Johnson law  
21 department file would have been in the file  
22 room and at some point sent to off-site  
23 storage.

24 Q. So if it's in off-site storage,

1 we could look at it and find out exactly  
2 what you sent to the plaintiff's lawyer in  
3 that case.

4 A. If it's still there.

5 Q. Oh, okay.

6 A. Well, I'm sorry, you said to  
7 find out what was sent to the plaintiff's  
8 lawyer.

9 Q. Yes, sir.

10 A. That would be in the possession  
11 of our local counsel. Our files did not  
12 contain documents that we produced in  
13 litigation.

14 Q. So when you were producing  
15 documents in litigation and people are  
16 asking you for information from prior  
17 cases, did you go back to all your local  
18 counsel and say send me all your files?

19 A. You were asking me about the  
20 McCrone production, whether or not McCrone  
21 documents were produced in Krushinski and  
22 what I'm saying, if they were produced in  
23 Krushinski, that would have been handled by  
24 the local attorneys, MehaffyWeber firm, in

1 conjunction with the New Jersey firm.  
2 Those documents would be in the collection  
3 of our lawyers and they would have  
4 collected that beforehand and they would  
5 use that document collection, that body of  
6 documents to respond to discovery requests.

7 Q. By the way, your lawyer, one of  
8 your lawyers was the MehaffyWeber firm in  
9 the Krushinski case, right?

10 A. Yes, they would have been  
11 assisting and Drinker Biddle, are they on  
12 there? Drinker Biddle would have been our  
13 counsel as well.

14 Q. And MehaffyWeber was in on the  
15 Blount secret of finding asbestos in  
16 Johnson's Baby Powder, weren't they?

17 MS. BROWN:

18 Argumentative. Misstates the facts  
19 and the evidence, and assumes  
20 facts.

21 THE WITNESS: There was  
22 no Blount secret.

23 MR. PLACITELLA: I'm  
24 sorry, could you read the answer

1 back?

2 - - - -

3 (Whereupon, the reporter read  
4 back as requested.)

5 - - - -

6 BY MR. PLACITELLA:

7 Q. So you told the lawyers on the  
8 other side in the Krushinski case about  
9 what you knew from Dr. Blount?

10 MS. BROWN: Objection,  
11 argumentative.

12 THE WITNESS: That's not  
13 my testimony. My testimony is  
14 you're characterizing it as a  
15 secret, something that was hidden  
16 away by the company and I'm saying  
17 that's not the case. We respond to  
18 discovery based on the particular  
19 requests and the particular local  
20 law. So you asked me was this  
21 provided to other people, I don't  
22 know. It might have been. It  
23 might not have been.  
24



1 BY MR. PLACITELLA:

2 Q. Well, sir, you said under --  
3 your company said under oath that there's  
4 no evidence of asbestos or tremolite, but  
5 you knew that was not true?

6 MS. BROWN: Objection,  
7 misstates testimony.

8 THE WITNESS: No, that's  
9 not correct at all.

10 BY MR. PLACITELLA:

11 Q. Okay. Let's keep going. I  
12 don't know, when do you guys want to take a  
13 break? Is now a good time? Do you want me  
14 to keep pushing forward?

15 MS. BROWN: Sure, we'll  
16 take a break.

17 MR. PLACITELLA: I'm  
18 fine --

19 MS. BROWN: How are you  
20 doing on time, Chris?

21 MR. PLACITELLA: I'm  
22 getting there.

23 MS. BROWN: Okay. Why  
24 don't we take a short break then?

1 MR. PLACITELLA: Don't  
2 make it too long.

3 MS. BROWN: Okay.

4 THE VIDEOGRAPHER: Off  
5 the record, 2:12 p.m.

6 -----

7 (A recess was taken at this time.)

8 -----

9 THE VIDEOGRAPHER: We  
10 are back on the record at 2:36 p.m.

11 BY MR. PLACITELLA:

12 Q. Okay. So for context,  
13 Krushinski is around 2000, 2001, right?

14 A. I'll accept that.

15 Q. Okay. And then in 2002, the  
16 issue with the National Toxicology Project  
17 comes up, remember you talked about that  
18 last time?

19 A. Yes.

20 Q. And internally at Johnson &  
21 Johnson, you testified that your  
22 recommendation was to tell the National  
23 Toxicology Program there's no asbestos in  
24 Johnson & Johnson's talc. Do you recall

1 that?

2 A. No.

3 Q. You don't recall giving that  
4 testimony?

5 A. Are you referring to the email  
6 I discussed?

7 Q. Yes.

8 A. And can I see it, I please?

9 Q. Okay. I'll find it at a break.  
10 I didn't think it was going to be an  
11 argument.

12 A. No, it's just the way you're  
13 phrasing it, it doesn't sound exactly the  
14 way I remember.

15 Q. I'll pull it out in a break.

16 And then in 2004, do you remember the  
17 discussion about the forensic analytical  
18 report that you received from the TV  
19 station. Do you recall that?

20 A. I received, yeah, I recall the  
21 issue with the TV station, yeah.

22 Q. And I actually don't have it in  
23 your binder, I apologize.

24 A. No, that's fine.

1 Q. But I will --

2 A. Is this it here?

3 Q. Yeah. This is the report that  
4 you went over with Mr. Block.

5 A. It was the subject of some  
6 emails, right?

7 Q. Correct. Correct. And you  
8 testified that you learned of the report  
9 because it might come up in litigation. Do  
10 you recall that?

11 A. I don't have the email in front  
12 of me, the exact words that they used when  
13 they sent it. I was copied on it and  
14 oftentimes, they would copy me on  
15 information that could be -- come up in  
16 litigation because they know that was my  
17 role.

18 Q. Right.

19 A. Yeah.

20 Q. And I think you testified last  
21 time that one of the reasons you got the  
22 report was because it might come up in  
23 litigation. That was your testimony.

24 A. Yeah, without seeing the email,





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1 misstates the evidence.  
2 Argumentative.  
3 THE WITNESS: Again, I  
4 don't want to, you know, belabor  
5 it, but I don't think there was any  
6 secret about that. And, yes,  
7 Mr. Williams did transfer all of  
8 the files that he had on J&J, it  
9 went with him.  
10 BY MR. PLACITELLA:  
11 Q. Okay. Can you go to two -- so  
12 you worked on the Durham case, does that  
13 refresh your memory?  
14 A. Apparently, I was there, yes.  
15 Q. Okay. Can you go to  
16 Exhibit 230 in your binders, I think that  
17 would be binder number one.  
18 A. I have 230.  
19 -----  
20 (Affidavit of Dr. John Hopkins  
21 in Durham case marked O'Shaughnessy  
22 Exhibit 230 for identification.)  
23 -----  
24

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1 BY MR. PLACITELLA:  
2 Q. And 230 is an affidavit  
3 submitted by Johnson & Johnson signed by  
4 Dr. Hopkins in the Durham case, right?  
5 A. Yes.  
6 Q. Okay. And Dr. Hopkins is one  
7 of those scientists that you stated that  
8 you relied upon for giving you the truth  
9 and the whole truth, correct?  
10 A. Yes.  
11 Q. Okay. And he was also on the  
12 Worldwide Talc Safety Committee, right?  
13 A. He was listed on it, yes.  
14 Q. Ms. Brown is smiling at me.  
15 She doesn't usually do that. Okay. And on  
16 page 230.3, if you can go to that?  
17 A. I'm on 230 and it would be  
18 page 3.  
19 Q. Yeah, it says 230.3.  
20 A. I don't have that, but I do  
21 have -- I do have the page you have up on  
22 the screen.  
23 Q. Okay. I'm sorry.  
24 A. Mine is missing an exhibit tag.

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1 Q. Oh, I goofed up.  
2 A. That's all right.  
3 Q. Lea, if you're listening, 30  
4 lashes. Okay. Do you see here under  
5 audits of talc mines?  
6 A. Yes.  
7 Q. Okay. He says that he  
8 consulted Dr. Pooley. Do you know who  
9 Dr. Pooley is?  
10 A. Yes.  
11 Q. Okay. Who is Dr. Pooley?  
12 A. I believe he's a professor at  
13 the University of Cardiff in Wales who  
14 specializes in, I was going to say lung  
15 issues and but I see here it says  
16 mineralogy and geology, so I'm corrected by  
17 that.  
18 Q. He's somebody who helped you  
19 out in litigation?  
20 A. I believe we consulted with  
21 Professor Pooley in the litigation, yes.  
22 Q. And Dr. Hopkins says to you, or  
23 not to you, but writes in his affidavit  
24 "the conclusion of the audits," he's

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1 talking about looking at the talc mines in  
2 Italy and Vermont. Do you see that?  
3 A. Yes, I do.  
4 Q. And he says "The conclusion of  
5 the audits was that for both the Italian  
6 and Vermont mines, there was zero evidence  
7 of asbestos in the geology and mineralogy  
8 of the mines." Do you see that?  
9 A. I do.  
10 Q. But you had testing reports in  
11 your possession that contradicted that  
12 statement, didn't you?  
13 MS. BROWN: Objection.  
14 Misstates the evidence.  
15 THE WITNESS: The  
16 testing reports that we spoke about  
17 before were -- McCrone testing was  
18 of the baby powder. This seems to  
19 be about the geology.  
20 BY MR. PLACITELLA:  
21 Q. Right.  
22 A. Right. Right.  
23 Q. But you also had reports from  
24 Dr. Pooley about his studies of your mines,

1 correct?

2 A. I believe Pooley did visit our  
3 mines, yes.

4 Q. And can you go to J&J 586 and  
5 maybe I can, if you wouldn't mind, I'll  
6 walk over and try to help you.

7 A. Sure. Sure.

8 Q. You're not going to find it  
9 over there.

10 A. Uh-huh.

11 Q. Okay. It's in this book. If  
12 you go to 586 in this book.

13 A. I have it.

14 Q. Okay. And for identification,  
15 586 is a report entitled "Department of  
16 Mineral Exploitation from the University of  
17 Cardiff." And we know that's where  
18 Dr. Pooley worked, right?

19 A. Yes.

20 Q. And this dates all the way back  
21 to 1972, right, if you look on the next  
22 page.

23 A. It does, yes.

24 Q. And it says "This document

1 represents the completion report of the  
2 Italian mine samples and other powders  
3 supplied by Johnson & Johnson." Do you see  
4 that?

5 A. Yes.

6 Q. Okay. And if you go to  
7 586.124.

8 MS. BROWN: What binder  
9 is this in, I don't have it.

10 MR. PLACITELLA: It says  
11 "additional testing documents."  
12 You have it, it might be behind  
13 you, I don't know.

14 MS. BROWN: Okay.

15 BY MR. PLACITELLA:

16 Q. Are you with me?

17 A. Not yet.

18 Q. It's towards the end.

19 A. Yeah, I'm almost there. I got  
20 it.

21 Q. There's a section at the end,  
22 it says conclusions. Do you see that?

23 A. Right, yeah.

24 Q. And in the conclusions, they

1 talk about what they found. Do you see  
2 that?

3 A. I do.

4 Q. And it says "Minerals found and  
5 associated with the talc specimens included  
6 tremolite." Do you see that?

7 A. I'm probably looking at the  
8 wrong paragraph.

9 Q. Okay. I have it.

10 A. I see that, second paragraph.

11 Q. Yup.

12 A. The carbonate night specimens  
13 examined, et cetera and were accompanied by  
14 talc chloride, tremolite, others, all in  
15 minor amounts.

16 Q. And then in the next paragraph  
17 it says "The powder X-ray examination  
18 confirmed that a major minerals occurring  
19 in the hand specimens and a classification  
20 was possible into three groups already  
21 mentioned, rock types, carbonate samples,  
22 and talc specimens." Do you see that?

23 A. I do.

24 Q. And it says "The only asbestos

1 type mineral to be detected in the hand  
2 samples was tremolite." Do you see that?

3 A. Yes.

4 Q. Okay. That's from Dr. Pooley,  
5 that's not consistent with what Dr. Hopkins  
6 put in his affidavit, is it?

7 MS. BROWN: Objection.  
8 Misstates the document and the  
9 evidence.

10 THE WITNESS: You know,  
11 there was a time when I kind of  
12 understood a little bit about some  
13 of these terms, but I definitely  
14 don't now. But even back then when  
15 I did have an understanding of it,  
16 I would ask the company scientists  
17 to explain it to me. So I can't  
18 really interpret this.

19 BY MR. PLACITELLA:

20 Q. Did Dr. Hopkins in making this  
21 statement, this sworn statement, ever  
22 advise you that he had in his possession  
23 test results from Pooley that actually  
24 showed tremolite asbestos in the Italian

1 mines?

2 MS. BROWN: Objection.  
3 That misstates the evidence.

4 THE WITNESS: My  
5 recollection of any discussions I  
6 had with Hopkins and others was  
7 that the findings were always no  
8 asbestos there.

9 BY MR. PLACITELLA:

10 Q. Well, that's not what this says  
11 though, sir --

12 A. I know, but, see, now we're  
13 getting into what tremolite is or isn't and  
14 I'm not really qualified to say that and I  
15 don't know what Mr. Hopkins would say about  
16 that.

17 Q. Let's read it together.

18 A. Sure.

19 Q. "The only asbestos type mineral  
20 to be detected in the hand samples was  
21 tremolite." Did I read that correctly?

22 A. You did.

23 Q. Okay. And remember that Dr.  
24 Hopkins in his affidavit that was turned

1 over in this case also said that Pooley  
2 never found any tremolite-type asbestos in  
3 the Vermont mines. Do you remember that?

4 A. Yeah, well, from what we just  
5 read before, right?

6 Q. Right.

7 A. Okay.

8 Q. Can you go in the same book to  
9 620. 620 is a May 16, 1973, report from  
10 T.H. Shelley. Do you see that?

11 A. 620?

12 Q. Yes.

13 A. "Proposed specs for analyzing  
14 talc for asbestos."

15 Q. J&J --

16 A. The next page has got it. I  
17 have it.

18 Q. It's page 2, I'm sorry.

19 MS. BROWN: I object as  
20 lacking foundation.

21 BY MR. PLACITELLA:

22 Q. Okay. And in the third  
23 paragraph it says that Pooley found  
24 .05 percent of a tremolite-type asbestos in

1 Vermont, right?

2 MS. BROWN: It does not  
3 say that.

4 BY MR. PLACITELLA:

5 Q. Let me read the whole thing so  
6 it's clear, "England is considering method  
7 of preconcentrating the asbestos so as to  
8 to be analyze by X-ray." Do you see that?

9 A. I do.

10 Q. "They find no asbestos by doing  
11 this with Italian talc. They find (Pooley)  
12 .05 percent of a tremolite-type in  
13 Vermont." Do you see that?

14 A. I do.

15 Q. Okay. And if we go back to Dr.  
16 Hopkins' affidavit, he says Pooley found no  
17 asbestos, zero evidence in the Italian and  
18 the Vermont mines, correct?

19 A. Right.

20 Q. Now, if you go to 230.4, which  
21 is the next page.

22 A. Okay.

23 Q. That's the end of his  
24 affidavit?

1 A. The affidavit?

2 Q. Yes. I'll put it up on the  
3 screen. He ends by saying "It may be  
4 concluded there has never been asbestos  
5 contamination of the talc used by Johnson &  
6 Johnson in the United States from the  
7 period in question, 1955-2002." He says  
8 that, correct?

9 A. He does say that.

10 Q. Okay.

11 A. And, you know, you're asking  
12 me, you know, you're showing me these  
13 documents from 1973, et cetera, and I don't  
14 think you're asking me to interpret them.  
15 But maybe you are and to the extent you  
16 are, I cannot interpret them and you would  
17 have to speak to Mr. Hopkins about that.  
18 Okay?

19 Q. Respectfully sir, I move to  
20 strike. There was no question.

21 A. It was the end of the answer to  
22 your first question.

23 Q. I will leave it as it is.

24 Now, Dr. Hopkins actually

1 testified with you present in that case,  
 2 correct?  
 3 A. That transcript you showed me,  
 4 yes.  
 5 Q. Okay.  
 6 A. And by that case, you mean that  
 7 Durham case, right?  
 8 Q. Correct.  
 9 A. Yeah.  
 10 Q. And can you go to page --  
 11 A. And what is that again, sorry,  
 12 Mr. Placitella.  
 13 Q. I'm sorry, it's TR15 in the  
 14 transcript binder.  
 15 A. TR15.  
 16 Q. And I'm going specifically to  
 17 TR15.34. And focusing on page 133.  
 18 A. Just want to make sure I have  
 19 the deposition here.  
 20 Q. Yes.  
 21 A. Okay. Okay. 133?  
 22 Q. Right. It would be page 34 of  
 23 your document. You know what, in the  
 24 interest of time, let's just go right to

1 TR15.37, okay, so that's three pages later.  
 2 A. The same transcript?  
 3 Q. Yeah, same transcript.  
 4 A. 15.37?  
 5 Q. Yeah.  
 6 A. Tell me what page on the  
 7 transcript, I could probably find it.  
 8 Q. Sure, absolutely, it's page 143  
 9 of the transcript.  
 10 A. Yeah, that's a lot easier. I  
 11 thought it was a lot easier, but I don't  
 12 see.  
 13 Q. Yeah, no problem.  
 14 A. I don't have 143. It goes from  
 15 133 to 162.  
 16 Q. Oh, that's bad --  
 17 A. Then it goes down.  
 18 Q. That's bad for me. Well, let  
 19 me show it to you and then we'll fix it.  
 20 A. What was the page? I think,  
 21 I'm closing in on it.  
 22 MS. BROWN: 143.  
 23 BY MR. PLACITELLA:  
 24 Q. 143.

1 A. I have it.  
 2 Q. Okay. And I highlighted in  
 3 green the part I want to talk to you about.  
 4 A. Okay. I see it.  
 5 Q. So Question: "So based on what  
 6 we've discussed, what you've come to the --  
 7 for the talc sources used in the United  
 8 States over the period 1955 to 2002,  
 9 there's never been an instance of asbestos  
 10 contamination?"  
 11 Answer: "That appears to be  
 12 the case, yes. Reviewing all of the data  
 13 from the mineralogy, from the mine, from  
 14 the actual physical testing of talc samples  
 15 from those mines, then asbestos  
 16 contamination, there is no evidence." Do  
 17 you see that?  
 18 A. Yeah, he's talking about the  
 19 totality of the evidence, I think.  
 20 Q. And in this case, the Durham  
 21 case, do you have any evidence that you  
 22 ever turned over any of the testing  
 23 documents that we went over here -- that we  
 24 pointed out here today?

1 MS. BROWN: Objection.  
 2 Misstates the evidence. Lacks  
 3 foundation.  
 4 THE WITNESS: My answer  
 5 would be the same answer I gave  
 6 before that I have no recollection  
 7 of what was done in a specific case  
 8 and I went through how we answered  
 9 the interrogatories in cases and  
 10 what we did to do that and so I  
 11 can't answer your question other  
 12 than the way I answered it before,  
 13 which I could repeat, if you want,  
 14 but I'm getting tired --  
 15 MR. PLACITELLA: Please  
 16 don't.  
 17 THE WITNESS: -- and I  
 18 don't know if I can do it.  
 19 BY MR. PLACITELLA:  
 20 Q. Please don't.  
 21 A. All right.  
 22 Q. As you sit here today, do you  
 23 have any recollection of turning over the  
 24 testing documents in the Durham case?



1 MS. BROWN: Objection.  
 2 Lacks foundation. Assumes facts.  
 3 THE WITNESS: I don't  
 4 have any specific recollection of  
 5 what was produced in this case or  
 6 not produced, because of the  
 7 passage of time.  
 8 BY MR. PLACITELLA:  
 9 Q. Okay. Do you have any  
 10 recollection of turning over the Blount  
 11 report or the information that Blount found  
 12 asbestos in Johnson's Baby Powder in the  
 13 Durham case?  
 14 MS. BROWN: That assumes  
 15 facts and lacks foundation.  
 16 THE WITNESS: It would  
 17 be the same answer, Mr. Placitella.  
 18 BY MR. PLACITELLA:  
 19 Q. Okay. Last case I want to ask  
 20 you about. You were involved in a case  
 21 called Lopez. Do you recall that? It  
 22 should be a little bit more familiar,  
 23 because it's a little bit more recent.  
 24 A. I don't, but if you point it

1 out to me, I'm sure you have a reason why  
 2 you're saying that.  
 3 Q. Can you go to 1044 in your  
 4 book. And 1044 is the deposition of Roger  
 5 Miller.  
 6 MR. COX: The transcript  
 7 1044?  
 8 MR. PLACITELLA: Yes.  
 9 THE WITNESS: Okay, I'm  
 10 sorry, wrong one. I see Lopez,  
 11 yes.  
 12 - - - - -  
 13 (Deposition of Roger Miller  
 14 taken 1/16/07 marked O'Shaughnessy  
 15 Exhibit 1044 for identification.)  
 16 - - - - -  
 17 BY MR. PLACITELLA:  
 18 Q. Okay. And if you go to the  
 19 second page, you'll see that you were the  
 20 person representing Miller in this case?  
 21 A. I'm looking for my name. I  
 22 don't doubt what you say, but there's so  
 23 many people here.  
 24 Q. I blew it up on the bottom. I

1 blew it up for you.  
 2 A. Yeah, I was present for that,  
 3 yes.  
 4 Q. And if you go to --  
 5 A. And also, for J&J was Mr.  
 6 Pulliam and Mr. Williams.  
 7 Q. Wow, you've got a lot of people  
 8 there.  
 9 A. Not compared to the others.  
 10 Q. Okay. And can you go to  
 11 1044.84. And I'll tell you exactly what  
 12 page that is in a second. I'm sorry.  
 13 A. Yeah, I think you better give  
 14 me the page.  
 15 Q. Hold on. Go to, it's page 84.  
 16 I blew it up.  
 17 A. I have it.  
 18 Q. The testimony is but -- "All  
 19 right. But there was never a positive  
 20 result for finding asbestos from any of the  
 21 mines from the ore?"  
 22 And the answer is "No,  
 23 never." Do you see that?  
 24 A. Yes.

1 Q. Okay. And can you go to, can  
 2 you go to the 1044.26 which would start on,  
 3 look at page 102?  
 4 A. 1044?  
 5 Q. Which would be page 102 of the  
 6 transcript.  
 7 A. Oh, I'm sorry.  
 8 Q. That's all right. I'm sorry,  
 9 almost done.  
 10 A. I see it.  
 11 Q. Okay. Now, this is the same  
 12 Roger Miller, by the way, who executed the  
 13 Edley affidavit way back 20 years earlier  
 14 in 1987, correct?  
 15 A. Yes.  
 16 Q. And he's asked a series of  
 17 questions. First he's asked "So the  
 18 Argonaut mine, you think, went online -- in  
 19 other words the operations began, right, in  
 20 approximately 1975?" And he says "Right."  
 21 Do you see that?  
 22 A. I see it on the screen, I'm  
 23 just looking for the page again, so I can  
 24 follow it.



1 Q. It's the next page.  
 2 A. What page of the transcript?  
 3 Q. It would be page 103.  
 4 A. I got it. I'm sorry. It's  
 5 right in front of me.  
 6 Q. It's no problem. And he's  
 7 asked specifically "So did the ore from the  
 8 Argonaut mine also go to the Ludlow mill?"  
 9 "Yes.  
 10 "And how long was the  
 11 Argonaut mine used?  
 12 "It's still in operation."  
 13 Do you see that?  
 14 A. Yes.  
 15 Q. And then he's asked on the very  
 16 next page, "Was there testing done at the  
 17 Argonaut mine?" Right?  
 18 And he says, Answer: "Yes.  
 19 "Okay. Same fashion?  
 20 "Same protocol, exactly.  
 21 "And the results never  
 22 revealed any asbestos?" Do you see that?  
 23 A. Well, he answers "Never found  
 24 anything.

1 "Were they looking for a  
 2 particular form, if you know?  
 3 "I believe the suspect  
 4 mineral was chrysotile but I cannot tell  
 5 you precisely what McCrone was looking  
 6 for."  
 7 Q. Right. And his answer was,  
 8 just to be clear, and the results never  
 9 revealed anything, "never found anything,"  
 10 correct?  
 11 A. "Never found anything."  
 12 Q. Right.  
 13 A. And well, the results never  
 14 revealed asbestos. Never found anything.  
 15 Then he goes on to discuss, I guess he  
 16 discusses chrysotile and tremolite and I  
 17 can't follow it.  
 18 Q. Okay. I'm not asking you to.  
 19 So now go to the McCrone book of tests, the  
 20 first book and look at J&J 65 and if you  
 21 need to help you, I'm happy to come over  
 22 and help you.  
 23 A. I think I got it by now. I  
 24 surrender. I think the volume must be over

1 here, Mr. Tisi. These don't look like  
 2 this.  
 3 MR. TISI: These are the  
 4 Musco.  
 5 MS. BROWN: I have mine  
 6 McCrone, do you want my McCrone?  
 7 MR. PLACITELLA: Yeah,  
 8 sure. Just give it to him.  
 9 MS. BROWN: What is it,  
 10 binder one?  
 11 MR. PLACITELLA: One.  
 12 MS. BROWN: Here you go.  
 13 THE WITNESS: Thank you.  
 14 BY MR. PLACITELLA:  
 15 Q. Do you remember he's the one  
 16 who said in the Edley affidavit that he was  
 17 relying upon McCrone testing?  
 18 A. Are you talking about Roger  
 19 Miller --  
 20 Q. Yes, sir.  
 21 A. -- in the affidavit?  
 22 Q. Yeah. He cited the McCrone  
 23 testing?  
 24 A. If he did, I accept that.

1 Q. So this document from 1974?  
 2 A. And which one is it, please?  
 3 Q. Sixty-five.  
 4 A. Got it.  
 5 Q. Is entitled from McCrone  
 6 "Examination of Talc Samples Argonaut Ore  
 7 Body." Do you see that?  
 8 A. Yes.  
 9 Q. So let's just put them side by  
 10 side for a second. Give me a second.  
 11 Okay. So now we have them side by side.  
 12 A. The transcript and this  
 13 exhibit?  
 14 Q. Correct. Where he says, okay.  
 15 When he's talking about the Argonaut mine,  
 16 never received any -- never revealed any  
 17 asbestos. Do you see that? And he says  
 18 never found anything, right, here, I'll  
 19 blow it up again, right?  
 20 A. Okay.  
 21 Q. Now, let's go look at what,  
 22 let's look at this report --  
 23 A. Yes.  
 24 Q. -- from McCrone.

1 A. Okay.  
 2 Q. That's right next to it. And  
 3 do you see Table 2, Electron Microscopic  
 4 Analyses of Talc Ore Symbols?  
 5 A. Yes, I do.  
 6 Q. And you see they actually have  
 7 chrysotile and amphibole?  
 8 A. I see those terms.  
 9 Q. And you see that they list all  
 10 the chrysotile findings in the chart?  
 11 MS. BROWN: Objection,  
 12 misstates the document.  
 13 THE WITNESS: I see  
 14 what's there, but you're asking me  
 15 to interpret the chart and I really  
 16 can't do that. I mean, you know  
 17 these -- one -- I've seen testing  
 18 documents, you know, from time to  
 19 time, and one thing I learned is  
 20 that, you know, the testing was  
 21 varied, it was different and there  
 22 was a lot of it. And to fully  
 23 understand it, you need to really  
 24 have interpreted by someone who is

1 familiar with the testing and we  
 2 would use people at the company in  
 3 R&D and the scientific disciplines  
 4 to do that.  
 5 So you're asking me  
 6 these questions now and they get  
 7 into a form of interpretation which  
 8 I'm not comfortable doing. I don't  
 9 have the expertise to do that. And  
 10 you're lining it up with his  
 11 testimony about that mine, but I  
 12 don't know if that's the testing he  
 13 was referring to or anything else,  
 14 because this -- I don't know what  
 15 he's referring to.  
 16 BY MR. PLACITELLA:  
 17 Q. What was my question?  
 18 A. Can you read it back, please?  
 19 I think we somehow switched roles here.  
 20 Q. Well, I'm trying to understand,  
 21 so let me ask it again. Okay. He  
 22 testified under oath in front of you that  
 23 there was -- the results never revealed  
 24 asbestos ever, right?

1 A. In the context of that  
 2 deposition what it says there and there's a  
 3 lot of other questions I guess too --  
 4 Q. Yes, sir.  
 5 A. -- so you've got to read those  
 6 depositions in context --  
 7 Q. Yes, sir?  
 8 A. -- as I'm sure you're aware.  
 9 Q. I'm absolutely aware.  
 10 MS. BROWN: Let him  
 11 finish.  
 12 THE WITNESS: But you're  
 13 plucking out things and I am saying  
 14 I see what you're reading.  
 15 BY MR. PLACITELLA:  
 16 Q. Okay. And Table 1 is entitled  
 17 "Electron Microscope Asbestos [sic] of the  
 18 Talc Core Samples." Do you see that?  
 19 A. It says --  
 20 Q. Analysis of the Talc Core  
 21 Samples, right?  
 22 A. Yes.  
 23 Q. Okay. And then there's a  
 24 listing of chrysotile and it shows finding

1 chrysotile at almost every level of the  
 2 mine, right?  
 3 MS. BROWN: I object.  
 4 THE WITNESS: I can't  
 5 interpret that.  
 6 MS. BROWN: That  
 7 misstates the document.  
 8 THE WITNESS: I'm not  
 9 the right person to ask that  
 10 question.  
 11 BY MR. PLACITELLA:  
 12 Q. Let me ask you this. Did Roger  
 13 Miller ever share this document with you in  
 14 the context of his testimony that there was  
 15 never ever any evidence?  
 16 A. Did it happen during the  
 17 deposition? I don't -- if it was, it was  
 18 an exhibit at the deposition.  
 19 Q. Should have been, right?  
 20 A. No, I'm saying --  
 21 MS. BROWN: Objection.  
 22 THE WITNESS: -- I don't  
 23 know if it was or wasn't. I don't  
 24 know.

1 BY MR. PLACITELLA:

2 Q. I don't know, you tell me, you  
3 were there.

4 A. Yes, I was there 20 years ago  
5 or so.

6 Q. Well, shouldn't it have been if  
7 he's testifying there is no evidence,  
8 shouldn't it have been there --

9 A. It depends on what the  
10 attorneys were showing him.

11 Q. Okay. So now I want to go to a  
12 new topic, because I'm trying to keep to my  
13 promise to His Honor.

14 By the way, before I end,  
15 when was the first time that you know that  
16 the testing documents that we flagged today  
17 in your deposition were ever turned over in  
18 the context of a talc lawsuit?

19 MS. BROWN: Objection.  
20 Lacks foundation, misstates the  
21 evidence, assumes facts.

22 THE WITNESS: I think I  
23 touched on this before in your  
24 specific questions to specific talc

1 cases. There were, you know, a few  
2 talc cases, many talc cases maybe  
3 over time and they all had their  
4 separate discovery requests and  
5 responses. And they were handled  
6 separately. And we complied with  
7 whatever our obligations were in  
8 the specific case. And at this  
9 point in time, I don't recall any  
10 specific documents or any specific  
11 productions. So you're asking me,  
12 you know, I know you put your three  
13 stacks of documents and I accept  
14 you at your word that they're  
15 McCrone testing and whether they  
16 were produced or not, but I would  
17 not have that information.

18 BY MR. PLACITELLA:

19 Q. Respectfully move to strike.  
20 My question is simply this. You were in  
21 charge of the litigation. When is the  
22 first time you turned over the testing  
23 results by McCrone or anybody else for  
24 asbestos in the Johnson & Johnson talc in a

1 lawsuit? When is the first time?

2 MS. BROWN: Same  
3 objections to the question you just  
4 asked as well as now --

5 MR. PLACITELLA: Please  
6 don't, please.

7 MS. BROWN: Asked and  
8 answered.

9 MR. PLACITELLA: That's  
10 not a form -- that's not a form  
11 objection. Please don't do that.

12 MS. BROWN: It is, asked  
13 and answered --

14 MR. PLACITELLA: It's  
15 not.

16 MS. BROWN: -- and you  
17 know there are objections where I  
18 need --

19 MR. PLACITELLA: That's  
20 definitely not a form objection.

21 MS. BROWN: -- to  
22 preserve.

23 THE WITNESS: In  
24 addition to what I said before, I

1 don't have a recollection right now  
2 of when we first produced documents  
3 in any specific case or what those  
4 documents were.

5 BY MR. PLACITELLA:

6 Q. I'm not asking any specific  
7 case.

8 A. I thought that's what your --

9 Q. Just give me a year, when was  
10 the first time you turned them over,  
11 because all of the research I've done  
12 didn't show that you turned them over until  
13 sometime after 2010.

14 MS. BROWN: Well, you're  
15 arguing and testifying, so I object  
16 to that. And he has answered your  
17 question to the best of his  
18 ability. Mr. O'Shaughnessy, if you  
19 would like to repeat your answer  
20 for the third time, please do so.

21 BY MR. PLACITELLA:

22 Q. Let me ask the question.

23 A. I have the question in mind.

24 And I understand you're not asking me about

1 a specific case, because you're not naming  
2 one. But you are, in essence, because  
3 you're asking me when it was first turned  
4 over and that would be in some specific  
5 case that I can't recall right now.

6 Q. Let me ask you a question this  
7 way. Do you have a -- when you left  
8 Johnson & Johnson, did you have a record of  
9 when you produced what evidence?

10 A. Any record of what was produced  
11 would be with the local law firms and the  
12 outside law firms that did the actual  
13 production.

14 Q. So --

15 A. If they existed.

16 Q. So to get actually all the  
17 evidence from all these cases, we'd have to  
18 send subpoenas to all the local law firms,  
19 right?

20 MS. BROWN: Objection.  
21 Lacks foundation, assumes facts,  
22 misstates the evidence.

23 THE WITNESS: I'm not  
24 going to tell you how to do your

1 job. I'm just answering questions  
2 about where.

3 MR. PLACITELLA: I'm not  
4 asking you to --

5 THE WITNESS: -- the  
6 documents were and how they were  
7 produced.

8 BY MR. PLACITELLA:

9 Q. Yes, sir. But if you didn't  
10 take them at Johnson & Johnson, then the  
11 only way I can find out where all the  
12 evidence is is to actually send subpoenas  
13 to the local law firms, right?

14 MS. BROWN: Objection.  
15 Misstates the evidence, lacks  
16 foundation --

17 THE WITNESS: I don't  
18 know.

19 MS. BROWN: -- and is  
20 argumentative.

21 THE WITNESS: I don't  
22 know.

23 BY MR. PLACITELLA:

24 Q. Okay. Now, can you go to --

1 well, let me ask you this, if you know, off  
2 the top of your head. When was the first  
3 lawsuit filed against Johnson & Johnson  
4 involving Johnson's Baby Powder?

5 A. I don't know. That would have  
6 been before my time with the company.

7 Q. Long before your time, right?

8 A. I don't know. You showed me  
9 some cases today that were before I was  
10 there.

11 Q. Okay. So can you go to  
12 Exhibit 486 in your binder and I'm going to  
13 tell you it's in book two.

14 A. I have 485.

15 Q. I need 486.

16 A. I know. And then my next one  
17 says 542. And, Mr. Placitella, I'm in  
18 additional testing binders?

19 Q. No, no, I'm sorry, your book  
20 two. Do you want me to come over and help  
21 you?

22 A. I don't think that's necessary.  
23 It's here somewhere.

24 MR. TISI: I'll get it.

1 I'll help him.

2 MR. PLACITELLA: Chris,  
3 go help him. This is a logistical  
4 nightmare, I understand.

5 MR. TISI: The Musco 2?

6 MR. PLACITELLA: No.  
7 It's the regular -- let me find it.

8 THE WITNESS: The  
9 regular documents binder.

10 BY MR. PLACITELLA:

11 Q. Yes, JOS on the front. Book  
12 two. Look at 446.

13 A. I got it.

14 - - - - -

15 (Privilege Log marked  
16 O'Shaughnessy Exhibit 486 for  
17 identification.)  
18 - - - - -

19 BY MR. PLACITELLA:  
20 Q. Okay. And go to 486.1.

21 MS. BROWN: I object to  
22 this document on foundation.

23 MR. PLACITELLA: Okay.  
24 THE WITNESS: Okay.

1 BY MR. PLACITELLA:

2 Q. And I'm going to represent to  
3 you this is a privilege log that was served  
4 upon us by Johnson & Johnson and I'm just  
5 going to blow up a section of the log.  
6 According to your privilege log, you had  
7 pending and anticipated litigation  
8 involving baby powder going back to 1974;  
9 is that true?

10 MS. BROWN: Objection.  
11 Misstates the document and lacks  
12 foundation.

13 THE WITNESS: I don't  
14 see where that is stated here. Can  
15 you point it out to me?

16 BY MR. PLACITELLA:

17 Q. Sure.

18 A. I think if you just scroll down  
19 for me a little bit, that might be what you  
20 want me to look at.

21 Q. It might be easier to find on  
22 the next page. Give me a second.

23 A. Okay.

24 Q. So I'm sorry. Getting late in

1 the day. Do you see where it talks about,  
2 I blew it up. Here, if you look at my  
3 screen. Do you see, let's just start with  
4 '77, okay?

5 A. In the left.

6 Q. Right. Do you see it says  
7 11/7/77 Roger Miller pending anticipated --  
8 pending and anticipated litigation, 1977?

9 A. Yes.

10 Q. Okay.

11 MS. BROWN: Objection.  
12 Lacks foundation.

13 THE WITNESS: I see  
14 where that's read, yes.

15 BY MR. PLACITELLA:

16 Q. Okay. And it goes, and if you  
17 keep going down, it goes to 1978, same  
18 thing?

19 A. Uh-huh.

20 Q. Okay. And so here's my  
21 question. If you go to your -- you agree  
22 that once there is pending or anticipated  
23 litigation, you were aware that there was a  
24 duty to put a litigation hold on the

1 evidence, correct?

2 MS. BROWN: Your Honor,  
3 I object. Counsel is asking  
4 Mr. O'Shaughnessy a legal question  
5 about his legal analysis and  
6 judgment about when it is  
7 appropriate for a legal hold to  
8 issue. And that is his mental  
9 thoughts and impressions, his legal  
10 analysis and it's protected.

11 BY MR. PLACITELLA:

12 Q. Let's go to 1049 in your book.

13 A. I have it.

14 - - - - -

15 (Legal Hold Letter dated  
16 5/16/03 marked O'Shaughnessy  
17 Exhibit 1049 for identification.)  
18 - - - - -

19 BY MR. PLACITELLA:

20 Q. Okay. This is a legal hold  
21 document that you put out in 2003.

22 A. Okay.

23 Q. Do you see that?

24 A. Yeah.

1 Q. And do you recognize this?

2 A. I don't recognize it, but I  
3 recognize the form of it, yes.

4 Q. And you say in connection with  
5 this matter, "It is vital to preserve all  
6 documents relating in any way to the below  
7 subject." Do you see that?

8 A. Yes.

9 Q. It says "Failure to preserve  
10 these materials could result in Court  
11 imposed penalties or sanctions on both the  
12 company and/or individual employees." Do  
13 you see that?

14 A. I do.

15 Q. "Do not discard, destroy or  
16 alter in any way any of the documents,"  
17 right?

18 A. Yes.

19 Q. Okay. And as of 1983, when you  
20 were already in litigation, you had no  
21 document retention policy, correct?

22 A. I was not --

23 Q. Johnson & Johnson, I'm talking  
24 about.



|                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                          |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                  |
|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <p style="text-align: right;">Page 720</p> <p>1 A. I was not at the company in<br/>2 '83. I'm unaware of what they had in<br/>3 place.<br/>4 Q. Okay. Look at J&amp;J 443, please.<br/>5 J&amp;J 443.<br/>6 MS. BROWN: Is that<br/>7 testimony?<br/>8 -----<br/>9 (Windsor Minerals' Responses to<br/>10 Interrogatories in Westfall case<br/>11 marked O'Shaughnessy Exhibit 443<br/>12 for identification.)<br/>13 -----<br/>14 BY MR. PLACITELLA:<br/>15 Q. For the record is responses of<br/>16 Windsor Minerals to interrogatories and the<br/>17 person who is supplying the information is<br/>18 Roger Miller, do you see that?<br/>19 A. I do.<br/>20 Q. And if you go to 443.28.<br/>21 A. Yes.<br/>22 Q. Or actually 27.<br/>23 A. Okay.<br/>24 Q. Interrogatory 35.</p>                                                                                     | <p style="text-align: right;">Page 722</p> <p>1 second page was a letter sent by you<br/>2 attaching it in the Coker case, correct?<br/>3 A. Yes.<br/>4 -----<br/>5 (Document Preservation Notice<br/>6 Bates JNJTAL000949679 to 949681<br/>7 marked O'Shaughnessy Exhibit 1051<br/>8 for identification.)<br/>9 -----<br/>10 BY MR. PLACITELLA:<br/>11 Q. Okay. And as you sit here<br/>12 today, are you aware of any document<br/>13 retention hold put out by Johnson &amp; Johnson<br/>14 before this time?<br/>15 A. I don't recall. There may have<br/>16 been. I might have put out a hold before<br/>17 this. I'm not sure.<br/>18 Q. Okay. Because I haven't found<br/>19 one in the production. So I'm asking from<br/>20 your recollection, do you recall any hold<br/>21 before 1997?<br/>22 MS. BROWN: He answered<br/>23 that. I object.<br/>24 THE WITNESS: I don't</p>                                                                                                          |
| <p style="text-align: right;">Page 721</p> <p>1 A. Okay.<br/>2 Q. You're asked specifically<br/>3 whether you have a document retention or<br/>4 destruction policy. Do you see that?<br/>5 A. I do.<br/>6 Q. Okay. And on the next page,<br/>7 the answer is no. Right?<br/>8 A. That's the answer to the<br/>9 question.<br/>10 MS. BROWN: I object.<br/>11 This lacks foundation.<br/>12 BY MR. PLACITELLA:<br/>13 Q. And the first notice that ever<br/>14 went out for a litigation hold was put out<br/>15 by you, correct?<br/>16 MS. BROWN: Objection.<br/>17 Assumes facts. Lacks foundation.<br/>18 THE WITNESS: I don't<br/>19 know that.<br/>20 BY MR. PLACITELLA:<br/>21 Q. Okay. Go to 1051. 1051 is an<br/>22 October 10, 1997, document preservation<br/>23 notice that went to a whole bunch of people<br/>24 including Hopkins, et cetera. And the</p> | <p style="text-align: right;">Page 723</p> <p>1 recall any, but I'm sure there was<br/>2 one, because we didn't suffer from<br/>3 a lack of lawsuits.<br/>4 BY MR. PLACITELLA:<br/>5 Q. Okay. Right. And if there<br/>6 were lawsuits, then you should have put in<br/>7 a hold on the evidence, correct?<br/>8 A. If there was a lawsuit, the<br/>9 policy was to issue a hold notice with<br/>10 respect to that particular case.<br/>11 Q. At least when you were in<br/>12 control?<br/>13 A. No, I think it was there, and I<br/>14 wasn't in control of hold notices, I was<br/>15 managing my cases and that would be part of<br/>16 my responsibility to issue the hold notice,<br/>17 but I wasn't in control of them for other<br/>18 cases or other lawyers. What I'm -- that's<br/>19 it.<br/>20 Q. So given your testimony, can<br/>21 you tell me where are all the files from<br/>22 all these lawsuits?<br/>23 MS. BROWN: Objection.<br/>24 Lacks foundation. Assumes facts.</p> |



1 BY MR. PLACITELLA:

2 Q. Let's say before 2010. Where  
3 are all the files?

4 MS. BROWN: Same  
5 objections.

6 THE WITNESS: I'm sorry,  
7 I was stuck -- I was looking at  
8 this, because I kind of had my  
9 refreshed -- I'm refreshing my  
10 memory a little bit about the hold  
11 notices.

12 BY MR. PLACITELLA:

13 Q. Please.

14 A. So I see that this was sent to  
15 Hernando Arbelaez and then he in turn sent  
16 it to other people at the company. So you  
17 asked me if this was the first hold notice  
18 and I don't think it was, because I think,  
19 you know, as time went on, you know, we  
20 tried to always try to improve our  
21 procedures round hold notices and this --  
22 sending the hold notice to one person at  
23 the other company to distribute it, I don't  
24 think that was the initial way we did it.

1 I think we issued some hold notices  
2 directly to people at the company that we  
3 think were involved and then I think what  
4 happened later on is there would be people  
5 from the company who were assigned to  
6 distribute hold notices not only for, you  
7 know, personal injury litigation like this,  
8 but for any kind of litigation. So that's  
9 why I'm thinking this wasn't the first hold  
10 notice.

11 Q. Okay. Fair enough.

12 A. And I'm sorry, I interrupted  
13 you.

14 Q. No, that's fine. That's fine.  
15 We're trying to get to the bottom. The  
16 hold notice was, you know, it was a serious  
17 issue, right?

18 A. Absolutely.

19 Q. Okay. You wouldn't throw out  
20 hold notices, right, that's part of the  
21 historical files for litigation?

22 A. We would keep the hold notices,  
23 you know, according to, in a particular  
24 file as long as we kept that file, I guess,

1 yeah.

2 Q. Okay. So my question is what  
3 happened to all the hold notices before  
4 1997?

5 MS. BROWN: Asked and  
6 answered. Assumes facts. Lacks  
7 foundation.

8 THE WITNESS: Sitting  
9 here now, I don't recall.

10 BY MR. PLACITELLA:

11 Q. Okay. Now, the hold notice you  
12 put out is not just for the current case,  
13 but when you anticipate further cases, it's  
14 to preserve evidence for all cases going  
15 forward, right?

16 A. No, I think -- I think when we  
17 issued hold notices, they were for a  
18 specific case.

19 Q. So even if you anticipated a  
20 case, you didn't put a hold notice out?

21 A. No, I think maybe we would put  
22 another one out, because sometimes the  
23 case -- each case is different and each  
24 case is treated individually. And so

1 sometimes, the documents that you would  
2 hold for one case doesn't necessarily  
3 translate to the other. So no, we would --  
4 I don't think we had, like, generic hold  
5 notices.

6 Q. So when you anticipated --

7 A. Except I think maybe the mass,  
8 when we started getting mass torts, it  
9 might have been a little bit different, but  
10 I don't know.

11 Q. But when you say you  
12 anticipated future cases, didn't you put a  
13 hold notice at that point in time to  
14 preserve the evidence?

15 A. I don't recall whether we did  
16 or did not.

17 Q. Well, we know that you were  
18 involved in litigation going back to the  
19 early '70s and as of 19 -- J&J --

20 A. Oh, J&J, yes.

21 Q. Yes. And as of 1983, there was  
22 no hold notice, right?

23 A. I don't know whether there was  
24 a hold notice or not. But the hold notices

1 were issued in individual cases, so I'm not  
2 sure where --

3 Q. So this is clear, because it's  
4 important --

5 A. Sure.

6 Q. -- so you're saying even when  
7 you anticipated litigation, you did not  
8 send out hold notices, only when you were  
9 actually sued?

10 MS. BROWN: Objection.  
11 Misstates testimony.

12 THE WITNESS: I don't  
13 recall, I don't recall if that  
14 would provoke a hold notice. I'm  
15 thinking no, because without the  
16 allegations in the complaint, it  
17 would be difficult to say what  
18 should be held.

19 BY MR. PLACITELLA:

20 Q. Okay. Well, you, for example,  
21 indicated to Mr. Tisi that you anticipated  
22 ovarian cancer cases related to talc from  
23 the early 1990s. Do you recall that  
24 testimony?

1 A. Yes.

2 Q. So did you put a hold notice  
3 out at that point for the ovarian evidence?

4 A. I don't think we would have  
5 until we had a case come in.

6 Q. Oh, okay. And what about when  
7 testing was done, right, and samples were  
8 taken in the testing, did your litigation  
9 hold notices go to tell people who are  
10 involved in the testing to retain samples?

11 A. I don't know whether it did or  
12 not. I would have to look at the hold  
13 notice.

14 Q. Well, here's the reason I'm  
15 asking the question.

16 A. Sure.

17 Q. Can you go to J&J 355, which is  
18 in the JOS book.

19 A. I got it.

20 - - - - -

21 (Letter dated 1/28/1987 Bates  
22 JNJALC0000387714 to 387716 marked  
23 O'Shaughnessy Exhibit 355 for  
24 identification.)

1 - - - - -

2 BY MR. PLACITELLA:

3 Q. Okay. 355 is the --

4 A. I'm going to get to it.

5 Q. I'm sorry.

6 A. It's at the end of it. I have  
7 it.

8 Q. I want to show you something  
9 while we're at it. Give me one second. Do  
10 you see -- remember the Edley case and  
11 Roger Miller attaching as proof the report  
12 from McCrone with the code language, no  
13 quantifiable amounts?

14 A. Yes, we discussed that, yeah.

15 Q. Okay. And so clearly this was  
16 a test involved in litigation, correct?

17 MS. BROWN: Objection.  
18 Misstates the document.

19 THE WITNESS: I'm not  
20 sure what you mean by that.

21 BY MR. PLACITELLA:

22 Q. Well, you're attaching test  
23 results to an affidavit filed in litigation  
24 saying what the results show.

1 A. Refresh me, was this attached  
2 to an affidavit?

3 Q. Yeah, if you flip forward, it  
4 was attached to the Miller affidavit?

5 A. Okay.

6 Q. Right.

7 A. Flip forward.

8 Q. It's in 188.3, remember?

9 A. What case was that?

10 Q. Remember in the Edley case,  
11 look at the screen in front of you.

12 A. I don't think I was around for  
13 the Edley case at Johnson.

14 Q. Yeah, I understand. I'm asking  
15 this way -- you said that. But you  
16 actually were around when the affidavit was  
17 filed.

18 A. What's the date of it?

19 Q. It was in July of '87.

20 A. Yes, then I would have been,  
21 but I don't think I was responsible for the  
22 talc litigation at that time.

23 Q. All right. But the same  
24 affidavit was filed a year later when you

3 THE WITNESS: I can't  
4 interpret a document from this t  
5 period from another company, i  
6 looks like, right?

8 Q. Well, sir, it went to your  
9 company --

11 Q. -- and it was a policy that was  
12 being executed in the context of litigation  
13 that your company was handling.

16 THE WITNESS: If it's a  
17 policy, it's the policy of McCrone.

19 Q. Sir, they're working for you,  
20 Johnson & Johnson?

22 Q. Did you tell them don't destroy  
23 the samples, because they're being used in  
24 litigation?

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3 Q. It says "Our present policy is  
4 to hold samples for 30 days after issuance  
5 of the analysis and at no additional  
6 charge. At the end of 30 days, samples  
7 will be disposed." Do you see that?

12 Q. Did you ever send such a  
13 request?

16 Q. The entire time that you worked  
17 for Johnson & Johnson when you were  
18 handling the litigation, did you ever tell  
19 McCrone don't destroy the samples, because  
20 they're being used for litigation?

24 Q. Okay.

---

3 Q. It says "Our present policy is  
4 to hold samples for 30 days after issuance  
5 of the analysis and at no additional  
6 charge. At the end of 30 days, samples  
7 will be disposed." Do you see that?

12 Q. Did you ever send such a  
13 request?

16 Q. The entire time that you worked  
17 for Johnson & Johnson when you were  
18 handling the litigation, did you ever tell  
19 McCrone don't destroy the samples, because  
20 they're being used for litigation?

24 Q. Okay.

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1 A. Obviously, I had some, because  
2 you've shown them to me. And so although I  
3 don't recall specific discussions, if  
4 something came up in a lawsuit, which  
5 called for us to preserve documents that we  
6 knew were with another company, generally,  
7 we took those steps.

8 Q. Sir, it's clear from this  
9 evidence, is it not, that Johnson & Johnson  
10 was being advised during the time  
11 litigation was pending that McCrone was  
12 destroying the samples, the very samples  
13 that Johnson & Johnson was relying upon to  
14 defend itself?

15 MS. BROWN: Misstates  
16 facts, misstates evidence, and  
17 lacks foundation.

18 THE WITNESS: No, I  
19 don't agree with that.

20 BY MR. PLACITELLA:

21 Q. Okay. We'll let the jury  
22 decide. Did you know -- can you go to your  
23 book one, your book one, Exhibit 198.

24 MR. TISI: I'll help you

1 here. It's getting late.

2 THE WITNESS: I think  
3 it's this one, Chris.

4 MR. TISI: Oh, okay, I  
5 was going to try to put it over  
6 here, so you could find it.

7 THE WITNESS: Well, now  
8 I dumped -- all right. Well, that  
9 was about to happen, wasn't it?

10 MR. TISI: Yeah, you  
11 know that's my life --

12 THE WITNESS: I got it,  
13 Chris, thanks.

14 MS. BROWN: 198?

15 MR. PLACITELLA: 198.

16 MR. TISI: Why don't we  
17 take a quick break so you can --

18 THE WITNESS: No, I'm  
19 all right. Let's go.

20 MR. TISI: Are you sure?

21 THE WITNESS: Yeah, I'm  
22 fine. Thanks, Chris. I have 198,  
23 Mr. Placitella.

24 - - - - -

1 (Letter dated 11/26/90 and  
2 Attachment Bates  
3 JNJMX\_\_68\_\_000012851 to 12859  
4 marked O'Shaughnessy Exhibit 198  
5 for identification.)  
6 - - - - -

7 BY MR. PLACITELLA:

8 Q. Sure. 198 is a report from  
9 McCrone to Cyprus Minerals Corporation from  
10 1990. Do you see that?

11 A. Yes, I do.

12 Q. Okay. And do you see they use  
13 the magic language, "no quantifiable  
14 amounts"?

15 MS. BROWN: I object to  
16 the form of the question,  
17 argumentative, lacks foundation.

18 BY MR. PLACITELLA:

19 Q. Do you see that?

20 A. My mic fell off.

21 Q. Yeah, sure.

22 A. You know, you're saying magic,  
23 you're characterizing it in your way. I  
24 see where it says "no quantifiable

1 amounts."

2 Q. Fair enough. And could you go  
3 to page 4?

4 A. I have it.

5 Q. And do you see that there are  
6 actual backup testing data attached to this  
7 report?

8 A. You know, I don't -- I'm not  
9 trying to be difficult, Mr. Placitella, I'm  
10 really not. But you're showing me  
11 documents from a long time ago for testing  
12 reports that if they are testing, I don't  
13 recognize these documents nor can I  
14 interpret them. And I'm not trying to be  
15 difficult, but --

16 Q. I know you're not trying to be  
17 difficult.

18 A. There's other people at the  
19 company who can address this way better  
20 than I can.

21 Q. Yeah, but that's not the point  
22 of my question, so give me a chance. Okay?

23 A. Absolutely.

24 Q. Okay. So do you see that

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1 despite finding no quantifiable amounts,  
 2 the backup data actually lists chrysotile  
 3 fiber?  
 4 MS. BROWN: I object.  
 5 That misstates the document and  
 6 lacks foundation.  
 7 THE WITNESS: I can't  
 8 comment on that.  
 9 BY MR. PLACITELLA:  
 10 Q. Okay.  
 11 A. I really can't interpret it.  
 12 Q. Here's my question. Do you see  
 13 at least that this report has all this  
 14 backup data? I'm not asking you to  
 15 interpret.  
 16 A. My eyes are glazing over at  
 17 this time.  
 18 Q. Okay. Has all this backup  
 19 data, do you see that?  
 20 A. It has graphs and charts. I  
 21 don't know if it's backup data.  
 22 Q. Exactly.  
 23 A. It's attached to the report.  
 24 Q. How come none of the documents

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1 you turned over had the same graphs and  
 2 charts?  
 3 MS. BROWN: That assumes  
 4 facts and lacks foundation.  
 5 BY MR. PLACITELLA:  
 6 Q. Didn't you --  
 7 A. Me personally?  
 8 Q. You, Johnson & Johnson, when  
 9 you turned over, finally turned over the  
 10 testing documents, why didn't you have the  
 11 facts and data attached to the McCrone  
 12 reports?  
 13 MS. BROWN: That assumes  
 14 facts and lacks foundation and he's  
 15 not testifying as Johnson &  
 16 Johnson.  
 17 THE WITNESS: In the  
 18 cases I handle, when we turned over  
 19 documents, we turned over documents  
 20 that we felt were responsive to the  
 21 discovery process in cases that we  
 22 were litigating. So McCrone  
 23 documents were probably turned  
 24 over, I don't know which, I don't

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1 know how many, and I don't know if  
 2 these were among them. But you're  
 3 asking me assuming that, it sounds  
 4 like you're assuming we consciously  
 5 made an effort not to turn  
 6 documents over and that was not  
 7 done.  
 8 BY MR. PLACITELLA:  
 9 Q. No, sir, that's not what I'm  
 10 asking. I'm asking --  
 11 MS. BROWN: Well, let  
 12 him finish though, Chris.  
 13 BY MR. PLACITELLA:  
 14 Q. No, what I'm asking you is why  
 15 didn't you retain the backup data for any  
 16 of the McCrone reports or any other  
 17 reports?  
 18 MS. BROWN: Assumes  
 19 facts, misstates the evidence,  
 20 lacks foundation.  
 21 THE WITNESS: The  
 22 company would have its own process  
 23 with how it dealt with McCrone and  
 24 what tests they received and what

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1 data they received for the tests  
 2 and you would have to discuss this  
 3 with someone at the company.  
 4 BY MR. PLACITELLA:  
 5 Q. Who shall I ask?  
 6 A. You should ask some of the  
 7 people that you might have spoken to  
 8 already, like Hopkins --  
 9 Q. He didn't know.  
 10 A. -- and others in the R&D.  
 11 Q. Give me somebody else.  
 12 MS. BROWN: Chris.  
 13 BY MR. PLACITELLA:  
 14 Q. Who else should I ask? Okay.  
 15 Let's go to --  
 16 A. I'm thinking, but you know --  
 17 Q. Go ahead.  
 18 A. I'm thinking, but you're asking  
 19 me and, you know, technical people at the  
 20 company may have this information.  
 21 Q. The problem is they're all  
 22 gone, dead, or retired, right?  
 23 MS. BROWN: I object to  
 24 the argumentative nature of your



1 question.

2 THE WITNESS: I don't  
3 know if that's true. You know,  
4 through the passage of time that's  
5 normally what happens.

6 BY MR. PLACITELLA:

7 Q. Okay. So let's go to 456 in  
8 your book two.

9 A. I have it.

10 - - - - -

11 (Report dated 11/23/83 Bates  
12 JNJ 000240739 to 40742 marked  
13 O'Shaughnessy Exhibit 456 for  
14 identification.)

15 - - - - -

16 BY MR. PLACITELLA:

17 Q. 456 is a report from  
18 November 23, 1993, from Denton. Do you  
19 know who Denton is?

20 A. I don't know.

21 Q. To William Ashton, you know  
22 him, right?

23 A. I do.

24 Q. He's dead though, right?

1 A. Yes, he is.

2 Q. So the truth died with him,  
3 right?

4 MS. BROWN: Objection.  
5 Chris Placitella, I know it's  
6 getting late, but the questions,  
7 they're so inappropriate.

8 BY MR. PLACITELLA:

9 Q. So let's go to 456.3.

10 A. Yes.

11 Q. Okay. This is 1993.

12 A. Okay.

13 Q. The note in this Johnson &  
14 Johnson document says "The specifics of the  
15 mining operation at Hammondsville are  
16 uncertain, as most of the pre-Luzenac  
17 records were destroyed by the mine  
18 management just prior to the J&J  
19 divestiture and the Cyprus purchase." Do  
20 you see that?

21 A. Yes, I do.

22 MS. BROWN: This lacks  
23 foundation.  
24

1 BY MR. PLACITELLA:

2 Q. "However, several former are  
3 Hammondsville minors are still employed at  
4 the mine and they provided us with some  
5 useful information." Do you see that?

6 A. "As to the nature of the  
7 underground works."

8 Q. Okay. So did you know before  
9 today that all the documents from the mine  
10 were destroyed before you turned over the  
11 mine to Cyprus?

12 MS. BROWN: That  
13 misstates the evidence and assumes  
14 facts and lacks foundation.

15 THE WITNESS: I don't  
16 know what he was referring to and I  
17 don't know exactly what was kept or  
18 not kept and what documents he's  
19 talking about. So I can't comment  
20 on someone else's memo.

21 BY MR. PLACITELLA:

22 Q. Would that have satisfied your  
23 litigation hold?

24 A. I'm sorry?

1 MS. BROWN: I object.

2 BY MR. PLACITELLA:

3 Q. Would that have satisfied your  
4 litigation hold?

5 A. You're mixing apples and  
6 oranges.

7 MS. BROWN: I object.

8 BY MR. PLACITELLA:

9 Q. Okay. So was there a  
10 litigation hold in place in 1993 when  
11 litigation was pending that would have  
12 prevented the destruction of these records?

13 MS. BROWN: Objection.  
14 Misstates the evidence. Assumes  
15 facts.

16 THE WITNESS: I don't  
17 know, I don't know what records  
18 he's referring to and I'm not sure  
19 if there was a specific hold in  
20 place.

21 BY MR. PLACITELLA:

22 Q. Okay. Did you know that  
23 Johnson & Johnson maintained a specific  
24 file for all of their contact, all their



1 phone calls with the FDA? Did you know  
2 that?

3 A. I don't know what files they  
4 maintain with the FDA, but they were pretty  
5 careful about how they recorded their  
6 contacts with the agency.

7 Q. Can you go to 491. 491 is a  
8 January 4, 1984, memo from --

9 A. I'm sorry.

10 MS. BROWN: Hold on.  
11 Let him get there and I object as  
12 lacking foundation.

13 THE WITNESS: I got it  
14 now.

15 - - - - -

16 (Memo dated 1/4/84 marked  
17 O'Shaughnessy Exhibit 491 for  
18 identification.)

19 - - - - -

20 BY MR. PLACITELLA:

21 Q. -- From Robert Kohler with a  
22 copy to Bruce Semple. He was the medical  
23 director, right?

24 A. I don't know what he was at the

1 time. I wasn't with the company.

2 Q. Okay. And it's a memo to the  
3 FDA call file. Do you see that?

4 A. Yes.

5 Q. Did you ever put a litigation  
6 hold out that said to maintain copies of  
7 the FDA call file?

8 A. I don't know what the FDA call  
9 file was. I wasn't with the company at the  
10 time. All I can tell you is when we put  
11 out a hold notice, we would put out the  
12 hold notice and include any documents  
13 specific to the hold notice in the case  
14 that we thought were relevant and should be  
15 preserved.

16 Q. Okay. So I want to show you --  
17 I still have no audio? Let me start it  
18 again. Did you have a -- should the FDA  
19 call file related to asbestos and talc have  
20 been retained pursuant to a document  
21 retention?

22 MS. BROWN: That assumes  
23 facts, misstates this document, and  
24 lacks foundation.

1 THE WITNESS: I don't  
2 know what procedures were in place  
3 in 1984.

4 BY MR. PLACITELLA:

5 Q. Well, I'm talking about ever.

6 A. Oh, ever?

7 Q. Yes, sir.

8 A. So whatever files they had that  
9 was required to be held by the hold notice  
10 should be held.

11 Q. Because I asked Susan Nicholson  
12 who was produced as the person with the  
13 most knowledge about your interaction with  
14 the FDA by you, Johnson & Johnson, this is  
15 what she said about the call file.

16 MS. BROWN: Object to  
17 selective playing of testimony.  
18 Lacks foundation.

19 - - - - -

20 (Video Clip was played.)

21 - - - - -

22 BY MR. PLACITELLA:

23 Q. So I guess Susan Nicholson  
24 never got the hold notice for the FDA call

1 file?

2 MS. BROWN: Okay. That  
3 misstates testimony.

4 THE WITNESS: I don't  
5 know what you're talking about.

6 MS. BROWN: Assumes  
7 facts, lacks foundation, and is  
8 argumentative.

9 BY MR. PLACITELLA:

10 Q. So do you have any information  
11 that you told the people handling the FDA  
12 call file that they should preserve the  
13 documents?

14 MS. BROWN: I object and  
15 instruct not to answer. That would  
16 be legal advice or legal direction  
17 and that's protected.

18 MR. PLACITELLA: Can I  
19 get a ruling on that?

20 JUDGE SCHNEIDER: Can I  
21 have the court reporter to please  
22 repeat the question?

23 - - - - -

24 (Whereupon, the reporter read

back as requested.)

-----

JUDGE SCHNEIDER:

Objection overruled. I think it's discoverable to find out and an appropriate area of inquiry is who received the hold notice, which is, obviously, relevant to whether appropriate documents have been preserved or exist. So objection overruled.

THE WITNESS: I'm sorry, could you read it back, please?

-----

(Whereupon, the reporter read back as requested.)

-----

THE WITNESS: I don't recognize what -- this is a document from 1984. I don't recognize what FDA call file may be. I don't know if it's a general file that they would be keeping there or it's this individual's

file that he called the FDA call file. All I can tell you is if we issued a hold notice that called for the retention of FDA communications, we would expect those communications to be held.

BY MR. PLACITELLA:

Q. So Susan Nicholson testified that there is no FDA call file in paper. What happened to it?

MS. BROWN: No, no, that misstates her testimony and lacks foundation with this witness.

BY MR. PLACITELLA:

Q. What happened to it?

MS. BROWN: The same objection.

THE WITNESS: I testified, I don't recognize what a call file is.

BY MR. PLACITELLA:

Q. Okay. So let me ask you another question.

MS. BROWN: Chris, can

we take a break soon, we have been going over an hour?

MR. PLACITELLA: Okay.

I was trying to finish by 4:00, but we'll take a break.

MS. BROWN: If you're going to finish in 13 minutes --

MR. PLACITELLA: I was going to try, but we'll take a break.

MS. BROWN: Okay.

THE VIDEOGRAPHER: Off the record at 3:47 p.m.

-----

(A recess was taken at this time.)

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THE VIDEOGRAPHER: We are back on the record at 4:05.

BY MR. PLACITELLA:

Q. Okay. I'm going to refer back to 219, I don't think you have to pull it out of your binder, because I'm going to ask you one question. This is a document that you've seen a number of times already

where in the Coker case, Luzenac provided you with all of their testing documents back to 1982. Do you see that?

A. The talc test with -- I don't know if it was all of it, but with documents related to talc testing and Val Chisone deposit dating back to 1982.

Q. What happened to those documents?

MS. BROWN: Objection. Foundation.

THE WITNESS: I don't recall specifically, but it would have been in my practice to turn them over so our lawyers would have them.

BY MR. PLACITELLA:

Q. The lawyers in the case?

A. Yeah.

Q. So last document I want to ask you about is 418.

A. Okay. Yes, I have it.

-----

(Email String dated 11/21/08

1 marked O'Shaughnessy Exhibit 418  
2 for identification.)  
3 - - - - -

4 BY MR. PLACITELLA:

5 Q. Okay. 418 is an email dated  
6 November 21, 2008, subject, baby powder,  
7 from Tim McCarthy. Do you see that?

8 A. Yes.

9 Q. This would have been a time  
10 when your litigation hold would have been  
11 in effect, true?

12 A. I'm assuming there might have  
13 been one in place at this time, yes.

14 MS. BROWN: I object to  
15 this document as lacking  
16 foundation.

17 BY MR. PLACITELLA:

18 Q. Okay. And if we just go to the  
19 bottom, it talks about baby powder, "Hi  
20 Tim, I don't think you would want to share  
21 this document, but FYI, I thought you would  
22 find it interesting." Do you see that?

23 A. I do.

24 Q. And then below it, it says

1 "More seriously, we have about four file  
2 drawers of information on talc over here."  
3 Do you see that?

4 A. Yes.

5 Q. What happened to that  
6 information?

7 MS. BROWN: Objection,  
8 assumes facts.

9 BY MR. PLACITELLA:

10 Q. Was that ever turned over to  
11 you as part of the litigation hold?

12 MS. BROWN: Assumes  
13 facts. Lacks foundation.

14 THE WITNESS: I don't  
15 know what this person is  
16 specifically referring to. Though  
17 I am familiar though in general  
18 when we do go to collect documents,  
19 there's documents, they're not all  
20 in one place. So you go to  
21 different places to collect them  
22 and you speak to different people  
23 to try and find out where they kept  
24 the files and where their files are

1 kept. It looks like, you know,  
2 that this might have been material  
3 if it came to our attention that we  
4 definitely would have collected.  
5 And I don't know if we did or we  
6 didn't. And I don't know the  
7 subject of these emails, whether  
8 they involved, you know, the  
9 document collection process or not  
10 and maybe that's why they were  
11 talking about it.

12 BY MR. PLACITELLA:

13 Q. Okay. How do we find that out?  
14 Who would I ask?

15 A. I don't know, I didn't read the  
16 whole email, but -- I didn't read the whole  
17 email.

18 Q. Okay. Can we go -- give me an  
19 Elmo. Okay. You stated before that Blount  
20 telling J&J Johnson's Baby Powder does  
21 not -- does have asbestos, not a secret.  
22 Did I get that right?

23 A. I think what she said in her  
24 report to the lawyers, the letter that was

1 sent to me was that she found trace amounts  
2 in cosmetic talc products, including  
3 Johnson & Johnson.

4 Q. And you said that's not a  
5 secret, right?

6 A. I forget the way you  
7 characterized it and I would really want to  
8 know how I responded, because you were  
9 calling it a secret and as if, you know, it  
10 was maintained like that by the company and  
11 I don't think that's correct. So that's  
12 what I meant by not a secret.

13 Q. Okay. So let me ask you then.  
14 Did you tell the FDA that?

15 A. Tell the FDA what?

16 Q. That Alice Blount told you  
17 specifically that the baby powder she  
18 tested had asbestos in it.

19 MS. BROWN: That  
20 misstates facts.

21 THE WITNESS: I think I  
22 told you before, I don't  
23 communicate with the FDA, Mr.  
24 Placitella, the company does.

1 BY MR. PLACITELLA:

2 Q. All right. So did you ever tell  
3 the FDA?

4 MS. BROWN: Same  
5 objection. Misstates facts.

6 THE WITNESS: I don't  
7 communicate with the FDA, so I  
8 wouldn't tell them that or anything  
9 else.

10 BY MR. PLACITELLA:

11 Q. Do you have any information  
12 that Johnson & Johnson told the FDA?

13 A. I didn't finish my answer. I  
14 don't know if you caught it, I was just  
15 about finished the prior answer, but if  
16 not, I want that clear.

17 Q. Let me ask the question again.

18 A. Could you read it back to me  
19 please?

20 Q. Let me ask the question again?

21 A. Oh, sure.

22 Q. Do you have any information  
23 that Johnson & Johnson told the FDA about  
24 Alice Blount finding asbestos in Johnson's

1 Baby Powder?

2 MS. BROWN: Objection.  
3 Misstates the evidence.

4 THE WITNESS: I don't  
5 know exactly what the company  
6 communicated with FDA about. There  
7 was always communication between  
8 the company, I think, and the FDA,  
9 so I don't know what it might have  
10 been. I can't guess at that.

11 BY MR. PLACITELLA:

12 Q. Should they have told them?

13 MS. BROWN: Objection.

14 THE WITNESS: I don't  
15 know.

16 BY MR. PLACITELLA:

17 Q. Oh, okay. So I'll just put "I  
18 don't know." Okay?

19 A. No, no, no.

20 Q. That's what you just told me.

21 A. You're putting I don't know as  
22 if I -- somehow that means that they did  
23 not tell the FDA. Something that I don't  
24 even know, you know, that they knew --

1 Q. Well, you don't even  
2 know whether you should have told them --

3 MS. BROWN: Wait. Let  
4 him finish. Let him finish and  
5 don't argue with him, please.

6 MR. PLACITELLA: Go  
7 ahead finish your answer.

8 THE WITNESS: You know,  
9 it has been a long four days --

10 BY MR. PLACITELLA:

11 Q. It sure has.

12 A. -- Mr. Placitella, but I don't  
13 really appreciate you waiving your hand at  
14 me and laughing at me when I'm giving you  
15 my answers. I don't think it's right. I  
16 have been trying my best to answer these  
17 questions about 25 years ago and I'm doing  
18 my best and I know I said I don't recall to  
19 a lot of questions, but that's 25 years ago  
20 and, you know, and if you asked me these  
21 questions way back then, I probably would  
22 have had the answers to an awful lot of  
23 them.

24 Q. What was my question, sir?

1 Move to strike your response. What was my  
2 question?

3 A. I'm not sure at this point.

4 Q. Okay. Move to strike your  
5 response.

6 A. It's in the record though.

7 Q. Do you have any information  
8 that the Blount findings of asbestos in  
9 Johnson's Baby Powder were communicated to  
10 the FDA, yes or no?

11 MS. BROWN: Objection.  
12 Misstates the evidence and lacks  
13 foundation.

14 THE WITNESS: I don't  
15 have any information really about  
16 the company's, all the company's  
17 communications with the FDA. You  
18 would have to ask someone at the  
19 company.

20 BY MR. PLACITELLA:

21 Q. Okay. So the answer is what,  
22 yes or no?

23 MS. BROWN: The answer  
24 is what he gave. Asked and

1 answered.

2 THE WITNESS: No, that's  
3 my answer, you would have to ask  
4 someone at the company.

5 BY MR. PLACITELLA:

6 Q. Okay. So your answer is I  
7 don't know?

8 MS. BROWN: Objection.

9 THE WITNESS: No, my  
10 answer is what it was.

11 BY MR. PLACITELLA:

12 Q. Okay. Who should I ask at the  
13 company?

14 A. You can ask people in the  
15 regulatory area.

16 Q. Give me a name.

17 A. I don't know who is there now.

18 Q. Okay. How about the National  
19 Toxicology Project, when you were involved  
20 with the National Toxicology Project, did  
21 you disclose to the National Toxicology  
22 Project that you knew that Dr. Blount found  
23 asbestos in Johnson's Baby Powder?

24 MS. BROWN: That assumes

1 facts and misstates the evidence.

2 THE WITNESS: Again,  
3 like with the FDA, I don't  
4 communicate with agencies or other  
5 entities, the company does. And  
6 I'm not privy to all the back and  
7 forth with those entities by the  
8 company, so I don't know.

9 BY MR. PLACITELLA:

10 Q. Okay. You were on a committee  
11 that dealt with the National Toxicology  
12 Project, correct?

13 A. I was on a committee that was  
14 formulating a response and materials for  
15 the consideration of that as their lawyer,  
16 yes.

17 Q. Okay. And did you recommend  
18 any time on that committee that the fact  
19 that Alice Blount found asbestos in  
20 Johnson's Baby Powder should be indicated  
21 to the National Toxicology Project?

22 A. I don't recall recommending nor  
23 would that be my role of what they should  
24 communicate to an agency or an entity.

1 Q. So what's the answer, did you  
2 ever make a recommendation?

3 A. No, I think that was part of my  
4 answer.

5 Q. So the answer is no, you never  
6 made a recommendation?

7 A. I don't recommend to them what  
8 they should do to communicate with other  
9 entities. That's up to them.

10 Q. All right. So just to be  
11 clear, you never made a recommendation that  
12 Johnson & Johnson disclose to the National  
13 Toxicology Program that they knew that  
14 Alice Blount found asbestos in Johnson's  
15 Baby Powder?

16 A. I didn't --

17 MS. BROWN: I object.  
18 To the extent that this is calling  
19 for privileged information. First  
20 of all, it has been asked and  
21 answered. And to the extent that  
22 Mr. O'Shaughnessy did anything in  
23 connection with the Coker case  
24 regarding that information, I would

1 instruct you, Mr. O'Shaughnessy,  
2 not to answer that.

3 MR. PLACITELLA: Okay.  
4 Can I have a ruling, Your Honor?

5 JUDGE SCHNEIDER:  
6 Objection overruled. This does not  
7 call for privileged information.  
8 It's in the course of a  
9 non-litigation context and it's the  
10 work of a committee, which is not  
11 to prepare for litigation.

12 THE WITNESS: I didn't  
13 recommend to the committee what  
14 they should do or not do with  
15 respect to scientific information  
16 that was available to them.

17 BY MR. PLACITELLA:

18 Q. My question, sir, is did you  
19 ever recommend to the committee that they  
20 disclose to the National Toxicology Program  
21 that Alice Blount found asbestos in the  
22 Johnson's Baby Powder?

23 MS. BROWN: Asked and  
24 answered.



1 THE WITNESS: I would  
2 not have recommended that, because  
3 I didn't recommend anything with  
4 respect to what they should do with  
5 scientific information.

6 BY MR. PLACITELLA:

7 Q. So the answer is no, you never  
8 did?

9 A. I just said I wouldn't have  
10 recommended that since I don't recommend  
11 what they should do with scientific  
12 information.

13 Q. Sir, can an honest and  
14 forthright witness provide a simple answer  
15 to a simple question?

16 MS. BROWN: That's  
17 argumentative. He's asked and  
18 answered your questions.

19 BY MR. PLACITELLA:

20 Q. So let me ask the question  
21 again.

22 A. Wait, you're referring to me --

23 Q. Excuse me, excuse me.

24 A. No, no, no, you asked a

1 what information that we specifically gave  
2 in specific cases.

3 Q. So let me ask you this final  
4 couple of questions. And I know that you  
5 are getting a little impatient with me and  
6 I apologize if in any way you think I was  
7 impugning your integrity, I wasn't.

8 A. Okay. Thank you. I appreciate  
9 that. I did interpret that question that  
10 way and I have the greatest respect for  
11 you. I only met you here during this  
12 depositions, but I certainly know you by  
13 reputation and it's a very good reputation  
14 among my colleagues at the bar.

15 Q. Okay. So if in any way I  
16 offended you, I apologize on the record in  
17 front of however many people are watching.

18 A. If I misinterpreted it, then  
19 likewise.

20 Q. Okay. Because I don't want you  
21 to answer questions when Ms. Brown asks you  
22 questions that I was unfair to you, because  
23 I don't want to be unfair to you. Okay?

24 A. I hear you.

1 question, I want to answer it --

2 Q. Go ahead.

3 A. -- because you're impugning my  
4 credibility and I am providing honest and  
5 forthright answers. So that's the answer  
6 to your question.

7 Q. So the answer is --

8 JUDGE SCHNEIDER: If you  
9 ask me, the witness has been asked  
10 the question, he has given, I  
11 think, a responsive answer.

12 MR. PLACITELLA: Fine.

13 JUDGE SCHNEIDER: And if  
14 I was the judge, I would say time  
15 to move on.

16 BY MR. PLACITELLA:

17 Q. Okay. Am I correct that you  
18 never disclosed the fact that Johnson &  
19 Johnson found -- I mean, Alice Blount found  
20 asbestos in the Johnson & Johnson's Baby  
21 Powder to any litigant in cases that you  
22 were involved in?

23 A. I think you asked this before  
24 and I think my answer was I don't recall

1 Q. Okay. And having now sat  
2 through four days of depositions, including  
3 my sometimes impatient questions, and by  
4 the way, you said about my hands flying,  
5 I'm Italian, that's what happens. Okay.  
6 So I apologize. Hands go up and down when  
7 I ask questions.

8 A. It wasn't the hands so much.  
9 I've had people throw their hands at me,  
10 it's the way you were laughing.

11 Q. Italians talk with their hands.  
12 There's nothing we can do about that.  
13 Okay. So you've sat here patiently for  
14 four days, which I greatly appreciate,  
15 because I know you're retired and this is  
16 the last thing you want to do. Will you  
17 agree with that?

18 A. Look, I don't mind fulfilling  
19 obligations or talking on behalf of what I  
20 did. I understand there's a lot of issues  
21 with respect to taking the deposition of  
22 attorneys and I may not agree with it, but  
23 I understand that if I'm going to be asked  
24 questions about what I did, I have no



1 problem answering those questions.  
 2 Q. Okay. So here's my final two  
 3 questions. Having sat through four days  
 4 and going home and thinking about this at  
 5 night, probably more than you would like  
 6 to, do you feel that Johnson & Johnson made  
 7 any mistakes in communicating to courts and  
 8 litigants and the public the fact that  
 9 there's no evidence whatsoever that  
 10 Johnson's Baby Powder ever contained  
 11 asbestos or tremolite?

12 A. No, and here's why. During all  
 13 my time at J&J, in responding to these  
 14 document requests and discovery and  
 15 creating affidavits, we didn't do it -- I  
 16 didn't do it and our outside counsel didn't  
 17 do it willy-nilly. We spent an awful lot  
 18 of time with these people and with the  
 19 documents, understanding the Johnson &  
 20 Johnson story with respect to talc and  
 21 understanding it well, speaking to other  
 22 experts, looking at the scientific  
 23 literature, and based on the totality of  
 24 that, I am completely comfortable with the

1 affidavits when I worked on them then and  
 2 even now.

3 Q. Okay. Even though there were  
 4 documents in your files that contradicted  
 5 the affidavits?

6 MS. BROWN: Objection.  
 7 Misstates the evidence.

8 THE WITNESS: You say  
 9 there are documents that contradict  
 10 it, I don't believe so.

11 BY MR. PLACITELLA:

12 Q. Okay. But you never read all  
 13 the documents?

14 A. Of course, I never read every  
 15 document, but I did speak to the witnesses  
 16 along with outside counsel and I'm  
 17 fairly -- very comfortable with what I  
 18 learned.

19 Q. So if no mistakes were made,  
 20 then you'll agree with me that everything  
 21 that was done was done on purpose?

22 MS. BROWN: I object.

23 THE WITNESS: Our  
 24 answers were done with a lot of

1 contemplation and with a lot of  
 2 thought and with a lot of work and  
 3 they were purposeful, yes.

4 MR. PLACITELLA: I think  
 5 that's all the questions I have.  
 6 If you want to give me -- or you  
 7 know what, I'll turn the witness  
 8 over and if I have something I  
 9 forgot, I'll ask you on my chance  
 10 on redirect. How is that?

11 THE WITNESS: Thank you.

12 MR. PLACITELLA: Is that  
 13 okay?

14 MS. BROWN: Yeah.

15 THE WITNESS: That's  
 16 okay.

17 MR. TISI: There were  
 18 just a handful of questions I would  
 19 ask. I got an email from a  
 20 colleague to ask a couple of  
 21 questions. I think it would be  
 22 like five minutes, but if you  
 23 prefer, I pass them over to --

24 MS. BROWN: On behalf of

1 who?

2 MR. TISI: Just from one  
 3 of my colleagues.

4 MS. BROWN: I know, but  
 5 on behalf of the Forrest  
 6 Plaintiffs?

7 MR. TISI: Yeah, on  
 8 behalf of the Forrest Plaintiffs.

9 MS. BROWN: You  
 10 concluded that questioning  
 11 yesterday.

12 MR. TISI: I understand.  
 13 I am happy to talk to Chris and  
 14 I'll ask Chris to just reserve and  
 15 I will --

16 MR. PLACITELLA: Do you  
 17 really want -- I'll do it, but --

18 MS. BROWN: I mean,  
 19 look, if you have --

20 MR. PLACITELLA: Do you  
 21 want me to ask the questions?

22 MS. BROWN: If you have  
 23 five minutes of questioning, I  
 24 think that that is fine.

1 MR. TISI: They're going  
2 to be quick, I don't even need,  
3 candidly, I think I can anticipate  
4 some of the answers and I will not  
5 even put a microphone on.

6 MS. BROWN: I mean, note  
7 our eminent reasonableness in  
8 allowing the callback questions.

9 THE VIDEOGRAPHER: Off  
10 the record, 4:21 p.m.

11 - - - - -  
12 (Discussion was held off the record.)

13 - - - - -  
14 THE VIDEOGRAPHER: Back  
15 on the record, 4:22.

16 BY MR. TISI:

17 Q. I apologize and I appreciate  
18 your patience on this.

19 A. Sure.

20 Q. This is just a couple of  
21 questions and I have, like, a half page  
22 here. What is Johnson & Johnson's, if you  
23 know, principal place of business?

24 A. I believe the principal place

1 BY MR. TISA:

2 Q. Okay. Do you know, and  
3 honestly I'm just reading it, do you have  
4 any information about Johnson & Johnson's,  
5 what total assets they had?

6 A. No.

7 Q. Any information about total  
8 assets that JJCI had?

9 A. I don't know any of that  
10 information.

11 Q. Same thing, same questions  
12 about liabilities. Do you know any  
13 projected liabilities for Johnson &  
14 Johnson or JJCI?

15 A. No. It sounds like you're  
16 asking for accounting-type information. I  
17 don't have that.

18 Q. Was there ever, to your  
19 knowledge, any estimation to J&J or JJCI,  
20 any analysis or asbestos-related  
21 liabilities in connection with these  
22 litigations?

23 MS. BROWN: I object and  
24 instruct not to answer. It sounds

1 of business is New Brunswick, New Jersey.  
2 I forget where the place of incorporation  
3 is and from a legal standpoint, I think the  
4 two are different, but they may not be.  
5 I'm not an expert on corporate law.

6 Q. Okay. And JJCI, where is their  
7 principal place of business, if you know?

8 A. I don't know where they're  
9 incorporated, but they were located in  
10 Skillman, New Jersey.

11 Q. Okay. Do you have any  
12 information about, at the time you left,  
13 any assets that they had, that J&J had and  
14 JJCI?

15 MS. BROWN: What? Hold  
16 on.

17 THE WITNESS: I'm not  
18 sure --

19 MS. BROWN: Hold on.

20 THE WITNESS: I don't  
21 understand your question.

22 MS. BROWN: I don't  
23 either and it's overly broad.  
24

1 like advice in the legal context.

2 MR. TISI: Okay. I  
3 think that's all. Thank you.

4 MR. PLACITELLA: Do you  
5 want to switch seats?

6 MS. BROWN: I do.

7 THE VIDEOGRAPHER: Off  
8 the record, 4:24.

9 - - - - -  
10 (A recess was taken at this time.)

11 - - - - -  
12 THE VIDEOGRAPHER: We  
13 are back on the record at 4:34 p.m.

14 BY MS. BROWN:

15 Q. Good afternoon,  
16 Mr. O'Shaughnessy.

17 A. Good afternoon.

18 Q. Mr. O'Shaughnessy, I'm glad to  
19 finally have the chance to talk to you. We  
20 are here on day four of your deposition; is  
21 that right?

22 MR. TISI: Objection.

23 THE WITNESS: Right.

24 MR. PLACITELLA: Okay.

1 Well, not exactly right.

2 MR. TISI: Not exactly,  
3 but go ahead.

4 BY MS. BROWN:

5 Q. And Mr. O'Shaughnessy, would  
6 you take a minute to introduce yourself to  
7 our jurors, please?

8 A. Yes. My name is John  
9 O'Shaughnessy and I'm here, as you know,  
10 testifying on behalf of what I did as an  
11 attorney with Johnson & Johnson. My  
12 background is I'm from New York City. I  
13 grew up in the Bronx. I was one of seven  
14 children. I attended schools in the Bronx  
15 until I went to college. I lived at home  
16 when I went to college in a small college  
17 called Iona College in New Rochelle, New  
18 York, just over the border from the Bronx.  
19 I graduated there in -- with a degree in  
20 history in 1974. And I then I drove a  
21 truck for a year. I actually drove a truck  
22 while I was in school as well, but I drove  
23 a truck for a year while I wasn't going to  
24 school, before I entered law school at New

1 probably be in school another two years.

2 And I decided, you know, that wasn't for  
3 me, I wanted to graduate from college in  
4 two years. So I stayed with college and by  
5 the time I got out of college, I became  
6 interested in becoming a lawyer.

7 Q. And so you attended law school  
8 from '75 to '78 ; is that right?

9 A. Yes.

10 Q. And you were just about to tell  
11 us about some time that you spent at the  
12 DA's office; is that right?

13 A. Yes.

14 Q. And can you tell us a little  
15 bit about what -- did you work there as a  
16 lawyer?

17 A. Yeah, I was employed there for  
18 four years and I was an assistant district  
19 attorney and so there's a progression in  
20 the office where, you know, you begin with  
21 lower seriousness-type crimes like  
22 misdemeanors and then you graduate, you get  
23 more responsibility up to, you know,  
24 serious crimes. And when I was there in

1 York Law School, which is in Lower  
2 Manhattan. And I entered law school in  
3 1975 and graduated in 1978. And upon  
4 graduation, I was employed by the Bronx  
5 District Attorney's office.

6 Q. And let me stop you right there  
7 for one second, Mr. O'Shaughnessy. So you  
8 said that you attended New York Law School;  
9 is that right?

10 A. I did, yes.

11 Q. And tell our jurors, did you  
12 always want to be a lawyer?

13 A. No, I had kind of visions of  
14 actually being an oceanographer. In fact,  
15 I applied for the program and was accepted,  
16 believe it or not, and the program was at  
17 the City University of New York in Upper  
18 Manhattan. They were one of only at the  
19 time four or five programs that offered  
20 that. I was in my sophomore year of  
21 college with two years under my belt, but I  
22 hadn't taken any science courses. So in  
23 order to go for that degree, it was  
24 explained to me that I would have to

1 the criminal court bureau, they called it  
2 at one point, I was supervising five or six  
3 other attorneys. And then I moved on to  
4 the homicide bureau and I ended there as a  
5 member of the major offense bureau.

6 Q. Did you ever have to give  
7 testimony in connection with that job like  
8 you're giving here today?

9 A. Yes. They had, from time to  
10 time, I would be assigned to what we called  
11 homicide duty, which meant that you were on  
12 call 24 hours so if there were a homicide  
13 committed and they had a body at the scene,  
14 I would be called up along with the DA's  
15 office video team to go and videotape the  
16 crime scene.

17 Also, if there was an arrest  
18 made in a homicide and the person decided  
19 to make a statement, I would go with the  
20 video team and we would videotape the  
21 statement for use later in court. And then  
22 when it was introduced in court, I would  
23 give testimony about the circumstances  
24 surrounding the taking of the statement

1 during the trial of the homicide.

2 Q. And how long did you stay  
3 there?

4 A. I was there -- I was in the  
5 office for four years and I left in 1982  
6 and I went to a civil litigation firm. The  
7 DA's office is, of course, is criminal, now  
8 I went to civil litigation and that was a  
9 firm in New York City called Martin  
10 Clearwater & Bell where their clients were  
11 primarily hospitals and doctors sued in  
12 medical malpractice personal injury cases.

13 Q. And how long did you stay  
14 there?

15 A. I was there, I think,  
16 approximately three years and then I went  
17 to the first time to a corporation. And  
18 the name of the corporation was  
19 International Playtex and they were located  
20 in Stamford, Connecticut. And I was hired  
21 as a litigation attorney and I primarily  
22 handled their lawsuits involving some of  
23 their consumer products.

24 Q. And did there come a point in

1 time where you came to Johnson & Johnson?

2 A. Yeah, while I was at Playtex, I  
3 was working with attorneys who also worked  
4 with Johnson & Johnson and they informed me  
5 that they were looking for someone. And I  
6 threw my hat in the ring and eventually was  
7 hired by Johnson & Johnson in June of --  
8 and started in June of 1987.

9 Q. And did you have to move to New  
10 Jersey for that job?

11 A. No, by the time I took the job  
12 at Johnson & Johnson, I had moved from the  
13 Bronx to Queens, New York, which is right  
14 over a bridge, and I was commuting to  
15 Connecticut where the Playtex Corporation  
16 was. But when I took the job at Johnson &  
17 Johnson, I realized I had to move to New  
18 Jersey. It was too far to commute. I  
19 commuted for about six or seven months, but  
20 it was about two and a half hours each way  
21 by car through the heart of, you know, the  
22 greater New York City metropolitan area  
23 traffic.

24 Q. So lots of traffic, yeah.

1 A. Yeah.

2 Q. Did you have family during that  
3 time, Mr. O'Shaughnessy?

4 A. Yeah, my wife and I had our  
5 first child while we were living in Queens  
6 and a second child as well and the third  
7 child was born in New Jersey.

8 Q. And how old are your kids  
9 today?

10 A. All right.

11 Q. Not to make you feel old.

12 A. I can't say I don't recall to  
13 these questions, I'll get in trouble.

14 MR. TISI: Exactly.

15 MR. PLACITELLA: Just  
16 don't screw up the birthdays or the  
17 anniversary. Don't ask him the  
18 anniversary question.

19 THE WITNESS: My  
20 daughter is approaching 36 or 37.  
21 I have a son who is working back  
22 from that, who is about four years  
23 younger than her, so he's about 31  
24 or so. And I'm sorry, he's about,

1 approaching 35. And then I have a  
2 son who I know is 31.

3 BY MS. BROWN:

4 Q. And are you a grandfather?

5 A. I am. I have two  
6 grandchildren -- three grandchildren and  
7 one, my daughter-in-law is due to have a  
8 baby this fall. So that would be four.

9 Q. And we'll talk in a second a  
10 little bit about what you're doing now, but  
11 fair to say you're retired now?

12 A. Yeah, I retired in May 1st of  
13 2018.

14 Q. And can you tell us generally  
15 how you've spent your retirement?

16 A. Yeah, you know, it's something  
17 that I don't -- people talk about getting  
18 used to retirement, I don't think -- I  
19 think it's kind of a continuum. So I don't  
20 know if I'm used to it already, but I spend  
21 most of time doing family-type stuff and,  
22 you know, my kids were moving, both of them  
23 were moving when I first retired and I  
24 moved, so that was three moves that I was



1 involved with helping the kids out and  
2 myself. So that kept you pretty busy. And  
3 after that, it's more, you know, keeping in  
4 touch with friends and family and my  
5 immediate family. And you know that, of  
6 course, like a lot of other people, that  
7 was interrupted by COVID, so right now,  
8 we're just kind of beginning to begin that  
9 process, again, of having our family, you  
10 know, get together.

11 Q. And have you gotten to spend  
12 time with your grandkids in your  
13 retirement?

14 A. Yeah, but not as much. They're  
15 very young. The oldest is four, so COVID  
16 took, you know, a good chunk of that out  
17 about a year, you know.

18 Q. I want to talk a little bit,  
19 Mr. O'Shaughnessy, about your time at  
20 Johnson & Johnson. Can you tell us a  
21 little bit about what your position was  
22 when you started and what your  
23 responsibilities were?

24 A. Yeah, I started with Johnson &

1 Johnson, as I told Mr. -- one of the  
2 attorneys, as a senior attorney when I was  
3 hired. And I was hired and I primarily  
4 handled litigation at that time for the  
5 Ortho Pharmaceutical Corporation. I should  
6 explain, Johnson & Johnson, as we testified  
7 about, is a large company. And it's broken  
8 up into basically three different  
9 businesses, pharmaceuticals, medical  
10 devices, and consumer, which we observe  
11 talking about mostly during my deposition.  
12 But I did an awful lot of work with the  
13 pharmaceutical side. Same type of work  
14 that I did with talc, defending product  
15 liability lawsuits in courts around the  
16 country, working with outside counsel. The  
17 same for medical device-type cases and by  
18 medical devices, I mean implants,  
19 orthopaedic implants. And we also had a --  
20 I don't know if Johnson & Johnson still  
21 owns the company, but we had a company that  
22 made neurosurgical instruments. So there  
23 were an awful lot of lawsuits between the  
24 pharmaceuticals, the medical devices as

1 well.

2 Q. And how long did you stay in  
3 that position at Johnson & Johnson?

4 A. Well, I stayed in that position  
5 until I left. My title changed after five  
6 years to assistant general counsel, but  
7 that didn't impact my responsibilities.

8 Q. Okay. And we have been here  
9 over the last couple of days,  
10 Mr. O'Shaughnessy, talking with you about  
11 your work on talc.

12 A. Yes.

13 Q. Can you help us understand in  
14 terms of all of your responsibilities at  
15 the company how much time you spent on  
16 issues relating to baby powder and talcum  
17 powder?

18 A. Yeah, in the context of the  
19 other litigation, I estimate the time I  
20 spent on talc was about 8 percent or less.

21 Q. And during the time period that  
22 you were at Johnson & Johnson, did you have  
23 the opportunity to work with a number of  
24 lawyers outside of the company?

1 A. Right. In the position of an  
2 in-house attorney, of course, you can't  
3 handle cases on your own as a law firm --  
4 as a law firm would do, you know, in  
5 wherever the law firm is located. So  
6 Johnson & Johnson is sued basically  
7 everywhere throughout the United States.  
8 And we have to hire counsel to handle those  
9 cases. And some cases, as we know, from  
10 talc, they are repeated and they're more  
11 than one. And they become a lot of cases,  
12 what you generally do is you try and work  
13 with a few firms that develop a specialty,  
14 that understand the product, understand the  
15 people who, you know, produce the product  
16 at the company and, you know, like I said  
17 before, responsible for collecting  
18 documents and that sort of thing so we can  
19 respond to these discovery requests that I  
20 have been asked about and that sort of  
21 thing. So it's very, you know, you have  
22 to -- my role in-house was to kind of  
23 manage all of that. So it's a balance of  
24 being involved in the day-to-day operations

1 so that you understand what's going on, but  
2 you have to let go some of that to manage  
3 around the country. So you really get to  
4 rely on your outside counsel to do a lot of  
5 that with you, your coordinating counsel.

6 Q. What about expert witnesses,  
7 Mr. O'Shaughnessy, over the course of your  
8 work at Johnson & Johnson, did you have the  
9 opportunity to meet and work with any  
10 expert witnesses?

11 A. Yes, like I said, most of my  
12 work was on the pharmaceutical and device  
13 side and in those cases, you know, we would  
14 be working with outside experts retained to  
15 provide their opinions on the case, to  
16 review what the company has done, and I  
17 worked with our outside counsel and I met  
18 with those experts, not all of them and not  
19 as much as our outside counsel, but I would  
20 get to know who we were using. And that  
21 kind of, that kind of involvement would  
22 become more if the case were proceeding to  
23 trial. Because then, you know, all the  
24 evidence is being marshaled and there's

1 going to be a trial, so you have to arrange  
2 for witnesses and that sort of thing. So  
3 the work intensified as the cases  
4 approached trial.

5 Q. And what about the scientists  
6 and experts inside of Johnson & Johnson,  
7 did you have an opportunity over the course  
8 of your work as a lawyer to meet with and  
9 work with some of those folks?

10 A. Yeah, I would say that's one of  
11 the main functions of, I thought of my job,  
12 was to make sure that the information that  
13 the company had would get, as far as  
14 possible, seamlessly translated to our  
15 legal teams so they would be able to defend  
16 the cases in court. And so that would mean  
17 going with our outside counsel, meeting  
18 with the people who, you know, had  
19 information about the product, who worked  
20 on the product. And in a company like  
21 Johnson & Johnson, it's not that easy,  
22 because the company is large. These  
23 companies in their own right are large.  
24 And so there's many employees working on a

1 product in different departments. I mean,  
2 we spoke about regulatory, R&D, medical, so  
3 there's not just one or two people in those  
4 departments, there's many. So you try and  
5 understand that product within that company  
6 and how that company, you know, handled  
7 that product.

8 And with respect to my role  
9 as an attorney in litigation, litigation  
10 touches on all of the areas that the  
11 company would have with the product. So  
12 the company has lots of contact, as we've  
13 seen, with outside agencies and outside  
14 entities and although I wouldn't be  
15 responsible for the back and forth and what  
16 was substantively done, but I had to know  
17 what was going on, because those issues  
18 would come up in court. So although we had  
19 lawyers from Johnson & Johnson, for  
20 instance, assigned to regulatory,  
21 corporate, trademark, other areas of  
22 litigation, I had to make sure that I was  
23 aware of anything that could potentially  
24 impact the litigation.

1 Q. Do you have any medical or  
2 scientific background, Mr. O'Shaughnessy?

3 A. I do not.

4 Q. You were asked a lot of  
5 questions over the course of these last few  
6 days about epidemiology, for example. Do  
7 you recall some of those questions?

8 A. Yes.

9 Q. In your role as a lawyer for  
10 Johnson & Johnson, was it your job to  
11 review and evaluate epidemiology regarding  
12 the products you were responsible for?

13 A. No, that would be the company  
14 scientists, technical people.

15 Q. Do you feel qualified as a  
16 lawyer to evaluate those kind of scientific  
17 issues?

18 A. No --

19 MR. TISI: Objection.

20 Mischaracterizes my question. Go  
21 ahead.

22 THE WITNESS: No,  
23 clearly not.  
24



1 BY MS. BROWN:

2 Q. What about do you have any  
3 training or expertise in testing talc for  
4 asbestos?

5 A. No.

6 Q. Are you a geologist?

7 A. No, no.

8 Q. Are you a microscopist?

9 A. No.

10 Q. Somebody who looks under a  
11 microscope at talc to see if there was  
12 asbestos?

13 A. No, I have no expertise in  
14 those areas.

15 Q. Are you qualified to look  
16 through -- counsel had stacks of what he  
17 represented were test results for Johnson's  
18 Baby Powder. Do you recall those stacks  
19 and those questions?

20 A. Yes, I do.

21 Q. Are you qualified as a lawyer  
22 to review those stacks of testing results  
23 and analyze their meaning?

24 A. No. As a lawyer, we would be

1 dealing with those insofar as the company  
2 had to explain them or if they came up in  
3 the litigation. But we would always rely,  
4 I would always rely on the company's  
5 scientists to explain them. Because I  
6 think I explained at one point, you know, I  
7 have been around these companies for a long  
8 time and I learned that the testing is  
9 sophisticated and it's different and there  
10 are different types of testing. And there  
11 are people who are trained to do it who do  
12 it at our company who know it way better  
13 than I and interpret it, so I would rely on  
14 them.

15 Q. Mr. O'Shaughnessy, you were  
16 asked a lot of questions to which you  
17 responded in some way, shape, or form that  
18 you couldn't really recall.

19 A. Yes.

20 Q. Do you know what I'm talking  
21 about?

22 A. Sure.

23 Q. And I imagine that probably  
24 happened to a fair amount of questions you

1 have been asked over the past couple of  
2 days; is that right?

3 A. Yes.

4 MR. TISI: Objection,  
5 leading.

6 THE WITNESS: Yes, I did  
7 give that answer on multiple  
8 occasions during the deposition,  
9 more than I would have liked.

10 BY MS. BROWN:

11 Q. Why do you think it is that you  
12 had to answer in that way so many times?

13 A. Well, because most of these  
14 events that I was questioned about occurred  
15 in the area of 30 to 20 years ago. And I  
16 don't have any recollection of them. In  
17 fact, you know, counsel would ask me a  
18 question, did you ever do this and I would  
19 say I don't recall doing it. And then they  
20 would have a document showing that, well, I  
21 did have correspondence here or I did speak  
22 to that person. But even after seeing that  
23 correspondence, it didn't click with any  
24 recollection I had.

1 And, you know, at this time,  
2 I'm dealing with talc, but I'm also dealing  
3 with the same kind of issues, discovery,  
4 documents, company witnesses, outside  
5 counsel in other litigation for, you know,  
6 the pharmaceutical side and the medical  
7 device side. So it's very hard to remember  
8 and especially when, you know, there were  
9 hundreds and thousands of cases.

10 Q. Did you do your best,  
11 nevertheless, while you were here over the  
12 last couple of days to try and recall what  
13 you could?

14 A. Yes, I did.

15 Q. Did you try and do your best to  
16 answer everybody's questions truthfully and  
17 accurately?

18 A. Yes, I tried to the best of my  
19 ability to do that.

20 Q. Would it be fair for someone to  
21 argue that because you said I don't recall  
22 a lot, you were trying to hide information?

23 MR. TISI: Objection.

24 MR. PLACITELLA: I'll

1 defer to Tisi's objection.

2 MR. TISI: It's okay.

3 We can both object.

4 MR. PLACITELLA:  
5 Objection.

6 THE WITNESS: No, I  
7 would never try to hide anything  
8 and I know it has been -- it seems  
9 to me it has been suggested or  
10 inferred that I tried to hide  
11 information or considered  
12 information secret. I know that  
13 term was used. And that I would  
14 prevent information from going to  
15 the court or not divulge to the  
16 court or not given to outside  
17 agencies or anything like that. I  
18 would never do anything to impede  
19 information. I would never do  
20 anything to violate the oath I took  
21 as a lawyer to tell the truth and  
22 to be honest in dealing with  
23 outside counsel, opposing counsel  
24 and the court.

1 was some correspondence, dealings with  
2 lawyers and I volunteered to go to New  
3 Jersey from Pennsylvania, because there's  
4 jurisdictional issues about subpoenas and I  
5 didn't want to impede it or cause a  
6 problem. So I said look, I'll voluntarily  
7 go to New Jersey. I'll meet your process  
8 server and I'll accept service.

9 Q. Why did you do that?

10 A. Because I didn't want --

11 MR. TISI: Objection.

12 MR. PLACITELLA:

13 Objection, scope. It has nothing  
14 to do with this case.

15 MR. TISI: And in all  
16 honesty, I think that may call for  
17 some communications that you had  
18 with him. So if you, honestly, if  
19 you ask that question, I'm going to  
20 ask questions and follow up asking,  
21 did you have communications with  
22 your lawyers about that. So you're  
23 going to open the door about that.

24 MS. BROWN: Well, that's

1 BY MR. PLACITELLA:

2 Q. And let's break that down a  
3 little bit if we could, Mr. O'Shaughnessy.  
4 You understand the questions that you have  
5 been asked over the course of the last  
6 couple of days are about really serious  
7 issues, right?

8 A. Absolutely.

9 Q. And in fact, the work that you  
10 did at Johnson & Johnson, did you take it  
11 seriously?

12 A. I did, because I understood the  
13 issues were serious then and I understand  
14 they're serious now. And I understand  
15 they're serious to the litigants and  
16 they're serious to the company.

17 Q. And in terms of your appearance  
18 here at this deposition, how did you come  
19 to learn that your presence here for  
20 questioning by the Plaintiffs' lawyers was  
21 requested?

22 A. I had a gentleman came to my  
23 house, a process server and rang the  
24 doorbell and served a subpoena. Then there

1 just not fair. I'm not opening the  
2 door about that at all. I'm asking  
3 you not about anything that you  
4 talked to lawyers about. But why  
5 did you make the decision to do  
6 what you just described?

7 MR. TISI: Objection,  
8 except to the extent if you're  
9 asking -- I'm going to ask him, if  
10 any of his decision had any -- in  
11 reaching that decision, did he  
12 speak with the lawyers.

13 MS. BROWN: Okay. I'm  
14 going to withdraw the question.

15 MR. TISI: Thank you.

16 MS. BROWN: This is not  
17 worth it.

18 BY MS. BROWN:

19 Q. And so, Mr. O'Shaughnessy, over  
20 the course of the past couple of days, did  
21 you come to kind of understand why the  
22 lawyers wanted to talk to you?

23 A. Yeah, I think in part, I did,  
24 yeah, I know.

1 Q. And what was your impression of  
2 the questions being asked of you?

3 MR. TISI: Objection.

4 THE WITNESS: Like I  
5 said before, these questions were  
6 posed to me sometimes with  
7 testimony from the employee or for  
8 some deposition that I may not even  
9 have known about or been employed  
10 and then juxtapositioned with a  
11 document. And the inference I  
12 think always was that the document  
13 or the information in the document  
14 or information about testing was  
15 being hidden. And that's what I  
16 think they were trying to do with  
17 the documents and that wasn't, in  
18 your opinion, what was happening  
19 with what I was doing with the  
20 product. And I --

21 BY MS. BROWN:

22 Q. I'm sorry. Mr. O'Shaughnessy,  
23 as it relates to your actions and based on  
24 your experience, is it fair and accurate to

1 suggest that you were part of an effort to  
2 keep information secret?

3 MR. TISI: Objection.

4 THE WITNESS: That's not  
5 accurate and no, it's not fair.

6 BY MS. BROWN:

7 Q. Okay. Is it based on your  
8 experience and your knowledge, is it fair  
9 and accurate to suggest that you tried to  
10 give information to courts and to  
11 plaintiffs that wasn't truthful?

12 MR. TISI: Objection.

13 MR. PLACITELLA:  
14 Objection to form.

15 THE WITNESS: No.

16 MR. PLACITELLA:  
17 Mischaracterizes.

18 BY MS. BROWN:

19 Q. You were asked a number of  
20 questions, Mr. O'Shaughnessy, about whether  
21 or not --

22 A. You have your notes up on the  
23 Elmo.

24 Q. Sorry, thanks. This is top

1 secret.

2 MR. TISI: But nobody  
3 could deliver it as well as you  
4 did.

5 MR. PLACITELLA: It says  
6 pick up milk on the way home.

7 BY MS. BROWN:

8 Q. No, I don't do that. Clearly  
9 that wasn't my note. We can get back to  
10 business here.

11 Mr. O'Shaughnessy, you were  
12 asked a number of questions about whether  
13 or not you had, quote, "turned over certain  
14 documents in certain cases." Do you  
15 remember those questions?

16 A. I do, yeah.

17 Q. First of all, were you ever  
18 shown any documents about particular  
19 requests in individual cases?

20 MR. TISI: Objection.

21 THE WITNESS: I was  
22 shown the document requests in some  
23 of the discovery.  
24

1 BY MS. BROWN:

2 Q. Do you have a memory, sitting  
3 here today, about what specific documents  
4 were requested in what individual cases?

5 MR. TISI: Objection.

6 THE WITNESS: No, I  
7 don't. And I think I testified to  
8 that and, you know, the discovery  
9 requests -- no, I don't, and I  
10 think I said that.

11 BY MS. BROWN:

12 Q. And in terms of your role in  
13 responding to requests like that, did you  
14 take those requests seriously?

15 A. Yes. And, you know, we spent a  
16 lot of time, we, when I say "we," I mean  
17 myself and our outside counsel spent a lot  
18 of time, you know, analyzing those  
19 requests, developing the response, in a way  
20 I testified during here with all we did  
21 with respect to the company witnesses and  
22 documents. And, you know, really, in light  
23 of the current law, because these requests  
24 are made in jurisdictions and certain laws

1 apply to that and there's certain  
2 objections that we can and do make and so  
3 all of that put together, yeah, and we took  
4 it very seriously and we spent a lot of  
5 time on it making sure they were accurate.

6 Q. Did you ever take steps to --  
7 strike that. You were asked questions  
8 about a document that I want to show you,  
9 if we could have the Elmo now that my notes  
10 are gone.

11 MR. TISI: Did you give  
12 me that document, I'm sorry?

13 MS. BROWN: It's a  
14 document Chris used, 456.1.

15 MR. TISI: I'm sorry,  
16 could I just take a look at it?  
17 Oh, Chris used it.

18 BY MS. BROWN:

19 Q. It's the other Chris. This  
20 document was marked as Exhibit 456.1 and it  
21 is a document from November 23, 1993, to W.  
22 Ashton and D. Jones from R. Denton. Do you  
23 see that?

24 A. Yes, I remember that.

1 Q. Okay. And the subject is "Trip  
2 Report Talc Validation Team Meeting." Do  
3 you see that?

4 A. Yes.

5 Q. And first of all, did this  
6 document go to you?

7 A. No.

8 Q. Have you ever seen this  
9 document before?

10 A. No.

11 Q. Okay. Do you know anything  
12 about the contents of this document?

13 A. No, I never read it.

14 Q. Okay. You were shown page 3 of  
15 this document and you were asked questions  
16 about this highlighted section that has a  
17 little asterisk and the word "note." Do  
18 you see that?

19 A. I do.

20 Q. Okay. And you were asked  
21 questions about this sentence "The  
22 specifics of the mining operation at  
23 Hammondsville are uncertain, as most of the  
24 pre-Luzenac records were destroyed by the

1 mine management staff just prior to the J&J  
2 divestiture and the Cyprus purchase.

3 However, several former Hammondsville  
4 miners are still employed at the Ham mine,  
5 and they provided us with useful  
6 information as to the nature of the  
7 underground works." Do you recall  
8 questions regarding that paragraph?

9 A. Yes, I do.

10 Q. Okay. And I want to show you a  
11 document that counsel didn't show you. And  
12 let's mark this document as Defense 1.  
13 Okay.

14 - - - -

15 (Affidavit of Robert K. Denton  
16 marked O'Shaughnessy Exhibit D-1  
17 for identification.)

18 - - - -

19 BY MS. BROWN:

20 Q. Now, the document --

21 MR. PLACITELLA: Could I  
22 just ask a question?

23 MS. BROWN: Yes.

24 MR. PLACITELLA: This

1 affidavit dated 11 -- well,  
2 October 31, 2018. Was it ever  
3 turned over to me in the course of  
4 litigation? Because it doesn't  
5 have any information that you ever  
6 turned it over.

7 MR. BERNARDO: I'll  
8 represent, Chris, it's in multiple  
9 briefs --

10 MR. PLACITELLA: That's  
11 not the question, whether it's in  
12 briefs or not.

13 MR. BERNARDO: That have  
14 been served in the MDL and the  
15 other places that you're privy to.

16 MR. PLACITELLA: The  
17 question is --

18 MS. BROWN: He just  
19 answered that.

20 MR. PLACITELLA: Excuse  
21 me. Was this affidavit ever turned  
22 over to me in discovery?

23 MS. BROWN: He just  
24 answered that.



1 MR. PLACITELLA: No, he  
2 didn't.

3 MS. BROWN: Yes, it has  
4 been filed with the court. Okay.

5 MR. PLACITELLA: Where,  
6 can you tell me where it was filed?

7 MR. BERNARDO: Why don't  
8 we continue with this examination  
9 instead of an examination --

10 MR. PLACITELLA: Judge,  
11 they're asking the witness about an  
12 affidavit of a J&J --

13 MS. BROWN: Hold on,  
14 hold on. It's been used at court.  
15 It has been used at trial.

16 MR. PLACITELLA: Not my  
17 trial. What trial?

18 MS. BROWN: Let's take a  
19 look, if we could,  
20 Mr. O'Shaughnessy --

21 MR. PLACITELLA: Well, I  
22 would object to the use of the  
23 affidavit or any questions about it  
24 when you've had it in your

1 Defense Exhibit No. 1. Do you see that,  
2 Mr. O'Shaughnessy?

3 A. I do.

4 Q. And the document that counsel  
5 showed you was written by a R. Denton. Do  
6 you see that?

7 A. Yes.

8 Q. Okay. And this affidavit, can  
9 you tell our jurors who signed and swore to  
10 the information in this affidavit?

11 A. Robert K. Denton.

12 Q. Okay. And --

13 MR. PLACITELLA: Can we  
14 ask him if he's ever seen it  
15 before?

16 BY MS. BROWN:

17 Q. Did counsel show you this  
18 document during his questioning,  
19 Mr. O'Shaughnessy?

20 MR. PLACITELLA: No, my  
21 question was --

22 THE WITNESS: No, he  
23 didn't.

24 MS. BROWN: Wait,

1 possession, you knew you were going  
2 to ask it, and you never turned  
3 over.

4 MS. BROWN: Okay. That  
5 is demonstrably false. It has been  
6 attached to a number of filings and  
7 it has been used in court.

8 MR. TISI: But there's  
9 no Bates numbers on it.

10 MS. BROWN: I  
11 understand. We're going to proceed  
12 and you can ask whatever you want.

13 MR. PLACITELLA: So  
14 you're representing this affidavit  
15 was served upon me as counsel for  
16 J&J --

17 MS. BROWN: I'm  
18 representing that this document has  
19 been used.

20 MR. BERNARDO: In your  
21 role in the multi-district  
22 litigation.

23 BY MS. BROWN:

24 Q. This is what we have marked as

1 wait --

2 MR. PLACITELLA: No, no,  
3 no, please.

4 MS. BROWN: -- you are  
5 interrupting my questioning --

6 MR. PLACITELLA: Please  
7 ask him if he ever saw it before.

8 MS. BROWN: You are  
9 welcome to ask him whatever you  
10 want, you are interrupting me and  
11 you are suggesting questions out of  
12 turn.

13 MR. PLACITELLA: Okay.

14 MS. BROWN: Please stop.

15 Now, Mr. O'Shaughnessy,  
16 did counsel show you Defense  
17 Exhibit 1, Mr. Denton's affidavit,  
18 when he was questioning you?

19 THE WITNESS: No.

20 BY MS. BROWN:

21 Q. Let's look at paragraph number  
22 14. And would you read to our jurors the  
23 information contained in Mr. Denton's  
24 affidavit of 2018?

1 A. Paragraph 14 reads "I  
2 understand that some attorneys for  
3 plaintiffs in talcum powder litigation  
4 involving Johnson & Johnson have suggested  
5 that the records I described as having been  
6 destroyed would have included records and  
7 materials related to testing, testing  
8 results, talcum powder samples tested,  
9 and/or TEM grids of talc and/or talc ore  
10 from the Hammondsville mine. No such  
11 records or materials would have been  
12 included among the materials that were  
13 destroyed."

14 Q. And in terms of the document  
15 that counsel showed you as Exhibit 456.1,  
16 is that a document you had ever seen  
17 before?

18 A. I have not.

19 Q. And in terms of this affidavit  
20 with information from Mr. Denton himself,  
21 is that something you had ever seen before?

22 A. No.

23 Q. Okay. Do you think it's  
24 important, Mr. O'Shaughnessy, when

1 considering all documents like this one  
2 from 1993 to look at all of the  
3 information?

4 MR. TISI: Objection to  
5 form.

6 THE WITNESS: Yes, I  
7 believe so and I was being asked  
8 questions about a document that I  
9 hadn't seen and I wasn't aware of  
10 information that the document had  
11 been addressed already in the  
12 litigation and the specific  
13 questions that Mr. Placitella had  
14 had been addressed. And I couldn't  
15 address them, because I had no  
16 knowledge about the document.

17 BY MS. BROWN:

18 Q. Did it happen a lot,  
19 Mr. O'Shaughnessy, over the past couple of  
20 days that you were shown selected test  
21 reports or studies or documents?

22 A. Yes.

23 MR. PLACITELLA:  
24 Objection to the question.

1 THE WITNESS: Yes.

2 MR. TISI: Yeah,  
3 objection to form.

4 BY MS. BROWN:

5 Q. And, Mr. O'Shaughnessy, in your  
6 role as lawyer for Johnson & Johnson, did  
7 you review and study and become an expert  
8 on every single test result test that was  
9 performed on Johnson's Baby Powder?

10 A. No.

11 Q. You were shown by counsel  
12 Exhibit 230, an affidavit of John Hopkins,  
13 do you remember being shown this affidavit?

14 A. Yes, in that Durham case.

15 Q. And first of all, tell our  
16 jurors, who is John Hopkins?

17 A. John Hopkins was a toxicologist  
18 who was employed by Johnson & Johnson as a  
19 scientist. I believe John was originally  
20 employed in the UK and then he came over to  
21 New Jersey and was a scientist for the  
22 company there.

23 Q. And just generally, and I don't  
24 want to ask you in any particular case, but

1 can you tell us generally about your  
2 interactions with Dr. Hopkins?

3 A. Yeah. As I think I explained  
4 before in the testimony, in order to defend  
5 the product in litigation, you speak to the  
6 people at the company who are experts in it  
7 and who know about it, are familiar with  
8 all the issues. And Mr. Hopkins was among  
9 the many people at Johnson & Johnson who  
10 was familiar with a lot of these issues.  
11 And I spoke with him, as did our outside  
12 counsel, quite often regarding this  
13 litigation.

14 Q. And you were asked questions  
15 about paragraph 3, audits of talc mines  
16 conducted by Professor Fred Pooley. Do you  
17 remember that?

18 A. Right, I do.

19 Q. And you were asked questions  
20 about Dr. Hopkins' statement that the  
21 conclusion of the audits was that for both  
22 the Italian and Vermont mines, there was  
23 zero evidence of asbestos in the geology  
24 and mineralogy of the mines. Do you recall



1 that?

2 A. Right, I do.

3 Q. And then you were shown some  
4 other documents that were put up next to  
5 this affidavit.

6 MR. PLACITELLA:

7 Objection. You're using your  
8 hands.

9 BY MS. BROWN:

10 Q. Do you recall those questions?

11 A. I do.

12 Q. And one document though you  
13 were not shown was one of Dr. Pooley's  
14 audits and so I would like to mark as  
15 Defense 2 the document about which Dr.  
16 Hopkins was referring here.

17 MR. PLACITELLA:

18 Objection, no basis.

19 - - - - -

20 (Letter dated 9/28/72 and  
21 Report Bates JNJTALC000289268 to  
22 359834 marked O'Shaughnessy Exhibit  
23 D-2 for identification.)  
24 - - - - -

1 BY MS. BROWN:

2 Q. And counsel has an objection to  
3 no basis. Do you have a memory of seeing  
4 any of the test results that counsel for  
5 the Plaintiffs put in front of you today?

6 A. No.

7 Q. Do you -- was it your role at  
8 the company to be an expert on the meaning  
9 or interpretation of those test results?

10 A. No, that was for the  
11 scientists.

12 Q. All right. And was Dr. Hopkins  
13 one of those scientists?

14 A. Yes.

15 Q. Okay. And in terms of this  
16 letter, it's dated September 28, 1972, by  
17 Dr. Pooley. And it's a letter to  
18 Dr. Shelley. Do you have a memory of who  
19 Dr. Shelley was?

20 A. I do not, no.

21 Q. Okay. Can you read to our  
22 jurors the information contained in the  
23 first paragraph of this letter that we've  
24 marked as Defense 2?

1 A. It states "The mineralogical  
2 X-ray and morphological examination of the  
3 Italian mine samples has been in progress  
4 for over a year. The samples were all  
5 collected under my supervision at the  
6 Fontana mine, which is the same mine from  
7 which the Shower to Shower sample was  
8 obtained."

9 Q. Okay. And what information  
10 does Dr. Pooley provide about his own audit  
11 that was the subject of Dr. Hopkins'  
12 affidavit?

13 A. Reading from the document again  
14 it says "The report of the examination  
15 contains a brief outline of the results  
16 obtained. No chrysotile was found at the  
17 mine or in the samples taken. Some  
18 tremolite was located, but was not  
19 asbestiform in character and has not been  
20 detected in 00000 talc imported into Great  
21 Britain for the past year, nor in shipments  
22 dating back to 1949. I hope that it is of  
23 some interest to you. Yours sincerely,  
24 Fred Pooley."

1 Q. And one of the things that Dr.  
2 Pooley notes here is that some tremolite  
3 was located, but was not asbestiform in  
4 character. Do you see that?

5 A. I do.

6 Q. Are you, Mr. O'Shaughnessy,  
7 qualified or capable of interpreting test  
8 results to determine whether or not the  
9 minerals identified are asbestiform or  
10 nonasbestiform?

11 A. I am not.

12 Q. And when reviewing testing  
13 results at Johnson & Johnson, were there  
14 people who were qualified to do that?

15 A. Yes, of course.

16 Q. And was Dr. Hopkins one of  
17 those people?

18 A. Yes.

19 Q. And what is, and I don't want  
20 to ask you about any particular case,  
21 Mr. O'Shaughnessy, but what was your  
22 understanding based on speaking to all of  
23 the experts at the company about the  
24 processes that were in place to test talc

1 for asbestos?

2 MR. TISI: Objection to  
3 form. Overbroad.

4 THE WITNESS: My  
5 understanding that the testing was  
6 voluminous. It occurred over many,  
7 many years while the product was on  
8 the market. That it was conducted  
9 both inside by Johnson & Johnson  
10 and by outside entities and  
11 laboratories as we discussed today.  
12 And that that testing was all in  
13 totality showing that there was no  
14 asbestos in the product.

15 BY MS. BROWN:

16 Q. You were asked -- first of all,  
17 you were shown this exhibit, which counsel  
18 marked as JOS 4 and he wrote, "Secret  
19 equals Alice Blount found asbestos in  
20 JBBP." I think he meant JBP. Do you see  
21 that?

22 A. I do.

23 Q. First of all, do you have a  
24 memory of receiving any information about

1 determination about whether or not this  
2 statement is true, Alice Blount found  
3 asbestos?

4 A. No.

5 Q. Who would be in charge of  
6 something like that?

7 A. That type of information would  
8 be assessed like other scientific  
9 information by the scientists.

10 Q. Okay. And even though you  
11 don't have a perfect recollection about  
12 what happened here with this Blount letter,  
13 what was the practice in terms of that  
14 evaluation?

15 MR. TISI: Objection to  
16 form.

17 THE WITNESS: Well, the  
18 company would always examine --  
19 from time to time the company had  
20 reports of talc in -- its talcum  
21 powder containing asbestos and it's  
22 my understanding that what they did  
23 was they would look into those and  
24 examine and determine for

1 Dr. Blount?

2 A. No, I don't. I think I  
3 testified to that. I don't recall it.

4 Q. Do you have a memory of any  
5 specific analysis of Dr. Blount's purported  
6 findings?

7 A. I do not.

8 Q. Sitting here today, can you  
9 remember the specifics of anything that Dr.  
10 Blount may have claimed to have found?

11 A. I don't.

12 Q. Okay. What is your  
13 understanding generally about how you dealt  
14 with information like the letter regarding  
15 Alice Blount?

16 A. I believe I testified that, you  
17 know, I have no recollection of it, but  
18 issues such as this, it would have been our  
19 practice to discuss it with the company  
20 people and I say "us," I would say, you  
21 know, outside counsel who sent me the  
22 information and myself.

23 Q. You were asked -- and would  
24 you, Mr. O'Shaughnessy, make a personal

1 themselves how they assessed  
2 whether that was accurate, reliable  
3 or not.

4 BY MS. BROWN:

5 Q. And you were asked a number of  
6 questions about whether you took the  
7 information contained in a letter from your  
8 lawyer and relayed it to entities like the  
9 NTP. Do you recall those questions?

10 A. I do, yes.

11 Q. And I know you don't recall a  
12 ton of the specifics about Dr. Blount, but  
13 do you recall generally, were her purported  
14 findings published?

15 MR. PLACITELLA:  
16 Objection to form.

17 THE WITNESS: I think,  
18 yes, I think there was a  
19 publication in 1991 by Dr. Blount.

20 BY MS. BROWN:

21 Q. And I want to show you a  
22 document that we'll mark as Defense  
23 Exhibit 3. This is a document that we've  
24 marked as Defense Exhibit 3 and it is on

1 CTFA letterhead, the Cosmetic, Toiletry,  
2 and Fragrance Association. Do you see  
3 that?

4 A. I do.

5 -----

6 (Letter dated 3/18/02 Bates  
7 JNJTALC00109268 to 109278 marked  
8 O'Shaughnessy Exhibit D-3 for  
9 identification.)

10 -----

11 BY MS. BROWN:

12 Q. And do you know generally what  
13 the CTFA is?

14 A. Like we discussed, it was an  
15 industry group for companies in that  
16 industry of cosmetics, toiletry, and  
17 fragrances.

18 Q. And it is a letter to whom,  
19 Mr. O'Shaughnessy?

20 A. This is a letter to Dr. Kenneth  
21 Olden who is the director of the National  
22 Toxicology Program of the National  
23 Institute of Environmental Health Services.

24 Q. Okay. And would you tell our

1 authored by Blount and Vassiliou, 1983,  
2 Identification of chlorite and serpentine  
3 in cosmetic or pharmaceutical talc.  
4 Published in the Environmental Health  
5 Perspect. I don't know the correct title  
6 of that publication.

7 Q. And would you have been the  
8 person, Mr. O'Shaughnessy, to have  
9 scientific discussions with the NTP about  
10 references like the ones contained in this  
11 letter?

12 A. No.

13 Q. You were asked a lot of  
14 questions about whether the Blount letter  
15 went to the FDA, went to the NTP, would you  
16 have been the person to engage in those  
17 kind of scientific discussions?

18 A. No, that was not my role.

19 Q. Did you attend the public NTP  
20 hearings and participate in scientific  
21 debate and discussions about references  
22 including those cited on this list?

23 A. I went to that one meeting and  
24 I forget which meetings it was, NTP, but I

1 jurors what information is contained in the  
2 second paragraph?

3 A. I'll read it. It says "In an  
4 attempt to clarify issues that were raised  
5 in the initial Draft Background Document in  
6 discussion at the RoC subcommittee meeting  
7 and in your letter of July 9, we have  
8 completed an updated review and analysis of  
9 the literature. Our findings include some  
10 90 studies, articles, and commentaries,  
11 more than 50 of which (the ones preceded an  
12 asterisk) that are not referenced in the  
13 initial DBD," which is the Draft Background  
14 Document. "While not all of the additional  
15 references may meet NTP criteria for use in  
16 a DBD, we believe they provide useful  
17 information relevant to the subject  
18 matter."

19 Q. And in terms of the 50 studies,  
20 articles, or commentaries that had an  
21 asterisk and were not referenced by the NTP  
22 but were provided by the CTFA, would you  
23 tell our jurors what number 55 was?

24 A. Number 55 was an article

1 went as an observer to keep my myself  
2 abreast of what was going on.

3 Q. Was it your role as a lawyer  
4 for Johnson & Johnson to be the person  
5 engaging in scientific discussions with  
6 regulators?

7 A. No.

8 Q. And do you have firsthand  
9 knowledge or would you about how the NTP,  
10 what the NTP did with this information?

11 A. No.

12 Q. You were asked a number of  
13 questions about an affidavit that was  
14 prepared by Mr. Ashton regarding the  
15 Johnson mine in Vermont. Do you recall  
16 that?

17 A. Yes.

18 Q. And first of all, can you tell  
19 our jurors just generally who Mr. Ashton  
20 was?

21 A. Mr. Ashton was an employee of  
22 the company for a number of years and as I  
23 knew him, he was primarily devoted to the  
24 research of geology and mineralogy related

1 to talc on behalf of the company.

2 Q. And you were shown a multi-page  
3 affidavit by Mr. Ashton stating that  
4 there's no asbestos in the Johnson mine and  
5 providing his support for that statement.  
6 Do you recall that?

7 A. Yes.

8 Q. Okay. And to the best of your  
9 knowledge, did Johnson & Johnson ever use  
10 talc from the Johnson mine in its baby  
11 powder?

12 A. No, that was used for  
13 industrial talc.

14 Q. And to the best of your  
15 knowledge, were the sources cited in  
16 Mr. Ashton's affidavit truthful and  
17 accurate?

18 A. Yes, they were published  
19 sources, yes.

20 Q. And to the best of your  
21 knowledge, were the statements made in  
22 Mr. Ashton's affidavit truthful and  
23 accurate?

24 A. Yes.

1 MR. TISI: Objection.

2 BY MS. BROWN:

3 Q. You were shown a bunch of  
4 snippets from other people's depositions  
5 regarding the Johnson mine. Do you  
6 remember that?

7 A. Yes, I do.

8 Q. First of all, do you have any  
9 idea who those folks are?

10 A. No.

11 Q. Do you know if they were being  
12 paid by plaintiffs' lawyers in litigation?

13 MR. PLACITELLA:  
14 Objection, there's no basis for  
15 that and you know it.

16 MS. BROWN: It's  
17 actually in the transcript, we can  
18 look at it.

19 MR. PLACITELLA: Dr.  
20 Hemstock was being paid by the  
21 plaintiffs' lawyer?

22 MS. BROWN: Dr. Gale.  
23 Dr. Gale was a paid expert.

24 MR. PLACITELLA: Who?

1 BY MS. BROWN:

2 Q. Dr. Gale. We'll get to it.

3 Relax. Do you have any information about  
4 who those folks were?

5 A. No.

6 Q. What their role was in  
7 litigation?

8 A. No.

9 Q. Have you ever reviewed the  
10 totality of those transcripts?

11 A. No.

12 Q. You were shown a transcript,  
13 which was at Exhibit 436, and it was a  
14 deposition, I'm going to have to take this  
15 out of here, just a second. You were shown  
16 a deposition of Peter Gale. Do you recall  
17 that generally?

18 A. Yes.

19 Q. I mean, do you have any idea  
20 who Peter Gale is?

21 A. I do not.

22 Q. You were shown some selected  
23 testimony about Mr. Gale's purported  
24 finding of asbestos in talc. Do you

1 remember that?

2 MR. PLACITELLA:

3 Objection to the form.

4 THE WITNESS: I remember  
5 being shown excerpts, yes.

6 BY MS. BROWN:

7 Q. And you never read the totality  
8 of this deposition?

9 A. No, never.

10 Q. I mean, do you think it's  
11 important if you're going to comment or  
12 question about somebody's sworn testimony  
13 to read and consider the whole thing?

14 MR. TISI: Objection.

15 MR. PLACITELLA:  
16 Objection.

17 THE WITNESS: Well,  
18 depositions are usually lengthy, as  
19 we know from my experience here.  
20 And there's a lot of testimony, so  
21 in order to have the context of it,  
22 that is certainly something you  
23 need to do.

1 BY MS. BROWN:

2 Q. And I want to show you a part  
3 of -- as it relates to -- you were shown  
4 some testimony about a purported finding of  
5 asbestos. Do you remember that?

6 A. Yes.

7 MR. PLACITELLA:

8 Objection to form.

9 BY MS. BROWN:

10 Q. And I want to show you some  
11 other testimony that in fairness, sir, you  
12 weren't shown. And could you read starting  
13 at line 8, the question that Mr. Gale was  
14 asked at the end of his deposition when the  
15 other lawyers had a chance to question.

16 A. Question: "Is it possible that  
17 an element that you may have identified as  
18 chrysotile by using the earlier two methods  
19 that you talked about and not performing an  
20 elemental analysis, could after elemental  
21 analysis be determined to be something  
22 other than chrysotile?"

23 There was an objection and  
24 then the witness answered "That is a

1 possibility."

2 Q. And continuing on, what about  
3 the next question?

4 A. Question: "Did you recommend  
5 that Engelhard pursue further analysis of  
6 these samples along the lines that you've  
7 identified?"

8 Q. And what was --

9 A. There was an objection and the  
10 answer was no.

11 Q. Okay. And so in terms of the  
12 snippet of the testing results that you  
13 were shown from Mr. Gale, are you in a  
14 position to evaluate the accuracy or the  
15 significance of those?

16 A. No.

17 Q. Do you defer to somebody else  
18 for that kind of stuff?

19 MR. PLACITELLA:

20 Objection to form.

21 THE WITNESS: Anything  
22 with respect to scientific findings  
23 and testing, I would defer to the  
24 scientists.

1 BY MS. BROWN:

2 Q. You were -- when you were being  
3 asked some questions about test results,  
4 there was something you wanted to explain  
5 about what you were thinking when you were  
6 looking at them and there was an objection  
7 and a motion to strike your answer. And so  
8 I want to give you the opportunity to  
9 explain to our jurors, when you were  
10 looking at that backup data and you were  
11 looking at those test results, was there  
12 something you wanted to continue on in your  
13 answer?

14 MR. TISI: Objection.

15 Improper question.

16 THE WITNESS: I believe  
17 so. And that is, you know, being  
18 shown, and I think I specifically  
19 said my eyes were glazing over,  
20 because I have no way of  
21 interpreting those documents. I  
22 rely on the scientists and, you  
23 know, they were shown to me along  
24 with maybe deposition transcript

1 quotes and things of that nature.  
2 And to me, they were -- they were  
3 totally different from each other.  
4 One was testimony and one was some  
5 scientific document. And I had no  
6 way based on my experience to and  
7 lack of expertise to correlate the  
8 two. And so I was asked questions  
9 about that and I couldn't answer  
10 them.

11 BY MS. BROWN:

12 Q. Who do you think would be  
13 better able to answer those kind of  
14 questions?

15 MR. PLACITELLA:

16 Objection to form.

17 THE WITNESS: The people  
18 at the company who actually perform  
19 the testing and dealt with it and  
20 are familiar with it.

21 BY MS. BROWN:

22 Q. Do you believe, sitting here  
23 today, Mr. O'Shaughnessy, that the  
24 statements that were made to courts and



1 plaintiffs during the time period that you  
2 worked at Johnson & Johnson were truthful  
3 and accurate?

4 A. They were truthful and  
5 accurate, yes.

6 Q. You were asked two days ago  
7 about what was marked as Exhibit 74 to your  
8 deposition, a memo dated January 24, 1995,  
9 from Neal Matheson and the subject was  
10 proposal for a new talc study.

11 A. I recall --

12 MR. TISI: Objection,  
13 misstates the document. It's not  
14 from Neal Matheson. It's to Neal  
15 Matheson.

16 BY MS. BROWN:

17 Q. Oh, that's fair. Hold on.  
18 Let's get this right. You were shown  
19 Exhibit 74 dated January 24, 1995, and it  
20 is a letter from Donald Jones to Neal  
21 Matheson and the subject is proposal for  
22 new talc study. Do you remember that?

23 A. I do.

24 Q. And you were asked really a lot

1 of questions about this proposed new talc  
2 study. Do you remember those?

3 A. Yes.

4 Q. Was it your role at the company  
5 as a lawyer for Johnson & Johnson to  
6 evaluate the propriety of a proposal for  
7 a study?

8 MR. TISI: Objection.

9 THE WITNESS: No.

10 BY MS. BROWN:

11 Q. Were you involved in your role  
12 as a lawyer for Johnson & Johnson in  
13 discussions about the potential merits or  
14 lack thereof of any scientific study  
15 proposal?

16 A. No, I had no role in that  
17 process.

18 Q. And I think how we got to this  
19 is that there's a list of people who are  
20 carbon copied here, right?

21 A. Yes.

22 Q. And that's, like, not a thing  
23 anymore, but it means that a copy was sent  
24 to you, right?

1 A. It does, yeah.

2 Q. Okay. And a lot of the  
3 documents you were shown had you sort of  
4 cc'd. Do you remember that?

5 A. Yes.

6 Q. And lot of them dealt with  
7 scientific or epidemiology issues. Do you  
8 remember those questions?

9 A. Yes, I do.

10 Q. Was your understanding -- what  
11 was your understanding as to why you were  
12 copied on those types of documents?

13 MR. TISI: Objection. I  
14 think you should rephrase the  
15 question, because I think it may  
16 call for attorney work product and  
17 attorney-client privilege and if  
18 you open the door, I'm going to go  
19 through it.

20 MS. BROWN: This has  
21 nothing to do with talking to  
22 lawyers.

23 MR. TISI: Well, I think  
24 you have to preface it.

1 BY MS. BROWN:

2 Q. What was your understanding of  
3 your role as it relates to issues like this  
4 proposal for a new talc study?

5 A. I believe I testified my role  
6 is, as you know, an attorney for the  
7 company, and the company, these people knew  
8 I was handling litigation and I would often  
9 be copied on materials that they thought  
10 might be relevant to that and that's why I  
11 would get it.

12 MR. TISI: Objection to  
13 move to strike as being  
14 speculative.

15 BY MS. BROWN:

16 Q. Did you understand there to be  
17 a suggestion that Johnson & Johnson was  
18 purposefully not funding a study because it  
19 was trying to hide a dangerous product?

20 A. I think the theme here that I'm  
21 picking up in the litigation on behalf of  
22 the Plaintiffs is that Johnson & Johnson  
23 somehow hid information regarding science,  
24 regarding talc.



1 Q. And based on your experience  
2 and your participation in things like the  
3 talc steering committee, is that truthful  
4 and accurate?

5 MR. TISI: Objection.

6 THE WITNESS: No, based  
7 on my experience, no.

8 BY MS. BROWN:

9 Q. And so you were asked a ton of  
10 questions about this particular proposal  
11 for a new study and if we look at some  
12 additional information provided under cost  
13 and timing, would you tell our jurors how  
14 many people this proposed study sought to  
15 evaluate?

16 A. The document reads, "The study  
17 is expected to require two-plus years and  
18 report 171 cases and 171 controls."

19 Q. And the date of this proposal  
20 for a study of approximately three- or 400  
21 people is what?

22 A. The date on the memo is  
23 January 24, 1995.

24 Q. Okay. And what I would like to

1 mark as Exhibit 4 to your deposition is a  
2 chart, I'll represent to you, of studies,  
3 case control studies that were published  
4 during the years 1992 to 1999. Do you see  
5 that?

6 A. I do.

7 - - - - -

8 (Case Control Studies that were  
9 Published from 1992 to 1999 marked  
10 O'Shaughnessy Exhibit D-4 for  
11 identification.)

12 - - - - -

13 BY MR. PLACITELLA:

14 Q. And first of all, in terms of  
15 your role as a lawyer, were you in charge  
16 of evaluating the significance or findings  
17 of these epidemiology studies?

18 A. No.

19 Q. When you were asked a ton of  
20 questions about this proposal for a new  
21 study in 1995, were you involved in any  
22 discussions about how the 1995 study  
23 proposal compared to the two studies that  
24 were published in 1995?

1 A. No.

2 Q. Were you involved in any  
3 discussions about whether or not the case  
4 control studies that were published in 1995  
5 were bigger or better or more significant  
6 than the proposal Johnson & Johnson  
7 received?

8 A. No.

9 Q. Do you have any information  
10 about whether or not the studies from 1992  
11 to 1999 that were published studied more,  
12 less, or the same amount of women that were  
13 referenced in the study proposal?

14 A. I don't -- I don't know.

15 Q. Were those discussions you  
16 would have been involved in as a lawyer at  
17 Johnson & Johnson?

18 A. No, no.

19 Q. Do you have any information  
20 about the scientific merits of the proposed  
21 study versus studies that were done during  
22 that time period or before?

23 A. No, I do not. That's well  
24 beyond my expertise.

1 Q. Were you shown any of the  
2 prospective cohort studies that were done,  
3 for example, the Nurses' Health Study or  
4 the Women's Health Initiative?

5 A. During the deposition, no.

6 Q. Are you aware generally that  
7 there were a number of government-funded  
8 prospective or forward-looking studies that  
9 were done throughout the '90s and the  
10 2000s?

11 A. Yes.

12 Q. Okay. And were you involved in  
13 any discussions at Johnson & Johnson about  
14 how the strength of those studies and the  
15 size of those studies compared to the  
16 proposed study that you were shown at  
17 Exhibit 74?

18 A. No.

19 Q. Okay. And in terms of  
20 evaluating and understanding the  
21 significance of those prospective  
22 government-funded studies, is that  
23 something you would be involved in as a  
24 lawyer for Johnson & Johnson?

1 A. No, again, that would be the  
2 scientists at the company.

3 Q. If Plaintiffs' lawyers really  
4 wanted to understand the scientific merits  
5 or lack thereof of this 1995 proposed case  
6 control study, are you the person they  
7 should talk to?

8 A. No.

9 MS. BROWN:

10 Mr. O'Shaughnessy, thank you so  
11 much for your patience and for  
12 taking the time to answer my  
13 questions. I appreciate it.

14 THE WITNESS: Thank you.

15 MR. PLACITELLA: So what  
16 do you want to do here?

17 MS. BROWN: Let's go.

18 MR. PLACITELLA: Do you  
19 want to take a break?

20 MS. BROWN: Oh, yeah,  
21 let's take five minutes.

22 THE VIDEOGRAPHER: Off  
23 the record, 5:33.

24 - - - - -

1 (A recess was taken at this time.)

2 - - - - -

3 THE VIDEOGRAPHER: We  
4 are back on the record at 5:51 p.m.

5 BY MR. TISI:

6 Q. All right. Mr. O'Shaughnessy,  
7 I'm going to try to be as quick as and  
8 efficient as I can. I promised you when I  
9 was on a break.

10 A. Thank you.

11 Q. But I am going to jump around a  
12 little bit, because I'm following the J&J  
13 lawyer's questions.

14 A. I understand.

15 Q. So if for some reason I kind of  
16 bear quickly to the right and you don't see  
17 where, I'm going to ask you to let me know  
18 that. Okay?

19 A. I will.

20 Q. All right. So let's just start  
21 kind of refocusing. I would like to really  
22 reset a little bit what I really was asking  
23 you in the direct examination. Did I ask  
24 you any questions about, you know, how many

1 people would be enrolled in the study, in a  
2 study or, you know, what statistical  
3 analyses would be done and all of those  
4 things? Did I ask you any of those  
5 questions?

6 A. I don't believe you did.

7 Q. Okay. What I asked you about  
8 was in the 1990s when you first started to  
9 be involved in the Worldwide Talc Steering  
10 Committee, I asked you these questions.  
11 And I'm really going to come back to these  
12 questions. I asked you whether there were  
13 proposals on the table that women would be  
14 warned of the risk, the potential risk of  
15 ovarian cancer. Remember those questions?

16 A. I do.

17 Q. I asked you whether or not  
18 women would be instructed not -- whether it  
19 was reasonable for women to be told not to  
20 use talc, you know, in their genital area.  
21 Do you remember those questions?

22 A. Questions along those lines.

23 Q. I asked you whether or not  
24 there were proposals out there in realtime,

1 not made up by the lawyers, right,  
2 proposals by scientists and researchers,  
3 including the American Cancer Society, that  
4 women -- that women not use talcum powders,  
5 but switch to cornstarch products. Do you  
6 remember those?

7 A. I recall you showing me some  
8 documents that stated things like that.

9 Q. Correct. And then I also asked  
10 you whether or not there was in realtime,  
11 not by me, not by Mr. Placitella --

12 A. I don't know what you mean by  
13 realtime.

14 Q. In realtime, in the 1990s.

15 A. Okay.

16 Q. Okay. I asked you whether or  
17 not in realtime, not by lawyers, because  
18 there wasn't even ovarian cancer cases at  
19 that time, right?

20 A. I don't believe there were.

21 Q. Okay. I asked you whether or  
22 not there were proposals about studying  
23 ovarian cancer made directly to Johnson &  
24 Johnson. Do you remember that?

1 A. I don't, Mr. Tisi. Maybe it's  
2 just a fog up --  
3 Q. Well, I asked -- I'm sorry. I  
4 asked you whether or not, remember I showed  
5 you a study not for the purposes of asking  
6 you whether it was good study or a bad  
7 study, I asked you whether or not the  
8 conclusion of the study was do more  
9 studies. And that was the Gross paper,  
10 remember that?  
11 A. You had me read from papers and  
12 Gross was one of them.  
13 Q. Right. And I asked you to look  
14 at the Harlow paper and what I really  
15 pointed out to you was the suggestion that  
16 women be told not to use talc in light of  
17 what was known at that time?  
18 A. I remember you -- we discussing  
19 the Harlow paper.  
20 Q. Right, so all the questions  
21 that the lawyer for Johnson & Johnson asked  
22 you about study designs and all those kinds  
23 of things, those weren't questions I asked  
24 you, were they?

1 MS. BROWN: Objection to  
2 the form.  
3 THE WITNESS: The  
4 question that she asked me, was I  
5 familiar with that or did I play a  
6 role in it.  
7 BY MR. TISI:  
8 Q. Okay. So let's kind of refocus  
9 on where I was really asking you, because I  
10 understand that there are other people who  
11 are scientists at Johnson & Johnson,  
12 correct?  
13 A. Yes.  
14 Q. And I asked you, for example,  
15 with respect to the study proposal by Dr.  
16 Muscat, whether or not the scientists  
17 recommended that the study be done. Do you  
18 remember those questions?  
19 A. I remember and there was some  
20 documents.  
21 Q. Right. And there was some  
22 documents that said, you know, we've looked  
23 at the study, it looks like a really great  
24 study. In fact, the words that were used

1 were "definitive," "important," all of  
2 those questions --  
3 A. I remember those.  
4 Q. And I made a long list of those  
5 questions, right?  
6 A. You did.  
7 Q. I didn't ask you whether or not  
8 you found it to be definitive, important,  
9 substantive, all those adjectives, did I?  
10 A. You had me read from the  
11 document.  
12 Q. Right. The document written by  
13 the scientists?  
14 MS. BROWN: Objection.  
15 Misstates the document.  
16 THE WITNESS: I forget  
17 who authored it.  
18 BY MR. TISI:  
19 Q. Okay. It was Mr. Jones, but  
20 we'll look at that really quickly.  
21 A. Okay.  
22 Q. But in fairness to both you and  
23 me, I was focusing my questions on what  
24 nonscientific recommendations were made out

1 there. Okay. So let me ask you this  
2 question. When I asked, counsel asked you,  
3 the lawyer for J&J asked you about  
4 forward-looking and backward-looking  
5 studies. Do you remember her questions  
6 about forward looking and backward looking.  
7 Do you remember those?  
8 A. She mentioned the studies, yes.  
9 Q. Right. A cohort study by --  
10 funded by the government, right?  
11 A. Yes.  
12 Q. Do you remember she asked you  
13 those questions?  
14 A. Yes.  
15 Q. Okay. Let's talk about those  
16 for a moment. Did counsel ask you  
17 questions about the cohort studies? For  
18 example, whether or not the studies funded  
19 by the government were even designed to  
20 look initially to look at the risk of  
21 ovarian cancer and the relationship to  
22 talc?  
23 A. No, I don't think Ms. Brown  
24 asked me that.

1 Q. All right. Did she ask you how  
2 many people within the cohort actually had  
3 ovarian cancer?

4 A. I don't recall -- I'm sorry,  
5 she did not ask me that detail.

6 Q. She didn't ask you, for  
7 example, what the women in the cohort were  
8 asked about their exposure to talc or when  
9 they were asked, did she?

10 A. No.

11 Q. Okay. And so the question  
12 about whether the cohort studies are better  
13 than case control studies are best left to  
14 the epidemiologists, correct, and the  
15 scientists?

16 A. Yes, yes.

17 Q. So the scientific question,  
18 okay, is one that I wasn't asking you, in  
19 all fairness to me, I was asking you  
20 whether or not the company was told to  
21 initiate studies and we looked at documents  
22 that indicated that there were -- that  
23 scientists were saying there's a concern  
24 about ovarian cancer and talc, correct?

1 MS. BROWN: Object, that  
2 misstates the testimony and the  
3 evidence.

4 THE WITNESS: Yeah, you  
5 know, we discussed these issues, I  
6 just don't know, I don't have a  
7 clear memory of the exact  
8 questions, but yeah, I follow you.

9 BY MR. TISI:

10 Q. And then I asked you whether or  
11 not it came to your personal attention that  
12 after the meeting at the FDA in January  
13 of two thousand -- excuse me, 1994, whether  
14 or not scientists came to J&J and proposed  
15 a study. Do you remember that?

16 A. I don't remember specifically,  
17 but I'll accept, you know --

18 Q. Well, it's the Muscat study.

19 A. Okay.

20 Q. So in 1995 --

21 A. There was -- I'm sorry, I  
22 didn't want to interrupt you.

23 Q. I'm sorry, in 1995, you  
24 received a memo that recommended that the

1 Muscat study be done?

2 MS. BROWN: Objection,  
3 misstates the evidence and lacks  
4 foundation.

5 THE WITNESS: I take  
6 your word for it. I was copied on  
7 some things and some things I was  
8 shown that I wasn't -- I had no --  
9 I wasn't part of it and I didn't --

10 BY MR. TISI:

11 Q. Well, would you bring up  
12 Exhibit No. 74, please.

13 A. -- analyze.

14 Q. Because, again, I want to be  
15 fair to you.

16 A. No, no, you know, you're asking  
17 me questions about the testimony yesterday.

18 Q. I have no problem --

19 A. It's kind of a jumble, but that  
20 will be fine. And I understand what you're  
21 doing, so that's fine.

22 Q. Yeah. No, I do want to be fair  
23 to you, because I don't want there to be  
24 any suggestion that I was unfair to you, as

1 a lawyer to a lawyer, about scientific  
2 questions. So let's look at the document  
3 that was sent to you as a lawyer. Okay.

4 So let's look at Exhibit No. 74 again.

5 A. Okay.

6 Q. And I've put it up on the  
7 screen. And this document indicates that,  
8 the first paragraph says "This recommends  
9 that J&J sponsor a new highly structured  
10 epidemiology study focused to examine the  
11 possibility that talc can lead to increased  
12 risk of ovarian cancer." That's a document  
13 you received, correct?

14 A. I believe I was copied on it.  
15 You showed that to me.

16 Q. And that follows the Gates --  
17 the Gross study which published that  
18 additional studies need to be done,  
19 correct?

20 A. I remember you going through  
21 that, yes.

22 Q. And remember I showed you an  
23 email from Dr. Gettings that he spoke to  
24 the FDA and they said additional work

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1 needed to be done, correct?

2 A. Yes. I don't recall exactly

3 what it was.

4 Q. So in the context of what was

5 really happening in realtime, okay, there

6 was a general feeling that there was this

7 concern out there for women who have the

8 potential of getting ovarian cancer from

9 talc and a suggestion that additional

10 studies be done?

11 A. In those documents, yes.

12 Q. All right. And the words that

13 I pulled out of this document were words

14 that are actually in the document. Things

15 like potentially significant. This would

16 be a definitive treatise. All those words

17 that I wrote down for you, okay, were words

18 that I didn't use, they were words that

19 were in a document that you got, true?

20 A. You did do that, yes.

21 Q. Okay. So I didn't make that

22 up, did I?

23 A. No, you took the words from a

24 document and put them on that machine there

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1 and wrote them down.

2 Q. Okay. And kind of anticipating

3 that Ms. Brown would ask you about all the

4 other studies that came after that, would

5 it surprise you that I asked Dr. Muscat

6 that very question about whether or not at

7 some point later in time, you know, that

8 maybe a cohort study might have been a

9 better thing and did he ever at some later

10 time suggest that the company do that?

11 Would that surprise you that when you --

12 A. I'm not following that

13 question.

14 Q. All right.

15 MS. BROWN: Objection.

16 BY MR. TISI:

17 Q. One of the things that counsel

18 asked you was whether or not you should

19 look at the entire depositions of -- to

20 address multiple issues, right? Do you

21 remember --

22 A. Well, to understand the

23 testimony.

24 Q. Correct. And sometimes when

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1 you're asking a witness questions, just

2 like we've done for you over a couple days,

3 we would do one topic here, one topic

4 there, we cover a lot of ground, right?

5 A. Certainly with me you did.

6 Q. With you, we did. And I'll

7 tell you, I covered the same ground with

8 Dr. Muscat and I asked him the questions of

9 whether or not these forward-looking

10 studies was something that even in

11 retrospect, you know, he wishes that he

12 would have suggested. So I'm going to play

13 that for you. Could you look at Exhibit

14 No. 80? Can you please play the second

15 clip that I pulled from Dr. Muscat,

16 Exhibit 82.

17 MS. BROWN: I object on

18 foundation grounds.

19 MR. PLACITELLA: It

20 doesn't look like Susan Sharko.

21 MR. TISI: Are we able

22 to show Exhibit 82, the video clip?

23 THE VIDEOGRAPHER: Mike

24 is playing it. I don't see it.

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1 MR. TISI: Is Mike

2 there?

3 THE VIDEOGRAPHER: Yeah,

4 he put up the document.

5 MR. TISI: It's not a

6 document.

7 THE VIDEOGRAPHER: He

8 put up the last thing.

9 MR. TISI: I don't see

10 it.

11 THE VIDEOGRAPHER: I

12 don't know.

13 BY MR. TISI:

14 Q. Well, would it surprise that

15 you even in retrospect, Dr. Muscat said

16 look, I didn't propose a cohort study, the

17 best study I could think of was a case

18 control analysis?

19 MS. BROWN: That

20 misstates his testimony and lacks

21 foundation.

22 THE WITNESS: Surprise

23 isn't a word I would use. I don't

24 have a reaction to it since I'm not



1 familiar with the issues.  
 2 BY MR. TISI:  
 3 Q. Okay. Now --  
 4 MR. TISI: Could you put  
 5 it up on the screen?  
 6 -----  
 7 (Whereupon video clip was played.)  
 8 -----  
 9 (Muscat Video Clip marked  
 10 O'Shaughnessy Exhibit 82 for  
 11 identification.)  
 12 -----  
 13 BY MR. TISI:  
 14 Q. Let's stop there.  
 15 MS. BROWN: I'm  
 16 objecting to the playing of this --  
 17 MR. TISI: Do you see  
 18 where I asked him -- I'm sorry, do  
 19 you want to object?  
 20 MS. BROWN: I do want to  
 21 object to just playing portions of  
 22 somebody else's deposition into the  
 23 record. He has never reviewed  
 24 that --

1 BY MR. TISI:  
 2 Q. That's fine. In light of  
 3 Ms. Brown's questions to you about whether  
 4 or not maybe a cohort study might have been  
 5 a better design, you understand that doctor  
 6 and I know you're not a doctor, an  
 7 epidemiologist or a doctor, but the  
 8 epidemiologist that J&J had retained, you  
 9 saw his testimony, he never recommended a  
 10 cohort study, did he?  
 11 A. I don't know what would be the  
 12 better design or a better study to do. I  
 13 don't think Ms. Brown asked me that  
 14 question and I can't comment on what, you  
 15 know, Dr. Muscat said. His testimony  
 16 speaks for itself.  
 17 Q. Right?  
 18 A. And I'm familiar with it or  
 19 aware of it and I would defer to the  
 20 scientists.  
 21 Q. Right. And in fairness to me,  
 22 I never raised the question of cohort  
 23 study. That was a question that was asked  
 24 by your counsel, correct?

1 MS. BROWN: I object to  
 2 the question.  
 3 THE WITNESS: She  
 4 certainly asked me that. I don't  
 5 know if it came up during the  
 6 deposition.  
 7 BY MR. TISI:  
 8 Q. All right. So let's move on.  
 9 I asked you -- you were asked some  
 10 questions about the other case control --  
 11 the other case control studies that  
 12 happened in 1995 when this Muscat study was  
 13 being proposed, the better definitive study  
 14 that was described. Remember she asked you  
 15 about the Purdie and the Cramer studies?  
 16 A. She showed me a chart with  
 17 studies on it.  
 18 Q. Right. And she kind of  
 19 highlighted the ones from 1995?  
 20 A. Yes.  
 21 Q. Would it surprise you that the  
 22 Purdie study showed an increased risk  
 23 association for ovarian cancer in the range  
 24 of almost 30 percent?

1 A. I wouldn't --  
 2 MS. BROWN: Object,  
 3 lacks foundation.  
 4 THE WITNESS: I can't  
 5 say surprised. Surprised isn't a  
 6 term I would use. I'm not that  
 7 familiar with it, so I can't  
 8 comment on it.  
 9 BY MR. TISI:  
 10 Q. Honestly, I didn't raise the  
 11 Purdie study, Ms. Brown did, so she asked  
 12 about those other studies. So I'm asking  
 13 you, would it surprise you that the Cramer  
 14 study from 2005, which was also a Harvard  
 15 study, showed a 60 percent increased risk  
 16 of ovarian cancer associated with talc use?  
 17 MS. BROWN: Misstates  
 18 the study and lacks foundation.  
 19 THE WITNESS: Again, I  
 20 wouldn't characterize my reaction  
 21 to it as surprise. I know there  
 22 were a lot of studies with a lot of  
 23 results.  
 24



1 BY MR. TISI:

2 Q. All right. So I just want to  
3 kind of be clear as to what was happening  
4 in the mid 1990s in fact when you were  
5 provided with information about whether or  
6 not additional studies needed to be done  
7 and so to be clear, just to wrap it up  
8 here, number one, there was a  
9 recommendation to do additional studies,  
10 right?

11 MS. BROWN: Objection.

12 Misstates the evidence.

13 THE WITNESS: You showed  
14 me documents to that effect.

15 BY MR. TISI:

16 Q. Number two, Dr. Muscat from the  
17 American Health Foundation came to you and  
18 proposed a study that was described by your  
19 scientists as definitive, significant, and  
20 important?

21 A. We talked about that document.

22 MS. BROWN: Misstates  
23 the evidence.  
24

1 BY MR. TISI:

2 Q. Number three, okay, that the  
3 other studies that Ms. Brown, assuming that  
4 I'm correct and it showed, they both,  
5 Purdie and Cramer, showed an increased  
6 risk, there were multiple studies that  
7 seemed to go in that direction of an  
8 increased risk, true?

9 MS. BROWN: Misstates  
10 the evidence and lacks foundation.

11 THE WITNESS: You know,  
12 I can't comment on what studies  
13 were showing what direction and you  
14 kind of, I think you're asking me  
15 what was -- you're questioning me  
16 about what else was going on in  
17 1995.

18 MR. TISI: Okay.

19 THE WITNESS: In any  
20 year, there's a lot going on and I  
21 don't want -- you know, and I can't  
22 recite of all of it to you, because  
23 I probably wasn't aware of all of  
24 what was going in science at the

1 time.

2 BY MR. TISI:

3 Q. But we also know from the memo  
4 we looked at that the scientists at J&J  
5 recommended that the study be done, right?

6 MS. BROWN: Objection.

7 Misstates the evidence.

8 THE WITNESS: I would  
9 just say that that document speaks  
10 for itself and there were certain  
11 people who seemed to recommend that  
12 they were in favor doing of doing  
13 the study.

14 BY MR. TISI:

15 Q. And we know that J&J, you've  
16 never seen the results of that study  
17 because it was never done, right?

18 MS. BROWN: Lacks  
19 foundation.

20 THE WITNESS: I don't  
21 know if it was done or not. I  
22 don't recall ever seeing any  
23 results.  
24

1 BY MR. TISI:

2 Q. All right. So let's move on to  
3 the other things I actually asked you  
4 about. You recall that when I talked about  
5 the Harlow paper, I talked about the fact  
6 that this professor at Harvard suggested  
7 that women not use talc in their genital  
8 area out of an abundance of caution, right?

9 A. I don't know the exact wording  
10 of what he recommended, but I accept what  
11 you say. I mean, we discussed this when it  
12 was all on the record --

13 Q. Correct.

14 A. -- and I had documents before  
15 me.

16 Q. And this wasn't just, like, you  
17 know, some professor just thinking about  
18 this in his laboratory somewhere. There  
19 were other -- I brought to your attention  
20 that -- and you were aware of other people  
21 who were making the same recommendations at  
22 that time in the 1990s, right?

23 A. You showed me --

24 MS. BROWN: I'm just

1 objecting. This beyond the scope  
2 now of the direct.  
3 THE WITNESS: You showed  
4 me, I'm not trying to be difficult,  
5 you showed me certain documents  
6 that there were recommendations  
7 made. I remember words like  
8 discouraged the use and that sort  
9 of thing.  
10 BY MR. TISI:  
11 Q. Right. I mean, do you remember  
12 the document where Dr. Wehner said to you,  
13 you know, the prestigious University of  
14 Berkeley Wellness Center was suggesting  
15 that women not use it? Do you remember  
16 that document?  
17 A. I remember the memo where he  
18 discussed that.  
19 Q. And you remember the American  
20 Cancer Society press release where they  
21 said that women should not -- should use  
22 cornstarch instead, he said, correct?  
23 MS. BROWN: Objection.  
24 Beyond the scope of the direct.

1 THE WITNESS: That was a  
2 press release, I think, in a  
3 document that was interviewing  
4 someone about the press releases  
5 and I'm not sure who said what.  
6 BY MR. TISI:  
7 Q. All right. So let's move onto  
8 the next thing. Now, Mr. Placitella will  
9 be asking you some questions -- well, let  
10 me rephrase the question. When counsel was  
11 asking you questions about the totality of  
12 the studies and what the studies showed and  
13 what, you know, I think she mentioned  
14 government agencies and all that kind of  
15 stuff recommended. Do you remember those  
16 questions?  
17 A. Not the way you're describing  
18 them.  
19 Q. Okay. Are you aware that in  
20 2021, the Canadian FDA looking at all of  
21 the evidence in this case, cohort studies,  
22 case control studies, all the mechanistic  
23 studies, determined that talc was a likely  
24 cause of ovarian cancer?

1 MS. BROWN: Beyond the  
2 scope. Lacks foundation.  
3 THE WITNESS: I'm not  
4 aware of anything like that.  
5 BY MR. PLACITELLA:  
6 Q. So if you were to really --  
7 A. 2021, right?  
8 Q. Yeah.  
9 A. Okay.  
10 Q. So if you were really to  
11 evaluate, which I didn't ask you to do,  
12 right, all the other studies that kind of  
13 come out over time, right, you would want  
14 to look at what the most recent evaluation  
15 of those studies said, correct?  
16 MS. BROWN: Beyond the  
17 scope. Lacks foundation.  
18 THE WITNESS: I wasn't  
19 asked to evaluate studies. I don't  
20 evaluate studies.  
21 BY MR. TISI:  
22 Q. Right, but what you were asked  
23 is whether or not there was recommendations  
24 made for Johnson & Johnson to do a study

1 and that's what I asked you, right?  
2 A. By you.  
3 Q. Correct. All right. So last  
4 thing I was going to ask you before I turn  
5 it over to Mr. Placitella, and I know he's  
6 got some questions to ask you about, you  
7 were asked some questions about asbestos in  
8 the talc and over many, many years and  
9 testing documents and all of that stuff.  
10 A. Uh-huh.  
11 Q. But I want to get real kind of  
12 like -- so that the jury really understands  
13 what this testing program was over decades.  
14 Do you have any understanding of -- now,  
15 you would agree with me just intuitively  
16 because of your involvement that hundreds  
17 of thousands, if not millions, of bottles  
18 of talc were sold in the United States over  
19 the past 50 years?  
20 MS. BROWN: Objection.  
21 Foundation.  
22 THE WITNESS: A lot of  
23 talc has been sold. I don't know  
24 how much.

1 BY MR. TISI:

2 Q. In terms of the testing  
3 protocol for talc, do you understand how  
4 much talc was actually tested for asbestos  
5 by Johnson & Johnson in order to conclude  
6 that it had no asbestos in it?

7 MS. BROWN: That's been  
8 asked and answered and --

9 THE WITNESS: I don't  
10 know the specific amount.

11 BY MR. TISI:

12 Q. And would it surprise you,  
13 regardless of how many papers there are, no  
14 matter how many slips of paper that were  
15 placed before you even by Mr. Placitella,  
16 that the actual amount of talc that was  
17 tested in 50 years would fit in this cup?

18 MS. BROWN: That is  
19 demonstrably false. You are  
20 misstating the evidence. And I  
21 object as lacking foundation and  
22 absolutely incorrect.

23 BY MR. TISI:

24 Q. Would it surprise you?

1 A. I don't characterize my  
2 reaction as surprise. You had said in your  
3 question regardless of all the testing,  
4 well, I can't disregard all the testing.

5 Q. All the testing of the talc  
6 that would fit in this cup.

7 MS. BROWN: Again,  
8 misstates the testing.

9 THE WITNESS: I don't  
10 know how much they tested in terms  
11 of all the testing they've done  
12 over the years, but it was  
13 continuous and it was regular.

14 BY MR. TISI:

15 Q. All right. And when you made  
16 the representations in the pleadings that  
17 you made, did you ever suggest to any  
18 court, litigant, anybody that, you know,  
19 when we made the suggestion that talc was  
20 asbestos free that was sold over decades,  
21 did you ever say to them, but we only  
22 tested a small amount?

23 MS. BROWN: Well, that's  
24 misstating the record and lacks

1 foundation and calls for  
2 speculation.

3 THE WITNESS: No, and,  
4 you know, what we told the courts  
5 in the documents is, of course, the  
6 talc is asbestos free and that was  
7 based on the testing that the  
8 company had done over all the years  
9 and, you know, our information from  
10 the company's scientists.

11 BY MR. TISI:

12 Q. Right. So if I take this  
13 napkin and put this napkin on this table  
14 here and say the amount of paper underneath  
15 this napkin, okay, is zero, okay. But I  
16 don't look at all the other information on  
17 this table, you would agree there's a lot  
18 of paper on this table, on this square  
19 table, right?

20 A. Is that a trick question?

21 Q. No, it's not.

22 MS. BROWN: It sounds  
23 like it.  
24

1 BY MR. TISI:

2 Q. You would agree there's a lot  
3 of paper on this square table, right?

4 MS. BROWN: This table  
5 is not a square.

6 THE WITNESS: Yes, there  
7 is.

8 BY MR. TISI:

9 Q. But if I say, you know, I'm  
10 going to test only this portion of this  
11 table, would there be any paper on this  
12 table, on this sample?

13 MS. BROWN: I object to  
14 this hypothetical as vague and  
15 lacking foundation.

16 THE WITNESS: I can't  
17 answer your question.

18 BY MR. TISI:

19 Q. You can't answer that question?

20 A. No, I can't.

21 MR. TISI: Okay. I  
22 don't have any questions. I think  
23 Mr. Placitella may have some.  
24

1 BY MR. PLACITELLA:

2 Q. How are you doing? Are you  
3 hanging in there?

4 A. So far.

5 Q. Okay.

6 MR. TISI: I told you I  
7 would be quick. Pretty good,  
8 right?

9 MR. PLACITELLA: Alli,  
10 can I have your exhibits?

11 MS. BROWN: Which ones?

12 MR. PLACITELLA: The  
13 ones you just had marked and went  
14 over with him.

15 MS. BROWN: The court  
16 reporter has what I have marked.

17 BY MR. PLACITELLA:

18 Q. While he's doing that, let me  
19 just ask some basic questions. I'm going  
20 to try to be as efficient as I can. I want  
21 to see if maybe you just made some mistakes  
22 in some of the answers you gave to  
23 Ms. Brown. By the way, to start off, I  
24 never served you with a subpoena at your

1 house, did I?

2 A. I don't know which firm did it,  
3 Mr. Placitella. I don't think it was you  
4 though.

5 Q. No. Okay. And that was in a  
6 totally different kind of case, wasn't it?

7 A. It was related to these  
8 depositions and these cases.

9 Q. Okay. And you, in your  
10 testimony, talked about the proportionate  
11 time that you spent in talc cases. Do you  
12 recall that?

13 A. I do.

14 Q. But the talc cases were so  
15 important to you with all the things you  
16 had to do, and I'm sure there were a lot,  
17 that you actually appeared at depositions  
18 that you thought were important to be at,  
19 correct?

20 MS. BROWN: Objection,  
21 foundation.

22 THE WITNESS: Yes, I  
23 did. I generally tried to be at  
24 depositions where the company

1 witnesses were being asked  
2 questions.

3 BY MR. PLACITELLA:

4 Q. Okay.

5 A. Regardless of whether it was  
6 talc, pharmaceutical, or medical devices.  
7 Can't do all of it.

8 Q. I understand.

9 A. But some of them I did attend.

10 Q. I understand. And Ms. Brown  
11 asked you some questions about, you know,  
12 where you don't know what was turned over  
13 in a particular case, because you don't  
14 know what requests. Do you remember those?

15 A. I recall my testimony on the  
16 subject.

17 Q. Okay. All right. But  
18 regardless of what was asked to you and  
19 what was turned over, when the affidavits  
20 saying that there was no evidence  
21 whatsoever were filed in courts and given  
22 to judges, you had all the evidence in your  
23 possession that's in these books here  
24 today, didn't you?

1 A. The company would have had  
2 these, I'm sure.

3 Q. Okay. And why file affidavits  
4 saying there's absolutely no evidence when  
5 the company knows that there's evidence  
6 sitting in their files?

7 MS. BROWN: Okay. Hold  
8 on. I object to that as misstating  
9 the evidence and if you are asking  
10 him for his legal strategy behind  
11 filing affidavits in litigation,  
12 I'll object and instruct.

13 JUDGE SCHNEIDER: Do you  
14 want a ruling?

15 MR. PLACITELLA: Yes,  
16 Your Honor.

17 JUDGE SCHNEIDER:  
18 Objection overruled. It doesn't  
19 ask for work product.

20 BY MR. PLACITELLA:

21 Q. So you had the evidence in your  
22 possession and I'm not saying that you knew  
23 it was there --

24 A. What evidence?

1 Q. All the testing evidence, the  
2 McCrone evidence, the Colorado School of  
3 Mine evidence, the Pooley studies --  
4 A. I'm sorry.  
5 Q. -- if you had all that --  
6 A. The documents were there in the  
7 company?  
8 Q. Then why would the company ask  
9 you to file affidavits saying there was no  
10 evidence?  
11 MS. BROWN: I object.  
12 That misstates the evidence.  
13 THE WITNESS: The  
14 company didn't ask me to file  
15 affidavits. That's a legal  
16 decision about what we should do  
17 with the lawsuit.  
18 BY MR. PLACITELLA:  
19 Q. Okay. And remember I started  
20 out the deposition and I tried to be  
21 careful and very respectful to you and I  
22 said that I know you recognize your duty as  
23 a lawyer and I think you do recognize that.  
24 And I said to you that the representations

1 that you could make in litigation are only  
2 as good as the information that's provided  
3 to you. Do you recall that?  
4 A. I recall that line of  
5 questioning, yes.  
6 Q. So I want to go over quickly  
7 some of Ms. Brown's exhibits. Can you give  
8 me the Elmo, please? So here is this D-1,  
9 which was this affidavit from Mr. Denton.  
10 Do you see that?  
11 A. I do.  
12 Q. Okay. Did you ever see that  
13 before Ms. Brown showed it to you?  
14 A. No.  
15 Q. Okay. So and she read to you  
16 or she had you read the stuff about "I  
17 understand some plaintiffs' lawyers." Do  
18 you see that?  
19 A. I do.  
20 Q. And it suggested that what was  
21 destroyed were TEM grids. Do you see that?  
22 A. Yes.  
23 Q. Did I suggest that to you, sir?  
24 MS. BROWN: Objection,

1 misstates the evidence and the  
2 questioning on --  
3 BY MR. PLACITELLA:  
4 Q. In the context of the document  
5 that said the mine documents were  
6 destroyed --  
7 MS. BROWN: Objection.  
8 BY MR. PLACITELLA:  
9 Q. Did I suggest that to you?  
10 MS. BROWN: Same  
11 objection.  
12 THE WITNESS: I believe,  
13 Mr. Placitella, you said that --  
14 you used terms like all the talc  
15 documents were destroyed, all that  
16 testing, all the backup documents  
17 were destroyed.  
18 MR. PLACITELLA: No,  
19 sorry --  
20 MS. BROWN: Wait, let  
21 him finish, Chris.  
22 MR. PLACITELLA: Well, I  
23 think you're mistaken.  
24 THE WITNESS: I might

1 be.  
2 MS. BROWN: Let him  
3 finish.  
4 THE WITNESS: I might  
5 be.  
6 BY MR. PLACITELLA:  
7 Q. Okay. The document that we  
8 talked about was the document, and I can go  
9 back to it if you want --  
10 A. I think I recall it.  
11 Q. Was the Trip report?  
12 A. With the paragraph at the  
13 bottom.  
14 Q. Right, right. And it said that  
15 the documents were destroyed. And in that  
16 context, I never said -- suggested to you  
17 exactly what documents were destroyed, did  
18 I?  
19 MS. BROWN: Misstates  
20 the testimony.  
21 THE WITNESS: I thought  
22 you phrased it at one point as all  
23 the documents.  
24



24 MS. BROWN: Also, lacks

24 A. That's right.

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24 A. Okay. Sure?

24 THE WITNESS: By you?



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1 BY MR. PLACITELLA:  
 2 Q. Myself and Dr. Hopkins  
 3 together, yes.  
 4 MS. BROWN: Lacks  
 5 foundation.  
 6 BY MR. PLACITELLA:  
 7 Q. Okay. So all I'm saying, and  
 8 you see the last part, the last column says  
 9 "satisfies Johnson & Johnson asbestos  
 10 deposition." Do you see that?  
 11 A. Yes.  
 12 Q. Okay. So that was ultimately  
 13 marked and I'll make sure it's in the  
 14 record, Hopkins 28. Do you see that?  
 15 A. I do.  
 16 Q. Okay. When Ms. Brown showed  
 17 you documents from Dr. Pooley from 1972,  
 18 did she ever show you this spreadsheet that  
 19 was created in this very case where Dr.  
 20 Hopkins went through all the tests in the  
 21 first big test book?  
 22 MS. BROWN: I object.  
 23 Lacks foundation. Misstates the  
 24 evidence.

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1 THE WITNESS: I don't --  
 2 I'm not familiar with this document  
 3 and what it contains. And I  
 4 haven't seen it until now.  
 5 BY MR. PLACITELLA:  
 6 Q. Okay. That's fair. Now, last  
 7 set of questions. You testified, I want to  
 8 see if you were mistaken, you testified  
 9 that the Johnson mine only sold industrial  
 10 talc. Do you recall that?  
 11 A. Yes.  
 12 MS. BROWN: Objection.  
 13 Misstates the testimony.  
 14 BY MR. PLACITELLA:  
 15 Q. Okay. Can you go to Exhibit 4,  
 16 J&J 4, in book one?  
 17 MS. BROWN: Of  
 18 testimony?  
 19 MR. PLACITELLA: No.  
 20 The JOS booklet.  
 21 THE WITNESS: I'm sorry,  
 22 what was the number?  
 23 MR. PLACITELLA: Four.  
 24 THE WITNESS: I think I

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1 have it. It says cosmetics on the  
 2 front of it.  
 3 -----  
 4 (Cosmetics Document marked  
 5 O'Shaughnessy Exhibit J&J 4 for  
 6 identification.)  
 7 -----  
 8 BY MR. PLACITELLA:  
 9 Q. Yes, it says cosmetics on the  
 10 front of it. And if you go to 4.2, do you  
 11 see where it says Eastern Magnesia Talc, a  
 12 Johnson & Johnson company?  
 13 A. Yeah.  
 14 Q. And do you see where it says  
 15 the cosmetic industry?  
 16 A. Yes.  
 17 Q. Do you see down below, the  
 18 Emtal talc that was used in the cosmetic  
 19 industry from the Vermont plants that came  
 20 out of the Johnson, Vermont, mine?  
 21 MS. BROWN: Objection.  
 22 Misstates the document.  
 23 THE WITNESS: Are you  
 24 referring to subsection D?

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1 BY MR. PLACITELLA:  
 2 Q. Yes, sir.  
 3 A. It says "The following grades,  
 4 FOB, the Vermont plants, are sold in the  
 5 cosmetic industry." And it has plant  
 6 Johnson, Vermont. West Windsor, Vermont.  
 7 Q. Right. And if you go to  
 8 page 4.4, do you see where it says that  
 9 "EMTCO," which is Eastern Magnesia Talc  
 10 Company, "working to replace Johnson EMTals  
 11 towels with West Windsor EMTals --"  
 12 A. Can you --  
 13 Q. Yes, number five, all the way  
 14 down at the bottom.  
 15 A. I see the bottom, yes.  
 16 Q. "When and if Johnson cosmetic  
 17 grades are eliminated due to arsenic  
 18 content." Do you see that?  
 19 A. I do.  
 20 Q. Now, you were present at  
 21 Mr. Miller's deposition when he testified  
 22 in your presence that the Johnson mine  
 23 produced cosmetic talc. Do you recall  
 24 that?

1 MS. BROWN: Objection.  
 2 Lacks foundation. Misstates the  
 3 evidence.  
 4 BY MR. PLACITELLA:  
 5 Q. Okay. Can you go to 270 in the  
 6 transcript folder?  
 7 A. Oh, transcript, all right.  
 8 Q. Yeah.  
 9 A. 270. Got it.  
 10 Q. And if you look at the second,  
 11 270.3, it says for Roger Miller, John  
 12 O'Shaughnessy, correct?  
 13 A. Yes.  
 14 -----  
 15 (Deposition of Roger N. Miller  
 16 taken 6/12/91 marked O'Shaughnessy  
 17 Exhibit 270 for identification.)  
 18 -----  
 19 BY MR. PLACITELLA:  
 20 Q. Okay. And if you go to 270.45  
 21 and I'll give you the right page, because I  
 22 know that's how you like to do, it's  
 23 actually page 42 of the deposition.  
 24 A. Yup.

1 Q. It says "And the Johnson mine  
 2 and mill did not or did produce cosmetics?"  
 3 MS. BROWN: What page  
 4 are you on?  
 5 MR. PLACITELLA: Page  
 6 42.  
 7 THE WITNESS: I see it.  
 8 BY MR. PLACITELLA:  
 9 Q. And the answer was, in your  
 10 presence, "They produced a very minor  
 11 quantity of cosmetic materials." Do you  
 12 see that?  
 13 A. I do.  
 14 Q. And he also testified that, if  
 15 you go to page 54 of the deposition, he was  
 16 asked a question "Was the purity similar  
 17 between the Johnson mine and the  
 18 Hammondsville mine and the Waterbury mine  
 19 of the talc?" Do you see that?  
 20 A. Was the purity similar  
 21 between -- yes, I see that.  
 22 Q. And he says "I don't know  
 23 anything about Waterbury. The ore bodies  
 24 were essentially the same except for

1 crystal size between the Hammondsville and  
 2 Johnson mine." Do you see that?  
 3 A. Yes.  
 4 MS. BROWN: Objection.  
 5 Lacks foundation.  
 6 BY MR. PLACITELLA:  
 7 Q. So testing that was done at the  
 8 Johnson mine would clearly be evidential of  
 9 what would be the Hammondsville mine, true?  
 10 MS. BROWN: I object.  
 11 It misstates the evidence and lacks  
 12 foundation.  
 13 THE WITNESS: I'm not  
 14 qualified to say. They're two  
 15 different mines, so --  
 16 BY MR. PLACITELLA:  
 17 Q. But he said they're the same,  
 18 the ore bodies --  
 19 MS. BROWN: No.  
 20 MR. PLACITELLA: -- are  
 21 essentially the same?  
 22 THE WITNESS: He said  
 23 the ore bodies are, that's his  
 24 testimony.

1 BY THE WITNESS:  
 2 Q. Right, so if they found  
 3 asbestos in the Johnson mine, it's a  
 4 reasonable indication that there was  
 5 asbestos in the Hammondsville mine?  
 6 MS. BROWN: I object.  
 7 It misstates the evidence, calls  
 8 for speculation, lacks foundation.  
 9 THE WITNESS: No, not at  
 10 all.  
 11 BY MR. PLACITELLA:  
 12 Q. Okay. And then lastly, go to  
 13 J&J 472.  
 14 A. In the transcript?  
 15 Q. No, I'm sorry, in the regular  
 16 book. This is the last, this is the last  
 17 thing you'll have to fight with here?  
 18 A. Excuse me.  
 19 Q. This is the last document  
 20 you'll have to fight to find.  
 21 A. Oh, okay. I'm sorry, what  
 22 binder is it?  
 23 Q. It's book two.  
 24 A. Okay. Got it, book two.

1 Q. Exhibit 472.  
 2 A. Got it.  
 3 -----  
 4 (Photograph marked  
 5 O'Shaughnessy Exhibit 472 for  
 6 identification.)  
 7 -----  
 8 BY MR. PLACITELLA:  
 9 Q. Okay. And this is a photo  
 10 taken directly from the Johnson Mine Museum  
 11 in Johnson, Vermont.  
 12 MS. BROWN: I object,  
 13 lacks foundation.  
 14 BY MR. PLACITELLA:  
 15 Q. I'm going to blow it up. Do  
 16 you see here where it shows all the  
 17 different products of Eastern Magnesia Talc  
 18 Company?  
 19 A. I see that.  
 20 Q. It has rubber products, paint  
 21 products, plastic products. Do you see  
 22 that?  
 23 A. Yes.  
 24 Q. Okay.

1 A. I can't --  
 2 Q. Okay. Well, this is the one I  
 3 want to show you. See the bottle of  
 4 Johnson's Baby Powder on the bottom?  
 5 A. Yeah.  
 6 Q. Okay.  
 7 A. Yeah. It says Johnson.  
 8 Q. Do you want me to do it again?  
 9 A. No, I can't see what -- it says  
 10 Johnson's Baby Powder, I don't know what it  
 11 is in terms of a container, but looks  
 12 like --  
 13 MS. BROWN: I object as  
 14 lacking foundation.  
 15 BY MR. PLACITELLA:  
 16 Q. Well, you recognize that has a  
 17 bottle of Johnson's Baby Powder, don't you?  
 18 A. That's what it says.  
 19 Q. Okay.  
 20 A. It looks very old.  
 21 Q. And at the end of the day,  
 22 Mr. Ashton never told you that there were  
 23 testing and testimony from the Westfall  
 24 case showing that there was asbestos in the

1 Johnson mine, correct?  
 2 MS. BROWN: That  
 3 misstates the testimony and lacks  
 4 foundation.  
 5 THE WITNESS: I don't  
 6 know what you mean by at the end of  
 7 the day, do you mean today? Are we  
 8 at the end of the day?  
 9 BY MR. PLACITELLA:  
 10 Q. I'm hoping.  
 11 A. I don't recall my discussions  
 12 with Mr. Ashton specifically, but I don't  
 13 recall those transcripts at all or that  
 14 testimony at all. I never saw them, I  
 15 believe.  
 16 Q. And to be totally fair to you,  
 17 it would have been good if they were shared  
 18 with you, don't you think?  
 19 MS. BROWN:  
 20 Argumentative. Lacks foundation.  
 21 THE WITNESS: No, I  
 22 wouldn't necessarily say that.  
 23 MR. PLACITELLA: Okay.  
 24 Well, thank you for your patience

1 with me and I appreciate your time.  
 2 THE WITNESS: Thank you  
 3 both.  
 4 BY MS. BROWN:  
 5 Q. Just one question. Can I do it  
 6 from here? Mr. O'Shaughnessy, based on  
 7 everything you know about where Johnson &  
 8 Johnson sourced its talc for use in baby  
 9 powder, did it get talc for baby powder  
 10 from the Johnson mine?  
 11 A. Not to my knowledge, no.  
 12 MS. BROWN: Thanks. No  
 13 more questions.  
 14 BY MR. PLACITELLA:  
 15 Q. You weren't alive in 1967 doing  
 16 this work when they were doing that, were  
 17 you?  
 18 MS. BROWN: Lacks  
 19 foundation.  
 20 BY MR. PLACITELLA:  
 21 Q. Well, let me rephrase the  
 22 question. You weren't working for Johnson  
 23 & Johnson when they were pulling cosmetic  
 24 talc out of the Johnson mine in 1967, were

1 you?

2 MS. BROWN: Misstates  
3 the evidence and lacks foundation.

4 THE WITNESS: I was not  
5 working for the company in 1967.

6 MR. PLACITELLA: Thank  
7 you, sir.

8 MS. BROWN: Going off.

9 THE VIDEOGRAPHER: Okay.  
10 That concludes today's deposition.  
11 The time is 6:37 p.m.

12 JUDGE SCHNEIDER: So the  
13 question I want to raise is do you  
14 want to close the deposition or  
15 just keep it open just for that one  
16 issue regarding the one document?

17 MR. TISI: Well, there  
18 is a question and I'm not prepared  
19 to really address it, but I know  
20 that there are many privileged  
21 issues that are still pending  
22 before Your Honor in terms of, you  
23 know, the issues that you heard  
24 argument on a couple of weeks ago.

1 And so, you know, when we say on  
2 the one document, I just want to  
3 make -- I haven't really, I've only  
4 been tangentially involved in that  
5 issue. I don't know where we stand  
6 with all of that, but with respect  
7 to any privileged document that is  
8 still under review and in that  
9 process, I think we would keep it  
10 open for those purposes.

11 JUDGE SCHNEIDER: The  
12 reason I raised it, I'm not sure of  
13 the legal niceties, if you formally  
14 close the deposition or if you say  
15 we're reserving depending upon the  
16 rulings of the privileged document.  
17 I just don't want anybody to be  
18 prejudiced.

19 MR. PLACITELLA: It  
20 feels like to me, it feels like,  
21 not having any research in front of  
22 me, it feels like to me that we  
23 should close the deposition subject  
24 to that one issue with the

1 agreement and perhaps other issues  
2 and I don't know what counsel's  
3 preference is. I know when I'm  
4 going to get in my car, I'm going  
5 to get four phone calls to say why  
6 did you do that.

7 JUDGE SCHNEIDER: While  
8 we're here, it seems to me we ought  
9 to have briefing and hopefully  
10 supporting affidavits on the one  
11 document that came up today. I  
12 think probably Johnson & Johnson  
13 should go first. You tell me how  
14 much time you want or need,  
15 whatever is reasonable is perfectly  
16 fine with me and we'll get a  
17 response from --

18 MR. TISI: It's fine  
19 with us. Whatever time you think  
20 you need with that.

21 JUDGE SCHNEIDER: Do you  
22 just need the time to do the due  
23 diligence?

24 MR. BERNARDO: I would

1 rather talk to the people who are  
2 actually going to put the brief  
3 together.

4 JUDGE SCHNEIDER: You  
5 probably -- I mean, I think the key  
6 issue is can you track down whether  
7 or not it was produced by J&J.

8 MS. BROWN: Yeah, we  
9 will.

10 JUDGE SCHNEIDER: That's  
11 the key issue.

12 MR. PLACITELLA: Can you  
13 guys go through whatever binders  
14 you have and pull that document  
15 out?

16 MS. BROWN: I took my  
17 version out of here and it's in our  
18 breakout room.

19 MR. PLACITELLA: But  
20 there's two sets.

21 MS. BROWN: Okay.

22 MR. BERNARDO: Yeah, and  
23 just a spoiler alert, I just edited  
24 a clawback letter just to be formal

1 about it that I'll send you all and  
2 send to Jerry Block, just so we're  
3 doing our due diligence.

4 MR. PLACITELLA: You're  
5 clawing at me?

6 MR. BERNARDO: Yes. And  
7 I'll send one, because Judge  
8 Schneider will yell at me if I  
9 haven't taken appropriate steps to  
10 formally claw it back.

11 JUDGE SCHNEIDER: Would  
12 you just agree with Plaintiffs on a  
13 briefing schedule? Whatever you  
14 agree to is fine with me. Whatever  
15 you think is reasonable.

16 MR. PLACITELLA: Thank  
17 you.

18 - - - - -  
19 (Whereupon, the deposition was  
20 concluded at 6:41 p.m.)  
21 - - - - -  
22  
23  
24

# INSTRUCTIONS TO WITNESS

1 Please read your deposition over carefully  
2 and make any necessary corrections.

3 You should state the reason in the appropriate  
4 space on the errata sheet for any corrections  
5 that are made.

6 After doing so, please sign the errata  
7 sheet and date it.

8 You are signing same subject to the  
9 changes you have noted on the errata sheet,  
10 which will be attached to your deposition.

11 It is imperative that you return the  
12 original errata sheet to the deposing attorney  
13 within thirty (30) days of receipt of the deposition  
14 transcript by you. If you fail to do so, the  
15 deposition transcript may be deemed to be accurate  
16 and may be used in court.  
17  
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19  
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24

## CERTIFICATION

1 I HEREBY CERTIFY that the proceedings and  
2 evidence are contained fully and accurately in the  
3 stenographic notes taken by me upon the foregoing  
4 matter on June 30, 2021, and that this is a correct  
5 transcript of same.  
6  
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15 \_\_\_\_\_  
16 Robin L. Clark  
17 Registered Professional Reporter  
18  
19  
20

21 (The foregoing certification of this  
22 transcript does not apply to any reproduction of the  
23 same by any means unless under the direct control  
24 and/or supervision of the certifying reporter.)

## ERRATA

1 PAGE LINE CHANGE  
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## 1 ACKNOWLEDGMENT OF DEPONENT

2  
3 I, JOHN C. O'SHAUGHNESSY, do hereby  
4 certify that I have read the foregoing pages  
5 and that the same is a correct  
6 transcription of the answers given by me to  
7 the questions therein propounded, except for  
8 the corrections or changes in form or  
9 substance, if any, noted in the attached  
10 Errata Sheet.

11 DATE SIGNATURE

12 Subscribed and sworn to before me this  
13 day of ,  
14 2021.

15  
16 My commission expires:

17  
18  
19  
20 Notary Public  
21  
22  
23  
24



# EXHIBIT 124

**AFFIDAVIT**

STATE OF NEW JERSEY)  
                                  : ss.:  
COUNTY OF SOMERSET )

**WILLIAM H. ASHTON**, being duly sworn, deposes and  
says:

1. For thirty-five years, I was actively involved in investigating and studying the domestic and international talc industry and talc technology while employed by Johnson & Johnson. In the course of this work, I examined talc deposits in the United States and throughout the world. I graduated from the University of Pennsylvania in 1940 with a Bachelor of Science degree. My major field of study was chemistry; my minor fields of study were geology and mineralogy. I did graduate work at Louisiana State University and also received training in talc minerals at the Battelle Memorial Institute in Columbus, Ohio, which included consultations with the Geology Department of Ohio State University. I have been retired since 1984, but have remained an active member of various talc and mineral committees of the American Society for Testing and Materials and the International Standards Organization.

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\*

2. From the 1940s through the 1980s, talc mined in Vermont and specifically, the talc mined by Engelhard Corporation (and its predecessors) from the talc mine located in Johnson, Vermont (the "Johnson mine") has been considered to be talc free from contamination by asbestos. This conclusion is the result of numerous investigations, examinations and studies of the Johnson mine. The following paragraphs discuss, in chronological order, these studies and investigations.

3. In 1949, Warren L. Hogue, Jr. and Frederick S. Mallette published a scientific paper entitled "A Study of Workers Exposed to Talc and Other Dusting Compounds in the Rubber Industry" (a copy of which is annexed hereto as Exhibit A). The authors studied workers in two rubber plants who had been exposed to talc and other dusting compounds for periods as long as 36 years. The authors noted that "[t]he dusting compound used in the tube operations and in rerolling liners is a pure talc from a deposit near Johnson, Vermont, and contains no free silica, tremolite, chrysolite, chrysotile, or actinolite."

(Exhibit A at 360) The authors identified the talc discussed in their study as being produced by Eastern Magnesia Talc Company (Exhibit A at 363-64), a predecessor of the Engelhard

-3-

subsidiary of the same name which produced talc from the Johnson mine.<sup>1</sup>

4. In March 1951, the U.S. Geological Survey published a report written by Dr. Alfred H. Chidester (and two co-authors), entitled "Talc Investigation in Vermont, Preliminary Report" (relevant portions of which are annexed hereto as Exhibit B). Dr. Chidester was employed for 39 years by the U.S. Geological Survey, a unit of the U.S. Department of the Interior. For a period of about 18 years, from 1944 through 1962, he was primarily concerned with the talc deposits of Vermont and northern Massachusetts. (From 1963 to 1971, while still employed by the Geological Survey, he was primarily involved with the United States lunar exploration program and training astronauts in field geology.) Dr. Chidester has an extremely prestigious reputation for his studies of the geology of talc deposits in the United States. In this 1951 report, Dr. Chidester stated:

---

<sup>1</sup> The Hogue and Mallette study concluded that "[p]hysical examinations and chest roentgenograms of a group of 20 men exposed to talc dust (hydrous magnesium silicate) for periods ranging from 10 to 36 years in rubber inner tube production were normal for men of their age group and urban industrial environment" and "[t]he findings of the present study indicate that long exposure to talc does not appear to produce pathologic changes in the lungs." (Exhibit A at 364)

-4-

"All the commercial talc deposits in Vermont are associated with the verde antique type of ultramafic body, whereas none is known to occur in ultramafic bodies that are only partly serpentized. On the other hand, cross-fiber asbestos appears to occur in appreciable quantities only in ultramafic bodies that contain unaltered dunite or peridotite, and is extremely rare or absent in the verde antique type." (Exhibit B at 4)

Stating this another way, Dr. Chidester wrote: "no commercial talc deposits are known to be associated" with a certain type of rock formation in Vermont which "commonly contains more or less chrysotile asbestos. . . ." (Exhibit B at 1)

5. In a 1962 Geological Survey Professional Paper, entitled "Petrology and Geochemistry of Selected Talc-Bearing Ultramafic Rocks and Adjacent Country Rocks in North-Central Vermont" (relevant portions of which are annexed hereto as Exhibit C), Dr. Chidester analyzed talc samples from a number of different mines in Vermont. He used the Johnson mine as a standard for the chemical analysis of pure talc. He noted that a sample "from the Johnson talc mine, Johnson, Vt., is included because specimens for chemical analysis of the pure mineral were not obtainable from the Mad River and Barnes Hill localities, and the specimen from the Johnson mine represents talc from the steatite zone of a purity not obtainable at the other deposits." (Exhibit C at 79)

-5-

6. A scientific paper by Maryanne G. Boundy, Karen Gold, Kenneth P. Martin, Jr., William A. Burgess and John M. Dement, entitled "Occupational Exposures to Non-Asbestiform Talc in Vermont" (a copy of which is annexed hereto as Exhibit D) reported on an environmental study of three Vermont talc companies, including Eastern Magnesia Talc and its Johnson mine, during the summer of 1975 and the winter of 1976. This study, under the auspices of the Department of Environmental Health Sciences, Harvard School of Public Health, Boston, Massachusetts, tested bulk samples of ore dust for their mineral constituents. The purpose of this study, as stated in the introduction to the paper, was to verify "geological studies dating from the early 1900's [that] have shown that the Vermont talc deposits contain no asbestos and little quartz. . . ." (Exhibit D at 1) In reporting the results of the study, the paper stated that "petrographic microscopy analysis, analytical transmission electron microscopy, and x-ray diffraction with step-scanning revealed no asbestos in the bulk samples" from the three Vermont talc companies. (Exhibit D at 377)

7. In September and October 1982, an independent testing laboratory, EMV Associates, then located in Rockville, Maryland, analyzed two talc samples taken from the Johnson mine by two different investigators in the 1961 time frame. (One



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sample had been taken by Dr. Chidester during the research incorporated in his 1962 Geological Survey Paper; I took the other sample during a May, 1961 visit to the Johnson mine.) These samples had not been modified or adulterated in any way prior to their 1982 analysis. (Dr. Chidester's talc sample had been maintained by the National Museum of Natural History, Smithsonian Institute in Washington, D.C.) The reports of the analysis of these two samples, dated September 24, 1982 and October 18, 1982 (copies of which are annexed hereto as Exhibits E and F), stated that no asbestos was detected and "prismatic and blocky forms of tremolite were not detected." The reports indicated that the talc samples were examined for freedom from asbestos by "scanning electron microscopy and energy dispersive spectroscopy (SEM/EDS)" and were examined at various magnifications from 1000x to 10,000x. Each of the reports includes a "Certificate of Microanalysis for Asbestos" which contains a Sample Description, Method of Analysis and "Results: No asbestos detected." The results of this analysis were confirmed by a subsequent analysis performed on these samples by Professor P.W. Pooley of the University of Cardiff in Wales, England. Prof. Pooley is one of the foremost authorities in the world in the identification of asbestos and other hazardous minerals in the respiratory tracts of individuals.

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In a December 22, 1982 report, Prof. Pooley noted that the samples were examined by x-ray diffraction analysis and by an analytical transmission electron microscope. The conclusion of these examinations was that no fibrous mineral particles were detected in the samples.

8. In sworn testimony in 1983 (relevant portions of which are annexed as Exhibit G), Dr. Chidester stated that he had never found veins of chrysotile asbestos in talc located in Vermont. He noted that chrysotile was a serpentine mineral found in serpentinite rock, but that, in the formation of talc in Vermont, all of the serpentine minerals are changed to talc. "So any asbestos that may have been there in the first place is altered to talc." (Exhibit G at 24) Thus, in Vermont, talc and serpentinite are mutually exclusive. Dr. Chidester testified that he had personally been at the talc mine in Johnson, Vermont and, based on his personal observations and testing, all of the serpentinite at the Johnson mine had been changed to talc and magnesite. He never observed any asbestos at the

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Johnson mine and never saw any asbestos in any of the samples that he took from the Johnson mine and subjected to microscopic analysis..

*William H. Ashton*  
WILLIAM H. ASHTON

**WILLIAM H. ASHTON**

Sworn to before me this 8th day of May, 1989

Narciso M. Lopez  
Notary Public

Notary Public

**MARGARET M. NAGY**  
**NOTARY PUBLIC OF NEW JERSEY**  
**MY COMMISSION EXPIRES AUG. 18, 1992**

# EXHIBIT 125

IN THE DISTRICT COURT IN AND FOR OKLAHOMA COUNTY  
STATE OF OKLAHOMA

VERNON EGGERS, Individually and  
as the Personal Representative of the Estate  
of Barbara Eggers, Deceased

Plaintiff,

vs.

Case No. CJ-2018-4739

COLGATE-PALMOLIVE  
COMPANY, et al.,

Defendants.

**DEFENDANTS JOHNSON & JOHNSON AND JOHNSON & JOHNSON CONSUMER  
INC.'S SECOND SUPPLEMENTAL RESPONSES TO CERTAIN OF PLAINTIFF'S  
FIRST SET OF INTERROGATORIES**

Preliminary Statement

Defendants Johnson & Johnson and Johnson & Johnson Consumer Inc. (collectively, “Defendants”) respond to Certain of Plaintiff’s First Set of Interrogatories (“Interrogatories”)<sup>1</sup> as follows.

In connection with prior discovery requests in this and other talc personal injury actions, Defendants have conducted reasonable searches at various times over the course of many years to identify, collect and produce documents that relate in a reasonably direct manner to allegations concerning Johnson’s® Baby Powder (“JBP”) and Shower to Shower® (“STS”) cosmetic talc

<sup>1</sup> In an effort to streamline Plaintiff’s ongoing examination of Defendants’ corporate representative regarding the more than 140 documents that are the subject of Plaintiff’s Interrogatories, Defendants agreed to respond to the Interrogatories after an extensive meet-and-confer process between counsel for Plaintiff and counsel for the Defendants, without waiver of their position that certain of the discovery sought is not appropriate for the reasons described in their Responses.

Responses to Interrogatories

**CHART NO. 1: JNJ 000331298 (10/6/1948)**

**INTERROGATORY NO. 5.1:**

Identify the source of the information utilized for any of the answers above if not already identified. If this information came from a person, the disclosed information should include the person's name, contact information (address, known phone number(s) and email address) as well as the specific information known to Johnson & Johnson from each listed individual.

**RESPONSE TO INTERROGATORY NO. 5.1:**

Johnson & Johnson's answers to Interrogatory Nos. 1.1 to 4.1 are based on the documents identified therein, as well as Johnson & Johnson's interpretation of those documents, which takes into account information learned over the course of the last several decades from individuals who had first-hand involvement in issues pertaining to talc, in general, and the talc used for Johnson & Johnson's cosmetic talc products, in particular. Johnson & Johnson identifies William Ashton and Dr. John Hopkins as sources of such information.

Mr. Ashton was the former Director, Advanced Powder Technology and worked for Johnson & Johnson from October 1948 to August 1983. He had over fifty years of experience as a geologist and mineralogist and received training in talc minerals at the Battelle Memorial Institute. He was a member of various talc and mineral committees of the American Society for Testing and Materials and the International Standards Organization. Throughout his tenure at Johnson & Johnson, his responsibilities included investigating and studying the domestic and international talc industry and methods for testing talc and communicating with outside scientists and laboratories that were testing talc and talcum powder products. Additionally, Mr. Ashton oversaw and was actively involved with the company's testing of talc and the efforts to identify, evaluate and approve new sources of talc. Mr. Ashton worked closely with Dr. Hopkins after Dr. Hopkins joined Johnson & Johnson and relayed the knowledge he developed with respect to talc



issues to Dr. Hopkins. Mr. Ashton continued to serve as an information resource on talc issues for Johnson & Johnson long after his retirement. Mr. Ashton is deceased.

Dr. Hopkins is the Former Worldwide Head of Research and Development and worked for Johnson & Johnson from 1976 to 2000. He has over forty years of experience as a toxicologist and has expertise and background in the safety of talc and talcum powder products. During his tenure at Johnson & Johnson, he was involved on all matters relating to talc safety and became familiar with the literature and discussion relating to talc safety as well as the history and background of the sourcing, standards and specification of talc as used by Johnson & Johnson on a worldwide basis. During the time that Dr. Hopkins served as corporate representative for Johnson & Johnson (which ended as of December 31, 2019), Dr. Hopkins' business address was as follows: Innovant Research, The Elms, Oxford Road, Chieveley, Newbury RG20 8RT, United Kingdom, Telephone: +44 1635 248830, Email: innova47@aol.com. Dr. Hopkins continued to serve as an information resource on talc issues for Johnson & Johnson long after his retirement.

Mr. Ashton and Dr. Hopkins were sources of information regarding: the sources of talc used in Johnson & Johnson's talcum powder products, the company's efforts to identify and evaluate new sources of talc, the extensive testing and approval process for talc sources, the routine and comprehensive testing of talc using state-of-the-art technology that exceeded industry standards, the repeated testing that confirmed the absence of asbestos from Johnson & Johnson's talcum powder products, the discussions with outside scientists and laboratories regarding talc testing, the efforts to evaluate and improve methods for testing talc, the continued cooperation and discussions with regulatory agencies and regulators, the efforts to study the toxicological effects of talc, and the ongoing review and analysis of scientific literature regarding talc. Johnson & Johnson relies upon the information described above, which has been passed down to current

employees, that in part forms the basis of its interpretation of the documents identified in Johnson & Johnson's answers to Interrogatory Nos. 1.1 to 4.1.

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# EXHIBIT 126

STATE OF MICHIGAN

IN THE CIRCUIT COURT FOR THE COUNTY OF WAYNE

SHERRI BRYANT and  
MARK BRYANT,

Plaintiffs,

HON. PATRICIA FRESARD

-vs-

CASE NO. 21-001960-NP

JOHNSON & JOHNSON  
JOHNSON & JOHNSON CONSUMER  
COMPANIES, INC., et al

Defendants,

---

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**DEFENDANT JOHNSON & JOHNSON CONSUMER INC.'S RESPONSES TO  
PLAINTIFFS' FIRST SET OF INTERROGATORIES AND REQUEST FOR  
PRODUCTION**

COMES NOW Defendant Johnson & Johnson Consumer Inc. ("JJCI" or  
"Defendant"), and provides its Responses ("Responses") to Plaintiffs' First Set of  
Interrogatories ("Interrogatories") and Request for Production ("Requests") as follows.

## **INTRODUCTORY STATEMENT**

Johnson's® Baby Powder ("JBP") and Shower to Shower®<sup>1</sup> ("STS") cosmetic talc products sold in the United States (collectively "JBP/STS") have been manufactured and sold at various periods of time by one or more of the Defendant, Johnson & Johnson and/or their predecessors, subsidiaries and affiliates (the "J&J Companies"). JJCI is currently the entity primarily responsible for the formulation, manufacture, testing, marketing and sale of JBP. Johnson & Johnson is a holding company that does not design, manufacture, market or sell Johnson's® Baby Powder (or any other product). Accordingly, the overwhelming majority of documents and information regarding JBP/STS are in the possession of JJCI.

Johnson's® Baby Powder has been sold for over a century and continues to be sold today.<sup>2</sup> Shower to Shower® has been sold for more than half of a century, although it has not been manufactured or sold by any of the J&J Companies since 2012. Over the many decades that JBP/STS have been sold, different entities, departments, and employees – as well as third parties – have had responsibilities for various activities pertaining to these products, including, but not limited to activities relating to formulation, manufacture, testing, marketing and sale. Many of Plaintiffs' claims relate to such activities which took place in the mid to late 1900s and therefore many of the

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<sup>1</sup> One or more of the J&J Companies (as defined herein) manufactured, marketed, and sold Shower to Shower® during the period from approximately the mid-1960s to 2012. In 2012, Shower to Shower® was sold to Valeant Pharmaceuticals International, Inc. ("Valeant"), which currently manufactures, markets and sells the product.

<sup>2</sup> On May 19, 2020, Johnson & Johnson announced the permanent discontinuation of talc-based Johnson's Baby Powder in the United States and Canada. Existing inventory will continue to be sold through retailers until it runs out. Additional information regarding this announcement is available at the website [www.factsabouttalc.com](http://www.factsabouttalc.com).

calculated to lead to the discovery of admissible evidence insofar as Plaintiff does not allege exposure to Johnson's Baby Powder during the period of time at issue in this Interrogatory.

**INTERROGATORY NO. 16:**

State the total number of times that "J&J cosmetic talc"

was tested for the presence of asbestos by transmission electron microscopy.

**ANSWER:**

Defendant states that it cannot quantify the exact number of times JBP/STS

or talc used in JBP/STS had been tested using transmission electron microscopy; however,

Defendant states that such testing, including composite testing, was sufficient to be representative

of every lot of JBP/STS and that from 1971 onwards there had been at least 800 such evaluations.

To the extent that this Interrogatory seeks additional or different information, Defendant objects on the grounds stated in Specific Objection No. 4, and on the additional grounds that it is argumentative.

**INTERROGATORY NO. 17:**

Out of the total number of times that "J&J cosmetic talc" was tested for the presence of asbestos by transmission electron microscopy, in how many of those are the "bench sheets" for such transmission electron microscopy tests in the possession of "Johnson & Johnson" today?

**ANSWER:**

Defendant objects to this Interrogatory on the grounds that it is overly broad, is unduly burdensome, exceeds the scope of permissible discovery under the Michigan Court Rules, and seeks information that is neither relevant to the subject matter of this action nor reasonably calculated to lead to the discovery of admissible evidence.

Subject to and without waiving the objections stated herein and without conceding that such documents are relevant to Defendant's cosmetic talc products or limited to Defendant's cosmetic talc products, pursuant to Rule 2.309(E) of the Michigan Court Rules, Defendant states that it has included in its fully searchable Document Production materials relating to the subject



To the extent that this Request seeks a different response, Defendant objects on the grounds stated in Specific Objection No. 4.

Respectfully submitted

KITCH DRUTCHAS WAGNER  
VALITUTTI & SHERBROOK

BY: *Patrick M. Fishman*  
PATRICK M. FISHMAN (P41656)  
Attorney for Johnson & Johnson Consumer  
One Woodward Ave. – Ste. 2400  
Detroit, Michigan 48226  
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DATED: August 3, 2021

ELECTRONICALLY FILED: 2020 AUG 12 12:02 PM CIRCLERULES/INCDOWNDOWN/LEAS/SC/AS/20200800003946

Document received by the MI Wayne 3rd Circuit Court.

STATE OF MICHIGAN  
IN THE CIRCUIT COURT FOR THE COUNTY OF WAYNE

SHERRI BRYANT and  
MARK BRYANT,

HON. PATRICIA FRESARD

CASE NO. 21-001960-NP

JOHNSON & JOHNSON  
JOHNSON & JOHNSON CONSUMER  
COMPANIES, INC., et al

## DECLARATION OF SERVICE

SHERRY J. MISSINNE, certifies that she is employed with the firm of KITCH DRUTCHAS WAGNER VALITUTTI & SHERBROOK, and that on August 3, 2021 she personally served: **DEFENDANTS', JOHNSON & JOHNSON CONSUMER INC.'S RESPONSES TO PLAINTIFFS' FIRST SET OF SET OF INTERROGATORIES & REQUEST FOR PRODUCTION AND DECLARATION OF SERVICE** upon: ERIC B. ABRAMSON, SERLING & ABRAMSON, P.C. 280 N. Old Woodward Avenue, Suite 409 Birmingham, Michigan 48009 by having same filed with the Wayne County e-filing system.

Sherry J. Missinne  
SHERRY J. MISSINNE

# EXHIBIT 127

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**15 New Tests from the Same Bottle of Johnson's Baby Powder  
Previously Tested by FDA Find No Asbestos**

*Over 60 New Tests of the Recalled Lot Conducted by Two Third-Party  
Laboratories Find No Asbestos*

**NEW BRUNSWICK, NJ, (OCTOBER 29, 2019)** – Johnson & Johnson Consumer Inc. (the Company) today announced that 15 new tests from the same bottle of Johnson's Baby Powder previously tested by the U.S. Food and Drug Administration (FDA) found no asbestos. An additional 48 new laboratory tests of samples from the single lot of Johnson's Baby Powder that the [Company voluntarily recalled](#) on October 18 (Lot #22318RB) also confirm that the product does not contain asbestos. These tests were conducted by two third-party laboratories as part of the Company's ongoing testing and investigation.

The Company stated, "Rigorous and third-party testing confirms there is no asbestos in Johnson's Baby Powder. We stand by the safety of our product."

**Tests Demonstrate Positive Readouts are Possible Due to Lab  
Contamination**

Following the voluntary recall, the Company contracted two third-party laboratories to expedite a large number of tests of the recalled lot of Johnson's Baby Powder utilizing Transmission Electron Microscopy (TEM), Powder X-Ray Diffraction (XRD) and Polarized Light Microscopy (PLM) testing.

In addition to using their standard preparation rooms, one of the laboratories deviated from their normal protocol by using an auxiliary room. In that auxiliary room, five samples were prepared, and three initially tested positive for asbestos. Upon this finding, the laboratory undertook an investigation and determined that a portable air conditioner in use during sample preparation in the auxiliary room was contaminated with asbestos. No asbestos was detected in any of the samples when prepared in the standard room.

This finding underscores the importance of investigating any positive test result. Even when careful safeguards are followed, asbestos contamination may be introduced during sample division, storage, preparation and analysis, according to the American Society for Testing and Materials, an International Standards Organization that identifies contamination as a concern in asbestos analysis ([ASTM 6620-19, Standard Practice for Asbestos Detection Limit Based on Counts, at 5.1.3\(ii\)](#)).

## Decades of Product Testing Has Found No Asbestos in Johnson's Baby Powder

For 133 years, the Johnson & Johnson Family of Companies have been committed to putting the needs and well-being of the people we serve first, and we will continue to do so.

As was previously announced, out of an abundance of caution Lot #22318RB of Johnson's Baby Powder was recalled on October 18. If you have questions about the recall, contact the Johnson & Johnson Consumer Care Center at [www.johnsonsbaby.com](http://www.johnsonsbaby.com) or by calling +1 (866) 565-2229.

This press release contains "forward-looking statements" as defined in the Private Securities Litigation Reform Act of 1995 regarding the results of subsequent testing related to the voluntary recall of one lot of Johnson's Baby Powder. The reader is cautioned not to rely on these forward-looking statements. The forward-looking statements in this press release are based on current expectations of future events. If underlying assumptions prove inaccurate or known or unknown risks or uncertainties materialize, actual results could vary materially from the expectations and projections of JJCI and/or Johnson & Johnson. Risks and uncertainties include, but are not limited to: product efficacy or safety concerns resulting in product recalls or regulatory action; significant adverse litigation or government action, including related to product liability claims; uncertainty of commercial success for new and existing products; the ability of the company to successfully execute strategic plans; manufacturing difficulties or delays, internally or within the supply chain; changes to applicable laws and regulations; changes in behavior and spending patterns of purchasers of health care products and services; and increased scrutiny of the health care industry by government agencies. A further list and descriptions of these risks, uncertainties and other factors can be found in Johnson & Johnson's Annual Report on Form 10-K for the fiscal year ended December 30, 2018, including in the sections captioned "Cautionary Note Regarding Forward-Looking Statements" and "Item 1A. Risk Factors," in the company's most recently filed Quarterly Report on Form 10-Q and in the company's subsequent filings with the Securities and Exchange Commission.

Copies of these filings are available online at [www.sec.gov](http://www.sec.gov), [www.jnj.com](http://www.jnj.com) or on request from Johnson & Johnson. Any forward-looking statement made in this release speaks only as of the date of this release. Neither Johnson & Johnson Consumer Inc. nor Johnson & Johnson undertakes to update any forward-looking statement as a result of new information or future events or developments. The Company expressly disclaims all liability in respect to actions taken or not taken based on any or all the contents of this press release.



# EXHIBIT 128

STATE OF WASHINGTON  
KING COUNTY SUPERIOR COURT

WENDI J. HIRSHBERG, et al., )

)

Plaintiffs, )

)

VS. )

)

JOHNSON & JOHNSON, et al., )

)

Defendants. )

)

CERTIFIED  
ORIGINAL

No. 20-2-05603-1 SEA

REMOTE VIDEO 30(b)(6) DEPOSITION OF WALGREEN CO.

THROUGH DESIGNEE RUDY KUCERA

FRIDAY, FEBRUARY 26, 2021

10:00 A.M. PT

VIA ZOOM

REPORTED BY: ANTHONY JUDE CORDOVA, CSR 12943

JOB NO. 302523

|                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                            |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                      |
|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <p style="text-align: right;"><b>Page 2</b></p> <p>1</p> <p>2 BE IT REMEMBERED THAT, on February 26, 2021,</p> <p>3 commencing at the hour of 10:00 a.m. PT of the said day,</p> <p>4 before me, ANTHONY JUDE CORDOVA, RPR, CSR, a Certified</p> <p>5 Shorthand Reporter and Notary Public, remotely appeared</p> <p>6 Rudy Kucera, produced as a witness in the above-titled</p> <p>7 court and cause, who, being by me first duly sworn, was</p> <p>8 examined in said cause.</p> <p>9</p> <p>10</p> <p>11</p> <p>12</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>                                                               | <p style="text-align: right;"><b>Page 4</b></p> <p>1 FOR THE DEFENDANTS JOHNSON &amp; JOHNSON:</p> <p>2 Taryn M. Basauri, Esq.</p> <p>3 LEWIS BRISBOIS</p> <p>4 1111 Third Avenue, Suite 2700</p> <p>5 Seattle, WA 98108</p> <p>6 206.508.1959</p> <p>7 taryn.basauri@lewisbrisbois.com</p> <p>8</p> <p>9</p> <p>10 FOR THE DEFENDANT ELIZABETH ARDEN:</p> <p>11 Michael B. Giaquinto, Esq.</p> <p>12 HAWKINS PARNELL</p> <p>13 445 South Figueroa, Suite 3200</p> <p>14 Los Angeles, CA 90071</p> <p>15 213.486.8026</p> <p>16 mgiaquinto@hpylaw.com</p> <p>17</p> <p>18</p> <p>19 FOR THE DEFENDANT WHITTAKER CLARK &amp; DANIELS:</p> <p>20 Kevin Clonts, Esq.</p> <p>21 RIZZO MATTINGLY BOSWORTH</p> <p>22 1300 SW Sixth Avenue, Suite 330</p> <p>23 Portland, OR 97201</p> <p>24 503.229.1819</p> <p>25 kclonts@rizzopc.com</p> |
| <p style="text-align: right;"><b>Page 3</b></p> <p>1 - - - -</p> <p>2 APPEARANCES</p> <p>3</p> <p>4 FOR THE PLAINTIFFS:</p> <p>5 Jessica Dean, Esq.</p> <p>6 DEAN OMAR BRANHAM SHIRLEY</p> <p>7 302 North Market Street, Suite 300</p> <p>8 Dallas, TX 75202</p> <p>9 214.722.5994</p> <p>10 jdean@dobslegal.com</p> <p>11</p> <p>12</p> <p>13 FOR THE DEFENDANT WALGREEN:</p> <p>14 Meredith Thornburg White, Esq.</p> <p>15 Kenneth M. Gorenberg, Esq. (Chicago office)</p> <p>16 BARNES &amp; THORNBURG</p> <p>17 11 South Meridian Street</p> <p>18 Indianapolis, IN 46204</p> <p>19 317.231.6417</p> <p>20 meredith.white@btlaw.com</p> <p>21 kenneth.gorenberg@btlaw.com</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p> | <p style="text-align: right;"><b>Page 5</b></p> <p>1 ALSO PRESENT:</p> <p>2 Amelia Schneider, Videographer</p> <p>3</p> <p>4</p> <p>5</p> <p>6</p> <p>7</p> <p>8</p> <p>9</p> <p>10</p> <p>11</p> <p>12</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                        |

| Page 6 |                                             |     | Page 8 |                                                          |  |
|--------|---------------------------------------------|-----|--------|----------------------------------------------------------|--|
| 1      | INDEX:                                      |     | 1      | - - - -                                                  |  |
| 2      | Examination by Ms. Dean                     | 10  | 2      | PROCEEDINGS                                              |  |
| 3      |                                             |     | 3      | - - - -                                                  |  |
| 4      |                                             |     | 4      | THE VIDEOGRAPHER: We are on the record. The              |  |
| 5      | EXHIBITS:                                   |     | 5      | date is February 26, 2021. The time on the monitor is    |  |
| 6      | EX 1 Notice of Deposition                   | 10  | 6      | 10:08 AM. This is the video recorded deposition of       |  |
| 7      | EX 2 Analysis of Powdered Talc              | 146 | 7      | Walgreens Company by and through Rudy Kucera being taken |  |
| 8      | EX 3 Witness notes                          | 185 | 8      | in the matter of Wendi J. Hirshberg, et al. versus       |  |
| 9      | EX 4 Reuters article                        | 226 | 9      | Johnson & Johnson. This deposition is being held         |  |
| 10     | EX 5 Email, 2.28.16                         | 196 | 10     | virtually via Zoom.                                      |  |
| 11     | EX 6 Emails                                 | EX  | 11     | My name is Amelia Schneider, a legal                     |  |
| 12     | EX 7 Email, 10.18.19                        | 179 | 12     | videographer representing Asbestos Reporters of          |  |
| 13     | EX 8 (skipped)                              | --  | 13     | California, a GPS partner, located in Los Angeles,       |  |
| 14     | EX 9 (skipped)                              | --  | 14     | California. The court reporter is Anthony Cordova also   |  |
| 15     | EX 10 (skipped_                             | --  | 15     | representing Asbestos Reporters of California.           |  |
| 16     | EX 11 Email, 4.7.20                         | 115 | 16     | Appearances and applicable stipulations will be          |  |
| 17     | EX 12 Letter, 6.28.77                       | 47  | 17     | reflected on the stenographic record. Will the court     |  |
| 18     | EX 13 Letter, 8.9.71                        | 60  | 18     | reporter please swear the witness and we can proceed.    |  |
| 19     | EX 14 Examination of JNJ Baby Powder        | 77  | 19     | - - - -                                                  |  |
| 20     | EX 15 Mineralogy and Chemistry Abstract     | 49  | 20     | RUDY KUCERA,                                             |  |
| 21     | EX 16 Trial transcript, Webber testimony    | 81  | 21     | Being by me first duly sworn,                            |  |
| 22     | EX 17 Examination of JNJ Baby Powder        | 84  | 22     | Was examined and testified as follows:                   |  |
| 23     | EX 18 Preliminary Report, Grantham Ore      | 87  | 23     | - - - -                                                  |  |
| 24     | EX 19 Memorandum, 8.11.72                   | 72  | 24     | MS. DEAN: Before we start questioning, I just            |  |
| 25     | EX 20 University of Minnesota Investigation | 88  | 25     | wanted to put a few things on the record. First, an      |  |
| Page 7 |                                             |     | Page 9 |                                                          |  |
| 1      | EX 21 Handwritten notes                     | 70  | 1      | objection by one defendant is good for all so that the   |  |
| 2      | EX 22 (skipped)                             | --  | 2      | record can say defense objection unless someone wants to |  |
| 3      | EX 23 Musco deposition transcript           | 66  | 3      | opt out. Second, this is being taken pursuant to the     |  |
| 4      | EX 24 Charts                                | 91  | 4      | Rules of Evidence and Procedure in Washington. Third,    |  |
| 5      | EX 25 Blount article                        | 25  | 5      | we have reached an agreement that the records produced   |  |
| 6      | EX 26 Letter, 4.23.98                       | 107 | 6      | in this case by Walgreen which were Bates labeled with a |  |
| 7      | EX 27 Letter, 7.30.71                       | 112 | 7      | Hirshberg name and then the Nos. 1 through 199 are       |  |
| 8      | EX 28 Memorandum, 10.16.97                  | 53  | 8      | authentic business records.                              |  |
| 9      | EX 29 Memo to File, 1.16.74                 | 110 | 9      | Meredith, do you agree with that?                        |  |
| 10     | EX 30 Email, 10.17.19                       | 124 | 10     | MS. WHITE: We are in agreement.                          |  |
| 11     | EX 31 Letter, 8.22.85                       | 136 | 11     | MS. DEAN: Okay. I think, unless others want to           |  |
| 12     | EX 32 Petition                              | 199 | 12     | say something preliminarily, we're good to go.           |  |
| 13     | EX 33 FDC Reports                           | 209 | 13     | MS. WHITE: I would just note that representing           |  |
| 14     | EX 34 Johnson's Share Gains document        | 213 | 14     | the witness from Walgreen Co, there's actually no S on   |  |
| 15     | EX 35 (Objection to production)             | 30  | 15     | the name of the company to the extent the court          |  |
| 16     | EX 36 Resume                                | 12  | 16     | reporters need that and that we would incorporate our    |  |
| 17     |                                             |     | 17     | written objections and responses to the deposition       |  |
| 18     |                                             |     | 18     | notice into the record so that we don't need to haggle   |  |
| 19     |                                             |     | 19     | about that on the record as well as I think we've had    |  |
| 20     |                                             |     | 20     | some successful meet and confers and we will continue to |  |
| 21     |                                             |     | 21     | work with plaintiff's counsel if there are related       |  |
| 22     |                                             |     | 22     | issues.                                                  |  |
| 23     |                                             |     | 23     | - - - -                                                  |  |
| 24     |                                             |     | 24     | EXAMINATION                                              |  |
| 25     |                                             |     | 25     | - - - -                                                  |  |

Page 10

1 BY MS. DEAN:  
2 Q. Okay. Are you ready, sir?  
3 A. Yes.  
4 Q. We may be using this videotape in front of a  
5 judge or a jury. So, if I ever mention them, that's  
6 why. I know they're not here right now. But can you  
7 please introduce yourself?  
8 A. Sure. My name is Rudy Kucera.  
9 Q. And you understand that you are here today as a  
10 person selected by Walgreen to speak on behalf of the  
11 company on a list of topics that we identified for the  
12 company relating to sale of Johnson Baby Powder  
13 historically?  
14 A. Yes, I do.  
15 Exhibit 1 was marked for identification.)  
16 Q. Okay. I've attached to the deposition Exhibit 1  
17 which is that deposition notice. It not just identifies  
18 the time we're going to meet today but also the topics  
19 that we wanted to discuss with you. Have you reviewed  
20 that?  
21 A. Yes, I have.  
22 Q. Okay. Do you feel like you are reasonably  
23 prepared to speak on behalf of the company on those  
24 topics?  
25 A. Yes, I do.

Page 11

1 Q. Okay. I am sometimes an informal soul and if  
2 I'm asking you about what you think about something,  
3 please understand unless I specifically indicate  
4 otherwise, I'm asking you as the representative of  
5 Walgreen. Okay?  
6 A. Understood.  
7 Q. Okay. Have you ever done a deposition before?  
8 A. No. This is the first one.  
9 Q. Okay. In terms of the process, because there is  
10 a court reporter, one of the hard things at least for me  
11 is in normal conversation, I interrupt and talk and  
12 there's a flow to it that we have to be a little bit  
13 more conscientious of, one, because we're in a different  
14 space because of social distancing and, two, because  
15 someone's trying to write down everything we say. So,  
16 if I ever ask you to wait to give somebody an  
17 opportunity to object or just to finish your question,  
18 I'm being a little bit more particular because of the  
19 format. Okay?  
20 A. Yep. Understood.  
21 Q. Okay. And, also, at any point in time you would  
22 like to take a break -- you're the one doing the heavy  
23 lifting in terms of thinking today -- let me know.  
24 Sometimes I might ask you to bear with me for a couple  
25 minutes to finish a thought, but we can certainly take a

Page 12

1 break whenever you'd like. Okay?  
2 A. Great.  
3 Q. In terms of understanding that you would be in  
4 this role to speak on behalf of Walgreen, when did you  
5 first learn that?  
6 A. That would have been several months ago.  
7 Q. So, sometime at the end of 2020?  
8 A. Correct.  
9 Q. When did you start working at Walgreen?  
10 A. I started with the company in 1990.  
11 Q. Do you have any kind of resume or CV?  
12 A. Yes.  
13 Q. Okay. Is that something that you could get to  
14 counsel so that we could just attach it to the  
15 deposition so we have kind of a broad-scope  
16 understanding of your background?  
17 A. Sure.  
18 (Exhibit 36 was marked for identification.)  
19 Q. I have already kind of outlined some exhibits  
20 I'm going to attach, so I'm just going to preliminarily  
21 attach that as Exhibit 36 to the deposition meaning that  
22 I would like to reserve that number for your resume when  
23 we get it.  
24 In terms of your time with Walgreen, can you  
25 give me kind of a broad stroke starting off with your

Page 13

1 history with the company, what you have done from then  
2 to now?  
3 A. Broadly, started with the company as a  
4 pharmacist intern and was a pharmacist for a short  
5 period of time, for a couple years, went into store  
6 management. From there, I went to our E-commerce group  
7 when our website first got off the ground and for the  
8 last decade or so have been in merchandising functions.  
9 Q. What's your educational background?  
10 A. I'm sorry?  
11 Q. What's your educational background?  
12 A. I am a pharmacist.  
13 Q. Do you have any education or training in  
14 asbestos-related issues?  
15 A. I do not.  
16 Q. Have you ever worked in the health or safety  
17 departments or regulatory departments for Walgreen?  
18 A. I have not.  
19 Q. Okay. In terms of trying to learn what a  
20 company knows over several different topics, over a  
21 dozen topics, who else did you speak to within the  
22 company other than lawyers in order to make sure you  
23 could talk about what the company reasonably knew as  
24 opposed to just what you knew as a person?  
25 A. Sure. So, I spoke with the individuals that

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1 Q. In terms of just this long relationship that  
2 Walgreen had with Johnson & Johnson, is there any kind  
3 of arc to this where Johnson & Johnson was keeping  
4 Walgreen abreast of, hey, in the '50s, we realized there  
5 was asbestos in our talc, we didn't mean to put it there  
6 but it's there but we're trying all this stuff to get it  
7 out and then, well, that didn't work and that didn't  
8 work and that didn't work? Any kind of indication at  
9 all that they were communicating to you as Walgreen  
10 about asbestos and their efforts to get it out of the  
11 talc that they were asking Walgreen to sell?  
12 MS. WHITE: I'm going to object as compound.  
13 You can answer.  
14 A. No. We were not, based on our research, aware  
15 that any of this has been shared.  
16 BY MS. DEAN:  
17 Q. I want to now show you a document that Walgreen  
18 provided me that I have already marked as Exhibit 6, and  
19 this is an email communication, and we kind of see parts  
20 of this document over and over again in emails that  
21 Walgreen has where they are providing this urgent,  
22 confidential recall notice, they being Johnson &  
23 Johnson, to Walgreen; fair?  
24 MS. WHITE: Could you just show the Bates number  
25 to orient us, please?

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1 MS. DEAN: Sure. This is the first time I see  
2 it is on 5.  
3 MS. WHITE: Great. Thank you.  
4 MS. DEAN: Okay.  
5 MS. WHITE: There might be a question pending.  
6 You might want to ask it.  
7 MS. DEAN: Should I try it again? I'll take  
8 that as a yes.  
9 A. Yeah. If you can just scroll to the bottom?  
10 BY MS. DEAN:  
11 Q. So, Walgreen --  
12 A. Got it.  
13 Q. -- has --  
14 MS. WHITE: You can object to this, Jessica, if  
15 you want. But, Rudy, you have this document in your  
16 binder at B2 in section B of the production, if that  
17 helps you. But she's going to show you what she wants  
18 to show you.  
19 BY MS. DEAN:  
20 Q. If it's helpful on your eyes or for any reason  
21 just to look at the printed copy --  
22 A. Yeah. It's actually much easier. So, if that's  
23 okay with you --  
24 Q. So, Walgreen --  
25 A. -- at the screen.

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1 Q. -- has repeated emails where Johnson & Johnson  
2 was providing information to people at Walgreen about  
3 the decision to recall its talc after FDA finding and we  
4 see this same kind of recall letter repeatedly in the  
5 documents Walgreen produced; true?  
6 A. Yes.  
7 Q. Okay. I want to talk about some of the specific  
8 things Walgreen was told by Johnson & Johnson and one of  
9 them specifically is that not only do we, Johnson &  
10 Johnson, and our suppliers routinely test to ensure the  
11 talc does not contain asbestos, our talc has been tested  
12 and confirmed to be asbestos-free by a range of  
13 independent labs, universities and global authorities.  
14 That's what they told you; right?  
15 A. Yes.  
16 Q. And making decisions to continue selling their  
17 baby powder to the public was based on trust that they  
18 wouldn't write this unless it was a hundred percent  
19 true; fair?  
20 MS. BASAURI: Form.  
21 A. Sure.  
22 BY MS. DEAN:  
23 Q. Does Walgreen have any idea how many times  
24 Johnson & Johnson tested its own baby powder and found  
25 asbestos before they broke this to Walgreen --

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1 MS. BASAURI: Form.  
2 BY MS. DEAN:  
3 Q. -- in 2019?  
4 A. We do not, no.  
5 Q. I want to focus on a few of those to show them  
6 to you to make sure this isn't information that you've  
7 ever seen and I want to start by talking about testing  
8 done by the FDA. The FDA did some testing through a  
9 consultant named Dr. Lewin, an academic in New York, to  
10 test a variety of talc products including Johnson's Baby  
11 Powder and Shower To Shower and this was something that  
12 was discussed extensively in Johnson & Johnson's  
13 internal records. Does any of that sound like  
14 information that's familiar or known to Walgreen based  
15 on your research?  
16 MS. WHITE: Object to form. You can answer.  
17 A. It is not.  
18 BY MS. DEAN:  
19 Q. Johnson & Johnson starts their presentation to  
20 jurors claiming that that was a false alarm, that that  
21 information by Dr. Lewin was dead wrong. Is that  
22 something that they've ever conveyed to Walgreen?  
23 MS. BASAURI: Form.  
24 MS. WHITE: Object. Form. And I'll object to  
25 the extent we're talking about business communications





|    | Page 238                                                |  |
|----|---------------------------------------------------------|--|
| 1  | ERRATA SHEET                                            |  |
| 2  |                                                         |  |
| 3  | NAME OF CASE:                                           |  |
| 4  | WENDI J. HIRSHBERG, et al. vs JOHNSON & JOHNSON, et al. |  |
| 5  | DATE OF DEPOSITION: 02/26/2021                          |  |
| 6  | NAME OF WITNESS: Walgreens (Rudy Kucera)                |  |
| 7  | Reason Codes: 1. To clarify the record.                 |  |
| 8  | 2. To conform to the facts.                             |  |
| 9  | 3. To correct transcription errors.                     |  |
| 10 | Page _____ Line _____ Reason _____                      |  |
| 11 | From _____ to _____                                     |  |
| 12 | Page _____ Line _____ Reason _____                      |  |
| 13 | From _____ to _____                                     |  |
| 14 | Page _____ Line _____ Reason _____                      |  |
| 15 | From _____ to _____                                     |  |
| 16 | Page _____ Line _____ Reason _____                      |  |
| 17 | From _____ to _____                                     |  |
| 18 | Page _____ Line _____ Reason _____                      |  |
| 19 | From _____ to _____                                     |  |
| 20 | Page _____ Line _____ Reason _____                      |  |
| 21 | From _____ to _____                                     |  |
| 22 | Page _____ Line _____ Reason _____                      |  |
| 23 | From _____ to _____                                     |  |
| 24 |                                                         |  |
| 25 | Walgreens (Rudy Kucera)   Date                          |  |
|    | Page 239                                                |  |
| 1  |                                                         |  |
| 2  | I, Walgreens (Rudy Kucera), have read the foregoing     |  |
| 3  | deposition and hereby affix my signature that same is   |  |
| 4  | true and correct, except as noted herein.               |  |
| 5  |                                                         |  |
| 6  |                                                         |  |
| 7  |                                                         |  |
| 8  | Walgreens (Rudy Kucera)   Date                          |  |
| 9  |                                                         |  |
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| 22 |                                                         |  |
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| 24 |                                                         |  |
| 25 |                                                         |  |

# EXHIBIT 129

FOR THE COUNTY OF LOS ANGELES

HON. C. EDWARD SIMPSON, JUDGE

LAOSD ASBESTOS CASES, ) ASBESTOS  
Coordinated Proceeding Special Title ) No. JCCP 4674  
(Rule 3.550) )

Plaintiffs,

VS.

AT&T CORP., a subsidiary of AT&T INC. and  
its subsidiary PACIFIC BELL TELEPHONE  
COMPANY, et al.,

Defendants.

REPORTER'S TRANSCRIPT OF PROCEEDINGS

FRIDAY; NOVEMBER 3, 2017

A.M. SESSION

(APPEARANCES, NEXT PAGE.)

PAGES 2570 - 2692

IRENE KUBERT, CSR, CRR, RMR  
Court Reporter Pro Tempore  
License No. 10105

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|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <p>1 APPEARANCES:</p> <p>2</p> <p>3 FOR PLAINTIFFS: SIMON GREENSTONE PANATIER BARTLETT</p> <p>4 BY: CHRISTOPHER J. PANATIER, ESQ.</p> <p>5 LEAH C. KAGAN, ESQ.</p> <p>6 3780 KILROY AIRPORT WAY</p> <p>7 SUITE 540</p> <p>8 LONG BEACH, CALIFORNIA 90806</p> <p>9 (562) 590-3400</p> <p>10 BY: JAY STUEMKE, ESQ.</p> <p>11 3232 MCKINNEY AVENUE</p> <p>12 SUITE 610</p> <p>13 DALLAS, TEXAS 75204</p> <p>14</p> <p>15 FOR JOHNSON &amp; JOHNSON: KING &amp; SPALDING</p> <p>16 BY: ALEXANDER G. CALFO, ESQ.</p> <p>17 JULIA E. ROMANO, ESQ.</p> <p>18 655 WEST FIFTH STREET</p> <p>19 17TH FLOOR</p> <p>20 LOS ANGELES, CALIFORNIA 90071</p> <p>21 (213) 443-4347</p> <p>22 and</p> <p>23</p> <p>24 TUCKER ELLIS, LLP</p> <p>25 BY: SHARLA J. FROST, ESQ.</p> <p>26 GWENDOLYN S. FROST, ESQ.</p> <p>27 405 MAIN STREET</p> <p>28 SUITE 500</p> <p>HOUSTON, TEXAS 77002</p> <p>(281) 657-0732</p> <p>and</p> <p>ORRICK, HERRINGTON &amp; SUTCLIFFE, LLP</p> <p>BY: MORTON DONALD DUBIN II, ESQ.</p> <p>51 WEST 52ND STREET</p> <p>NEW YORK, NEW YORK 10019</p> <p>(212) 506-3752</p> <p>FOR IMERY'S TALC AMERICA and CYPRUS AMAX:</p> <p>ALSTON &amp; BIRD</p> <p>BY: TODD B. BENOFF, ESQ.</p> <p>PETER E. MASAITIS, ESQ.</p> <p>333 SOUTH HOPE STREET</p> <p>16TH FLOOR</p> <p>LOS ANGELES, CALIFORNIA 90071</p> <p>(213) 576-1000</p> | <p>1 EXHIBITS</p> <p>2</p> <p>3 NOVEMBER 3, 2017; A.M. SESSION</p> <p>4 FOR IN WITHDRAWN/</p> <p>5 PLAINTIFFS' I.D. EVIDENCE REJECTED</p> <p>6 2232 Document re 2613</p> <p>7 NIOSH</p> <p>8 Sponsored Tale</p> <p>9 Study Authored</p> <p>10 by Vernon</p> <p>11 Zeitz</p> <p>12</p> <p>13 2241 Communication 2632</p> <p>14 between</p> <p>15 Johnson &amp;</p> <p>16 Johnson and</p> <p>17 FDA, Shower to</p> <p>18 Shower Summary</p> <p>19 2248 Memo from John 2656</p> <p>20 Hopkins to Ian</p> <p>21 Philipson</p> <p>22 2294 Letter from 2643</p> <p>23 Mr. Walcott</p> <p>24 CC'ing</p> <p>25 Dr. Clare</p> <p>26</p> <p>27 2501 Field Memo 2640</p> <p>28 from the U.S.</p> <p>Department of</p> <p>Labor</p> <p>2575 Meeting of the 2603</p> <p>CTFA, 2/1/1977</p> <p>2629 Letter from 2609</p> <p>Donald Muller</p> <p>at Windsor</p> <p>mills to</p> <p>individuals at</p> <p>Johnson &amp;</p> <p>Johnson</p> <p>2667 Letter to 2597</p> <p>Matthew A.</p> <p>Nunes from Al</p> <p>Dicky and Ian</p> <p>Stewart, March</p> <p>1988</p> |
| <p>1 MASTER INDEX</p> <p>2</p> <p>3 NOVEMBER 3, 2017; A.M. SESSION</p> <p>4</p> <p>5 CHRONOLOGICAL/ALPHABETICAL INDEX OF WITNESSES</p> <p>6</p> <p>7</p> <p>8 PLAINTIFFS' PAGE</p> <p>9 HOPKINS, JOHN</p> <p>10 REDIRECT EXAMINATION (RESUMED) BY MR. PANATIER.....2583</p> <p>11</p> <p>12</p> <p>13 DEFENDANTS' PAGE</p> <p>14 HOPKINS, JOHN</p> <p>15 DIRECT EXAMINATION (RESUMED) BY MS. FROST.....2664</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p> <p>26</p> <p>27</p> <p>28</p>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                      | <p>1 EXHIBITS</p> <p>2 NOVEMBER 3, 2017; A.M. SESSION</p> <p>3</p> <p>4 FOR IN WITHDRAWN/</p> <p>5 PLAINTIFFS' I.D. EVIDENCE REJECTED</p> <p>6 2669 Letter to John 2619</p> <p>7 Pendergrass</p> <p>8 from J. Donald</p> <p>9 Miller, M.D.</p> <p>10</p> <p>11 3112 "Reexamination 2621</p> <p>12 of the</p> <p>13 Asbestos</p> <p>14 Content of</p> <p>15 Johnson &amp;</p> <p>16 Johnson's Baby</p> <p>17 Powder Lot</p> <p>18 228p."</p> <p>19 3113 McCrone 2612</p> <p>20 Associates</p> <p>21 Document re</p> <p>22 NIOSH Sample</p> <p>23 Number</p> <p>24 3114 Characterization 2623</p> <p>25 of Johnson &amp;</p> <p>26 Johnson's Baby</p> <p>27 Powder Lot 228p,</p> <p>28 third page,</p> <p>6/11/1972</p> <p>3115 Evaluation of 2601</p> <p>CTFA's round</p> <p>robins of FDA</p> <p>method</p> <p>3116 Memo of 2624</p> <p>meeting with</p> <p>FDA, 9/21/72</p> <p>3117 Letter from 2626</p> <p>Mr. Grieger</p> <p>to Professor</p> <p>Hutchison, CC'ing</p> <p>Johnson &amp; Johnson</p>                                               |

|                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                    |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                           |
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| <p>1<br/>2<br/>3<br/>4<br/>5<br/>6<br/>7<br/>8<br/>9<br/>10<br/>11<br/>12<br/>13<br/>14<br/>15<br/>16<br/>17<br/>18<br/>19<br/>20<br/>21<br/>22<br/>23<br/>24<br/>25<br/>26<br/>27<br/>28</p> <p>EXHIBITS</p> <p>NOVEMBER 3, 2017; A.M. SESSION<br/>FOR IN WITHDRAWN/<br/>PLAINTIFFS' I.D. EVIDENCE REJECTED</p> <p>3118 Report re 2626<br/>"Investigation<br/>of Possible<br/>Asbestos<br/>Contaminations<br/>in Talc<br/>Samples"</p> <p>3119 McCrone's 2635<br/>Standard<br/>Operating<br/>Procedure for<br/>Analysis of<br/>Talc</p> <p>3128 Report on 2598<br/>Examination of<br/>879-57 Talc L</p> <p>3130 Information 2641<br/>from OSHA<br/>Website<br/>Referencing<br/>Field Memo<br/>74-92</p>                                                                                                                                                                                                                                                                                                                                                                                                                                                                           | <p>2571</p> <p>1 THE COURT: Let me just see if I have it here.<br/>2 That might be easier.<br/>3 MR. CALFO: Your Honor, I can give you the<br/>4 transcript.<br/>5 THE COURT: Just give it to Karli.<br/>6 Okay. You're talking about -- oh, this is<br/>7 the one that doesn't have any page numbers?<br/>8 MR. CALFO: It's on Page 74, Your Honor, in the<br/>9 upper right corner.<br/>10 THE COURT: Okay. I see it, Page 74.<br/>11 MR. CALFO: And really easy, Your Honor. You<br/>12 wrote "S" for sustained, and then "A." And we find it<br/>13 unclear what ground our designation was sustained on.<br/>14 THE COURT: "A" was argumentative, I think.<br/>15 MR. CALFO: Okay. Because it was based on his<br/>16 personal knowledge.<br/>17 THE COURT: Let's see. Question --<br/>18 MR. CALFO: And it goes to completeness with what<br/>19 the plaintiffs asked.<br/>20 THE COURT: Yes. I can go either way on that. It<br/>21 just seemed to me, when I was reading it, it seemed a<br/>22 little bit argumentative.<br/>23 "QUESTION: Then when you went on to<br/>24 hire McCrone, why was it that after<br/>25 Johnson &amp; Johnson came up with a zero<br/>26 asbestos result, did you go to McCrone?"<br/>27 What's the plaintiffs' position?<br/>28 MS. KAGAN: I mean, Your Honor, we stand by your</p>                                                                                                                                                                               |
| <p>2570</p> <p>1 CASE NUMBER: BC464315<br/>2 CASE NAME: HERFORD VS. AT&amp;T<br/>3 PASADENA, CALIFORNIA MONDAY, NOVEMBER 3, 2017<br/>4 DEPARTMENT NER HON. C. EDWARD SIMPSON, JUDGE<br/>5 REPORTER: IRENE KUBERT, CSR NO. 10105<br/>6 TIME: A.M. SESSION<br/>7 APPEARANCES: (AS HERETOFORE NOTED.)<br/>8 -o0o-<br/>9<br/>10 (At 8:59 a.m. the following<br/>11 proceedings were held in open court<br/>12 out of the presence of the jury:)<br/>13<br/>14 THE COURT: Good morning.<br/>15 (A chorus of "good mornings" was<br/>16 heard.)<br/>17 THE COURT: What have we this morning?<br/>18 MS. KAGAN: I think that Johnson &amp; Johnson has a<br/>19 request for you to clarify a ruling. And I also have a<br/>20 request for a clarification of ruling on the Miller<br/>21 transcript. We were able to meet and confer and agree<br/>22 to two of the three issues, and I think there is just<br/>23 one issue remaining for each.<br/>24 MR. BENOFF: There are issues beyond that, Your<br/>25 Honor, but I'm glad to wait.<br/>26 MR. CALFO: Ours is a little petty. It should be<br/>27 easy. Really quickly, I don't know if it's best if I<br/>28 hand you this --</p> | <p>2572</p> <p>1 ruling that it is argumentative. But if Johnson &amp;<br/>2 Johnson really needs it read --<br/>3 THE COURT: I'll change my mind on it.<br/>4 MS. KAGAN: And then the issue that we had is on<br/>5 Page 105. On Page 105 -- actually it begins on 104.<br/>6 It's the last of line of 104. Your Honor sustained the<br/>7 objection because the defendant had claimed that the<br/>8 Clifton mine is not a cosmetic talc mine, and so<br/>9 therefore it's not relevant because the products at<br/>10 issue weren't sourced from that mine.<br/>11 The reason we designated this -- and I think<br/>12 it became apparent during Dr. Hopkins' testimony -- is<br/>13 that during this window of time when this mill and mine<br/>14 were in operation, which was only 1969 to approximately<br/>15 1973, that was the only industrial mine in operation in<br/>16 that window. Everything else was the Hammondsville<br/>17 Mine.<br/>18 So this distinction of cosmetic versus<br/>19 industrial, this is the factual information that<br/>20 clarifies that the testing that happened after 1973 is<br/>21 from the same mine that Johnson &amp; Johnson used, the<br/>22 Hammondsville Mine.<br/>23 And so I think it's important from a factual<br/>24 perspective because Mr. Hopkins didn't seem to know<br/>25 exactly. And this bears out the issue that has come up<br/>26 now for two days.<br/>27 THE COURT: Let me just read the question and the<br/>28 answer, then.</p> |



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| <p style="text-align: right;">2621</p> <p>1 Argumentative.</p> <p>2 THE COURT: Overruled.</p> <p>3 THE WITNESS: NIOSH -- my understanding of the</p> <p>4 NIOSH definition of asbestos is wider than just a 3-to-1</p> <p>5 aspect.</p> <p>6 Q. BY MR. PANATIER: I'm asking you about what</p> <p>7 the assistant surgeon general said.</p> <p>8 A. In 1988 --</p> <p>9 MS. SHARLA FROST: And I object. The document</p> <p>10 speaks for itself.</p> <p>11 THE COURT: Sustained.</p> <p>12 Q. BY MR. PANATIER: My question for you, sir,</p> <p>13 is I just asked you, they define fibrous as 3 to 1.</p> <p>14 Do you agree with that?</p> <p>15 A. I agree with what is written.</p> <p>16 Q. All right. Now, this is Defense</p> <p>17 Exhibit 7287. This regards a series of McCrone</p> <p>18 testing -- right? -- that you went through with</p> <p>19 Ms. Frost?</p> <p>20 A. Yes.</p> <p>21 Q. I want to ask you about this one. 228p.</p> <p>22 Do you know what 228p is?</p> <p>23 A. No.</p> <p>24 MR. PANATIER: This will be Exhibit 3112.</p> <p>25 (Plaintiffs' 3112 was marked for</p> <p>26 identification by the judicial</p> <p>27 assistant.)</p> <p>28 Q. BY MR. PANATIER: August 12, '74,</p> | <p style="text-align: right;">2623</p> <p>1 (Plaintiffs' 3114 was marked for</p> <p>2 identification by the judicial</p> <p>3 assistant.)</p> <p>4 Q. BY MR. PANATIER: If you'll turn, please,</p> <p>5 sir, to Page 3 -- here's the cover --</p> <p>6 "Characterization."</p> <p>7 It doesn't like that.</p> <p>8 "Characterization of Johnson &amp; Johnson's</p> <p>9 Baby Powder Lot 228p." Third page. June 11, 1972.</p> <p>10 "As you may remember, Dr. Sundberg</p> <p>11 obtained 1,000 cans of Johnson's baby powder</p> <p>12 lot 228p for all our chemical and inhalation</p> <p>13 studies. In the past few months, a complete</p> <p>14 analytical characterization has been carried</p> <p>15 out on lot 228p, and it is the subject of</p> <p>16 this report."</p> <p>17 Did I read that right?</p> <p>18 A. You did.</p> <p>19 Q. What they did is they took a thousand cans</p> <p>20 of one lot and they precleared it, tested it to make</p> <p>21 sure that it was asbestos-free; right?</p> <p>22 A. Yes.</p> <p>23 Q. And then they sent it for use in their</p> <p>24 studies?</p> <p>25 A. Yes.</p> <p>26 Q. Okay. You can set that aside, sir.</p> <p>27 This is Exhibit 3116.</p> <p>28 ////</p>                                                                                       |
| <p style="text-align: right;">2622</p> <p>1 "Reexamination of the Asbestos Content of Johnson &amp;</p> <p>2 Johnson's Baby Powder Lot 228p."</p> <p>3 Do you see that, sir?</p> <p>4 A. Yes.</p> <p>5 Q. It says:</p> <p>6 "Johnson's baby powder lot 228p is the</p> <p>7 material being used in our inhalation study</p> <p>8 at Battelle, and as such was scrutinized in</p> <p>9 1972."</p> <p>10 And it says by McCrone and others.</p> <p>11 "Found to be free of asbestos"; right?</p> <p>12 A. Yes.</p> <p>13 Q. So 228p was the specific lot of baby powder</p> <p>14 that Johnson &amp; Johnson gave to be used in its inhalation</p> <p>15 studies with the hamsters; correct?</p> <p>16 A. That's what it reads.</p> <p>17 MS. SHARLA FROST: For sake of completeness, if</p> <p>18 you could, read the last sentence.</p> <p>19 Q. BY MR. PANATIER: "As the attached letter</p> <p>20 states, find that it is free of chrysotile and</p> <p>21 amphiboles."</p> <p>22 They cleared this lot; correct?</p> <p>23 A. It was cleared.</p> <p>24 Q. Right.</p> <p>25 MR. PANATIER: This will be Exhibit 3114 on the</p> <p>26 same subject.</p> <p>27 ////</p> <p>28 ////</p>                              | <p style="text-align: right;">2624</p> <p>1 (Plaintiffs' 3116 was marked for</p> <p>2 identification by the judicial</p> <p>3 assistant.)</p> <p>4 Q. BY MR. PANATIER: You spoke with Ms. Frost</p> <p>5 about the various studies that were done when Lewin came</p> <p>6 out with his conclusions about baby powder and Shower to</p> <p>7 Shower; correct?</p> <p>8 A. Yes, we did.</p> <p>9 Q. And in fact here there's a memo of a meeting</p> <p>10 with the FDA that they apparently had on September 21,</p> <p>11 '72; right?</p> <p>12 A. Yes.</p> <p>13 Q. And there were a series of reports that you</p> <p>14 spoke with Ms. Frost about. And they reference those</p> <p>15 here.</p> <p>16 It says, "Professor Pooley was unable</p> <p>17 to find any chrysotile in the sample of</p> <p>18 Shower to Shower powder which Dr. Lewin had</p> <p>19 examined."</p> <p>20 And at that time, in fairness, Dr. Pooley</p> <p>21 was a consultant to Johnson &amp; Johnson; correct?</p> <p>22 A. He was a professor at a university that</p> <p>23 Johnson &amp; Johnson employed to give an opinion, to</p> <p>24 analyze talc, yes.</p> <p>25 Q. So he was also a consultant to them;</p> <p>26 correct?</p> <p>27 MS. SHARLA FROST: Objection. Asked and answered</p> <p>28 and argumentative.</p> |

16 (Pages 2621 to 2624)

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| <p style="text-align: right;">2625</p> <p>1 THE COURT: Overruled.</p> <p>2 Q. BY MR. PANATIER: Right?</p> <p>3 A. If we define "consultant" in that way, he</p> <p>4 was consulted and provided information.</p> <p>5 Q. Okay. Ian Stewart of McCrone Associates</p> <p>6 performed electron microscopy on the Lewin sample of</p> <p>7 Shower to Shower powder looking at numerous grids for</p> <p>8 chrysotile. And Johnson &amp; Johnson had the Pooley</p> <p>9 report, and they had the McCrone report; correct?</p> <p>10 A. Yes.</p> <p>11 Q. No chrysotile was found by electron</p> <p>12 microscopy. Scanning electron microscopy was also</p> <p>13 performed by the Lewin sample of Shower to Shower powder</p> <p>14 by Mr. Brown of McCrone and Professor Hutchinson of the</p> <p>15 University of Minnesota.</p> <p>16 And those were also consultants; correct,</p> <p>17 sir?</p> <p>18 A. Where does it say Mr. Brown? Mr. Brown was</p> <p>19 at Princeton University. Professor Brown of Princeton</p> <p>20 University.</p> <p>21 Q. They say McCrone. It might be a misprint.</p> <p>22 A. Maybe there are two Mr. Browns.</p> <p>23 Q. So Johnson &amp; Johnson had these reports from</p> <p>24 Pooley, McCrone, Princeton --</p> <p>25 A. MIT.</p> <p>26 Q. -- MIT, and the University of Minnesota;</p> <p>27 correct?</p> <p>28 A. Yes. Colorado School of Mines.</p> | <p style="text-align: right;">2627</p> <p>1 A. I do.</p> <p>2 Q. That's where Mr. Hutchison was; correct?</p> <p>3 A. Yes.</p> <p>4 Q. And do you see, sir, that it says,</p> <p>5 "Investigation of Possible Asbestos Contaminations in</p> <p>6 Talc Samples"?</p> <p>7 A. Yes.</p> <p>8 Q. And it even kind of echoes the language of</p> <p>9 the previous letter.</p> <p>10 "Specimens of powdered talc were</p> <p>11 received from Johnson &amp; Johnson Company and</p> <p>12 from McCrone Associates. Analysis of these</p> <p>13 samples, using the scanning electron</p> <p>14 microscope, was requested in order to</p> <p>15 determine the possible content of fibrous</p> <p>16 chrysotile asbestos contained in the talc</p> <p>17 samples. The first lot of material was</p> <p>18 examined by McCrone Associates" -- by</p> <p>19 McCrone Associates' Lewin."</p> <p>20 Right?</p> <p>21 A. Yes.</p> <p>22 Q. So he's looking at both some J&amp;J Shower to</p> <p>23 Shower and the Lewin sample; correct?</p> <p>24 A. Yes.</p> <p>25 Q. Okay. If you would, turn to Page 3, sir.</p> <p>26 He says: "Considering the lack of</p> <p>27 success in obtaining definitive results by</p> <p>28 scanning electron microscopy, transmission</p> |
| <p style="text-align: right;">2626</p> <p>1 Q. And Colorado School of Mines and</p> <p>2 Professor Hutchison at the University of Minnesota.</p> <p>3 So they communicated all these to the FDA;</p> <p>4 right?</p> <p>5 A. Yes.</p> <p>6 MR. PANATIER: This will be Exhibit 3117.</p> <p>7 (Plaintiffs' 3117 was marked for</p> <p>8 identification by the judicial</p> <p>9 assistant.)</p> <p>10 Q. BY MR. PANATIER: Sir, this is just a letter</p> <p>11 from Mr. Grieger at McCrone CC'ing Johnson &amp; Johnson to</p> <p>12 Professor Hutchison at the Space Science Center,</p> <p>13 University of Minnesota; right?</p> <p>14 A. Yes.</p> <p>15 Q. And you can see he's sending along samples</p> <p>16 for Professor Hutchison to look at; right?</p> <p>17 A. Yes.</p> <p>18 Q. And that happened and Johnson &amp; Johnson got</p> <p>19 that report and communicated it to the FDA; correct?</p> <p>20 A. Yes.</p> <p>21 Q. Okay. Let's look at the report.</p> <p>22 MR. PANATIER: This will be Exhibit 3118.</p> <p>23 (Plaintiffs' 3118 was marked for</p> <p>24 identification by the judicial</p> <p>25 assistant.)</p> <p>26 Q. BY MR. PANATIER: University of Minnesota</p> <p>27 Space Science Center.</p> <p>28 Do you see that?</p>                                                                                                                                       | <p style="text-align: right;">2628</p> <p>1 electron microscopy was tried."</p> <p>2 Right?</p> <p>3 A. Yes.</p> <p>4 Q. Didn't see anything by scanning electron</p> <p>5 microscopy; right?</p> <p>6 A. No, not --</p> <p>7 Q. And that's what Johnson &amp; Johnson reported</p> <p>8 to the FDA. Fair?</p> <p>9 A. Yes.</p> <p>10 Q. Okay. Then it says:</p> <p>11 "Of the large number of grids</p> <p>12 examined, three examples of fibers, which</p> <p>13 upon examination by electron diffraction</p> <p>14 could be classified as likely candidates for</p> <p>15 chrysotile asbestos in the Shower to Shower</p> <p>16 material, and one example was found in the</p> <p>17 Lewin material, these are shown in Figures</p> <p>18 16, 17, 18, and 19.</p> <p>19 "In Figures 17 and 18, electron</p> <p>20 micrographs of the transmission type show</p> <p>21 the typical stranded appearance of</p> <p>22 chrysotile asbestos. In each case, Figures</p> <p>23 16 through 19, the diffraction pattern is</p> <p>24 closely similar to that indexed for</p> <p>25 chrysotile asbestos."</p> <p>26 He goes on:</p> <p>27 "It is felt, therefore, that</p> <p>28 chrysotile asbestos does exist in the</p>                                             |

17 (Pages 2625 to 2628)

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| <p style="text-align: right;">2629</p> <p>1 specimen of Shower to Shower, and Lewin<br/>2 supplied to this laboratory."<br/>3 He says:<br/>4 "It is, however, further concluded<br/>5 that on the basis of samples supplied to us,<br/>6 transmission electron microscopy can only<br/>7 find a total material by volume of less than<br/>8 1/100 of 1 percent chrysotile asbestos in<br/>9 the Shower to Shower material and less in<br/>10 the Lewin material."<br/>11 Did I read that right?<br/>12 A. You read what was written, yes.<br/>13 Q. And Johnson &amp; Johnson was certainly aware of<br/>14 that report; correct?<br/>15 A. Yes.<br/>16 Q. Now, 1/100 of 1 percent -- is that .001?<br/>17 .01.<br/>18 A. Yes.<br/>19 Q. .01 chrysotile in Shower to Shower and<br/>20 Lewin. This is Hutchison.<br/>21 And if we turn to Figure 16 -- because he<br/>22 said Figures 16 through 19; right?<br/>23 A. Uh-huh.<br/>24 Q. That's the SAED pattern; correct?<br/>25 A. We'd have to take their word for it.<br/>26 Q. Well, you recognize an SAED pattern; right?<br/>27 A. Yes, it is an SAED pattern, yes. Yes.<br/>28 Q. Here's the picture of the actual fibers. Do</p>                                                                                                          | <p style="text-align: right;">2631</p> <p>1 A. You read what was written.<br/>2 Q. Okay. Hutchison found chrysotile in<br/>3 Shower to Shower and the Lewin samples; correct?<br/>4 A. By TEM.<br/>5 Q. By TEM.<br/>6 And Johnson &amp; Johnson, at the FDA meeting<br/>7 after getting that report, did not communicate that at<br/>8 all to the FDA; correct?<br/>9 A. I don't know.<br/>10 Q. What they said was they reported part of<br/>11 Hutchison's results.<br/>12 "Scanning electron microscopy was also<br/>13 performed on the Lewin sample of Shower to<br/>14 Shower powder by Mr. Brown of McCrone" --<br/>15 which we know is MIT; right? -- or<br/>16 Princeton -- "and Professor Hutchison of the<br/>17 University of Minnesota. No chrysotile was<br/>18 detected. However, this was not considered<br/>19 a valid method for analysis."<br/>20 SEM; right?<br/>21 A. Scanning electron microscope.<br/>22 Q. That's right. Because Hutchison did SEM,<br/>23 and he didn't see anything?<br/>24 A. Yes.<br/>25 Q. But then he did TEM, and he found<br/>26 unmistakable chrysotile in both the Johnson &amp; Johnson<br/>27 samples and the Lewin sample; correct?<br/>28 MS. SHARLA FROST: Objection. Asked and answered.</p> |
| <p style="text-align: right;">2630</p> <p>1 you see it says "S to S," Shower to Shower; right?<br/>2 A. Yes.<br/>3 Q. If you turn another two pages, Shower to<br/>4 Shower. There are some more pictures of fibers; right?<br/>5 A. Yes.<br/>6 Q. Shower to Shower. More fibers; right?<br/>7 A. Yes.<br/>8 Q. Okay. So -- and if you turn to the very<br/>9 last page -- I'm sorry. Fourth to last page. I was off<br/>10 by four -- we've got his handwritten notes here.<br/>11 "Five fibrous particles were found<br/>12 which give electron diffraction patterns,<br/>13 unmistakably chrysotile asbestos. One<br/>14 highly suspect particle gave a<br/>15 non-chrysotile diffraction pattern. The<br/>16 particles were generally less than<br/>17 30 microns in length and had the typical<br/>18 fiber structure. No bundle branch and join<br/>19 was, however, seen."<br/>20 "Shower to Shower: Approximately<br/>21 2,100 grid squares were examined. Numerous<br/>22 examples of fiber structures were seen.<br/>23 Electron diffraction of these fibers showed<br/>24 no resemblance to chrysotile asbestos<br/>25 patterns. Three clear examples were found<br/>26 of serpentine material, which gave perfect<br/>27 chrysotile patterns."<br/>28 Did I read that right, sir?</p> | <p style="text-align: right;">2632</p> <p>1 and the document speaks for itself.<br/>2 THE COURT: Overruled.<br/>3 THE WITNESS: He wrote what he wrote.<br/>4 Q. BY MR. PANATIER: That was not communicated<br/>5 to the FDA; correct?<br/>6 A. I don't know.<br/>7 Q. Okay. Well, let us look. This was<br/>8 Plaintiffs' Exhibit 2241.<br/>9 (Plaintiffs' 2241 was marked for<br/>10 identification by the judicial<br/>11 assistant.)<br/>12 Q. BY MR. PANATIER: And we can look here --<br/>13 this was all the communications between the FDA and --<br/>14 between Johnson &amp; Johnson and the FDA. And here's the<br/>15 Shower to Shower summary.<br/>16 Do you see Professor Hutchison on there?<br/>17 A. No.<br/>18 Q. Do you see Minnesota Space Center on there?<br/>19 A. No.<br/>20 Q. 11/29/72, do you see Hutchison on there?<br/>21 A. No.<br/>22 Q. Do you see Minnesota Space Center on there?<br/>23 A. No.<br/>24 Q. There's another Shower to Shower submission,<br/>25 right there. They sure did send a lot of reports;<br/>26 right?<br/>27 A. They did.<br/>28 MS. SHARLA FROST: Objection. Argumentative.</p>                                                                                                           |

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| <p style="text-align: right;">2633</p> <p>1 THE COURT: Sustained.</p> <p>2 Q. BY MR. PANATIER: Do you see</p> <p>3 Professor Hutchison there, sir?</p> <p>4 A. No. There are seven or eight, but he's not</p> <p>5 one of them.</p> <p>6 Q. Do you see Minnesota Space Center, sir?</p> <p>7 A. Well, it's the same thing, but the answer</p> <p>8 is no.</p> <p>9 Q. Professor Lewin -- his results were -- I'm</p> <p>10 trying to find a better word for "attack" so I don't</p> <p>11 draw an objection -- but were criticized by many of</p> <p>12 Johnson &amp; Johnson's consultants; correct?</p> <p>13 A. And including Lewin's own establishment,</p> <p>14 yes.</p> <p>15 Q. Lewin's own establishment? The New York</p> <p>16 University?</p> <p>17 A. It was the one where the dean wrote to the</p> <p>18 press that there was certainly an issue.</p> <p>19 Q. No, that was Mt. Sinai.</p> <p>20 A. Mt. Sinai, yeah. Lewin himself wrote to the</p> <p>21 press. I beg your pardon.</p> <p>22 Q. And he clarified the levels he found;</p> <p>23 correct?</p> <p>24 A. Yes.</p> <p>25 Q. Johnson &amp; Johnson was in possession of a</p> <p>26 report that verified Lewin's results and didn't give it</p> <p>27 to the FDA; correct?</p> <p>28 MS. SHARLA FROST: Objection. Argumentative.</p>                                              | <p style="text-align: right;">2635</p> <p>1 A. Yes.</p> <p>2 Q. Okay. They identified a fiber of</p> <p>3 anthophyllite that was, we agreed, a little more than</p> <p>4 7 to 1; right?</p> <p>5 A. Yes.</p> <p>6 Q. Okay. Yet they report no asbestiform -- no</p> <p>7 quantifiable amounts of asbestiform minerals; right?</p> <p>8 A. That's what the laboratory wrote, yes.</p> <p>9 Q. Now, do you know what McCrone considered to</p> <p>10 be quantifiable?</p> <p>11 A. No.</p> <p>12 Q. Okay.</p> <p>13 MR. PANATIER: This will be Exhibit 3119.</p> <p>14 (Plaintiffs' 3119 was marked for</p> <p>15 identification by the judicial</p> <p>16 assistant.)</p> <p>17 Q. BY MR. PANATIER: Here you are, sir.</p> <p>18 This is McCrone's standard operating</p> <p>19 procedure for their analysis of talc dated three years</p> <p>20 before this document, 1987.</p> <p>21 Do you see that, sir?</p> <p>22 A. Yes.</p> <p>23 Q. Okay. Do you see it says:</p> <p>24 "This method is applicable to the</p> <p>25 identification and quantitation of asbestos</p> <p>26 minerals in talc."</p> <p>27 And it says:</p> <p>28 "The combined technique of</p>                         |
| <p style="text-align: right;">2634</p> <p>1 THE COURT: Overruled.</p> <p>2 MS. SHARLA FROST: That misstates --</p> <p>3 THE WITNESS: I don't know whether it was given at</p> <p>4 that time or later time. It wasn't on those lists. But</p> <p>5 we don't know.</p> <p>6 Q. BY MR. PANATIER: All right. They didn't</p> <p>7 write it down as one that they had communicated?</p> <p>8 A. Not on that list. Not in that letter, no.</p> <p>9 Q. You were asked some follow-up questions</p> <p>10 about this document, which was a count sheet from</p> <p>11 McCrone from 1990 finding anthophyllite; right?</p> <p>12 MS. SHARLA FROST: Document number, please, sir?</p> <p>13 MR. PANATIER: Oh, yeah. Sorry. This was -- this</p> <p>14 is exhibit -- I think it's in the binder.</p> <p>15 Q. I'll let you look at it while we're getting</p> <p>16 the exhibit number. Okay?</p> <p>17 A. Sure.</p> <p>18 MR. PANATIER: It's 1990. There it is.</p> <p>19 Exhibit 2672. Sorry.</p> <p>20 Q. All right. Do you recall looking at</p> <p>21 that, sir?</p> <p>22 A. I do.</p> <p>23 Q. And despite having identified two fibers in</p> <p>24 those samples -- they identified a fiber of chrysotile</p> <p>25 that was one micron long, .15 wide; right?</p> <p>26 A. Yes.</p> <p>27 Q. That's at least 5 to 1. It's over 5 to 1;</p> <p>28 right?</p> | <p style="text-align: right;">2636</p> <p>1 transmission electron microscopy," TEM, "and</p> <p>2 SAED permit the detection of asbestiform</p> <p>3 minerals based on morphological</p> <p>4 characteristics followed by a definitive</p> <p>5 mineralogical identification of each fiber.</p> <p>6 These techniques are currently the ultimate</p> <p>7 analytical tools for unequivocal</p> <p>8 determination of asbestos minerals in a talc</p> <p>9 matrix.</p> <p>10 "Confirmation by energy dispersive</p> <p>11 X-ray analysis" --</p> <p>12 That sometimes goes by EDS or EDX as well;</p> <p>13 correct, sir?</p> <p>14 A. Yes.</p> <p>15 Q. (Reading:)</p> <p>16 -- "further removed ambiguity in fiber</p> <p>17 identification."</p> <p>18 And that's the elemental chemistry part of</p> <p>19 identification; correct?</p> <p>20 A. Correct.</p> <p>21 Q. Now, let's look down here.</p> <p>22 "The detection of ten or more asbestos</p> <p>23 fibers of one variety in a sample analysis</p> <p>24 constitutes a quantifiable level of</p> <p>25 contamination."</p> <p>26 Do you see that?</p> <p>27 A. Yes.</p> <p>28 Q. So they're not going to say it's detectable</p> |





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| <p>1 SUPERIOR COURT OF THE STATE OF CALIFORNIA<br/> 2 FOR THE COUNTY OF LOS ANGELES<br/> 3 DEPARTMENT NER HON. C. EDWARD SIMPSON, JUDGE<br/> 4<br/> 5 LAOSD ASBESTOS CASES, )No. JCCP 4674<br/> Coordinated Proceeding Special Title )<br/> 6 (Rule 3.550) )<br/> _____)<br/> 7 )<br/> TINA HERFORD and DOUGLAS HERFORD, )<br/> 8 )<br/> Plaintiffs, )<br/> 9 )<br/> vs. )No. BC646315<br/> 10 )<br/> AT&amp;T CORP., a subsidiary of AT&amp;T INC. and )<br/> 11 its subsidiary PACIFIC BELL TELEPHONE )<br/> COMPANY, et al., )<br/> 12 )<br/> Defendants. )<br/> _____)<br/> 13 )<br/> 14 )<br/> 15 )<br/> 16 I, IRENE KUBERT, CSR No. 10105, Official Reporter<br/> 17 Pro Tempore of the Superior Court of the State of<br/> 18 California, for the County of Los Angeles, do hereby<br/> 19 certify that the foregoing pages, 2570 through 269 ,<br/> 20 comprise a full, true, and correct transcript of the<br/> 21 proceedings and testimony taken in the matter of the<br/> 22 above-entitled cause on November 3, 2017, A.M. Session.<br/> 23 Dated this 4th day of November, 2017.<br/> 24<br/> 25<br/> 26<br/> &lt;%Signature%&gt;<br/> 27 _____<br/> IRENE KUBERT, RMR, CRR, CLR<br/> 28 Official Reporter Pro Tempore, CSR No. 10105</p> |  |
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# EXHIBIT 130

## Hearing

**Hirshberg, et vir v. Johnson & Johnson**

**April 29, 2021**



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IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON  
IN AND FOR THE COUNTY OF KING

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|--------------------------------|---|----------------------------|
| WENDI J. HIRSHBERG and RICHARD | ) |                            |
|                                | ) |                            |
| HIRSHBERG, Wife and Husband,   | ) |                            |
|                                | ) |                            |
| Plaintiffs,                    | ) | Cause No. 20-2-05603-1 SEA |
|                                | ) |                            |
| v.                             | ) |                            |
|                                | ) |                            |
| JOHNSON & JOHNSON, et al.,     | ) |                            |
|                                | ) |                            |
| Defendants.                    | ) |                            |

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HEARING  
The Honorable Suzanne Parisien Presiding  
April 29, 2021

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TRANSCRIBED BY: Chastity M. Feezle, WA-CRL

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I N D E X O F P R O C E E D I N G S

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ELECTRONIC JUDICIAL RECORDS  
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CLERK: JESSICA SCOTT  
CASE: 2020-0003946

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April 29, 2021

THE BAILIFF: All right. Welcome, everybody. We're going to put everyone's name on the record first to save a little bit of time. So I'm going to call the case now.

This is pretrial motions and motions in limine and hardships for Hirshberg vs. Johnson & Johnson, 20-2-05603-1 Seattle.

For plaintiff, who do we have with us?

MR. ADAMS: Good afternoon. Ben Adams for the plaintiffs.

MS. DEAN: Jessica Dean, also for Wendi and Rich  
Hirshberg.

THE BAILIFF: All right. For defense?

MS. BROWN: Good afternoon. Allie Brown for the J&J defendants.

MS. BASAURI: Hi, Mr. Hodgman. This is Taryn Basauri,  
also for the J&J defendants.

MR. BERNARDO: Good afternoon. Also Rich Bernardo for the J&J defendants.

THE BAILIFF: All right. I have one --

MR. WYATT: And good afternoon. Jeff Wyatt for the J&J defendants.

THE BAILIFF: All right. Perfect. Thank you. We'll get started here in just one moment.



1       guy who negotiated the protocol for the thousands of samples  
2       that were produced, and I wanted you to hear directly from  
3       me what the circumstances are --

4       THE COURT:   Okay.

5       MR. BERNARDO:  -- because plaintiffs have made very, very  
6       serious allegations and essentially, Your Honor, are asking  
7       for a trial within a trial.  They're asking for this case to  
8       be diverted and to have a sideshow, to have the jury  
9       consider prior -- and Ms. Dean already said it -- prior  
10      lawsuits that the company was in, the discovery obligations  
11      in those cases, whether or not the company had a legal duty  
12      to hold on -- to hold documents, all the kinds of things  
13      that should not be within the ambit of the jury to decide

14      The relief that plaintiffs are seeking here is  
15      essentially tantamount to a directed verdict.  They're  
16      asking Your Honor to allow evidence in and to tell the jury  
17      that they should assume things that are demonstrably false.  
18      They should assume that bottles of baby powder that were not  
19      tested contain asbestos, when even their own experts concede  
20      that not every bottle they tested contained asbestos.

21      And this is, as it says here, a **game changer**.  And it has  
22      not been permitted by any other court and it shouldn't be  
23      permitted by this court.

24      I note, Your Honor, and this is one of the struggles that  
25      I think both Ms. Dean and I are having, plaintiffs have

1 waited to raise this until the eve of trial. Spoliation is  
2 not a motion of limine.

3 THE COURT: I do have to say that was the first thing I  
4 thought of is that I don't think I have seen a spoliation --  
5 in fact, I have never seen it waited for motion in limine.  
6 It is a game changer.

7 And to be honest with you, it should have been brought  
8 up -- and I'm not -- that's not determinative of my ruling,  
9 but I can tell you that this is the kind of motion that is  
10 not done as an MIL because it generally will prompt a  
11 settlement in some ways. If folks are close, it can really  
12 help move a case along.

13 So this really shouldn't be -- have been brought three  
14 days before trial. But neither here nor there.

15 MR. BERNARDO: You're exactly right, Your Honor. And to  
16 that point, I strongly disagree with plaintiffs'  
17 characterization that things have happened since Lanzo,  
18 because I personally have argued spoliation motions, the  
19 very same motions. There isn't a fact or issue that is  
20 raised in plaintiffs' motion here that has not already been  
21 raised in arguments that I had that spanned over two hours  
22 in New Jersey, and with the same judge who decided the issue  
23 that plaintiffs' counsel pointed out, and in Kentucky the  
24 same thing, and they've been rejected.

25 Next, please.

C E R T I F I C A T E

STATE OF WASHINGTON )  
 ) ss  
COUNTY OF KING )

I, the undersigned, do hereby certify under penalty of perjury that the foregoing court proceedings or other legal recordings were transcribed under my direction as a certified transcriptionist; and that the transcript is true and accurate to the best of my knowledge and ability, including any changes made by the trial judge reviewing the transcript; that I received the electronic recording directly from the trial court conducting the hearing; that I am not a relative or employee of any attorney or counsel employed by the parties hereto, nor financially interested in its outcome.

IN WITNESS WHEREOF, I have hereunto set my hand  
this 30th day of April, 2021.

s/Chastity M. Feezle, WA-CRL  
Reed Jackson Watkins, LLC  
800 Fifth Avenue, Suite 101-183  
Seattle, Washington 98104  
Telephone: (206) 624-3005  
E-mail: [info@rijwtranscripts.com](mailto:info@rijwtranscripts.com)



# EXHIBIT 131

IN THE DISTRICT COURT IN AND FOR OKLAHOMA COUNTY  
STATE OF OKLAHOMA

VERNON EGGERS, Individually and  
as the Personal Representative of the Estate  
of Barbara Eggers, Deceased

Plaintiff,

vs.

Case No. CJ-2018-4739

COLGATE-PALMOLIVE  
COMPANY, et al.,

Defendants.

**DEFENDANTS JOHNSON & JOHNSON AND JOHNSON & JOHNSON CONSUMER  
INC.'S SECOND SUPPLEMENTAL RESPONSES TO CERTAIN OF PLAINTIFF'S  
FIRST SET OF INTERROGATORIES**

Preliminary Statement

Defendants Johnson & Johnson and Johnson & Johnson Consumer Inc. (collectively, "Defendants") respond to Certain of Plaintiff's First Set of Interrogatories ("Interrogatories")<sup>1</sup> as follows.

In connection with prior discovery requests in this and other talc personal injury actions, Defendants have conducted reasonable searches at various times over the course of many years to identify, collect and produce documents that relate in a reasonably direct manner to allegations concerning Johnson's® Baby Powder ("JBP") and Shower to Shower® ("STS") cosmetic talc

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<sup>1</sup> In an effort to streamline Plaintiff's ongoing examination of Defendants' corporate representative regarding the more than 140 documents that are the subject of Plaintiff's Interrogatories, Defendants agreed to respond to the Interrogatories after an extensive meet-and-confer process between counsel for Plaintiff and counsel for the Defendants, without waiver of their position that certain of the discovery sought is not appropriate for the reasons described in their Responses.

products sold in the United States (collectively, “JBP/STS” or “cosmetic talc products”).<sup>2</sup> Defendants have made available their Document Production to Plaintiff’s counsel and Defendants may refer to such materials in these Responses.

Plaintiff’s Interrogatories seek a broad array of information from Defendants, including but not limited to their positions regarding complex scientific issues, pertaining to documents dating back to a period more than 70 years ago. Many such documents were not authored by Defendants and/or are not from the files of Defendants. Nevertheless, Defendants state that they have made a good-faith effort to identify with specificity information and documents sought by each of the Interrogatories, which are set out in the Responses.

Defendants do not concede (and as set forth herein, expressly disagree with) the characterizations contained in Exhibit A to Plaintiff’s Interrogatories. Defendants further state that certain document descriptions and/or references contained in Exhibit A to the Interrogatories are vague and ambiguous and/or appear to be incorrect based on Defendants’ good-faith efforts to identify such documents. To address these issues, Defendants have specifically identified the dates and Bates numbers of the documents to which they are responding.

In addition, Defendants state that by referring to, relying on, or producing documents in connection with responding to the Interrogatories, they do not waive their right to object to the use of such documents (including but not limited to documents that are not included within Defendants’ Document Production) at trial on any and all grounds, including, but not limited to, authenticity, relevance, hearsay, and unfair prejudice. Defendants further state, that while they

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<sup>2</sup> Defendants state the cosmetic talc products have been manufactured and sold at various periods of time by one or more of the Defendants and/or their predecessors, subsidiaries and affiliates (the “J&J Companies”). In collectively responding to the Interrogatories, including by referring to “Johnson & Johnson” in the Responses, Defendants do not waive any argument with respect to which of the J&J Companies had responsibility for the cosmetic talc product during a particular time period.



and their corporate representative may refer to, rely on, or produce documents that were not located among Defendants' business records, Defendants do so without waiver of their position that Defendants and their corporate representative will respond subject to the limitations of applicable discovery rules.

Responses to Interrogatories

**CHART NO. 1: JNJ 000331298 (10/6/1948)**

**INTERROGATORY NO. 5.1:**

Identify the source of the information utilized for any of the answers above if not already identified. If this information came from a person, the disclosed information should include the person's name, contact information (address, known phone number(s) and email address) as well as the specific information known to Johnson & Johnson from each listed individual.

**RESPONSE TO INTERROGATORY NO. 5.1:**

Johnson & Johnson's answers to Interrogatory Nos. 1.1 to 4.1 are based on the documents identified therein, as well as Johnson & Johnson's interpretation of those documents, which takes into account information learned over the course of the last several decades from individuals who had first-hand involvement in issues pertaining to talc, in general, and the talc used for Johnson & Johnson's cosmetic talc products, in particular. Johnson & Johnson identifies William Ashton and Dr. John Hopkins as sources of such information.

Mr. Ashton was the former Director, Advanced Powder Technology and worked for Johnson & Johnson from October 1948 to August 1983. He had over fifty years of experience as a geologist and mineralogist and received training in talc minerals at the Battelle Memorial Institute. He was a member of various talc and mineral committees of the America Society for Testing and Materials and the International Standards Organization. Throughout his tenure at Johnson & Johnson, his responsibilities included investigating and studying the domestic and international talc industry and methods for testing talc and communicating with outside scientists and laboratories that were testing talc and talcum powder products. Additionally, Mr. Ashton oversaw and was actively involved with the company's testing of talc and the efforts to identify, evaluate and approve new sources of talc. Mr. Ashton worked closely with Dr. Hopkins after Dr. Hopkins joined Johnson & Johnson and relayed the knowledge he developed with respect to talc

issues to Dr. Hopkins. Mr. Ashton continued to serve as an information resource on talc issues for Johnson & Johnson long after his retirement. Mr. Ashton is deceased.

Dr. Hopkins is the Former Worldwide Head of Research and Development and worked for Johnson & Johnson from 1976 to 2000. He has over forty years of experience as a toxicologist and has expertise and background in the safety of talc and talcum powder products. During his tenure at Johnson & Johnson, he was involved on all matters relating to talc safety and became familiar with the literature and discussion relating to talc safety as well as the history and background of the sourcing, standards and specification of talc as used by Johnson & Johnson on a worldwide basis. During the time that Dr. Hopkins served as corporate representative for Johnson & Johnson (which ended as of December 31, 2019), Dr. Hopkins' business address was as follows: Innovant Research, The Elms, Oxford Road, Chieveley, Newbury RG20 8RT, United Kingdom, Telephone: +44 1635 248830, Email: innova47@aol.com. Dr. Hopkins continued to serve as an information resource on talc issues for Johnson & Johnson long after his retirement.

Mr. Ashton and Dr. Hopkins were sources of information regarding: the sources of talc used in Johnson & Johnson's talcum powder products, the company's efforts to identify and evaluate new sources of talc, the extensive testing and approval process for talc sources, the routine and comprehensive testing of talc using state-of-the-art technology that exceeded industry standards, the repeated testing that confirmed the absence of asbestos from Johnson & Johnson's talcum powder products, the discussions with outside scientists and laboratories regarding talc testing, the efforts to evaluate and improve methods for testing talc, the continued cooperation and discussions with regulatory agencies and regulators, the efforts to study the toxicological effects of talc, and the ongoing review and analysis of scientific literature regarding talc. Johnson & Johnson relies upon the information described above, which has been passed down to current

employees, that in part forms the basis of its interpretation of the documents identified in Johnson & Johnson's answers to Interrogatory Nos. 1.1 to 4.1.

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# EXHIBIT 132







1

Exhibit 11

"Distinguishing Asbestiform Tremolite from Non-Asbestiform Tremolite"

143

2

3

Exhibit 12

Dr. Weber's article regarding examining play sand products for asbestos contamination

148

4

5

Exhibit 13

"Quality Control Testing for Asbestos Analysis with Synthetic Bulk Samples"

162

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Exhibit 14

1988 study

165

8

Exhibit 15

Article about asbestos and drinking water

171

9

10

Exhibit 16

The most current OSHA regulation current through May 21 of 2005

196

11

12

Exhibit 17

Publication by Taylor, Wiley, Mossman, and Lower

202

13

14

Exhibit 18

EPA document

208

15

16

17

NUMBER

PREVIOUSLY MARKED EXHIBITS

PAGE

18

19

INFORMATION REQUESTED

20

Page

Line

21

(None)

22

INSTRUCTION NOT TO ANSWER

23

Page

Line

24

43

2

25

1

Irvine, California, Wednesday, May 31, 2017

2

10:10 a.m. - 7:59 p.m.

3

4

THE VIDEOGRAPHER: Here begins Videotape

5

Number 1 in the depositions of James Webber, Ph.D.,

6

in the matter of Sharon M. Hanson, et al., versus

7

Colgate-Palmolive Company, et al., in the U.S.

8

District Court for the Southern District of Georgia,

9

Brunswick Division. The Case Number is 2:16-CV-34.

10

Today's date is May 31, 2017. And the time

11

on the video monitor is 10:10 a.m.

12

The video operator today is Alex Klyusner.

13

The court reporter today is Christina D'Arcangelo of

14

TrustPoint Court Reporting.

15

Will all others present please state your

16

name for the record.

17

MS. KAGAN: Leah Kagan, Simon, Greenstone,

18

Panather, Bartlett, counsel for the plaintiffs in

19

the Hanson matter. And this deposition is also

20

being conducted jointly in the Bartlow and

21

Schoeinger (phonetic) matters pending in New Jersey.

22

MR. ELDER: Scott Elder, representing Cyprus

23

Amax Minerals Corporation and Imerys Talc America in

24

those cases in which they are defendants for Hanson,

25

Bartlow, and Schoeinger.

1

MR. HORTON: JD Horton of Quinn Emanuel for

2

defendant Colgate-Palmolive in all three matters.

3

MR. KESSLER: Andrew Kessler, Hoagland,

4

Longo, Moran & Doukis, on behalf of Whittaker, Clark

5

and Daniels, in the Bartlow and Schoeinger matters.

6

7

JAMES WEBBER, Ph.D.,

8

having been first duly sworn, was examined and

9

testified as follows:

10

11

12

EXAMINATION

13

BY MR. ELDER:

14

Q Dr. Webber, good morning. My name is Scott

15

Elder. We just talked about the fact that we are

16

here on three cases today.

17

Is that your understanding?

18

A Yes.

19

Q And I believe the reason that we are able to

20

cover three cases in one deposition is that your

21

opinions in each of those three cases are identical;

22

is that fair?

23

A Yes.

24

Q In other words, you do not have any opinions

25

in any of these cases that are specific to the

1

plaintiff in the individual case; is that right?

2

A That's correct.

3

Q I am going to show you what I have marked as

4

Exhibit 1 to the deposition, which is the deposition

5

notice in the Hanson case.

6

(Whereupon Exhibit 1 was marked for

7

identification by the court reporter

8

as of this date.)

9

BY MR. ELDER:

10

Q And I want to look at a few of the particular

11

requests in there in a minute. But before we do

12

that, you have a stack of materials that you brought

13

to the deposition today.

14

Could you identify what you brought?

15

A I brought the outline of the points that I

16

will be making in testimony, proposed points for

17

discussion today just so that you are aware of

18

what -- what my points will be during testimony.

19

And then I have a copy of the report that I

20

generated for Ms. Kagan last fall concerning

21

asbestos and cosmetic talc in general. It's dated

22

October 9, 2016. And then I have some separate

23

stacks of testing reports related to the ores that

24

were used by Colgate-Palmolive in their production

25

of Cashmere Bouquet. And then some testing reports



|                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                 |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                        |
|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <p style="text-align: right;">Page 74</p> <p>1 government because of his recognition as a<br/>2 mineralogical chemist. He was an academic. And the<br/>3 FDA goes on to say because the industries, that is,<br/>4 the talc producers, used him as a consultant,<br/>5 appeared to confer a desirable immunity against<br/>6 possible industry attacks on the validity of the<br/>7 results.</p> <p>8 Q Okay. So what did the industry do or not do<br/>9 in that sentence that was obstructive?</p> <p>10 A I'm simply saying that the FDA was expecting<br/>11 that there would be some confrontation between what<br/>12 they were trying do and what the industry was<br/>13 probably going to do in response.</p> <p>14 Q Okay. And how does that translate to the<br/>15 industry being obstructive? Specifically what?</p> <p>16 MS. KAGAN: You are asking him one sentence.<br/>17 Argumentative. You are asking him about one<br/>18 sentence in a 14-page report answers a specific<br/>19 question that you have chosen.</p> <p>20 THE WITNESS: I am just taking the words of<br/>21 FDA and saying how they anticipated that there would<br/>22 be problems with the industry, and then I go down<br/>23 further and give examples of how there were problems<br/>24 with the industry.</p> <p>25 BY MR. ELDER:</p> | <p style="text-align: right;">Page 75</p> <p>1 Q Okay. And let's keep going.</p> <p>2 The next thing you refer to is a March 18th,<br/>3 1976, document, an FDA memo that you describe as<br/>4 further evidence of the FDA's unease with the<br/>5 direction of the CTFA.</p> <p>6 So I should have brought -- somehow I got<br/>7 away with only one copy of that memo. So I'm not<br/>8 going to mark it, because I have highlighted on it,<br/>9 but you can refer to as you like.</p> <p>10 What in that document is evidence of the<br/>11 FDA's -- I'm sorry, of the industry's obstructive<br/>12 efforts?</p> <p>13 A Well, I'm looking at the date -- the FDA is<br/>14 making the point here that the CTFA representatives,<br/>15 that is, the talc companies, were not at all<br/>16 diligent in looking at the materials for asbestos<br/>17 contamination.</p> <p>18 Q Okay. I understand. So the FDA says we<br/>19 don't think they are doing enough. How is that<br/>20 being obstructive in the development of a testing<br/>21 standard?</p> <p>22 MS. KAGAN: Argumentative. You are taking a<br/>23 sentence out of a paragraph and asking a specific<br/>24 question about how a sentence speaks to a conclusion<br/>25 that you are focusing on, as opposed to the document</p> |
| <p style="text-align: right;">Page 76</p> <p>1 itself. It's a 14-page report. And if you continue<br/>2 reading that paragraph, as Dr. Webber has already<br/>3 suggested, it answers your question. This is<br/>4 totally inappropriate.</p> <p>5 MR. ELDER: You can object to form.</p> <p>6 BY MR. ELDER:</p> <p>7 Q You can answer.</p> <p>8 MS. KAGAN: You can stop being a jerk.</p> <p>9 THE WITNESS: The text I have there is<br/>10 self-explanatory.</p> <p>11 BY MR. ELDER:</p> <p>12 Q Point me to a specific action or inaction<br/>13 that the industry took to obstruct a rule making<br/>14 effort or an effort to develop a standard.</p> <p>15 A This is the background to the actions or<br/>16 inactions that were taken later as explained later<br/>17 on page 11 and 12.</p> <p>18 Q What does the FDA say in that memo about<br/>19 Cyprus's testing effort?</p> <p>20 A For Cyprus it says, "XRD method up to August<br/>21 of '75, and 50 additional evaluations thereafter.<br/>22 This appears to be a responsible test program."</p> <p>23 Q Okay. What was the number of analyses that<br/>24 Cyprus had done?</p> <p>25 A 2,839.</p>                                                                                                                                                             | <p style="text-align: right;">Page 77</p> <p>1 Q And the FDA thought that was a responsible<br/>2 test program?</p> <p>3 A That's what they say.</p> <p>4 Q No evidence in that document that Cyprus<br/>5 obstructed anything that the FDA was trying to do,<br/>6 correct?</p> <p>7 A That's correct.</p> <p>8 Q All right. So in the first paragraph you<br/>9 have -- here you have described two documents, the<br/>10 FDA July 31st, '73, memo and the FDA March 18th,<br/>11 1976, memo. Okay.</p> <p>12 Is there any particular conduct reflected in<br/>13 either of those documents that you believe shows an<br/>14 effort to obstruct the process on the part of<br/>15 industry?</p> <p>16 MS. KAGAN: Same objections. Argumentative.<br/>17 It's a 14-page report, and you are focusing on two<br/>18 documents.</p> <p>19 THE WITNESS: I will answer as I answered<br/>20 earlier in that this was setting the stage that the<br/>21 FDA was expecting resistance from them.</p> <p>22 BY MR. ELDER:</p> <p>23 Q Okay. Let's go to the next paragraph.</p> <p>24 You quote the CTFA in a March 21st, '73, talc<br/>25 group meeting minutes as stating that Dr. Selicoff's</p>                                                                                                          |

Page 183

2 THE WITNESS: Essentially that's right, yes.

4 Q And it was part of this discussion that you  
5 had with counsel for Cyprus where counsel for Cyprus  
6 and Imerys was asking you what it was that the CTFA  
7 and the industry members had done to either deceive  
8 the FDA or withhold information, and you had noted  
9 that they didn't provide testing results. And I  
10 wanted to go through some of those testing results  
11 with you and ask you some questions about that.

15 Have you seen that before?

13 Q And so then it would allow for there to be  
14 asbestos present below that .5 percent to end up in  
15 the end product?

17 Q And what is the product or source, the  
18 product origin identified?

19 A It says, "1650 Italy."

20 Q And under the X-ray diffraction analysis, what  
21 was the finding?

22      A    Chrysotile 1 percent.

23 Q Is there any indication from the documents  
24 that you reviewed that -- and, I'm sorry, what date  
25 was that?

Page 185

1 Q This document you discussed briefly also with  
2 counsel for Cyprus and Imerys is Bates stamped  
3 CPD-NB61.

4 And there we have positive findings for  
5 Italian talc, Montana talc, and Regal, North  
6 Carolina, talc. Is there any indication -- and I  
7 believe the date is 1976 on that. Is there any  
8 indication that Colgate-Palmolive ever informed the  
9 FDA of these positive findings?

10 A I haven't seen anything.

11 Q Moving along to 1976, another product number,  
12 test 1615 from Italy. This is Bates stamped ITA  
13 Polakow 544. Also Bates stamped FM WCD MORKAN 1711.

14 What are the findings here from McCrone?

15       A   It says, "Tremolite," question mark, and  
16   "chrysotile ND."

17           And further on the second page it says,  
18 "Tremolite may be present."

19 In the text on the report from Lucy B.  
20 McCrone, dated 27 April, 1976, she says, "So the  
21 tremolite was present as fibrous, many of which were  
22 plates on edge."

23 Q Any occasion that Colgate-Palmolive notified  
24 the FDA of this finding of tremolite?

25 A No.



|                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                            |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                             |
|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <p>Page 186</p> <p>1 Q I am going to hand you a document that's<br/>2 Bates stamped McCrone 77, also COL 553. It's dated<br/>3 November 9th, 1977.<br/>4 Could you tell me what the finding is here<br/>5 for talc 1516 to Colgate-Palmolive?<br/>6 A It says, "Tremolite detected. A small amount<br/>7 of tremolite is present mainly as relatively equant<br/>8 prism fragments. A few of these would be called<br/>9 fibers by OSHA. Other minerals present besides talc<br/>10 are hyapatite, little quartz, and dolomite. Lucy B.<br/>11 McCrone."<br/>12 Q Any indication that Colgate-Palmolive<br/>13 notified the FDA in 1977 of this finding of<br/>14 tremolite in 1516 Italian talc?<br/>15 A I haven't seen anything to that effect.<br/>16 Q I am going to hand you a stack of document<br/>17 that begins with the Bates number Lehman 1735. The<br/>18 top date is November 20th, '86, and it ranges<br/>19 through December 23rd, 1987.<br/>20 Would you take a look at this and let me<br/>21 know -- first, do you know what supra talc source<br/>22 is?<br/>23 A I believe supra was Italian.<br/>24 Q And what do these documents indicate that<br/>25 range from 1986 to 1987?</p> | <p>Page 187</p> <p>1 A For supra we have a 0.2 percent tremolite.<br/>2 We have another 0.2 percent tremolite. A<br/>3 0.1 percent tremolite. A 0.09 percent tremolite. A<br/>4 0.2 percent supra tremolite. Another 0.2 percent<br/>5 tremolite for supra. 0.1 percent supra for<br/>6 tremolite.<br/>7 Q The page that you are looking at now, and<br/>8 then the next page after that, does that appear to<br/>9 be multiple tests of samples from the same lot of<br/>10 talc?<br/>11 A That would be my understanding because it<br/>12 says tremolite QC suprafeno, lot number 509297 V.<br/>13 And there are 16, approximately 16 pellets,<br/>14 and they have results ranging from ND to .11 to .17<br/>15 to .27 to .34 percent.<br/>16 Q And so would that indicate that in one lot of<br/>17 talc, there is a variance in testing if you run<br/>18 multiple tests that show non-detect and then also<br/>19 different quantities of tremolite asbestos present?<br/>20 A That would be my interpretation of this<br/>21 table.<br/>22 Q We don't have to go through every page of<br/>23 that. You can hand that back to me.<br/>24 Is there any indication from the documents<br/>25 that you reviewed that this information was provided</p> |
| <p>Page 188</p> <p>1 to the FDA?<br/>2 A I haven't seen any.<br/>3 Q And at the top it says, "CIM talc customer<br/>4 service."<br/>5 Are you aware that CIM was Cyprus Industrial<br/>6 Minerals?<br/>7 A No.<br/>8 Q And we can do the same exercise for the pile<br/>9 of testing that you have in Exhibit 5 for Montana<br/>10 and for North Carolina, and would your answers be<br/>11 the same? Is there any indication that industry was<br/>12 actually recording the findings of chrysotile and<br/>13 tremolite to the FDA when their own internal testing<br/>14 was happening?<br/>15 MR. ELDER: Objection. Foundation.<br/>16 Speculation.<br/>17 THE WITNESS: I have seen no documents to<br/>18 that effect.<br/>19 BY MS. KAGAN:<br/>20 Q Now, counsel for Cyprus and Imerys asked you<br/>21 about a mass-based analysis that would quantify the<br/>22 presence of asbestos by parts per million and you<br/>23 said that that was inappropriate. Could you explain<br/>24 specifically with respect to a talc powder product<br/>25 like Cashmere Bouquet or a talc or a source like the</p>                                                                                            | <p>Page 189</p> <p>1 Italian talc at issue, why would quantifying the<br/>2 presence of an asbestos by -- on a mass-base method<br/>3 be inappropriate?<br/>4 A As I said earlier, it would be inappropriate<br/>5 because even -- because the parts per million is the<br/>6 same metric as percent, just expressed in different<br/>7 units, and something that has what appears to be a<br/>8 very low concentration by mass can contain very<br/>9 large numbers into the millions or even billions of<br/>10 fibers at what would appear to be very low<br/>11 concentration by mass.<br/>12 Q You noted that you were not an expert in the<br/>13 mining and milling of talc. Is that a fair<br/>14 statement?<br/>15 A Yes.<br/>16 Q In your work analyzing the Vanderbilt mining<br/>17 process and the Arnold Pitt and Lake articles that<br/>18 you published as part of your PhD, did you glean an<br/>19 understanding of what talc mining and milling<br/>20 processes were?<br/>21 MR. ELDER: Objection. Foundation to the<br/>22 work. Misstates his testimony.<br/>23 THE WITNESS: I think I have a fairly good<br/>24 understanding of the principles involved, as I had<br/>25 responded to the earlier question from counselor for</p>   |



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| <p>Page 242</p> <p>1 A No, I don't.</p> <p>2 Q Do all building materials that contained</p> <p>3 asbestos, joint compounds, floor tiles, ceiling</p> <p>4 tiles, contain asbestos at greater than 1 percent?</p> <p>5 A Not all of them.</p> <p>6 MR. ELDER: That's all I have.</p> <p>7 MS. KAGAN: I have some very quick follow-up.</p> <p>8 Literally, I believe two questions.</p> <p>9</p> <p>10</p> <p>11 FURTHER EXAMINATION</p> <p>12 BY MS. KAGAN:</p> <p>13 Q Following up on what Mr. Elder just asked</p> <p>14 you, he asked you why would the FDA expect the</p> <p>15 industry would report results of its testing pack to</p> <p>16 the FDA, and if I can draw your attention --</p> <p>17 MR. ELDER: Objection. Misstates my</p> <p>18 question.</p> <p>19 BY MR. ELDER:</p> <p>20 Q -- to page 12 of your report, the first full</p> <p>21 paragraph states, "The CTFA responded to the FDA's</p> <p>22 public notice on its proposed optical microscopy</p> <p>23 method on December 26th, 1973. The CTFA contended</p> <p>24 that the proposed method was not," quote, "reliable</p> <p>25 for the detection of asbestos and talc, recommended</p>           | <p>Page 243</p> <p>1 a," quote, "collaborative effort between FDA and</p> <p>2 industry to develop such a method and urged</p> <p>3 deferment of the proposed promulgation.</p> <p>4 "Minutes of the CTFA talc subcommittee</p> <p>5 meeting on March 15th, 1976, at FDA reports that</p> <p>6 FDA's," quote, "Dr. Shafner suggested the</p> <p>7 possibility of having industry report periodically</p> <p>8 on the results of its analysis to the FDA," end</p> <p>9 quote.</p> <p>10 "Dr. Estrin of the CTFA responded that,"</p> <p>11 quote, "the subcommittee would give serious</p> <p>12 consideration to this suggestion," end quote.</p> <p>13 Would that lead you to believe that the FDA</p> <p>14 might be expecting that industry would be reporting</p> <p>15 test results of talc to it at some point in time,</p> <p>16 perhaps periodically?</p> <p>17 MR. ELDER: Objection. Speculation.</p> <p>18 THE WITNESS: Yes.</p> <p>19 BY MR. ELDER:</p> <p>20 Q And did you see any evidence that the CTFA or</p> <p>21 its members were indeed periodically reporting its</p> <p>22 testing results back to the FDA?</p> <p>23 A As I said, I didn't see any documents that</p> <p>24 showed that periodic reporting of results to the</p> <p>25 FDA.</p>                                            |
| <p>Page 244</p> <p>1 Q Now, following up -- hopefully my last</p> <p>2 question, famous last words -- on counsel for</p> <p>3 Colgate's questioning about reporting asbestos</p> <p>4 contents in talc as fibers per gram, why would it be</p> <p>5 important in your opinion to report or what is the</p> <p>6 significance of reporting asbestos content in talc</p> <p>7 by fibers per gram as opposed to a mass</p> <p>8 concentration?</p> <p>9 A Because the reporting of fiber numbers is</p> <p>10 used in risk assessment. A weight based result is</p> <p>11 meaningless from risk assessment.</p> <p>12 Q And is there any method or publication that</p> <p>13 says that it would be inappropriate or incorrect to</p> <p>14 report asbestos content in talc by fibers per gram?</p> <p>15 A Not aware of any.</p> <p>16 MS. KAGAN: Those are all the questions that</p> <p>17 I have.</p> <p>18 MR. HORTON: I have like two more.</p> <p>19</p> <p>20</p> <p>21 FURTHER EXAMINATION</p> <p>22 BY MR. HORTON:</p> <p>23 Q Doctor, the number of fibers in a bulk</p> <p>24 material of asbestos is irrelevant from a health</p> <p>25 risk standpoint, isn't it?</p> | <p>Page 245</p> <p>1 MS. KAGAN: Mischaracterizes. Argumentative.</p> <p>2 THE WITNESS: I would say that if those</p> <p>3 numbers were known, they certainly could be an</p> <p>4 indicator of potential exposure. But most of the</p> <p>5 time when bulk samples are being analyzed, it's for</p> <p>6 the purpose of determining whether or not that</p> <p>7 material needs to be removed or handled in a special</p> <p>8 way to comply with regulation.</p> <p>9 BY MR. HORTON:</p> <p>10 Q If this table were a hundred percent asbestos</p> <p>11 and it's sealed, how many fibers of asbestos are in</p> <p>12 this table are irrelevant, for risk purposes, right?</p> <p>13 A As long as nobody takes a saw to it.</p> <p>14 Q So when you're looking at talc and you are</p> <p>15 trying to figure out for risk assessment purposes</p> <p>16 the risk from it, what matters is the amount of</p> <p>17 fibers that are in the air that are respirated,</p> <p>18 correct?</p> <p>19 A In the end, that's -- yes, that's what's</p> <p>20 important.</p> <p>21 Q And from a scientist's perspective, they can</p> <p>22 do that same calculation from a weight percent as</p> <p>23 they can from fibers per gram, can't they?</p> <p>24 A Absolutely not.</p> <p>25 Q You don't think they can?</p> |

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Page 249

JAMES WEBBER, PH.D. DATED



# EXHIBIT 133

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SUPERIOR COURT OF CALIFORNIA  
COUNTY OF ALAMEDA  
CASE NO. RG 17882401

TERESA ELIZABETH LEAVITT and )  
DEAN J. McELROY, )  
 )  
Plaintiffs, ) VIDEOTAPE  
 ) DEPOSITION OF:  
-VS- )  
 ) JAMES PETER  
JOHNSON & JOHNSON, et. al., ) MITTENTHAL  
 )  
Defendants. )  
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 )

SUPERIOR COURT OF CALIFORNIA  
COUNTY OF LOS ANGELES, CENTRAL DISTRICT  
JCCP CASE NO. 4674

PUI FONG and THAI WONG, )  
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Plaintiffs, )  
 )  
-VS- )  
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IMERYS TALC AMERICA, INC., )  
et. al., )  
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Defendants. )  
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| <p style="text-align: right;">Page 2</p> <p>1 TRANSCRIPT of the stenographic notes of</p> <p>2 the proceedings in the above-entitled matter, as</p> <p>3 taken by and before LINDA M. JORRITSMA, a Certified</p> <p>4 Court Reporter and Notary Public, held at the office</p> <p>5 of LEVY KONIGSBERG, LLP, 800 3rd Avenue, New York,</p> <p>6 New York, on Monday, September 24, 2018, commencing</p> <p>7 at 9:37 a.m.</p> <p>8 Job No. 3019431</p> <p>9</p> <p>10</p> <p>11</p> <p>12</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                | <p style="text-align: right;">Page 4</p> <p>1 INDEX</p> <p>2 WITNESS: PAGE</p> <p>3 JAMES PETER MITTENTHAL</p> <p>4 BY MR. SWANSON 7</p> <p>5</p> <p>6</p> <p>7 EXHIBITS</p> <p>8 (Exhibits retained by Court Reporter.)</p> <p>9 No. Description Page</p> <p>10 Exhibit 1 General Binder Table of Contents 25</p> <p>11 Exhibit 1A 2017 Hold Notice (Consolidated.) 26</p> <p>12 (Exhibit 1B, 2003 Hold Notice</p> <p>13 (Hozeny)</p> <p>14 Exhibit 1B 2003 Hold Notice (Hozeny) 26</p> <p>15 Exhibit 1C 2000 Hold Notice (Bloch) 26</p> <p>16 Exhibit 2A 2015 WWRIM Standards 26</p> <p>17 Exhibit 2B 2017 WWRIM Standards 26</p> <p>18 Exhibit 2C J&amp;J Enterprise Retention Schedule 26</p> <p>19 (2018)</p> <p>20 Exhibit 2D Quality Agreements 26</p> <p>21 Exhibit 2E Franchise-Level Record Retention 26</p> <p>22 Schedules</p> <p>23 Exhibit 2F Franchise-Level Record Retention 26</p> <p>24 Schedules</p> <p>25 Exhibit 3 Custodian List 26</p> <p>26 Exhibit 4 List of Non-Custodial Sources 26</p> <p>27 Exhibit 5 MDL Sample Protocol and Exhibits 26</p> <p>28 Exhibit 6 Archives Search Terms 27</p> <p>29 Exhibit 7 Master Search Terms 27</p> <p>30 Exhibit 8 Search Terms to Identify Documents 27</p> <p>31 Represented in Production</p> <p>32 With "Non-Responsive" Slip Sheets</p> <p>33 Exhibit 9A MDL ESI Protocols 27</p> <p>34 Exhibit 9B ESI Protocols (Hogans) 27</p> <p>35 Exhibit 10 September 28, 2017, Correspondence 27</p> <p>36 to MDL Court</p> <p>37 Exhibit 11 June 25th, 2001, Records Retention 28</p> <p>38 Schedules</p> <p>39</p> <p>40</p> <p>41</p> <p>42</p> <p>43</p> <p>44</p> <p>45</p> |
| <p style="text-align: right;">Page 3</p> <p>1 APPEARANCES:</p> <p>2</p> <p>3 KAZAN, McCLAIN, SATTERLEY &amp; GREENWOOD</p> <p>4 BY: MARK A. SWANSON, ESQ.</p> <p>5 Jack London Market</p> <p>6 55 Harrison Street, Suite 400</p> <p>7 Oakland, California 94607</p> <p>8 510-302-1000</p> <p>9 mswanson@kazanlaw.com</p> <p>10 Attorneys for Plaintiffs</p> <p>11</p> <p>12 SKADDEN ARPS, SLATE, MEAGHER &amp; FLOM, LLP</p> <p>13 BY: CHRISTOPHER COX, ESQ.</p> <p>14 RICHARD T. BERNARDO, ESQ.</p> <p>15 KENT HIEBEL, ESQ.</p> <p>16 4 Times Square</p> <p>17 New York, New York 10036</p> <p>18 212-735-3453</p> <p>19 christopher.cox@skadden.com</p> <p>20 richard.bernardo@skadden.com</p> <p>21 kent.hiebel@skadden.com</p> <p>22 Attorneys for Defendants, Johnson &amp; Johnson and</p> <p>23 Johnson &amp; Johnson Consumer, Inc.</p> <p>24</p> <p>25 DENTONS US LLP</p> <p>26 BY: ERIN CARPENTER, ESQ.</p> <p>27 4675 MacArthur Court</p> <p>28 Suite 1250</p> <p>29 Newport Beach, California 92660</p> <p>30 213-623-9300</p> <p>31 erin.carpenter@dentons.com</p> <p>32 Attorneys for Imerys Talc, Vermont Imerys Talc</p> <p>33 America, Inc. Cyprus Mines Corporation</p> <p>34</p> <p>35 Also attending: Martin Zinkel, Videographer</p> <p>36 Coulter Reporting</p> <p>37 Jonathan Jaffe, ESI Consultant</p> <p>38</p> <p>39</p> <p>40</p> <p>41</p> <p>42</p> <p>43</p> <p>44</p> <p>45</p> | <p style="text-align: right;">Page 5</p> <p>1 EXHIBITS, continued</p> <p>2</p> <p>3 Exhibit 12 June 3rd, 2002, Records Retention 28</p> <p>4 Policy</p> <p>5 Exhibit 13 January 17th, 1997, Johnson &amp; 28</p> <p>6 Johnson Consumer Products Company's</p> <p>7 Guideline Records Retention</p> <p>8 Schedule</p> <p>9 Exhibit 14 Descriptive Table of Contents in 33</p> <p>10 Leavitt</p> <p>11 Exhibit 15 Descriptive Table of Contents in 33</p> <p>12 Fong</p> <p>13 Exhibit 16 Leavitt Amended Notice of 33</p> <p>14 Deposition</p> <p>15 Exhibit 17 Deposition Notice in the Fong Case 34</p> <p>16 Exhibit 18 Witness' Notes in the Hayes Case 49</p> <p>17 Exhibit 19 Index of Notes That Are Exhibit 18 137</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                |



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| <p style="text-align: right;">Page 6</p> <p>1 THE VIDEOGRAPHER: Here begins Volume 1</p> <p>2 Tape 1 of the videotape deposition of James</p> <p>3 Mittenhal, taken in the matter of Leavitt and</p> <p>4 McElroy, et. al., versus Johnson &amp; Johnson, et. al.;</p> <p>5 and Fong, et. al., versus Imerys Talc America,</p> <p>6 Incorporated, et. al.</p> <p>7 Today's date is September 24th, 2018.</p> <p>8 The time is 9:38 a.m.</p> <p>9 This deposition is being held at Levy</p> <p>10 Konigsberg, 800 Third Avenue, New York, New York.</p> <p>11 The court reporter is Linda Jorritsma.</p> <p>12 Video camera operator is Martin Zinkel.</p> <p>13 Will counsel and others please introduce</p> <p>14 themselves and state whom they represent.</p> <p>15 MR. SWANSON: Mark Swanson representing</p> <p>16 the plaintiffs.</p> <p>17 MR. COX: Christopher Cox representing</p> <p>18 defendants Johnson &amp; Johnson and Johnson &amp; Johnson</p> <p>19 Consumer, Inc.</p> <p>20 MR. BERNARDO: Richard Bernardo, also</p> <p>21 representing the J&amp;J defendants.</p> <p>22 MR. CARPENTER: Erin Carpenter on behalf</p> <p>23 of Imerys Talc America, Inc., Imerys Talc Vermont,</p> <p>24 and Cyprus Mines Corporation.</p> <p>25 THE VIDEOGRAPHER: Will the court</p> | <p style="text-align: right;">Page 8</p> <p>1 A. Yes, it is.</p> <p>2 Q. Okay. And when I'm speaking of Johnson</p> <p>3 &amp; Johnson, generally I'm just going to refer sort of</p> <p>4 generically as Johnson &amp; Johnson in your deposition,</p> <p>5 and I will be referring collectively to Johnson &amp;</p> <p>6 Johnson, which will include the proper company named</p> <p>7 Johnson &amp; Johnson, Johnson &amp; Johnson Consumer, Inc.,</p> <p>8 and also predecessor subsidiary units. Do you</p> <p>9 understand that?</p> <p>10 MR. COX: Object to the form of the</p> <p>11 question.</p> <p>12 A. Yes, I do.</p> <p>13 Q. And if I need -- if we need to break</p> <p>14 that down and talk about a specific entity by name,</p> <p>15 then I'll specify that or you can specify that in an</p> <p>16 answer if you need to. Okay?</p> <p>17 A. Okay.</p> <p>18 Q. And you understand in your answers here</p> <p>19 today that you're the designated representative, so</p> <p>20 your answers today are the answers of Johnson &amp;</p> <p>21 Johnson. Correct?</p> <p>22 A. Yes.</p> <p>23 Q. And you understand that your testimony</p> <p>24 binds Johnson &amp; Johnson.</p> <p>25 MR. COX: Object to the form of the</p> |
| <p style="text-align: right;">Page 7</p> <p>1 reporter please swear in the witness.</p> <p>2 JAMES PETER MITTENTHAL, residing at 183 Blackberry</p> <p>3 Drive, Stamford, Connecticut, having been duly sworn</p> <p>4 by the Notary Public, testified as follows:</p> <p>5 DIRECT EXAMINATION BY MR. SWANSON:</p> <p>6 Q. Mr. Mittenhal, good morning. My name is</p> <p>7 Mark Swanson.</p> <p>8 A. Good morning.</p> <p>9 Q. I'll be taking your deposition today in</p> <p>10 the Teresa Leavitt case and also in the Pui Fong</p> <p>11 case. Do you understand that?</p> <p>12 A. Yes, I do.</p> <p>13 Q. Okay. And you understand that you've</p> <p>14 taken an oath here today and that your testimony has</p> <p>15 the same force and effect as if you gave that</p> <p>16 testimony, sworn testimony, in a court of law before</p> <p>17 a judge?</p> <p>18 A. Yes, I do.</p> <p>19 Q. And you're appearing today as the</p> <p>20 designated representative of Johnson &amp; Johnson</p> <p>21 Company, and Johnson &amp; Johnson Consumer, Inc., to</p> <p>22 answer questions in the Leavitt case and the Fong</p> <p>23 case related to various document issues that have</p> <p>24 been noticed in the deposition notices. Is that</p> <p>25 correct?</p>                | <p style="text-align: right;">Page 9</p> <p>1 question.</p> <p>2 A. Yes.</p> <p>3 Q. And you understand that your testimony</p> <p>4 is being video-recorded and that your testimony here</p> <p>5 today may be played to a jury at the time of trial.</p> <p>6 Do you understand that?</p> <p>7 A. Yes.</p> <p>8 Q. Okay. You've been deposed on a number</p> <p>9 of occasions in the past. Is that correct?</p> <p>10 A. Several, yes.</p> <p>11 Q. Okay. So just real quick on basic</p> <p>12 deposition rules, but you seem to have a good handle</p> <p>13 on them. Please allow me to finish my question</p> <p>14 before you start your answer and I'll try to give you</p> <p>15 the same courtesy so that we don't step on each</p> <p>16 other's words.</p> <p>17 All of your answers need to be verbal.</p> <p>18 If you don't understand a question, please ask me to</p> <p>19 clarify; otherwise I will under -- I will assume that</p> <p>20 you understood the question and answered with that</p> <p>21 understanding in mind. Do you -- do you understand</p> <p>22 that?</p> <p>23 A. Yes.</p> <p>24 Q. If your counsel -- you're being</p> <p>25 represented here today. Is that correct?</p>                                  |

Mittenthal - by Mr. Swanson

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| <p style="text-align: right;">Page 10</p> <p>1 A. Yes.</p> <p>2 Q. And who are you represented by?</p> <p>3 A. The -- the firm or the person?</p> <p>4 Q. Both.</p> <p>5 A. Christopher Cox of Skadden Arps.</p> <p>6 Q. Okay. And you understand that if</p> <p>7 counsel makes an objection, you still need to go</p> <p>8 ahead and answer the question unless you're</p> <p>9 instructed not to or unless you don't understand the</p> <p>10 question. Correct?</p> <p>11 A. I understand.</p> <p>12 Q. I understand that you have been trained</p> <p>13 as a lawyer. Is that right?</p> <p>14 A. That's right.</p> <p>15 Q. And you got a law degree?</p> <p>16 A. Yes, I did.</p> <p>17 Q. When did you get your law degree?</p> <p>18 A. 1986.</p> <p>19 Q. Have you ever practiced law?</p> <p>20 A. No.</p> <p>21 Q. And generally since you've had your law</p> <p>22 degree you've been involved in issues around document</p> <p>23 management and retention for corporations. Is that</p> <p>24 true?</p> <p>25 A. Over the course of my career at various</p>                                                                                              | <p style="text-align: right;">Page 12</p> <p>1 A. Yes.</p> <p>2 Q. And you were working as a managing</p> <p>3 director, and this also involved legal support</p> <p>4 services?</p> <p>5 A. Yes. I -- I started a small New York</p> <p>6 office of a larger company called Baker Robbins who</p> <p>7 was subsequently acquired by Thompson Reuters and</p> <p>8 integrated with Hildebrandt Consulting, and I became</p> <p>9 a managing director over time.</p> <p>10 Q. And then you worked at Epic Systems from</p> <p>11 about 2011 to 2016. And was this the same group of</p> <p>12 people that you had been working with at Baker</p> <p>13 Robbins?</p> <p>14 A. Thompson Reuters had ended its</p> <p>15 consulting practice and I took our litigation group</p> <p>16 to Epic. So there were about five or six people that</p> <p>17 were my teammates that -- that carried forward, and</p> <p>18 we were the successor practice for the litigation</p> <p>19 practice of -- of Thompson Reuters.</p> <p>20 Q. And this continued to be the same type</p> <p>21 of litigation support work?</p> <p>22 A. Yes.</p> <p>23 Q. And then briefly you worked for a</p> <p>24 company called eDelta Consulting?</p> <p>25 A. Yeah, I wasn't a regular employee. I</p> |
| <p style="text-align: right;">Page 11</p> <p>1 times, yes.</p> <p>2 Q. Okay. And very quickly going through</p> <p>3 your work history. You worked for a firm named Legal</p> <p>4 Support Services in Boston from 1985 to 1992.</p> <p>5 Correct?</p> <p>6 A. That's right.</p> <p>7 Q. And was that doing document management</p> <p>8 and retention?</p> <p>9 A. It involved document handling, and one</p> <p>10 of my duties was to program bibliographic coding</p> <p>11 systems for litigation matters.</p> <p>12 Q. Okay. And you worked at Price</p> <p>13 Waterhouse as a consultant and then a manager from</p> <p>14 1992 to 1995?</p> <p>15 A. That's right.</p> <p>16 Q. All right. Did that have to do with</p> <p>17 document issues?</p> <p>18 A. In general I was assisting law firms and</p> <p>19 corporations to improve their litigation</p> <p>20 capabilities. I'm -- there may have been specific</p> <p>21 litigation matters. I would -- I would have to</p> <p>22 double check that time frame.</p> <p>23 Q. And after Price Waterhouse, you worked</p> <p>24 at Hildebrandt Baker Robbins from 1995 to 2011. Is</p> <p>25 that correct?</p> | <p style="text-align: right;">Page 13</p> <p>1 was partnering with the principal of eDelta. We were</p> <p>2 authoring proposals together.</p> <p>3 Q. Okay. And what's your current firm's</p> <p>4 name?</p> <p>5 A. Stroz Friedberg, which is an Aon</p> <p>6 company. S-T-R-O-Z, new word, F-R-I-E-D-B-E-R-G.</p> <p>7 And Aon is A-O-N.</p> <p>8 Q. Okay. And you've been working there</p> <p>9 since 2017?</p> <p>10 A. Yes.</p> <p>11 Q. And what is your job title there?</p> <p>12 A. I'm a vice president, some title,</p> <p>13 Solutions Architect.</p> <p>14 Q. What does title Solutions Architect</p> <p>15 mean?</p> <p>16 A. I'm not involved with the -- sort of</p> <p>17 the -- I'm in the litigation group, but I'm not</p> <p>18 involved with sort of the traditional litigation</p> <p>19 processing activities. I'm in more of a consulting</p> <p>20 role where I help our clients devise solutions to</p> <p>21 business problems which may include litigation. I</p> <p>22 was hired specifically to focus on information</p> <p>23 governance issues.</p> <p>24 Q. What is information governance issues?</p> <p>25 What does that mean?</p>                                                                                                   |

Mittenthal - by Mr. Swanson

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| <p style="text-align: right;">Page 14</p> <p>1 A. It entails how companies manage their<br/>2 paper and digital information assets over the<br/>3 lifecycle from a standpoint of risk, security,<br/>4 efficiency and cost.<br/>5 Q. And is it in your role at Stroz<br/>6 Friedberg that you're testifying for Johnson &amp;<br/>7 Johnson as a corporate representative?<br/>8 MR. COX: Object to the form.<br/>9 A. That's correct.<br/>10 Q. And your -- your firm or you are paid by<br/>11 Johnson &amp; Johnson to act as a corporate<br/>12 representative. Correct?<br/>13 A. That's correct.<br/>14 Q. And how much do they pay you?<br/>15 A. Five hundred dollars per hour.<br/>16 Q. And every time -- and you've testified<br/>17 for Johnson &amp; Johnson in the past. Is that correct?<br/>18 A. Yes, I have.<br/>19 Q. How many times?<br/>20 A. By my accounting, this will be the 15th<br/>21 time.<br/>22 Q. And how many of those times have been<br/>23 for the company, the parent company, or whatever you<br/>24 want to call it, Johnson &amp; Johnson, as opposed to one<br/>25 of the Johnson &amp; Johnson units?</p> | <p style="text-align: right;">Page 16</p> <p>1 depositions did Mr. Bernardo represent you, defend<br/>2 your deposition?<br/>3 A. I don't recall the -- the -- the number<br/>4 that Mr. Bernardo was directly involved with. I<br/>5 would say that approximately ten of them have<br/>6 involved the Skadden team.<br/>7 Q. And of the 14 depositions that you've<br/>8 done for Johnson &amp; Johnson, can you -- one of them<br/>9 was talc litigation. What were the other ones?<br/>10 A. Generally speaking, they were matters<br/>11 for DePuy, for Ethicon, and for Janssen, or Janssen,<br/>12 Pharmaceutical.<br/>13 Q. How many of those were for Ethicon?<br/>14 A. Approximately five.<br/>15 Q. Were those involving multiple cases or<br/>16 one case? How many cases?<br/>17 A. You know, I -- I know that my testimony<br/>18 was used for a variety of purposes. I don't have a<br/>19 recollection of whether -- which specific cases were<br/>20 state cases, MDL. I -- I would have to go back and<br/>21 look at the case captions.<br/>22 Q. Okay. It was more than one case.<br/>23 A. Well --<br/>24 Q. The Ethicon cases?<br/>25 A. My understanding is that there</p> |
| <p style="text-align: right;">Page 15</p> <p>1 A. Well, to my understanding, there were<br/>2 not times I can recall where I was representing the<br/>3 parent company. There may have been issues involving<br/>4 the parent company, but at all times I was involved<br/>5 with a -- a franchise or subsidiary company.<br/>6 Q. Okay. How many of -- out of those 15<br/>7 prior depositions --<br/>8 A. I'm sorry. Fourteen.<br/>9 Q. Fourteen. Today is the 15th?<br/>10 A. That's my understanding.<br/>11 Q. Okay. So you're a corporate<br/>12 representative in each of those. It was franchise<br/>13 or -- or subsidiaries, or Johnson &amp; Johnson units.<br/>14 And how many of those depositions involved talc in<br/>15 litigation?<br/>16 A. One.<br/>17 Q. Was that the Hayes case?<br/>18 A. That's correct.<br/>19 Q. And were you hired in each of those<br/>20 instances by Johnson &amp; Johnson's lawyer, Rich<br/>21 Bernardo?<br/>22 MR. COX: Object to the form of the<br/>23 question.<br/>24 A. No.<br/>25 Q. Okay. In -- in -- in how many of those</p>                                                               | <p style="text-align: right;">Page 17</p> <p>1 were -- there were state cases and there were broader<br/>2 matters.<br/>3 Q. Other than testifying for Johnson &amp;<br/>4 Johnson, have you testified for other corporations as<br/>5 a corporate representative in litigation?<br/>6 A. Yes.<br/>7 Q. Which companies?<br/>8 A. Ericsson.<br/>9 Q. And what was the subject matter of that<br/>10 litigation?<br/>11 A. That was a patent case involving a<br/>12 royalties dispute with Samsung.<br/>13 Q. Any other corporations that you've<br/>14 testified for as a corporate representative?<br/>15 A. No.<br/>16 Q. And I'm going to -- since we're<br/>17 consolidating your deposition for two cases in the<br/>18 one transcript, I'll be asking you general questions<br/>19 that apply to both, and then sometimes I'll<br/>20 individually ask you about either one case or the<br/>21 other. Okay?<br/>22 A. Okay.<br/>23 Q. So how many hours -- can you separate in<br/>24 your mind how many hours you've spent working in the<br/>25 Fong case as opposed to the Leavitt case?</p>                                                                                            |

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| <p style="text-align: right;">Page 18</p> <p>1 A. I -- I think I would be hard pressed to<br/> 2 make that distinction.<br/> 3 Q. Okay. Combined, how many hours have you<br/> 4 spent on the two cases?<br/> 5 A. Well, I think to fully answer your<br/> 6 question, I would consider that I have spent time in<br/> 7 prior matters for talc collecting information, and<br/> 8 then for these cases I've invested additional hours.<br/> 9 That -- for that second piece of it, the post-Hayes<br/> 10 preparation was about 50 to 55 hours.<br/> 11 Q. And how many hours did you spend in the<br/> 12 Hayes case?<br/> 13 A. About 120.<br/> 14 Q. Have you billed Johnson &amp; Johnson in the<br/> 15 Leavitt and Fong cases?<br/> 16 A. I would have to check with Accounting to<br/> 17 see if invoices have gone out. I have approved<br/> 18 pre-bills in the matter.<br/> 19 Q. And your time, again, is all billed at<br/> 20 \$500 an hour?<br/> 21 A. Yes.<br/> 22 Q. And when were you asked to work on the<br/> 23 Leavitt and Fong cases? And, again, if the answer is<br/> 24 separate, please tell me separately.<br/> 25 A. It was sometime -- I was aware of those</p>                                                                                                                                                                                                                                            | <p style="text-align: right;">Page 20</p> <p>1 on sites with -- with the lawyers present.<br/> 2 Q. Okay. And which lawyers were present?<br/> 3 A. That included the lawyers present here,<br/> 4 as well as Tom Fox.<br/> 5 Q. Okay. The lawyers present here being<br/> 6 Christopher Cox and Rich Bernardo?<br/> 7 A. That's right.<br/> 8 Q. Who else?<br/> 9 A. That's it.<br/> 10 Q. And did you say Tom Fox?<br/> 11 A. Yes.<br/> 12 Q. And is he also a Skadden lawyer?<br/> 13 A. Yes.<br/> 14 Q. The other half of your time, what were<br/> 15 you doing when you weren't speaking with lawyers?<br/> 16 A. Reviewing documents. Creating<br/> 17 compilations.<br/> 18 Q. Okay. Generally -- and we'll get into<br/> 19 it more specifically as we need to, probably later<br/> 20 reviewing documents -- what documents were you<br/> 21 reviewing specifically for these cases?<br/> 22 A. Well, the materials provided in these<br/> 23 binders were the sum and substance of my review.<br/> 24 They included interrogatories, interrogatory<br/> 25 responses, requests for production, and -- and -- and</p>                                                                                                                                                                                                                                                                                                                                                                          |
| <p style="text-align: right;">Page 19</p> <p>1 cases during my Hayes preparation. I had a general<br/> 2 understanding that there may be additional work in<br/> 3 the -- in the talc matters. I would say<br/> 4 approximately a month ago I -- I had a confirmation<br/> 5 with regard to Leavitt and -- and Hayes -- and Fong.<br/> 6 Q. Okay. And I looked at your transcript<br/> 7 and -- in the Hayes case, and you had mentioned that<br/> 8 you had been aware of the Leavitt case but had not<br/> 9 been involved in gathering documents at that time.<br/> 10 And that was, I think, June 12th. Is that correct?<br/> 11 A. Yes.<br/> 12 Q. Okay. And then in the Fong case at that<br/> 13 point, I think Mr. Satterley in asking you questions<br/> 14 mentioned it, and I believe you said that you were<br/> 15 not aware of it. Is that true, at that time you were<br/> 16 not aware of the Fong case?<br/> 17 MR. COX: Object to the form.<br/> 18 A. I may have -- certainly may have said<br/> 19 that. I knew the Leavitt case specifically. I -- I<br/> 20 may or may not have been aware of the Fong case. I'm<br/> 21 sure at that time I possibly hadn't heard of it.<br/> 22 Q. So of the 50 to 55 hours that you spent<br/> 23 working in the two cases, how much of that time has<br/> 24 been spent speaking with Johnson &amp; Johnson's lawyers?<br/> 25 A. Approximately half of the time was spent</p> | <p style="text-align: right;">Page 21</p> <p>1 answers regarding requests for production specific to<br/> 2 Leavitt and Fong. There were also documents related<br/> 3 to the policies and retention materials of the<br/> 4 company. There were a number of other documents in<br/> 5 the -- that I provided with me that are mostly<br/> 6 similar to the ones from the Hayes case, and in some<br/> 7 cases I reviewed them additionally. There were also<br/> 8 some new schedules and documents that were -- that<br/> 9 were made available. And I also reviewed specific<br/> 10 documents produced in the case -- in the cases.<br/> 11 Q. Okay. So what specific -- how did<br/> 12 you -- do you know what specific documents you<br/> 13 reviewed that were produced in the cases?<br/> 14 A. I reviewed -- it was really my efforts<br/> 15 to become familiar with the document population. So<br/> 16 in looking at the -- the production summaries, in<br/> 17 cases where they referenced references that led<br/> 18 ultimately to Bates ranges, I referenced those<br/> 19 documents with the review tool and looked -- looked<br/> 20 at them to become generally familiar with the<br/> 21 contours of the production. That may have included<br/> 22 marketing, chain of custody, test documents. I<br/> 23 really did not have a specific methodology in the<br/> 24 documents I chose to review other than to just<br/> 25 generally familiarize myself with -- with the set.</p> |

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| <p style="text-align: right;">Page 22</p> <p>1 Q. I see. And when you -- when you're</p> <p>2 referring to production summaries, are you referring</p> <p>3 to the responses, the disclosure of what was being</p> <p>4 produced in response to particular requests for</p> <p>5 productions of documents?</p> <p>6 A. That's right.</p> <p>7 Q. Okay. And that would include both the</p> <p>8 response, if it includes something in the response,</p> <p>9 and then any attachments that would list Bates ranges</p> <p>10 and that sort of thing. Is that correct?</p> <p>11 A. That's correct.</p> <p>12 Q. And so you took those production</p> <p>13 summaries and then you sort of spot-checked some</p> <p>14 documents with -- using some type of review tool to</p> <p>15 get a sense of what the documents were and how the</p> <p>16 production was done?</p> <p>17 A. Yes. The -- the content of the</p> <p>18 documents themselves, as well as the surrounding</p> <p>19 circumstances, such as the metadata.</p> <p>20 Q. And now do you have -- how many</p> <p>21 documents were produced in the Leavitt case?</p> <p>22 A. I believe somewhere in the neighborhood</p> <p>23 of 250 to 260,000 documents.</p> <p>24 Q. And how many of those documents did you</p> <p>25 review?</p>                                                                                                        | <p style="text-align: right;">Page 24</p> <p>1 the general binder that you have?</p> <p>2 Okay. All right. So the general binder</p> <p>3 has ten tabs on it and a table of contents at the</p> <p>4 top, correct, of what the tabs are for?</p> <p>5 A. Yes. I don't know the exact count, but</p> <p>6 that sounds about right.</p> <p>7 Q. Okay. You can go ahead and have a look</p> <p>8 at it. I want to make sure that what I end up giving</p> <p>9 the court reporter is...</p> <p>10 A. There are -- I should point out, in</p> <p>11 addition to the ten tabs, there are some loose</p> <p>12 materials.</p> <p>13 Q. Okay. In that binder?</p> <p>14 A. Well, actually, in this case there are</p> <p>15 these short documents that are just slipped into the</p> <p>16 general binder. I also have them on my desk. There</p> <p>17 are also additional bound loose documents that would</p> <p>18 comprise the whole collection. So those --</p> <p>19 Q. Okay. Let's start with what's been</p> <p>20 called the general binder, since you have something</p> <p>21 that's been sort of pre-packaged as the general</p> <p>22 binder. And just for the record, we're going to mark</p> <p>23 these -- have these marked, these exhibits, just as</p> <p>24 they are in the general binder. So your general</p> <p>25 binder will be marked as Exhibits 1 through 10. That</p> |
| <p style="text-align: right;">Page 23</p> <p>1 A. As I mentioned, several hundred.</p> <p>2 Q. And in the Fong case, how many documents</p> <p>3 has Johnson &amp; Johnson produced?</p> <p>4 A. My understanding is that it was a</p> <p>5 similar number, 250,000 to 260,000 in total.</p> <p>6 Q. And how did you get that understanding?</p> <p>7 A. It came both from counsel and from</p> <p>8 the -- the vendors that I interviewed.</p> <p>9 Q. I'm just going to pause on that for a</p> <p>10 second and let's just take care of a couple of</p> <p>11 housekeeping things.</p> <p>12 So I have in front of me, that I've</p> <p>13 brought with me, a -- a binder that was provided to</p> <p>14 us of materials that I understood that you had</p> <p>15 produced. And I don't know if the same -- did you</p> <p>16 have -- did you bring the same binder with you? And</p> <p>17 it was tabbed, and I don't know of anything that you</p> <p>18 had was tabbed, and it had a table of contents on it.</p> <p>19 Is this something that you put together? And I don't</p> <p>20 mean this -- this specific paper copy of it, but a</p> <p>21 binder with tabs?</p> <p>22 A. I have with me several binders; a</p> <p>23 general binder, a Leavitt binder, and a Fong binder,</p> <p>24 and those were created at my request to counsel.</p> <p>25 Q. Okay. And the general binder, can I see</p> | <p style="text-align: right;">Page 25</p> <p>1 goes through Tab 10. Correct? Is it just 10, or is</p> <p>2 it 11?</p> <p>3 A. Yes, that's it.</p> <p>4 Q. Okay. So there's ten tabs. And then</p> <p>5 in -- the way we'll have those marked is that some of</p> <p>6 these have sub-tabs, correct? Like, 2 has -- 1 and 2</p> <p>7 have A, B, Cs, that sort of thing. Correct?</p> <p>8 A. That's right.</p> <p>9 Q. Okay. So just for the record we'll go</p> <p>10 ahead and have those marked that way.</p> <p>11 MR. COX: Mark, you're having the binder</p> <p>12 that's in front of the witness marked?</p> <p>13 MR. SWANSON: Yeah, or we can send, you</p> <p>14 know, the digital copy of it to the -- the files to</p> <p>15 the court reporter. Either way. I mean...</p> <p>16 MR. COX: Well, we have a physical copy</p> <p>17 marked.</p> <p>18 MR. SWANSON: Okay. That's fine.</p> <p>19 Right. So that will be 1 through 10,</p> <p>20 with As -- that whole thing, with As, Bs, that sort</p> <p>21 of thing, where there's substance. There's a table</p> <p>22 of contents there. And let's put the table of</p> <p>23 contents also on 1 at the top so that we have that</p> <p>24 right there. Okay?</p> <p>25 (Exhibit 1, General Binder Table of</p>                                                                                                                 |



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| <p style="text-align: right;">Page 26</p> <p>1 Contents, marked for identification.)<br/> 2 (Exhibit 1A, 2017 Hold Notice<br/> 3 (Consolidated.)<br/> 4 (Exhibit 1B, 2003 Hold Notice (Hozeny),<br/> 5 marked for identification.)<br/> 6 (Exhibit 1C, 2000 Hold Notice (Bloch),<br/> 7 marked for identification.)<br/> 8 (Exhibit 2A, 2015 WWRIM Standards, marked<br/> 9 for identification.)<br/> 10 (Exhibit 2B, 2017 WWRIM Standards, marked<br/> 11 for identification.)<br/> 12 (Exhibit 2C, J&amp;J Enterprise Retention<br/> 13 Schedule (2018), marked for identification.)<br/> 14 (Exhibit 2D, Quality Agreements, marked<br/> 15 for identification.)<br/> 16 (Exhibit 2E, Franchise-Level Record<br/> 17 Retention Schedules, marked for identification.)<br/> 18 (Exhibit 2F, Franchise-Level Record<br/> 19 Retention Schedules, marked for identification.)<br/> 20 (Exhibit 3, Custodian List, was marked<br/> 21 for identification.)<br/> 22 (Exhibit 4, List of Non-Custodial<br/> 23 Sources, marked for identification.)<br/> 24 (Exhibit 5, MDL Sample Protocol and<br/> 25 Exhibits, marked for identification.)</p>                                                  | <p style="text-align: right;">Page 28</p> <p>1 materials. I see those are now for you in a binder.<br/> 2 I believe these are the format I was provided them<br/> 3 in. So there are -- I have three clipped-bound<br/> 4 copies of what I think is the same as in that binder.<br/> 5 Q. Okay. And if you would hand those to<br/> 6 me, please. Thank you.<br/> 7 MR. SWANSON: So let's go ahead<br/> 8 and -- the June 25th, 2001, will be marked<br/> 9 Exhibit 11.<br/> 10 (Exhibit 11, June 25th, 2001, Records<br/> 11 Retention Schedules, marked for identification.)<br/> 12 MR. SWANSON: The June 3rd, 2002,<br/> 13 records retention policy will be marked Exhibit 12.<br/> 14 (Exhibit 12, June 3rd, 2002, Records<br/> 15 Retention Policy, marked for identification.)<br/> 16 MR. SWANSON: And then the January 17th,<br/> 17 1997, Johnson &amp; Johnson Consumer Products Company's<br/> 18 guideline records retention schedule will be<br/> 19 Exhibit 13.<br/> 20 (Exhibit 13, January 17th, 1997, Johnson<br/> 21 &amp; Johnson Consumer Products Company's Guideline<br/> 22 Records Retention Schedule, marked for<br/> 23 identification.)<br/> 24 Q. All right. When were you provided these<br/> 25 records retention schedules from 1997, 2001, 2002?</p> |
| <p style="text-align: right;">Page 27</p> <p>1 (Exhibit 6, Archives Search Terms, marked<br/> 2 for identification.)<br/> 3 (Exhibit 7, Master Search Terms, marked<br/> 4 for identification.)<br/> 5 (Exhibit 8, Search Terms to Identify<br/> 6 Documents Represented in Production<br/> 7 With "Non-Responsive" Slip Sheets, marked for<br/> 8 identification.)<br/> 9 (Exhibit 9A, MDL ESI Protocols, marked<br/> 10 for identification.)<br/> 11 (Exhibit 9B, ESI Protocols (Hogans),<br/> 12 marked for identification.)<br/> 13 (Exhibit 10, September 28, 2017,<br/> 14 Correspondence to MDL Court, marked for<br/> 15 identification.)<br/> 16 (A discussion is held off the record.)<br/> 17 Q. Now, another thing that was provided to<br/> 18 me, to the plaintiffs in this case that wasn't part<br/> 19 of the general binder but it seemed sort of<br/> 20 consistent with it and so I want to ask you about, is<br/> 21 a couple of records retention schedules, one dated<br/> 22 2000 -- June 25th, 2001, and another one June 3rd,<br/> 23 2002. Were those two things that you were given that<br/> 24 later or --<br/> 25 A. Yes, and I alluded to what I call loose</p> | <p style="text-align: right;">Page 29</p> <p>1 A. That was the middle of last week.<br/> 2 Q. Okay.<br/> 3 And what other materials have you been<br/> 4 provided?<br/> 5 A. Well, I also have my notes which --<br/> 6 dated to the Hayes matter, and I have brought them<br/> 7 forward. They are not in the general binder. They<br/> 8 are in a sort of a loose fashion.<br/> 9 Q. Okay. And I'll get to those.<br/> 10 Why don't I take care of this more basic<br/> 11 thing first.<br/> 12 The case-specific materials that you<br/> 13 reviewed in terms of discovery responses, do you have<br/> 14 those lists? And what I'm looking at is something<br/> 15 that looks like this that I -- that I didn't prepare<br/> 16 so I'm assuming that Johnson &amp; Johnson prepared it, I<br/> 17 believe.<br/> 18 A. Well, I have --<br/> 19 Q. Do you have a list of the things that<br/> 20 you prepared -- I mean, that you've reviewed?<br/> 21 A. When you say "prepared" -- and I'm a<br/> 22 little unclear on the question, meaning the materials<br/> 23 I reviewed or the production documents I reviewed?<br/> 24 Q. Okay. Yeah, I'll be more specific.<br/> 25 What I got was a list of case-specific documents, not</p>                                              |



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| <p style="text-align: right;">Page 30</p> <p>1 the Johnson &amp; Johnson documents that were part of the</p> <p>2 produced documents that you reviewed, but the</p> <p>3 documents, the discovery responses, the Amended</p> <p>4 Complaint. Take a look at this. I was provided</p> <p>5 these lists. And do you have a list of everything</p> <p>6 that you've reviewed in these two cases?</p> <p>7 A. Okay. This -- my general impression of</p> <p>8 these documents is that they appear to be tables of</p> <p>9 contents for the Leavitt and Fong binders. But I</p> <p>10 would want to confirm that.</p> <p>11 Q. Okay.</p> <p>12 A. So I have Leavitt and Fong.</p> <p>13 Q. The Leavitt and Fong binders that you</p> <p>14 have, are those -- those are discovery responses and</p> <p>15 the Complaints. Is that right?</p> <p>16 A. I believe they correspond to this table</p> <p>17 of contents, but I'd want to just confirm that.</p> <p>18 Q. Why don't you go ahead and confirm that</p> <p>19 then.</p> <p>20 A. Yeah, this -- this appears to be the</p> <p>21 Fong TOC. And this appears to be the Leavitt TOC.</p> <p>22 Q. Okay. And can -- can you hand me one of</p> <p>23 those?</p> <p>24 A. Sure.</p> <p>25 Q. Either one.</p> | <p style="text-align: right;">Page 32</p> <p>1 this -- was this provided to us? I mean, I know he</p> <p>2 has a copy here and there's a copy in here and over</p> <p>3 there, but I haven't seen a copy of this until now.</p> <p>4 Do you know --</p> <p>5 MR. COX: It wasn't provided for this</p> <p>6 deposition.</p> <p>7 MR. SWANSON: Okay. Are these the only</p> <p>8 two copies we've got here?</p> <p>9 MR. COX: I could locate another copy.</p> <p>10 MR. SWANSON: I would love to have a</p> <p>11 copy both in Leavitt and in Fong, if there's an</p> <p>12 equivalent.</p> <p>13 MR. COX: Sure.</p> <p>14 MR. SWANSON: Thank you.</p> <p>15 Q. And Mr. Mittenthal, could you show me</p> <p>16 the binder that you have there for the Leavitt case,</p> <p>17 I'm assuming?</p> <p>18 A. Yes.</p> <p>19 Q. Thank you.</p> <p>20 And for the record, this is a similar</p> <p>21 type binder that includes these discovery responses,</p> <p>22 the Amended Complaint, and also the deposition</p> <p>23 notices. Correct?</p> <p>24 A. Yes.</p> <p>25 Q. And then also in looseleaf here there's</p>                                                                                                                                                                          |
| <p style="text-align: right;">Page 31</p> <p>1 And these were put together for you. Is</p> <p>2 that right?</p> <p>3 A. The -- the binders were put together at</p> <p>4 my request, yes.</p> <p>5 Q. Okay.</p> <p>6 And also I noticed in Fong, besides the</p> <p>7 table of contents, there is this document loose in</p> <p>8 here that says, "Fong Document Production Summary By</p> <p>9 Set."</p> <p>10 A. Yes, I have that here.</p> <p>11 Q. And you have that there. And who</p> <p>12 prepared that?</p> <p>13 A. I worked on this together with counsel.</p> <p>14 Q. Okay. And what's the difference between</p> <p>15 this and the Fong table of contents?</p> <p>16 A. This is simply a -- what I would call a</p> <p>17 shorthand reference to -- to the materials. In other</p> <p>18 words, the -- the Fong table of contents, to my</p> <p>19 recollection, is not descriptive. So in other words,</p> <p>20 if I wanted to reference where testing of talc used</p> <p>21 in JBP in U.S. '83 to present was found, I, rather</p> <p>22 than thumbing through the many pages of the book, I</p> <p>23 could simply leverage this -- this summary sheet.</p> <p>24 Q. Okay.</p> <p>25 MR. SWANSON: And, Chris, were</p>                   | <p style="text-align: right;">Page 33</p> <p>1 a -- you've got a set of these notes, which is more</p> <p>2 specific information with respect to what was</p> <p>3 contained within those discovery responses. Correct?</p> <p>4 A. Yes. It's simply a -- I would -- I'm</p> <p>5 not sure I would call it notes so much as just a</p> <p>6 descriptive table of contents.</p> <p>7 Q. Okay. If you could hand me -- I think</p> <p>8 I'll mark those copies you've got with you there.</p> <p>9 MR. SWANSON: So let's mark these</p> <p>10 descriptive table of contents in Leavitt as</p> <p>11 Exhibit 14.</p> <p>12 (Exhibit 14, Descriptive Table of</p> <p>13 Contents in Leavitt, marked for identification.)</p> <p>14 Q. And I'll hand that back to you.</p> <p>15 MR. SWANSON: And in the Fong case, the</p> <p>16 descriptive table of contents that you prepared with</p> <p>17 counsel will be Exhibit 15.</p> <p>18 (Exhibit 15, Descriptive Table of</p> <p>19 Contents in Fong, marked for identification.)</p> <p>20 Q. And I'll hand that back to you.</p> <p>21 And I'll just hand those back for now</p> <p>22 anyway.</p> <p>23 MR. SWANSON: The deposition notice in</p> <p>24 Leavitt we will mark as Exhibit 16.</p> <p>25 (Exhibit 16, Leavitt Amended Notice of</p> |

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| <p style="text-align: right;">Page 34</p> <p>1 Deposition, marked for identification.)</p> <p>2 MR. SWANSON: This is the Amended</p> <p>3 Deposition Notice.</p> <p>4 And Exhibit 17 will be the deposition</p> <p>5 notice in the Fong case.</p> <p>6 (Exhibit 17, Deposition Notice in the</p> <p>7 Fong Case, marked for identification.)</p> <p>8 Q. I'm going to hand you those two</p> <p>9 deposition notices. Do you have those in front of</p> <p>10 you?</p> <p>11 A. I do.</p> <p>12 Q. Okay. I just want to confirm that in</p> <p>13 looking at Exhibit 17, the deposition notice of</p> <p>14 Johnson &amp; Johnson's custodian of records and persons</p> <p>15 most qualified with requests for production of</p> <p>16 documents on a number of topics; and just for the</p> <p>17 record, I haven't marked these, but an equivalent</p> <p>18 notice was done for Johnson &amp; Johnson Consumer, Inc.</p> <p>19 Did you see that?</p> <p>20 MR. COX: Object to form.</p> <p>21 A. I'm aware that there are notices for</p> <p>22 both.</p> <p>23 Q. Okay. And so if you look at Exhibit 16,</p> <p>24 at page number 9, we have been told by Johnson &amp;</p> <p>25 Johnson counsel that you are produced for the first</p>                                                     | <p style="text-align: right;">Page 36</p> <p>1 representative on all those topics. Correct?</p> <p>2 MR. COX: Object to the form.</p> <p>3 A. Yes.</p> <p>4 Q. Okay. And then if you look at the Fong</p> <p>5 notice, Exhibit Number 17, you are produced as</p> <p>6 the -- you are the corporate representative for</p> <p>7 Johnson &amp; Johnson and Johnson &amp; Johnson Consumer,</p> <p>8 Inc., on those first eight topics listed. Is that</p> <p>9 correct, under, "Matters To Be Examined"?</p> <p>10 A. Yes.</p> <p>11 Q. Okay.</p> <p>12 Okay. You mentioned that there were</p> <p>13 vendors that you interviewed. Is that correct?</p> <p>14 A. Yes.</p> <p>15 Q. And did you interview vendors specific</p> <p>16 to the production done in the Leavitt case?</p> <p>17 A. I had interviewed the vendors on general</p> <p>18 topics; and with respect to Leavitt and Fong, I had</p> <p>19 some follow-up.</p> <p>20 Q. And who were the vendors that you spoke</p> <p>21 to in the follow-up with Leavitt and Fong?</p> <p>22 A. The follow-up vendor was the company</p> <p>23 Triality, Pam Downs.</p> <p>24 Q. And what does Triality do?</p> <p>25 A. They assist companies in identifying and</p> |
| <p style="text-align: right;">Page 35</p> <p>1 11 items there. Do you see those items,</p> <p>2 those -- those topics?</p> <p>3 A. Yes, I do.</p> <p>4 Q. Okay. And is it correct that you</p> <p>5 have -- you are appearing as a corporate</p> <p>6 representative to answer questions on all of those</p> <p>7 topics?</p> <p>8 A. Yes.</p> <p>9 Q. Okay. And that specifically includes</p> <p>10 record retention policies. Right?</p> <p>11 A. Yes.</p> <p>12 Q. Indexes or databases for documents,</p> <p>13 search terms, parameters for searching documents,</p> <p>14 efforts made to locate documents, the genuineness or</p> <p>15 authenticity of documents produced, whether documents</p> <p>16 produced are business records, whether they were --</p> <p>17 documents were produced in the regular,</p> <p>18 ordinary -- as they were kept in the usual course of</p> <p>19 business, chain of custody of documents produced,</p> <p>20 litigation holds defendant put on documents.</p> <p>21 Defendant's efforts to preserve documents related to</p> <p>22 marketing, sale, and testing Johnson's Baby Powder</p> <p>23 and its efforts to preserve evidence of testing.</p> <p>24 So those are all the topics you</p> <p>25 were -- you understood that you're here as a</p> | <p style="text-align: right;">Page 37</p> <p>1 collecting and producing documents and other</p> <p>2 evidentiary material for litigation and other</p> <p>3 disputes.</p> <p>4 MR. SWANSON: Could I have that answer</p> <p>5 read back, please?</p> <p>6 (Whereupon, the court reporter reads as</p> <p>7 requested.)</p> <p>8 Q. And your follow-up conversation with Pam</p> <p>9 Downs regarding -- was it specifically regarding the</p> <p>10 production that was done in Leavitt and Fong, or one</p> <p>11 or the other?</p> <p>12 A. It was not specific to one or the other.</p> <p>13 Q. Okay. What was -- sorry. That's</p> <p>14 probably a poor question.</p> <p>15 Was it about those cases specifically or</p> <p>16 was it more -- were these more general questions?</p> <p>17 A. It was a more -- more general question,</p> <p>18 but in the -- in the context of my preparation for</p> <p>19 those cases.</p> <p>20 Q. Okay. And how long did the conversation</p> <p>21 last?</p> <p>22 A. Just a few minutes.</p> <p>23 Q. Was this by telephone?</p> <p>24 A. Yes.</p> <p>25 Q. And who else was present?</p>                                                                                     |

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| <p style="text-align: right;">Page 38</p> <p>1 A. Counsel was present.</p> <p>2 Q. And did you make notes of that</p> <p>3 conversation?</p> <p>4 A. Not written notes, no.</p> <p>5 Q. Okay. And what did you speak about on</p> <p>6 that occasion for a few minutes?</p> <p>7 A. Generally speaking, I wanted to resolve</p> <p>8 an ambiguity with respect to the term "boxes</p> <p>9 searched" with respect to the company's offsite</p> <p>10 archive system.</p> <p>11 Q. And what was that ambiguity?</p> <p>12 A. The -- the number -- whether the number</p> <p>13 of -- well, the ambiguity was whether the</p> <p>14 term "searched" meant through the system or when the</p> <p>15 boxes were retrieved from offsite storage, and so a</p> <p>16 physical search of the contents. So two different</p> <p>17 types of searches.</p> <p>18 Q. Okay. And how did that ambiguity arise?</p> <p>19 In other words, what was it in your -- either</p> <p>20 your -- what you had understood about what had</p> <p>21 happened in document search and production up to that</p> <p>22 point that created that ambiguity for you?</p> <p>23 A. I was reviewing the Hayes deposition and</p> <p>24 I recalled some language about thousands of boxes</p> <p>25 searched, and I wanted to clarify the -- the specific</p>                                                  | <p style="text-align: right;">Page 40</p> <p>1 was approximately 1,600.</p> <p>2 Q. The 1,600 boxes that were searched, they</p> <p>3 were searched for these two cases? Sixteen hundred</p> <p>4 boxes of documents, hard copies, were pulled from a</p> <p>5 repository somewhere. Is that correct?</p> <p>6 MR. COX: Object to the form.</p> <p>7 A. Yes. In other words, they were -- they</p> <p>8 were pulled from a repository as a component of the</p> <p>9 overall production efforts. My understanding is that</p> <p>10 the -- the 1,600 represented searches in connection</p> <p>11 with Hayes, Leavitt, and Fong.</p> <p>12 Q. Okay. But -- but the Hayes search that</p> <p>13 you had testified about in the Hayes deposition, at</p> <p>14 that point you had not been involved in Leavitt and</p> <p>15 Fong. Correct?</p> <p>16 A. Correct.</p> <p>17 Q. So your understanding of what happened,</p> <p>18 that came from Johnson &amp; Johnson's counsel. Is that</p> <p>19 correct?</p> <p>20 MR. COX: Object to form.</p> <p>21 A. That -- that idea that thousands of</p> <p>22 boxes were searched may have come from -- from the</p> <p>23 vendor, and that's why I sought clarification.</p> <p>24 Q. Pam -- from Pam Downs?</p> <p>25 A. Yes.</p>                                                                                                 |
| <p style="text-align: right;">Page 39</p> <p>1 numbers.</p> <p>2 Q. Okay. And these thousands of boxes</p> <p>3 searched, who are they searched by?</p> <p>4 A. Well, they are searched by the company</p> <p>5 in conjunction with the vendor and in -- you know, in</p> <p>6 connection with request by counsel.</p> <p>7 Q. And these were searched generally or</p> <p>8 specifically as to Leavitt and Fong?</p> <p>9 A. My question encompassed both general</p> <p>10 searches for these matters, and any -- any other</p> <p>11 searches that were done.</p> <p>12 Q. And where are these -- and these are</p> <p>13 actual physical copies, thousands of boxes, is your</p> <p>14 understanding?</p> <p>15 A. Well, the ambiguous term was "thousands</p> <p>16 of boxes" as to what was searched. My understanding</p> <p>17 is that there were the -- there is not a specific</p> <p>18 number of the total boxes that were searched</p> <p>19 electronically to retrieve potential or really</p> <p>20 relevant material. There were perhaps tens of</p> <p>21 thousands of boxes in the inventory. There were</p> <p>22 another number surrounding the boxes that were</p> <p>23 returned from those searches that were then, the box</p> <p>24 opened and a person then searched the contents of</p> <p>25 those boxes for relevant material, and that number</p> | <p style="text-align: right;">Page 41</p> <p>1 Q. Okay. And these documents that were</p> <p>2 pulled, where is the repository of those documents?</p> <p>3 Do you know?</p> <p>4 A. Well, the -- once again, I'm talking</p> <p>5 about a component of the overall production set.</p> <p>6 These are boxes specifically referenced to be hard</p> <p>7 copy materials in boxes in offsite storage. My</p> <p>8 understanding is that they are located -- or the</p> <p>9 original storage locations were several Iron Mountain</p> <p>10 facilities.</p> <p>11 Q. And these Iron Mountain facilities, are</p> <p>12 they -- is that where the doc -- those boxes remain,</p> <p>13 or are they now in the possession of lawyers in some</p> <p>14 other offsite location?</p> <p>15 MR. COX: Object to the form.</p> <p>16 A. Well, as I mentioned, the 1,600 boxes</p> <p>17 that were retrieved were then manually searched. In</p> <p>18 other words, the box was opened, the contents</p> <p>19 searched for material relevant to the cases. And</p> <p>20 once again, I'm talking not specific to Hayes,</p> <p>21 Leavitt, or Fong, but to the -- to the effort to</p> <p>22 date. And those 1,600 boxes, to the extent that</p> <p>23 relevant materials were located, those were then</p> <p>24 provided to counsel.</p> <p>25 Q. I'm confused. I'm getting the</p> |

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| <p style="text-align: right;">Page 42</p> <p>1 impression from what you're telling me that<br/> 2 this -- these -- this -- this pulling these 1,600<br/> 3 documents -- boxes of documents from offsite storage<br/> 4 locations and manually -- you're talking about<br/> 5 manually searching them. Right?<br/> 6 A. Well, the -- that is a portion of the<br/> 7 story. I mean, they were pulled in response to a<br/> 8 specific search of an inventory of those boxes<br/> 9 offsite and using key words that were -- that were<br/> 10 provided in my materials today. So there<br/> 11 are -- there was a methodology for how they were<br/> 12 searched. The boxes that were responsive to that<br/> 13 search methodology were identified. They were<br/> 14 retrieved from offsite storage. They were opened and<br/> 15 their contents searched for those materials that<br/> 16 were, in fact, relevant. And this describes those<br/> 17 efforts to date, in other words, through efforts that<br/> 18 would include Leavitt and Fong. To the extent that<br/> 19 those boxes had relevant material, they were then<br/> 20 provided to counsel.<br/> 21 Q. Okay. If you would help me by not<br/> 22 giving me a full description every time I ask just a<br/> 23 piece of a question, and the reason is because I need<br/> 24 to be able to understand in order for us to be able<br/> 25 to communicate. And I understand you're giving me</p> | <p style="text-align: right;">Page 44</p> <p>1 time because of a Leavitt- or Fong-specific issue, it<br/> 2 would have been searched again.<br/> 3 Q. And you're speculating about whether or<br/> 4 not anything was specifically searched again in<br/> 5 Leavitt or Fong, though, is that correct, in terms of<br/> 6 those 1,600 boxes?<br/> 7 MR. COX: Object to the form.<br/> 8 A. I cannot tell you specific dates, but I<br/> 9 have knowledge that those materials were specifically<br/> 10 searched in the context of Leavitt and Fong beyond<br/> 11 any initial searches that were done.<br/> 12 Q. Where did that understanding come from?<br/> 13 A. That came from vendors and counsel<br/> 14 conversations.<br/> 15 Q. Okay. Of those 1,600 boxes -- and<br/> 16 were -- the 1,600 boxes, though, you don't know the<br/> 17 date that they were first pulled. Is that correct?<br/> 18 A. My understanding is that they've<br/> 19 been -- they've been pulling them for the last few<br/> 20 years. I don't know the first dates.<br/> 21 Q. Do you know if it was more than three<br/> 22 years, or less?<br/> 23 A. I can't speak to that specifically.<br/> 24 Q. Do you know if it was more or less than<br/> 25 ten years ago that that happened?</p>                                                         |
| <p style="text-align: right;">Page 43</p> <p>1 the whole story about it because you'll think I'll<br/> 2 understand it like that, but I'm not, so I want to<br/> 3 just break it down. Okay?<br/> 4 So first question: Were these 1,600<br/> 5 boxes pulled and searched for Hayes, Leavitt, and<br/> 6 Fong since, just those three cases, or was this<br/> 7 something that was done prior to Hayes, Leavitt, and<br/> 8 Fong?<br/> 9 A. I guess my best answer would be neither.<br/> 10 In other words, they were done for -- to form<br/> 11 the -- as part of creating the global production set,<br/> 12 and then also as part of supplemental efforts for<br/> 13 Leavitt and Fong, such that the 1,600 represents the<br/> 14 boxes examined to date, or roughly 1,600.<br/> 15 Q. When were they first pulled?<br/> 16 A. I -- I have a general understanding that<br/> 17 they've been -- this is -- these are materials that<br/> 18 have been pulled over the last few years.<br/> 19 Q. Okay. And how many times were they<br/> 20 manually searched? How many different occasions?<br/> 21 A. My understanding is that they were<br/> 22 searched in response to their -- the specific key<br/> 23 words being responsive to those boxes. The boxes<br/> 24 were retrieved. If a box was -- surfaced again, if<br/> 25 it had been searched but if it surfaced the second</p>                                                                    | <p style="text-align: right;">Page 45</p> <p>1 A. I am aware that there's been document<br/> 2 production ongoing for many years, including for ten<br/> 3 years. My number of 1,600 I was -- returned<br/> 4 was -- was limited to the last few years, but I<br/> 5 am -- I understand that there have been materials<br/> 6 pulled for many, many years.<br/> 7 MR. SWANSON: Move to strike<br/> 8 nonresponsive portions.<br/> 9 Q. Okay. So in Leavitt and Fong, you<br/> 10 interviewed Pam Downs for a few minutes specifically<br/> 11 to resolve the ambiguity. And the resolution to the<br/> 12 ambiguity was what, that there was 1,600 boxes that<br/> 13 have been pulled, and -- and what was the rest of the<br/> 14 resolution of that ambiguity for you?<br/> 15 A. That was the number that had been opened<br/> 16 and examined for relevant material.<br/> 17 Q. Okay. And did she tell you or did you<br/> 18 ask her -- and this was from hundreds of thousands of<br/> 19 boxes, or thousands of boxes that existed in offsite<br/> 20 storage?<br/> 21 A. As I mentioned, I -- I know there to be<br/> 22 many thousands of boxes in offsite storage. I don't<br/> 23 know the precise number.<br/> 24 Q. And what was the -- what was the method<br/> 25 by which they chose to decide which boxes to pull</p> |

1 that led them to pulling to 1,600 boxes, if you know?

2       A.    There was -- yes. There was a list of  
3 key words. Those key words are provided in my  
4 materials. They contain search terms and phrases  
5 that were applied against the system.

6 Q. And if you go ahead and look at your  
7 general binder, and tell me what search terms you're  
8 referring to.

9 A. Tab 6.

10 Q. Okay. So that's Exhibit 6 to your  
11 deposition also.

12           And these search terms, this is, I don't  
13 know, about a ten-page list, or maybe an eight-page  
14 list. Correct?

15 A. Yes.

16 Q. It starts with "200-J" is the first  
17 search term, and the last one is "Zhizhua." And the  
18 document is titled, "Archive Search Terms as of  
19 9/7/2018." Correct?

20 A. Yes.

21 Q. When was this list of search terms  
22 generated initially?

23 A. My understanding is that it's been  
24 developed over the last couple of years.

25 Q. Was this the exact same set of search

1     A.    I do not.

2 Q. Have you spoken to anybody  
3 about -- what's your -- what's the source of your  
4 information about supplemental searches?

5       A. I have an understanding both from  
6 counsel and from the vendor that there were  
7 additional searches performed in connection with  
8 those cases.

9 Q. Okay. And that is which vendor?

10      A.    Triality.

11 Q. And that, again, is from your few-minute  
12 conversation with Pam Downs. Correct?

13 A. No. That also is reflected in my notes  
14 of my longer conversations with Miss Downs.

15 Q. The longer conversation happened in  
16 connection with the Hayes case. Correct?

17 A. Yes.

18 Q. Okay. But I just asked you about the  
19 supplemental searches for Leavitt and Fong.

20 A. Correct.

21 Q. So were you talking to her about the  
22 supplemental searches in Leavitt and Fong before you  
23 were working on those cases?

24 A. In a way I was, because I learned about  
25 other types of searches that had been done outside

1 terms that were used to decide which of those  
2 thousands of documents in offsite storage were  
3 pulled?

4     A.   My understanding is that this would have  
5   been applied against the repository to decide what  
6   was pulled. I also understand that there were  
7   additional targeted searches performed for the  
8   Leavitt and Fong cases.

9 Q. Are there search terms -- is this -- are  
10 there additional terms on this list that weren't on  
11 the list when they initially pulled the  
12 \$1,600 -- 1,600 boxes of documents from the thousands  
13 that you mentioned that was done some years ago, as  
14 you put it?

15 MR. COX: Object to form.

16 A. As I mentioned, the 1,600 represents the  
17 boxes examined to date in the -- and in the effort of  
18 the past couple years.

19 I don't know whether there were -- in  
20 the supplemental searches conducted for Leavitt and  
21 Fong if those search terms were -- were or were not  
22 incorporated into this list.

23 Q. Do you have a list of the search terms  
24 that were used in the supplemental search or searches  
25 that were done in Leavitt and Fong?

1 the United States, and I did not know the particulars  
2 of Leavitt and Fong, nor was my purpose to obtain  
3 information about Leavitt and Fong in those  
4 discussions. However, in reviewing my notes, they  
5 reflect searches that were done that would be  
6 relevant to Leavitt and Fong.

7 Q. So you're saying if I look at  
8 your -- your notes that you produced in the Hayes  
9 case and we look at your notes of your interview with  
10 Pam Downs, that there are references in there to this  
11 supplemental search in Leavitt and Fong, but not with  
12 the case name spelled out because you didn't know  
13 about the case yet? Is that what you're saying?

14     A.    There are references to searches in  
15 outside U.S. locations.

16 Q. Okay. And can you point that to me?

17 And I think we'll go ahead and mark this as the next  
18 in order. This will be Exhibit 18.

(Exhibit 18, Witness' Notes in the Hayes Case, marked for identification.)

21 Q. So can you describe for the record --

22 MR. SWANSON: Do you have a copy for him

23 there? In fact, let's mark that one, if you would,  
24 so I can mark mine up.

25 Q. Handing you Exhibit 18.



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| <p style="text-align: right;">Page 50</p> <p>1 Are those your notes from the Hayes</p> <p>2 case?</p> <p>3 A. Yes, they are.</p> <p>4 Q. Okay. And generally speaking, what are</p> <p>5 those notes of in the Hayes case?</p> <p>6 A. These reflect my interview notes where I</p> <p>7 sought to understand the nature of the systems,</p> <p>8 policies, and background information, as well as</p> <p>9 collection efforts for documents related to the</p> <p>10 subject matter of that case.</p> <p>11 Q. All right. And can you take us in this</p> <p>12 document to the notes regarding your conversation</p> <p>13 with Pam Downs.</p> <p>14 A. Yes. I just want to note that you had</p> <p>15 originally asked me about the 1,600 boxes and</p> <p>16 the -- the archive, and I believe we are talking now</p> <p>17 about searches that would apply outside the U.S. to</p> <p>18 Leavitt and Hayes that wouldn't necessarily speak to</p> <p>19 the archive but would speak to other locations. I</p> <p>20 just want to make that clear.</p> <p>21 Q. Well, no, I mean, I didn't say anything</p> <p>22 about searches that were outside the country. You</p> <p>23 had mentioned supplemental searches in terms of</p> <p>24 the -- the search terms, or -- or in terms of the</p> <p>25 search that had been done that you talked to Pam</p> | <p style="text-align: right;">Page 52</p> <p>1 and then back up four pages to where it says page 4.</p> <p>2 Q. Okay. And to page 4?</p> <p>3 A. Yes.</p> <p>4 Q. All right. And what does it say at</p> <p>5 page 4?</p> <p>6 A. There is a follow-up conversation from</p> <p>7 May 4th with Ms. Downs called -- the subtitle</p> <p>8 is "Foreign collection follow-up." And it has a</p> <p>9 section on Philippines and a section on Hong Kong.</p> <p>10 Q. Okay. It also has -- and this</p> <p>11 conversation happened in May of 2018. True?</p> <p>12 A. Yes.</p> <p>13 Q. All right. So, again, you weren't</p> <p>14 working on Leavitt and Fong at the time, but you had</p> <p>15 talked to her about out of -- outside the country</p> <p>16 collections. True?</p> <p>17 A. That's right.</p> <p>18 Q. For what's referred to as foreign</p> <p>19 collections here. And including Canada, UK. It</p> <p>20 says "paper." Philippines Paper, Hong Kong, Peru,</p> <p>21 Turkey, Poland, Austria. See that?</p> <p>22 A. Yes.</p> <p>23 Q. So now when you spoke -- what day did</p> <p>24 you speak to Pam Downs the last time?</p> <p>25 A. About a week ago.</p>                                               |
| <p style="text-align: right;">Page 51</p> <p>1 Downs about in this case. And then but you said in</p> <p>2 Leavitt and Fong, but then you mentioned that you had</p> <p>3 spoken to her in the Hayes case specifically about</p> <p>4 that. And what I want to do is go in here and see</p> <p>5 where you're talking about.</p> <p>6 A. Okay. Yeah, I just wanted to --</p> <p>7 MR. COX: Object to form.</p> <p>8 A. -- because I think we've -- we've gone</p> <p>9 down the road and I believe the last couple questions</p> <p>10 I answered were, in my mind, about the collection</p> <p>11 efforts outside the U.S.</p> <p>12 Now, the materials collected would have</p> <p>13 been added -- incorporated in the production, but the</p> <p>14 notes I'm referring to where I learned that searches</p> <p>15 were being done that might have applicability</p> <p>16 specifically to Leavitt and Hayes were in this paper.</p> <p>17 Q. Well, okay. Move to strike. No</p> <p>18 question was pending.</p> <p>19 But just take me to the notes, the Pam</p> <p>20 Downs notes --</p> <p>21 A. Okay.</p> <p>22 Q. -- that you made in the Hayes case, and</p> <p>23 let's look at that and I'll ask some questions about</p> <p>24 it.</p> <p>25 A. So let's go to the end of the document</p>                                                       | <p style="text-align: right;">Page 53</p> <p>1 Q. Okay. And do you have notes of that</p> <p>2 conversation?</p> <p>3 MR. COX: Object to form. Outside the</p> <p>4 scope.</p> <p>5 A. Yeah. As I mentioned before, no.</p> <p>6 Q. Okay. All right. So you don't have</p> <p>7 notes of that conversation, but -- but during that</p> <p>8 few-minute conversation, what was it that you</p> <p>9 gathered about this supplemental search that you then</p> <p>10 connected to the prior conversation that you had had</p> <p>11 with Pam Downs?</p> <p>12 MR. COX: Object to the form.</p> <p>13 A. I -- I don't believe it surfaced in that</p> <p>14 conversation.</p> <p>15 Q. Did you talk about foreign collections</p> <p>16 during that conversation that you had for a few</p> <p>17 minutes with Pam Downs just a week and a half ago?</p> <p>18 A. Not that I recall.</p> <p>19 Q. Okay. And then what was it that led you</p> <p>20 to conclude that your discussion with her on May 4,</p> <p>21 2018, was connected with these supplemental</p> <p>22 productions?</p> <p>23 A. I -- I learned from counsel that there</p> <p>24 were specific OUS searches conducted in -- in four</p> <p>25 specific cases.</p> |



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25 A. Yeah, in general that's correct. I

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| <p style="text-align: right;">Page 58</p> <p>1 derived the Bates number ranges through an Excel<br/> 2 spreadsheet that was referenced in the production<br/> 3 response. And then I basically pasted those Bates<br/> 4 numbers into the Relativity search tool and retrieved<br/> 5 the documents that corresponded to them.<br/> 6 Q. Okay. And you realize for some of those<br/> 7 requests there were thousands of Bates numbers. So<br/> 8 this was just sort of a random selection, is that<br/> 9 correct, that you actually looked at?<br/> 10 A. Yes.<br/> 11 Q. Okay. Now -- and I -- I hope not to get<br/> 12 too bogged down on this because there's bigger<br/> 13 picture items here. But on the 1,600 boxes -- I want<br/> 14 to go back to this -- did you audit that production?<br/> 15 MR. COX: Object to the form.<br/> 16 A. I -- could you clarify? What do you<br/> 17 mean by "audit," and what -- what production?<br/> 18 Q. You said that there were 1,600<br/> 19 document -- 1,600 boxes of documents that had been<br/> 20 searched in the last few -- few years for, I guess,<br/> 21 talc documents? Is that correct?<br/> 22 A. Yes. Documents in -- in connection with<br/> 23 several cases involving talc.<br/> 24 Q. Okay. But it wasn't just particular to<br/> 25 the Hayes case or Leavitt and Fong. We've already</p> | <p style="text-align: right;">Page 60</p> <p>1 multiple facilities.<br/> 2 Q. Okay. And you haven't visited those<br/> 3 facilities.<br/> 4 A. That's right.<br/> 5 Q. And you got that information from<br/> 6 counsel and Pam Downs. Is that right?<br/> 7 A. And from the -- from the collection team<br/> 8 onsite. In other words, the company employees.<br/> 9 Q. And of these multiple Iron Mountain<br/> 10 locations, is there some sort of index that is<br/> 11 searchable regarding the contents of those boxes, of<br/> 12 all the boxes? Not just the 1,600.<br/> 13 MR. COX: Object to the form.<br/> 14 A. My understanding is that there is a -- a<br/> 15 system called ERMS that is a system devoted to<br/> 16 the -- let's call it the boxed materials that the<br/> 17 Records Department tracks for J&amp;J, CI, and that would<br/> 18 be considerate of offsite locations such as Iron<br/> 19 Mountain facilities. It may also encompass file<br/> 20 locations at facilities such as Skillman and Fort<br/> 21 Washington. That -- that ERMS system, which is a<br/> 22 successor to several other systems used by the<br/> 23 company, has a complete record of information<br/> 24 contained in its -- from the standpoint of those<br/> 25 other systems, announcing -- to answer your question</p>                                                                                                                      |
| <p style="text-align: right;">Page 59</p> <p>1 got that. Correct?<br/> 2 A. Yes. As I understood it, those -- it<br/> 3 was a cumulative effort over the years.<br/> 4 Q. Okay. And did you audit every step of<br/> 5 that document search and production?<br/> 6 MR. COX: Object to the form. Go ahead.<br/> 7 A. By "audit," you mean?<br/> 8 Q. Well, I mean, did you review each step<br/> 9 of the process so that -- to see whether or not that<br/> 10 was in compliance with whatever standards you would<br/> 11 apply?<br/> 12 MR. COX: Object to the form.<br/> 13 A. I -- I talked to counsel. I talked to<br/> 14 the vendor. I talked to the collection personnel at<br/> 15 the company to understand the steps that were taken.<br/> 16 So I -- I -- I understood the overall series of steps<br/> 17 with respect to a particular box. I did not -- I did<br/> 18 not audit, as I understand you to be asking.<br/> 19 Q. Okay. Was there an index? The -- well,<br/> 20 first of all, the physical location of the tens of<br/> 21 thousands of boxes that exist, is that an Iron<br/> 22 Mountain facility, or multiple Iron Mountain<br/> 23 facilities? Do you know?<br/> 24 MR. COX: Object to the form.<br/> 25 A. My -- my knowledge is that it's at</p>                                                                                 | <p style="text-align: right;">Page 61</p> <p>1 as accurately as I can, in terms of the precise<br/> 2 location of those boxes? That system called ERMS<br/> 3 connects to a system at Iron Mountain called Iron<br/> 4 Mountain Connect.<br/> 5 As I understand it, the only things<br/> 6 stored in the Iron Mountain-specific system, in other<br/> 7 words, Iron Mountain's own system, is the box number<br/> 8 and the physical location where the box is stored in<br/> 9 its facilities.<br/> 10 Q. Now, you said that the EMR -- ERMS<br/> 11 system has a complete record of information in it.<br/> 12 You're -- are you saying that it has a complete<br/> 13 record of the information -- the contents of the box?<br/> 14 A. No, I am saying that it is a compilation<br/> 15 of the former systems that were in use over the years<br/> 16 at the -- at both the Fort Washington and Skillman<br/> 17 facilities -- and I'm sorry, and Morris Plains.<br/> 18 Q. Okay. And I'm trying to look at this as<br/> 19 a little more nuts and bolts things, because you say<br/> 20 it incorporates other systems. I guess my question<br/> 21 is, thinking about an index and trying -- if -- if<br/> 22 I'm thinking about this simplistically, and this<br/> 23 isn't a question, I'm just trying to give you some<br/> 24 context of my thinking when I'm asking this question,<br/> 25 is I'm looking at an index to try to figure out</p> |

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| <p style="text-align: right;">Page 62</p> <p>1 what's in all of these tens of thousands of boxes.<br/> 2 Then that index is going to provide, presumably, some<br/> 3 information about the contents of those boxes of<br/> 4 documents. Do you understand that concept?<br/> 5 MR. COX: Objection to form.<br/> 6 A. Yes, I do.<br/> 7 Q. Regardless of whatever system you're<br/> 8 talking about, that's the way I'm looking at it.<br/> 9 Okay. So my question is when somebody<br/> 10 was trying to decide which documents -- which boxes<br/> 11 to pull to search in the last few years, what -- the<br/> 12 index they're looking at, what information, what is<br/> 13 the complete set of information that it contains<br/> 14 about the contents of each of those boxes in the Iron<br/> 15 Mountain facilities?<br/> 16 MR. COX: Object to the form.<br/> 17 A. There is a list of bibliographic<br/> 18 information about the box and there is a place to<br/> 19 create a textual annotation. The bibliographic<br/> 20 information might include, for instance, the<br/> 21 department that the box came from, and the -- the<br/> 22 person who checked the information in.<br/> 23 The textual information would be a place<br/> 24 to enter a description of the box contents.<br/> 25 Q. Okay. And did you actually look at</p> | <p style="text-align: right;">Page 64</p> <p>1 site, to T. Renay Lawson and Michelle Anderson.<br/> 2 Q. And did you review their -- and was this<br/> 3 an Iron Mountain facility?<br/> 4 A. No.<br/> 5 Q. Where was this location, the Fort<br/> 6 Washington location?<br/> 7 A. That's a Johnson &amp; Johnson Consumer,<br/> 8 Inc., facility.<br/> 9 Q. Okay. So when you're doing this review<br/> 10 of -- how -- how long were you there?<br/> 11 A. About half a day.<br/> 12 Q. And what did you do to go about finding<br/> 13 out what was on the ERMS system?<br/> 14 A. I interviewed Ms. Anderson, Ms. Lawson,<br/> 15 and subsequently others to learn more about the ERMS<br/> 16 system and its uses and its predecessors. That's<br/> 17 reflected in my notes. And I also asked for, on the<br/> 18 screen, a demonstration of the application.<br/> 19 Q. Okay. And in terms of you -- you<br/> 20 mentioned that there was bibliographic information.<br/> 21 In terms of your review on screen of the application,<br/> 22 what information -- how -- you were looking -- and<br/> 23 this may be the wrong question, but what volume of<br/> 24 information were you looking -- were you looking<br/> 25 at -- strike that.</p> |
| <p style="text-align: right;">Page 63</p> <p>1 these -- the amount of information that was contained<br/> 2 in this ERMS system regarding how much detail there<br/> 3 was about the contents of these tens of thousands of<br/> 4 boxes at Iron Mountain facilities?<br/> 5 A. Yes, I did a site visit, and in the<br/> 6 course of that site visit, I asked for a<br/> 7 demonstration of the ERMS application.<br/> 8 Q. And "site visit," which site did you<br/> 9 visit?<br/> 10 A. That would have been the Fort Washington<br/> 11 facility.<br/> 12 Q. Where is Fort Washington?<br/> 13 A. In Pennsylvania, outside Philadelphia.<br/> 14 Q. Okay. And who was there with you at<br/> 15 that site visit to the Fort Washington location?<br/> 16 A. Who was with me?<br/> 17 Q. Yeah.<br/> 18 A. In other words --<br/> 19 Q. Who -- who was there that --<br/> 20 A. Who was in the room?<br/> 21 Q. Yes.<br/> 22 A. Who came down with me? Who did I talk<br/> 23 to?<br/> 24 Q. All of it.<br/> 25 A. I was with Tom Fox. I spoke to, on</p>                                                                                                                                                                                                                                                                                           | <p style="text-align: right;">Page 65</p> <p>1 Were searches being done or were they<br/> 2 just showing you how the application worked?<br/> 3 A. I believe they demonstrated a search<br/> 4 function, as I recall.<br/> 5 Q. Were -- and what were they specifically<br/> 6 searching for?<br/> 7 A. The system can search both the<br/> 8 bibliographic elements and the textual elements.<br/> 9 Q. And were you able to tell in what -- in<br/> 10 that example search, you said "I believe." Are you<br/> 11 certain that you -- that they showed you an actual<br/> 12 search?<br/> 13 A. That's my recollection.<br/> 14 Q. Okay. And in that search that they did,<br/> 15 what were they searching for?<br/> 16 A. I -- I don't recall. That was a number<br/> 17 of months ago.<br/> 18 Q. Okay. And was the -- for -- and did you<br/> 19 find out how many, sort of, boxes are out there that<br/> 20 they have information for?<br/> 21 A. Frankly, no, I just really wanted to see<br/> 22 what the system looked like and how it operated on<br/> 23 the screen.<br/> 24 Q. Okay. Did you find out whether or not<br/> 25 the amount of detail of information in the ER -- ERMS</p>                                                     |

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| <p style="text-align: right;">Page 66</p> <p>1 about these boxes is always the same, or it varies?</p> <p>2 A. I learned -- and not necessarily from my</p> <p>3 demonstration, but through conversations through the</p> <p>4 interviews -- that there is a varying amount of</p> <p>5 information that may be kept for a particular box.</p> <p>6 There is a standard for entering that information and</p> <p>7 that is codified and is the province of the Records</p> <p>8 Department. But some boxes may have more or less</p> <p>9 detail.</p> <p>10 Q. So this is the standard for entering</p> <p>11 information that would then go into the ERMS system.</p> <p>12 Is that right?</p> <p>13 A. That's right.</p> <p>14 Q. Okay. And now, you said that this was</p> <p>15 something that had -- that was put together from</p> <p>16 other systems that already existed. Correct?</p> <p>17 A. Yes.</p> <p>18 Q. And how -- and now there's a standard.</p> <p>19 When was that standard put in place?</p> <p>20 A. You mean the --</p> <p>21 Q. The current standard for putting</p> <p>22 information about the boxes in the ERMS system, how</p> <p>23 long has that system been in place?</p> <p>24 MR. COX: Object to form.</p> <p>25 Q. The standard.</p>                                                                                                          | <p style="text-align: right;">Page 68</p> <p>1 MR. COX: Object to form.</p> <p>2 A. And I -- I'm interpreting your question</p> <p>3 to mean the varying information about each box as</p> <p>4 opposed to in each box.</p> <p>5 Q. Yes, that's what I meant, about the box</p> <p>6 in the ERMS.</p> <p>7 A. My general understanding of the</p> <p>8 description of the box is as follows, that there is</p> <p>9 sufficient room in the -- in the screen or</p> <p>10 descriptors, as it were, to describe boxes down to a</p> <p>11 document level, should that be necessary or desired.</p> <p>12 However, the -- notwithstanding the fact that there</p> <p>13 was a Records Department that oversaw the process,</p> <p>14 the responsibility for describing the contents of the</p> <p>15 box fell to the department contributing to that</p> <p>16 archive; and, therefore, it was really up to the</p> <p>17 individual department to decide how to name its</p> <p>18 boxes.</p> <p>19 Q. Okay. So did -- and was there a</p> <p>20 standard -- you said that it was up to them how to</p> <p>21 describe it, the department that it came from.</p> <p>22 Was there a standard in place</p> <p>23 that -- how does -- did the -- did the standard</p> <p>24 operating procedure, the current one, tell a</p> <p>25 department how to enter -- what information to enter</p>                                 |
| <p style="text-align: right;">Page 67</p> <p>1 A. I -- I don't know a specific date. I</p> <p>2 know that there has been for many, many years, at</p> <p>3 least going back to the -- well, certainly the '80s,</p> <p>4 there has been a Records Department whose function it</p> <p>5 is to file information on behalf of the company, and</p> <p>6 that they had certain conventions. I'm not certain</p> <p>7 as to when their standard operating procedures</p> <p>8 evolved over the years and what the -- what the</p> <p>9 current iteration is.</p> <p>10 Q. Okay. So you don't know when the</p> <p>11 current standard came in. Do you -- do you -- was it</p> <p>12 produced to us here? Did you bring with you this</p> <p>13 standard for entering information in the ERMS system</p> <p>14 about what the contents of the documents is?</p> <p>15 A. I did not.</p> <p>16 Q. Okay. And -- and do you know -- do</p> <p>17 you -- did you see the standards that were in place</p> <p>18 before the current standard?</p> <p>19 A. I had a general conversation about how</p> <p>20 the standards evolved and learned some elements about</p> <p>21 the standards.</p> <p>22 Q. And was the varying amount of</p> <p>23 information that existed in each box a result of</p> <p>24 updating of standards, or human error, or what was</p> <p>25 it, if you know?</p> | <p style="text-align: right;">Page 69</p> <p>1 specifically?</p> <p>2 MR. COX: Object to the form.</p> <p>3 A. My general understanding, my take-away</p> <p>4 from the conversation was that there was discretion.</p> <p>5 While there were certain elements that needed to be</p> <p>6 entered in correctly, bibliographic elements, that</p> <p>7 the way a box was described was -- in textual form</p> <p>8 was really left to the -- the needs and uses of</p> <p>9 the -- of the individual department.</p> <p>10 Q. Okay. So what is the current operating</p> <p>11 procedure? What is the required bibliographic</p> <p>12 information that's supposed to be entered?</p> <p>13 A. You know, I -- I don't have the list of</p> <p>14 fields with me. The -- as I mentioned, I reviewed</p> <p>15 the system in person. I spoke to them about it. I</p> <p>16 have an understanding of the general elements</p> <p>17 captured, but I don't have a specific list of the</p> <p>18 elements to provide you today.</p> <p>19 Q. Does it have -- now, and this might be</p> <p>20 going down a rabbit hole, but does this -- these</p> <p>21 documents that are in the offsite storage that</p> <p>22 we've -- we've got this ERMS, or indexing system for,</p> <p>23 were these boxes -- were these documents from both</p> <p>24 custodial and non-custodial sources in terms of their</p> <p>25 origins?</p> |

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| <p style="text-align: right;">Page 70</p> <p>1 MR. COX: Object to form.</p> <p>2 A. They may have been, yes.</p> <p>3 Q. Okay. But you don't know.</p> <p>4 A. Well, I can -- I can speak to the fact</p> <p>5 that there would be outputs of -- of business</p> <p>6 systems. In other words, systems owned by the</p> <p>7 central IT authority that would have had their</p> <p>8 printouts in the boxes. I can speak to the fact that</p> <p>9 custodians, when they submitted their information,</p> <p>10 were stored offsite. I have a general understanding</p> <p>11 that when a -- traditionally when a person left the</p> <p>12 company, their materials became associated with the</p> <p>13 department and, therefore, were departmental sources</p> <p>14 rather than custodial sources.</p> <p>15 Q. The bibliographic information, can you</p> <p>16 tell me any required elements of the bibliographic</p> <p>17 information?</p> <p>18 A. My recollection is that there would have</p> <p>19 been a -- some sort of a records series that would</p> <p>20 indicate its connection to a records retention</p> <p>21 schedule and a trigger date. In other words, a date</p> <p>22 for which that time frame would begin tolling.</p> <p>23 Q. Okay. Is there information -- now, so</p> <p>24 the biblio -- is there any -- in that description in</p> <p>25 the ERMS system bibliographic a requirement of -- it</p> | <p style="text-align: right;">Page 72</p> <p>1 So is there a date of collection of the</p> <p>2 document -- of the box -- sorry, of the documents?</p> <p>3 A. I'm -- I'm not specifically aware of</p> <p>4 whether there was a collection date or whether they</p> <p>5 were simply a date where they were taken to the</p> <p>6 records center and -- and given to the records center</p> <p>7 for -- for filing. I, once again, would have to</p> <p>8 check my notes.</p> <p>9 Q. Is there a -- in the bibliographic</p> <p>10 information, an indication of the date range of the</p> <p>11 documents in terms of when these documents were</p> <p>12 created?</p> <p>13 A. I -- I don't know.</p> <p>14 Q. Is there a requirement in -- to put in</p> <p>15 the bibliographic information a descriptor, any kind</p> <p>16 of descriptor of the contents of the documents, or is</p> <p>17 that in the textual part?</p> <p>18 A. My understanding is that there -- there</p> <p>19 are some description is required. I would certainly</p> <p>20 want to reference my notes to -- to solidify that</p> <p>21 information.</p> <p>22 Q. Okay. Go ahead and look at your notes</p> <p>23 and see if you can answer any of these questions</p> <p>24 that -- that we just went over in terms of what</p> <p>25 information is required.</p> |
| <p style="text-align: right;">Page 71</p> <p>1 says the department. Is that a requirement that it</p> <p>2 say the department, or do you know?</p> <p>3 A. That's my understanding.</p> <p>4 Q. That is a requirement.</p> <p>5 A. That's my understanding.</p> <p>6 Q. Is there a requirement that -- do you</p> <p>7 know if there's a requirement to list individuals</p> <p>8 that were involved in that department?</p> <p>9 A. You know, at this point, I mean, I've</p> <p>10 kind of hit the wall with my recollection. I can</p> <p>11 consult my notes and see if I have further</p> <p>12 information on what's required.</p> <p>13 Q. Okay. So without looking at your notes,</p> <p>14 you don't know if it includes a reference, the</p> <p>15 bibliographic information, to the individuals</p> <p>16 whose -- whose documents may be in there or who were</p> <p>17 custodian of those documents. True?</p> <p>18 MR. COX: Object to form.</p> <p>19 A. My general recollection is that it would</p> <p>20 not require that.</p> <p>21 Q. Does it have a date of -- now, these</p> <p>22 documents are now in offsite storage. So they had to</p> <p>23 be collected at one point. Correct?</p> <p>24 A. Yes.</p> <p>25 Q. Okay. And taken to offsite storage.</p>                                                                                                                                                      | <p style="text-align: right;">Page 73</p> <p>1 And for the record, what exhibit are you</p> <p>2 looking at?</p> <p>3 A. I'm looking at Exhibit 18. And I am</p> <p>4 starting with a section entitled, "Consumer</p> <p>5 records-Darren Harris," which is about halfway, a</p> <p>6 little less than halfway through the pile.</p> <p>7 Do you want me to read relevant</p> <p>8 excerpts, or --</p> <p>9 Q. No. First of all, if you find something</p> <p>10 in there that states what was required information</p> <p>11 currently in the bibliographic information, the</p> <p>12 standard for entering information into this index for</p> <p>13 these offsite -- offsite stored boxes, just tell me</p> <p>14 that you find something in there and it will help</p> <p>15 clarify, and then we can follow up on that.</p> <p>16 A. Okay. Well, I'm --</p> <p>17 MR. COX: Objection to form.</p> <p>18 A. Sorry. I'm on page 1 of "Consumer</p> <p>19 Records-Darren Harris."</p> <p>20 Q. Okay.</p> <p>21 A. Middle of the page. "Boxes always</p> <p>22 associated with a department, e.g., R &amp; D, there is</p> <p>23 no field with a product name, would put the product</p> <p>24 name in the narrative."</p> <p>25 Q. Okay. Is the product name required in</p>                                                                  |



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1 description, do you know specifically -- you said  
2 that was a discretionary thing before. Do you have  
3 any information that there was any particular  
4 information required in that description when that  
5 was transferred, the box?

6 A. Well, in answer to that question I'm now  
7 onto the next interview, "Consumer Records-Renay  
8 Lawson." And near the bottom of that first page I  
9 just have the notation that the Records Department  
10 inspects the form and the associated records  
11 themselves and verifies, including date ranges. So I  
12 take that to mean that there is a date range field  
13 included as well.

14 Also in Renay Lawson, middle of page  
15 2 -- and this is a section describing how ERMS is  
16 searched -- it references the fact that in the search  
17 results for ERMS you get a record name, a record  
18 title, and a description in the search report.

19 Q. Record name. What's record name?

20 A. I -- I don't know that in context, no.

21 Q. What's record title in context there?

22 A. I think I would associate that with the  
23 short summary that was referenced earlier.

24 Q. And, again, the summary is something  
25 that's discretionary.

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1 A. Well --  
2 Q. If you don't know, just say you don't  
3 know.  
4 A. Right. My -- my general understanding  
5 from Renay and Michelle was that someone had to put  
6 something in, and the Records Department checked,  
7 according to its procedures, that something  
8 was -- was put there.  
9 I -- I see also that there is a "Box  
10 Status" indication.  
11 Q. What does that mean, "Box Status"?  
12 A. Well, I don't know the options  
13 specifically. I can speak to the fact that  
14 it's -- there is a -- a notation in the system that  
15 says if a box has been brought back from storage  
16 to -- to the company, its status would be changed.  
17 So I think there are -- my understanding is that  
18 there are status files that indicate is this  
19 where -- where the box is, is it in storage, is it  
20 off storage.  
21 I have another -- and I think I'm done  
22 with my review of ERMS.  
23 Q. Okay.  
24 A. But there -- there may be other  
25 information spread across other interviews. There is



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| <p style="text-align: right;">Page 78</p> <p>1 some in the Rosina interview, but I -- I just<br/> 2 gathered from the Renay interview that there is also<br/> 3 a legal hold capability. So there would be an<br/> 4 ability to place a box on hold.<br/> 5 Q. Okay.<br/> 6 So these are not yet -- these aren't<br/> 7 necessary -- all of these thousands of boxes that are<br/> 8 in offsite storage aren't necessarily yet documents<br/> 9 that have already been put on a legal hold, but<br/> 10 there's a capability for putting that -- a note of<br/> 11 that into the system in the ERMS. Is that right?<br/> 12 MR. COX: Object to the form.<br/> 13 A. I know there's that provision. I don't<br/> 14 actually know how they -- how they use that.<br/> 15 Q. Okay.<br/> 16 Now, okay, so we've got some of this<br/> 17 basic information that you talked about. And you<br/> 18 said that the descriptions that are given, the<br/> 19 contents are variable. And so then when in the last<br/> 20 few years these searches were done, do you<br/> 21 know -- and I -- and I believe I already asked you,<br/> 22 but you're not certain whether or not this list of<br/> 23 search terms that you provided that's Exhibit 6 to<br/> 24 your deposition were the search terms used to find<br/> 25 those hundred an -- 1,600 boxes. Is that true?</p> | <p style="text-align: right;">Page 80</p> <p>1 A. What -- what I do know is that<br/> 2 the -- the search terms represent the cumulative<br/> 3 terms used for all cases to date. So they would be<br/> 4 inclusive of terms used in the Fong and Leavitt<br/> 5 cases.<br/> 6 Q. Okay. But when were these terms -- but<br/> 7 these have been generated over time. Correct?<br/> 8 A. This is a living list. So as -- as new<br/> 9 terms are added, they are incorporated into -- into<br/> 10 the list.<br/> 11 Q. And you can't tell me when any<br/> 12 particular term in this list was added in terms of<br/> 13 date or year. Correct?<br/> 14 A. Not from just looking at it, no.<br/> 15 Q. Well, is there some other information<br/> 16 that you have about when each of those search terms<br/> 17 have been added?<br/> 18 A. I mean, I could go back to the company<br/> 19 and ask if they have earlier versions.<br/> 20 Q. But you don't know that information,<br/> 21 sitting today here to answer questions in these<br/> 22 depositions on behalf of Johnson &amp; Johnson, when<br/> 23 these various search terms were added. Correct?<br/> 24 A. That's right. I understand this is a<br/> 25 cumulative list. I don't know when each term was</p> |
| <p style="text-align: right;">Page 79</p> <p>1 A. I'm sorry. One more time, please.<br/> 2 Q. Okay. That's fine.<br/> 3 So you've described -- you've described<br/> 4 what you know about this EMR system and the basic<br/> 5 information that it contains. And you said -- at<br/> 6 what point were search terms applied to -- into this<br/> 7 indexing system to spot the documents that were then<br/> 8 going to be pulled?<br/> 9 MR. COX: Object to the form. Go ahead.<br/> 10 A. I have a general understanding that<br/> 11 those search terms have been used at least for the<br/> 12 last few years.<br/> 13 Q. And these are the search terms that<br/> 14 you've given us that's Exhibit 6.<br/> 15 A. Does it say "archives search terms" on<br/> 16 it? Yes.<br/> 17 Q. "Archives search terms as of 9/7/2018."<br/> 18 A. Yes, that's -- that's what I provided.<br/> 19 Q. Okay. And do you have -- if you look at<br/> 20 that Tab 6 in your binder. Do you have that in front<br/> 21 of you?<br/> 22 A. I do.<br/> 23 Q. Okay. If we went through this list,<br/> 24 could you tell me at what point each of these search<br/> 25 terms were added to the search term list?</p>                                                                                                                                                              | <p style="text-align: right;">Page 81</p> <p>1 added.<br/> 2 Q. Okay. So I've got these search terms.<br/> 3 Let's say these are the current search terms, and I<br/> 4 want to -- and by the way, let's just, for the<br/> 5 record, because we'll get to this later, these<br/> 6 thousands -- whether it's tens or hundreds of<br/> 7 thousands of boxes in offsite storage. Do you know?<br/> 8 A. I do not.<br/> 9 Q. Okay. Thousands and thousands.<br/> 10 Correct?<br/> 11 A. Yes.<br/> 12 Q. Okay. When -- if we<br/> 13 want -- these -- this is not the entirety of all the<br/> 14 documents that Johnson &amp; Johnson has. Correct?<br/> 15 A. Correct.<br/> 16 Q. Okay. But -- but since you were talking<br/> 17 about these is why I'm focusing on this as kind of an<br/> 18 example of how these things -- trying to find out how<br/> 19 these things are done.<br/> 20 So what we now have, we've got search<br/> 21 terms and you've talked about what's in the ERMS.<br/> 22 And I'm looking at all these search terms. And how<br/> 23 do we -- if all these detailed search terms, how much<br/> 24 of that information is put in the ERMS, so that any<br/> 25 of it would even come up? Do you know?</p>                                          |

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| <p style="text-align: right;">Page 82</p> <p>1 MR. COX: Object to the form.</p> <p>2 A. I -- I just have a general understanding</p> <p>3 that the search terms are devised in such a way that</p> <p>4 they would be -- if -- they would be likely to find</p> <p>5 responsive material if it was named that way. In</p> <p>6 other words, they are reasonably calculated to equate</p> <p>7 to ways people would have named their -- their</p> <p>8 documents.</p> <p>9 Q. Is each document named in the ERMS, each</p> <p>10 specific document?</p> <p>11 A. No. That is a -- someone has the</p> <p>12 ability to describe a specific document. That is not</p> <p>13 required.</p> <p>14 Q. Right. And it's not -- none of</p> <p>15 these -- are any of these terms terms that are</p> <p>16 required in the bibliographic information of the ERMS</p> <p>17 index?</p> <p>18 MR. COX: Object to the form.</p> <p>19 A. I would agree.</p> <p>20 Q. Okay. So and you did nothing to</p> <p>21 determine, by taking -- looking at actual boxes or</p> <p>22 fully scanned boxes and looking at the ERMS in terms</p> <p>23 of what information is contained in an index to see</p> <p>24 to what extent these search terms would be successful</p> <p>25 at pulling up and locating responsive boxes of</p>                                                                       | <p style="text-align: right;">Page 84</p> <p>1 would be in locating search terms using these search</p> <p>2 terms would be in pulling responsive documents.</p> <p>3 True?</p> <p>4 A. Well, as I mentioned, I noted</p> <p>5 that -- that they obtained -- that those search terms</p> <p>6 retrieved roughly 1,600 boxes.</p> <p>7 Q. Okay. Did you do anything to determine</p> <p>8 sampling of pulling boxes, or asking somebody else to</p> <p>9 pull documents, to find out whether responsive</p> <p>10 documents or documents that would have these hits in</p> <p>11 them in the content of the documents in those boxes</p> <p>12 would be -- would be found, but were not found by the</p> <p>13 search terms? Do you understand the question?</p> <p>14 MR. COX: Object to the form.</p> <p>15 Q. And if you don't, I'll rephrase it.</p> <p>16 A. I believe I understand the question, and</p> <p>17 I -- in my discussions with Pam Downs and Renay</p> <p>18 Lawson, I determined that they opened boxes to</p> <p>19 examine them for content and responsiveness to</p> <p>20 the -- to the terms, and that the terms, themselves,</p> <p>21 were evolved over the course of the last couple years</p> <p>22 to make them as accurate and responsive as they could</p> <p>23 be. And that was based on, you know, not just a</p> <p>24 reckoning of the best terms, but also the experience</p> <p>25 of opening the boxes and looking at the documents.</p> |
| <p style="text-align: right;">Page 83</p> <p>1 documents. Correct?</p> <p>2 A. Well, I did two things. One, I spoke to</p> <p>3 the Records Department in general, and those are</p> <p>4 the -- many of the people I referred to, Renay,</p> <p>5 Michelle, others, Darren Harris, Rosina Sheerin, to</p> <p>6 understand -- we touched on this before, the</p> <p>7 standards and the fact that the Records Department</p> <p>8 will make sure that the naming of a box conforms to</p> <p>9 its standard.</p> <p>10 Secondly, I spoke to -- at length</p> <p>11 to -- to Renay Lawson. Now, Renay's -- much of her</p> <p>12 job responsibility by what she does a good chunk of</p> <p>13 the day is searching the ERMS index for these terms.</p> <p>14 And her -- she is a point person to associate has the</p> <p>15 box been named in accordance with -- with a search</p> <p>16 term.</p> <p>17 I didn't validate every search term with</p> <p>18 Renay, but I confirmed with her that these search</p> <p>19 terms are meaningful and produce results against how</p> <p>20 they are named in the consequence of her daily</p> <p>21 routine.</p> <p>22 Q. Move to strike as nonresponsive.</p> <p>23 Again, you didn't compare specifically</p> <p>24 the -- the protocol about what are required terms in</p> <p>25 the ERMS in this index to see how effective they</p> | <p style="text-align: right;">Page 85</p> <p>1 MR. SWANSON: Move to strike.</p> <p>2 Q. But you didn't do that work yourself.</p> <p>3 A. That's correct.</p> <p>4 Q. And you didn't from based on your own</p> <p>5 judgment decide what a -- what kind of procedure to</p> <p>6 devise when there's that many documents at issue in</p> <p>7 all of these search terms, when we're putting that</p> <p>8 next to what seems like relatively minimal required</p> <p>9 information in the ERMS, you never devised some kind</p> <p>10 of procedure for checking for errors and checking for</p> <p>11 boxes that aren't being pulled because the search</p> <p>12 terms aren't identifying them in the ERMS. True?</p> <p>13 MR. COX: Object to the form.</p> <p>14 A. What I will say is that I -- I sought to</p> <p>15 understand the overall methodology. I did not,</p> <p>16 myself, spot check, but I understood that the purpose</p> <p>17 of the search terms was to develop a very wide net,</p> <p>18 and that the reduction to more closely responsive</p> <p>19 topics would happen later. So the idea behind the</p> <p>20 search terms was to bring back the broadest category</p> <p>21 of responsive material.</p> <p>22 MR. SWANSON: Move to strike</p> <p>23 nonresponsive portions.</p> <p>24 Q. Okay. You didn't do the error checking</p> <p>25 procedure; and, furthermore, the -- what I'm trying</p>                                                 |

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| <p style="text-align: right;">Page 86</p> <p>1 to get at is you gave me a list of just -- you gave</p> <p>2 us a list of just a few items that goes into this</p> <p>3 ERMS. Okay?</p> <p>4 A. I'm sorry?</p> <p>5 Q. There's a few required fields that go</p> <p>6 into the ERMS. Now, when you're doing a search and</p> <p>7 using these search terms, you're searching the ERMS</p> <p>8 to determine which of those thousands upon thousands</p> <p>9 of documents to pull to then search more thoroughly.</p> <p>10 Correct?</p> <p>11 A. I agree.</p> <p>12 Q. Okay. And -- and nothing gets</p> <p>13 completely scanned until at least those documents are</p> <p>14 pulled in and reviewed, those 1,600. Correct?</p> <p>15 MR. COX: Object to the form.</p> <p>16 A. Correct.</p> <p>17 Q. So if there's terms missing from the</p> <p>18 ERMS in terms of what information got entered, then</p> <p>19 you're going to miss documents, boxes of documents.</p> <p>20 Correct?</p> <p>21 MR. COX: Object to the form.</p> <p>22 A. It's possible.</p> <p>23 Q. Okay. And you did not, yourself, devise</p> <p>24 a procedure that would be adequate to the task to</p> <p>25 make sure that all responsive documents and boxes</p>                                                                                                                                                                                | <p style="text-align: right;">Page 88</p> <p>1 Q. The folks that you talked to in Records</p> <p>2 Retention. Do they -- okay. You've said you didn't</p> <p>3 devise a procedure to check to see if there were</p> <p>4 errors in terms of not finding responsive boxes of</p> <p>5 documents. Okay? You said that you -- you talked to</p> <p>6 these folks in Records, and that they had some kind</p> <p>7 of procedure for that. Did -- did I misquote you?</p> <p>8 A. Yes. Well, there's two constituencies.</p> <p>9 There's the Records Department, itself, which sets</p> <p>10 the standards, which they're the retrieval</p> <p>11 team -- and we're talking about some of the same</p> <p>12 people such as Renay -- knew the standards by which</p> <p>13 documents were named; were familiar from spending</p> <p>14 every day looking at box descriptions, how they were</p> <p>15 named; and, thirdly, opened up boxes and verified</p> <p>16 that the contents were reflective, and evolved the</p> <p>17 search terms over the years to make them as accurate</p> <p>18 as possible.</p> <p>19 Q. Okay. So when they -- when they ran</p> <p>20 search terms and they got a hit, and they got those</p> <p>21 boxes, they confirmed that the con -- something in</p> <p>22 those contents reflected what they thought based on</p> <p>23 the search term hit that they got. Correct?</p> <p>24 A. Yes.</p> <p>25 Q. Okay. But did -- what was the procedure</p>               |
| <p style="text-align: right;">Page 87</p> <p>1 were getting pulled. Correct?</p> <p>2 MR. COX: Object to the form.</p> <p>3 A. I have a couple of answers to that. I</p> <p>4 did -- I personally did not view it as part of my</p> <p>5 assignment to perform that verification. I</p> <p>6 interviewed people to understand that there were</p> <p>7 procedures in place and controls that would maximize</p> <p>8 the -- the returned boxes and correspondence with</p> <p>9 the -- with the outcomes. I spoke to the Records</p> <p>10 Department to understand how they named boxes.</p> <p>11 Because let's face it, it's not -- they don't just</p> <p>12 name boxes so that they're responsive to litigation</p> <p>13 terms, they need to be able to name a box to get it</p> <p>14 back from storage in a meaningful way just for</p> <p>15 business purposes. If a box is poorly named, that</p> <p>16 doesn't help them in any case. So the purpose of the</p> <p>17 Records Department standard is to make sure boxes are</p> <p>18 retrievable by known means.</p> <p>19 Q. Okay. Move to strike everything after</p> <p>20 you didn't do the work.</p> <p>21 So you said they had some kind of</p> <p>22 procedure in place for checking to see if they're</p> <p>23 missing boxes. Is that what you meant by that?</p> <p>24 MR. COX: Object to the form.</p> <p>25 A. I -- can we clarify who "they" is?</p> | <p style="text-align: right;">Page 89</p> <p>1 to confirm that their ERMS terms were adequate to</p> <p>2 pull all responsive boxes of documents?</p> <p>3 A. Well, it's my understanding that the</p> <p>4 nature of search terms in general is that they</p> <p>5 are -- they are not -- there can't be a perfect set</p> <p>6 of search terms to retrieve everything, that this is</p> <p>7 a best effort, good faith approach that evolves over</p> <p>8 time that is as self-correcting as possible and that</p> <p>9 has evolved to the point where it's as accurate as</p> <p>10 can be made. Now, will it evolve again in a month or</p> <p>11 two? Perhaps. They are -- it's under continuous</p> <p>12 refinement. As boxes are opened and contents are</p> <p>13 understood and contents are named, they -- they are</p> <p>14 improving it as best they can.</p> <p>15 Q. Well, the search terms, regardless of</p> <p>16 how these search terms, how thorough the search terms</p> <p>17 are -- and we can certainly go through and find some</p> <p>18 things in the search terms that maybe should be in</p> <p>19 there -- but those search terms are not the terms</p> <p>20 that are in the ERMS. So until you get a box of</p> <p>21 documents and scan it, you're not running all of</p> <p>22 those search terms through the actual contents of the</p> <p>23 document. Right?</p> <p>24 MR. COX: Object to the form.</p> <p>25 Q. You're running them compared next to</p> |

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| <p style="text-align: right;">Page 90</p> <p>1 this indexing of the ERMS. True?</p> <p>2 A. Based on the descriptions that someone</p> <p>3 entered into the box contents, yes.</p> <p>4 Q. Which by your own admission are variable</p> <p>5 in terms of the level of detail. Correct?</p> <p>6 A. Variable, but subject to standards and</p> <p>7 review, yes.</p> <p>8 Q. And what is the training of the people</p> <p>9 who decide what search terms to put on there and</p> <p>10 what -- let me just. Strike that.</p> <p>11 The folks who are putting these search</p> <p>12 terms in the ERMS -- okay?</p> <p>13 A. Yes.</p> <p>14 Q. That are discretionary, those search</p> <p>15 terms. You said some were -- there were a few that</p> <p>16 were not discretionary in terms of department. Do</p> <p>17 they have this list of search terms with them so they</p> <p>18 know that if there are contents of the boxes that</p> <p>19 are -- contain these types of terms that they should</p> <p>20 be entering those terms?</p> <p>21 MR. COX: Object to the form.</p> <p>22 A. Well, I have a logical deduction that</p> <p>23 they -- these are -- if something is put in offsite</p> <p>24 storage, it's going to be a historic document. So</p> <p>25 it's -- it's going to be something that was chosen to</p> | <p style="text-align: right;">Page 92</p> <p>1 some of the testing.</p> <p>2 Q. Okay. Are they in the -- the archives</p> <p>3 terms?</p> <p>4 A. I'm -- I'm not aware if they are or not.</p> <p>5 Q. Can you look?</p> <p>6 A. Sure.</p> <p>7 I don't see them in the listing.</p> <p>8 Q. That should be in there, shouldn't it?</p> <p>9 MR. COX: Object to the form.</p> <p>10 A. Well, I -- I wouldn't want to render an</p> <p>11 opinion as to what should or shouldn't be there.</p> <p>12 I -- I'm not involved with the construction of</p> <p>13 the -- the search terms.</p> <p>14 Q. If you were looking for talc testing</p> <p>15 results from the Vermont Mines at issue where</p> <p>16 Johnson &amp; Johnson gets talc -- got talc from its baby</p> <p>17 powder that were testing from RJ Lee, would you want</p> <p>18 the name RJ Lee in there if you were the one devising</p> <p>19 the search terms?</p> <p>20 MR. COX: Object to the form and beyond</p> <p>21 the scope of the notice.</p> <p>22 A. Yeah, I mean, I would probably go to the</p> <p>23 specific department and ask them how they name their</p> <p>24 boxes for those types of materials.</p> <p>25 Q. Okay. Do you know what Windsor Minerals</p>              |
| <p style="text-align: right;">Page 91</p> <p>1 be filed because it's -- it's older.</p> <p>2 I don't know if for prospective items</p> <p>3 going into offsite filing, if these search terms are</p> <p>4 evaluated. I -- I am aware that members of the</p> <p>5 Records Department are -- know these search terms,</p> <p>6 and in the case of Ms. Lawson, use these search</p> <p>7 terms. I don't know if they are known and</p> <p>8 incorporated into the go-forward procedures.</p> <p>9 Q. You don't know specifically if these</p> <p>10 search terms are incorporated intentionally into the</p> <p>11 box descriptions, do you?</p> <p>12 A. I do not.</p> <p>13 Q. In the ERMS. Okay.</p> <p>14 Do you know who RJ Lee is?</p> <p>15 A. Yes.</p> <p>16 Q. Okay. And what do you know about RJ Lee</p> <p>17 when it comes to Johnson &amp; Johnson?</p> <p>18 A. RJ Lee is a third-party that has been</p> <p>19 contracted for certain testing procedures.</p> <p>20 Q. Talc testing procedures. Correct?</p> <p>21 A. Yes.</p> <p>22 Q. And they do the actual testing, true, as</p> <p>23 far as you know?</p> <p>24 A. The actual testing? I know they do</p> <p>25 testing. I don't know if they do all the testing,</p>                                                                                          | <p style="text-align: right;">Page 93</p> <p>1 is?</p> <p>2 A. Yes.</p> <p>3 Q. Okay. And under the search terms here,</p> <p>4 archives search terms, it says, "Windsor</p> <p>5 Minerals," in quotation marks. Will that search term</p> <p>6 in this ERMS pull up "Windsor"?</p> <p>7 A. I don't know.</p> <p>8 Q. Because normally if you put something in</p> <p>9 quotes, it just pulls up that full term. Correct?</p> <p>10 MR. COX: Object to the form.</p> <p>11 A. Yes. I mean, in many languages with</p> <p>12 Boolean interrelational operators, there would be</p> <p>13 that result. I don't know, and I can't speak to the</p> <p>14 ERMS search engine, how it produces its results.</p> <p>15 Q. Okay.</p> <p>16 A. I don't know.</p> <p>17 Q. Do you agree with me that if an acronym</p> <p>18 is used in documents, let's say e-mails or other</p> <p>19 kinds of documents, to describe something, that that</p> <p>20 should be a search term?</p> <p>21 MR. COX: Object to the form.</p> <p>22 A. Well, I -- I don't feel that I can speak</p> <p>23 to what should be a search term in this case. I have</p> <p>24 a general understanding that in many search</p> <p>25 applications acronyms can be put into a synonym list</p> |

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| <p style="text-align: right;">Page 94</p> <p>1 and expanded at search time. I don't know how ERMS<br/>2 operates.<br/>3 Q. Now, these archives search terms, are<br/>4 these solely for doing the search of the ERMS to<br/>5 decide what boxes to pull, or are these search terms<br/>6 that are actually used to search documents once<br/>7 they're scanned --<br/>8 MR. COX: Objection.<br/>9 Q. -- to find what actual specific<br/>10 documents that might be relevant or responsive to a<br/>11 document request?<br/>12 MR. COX: Object to the form.<br/>13 A. My understanding is that these terms<br/>14 apply only to the search of ERMS.<br/>15 Q. Okay.<br/>16 So based on what information was in ERMS<br/>17 about those 1,600 documents -- boxes, some search<br/>18 terms were put in. Those were pulled. Who did the<br/>19 pulling of the boxes?<br/>20 A. Well, Iron Mountain went into its<br/>21 warehouse, got the box, and delivered it back<br/>22 to -- to the company facilities.<br/>23 Q. Okay. A box with a lid on it?<br/>24 A. Yeah -- yes, a label.<br/>25 Q. And a label. And, what, would the label</p> | <p style="text-align: right;">Page 96</p> <p>1 Q. And then did you say there was also<br/>2 company people who would be involved in that?<br/>3 A. Well, Ms. Lawson.<br/>4 Q. Ms. Lawson. Do you know specifically<br/>5 which ones were opening boxes?<br/>6 A. I wouldn't be able to break it down to<br/>7 the opening of the boxes. I know that -- that<br/>8 that -- that group was involved in the review of the<br/>9 materials.<br/>10 Q. Okay. So did anybody describe to you in<br/>11 detail what the review of a particular box,<br/>12 how -- how the process, how that process went?<br/>13 A. I -- I don't have a step-by-step<br/>14 recounting of it, but I may have some information in<br/>15 my notes that reflects some of the elements of that.<br/>16 Q. Okay. So when they -- when they opened<br/>17 these boxes, what was the next step -- if you know,<br/>18 and only if you know, because I don't want you to<br/>19 speculate. What was the next step in the search for<br/>20 responsive documents?<br/>21 MR. COX: Object to the form.<br/>22 A. Well, as I just mentioned, I don't have<br/>23 a step-by-step analysis. I know in a general level<br/>24 that the boxes, the contents were examined for<br/>25 whether they were relevant. And I'm</p> |
| <p style="text-align: right;">Page 95</p> <p>1 have a box number or something like that?<br/>2 A. Yes.<br/>3 Q. Okay. Brought it back to the company.<br/>4 To whom or where at the company?<br/>5 A. I don't know that in every case it was<br/>6 Renay Lawson, but she was described as the person who<br/>7 was the -- the point person for the retrieval of<br/>8 boxes.<br/>9 Q. This is at Port Washington.<br/>10 A. Fort Washington.<br/>11 Q. Fort Washington. Sorry.<br/>12 All right. So all these boxes get there<br/>13 that had numbers. Then whose job was it to open the<br/>14 boxes?<br/>15 A. I have general knowledge that -- that<br/>16 Pam Downs and others may have been involved from the<br/>17 Records Department, and the legal team, but I'm<br/>18 not -- I'm not specifically aware of who opened boxes<br/>19 and who looked at them.<br/>20 Q. Pam Downs is from an outside vendor.<br/>21 Right?<br/>22 A. Yes.<br/>23 Q. The legal team are J&amp;J's lawyers.<br/>24 Right?<br/>25 A. Yes.</p>                                                                                                         | <p style="text-align: right;">Page 97</p> <p>1 using "relevant" and "responsive" interchangeably.<br/>2 I'm not a lawyer. I -- I just -- I'm going to use<br/>3 those terms, one or the other.<br/>4 If relevant materials were found, they<br/>5 would -- there would be a sheet inserted to indicate<br/>6 that material had been removed for the discovery<br/>7 process, and those materials would be sent to the<br/>8 legal team.<br/>9 Q. Okay. Do you know which -- do you know<br/>10 if the legal team did any of the actual -- and you're<br/>11 talking about physical thumbing through documents, is<br/>12 that right, in a box? Is that what you're talking<br/>13 about?<br/>14 A. Yes.<br/>15 Q. Okay. Do these have -- these have<br/>16 folders in them or just box of thousands of pages?<br/>17 MR. COX: Object to the form.<br/>18 A. Once again, it's really up to the<br/>19 department to decide how it -- how it puts things in<br/>20 a box, whether it's folders, Redwelds, loose pages.<br/>21 That's -- that would be up to departmental standards.<br/>22 Q. Okay. Do you know what the protocol<br/>23 was -- you said departmental standards. Did it vary<br/>24 by department, or do you know?<br/>25 A. Yes, it did vary by department.</p>          |



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| <p style="text-align: right;">Page 98</p> <p>1 Q. Okay. And do you know what those<br/>2 protocols or standards were for each department?<br/>3 A. Well, as I mentioned, each department<br/>4 had the discretion to decide how to do it. I -- I<br/>5 don't know that there was a written protocol for each<br/>6 department. I know that each department had the<br/>7 responsibility for determining the -- the way a box<br/>8 was organized.<br/>9 Q. All right. So -- and, again, do you<br/>10 know -- and I apologize if I just asked this<br/>11 question. Did Johnson &amp; Johnson's lawyers do any of<br/>12 this page-by-page thumbing through these documents at<br/>13 that point to decide what was what you called<br/>14 relevant or responsive?<br/>15 MR. COX: Object to the form. Go ahead.<br/>16 A. You know, I know -- I know counsel was<br/>17 involved with the process. I don't know, and -- and<br/>18 I couldn't -- and I don't even think if I knew I<br/>19 would be able to say the interactions at that point.<br/>20 I think that goes to counsel's business. But I -- I<br/>21 don't -- I don't have specific knowledge either way.<br/>22 Q. How many different individuals were<br/>23 thumbing through these pages of 1,600 boxes?<br/>24 MR. COX: Object to the form.<br/>25 A. I -- I don't know. I do know that there</p> | <p style="text-align: right;">Page 100</p> <p>1 doing?<br/>2 MR. COX: Object to the form.<br/>3 A. I know they comprised records personnel,<br/>4 outside vendors, and attorneys. I don't know their<br/>5 specific training.<br/>6 Q. Now, you -- you just said that you<br/>7 didn't know if any actual attorneys did the thumbing<br/>8 through, that initial thumbing through. True?<br/>9 MR. COX: Object to the form.<br/>10 Q. I'm just talking about these people now<br/>11 who were thumbing through the -- these boxes to find<br/>12 relevant documents.<br/>13 MR. COX: Asked and answered.<br/>14 A. Yeah, I don't know which individuals<br/>15 thumbed through the documents.<br/>16 Q. And you don't know specifically what<br/>17 their instructions were. Correct?<br/>18 A. I have a general understanding that<br/>19 their instructions were to find materials that would<br/>20 be relevant to the -- to the case and to the search<br/>21 terms.<br/>22 Q. Okay. Which search terms?<br/>23 A. The -- the search terms that were<br/>24 provided in the -- in the listing.<br/>25 Q. Okay. Before you said these search</p>                                                                                                                                                                                                                                                                                                     |
| <p style="text-align: right;">Page 99</p> <p>1 was -- Ms. Lawson provided continuity to the process.<br/>2 I don't know how many people were working with her.<br/>3 Q. She was around watching it?<br/>4 A. She was the point person.<br/>5 Q. Okay. She's the point person. Were any<br/>6 of these people doing the searching lawyers?<br/>7 A. I know that the lawyers were involved.<br/>8 I can't speak to the specific involvement.<br/>9 Q. Okay.<br/>10 Do you know what the training of any of<br/>11 those individuals who were actually thumbing through<br/>12 the documents was?<br/>13 A. I -- I have Ms. Lawson's background. I<br/>14 don't -- I know that she was acting under attorney<br/>15 supervision. I know that the attorneys were -- had<br/>16 supervisory authority over the process. I don't know<br/>17 the training of each individual because I don't know<br/>18 each individual that looked at the documents.<br/>19 Q. Do you know what the training was<br/>20 specifically as to what each individual -- and we<br/>21 don't know how many individuals it was that were<br/>22 thumbing through these documents for relevant or<br/>23 responsive information. Do you know what the<br/>24 specific training was and instruction of each of<br/>25 those individuals for what they were supposed to be</p>                    | <p style="text-align: right;">Page 101</p> <p>1 terms were the ERMS search terms. Are you saying<br/>2 that these are the search terms now that they're<br/>3 doing search terms -- they're using all of these<br/>4 search terms, each of the people who are looking<br/>5 through, thumbing through these documents?<br/>6 MR. COX: Object to the form.<br/>7 Q. Because this is a different step of the<br/>8 process now. They've pulled these 1,600<br/>9 documents -- boxes of documents. Now they're<br/>10 thumbing through them to find stuff that -- what you<br/>11 call relevant. And so what specifically, if you<br/>12 know -- and please don't speculate -- was the<br/>13 application of these search terms that you've<br/>14 attached that -- that's been attached as Exhibit 6 to<br/>15 your deposition to -- what was the application of<br/>16 those by these individuals when they're thumbing<br/>17 through these boxes of documents in terms of<br/>18 determining what documents to pull or mark?<br/>19 A. They were a reference aid. I -- I don't<br/>20 think they were dispositive. In other words, if you<br/>21 saw something relevant that wasn't in a search term,<br/>22 it would still be viewed -- the -- the documents that<br/>23 were retrieved were the ones relevant. The search<br/>24 terms were used, obviously, at the beginning of the<br/>25 process, but they also were available as a reference</p> |



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1 and references the search terms.

2 Q. I didn't ask you that question. I was  
3 asking about the individuals who actually were doing  
4 thumbing through the documents. You didn't know if  
5 those were attorneys. You didn't know how many  
6 individuals those were. You didn't know what the  
7 training of those people were. Correct?

8 A. Correct.

9 Q. And you don't know whether or not they  
10 had this set of search terms in front of them that  
11 they were checking those documents against, correct,  
12 when they did that search? You don't specifically  
13 know that. Correct?

14       A.    I -- I do know that regardless of  
15 whether the search terms then immediately go to the  
16 attorneys that there is someone who goes through the  
17 documents and determines what's -- pulls the ones  
18 that are relevant.

19 MR. SWANSON: Nonresponsive. Move to  
20 strike.

21 Q. These documents, when these 16 -- so in  
22 this first part of the process, you said that the  
23 descriptions on these boxes were variable in terms of  
24 the level of detail. You're agreeing with me that  
25 using those -- these search terms, search terms in

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1 which the term "RJ Lee" is missing, that you could  
2 miss boxes of documents that could have responsive  
3 information. Correct?

4 MR. COX: Object to the form, beyond the  
5 scope of the notice.

6 O. True?

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1 which the term "RJ Lee" is missing, that you could  
2 miss boxes of documents that could have responsive  
3 information. Correct?

4 MR. COX: Object to the form, beyond the  
5 scope of the notice.

6 O. True?

7 A. Based just on the search terms, yes.

8 Q. Okay. And furthermore, if you have  
9 individuals with unknown levels of training and how  
10 much they're specifically -- how closely they're  
11 reading each set of boxes that ends up getting  
12 pulled, you could miss more documents at that stage  
13 of the process, true, in terms of locating responsive  
14 documents?

15 MR. COX: Object to the form, beyond the  
16 scope of the notice.

17 A. To my understanding, it's possible.

18 Q. Okay. And wouldn't it be better  
19 even -- let's say in a hypothetical world you had a  
20 perfect set of search terms that even included "RJ  
21 Lee" and, let's say, "Windsor," or maybe, you  
22 know, "WMI," for Windsor Minerals Incorporated.  
23 Let's say it had everything in it. Wouldn't it be  
24 better once you had those 1,600 boxes to scan all of  
25 it and at that point do your searches?

23 Let's say it had everything in it. Wouldn't it be  
24 better once you had those 1,600 boxes to scan all of  
25 it and at that point do your searches?

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| <p style="text-align: right;">Page 106</p> <p>1 MR. COX: Objection to the form of the</p> <p>2 question. Beyond the scope of the notice.</p> <p>3 Q. So that you make sure that at least in</p> <p>4 your applying this -- these search -- archives search</p> <p>5 terms everything that everybody who is thinking about</p> <p>6 this has come up with, with possible relevant search</p> <p>7 terms, would be applied to every single document in</p> <p>8 those boxes? Wouldn't that be a better way to do it?</p> <p>9 MR. COX: Objection to the form of the</p> <p>10 question and beyond the scope of the notice.</p> <p>11 Q. In terms of eliminating error so that</p> <p>12 you don't miss relevant documents? That would be a</p> <p>13 better way. True?</p> <p>14 MR. COX: Same objections.</p> <p>15 A. My understanding, just from my notes,</p> <p>16 there are, for instance, boxes that have multiple</p> <p>17 record series in them that one record series may have</p> <p>18 nothing to do with the one that returned the search</p> <p>19 hit. If you're asking as a general proposition,</p> <p>20 if -- if ingesting everything is -- is a best</p> <p>21 practice? I -- I don't know that including materials</p> <p>22 known to be not responsive is -- is safer or better,</p> <p>23 or only creates additional cost, expense, bulk,</p> <p>24 difficulty. If the search is to winnow down from the</p> <p>25 overall population that which is responsive, I do not</p> | <p style="text-align: right;">Page 108</p> <p>1 Mr. Mittenthal?</p> <p>2 A. Yes.</p> <p>3 Q. Okay. A lot of terms here, so I</p> <p>4 apologize if sometimes my confusing -- if my</p> <p>5 questions get a little confusing.</p> <p>6 Now, when you went to Fort Washington to</p> <p>7 observe an example of the process of searching with</p> <p>8 the ERMS. You did that. Correct?</p> <p>9 A. Well, I wouldn't characterize that as</p> <p>10 really the -- my mission. I went to interview people</p> <p>11 in the --</p> <p>12 Q. Well, I'm not asking what your mission</p> <p>13 was. Sorry to cut you off. I was just asking, just</p> <p>14 confirming, you had said earlier that you looked at</p> <p>15 the example -- the system and an example of a search.</p> <p>16 Is that true?</p> <p>17 A. Yes.</p> <p>18 Q. Okay. I just want to ask about that.</p> <p>19 A. Okay.</p> <p>20 Q. You've talked about what you were doing</p> <p>21 there.</p> <p>22 So how -- when you were there, were you</p> <p>23 looking -- when they showed you a search, were they</p> <p>24 showing you the results of a search where there had</p> <p>25 been a positive hit for things and -- and the -- the</p>                                                                                                                                                                   |
| <p style="text-align: right;">Page 107</p> <p>1 see it as productive to include things known to not</p> <p>2 be responsive.</p> <p>3 Q. Known not to be responsive, but not</p> <p>4 known to you because you don't know specifically all</p> <p>5 these details about what was done when these folks</p> <p>6 were actually thumbing through the documents and what</p> <p>7 their specific instructions were.</p> <p>8 MR. COX: Object to the form.</p> <p>9 A. That's right. I don't know.</p> <p>10 MR. COX: Mark, is now a good time to</p> <p>11 take a break?</p> <p>12 MR. SWANSON: What time is it?</p> <p>13 MR. COX: It's 12:40 or 12:35.</p> <p>14 MR. SWANSON: Sure. Do you want to get</p> <p>15 your lunch now?</p> <p>16 MR. COX: Why don't we do that.</p> <p>17 MR. SWANSON: Reasonable time to do it.</p> <p>18 Let's go off the record.</p> <p>19 THE VIDEOGRAPHER: Going off the video</p> <p>20 record at 12:35 p.m.</p> <p>21 (A lunch recess is taken.)</p> <p>22 A F T E R N O O N S E S S I O N</p> <p>23 THE VIDEOGRAPHER: We are back on the</p> <p>24 video record 1:31 p.m.</p> <p>25 Q. Are you ready to continue,</p>                                                                                                                                                                                                                                                                                                                                              | <p style="text-align: right;">Page 109</p> <p>1 descriptive -- the descriptive field or whatever</p> <p>2 fields were in the ERMS about those boxes, or were</p> <p>3 they doing new searches?</p> <p>4 A. From what I recall, it wasn't even that</p> <p>5 involved. It was we've talked about the system for a</p> <p>6 number of minutes. I just want to visualize what it</p> <p>7 looks like on the screen, the input fields, and saw</p> <p>8 how something was retrieved. It was a very short</p> <p>9 demonstration of that. I don't recall much beyond</p> <p>10 that brief demonstration of here's the -- here's the</p> <p>11 form which had our information in. Here's how you</p> <p>12 can pull information out.</p> <p>13 Q. Okay. Did you observe the -- actually</p> <p>14 observe the descriptive fields of a sampling of</p> <p>15 boxes?</p> <p>16 A. You mean while I was onsite?</p> <p>17 Q. Yes, or -- or in any other form.</p> <p>18 A. I may have looked at some descriptions</p> <p>19 on the screen. I don't recall anything specific.</p> <p>20 Q. Okay. Now, you said -- were there boxes</p> <p>21 that were missing descriptive fields, where the</p> <p>22 descriptive field was empty?</p> <p>23 A. Were there boxes where --</p> <p>24 Q. Did you observe any box descriptions</p> <p>25 where the description or textual field was empty?</p> |

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| <p style="text-align: right;">Page 110</p> <p>1 A. I don't recall that, no.</p> <p>2 Q. Okay. Do you know how many textual or</p> <p>3 descriptive fields you observed of -- of boxes, for</p> <p>4 how many different boxes?</p> <p>5 A. Just while the system was being</p> <p>6 explained to me or demo'd to me?</p> <p>7 Q. Yes.</p> <p>8 A. Probably just one or two.</p> <p>9 Q. In what other context have you seen the</p> <p>10 descriptive fields for boxes for Johnson &amp; Johnson's</p> <p>11 talc litigation production?</p> <p>12 A. I've had it described to me in the</p> <p>13 course of the discussions with Michelle Anderson,</p> <p>14 Renay Lawson, Darren Harris, Rosina Sheerin. I don't</p> <p>15 believe I've seen it anywhere else.</p> <p>16 Q. Okay. So you couldn't say one way or</p> <p>17 the other whether there are boxes among these</p> <p>18 thousands and thousands of boxes that actually don't</p> <p>19 have any textual information, descriptive field</p> <p>20 filled in at all. Correct?</p> <p>21 A. I know that it was a policy that there</p> <p>22 would be descriptive information that the Records</p> <p>23 Department would incorporate as part of its</p> <p>24 procedures. I -- I can't verify that they were there</p> <p>25 in every case.</p>                                                                                                                                          | <p style="text-align: right;">Page 112</p> <p>1 the source of the documents, do you know whether or</p> <p>2 not it would be marked by his department or title</p> <p>3 name, or by his -- the individual's name, "William</p> <p>4 Ashton," or "Ashton"?</p> <p>5 MR. COX: Object to the form.</p> <p>6 A. Well, the first thing I'm going to do in</p> <p>7 terms of answering the question is to consult the</p> <p>8 custodian list. And I see that he is a senior</p> <p>9 research associate, as far as last known position, as</p> <p>10 presented in the custodian list under Tab 3 of the</p> <p>11 general binder. I would -- I don't know if</p> <p>12 Mr. Ashton is a current employee or a former employee</p> <p>13 at this point. My understanding would be if he was a</p> <p>14 former employee, his materials, to the extent that</p> <p>15 they were filed offsite, would be filed under this</p> <p>16 department. So I would infer that senior research</p> <p>17 associate would have something to do with R &amp; D and</p> <p>18 that his materials would be associated with the R &amp; D</p> <p>19 file. Not necessarily under his custodial name, but</p> <p>20 with those departmental records.</p> <p>21 Q. Okay. Was that something you were told</p> <p>22 or you're making some assumptions here based on what</p> <p>23 you've learned, or some conclusions about it?</p> <p>24 A. Well, I -- I tried to make it clear. I</p> <p>25 don't know if he's a current or former employee. I</p> |
| <p style="text-align: right;">Page 111</p> <p>1 Q. Now, you said that some of the boxes had</p> <p>2 to be -- that one of the purposes, from what you</p> <p>3 understood, in terms of the descriptive field was</p> <p>4 it's not just for litigation, but so it could be for</p> <p>5 pulling boxes again for business purposes. Correct?</p> <p>6 A. Well, that -- that would be the -- the</p> <p>7 principal purpose would be for -- for business.</p> <p>8 If -- if a box was a litigation box, it wouldn't have</p> <p>9 been -- I don't think it would have gone through that</p> <p>10 process. In other words, the -- the filing of boxes</p> <p>11 for retention purposes is part of the ordinary</p> <p>12 business operations.</p> <p>13 Q. Okay. And if the purpose is a business</p> <p>14 purpose, then the descriptive field that's put in</p> <p>15 isn't a litigation purpose at that point. Correct?</p> <p>16 A. As a general proposition, I would -- I</p> <p>17 would agree.</p> <p>18 Q. Okay. And so, for example, do you know</p> <p>19 who William Ashton is, Bill Ashton?</p> <p>20 A. I'm not familiar with that name.</p> <p>21 Q. Okay. He was a senior scientist, and he</p> <p>22 may have had other titles through the years.</p> <p>23 Do you know, for example, whether or not</p> <p>24 his boxes that would have his documents in there or</p> <p>25 his information where he was the custodian or he was</p> | <p style="text-align: right;">Page 113</p> <p>1 know that if he is a former employee and his</p> <p>2 materials were sent offsite, they would have been</p> <p>3 filed under his department.</p> <p>4 Q. Okay. And what was the name of the</p> <p>5 department?</p> <p>6 A. I -- I don't know the name of his</p> <p>7 department. I infer that it would be something to do</p> <p>8 with research and development because he is a senior</p> <p>9 research associate.</p> <p>10 Q. Okay. But if the descriptive -- the</p> <p>11 descriptive field, or the fields, so the department</p> <p>12 would be a hit, but you wouldn't -- but if they're in</p> <p>13 the search terms, if you're running ERMS search</p> <p>14 terms, or just as a search term for research and</p> <p>15 development, for example, that -- that broad? I</p> <p>16 don't think I saw that. And for -- do you see that</p> <p>17 in the search terms?</p> <p>18 A. I have not -- I don't have the search</p> <p>19 terms in front of me.</p> <p>20 Q. Okay.</p> <p>21 A. Here they are. I don't know that there</p> <p>22 would be a search term for research and</p> <p>23 development --</p> <p>24 Q. Right.</p> <p>25 A. -- because the department itself is a</p>                                                                                                                                                                                                                                                                           |

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| <p style="text-align: right;">Page 114</p> <p>1 bibliographic field.</p> <p>2 Q. Okay. So you're not going -- if there's</p> <p>3 documents that he authored, William Ashton did, then</p> <p>4 in order to catch those documents we would have to</p> <p>5 catch something in the descriptive field because just</p> <p>6 the department isn't going to be enough reason to</p> <p>7 pull those doc -- wouldn't have been enough reason to</p> <p>8 pull those documents. Correct?</p> <p>9 MR. COX: Object to the form.</p> <p>10 A. Yeah. I mean, this is very speculative</p> <p>11 because I don't -- you know, he may have his name in</p> <p>12 a box description. I -- I don't think that was the</p> <p>13 convention. And, further, if he was a current</p> <p>14 employee, he -- he would have been interviewed as to</p> <p>15 where his materials were. So there would have been</p> <p>16 additional information available if he was still</p> <p>17 present. I would say that generally we -- we know, I</p> <p>18 know that the department is required to be entered in</p> <p>19 that field. So if -- if the department is R &amp; D, for</p> <p>20 instance, that would have been included as part of</p> <p>21 the search criteria. And other factors would have</p> <p>22 been potentially leveraged to find his information,</p> <p>23 if not his name.</p> <p>24 Q. Do you know if that 1,600 boxes of</p> <p>25 documents that were pulled from those thousands and</p> | <p style="text-align: right;">Page 116</p> <p>1 Q. Okay. My -- my point is if they're</p> <p>2 doing it for business purposes, it may be, the</p> <p>3 search -- the -- the description -- the textual field</p> <p>4 or descriptive field might very well refer to his</p> <p>5 title, correct, files of senior research assistant?</p> <p>6 MR. COX: Object to the form.</p> <p>7 Q. True?</p> <p>8 A. It's possible. And as I mentioned</p> <p>9 before, it's up to each department, so the research</p> <p>10 or R &amp; D department, to determine how they want to</p> <p>11 name their boxes and retrieve them.</p> <p>12 Q. Exactly. And if they name them that way</p> <p>13 and that doesn't happen to coordinate with the terms</p> <p>14 that have been generated by the lawyers, these</p> <p>15 archives search terms, or whoever develops these</p> <p>16 archives search terms, then that's not going to get</p> <p>17 identified in an ERMS search in order to decide what</p> <p>18 boxes to pull. Correct?</p> <p>19 A. In -- in theory that's correct. I do</p> <p>20 understand that they -- people like Renay Lawson, who</p> <p>21 ran the searches, had been at the company many years,</p> <p>22 familiar with the search terms, familiar with the</p> <p>23 people who work there, familiar with how to retrieve</p> <p>24 their information. I can't speak to, as I mentioned</p> <p>25 in the last response, how she actually constructed</p> |
| <p style="text-align: right;">Page 115</p> <p>1 thousands, if documents were -- boxes were pulled</p> <p>2 solely based on the department? In other words, were</p> <p>3 there -- was there a hit for the -- for the talc</p> <p>4 litigation when they were doing these searches over</p> <p>5 the past years that you mentioned, was that a</p> <p>6 hit -- was that a reason to pull one of those 1,600</p> <p>7 boxes? Do you know?</p> <p>8 A. I frankly don't know if department was</p> <p>9 included when the search terms were executed, if</p> <p>10 department was left blank, or if departments were</p> <p>11 explicitly specified. I don't know.</p> <p>12 Q. Okay. And so if it said "department,"</p> <p>13 it -- you know, if it were his documents and it had</p> <p>14 his -- his -- just his title, okay, senior research</p> <p>15 assistant, or senior scientist, or something like</p> <p>16 that, it wouldn't come up if that's not in the</p> <p>17 archives search terms. True?</p> <p>18 MR. COX: Object to the form.</p> <p>19 A. Well, I -- once again, I don't know that</p> <p>20 these -- these -- the custodian list and position, I</p> <p>21 don't necessarily know are fodder for the search term</p> <p>22 list. The archives search term list is the set of</p> <p>23 terms that we've seen. I don't believe they searched</p> <p>24 on "Ashton" or "senior research associate" if it's</p> <p>25 not in the -- the list of search terms.</p>            | <p style="text-align: right;">Page 117</p> <p>1 the searches other than using the search terms. My</p> <p>2 understanding is that she ran searches that were</p> <p>3 calculated to derive the relevant information, and</p> <p>4 that would have included interviewing Mr. Ashton or</p> <p>5 anyone else, if they were available to be</p> <p>6 interviewed, and understanding from them directly</p> <p>7 where their information might live.</p> <p>8 Q. Move to strike everything after "That is</p> <p>9 correct."</p> <p>10 Does Johnson &amp; Johnson have an Iron</p> <p>11 Mountain in the UK?</p> <p>12 A. My understanding that there are Iron</p> <p>13 Mountain facilities around the world, but</p> <p>14 they -- Johnson &amp; Johnson does not just use Iron</p> <p>15 Mountain. I -- I don't know specifically of an Iron</p> <p>16 Mountain facility in the UK. There may be.</p> <p>17 Q. Does Johnson &amp; Johnson have physical</p> <p>18 repositories in the UK, document repositories?</p> <p>19 A. Of any kind?</p> <p>20 Q. Yes.</p> <p>21 A. It has physical repositories in Europe.</p> <p>22 I don't know which -- which service parts of the</p> <p>23 business. I don't know which countries those</p> <p>24 facilities are located in.</p> <p>25 Q. Do you know if those -- strike that.</p>                                                                                                                                             |

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| <p style="text-align: right;">Page 118</p> <p>1 Now, we had talked about the process</p> <p>2 where somebody's thumbing through these boxes and</p> <p>3 trying to figure out if something is responsive. Do</p> <p>4 you know whether or not that individual</p> <p>5 was -- had -- well, first of all, when this process</p> <p>6 was done, this was over the years, correct, that you</p> <p>7 described where they pulled these 1,600 boxes? This</p> <p>8 wasn't just for the Hayes case or the Fong case or</p> <p>9 the Leavitt case. Correct?</p> <p>10 A. Correct.</p> <p>11 Q. Okay. And so when that person is</p> <p>12 thumbing through these documents, they're not looking</p> <p>13 at a particular discovery request at that point.</p> <p>14 Correct?</p> <p>15 A. Well, I can't speak to, at a particular</p> <p>16 moment, whether they are doing it in response to a</p> <p>17 case or not. I -- what I do know is that that is the</p> <p>18 cumulative number of boxes retrieved over the last</p> <p>19 couple of years of searches regardless of they were</p> <p>20 for a specific case or not.</p> <p>21 Q. Now, if somebody's pulling documents and</p> <p>22 they get a hit -- well, let's say there's a hit on</p> <p>23 that box, and then they go through and they find</p> <p>24 something maybe that corresponds to the hit, do they</p> <p>25 in that -- and they find a document, and let's say</p>        | <p style="text-align: right;">Page 120</p> <p>1 the widest scope of material. So if a document was</p> <p>2 viewed as responsive, its neighbors would be</p> <p>3 collected, as well.</p> <p>4 Q. Okay. And this is something</p> <p>5 you've -- your understanding about this comes from</p> <p>6 the attorneys, Johnson &amp; Johnson's attorneys. Is</p> <p>7 that right?</p> <p>8 A. Yes.</p> <p>9 Q. Okay. And when you say "broad," what do</p> <p>10 you mean? What does that encompass in terms of how</p> <p>11 that determination got made at the time by the person</p> <p>12 who was thumbing through the documents? In other</p> <p>13 words, what is -- what's -- if you -- if you get a</p> <p>14 document that's responsive to the search because</p> <p>15 there's a search term hit on that, and you've got</p> <p>16 other documents around it that don't have that search</p> <p>17 term hit, what's the process for determining what the</p> <p>18 larger set of documents are that may be related or</p> <p>19 that are relevant?</p> <p>20 MR. COX: Object to the extent that</p> <p>21 you're asking about attorneys' thought processes</p> <p>22 here, and you shouldn't reveal those in your answer.</p> <p>23 A. Yeah. My understanding simply is that</p> <p>24 the widest container would be pulled. So if</p> <p>25 there's -- if there's documents in a -- in a Redweld,</p>            |
| <p style="text-align: right;">Page 119</p> <p>1 it's in a folder, do they pull the whole folder, or</p> <p>2 do they just pull that one document that they believe</p> <p>3 is responsive to whatever the search term or search</p> <p>4 purpose is at that time?</p> <p>5 MR. COX: Object to the form.</p> <p>6 A. My understanding is that they would pull</p> <p>7 at least the folder, if not all the surrounding</p> <p>8 material. If it could be in any way viewed as</p> <p>9 potentially relevant, that portion of the box would</p> <p>10 be -- would be pulled.</p> <p>11 Q. Okay. And what -- what specifically is</p> <p>12 the protocol for doing that? In other words, you say</p> <p>13 potentially relevant, but what's -- what is the</p> <p>14 instruction on how to decide whether or not an entire</p> <p>15 folder or, let's say, an entire Redweld, a larger</p> <p>16 folder has -- is relevant?</p> <p>17 MR. COX: I think we're getting into</p> <p>18 attorney/client privilege and work product area here.</p> <p>19 But if you can answer without revealing</p> <p>20 any of that, please do.</p> <p>21 A. Yeah, I just have general knowledge that</p> <p>22 the intention was to cast a very wide net and to be</p> <p>23 as inclusive as possible, mindful that there would be</p> <p>24 further efforts downstream to assess relevance, as</p> <p>25 well. So that if -- every effort was made to collect</p> | <p style="text-align: right;">Page 121</p> <p>1 the whole Redweld would be pulled. If there's</p> <p>2 Redwelds next to it that are part of that set, all</p> <p>3 those Redwelds would be pulled. If there's Redwelds</p> <p>4 that have a different product, for instance,</p> <p>5 something that says "Vaseline" -- I don't know if</p> <p>6 that's even a Johnson &amp; Johnson product -- but those</p> <p>7 documents may not have necessarily been pulled. So</p> <p>8 it's -- it's what I would call a conservative</p> <p>9 approach, the -- the biggest set of whatever was in</p> <p>10 the box, or even the entire box itself.</p> <p>11 Q. Other than learning that through Johnson</p> <p>12 &amp; Johnson's lawyers, what -- did you specifically</p> <p>13 observe the culling of documents that way, where they</p> <p>14 were taking the entire Redweld because there was a</p> <p>15 single document in there where there was a search</p> <p>16 term hit?</p> <p>17 A. My -- my knowledge is based on my</p> <p>18 discussions with the collection team, the vendors,</p> <p>19 and counsel. So I -- I did not serve as an observer</p> <p>20 of culling processes.</p> <p>21 Q. The collection team, did you talk to the</p> <p>22 people who actually went through these documents by</p> <p>23 hand?</p> <p>24 MR. COX: Object to the form.</p> <p>25 Q. Who did the actual labor of going</p> |



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| <p style="text-align: right;">Page 122</p> <p>1 through and deciding which document or which Redweld<br/>2 to pull?</p> <p>3 A. As I believe I answered before, I talked<br/>4 to people like Renay Lawson who were involved in the<br/>5 process. I don't know who actually touched the<br/>6 documents beyond what's in my notes.</p> <p>7 Q. Did Renay specifically tell you that she<br/>8 had given instructions to whoever it was who was<br/>9 thumbing through the documents to pull an entire<br/>10 Redweld if there was a document within that Redweld?</p> <p>11 A. If she had said something like that, it<br/>12 would have been in my notes, and I don't believe<br/>13 that's in my notes.</p> <p>14 Q. Okay.</p> <p>15 And what information from a folder or a<br/>16 box or a Redweld gets maintained by Johnson &amp; Johnson<br/>17 after it's identified a document it believes is<br/>18 relevant to talc litigation or responsive to a<br/>19 document request in talc litigation?</p> <p>20 MR. COX: Object to the form.</p> <p>21 A. I don't understand the question. When<br/>22 you say "maintained," what does that mean?</p> <p>23 Q. Well, for example, if -- if -- if<br/>24 there's a Redweld and it's got some documents in<br/>25 there and there's a particular document of interest</p>                                                                              | <p style="text-align: right;">Page 124</p> <p>1 produced. True?</p> <p>2 A. Yeah. I'm looking at the -- the<br/>3 information right now. Yeah, I -- I don't -- I don't<br/>4 see it, and I don't know how information, for<br/>5 instance, written on a Redweld would be -- where that<br/>6 would be presented.</p> <p>7 Q. Now, once there's an ERMS search and<br/>8 there are hits for boxes, are all of those boxes that<br/>9 come up as positive hits pulled without exception for<br/>10 manual review?</p> <p>11 A. That is my understanding.</p> <p>12 Q. Okay. And what's the source of that<br/>13 understanding?</p> <p>14 A. Discussions with -- with Pam Downs as to<br/>15 the fact that -- that boxes that were responsive to<br/>16 the search criteria were -- were pulled.</p> <p>17 Q. Now, you mentioned that, if I'm correct,<br/>18 that a lawyer, a Johnson &amp; Johnson lawyer, gets a<br/>19 report of the positive ERMS hits. Is that correct?</p> <p>20 A. Well, I don't know if it's a<br/>21 Johnson -- it's a -- it's a -- some -- a member of<br/>22 the legal team gets a report, a report of the -- of<br/>23 the hits, a summary report from the ERMS system.</p> <p>24 Q. Okay. And does that contain the ERMS<br/>25 information that we talked about, the textual field</p>                  |
| <p style="text-align: right;">Page 123</p> <p>1 or more than one, what information about any<br/>2 descriptions on the Redweld or on the box, itself, if<br/>3 we're talking about the bigger box context, or on a<br/>4 smaller folder, in any of these situations? And<br/>5 maybe we'll have to break it down. What information<br/>6 is maintained once those documents get entered into a<br/>7 database, for example, scanned?</p> <p>8 A. Yeah, I am aware that there are<br/>9 references to locations in the metadata of the<br/>10 production set. I don't know directly how<br/>11 subdivisions of a box would -- would be indicated. I<br/>12 can look at the descriptions of the metadata and try<br/>13 to adduce that. I don't know it offhand.</p> <p>14 Q. Do you know if there are<br/>15 handwritten -- a description on a Redweld, for<br/>16 example, if that gets scanned in and associated with<br/>17 a family of documents in which there are, quote,<br/>18 relevant documents?</p> <p>19 A. Yeah, I -- I can't answer that directly.<br/>20 I have knowledge that there are coding manuals and<br/>21 conventions that are customarily used in these types<br/>22 of cases, but I don't know specifically.</p> <p>23 Q. So if there are notes or comments or<br/>24 descriptors on Redwelds, you -- you don't know<br/>25 whether or not those actually get preserved and</p> | <p style="text-align: right;">Page 125</p> <p>1 and the bibliographic information?</p> <p>2 A. My notes indicate that there -- there<br/>3 are, I think, the three fields in the report. I<br/>4 don't know if there's other fields in the report.</p> <p>5 Ms. Lawson, as I recall, who told me about the<br/>6 report, did not show me a sample of it.</p> <p>7 Q. What are the three fields?</p> <p>8 A. Let me go back to my notes.</p> <p>9 Ms. Lawson told me -- and this is on<br/>10 page 2 of my notes with her, I'm just going to read<br/>11 it: "ERMS hits result in a report generated sent to<br/>12 the attorney." She mentioned the record name, the<br/>13 record title, and the description. She did not<br/>14 indicate if that was it or if there were other<br/>15 fields. She said those fields are definitely part of<br/>16 the report.</p> <p>17 Q. Okay.</p> <p>18 Now, what -- what's the purpose -- do<br/>19 you know what the purpose of providing the attorney<br/>20 at that point a separate report if all the boxes are<br/>21 going to be pulled anyway?</p> <p>22 A. Yeah. I mean, I think that goes to just<br/>23 the -- the attorney work product. Certainly it's to<br/>24 let the attorneys know what was found. But in terms<br/>25 of methodology and -- and work process, I wouldn't</p> |



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| <p style="text-align: right;">Page 126</p> <p>1 know.</p> <p>2 Q. Okay. Is there a discretionary part of</p> <p>3 this process in there where the attorney may decide</p> <p>4 at that point once they get the report with</p> <p>5 the -- with the positive ERMS hits from the search to</p> <p>6 not have a box of documents --</p> <p>7 MR. COX: Object.</p> <p>8 Q. -- pulled?</p> <p>9 MR. COX: Object on privilege grounds.</p> <p>10 You're asking what -- what attorneys are deciding.</p> <p>11 Don't answer the question.</p> <p>12 MR. SWANSON: Well, all right. But -- I</p> <p>13 mean, this document search information necessarily</p> <p>14 involves lawyers when they're involved in it, and</p> <p>15 he's the representative to talk about those searches.</p> <p>16 So I'll see if I can rephrase it, but he's -- I've</p> <p>17 got to be able to find out how these searches are</p> <p>18 done.</p> <p>19 Q. Do you know that as a result of these</p> <p>20 reports that get generated to the lawyers, the</p> <p>21 decisions get made to not pull some of the documents,</p> <p>22 to not pull some of the boxes where there was a hit</p> <p>23 from the ERMS search?</p> <p>24 A. I -- I don't know what decisions are</p> <p>25 made, whether they are to not pull boxes or not. I</p>                                                                                                                                   | <p style="text-align: right;">Page 128</p> <p>1 are any exceptions to that in terms of attorney</p> <p>2 decisionmaking, I don't know.</p> <p>3 Q. Okay. I'm going to move to strike that.</p> <p>4 I wasn't asking about the widest approach.</p> <p>5 I asked you just specifically a very</p> <p>6 narrow question. Do you know whether or not all the</p> <p>7 boxes that are identified in an ERMS search, setting</p> <p>8 aside the dispositioned ones, get pulled? Yes or no?</p> <p>9 A. I -- I don't know.</p> <p>10 Q. Now -- and I -- I went at this a</p> <p>11 different way. I was asking about descriptions on</p> <p>12 Redwelds and folders and boxes. And you had</p> <p>13 mentioned that maybe in the metadata that information</p> <p>14 gets preserved. But if documents get pulled and then</p> <p>15 they're determined to be relevant to the talc</p> <p>16 litigation and now the next process is they would get</p> <p>17 scanned in. Is that correct? They would get scanned</p> <p>18 and put in some type of database?</p> <p>19 A. Correct.</p> <p>20 Q. Okay. In that database, then, is there</p> <p>21 enough information about that document to identify</p> <p>22 what box it came from? Let's start at the box level.</p> <p>23 A. I don't know specifically, as I</p> <p>24 mentioned, about the metadata. From the scanning</p> <p>25 process, I do know -- and this is reflected in</p> |
| <p style="text-align: right;">Page 127</p> <p>1 have a general understanding that boxes</p> <p>2 with -- with -- with hits are pulled. And I -- in</p> <p>3 reading my notes, I -- I found additional text from</p> <p>4 Renay, because in your earlier question you asked me</p> <p>5 if every box is pulled.</p> <p>6 Now, in ERMS I learned from rereading</p> <p>7 her notes that if a box has already been</p> <p>8 dispositioned according to its retention schedule and</p> <p>9 hasn't been -- wasn't on litigation hold, that that</p> <p>10 would show up as -- it stays in the ERMS, it shows up</p> <p>11 as a hit, but the box couldn't be retrieved if it's</p> <p>12 no longer in the -- in the warehouse. I just wanted</p> <p>13 to notate that to your earlier question.</p> <p>14 In terms of the question about whether</p> <p>15 attorneys make decisions about whether boxes</p> <p>16 are -- all boxes are retrieved or not, I -- I don't</p> <p>17 know.</p> <p>18 Q. Okay. So as you sit here right now,</p> <p>19 you're not certain if all the boxes -- setting aside</p> <p>20 any that have been dispositioned, are -- that are</p> <p>21 identified in the ERMS search, are actually pulled</p> <p>22 and then manually searched. True?</p> <p>23 A. Only the -- the -- the idea that the</p> <p>24 widest possible net, the most conservative approach</p> <p>25 is -- is -- is -- is employed. Now, whether there</p> | <p style="text-align: right;">Page 129</p> <p>1 my -- I mentioned I sampled several hundred documents</p> <p>2 and looked at how they were scanned in cases where</p> <p>3 there were hard copy documents. And I observed that</p> <p>4 places where there was a folder, that the jacket of</p> <p>5 the folder was scanned as well as the contents of the</p> <p>6 folder. So that if there was information on a</p> <p>7 Redweld, for instance, and I didn't -- I didn't see</p> <p>8 any in my sampling, but if there was -- from looking</p> <p>9 at a manila folder and seeing that the jacket was</p> <p>10 scanned, I would conclude that the container would be</p> <p>11 scanned and would be part of a scanned image and</p> <p>12 would be incorporated into the set.</p> <p>13 And that that would be responsive to a</p> <p>14 search if it was either handwritten or typed if it</p> <p>15 went through the OCR process and resulted as -- as</p> <p>16 extracted text which would be provided as part of the</p> <p>17 production.</p> <p>18 MR. SWANSON: Move to strike as</p> <p>19 nonresponsive.</p> <p>20 Q. The question simply was can you</p> <p>21 trace -- just one thing at a time -- trace the</p> <p>22 document back to the box from which it was pulled?</p> <p>23 Talking about chain of custody now.</p> <p>24 A. Okay. So the -- the -- the big box.</p> <p>25 Q. The "box" box.</p>            |

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| <p style="text-align: right;">Page 130</p> <p>1 A. The box that was retrieved --</p> <p>2 Q. That's right.</p> <p>3 A. -- from the -- okay. Yes, that -- that</p> <p>4 information I understand is provided.</p> <p>5 Q. Did you identify that information</p> <p>6 yourself when you looked at the documents that had</p> <p>7 been produced, the few hundred documents that had</p> <p>8 been produced in Leavitt and Fong?</p> <p>9 A. I don't recall if I saw any samples</p> <p>10 that -- that reflected that. I don't remember.</p> <p>11 Q. Okay. So how do you know that</p> <p>12 information gets preserved?</p> <p>13 A. Excuse me another minute. I'm just</p> <p>14 reviewing some of the protocols.</p> <p>15 Q. Let me -- let me just --</p> <p>16 A. Well, I have -- I have -- what I</p> <p>17 was -- let me tell you what I've done. I've reviewed</p> <p>18 the ESI protocols. I have observed that there is a</p> <p>19 piece of metadata called "Folder" which denotes the</p> <p>20 original source folder for the record produced.</p> <p>21 Now, I don't -- on -- on further study,</p> <p>22 I don't know certainly if that is the equivalence of</p> <p>23 the box or not. It's -- it's the folder. That may</p> <p>24 be what I'm recalling.</p> <p>25 Q. Okay. So a folder, let's say, is pulled</p>                                         | <p style="text-align: right;">Page 132</p> <p>1 A. Yes.</p> <p>2 Q. And all of this what we're talking about</p> <p>3 with these 1,600, none of that are those Legacy</p> <p>4 collections. True?</p> <p>5 A. To -- to my understanding,</p> <p>6 those -- these are apart from the Legacy collections.</p> <p>7 Q. Okay. So these have been done in the</p> <p>8 last few years for the -- that came up with the</p> <p>9 16 -- the searches that came up with the 1,600 boxes.</p> <p>10 True?</p> <p>11 A. Yes.</p> <p>12 Q. Okay. And my question is as these</p> <p>13 archives search terms have been updated, did searches</p> <p>14 get rerun?</p> <p>15 MR. COX: Object to the form.</p> <p>16 A. My understanding -- and I -- I alluded</p> <p>17 to it earlier, was that the search -- the search</p> <p>18 terms were -- were -- evolved over time in response</p> <p>19 to the knowledge of the case and the materials being</p> <p>20 collected. And I don't know -- you asked me before</p> <p>21 about the dates, and I indicated that this -- this</p> <p>22 date of September 7th is the cumulative effect of</p> <p>23 those search terms being modified.</p> <p>24 Q. Did -- when the search terms get</p> <p>25 modified, do they rerun the ERMS searches?</p>                                                                                                                          |
| <p style="text-align: right;">Page 131</p> <p>1 from whatever the original source of it was. And</p> <p>2 then it goes -- gets into a document repository. And</p> <p>3 it's put in a box and put in a document repository.</p> <p>4 This is part of the chain of custody now. And then</p> <p>5 at the end you know whose folder -- what the folder</p> <p>6 was, but you're not sure if it denotes the middle</p> <p>7 process where it's in the box at the repository.</p> <p>8 Correct?</p> <p>9 A. That's right. As I stand here, as I</p> <p>10 read through the protocols and the field</p> <p>11 descriptions, I'm not sure as to whether the -- the</p> <p>12 box is -- is captured.</p> <p>13 Q. Okay.</p> <p>14 Did -- you said that these searches that</p> <p>15 resulted in 1,600 documents -- and just for the</p> <p>16 record, we've been talking about these 1,600 boxes,</p> <p>17 sorry, as just a piece of this because you had</p> <p>18 mentioned it and so I've been focusing on this to</p> <p>19 find out what was done. But there have been other</p> <p>20 accumulations of Johnson &amp; Johnson talc documents</p> <p>21 through the years. Correct?</p> <p>22 A. Yes.</p> <p>23 Q. Okay. And some of those were named with</p> <p>24 the Legacy name, Legacy 1, Legacy 2, Legacy 3. I</p> <p>25 believe there was a Legacy 4. Correct?</p> | <p style="text-align: right;">Page 133</p> <p>1 A. My -- my understanding is that they do</p> <p>2 rerun searches from time to time.</p> <p>3 Q. Okay. And do you know if -- if</p> <p>4 that -- if -- if they've done it on all the updated</p> <p>5 search terms for all the searches they had done that</p> <p>6 resulted in these 1,600 boxes of documents?</p> <p>7 A. Yes. In other words, these searches are</p> <p>8 current as of the September 7th list of terms.</p> <p>9 Q. All right. But you said the 1,600 boxes</p> <p>10 had been pulled over the last few -- several years.</p> <p>11 You weren't sure how many years it was. But are you</p> <p>12 saying that those -- all of those 1,600 boxes</p> <p>13 have -- were the result of an updated search using</p> <p>14 all of the archive -- archives search terms that are</p> <p>15 current as of 9/7/2018?</p> <p>16 A. Yes.</p> <p>17 Q. What's the source of that information?</p> <p>18 A. Ms. -- Ms. Pam Downs.</p> <p>19 Q. Has anybody done an audit of missed</p> <p>20 boxes? In other words, boxes that came up with</p> <p>21 negative results where there was no search term hit,</p> <p>22 where at least in theory there might likely be some</p> <p>23 hits within that department, for example? Because</p> <p>24 you said that the ERMS tracks, one of the fields it</p> <p>25 does track is department. Correct?</p> |

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| <p style="text-align: right;">Page 134</p> <p>1 A. Yes.</p> <p>2 Q. So let's say -- I don't know exactly how</p> <p>3 the departments are broken down, and maybe I can ask</p> <p>4 that. But let's say the -- the Johnson baby products</p> <p>5 division or company marketing, okay, department,</p> <p>6 it -- if it's identified that way or something like</p> <p>7 that, has anybody done -- and this is just an</p> <p>8 example, but has anybody done a search to determine</p> <p>9 based on a department or some other likely category,</p> <p>10 to search through boxes where there hadn't been any</p> <p>11 hits to check the process to see if it was getting</p> <p>12 all responsive information, all relevant information?</p> <p>13 A. Yeah. And beyond my understanding that</p> <p>14 the searches were refined and tested, I don't know if</p> <p>15 searches were conducted when materials were retrieved</p> <p>16 from a specific department or not retrieved that</p> <p>17 should have been retrieved. That would be a question</p> <p>18 for Ms. Lawson.</p> <p>19 Q. Okay. I don't think I asked the</p> <p>20 question very well. Let me try it again. Or maybe I</p> <p>21 just didn't understand your answer.</p> <p>22 But you understand what it would be to</p> <p>23 go back into a certain number of documents in sort of</p> <p>24 a randomized way and check documents where there had</p> <p>25 been no positive search results to see -- to go</p> | <p style="text-align: right;">Page 136</p> <p>1 work that you -- you're -- you've been doing as the</p> <p>2 corporate representative to talk about the document</p> <p>3 production, did -- have you made a distinction</p> <p>4 between Johnson &amp; Johnson Consumer, Inc., and Johnson</p> <p>5 &amp; Johnson proper?</p> <p>6 MR. COX: Object to the form.</p> <p>7 A. Yes.</p> <p>8 Q. Okay. And what distinction have you</p> <p>9 made between those two?</p> <p>10 A. I -- some examples. The interviews</p> <p>11 themselves that I conducted. There are interviews</p> <p>12 conducted specifically with corporate personnel,</p> <p>13 interviews conducted with Consumer, Inc., personnel,</p> <p>14 and those are denoted -- I could show you</p> <p>15 the -- well, I'm looking for -- here's the -- the</p> <p>16 index to those notes in your hand. It's just simply</p> <p>17 a listing of the file names that comprised each</p> <p>18 interview.</p> <p>19 And if one were to read down the left</p> <p>20 column, Consumer, Consumer, Consumer, Consumer, up</p> <p>21 through 24, those interviews were people at the</p> <p>22 operating company.</p> <p>23 The corporate interviews, which would be</p> <p>24 25 through 32, concern themselves with people in</p> <p>25 the -- the corporate parent.</p> |
| <p style="text-align: right;">Page 135</p> <p>1 through them manually and look at them at a finer</p> <p>2 tune level to see whether or not you're missing</p> <p>3 stuff, and then, if so, figure out why you're doing</p> <p>4 it? Do you understand that process?</p> <p>5 A. Yes. In other words, I -- I do not</p> <p>6 believe but I do not know for certain, but I do not</p> <p>7 believe that boxes that were not responsive to search</p> <p>8 terms were sampled if they were -- retrieved and</p> <p>9 sampled or screened if they were not responsive to</p> <p>10 the terms.</p> <p>11 Q. Okay.</p> <p>12 Have you interviewed anybody else in</p> <p>13 your work on -- on this case or in the Hayes case,</p> <p>14 anybody that is not reflected in your notes marked as</p> <p>15 Exhibit 18 or in your testimony when you said that</p> <p>16 you spoke to Pam Downs again?</p> <p>17 A. Yeah, other than the -- that Pam Downs</p> <p>18 incident, other -- all other conversations and</p> <p>19 interviews are reflected in those notes.</p> <p>20 Q. Okay. I'm curious. For your -- for</p> <p>21 your purposes in this case -- and I know I've</p> <p>22 been -- and I -- and I told you this at the beginning</p> <p>23 just talking about Johnson &amp; Johnson in the bigger</p> <p>24 sense, including subsidiaries that are relevant to</p> <p>25 this litigation, but in your mind in terms of the</p>                                                        | <p style="text-align: right;">Page 137</p> <p>1 Further, I distinguished with the</p> <p>2 materials that I collected as to --</p> <p>3 MR. SWANSON: Can I go ahead and mark</p> <p>4 that while you're talking about it?</p> <p>5 A. -- as to whether they came from the</p> <p>6 corporate parent or the subsidiary. For instance,</p> <p>7 the records retention schedules.</p> <p>8 And then, finally, with respect to the</p> <p>9 interrogatory requests and responses and materials</p> <p>10 produced, I took note of the fact that there were in</p> <p>11 many cases separate compilations for each.</p> <p>12 Q. Okay. So Exhibit -- I've marked as now</p> <p>13 as Exhibit Number 19. This is an index of the notes</p> <p>14 that are Exhibit 18. Is that correct?</p> <p>15 (Exhibit 19, Index of Notes That Are</p> <p>16 Exhibit 18 marked for identification.)</p> <p>17 A. Yes.</p> <p>18 Q. And on here, it indicates a listing of</p> <p>19 34 -- these are 34 individuals?</p> <p>20 A. Let me make sure that -- actually,</p> <p>21 number 26 is two people, and number 2 is two people.</p> <p>22 Q. Okay.</p> <p>23 A. I think the rest are -- are -- so in</p> <p>24 other words, I believe there's a total of 36 people.</p> <p>25 Q. All right. And it notes their name</p>                            |

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| <p style="text-align: right;">Page 138</p> <p>1 here, the specific corporation and department they<br/> 2 worked in. Is that right?<br/> 3 A. Well, this is my shorthand. In other<br/> 4 words, I put a general word about their business<br/> 5 function. I mean, their formal department might be a<br/> 6 longer term or might be slightly different than that.<br/> 7 But in terms of the -- the reason I spoke to them and<br/> 8 the department function I would associate them with,<br/> 9 that is reflected in that second word.<br/> 10 Q. Okay.<br/> 11 And you said "corporate." That means<br/> 12 Johnson &amp; Johnson, the parent company. Correct?<br/> 13 A. Yes.<br/> 14 Q. And I'm sorry, "vendor," I think we<br/> 15 talked about vendor.<br/> 16 Okay.<br/> 17 Now, other than your looking at a few of<br/> 18 the document requests and the listing in an Excel<br/> 19 spreadsheet of the responsive documents by Bates<br/> 20 numbers and then looking at, I don't know, a couple<br/> 21 hundred, was it?<br/> 22 A. Yes.<br/> 23 Q. Okay -- a couple hundred documents, did<br/> 24 you have any role in the mechanics of the production<br/> 25 in the Leavitt case?</p>                                            | <p style="text-align: right;">Page 140</p> <p>1 Q. Sales and call notes.<br/> 2 MR. COX: Objection, beyond the scope of<br/> 3 the notice.<br/> 4 A. I believe I'm -- I'm able -- I'm allowed<br/> 5 to answer the question, so I will.<br/> 6 In -- in those cases, I had a role in<br/> 7 ascertaining the information to be produced from the<br/> 8 various databases, interviewing business owners and<br/> 9 technical owners to understand the -- the various<br/> 10 systems involved. Participating in meet and confers<br/> 11 with -- with opposing counsel. Determining<br/> 12 that -- that -- the structure of the information to<br/> 13 be preserved, and then working with my programming<br/> 14 team to build out the productions.<br/> 15 Q. Were the -- had the documents already<br/> 16 been compiled or were you in the<br/> 17 process -- and -- and these were probably mostly in<br/> 18 electronic format, I'm assuming. Is that right?<br/> 19 A. Yeah, I would not call these traditional<br/> 20 documents. They were -- they were by and large<br/> 21 database records, but they may have had descriptive<br/> 22 text attached to them.<br/> 23 Q. Okay. Was your role in this the<br/> 24 original folks who actually did the culling of the<br/> 25 information?</p>                                                                                                      |
| <p style="text-align: right;">Page 139</p> <p>1 A. I did not have a role in the production<br/> 2 of the documents in the Leavitt case.<br/> 3 Q. And did you have any role in the<br/> 4 mechanics of the production in the Fong case?<br/> 5 A. I did not.<br/> 6 Q. Have you ever in your role with Johnson<br/> 7 &amp; Johnson had a role in the mechanics of a document<br/> 8 production?<br/> 9 A. In -- in -- for other operating<br/> 10 companies in -- in the past I have, yes.<br/> 11 Q. Okay. And which litigation was that?<br/> 12 A. For a series of pharmaceutical<br/> 13 litigations, Risperdal, Levaquin, Ortho Evra, my team<br/> 14 produced adverse event and sales or call note<br/> 15 information.<br/> 16 Q. And which company were you with then?<br/> 17 A. Well, that would have been<br/> 18 Thomson Reuters -- Hildebrandt Baker Robbins or<br/> 19 Thomson Reuters business. I refer to it in the<br/> 20 shorthand as Baker Robbins. That was the -- the<br/> 21 entity that -- that worked with the company.<br/> 22 Q. Okay. And what was your role in the<br/> 23 mechanics of the search for these adverse event<br/> 24 reports and sales -- did you call them sales?<br/> 25 A. Sales and call notes.</p> | <p style="text-align: right;">Page 141</p> <p>1 MR. COX: Object, beyond the scope of<br/> 2 the notice. And I caution you not to reveal any work<br/> 3 product associated with your involvement in those<br/> 4 cases.<br/> 5 Q. I'm just trying to get a sense of what<br/> 6 your role is because I'm trying to find out what your<br/> 7 qualifications are in terms of, you know,<br/> 8 what -- what you've done. I know you haven't done<br/> 9 that sort of -- you know, the mechanics of the<br/> 10 production here in the sources on the talc<br/> 11 litigation, but in terms of this -- well, let me go<br/> 12 back to what we were talking about in terms of<br/> 13 the -- the -- the gathering of information.<br/> 14 Were you going to the sources and then<br/> 15 figuring out how to pull the relevant information<br/> 16 from the sources, these databases, where all this<br/> 17 information was?<br/> 18 A. Yeah, that was a part of it. I mean,<br/> 19 with -- with a database, unlike documents, there's a<br/> 20 team approached that includes multiple people on the<br/> 21 company side, including there may be operators<br/> 22 halfway around the world. There may be business<br/> 23 people, technical people, people with responsibility<br/> 24 to secure the information and transfer it. In any<br/> 25 case, there was the -- the dual role of understanding</p> |

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| <p style="text-align: right;">Page 142</p> <p>1 the data as it lived in their business systems and<br/> 2 pulling out extracts of the data and putting that<br/> 3 into a review system.<br/> 4 And unlike documents which can be<br/> 5 reviewed in Concordance, Summation, Relativity,<br/> 6 et cetera, these -- these complex database systems<br/> 7 required a dedicated vehicle for attorney review and<br/> 8 selection. And our job was to create such a vehicle,<br/> 9 load the data, and then allow the -- the attorneys to<br/> 10 determine relevance and -- and what was to be<br/> 11 produced.<br/> 12 Q. Okay.<br/> 13 So in Leavitt and Fong, I understand<br/> 14 you -- you weren't involved in the mechanics of -- of<br/> 15 this, but do you know what the process was for<br/> 16 producing and searching for responsive documents<br/> 17 specific to these two cases?<br/> 18 A. Yeah. And I want to make sure we're<br/> 19 using the same terms because your -- your use of<br/> 20 "production" and "search" might be different than<br/> 21 mine. So I can --<br/> 22 Q. Let me just ask you if you know what the<br/> 23 process was specific to these cases as opposed to<br/> 24 sort of generally how you think it would be done<br/> 25 based on your discussions.</p>                                          | <p style="text-align: right;">Page 144</p> <p>1 MR. SWANSON: That's a long answer, but<br/> 2 can I have that read back.<br/> 3 (Whereupon, the court reporter reads as<br/> 4 requested.)<br/> 5 Q. Okay. Specific as to Leavitt and Fong,<br/> 6 were there -- do you know -- you mentioned<br/> 7 custodians, active custodians. First of all,<br/> 8 what -- what is -- a custodian is -- what is a<br/> 9 custodian according to Johnson &amp; Johnson?<br/> 10 A. Well, I don't -- I don't believe that's<br/> 11 a business term. I think it's -- I'm using it as it<br/> 12 would be used in the course of discovery, which would<br/> 13 be an -- an individual from whom materials would be<br/> 14 obtained in the -- in the course of discovery.<br/> 15 Q. Okay. And you mentioned active<br/> 16 custodians. What's the difference between an active<br/> 17 and an inactive custodian?<br/> 18 A. And I probably should have included<br/> 19 inactive custodians inasmuch as if they were recently<br/> 20 inactive within the last few years, they would be<br/> 21 searched just like active custodians. In other<br/> 22 words, their materials would be available on the<br/> 23 system. So active custodians would be people that<br/> 24 have e-mail accounts, right to file shares, have<br/> 25 network directories that they -- that they write to.</p> |
| <p style="text-align: right;">Page 143</p> <p>1 A. Well, that's why I asked about search,<br/> 2 because I do know elements of the search specific<br/> 3 to -- to these cases.<br/> 4 Q. Okay. And, now, was there -- were any<br/> 5 additional -- as to these two cases, were any<br/> 6 additional sources of documents identified?<br/> 7 A. My understanding is yes.<br/> 8 Q. Okay. And what additional sources of<br/> 9 documents were identified?<br/> 10 A. My understanding is that there were<br/> 11 searches -- the -- the what I would call global<br/> 12 production, which were the compilation of materials<br/> 13 produced in other cases, was supplemented with<br/> 14 new -- new searches across the repositories that were<br/> 15 used to gather the information in the first place.<br/> 16 That may include ERMS. It may include active<br/> 17 custodians. It may include business systems. It may<br/> 18 include file shares. Those systems and sources were<br/> 19 searched again, including where people may be housed<br/> 20 in international locations and additional documents<br/> 21 were obtained.<br/> 22 Further to that, searches were conducted<br/> 23 in physical locations that corresponded to<br/> 24 those -- those areas where exposure was alleged; so<br/> 25 the Philippines, Hong Kong.</p> | <p style="text-align: right;">Page 145</p> <p>1 Potentially share points and other business systems<br/> 2 that they -- that they have data in.<br/> 3 To the extent that there are<br/> 4 active -- inactive custodians, if they left in the<br/> 5 last few years, their information would also be<br/> 6 preserved electronically.<br/> 7 So when I said "active<br/> 8 custodians" -- and I should have said active and<br/> 9 certain inactive custodians would have their material<br/> 10 searched for relevant information, as well as file<br/> 11 shares which don't really relate to a particular<br/> 12 custodian but may be mentioned by a custodian as a<br/> 13 place that he or she has materials on.<br/> 14 And I also spoke about business systems<br/> 15 that -- and those -- those areas. And they are<br/> 16 enumerated in one of the tabs under the central<br/> 17 sources listing. Those would be places where<br/> 18 information would be searched for.<br/> 19 Q. What -- what tab are you referring to?<br/> 20 A. Let me just get to there in a second.<br/> 21 The custodian list is Tab 3, and the<br/> 22 non-custodial or central sources would be Tab 4 of<br/> 23 the general binder.<br/> 24 Q. Okay. So when you say "business<br/> 25 systems," is that the same thing as non-custodial</p>                                            |



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| <p style="text-align: right;">Page 146</p> <p>1 sources, or did I misunderstand?</p> <p>2 A. No, you didn't misunderstand.</p> <p>3 The -- the non-custodial sources comprise business</p> <p>4 systems as well as other types of materials. For</p> <p>5 instance, a file share on a network may have a whole</p> <p>6 department writing documents to it, mixing documents</p> <p>7 together, for instance, an accounting file share. An</p> <p>8 accounting system would be a business system, and so</p> <p>9 either of those might be counted as a non-custodial</p> <p>10 source.</p> <p>11 Q. Okay. So you mentioned people housed in</p> <p>12 international locations. I wasn't sure what was</p> <p>13 meant by that. What is meant by that?</p> <p>14 A. Well, I have an understanding that there</p> <p>15 were searches done for people's materials that</p> <p>16 would -- might be relevant to the Leavitt and Fong</p> <p>17 cases, and that that search was extended for Leavitt</p> <p>18 and Fong to people sitting in other locations. And</p> <p>19 the example I can speak to is Mark Hopkin or</p> <p>20 Mark Hopkins who was -- who was -- is based in</p> <p>21 the -- in the UK but was found to have some relevant</p> <p>22 materials.</p> <p>23 Q. Is it Mark or John?</p> <p>24 A. Oh, I'm sorry. That may very well be</p> <p>25 right. Let me just make sure we got it right here.</p> | <p style="text-align: right;">Page 148</p> <p>1 have any information that that actually happened, do</p> <p>2 you?</p> <p>3 A. Well, what -- what I do know is that he</p> <p>4 had involvement in certain talc activities in the</p> <p>5 Far East based -- despite the fact that he was housed</p> <p>6 in the UK. And because of that involvement, his</p> <p>7 materials were searched and brought into the</p> <p>8 collection.</p> <p>9 Q. Did you speak to Mr. Hopkins?</p> <p>10 A. No.</p> <p>11 Q. In the Hayes case, did you speak to him?</p> <p>12 A. No.</p> <p>13 Q. Okay.</p> <p>14 Do you believe that -- that the</p> <p>15 information regarding his dealings in the Far East,</p> <p>16 do you know if there were -- if those were hard</p> <p>17 copies of -- paper copies of documents or things that</p> <p>18 had been digitized or had been created</p> <p>19 electronically? Do you know?</p> <p>20 A. I -- I don't know the -- the -- the</p> <p>21 nature of the format of his materials.</p> <p>22 Q. Do you know if information was collected</p> <p>23 to him -- from him about activities, Johnson &amp;</p> <p>24 Johnson's activities or his activities on behalf of</p> <p>25 Johnson &amp; Johnson in the Far East for the first time</p>                                                                             |
| <p style="text-align: right;">Page 147</p> <p>1 Q. Is he listed in the custodial list?</p> <p>2 A. John Hopkins.</p> <p>3 Q. Okay.</p> <p>4 A. My apologies.</p> <p>5 Q. Okay. That's all right.</p> <p>6 So it's your understanding that -- and</p> <p>7 specific to Leavitt and Fong, he was reinterviewed</p> <p>8 or -- or an inquiry was made of him about certain</p> <p>9 types of documents?</p> <p>10 A. I can't speak to whether he was</p> <p>11 reinterviewed. His -- his materials were -- were</p> <p>12 searched under the expectation that in the scope of</p> <p>13 Leavitt and Fong he may have relevant information.</p> <p>14 Q. Okay. So the existing materials from</p> <p>15 him that were already in the system were researched?</p> <p>16 Is that what you mean?</p> <p>17 A. I mean to say that he -- his materials</p> <p>18 were searched. Whether it was an ab initio search or</p> <p>19 whether they were searched a second time with a</p> <p>20 broader scope, I -- I don't know.</p> <p>21 Q. Okay. So you don't have any information</p> <p>22 that they actually went -- they redid the process</p> <p>23 with John Hopkins and sort of with a broader</p> <p>24 perspective in mind and reinterviewed him about any</p> <p>25 possible documents, but -- but you don't -- you don't</p>                                                                                           | <p style="text-align: right;">Page 149</p> <p>1 in connection with Leavitt and Fong?</p> <p>2 A. As I mentioned, I didn't know whether</p> <p>3 the search was ab initio or -- or a redo -- redo of a</p> <p>4 search. I -- I -- I don't know, you know, with an</p> <p>5 expanded scope. As I said before, I don't know.</p> <p>6 Q. I didn't take Latin. "Ab initio," what</p> <p>7 do you --</p> <p>8 A. From the beginning.</p> <p>9 Q. Okay.</p> <p>10 The active custodian or recently active</p> <p>11 custodians who are now inactive that the supplemental</p> <p>12 searches went to, were any of those folks</p> <p>13 reinterviewed?</p> <p>14 A. Well, if they were no longer employees?</p> <p>15 Q. Either way. In other words, people who</p> <p>16 are active custodians. I'm just saying were there</p> <p>17 actual interviews done of custodians for the searches</p> <p>18 that were done in Leavitt and Fong? Because you had</p> <p>19 mentioned some supplemental or additional searches</p> <p>20 had been done in Leavitt and Fong that hadn't been</p> <p>21 done previously, and you mentioned active custodians</p> <p>22 and recently inactivated custodians, however you want</p> <p>23 to describe that.</p> <p>24 A. Yes. I do know that there were -- there</p> <p>25 were interviews of certain custodians for the</p> |



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| <p style="text-align: right;">Page 150</p> <p>1 existence of things like advertisements. Now, I<br/> 2 don't know whether every active custodian that might<br/> 3 have been relevant was reinterviewed or -- or<br/> 4 something, whether their materials were searched. I<br/> 5 don't -- I don't know.<br/> 6 Q. Okay. And your -- your source of<br/> 7 information is -- is just from counsel on that stuff.<br/> 8 Right?<br/> 9 A. Yes.<br/> 10 Q. Okay. Looking at the custodian list<br/> 11 here, which is Exhibit 3 to your deposition, can you<br/> 12 point to anybody on this list who was actually<br/> 13 interviewed, spoken to, inquired of in order to find<br/> 14 documents responsive in the Leavitt or Fong cases?<br/> 15 A. Well, I understand that -- that<br/> 16 Mr. Hopkins was a subject. I don't -- I have general<br/> 17 understanding that people with responsibilities<br/> 18 in -- in the Far East were -- were spoken to. I<br/> 19 can't point out each one.<br/> 20 Q. Okay. Well, do you -- was it -- and I<br/> 21 apologize, I thought you said that you weren't sure<br/> 22 if they actually spoke to Mr. Hopkins about the<br/> 23 Far East issue. Did they -- was he inquired of<br/> 24 specifically as to these cases about the Far East?<br/> 25 A. Yeah. I -- I don't know if -- if he was</p>                                               | <p style="text-align: right;">Page 152</p> <p>1 do custodial interviews, that one would have been<br/> 2 done of Hopkins here. Correct?<br/> 3 A. If -- if he is, in fact, an active<br/> 4 custodian.<br/> 5 Q. Okay. I believe Mr. Hopkins is -- acts<br/> 6 as a corporate representative to talk about certain<br/> 7 issues, but I don't believe that he's still an<br/> 8 employee. Do you know with that information whether<br/> 9 or not he was specifically interviewed?<br/> 10 A. I -- I know that the -- the company as a<br/> 11 practice does not have a means to hail former<br/> 12 employees from outside into an interview situation,<br/> 13 but I -- I do know that in cases where former<br/> 14 employees are part of a participant in the litigation<br/> 15 perhaps as a -- in a testifying role, if they're<br/> 16 deposed, if they're interviewed, they -- they would<br/> 17 be typically asked these questions.<br/> 18 Q. If -- if it's not an active employee and<br/> 19 they're not participating in the litigation, you're<br/> 20 saying you can't -- there's not a process by which<br/> 21 Johnson &amp; Johnson could hail them for an interview?<br/> 22 A. Well, they -- they can -- they can ask,<br/> 23 but there's not a process where they can force them<br/> 24 to -- to participate.<br/> 25 Q. I see. Okay.</p> |
| <p style="text-align: right;">Page 151</p> <p>1 interviewed. I -- my understanding is that if he was<br/> 2 an -- an -- an employee, an active employee, he would<br/> 3 have been interviewed as part of the collection<br/> 4 process. That would be a -- a basis for how<br/> 5 information would be collected from him if he was<br/> 6 still available, an -- an employee.<br/> 7 Q. You -- okay. So you're assuming that he<br/> 8 was, but you don't know. Correct?<br/> 9 A. I -- I know that the procedure would be<br/> 10 to interview active employees as part of the<br/> 11 collection process. I -- I don't know if he is, A,<br/> 12 an active employee; and B, if he was actually<br/> 13 interviewed.<br/> 14 Q. Okay. And what do you mean? You said<br/> 15 you know the procedure would be to interview him.<br/> 16 Where is that? Is that procedure written down here?<br/> 17 A. It may be reflected in my discussions<br/> 18 with United Lex, with Triality. I would have to<br/> 19 refresh my notes to see if -- if it's -- if it's in<br/> 20 there. I also have general knowledge of the<br/> 21 methodology used in -- in the collection process<br/> 22 across the company, and it is -- does involve an<br/> 23 interview with the custodian.<br/> 24 Q. Okay. Is -- is the -- but -- okay. So<br/> 25 you believe that based on the process, because they</p> | <p style="text-align: right;">Page 153</p> <p>1 MR. COX: Mark, may we take a break when<br/> 2 you're at a good stopping point?<br/> 3 MR. SWANSON: Sure. Let me -- let me<br/> 4 continue on this a little bit.<br/> 5 MR. COX: Okay.<br/> 6 MR. SWANSON: Because I want to<br/> 7 get -- get through this unless it's an urgent thing.<br/> 8 Because it should take about ten minutes to get<br/> 9 through this little bit right here in terms of these<br/> 10 sources that he's consulted. I didn't think we've<br/> 11 been going very long, but if -- if you need a break.<br/> 12 MR. COX: It's been about an hour and<br/> 13 15 minutes, but how do you feel?<br/> 14 THE WITNESS: I mean, I guess we could<br/> 15 go and finish the section if -- if that works.<br/> 16 MR. SWANSON: You know, I don't know how<br/> 17 long it's going to take because some of this takes<br/> 18 longer than I think it's going to take. So if we<br/> 19 need a short break, let's try to make it fairly<br/> 20 short, but that's fine.<br/> 21 THE VIDEOGRAPHER: Going off the video<br/> 22 record 2:48 p.m.<br/> 23 (A recess is taken.)<br/> 24 THE VIDEOGRAPHER: We are back on the<br/> 25 video record at 3:16 p.m.</p>                                                                                                                                  |

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| <p style="text-align: right;">Page 154</p> <p>1 MR. COX: Mark, before you begin, I</p> <p>2 think Mr. Mittenthal had a clarification about the</p> <p>3 discussion you had concerning John Hopkins that may</p> <p>4 clarify that discussion a little bit.</p> <p>5 Q. Okay. So I had been asking you about</p> <p>6 whether or not an actual interview or inquiry had</p> <p>7 been made of Mr. Hopkins with regard to</p> <p>8 this -- regard to supplemental searches. You had</p> <p>9 said there were supplemental or additional searches,</p> <p>10 and then you mentioned John -- John Hopkins as one of</p> <p>11 the sources. And so I asked you if he had been</p> <p>12 interviewed, and you were a little uncertain about</p> <p>13 that. So do you have some additional information on</p> <p>14 that or a clarification?</p> <p>15 A. I have a clarification, yes.</p> <p>16 Q. Okay. What's that?</p> <p>17 A. Which is that I was mistaken entirely</p> <p>18 about Mr. Hopkins, and I had conflated something I</p> <p>19 learned from counsel about Mr. Hopkins vis-à-vis his</p> <p>20 role in Leavitt and Fong.</p> <p>21 Q. Okay.</p> <p>22 A. So he is not a good example of someone</p> <p>23 who had involvement in Far East matters. Rather,</p> <p>24 he's simply an example of someone who was officed</p> <p>25 outside the United States whose materials would have</p>     | <p style="text-align: right;">Page 156</p> <p>1 Do you know -- first of all, we were</p> <p>2 just talking about interviews or actual inquiries,</p> <p>3 asking questions of somebody by phone or in person,</p> <p>4 or however, you know, e-mail. Were any of</p> <p>5 those -- do you -- can you identify any custodians</p> <p>6 who were actually inquired of?</p> <p>7 A. I can't identify specific custodians.</p> <p>8 What I can say is that custodians, non-custodial</p> <p>9 sources, including ERMS, were searched specifically</p> <p>10 for Fong and specifically for Leavitt.</p> <p>11 Q. Okay. And when you say "searched," let</p> <p>12 me just step back one -- because when you say</p> <p>13 "search," that's a broad term that encompasses a lot</p> <p>14 of different steps. Is that right?</p> <p>15 A. It encompasses different means for</p> <p>16 searching each of those sources. And in some cases,</p> <p>17 there may be a decision that a non-custodial source,</p> <p>18 for instance, or a custodial source may not need to</p> <p>19 be searched. But the totality of the sources</p> <p>20 consulted for to build the global production,</p> <p>21 as -- as -- as I'm referring to it, were gone back to</p> <p>22 and said is there -- is there -- do we need to tweak</p> <p>23 this search and include materials that would be</p> <p>24 specific to the Fong and Leavitt circumstances.</p> <p>25 And so, yes, where additional searches</p> |
| <p style="text-align: right;">Page 155</p> <p>1 been considered for U.S. matters.</p> <p>2 So the fact that he -- that I had</p> <p>3 discussed his role for Fong and Leavitt was -- was a</p> <p>4 mistake on my part.</p> <p>5 Q. Okay. Thank you for that clarification.</p> <p>6 So I want to try to hash out this</p> <p>7 supplemental or additional search that had been</p> <p>8 specific -- done specific to the Leavitt and Fong</p> <p>9 cases. Let me just ask you preliminarily, can you</p> <p>10 separate out the two cases in terms of what</p> <p>11 supplemental searches had been done for one case as</p> <p>12 opposed to another?</p> <p>13 A. Well, I can speak to the fact that just</p> <p>14 based on the facts of the case, that the searches</p> <p>15 were -- were different. There were different</p> <p>16 exposure periods. There were different regions where</p> <p>17 exposure was alleged. I -- I read both complaints</p> <p>18 and I have a -- a general knowledge of -- of the</p> <p>19 background materials. And so the searches insofar as</p> <p>20 they covered OUS sources where exposure was alleged</p> <p>21 and accompanying time frames would have been</p> <p>22 different.</p> <p>23 Q. Okay. So let me -- let's -- the sources</p> <p>24 that you mentioned, let's stick with the custodians</p> <p>25 and any custodians that are on the list.</p> | <p style="text-align: right;">Page 157</p> <p>1 needed to be conducted, be it custodial or</p> <p>2 non-custodial, those were done. The global</p> <p>3 production, the compiled production to date was</p> <p>4 supplemented with the results of that material.</p> <p>5 MR. SWANSON: Move to strike,</p> <p>6 nonresponsive.</p> <p>7 Q. But just when you use the word</p> <p>8 "search," I want -- I want to be clear on what</p> <p>9 we -- what we mean here. Because part of the first</p> <p>10 step in the process or one of the first steps is what</p> <p>11 you actually talked about and I've tried to ask</p> <p>12 about, which is, you know, talking to custodians,</p> <p>13 interviewing custodians, inquiring of custodians to</p> <p>14 find out if there's something more. Is that true?</p> <p>15 A. Yes.</p> <p>16 Q. Okay. And then another step in the</p> <p>17 process would be collecting documents from a</p> <p>18 custodial or non-custodial source. Correct?</p> <p>19 A. Yes.</p> <p>20 Q. Documents maybe that hadn't been</p> <p>21 collected before. True?</p> <p>22 A. True.</p> <p>23 Q. And then the next step would be either,</p> <p>24 like, hand -- by hand going through the documents,</p> <p>25 like you were talking about with respect to the 1,600</p>                                                                                                                                                                                  |

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| <p style="text-align: right;">Page 158</p> <p>1 boxes, or just scanning everything and starting to do</p> <p>2 searches of whatever had been collected. True?</p> <p>3 A. I would -- I would agree with that, yes.</p> <p>4 Q. Okay. And then there's -- then there's</p> <p>5 additional searches for the specific responsive</p> <p>6 documents potentially in a database after</p> <p>7 everything's been scanned in and for responsiveness.</p> <p>8 True?</p> <p>9 A. After everything's been scanned in.</p> <p>10 Q. Well, if you collected everything from a</p> <p>11 source and you said, oh, this looks like it could</p> <p>12 matter, let's just scan it all, then you're going to</p> <p>13 actually going to search it in some kind of</p> <p>14 searchable database, true, to find out what's</p> <p>15 actually responsive?</p> <p>16 A. Yes, although I believe we are -- we</p> <p>17 are -- there's a -- an additional step in the -- in</p> <p>18 the process, and there is -- I mean, for all</p> <p>19 materials collected, there's an additional step which</p> <p>20 is reflected in the binder which we haven't</p> <p>21 discussed, and I would be reluctant to discuss</p> <p>22 Leavitt and Fong without touching upon that this is</p> <p>23 part of the overall process.</p> <p>24 Q. All right. Well, just -- can you just</p> <p>25 very briefly tell me what's that part of the process</p> | <p style="text-align: right;">Page 160</p> <p>1 custodians would have been reinterviewed if the legal</p> <p>2 team thought it advisable to -- to do so. I don't</p> <p>3 know which custodians were -- were reinterviewed.</p> <p>4 Q. You don't know if any were</p> <p>5 reinterviewed. True?</p> <p>6 A. That's correct.</p> <p>7 Q. Okay. And do you know if collection was</p> <p>8 done of any sources of documents for the first time</p> <p>9 that had never been collected from before in</p> <p>10 connection with the Fong case? And if you can't</p> <p>11 separate Fong and Leavitt, we can talk about them</p> <p>12 together, and that's okay.</p> <p>13 A. Here -- here's what I do know. I know</p> <p>14 that there were searches made of the existing</p> <p>15 sources. There were additional searches made in OUS</p> <p>16 sources for Fong and Leavitt. There were searches</p> <p>17 made for materials such as advertisements. I don't</p> <p>18 know -- there were additional advertisements that</p> <p>19 were produced that had not been produced before. I</p> <p>20 don't recall if they were associated with Fong or</p> <p>21 Leavitt.</p> <p>22 In the context of searching the existing</p> <p>23 U.S. sources for Fong and Leavitt, I have an</p> <p>24 understanding that a small number of additional</p> <p>25 documents were identified for Leavitt.</p>            |
| <p style="text-align: right;">Page 159</p> <p>1 called?</p> <p>2 A. That -- that would be known as the</p> <p>3 filter terms.</p> <p>4 Q. Okay. So filter terms would be you look</p> <p>5 at the collected material that's already been</p> <p>6 collected to filter it down?</p> <p>7 A. Or -- yes, to filter -- I would use the</p> <p>8 term "promote" it into the review platform. So in</p> <p>9 other words, you have a pool of information. You</p> <p>10 have what are referred to as filter terms. These, I</p> <p>11 understand, have been provided to the plaintiffs.</p> <p>12 They are used to determine what is then made</p> <p>13 available by the attorneys for review.</p> <p>14 Q. Okay. And -- all right. So the filter</p> <p>15 terms -- all right. I'm going to try to go back to</p> <p>16 that.</p> <p>17 But going back to now the -- the</p> <p>18 inquiry, the initial, like, talking to a custodian,</p> <p>19 interviewing a custodian. Was that done either for</p> <p>20 the first time or a subsequent time for any of the</p> <p>21 custodial sources that are identified in Exhibit 3 of</p> <p>22 your binder?</p> <p>23 A. I can't say specifically. I can speak</p> <p>24 to the fact that if it was -- if it was deemed</p> <p>25 necessary, it would have been done. In other words,</p>                                                                                             | <p style="text-align: right;">Page 161</p> <p>1 Q. Okay. So a small number of additional</p> <p>2 documents had been identified for Leavitt. Let me go</p> <p>3 back to the original question. And I appreciate</p> <p>4 that, but -- but still the question is -- I want to</p> <p>5 put the question more narrowly. Because when you</p> <p>6 say "identified," I don't know if that means they're</p> <p>7 being collected for the first time or they're</p> <p>8 actually being identified in something that's already</p> <p>9 been compiled.</p> <p>10 Were these collected for the first time</p> <p>11 from a source, a custodian or a non-custodian?</p> <p>12 A. I -- I believe they were, but I can't</p> <p>13 speak to that with authority.</p> <p>14 Q. Okay. And what is the basis for your</p> <p>15 belief the documents were being collected --</p> <p>16 identified and collected for the first time in the</p> <p>17 Leavitt case?</p> <p>18 A. That is how I interpreted the</p> <p>19 information when I heard it. However, it could also</p> <p>20 be the result of searches either at the filtered</p> <p>21 level, for instance, at what is known in the binder</p> <p>22 as the master search terms, the filter terms.</p> <p>23 Q. Okay. So without jumping to the</p> <p>24 questions yet on the filter terms, you're not sure at</p> <p>25 this point if any documents were</p> |

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| <p style="text-align: right;">Page 162</p> <p>1 produced -- were -- that were produced in Leavitt or<br/> 2 Fong resulted from any new collection of documents<br/> 3 taken from custodial or non-custodial sources. True?<br/> 4 MR. COX: Object to the form.<br/> 5 A. I understand that to be the case<br/> 6 for -- for Leavitt. I don't know -- in other<br/> 7 words --<br/> 8 Q. You don't know --<br/> 9 A. -- for Leavitt, I don't know where<br/> 10 those -- the handful of additional documents came<br/> 11 from, whether they were collected from original<br/> 12 sources or whether they were made available from<br/> 13 changing the scope down -- downstream. I -- I don't<br/> 14 know.<br/> 15 Q. So changing the scope downstream, is<br/> 16 that the -- is that similar to the process we had<br/> 17 talked about with the ERMS or is that another step in<br/> 18 the process?<br/> 19 A. It is a different step, but it's<br/> 20 similar. It is applying search terms to a -- to a<br/> 21 body of material.<br/> 22 Q. Right. So in other words, it<br/> 23 would -- you've already collected something, but<br/> 24 you're using different search terms so that you're<br/> 25 pulling more -- more stuff or different stuff.</p>                                              | <p style="text-align: right;">Page 164</p> <p>1 an update. But when were these created and who<br/> 2 created them? Let me just ask broadly for now.<br/> 3 A. Yeah, I -- I don't know. I -- I<br/> 4 understand that they were created and with -- with<br/> 5 counsel's involvement, but I don't know how long. My<br/> 6 understanding would be they've evolved over several<br/> 7 years.<br/> 8 Q. Okay. Now, I don't remember in -- in<br/> 9 Leavitt or Fong that -- that I personally as an<br/> 10 attorney representing those plaintiffs had anything<br/> 11 to do with these search terms. So can you tell me<br/> 12 what plaintiffs' involvement or plaintiffs' counsel<br/> 13 involvement was, if you know, in these search terms<br/> 14 and -- and where -- when did that happen? What<br/> 15 litigation?<br/> 16 A. My understanding would be that these<br/> 17 terms would have -- would have been used in --<br/> 18 as -- in -- in connection with the global production<br/> 19 from across the litigation. So these would have<br/> 20 allowed materials from any case that would be<br/> 21 considered part of the global production to be<br/> 22 promoted into a review tool.<br/> 23 Q. Do you know what attorneys were, on the<br/> 24 plaintiffs' side, involved in giving -- you said<br/> 25 attorneys gave input on this. But in -- in what way,</p> |
| <p style="text-align: right;">Page 163</p> <p>1 Correct?<br/> 2 A. Well, it's a -- I mean, I -- I think I<br/> 3 would describe that. I would say that the -- the<br/> 4 systems are different. The -- the -- the purpose is<br/> 5 different. In other words, the stuff -- and I tend<br/> 6 to use the word "transom" meaning from -- delivered<br/> 7 from the company to the vendor at this point. The<br/> 8 stuff has gone over the transom, and it now resides<br/> 9 with the -- with the vendor. And so these are search<br/> 10 terms that determine how the vendor promotes material<br/> 11 to be reviewed by the attorneys.<br/> 12 Q. Okay. Let's take a look at those for a<br/> 13 moment, then. Where are those terms?<br/> 14 A. Under Tab 7.<br/> 15 Q. Okay. So Tab 7 is also Exhibit 7 to<br/> 16 your deposition. And this is Johnson &amp; Johnson<br/> 17 Talcum Powder Litigation Master Search Terms. And<br/> 18 this is dated as of 9/4/2018. Correct?<br/> 19 A. Yes.<br/> 20 Q. Okay.<br/> 21 And these -- I believe that you said<br/> 22 that these master search terms were -- these were<br/> 23 provided to plaintiffs. And you provided them here.<br/> 24 And how long have these search terms been in<br/> 25 existence? I mean, I know when it's as of -- this is</p> | <p style="text-align: right;">Page 165</p> <p>1 do you know?<br/> 2 A. I mean attorneys for -- for the company.<br/> 3 Q. Okay. Not plaintiffs' attorneys.<br/> 4 A. Correct.<br/> 5 Q. I thought -- and maybe I misunderstood,<br/> 6 and that's my fault if I did -- but I thought you had<br/> 7 said that plaintiffs' counsel was somehow involved<br/> 8 in -- in having input on what these search terms are.<br/> 9 A. I understand they were provided to<br/> 10 plaintiffs. I don't know if there was any feedback<br/> 11 or not. I -- I don't know.<br/> 12 Q. Okay. And this global<br/> 13 production -- now, I don't know global production<br/> 14 when, because I know that there had been -- and I'm<br/> 15 sure that you know going back to 1998 or so --<br/> 16 documents regarding talc issues in response to<br/> 17 litigation had been collected. True?<br/> 18 A. Yes.<br/> 19 Q. Okay. And -- and those documents<br/> 20 had -- had been put into what is now the global<br/> 21 production. True?<br/> 22 A. Yes.<br/> 23 Q. Okay. And so -- but this master search<br/> 24 terms, it doesn't -- this isn't a list that goes all<br/> 25 the way back to 1998, does it?</p>                                                                                                                                                                                |



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| <p style="text-align: right;">Page 166</p> <p>1 A. My understanding is that it will -- it</p> <p>2 would take into account materials that were collected</p> <p>3 and brought forward into the review tool. Now, as to</p> <p>4 whether items like Legacy 1 and Legacy 2 would have</p> <p>5 been included in the master search terms, my sense is</p> <p>6 that those were independent productions that would</p> <p>7 have been folded into the global production. But for</p> <p>8 the materials collected from the company and put into</p> <p>9 a repository, these terms were used to send it off to</p> <p>10 the review stage.</p> <p>11 Q. Okay. So these terms -- these filter</p> <p>12 terms -- so -- well, let me just ask you before I get</p> <p>13 to there.</p> <p>14 Looking through this list, can you tell</p> <p>15 me when the master search -- you said in connection</p> <p>16 with the global production, but that's been a long</p> <p>17 process over many years. True?</p> <p>18 A. Yes.</p> <p>19 Q. Okay. And so but you can't tell me by</p> <p>20 looking at this when each of these terms was included</p> <p>21 in a list of master search terms. True?</p> <p>22 A. Correct.</p> <p>23 Q. Okay. Did you have that information,</p> <p>24 when different search -- they came up with different</p> <p>25 search terms?</p> | <p style="text-align: right;">Page 168</p> <p>1 Q. Well, Legacy 1 and Legacy 2, they</p> <p>2 don't -- they don't go through this filtering</p> <p>3 process?</p> <p>4 A. Correct.</p> <p>5 Q. Okay. I'll leave it there.</p> <p>6 And you said that this is the -- did you</p> <p>7 say -- the word you used, "transom"?</p> <p>8 A. Yeah, to mean the information collected</p> <p>9 from the company and the -- now in the hands of the</p> <p>10 vendor.</p> <p>11 Q. Okay. And so this is what filters</p> <p>12 before it gets finally to the vendor.</p> <p>13 A. No. The vendor applies -- well, in</p> <p>14 conjunction with counsel, but the vendor applies</p> <p>15 from -- everything it has, it applies these terms.</p> <p>16 Q. Okay. And then it -- from that, it</p> <p>17 constitutes the master collection.</p> <p>18 A. Yeah. So the vendor has two pools.</p> <p>19 The -- the big pool runs the master search terms, and</p> <p>20 then that results in the review pool.</p> <p>21 Q. Right. And then what's done with what</p> <p>22 is collected that gets to the filtering process but</p> <p>23 then doesn't make it to the master collection where</p> <p>24 it would end up in now the review process -- and the</p> <p>25 review process just to be -- well, let me just ask</p>                                                       |
| <p style="text-align: right;">Page 167</p> <p>1 A. I do not.</p> <p>2 Q. Okay. And this filtering process that</p> <p>3 you're describing, I think you mentioned as I was</p> <p>4 kind of trying to go through the steps to make sure</p> <p>5 that we were keeping them separated, I believe that</p> <p>6 you said that this is sort of post collection. Is</p> <p>7 that true?</p> <p>8 A. For documents collected from the</p> <p>9 company. In other words, not Legacy 1, Legacy 2, but</p> <p>10 for the materials collected from company sources.</p> <p>11 Q. Okay. So Legacy 1, Legacy 2, you</p> <p>12 wouldn't put them -- you wouldn't run the master</p> <p>13 search terms on them. True?</p> <p>14 A. Correct.</p> <p>15 Q. Okay. Because they're already included?</p> <p>16 A. Correct.</p> <p>17 Q. So this is going to determine what ends</p> <p>18 up going into the bigger collection of what would be</p> <p>19 considered the master sort of talc collection of</p> <p>20 documents. Correct?</p> <p>21 A. That's my understanding.</p> <p>22 Q. Okay. But not from prior collections</p> <p>23 that had already been determined to be relevant to</p> <p>24 talc litigation, for example. Correct?</p> <p>25 A. I didn't understand the last part.</p>                                                                             | <p style="text-align: right;">Page 169</p> <p>1 that question. What happens to that stuff that</p> <p>2 doesn't make -- gets collected and doesn't then pass</p> <p>3 through the filter?</p> <p>4 A. Well, it's --</p> <p>5 MR. COX: Object to the form. Go ahead.</p> <p>6 A. I'm sorry.</p> <p>7 My understanding, it's there. It is</p> <p>8 available to be promoted to the extent that search</p> <p>9 terms will include it. It's certainly not disposed</p> <p>10 of as -- as part of a -- an ongoing repository.</p> <p>11 It -- it is -- it is simply available as -- as</p> <p>12 needed.</p> <p>13 Q. Is it -- and when you say it's part of</p> <p>14 an existing repository, it's not one single</p> <p>15 repository, though, is it? Is this -- is this -- is</p> <p>16 this -- well, I guess let me ask. The stuff that's</p> <p>17 been collected but then doesn't add up -- end up, and</p> <p>18 then goes through this filtering process through the</p> <p>19 master search terms using the master search terms but</p> <p>20 doesn't make it to the final collection, that</p> <p>21 information that's been collected now has all</p> <p>22 actually been digitized. Correct? Otherwise, how</p> <p>23 are they applying all these search terms to it?</p> <p>24 A. I -- I believe it has, but I -- I want</p> <p>25 to double-check that.</p> |

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| <p style="text-align: right;">Page 170</p> <p>1 Q. Well, if you look at these search terms,<br/> 2 is there any way that you -- one could reasonably do<br/> 3 a filtering process using these search terms looking<br/> 4 through a paper index, a hard copy of an index or by<br/> 5 looking merely through boxes?<br/> 6 A. Yeah, I would agree.<br/> 7 Q. So okay. So let's -- and it sounds like<br/> 8 you -- and I may follow up on this in -- in the next<br/> 9 volume of your deposition, but so if this all gets<br/> 10 digitized and some of it doesn't make it to the final<br/> 11 collection, what do you call that collection now of<br/> 12 stuff that actually has been digitized? And<br/> 13 presumably some of it's already digitized information<br/> 14 anyway. It's electronic. That's the format it came<br/> 15 in. True?<br/> 16 A. Yes.<br/> 17 Q. And then some of it is going to be stuff<br/> 18 that was just hard copies. True?<br/> 19 A. Yes.<br/> 20 Q. Okay. But now it's all been digitized.<br/> 21 Right?<br/> 22 A. I -- I'm pretty sure that's true.<br/> 23 Q. Okay. So homework for next time.<br/> 24 So what database or platform -- and I'm<br/> 25 not very good at that stuff because I don't know it</p> | <p style="text-align: right;">Page 172</p> <p>1 run many, many times.<br/> 2 That then -- a hit would result in<br/> 3 a -- what I'm calling a promotion or a movement into<br/> 4 the review system.<br/> 5 Q. Okay.<br/> 6 MR. SWANSON: Madam court reporter, can<br/> 7 you read that back. Thank you.<br/> 8 (Whereupon, the court reporter reads as<br/> 9 requested.)<br/> 10 Q. And I apologize here because I -- I wish<br/> 11 I had a better understanding how this is done. But<br/> 12 the index being built, what is it built with?<br/> 13 A. Well, that's -- that's Nuix's function<br/> 14 is to create a -- a searchable capability. So if I<br/> 15 had -- if I had a personal computer and I had ten<br/> 16 documents in a folder, I could point the Nuix<br/> 17 application and Nuix would say, oh, Document 1, 2, 3<br/> 18 through 10, build an index, pull out some metadata,<br/> 19 pull out some text, come up with a -- a means to then<br/> 20 go back to those materials and find them. So if<br/> 21 there's a word in one of those ten documents, I could<br/> 22 tell Nuix go out and find these documents with that<br/> 23 word in it.<br/> 24 Q. Is -- does the -- the Nuix index doesn't<br/> 25 include all the content. Correct? But does it</p>                                                                                                                                                       |
| <p style="text-align: right;">Page 171</p> <p>1 all that well. But what -- what platform or database<br/> 2 or app are they using to review, do this filtering<br/> 3 review with these master search terms?<br/> 4 A. If there's no objection, I -- I will say<br/> 5 it's a tool called Nuix.<br/> 6 Q. Nuix?<br/> 7 A. Yes.<br/> 8 Q. How do you spell that?<br/> 9 A. N-U-I-X.<br/> 10 Q. Okay. So those documents now that have<br/> 11 been collected, they get put into Nuix. The filter<br/> 12 terms get provided. And then if there's a hit based<br/> 13 on filtering terms, they make it into the global<br/> 14 production? Is that how that works?<br/> 15 A. Yeah.<br/> 16 MR. COX: Object to the form.<br/> 17 Q. Or you talked about a review process.<br/> 18 So is there something after the filtering process?<br/> 19 A. Well, I was just going to say that<br/> 20 rather than being put into Nuix, they are put into a<br/> 21 storage vehicle. The Nuix builds an index against<br/> 22 those materials, and that index can then be queried<br/> 23 using these search terms. And because it's an index,<br/> 24 the terms can be run one after the other instantly,<br/> 25 rapidly. The index is built once. The terms can be</p> | <p style="text-align: right;">Page 173</p> <p>1 index -- or -- or does it?<br/> 2 A. Well, Nuix has a couple of capabilities.<br/> 3 I'm -- I'm not -- you know, I know generally that the<br/> 4 vendor uses Nuix. There are a number of modules to<br/> 5 it. I don't -- my general understanding would be<br/> 6 that the Nuix is going in, looking at the metadata.<br/> 7 So it's looking at native documents and taking<br/> 8 selected pieces out of those documents. It is going<br/> 9 to be able to extract text from -- from those<br/> 10 materials, as well. So if there's a word processing<br/> 11 document, they'll pull the text out.<br/> 12 It will then create upon request load<br/> 13 files that comprise the bibliographic elements and<br/> 14 the full text and perhaps the -- the -- the OCR<br/> 15 images. They may be using a separate tool for the<br/> 16 OCR -- I'm sorry -- for the -- well, for the imaging<br/> 17 and the OCR. The rendering of the TIF files and the<br/> 18 extraction of the text could be native in Nuix, could<br/> 19 be a third-party. But that -- that whole process<br/> 20 will result in OCR text, TIF images of -- and<br/> 21 a -- and a load file of the bibliographic data.<br/> 22 Q. Okay.<br/> 23 So -- and then the review -- so when you<br/> 24 were talking about -- when I was asking you whether<br/> 25 or not information had been collected either for the</p> |



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| <p style="text-align: right;">Page 174</p> <p>1 first time or re-collected from a source that had<br/> 2 been collected before, you weren't sure in Leavitt<br/> 3 for that one section of information whether or not<br/> 4 that had been done or a new -- a new filtering<br/> 5 process had been done. Is that true?<br/> 6 A. I wasn't sure if those<br/> 7 additional -- that handful of additional documents<br/> 8 came from sources at the company or if they were the<br/> 9 result of different terms, expanded terms in<br/> 10 the -- in the -- the Nuix master search terms<br/> 11 section.<br/> 12 Q. Okay.<br/> 13 And what was that handful of documents,<br/> 14 do you know?<br/> 15 A. I do not.<br/> 16 Q. Okay. Did you know what the subject<br/> 17 matter was?<br/> 18 A. As -- as I mentioned, I know that<br/> 19 the -- somewhere between Leavitt and Fong, there were<br/> 20 advertisements, possibly a PowerPoint that were<br/> 21 added. I don't know for Leavitt specifically which<br/> 22 documents were -- were added.<br/> 23 Q. Okay.<br/> 24 Now, as to the filtering process, so if<br/> 25 you get everything in this master collection, you've</p> | <p style="text-align: right;">Page 176</p> <p>1 of documents we've talked about, which wasn't just<br/> 2 specific to Leavitt and Fong but had been over the<br/> 3 last several years according to you. Did those<br/> 4 go -- after they had been hand-searched, did it then<br/> 5 go through the filtering process?<br/> 6 A. They -- they would have been delivered<br/> 7 to the vendor. After the boxes had been reviewed,<br/> 8 they would have been delivered to the vendor. And<br/> 9 the materials would have been scanned and OCRd. Now,<br/> 10 I don't know whether the vendor does it itself. I<br/> 11 mean, typically these days scanning is -- is -- is<br/> 12 outsourced to a dedicated scanning company. I -- I<br/> 13 don't know which direction it went. But<br/> 14 the -- the -- the vendor would have had overall<br/> 15 responsibility to ingest that material and make it<br/> 16 searchable in Nuix.<br/> 17 Q. Okay.<br/> 18 Is it your understanding that anything<br/> 19 that gets produced in the talc litigation either<br/> 20 already made it to the master set or it goes through<br/> 21 this filtering process with these master search<br/> 22 terms?<br/> 23 MR. COX: Object to the form.<br/> 24 A. So I think in the first instance you're<br/> 25 talking about Legacy 1, Legacy 2, so where it -- it</p> |
| <p style="text-align: right;">Page 175</p> <p>1 filtered it now, the Nuix system -- what happens with<br/> 2 everything that's on the Nuix system, that's been<br/> 3 indexed in the Nuix system?<br/> 4 A. In terms -- I'm sorry.<br/> 5 Q. Well, does it just -- now, you said the<br/> 6 stuff doesn't get destroyed. Do they leave the -- it<br/> 7 would reside on some sort of server, the actual data.<br/> 8 But then you've got the Nuix system in place that you<br/> 9 run with that. Right?<br/> 10 A. Correct.<br/> 11 Q. Okay. And that -- does that remain<br/> 12 available? And is this -- one question at a time.<br/> 13 Okay.<br/> 14 Is this something the vendor does or<br/> 15 something that's done before the vendor? I think you<br/> 16 said the vendor. Correct?<br/> 17 A. This is done -- the collected materials<br/> 18 are provided to the vendor and they perform all the<br/> 19 processing activities.<br/> 20 Q. Okay.<br/> 21 A. And as I mentioned, they may leverage<br/> 22 other tools, but Nuix is the primary tool that is<br/> 23 performing that function.<br/> 24 Q. Okay.<br/> 25 And did -- going back to the 1,600 boxes</p>               | <p style="text-align: right;">Page 177</p> <p>1 doesn't need to go through --<br/> 2 Q. That's correct.<br/> 3 A. -- the process because it's an intact<br/> 4 production?<br/> 5 Q. That's right.<br/> 6 A. I -- I can't say that -- that that is<br/> 7 the case for everything that is produced for<br/> 8 the -- the simple reason that -- that this is a part<br/> 9 of the document protocol.<br/> 10 Now, if there are certain systems that<br/> 11 can't be reduced to document form that are complex<br/> 12 business systems, those according to the protocol<br/> 13 would be subject to meet and confer and would be<br/> 14 produced in the -- the most -- in the agreed-upon<br/> 15 manner.<br/> 16 I can only speak for things that are<br/> 17 documents in this case in terms of the production.<br/> 18 If there was a business system that required a meet<br/> 19 and confer and an agreement between the sides as to<br/> 20 how it was to be produced, that might fall outside<br/> 21 this process.<br/> 22 Q. Okay.<br/> 23 But other than that, your understanding<br/> 24 is that it goes through the filtering process?<br/> 25 A. Yes.</p>                                                                                                                                                                                    |

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| <p style="text-align: right;">Page 178</p> <p>1 Q. If it wasn't already part of the master<br/>2 collection?</p> <p>3 A. Yes.</p> <p>4 Q. On -- and as to the Fong case, you're<br/>5 not aware of any new collection of documents either<br/>6 for the first time or a collection -- a new<br/>7 collection from a source that had previously been<br/>8 collected from. True?</p> <p>9 A. Say the second part again, please. I'm<br/>10 sorry.</p> <p>11 Q. Well, I'll -- I'll do it one at a time.<br/>12 Now, you mentioned this one set of<br/>13 documents in Leavitt, and you weren't sure if it was<br/>14 just a new filtering process adding search terms or<br/>15 they actually collected new documents. Correct?</p> <p>16 A. Correct.</p> <p>17 Q. All right. Now, as to Fong, do you know<br/>18 whether or not any documents were collected from the<br/>19 first -- for the first time from a source to find<br/>20 documents responsive to the Fong request?</p> <p>21 A. I don't know that any new documents<br/>22 were -- were -- surfaced from the efforts in the Fong<br/>23 case. I know that there were -- there was a<br/>24 collection originally produced in the Delacruz case<br/>25 that was also produced in Fong.</p>                                       | <p style="text-align: right;">Page 180</p> <p>1 A. That's -- that's my understanding. I am<br/>2 just trying to be careful that I'm not confusing Fong<br/>3 and -- and Leavitt. But I believe they were produced<br/>4 in connection with the Fong case from the Delacruz<br/>5 case.</p> <p>6 Q. Okay. Right. And Fong would be the<br/>7 case that -- that has to do with Hong Kong. That's<br/>8 true?</p> <p>9 A. Yes.</p> <p>10 Q. Okay.</p> <p>11 Now, you mentioned this term "inactive<br/>12 custodian" or -- or "recently active custodian," a<br/>13 custodian who might be a custodian but no longer<br/>14 works for the company. Correct?</p> <p>15 A. Yes.</p> <p>16 Q. Okay. And is the -- the -- what's<br/>17 the -- is there a term that Johnson &amp; Johnson uses<br/>18 for that?</p> <p>19 A. I think former employees would be the<br/>20 way I would refer to it.</p> <p>21 Q. And is there a cutoff in terms of the<br/>22 number of years that somebody was no longer with the<br/>23 company that they would no longer be considered a<br/>24 custodian?</p> <p>25 A. Well, I -- I would think that is more a</p>                                                                                                                                                                                                                                                    |
| <p style="text-align: right;">Page 179</p> <p>1 MR. SWANSON: Okay. Move to strike the<br/>2 nonresponsive part.</p> <p>3 Q. But -- but again, you don't know if<br/>4 anything was collected for the first time in the Fong<br/>5 case. True?</p> <p>6 A. I don't believe anything else was found<br/>7 in the -- in the Fong case.</p> <p>8 Q. Okay. And just briefly, what was the<br/>9 Delacruz case? What was collected? What types of<br/>10 documents were collected there that were produced in<br/>11 Fong?</p> <p>12 A. And I -- I want to consult my notes<br/>13 because I want to make sure when I'm speaking of<br/>14 Delacruz, that I am referring to a -- a matter in<br/>15 Hong Kong. I want to make sure that I'm referring to<br/>16 the right collection in the right case before I put<br/>17 that to -- to rest.</p> <p>18 Q. Okay. So -- and I'm not going to even<br/>19 make you do that right now. Maybe you can do it on<br/>20 the break. But -- but I'll just ask. So it's your<br/>21 understanding that there were documents that had been<br/>22 produced in a case regarding Johnson &amp; Johnson's<br/>23 Hong Kong activities that had been produced in<br/>24 another case that were then again produced in the<br/>25 Fong case. Is that right?</p> | <p style="text-align: right;">Page 181</p> <p>1 function of the -- the -- two things; the system<br/>2 capabilities at that time, and the results of the<br/>3 exit process for that employee. And I can expound on<br/>4 that if you wish.</p> <p>5 Q. Let me just follow up. Would it have to<br/>6 do -- you mentioned before, you know, whether or not<br/>7 they were involved in litigation with Johnson &amp;<br/>8 Johnson assisting or something like that -- sounded<br/>9 like in a consultant role, somebody like<br/>10 Mr. Hopkins -- that that would<br/>11 constitute -- that -- that might be somebody who<br/>12 remained being a custodian. Correct?</p> <p>13 A. Well, I would view a custodian in this<br/>14 case as someone who holds relevant materials.</p> <p>15 Q. Okay.</p> <p>16 A. I can't speak to Mr. Hopkins one way or<br/>17 the other about the materials as opposed to his<br/>18 testimonial or other role, but I can speak to the<br/>19 fact that in terms of whether a former custodian<br/>20 remains a custodian after he or she leaves, that is a<br/>21 function of -- of, one, the exit process. So there<br/>22 is a procedure by which an employee leaves the<br/>23 company which entails a checklist, an exit interview<br/>24 with the manager, and certain responsibilities being<br/>25 carried out, which is the transfer of materials.</p> |

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| <p style="text-align: right;">Page 182</p> <p>1 Those materials would be transferred if</p> <p>2 there is a business reason for the employee to</p> <p>3 transfer them or a litigation reason for the employee</p> <p>4 to transfer them. It is up to the employee to tell</p> <p>5 the manager or present them with those materials one</p> <p>6 way or the other.</p> <p>7 Now, that may be to transfer them to a</p> <p>8 new custodian, in which case there's a successor</p> <p>9 custodian. That may be to burn them to a CD and they</p> <p>10 still be marked with the old custodian's name,</p> <p>11 although they may be in the manager's custody.</p> <p>12 They may be copied into a litigation</p> <p>13 hold system and the manager would be alerted to that.</p> <p>14 In any case, the manager would have knowledge at that</p> <p>15 point whether that custodian was still independently</p> <p>16 identifiable or whether they became the materials of</p> <p>17 a successor custodian.</p> <p>18 The second part of my answer about the</p> <p>19 systems is that in approximately 2012, 2013 -- and</p> <p>20 I'll have to double-check the -- the exact time</p> <p>21 frame -- the company started preserving mailboxes</p> <p>22 and -- and file shares of employees who left. So if</p> <p>23 you -- if you left and you're -- you no longer had an</p> <p>24 e-mail account, that e-mail user was removed from the</p> <p>25 directory but your mail stayed on the system.</p> | <p style="text-align: right;">Page 184</p> <p>1 They could be, for instance, obsolete or duplicate or</p> <p>2 records in which case they may not be sent to offsite</p> <p>3 storage. They may be dispositioned.</p> <p>4 But if they are viewed as being</p> <p>5 part of -- part of a records schedule, then -- and</p> <p>6 with retention responsibility still attached to them,</p> <p>7 they would be retained.</p> <p>8 Q. Okay. So when you talk about protocol,</p> <p>9 in that context you're talking about looking at the</p> <p>10 records retention?</p> <p>11 A. Yes.</p> <p>12 Q. So is the manager who's doing -- did you</p> <p>13 say that the manager does, like, an interview with</p> <p>14 the person?</p> <p>15 A. An exit interview, yes.</p> <p>16 Q. Exit interview. And is that</p> <p>17 manager -- it's a manager at what sort of level?</p> <p>18 A. The person that that employee reports</p> <p>19 to.</p> <p>20 Q. Okay. And what is -- what is the</p> <p>21 protocol for training these various -- because</p> <p>22 there's various managers at different levels.</p> <p>23 Correct?</p> <p>24 A. Yes.</p> <p>25 Q. Okay. So do you know what the training</p>                                                                                                                                                                                                                                                             |
| <p style="text-align: right;">Page 183</p> <p>1 Q. Okay. How -- and the -- so I think</p> <p>2 there's two separate parts there that I want to</p> <p>3 follow up on.</p> <p>4 When an employee leaves and if -- if</p> <p>5 there's a potential litigation purpose or business</p> <p>6 purpose now for keeping the records or archiving</p> <p>7 them -- is that what you said? -- they'd be retained</p> <p>8 in that case or transferred over?</p> <p>9 A. That may be an outcome is that that</p> <p>10 employee's -- if their, let's say, paper</p> <p>11 materials -- I mentioned this earlier -- their paper</p> <p>12 materials may be boxed up and sent under their</p> <p>13 department to offsite storage.</p> <p>14 Q. And -- and what is the protocol for</p> <p>15 determining whether or not somebody's -- well, let me</p> <p>16 back up a step.</p> <p>17 Presumably the paper materials that</p> <p>18 somebody is generating in the course of their work</p> <p>19 are business-related materials. Correct?</p> <p>20 MR. COX: Object to the form.</p> <p>21 Q. As opposed to just personal stuff.</p> <p>22 A. They -- they may be business-related</p> <p>23 materials, but as to whether they're candidates for</p> <p>24 offsite storage would depend on whether they're</p> <p>25 viewed as records from a record retention standpoint.</p>                                                                                                                                      | <p style="text-align: right;">Page 185</p> <p>1 protocol is for managers in the records retention</p> <p>2 policy?</p> <p>3 A. What I can state as a general principle</p> <p>4 that all employees receive records retention training</p> <p>5 and refresher training a couple times a year, and</p> <p>6 that that is part of the philosophy, and the</p> <p>7 philosophy is described in the binder in the WWRIM</p> <p>8 that all employees are considered records managers of</p> <p>9 their materials. So that the -- there should be</p> <p>10 knowledge and responsibility and authority to manage</p> <p>11 one's records, and by implication for the manager to</p> <p>12 administer the records of -- of an active or a</p> <p>13 departing employee.</p> <p>14 Q. So if they go to -- based on -- you</p> <p>15 know, if everybody is trained properly and these are</p> <p>16 records that are supposed to be</p> <p>17 retrained -- retained, what does the</p> <p>18 protocol -- Johnson &amp; Johnson's protocol provide for</p> <p>19 the next step in terms of how they're supposed to get</p> <p>20 archived? Because you said sometimes they get burned</p> <p>21 onto a CD; sometimes physical copies are kept.</p> <p>22 A. Yes. And that's in the manager's</p> <p>23 discretion to make that determination. And the</p> <p>24 manager may consult IT, may go to the Records</p> <p>25 Department. If there's -- it appears to be sent</p> |

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| <p style="text-align: right;">Page 186</p> <p>1 offsite, they're in a paper form, it's up to the<br/> 2 manager to make that decision because the manager at<br/> 3 that point has the -- has the knowledge and obviously<br/> 4 is the -- the one who is still present at the<br/> 5 company.<br/> 6 Q. Okay. Now, you are familiar with the<br/> 7 idea that copies of the same documents can sometimes<br/> 8 be relevant depending on who was in possession of<br/> 9 those documents, and especially if there are<br/> 10 handwritten notes on documents. Correct?<br/> 11 A. So may I ask if we're talking in a<br/> 12 litigation context now?<br/> 13 Q. Yes.<br/> 14 A. Yes.<br/> 15 Q. Okay.<br/> 16 A. Yes, I would agree with that.<br/> 17 Q. Okay. And -- and so in -- and you<br/> 18 mentioned that sometimes, you know, documents get<br/> 19 dispositioned that are duplicates. How -- what is<br/> 20 the -- what is the policy? What does Johnson &amp;<br/> 21 Johnson do into ensuring that they're not throwing<br/> 22 away documents or dispositioning documents just<br/> 23 because they're copies that could actually be<br/> 24 relevant to litigation?<br/> 25 MR. COX: Object to the form. Go ahead.</p>                                                    | <p style="text-align: right;">Page 188</p> <p>1 Q. Okay. And how do those e-mails get<br/> 2 archived?<br/> 3 A. Well, the -- the current e-mail system<br/> 4 keeps them. I mean, there may be an archive area<br/> 5 within the Microsoft Outlook Exchange environment,<br/> 6 but they basically remain in the Outlook Exchange<br/> 7 environment.<br/> 8 Q. And at what point do you know with<br/> 9 Johnson &amp; Johnson was that implemented?<br/> 10 A. As I mentioned, in around -- I believe<br/> 11 it was 2013 the company upgraded its e-mail<br/> 12 environment to Exchange 2010. The version of<br/> 13 Exchange was 2010. If it was started in 2012 and<br/> 14 completed in 2013, at that point the company had<br/> 15 obtained sufficient storage in its e-mail environment<br/> 16 to maintain information in place, including that of<br/> 17 former employees.<br/> 18 Now, the current scenario is that -- is<br/> 19 that active e-mails are -- active e-mail users live<br/> 20 in the cloud in the Office 365 environment. That's a<br/> 21 process that was -- has started in terms of users<br/> 22 being moved in the cloud. But the idea that an<br/> 23 inactive user's information is kept is still a<br/> 24 going-forward concept.<br/> 25 Q. Now, one of the things that you</p>                                                                                                                                                      |
| <p style="text-align: right;">Page 187</p> <p>1 A. I'm sorry. In the event of a litigation<br/> 2 hold, the operation of the policy is suspended. So<br/> 3 the idea that duplicates are redundant or obsolete<br/> 4 information, is -- is a candidate for disposition is<br/> 5 suspended, and the -- the requirements of the<br/> 6 litigation obviously interpose themselves against the<br/> 7 records retention policy.<br/> 8 Q. Right. Because -- because otherwise if<br/> 9 there wasn't a hold and there's litigation, you could<br/> 10 be throwing away documents that are relevant to the<br/> 11 litigation. Correct?<br/> 12 A. Yeah. A litigation hold would suspend<br/> 13 an applicable part of the operation of the records<br/> 14 retention policy.<br/> 15 Q. Right. Because otherwise if you don't<br/> 16 have them in place, you would be throwing away<br/> 17 relevant documents. True?<br/> 18 MR. COX: Object to the form.<br/> 19 Q. Potentially.<br/> 20 A. As a -- as a general principle, yes.<br/> 21 Q. Now, you mentioned that when employees<br/> 22 leave now, I believe you said that all of<br/> 23 the -- their e-mails get captured. Is that right?<br/> 24 A. Their e-mail account on the network<br/> 25 is -- is basically locked down.</p> | <p style="text-align: right;">Page 189</p> <p>1 mentioned in terms of -- and, again, I -- I don't<br/> 2 want to beat a dead horse. But since you talked<br/> 3 about these supplemental searches being done in<br/> 4 Leavitt and Fong, you mentioned people housed in<br/> 5 international locations. And I don't think that we<br/> 6 had identified any particular custodians that had<br/> 7 been interviewed or any new documents that had been<br/> 8 collected from people housed in international<br/> 9 locations. So let me ask you this: What<br/> 10 specifically did you mean by that in terms of what<br/> 11 was actually done in either of these cases?<br/> 12 A. Right. Well, the -- the -- the concept<br/> 13 of people housed in locations when I first mentioned<br/> 14 it was my erroneous notion about Mr. Hopkins, and<br/> 15 that was conflated with the idea that people housed<br/> 16 in international locations were searched for U.S.<br/> 17 matters even if they weren't physically in the U.S.<br/> 18 In terms of the OUS searches relevant to<br/> 19 Leavitt and Fong, I have notes -- and I believe we<br/> 20 looked at those notes -- from Pamela Downs that<br/> 21 indicate that locations in the Philippines and in<br/> 22 Hong Kong were specifically searched for relevant<br/> 23 material typically in -- in terms of paper and<br/> 24 archived material because of the time frame of the<br/> 25 alleged exposure.</p> |

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| <p style="text-align: right;">Page 190</p> <p>1 Q. Okay. And where -- where is that in the<br/>2 notes?<br/>3 A. So it's going to be towards the end.<br/>4 I'm going to go maybe four pages back from the end.<br/>5 Q. Right.<br/>6 A. Page 4 of the -- the Pam Downs notes.<br/>7 Q. Okay.<br/>8 Okay. Again, these searches -- we<br/>9 talked about this, but these searches were -- these<br/>10 are a bunch of out of the United States locations.<br/>11 Correct?<br/>12 A. I'm sorry. "Out of" meaning?<br/>13 Q. No, these are -- these are overseas<br/>14 sources.<br/>15 A. Correct.<br/>16 Q. Okay.<br/>17 But these -- this follow-up that was<br/>18 done -- and this is from your notes with Pam Downs.<br/>19 Correct?<br/>20 A. And let me clarify the meaning of the<br/>21 word "follow-up." It was my follow-up with her --<br/>22 Q. Okay.<br/>23 A. -- as opposed to a follow-up collection.<br/>24 Q. Okay. All right.<br/>25 So as to -- but you're not saying that</p>                                                                                                                                                                                                                                                                                                               | <p style="text-align: right;">Page 192</p> <p>1 just -- I just don't know.<br/>2 Q. Were those all hard copies of documents,<br/>3 do you know, or were they searching something<br/>4 digitally?<br/>5 A. My understanding is that it would depend<br/>6 on the date range. So, for instance, I believe<br/>7 Hong Kong was only a box search. I believe the<br/>8 Philippines, there were -- would have been --<br/>9 Q. Okay. I'm just going to cut you off<br/>10 because I was just asking about the UK first.<br/>11 A. Oh, I'm sorry.<br/>12 Q. No, that's okay. So in the UK, it says<br/>13 "No docs collected." True?<br/>14 A. Correct.<br/>15 Q. It says, "Answers to interrogatories."<br/>16 I don't need to know about that. But "Date Range of<br/>17 Exposure: '69 to 2000."<br/>18 So UK, for the UK, you don't know if<br/>19 anybody was specifically interviewed for what might<br/>20 be there, do you?<br/>21 A. Well, I -- I can -- I want to establish<br/>22 two different ideas. One is the need to interview<br/>23 people in OUS locations. And -- and I would look at<br/>24 the custodian list for that determination.<br/>25 The other would be searching for</p>                                                                                                                                                                                               |
| <p style="text-align: right;">Page 191</p> <p>1 these were specifically done for Leavitt or Fong.<br/>2 Correct? You -- you don't know?<br/>3 A. I understand that -- that these searches<br/>4 were -- I don't know if they -- if anything was<br/>5 repeated specific to Leavitt and Fong, but I know<br/>6 that the materials that were searched were viewed<br/>7 from the perspective of whether they would be<br/>8 applicable to Leavitt and Fong.<br/>9 Q. Okay.<br/>10 And if you look at this, when it<br/>11 says "UK Paper," do you know what documents -- were<br/>12 those hard copy documents or what that was being<br/>13 reviewed? I -- I'm not sure what the note is, but<br/>14 I'm trying to figure it out. It says, "UK Paper,<br/>15 specs, processing, and testing search."<br/>16 What does that mean in terms of<br/>17 "search"? No documents were collected. Right?<br/>18 A. Correct.<br/>19 Q. Okay. And was anybody interviewed?<br/>20 A. I -- I have no indication that anyone<br/>21 was interviewed in connection with that -- with that<br/>22 search. There may have been people consulted for<br/>23 their knowledge of where materials would be located,<br/>24 what warehouse, for instance. I don't know that<br/>25 there were additional interviews conducted. I</p> | <p style="text-align: right;">Page 193</p> <p>1 specific locations. In the case of the UK, paper<br/>2 locations for these documents in UK locations.<br/>3 I don't know that there were<br/>4 interviews -- links to these searches. I know there<br/>5 were -- the people who are interviewed in connection<br/>6 with their knowledge of documents are reflected in<br/>7 the -- in the list of custodians.<br/>8 Q. Well, now, but the term you're using<br/>9 there, when it says "Specs, processing, and testing<br/>10 search," again, "search" is kind of the broadest<br/>11 term. Right? So when I look at that -- and based on<br/>12 our discussion, when I look at that word "search,"<br/>13 that doesn't tell me what part of the searching<br/>14 process or processes was actually done as to the UK.<br/>15 In other words, was there an initial -- was there<br/>16 further inquiry about where to search? And then<br/>17 what -- what -- where was it searched? Was it paper?<br/>18 Was it electronic? Did they actually go through it<br/>19 piece by piece?<br/>20 Or, you know, there's none of that<br/>21 information there. And so I -- I don't know what you<br/>22 mean here when you say "Specs, processing, and<br/>23 testing search." So let me ask you: Do you know<br/>24 what you mean by those words?<br/>25 A. Well, I do know that the reference in</p> |



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| <p style="text-align: right;">Page 194</p> <p>1 the UK was to paper because it simply says "UK<br/>2 Paper."<br/>3 What -- what happened was that I -- in<br/>4 my follow-up with Ms. Downs, we walked through each<br/>5 location, and I got a summary of the efforts done<br/>6 in -- in each location. Now, that -- that's<br/>7 reflected in my notes. I mean, obviously there is<br/>8 more information that can be gained, for instance,<br/>9 from -- from the UK process. I simply did a survey,<br/>10 sort of an around-the-horn survey with her in --<br/>11 in -- in the context of the follow-up.<br/>12 Q. Okay.<br/>13 Do you know whether or not<br/>14 the -- the -- some type of paper search happened from<br/>15 your notes. That's what it sounds like. Were those<br/>16 boxes in a repository? Was it one box? Was it a<br/>17 file cabinet? Do you know?<br/>18 MR. COX: Object to the form. Go ahead.<br/>19 A. No. All I know is that that paper was<br/>20 searched, which I believe to be in boxes.<br/>21 Q. Okay. Do you have any idea of the<br/>22 quantity of boxes, whether it was more or less than<br/>23 100 boxes?<br/>24 A. No.<br/>25 Q. Okay. More or less than five boxes?</p>                                                                                                                      | <p style="text-align: right;">Page 196</p> <p>1 A. That's right.<br/>2 Q. Okay. She told you that?<br/>3 A. Yes.<br/>4 Q. And did she tell you specifically that<br/>5 the UK search was a search of documents that had<br/>6 never been done before?<br/>7 A. I -- I don't know that it had never been<br/>8 done before, but in terms of this -- this recent<br/>9 effort, it had not been done before.<br/>10 Q. What do you mean by "recent effort"? In<br/>11 the last few years?<br/>12 A. That's what I understood her to mean,<br/>13 yes.<br/>14 Q. Not -- not recent effort as in Leavitt<br/>15 and Fong, but more like the recent effort like taking<br/>16 those hundred -- 1,600 boxes out of the offsite U.S.<br/>17 storage locations in Iron Mountain.<br/>18 MR. COX: Object to the form.<br/>19 A. I'm sorry. One --<br/>20 Q. I'm trying to get -- so when you say<br/>21 something like "recent," I don't know, is this some<br/>22 effort that's been made since a particular year<br/>23 because of litigation?<br/>24 A. My understanding, and it's a -- it's<br/>25 a -- it's a general understanding from -- from</p>                                                                                                                                                                                                                                                                     |
| <p style="text-align: right;">Page 195</p> <p>1 A. Yeah, unless it's -- unless it's<br/>2 delineated there, I don't know.<br/>3 Q. Did you -- do you know whether or not<br/>4 these boxes that got supposedly searched were boxes<br/>5 that had already been searched in the past for<br/>6 responsive documents?<br/>7 A. My understanding is that the -- the<br/>8 notations here are reflective of when each of these<br/>9 locations was searched for the first time.<br/>10 Q. So -- interesting. So does it say that<br/>11 somewhere here?<br/>12 A. The -- the purpose of my conversation<br/>13 with Ms. Downs was to ask what boxes had been<br/>14 searched as part of the international effort. Now,<br/>15 that would have been relevant to the searches over<br/>16 the past several years. I -- I don't know, you know,<br/>17 going back farther than that what -- whether<br/>18 other -- you know, over time in the '80s, '90s, 2001,<br/>19 I don't know what -- what international locations<br/>20 were searched. And obviously some of these documents<br/>21 would have been active back then. I -- Ms. Downs was<br/>22 speaking to the efforts that she was involved in<br/>23 which would have been just the past couple years.<br/>24 Q. Okay. So this reflects her efforts in<br/>25 the past couple years.</p> | <p style="text-align: right;">Page 197</p> <p>1 Ms. Downs, was that I wanted to know what over<br/>2 the -- the course of the last couple years, what<br/>3 document repositories from foreign locations had been<br/>4 reviewed in terms of building out the global -- the<br/>5 global collection. And this was not -- this inquiry<br/>6 was not specific to a single case or cases. It -- it<br/>7 obviously encompassed locations mentioned in Leavitt<br/>8 and Fong, but the purpose of my talking to her was<br/>9 not specific to Leavitt or Fong.<br/>10 Q. Okay. And you believe, but -- but did<br/>11 she specifically tell you that she confirmed or<br/>12 somebody confirmed that these locations out of<br/>13 states -- is that what you call them?<br/>14 A. OUS, outside U.S.<br/>15 Q. Outside U.S. locations, had never been<br/>16 searched before? These particular things.<br/>17 MR. COX: Object to the form.<br/>18 A. She did not tell me that. And I did not<br/>19 mean to -- if I implied that or suggested it, what I<br/>20 meant was that these were searched in the last couple<br/>21 years with her participation. She had not searched<br/>22 them before. They certainly may have been consulted<br/>23 individually for various cases, but in terms of her<br/>24 efforts to build out the global production,<br/>25 this -- these were the efforts that she described.</p> |



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| <p style="text-align: right;">Page 198</p> <p>1 Q. Do you know what the procedure or<br/>2 protocol was that -- and was it -- what's the name of<br/>3 Ms. Downs' business again?<br/>4 A. Triality.<br/>5 Q. Triality. Was it specifically Triality<br/>6 that -- that did this work?<br/>7 A. My understanding is that she worked with<br/>8 personnel -- company personnel in those locations.<br/>9 Q. She individually?<br/>10 A. Well, she is a company representative.<br/>11 Her -- her company worked with Johnson &amp; Johnson<br/>12 employees.<br/>13 Q. Triality did.<br/>14 A. Yes.<br/>15 Q. Okay.<br/>16 A. With obviously --<br/>17 Q. So she wasn't the only one doing the<br/>18 work.<br/>19 A. Correct.<br/>20 Q. Okay. Was there a procedure or protocol<br/>21 in place for how to go about that work at each sort<br/>22 of step of the process in terms of trying to<br/>23 determine what, if any, additional sources of<br/>24 potential relevant documents are at these locations<br/>25 which may involve inquiring of people involved in</p>                                                                                                                                                               | <p style="text-align: right;">Page 200</p> <p>1 beyond that, I have no further information on the UK<br/>2 or the other locations than what's reflected in my<br/>3 notes.<br/>4 Q. And it says here -- well, your -- your<br/>5 notes are very abbreviated. By the way, were these<br/>6 handwritten, these notes, or did you write them like<br/>7 this?<br/>8 A. I write them as I go. Yeah, I'm sorry.<br/>9 I -- I type them as I go.<br/>10 Q. So they were typed up in exactly this<br/>11 format?<br/>12 A. Yes.<br/>13 Q. Okay. And then you provided this to<br/>14 counsel and they provided it to me just as it is. Is<br/>15 that right?<br/>16 A. Yes.<br/>17 Q. Okay. So it says -- just as to UK, now.<br/>18 It says, "No docs were collected." Correct?<br/>19 A. Yes.<br/>20 Q. Okay.<br/>21 Do you know -- but it -- but it implies<br/>22 here a search. It says, "Specs, processing, and<br/>23 testing search." You said that there were hard<br/>24 copies based on where it says "UK Paper." Do you<br/>25 know whoever did that search, what specifically they</p>                                                                                                                                                                                                                                              |
| <p style="text-align: right;">Page 199</p> <p>1 these overseas units? Correct?<br/>2 A. Yes.<br/>3 Q. Okay. Do you know what the procedure or<br/>4 process was, if any, for -- for doing that,<br/>5 determining where the documents might be?<br/>6 MR. COX: Object to the form. Go ahead<br/>7 and answer.<br/>8 A. Yeah, I -- I only know what's reflected<br/>9 here. So that there is not -- not the same<br/>10 procedure, because in some cases there are sales<br/>11 collected, often specs, processing, and testing<br/>12 materials. There's different exposure ranges. So<br/>13 whereas there may be some common elements in the<br/>14 methodology, the -- the nature of the search that was<br/>15 conducted varied from location to location. My<br/>16 understanding is that that was because it was for<br/>17 different cases.<br/>18 Q. Okay. So let's go back to the UK part<br/>19 of it, then.<br/>20 So on this UK paper, did you have any<br/>21 information about what was done to determine where<br/>22 all the potential UK sources might be of relevant<br/>23 documents to the talc litigation?<br/>24 A. This -- well, this is -- I mean, all<br/>25 these foreign collections are talc related. But</p> | <p style="text-align: right;">Page 201</p> <p>1 were looking for, whether they had specific folder<br/>2 labels in mind, if they were looking through it<br/>3 document by document looking for different specific<br/>4 responsive terms, or what -- what it was they were<br/>5 specifically looking for?<br/>6 A. What I -- what I do know is that they<br/>7 were looking for the three categories of materials in<br/>8 that date range and opening boxes to -- to do so.<br/>9 That's -- that's -- that's it. That's what I know.<br/>10 Q. Okay. Were they looking for, for<br/>11 example, correspondence between Johnson &amp; Johnson and<br/>12 a consulting scientist, for example, like a<br/>13 Dr. Pooley, or let's say like a Dr. Roe, somebody<br/>14 like that, who was doing work in the UK to try to<br/>15 establish for Johnson &amp; Johnson that their talc was<br/>16 safe?<br/>17 MR. COX: Object to the form.<br/>18 A. You know, I would need to make further<br/>19 inquiries as to the nature of the correspondence that<br/>20 was -- that was searched for.<br/>21 Q. Would you know if any correspondence was<br/>22 searched for based on this specs, processing, and<br/>23 testing search?<br/>24 A. Yeah, I mean, those categories could<br/>25 include correspondence if that's relevant to the</p> |

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| <p style="text-align: right;">Page 202</p> <p>1 category. I -- I don't know.</p> <p>2 Q. Okay. Do you know how -- and you don't</p> <p>3 know how many boxes and you don't know how much time</p> <p>4 anybody spent looking at each box. True?</p> <p>5 A. Correct.</p> <p>6 Q. Okay.</p> <p>7 So on the Philippines, you've looked at</p> <p>8 the Amended Complaint. True?</p> <p>9 A. Yes.</p> <p>10 Q. And are you aware that Teresa Leavitt</p> <p>11 alleges exposure from the time that she was a baby?</p> <p>12 A. Yes.</p> <p>13 Q. Okay. And she was born in 1967, if I'm</p> <p>14 not getting that a few months off -- born in 1967.</p> <p>15 Did you know that?</p> <p>16 A. I thought it was 1965, but I will -- I</p> <p>17 know it was in the '60s.</p> <p>18 Q. Okay. And so I'm looking at this</p> <p>19 Philippines paper, specs, processing, and testing</p> <p>20 search date range. It says 1970 to 2002. And this,</p> <p>21 then, doesn't intersect in terms of that particular</p> <p>22 search with the Leavitt case, does it? Because</p> <p>23 Terri Leavitt moved out of the Philippines before</p> <p>24 1970.</p> <p>25 A. Yes, I understand.</p>                                                  | <p style="text-align: right;">Page 204</p> <p>1 documents?</p> <p>2 MR. COX: Object to the form.</p> <p>3 Q. If you know.</p> <p>4 A. Well, once again, what my understanding</p> <p>5 was was that they were searching for these types of</p> <p>6 documents. They knew in this case that the date</p> <p>7 range was 1970 to 2002. My understanding is that if</p> <p>8 they found documents in these categories, even if</p> <p>9 they were older documents, they would have been</p> <p>10 pulled. They would have been taken.</p> <p>11 Q. So you're saying despite the fact that</p> <p>12 they were searching for 1970 -- and when you said</p> <p>13 "for this case," you mean for a case other than the</p> <p>14 Leavitt case. True?</p> <p>15 A. Yes, I'm sorry for the ambiguity.</p> <p>16 Q. Correct.</p> <p>17 A. Yes. For the case mentioned here, for</p> <p>18 the 1970 case which was the exposure period alleged,</p> <p>19 as I understand it, they were searching for</p> <p>20 documents. And had they found documents in these</p> <p>21 categories beyond, for instance, earlier than that</p> <p>22 exposure range, my understanding is that they would</p> <p>23 have taken those documents.</p> <p>24 MR. SWANSON: Move to strike the</p> <p>25 nonresponsive portions.</p>                 |
| <p style="text-align: right;">Page 203</p> <p>1 Q. Okay. So specifically that search had</p> <p>2 nothing to do with the Leavitt case and doesn't apply</p> <p>3 to the Leavitt case. True?</p> <p>4 A. I asked counsel for that date range</p> <p>5 specifically.</p> <p>6 Q. For what case?</p> <p>7 A. Well, in terms of whether this 1970</p> <p>8 forward search would apply to Leavitt.</p> <p>9 Q. Okay.</p> <p>10 A. And the understanding I was provided was</p> <p>11 that notwithstanding the 1970 location as being the</p> <p>12 date range, which was the date range of the alleged</p> <p>13 exposure in that case, but that the search would have</p> <p>14 covered documents from earlier periods, as well.</p> <p>15 Q. That's the understanding you got from</p> <p>16 the attorneys. Correct?</p> <p>17 A. Yes.</p> <p>18 Q. Okay. Did -- did Pam Downs give you</p> <p>19 that understanding?</p> <p>20 A. I believe that came from the attorneys.</p> <p>21 Q. Okay.</p> <p>22 Do you -- what was it about only</p> <p>23 searching back to 1970 that would ensure capture of</p> <p>24 relevant Philippines paper documents regarding specs,</p> <p>25 processing, and testing that would capture pre-1970</p> | <p style="text-align: right;">Page 205</p> <p>1 Q. I only asked you whether this was for</p> <p>2 the Leavitt case, to confirm that it wasn't. It</p> <p>3 wasn't. What was the name of the case that that 1970</p> <p>4 to 2002 Philippines search was for?</p> <p>5 A. Well, this is where I'm -- I'm a little</p> <p>6 confused as to whether this is the Delacruz case or a</p> <p>7 different case because I know that was one of the</p> <p>8 cases involved. I -- I don't -- as I mentioned</p> <p>9 earlier, I believe Delacruz was -- was a Hong Kong</p> <p>10 case, but I don't -- I don't recall or I didn't know</p> <p>11 specifically which case this Philippines case refers</p> <p>12 to.</p> <p>13 Q. Okay.</p> <p>14 And what's your specific</p> <p>15 information -- and I've asked this before, but if we</p> <p>16 keep our answers simple then I might be able to get</p> <p>17 to this. So you're telling me that a search, when</p> <p>18 somebody specifies a search for a specific date</p> <p>19 range, they're just grabbing stuff out of that date</p> <p>20 range?</p> <p>21 MR. COX: Object to the form.</p> <p>22 Q. Why -- why would you do that when you're</p> <p>23 doing a search?</p> <p>24 MR. COX: Object to the form.</p> <p>25 Q. Because if you're going to grab stuff</p> |

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| <p style="text-align: right;">Page 206</p> <p>1 outside of a date range for which you're searching,<br/> 2 just expand the date range.<br/> 3 MR. COX: Object to the form.<br/> 4 A. Well, as I mentioned, the date range<br/> 5 expressed here was the dates of exposure. Now, that<br/> 6 would not necessarily have constrained the search for<br/> 7 documents in the exposure dates. They may be<br/> 8 interested in documents prior to the exposure range.<br/> 9 Q. Now, that's not what it says here,<br/> 10 though, does it? It says, "Specs, processing, and<br/> 11 testing search." And it just says "Date range." So<br/> 12 you're saying that you're -- you -- you understand<br/> 13 that. Because above, if you look under "UK." You<br/> 14 say where it says, "Date range of exposure: '69 to<br/> 15 2000." And down here you say date range '70 to -- is<br/> 16 that just an oversight? You didn't put exposure<br/> 17 before date range?<br/> 18 A. Yes, as you could see, then I said<br/> 19 exposure range, exposure, exposure, exposure dates,<br/> 20 exposure dates. So I -- I would say as I was typing,<br/> 21 as I was going, either I wasn't consistent in naming<br/> 22 it or it was being described to me and I was just<br/> 23 writing down as I -- as I -- as it was being<br/> 24 described.<br/> 25 Q. Okay. So what's your</p> | <p style="text-align: right;">Page 208</p> <p>1 that's different than "talc not mined there,"<br/> 2 meaning, yes, "there" meaning the Philippines.<br/> 3 Q. Okay. And it says, "Reviewed all<br/> 4 offsite storage indexes."<br/> 5 What were the indexes for offsite<br/> 6 storage, do you know, in the Philippines?<br/> 7 A. I -- I don't know whether that would be<br/> 8 a paper list, an electronic list, a spreadsheet.<br/> 9 I -- I don't know how those indexes were supplied.<br/> 10 Q. And then it says, "Sent Skadden<br/> 11 associate to open 100 boxes to sample based on key<br/> 12 words. Found nothing in date range."<br/> 13 So a "Skadden associate," do you know<br/> 14 who that associate was?<br/> 15 A. No.<br/> 16 Q. -- "open 100 boxes to sample based on<br/> 17 key words." What were the key words?<br/> 18 A. I -- I don't know.<br/> 19 Q. Okay. "Found nothing in date range."<br/> 20 So that makes me think that the<br/> 21 Philippines documents, either they didn't do any<br/> 22 testing or didn't have any specs or didn't do any<br/> 23 processing between 1970 or 2002, or the documents<br/> 24 were destroyed. Is that a fair -- fair conclusion<br/> 25 based on the circumstances, that nothing was found in</p> |
| <p style="text-align: right;">Page 207</p> <p>1 understanding -- and I don't -- you didn't learn this<br/> 2 from Pam -- Pam Downs, but how far back did they<br/> 3 search?<br/> 4 A. They -- they searched whatever -- my<br/> 5 understanding is that they searched what was<br/> 6 available in those categories. So in other words,<br/> 7 open a box. Look for specs, look for processing<br/> 8 information, look for testing information. If it's<br/> 9 in the box, grab it.<br/> 10 Q. Now, this next line says, "Committee of<br/> 11 manager or level" -- "higher level included. Legal<br/> 12 director, records, quality, supply chain, marketing."<br/> 13 What does that mean, that note? I don't<br/> 14 understand that.<br/> 15 A. Yeah, I'm -- I mean, I can read the<br/> 16 words. I'm going to have to refresh my recollection<br/> 17 from Ms. Downs as to -- as to what she was talking<br/> 18 about there.<br/> 19 Q. Okay. And then it says, "Talc not mined<br/> 20 there but was manufactured there for a while," as in<br/> 21 the Philippines at that location. That Philippines<br/> 22 unit. The talc wasn't mined there. Is that what<br/> 23 that means, if you know?<br/> 24 A. Yes. I mean, that's simply what the<br/> 25 words -- I'm -- I'm struggling to understand how</p>                                                        | <p style="text-align: right;">Page 209</p> <p>1 that entire date range?<br/> 2 MR. COX: Object to the form.<br/> 3 A. Based on my general understanding of<br/> 4 customary retention periods, it's not surprising that<br/> 5 those materials would not be found.<br/> 6 Q. And what was the retention period for<br/> 7 those specs, processing, and testing documents in the<br/> 8 Philippines unit?<br/> 9 A. Well, I have a general knowledge that<br/> 10 the retention periods would be relative to the life<br/> 11 of the product. So if the life of the product was<br/> 12 four years, the retention period would be four to<br/> 13 eight years for those -- for those materials.<br/> 14 Q. And that's based on the current<br/> 15 retention?<br/> 16 A. That's based on my discussions<br/> 17 with -- with personnel such as Don Hicks who<br/> 18 described the general approach to retention of those<br/> 19 types of materials.<br/> 20 Q. And was that before litigation holds?<br/> 21 A. Yeah. That -- that would be from the<br/> 22 retention schedule. In other words, that would be<br/> 23 not reflective of litigation holds.<br/> 24 Now, I should point out that my<br/> 25 understanding would be that specifications would be</p>        |

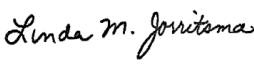
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| <p style="text-align: right;">Page 210</p> <p>1 subject to a longer retention period as distinct from</p> <p>2 processing and testing. So I -- I don't want to</p> <p>3 imply that specs would have a short retention period</p> <p>4 of four to eight years.</p> <p>5 Q. So for Johnson's Baby Powder specs, what</p> <p>6 would the retention be currently?</p> <p>7 A. I -- I'd have to look at that in the</p> <p>8 schedule.</p> <p>9 Q. But you say it's longer?</p> <p>10 A. Yes.</p> <p>11 Q. When you say "life of the product," I</p> <p>12 mean, if it's Johnson's Baby Powder wouldn't that be</p> <p>13 kept forever as long as they're making Johnson's Baby</p> <p>14 Powder?</p> <p>15 MR. COX: Object to the form.</p> <p>16 A. My understanding is that that -- that</p> <p>17 relates to shelf life. So for instance, if -- if a</p> <p>18 product would be in the marketplace for four years,</p> <p>19 the retention for records about that product would be</p> <p>20 somewhere between four and eight years.</p> <p>21 Q. What if you have a spec that's -- never</p> <p>22 mind.</p> <p>23 Was there -- was there a litigation hold</p> <p>24 on those documents, on talc testing and spec</p> <p>25 documents from the Philippines for effecting a time</p>                   | <p style="text-align: right;">Page 212</p> <p>1 at your notes here, I'm assuming the date range you</p> <p>2 mean there near the top on that second line is the</p> <p>3 same date range you're referring to when it says,</p> <p>4 "Found nothing in the date range."</p> <p>5 A. Correct.</p> <p>6 Q. Correct? So I still don't see how that</p> <p>7 takes us back to a search -- or back to 1967. "Found</p> <p>8 nothing in date range." Where -- what's the date</p> <p>9 range being searched, do you know? Because it says</p> <p>10 here "date range," and the date range referred to</p> <p>11 above is 1970 to 2002.</p> <p>12 A. I understand that that is the date range</p> <p>13 that's specified, and that -- that is -- this is</p> <p>14 reflective of my conversation with Ms. Downs.</p> <p>15 Subsequent to that conversation, I asked</p> <p>16 counsel about that matter and was informed that the</p> <p>17 search would, in fact, have covered earlier years.</p> <p>18 Q. It says, "Get retention schedule from</p> <p>19 Pam pre-2015 WWRIM ERS."</p> <p>20 What does that mean?</p> <p>21 A. The WWRIM is the Worldwide Records and</p> <p>22 Information Management standards promulgated by</p> <p>23 Johnson &amp; Johnson on the company as a whole,</p> <p>24 including its subsidiaries. That is a set of</p> <p>25 policies and principles that govern the company's</p> |
| <p style="text-align: right;">Page 211</p> <p>1 period from 1970 to 2002?</p> <p>2 MR. COX: Object to the form.</p> <p>3 A. I -- I don't know if there were holds</p> <p>4 that would have covered that -- that information in</p> <p>5 that area.</p> <p>6 Q. Were there litigation holds going back</p> <p>7 to 2002 regarding talc litigation?</p> <p>8 MR. COX: Object to the form.</p> <p>9 A. I have requested litigation holds, and I</p> <p>10 am aware of litigation holds from that time period.</p> <p>11 Q. Okay. And the litigation hold that</p> <p>12 you're aware of from that time period would have</p> <p>13 required a -- a hold on testing documents if they</p> <p>14 were testing Johnson's Baby Powder in the</p> <p>15 Philippines. Right?</p> <p>16 MR. COX: Object to the form.</p> <p>17 A. Well, I -- I know there were holds in</p> <p>18 that period. I don't know if that hold would apply</p> <p>19 to these materials.</p> <p>20 Q. Now, it says here nothing was found.</p> <p>21 "Found nothing in the date range."</p> <p>22 And, again, that confuses me because you</p> <p>23 said, well, that wasn't the range that was searched,</p> <p>24 the date range 1970 to 2002, but now here you're</p> <p>25 referring to date range here. So I'm -- when I look</p> | <p style="text-align: right;">Page 213</p> <p>1 management of records.</p> <p>2 In 2015, those standards were coupled</p> <p>3 with what is known as an ERS or Enterprise Retention</p> <p>4 Schedule, which was a list of 43 categories of</p> <p>5 information to be retained according to prescribed</p> <p>6 periods.</p> <p>7 The operating companies, including the</p> <p>8 Johnson &amp; Johnson Consumer companies, were given the</p> <p>9 requirement to adopt the 2015 ERS as their schedule</p> <p>10 by mid-2015, or in the absence of adopting it, to</p> <p>11 harmonize with it.</p> <p>12 So I can conclude that in -- as of</p> <p>13 mid-2015, the retention periods that were being used</p> <p>14 by CI, by the Consumer companies, were reflective of</p> <p>15 the corporate requirements. What I did not know at</p> <p>16 the time was what the Consumer companies were using</p> <p>17 for retention periods prior to 2015.</p> <p>18 Q. It says, "Also found advertising records</p> <p>19 in both paper and electronic."</p> <p>20 So that means if -- so they found</p> <p>21 advertising records regarding Johnson's talc products</p> <p>22 in the Philippines? Is that your understanding of</p> <p>23 what that means?</p> <p>24 A. Yes.</p> <p>25 Q. Okay. And were those produced in the</p>                                                                            |

Mittenthal - by Mr. Swanson

|                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                         |
|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <p style="text-align: right;">Page 214</p> <p>1 Leavitt case?</p> <p>2 A. My understanding is that they were.</p> <p>3 Q. What does this mean, "Crown indexes were</p> <p>4 searched"?</p> <p>5 A. What I recall from that conversation was</p> <p>6 that the storage vendor was a company called Crown,</p> <p>7 and that they maintained the index of their boxes.</p> <p>8 Q. Have you actually looked at any of those</p> <p>9 indexes?</p> <p>10 A. No.</p> <p>11 Q. Do you know how much detail is in those</p> <p>12 indexes?</p> <p>13 A. I -- I do not.</p> <p>14 Q. Do you know whether or not the boxes</p> <p>15 that were stored at the location were -- whether</p> <p>16 there were only 100 boxes or more than 100 boxes?</p> <p>17 A. What I read and what I infer and what I</p> <p>18 remember was that the 100 boxes that were opened were</p> <p>19 from a sampling perspective. That the indexes were</p> <p>20 searched. And as a follow-on to the results of the</p> <p>21 search, they sampled 100 boxes from a much larger</p> <p>22 population to backstop or to correlate the fact that</p> <p>23 there were, in fact, no materials found in -- in that</p> <p>24 search.</p> <p>25 Q. And, again, you don't know what the key</p> | <p style="text-align: right;">Page 216</p> <p>1 long as we can handle it?</p> <p>2 MR. COX: Let's go off the record.</p> <p>3 THE VIDEOGRAPHER: Off the video</p> <p>4 4:45 p.m.</p> <p>5 (A recess is taken.)</p> <p>6 THE VIDEOGRAPHER: We're back on the</p> <p>7 video record at 5:08 p.m.</p> <p>8 MR. SWANSON: Okay. So we are</p> <p>9 adjourning for the day, and the deposition will</p> <p>10 continue at a later date within hopefully the next</p> <p>11 couple weeks and a determination will be</p> <p>12 about -- made about location and time. And it will</p> <p>13 continue in -- in both the Leavitt and the Fong</p> <p>14 cases.</p> <p>15 MR. COX: Agreed.</p> <p>16 MR. SWANSON: Okay?</p> <p>17 THE VIDEOGRAPHER: This concludes the</p> <p>18 video deposition of James Mittenthal. We are going</p> <p>19 off the record at 5:09 p.m.</p> <p>20 (The deposition concluded at 5:09 p.m.)</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p> |
| <p style="text-align: right;">Page 215</p> <p>1 words were that the Skadden associate was using.</p> <p>2 Correct?</p> <p>3 A. That's right.</p> <p>4 Q. Or how long they took to search each</p> <p>5 box.</p> <p>6 A. That's right.</p> <p>7 Q. Because if you're looking through paper</p> <p>8 for key words, it's kind of a time-consuming process.</p> <p>9 Would you agree?</p> <p>10 A. It certainly may be.</p> <p>11 Q. So, you know, obviously, people's speed</p> <p>12 in terms of how fast they are reviewing boxes varies,</p> <p>13 but if we knew something about how long it was taking</p> <p>14 them to review these 100 boxes, we might get an idea</p> <p>15 of how thoroughly they searched them.</p> <p>16 MR. COX: Objection.</p> <p>17 Q. Would you agree to that?</p> <p>18 MR. COX: Objection.</p> <p>19 A. Well, as a general proposition, if they</p> <p>20 took ten minutes versus two hours, I would consider</p> <p>21 that to be a -- you know, a meaningful distinction.</p> <p>22 I -- I don't know how long was actually spent on</p> <p>23 those searches.</p> <p>24 MR. SWANSON: How about we take one more</p> <p>25 short break and then we go another 45 minutes, as</p>                                             | <p style="text-align: right;">Page 217</p> <p>1 J U R A T</p> <p>2</p> <p>3 I DO HEREBY CERTIFY that I have read the</p> <p>4 foregoing transcript and I certify that it is true</p> <p>5 and correct to the best of my knowledge.</p> <p>6</p> <p>7</p> <p>8</p> <p>9</p> <p>10 JAMES PETER MITTENTHAL</p> <p>11</p> <p>12</p> <p>13</p> <p>14</p> <p>15 SWORN AND SUBSCRIBED</p> <p>16</p> <p>17 BEFORE ME ON THIS</p> <p>18 DAY OF 2018.</p> <p>19</p> <p>20 Notary Public of the State of</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>                                                                                                                                                                                                                                                                                                                                                                                                                     |



1 CERTIFICATE  
2 I, LINDA M. JORRITSMA, a Notary Public and  
3 Certified Court Reporter and Registered Professional  
4 Reporter, do hereby certify that prior to the  
5 commencement of the examination, JAMES PETER  
6 MITTENTHAL was duly sworn to testify the truth, the  
7 whole truth and nothing but the truth.  
8 I DO FURTHER CERTIFY that the foregoing is a  
9 true and accurate transcript of the testimony as  
10 taken stenographically by and before me at the time,  
11 place and on the date hereinbefore set forth.  
12 I DO FURTHER CERTIFY that I am neither a  
13 relative nor employee nor attorney nor counsel of any  
14 of the parties to this action, and that I am neither  
15 a relative nor employee of such attorney or counsel,  
16 and that I am not financially interested in the  
17 action.  
18  
19   
20 \_\_\_\_\_  
21 Notary Public  
22  
23 Dated: September 26, 2018  
24  
25



# EXHIBIT 134

STATE OF SOUTH CAROLINA       )  
                                                ) IN THE COURT OF COMMON PLEAS  
  
COUNTY OF CHARLESTON      ) NINTH JUDICIAL DISTRICT

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|                                                                                                                          |                                                                               |
|--------------------------------------------------------------------------------------------------------------------------|-------------------------------------------------------------------------------|
| <b>ANGELA M. HOOD</b> , Individually and as )<br>Personal Representative of the Estate of )<br><b>MARY B. MCBRAYER</b> , | C/A No. 2020-CP-10-03946<br><br>In Re: Asbestos Products Liability Litigation |
|                                                                                                                          | )                                                                             |
| Plaintiff,                                                                                                               | )                                                                             |
|                                                                                                                          | )                                                                             |
| vs.                                                                                                                      | )                                                                             |
|                                                                                                                          | )                                                                             |
| <b>ACME MARKETS, INC.</b> , et al.)                                                                                      |                                                                               |
|                                                                                                                          | )                                                                             |
| Defendants.                                                                                                              | )                                                                             |



|                 |                                                                                                                                               |    |
|-----------------|-----------------------------------------------------------------------------------------------------------------------------------------------|----|
| 3.              | Despite ongoing litigation and the depth of its knowledge, J&J failed to institute preservation policies until far too late.....              | 22 |
| F.              | J&J engaged in a decades-long pattern of concealing evidence and making false statements to prevent public knowledge of asbestos in JBP. .... | 24 |
| ARGUMENT.....   |                                                                                                                                               | 27 |
| A.              | J&J is guilty of spoliation. ....                                                                                                             | 27 |
| 1.              | J&J had a duty to preserve this evidence before litigation was pending, or even clearly anticipated. ....                                     | 27 |
| 2.              | The evidence is relevant and there is reason to believe it would have been favorable to Plaintiff. ....                                       | 29 |
| B.              | The requested sanctions are appropriate. ....                                                                                                 | 30 |
| CONCLUSION..... |                                                                                                                                               | 34 |

Plaintiff, through undersigned counsel, respectfully moves for (a) two adverse inference instructions and (b) two Orders limiting Johnson & Johnson and Johnson & Johnson Consumer, Inc. (collectively “J&J”) as a sanction for spoliation of evidence. Plaintiff has combined these four requests into this consolidated motion because much of the evidence interrelates.

J&J has had its talcum products and its source talcs tested for asbestos for decades—at least back to the 1950s. Hundreds of tests have been completed. J&J is guilty of spoliation through its failure to preserve (1) underlying data that support (or fail to support) test reports, (2) control blanks that would show whether laboratory air was contaminated with asbestos fibers, and (3) historical talc samples in its possession. J&J knew from at least 1969 that it faced litigation over its talc products, and it knew this evidence would be important to that litigation, but it discarded and/or recklessly failed to preserve it. Plaintiff asks this Court to instruct that the jury may presume:

- 1) that when J&J introduces a test result that is negative for asbestos, reports “no quantifiable asbestos,” or contains similar language, if the evidence shows J&J destroyed or unreasonably failed to preserve underlying data related to the test, the jury may presume that the missing data showed asbestos fibers were present<sup>1</sup>; and
- 2) when J&J argues any positive tests for asbestos were the result of lab contamination, but J&J failed to retain evidence related to the “blanks” used as a control for such contamination, they may presume the blanks were free from asbestos contamination.

In addition, because it destroyed, discarded, or recklessly failed to preserve historical talc samples it knew would be needed in anticipated or pending litigation, J&J should be precluded from presenting any argument, evidence, or testimony that suggests Plaintiff has tested in

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<sup>1</sup> J&J revealed approximately 500 additional TEM evaluations were performed of its product but have never been produced to plaintiffs. See, **Ex. 126** at #16. Because this revelation is so recent, it is unclear what evidence exists concerning those tests. Should those tests have been performed and J&J is unable, in response to a motion to compel for example, to produce the tests or underlying data supporting the tests, those tests should likewise be subject to an inference that they found asbestos in J&J’s product.

insufficient number of bottles to support her experts' causation opinions. Similarly, where J&J's testing, or testing done at its request, reported asbestos or asbestos minerals in its talc J&J in litigation attempts to discredit its own findings or undermine the weight of the testing by noting the absence of the underlying data. The requested evidentiary sanctions are a reasonable and warranted response to J&J's actions.

### **INTRODUCTION AND SUMMARY OF ARGUMENT**

J&J developed a pattern of discarding or recklessly failing to preserve testing data and historical talc samples, even when it knew it faced litigation related to its talcum powder products and knew how important this evidence would be. Until 2017, J&J failed to disclose such testing existed, preventing plaintiffs from taking steps to preserve whatever underlying data survived during earlier litigation. Now J&J wants to rely on evidence of historical test results favorable to them when they destroyed the underlying data for those tests—**even though** J&J has acknowledged that this missing data is critical to understanding test results.

Likewise, J&J has discarded or failed to preserve documentation on laboratory control blanks. When test results do report asbestos fibers, J&J and its experts often blame their presence on laboratory contamination. Without evidence of asbestos fibers in blanks, used to control for asbestos in the air, any contamination claim is unsupported. But J&J has discarded or failed to preserve these blanks. In the few cases where they exist, they fail to support claims of laboratory contamination—making their absence in other tests that much more important and more suspect.

Finally, J&J has discarded or recklessly failed to preserve talc samples from testing and from its own historical museum of its products. This matters because J&J often claims that plaintiffs' tests finding asbestos in J&J's product are insufficient to demonstrate the content of the talc the plaintiffs would have been exposed to. But J&J knew decades ago that mesothelioma was a latent disease that would take decades to develop, and it knew that its own product samples



would likely represent the vast majority of historical samples available to test. Nevertheless, J&J destroyed, discarded, or failed to preserve these samples—even long after it was involved in talc litigation.

In each of these three categories of evidence, the pattern is the same: J&J makes claims about the evidence but has failed to retain the underlying data that would allow Plaintiff to challenge J&J's claims and allow the factfinder to verify those claims. The sheer volume of evidence and data that has gone missing indicates that the absence of that data is not isolated or unintentional. Rather, it has long been J&J's litigation strategy to make misleading assertions about the evidence while preventing Plaintiff from correcting the record or presenting the whole story to the jury. J&J's conduct warrants the requested evidentiary sanctions.

### **FACTUAL BACKGROUND**

Mary McBrayer was diagnosed with mesothelioma in late December 2019, and she died January 14, 2020, too quickly to be deposed.<sup>2</sup> However, her children testified that she only used Johnson & Johnson talcum powder products.<sup>3</sup> Johnson Baby Powder (JBP) “was always a staple at [the McBrayer] house.”<sup>4</sup> Mrs. McBrayer used it on herself and to diaper her grandchildren and great-grandchildren.<sup>5</sup> Her daughter Angela remembered her mother using JBP from about 1973, and her mother used JBP year round.<sup>6</sup> She was also a nurse who used it repeatedly at work.<sup>7</sup>

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<sup>2</sup> **Ex. 1**, Deposition of Angela Hood at 9:17-20; **Ex. 2**, Deposition of Deborah Jones at 11:10-21.

<sup>3</sup> **Ex. 1**, Hood Deposition at 9:24-10:4, 11:2-4.

<sup>4</sup> *Id.* at 12:21-23.

<sup>5</sup> **Ex. 1**, Hood Deposition at 11:5-10; **Ex. 2**, Jones Deposition at 12:17-21.

<sup>6</sup> **Ex. 1**, Hood Deposition at 5:19, 13:1-17, 14:7-11.

<sup>7</sup> **Ex. 134**, Deposition of Mary Hyatt at 17:9-18:19, 25:11-27:15.

**A. Plaintiff submits evidence of asbestos content from a variety of sources. J&J and its consultants' reports from the 1950s to 2000s constitute a fraction of Plaintiff's evidence on asbestos content.**

Plaintiff establishes the asbestos content of the talc<sup>8</sup> in JBP through numerous sources, including (a) J&J and its consultants' reports from the 1950s to 2000s,<sup>9</sup> (b) J&J's admissions,<sup>10</sup> (c) third-party testing,<sup>11</sup> (d) scientific literature,<sup>12</sup> (e) recent tests of vintage JBP samples<sup>13</sup> and (f) lung tissue of JBP-exposed persons.<sup>14</sup> Plaintiff's experts will opine that JBP contained asbestos.

J&J also has many types of evidence at its disposal to support its position that JBP does **not** contain asbestos and never has—including hundreds of documents provided by its suppliers that are included in its historical testing records.<sup>15</sup> Only very specific subsets of documents are the subject of this motion.

<sup>8</sup> JBP contained talc from (a) southern Vermont from 1967-2003, (b) Val Chisone, Italy in 1979-1980 and (c) China in 2003 onward. **Ex. 21**, J&J's responses to interrogatories, *Breakell v. 3M Co.*, at pp. 16-17.

<sup>9</sup> See, e.g., **Ex. 4**, Report of Dr. Webber, 6/10/2021 at pgs. 21-26 (summarizing J&J internal documents); **Ex. 5**, Demonstrative summarizing reports of asbestos in JBP admitted in evidence 8/21/2019; **Ex. 6**, Demonstrative on findings of asbestos minerals and/or asbestos in 696 talc samples 3/31/2021.

<sup>10</sup> For some non-exhaustive examples, see, e.g., **Ex. 7**, Memorandum from J&J's Dr. Nashed 7/29/1971 (stating "the talc used in Johnson's Baby Powder is obtained from a selected mine in Vermont where the ore consists ... [of] only trace amounts of fibrous minerals (tremolite/actinolite)"); **Ex. 8**, Memorandum from J&J's D.R. Petterson 4/26/1973 ("... we are also confident that fiber forming or fiber type minerals could be found. The usefulness of the 'Clean Mine' approach for asbestos only is over ... Our Baby Powder contains talc fragments classifiable as fiber. Occasionally sub-trace quantities of tremolite or actinolite are identifiable (optical microscope) and these might be classified as asbestos fiber."); **Ex. 9**, Memorandum from Dr. Nashed 10/23/1973 (recognizing J&J "may have problems" if more sensitive testing techniques are used to analyze J&J's talc).

<sup>11</sup> For some non-exhaustive examples, see, e.g., **Ex. 10**, Ernest F. Fullam Inc. report to (codefendant) Whittaker, Clark & Daniels, Inc. (reporting 675 chrysotile and 3,225 amphibole fibers per milligram in Vermont cosmetic talc); **Ex. 11**, Luzenac report on Argonaut 5/23/2002 (finding fibrous tremolite with "extremely high aspect ratios").

<sup>12</sup> See, e.g., **Ex. 12**, Blount, A.M., *Amphibole Content of Cosmetic and Pharmaceutical Talcs*, Environmental Health Perspectives, Vol. 94, pp. 225-230 (1991) (finding sample I – Vermont talc used in JBP – contained tremolite "fibers" with aspect ratios of at least 15:1); **Ex. 13**, Steffen et. al. *Serious ovarian cancer caused by exposure to asbestos and fibrous talc in cosmetic talc powders – A case series*. J Occup Environ Med. 2020; 62(2):e65-e77.

<sup>13</sup> See, e.g., **Ex. 14**, Report of Dr. Rigler 6/11/2021 (discussing results on 72 samples of the talc in JBP dated from the late 1960s to early 2000s and other contemporary analyses); see also **Ex. 4** at pgs. 32-33 (summarizing recent analytical results of JBP); **Ex. 13**; **Ex. 15**, Excerpt of Mark Bailey's Report on Vermont talc 11/16/2020.

<sup>14</sup> See, e.g., **Ex. 13**; **Ex. 16**, Moline, J., et. al., *Mesothelioma associated with the use of cosmetic talc*. J Occup Environ Med. 2020;62(1):11-17; **Ex. 17**, Emory, TS. *Malignant mesothelioma following repeated exposures to cosmetic talc: A case series of 75 patients*. Am J Ind Med. 2020 June; 63(6):484-489.

<sup>15</sup> See **Ex. 89**, J&J's Interrogatory Responses, *Eggers v. Colgate-Palmolive Co.*, Response to Interrogatory No. 5.1 and attached Exhibit 1.

Among other types of evidence, a significant part of the evidence that Plaintiff intends to introduce consists of J&J's internal documents, specifically reports of J&J<sup>16</sup> and its hired consultants.<sup>17</sup> Such consultants include, among others, (a) Battelle Memorial Institute,<sup>18</sup> (b) Colorado School of Mines Research Institute ("CSMRI"),<sup>19</sup> (c) Mt. Sinai,<sup>20</sup> (d) Dr. Hutchinson (University of Minnesota),<sup>21</sup> (e) Walter C. McCrone Associates ("McCrone"),<sup>22</sup> (f) Dr. Reynolds (Dartmouth),<sup>23</sup> (g) EMV Associates,<sup>24</sup> (h) R.J. Lee<sup>25</sup> and (i) Dr. Blount (Rutgers).<sup>26</sup> J&J and its own consultants repeatedly reported asbestos in the talc in JBP.<sup>27</sup> Such evidence establishes J&J's negligence and serves as substantive evidence of asbestos content.

<sup>16</sup> For some non-exhaustive examples, *see, e.g.*, **Ex. 19**, J&J notebook 8/10/1972 (reporting tremolite "fibers or rods/needles" in J&J cosmetic talc); **Ex. 20**, J&J memo 4/19/1973 (noting tremolite fibers in four JBP samples).

<sup>17</sup> **Ex. 4** at pgs. 21-26; **Ex. 5** (summarizing documents from 1957 to 2004); **Ex. 6**. For clarity, Plaintiff note that Windsor Minerals, Inc. was a wholly owned subsidiary of J&J that mined and milled J&J's southern Vermont talc during the years 1967 to 1988. **Ex. 123**, O'Shaughnessy Deposition, 6/30/21 at 464:14-20.

<sup>18</sup> *See, e.g.*, **Ex. 4** at pg. 21 (reporting Battelle told J&J that its talc contained trace levels of tremolite with minor amounts as "fibrous aggregates" in 1956 and 59 of 59 samples containing tremolite in 1959); **Ex. 89**, J&J's Interrogatory Responses, *Eggers v. Colgate-Palmolive Co.*, Response to Interrogatory No. 5.1 and attached Exhibit 1.

<sup>19</sup> For some non-exhaustive examples, *see, e.g.*, **Ex. 22**, CSMRI report 4/14/1971 (reporting "tremolite-actinolite needles" in "Vermont final product"); **Ex. 23**, CSMRI report 7/7/1971 (finding tremolite-actinolite by x-ray diffraction in five of six "Vermont product" samples); **Ex. 24**, CSMRI report 2/26/1973 (finding tremolite-actinolite and "possible serpentine fibers").

<sup>20</sup> **Ex. 25**, J&J memo 7/9/1971 at pg. 4 (stating Mt. Sinai's Dr. Langer "demonstrated to me the presence of some very fine fibers" of "chrysotile asbestos"); **Ex. 26**, Dr. Langer to J&J 11/10/1971 (telling J&J that Mt. Sinai "observed trace amounts of chrysotile asbestos" in JBP); **Ex. 27**, J&J memo 9/9/1975 (stating Dr. Langer found tremolite and anthophyllite in JBP before Edinburgh conference); **Ex. 28**, J&J memo 10/3/1975.

<sup>21</sup> **Ex. 29**, Excerpt of report of Dr. Hutchins 1972 at pg. 4 ("It is felt therefore that chrysotile asbestos does exist in the specimens of Shower to Shower and Lewin supplied to this laboratory.").

<sup>22</sup> For some non-exhaustive examples, *see, e.g.*, **Ex. 30**, McCrone report 10/27/1972 (finding a "total tremolite content" of 0.5% and 0.2-0.3%, including "tremolite rods"); **Ex. 31**, McCrone report 2/11/1974 (finding chrysotile in two of three samples); **Ex. 32**, McCrone report 3/11/1974 (confirming chrysotile fibers and no contamination in prior sample); **Ex. 33**, McCrone report 7/8/1974 (reporting tremolite and/or chrysotile fibers in four "production samples"); **Ex. 34**, McCrone report 7/1/1975 (finding "asbestos" fibers and bundles in numerous talc ore samples, including cosmetic ore); **Ex. 35**, McCrone report 11/5/1975 (finding "rather high" amounts of asbestos fibers); **Ex. 36**, Windsor Mineral, 5/25/1976 (stating "HC" samples pertain to cosmetic talc).

<sup>23</sup> **Ex. 37**, Dr. Reynolds report 3/1974 at pg. 6 (finding actinolite as the "dominant fiberform amphibole phase").

<sup>24</sup> **Ex. 38**, EMV Associates report 4/4/1977 (reporting a "large fiber bundle" and fiber of tremolite).

<sup>25</sup> *See, e.g.*, **Ex. 39**, RJ Lee report 3/14/1988 (finding 0.0024% chrysotile and 0.014% "fibrous tremolite").

<sup>26</sup> **Ex. 12** (1991 published paper); **Ex. 40**, Dr. Blount to J&J attorney 4/23/1998 ("I believe that Johnson & Johnson's Vermont talc contains trace amounts of asbestos ...").

<sup>27</sup> *See, e.g.*, **Ex. 5** (summarizing documents from 1957-2004); **Ex. 6** (summarizing positive findings in 696 samples).

Despite hundreds of tests reporting otherwise,<sup>28</sup> J&J claims its cosmetic talc never contained any asbestos.<sup>29</sup> J&J (a) attempts to discredit each test finding asbestos and (b) relies on test results largely finding “non-detects” and “no quantifiable asbestos.”<sup>30</sup> As explained below, such results reflect J&J’s often using testing techniques not powerful enough to detect asbestos and J&J’s creating protocols that mandate analysts not report some asbestos fibers.

**B. J&J maintained the results but not the underlying data on chemistry, size and shape of the structures at issue. J&J’s failure benefits J&J and hurts Plaintiff.**

**1. Data on chemistry, size and shape of particles are at the heart of the dispute.**

Whether the talc in JBP contained asbestos will be a central issue at trial. Answering that question requires determination of the proper (1) definition for asbestos in the context of evaluating health effects, (2) methodology to detect the presence of trace levels of asbestos in talc<sup>31</sup> and (3) interpretation of the data generated, including the chemistry, crystal structure, size and shape of the particles or structures examined. There is substantial disagreement on these points, and consequently, the parties’ experts often reach different conclusions based on the same evidence. Without the underlying data for J&J’s tests, it is impossible to determine what the results would have been if a different definition were applied, different methodology used, and/or different interpretation made. For these reasons, the underlying data is at the heart of the dispute. However, most of the reports from the 1950s to 2000s produced by J&J contain only the final results with the underlying data missing. Consequently, Plaintiff has no concrete evidence from which to counter J&J’s test results—to show that the underlying data reflect the presence of asbestos when another definition is applied or when the results are interpreted by a different expert.

<sup>28</sup> Ex. 5 (summarizing J&J documents 1957-2004); Ex. 6 (reporting 696 positive samples); *see also* Exs. 10-40.

<sup>29</sup> Exhibit 41, Excerpt of the J&J designee Dr. Hopkins 7/22/2019 (am) at 43:3-7.

<sup>30</sup> Exhibit 42, J&J’s responses to discovery (excerpt) in Eggers.

<sup>31</sup> *See, e.g.,* Ex. 15 (Mark Bailey report) at pgs. 39-42 (criticizing J&J’s testing procedures and protocols.)

J&J's own experts agree that information on the number, chemistry, crystal structure, size and shape of the particles is necessary to evaluate the accuracy of the results reported by J&J and its consultants. In 2004, when another laboratory reported finding anthophyllite asbestos in JBP, J&J's consultant RJ Lee told J&J that it needed the following data to evaluate the report:<sup>32</sup>

- 1) The count sheets that show the number and size of the structures that were seen.
- 2) Photos that show if these structures are cleavage or asbestiform.
- 3) EDS (Energy Dispersive Spectra) to show the elements present and their ratio.
- 4) The SAED (Selected area Electron Diffraction) patterns to show the crystal system-similar to XRD.

McCrone, J&J's consultant for many years, usually attached to its results (a) "bench sheets" or "count sheets," (b) photographs and/or (c) EDS data. Bench sheets report each particle examined: its chemistry (whether it is one of the asbestos types and which one), length, width, aspect ratio and other features.<sup>33</sup> Photographs show the particle's length and width, but also its shape, such as potential curvature, bundling, etc. And EDS data provides information on the chemical elements in a particle examined. The elemental makeup can then be compared to the reference standard for identification. J&J acknowledges the following:

Talc and all the asbestos minerals can, however, be unambiguously defined by determination of their unique chemical structure of each mineral by such methods as X-ray diffraction. Talc has the unique chemical structure  $\text{Mg}_3\text{Si}_4\text{O}_{10}(\text{OH})_2$ ; whereas, the asbestos minerals have different chemical structures. For example:

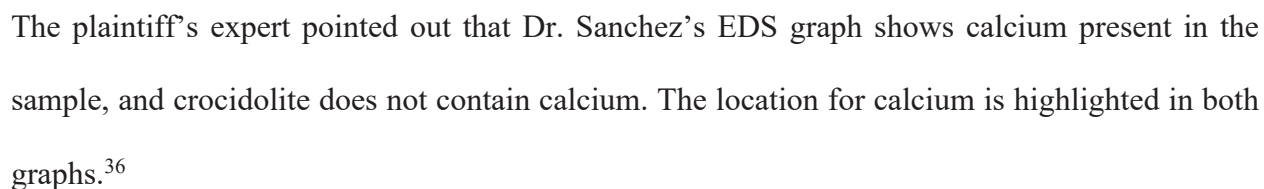
|               |                                                                   |    |
|---------------|-------------------------------------------------------------------|----|
| tremolite     | - $\text{Ca}_2\text{Mg}_5\text{Si}_8\text{O}_{22}(\text{OH})_2$   |    |
| chrysotile    | - $\text{Mg}_3\text{Si}_2\text{O}_5(\text{OH})_4$                 |    |
| anthophyllite | - $(\text{Mg}, \text{Fe})_7\text{Si}_8\text{O}_{22}(\text{OH})_2$ | 34 |

A recent disagreement between experts demonstrates the significance of having EDS data available for analysis by both sides. J&J's expert Dr. Matthew Sanchez recently claimed in

<sup>32</sup> Ex. 66, RJ Lee to Mr. Ashton of J&J 3/9/2004.

<sup>33</sup> See, e.g., Exhibit 50, McCrone to J&J 12/17/1990.

<sup>34</sup> Ex. 109 (J&J re: Dutch Organization 9/20/1973) at pg. 2 (JNJALC 000291476).



These graphs are examples of the type of data generated when analyzing the chemistry of a fiber. With access to the chemical analysis, Plaintiff's experts can evaluate and critique the conclusions drawn by J&J's experts. Because Plaintiff does not have access to such data for most of J&J's historical testing, Plaintiff has no means to question the test results and potentially present alternate interpretations of the evidence—because that evidence doesn't exist anymore.

**2. J&J's experts use a narrow definition for asbestos not generally accepted.**

For context in evaluating the effect of the missing underlying data, J&J's expert Dr. Matthew Sanchez of the R.J. Lee Group applies the most stringent or narrow definition for

<sup>35</sup> **Ex. 87**, Report of Dr. Sanchez in Hirshberg (excerpt) 4/2/2021 at **pg. 13-14**.

<sup>36</sup> The identification of fiber types—crocidolite vs. tremolite, for example—because only some fiber types are found as accessory minerals to talc. Crocidolite would not be expected to be found with talc, so if the fiber were indeed crocidolite, it would mean that the fiber was not connected to talc exposure.



asbestos possible,<sup>37</sup> suitable only for commercial-grade asbestos in bulk construction products.<sup>38</sup> Under this definition, for structures/fibers to qualify as asbestos, they must (in addition to being the right mineral) have (a) 20:1 aspect ratios, (b) fibrils narrower than 0.5 micrometers (“um”) and (c) a series of shape characteristics like parallel fibers, bundles with splayed ends and fiber curvature.<sup>39</sup> Requiring these characteristics to identify an asbestos fiber is not helpful when trying to identify asbestos as a health hazard, and applying it results in a dangerous undercounting of asbestos fibers. As the U.S. Geological Survey (“USGS”) recognizes, different contexts call for different definitions for asbestos:

Asbestos has been defined by works in many disciplines including those in the commercial asbestos industry and the mining industry, those in the regulatory community, and the mineralogical and geological sciences. ... [T]he definition of asbestos (and related terminology) can vary depending on the source and purpose. For example, a definition of asbestos appropriate for the asbestos cloth industry, which might require a very long, thin, highly flexible fiber might be different from that used in the asbestos cement pipe industry which could utilize a more brittle and perhaps shorter and wider fiber. Both of these definitions could be vastly different from those used in the health community, where the concern is exposure, risk and ultimately disease.<sup>40</sup>

Outside the litigation context, J&J’s talc expert Bill Ashton also recognized these distinctions in 1977:<sup>41</sup>

when analyzing sheet silicates for asbestos. Unfortunately, one main factor is that asbestos has now developed variable definitions, depending on whether the point of view is mineralogical, industrial, medical, or regulatory. The medical definition is most concerned with whether or not the particles are biologically active; the industrial definition is dependent upon flexibility and weavability; the mineralogical definition upon crystallography; and the regulatory definition upon size and aspect ratio.

<sup>37</sup> **Exhibit 43**, Expert report of Dr. Sanchez report 7/30/2021 at pg. 20.

<sup>38</sup> **Ex. 4** (Dr. Webber report) at pg. 9; **Ex. 15** (Mark Bailey report) at pgs. 4-6.

<sup>39</sup> **Ex. 43** at pg. 20.

<sup>40</sup> **Ex. 44**, (Excerpts of) Mineralogy and Morphology of Amphiboles Observed in Soils and Rocks in El Dorado Hills, California, USGS Open-File Report 2006-1362, at pg. 37; *see also* **Exhibit 45**, *Misidentification of Asbestos in Talc* by J&J’s Mr. Ashton 1977 at pg. 1 (339) (“... asbestos has now developed variable definitions depending on whether the point of view is mineralogical, industrial, medical or regulatory. The medical definition is most concerned with whether or not the particles are biologically active ...”).

<sup>41</sup> **Ex. 45**, Jerome B. Krause and William H. Ashton, *Misidentification of Asbestos in Talc*, National Bureau of Standards Special Publication 506, Proceedings of the Workshop—Asbestos: Definitions and Measurement Methods held at NBS, Gaithersburg, MD, July 1977 (Issued Nov. 1978)(emphasis added).

When evaluating JBP as the product that allegedly killed Mary McBrayer, the commercial viability of an asbestos vein or commercial asbestos products is irrelevant.<sup>42</sup>

The USGS rejected R.J. Lee's use of a commercial definition for asbestos because "properties of commercial-grade asbestos such as flexibility and tensile strength have not been shown to directly contribute to health effects and should not be the sole basis for exclusion of materials that may otherwise meet demonstrated health-related criteria such as length, width, bulk chemistry, and perhaps surface chemistry."<sup>43</sup> In the context of evaluating health effects, generally accepted criteria for determining whether to count a given structure as asbestos include confirming the right (a) mineral (*i.e.*, one of the six forms of asbestos), (b) length (5um, later 0.5um), (c) width (less than 3um) and (d) aspect ratio (3:1 or 5:1).<sup>44</sup>

**3. Where tests find no asbestos, "no quantifiable asbestos" or similar results, the absence of underlying data hurts Plaintiff.**

J&J's counting protocols, like its definitions, served to prevent analysts from reporting the presence of asbestos in JBP. J&J required its consultants to report "not quantifiable" levels of asbestos even when they identified asbestos in a sample.<sup>45</sup> J&J's procedure required microscopists to report the presence of asbestos only if they found 5 or more fibers of the same type.<sup>46</sup> Thus, even if an analyst identified as many as 16 asbestos fibers (four fibers each of tremolite, actinolite, anthophyllite and chrysotile), J&J's TM7024 protocol mandated the report

<sup>42</sup> **Ex. 44** at pg. 37 (recognizing the definition Dr. Sanchez uses was "developed to specifically analyze for commercial-grade asbestos in media where there may be reason to expect its presence").

<sup>43</sup> *Id.* at pg. 42.

<sup>44</sup> *See, e.g.*, **Ex. 4** at pgs. 6-13; **Ex. 15** at pgs. 4-6; **Ex. 62**, Executive Summary of Preliminary Recommendations by the Interagency Working Group on Asbestos in Consumer Products, 1/6/2020 at pg. 5.

<sup>45</sup> J&J tested a vanishingly small amount of its talc. From 1971 onward (over 40 years), J&J's expert, Dr. Sanchez, agreed J&J only tested 365 samples (8 per year) of J&J's talc products or talc ore sources by transmission electron microscopy. **Ex. 108**, Testimony of Dr. Sanchez (excerpt) 5/22/2018 at 488:1-9. Because each sample examined is very small (*see Ex. 46*), the total quantity of talc J&J tested by TEM amounts to 1/100<sup>th</sup> the weight of a breath mint.

<sup>46</sup> *See, e.g.*, **Ex. 46**, J&J's TM7024 8/21/1995.

merely state “not quantifiable.” In public statements, “no quantifiable asbestos” became “asbestos free.”

Two examples illustrate the importance of bench sheets and/or data indicating the number of fibers found (distinguished from reported results under J&J’s protocol): (1) an exchange between J&J and its consultant McCrone in 1985 and (2) an instance in 1990 where the bench sheets still exist. First, in a report dated August 22, 1985, McCrone states it detected “chrysotile asbestos” in two samples.<sup>47</sup> McCrone noted that the chrysotile asbestos was present but it could not calculate the weight percent of chrysotile asbestos.<sup>48</sup> In response, Windsor Mineral’s president flew to Chicago to speak to McCrone personally.<sup>49</sup> He followed up in a letter:

The August 22, report is couched in substantially different language than earlier reports. As I explained to you on my visit to Chicago it is very important that specific language be used.

On October 8, 1985, McCrone resubmitted the August 22 report, stating it “did not find any quantifiable amount of asbestos minerals.”<sup>50</sup> Second, in 1990 McCrone reported to J&J that “no asbestos minerals were identified in the samples.”<sup>51</sup> Because the bench sheets or underlying data were maintained in this instance, closer inspection reveals McCrone identified an anthophyllite fiber.<sup>52</sup> Other instances where the bench sheets were maintained likewise show “no quantifiable amounts of asbestos”<sup>53</sup> reported while the underlying data show asbestos fibers.<sup>54</sup>

<sup>47</sup> Ex. 47, McCrone to J&J (Windsor Mineral) 8/22/1985.

<sup>48</sup> *Id.*

<sup>49</sup> Ex. 48, J&J (Windsor Mineral) to McCrone 9/10/1985 (“... as I explained to you on my visit to Chicago ...”).

<sup>50</sup> Ex. 49, McCrone to J&J (Windsor Mineral) 10/8/1985 re (project # ME-1862).

<sup>51</sup> Ex. 50, McCrone to J&J 12/17/1990 at pg. 5 (JOJO-MA90013-0009) (concerning sample “33-HV66” under TM7024).

<sup>52</sup> *Id.* at pg. 1 (JOJO-MA90013-0005).

<sup>53</sup> See, e.g., Ex. 51, McCrone to Cyprus Windsor Minerals 11/26/1990 at pg. 1 (JNJMX68\_000012851). To be sure, while this example still illustrates the difference between reported results and actual findings, this particular example is McCrone reporting to Cyprus Windsor Minerals, the successor to J&J’s subsidiary Windsor Mineral and the exclusive supplier of talc for use in JBP beginning in 1989.

Consequently, J&J documents containing only results (per its reporting protocol) without attached “bench sheets” leaves Plaintiff unable to determine if asbestos fibers were found and unreported in the results preserved.

**4. Even in tests where asbestos was found, the absence of underlying data hurts Plaintiff.**

J&J attempts to discredit most of J&J and its consultants’ findings of asbestos by (a) taking advantage of the fact that the underlying data on chemistry, size and shape were discarded and (b) applying the above-described inappropriate definition for asbestos. Rather than accept its own admissions as stated in the internal documents produced by J&J, J&J asserts the documents do not mean what they say. J&J argues that when its own document or report states “asbestos,” “fibrous” or “fiber,”<sup>55</sup> J&J really “only” meant the then-existing regulatory definition for those terms (particles of one of the six asbestos minerals with a 3:1 aspect ratio 5um or longer), not “real asbestos.” Because J&J saved only the final report but failed to maintain the underlying data, there is no objective evidence by which to challenge J&J’s contention about what the results **really** mean. Without bench sheets, there is no way to know the aspect ratios for the asbestos fibers that were counted. Similarly, when J&J or its consultants use potentially ambiguous terms like “needles”<sup>56</sup> or “rods”<sup>57</sup> that, read in context, refer to fibers, J&J argues that it really meant something different. For the same reasons (J&J’s failure to maintain the

<sup>54</sup> *Id.* at pg. 4 (JNJMX68\_000012854) (finding an anthophyllite fiber 1.5um wide and 20um long); *id.* at pg. 9 (JNJMX68\_000012859) (finding a chrysotile fiber).

<sup>55</sup> *See, e.g., Ex. 25* (J&J report on meeting with Dr. Langer 7/9/1971) (referring to chrysotile asbestos); *Ex. 34* (McCrone to J&J 7/1/1975) (reporting “fibers” and “confirmed asbestos,” including in Hammondsville cosmetic talc); *Ex. 35* (McCrone to J&J 11/5/1975) (same).

<sup>56</sup> *Ex. 63*, CSMRI to J&J 5/18/1971 at pg. 3 (distinguishing “needles” and “shards,” with “shards”); *Ex. 64*, J&J “Assay of Talc in Baby Powder, 5/14/1971 (“We consider the free non-talc needles but a trace ... Those particles are tremolite.”); *Ex. 88*, CSMRI to J&J 8/13/1971 (“Any particle having a length/width ratio of 5:1 or greater was considered a needle.”); *Ex. 109*, J&J memorandum regarding Dutch Organization 9/20/1973 at pg. 2 (JNJTALC 000291476) (“The definition of asbestos offered by the Dutch Consumer Organization is as follows: ‘all needle and/or fibrous parts or composed units ...’”) (emphasis added).

<sup>57</sup> *Ex. 65*, J&J report 10/1980 (equating rod-shaped tremolite with asbestos noting “high concentration of rod shaped amphibole (tremolite) particles” before recommending “this talc source be dropped from further consideration.”).

underlying data), Plaintiff is limited in challenging J&J's contention.

**5. With no explanation, J&J failed to maintain the underlying data for most of the reports from its consultants.**

The majority of reports by J&J or its consultants that J&J produced in litigation consist of result summaries.<sup>58</sup> J&J offers no explanation for (a) the loss of underlying microscopy, bench sheets, photomicrographs, appendices and other data from so many reports and (b) why a limited number of reports still attach that information. From the list of test results that J&J affirms it relies on,<sup>59</sup> the following chart provides non-exhaustive examples of reports that, on the face of the document itself, reveal discarded information:

| <b>J&amp;J No.</b> | <b>Report</b>                    | <b>Findings</b>                                                                                                                                                                                                                                            | <b>Missing References</b>                                                                                                                                                |
|--------------------|----------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 7019               | McCrone, 8/19/71 <sup>60</sup>   | Analysis of JBP by optical microscopy and TEM<br><br>No fibers seen by optical microscopy; 12 fibers seen by TEM, 1 of which could not be identified                                                                                                       | No photomicrographs<br>No electron micrographs<br>“Copies of all photomicrographs and electron micrographs taken on this project are already in the possession of J&J.”  |
| 7028               | McCrone, 1/7/72 <sup>61</sup>    | Analysis of talc ore samples by TEM, optical microscopy, electron microprobe, and XRD<br><br>Rules out tremolite by a chemical analysis of 3 fibers examined (“Figure 13 shows the spectrum of the fibers”); tremolite ruled out because no calcium found. | None of 13 figures<br>No appendix<br>No photos<br>No Energy dispersive spectroscopy (EDS) analysis<br>No underlying data                                                 |
| 7116               | Dr. Pooley, 2/3/72 <sup>62</sup> | Analysis of talc powder samples by TEM and powder x-ray<br><br>Finds that two Italian talc                                                                                                                                                                 | No electron micrographs or pictures although report states “Electron micrographs representative of the particles from the various samples are included with this report, |

<sup>58</sup> See, e.g., Exs. 20, 23, 30-33, 38-39.

<sup>59</sup> Ex. 42.

<sup>60</sup> Ex. 67, McCrone on JBP 8/19/1971.

<sup>61</sup> Ex. 68, McCrone 1/7/1972.

<sup>62</sup> Ex. 69, Dr. Pooley 12/3/1972.

|      |                                         |                                                                                                                                                                                                                                                                                                                             |                                                                                                                                                                                                     |
|------|-----------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
|      |                                         | samples are “fibrous” but claims no asbestos                                                                                                                                                                                                                                                                                | together with pictures of the asbestos particles observed and selected area diffraction patterns.”                                                                                                  |
| 7685 | J&J,<br>12/20/72 <sup>63</sup>          | X-ray diffractometer scans of samples of Vermont 66 talc<br><br>No amphibole or chrysotile fibers detected in any sample                                                                                                                                                                                                    | No scans even though the report states “The scans will be retained as references.”                                                                                                                  |
| 8030 | EMV Associates,<br>6/3/83 <sup>64</sup> | Analysis of 5 talc samples by SEM <sup>65</sup> and chemical analysis/EDS<br><br>In JBP Lot 31314, stated “Prismatic tremolite is non-fibrous and does not indicate presence of fibrous asbestos.”                                                                                                                          | No SEM micrographs or other data<br><br>No figures, including Figure 7 of tremolite fiber                                                                                                           |
| 7228 | RJ Lee,<br>5/23/89 <sup>66</sup>        | “Detailed analytical electron microscopical analyses” of Windsor talc ore sample<br><br>Talc sample found to be “free of asbestos fibers”                                                                                                                                                                                   | No analytical findings even though states that “the letter report of the analytical findings is attached”                                                                                           |
| 7363 | McCrone,<br>1/24/94 <sup>67</sup>       | TEM analysis of 3 talc samples<br><br>“We detected no asbestiform minerals in any of the samples.”                                                                                                                                                                                                                          | No tables or underlying data attached even though states “a summary of the results is provided in Table I”                                                                                          |
| 7397 | McCrone,<br>6/25/95 <sup>68</sup>       | TEM analysis of 3 talc samples. “We detected no <i>regulated</i> asbestiform minerals in any of the samples.” (Emphasis added)<br><br>Sample 19 was “unique due to the alternation of the talc plates to a fibrous morphology . . . . Selected area diffraction (SAED) of the fibers show a variety of patterns [including] | No figures<br><br>No tables<br><br>Even though:<br>“Figures 1 through 4 show talc plates in various stages of alteration from sample 19.”<br><br>“A summary of the results is provided in Table I.” |

<sup>63</sup> Ex. 70, J&J internal document 12/20/1972.

<sup>64</sup> Ex. 71, EMV Associates for J&J 6/3/1983.

<sup>65</sup> SEM, or scanning electron microscopy, is another way to visualize fibers. It is less powerful than TEM.

<sup>66</sup> Ex. 72, RJ Lee 5/23/1989.

<sup>67</sup> Ex. 73, McCrone to Luzenac 1/24/1994.

<sup>68</sup> Ex. 74, McCrone to Luzenac 1/24/1995.



|  |  |                                 |  |
|--|--|---------------------------------|--|
|  |  | chrysotile-like streaked rows.” |  |
|--|--|---------------------------------|--|

The above examples are representative of the problem with hundreds of test result summaries that J&J relies on in this case. J&J’s discarding the underlying data has left Plaintiff with little opportunity to challenge the purported results and counter J&J’s position before the jury.

**C. J&J failed to maintain any information on blanks, limiting Plaintiff’s ability to refute J&J’s specious claims of “laboratory contamination.”**

J&J also attempts to explain away tests finding asbestos in its products or source talc by arguing the asbestos resulted from “lab contamination.” Under this theory, J&J claims asbestos—including rare, non-commercial asbestos fibers (tremolite, actinolite, anthophyllite)—floating in the laboratory environment found their way into the vanishingly small amount of talc examined under the microscope. J&J makes this argument about numerous tests, including historical tests for which J&J has no documentation about whether the laboratory found asbestos in the “blanks.”

A standard practice amongst laboratories consists of using “blanks” to control for possible contamination.<sup>69</sup> A blank is a filter placed near talc samples being tested to capture any contaminants in the air. The practice allows labs to rule out the possibility that asbestos fibers found in the sample came from an outside source. If the asbestos found in a talc sample was the result of contamination within the lab, the blanks would also show asbestos fibers. For most labs,

<sup>69</sup> **Ex. 52**, ASTM D6620-19, Standard Practice for Asbestos Detection Limit Based on Counts (2019) at 3.2.3.1 (“Blanks are used in this practice to determine background levels (also referred to as contamination) for asbestos measurement methods.”); **Ex. 53**, EPA, Region III Fact Sheet, Quality Control Tools: Blanks (2009) (“The primary purpose of blanks is to trace sources of artificially introduced contamination.”).

asbestos fibers appearing in the “blanks” is an exceedingly rare event that almost never occurs.<sup>70</sup> J&J required the use of blanks in its asbestos testing procedures.<sup>71</sup>

Two recent examples illustrate the lengths to which J&J—and its experts—will go to claim lab contamination and the importance of information on blanks to refute such contentions. First, in October 2019, the FDA found asbestos in JBP.<sup>72</sup> J&J immediately sent the samples to Dr. Van Orden of RJ Lee, a lab J&J often uses, including in litigation.<sup>73</sup> RJ Lee found the same asbestos type as the FDA in **three** samples, while **no** asbestos appeared in the six blanks (two per sample) placed alongside the samples.<sup>74</sup> Nevertheless, RJ Lee, with no objective support, attributed the asbestos in the samples to lab contamination.<sup>75</sup> Second, as another example, RJ Lee found chrysotile in two samples of Brazilian talc (used in JBP sold outside of the U.S.) but not in the blanks.<sup>76</sup> RJ Lee initially concluded, based on the blanks, that lab contamination was unlikely.<sup>77</sup> RJ Lee tested water used in the talc beneficiation process and roofing shingles near the site, but asbestos was not found in either.<sup>78</sup> Despite negative tests of the water and shingles and the empty blanks, RJ Lee reversed itself and ultimately concluded laboratory contamination was the probable source of the asbestos fibers.<sup>79</sup> For both the FDA and Brazilian samples, J&J and RJ Lee claimed asbestos fibers floated into the talc samples in analyses (a) conducted by

<sup>70</sup> **Ex. 32** (McCrone to J&J 3/11/1974) (“... in view of our record of zero blanks ...”); **Ex. 46**, (TM7024 8/21/1995) at 8.0 (“As of the time of this writing, background correction has not been necessary.”); **Ex. 54**, McCrone Standard Operating Procedure 3/24/1987 (“Blank contamination is rare.”).

<sup>71</sup> **Ex. 46** at pg. 5 (7.0).

<sup>72</sup> **Ex. 55**, Email from Ruark Lanham, FDA Divisional Recall Coordinator, 10/17/2019.

<sup>73</sup> **Ex. 56**, Decl. of Dr. Sanchez 3/29/2021 (noting J&J paid RJ Lee 4.3M in 3.5 years for litigation efforts).

<sup>74</sup> **Ex. 57**, Letter from RJ Lee 10/28/2019 at pg. 2.

<sup>75</sup> *Id.* Dr. Van Orden testified that this was the only time he remembers claiming laboratory contamination in 30 years. **Ex. 58**, Excerpt of Dr. Van Orden 3/12/2020 at 35:4-36:4.

<sup>76</sup> **Ex. 59**, Excerpt of the (combined) deposition of Donald Hicks, 7/29/2020 and 8/3/2020, at 146, 172-174, 340-353, 373-374, 475, 480.

<sup>77</sup> *Id.* at 374-375.

<sup>78</sup> *Id.* at 381-382, 463-464.

<sup>79</sup> *Id.* at 488, 504-505.

professional researchers who (b) wiped the entire laboratory clean before (c) processing the samples under a hood with negative pressure air.

Despite J&J requiring blanks,<sup>80</sup> the documents J&J produced in litigation almost always fail to contain any documentation about the blanks. To date, J&J offers no reason for maintaining some testing reports yet consistently failing to maintain documentation on blanks. The absence of such information disadvantages Plaintiff, left without solid evidence from which to refute J&J's contentions.

**D. J&J's failure to maintain samples benefits J&J by (1) allowing J&J to argue the talc samples Plaintiff's experts rely on are not representative and (2) forcing Plaintiff to obtain samples from other sources only to have J&J challenge the reliability of those samples.**

Despite hundreds of findings of asbestos in JBP talc,<sup>81</sup> J&J generally attacks the number, diversity and source of the talc samples that Plaintiff's experts rely on in two ways. First, J&J may argue the talc samples Plaintiff's experts reviewed are not representative of the talc used by Mary McBrayer. J&J may argue that (a) composition of talc varies within the mine or the composition varies from year-to-year, as the mining operation shifts location over time and (b) Plaintiff's experts rely on test results from an insufficient number or variety of samples of talc to be representative of the varied composition in the source ore over time.<sup>82</sup> Second, J&J may attempt to challenge any reliance on JBP samples not obtained from J&J by claiming insufficient chain-of-custody and/or asbestos contamination during maintenance.<sup>83</sup>

J&J had an endless number of talc bottles to draw from to preserve samples of its talc for future analysis. In January 1987, McCrone specifically told J&J that its policy required them to

<sup>80</sup> Ex. 46 at pg. 5 (7.0).

<sup>81</sup> See, e.g., Ex. 4 (Dr. Webber report) at pgs. 21-26, 32-33 (summarizing results stated in J&J internal documents and contemporary tests); Ex. 5 (Chart on 1957 to 2004); Ex. 6 (Chart on 696 samples); Ex. 14 (Dr. Rigler report) (discussing his analyses of at least 72 JBP ore talc samples); Ex. 18 (Dr. Madigan report) (statistical analysis).

<sup>82</sup> See, e.g., Ex. 43 (Dr. Sanchez report) at pgs. 2-3; see also Ex. 15 (Mark Bailey report) at pgs. 17-20 (discussing talc zoning); Ex. 18 (Dr. Madigan report) at pg. 15 (#56) (assuming representativeness for statistical analysis).

<sup>83</sup> Id. at pg. 14 (#55) (assuming the samples analyzed are not biased).

hold samples tested for 30 days after a report for no charge and then, upon written request, fifty cents each month thereafter.<sup>84</sup> J&J could have saved the same samples McCrone tested. McCrone reminded J&J repeatedly of this option. J&J benefits from its own failure to maintain talc samples as it simultaneously (a) argues Plaintiff relies on a sample set not sufficiently representative and (b) challenges each sample not obtained from J&J.

**E. J&J recklessly and knowingly failed to preserve this important evidence, and J&J now seeks to use the absence of such evidence to its advantage.**

1. **J&J (a) knew by 1969 of the risk of civil litigation for injuries caused by inhaling needle-like tremolite particles and (b) was engaged in active litigation from 1971.**

J&J knew (a) by the 1930s that asbestos was associated with cancer,<sup>85</sup> (b) by 1956 that its talc contained “trace” tremolite with some occurring in “fibrous aggregates,”<sup>86</sup> (c) by 1967 that tremolite in talc was a health hazard<sup>87</sup> and (d) by 1971 that there was no safe level of asbestos in cosmetic talc.<sup>88</sup>

By 1969, J&J knew it was at risk of litigation related to injuries caused by inhaling the tremolite in JBP. J&J’s Medical Director Dr. T.M. Thompson (a) advised J&J of the danger of inhaling “needle-like” tremolite, (b) recognized that “trace” amounts of tremolite in JBP were “unavoidable” and (c) noted that “furor” might arise if the public learned JBP “contained any significant amount of tremolite.”<sup>89</sup> He predicted J&J “could become involved in litigation” for

<sup>84</sup> **Ex. 60**, McCrone to J&J 1/28/1987 at pg. 2 (JNJALC000387137) (“It is our present policy to hold samples for 30 days after issuance of the analysis report at no additional charge to the client.”); **Ex. 61**, McCrone 6/25/1995 (“If you would like the samples returned to you, please notify me within 30 days”).

<sup>85</sup> **Ex. 41** (J&J’s designee 7/22/2019) at 33:12-17.

<sup>86</sup> **Ex. 3**, Battelle Report 2/29/1956 at 17-19.

<sup>87</sup> **Ex. 75**, Mr. Ashton to Dr. Hildick-Smith 4/9/1969.

<sup>88</sup> **Ex. 76**, Dr. Hildick-Smith regarding Dr. Cooper, 7/30/1971 (“There is no place for asbestos in talcs.”).

<sup>89</sup> **Ex. 77**.

pulmonary fibrosis and recommended J&J's "Law Department" evaluate the "defensibility of our position."<sup>90</sup>

Dr. Thompson's prediction came true in 1971 when, according to admissions in J&J's privilege log, J&J was already named in "pending" litigation."<sup>91</sup> J&J asserted privilege for "pending" or "ongoing" "talc litigation" throughout the 1970s.<sup>92</sup> J&J distinguished "talc litigation" from litigation on (a) "regulatory matters" in 1973,<sup>93</sup> (b) a "talc complaint"<sup>94</sup> and (c) a "talc study" in 1979.<sup>95</sup> J&J knew that information from one case would be relevant to others.<sup>96</sup>

J&J was continuously named in suits in the 1980s and 1990s. By 1981, J&J knew of a pending suit alleging mesothelioma from inhaling talc, including talc from the Johnson Vermont mine—a suit in which its subsidiary Windsor Minerals was named.<sup>97</sup> J&J asserted privilege for "pending" litigation regarding this case.<sup>98</sup> A 1982 case alleged lung injury from using JBP.<sup>99</sup> By 1988, over 900 plaintiffs had alleged asbestos injury from J&J's subsidiary's Vermont talc.<sup>100</sup> Mesothelioma victims filed suit against J&J in 1997 (*Coker*), 2000 (*Bloch*) and 2003 (*Hozeny*).<sup>101</sup>

<sup>90</sup> *Id.*

<sup>91</sup> **Ex. 78**, J&J's privilege log (excerpt) from the deposition of Nancy Musco 2/15/2019 at pg. 1 (referring to "pending and anticipated litigation regarding Johnson's Baby Powder litigation.").

<sup>92</sup> *Id.* at pgs. 1-6; **Ex. 79**, Deposition of Nancy Musco (excerpt) 2/15/2019 at 12:21-25, 13:5-21, 14:8-18, 14:21-23, 75:2-4, 75:7-21, 75:24-76:4, 77:13-20, 80:6-9, 80:13-8, 81:25-82:14, 82:17-18, 82:23-25.

<sup>93</sup> **Ex. 78** at pg. 1.

<sup>94</sup> *Id.* at pg. 2.

<sup>95</sup> *Id.* at pgs. 3-4.

<sup>96</sup> **Ex. 79** at 25:4-7, 25:10-17, 25:20.

<sup>97</sup> **Ex. 79**, Musco Deposition, 2/15/2019, at 202:25-203:3, 203:10-14; **Ex. 133**, Deposition of J&J designee James Mittenthal (Vol. 1 of 3) dated 9/24/2018 at 7:19-8:9, 8:12, 8:18-24, 9:2, 34:23-36:1, 36:3-10; **Ex. 94**, Deposition of J&J designee James Mittenthal (Vol. 3 of 3) dated 10/19/2018 at 471:19-22, 472:11-473:4. **Ex. 80**, J&J memorandum on the *Westfall* case 7/15/1981.

<sup>98</sup> **Ex. 78** at pgs. 8-9.

<sup>99</sup> **Ex. 81**, J&J on *Joly* case 12-3-1982; **Ex. 82**, J&J list of inhalation complaints 6/17/1985 at pg. 1.

<sup>100</sup> **Ex. 83**, Schedule I to J&J-Cyprus contract 12/30/1988; **Ex. 84**, Luzenac to J&J 10/17/1994 (stating throughout 1973-1984 industrial talc came from Vermont mines). Suits alleging respiratory injury from J&J's Vermont talc include 1986 (*Cooper*), 1986 (*Yohas*), 1988 (*Kreppel*), 1992 (*Faye Miller*), 1993 (*Selby*) and 1994 (*Ritter*).

<sup>101</sup> **Ex. 85**, Ex. 21 to the deposition of James Mittenthal 10/18/2018.

2. J&J knew the importance of preserving (and the consequences of discarding)  
(a) data on chemistry, size and shape and (b) vintage talc samples.

From the 1970s onward, J&J knew the significance of data on chemistry, size and shape of the particles. In October 1972, J&J was copied on a letter from its consultant Ian Stewart, who wrote that missing photographs of reported asbestos in J&J talc were “vital information” to confirm if asbestos was truly present.<sup>102</sup>

**In particular, it would have been useful to know from which samples micrographs had been taken and what their magnifications were. There are in fact only a few of the photographs which contain this vital information. I would be pleased if you could furnish me with this missing information and**

Bill Ashton, J&J’s in-house talc expert,<sup>103</sup> recognized in 1977 that test results to identify asbestos in talc cannot be relied on without question because “[t]he conclusions reached will often vary widely depending on the expertise and specific interest of the investigator.”<sup>104</sup>

**There are many ways to analyze and study any naturally occurring material. The conclusions reached will often vary widely depending on the expertise and specific interest of the investigator. That situation sums up the present status of “asbestos”; it is also the status of minerals which are associated with “asbestos”; and it is becoming the status of other minerals which can be naturally associated with talc.**

J&J used underlying data to challenge others’ findings of asbestos in cosmetic talc by reference to the underlying data. For example, J&J hired Colorado School of Mines Research Institute (CSMRI) to review the underlying data for the Bowling Green study that found asbestos

<sup>102</sup> Ex. 86, McCrone to Dr. Hutchinson, 10/5/1972.

<sup>103</sup> According to J&J, “Mr. Ashton was the former Director, Advanced Powder Technology and worked for Johnson & Johnson from October 1948 to August 1983. He had over fifty years of experience as a geologist and mineralogist and received training in talc minerals at the Battelle Memorial Institute.... [A]t Johnson & Johnson, his responsibilities included investigating and studying the domestic and international talc industry and methods for testing talc and communicating with outside scientists and laboratories that were testing talc and talcum powder products. Additionally, Mr. Ashton oversaw and was actively involved with the company’s testing of talc and the efforts to identify, evaluate and approve new sources of talc.” Ex. 131, J&J’s Second Supplemental Responses to Certain of Plaintiff’s First Set of Interrogatories, *Eggers v. Colgate Palmolive Co.*, at pp. 4-5.

<sup>104</sup> Ex. 45, Jerome B. Krause and William H. Ashton, *Misidentification of Asbestos in Talc*, National Bureau of Standards Special Publication 506, Proceedings of the Workshop—Asbestos: Definitions and Measurement Methods held at NBS, Gaithersburg, MD, July 1977 (Issued Nov. 1978)(emphasis added).



in JBP. Based on its review, analysts from CSMRI challenged the authors with specific findings they believed to be in error.<sup>105</sup>

J&J repeatedly attempted to control the data others received, demonstrating its awareness of its significance. As an example, when McCrone concluded two J&J samples contained 0.2-0.3% and 0.5% tremolite,<sup>106</sup> J&J wrote in capital letters “DO NOT USE THIS REPORT.”<sup>107</sup> Another report was submitted without the percentages expressed.<sup>108</sup> And as noted above, J&J instructed its consultants that it was “very important specific language be used” in their reports—language provided by J&J.<sup>109</sup>

J&J knew the importance of preserving vintage samples of talc. Through its corporate designee Dr. Hopkins, J&J admitted that it knew by 1971 asbestos-related diseases were latent, forming decades after exposure.<sup>110</sup> Because of the latency, J&J knew the samples in its possession might remain one of the only sources for vintage samples thirty years or more after a consumer used its product, when disease was diagnosed. J&J knew the significance of such samples in litigation specifically. J&J’s privilege log reveals that, as early as February 1971, J&J was communicating with its attorneys about “talc samples in connection with ongoing and anticipated litigation.”<sup>111</sup> Facing litigation in 1994, J&J wrote its talc supplier Luzenac about whether Luzenac had vintage talc samples and Luzenac responded that “samples are not available for this time frame since retention is only two years.”<sup>112</sup>

<sup>105</sup> **Ex. 90**, CSMRI to J&J 6/8/1973.

<sup>106</sup> **Ex. 30** at pg. 3 (JNJMX68\_000006932).

<sup>107</sup> *Id.* at pg. 1 (JNJMX68\_000006930).

<sup>108</sup> **Ex. 91**, McCrone report to J&J without percentages 10/27/1972.

<sup>109</sup> **Ex. 48**, J&J (Windsor Mineral ) to McCrone 9/10/1985 (“ ... as I explained to you on my visit to Chicago ...”).

<sup>110</sup> **Ex. 92**, Dr. Hopkins deposition (excerpt) 8/16/2017 at 537:16-20.

<sup>111</sup> **Ex. 78** at pg. 1; **Ex. 79** at 93:3-9, 93:12, 93:15-25, 94:4-6.

<sup>112</sup> **Ex. 84** (Luzenac to J&J 10/17/1994) at pg. 2 (JNJ 000063582).

**3. Despite ongoing litigation and the depth of its knowledge, J&J failed to institute preservation policies until far too late.**

J&J failed to make any systematic effort to collect potentially responsive documents until the mid-1990s and failed to institute a records retention policy until 1997.<sup>113</sup> After years of active litigation, J&J did not institute a “legal hold”<sup>114</sup> for litigation surrounding consumer talc until 1997 or 1999.<sup>115</sup> Even then, J&J failed to direct its legal holds to all of its operating companies.<sup>116</sup> J&J recognizes that litigation holds can be entered for *anticipated* litigation,<sup>117</sup> but it had been involved in litigation for more than 25 years before it instituted any sort of legal hold.

J&J knew the effect of not instituting a litigation hold. Under J&J’s policies, J&J employees discard documents (a) no longer governed by retention schedules and (b) not subject to a legal hold.<sup>118</sup> J&J had annual “clean-out” policies for disposing of documents.<sup>119</sup> Despite J&J’s awareness of the importance of vintage samples since 1994<sup>120</sup> (if not 1971), J&J failed to institute a legal hold for talc samples until 2017, twenty years after the *Coker* case.<sup>121</sup>

<sup>113</sup> **Ex. 93**, Deposition of James Mittenthal 10/18/2018 at 389:7-16, 389:18-390:8; **Ex. 94**, Deposition of James Mittenthal 10/18/2018 at 539:23-540:5, 540:10-13, 541:1-7, 548:14-21.

<sup>114</sup> A litigation hold, legal hold or “preservation notice” is an instruction to possessors of certain specified documents to preserve (and not destroy) them while the hold remains in effect. **Ex. 93** at 408:14-20, 420:13-16. Legal holds remain in effect until a release notice is issued. *Id.* at 408:21-409:3.

<sup>115</sup> **Ex. 93** at 227:4-7, 389:2-6, 403:10-13; **Ex. 94** at 477:14-19, 480:16-21, 481:7-9, 488:23-25, 507:13-14; **Ex. 96**, *Krushinski* legal hold 11/11/1999. Records reveal J&J instituted a legal hold for the *Coker* case on October 6, 1997. **Ex. 95**, *Coker* legal hold 10/6/1997.

<sup>116</sup> **Ex. 93** at 417:3-10. J&J is not aware of any legal holds being destroyed or hold releases being entered. **Ex. 94** at 500:12-22, 506:7-13, 507:15-18. J&J entered hold notices in 1999, 2000, 2003, 2009, 2014 and 2017. **Ex. 85** (J&J list of legal holds 10-18-2018).

<sup>117</sup> **Ex. 94** at 468:9-13, 468:18-23.

<sup>118</sup> *Id.* at 535:20-536:1, 536:3-4.

<sup>119</sup> *Id.* at 536:6-9, 536:11-12. J&J may have discarded testing when it sold Windsor Mineral to Cyprus in 1989. The memorandum refers to Windsor Mineral conducting monthly tests from 1970 to 1989. **Ex. 84**. J&J reported “records were destroyed by the mine management staff prior to J&J divestiture and the Cyprus purchase.” **Ex. 97**, J&J trip report 11/23/1993. Other discarded, or potentially discarded, documents include: (a) J&J employee George Lee’s files pertaining to bi-monthly reports, the *Westfall* case (1981) and the *Joly* case (1982), **Ex. 98**, George Lee files 7/1988, (c) historical talc samples and talc photomicrographs, **Ex. 99**, Talc Closet Cleanout 1/20/2000 and (d) J&J’s file on all phone calls and correspondence it had with the FDA that no longer exists.

<sup>120</sup> **Ex. 84**.

<sup>121</sup> **Ex. 85**. Before 2017, J&J’s talc samples were subject to its ordinary records retention schedule four years after manufacture or one year after expiration. **Ex. 93** at 404:18-21.

Nancy Musco testified as J&J's corporate designee on J&J's discovery responses.<sup>122</sup> She verified interrogatory responses in many instances.<sup>123</sup> Ms. Musco admitted J&J was asked repeatedly in discovery for "any evidence" that the talc in JBP (*i.e.*, JBP or its talc sources) contained asbestos.<sup>124</sup> J&J knew any testing on whether its talc contained asbestos would be responsive and information in its possession relevant to, or produced in, any particular talc-based lawsuit would be relevant to discovery in future talc-based cases.<sup>125</sup>

When deposed in 2019, Ms. Musco admitted that J&J could not identify a single case prior to 2017 in which it had turned over evidence related to the testing of J&J's talc:

Q. Okay. So as you sit here today, Johnson & Johnson, to be clear, cannot point to a single case prior to 2017 where it turned over evidence related to the testing of Johnson & Johnson's talc, baby powder or sources of that baby powder related to asbestos, correct?

...

A. No, I cannot.<sup>126</sup>

Mr. O'Shaughnessy, J&J's assistant general counsel, admitted that, even after it knew of evidence of asbestos, J&J continued stating in discovery there was "no evidence" of asbestos.<sup>127</sup>

J&J answered discovery to promote "the company position":

A. **Everybody I worked with, we knew the company's position. I verified that everything that was written there [in interrogatory responses] was consistent with that position.**

Q. When you say "company's position," what do you mean by that?

<sup>122</sup> Ex. 79 at 13:5-21.

<sup>123</sup> *Id.* at 14:2-6.

<sup>124</sup> *Id.* at 35:4-24, 36:3-4, 36:8-9, 36:13, 36:23-25, 37:1-11, 37:16-20.

<sup>125</sup> *Id.* at 25:13-17, 25:20, 30:20-31:8, 31:14-15. J&J admits that it owed a duty to provide complete and accurate discovery. *Id.* at 32:3-7, 32:10.

<sup>126</sup> **Exhibit 120**, Deposition of Nancy Musco (Vol. 2) (excerpt) at 420:19-421:2. J&J's attorney objected that the question was beyond the scope of the notice and could only be answered in her individual capacity. Ms. Musco testified as J&J's corporate representative "with the most knowledge concerning discovery responses historically provided by" J&J and its subsidiaries. *Id.* at 13:5-21. This question related precisely to the discovery responses historically provided by J&J concerning the asbestos content of its talc, JBP or Shower to Shower sold by J&J. Even in her individual capacity, Ms. Musco would be in a position to know if such information had been produced by J&J because she was personally involved in the discovery process.

<sup>127</sup> See Ex. 100, John O'Shaughnessy deposition (excerpt) 6/22/2021 at 12:21-13:9, 92:20-96:2, 111:16-23.

A. That there is no asbestos in the cosmetic talc used for Johnson's Baby Powder.

Q. There's no evidence of asbestos, there never was and there never will be; isn't that the company position?

A. Yes, in the cosmetic talc used for Johnson's Baby Powder.<sup>128</sup>

Between J&J's secrets and what litigants needed to know was a wall of obfuscation. But J&J did not develop its practice of avoidance and concealment just for litigation. J&J has long fought to protect the reputation of its flagship product—from regulators, medical professionals, and consumers.

**F. J&J engaged in a decades-long pattern of concealing evidence and making false statements to prevent public knowledge of asbestos in JBP.**

JBP was J&J's "flagship product" that – out of thousands of J&J products – most people associated with J&J.<sup>129</sup> J&J called JBP "the franchise,"<sup>130</sup> a "sacred cow"<sup>131</sup> and a "golden egg."<sup>132</sup> J&J recognized that its business depended on the "emotional trust" and perception of "safety" developed from an "infant bond."<sup>133</sup> As a diverse company with numerous revenue streams, J&J knew that disclosure of the asbestos content of JBP and associated cancer risk would damage that perception and affect J&J's other revenue streams besides JBP.<sup>134</sup> J&J went to great lengths to prevent such disclosure.<sup>135</sup> J&J engaged in a pattern of concealing information and making false statements to regulatory bodies, courts and the public.

<sup>128</sup> Ex. 16 at 136:5-18 (emphasis added).

<sup>129</sup> Ex. 101, J&J designee Dr. Hopkins deposition (excerpt) 8/15/2017 at 10:5-19, 121:25-122:25.

<sup>130</sup> *Id.* at 121:21-24.

<sup>131</sup> *Id.* at 123:18-124:11.

<sup>132</sup> Ex. 102, J&J marketing Power Point 4/28/1997; Ex. 103, J&J marketing Power Point 8/18/1997.

<sup>133</sup> Exs. 102-103.

<sup>134</sup> *See, e.g.*, Ex. 41 (Dr. Hopkins on 7/22/2019) at 38:19-39:1 ("It would very, very bad for business.").

<sup>135</sup> Ex. 105, J&J's Vernon Zeitz 5/5/1975 at pgs. 10-11 (WTALC00007375 to 76) ("Most wars are not won at peace talks around the conference table, but are won on the battlefield by legions who are the most ruthless ... It is imperative we overcome the inertia of our past to modernize and mobilize our defenses and offenses so we enter into battle with the outcome assured.").



As noted above with respect to the Bowling Green researchers, J&J also sought to control others' disclosure of information. J&J developed a list of "antagonistic personalities" that published information adverse to its interests.<sup>146</sup> J&J's enemy list included Dr. Selikoff and Dr. Langer of Mt. Sinai. When Dr. Langer planned to present his findings of chrysotile and anthophyllite in JBP at a scientific conference,<sup>147</sup> J&J secured the "immediate removal of the hostile preprint" of the conference program and pressured Mt. Sinai to withdraw the paper.<sup>148</sup> Dr. Langer attributed its removal to "professional pressures and industry harassment."<sup>149</sup> Pfizer noticed J&J applying "heavy pressure."<sup>150</sup> As another example, in 1974 J&J learned that its former talc supplier (of Italian talc) published a booklet in Europe stating it contains chrysotile asbestos and intended to distribute in the U.S.<sup>151</sup> J&J met with other talc suppliers in the U.S., flew to Italy and pressured them to stopping publication in the U.S.<sup>152</sup>

J&J repeatedly made false statements to courts. In July 1987, Roger Miller (president of J&J's talc mining subsidiary) gave a sworn affidavit (to induce a dismissal) stating "no evidence of the presence of asbestos in Windsor Minerals' product has ever been revealed by this testing."<sup>153</sup> J&J employee Bill Ashton likewise submitted a false affidavit claiming that talc from the Johnson, Vermont mine was "free from contamination by asbestos."<sup>154</sup> He attached an affidavit of Dr. Chidester, but failed to disclose that Dr. Chidester had found chrysotile and two

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Hutchinson's report that verified Lewin's results finding chrysotile asbestos in Shower to Shower but J&J hid this from FDA. *See Ex. 129*, Hopkins Testimony, *Herford*, 11/3/17, at 2631:4-2634:8.

<sup>146</sup> **Ex. 104**, J&J on antagonistic personalities 11/29/1972.

<sup>147</sup> **Ex. 27** (J&J memorandum 9/9/1975).

<sup>148</sup> **Ex. 28** (J&J memorandum 10/3/1975).

<sup>149</sup> **Ex. 114**, Dr. Langer to Mt. Sinai 3/17/1976 at pg. 3.

<sup>150</sup> **Ex. 115**, Pfizer memorandum on media coverage 3/25/1976.

<sup>151</sup> **Ex. 116**, J&J regarding meeting with Don Ferry 10/2/1974; **Ex. 117**, J&J on booklet 10/8/1974.

<sup>152</sup> **Ex. 116** (referring to meeting with other supplier); **Ex. 118**, J&J on trip to Italy 10/31/1974; **Ex. 119**, J&J to UK confirming decision not to publish 11/26/1974.

<sup>153</sup> **Ex. 79** (Nancy Musco 2/15/2019) at 227:18-21, 227:23-24; **Ex. 121**, Roger Miller Affidavit (*Edley*) 7/3/1987.

<sup>154</sup> **Ex. 120** (Nancy Musco 3/8/2019) at 351:9-19; **Ex. 121**, J&J employee William Ashton's Affidavit 5/8/1989.







destroys evidence, an inference may be drawn that the destroyed or lost evidence would have been adverse to that party.” *Id.* (citing *Kershaw Cnty. Bd. of Educ. v. U.S. Gypsum Co.*, 302 S.C. 390, 396 S.E.2d 369 (1990)).

In these cases, the loss of the evidence occurred long before litigation was filed and with no reason to believe that evidence was deliberately or maliciously discarded—indeed, the defendant in *Stokes* argued that some of the allegedly missing evidence might never have existed.

The loss of the evidence at issue in this case began decades ago, including before litigation began against J&J, and it continued through decades of litigation. J&J, from the time it knew it had asbestos in its cosmetic talc products and knew that it was unacceptable to have asbestos in its talc product, also had reason to know (like the defendants in *Stokes* and *Gathers*) that the evidence needed to be retained. But J&J failed to do so.

**2. The evidence is relevant and there is reason to believe it would have been favorable to Plaintiff.**

Under Rule 401, SCRE, “relevant evidence” means “evidence having any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable that it would be without the evidence.” “Evidence is relevant if it tends to establish or to make more or less probable some matter in issue upon which it directly or indirectly bears.” *State v. Schmidt*, 288 S.C. 301, 303, 342 S.E.2d 401, 403 (1986). Thus, any evidence which assists a jury at arriving at the truth on a matter at issue is relevant. The determination of the relevancy of evidence is largely within the trial judge’s discretion. *Strickland v. Coastal Design Associates, Inc.*, 284 S.C. 421, 365 S.E.2d 226 (Ct. App. 1987).

Evidence that goes to whether JBP contains asbestos is extremely relevant to Plaintiff's case. Indeed, it goes to the heart of the dispute between Plaintiff and J&J. Moreover, the facts outlined above provide reason to believe the evidence that has been lost or discarded would have been favorable to Plaintiff. Plaintiff has provided examples of (1) a bench sheet that found an asbestos fiber while the final report claimed "no quantifiable asbestos," (2) two cases where laboratory contamination was blamed for asbestos fibers found in samples of JBP and J&J talc when control blanks did not support the claims, and (3) an expert report that demonstrates areas of disagreement about the identification of fibers based on chemistry or morphology. In addition, J&J's history of presenting tests to the FDA that reported JBP was asbestos-free while withholding other tests that would be "very, very bad for business" is further evidence that J&J avoids producing evidence that it considers harmful to "the company position."<sup>158</sup>

**B. The requested sanctions are appropriate.**

Over the years, courts have found numerous sanctions to be appropriate for the spoliation of evidence. Courts have allowed adverse inferences to be drawn from the loss or destruction of relevant evidence, issued fines plus attorney's fees, as well as other sanctions. The adverse inference instruction is favored because the spoliating party has prevented the evidence from being reviewed by the jury or court: "Giving the finder of fact the ability to decide what weight to place on the spoliation is the preferred practice in South Carolina." *Spoliation in South Carolina* at 31.

"The rights of discovery provided by the Rules [of Civil Procedure] give the trial lawyer the means to be prepared for trial." *Downey v. Dixon*, 294 S.C. 42, 46, 362 S.E.2d 317, 319 (Ct. App. 1987). "Where these rights are not accorded, prejudice must be presumed and, unless the

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<sup>158</sup> J&J's corporate representative Nancy Musco testified that J&J's company position was "[t]hat there is no asbestos in the cosmetic talc used for Johnson's Baby Powder." **Ex. 79**, Musco Deposition, 2/15/2019, at 136:5-18. *See also Ex. 100*, O'Shaughnessy Deposition, 6/22/2021, at 195:-197:10.



## Decades of Product Testing Has Found No Asbestos in Johnson's Baby Powder

The Company has a rigorous testing standard in place to ensure its cosmetic talc is safe. Thousands of tests over the past 40 years, including FDA's own testing as recently as last month, repeatedly confirm that Johnson's Baby Powder does not contain asbestos. Our talc comes from ore sources confirmed to meet our stringent specifications that exceed industry standards. The Company and its suppliers routinely test to ensure our talc does not contain asbestos. Our talc has also been tested and confirmed to be asbestos-free by a range of independent laboratories, universities and global health authorities.

J&J touts its own “rigorous testing” as its primary defense. J&J knew this evidence was important for a host of reasons (regulatory pressure, consumer concerns, hundreds of existing and anticipated lawsuits) but selectively and overwhelmingly failed to keep the proof and ask that opposing parties be forced to accept it as true and be denied the ability to verify.

If J&J's 40 years of testing is the evidence that its talc does not contain asbestos, Plaintiff is severely hampered by (1) a lack of historical talc samples for testing (to counter the hundreds of historical tests done by J&J), (2) a lack of underlying test data to evaluate test results on which J&J relies, (3) a lack of blanks from which to evaluate claims of laboratory contamination and (4) lack of underlying data to support historical testing done by J&J finding asbestos.

There is also evidence that J&J acted in bad faith when it lost or destroyed this evidence. J&J's history of protecting the reputation of its cornerstone product, JBP, with regulators, medical professionals, consumers, and litigants by hiding, misrepresenting, and attacking is strong evidence of bad faith. It would have been "very, very bad for business" if anyone had discovered there was asbestos in JBP.<sup>160</sup> J&J has promoted the company position, that there is no asbestos in JBP, with regulators,<sup>161</sup> litigants,<sup>162</sup> and the press<sup>163</sup> decade after decade. Any evidence that conflicts with that story is unacceptable.

<sup>160</sup> **Ex. 101**, Hopkins Deposition, Aug. 15, 2017, at 134:11-17.

<sup>161</sup> See, e.g., **Ex. 110**, J&J's summary of submissions to the FDA 1971-1979; **Ex. 113** at 132:11-16, 132:18.



J&J knew by the 1970s testing data regarding asbestos in baby powder was of great interest to regulators, consumers, litigants, and medical professionals and the failure to maintain it cannot be brushed away given its undisputed importance to J&J's business and undisputed significance of this information both in and outside of the litigation starting over 40 years ago. J&J knew and published on the importance of having this data; knew that the FDA and others were promised and expected analytical data and knew that there was much scientific concern about its talc in the 1970s. The number of reasons to keep this type of information, the nature of the evidence (verification of a carcinogen in a baby powder) and the length and persistence of the failure all show J&J did not act in good faith.

The way to keep interested parties from gaining access to this vital information was to discard it, destroy it, or recklessly fail to preserve it. J&J knew what it was doing when it destroyed underlying test data, talc samples, and blanks data. J&J made a decision to retain results that were stated in a particular manner favorable to its defense and to largely discard anything that might undermine its interests. Some of these categories of evidence are historical, but some, like the blanks related to its claims of laboratory contamination, include data that is quite recent. J&J's pattern of concealment spans decades. The Court should not let J&J evade the consequences of its concealment and destruction.

The sanctions requested in this case are directly connected to the missing evidence and what Plaintiff and Plaintiff's experts have reason to believe that evidence would have shown. Plaintiff merely asks that J&J not be allowed to profit from discarding or knowingly failing to preserve these specific categories of evidence. Where J&J has failed to preserve evidence that it *knows* is essential to test or challenge its claims, Plaintiff should benefit from an adverse

<sup>162</sup> See **Ex. 100**, John O'Shaughnessy deposition (excerpt) 6/22/2021 at 12:21-13:9, 92:20-96:2, 111:16-23.

<sup>163</sup> **Ex. 127**, J&J Press Release, Oct. 29, 2019 at 2; *see also* **Ex. 128**, Deposition of Walgreen's designee Rudy Kucera (excerpt) 2/26/21, at 64:7-15.

inference instruction regarding what the discarded evidence likely would have revealed. And when J&J discarded a voluminous stock of historical talc samples during the course of active litigation, it should not be entitled to claim that Plaintiff did not test sufficient historical samples or that testing additional historical samples would have shown no asbestos.

To be sure, this is a significant sanction in J&J's eyes. J&J has called the motion a "game changer."<sup>164</sup> But these tests are not the only relevant evidence of asbestos—or the lack of it—in J&J's product. This motion applies to very specific subsets of documents. For example, the motion addresses historical testing by J&J and its consultants, but it does not, but the testing record produced by J&J also contains hundreds of historical documents from its suppliers that would not be impacted by this motion.<sup>165</sup> J&J will not be prevented from putting on its defense. It will only be prevented from using in that defense the evidence it has unfairly prevented Plaintiff from challenging its test results.

### CONCLUSION

For the foregoing reasons, Plaintiff asks this Court to instruct that the jury may presume:

- 1) that when J&J introduces a test result that is negative for asbestos, reports "no quantifiable asbestos," or contains similar language, if the evidence shows J&J destroyed or unreasonably failed to preserve underlying data related to the test, the jury may presume that the missing data showed asbestos fibers were present;<sup>166</sup> and
- 2) when J&J argues any positive tests for asbestos were the result of lab contamination, but J&J failed to retain evidence related to the "blanks" used as a control for such contamination, they may presume the blanks were free from asbestos contamination.

<sup>164</sup> **Ex. 130**, Hearing, *Hirshberg v. Johnson & Johnson* (Wash. Super. Ct., King County, April 29, 2021) at 29:21.

<sup>165</sup> See **Ex. 89**, J&J's Interrogatory Responses, *Eggers v. Colgate-Palmolive Co.*, Response to Interrogatory No. 5.1 and attached Exhibit 1.

<sup>166</sup> J&J revealed approximately 500 additional TEM evaluations were performed of its product but have never been produced to plaintiffs. See, **Ex. 126** at #16. Because this revelation is so recent, it is unclear what evidence exists concerning those tests. Should those tests have been performed and J&J is unable, in response to a motion to compel for example, to produce the tests or underlying data supporting the tests, those tests should likewise be subject to an inference that they found asbestos in J&J's product.

In addition, because it destroyed, discarded, or recklessly failed to preserve historical talc samples it knew would be needed in anticipated or pending litigation, J&J should be precluded from presenting any argument, evidence, or testimony that suggests Plaintiff has tested in insufficient number of bottles to support her experts' causation opinions. Similarly, where J&J's testing, or testing done at its request, reported asbestos or asbestos minerals in its talc J&J in litigation attempts to discredit its own findings or undermine the weight of the testing by noting the absence of the underlying data. Because J&J saved the report without the underlying data, Plaintiff cannot challenge J&J's contention. As such, the requested evidentiary sanctions are a reasonable and warranted response to J&J's actions.

At a minimum, should the Court conclude that granting the requested instructions is inappropriate at this stage, Plaintiff asks the Court to defer ruling on any adverse inference instruction until the evidence relevant to the motion is offered at trial. The absence of underlying data and documentation is central to issues in this case. It is undisputed that certain documentation regarding J&J's historic testing of its cosmetic talc no longer exists, and whether or not the jury is instructed to presume the significance of that fact, jurors must be allowed to consider how this missing evidence impacts the experts' ability to evaluate the test results and why the evidence is missing as part of Plaintiff's burden on causation and punitive damages.

Plaintiff also requests any other relief this Court deems just and warranted.

Respectfully submitted,  
/s/ Jonathan M. Holder  
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Dallas, TX

# EXHIBIT 135

|    |                                |   |                       |
|----|--------------------------------|---|-----------------------|
| 1  | STATE OF SOUTH CAROLINA        | ) |                       |
| 2  | COUNTY OF CHARLESTON           | ) | COURT OF COMMON PLEAS |
| 3  |                                | ) | 2020-CP-10-03946      |
| 4  | ANGELA M. HOOD, Individually   | ) |                       |
| 5  | and as Personal Representative | ) |                       |
| 6  | of the Estate of MARY B.       | ) |                       |
| 7  | MCBRAYER,                      | ) |                       |
| 8  |                                | ) |                       |
| 9  | Plaintiff,                     | ) |                       |
| 10 |                                | ) |                       |
| 11 | vs.                            | ) | TRANSCRIPT OF RECORD  |
| 12 |                                | ) |                       |
| 13 | ACME MARKETS, INC.,            | ) |                       |
| 14 | individually, and as           | ) |                       |
| 15 | successor-in-interest to       | ) |                       |
| 16 | COMMUNITY CASH STORES, INC.    | ) |                       |
| 17 |                                | ) |                       |
| 18 | ALBERTSONS COMPANIES, INC.,    | ) |                       |
| 19 | individually and as successor- | ) |                       |
| 20 | in-interest to COMMUNITY CASH  | ) |                       |
| 21 | STORES, INC.                   | ) |                       |
| 22 |                                | ) |                       |
| 23 | CYPRUS AMEX MINERALS COMPANY,  | ) |                       |
| 24 | individually, d/b/a and as     | ) |                       |
| 25 | successor-in-interest to       | ) |                       |
|    | SIERRA TALC COMPANY, UNITED    | ) |                       |
|    | SIERRA DIVISION OF CYPRUS      | ) |                       |
|    | MINES, CYPRUS INDUSTRIAL       | ) |                       |
|    | MINERALS COMPANY, AMERICAN     | ) |                       |
|    | TALC COMPANY, METROPOLITAN     | ) |                       |
|    | TALC COMPANY, INC., CHARLES    | ) |                       |
|    | MATHIEU INC., RESOURCE         | ) |                       |
|    | PROCESSORS, INC., and WINDSOR  | ) |                       |
|    | MINERALS, INC.                 | ) |                       |
|    |                                | ) |                       |
|    | CYPRUS MINES CORPORATION,      | ) |                       |
|    | individually, d/b/a and as     | ) |                       |
|    | successor to SIERRA TALC       | ) |                       |
|    | COMPANY, AMOCO MINERALS CO.,   | ) |                       |
|    | CYPRUS GEORESEARCH CO., a      | ) |                       |
|    | wholly-owned subsidiary of     | ) |                       |
|    | CYPRUS MINES CORP, and         | ) |                       |
|    | successor to CHARLES           | ) |                       |
|    | MATHIEU INC.(d/b/a CHARLES     | ) |                       |
|    | MATHIEU & CO. and CHAS.        | ) |                       |
|    | MATHIEU INC.), AMERICAN TALC   | ) |                       |
|    | COMPANY INC., METROPOLITAN     | ) |                       |



1 TALC COMPANY INC., IMPERIAL )  
2 PRODUCTS CO. INC., and )  
3 RESOURCE PROCESSORS INC. )  
4 FORD'S DRUGS AND MEDICAL, INC, )  
5 f/k/a FORD'S DRUGS, INC., and )  
6 d/b/a FORD'S DRUGS AND MEDICAL )  
7 JOHNSON & JOHNSON )  
8 JOHNSON & JOHNSON CONSUMER )  
9 INC., f/k/a JOHNSON & JOHNSON )  
10 CONSUMER COMPANIES, INC. )  
11 SMITH DRUG STORE a/k/a SMITH'S )  
12 DRUG NO. 1 & DME, a/k/a )  
13 SMITH'S DRUGS )  
14 SOUTHEASTERN GROCERS, INC., )  
15 individually, and as )  
16 successor-in-interest to WINN- )  
17 DIXIE STORES, INC. )  
18 WINN-DIXIE STORES, INC. a )  
19 subsidiary of SOUTHEASTERN )  
20 GROCERS, INC., )  
21 Defendants. )

October 28, 2021  
Columbia, South Carolina

B E F O R E:

THE HONORABLE JEAN H. TOAL, JUDGE.

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

THEILE B. MCVEY, ESQ.  
Attorney for the Plaintiff

LOUIS P. HERNS, ESQ.  
ALLISON M. BROWN, ESQ.  
RICHARD T. BERNARDO, ESQ.  
Attorneys for the Defendant

DEBORAH M. McCURDY, RPR  
Official Court Reporter

1                    I N D E X   O F   W I T N E S S E S

2

3

4                    (WHEREUPON, no witnesses were called

5                    during these proceedings.)

6

7

8

9

10                   E X H I B I T S

11

12                   Court's Exhibits

13                   1                    Objection/Reservation of Rights                    9

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1                                    OCTOBER 28, 2021

2                                    (WHEREUPON, the hearing commenced at  
3                                    11:49 a.m.)

4                                    THE COURT: This is in the matter of  
5                                    McBrayer/Hood against J&J and others,  
6                                    20-CP-10-03946.

7                                    Two matters are before the Court. One is the  
8                                    Defendant's motion to enforce a stay; and the  
9                                    second is Plaintiff's motion to compel and motion  
10                                   for sanctions.

11                                   The first motion involves the question of  
12                                   whether or not matters pertaining to this case are  
13                                   stayed by the activity of the Bankruptcy Court for  
14                                   the Western District of North Carolina.

15                                   And it is Mr. Herns' motion, so Mr. Herns, you  
16                                   will be recognized at this time. You may unmask to  
17                                   make your arguments, Mr. Herns.

18                                   MR. HERNS: Thank you, Your Honor.

19                                   I have with me in the courtroom Allison Brown,  
20                                   whom you are familiar with, from the Skadden Law  
21                                   Firm in New York.

22                                   THE COURT: Yes. Welcome, Ms. Brown.

23                                   MR. HERNS: And also Rich Bernardo, here with  
24                                   the Skadden Firm in New York.

25                                   THE COURT: Welcome, Mr. Bernardo.

1 MR. BERNARDO: Thank you, Your Honor.

2 MR. HERNS: We have filed all the appropriate  
3 pro hac motions with the Supreme Court and with the  
4 Charleston County Clerk of Court.

5 THE COURT: Do I need to sign them, Mr. Herns?

6 MR. HERNS: If you would like to, I have got  
7 them in here.

8 THE COURT: Good. Hand them up and I will  
9 sign them.

10 MS. MCVEY: Your Honor, and I have no  
11 objection just to confirm that they are here  
12 appearing for Johnson & Johnson, not Old JJCI or  
13 LTL.

14 MR. HERNS: That is correct, we are here for  
15 Johnson & Johnson.

16 THE COURT: Those parties aren't in front of  
17 me right now, as I understand it?

18 MS. MCVEY: I agree, Your Honor. Thank you.

19 THE COURT: Mr. Herns, we will file both of  
20 these electronically.

21 MR. HERNS: Thank you.

22 THE COURT: Very good.

23 All right, Mr. Herns, you may proceed.

24 MR. HERNS: Your Honor, Allison Brown will be  
25 arguing the actual motion, but I have been asked by

1 other lawyers with the bankruptcy to read in an  
2 Objection and Reservation of Rights before we  
3 proceed, with your permission?

4 THE COURT: Certainly. You may do that.

5 MR. HERNS: Thank you. And I will give a copy  
6 to the court reporter to help her with the  
7 transcription.

8 On October 12, 2021, Johnson & Johnson  
9 Consumer Inc. ("Old JJCI") completed an internal  
10 corporate restructuring. As a result of that  
11 restructuring, Old JJCI ceased to exist and two new  
12 companies were created. The first new company is  
13 named LTL Management LLC ("LTL"). The second new  
14 company, like the former company, is named Johnson  
15 & Johnson Consumer Inc. ("New JJCI"). LTL is the  
16 entity responsible for all talc-related claims  
17 asserted against Old JJCI, and J&J, or any of their  
18 affiliates(excluding talc-related claims for which  
19 the exclusive remedy is provided under workers'  
20 compensation statutes and similar laws). LTL is  
21 the entity responsible for talc-related claims  
22 asserted in this case.

23 On October 14, 2021, LTL filed a voluntary  
24 petition for relief under chapter 11 of the  
25 Bankruptcy Code in the United States Bankruptcy

1 Court for the Western District of North Carolina  
2 ("Bankruptcy Court"). Upon that filing, the  
3 automatic stay under section 362 of the Bankruptcy  
4 Code became effective immediately. A Notice of  
5 Suggestion of Bankruptcy("the Notice) was filed in  
6 this case on October 15, 2021. The Notice informed  
7 the parties and the court of LTL's chapter 11  
8 filing and LTL's position regarding the scope of  
9 the automatic stay---that it applies to all  
10 talc-related claims against Old JJCI, New JJCI,  
11 J&J, and their other corporate affiliates, among  
12 other parties that share an identity of interest  
13 with LTL concerning talc-related claims and/or  
14 against whom fixing talc-related liabilities would  
15 be tantamount to fixing those liabilities against  
16 LTL.

17 In response to litigation conduct at odds with  
18 the scope of the stay, (i) on October 18, 2021, LTL  
19 filed in the Bankruptcy Court an Emergency Motion  
20 to Enforce the Automatic Stay("Stay Motion"); and  
21 (ii) on October 21, 2021, LTL filed in the  
22 Bankruptcy Court an adversary complaint and motion  
23 for an order declaring that the automatic stay  
24 applies to certain actions against non-debtors or  
25 preliminarily enjoining such actions against



1 non-debtors and granting a temporary restraining  
2 order pending a final hearing ("the Adversary  
3 Proceeding"). In the Adversary Proceeding, LTL  
4 seeks a declaration that the stay applies not only  
5 to LTL and Old JJCI, but to New JJCI, J&J, and  
6 other corporate affiliates, identified retailers,  
7 insurance companies, and certain others  
8 (collectively, the "Protected Parties").

9 On October 22, 2021, the Bankruptcy Court  
10 issued an oral ruling confirming that all  
11 talc-related claims asserted against Old JJCI and  
12 LTL are stayed pursuant to the automatic stay under  
13 section 362 of the Bankruptcy Code. The Bankruptcy  
14 Court did not enter a temporary restraining order  
15 against claims asserted against the other Protected  
16 Parties but set a hearing on LTL's request for a  
17 preliminary injunction for November 4 and 5, 2021.  
18 The Bankruptcy Court will then consider further,  
19 whether by virtue of the application of the  
20 automatic stay or otherwise, talc-related claims  
21 against New JJCI, J&J and the other Protected  
22 Parties are automatically stayed pursuant to  
23 section 362(a) of the Bankruptcy Code or should be  
24 enjoined pursuant to section 105(a) of the  
25 Bankruptcy Code.

1 J&J and Old JJCI, f/k/a Johnson & Johnson  
2 Consumer Companies, Inc., maintain that the  
3 automatic stay applies to them and any other  
4 Protected Parties in this case. J&J objects to any  
5 further proceedings against it and any other  
6 Protected Parties. J&J reserves all rights under  
7 applicable law with respect to any violations of  
8 the automatic stay. In the event that the  
9 Bankruptcy Court determines on November 5, 2021, or  
10 thereafter, that talc-related claims against J&J or  
11 any other Protected Parties are automatically  
12 stayed, any actions taken in the interim in  
13 violation of the stay will be null and void as a  
14 matter of law.

15 I appreciate your patience in allowing me to  
16 read that into the record, Your Honor.

17 THE COURT: Thank you, Mr. Herns.

18 MR. HERNS: And I would again introduce  
19 Allison Brown, who will present the arguments  
20 concerning enforcement of the motion to stay.

21 THE COURT: Very good. And Mr. Herns has  
22 handed up to the court reporter a copy of the  
23 statement just read. And, Madam Court Reporter,  
24 you may mark that as Court's Exhibit 1.

25 (WHEREUPON, Court's Exhibit No. 1 was

1 marked for identification only.)

2 MS. MCVEY: Your Honor, just briefly, a point  
3 of clarification. I know that LTL filed a Notice  
4 of Suggestion of Bankruptcy. I think I have got  
5 that title right. I didn't know that there had  
6 been a motion to stay filed in this case as to  
7 Johnson & Johnson, so I just wanted --

8 THE COURT: All right, there is a filing  
9 that -- well, I tell you what, let's just let  
10 counsel address that as she addresses these other  
11 matters, and your position is noted and you are  
12 protected on that position, Ms. McVey. You just  
13 want to be sure you are not going forward with  
14 something that has been stayed or that they need a  
15 notice that there is a stay. I understand your  
16 position.

17 MS. MCVEY: And that the bankruptcy -- there  
18 is nothing for you to rule on on that because the  
19 bankruptcy --

20 MS. BROWN: Your Honor --

21 MS. MCVEY: Okay, great. That is what I  
22 wanted to make sure.

23 MS. BROWN: -- I think I can clear it up.

24 MS. MCVEY: Thank you.

25 MS. BROWN: May I have permission to remove my

1 mask?

2 THE COURT: You may. And announce for the  
3 court reporter again, if you will announce your  
4 name and the party you represent.

5 MS. BROWN: I will.

6 Good morning, Your Honor. My name is Alli  
7 Brown from Skadden, and I am here representing  
8 Johnson & Johnson.

9 Your Honor, it is nice to see you again. I  
10 had the privilege of appearing before you back in  
11 2019 in the Johnson case.

12 THE COURT: Yes.

13 MS. BROWN: And certainly, Your Honor, a lot  
14 has changed in this litigation since the time that  
15 I was here before Your Honor, as you well know.

16 Earlier this month, JJCI undertook certain  
17 corporate restructuring, which Mr. Herns outlined  
18 for the Court and has marked as a Court Exhibit.

19 There is certainly no question, Your Honor,  
20 that the claims against Johnson & Johnson Consumer  
21 Inc. are stayed. And, in fact, counsel was good  
22 enough to clarify that when we made our appearances  
23 when we asked for the Court to grant us permission  
24 to appear here. Certainly there is no question  
25 that anything proceeding against JJCI is now

1 stayed.

2 We are now on the eve of a ruling from the  
3 Bankruptcy Court about the scope of that stay and  
4 whether or not that stay in fact applied to Johnson  
5 & Johnson. In fact, Your Honor, we are really  
6 close to getting a lot of clarity on an issue that  
7 I think is disputed here amongst the parties. This  
8 time next week the Bankruptcy Court intends to hold  
9 a two-day hearing on this, Your Honor, in which  
10 witnesses will be called and the Bankruptcy Court  
11 will determine the scope of the stay.

12 Johnson & Johnson's position, as Mr. Herns  
13 articulated and as Your Honor can see in the papers  
14 we filed here, is that the stay does apply to  
15 Johnson & Johnson, but to alleviate any concerns of  
16 counsel or the Court, we are not here before Your  
17 Honor asking the Court to rule on the scope of the  
18 stay. In fact, just the opposite, Your Honor.

19 What we are here respectfully asking this  
20 Court to do is to pause for one week, is to just  
21 step back for one week and allow the Bankruptcy  
22 Court to rule on an issue that is within the  
23 jurisdiction of the Bankruptcy Court, the scope of  
24 the automatic stay.

25 Johnson & Johnson believes the Court will find

1           that the automatic stay does apply to Johnson &  
2           Johnson. If we were to proceed in any matters in  
3           the interim, as Your Honor well knows, that would  
4           make any rulings, anything that took place, null  
5           and void. And so we find ourselves sort of in a  
6           one-week situation where we have a dispute about  
7           whether or not the stay applies to Johnson &  
8           Johnson. And we would submit to the Court the most  
9           reasonable way to approach that, particularly in  
10          this case, Your Honor, which has a trial date, as  
11          Your Honor well knows, set for February of 2022, is  
12          to simply step back and wait a moment to have  
13          clarity from the Bankruptcy Court. And, indeed, as  
14          Your Honor likely knows, there are a number of  
15          cases pending before Chief Judge Freda Wolfson in  
16          the District of New Jersey. And she has  
17          encountered some of the very same things that are  
18          before Your Honor right now, what do we do in this  
19          one-week period of time. And just last night, Your  
20          Honor, she ruled that given that a clarity from the  
21          Bankruptcy Court is imminent and given that there  
22          would be no prejudice to the Plaintiff in waiting  
23          the one week, that she would not proceed with any  
24          motions or any matters in the 38,000 cases that are  
25          pending before her in the District of New Jersey,



1 but rather wait for the imminent clarity that we  
2 expect to get from the Bankruptcy Court as soon  
3 perhaps, Your Honor, as a week from tomorrow.

4 Additionally, Your Honor -- and so we would  
5 request the very same of this Court. Your Honor is  
6 very familiar with the pretrial schedule in this  
7 case. In fact, discovery doesn't even close until  
8 December 6. We are looking at a trial date in  
9 February. Certainly, just as Judge Wolfson found,  
10 there would be no prejudice given the imminent  
11 ruling. We would submit the facts of this case  
12 would support a similar ruling.

13 And the complication, Your Honor, if I could  
14 just talk for a moment about the substance of the  
15 motions that have been filed, there is a real  
16 complication and potential prejudice and potential  
17 violation of a stay we both agree exists as to JJCI  
18 in us attempting to respond to those motions, and  
19 here is why.

20 Those were motions, both of them, that were  
21 filed before JJCI filed for bankruptcy. So what  
22 the motions do and what Your Honor well knows is  
23 very typical in this litigation is they refer to  
24 both companies as one Defendant. They refer to  
25 Johnson & Johnson and Johnson & Johnson Consumer

1 Inc. as collectively J&J or collectively the  
2 Defendant. And their allegations are aimed at this  
3 sort of single entity or a combination of the  
4 entities. And so the problem, you know, putting  
5 aside, Your Honor, that we are only talking about a  
6 week here, the problem if we were to even attempt  
7 to respond on behalf of the entity, on Johnson &  
8 Johnson, is that the allegations in those motions  
9 don't separate the claims. And so there is no  
10 dispute that we are not here responding for JJCI,  
11 but there is no way to disentangle in those motions  
12 what claims are being made against JJCI versus what  
13 claims are being made against Johnson & Johnson.

14 Now, from our point of view, Your Honor, we  
15 expect next week the Bankruptcy Court will find the  
16 stay to cover Johnson & Johnson as well, but if  
17 claims were to proceed against Johnson & Johnson,  
18 we would respectfully request Plaintiffs would need  
19 to refile those motions to make clear what  
20 allegations are being made against Johnson &  
21 Johnson. And as they stand now, and in fairness to  
22 the Plaintiffs, these motions were filed before  
23 bankruptcy was even on, you know, the table. So of  
24 course they did not try to necessarily separate out  
25 the companies or separate out the claims. But we

1 would submit to the Court that is another reason  
2 why we should just press pause on what is happening  
3 here because it is almost impossible for us to know  
4 what allegations we even would be responding to on  
5 behalf of Johnson & Johnson.

6 And so, Your Honor, as Chief Judge Wolfson  
7 decided last night to wait for the imminent ruling  
8 from the Bankruptcy Court, we would respectfully  
9 request the very same from this Court, and we would  
10 have clarity as early as next Friday in terms of  
11 the scope of the stay. And certainly in a case  
12 with a trial date in February, we would submit  
13 there would be no prejudice to the Plaintiffs here,  
14 Your Honor.

15 THE COURT: Ms. Brown, let me ask you a couple  
16 of questions.

17 MS. BROWN: Sure.

18 THE COURT: I am looking at the order of J.  
19 Craig Whitley, United States bankruptcy judge, IN  
20 RE LTL Management, which is the debtor in a chapter  
21 11 bankruptcy, Case Number 21-30589 in the United  
22 States Bankruptcy Court for the Western District of  
23 North Carolina.

24 The judge conducted a hearing and issued an  
25 order in a case in which J&J claimed to be an

1       alleged Protected Party in the LTL bankruptcy. And  
2       the judge says, The Debtor did not present  
3       sufficient evidence at the hearing to meet its  
4       burden for such relief -- that is, temporary  
5       injunction and interim stay -- with respect to or  
6       in favor of the alleged Protected Parties. The  
7       Court therefore declines to grant relief as  
8       requested, but finds it appropriate to enter an  
9       interim declaration, the section 362 stay applies  
10      to the Debtor and his predecessor, Old JJCI, and  
11      again declines to stay -- declare a stay in favor  
12      of or to extend stay motions under 11 USC 362 or  
13      105 or provide any stay or injunction in favor of  
14      Johnson~&~Johnson or any party other than the  
15      Debtor, LTL, and JJCI.

16             That is then subject to this further hearing  
17      that you refer to.

18             The litigation in front of me, the  
19      McBrayer/Hood case, does not have JJCI, old, new,  
20      or anything else, as a Defendant, never has. It  
21      has Johnson & Johnson, period, as a Defendant, as I  
22      understand it.

23             MS. MCVEY: Your Honor, it had -- I'm sorry to  
24      interrupt, but just to clarify. It did have JJCI  
25      and Johnson & Johnson. We are here today moving

1           only against Johnson & Johnson.

2           THE COURT: Okay. So JJCI is still in the  
3 case?

4           MS. MCVEY: We agree that JJCI is stayed, and  
5 the motion that we are here today about is only  
6 against Johnson & Johnson.

7           THE COURT: All right, that clarifies that.

8           All right, you are then taking the position,  
9 Ms. Brown -- and this is what worries me about  
10 delaying this hearing -- you ostensibly say that  
11 the hearing is just about keeping everything  
12 neutral and keeping everything just on a, as you  
13 term it, a non-legal term called pause, the pause  
14 thing. And if I thought that were the case, I  
15 wouldn't have as much heartburn as I do in light of  
16 your argument that, They kind of speak to  
17 everything, but it is all kind of mushed into one,  
18 and the Plaintiff will have to refile motions. If  
19 Johnson & Johnson is not stayed, then the Plaintiff  
20 doesn't have to refile anything. It would be up to  
21 Johnson & Johnson to defend in whatever way it  
22 wanted to. But I am really concerned that you are  
23 going to use a pause by me as a sword, and maybe  
24 even as a shield, because if it turns out J&J,  
25 there isn't evidence sufficient to stay against

1 J&J, then I don't want to have taken a position  
2 that is going to come back and haunt me as this  
3 case moves forward. And the deadlines are rather  
4 acute. The things we are here to talk about are  
5 some pretty hotly contested discovery issues,  
6 including spoliation, as well as failure to produce  
7 and motion to compel, motion for sanctions, and  
8 this kind of thing. And those impact what happens  
9 in a looming date for the end of discovery, which  
10 is in December.

11 MS. BROWN: Sure.

12 THE COURT: And December will be here before  
13 we know it. So -- and I don't want to have to  
14 then, if it is not stayed, spend a bunch of  
15 wheel-spinning time with all kinds of defenses that  
16 have to do with, Well, it is not stayed, but JJCI  
17 in effect states that you can't try it and you  
18 can't ask for discovery, and you can't get anything  
19 out of it, et cetera. So I need some clarification  
20 about your argument in that regard.

21 MS. BROWN: Sure. Understood. And I think I  
22 hear the Court's concern loud and clear. And if I  
23 could just take the Court's statements in two  
24 parts.

25 Very quickly, Your Honor correctly pointed out



1 the ruling from the TR0 hearing, Your Honor, and  
2 that is absolutely correct that the Court ruled at  
3 that time on the TR0 basis under that standard that  
4 they would not -- that the Court would not extend  
5 the stay to Johnson & Johnson.

6 The Court has specific questions that will be  
7 addressed at this hearing where Johnson & Johnson  
8 will put on evidence on Thursday and Friday. So  
9 the Court certainly did not rule, nor has there  
10 been any ruling that the stay does not apply to  
11 Johnson & Johnson. Your Honor is correct that  
12 these issues and the questions that the Bankruptcy  
13 Court raised will be addressed more fully on  
14 Thursday and Friday of next week at the full  
15 hearing that the Court is intending to hold.

16 I hear the Court's concern that if the Court  
17 were to recognize that a ruling is imminent from  
18 the Bankruptcy Court and we should just wait and  
19 get clarity on the scope of the stay, that the  
20 Court is troubled, as I hear Your Honor, that  
21 Johnson & Johnson would come back and say, Well,  
22 now we need a continuance and now we need you to  
23 refile everything. And I hear what the Court is  
24 saying is, You have these filings and it would be  
25 on Johnson & Johnson, if Johnson & Johnson -- if it

1 is determined the case proceeds against Johnson &  
2 Johnson, to defend the claims Johnson & Johnson  
3 that perceives to remain. Is that correct, Your  
4 Honor?

5 THE COURT: Well, the claims that I  
6 perceive --

7 MS. BROWN: Yes, Your Honor. Right.

8 THE COURT: -- continue to remain. And, you  
9 know, in that connection, the judge says, The  
10 Debtor did not present sufficient evidence at the  
11 hearing to meet its burden for such relief in favor  
12 of the alleged Protected Parties, speaking as to  
13 J&J.

14 There was a lot of evidence presented in this  
15 hearing about the financial status of Johnson &  
16 Johnson, as one of America's leading corporations.  
17 There was a lot of information presented as to its  
18 financial status as opposed to the financial status  
19 of the parties -- the other alleged Protected  
20 Parties, a fairly dramatic differential between  
21 their financial status, whether it is based on a  
22 share value, whether it is based on declared  
23 assets, or a number of other more sophisticated  
24 measures that were talked about during the hearing.

25 MS. BROWN: Sure.

1 THE COURT: And so I understand that a further  
2 hearing will be had, but there has already been a  
3 great deal of evidence to suggest that it is a high  
4 hill that is going to have to be climbed before J&J  
5 is going to be protected by a bankruptcy it does  
6 not seek to have for itself.

7 MS. BROWN: And, Your Honor, if I could just  
8 give a little more color to that for the record,  
9 Your Honor?

10 In connection with this upcoming hearing,  
11 Johnson & Johnson has submitted a potential witness  
12 disclosure. And I, just for the record, note that  
13 it is much more robust than the witnesses that  
14 testified in the TR0 hearing. For example, Johnson  
15 & Johnson has identified Johnson & Johnson Consumer  
16 Inc.'s Chief Medical Officer, Dr. Ed Kuffner, as  
17 someone who will testify potentially at that  
18 hearing as well.

19 So just so Your Honor understands, and I know  
20 the Court does, there is, particularly in response  
21 to some of the Bankruptcy Court's questions, there  
22 is additional documentation evidence that will be  
23 submitted as well as additional witnesses.

24 But I think we can -- and certainly  
25 Mr. Bernardo, my colleague here today, has a very,

1 I think, professional and working relationship with  
2 a number of the Plaintiffs in this case, and we  
3 certainly can commit to the Court that if we were  
4 to wait for a clarity from the Bankruptcy Court we  
5 could immediately meet and confer about a timeline  
6 for moving these motions forward should the Court  
7 find that the stay does not apply to Johnson &  
8 Johnson without jeopardizing the schedule that,  
9 Your Honor is right, particularly around the  
10 holidays, you know, the time seems to fly, and I  
11 understand that February here in October seems a  
12 long way off, but once you start moving through  
13 Thanksgiving and, you know, it comes quickly. But  
14 I certainly could represent to the Court, and it  
15 has been my experience, and certainly Mr.  
16 Bernardo's experience, that we could work  
17 efficiently if needed, Your Honor.

18 I mean, we fully expect the stay will extend  
19 to Johnson & Johnson. I hear the Court's concerns,  
20 but I do want to allay the Court's concern that we  
21 would use this as some kind of delay tactic just to  
22 try and blow up this schedule that I know Your  
23 Honor has laid out very carefully here.

24 So I think the history of the parties would  
25 allow us to, you know, continue those on an

1 efficient basis if we were to wait for clarity from  
2 the Bankruptcy Court.

3 THE COURT: Okay. Ms. McVey?

4 MS. BROWN: Thanks very much, Judge.

5 THE COURT: Well, let me stop here for a  
6 moment. Ms. Brown, do we need to hear from Mr.  
7 Bernardo, or do you want to wait and let's hear  
8 from Ms. McVey first?

9 MS. BROWN: I think that probably makes sense,  
10 Your Honor. And then we can go from there, yes.

11 Thanks so much.

12 THE COURT: All right. Ms. McVey?

13 MS. MCVEY: Good afternoon, Your Honor.  
14 Theile McVey, for the Plaintiffs Angela Hood and  
15 Mary McBrayer.

16 Your Honor, the stay is not in place for  
17 Johnson & Johnson. The Bankruptcy Court in fact  
18 said that. And while counsel for Johnson & Johnson  
19 seems very sure that it ultimately will get  
20 extended to them, you -- I sent you the transcript,  
21 you have got the order. And one of the things that  
22 the bankruptcy judge said is this:

23 The evidence presented today gives me grave  
24 concerns that these may be independent liabilities  
25 of the Johnson & Johnson Company that were not

1 subject to divisional merger. And that is not  
2 brought into this bankruptcy case, not the  
3 liability for the Debtor.

4 I don't think the stay is going to extend to  
5 Johnson & Johnson. And if it does, then we'll face  
6 that another day. But the timing of this is really  
7 important.

8 Your Honor, we filed this motion in September.  
9 And when I'm talking about this, please know that,  
10 you know, I think the world of Mr. Herns, and I  
11 have seen Ms. Brown and I have heard about Mr.  
12 Bernardo, they are incredible lawyers, but I am  
13 talking about the actions of Johnson & Johnson.  
14 You recall that we filed this in September. And  
15 Johnson & Johnson really wanted to push this out.  
16 They wanted me to say -- agree that they could file  
17 their briefs like in November. And I said, No, the  
18 October docket has cleared, we had settled that  
19 that is a good time for us to hear these motions.  
20 And then we went back and forth. And ultimately we  
21 agreed, You know what, we'll seek to hear it  
22 October 28, Johnson & Johnson will file their  
23 briefs on the 18th in response to our motions, and  
24 we will have five days to respond, and we will file  
25 on the 22nd. And we included you on that



1 correspondence.

2 And then you remember I said, Judge, can we  
3 make sure we get this set? That was on October 12.  
4 That was the date of our Steering Committee  
5 meeting. And Mr. Herns was there. And in that  
6 Steering Committee meeting he said again, We need  
7 to continue this, we need to push it.

8 Now, what was happening on October 12 that I  
9 didn't know about and you didn't know about, and I  
10 doubt Mr. Herns knew about, is that Johnson &  
11 Johnson was doing -- or Johnson & Johnson CI was  
12 doing this Texas Two Step thing that they were  
13 going to do. And they filed that on October 12.  
14 And then they declared bankruptcy, LTL did,  
15 declared bankruptcy on October 14th, I believe.

16 And then they said, Guess what, everything is  
17 stayed as to Johnson & Johnson, remember? That was  
18 before they even filed everything. They let us  
19 know they are going to file bankruptcy and Johnson  
20 & Johnson is going to stay everything.

21 And then I looked when it was finally filed, I  
22 got this Notice of Suggestion of Bankruptcy, and it  
23 was only for LTL. LTL is not in my case. I don't  
24 even know what that means.

25 And I wrote the Court and said, Judge, I would

1       like to continue these motions to go forward  
2       because LTL is in the case.

3               And we went back and forth and back and forth.  
4       Well, they never filed a response. And you said,  
5       by the way, We will keep the motions on on  
6       October 28, and if the stay applies, we won't hear  
7       them.

8               They then file their brief on the 18th, okay.  
9       But then the bankruptcy judge actually says, The  
10      stay doesn't apply to Johnson & Johnson, and I have  
11      grave concerns that it will not.

12              Now what they want us to do is to push these  
13      motions that have pending for some period of  
14      time -- and they act like it is so reasonable, it  
15      is so reasonable that a company worth billions and  
16      billions of dollars can have the benefit of  
17      Bankruptcy Court -- that is not for us to decide  
18      today, obviously -- it is so reasonable. What is  
19      the harm? It is one week.

20              Here is the harm. The harm is that this is a  
21      motion that has been heard in other courts, and  
22      some of the reasons other courts have not granted  
23      it is because of the timing of when it was filed.

24              This case is only three and a half months from  
25      trial. These are important evidentiary issues.

1 And if the Court grants the motion, it will take  
2 time for the parties to assess the evidence before  
3 it. Let me be very clear, we are only pursuing  
4 today this motion against Johnson & Johnson, not  
5 Old JJCI or new -- I don't even know what all those  
6 mean, but only against Johnson & Johnson.

7 The parties have briefed this, even though  
8 they were late. I have read all their stuff. I'm  
9 ready to go today. And I think it would benefit  
10 the parties, including, by the way, Mary McBrayer's  
11 family, who is a real life victim in this, who has  
12 a right to have her day in court. And, Your Honor,  
13 that is why I think we should go forward with these  
14 motions.

15 THE COURT: All right. Anything in reply, Mr.  
16 HERNs?

17 MR. HERNS: Yes, Your Honor.

18 THE COURT: Ms. Brown?

19 MS. BROWN: Just real quickly, if I could,  
20 Judge. Thanks.

21 Just a couple of things in reply, Your Honor.  
22 The Notice -- just for the record, the Notice of  
23 Suggestion of Bankruptcy was filed on October 15th.  
24 It informed the parties of LTL's chapter 11 filing  
25 and it informed everyone of LTL's position

1        regarding the scope of the automatic stay; that is,  
2        that it would apply to all talc-related claims  
3        against Old JJCI, New JJCI, Johnson & Johnson, and  
4        other corporate affiliates, as well as other  
5        parties that share an identity of interest with  
6        LTL.

7                And so just to correct -- and counsel may have  
8        misspoke -- from the beginning, the Suggestion of  
9        Bankruptcy put LTL's position of the scope of the  
10       automatic stay in the filing.

11               THE COURT: Let me maybe clarify that for you.

12               MS. BROWN: Sure.

13               THE COURT: Mr. Herns, who is a lawyer of  
14       sterling representation with this Court, was kind  
15       enough to call me while I was teaching a seminar,  
16       and I think called Ms. McVey as well, to simply  
17       tell us what he had been told about this matter.

18               MS. BROWN: Got it.

19               THE COURT: And then filings were made at some  
20       later time. But that is -- you don't need to feel  
21       that some incorrect representation has been made  
22       about what actually ended up being filed as a  
23       Suggestion. You know, any disconnect was simply we  
24       were told what Mr. Herns knew at the time.

25               MS. BROWN: I understand.

1 THE COURT: And then, you know, at some period  
2 after that we got the actual Suggestion, so  
3 don't -- I wouldn't spend any time on that.

4 MS. BROWN: Sure, Your Honor. Understood. I  
5 just wanted to make sure our position was clear,  
6 which is the position we maintain in front of the  
7 Bankruptcy Court, Your Honor, of course, that the  
8 automatic stay does apply to Johnson & Johnson.

9 THE COURT: Right.

10 MS. BROWN: And if it would help the Court,  
11 you know, if where the Court is getting pause, and  
12 that is what I'm sensing, is this idea that we are  
13 going to try and use this week while we wait for  
14 clarity to somehow delay things and to push off the  
15 trial date that exists in February, or frankly any  
16 of the other pretrial deadlines, we can on the  
17 record today, Your Honor, commit to a schedule, to  
18 commit to a date to meet to confer on a schedule,  
19 whatever would give the Court -- I don't want that  
20 to sort of be what is giving the Court concern,  
21 because you have our representations that if it is  
22 the case that the Bankruptcy Court decides after  
23 the full hearing next week that the stay does not  
24 apply to Johnson & Johnson, that we will  
25 expeditiously work with Plaintiffs to keep the

1 schedule and respond to these motions, Your Honor.

2 But similar to Chief Judge Wolfson's order  
3 from last night, given that this clarity is  
4 expected imminently, Your Honor, we would request  
5 that Your Honor wait a week for that clarity before  
6 hearing these motions because, as I mentioned, of  
7 course, the motions were directed against two  
8 companies, one of which there is no dispute is  
9 stayed.

10 THE COURT: I understand.

11 MS. BROWN: Okay.

12 THE COURT: Let me confer with my clerk for a  
13 moment.

14 MS. BROWN: Sure. Thanks.

15 (Pause.)

16 THE COURT: All right, Ms. Brown, thank you.

17 MS. BROWN: Thank you, Judge.

18 THE COURT: Here is what I want to do. I want  
19 to go forward and hear these motions. And what I  
20 will do, then, because I don't want to have to  
21 conduct some further proceedings about this  
22 discovery, I want to go on and hear these motions.  
23 There are motions that involve Johnson & Johnson  
24 only. That matter is not stayed. I will give some  
25 consideration, rather, as to whether to vary from



1 my ordinary procedure of ruling from the bench on  
2 these things, as I always do, to hold that until  
3 these other matters are complete, but I want to at  
4 least go on and hear these matters. I am prepared  
5 on them, and you all are as well. I want to go  
6 forward and hear these matters at this time, and  
7 then let's see where we are in terms of when we  
8 could expect to have orders on these matters.

9 All right, Ms. McVey, you may proceed.

10 MS. MCVEY: Thank you, Your Honor.

11 I am going to start with -- there are two  
12 separate motions. The first is what I am calling  
13 the spoliation motion.

14 THE COURT: Yes.

15 MS. MCVEY: And then there is a second motion  
16 which is much shorter and less complex that I am  
17 calling the motion to compel.

18 So, again, Theile McVey, for the McBrayer  
19 family.

20 Your Honor, this is a motion for spoliation,  
21 but to be clear, this motion does not seek to  
22 strike Johnson & Johnson's answers or to gut their  
23 defense. We are simply asking for a presumption  
24 that would apply to a very specific set of  
25 documents.

1           And so I want to talk to you today about  
2           essentially five things that would help you decide  
3           this motion, I believe.

4           The first is, What did Johnson & Johnson know,  
5           and when did they know it, about asbestos in their  
6           talc and the potential for litigation; what this  
7           evidence, this motion would apply to; why this  
8           evidence matters and it is prejudicial to the  
9           Plaintiff.

10          I want to talk to you for a minute about South  
11          Carolina law on spoliation, and then the specific  
12          instructions that we are seeking. And so if you  
13          will let me go in that order, I think it will be  
14          helpful.

15          THE COURT: Very good.

16          MS. MCVEY: Your Honor, what Johnson & Johnson  
17          knew and when they knew it about talc -- asbestos  
18          in their talc -- is extensive. By the 1930s --  
19          and, Your Honor, we have cited in our brief all  
20          sorts of exhibits. I have most of those exhibits  
21          with me, I didn't bring all of them, but if there  
22          is something you want to see specifically, I am  
23          happy to hand it up to you. And I will cite -- for  
24          each evidence that I am talking about, I will cite  
25          an exhibit to it.

1 THE COURT: Those exhibits and that material  
2 is of course familiar territory for this Court. I  
3 have tried four Johnson -- five -- well, one tried  
4 twice -- Johnson & Johnson cases. And the question  
5 of what they knew and when they knew it has been  
6 actively explored with the corporate  
7 representative, as well as through documents, as  
8 well as through very contested materials in the  
9 other cases. And I say that by means of saying, I  
10 certainly would want to have exhibits in this case,  
11 specific to this case, but I am in general familiar  
12 with the kind of material we are talking about.

13 MS. MCVEY: Yes, Your Honor. And all the  
14 exhibits that are referenced in our brief are  
15 filed, of course, so everyone has access to those.

16 Your Honor, it is clear that by the 1930s  
17 Johnson & Johnson knew that asbestos was associated  
18 with cancer.

19 And by 1956, Johnson & Johnson knew that its  
20 talc contained trace tremolite with some occurring  
21 in fibrous aggregate.

22 By 1967, that tremolite in talc -- I'm sorry,  
23 by 1967 Johnson & Johnson knew that tremolite in  
24 talc was a health hazard.

25 By 1971, Johnson & Johnson knew that there was

1 no safe level of asbestos in cosmetic talc. And  
2 that comes from Exhibit 76 from Dr. Hildick-Smith  
3 regarding -- to Dr. Cooper saying, There is no  
4 place for asbestos in talc.

5 By 1969, Johnson & Johnson knew it was at risk  
6 of litigation related to injuries caused by  
7 inhaling tremolite in Johnson's Baby Powder. And  
8 that comes from Johnson & Johnson's Medical  
9 Director, Dr. Thompson. He advised of the danger  
10 of inhaling needle-like tremolite. He recognized  
11 that trace amounts of tremolite in Johnson's Baby  
12 Powder were unavoidable. And he noted, and I quote  
13 this: Furor that might arise if the public learned  
14 that Johnson's Baby Powder contained any  
15 significant amount of tremolite. That is  
16 Exhibit 77.

17 By 1971, Dr. Thompson's prediction came true  
18 when, according to Johnson & Johnson's privilege  
19 log, Johnson & Johnson was already intending  
20 litigation.

21 Johnson & Johnson was continuously named in  
22 lawsuits in the 1980s and the 1990s. By 1981,  
23 Johnson & Johnson knew of a pending suit alleging  
24 mesothelioma from inhaling talc, including talc  
25 from the Johnson & Johnson Vermont Mine, Windsor

1 Minerals, in which Windsor Minerals was named.

2 By 1982, there was a case alleging lung injury  
3 from using Johnson's Baby Powder.

4 By 1988, over 900 Plaintiffs had alleged  
5 asbestos injury from Johnson & Johnson's  
6 subsidiary, Vermont Talc.

7 Suits alleging respiratory injury from Johnson  
8 & Johnson from that talc include 1986, the Cooper  
9 case; another 1986 case, Yuhas; 1988, Crumble; '92,  
10 Fay Miller; '93, Selby; and 1994, the Ritter case.

11 Now, Johnson & Johnson argues in their  
12 response that industrial talc is very different  
13 than talc that is used in baby powder, but  
14 Dr. Hopkins, who this Court is very familiar with,  
15 Johnson & Johnson's representative, said that,  
16 industrial talc and cosmetic talc in large part are  
17 sourced from the same mine. Now, they are  
18 processed differently, but everyone agrees that you  
19 cannot remove asbestos through processing.

20 Some of these cases I have alluded to  
21 implicate cosmetic talc. The Coker case was over  
22 27 years ago.

23 Now, that is what Johnson & Johnson knew.  
24 Johnson & Johnson also knew about the importance of  
25 preserving and the consequences of discarding data

1 on the chemistry found, the size and shape of any  
2 fibers, and vintage talc samples.

3 In October of 1972, Johnson & Johnson's  
4 consultant, Ian Stewart, who wrote that: Missing  
5 photograph of reported asbestos in talc were,  
6 quote, vital information to confirm if asbestos was  
7 truly present. That is Exhibit 86.

8 In 1977, Bill Ashton, who is Johnson &  
9 Johnson's in-house talc expert, as they called him,  
10 recognized in 1977 that test results to ID asbestos  
11 in talc cannot be relied on without question  
12 because -- and I quote -- the conclusions reached  
13 will often vary widely depending on the expertise  
14 and specific interest of the investigator.

15 Johnson & Johnson, as this Court knows, trying  
16 at least four Johnson & Johnson cases, regularly  
17 uses the underlying data to challenge other's  
18 finding of asbestos. Let me give you a couple of  
19 examples.

20 In October of 1972, McCrone concluded -- and  
21 this is found in Exhibit 30 -- that two Johnson &  
22 Johnson samples contained .2 -- between .2 and .3  
23 percent, and then another sample contained .5  
24 percent tremolite. Johnson & Johnson wrote on that  
25 report, Do not use this report. Don't use it. And



1 I brought a copy, but it is interesting. And I  
2 hold it up. Do not use this report because it  
3 actually has percentages of asbestos. And then  
4 miraculously another report is issued, and in that  
5 report, also in 1972, and that is Exhibit 91, is  
6 the McCrone report, and it mysteriously deletes the  
7 percentages of asbestos that was found.

8 You have seen how they challenge using the  
9 underlying data in this court. Johnson & Johnson  
10 also knew that vintage talc samples should have  
11 been preserved. Dr. Hopkins, Johnson & Johnson's  
12 representative, testified that it knew by 1971 that  
13 asbestos-related diseases were latent forming  
14 decades after exposure. And because of that  
15 latency, Johnson & Johnson knew the samples in its  
16 possession might remain one of the only sources for  
17 vintage samples 30 years or more after a consumer  
18 used its product when the disease was diagnosed.

19 As early as February of 1971, Johnson &  
20 Johnson was communicating with its attorneys about  
21 talc samples in connection with ongoing and  
22 anticipated litigation. That is Exhibit 78 and 79.

23 Despite the ongoing litigation concern by  
24 regulators and consumers and the depth of  
25 knowledge, Johnson & Johnson failed to institute

1 preservation policies until far too late.

2 Johnson & Johnson failed to collect responsive  
3 documents until the mid 1990s, and failed to  
4 institute a record retention policy until 1997.  
5 They failed to institute a legal hold for  
6 litigation until 1997, despite the fact that they  
7 have been involved in litigation for more than  
8 25 years before it instituted the hold. The legal  
9 hold for samples was not put in place until 2017,  
10 20 years after the Coker case.

11 Not a single case -- and this is according to  
12 Ms. Musco, Nancy Musco, who is a 30(b)(6) witness  
13 for Johnson & Johnson, who testified and we have  
14 made her deposition a part of this record, she  
15 would have been a direct employee of Johnson &  
16 Johnson since '82 and was the person most  
17 knowledgeable about discovery responses, and she  
18 testified not a single case prior to 2017 where  
19 Johnson & Johnson turned over evidence related to  
20 the testing of Johnson & Johnson talc baby powder.

21 Mr. O'Shaughnessy, Johnson & Johnson's  
22 assistant general counsel, testified that even  
23 after Johnson & Johnson admitted it knew of the  
24 existence of asbestos in its talc, Johnson &  
25 Johnson continued stating in discovery that there

1 was no evidence of asbestos. Johnson & Johnson  
2 gave false statements about its own internal  
3 testing.

4 By early 1976, Johnson & Johnson recognized  
5 itself and had been told by its consultants dozens  
6 of times that talc in baby powder contained  
7 asbestos, including chrysotile asbestos. And that  
8 information is found, Your Honor, in Exhibits 4, 5,  
9 6, and 7.

10 Johnson & Johnson admits that by the early  
11 1970s it had received numerous reports of tremolite  
12 in its Vermont and Italian talc. However, Johnson  
13 & Johnson told the FDA that no amphiboles or  
14 serpentine minerals were detected in any samples  
15 analyzed by its consultants. And that comes from  
16 Exhibit 111 and 112 of Dr. Hopkins' deposition.

17 Johnson & Johnson not only sought to hide that  
18 in both litigation to the FDA, but Johnson &  
19 Johnson also sought to prevent other scientists  
20 from disclosing this information. Your Honor is  
21 familiar with this, but Exhibit 104 is Johnson &  
22 Johnson's antagonistic personalities document. And  
23 it listed antagonistic personalities that published  
24 information adverse to its interest, including  
25 Dr. Selikoff and Dr. Langer of Mount Sinai. That

1 is Exhibit 104.

2 When Dr. Langer planned to present findings of  
3 chrysotile and other asbestos in Johnson's Baby  
4 Powder at a scientific conference, Johnson &  
5 Johnson secured the immediate removal of the  
6 hostile preprint at the conference and pressured  
7 Mount Sinai to withdraw the paper. That is  
8 Exhibit 27. Even Pfizer noted that Johnson &  
9 Johnson was applying heavy pressure to remove that  
10 paper.

11 So let me tell you what I think this motion  
12 would apply to. It is very limited. As you know,  
13 the Plaintiff has evidence of asbestos content in  
14 the Johnson's Baby Powder. And the sources of our  
15 evidence include Johnson & Johnson and its  
16 consultants' reports from the 1950 to the 2000's;  
17 we have Johnson & Johnson's own admission; we have  
18 third-party testing, scientific literature; and we  
19 have recent vintage Johnson's Baby Powder samples;  
20 and we also have lung tissue of Johnson Baby  
21 Powder's exposure to three people.

22 Now, Johnson & Johnson also has many types of  
23 evidence at its disposal to support its position  
24 that the baby powder does not contain asbestos, and  
25 never has, including hundreds of documents provided

1 by its suppliers that are included in its  
2 historical testing records and volumes of testing  
3 done by their litigation expert. And, in fact,  
4 most recently, Mr. Sanchez, who you are familiar  
5 with, tested 19 Chinese bottles right off the  
6 shelf. This motion then applied to a subset of  
7 that testing document.

8 So, Your Honor, you are very familiar about  
9 the definition that Johnson & Johnson scientists  
10 use versus other mainstream definitions of what is  
11 or isn't asbestos. And whether the talc in J&J  
12 Baby Powder contained asbestos depends on a couple  
13 of things: The proper definition for asbestos and  
14 the context of evaluating health effects; the  
15 methodology used to detect trace levels of asbestos  
16 in talc; and the interpretations of that data.  
17 That includes the chemistry, the crystal structure,  
18 the size and the shape of particles or structures.

19 There is, as you know in these trials, huge  
20 disagreement on the points, and therefore the  
21 experts reach different conclusions based on the  
22 same exact evidence. And without the underlying  
23 data of Johnson & Johnson tests, it is impossible  
24 to determine what the results would have been if  
25 different definitions were applied, different

1 methodologies used, and different interpretations  
2 made. The underlying data, as you know, is at the  
3 heart of all of this dispute.

4 So many of the Johnson & Johnson reports from  
5 the 1950s to the 2000s have been produced, but they  
6 only contain the final result without any of that  
7 underlying data. And with that, the Plaintiff had  
8 no concrete evidence from which to counter the test  
9 results that Johnson & Johnson is reporting. And  
10 that is important because Johnson & Johnson uses  
11 these -- I would say Johnson & Johnson uses these  
12 definitions that are not generally accepted in the  
13 scientific community.

14 For example, Matt Sanchez again, of RJ Lee  
15 Labs, who has testified I know in front of you  
16 before, applies the most narrow definition of  
17 asbestos possible. He said, It is suitable for --  
18 asbestos is suitable for only commercial grade  
19 asbestos in bulk construction product. And to  
20 qualify as asbestos, Mr. Sanchez says you have to  
21 have a 20-to-1 aspect ratio, fibers narrower than  
22 .5 micrometers, and a series of shape and  
23 characteristics that I won't get into, but that you  
24 are familiar with.

25 That definition does not work when trying to



1 identify asbestos as a health hazard. And our  
2 scientists are not the only ones saying that. The  
3 U.S. Geological Survey, USGS, which I know the  
4 Court is familiar with, recognizes different  
5 contexts call for different definitions for  
6 asbestos.

7 This is what they say, and I'm quoting: For  
8 example, a definition of asbestos appropriate for  
9 the asbestos cloth industry, which might require a  
10 very long, thin, highly flexible fiber, might be  
11 different than that used in the asbestos cement  
12 pipe industry, which could utilize a more brittle  
13 and perhaps shorter and wider fiber. Both of these  
14 definitions could be vastly different from those  
15 used in the health community where the concern is  
16 exposure, risk, and ultimately disease. That is  
17 contained in Exhibit 44.

18 But it is not just USGS, even the talc expert,  
19 Mr. Ashton, J&J's in-house talc guy, in 1977 noted  
20 those distinctions. And here is what he said, and  
21 I quote: Unfortunately, one main factor is that  
22 asbestos has now developed variable definitions  
23 depending on whether the point of view is  
24 mineralogical, industrial, medical, or regulatory.  
25 The medical definition is most concerned with

1           whether or not the particles are biologically  
2           active; the industrial definition is dependent upon  
3           flexibility and believability; the mineralogical  
4           definition upon chrysotology; and the regulatory  
5           definition upon size and aspect ratio. '77,  
6           "Mr. Talc" is saying that. That is Exhibit 45.

7           In this case, in evaluating whether Johnson &  
8           Johnson Baby Powder is the product that allegedly  
9           killed Mary McBrayer, the commercial viability of  
10          the asbestos vein in commercial asbestos products  
11          is totally irrelevant.

12          The USGS has said in the context of evaluating  
13          health effect, generally accepted criteria for  
14          determining whether to count a given structure as  
15          asbestos include: Confirming the right mineral,  
16          one of the six forms of asbestos; the length; the  
17          width; the aspect ratio, 3-to-1 or 5-to-1 versus  
18          Sanchez's 20-to-1.

19          Why does this matter? In the whole scheme of  
20          this trial, why does the lack of underlying data  
21          matter?

22          What happens is -- and you have seen this --  
23          where tests, where Johnson & Johnson tests find no  
24          asbestos, and they call it no quantifiable  
25          asbestos, or similar results, the absence of

1           underlying data hurts the Plaintiff.

2           Johnson & Johnson's counting protocol by its  
3 definition served to prevent analysts from  
4 reporting the presence of asbestos. And they  
5 required -- Johnson & Johnson had protocols that  
6 required microscopists to report the presence of  
7 asbestos only if they found five or more fibers of  
8 the same fiber type. So even if an analyst  
9 identified as many as 16 asbestos fibers in a  
10 sample, four fibers of each type, Johnson &  
11 Johnson's protocol mandated the report would state  
12 "not quantifiable." So in public comments, "not  
13 quantifiable asbestos" becomes "asbestos free."

14           Two examples illustrate the importance of the  
15 bench sheets for the underlying data, and I  
16 included them in our papers. One is Exhibit 47.  
17 That is an exchange between Johnson & Johnson and  
18 its consultant, McCrone, in 1985.

19           In a report dated August 22 of 1985, McCrone  
20 states, Detected chrysotile asbestos in two  
21 samples. Chrysotile asbestos in two samples. He  
22 said that the chrysotile was present, but could not  
23 calculate the weight percent of chrysotile  
24 asbestos.

25           In response, Windsor Minerals' president flew

1 to Chicago to speak with McCrone personally. And  
2 he followed up with a letter, and the letter is  
3 Exhibit 48.

4 The letter says, The August 22nd report, the  
5 one that reported chrysotile asbestos, is couched  
6 in substantially different language than earlier  
7 reports. As I explained to you in my visit to  
8 Chicago, it is very important that specific  
9 language be used.

10 Lo and behold, on October 8, McCrone  
11 resubmitted the August 22nd report stating that it  
12 did not find any quantifiable amount of asbestos  
13 minerals.

14 Johnson & Johnson documents containing only  
15 results per its predetermined reporting protocol,  
16 without any attached bench sheets, leaves the  
17 Plaintiff unable to determine if asbestos fibers  
18 were found and unreported and the results  
19 preserved.

20 Even though, Judge, in the tests where  
21 asbestos was found, the absence of underlying data  
22 hurts the Plaintiff. And you have heard this, even  
23 in reports where Johnson & Johnson found data -- I,  
24 mean, found asbestos -- they say it must have been  
25 lab contamination, right? You have heard that.

1 That happened in 2019 with RJ Lee.

2 Because Johnson & Johnson only saved the final  
3 report and failed to retain the underlying data, we  
4 don't know about the blanks, the blanks that are  
5 used to control contamination. So there was no  
6 objective evidence by which to challenge Johnson &  
7 Johnson's contention about what those results  
8 really mean. And you have seen that. Asbestos,  
9 but it doesn't really mean asbestos, it means  
10 something else. And we don't have the underlying  
11 data.

12 Johnson & Johnson failed, as we have seen, to  
13 maintain the underlying data for most of the  
14 reports from its consultants. And that includes  
15 any information on the blanks.

16 That failure to maintain the samples allows --  
17 and I am talking about the talc samples now --  
18 allowed Johnson & Johnson to argue that the talc  
19 samples that the Plaintiff experts rely on are not  
20 representative of the talc that Mary McBrayer would  
21 have used. And you have heard them argue that as  
22 well.

23 That forces the Plaintiff to obtain samples  
24 from other sources only to then have Johnson &  
25 Johnson challenge the reliability of those samples.

1 They argue that the samples are not representative  
2 of what Ms. McBrayer would have used. They argue  
3 the talc composites vary. They argue chain of  
4 custody. They argue contamination.

5 Johnson & Johnson at the time they knew, had  
6 actual knowledge, had endless number of talc  
7 bottles to draw from to preserve the samples of  
8 talc. They get the benefit of the spoliation and  
9 argue that the Plaintiff relied on a sample set not  
10 sufficiently representative. And they challenged  
11 each sample not obtained by Johnson & Johnson  
12 itself.

13 Now, in this case, Johnson & Johnson seems to  
14 say, We are not going to argue that anymore. We  
15 are not going to argue that Plaintiff's talc  
16 samples are -- should be challenged. They have got  
17 plenty. Dr. Longo says he can rely on them. I  
18 think that is what they said in their brief. If  
19 that is true, that is helpful. It doesn't solve  
20 the underlying problem of, Johnson & Johnson has  
21 hundreds of tests without any underlying data, and  
22 we only have this many because we don't have access  
23 to the historical talc.

24 That is the factual basis and why it matters.

25 Judge, they crossed our experts on the fact



1           that in 2017 our experts started saying that there  
2           was asbestos in talc. You have heard that. In  
3           fact, Ms. Brown -- I came and watched, I don't know  
4           if she will remember this, when she was trying the  
5           Johnson case, when she was cross-examining Dr. Longo, and  
6           it was a very effective cross-examination, and one  
7           of the things she puts up there is, Urban Legend.  
8           Dr. Longo, you said asbestos in talc was an urban  
9           legend. It was very effective. And one of the  
10          things is because Johnson & Johnson hid from  
11          anybody, the FDA or from litigants prior to 2017,  
12          the finding of asbestos in talc. They crossed our  
13          experts on an inability to look at the underlying  
14          data. That is why this matters.

15                Your Honor, the case law -- and they have  
16                cited in their response to you a couple of other  
17                courts that have heard this motion. One of them  
18                was Hirshberg, which is a Washington State case,  
19                and that is why I wanted to go forward today  
20                because one of the reasons the judge denied the  
21                motion was it was made as a motion in limine too  
22                close to trial.

23                The other thing is that Washington law is very  
24                different. It requires potentially intentional  
25                conduct: I knew it was bad and I threw it away. I

1 think we have proven intentional conduct here. But  
2 we don't have to in South Carolina to get a  
3 presumption.

4 And, Your Honor, we quoted in there, and you  
5 will know this law better than I will, but the  
6 Stokes case, that was a med mal case decided by the  
7 Court of Appeals, at the time Chief Justice Hearn  
8 wrote the opinion, and in that case it was evidence  
9 where some records were missing in the medical  
10 records. And the Court said, We are not saying  
11 they intentionally threw it away, it could have  
12 been lost. It may never have been created. But  
13 the dispute was the cause of death. And the Court  
14 of Appeals said that the judge, the trial judge,  
15 should have charged the spoliation charge. And  
16 they said, While the jury may well have accepted  
17 the hospital's explanation that it was lost, it  
18 was also in the province drawn negative inference  
19 from the hospital's failure to produce those pieces  
20 of evidence.

21 Your Honor, we would also cite to Gathers v.  
22 South Carolina Electric & Gas where the Court  
23 denied the Defendant's motion and said, Where a  
24 party loses or destroys evidence, an inference may  
25 be drawn whether the destroyed or lost evidence

1           would have been adverse to that party.

2           South Carolina does not require a party to be  
3           in active litigation to trigger a duty to retain  
4           evidence. Your Honor, they cite a couple of South  
5           Carolina cases, which I won't go into unless you  
6           want me to, but essentially where the Court struck  
7           the Defendant's pleadings. And the Court said,  
8           That is the worst case scenario. We are not asking  
9           you to do that here at all. What we are asking you  
10          to do is do a couple of presumptions for the jury.  
11          Because what is missing from Johnson & Johnson is  
12          the underlying test data, the laboratory blanks,  
13          and the talc samples. Johnson & Johnson still  
14          maintains to this day the testing showed that there  
15          is no asbestos in its product. That is what they  
16          maintain.

17          In a press release in 2019, Johnson & Johnson  
18          claimed decades of tests showed no asbestos in  
19          Johnson & Johnson's Baby Powder. And you know  
20          Johnson & Johnson talc used its own rigorous  
21          testing as its primary defense. Johnson & Johnson  
22          knew that this evidence that I am talking about,  
23          the underlying data, was important for our specific  
24          reasons, but collectively and overwhelmingly failed  
25          to keep the proof and asked that opposing party be

1       forced to accept it as true and be denied the  
2       ability to verify.

3               And, Your Honor, we are prejudiced by that.  
4       We are prejudiced by the lack of historic talc  
5       samples, by the lack of underlying data to evaluate  
6       the test results, the lack of blanks. The lack of  
7       underlying data supports any of them.

8               The evidence in this case is not only were  
9       they negligent, but they also acted in bad faith  
10       when it lost or destroyed the evidence. Johnson &  
11       Johnson's history of presenting tests to the FDA  
12       that reported Johnson Baby Powder as asbestos free  
13       while withholding other tests would be very, very  
14       bad for business. And that is according to  
15       Dr. Hopkins, which is exactly what they do.

16              Your Honor, an adverse instruction is the  
17       preferred method of dealing with spoliation in  
18       South Carolina, and we have cited that. These  
19       would not prevent Johnson & Johnson from putting on  
20       a defense. The spoliation motion would only apply  
21       to a very specific subset of documents, and it  
22       would only be prevented from using it -- from using  
23       in that defense the evidence that unfairly  
24       prevented the Plaintiff from having access to the  
25       underlying data.

1 I am happy to go over the requested  
2 presumptions, or we can wait and let them respond.

3 THE COURT: Very good. Why don't we let them  
4 respond?

5 MS. MCVEY: Thank you, Your Honor.

6 MR. HERNS: Your Honor, Mr. Bernardo will  
7 present the argument.

8 THE COURT: Very good. Mr. Bernardo, please  
9 come forward.

10 MR. BERNARDO: Thank you, Your Honor.

11 May I also remove my mask?

12 THE COURT: You may.

13 MR. BERNARDO: Thank you, Your Honor.

14 Your Honor, before I begin to address the  
15 merits of the motion for spoliation, I want to make  
16 a couple of observations.

17 At the outset of her argument, Ms. McVey said,  
18 I'm not seeking to gut their defense, I'm just  
19 seeking to ask the jury to presume certain things.

20 Your Honor, I would submit she is asking Your  
21 Honor to gut the defense of this case. What she is  
22 specifically asking Your Honor to do is to tell the  
23 jury that they don't need to look at documents and  
24 consider facts, that they can presume things. And,  
25 in fact, what she wants Your Honor to do is tell

1           them, You can presume things that are contrary to  
2           what is in the documents. That is an example of  
3           gutting the defense, period. And every court that  
4           has looked at this has come to the same conclusion,  
5           that that should not be done, because the ladies  
6           and gentlemen of the jury that are sitting there,  
7           that is their obligation, that is their duty to  
8           look at the documents, to make judgments, to hear  
9           Ms. McVey's arguments. There is no -- she is  
10          allowed to argue that, you know, Ladies and  
11          gentlemen of the jury, there is no underlying test  
12          here for us to examine. Nobody is disputing that  
13          they can say that.

14                What we are disputing is that you can tell  
15          them they should just -- they should put aside what  
16          they think on their own and they should just  
17          presume certain things, and certain things that are  
18          contrary to other documents.

19                And as Your Honor knows overseeing trials,  
20          facts are super important. That is what we are all  
21          here to talk about. And I'm not going to go  
22          through what was a very good closing argument in  
23          the case as opposed to arguing spoliation, but I  
24          just want to give a couple of examples of where  
25          facts are important and where a jury should be able



1 to hear everything. And to be honest, there are  
2 facts that are particularly troublesome to me  
3 because I find them coming up time and time again,  
4 and they are just distortions of fact.

5 For example, in talking about the duty and in  
6 talking about legal holds, it was represented to  
7 Your Honor that Johnson & Johnson did not issue  
8 legal holds before a particular date. That is --  
9 if Your Honor looks at the testimony, and it is in  
10 the record -- that is not what the testimony is.  
11 That is not what the witness said. I prepared that  
12 witness, I know what he said. He said the most --  
13 the oldest one he has located is from a particular  
14 case. There are ones that the Plaintiffs know go  
15 back further. I mean, the fact that you can't find  
16 a legal hold -- and that is what the witness,  
17 Mr. O'Shaughnessy, made clear -- doesn't mean that  
18 one doesn't exist. And Mr. O'Shaughnessy testified  
19 to the opposite. Facts. Facts are important. The  
20 ability for the jury to hear those and not just  
21 presume things are important.

22 Another example, Ms. Musco. I prepared this  
23 witness. This witness never undertook to  
24 investigate questions as to when certain documents  
25 were disclosed or not disclosed. She made that

1 abundantly clear. I made that abundantly clear --  
2 and if you take a look, I think it is like  
3 Exhibit 79, Your Honor -- I made that abundantly  
4 clear in my objections that she never looked at  
5 that. But the Plaintiffs wanted to get a sound  
6 byte and basically said, So, Ms. Musco, you are not  
7 aware of any evidence that Johnson & Johnson  
8 discloses before 2017? Well, of course her answer  
9 has to be, No, I'm not, because she never looked at  
10 it. But that evidence is kept from the jury and  
11 kept from Your Honor.

12 But I raise these examples -- and I am not  
13 going to go through all of them, but there were  
14 just a couple of them that jumped out at me because  
15 I was there. I know. I prepared these witnesses.  
16 And I just raise them as an example of why asking a  
17 jury to presume certain things is really gutting  
18 the defense.

19 I also preliminarily wanted to point out that  
20 Ms. McVey's argument highlights just how difficult  
21 and complicated this is, because I heard numerous  
22 examples of documents that were generated by  
23 Johnson, Old Johnson & Johnson Consumer Inc., not  
24 Johnson & Johnson, the parent, not at a period of  
25 time when Johnson & Johnson, the parent, had

1 responsibility for manufacturing. And there is  
2 this blur in distinction that is going on, and it  
3 is throughout the whole argument. I will try and  
4 unpackage it a little bit as I discuss this, but --

5 THE COURT: I tell you one thing, Mr.  
6 Bernardo, if you think anybody in any of these  
7 cases is going to allow the stay against liability  
8 on behalf of Old Johnson & Johnson Consumer Inc. to  
9 somehow affect the evidence that is going to be  
10 received, whether that evidence was from Johnson &  
11 Johnson, Old Johnson or New Johnson, that is a very  
12 different kettle of fish, and I can tell you right  
13 now, that is not going to happen in this case as  
14 far as I'm concerned.

15 What they are talking about is underlying  
16 evidence and whether that underlying evidence was  
17 retained by Johnson & Johnson, the Defendant in  
18 this case. And whether that evidence came from  
19 McCrone, from Mr. Sanchez, whatever source, whether  
20 it came from testers of the mines or -- not --  
21 whether it came from Johnson & Johnson Consumer  
22 Inc., because they happen to be the ones that are  
23 going to -- that is not going to have anything to  
24 do with the determinations that are made about  
25 whether or not this Defendant is involved in

1       spoliation with respect to destroying or  
2       suppressing evidence that it has made a big deal  
3       about when it starts evaluating the Plaintiffs'  
4       cases. So let me just tell you, don't spend any  
5       time on that as far as I'm concerned. We are about  
6       one thing, and one thing only -- was there  
7       suppression or destruction of materials. And it  
8       doesn't matter whether it is a legal hold or not a  
9       legal hold, or anything else. Was there a pattern  
10      and practice on the part of J&J to have base line  
11      information, data, destroyed or not retained such  
12      that it impacts the way the Plaintiff can present  
13      its case. And if that is so, then the presumptions  
14      are facts. And that is what the jury is going to  
15      be told. They are not some kind of, Hey, if it  
16      guts my case, then you are suppressing facts.  
17      Presumptions in the context of sanctions are a  
18      punishment for failing to retain the basic  
19      evidentiary material for fair use of both the  
20      Plaintiff and the Defendant.

21           MR. BERNARDO: Understood, Your Honor. And I  
22      am going to leave it to more capable trial lawyers  
23      to address the evidentiary issues. I wasn't  
24      intending to go there. What I was simply pointing  
25      out is the very issue Your Honor is raising is what

1 did Johnson & Johnson have a duty to preserve and  
2 did they preserve that. That was the simple point.

3 And to address most directly Your Honor's  
4 point, and I will go through that, I would submit  
5 that (a) they did not have a duty going all the way  
6 back that far to retain the types of documents that  
7 are being called for here; (b) even if they did,  
8 the duty didn't extend to things that they never  
9 even had or things that may never have existed. So  
10 that is the point I was trying to make, perhaps  
11 inartfully, Your Honor, with respect to Johnson &  
12 Johnson and pointing to documents, because where I  
13 was heading, Your Honor, is at a point in time  
14 decades ago, these documents were, and they still  
15 are, in the possession of a different entity, not  
16 even in the same geographic location, they are  
17 separate corporate archives. But, again, I am just  
18 pointing out that it gets a little bit more  
19 complicated, so I won't belabor that point taking  
20 Your Honor's point.

21 But let me then address, because I think it is  
22 very important to say, Your Honor, that Johnson &  
23 Johnson takes its discovery obligations very  
24 seriously, and Johnson & Johnson has taken the  
25 appropriate and proper steps under the law to

1       preserve documents that are relevant, to preserve  
2       documents that are called for.

3               I feel like there has been a little bit of  
4       loss of clarity in what is being alleged was  
5       destroyed improperly, so I want to take just a  
6       moment, if I may, Your Honor, to go through the  
7       three categories.

8               One category are talc samples. Okay? There  
9       are thousands of talc samples that have been  
10      preserved and are available to the Plaintiffs from  
11      Johnson & Johnson, from Johnson & Johnson's -- from  
12      the manufacturers who made it, from museums, there  
13      are documents -- there are samples going back to  
14      the turn of the century. And Plaintiffs have  
15      selected those. And they have been preserved.

16              What hasn't been preserved is every single  
17      last sample of every talc that was ever tested.  
18      And I will explain, Your Honor, later under the law  
19      that that can't be the law that every single talc  
20      sample that has ever been tested has to be  
21      preserved, because if you take that and extend the  
22      logic of it to -- I understand talc is smaller,  
23      but to something like a car manufacturer. That  
24      would suggest that every car that a car  
25      manufacturer tests all through the decades has to



1 be preserved. But that is one category, are the  
2 samples.

3 Another category are these so-called TEM bench  
4 sheets and other -- some of them aren't even  
5 clearly bench sheets that they are referring to,  
6 they are attachments. And many of them -- and it  
7 is clear through the record -- aren't even things  
8 that the company ever received, because there would  
9 be no reason for them, if a test was showing  
10 negative or no asbestos, to have the back-up  
11 supporting that. And under the ordinary record  
12 retention policy, nothing nefarious, just like what  
13 ordinary companies do, these things, by the third  
14 party who did the testing, were disposed of in the  
15 ordinary course of business.

16 The third category is one that the Plaintiffs  
17 frankly are theorizing exists, then they are  
18 theorizing that they should have been asked for by  
19 Johnson & Johnson, and then claiming that Johnson &  
20 Johnson destroyed them, and that is these controls.  
21 There is no evidence, other than the Plaintiff's  
22 argument, that these even ever existed.

23 And most importantly on this category, Your  
24 Honor, if the Plaintiffs are prejudiced by this,  
25 then why didn't they -- and why hasn't any other

1 litigant ever asked for them. The Plaintiffs in  
2 this discovery, which is where you say what I need  
3 for my case, never asked for them. They simply,  
4 now that trial is coming, say, Well, we are  
5 prejudiced by this.

6 So those are three categories: The samples;  
7 the grids -- I'm sorry, the samples; the back-up  
8 data; and these so-called blanks.

9 I want to talk about South Carolina law, and I  
10 will concede, Your Honor, that South Carolina law  
11 isn't as well developed, but it is very similar  
12 when you look through the case law to the case law  
13 of the other cases in which we have argued this.  
14 And I have argued this very same motion multiple  
15 times, and I do agree with Plaintiff's counsel that  
16 the judge in Hirshberg was troubled that the motion  
17 was made so close to trial, but she didn't use that  
18 as a basis to disagree with the Plaintiffs. In  
19 fact, we had hours of argument and briefing that  
20 spanned two days. I had to come back a second day  
21 to complete this. We similarly argued this in the  
22 State of New Jersey and spent hours in a state  
23 court there in front of a judge who looked at all  
24 of this evidence. We similarly did it -- I went  
25 down to Kentucky to argue the exact same motion.

1 Every judge that has looked at this comes to the  
2 same conclusions, because there are similar  
3 elements of the law in each of these states.  
4 Again, I will agree that South Carolina law isn't  
5 as well developed, but it does contain the similar  
6 elements. You have to have a duty. Obviously you  
7 have to have a reason to preserve them. You have  
8 to have some degree of intentionality or  
9 willfulness, particularly -- and that is why I made  
10 the point, Your Honor, about gutting the case,  
11 because under South Carolina law, when you are  
12 asking for something that has that kind of  
13 ramification, that we would submit is gutting the  
14 case, you do have to show some bad faith because,  
15 to take Your Honor's point, it is a punishment, and  
16 in order to punish somebody, they should have had  
17 to have done something bad or wrong, so bad faith.  
18 And the last piece of this that needs -- that is  
19 common to all of these state laws and federal laws  
20 is prejudice.

21 And I want to take each one of them, because  
22 on the duty, Your Honor, the Plaintiffs have taken  
23 us back, and taken us back into the 1960s and  
24 talked about cases with other disease end points in  
25 other products, and whether the Plaintiffs would

1       argue in trial that, Oh, it is similar talc, a duty  
2       to preserve Johnson's Baby Powder cannot arise  
3       because industrial talc is being the subject --  
4       stuff used in roofing shingles and other things,  
5       that doesn't give rise to an obligation.

6               And if you look at the cases that they have  
7       referred to, most of those cases going back into  
8       the early period of time are industrial talc cases.  
9       Totally different from here.

10              The first case that sounds at all like the  
11       case here was filed in 1996. And even that case --  
12       there is an affidavit we submitted, Your Honor --  
13       that case was -- I'll call them one-off cases, it  
14       is a case here and a case there that occurred over  
15       a period of time. There was hardly a steady stream  
16       of cases alleging that Johnson's Baby Powder caused  
17       mesothelioma. And as Mr. Williams in his affidavit  
18       also points out, there wasn't a lot of discovery  
19       from the Defendants.

20              So looking at the case law across the country,  
21       it is clear that a duty to preserve the kinds of  
22       things we are talking about here would not trigger  
23       until there is a swell of or other litigation that  
24       you would expect would cause a company to retain.  
25       And even if there were, the key is the scope of

1           that obligation, Your Honor, because, as I said  
2           earlier, it can't be that because a case, a single  
3           case is filed in 1996 alleging mesothelioma, that a  
4           company has an obligation to say, Okay, we are  
5           going to now save every single sample. I mean,  
6           they have thousands of samples, but we are going to  
7           save every single one, especially when you look at  
8           the discovery in those cases and nobody said, Give  
9           me every sample that you have. That would be the  
10          trigger for a company to say, Okay, the Plaintiffs  
11          don't just want like the particular lot that they  
12          used, they want everything. That didn't happen,  
13          and I know it happened because I was involved in  
14          litigation when it did, until around 2016, 2017,  
15          when for the first time the Plaintiff's lawyers  
16          said, I don't just want a lot that was at issue  
17          here in this particular case, I want all of the  
18          talc that Johnson & Johnson has. And we all looked  
19          around and scurried and put together this inventory  
20          as an exhibit, and you have seen that.

21                 So, Your Honor, again, I would submit from a  
22          duty standpoint, there was not a duty that goes as  
23          far as back as Plaintiffs say, first. And even to  
24          the extent that a duty does go back further in  
25          time, it could not possibly extend to things that

1       aren't even at Johnson & Johnson or things that  
2       Plaintiffs don't ask for typically or things that  
3       create some kind of a burden.

4               Once those kinds of requests were coming in,  
5       Johnson & Johnson did exactly what they should do  
6       and they said, Stop, you need to preserve all of  
7       this, we now have requests for everything, and we  
8       are going to preserve that. So there is just  
9       absolutely no duty. And, again, each of the courts  
10      who has looked at this went through and looked at  
11      each of those cases, and we had extensive arguments  
12      just like this considering that, and they concluded  
13      that the kind of duty doesn't extend back, and it  
14      certainly doesn't extend to the scope of the kinds  
15      of materials that are being discussed here.

16             The next thing I want to raise, Your Honor, is  
17      the bad faith. And I think that is very important  
18      because, you know, Plaintiffs are asking Your Honor  
19      to accept their interpretation of documents and  
20      their allegation of documents and then infer from  
21      that some bad faith and say, They were actively  
22      destroying things. Your Honor, if they were  
23      actively destroying things to prevent Plaintiffs  
24      from having evidence, as you have probably seen  
25      from documentation, they did have a very poor job



1 of it. I mean, there are millions of pages of  
2 documents that have been produced going back, like  
3 they have used them as exhibits, to the 1960s and  
4 1970s.

5 THE COURT: We are starting to kind of repeat  
6 some things that have been said before,  
7 Mr. Bernardo.

8 MR. BERNARDO: Okay.

9 THE COURT: But what is being -- the premise  
10 of -- the disadvantage that the Plaintiff seeks to  
11 remedy with this spoliation motion is the practice  
12 that I have seen in every Johnson & Johnson case I  
13 have tried, which is a huge amount of scientific  
14 evidence, alleged scientific evidence, that says  
15 there is no identifiable asbestos in Johnson &  
16 Johnson Baby Powder, and it is based on all kinds  
17 of data.

18 MR. BERNARDO: Uh-huh.

19 THE COURT: And then it turns out that the  
20 samples used to create that data haven't been  
21 maintained. And what the Plaintiff is simply  
22 saying now, we have now come to learn -- because  
23 there is now much more information about who was  
24 doing what, what the texting was, I have seen some  
25 of that as well -- we have now come to learn that a

1 lot of the negative test results they got depended  
2 on how they defined an identifiable quantity. And  
3 now we know that those pieces of evidence may not  
4 have the legitimacy that they had before we knew  
5 that they were so influenced by how the asbestos  
6 was defined. But when their experts take the  
7 stand, they are heavily cross-examined about  
8 whether they have samples to back up every piece of  
9 database evaluation they made. And so what they  
10 are trying to do, what Ms. McVey argued, she is  
11 trying to do, is level the playing field and not  
12 allow Johnson & Johnson to keep projecting this  
13 huge screen of information they say proves that  
14 there is -- not until this good day -- any evidence  
15 of asbestos in Johnson & Johnson Baby Powder when  
16 later evidence certainly reveals that there is  
17 evidence of that. So that is the dilemma I'm faced  
18 with now.

19 And in South Carolina it really doesn't matter  
20 how deliberate and black-hearted the attempt might  
21 have been to actively destroy evidence, but it does  
22 depend on a casual lack of retention when you then  
23 project those results as the gospel and entitled to  
24 great scientific weight and attack the Plaintiff's  
25 experts because they don't have data, raw data,

1           that supports the inferences that they are making,  
2           depending on how they define asbestos. So that is  
3           what I'm struggling with right now.

4           MR. BERNARDO: Understood, Your Honor. And  
5           let me see if I can address that because -- and I  
6           think the Pringle case really addresses that --  
7           because you said that they are trying to level the  
8           playing field. And this goes back to the point --  
9           and I'll try not to repeat myself -- but this goes  
10          back to the point I made at the beginning, Your  
11          Honor, they are trying to tilt the playing field in  
12          a way that it shouldn't be. The Pringle case --

13          THE COURT: Well, I will just say this,  
14          Mr. Bernardo. You know, I have tried enough of  
15          these cases to see even when certain evidentiary  
16          rulings are made by myself and have experts  
17          presented by Johnson & Johnson get up and simply  
18          defy the rulings I have made -- you have got one  
19          fellow from Wales who is an expert at doing that, I  
20          hope I don't see him again -- and that is what they  
21          are talking about in terms of leveling the playing  
22          field. It is not some suppression of facts that  
23          they seek to accomplish. It is the presumptions  
24          because of the lack of retention of base line  
25          material that would be able to be evaluated either

1 way by evidence -- by experts that may have  
2 different definitions of asbestos. So that is what  
3 I mean when I say level the playing field. Take  
4 presumptions to knock out of the debate certain  
5 kinds of information that turns out not to have any  
6 way to be verified with a definition that we now  
7 know may be hotly contested by a majority of the  
8 scientific community.

9 MR. BERNARDO: So, Your Honor, let me address  
10 that, because I think it is addressed, and I think  
11 this goes very much to the heart of the South  
12 Carolina Court of Appeals decision in the Pringle  
13 case.

14 So, as Your Honor points out, it is hotly  
15 disputed as to what "no asbestos" means and the  
16 number of fibers and detection limits. That is  
17 known. That will be -- that has been and will  
18 continue to be argued to the jury. The Plaintiffs  
19 will come up and say, Here, let me show you that  
20 this number of fibers was permitted here. That is  
21 a dispute as to the significance of that, not the  
22 fact of that. But what Plaintiffs want to do is to  
23 then say, besides the arguments that we just talked  
24 about, which is presented to the jury and they can  
25 decide, they then want to say, If we don't have any

1 back-up documentation -- which we know J&J never  
2 had -- we want to assume that in every one of those  
3 there were fibers.

4 And the Pringle case makes that very clear.  
5 There has got to be a basis for the presumption.  
6 There has to be some -- it can't be inconsistent  
7 with the real world facts. And just take for an  
8 example, that would tell the jury that, You should  
9 ignore this 1987 document that says for 15 years  
10 back we didn't find asbestos and you should assume  
11 the opposite, you should assume that every one of  
12 those tests is inconsistent. And that is what I'm  
13 getting at, Your Honor. That is where they are not  
14 leveling the playing field, that is where they are  
15 tilting it in their favor, because they are asking  
16 you to have the jury presume something that is  
17 different from the documentary basis as punishment.  
18 And we submit that that is wrong.

19 Similarly, again, when you look at some of  
20 these other things, they were assuming that things  
21 existed that may never have existed, and then they  
22 are punishing Johnson & Johnson for not having gone  
23 out and gotten those and kept them, dispute a duty.

24 So, Your Honor, I think the same is true for  
25 each of these things.

1           So I want to go to -- you talked about  
2 Plaintiff's experts, and this gets, again, to the  
3 samples. I mean, one of their own experts  
4 testifies that the mind doesn't change over time,  
5 it is not necessary to get the exact same cans, the  
6 exact same bottles or talc samples during any  
7 particular time. That is their expert's viewpoint.  
8 They have prevailed in trials with the thousands of  
9 talc samples that exist. But, again, they are now  
10 trying to say, For every one that doesn't, we want  
11 to presume something for which there is just no --

12           THE COURT: I think I understand this  
13 argument.

14           MR. BERNARDO: Well, Your Honor, I will leave  
15 it at that then. I will simply say we don't  
16 believe that there is a duty, and if there is one,  
17 it doesn't extend this broadly, and we certainly  
18 don't believe that there is any kind of bad faith  
19 or prejudice.

20           THE COURT: Okay.

21           MR. BERNARDO: Thank you, Your Honor.

22           THE COURT: All right. Ms. McVey, we are now  
23 at 1:20.

24           MS. MCVEY: Yes, ma'am. I can make it two  
25 seconds, I can -- whatever you want to do.



1 THE COURT: Well, what is left to be done is  
2 to tell me exactly what you want.

3 MS. MCVEY: Yes.

4 THE COURT: That is where you were headed when  
5 I asked Mr. Bernardo to discuss the concepts with  
6 us.

7 MS. MCVEY: I can tell you exactly what I  
8 want, and then the next motion to compel will take  
9 two minutes. I don't think it will take very long.

10 THE COURT: Well, they are going to have to  
11 have a chance to reply to whatever you say. So  
12 here is what I am going to do. I am going to take  
13 a 45-minute break for the sake of the reporter and  
14 for the sake of all of us. Let's come back here at  
15 2:15.

16 MR. BERNARDO: May I take one minute, because  
17 it might save some time and we may not have to come  
18 back at 2:15?

19 There may have been some disconnect or  
20 confusion because I was trying to discuss with  
21 Ms. McVey's colleague that on one of the motions  
22 that pertains to a deposition, in exchange for not  
23 coming down, we would be willing to withdraw that.  
24 Given the time of day, while we strongly disagree  
25 with Plaintiff's position there, we are putting up

1 a witness, and we will put up a witness with  
2 respect to those particular topics to avoid having  
3 to come back and have to take --

4 THE COURT: What, a witness here in front of  
5 me?

6 MR. BERNARDO: No, no, no, I'm sorry, at a  
7 deposition.

8 THE COURT: Oh.

9 MR. BERNARDO: I'm sorry.

10 MS. MCVEY: If they are willing to put up a  
11 witness on all five topics that we discussed, then  
12 the second motion is taken care of.

13 MR. BERNARDO: Sorry. She said it better than  
14 I did.

15 THE COURT: Okay. Well, why don't y'all take  
16 a little while to discuss that then, and we will  
17 come back and gather at 2:15. Can we do that?

18 MR. BERNARDO: Sure.

19 MS. MCVEY: Sure.

20 THE COURT: Okay.

21 MS. MCVEY: Thank you.

22 THE COURT: And that may solve a lot of  
23 things.

24 MS. MCVEY: It doesn't solve the spoliation,  
25 but, yes.

1 MR. BERNARDO: It doesn't solve -- no, I am  
2 not suggesting that it would.

3 MS. MCVEY: Okay.

4 THE COURT: Okay, very good. See you at 2:15.

5 MS. MCVEY: Thank you.

6 MR. BERNARDO: Thank you, Your Honor.

7 (WHEREUPON, a lunch break was taken at  
8 1:21 p.m.)

9 (WHEREUPON, the hearing resumed at 2:15  
10 p.m.)

11 THE COURT: All right. Ms. McVey?

12 MS. MCVEY: Thank you, Your Honor. I heard  
13 you very clearly, and so I will be brief. I am not  
14 even going to go back and rebut what Johnson &  
15 Johnson has said other than to make very clear what  
16 this would apply to.

17 It would apply only to tests that Johnson &  
18 Johnson either did themselves or asked to be done  
19 where it could be proved that there was some  
20 underlying data that was not retained.

21 And that is different than what Johnson &  
22 Johnson has in their possession. It would not  
23 apply to tests done by suppliers or other folk. It  
24 would have to be tests that Johnson & Johnson did  
25 or asked for, asked to be done.

1           With your permission, I'll go and ask -- and  
2           one more thing before I forget. On Page 13 and 14  
3           of our brief to you -- this is actually not an  
4           exhaustive list, but it is an example of the types  
5           of information we are talking about. And it tells  
6           you the Johnson & Johnson Bates number, the report,  
7           the findings, and then the missing references.

8           THE COURT: Right.

9           MS. MCVEY: That is the kind of information  
10          these presumptions would apply to if Your Honor  
11          grants them.

12          THE COURT: Right.

13          MS. MCVEY: Okay. So the requested  
14          presumptions that we would ask, Your Honor, as a  
15          result of Johnson & Johnson's spoliation are the  
16          following:

17                 That when Johnson and Johnson introduces a  
18                 test result that is negative for asbestos and  
19                 reports no quantifiable asbestos or contains  
20                 similar language, if the evidence shows that  
21                 Johnson & Johnson destroyed or unreasonably failed  
22                 to preserve underlying data related to the test,  
23                 the jury may -- the jury may presume that the  
24                 missing data showed asbestos fibers were present.  
25                 That is the first one.

1           The second one is: When Johnson & Johnson  
2 argues any positive test for asbestos were the  
3 result of lab contamination, but Johnson & Johnson  
4 failed to retain evidence related to the blanks  
5 used as a control for such contamination, they may  
6 presume that blanks were free from asbestos  
7 contamination.

8           And the final one: Because Johnson & Johnson  
9 destroyed, discarded, or recklessly failed to  
10 preserve historical talc samples it knew would be  
11 needed in anticipated or pending litigation,  
12 Johnson & Johnson should be precluded from  
13 presenting any argument, evidence, or testimony  
14 that would suggest Plaintiff had tested an  
15 insufficient number of bottles to support her  
16 expert's causation opinion.

17           Now, Judge, I think in their brief they kind  
18 of agree to that third one. They may prove me  
19 wrong.

20           THE COURT: All right. You say if they agree  
21 that when they show negative results, if the  
22 evidence is shown to have been either -- which one  
23 did you think they agree to?

24           MS. MCVEY: The third one, which is --the  
25 argument they make is that, Look, Plaintiff's

1 expert, you haven't tested enough Johnson & Johnson  
2 talc and so it is not reliable.

3 What we are saying is, because they failed to  
4 present it, they shouldn't be able to make those  
5 kind of arguments.

6 What you heard Mr. Bernardo say, and they did  
7 in their brief, is that, Look, the Plaintiffs are  
8 not prejudiced here because Dr. Longo says the talc  
9 is the same, he has plenty of samples to be  
10 causative, etc., etc. But they cross him on the  
11 number of tests he had done.

12 THE COURT: So what you are saying is -- that  
13 is No. 3 --

14 MS. MCVEY: Yes.

15 THE COURT: -- of what you are requesting.

16 MS. MCVEY: That's right.

17 THE COURT: And you think they basically told  
18 you that, Hey, we are not going to take that  
19 position anyway?

20 MS. MCVEY: Because you are not prejudiced  
21 because Dr. Longo says we are all good. So that is  
22 not really a presumption, I guess, it really  
23 prevents them from making the argument that Dr.  
24 Longo and other Plaintiff's experts haven't tested  
25 enough samples, because they denied us the ability



1 to test samples.

2 The first two are the presumptions, and that  
3 is really about the blanks and the underlying test  
4 data.

5 THE COURT: So the first presumption is  
6 when --

7 MS. MCVEY: It is on Page 34, if that is  
8 helpful.

9 THE COURT: When J&J tests show negative  
10 results, these are tests that either they did or  
11 they commissioned to be done, not random other  
12 tests?

13 MS. MCVEY: That's right.

14 THE COURT: All right. If the evidence,  
15 underlying evidence supporting the negative results  
16 has either not been retained or has been destroyed,  
17 that the jury may presume that the tests would have  
18 been positive?

19 MS. MCVEY: That the missing data showed  
20 asbestos fibers were present. And the exact  
21 language we are requesting is on Page 34 of our  
22 brief, if that is helpful. I just want to make  
23 sure I am being real technical on the language.

24 THE COURT: And that is No. 1, right?

25 MS. MCVEY: Yes, ma'am.

1 THE COURT: And I think what I'm adding to  
2 that is that when J&J introduces a test result  
3 performed by it or commissioned by it or --

4 MS. MCVEY: Or requested by it, maybe.

5 THE COURT: All right. And then the second  
6 one is, When J&J argues any positive tests for  
7 asbestos were the result of lab contamination but  
8 fails to retain evidence related to blanks used to  
9 control contamination, the jury may presume the  
10 blanks were free from asbestos contamination. All  
11 right?

12 MS. MCVEY: Yes, ma'am.

13 THE COURT: So that is essentially, after it  
14 all boils down to it, are the two things you are  
15 asking for?

16 MS. MCVEY: That's right.

17 THE COURT: And if there is further  
18 clarification needed with respect, particularly --  
19 well, with respect to either of those presumptions,  
20 you point to the exemplars on Page 13 and 14 of  
21 your brief?

22 MS. MCVEY: That's right, Your Honor. And I  
23 think what we could do is submit relatively quickly  
24 a listing of the tests we believe fall into that  
25 category and give it to the other side and they

1           could agree -- not agree with whatever your ruling  
2           is going to be, but agree that these are tests that  
3           either Johnson & Johnson did or --

4           THE COURT: I gotcha.

5           MS. MCVEY: -- requested be done.

6           THE COURT: All right, well, here is what I am  
7           going to do. I am going to --

8           MR. HERNS: Excuse me, Your Honor.

9           MR. BERNARDO: Your Honor, I'm sorry to  
10          interrupt.

11          THE COURT: Unmask so I can hear you.

12          MR. BERNARDO: May I just briefly be heard on  
13          just one point?

14          THE COURT: Certainly. Come right up,  
15          Mr. Bernardo.

16          MR. BERNARDO: Thank you. I appreciate it,  
17          Your Honor. I promise to be very brief.

18          THE COURT: Sure. Go right ahead.

19          MR. BERNARDO: I want to go backwards. I just  
20          want to state for the record that we do not agree  
21          with the third one that is on Page 35 of their  
22          brief, despite my argument that Plaintiffs aren't  
23          prejudiced. I just want to state for the record we  
24          disagree with that. Obviously we have already made  
25          it clear we disagree with any of these, but to the

1 extent Your Honor is considering entertaining them,  
2 in No. 1, we would suggest that the words at the  
3 end, the last line is that, The jury may presume  
4 that the missing data showed asbestos fibers. At a  
5 bare minimum, Your Honor, it should be, below the  
6 detection limit, because that would be consistent  
7 with what the other evidence is opposed to  
8 something more. And that on --

9 THE COURT: Well, you are asking me to put in  
10 a qualifier that is hotly disputed, which is what  
11 detection level is. This simply says, The jury may  
12 presume the missing data showed asbestos fibers  
13 were present. And you are trying to negate that  
14 presumption by saying, below detection levels.  
15 That is the evaluation of why you don't have the  
16 test results or -- I don't know how I could do  
17 that.

18 MR. BERNARDO: Because that would be  
19 consistent with all of the other documentation.  
20 That goes back to the Pringle case, Your Honor,  
21 where the presumption has to be consistent with the  
22 evidence, it can't just be what Plaintiffs would  
23 like it to be. And that --

24 THE COURT: No, no. This has been done  
25 because you presented this test result but did not

1 retain the underlying material that would allow  
2 someone else to contest that.

3 MR. BERNARDO: Understood, Your Honor. I am  
4 simply stating our objection. I understand your  
5 point.

6 THE COURT: Very good. I understand.

7 MR. BERNARDO: And then the other point, which  
8 you may disagree with, but I will state it for the  
9 record.

10 THE COURT: Sure.

11 MR. BERNARDO: In the second one --

12 THE COURT: Yes, sir?

13 MR. BERNARDO: So the first one -- I'm sorry,  
14 the second one in the last line where it says,  
15 Control for such contamination, to the extent Your  
16 Honor is considering this, J&J submits there ought  
17 to be something here that says, To the extent  
18 evidence shows or reasonably shows that such blanks  
19 exist. Because, as you recall, Your Honor, there  
20 has been no evidence that for each of these blanks  
21 did exist, the Plaintiffs are claiming they did, I  
22 mean, if there is some evidence in the documents or  
23 otherwise that these existed, that would be  
24 consistent with the kind of inference that is being  
25 sought here as opposed for just the jurors to

1           assume that these existed and were destroyed.

2           THE COURT: I'm assuming the way this is  
3           worded that that wouldn't be a problem because what  
4           it says is, J&J failed to retain evidence related  
5           to the blanks used as a control for such  
6           contamination. And if no blanks were used, that  
7           could simply be pointed out by the Plaintiff as a  
8           reason why you ought not to give those too much  
9           weight. This is a more permanent thing than that.  
10          This is, Your test thing said -- or it could  
11          otherwise be determined that blanks were used, but  
12          they haven't been retained.

13          MR. BERNARDO: Understood, Your Honor. And,  
14          again, I am just stating our --

15          THE COURT: Sure. And you object to the whole  
16          thing. I get that. I just want to make it clear,  
17          I'm not allowing them to assume -- to say anything  
18          about blanks if no blanks were used. They can just  
19          attack it on the basis, Hey, these blanks checked  
20          for contamination, it is only where it is otherwise  
21          shown that blanks were used.

22          MR. BERNARDO: Thank you, Your Honor. Those  
23          are my points. I promised I would be brief.

24          THE COURT: All right. So here is what I will  
25          do. The two presumptions that I would use would be



1       that when J&J introduces a test result that is  
2       negative for asbestos -- wait a minute -- that when  
3       J&J introduces a test result for tests performed by  
4       it or commissioned by it that is negative for  
5       asbestos, reports no quantifiable asbestos, or  
6       contains similar language, if the evidence shows  
7       J&J destroyed or unreasonably failed to preserve  
8       underlying data related to that test, the jury may  
9       presume that the missing data showed asbestos  
10      fibers were present.

11             Then the second one would be, When J&J argues  
12      any positive tests for asbestos were the result of  
13      lab contamination, but J&J failed to retain  
14      evidence related to the blanks used as a control  
15      for such contamination, the jury may presume the  
16      blanks were free from asbestos contamination. And  
17      that would be the two presumptions. These  
18      presumptions can only be used if the Plaintiff goes  
19      further and supplies before trial -- and I would do  
20      it as quickly as you can in fairness to them and  
21      discovery they may wish to conduct -- a listing of  
22      all the tests which meet the criteria I just set  
23      forth. And those lists should be in the format as  
24      detailed in the exemplars contained at Page 13 and  
25      14 of the Plaintiff's motion just heard. Okay. So

1           that is what I'm going to do about so-called  
2           presumptions.

3           MS. MCVEY: Thank you, Your Honor.

4           THE COURT: All right. Now, what else have we  
5           got, compel?

6           MS. MCVEY: I think the motion to compel has  
7           been resolved. The only thing I need to talk to  
8           you about is the date. I think we are good. I  
9           think they had offered to put up a witness either  
10          the 5th or the 8th. Is that still the deal?

11          MR. BERNARDO: And we can I think commit to  
12          the 5th.

13          MS. MCVEY: Okay, great.

14          THE COURT: Great. So that is off the list as  
15          long as you can renew it if it gets to be a  
16          problem.

17          MS. MCVEY: That sounds good.

18          THE COURT: But otherwise it is off the list.

19          MS. MCVEY: Your Honor, do you want me to  
20          draft an order and send it around to everybody?

21          THE COURT: Please. And let me just say this.  
22          Draft an order and send it around. And I am  
23          mindful of the fact that all this may be nugatory  
24          if the Court in the Western District of North  
25          Carolina Bankruptcy Court rules that J&J is

1 entitled to protection. And if the Court so rules,  
2 Mr. Herns, I am sure you will forward to me quickly  
3 the order when you get it, and then I will suspend  
4 everything at that time.

5 MR. HERNS: Certainly, Your Honor.

6 THE COURT: And let me say, when I suspend  
7 everything, that will carry with it the ability to  
8 be revisited at some time later when the stays were  
9 lifted. So let me just say that, as I indicated  
10 from the start of this program, I want to go on  
11 forward with these things, but I will be much  
12 impacted by what Judge Whitley does in the motions  
13 that are being heard. And I don't want this ruling  
14 to be regarded or used as any kind of evaluation by  
15 this state court judge what is in the proper  
16 province of the Bankruptcy Judge of the Western  
17 District of North Carolina.

18 MS. MCVEY: Agreed.

19 THE COURT: All right. Anything further?

20 MS. MCVEY: No, Your Honor.

21 MR. BERNARDO: No, Your Honor.

22 MS. MCVEY: Thank you so much.

23 MR. HERNS: No, Your Honor. Thank you.

24 THE COURT: Thank you so much for your  
25 patience. Adjourned.

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MS. MCVEY: Thank you, Judge.  
(WHEREUPON, the hearing adjourned at  
2:29 p.m.)

(END OF TRANSCRIPT)

CERTIFICATE OF REPORTER

STATE OF SOUTH CAROLINA       )  
                                                  )  
COUNTY OF RICHLAND            )

I, Deborah M. McCurdy, Official Court Reporter for the Fifth Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete Transcript of Record of the proceedings had and evidence introduced in the trial of the captioned case, relative to appeal, in the Court of Common Pleas for Richland County, South Carolina, on the 28th day of October, 2021.

I do further certify that I am neither of kin, counsel nor interest to any party hereto.

October 30, 2021

*s/Deborah M. McCurdy, RPR*

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Deborah M. McCurdy, RPR  
Fifth Circuit Court Reporter

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| theorizing [2] 62/17 62/18                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                 | through [12] 23/12 34/7 34/8<br>36/19 55/22 57/13 60/4 61/6 61/25<br>62/7 63/12 67/10                                                                                                                                                       | unable [1] 47/17                                                                                                                                                                                               |
| there [83] 10/5 10/8 10/15 10/17<br>11/19 11/24 13/14 13/21 14/10<br>14/15 15/9 15/11 16/13 18/25 20/9<br>21/14 21/17 22/2 22/20 22/21<br>24/10 26/5 31/8 31/23 32/11 32/15<br>33/21 34/25 35/3 36/2 39/25 42/19<br>48/5 50/1 50/7 51/4 52/14 55/6<br>55/9 55/11 56/1 56/14 57/13 57/15<br>58/1 59/6 59/9 59/24 61/3 61/8<br>61/12 61/13 62/8 62/21 63/23 64/2<br>65/12 65/14 65/15 65/18 65/23<br>65/25 66/22 67/8 68/1 68/15 68/23<br>69/14 69/16 72/3 72/5 72/6 73/11<br>73/16 73/16 73/18 74/19 74/25<br>76/19 81/17 84/16 84/19 84/22 | throughout [1] 58/3                                                                                                                                                                                                                         | unavoidable [1] 35/12                                                                                                                                                                                          |
| thereafter [1] 9/10                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                        | Thursday [2] 20/8 20/14                                                                                                                                                                                                                     | under [11] 6/19 6/24 7/3 8/12 9/6<br>17/12 20/3 60/25 61/18 62/11<br>64/11                                                                                                                                     |
| therefore [2] 17/7 42/20                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                   | tilt [1] 70/11                                                                                                                                                                                                                              | underlying [29] 37/17 38/9 42/22<br>43/2 43/7 45/20 46/1 46/15 47/21<br>48/3 48/10 48/13 49/20 49/21<br>50/13 52/12 52/23 53/5 53/7 53/25<br>55/11 58/15 58/16 76/20 77/22<br>80/3 80/15 84/1 86/8             |
| these [52] 3/5 5/20 10/10 15/22<br>20/12 20/24 23/6 24/24 25/19 27/1<br>27/12 27/25 28/13 31/1 31/6 31/19<br>31/22 32/2 32/3 32/4 32/6 32/8<br>36/20 42/19 43/11 43/11 44/13<br>53/18 57/12 57/15 58/6 60/14 62/3<br>62/13 62/20 62/22 63/8 64/3 64/19<br>70/15 72/20 72/25 77/10 80/10<br>82/2 82/25 84/20 84/23 85/1 85/19<br>86/17 88/11                                                                                                                                                                                                | tilting [1] 72/15                                                                                                                                                                                                                           | understand [11] 5/17 10/15 17/22<br>22/1 23/11 29/25 31/10 61/22<br>73/12 84/4 84/6                                                                                                                            |
| they [141]                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                 | time [31] 4/16 11/14 12/8 13/19<br>19/15 20/3 23/10 25/19 27/14 28/2<br>29/20 29/24 30/3 32/6 49/5 51/7<br>56/3 56/3 57/25 59/5 60/13 65/8<br>65/15 66/15 66/25 73/4 73/7 74/17<br>74/24 88/4 88/8                                          | understands [1] 22/19                                                                                                                                                                                          |
| thin [1] 44/10                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                             | timeline [1] 23/5                                                                                                                                                                                                                           | Understood [6] 19/21 30/4 59/21<br>70/4 84/3 85/13                                                                                                                                                             |
| thing [13] 18/14 19/8 26/12 50/23<br>58/5 59/6 59/6 67/16 77/2 85/9<br>85/10 85/16 87/7                                                                                                                                                                                                                                                                                                                                                                                                                                                    | times [2] 40/6 63/15                                                                                                                                                                                                                        | undertook [2] 11/16 56/23                                                                                                                                                                                      |
| things [35] 13/17 19/4 24/21                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                               | timing [2] 25/6 27/23                                                                                                                                                                                                                       | unfairly [1] 53/23                                                                                                                                                                                             |
|                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                            | tissue [1] 41/20                                                                                                                                                                                                                            | Unfortunately [1] 44/21                                                                                                                                                                                        |
|                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                            | title [1] 10/5                                                                                                                                                                                                                              | UNITED [4] 1/15 6/25 16/19 16/21                                                                                                                                                                               |
|                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                            | TOAL [1] 2/18                                                                                                                                                                                                                               | unless [1] 52/5                                                                                                                                                                                                |
|                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                            | today [10] 17/25 18/5 22/25 24/23<br>27/18 28/4 28/9 30/17 33/1 50/19                                                                                                                                                                       | unmask [2] 4/16 82/11                                                                                                                                                                                          |
|                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                            | together [1] 66/19                                                                                                                                                                                                                          | unpackage [1] 58/4                                                                                                                                                                                             |
|                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                            | told [6] 29/17 29/24 40/5 40/13<br>59/15 79/17                                                                                                                                                                                              | unreasonably [2] 77/21 86/7                                                                                                                                                                                    |
|                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                            | tomorrow [1] 14/3                                                                                                                                                                                                                           | unreported [1] 47/18                                                                                                                                                                                           |
|                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                            | too [3] 39/1 50/21 85/8                                                                                                                                                                                                                     | until [10] 14/7 32/2 39/1 39/3<br>39/4 39/6 39/9 65/23 66/14 69/14<br>up [22] 5/8 9/22 10/23 18/20<br>23/22 29/22 33/23 38/2 47/2 50/7<br>56/3 62/10 63/7 69/8 70/17 71/19<br>72/1 74/25 75/1 75/10 82/14 87/9 |
|                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                            | took [1] 13/4                                                                                                                                                                                                                               | upcoming [1] 22/10                                                                                                                                                                                             |
|                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                            | topics [2] 75/2 75/11                                                                                                                                                                                                                       | upon [4] 7/2 45/2 45/4 45/5                                                                                                                                                                                    |
|                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                            | totally [2] 45/11 65/9                                                                                                                                                                                                                      | urban [2] 50/7 50/8                                                                                                                                                                                            |
|                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                            | trace [3] 34/20 35/11 42/15                                                                                                                                                                                                                 | us [15] 11/23 14/18 16/3 23/25<br>25/19 26/18 27/12 27/17 29/17<br>55/12 64/23 64/23 74/6 74/14<br>79/25                                                                                                       |
|                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                            | transcript [4] 1/7 24/20 89/25<br>90/11                                                                                                                                                                                                     | USC [1] 17/12                                                                                                                                                                                                  |
|                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                            | transcription [1] 6/7                                                                                                                                                                                                                       | use [10] 18/23 23/21 30/13 37/25<br>37/25 38/2 42/10 59/19 63/17<br>85/25                                                                                                                                      |
|                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                            | tremolite [9] 34/20 34/22 34/23<br>35/7 35/10 35/11 35/15 37/24<br>40/11                                                                                                                                                                    | used [25] 36/13 38/18 42/15 43/1<br>44/11 44/15 47/9 48/5 48/21 49/2<br>52/20 65/4 66/12 68/3 68/20 78/5<br>81/8 85/5 85/6 85/11 85/18 85/21<br>86/14 86/18 88/14                                              |
|                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                            | trial [14] 13/10 14/8 16/12 27/25<br>30/15 45/20 50/22 51/14 59/22<br>63/4 63/17 65/1 86/19 90/12                                                                                                                                           | uses [3] 37/17 43/10 43/11                                                                                                                                                                                     |
|                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                            | trials [3] 42/19 55/19 73/8                                                                                                                                                                                                                 | USGS [3] 44/3 44/18 45/12                                                                                                                                                                                      |
|                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                            | tried [4] 34/3 34/3 68/13 70/14                                                                                                                                                                                                             | using [4] 36/3 38/8 53/22 53/22                                                                                                                                                                                |
|                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                            | trigger [3] 52/3 65/22 66/10                                                                                                                                                                                                                | utilize [1] 44/12                                                                                                                                                                                              |
|                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                            | TRO [3] 20/1 20/3 22/14                                                                                                                                                                                                                     | <b>V</b>                                                                                                                                                                                                       |
|                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                            | troubled [2] 20/20 63/16                                                                                                                                                                                                                    | value [1] 21/22                                                                                                                                                                                                |
|                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                            | troublesome [1] 56/2                                                                                                                                                                                                                        | variable [1] 44/22                                                                                                                                                                                             |
|                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                            | true [5] 35/17 49/19 53/1 72/24<br>90/11                                                                                                                                                                                                    | vary [3] 31/25 37/13 49/3                                                                                                                                                                                      |
|                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                            | truly [1] 37/7                                                                                                                                                                                                                              |                                                                                                                                                                                                                |
|                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                            | try [6] 15/24 19/17 23/22 30/13                                                                                                                                                                                                             |                                                                                                                                                                                                                |

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| <b>V</b>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                        | vastly [1] 44/14<br>vein [1] 45/10<br>verified [1] 71/6<br>verify [1] 53/2<br>Vermont [3] 35/25 36/6 40/12<br>versus [3] 15/12 42/10 45/17<br>very [47] 5/22 9/21 13/17 14/5<br>14/6 14/23 16/9 19/25 22/25 23/23<br>24/4 24/19 28/3 32/24 33/15 34/8<br>36/12 36/14 41/12 42/8 44/10 47/8<br>50/6 50/9 50/23 53/13 53/13 53/21<br>54/3 54/8 55/22 58/11 59/25 60/22<br>60/23 63/11 63/14 67/17 67/25<br>71/11 72/14 74/9 76/4 76/13 76/15<br>82/17 84/6<br>viability [1] 45/9<br>victim [1] 28/11<br>view [2] 15/14 44/23<br>viewpoint [1] 73/7<br>vintage [4] 37/2 38/10 38/17<br>41/19<br>violation [2] 9/13 14/17<br>violations [1] 9/7<br>virtue [1] 8/19<br>visit [1] 47/7<br>vital [1] 37/6<br>void [2] 9/13 13/5<br>volumes [1] 42/2<br>voluntary [1] 6/23<br>vs [1] 1/7 | we'll [35] 10/9 11/15 13/3 13/11<br>14/22 15/16 19/6 19/16 20/21 21/5<br>22/18 22/23 24/5 27/4 29/4 29/16<br>32/5 34/3 34/7 34/8 48/22 51/16<br>57/8 63/4 63/11 64/5 68/25 70/13<br>73/14 74/1 74/10 75/15 81/19 82/6<br>83/9<br>went [4] 25/20 27/3 63/24 67/10<br>were [56] 3/4 6/12 13/2 14/20<br>14/20 15/6 15/17 15/22 18/14<br>20/17 21/24 23/3 24/1 24/25 26/12<br>28/8 29/19 29/24 31/7 35/12 37/5<br>38/13 40/14 42/25 47/18 51/9 53/8<br>56/25 57/13 57/22 60/14 62/14<br>65/25 67/4 67/21 67/22 69/5 72/3<br>72/20 74/4 77/24 78/2 78/6 80/20<br>81/7 81/10 83/13 85/1 85/6 85/11<br>85/18 85/21 86/10 86/12 86/16<br>88/8<br>Western [5] 4/14 7/1 16/22 87/24<br>88/16<br>what [103]<br>whatever [6] 18/21 30/19 58/19<br>73/25 74/11 82/1<br>wheel [1] 19/15<br>wheel-spinning [1] 19/15<br>when [44] 11/22 11/23 25/9 26/21<br>27/23 32/7 33/5 33/17 34/5 35/18<br>38/18 41/2 43/25 50/4 50/5 53/10<br>56/24 57/25 59/3 63/12 64/11 66/7<br>66/14 66/15 69/6 69/15 69/22<br>70/15 71/3 72/19 74/4 77/17 78/1<br>78/21 80/6 80/9 81/2 81/6 86/1<br>86/2 86/11 88/3 88/6 88/8<br>where [25] 13/6 20/7 30/11 32/7<br>39/18 44/15 45/23 45/23 47/20<br>47/23 51/9 51/22 51/23 52/6 55/24<br>55/25 60/12 63/2 72/13 72/14 74/4<br>76/19 83/21 84/14 85/20<br>WHEREUPON [6] 3/4 4/2 9/25 76/7<br>76/9 89/2<br>whether [22] 4/12 8/19 12/4 13/7<br>21/21 21/22 31/25 42/11 44/23<br>45/1 45/7 45/14 51/25 58/10 58/16<br>58/18 58/19 58/21 58/25 59/8<br>64/25 69/8<br>which [30] 6/18 11/17 12/9 13/10<br>16/20 16/25 19/9 30/6 31/8 32/16<br>36/1 43/8 44/3 44/9 44/12 48/6<br>50/18 52/5 53/15 63/2 63/13 68/13<br>71/24 72/1 73/11 78/22 78/24<br>83/10 84/7 86/22<br>while [7] 24/18 29/15 30/13 51/16<br>53/13 74/24 75/16<br>Whitley [2] 16/19 88/12<br>who [18] 9/19 22/17 28/11 28/11<br>29/13 36/14 37/4 37/8 39/12 39/13<br>42/4 43/15 61/12 62/14 63/23<br>67/10 68/23 70/19<br>whole [3] 45/19 58/3 85/15<br>wholly [1] 1/22<br>wholly-owned [1] 1/22<br>whom [2] 4/20 7/14<br>why [17] 14/19 16/2 28/13 33/7<br>45/19 45/20 49/24 50/14 50/19<br>54/3 57/16 62/25 62/25 64/9 75/15<br>83/15 85/8<br>widely [1] 37/13<br>wider [1] 44/13<br>width [1] 45/17<br>will [64] 4/16 5/8 5/19 5/24 6/5<br>8/18 9/13 9/19 11/3 11/5 12/10<br>12/11 12/25 15/15 18/18 19/12<br>20/6 20/8 20/13 22/2 22/17 22/22<br>23/18 24/19 25/22 25/24 25/24<br>27/5 27/11 28/1 30/24 31/20 31/24<br>33/13 33/13 33/23 33/24 37/13<br>50/4 51/5 51/5 54/6 58/3 60/4<br>61/18 63/10 64/4 70/13 71/17<br>71/17 71/19 73/14 73/15 74/8 74/9 | 75/1 75/16 76/13 84/8 85/24 88/2<br>88/3 88/7 88/11<br>willfulness [1] 64/9<br>Williams [1] 65/17<br>willing [2] 74/23 75/10<br>WINDSOR [4] 1/18 35/25 36/1 46/25<br>WINN [2] 2/11 2/12<br>WINN-DIXIE [1] 2/12<br>wish [1] 86/21<br>withdraw [2] 41/7 74/23<br>withholding [1] 53/13<br>within [1] 12/22<br>without [6] 23/8 37/11 42/22 43/6<br>47/16 49/21<br>witness [12] 22/11 39/12 56/11<br>56/12 56/16 56/23 56/23 75/1 75/1<br>75/4 75/11 87/9<br>witnesses [5] 3/4 12/10 22/13<br>22/23 57/15<br>Wolfson [3] 13/15 14/9 16/6<br>Wolfson's [1] 31/2<br>won't [4] 27/6 43/23 52/5 60/19<br>worded [1] 85/3<br>words [1] 83/2<br>work [3] 23/16 30/25 43/25<br>workers' [1] 6/19<br>working [1] 23/1<br>world [2] 25/10 72/7<br>worries [1] 18/9<br>worst [1] 52/8<br>worth [1] 27/15<br>would [85] 5/6 7/14 9/18 13/3<br>13/8 13/22 13/23 14/4 14/10 14/11<br>14/12 15/18 15/18 16/1 16/4 16/8<br>16/9 16/12 16/13 18/20 20/4 20/4<br>20/21 20/24 23/21 23/24 26/25<br>28/9 29/2 30/10 30/19 31/4 32/24<br>33/2 33/7 34/10 39/15 41/12 42/24<br>43/11 46/11 48/20 49/2 51/21 52/1<br>53/13 53/19 53/20 53/22 54/20<br>60/4 61/24 62/8 64/13 64/25 65/22<br>65/24 65/24 66/9 66/21 70/25 72/8<br>74/23 76/2 76/16 76/17 76/22<br>76/24 77/10 77/14 78/10 78/14<br>80/17 83/2 83/6 83/18 83/22 84/1<br>84/23 85/23 85/25 85/25 86/11<br>86/17 86/19<br>wouldn't [3] 18/15 30/3 85/3<br>wrong [3] 64/17 72/18 78/19<br>wrote [4] 26/25 37/4 37/24 51/8 |
| <b>W</b>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                               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| wait [11] 13/12 14/1 16/7 20/18<br>23/4 24/1 24/7 30/13 31/5 54/2<br>86/2<br>waiting [1] 13/22<br>Wales [1] 70/19<br>want [44] 10/13 19/1 19/13 23/20<br>24/7 27/12 30/19 31/18 31/18<br>31/20 31/22 32/3 32/5 33/1 33/10<br>33/22 34/10 52/6 54/15 55/24 61/5<br>63/9 64/21 66/11 66/12 66/16<br>66/17 67/16 71/22 71/25 72/2 73/1<br>73/10 73/25 74/2 74/8 80/22 82/19<br>82/20 82/23 85/16 87/19 88/10<br>88/13<br>wanted [9] 10/7 10/22 18/22 25/15<br>25/16 30/5 50/19 57/5 57/19<br>wants [1] 54/25<br>was [88] 7/5 9/25 11/15 11/21<br>15/23 21/14 21/17 26/3 26/4 26/5<br>26/8 26/11 26/11 26/17 26/21<br>26/23 27/23 28/23 29/14 29/15<br>29/23 30/5 34/17 34/24 34/25 35/5<br>35/19 35/21 36/1 36/2 36/21 37/6<br>38/7 38/18 38/20 39/9 39/16 40/1<br>41/9 46/22 47/21 48/5 50/2 50/4<br>50/5 50/6 50/8 50/9 50/18 50/21<br>50/21 50/25 51/6 51/8 51/13 51/17<br>51/18 52/23 55/22 56/6 57/15<br>58/10 58/16 59/6 59/9 59/24 60/2<br>60/10 60/13 61/4 61/17 62/9 63/16<br>63/17 65/11 65/13 65/15 66/13<br>66/16 66/22 68/23 68/24 69/6<br>71/20 74/20 76/7 76/19 76/20<br>Washington [2] 50/18 50/23<br>wasn't [2] 59/23 65/18<br>watched [1] 50/3<br>way [12] 13/9 15/11 18/21 23/12<br>27/5 28/10 59/12 60/5 70/12 71/1<br>71/6 85/2<br>we [162]<br>we'll [2] 25/5 25/21<br>week [14] 12/8 12/20 12/21 13/6<br>13/19 13/23 14/3 15/6 15/15 20/14<br>27/19 30/13 30/23 31/5<br>weight [3] 46/23 69/24 85/9<br>Welcome [2] 4/22 4/25 |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                  | y'all [1] 75/15<br>years [5] 36/22 38/17 39/8 39/10<br>72/9<br>yes [14] 4/22 11/12 21/7 24/10<br>28/17 32/14 34/13 73/24 74/3<br>75/25 79/14 80/25 81/12 84/12<br>York [2] 4/21 4/24<br>you [186]<br>your [152]<br>Yuhas [1] 36/9                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                   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