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THE STATE OF SOUTH CAROLINA
In The Court of Appeals

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

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

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 2

JERRY B. NEWTON and
PATSY NEWTON

Plaintiffs,

v.

JOHNSON & JOHNSON, ET AL.

Defendants.

CAUSE NO. 2019-67903
District Court
Harris County, Texas
11th Judicial District

AFFIDAVIT OF STEVEN E. HABER, M.D.

Before me, the undersigned authority, on this day personally appeared Steven E. Haber, M.D., who after being by me duly sworn, upon oath deposed and stated that the following facts are true and correct and based on his personal knowledge:

“My name is Dr. Steven E. Haber. I am of sound mind, over the age of 18 and legally competent and capable in all respects of making this Affidavit and personally acquainted with the facts stated herein. All the facts contained herein are true, correct, and based on my personal knowledge.

I am currently, and at all times material to this Affidavit, a medical doctor licensed to practice medicine in Texas. I have been licensed to as a physician in Texas since 1987. I am also licensed to practice medicine in Arkansas, New Mexico, Mississippi, and Oklahoma. I have been Board Certified in Internal Medicine since 1989 and Board Certified in the subspecialty of Pulmonary Diseases since 1992. I am a diplomate of the National Board of Physicians and Surgeons. I am a Fellow of the American College of Chest Physicians and a member of the American College of Occupational and Environmental Medicine and the American Thoracic Society. I am a Fellow of the American College of Physicians. I maintain a medical practice in pulmonary disease, occupational lung disease, and internal medicine. I

have been practicing medicine for more than 30 years in the fields of Internal Medicine and Pulmonary Diseases. My medical licensure is current. Currently, I practice medicine at Respiratory Medicine Consultants in Houston, Texas. I have hospital privileges at several Houston area hospitals.

Throughout my career, I have seen patients with a variety of medical and pulmonary diseases. I have diagnosed and managed patients with a variety of occupational pulmonary diseases, including asbestos-related diseases. I have been involved in the diagnosis and management of patients with malignant mesothelioma. I have extensive knowledge and clinical experience in the area of occupational lung diseases. I am a certified B-reader from the Centers for Disease Control and Prevention, National Institute for Occupational Safety and Health (NIOSH), and the Appalachian Laboratory for Occupational Safety and Health (ALOSH). I have been a NIOSH-certified B-reader since 2003. B-readers evaluate chest radiographs for the presence of pneumoconiosis as well as other conditions, including mesothelioma and other cancers. I have published in peer-reviewed medical journals, including on malignant mesothelioma. I have testified on behalf of plaintiffs and defendants in litigation regarding asbestos-related disease, including mesothelioma. I have been accepted in both State and Federal courts as an expert in internal medicine, pulmonary medicine, and occupational lung disease. A copy of my CV is attached (Exhibit A).

Pulmonologists evaluate and treat patients with diseases of the chest and respiratory system. Internal Medicine physicians, or internists, have training and expertise in diseases related to the internal organs and internal processes of adults. As an internist and pulmonologist, I have specialized knowledge of the pathophysiology, biology, and disorders of not only the chest and respiratory system but organ systems throughout the body. Pulmonologists and internists must also maintain specialized knowledge of the epidemiology of diseases that they see or treat. Additionally, understanding disease causation is essential to our diagnostic duties. Pulmonologists and internists may face diagnostic situations with a broad differential diagnosis (the number of potential diseases consistent with those of the patient). To focus diagnostic investigation more narrowly, particularly when dealing with dust-related diseases, a comprehensive occupational and exposure history is helpful. With asbestos-related diseases, the ability to use information from an occupational and exposure history requires the physician to understand issues of industrial hygiene, toxicology, chemistry, geology, mineralogy, and epidemiology. Moreover, physicians frequently read the reports and conclusions of other physicians or scientists and rely upon others' work in clinical practice.

All opinions that I have issued in this Affidavit are expressed within a reasonable degree of medical certainty. I base my opinions on the clinical, radiological, and pathological data, Mr. Jerry Newton's exposure history, my education, training, and experience as a medical doctor, internist, and pulmonologist, and the current medical and scientific evidence about the health effects of asbestos, including epidemiological evidence, animal studies, case reports, fiber burden analyses, and laboratory testing. I have attached a listing of documents and references pertaining to the opinions stated herein (Exhibits B and C). At deposition or trial, I may provide analyses and/or criticisms of defendant opinions, reliance articles, or publications. I reserve the right to amend or supplement my opinions based upon any new or additional information as discovery progresses.

I hold the following general causation opinions:

1. Asbestos is the major cause of malignant mesothelioma.
2. The carcinogenic risks apply to all asbestos fiber types, regardless of source, including from talc containing asbestos.
3. Talc containing asbestos fibers is carcinogenic to humans and causes malignant mesothelioma.
4. There is insufficient scientific proof of the existence of "spontaneous" malignant mesothelioma in humans (i.e., unrelated to mutagen). To the extent that such cases occur, they would be exceptionally rare, far below the "background" rate.
5. There is no established threshold of asbestos exposure below which there is no risk for malignant mesothelioma and epidemiological studies reveal significant risk for malignant mesothelioma below (and in some studies well below) 1 fiber/cc-year.
6. Visible dust from asbestos-containing products contains large numbers of asbestos fibers that greatly exceed background ambient levels.
7. Consumer talcum powder products are used in a manner that creates respirable dust in the user's breathing zone.
8. In general, when compared to adults, children and adolescents are at greater risk from the effects of carcinogens, such as asbestos.
9. Neither the presence of asbestosis nor pleural plaquing is required for asbestos to cause mesothelioma.
10. Malignant mesothelioma causes significant symptomatology.
11. The overall survival of patients with malignant mesothelioma is dismal.
12. The average residual life expectancy in the U.S.A. for a 76-year-old Caucasian male is 10 years.

The adverse health effects of asbestos include asbestosis, asbestos-related pleural disease, lung cancer, and malignant mesothelioma. These diseases all have in common long latency periods and a cumulative dose-response relationship. The occurrence of disease also depends upon individual susceptibility.

Asbestos is a toxin and all asbestos fiber types are capable of inducing DNA damage. The carcinogenic risks apply to all fiber types wherever they are found, including from talc containing asbestos. Asbestos fibers have been shown to induce oxidative stress, inflammatory response, genetic changes, epigenetic alterations, and cellular toxicity and tissue injuries in target cells in vitro and tissues in vivo. There is an increased susceptibility to cancer from early-in-life exposures to carcinogenic hazards, such as asbestos.

The adverse health effects of asbestos were first reported in the late 1800s. By the early 1900s, more data were published demonstrating that asbestos exposure is hazardous to human health and potentially deadly. In the 1920s and 1930s, more scientific and published literature reported on the health effects of breathing asbestos. By the 1930s and 1940s, medical articles and journals indicated that asbestos could cause cancer. Although cases of pleural tumors associated with asbestos exposure were described in the 1940s and 1950s, the relationship of mesothelioma and asbestos was more firmly established by 1960, based on a case series of 33 patients.[Wagner, 1960] Concerns about asbestos being an impurity in talc were also known for over 100 years. Talc containing fibrous amphiboles and chrysotile have been shown to cause non-malignant diseases and malignancy for well over half a century.[Siegal 1943][Kleinfeld 1955]

The generic term “asbestos” is used to describe a heterogeneous group of hydrated magnesium silicate minerals in fiber form. The definition of asbestos can differ depending on context. As a commercial term, asbestos refers to principally three fibrous silicate minerals: amosite, crocidolite, and chrysotile. Those mineral fibers have been reported to have commercially useful properties, such as high heat resistance, acid resistance, electrical resistance, tensile strength, and in some cases, flexibility. Geologists or mineralogists may have different definitions, being more concerned about how it was formed (“habit”), whereas physicians and scientists are more concerned if the fiber can create a risk for disease. The federal government typically defines asbestos as the fibrous serpentine (chrysotile) and the fibrous forms of the amphibole group (amosite, anthophyllite, crocidolite, tremolite and actinolite). I have seen documents wherein industry, including Johnson & Johnson and Pfizer, have used the same definition. A fiber has an aspect ratio of at least 3:1. Chrysotile, amosite, anthophyllite, crocidolite, tremolite and actinolite,

when in a fibrous form, can cause a spectrum of diseases, including cancer. Based on the medical and scientific literature on the health effects of asbestos, to physicians such as myself, “asbestos” means any of these six minerals in fiber form. This definition is ubiquitous amongst medical texts and published papers.[Gochfeld, 1995][Witschi, 2001][Fraser 1999][Selikoff, 1986]

The commercial properties of asbestos do not correlate with the health effects. There are other fibrous minerals, not meeting the regulatory definition of asbestos, which are also capable of producing adverse health effects (e.g., erionite). For instance, it has long been known that fibers shorter than those included in regulatory definitions are carcinogenic. A definition of asbestos that requires a determination of the “habit” in which the fibers grow, or even a regulatory definition of asbestos such as how OSHA defines asbestos, may exclude from consideration fibers of chrysotile, amosite, anthophyllite, crocidolite, tremolite or actinolite that have been demonstrated to cause disease, including mesothelioma. While definitions in other fields can be important to consider for context when reviewing regulatory and scientific documents, those other arenas may not fully capture the relevant health criteria for evaluating causation.

The US Geological Survey (USGS) rejected the 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.”[Meeker, 2006] As the USGS recognizes, different contexts call for different definitions for asbestos: “Asbestos has been defined by workers 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.”[id]

Narrowly defining asbestos to only those structures that have a mean aspect ratio of 20:1 to 100:1 or greater, fiber length greater than 5 µm, and width less than 0.5 µm, plus two or more additional characteristics (fiber bundles displaying splayed

ends, matted masses of individual fibers, and fibers showing curvature), is inaccurate when trying to identify asbestos as an impurity in other minerals, such as talc, and results in undercounting of asbestos fibers. Dr. Sanchez of the R.J. Lee Group has applied this definition in the past. In this report, the definition that requires aspect ratios of 20:1 or higher is referenced as “Dr. Sanchez’ definition.”

Recently, the FDA commissioned an interagency working group of 38 subject matter experts from multiple federal agencies to develop a white paper reflecting the consensus opinions of the group on the detection of harmful mineral particles associated with cosmetic talc. As part of their recommendations, when testing cosmetic products containing talc and talc intended for use in cosmetics, the working group advises, “Tabulate, at minimum, all amphibole and chrysotile particles having a length ≥ 0.5 micrometer... and a ratio of length to width, i.e., aspect ratio (AR), $\geq 3:1$ ” and “avoid categorizing such particles as non-asbestiform when there is ambiguity as to habit of growth.”[IWGACP, 2021] The working group calls for a focus on fibers or elongate mineral particles (EMP) at a much broader range of sizes and aspect ratios than what would be included using Dr. Sanchez’ definition. Both commercially exploited asbestos deposits and asbestos obtained by the National Institute of Standards and Technology (NIST) include a significant range of sizes of fibers and aspect ratios, most of which would not meet Dr. Sanchez’ definition.[Harper, 2008] [Harper 2012] In fact, Harper et al. reports that only 2%, 8%, and 41%, respectively, of fibers of NIST tremolite asbestos, NIST actinolite asbestos, and asbestos at a shipyard had aspect ratios $>20:1$. [Harper, 2008][Harper 2012] I do not use Dr. Sanchez’ definition of asbestos because it excludes fibers of chrysotile, amosite, anthophyllite, crocidolite, tremolite or actinolite that have been established to be carcinogenic.

Some have claimed that in response to a citizen’s petition to the FDA that the FDA determined in 1986 that cosmetic talc is safe. The FDA in 1986 did not issue a formal statement that asbestos in trace levels in talc could not cause disease nor do the data support such a conclusion. Over 35 years ago, the Acting Associate Commissioner for Regulatory Affairs issued a letter in response to a citizen’s petition, based on a 1985 risk assessment by Mr. Robert Brown, a mathematician, not a medical doctor. Mr. Brown’s conclusions regarding a “worst-case” scenario were based on faulty assumptions and contradicted by actual data from industry regarding the amount of asbestos in the talc it sold. This risk assessment was a thought experiment of lifetime risk for certain cancers related to exposures to asbestos in talcum powder while being diapered from birth until age two. Thus, the exposure scenario used by Mr. Brown would not be applicable to talc exposures of longer duration and from uses unrelated to diapering. Mr. Brown was incorrect in

the amount of air a baby breathes, thus under-estimating exposure 5- to 6-fold. The amount of air an adult breathes per minute (minute ventilation) is 3 to 4 times greater than that of a neonate. The higher the minute ventilation, the greater amount of asbestos that will be inhaled at any given air concentration. In addition, Mr. Brown did not consider that on a body weight basis, the volume of air passing through the lungs of an resting infant is twice that of a resting adult.[EPA, 2008] Additionally, Mr. Brown made assumptions regarding the frequency of diapering (only five times per day), length of diapering time (75 seconds each), and total duration (two years), all of which likely further falsely lowered the calculated risk. Moreover, there was an assumption of instantaneous stoppage of exposure (i.e., no consideration of the lingering asbestos in the air) and lack of re-entrainment, both of which are scientifically incorrect assumptions.

Mr. Brown assumed that the asbestos content in talc was 0.1% by weight. One of the citations in support of this assumption was from a November 1984 letter by Linda Taylor, Ph.D., who acknowledged that no testing had been done on talc since 1979 (and which had a limit of detection of 0.1% for tremolite and 1-2% for anthophyllite or chrysotile). She noted, "...it is not known whether cosmetic talc (used today) is contaminated with asbestos" and "or what levels of asbestos, if contaminated." The FDA documents cited explicitly acknowledge the lack of data or foundation for the amount of asbestos in cosmetic products, let alone the "worst case" for those talcs. It was an assumption.

The risk assessment also acknowledged there was a "general consensus" that current talc mines are "virtually free of asbestos," which has been shown to be inaccurate due to industry's withholding of hundreds of tests evidencing asbestos in talc. The author of the risk assessment was also led to believe by industry that the "offending mines have gradually been abandoned" making the conclusion of the Acting Associate Commissioner unsurprising when he stated: "the quality of cosmetic talc has significantly improved." This was not the case. Some cosmetic companies continued using their same talc sources.

From a medical perspective, the amount of asbestos in a product is an important consideration but one must also consider the air concentration of asbestos during product use. As noted later in this report, air sampling shows that even with talc containing less than 0.1% asbestos (by weight), significant amounts of asbestos fibers are released into the air. These levels, when associated with repeated use, have long been associated with asbestos-related illness, including mesothelioma. Moreover, the FDA has evaluated this issue and as recently as 2019 concluded that levels well under 0.1% should not be used and do represent health concerns. In

fact, levels as low as 0.00002% were found to be adulterated and should not be used.

Additionally, as shown below, even assuming 0.1% asbestos content by weight, the respirable fraction will be significantly higher.

Burns et al. relies on this flawed 1985 Risk Assessment.[Burns, 2019] The authors also outline an asbestos risk assessment of infant and adult cumulative exposure estimates with four consumer application scenarios. Even if one were to accept the authors' fiber to dust conversion factor of 1.72:1, the calculation underestimates the exposures by at least two orders of magnitude. Burns et al. assumes that only 0.1% (1 of 1000) of the fibers in an airborne sample of cosmetic talc are asbestos. Published studies, as well as data provided by Johnson & Johnson and others, demonstrate that the proportion of asbestos fibers of total fibers in talc used in cosmetic products is significantly higher.[Gordon, 2014][Steffen, 2020][Paoletti, 1984] This error in the Burns et al. risk assessment was discussed in a letter to the editor.[Finkelstein, 2019] Even a conservative adjustment for this error would place the upper bound of the cumulative asbestos exposure as estimated by Burns et al. to be 0.96 f/cc-years, a number more consistent with other published data and a level at which published data demonstrate a significantly elevated risk for mesothelioma (as discussed below).

Malignant mesothelioma results from neoplastic transformation and uncontrolled growth of mesothelial lining cells, most commonly encountered in the visceral pleura and second most commonly in the peritoneum. Normally, the mesothelium is a very slowly renewing tissue and thus it is less likely that any random DNA error would go unnoticed by the body's DNA repair mechanisms. The inflammatory injury mediated by asbestos increases mitotic activity greatly and creates an environment capable of inducing carcinogenesis. Based on genome-sequencing data, a normal adult cell cannot suddenly or spontaneously transform into a cancer cell.

Every tumor contains thousands of genetic (and epigenetic) alterations that are not present in the patient's germline (somatic mutations), but only a small fraction of these alterations occurs in "driver" (cancer-causing) genes. Mutations in only about 1% of genes in the human genome have been shown to act as driver genes for common cancers and random mutations generally encompass somatic point mutations rather than driver mutations.[Belpomme, 2016] All but a very small fraction of mutations are "passengers," found in tumors cells only because they occurred coincidentally during the long march toward tumorigenesis.[Vogelstein,

2015] In solid tumors of adults, at least three driver genes are needed for a cell to evolve into an advanced cancer and the order in which they occur is also important. Given the extreme uncertainty of stem cell mutation rates, stem cell replication is a poor predictor of cancer incidence rates at any given cancer site.[IARC, 2015] For certain cancers, like malignant mesothelioma, a very high proportion of drivers are due to extrinsic exposures.[Perduca, 2019]

BCRA1 associated protein-1 (BAP1) is one of the known tumor suppressor genes. Somatic BAP1 mutation is a common driver for malignant mesothelioma, likely due to DNA damage caused from exposure to asbestos. There are a select number of known cases in the world of a germline (inherited), autosomal dominant BAP1 mutation. These individuals are at increased risk for several cancer types, particularly melanotic cancers, but also malignant mesothelioma and renal cell carcinoma. However, studies of this cohort and animal studies demonstrate that the risk of mesothelioma is still generally dependent on exposure to asbestos and that there is an increased sensitivity to asbestos in these individuals. The lack of BAP1 staining in tumor cells can sometimes help pathologists differentiate mesothelioma from benign tissue or other malignancies. BAP1 mutation of tumor cells cannot inform scientists of the germline status of the patient, but retained BAP1 in tumor cells excludes a germline BAP1 mutation.

Asbestos is a well-known cause of malignant mesothelioma. In fact, the causal relationship between asbestos exposure and the development of mesothelioma is so firmly established in the medical and scientific literature that it is accepted as fact. In the United States, asbestos is the major cause of malignant mesothelioma and the only epidemiologically established environmental cause of mesothelioma.

Asbestos is the only identifiable cause for most cases of malignant mesothelioma. The relationship between asbestos and mesothelioma is so strong that some consider mesothelioma a “signal” or “sentinel” tumor.[Checkoway 2004] There is wide agreement that when mesothelioma is seen, asbestos exposure is likely to have previously occurred, or conversely, when asbestos exposure has occurred, there is significant relative risk of later mesothelioma. All fiber types of asbestos are capable of inducing mesothelioma.

There is no evidence of a threshold level below which there is no risk of mesothelioma.[Hillerdal, 1999][Hodgson, 2000] Mesothelioma has been reported to occur with brief or low-level asbestos exposure. There is no completely “safe” level of asbestos exposure that has been established.[EPA, 1986] Exposure limits established by government regulations were not intended to protect from cancer.

Mesothelioma is a dose-response related disease, however; the greater one's cumulative exposure to asbestos, the greater their risk for the development of mesothelioma. Nevertheless, mesothelioma may be related to brief, low level, or indirect exposures to asbestos.[Henderson, 1997][DeVuyst, 2002][Browne, 1983] Even products with less than 1% asbestos can be dangerous and "inconsequential" and "low-dose" exposures to asbestos are associated with mesothelioma.[USP, 2014] Cases of mesothelioma have been reported in the medical and scientific literature after as little as only one day of exposure [Greenburg, 1974] and even a "slight" exposure to asbestos has been reported to result in mesothelioma.[Chen, 1978]

Epidemiological studies look at the relationship between cumulative asbestos exposure and risk of mesothelioma. Studies have demonstrated increased risk for malignant mesothelioma associated with cumulative asbestos exposures in ranges below one fiber/cc-year. For example, Iwatsubo et al. found a four-fold risk for pleural mesothelioma among workers with estimated cumulative asbestos exposures of 0.5-0.99 fibers/cc-years.[Iwatsubo, 1998] In a follow-up investigation of this national registry, Rolland and colleagues identified an almost 3-fold increased risk for malignant mesothelioma with a cumulative occupational asbestos exposure below 0.07 fibers/cc-years.[Rolland, 2006] Rodelsperger et al. found almost an eight-fold increased risk associated with an exposure of less than 0.15 fibers/cc-years and with no threshold.[Rodelsperger, 2001] Lacourt et al. reported a four-fold increased risk from exposures at or below 0.1 fibers/cc-years.[Lacourt, 2014] In a study from the Netherlands, Offermans et al. found over a doubling of the risk for pleural mesothelioma after median exposure to 0.20 fibers/cc-years.[Offermans, 2014] Ferrante et al. found over a four-fold risk for pleural mesothelioma from exposures between 0.1-0.99 fibers/cc-years.[Ferrante, 2016] Jiang et al. found over a 20-fold increased risk from exposures below 0.5 fibers/cc-years.[Jiang, 2018] The risk of mesothelioma was increased for cumulative amphibole exposures of 0.01 fiber/cc-years and even below 0.005 fiber/cc-years.[Hodgson, 2000] The EPA estimated more than a two-fold increased risk for malignant mesothelioma associated with asbestos exposures of 0.01 fibers/cc-years and OSHA estimated a 3.5-fold increased risk from exposures at 0.1 fibers/cc-years.[EPA, 1986; OSHA, 1986] There are additional studies showing elevated risk of mesothelioma with similar ranges of exposure.

Thus, scientists have repeatedly shown that cumulative exposures in ranges below 1 fiber/cc-year, 0.1 fiber/cc-year, and even 0.01 fiber/cc-year are linked to or associated with a two-fold or higher risk of mesothelioma. Moreover, the risk of mesothelioma from such exposure ranges has been corroborated throughout the

medical and scientific literature and comports with the data that I have reviewed and considered as a pulmonologist.

Physicians determine causation of mesothelioma based upon the qualitative history of asbestos exposure and not upon a quantitative dose analysis of that exposure. This methodology for establishing causation of mesothelioma is widely accepted in the medical community, has demonstrated increased risk for malignant mesothelioma, and has been repeatedly published in the medical and scientific literature. Even in the absence of markers of asbestos exposure, a history of occupational, domestic, or environmental exposure to asbestos will suffice for attribution of asbestos causing mesothelioma.[Henderson, 1997]

Because there may be too many variables when considering someone's exposures to asbestos, arriving at a specific dose might not be scientifically valid. Rather, scientists and physicians will categorize exposures in terms of (1) job class (for example, "insulation worker" or "pipefitter"), (2) qualitative assessment (based on the nature, regularity, proximity, duration, and intensity of exposure), or (3) dose range estimates (based on comparisons to measurements from like exposures). Moreover, since humans have individual susceptibilities to carcinogens, there is not going to be one specific dose that affects everyone equally. This is the same qualitative approach that I and other physicians use when evaluating toxic exposures (not just asbestos) in our practices.

Latency, the time from first exposure to manifestation of disease, is prolonged in the case of mesothelioma, generally decades, but can be shorter in some cases.[Lanphear 1992][Haber, 2011] Benign markers of asbestos exposure are not required to attribute asbestos as a cause of mesothelioma. Most cases of malignant mesothelioma do not also have asbestosis, and depending on the study, many, if not the majority, also do not have radiographic evidence of pleural plaquing.[Haber, 2011][Mensi, 2016][Spinazze 2022] The presence of such markers, on a probability basis, are sufficient to relate a case to asbestos.[Henderson, 1997]

All asbestos fiber types demonstrate high biopersistence in the human lung.[Feder, 2017]

With regard to fiber size, in a study on rats, Stanton et al. reported that longer ($\geq 8 \mu\text{m}$) and thinner ($\leq 0.25 \mu\text{m}$) amphibole fibers appeared to be more carcinogenic, but they did not identify a specific fiber length that had no biological activity, including fibers $<5 \mu\text{m}$ in length.[Stanton, 1981] Although longer fibers may be

retained more within the lung tissues, studies have shown that shorter fibers predominate in the pleura and mesothelial tissue and ultrafine fibers (length $<5\text{ }\mu\text{m}$, diameter $<0.25\text{ }\mu\text{m}$) have less hindrance for translocation to the pleura.[Suzuki, 2002][Miserocchi, 2009] Moreover, researchers have found that in occupational environments, fibers less than $5\text{ }\mu\text{m}$ significantly outnumbered longer fibers.[Dement, 1990] Short fibers have been shown to produce toxic effects, including carcinogenesis [Yeager, 1983] and the scientific data do not support the conclusion that “short fibers” have no biological effect. Based on its review of the published data, the interagency working group also concluded that fibers $<5\text{ }\mu\text{m}$ in length contribute to disease.[IWGACP, 2021]

Asbestos is present in ambient air, both indoors and outdoors. These “background” or “ambient” asbestos fibers are mostly (85%) composed of short ($<1\text{ }\mu\text{m}$) chrysotile fibers.[ATSDR, 2001] Only about 2% of ambient asbestos is amphibole asbestos and testing has demonstrated no background airborne anthophyllite asbestos. As reported by the ATSDR, using TEM the urban ambient asbestos airborne concentration is less than 0.00003 fibers/cc. Much of the data on ambient levels are derived from measurements taken decades ago, when asbestos was more widely used. Such exposure levels would likely overestimate the amount of asbestos that a person living more recently would expect to encounter. In fact, a recent study indicated there was no measurable asbestos in the ambient air in a major U.S. city.[Ward, 2021]

Asbestos exposures from talc use involve a range of asbestos types and lengths that are not found in the background. Additionally, exposures to asbestos from cosmetic talc use are added to a person’s cumulative exposures, including to background exposures. The background asbestos in the air is fundamentally different in (1) amount, (2) type, and (3) length than the exposures associated with talc sourced from Italy, Vermont, California, and others.

A “background” incidence of malignant mesothelioma has been estimated or suggested to be 1-2 per million/year. Other data support a much lower background level. This background level does not mean that these are unrelated to mutagen exposure. In fact, whether a background level occurring in the absence of exposure to asbestos or other mutagen truly exists is unproven. Scientists use this rate when performing epidemiological studies to help determine if a particular industry or exposure scenario is associated with a higher rate than a person in the general population. Pathology studies have shown that malignant mesothelioma prior to the industrial age was vanishingly rare to non-existent.[Strauchen, 2011][Mark, 1991]

The lack of a documented history of exposure to asbestos does not mean that the mesothelioma occurred unrelated to asbestos exposure, as many affected individuals may be unaware that they had been exposed years earlier and medical investigation of exposure sources is often lacking. It would be incorrect to assume such cases are “spontaneous.” As scientific knowledge has expanded over time, we have learned of additional sources of asbestos exposure not previously inquired about. Studies evaluating exposures in the past did not evaluate talc exposures.[Price, 2009][Spirtas, 1994][Rake, 2009][Goldberg, 2006] Much information regarding asbestos routinely being in cosmetic talc was withheld from the public until recently.[Bird, 2021]

While men with malignant mesothelioma may outnumber women, thought related to more frequent occupational asbestos exposures, both men and women are capable of developing this malignancy. There is no biological reason to conclude that women are less sensitive to the carcinogenic effects of asbestos or that women are more likely than are men to develop mesothelioma unrelated to asbestos, including some sort of genetic predisposition. While some studies made conclusions about the etiology of mesothelioma in women as unrelated to asbestos, researchers often ignored potential exposure pathways or merely assumed that no pathway existed. Although pleural mesotheliomas outnumber peritoneal mesotheliomas in both men and women, some researchers note that women have a slightly lower pleural to peritoneal mesothelioma ratio and opine that this provides evidence of “spontaneous” mesothelioma in women, allegedly because women inhale less asbestos than their husbands who had brought asbestos home on their clothing. This ignores the obvious differences in human anatomy. Powdered substances applied to the perineal area can directly enter the peritoneum through the female genital tract.

Asbestos-related diseases are not isolated to only those occupations that have been studied. Specific exposure scenarios do not require separate epidemiological studies to make causal connections.

Once inhaled, asbestos fibers cause inflammation, injury to the cells, and genetic alterations, which can then produce a malignant phenotype progressing to malignant mesothelioma. Asbestos acts in a cumulative and dose-dependent manner in causing mesothelioma but relatively low-dose exposures to asbestos have been demonstrated to increase the risk for mesothelioma. Assessing a potential exposure source as a percentage of asbestos by weight may be misleading because even a small weight of asbestos can contain exceptionally large numbers

of fibers. For example, just one gram (about one-fourth of a sugar cube) of asbestos could contain billions to trillions of asbestos fibers.

Talc is a hydrous magnesium silicate inorganic material that is mined from the earth, and is generally not a monomineralic material, but rather a mixture of mineral phases. Some of these minerals may pose occupational or even consumer risk of disease.

Asbestos is an impurity (also referred to as a contaminant or co-mineral) of some talc deposits. The type of formation associated with talc deposits involves some combination of four of the six relevant minerals: chrysotile, anthophyllite, actinolite and tremolite.

To assess if an exposure is causative in a person's cancer, I consider the presence, type, and amount of asbestos in the product and how the product use may lead to airborne asbestos fibers. For decades, I have evaluated the causation of asbestos related disease in specific patients. Whether the exposure implicates, for example, insulation, vermiculite, or gaskets, this is the type of information medical doctors routinely investigate. The same is true in evaluating talc exposures. Sources for this information can include medical and scientific publications, industrial hygiene testing, company records, regulatory data, material safety data sheets, mineralogical or geological information, and others.

It has been reported that asbestos found in talc ore is impossible to fully remove from the ore. Talc containing asbestos fibers is carcinogenic to humans and causes malignant mesothelioma. Companies made efforts to use citrus acids to burn asbestos out of the talc, float the asbestos out of the talc, or otherwise remove asbestos from the talc through reagents, ultrasonic grinding, and beneficiation. These methods did not work. Dr. Pooley, a geologist and consultant to cosmetic talc companies beginning in the 1970s admitted that "if you're producing a talc and it's got asbestos in it, no way you're going to get it out." I do not find any claims by others suggesting that asbestos can be entirely removed from the talc to be supported by any of the information I have reviewed.

I have reviewed the published literature, FDA testing, testing by cosmetic talc companies, testing by cosmetic talc company suppliers, testing by third party labs hired by cosmetic talc companies or talc suppliers, expert reports from material scientists and geologists, and more, indicating that talc source mines used by many cosmetic talc companies, including those from Italy, Montana, North Carolina, Brazil, Vermont, California, New York, Ontario, Australia, and China contained

asbestos. Testing spanning decades has been positive for asbestos. I have also reviewed and relied on geological and mineralogical data regarding talc deposits to determine if the testing information is consistent with the asbestos impurities associated with the talc mine.

I have reviewed testing pertaining to the presence of asbestos in talc products, including Johnson & Johnson, Avon, Revlon, Chanel, Cashmere Bouquet, Cover Girl, Gold Bond, Coty, and others. These data provide support for my opinions.

There are hundreds of tests evidencing asbestos in talc used in cosmetic products spanning many decades from various sources, including but not limited to, talc sourced from Italy, Montana, China, Vermont, Alabama, California, North Carolina, Brazil, Korea, Australia, and Canada.

Johnson & Johnson obtained talc for its products sold in the United States from Val Chisone, Italy from 1926 to around 1967, Vermont mines from around 1967 to 2003 (with the exception that it used Italian talc for several months in 1979-1980 during a Vermont miners' strike) and Guangxi, China from 2003 onward. It is my understanding, based on testimony from Dr. Hopkins and from J&J's responses to interrogatories, that the transition from Italian to Vermont-based talc continued into the early 1970s. Among the Vermont source mines, Johnson & Johnson used talc from the Hammondsville, Argonaut, Rainbow, and Hamm mines for its cosmetic products. In reviewing published studies and documents, I have found that talc companies and talc suppliers often referenced the talc source mine or mill with talc codes (e.g., 00000, 1615, Supra).

I critically reviewed testing and analyses of talc from the source mines, milled or processed talc, the finished product at issue and other finished products containing talc from the same source. As to Johnson & Johnson, I have reviewed hundreds of tests showing the presence of asbestos minerals and asbestos in talc from the relevant sources in Italy, Vermont, and China. Such testing and analyses spanned from the 1940s to the present from independent laboratories/scientists, government or regulatory bodies, Johnson & Johnson itself, Johnson & Johnson's consultants, and others in industry. The majority of the positive results that I have reviewed came from testing conducted outside the context of litigation. Some test results indicate that such talc did not meet the definition of cosmetic talc because, in addition to containing asbestos, it contained less than 90-95% talc.

In making my assessment, I have considered the data referenced in a document entitled "Decades of Evidence of Asbestos Content in Johnson & Johnson

Products” and have verified the accuracy of each entry. This document was provided to Johnson & Johnson so the company could identify concerns regarding the accuracy or applicability of the information, and I considered Johnson & Johnson’s responses.

Among the tests of Italian talc that I have reviewed, Battelle Memorial analyzed over 150 samples of Italian talc for Johnson & Johnson in the 1950s to 1960s. Virtually every sample showed the presence of tremolite. Pfizer’s testing of Italian talc in the 1970s and 1980s revealed asbestos fibers in significant concentrations in about half of 234 samples. Dr. Compton found asbestos in 11 of 13 samples from Val Chisone, Italy. MAS found asbestos, primarily tremolite asbestos, in 18 of 32 Johnson & Johnson containers with Italian-sourced talc. Both Dr. Pooley and MAS found asbestos in testing of Coty Airspun face powder containing Italian talc. In addition to MAS testing, I have reviewed a summary table of all testing done by MAS on Italian talc showing the presence of asbestos in Italian-sourced talc from five companies, spanning six decades. Testing of Avon samples containing Italian talc by MAS, McCrone, Ypma and Avon have demonstrated the presence of asbestos. Cashmere Bouquet contained exclusively Italian talc until about 1968. Testing of Cashmere Bouquet by MAS, the Colorado School of Mines, Bowling Green, Gordon, Pooley, McCrone, and others have demonstrated asbestos present. For example, Gordon et al. found asbestos in 50 of 50 samples. As of June 2021, MAS has reported on testing of approximately 91 containers of Cashmere Bouquet talc products, finding asbestos in about 87%. Of those from the 1950s to 1990s, approximately 98% contained asbestos. Many of these samples from Gordon et al. and MAS were during times when Cashmere Bouquet used exclusively talc from Val Chisone, Italy. Colgate testing records report asbestos in the Italian talc it used in Cashmere Bouquet. I have also reviewed a variety of other tests of Italian talc, including from Hazen Research, Ernest Fullam, MSHA and Paoletti that found the presence of asbestos. I have reviewed hundreds of samples evidencing asbestos in talc ore from Val Chisone, Italy, cosmetic grade processed talc from Italy and in finished products using cosmetic grade talc from Italy.

Evidence of asbestos in talc from the Vermont mines used by Johnson & Johnson for its cosmetic products includes testing from Battelle Memorial, McCrone Associates, the Colorado School of Mines, Johnson & Johnson/Windsor Minerals, Cyprus, Luzenac, Dr. Pooley, Dr. Langer, Dr. Blount, EMV Associates, Mountain State Research, Ernest Fullam, Hazen Research, Dartmouth University (Dr. Reynolds), University of Minnesota (Dr. Hutchins), Bain Laboratories, Forensic Analytical, Dr. Compton, and MAS. For example, McCrone repeatedly found asbestos in Johnson & Johnson’s Vermont ore and finished product. In fact, in a

November 1975 memorandum, McCrone reported there was a “rather high” amount of amphibole asbestos fibers in about 15 samples. Dr. Reynolds of Dartmouth told Johnson & Johnson that actinolite and anthophyllite were both present in the ore and talc product. Based on her analysis, Dr. Blount told Johnson & Johnson that its “Vermont talc contains trace amounts of asbestos.” Dr. Compton analyzed 15 samples of Vermont talc, including 7 taken directly from the Argonaut mine and found asbestos in 10 of 15 samples, including 6 of the 7 from the Argonaut mine, with concentrations ranging from 1.1 to 15.3 million asbestos fibers per gram. MAS detected asbestos in 33 of 40 Johnson & Johnson containers with Vermont ore and 8 of 15 samples of Vermont ore used to manufacture Johnson & Johnson cosmetic products.

As for talc from Guangxi, China, I have reviewed results from MAS, AMA, R.J. Lee, and others showing the presence of asbestos. Luzenac detected chrysotile in multiple Guangxi, China composite samples. In about 2009, the South Korean FDA found asbestos in 10 baby powder products containing Chinese-sourced talc. Testing for the FDA in October 2019 found asbestos in Johnson’s Baby Powder containing Chinese talc. MAS has detected asbestos in virtually every sample containing such Chinese talc. MAS found asbestos in well over 100 containers of Johnson & Johnson, Chanel, and Avon products containing Chinese-sourced talc, as well as 29 ore and milled talc samples from China.

My report does not itemize all the testing I have reviewed. The relevant testing and summary documents are either listed in this report or in the attachments to this report.

The information relating to the asbestos in Johnson & Johnson’s talc was not made available to the medical and scientific community for decades. For example, Johnson & Johnson never publicly produced in any case repeated tests evidencing asbestos in its talc prior to 2017. Cosmetic talc companies did not inform the FDA that they possessed test results finding asbestos in the mine ore and/or the finished talc product, nor did they provide those testing results to the FDA. An outside laboratory hired by Johnson & Johnson (McCrone) and Johnson & Johnson worked together to manipulate the asbestos testing results of Johnson & Johnson’s products done by outside laboratories and reported those manipulated findings to the FDA as negative results. These are examples of efforts by cosmetic talc companies, including Johnson & Johnson, which kept the scientific community, including myself, as well as governmental regulators, from critical health information regarding a carcinogen in cosmetic talc. The FDA does not require pre-market approval for cosmetic products, nor does it have a requirement that

industry testing be shared with regulators. The FDA had limited resources to evaluate cosmetic talc safety in the 1970s. In this same period, industry indicated it would share its testing data with the FDA. However, repeated tests, from multiple companies including Johnson & Johnson, revealing the presence of asbestos were not shared.[Bird, 2019] Testing by or for cosmetic talc companies helps inform my opinions regarding the presence of asbestos in their cosmetic talc products. This withholding of information from regulators impacts the weight of findings by the FDA or its Acting Associate Commissioners in 1986.

Since 2017, multiple scientific and medical articles have been published identifying and discussing the dangers associated with asbestos in cosmetic talc. In 2018, the FDA formed an interagency working group comprised of subject matter experts and in 2021 published the opinions of these experts, including for testing and counting asbestos in talc.

As a physician and scientist, it is a normal part of my medical practice to read and/or rely upon the testing of others, including biologists, industrial hygienists, statisticians, and other physicians. I have also reviewed test results where no asbestos was detected, including Johnson & Johnson's discovery responses stating it had listed the entirety of the voluminous testing record concerning Johnson & Johnson's cosmetic talc products. The vast majority of such testing was limited in one or more ways, such that the testing was of limited value. In making my assessment of reliability, I have analyzed the study methodology, just as I have when evaluating published medical literature as part of my practice of medicine. As a physician and scientist, it is a normal part of my medical practice to read and/or rely upon the testing of others, including biologists, industrial hygienists, statisticians, and other physicians. A "non-detect" test for asbestos does not equate to asbestos-free.

An understanding of "detection limits" or "limits of detection" is not isolated to only those who perform the measurements. In fact, a medical textbook on occupational and environmental medicine notes, "It is *critically important* (emphasis added) in evaluating reports of fiber and other particle analysis to be aware of the potential impact of the detection limits of the various analyses. For example, the report of "zero" is sometimes substituted for what should be more correctly termed "non-detected." The detection limit is strongly influenced by several factors, most notably the weight of the tissue analyzed, the number of fields of view examined and magnification used in the instrument. Also, if one type of particle is present at very high concentrations, the detection limit for other particles may be much higher than desirable." [Rom, 2007]

Many tests that did not detect asbestos utilized the J4-1 testing method. This testing method utilized x-ray diffraction (“XRD”) as the initial screen to determine if any further testing was necessary. The limit of detection for XRD was between 0.5% and 5%, thus enabling millions to trillions of asbestos fibers in a gram of talc to escape detection. The J4-1 method was known by industry to be unreliable for detecting asbestos in talc. In fact, the first “round robin” tests, which analyzed a CFTA tremolite-spiked talc, resulted in six of seven participating laboratories failing to detect the spiked tremolite. In other words, 86% of the industry’s laboratories using the CTFA’s J4-1 method failed to detect asbestos in a talc sample known to contain tremolite asbestos. Similarly, optical microscopy (PCM) has significant limitations for detecting asbestos [Lee, 1992], especially in talc [Paoletti, 1984][Blejer, 1973][IWGACP, 2021]

Transmission electron microscopy (“TEM” or electron microscopy) is the most sensitive tool in terms of detecting the presence of asbestos in talc, more than 10,000 times as powerful than XRD. As a physician, when selecting the appropriate test for a patient, one needs to consider the strengths and weaknesses of the tests available, even if the testing is performed by and/or interpreted by others.

For example, a CT scan is a far more sensitive test for screening for lung cancer than plain chest x-ray; so much so that the data on lung cancer screening does not support the use of the chest x-ray. Nevertheless, even by chest CT a cancer can go undetected, and thus even a “negative” chest CT does not allow the physician to tell his/her patient that he/she is cancer-free. It has long been recognized that TEM is the superior microscope to detect asbestos in talc. Laboratory consultants urged talc companies, including Johnson & Johnson, to use TEM to test for asbestos as it was far more sensitive than any other testing method.

Even where TEM was used, many tests had limitations. For instance, Johnson & Johnson used a protocol to detect and quantify asbestos in a small talc sample but report “no asbestos detected.” This protocol required the microscopist to report the presence of asbestos only if there were 5 or more fibers of the same fiber type present, thus allowing the presence of as many as 16 asbestos fibers (4 each of tremolite, actinolite, anthophyllite, and chrysotile) to be reported as “not quantifiable.” This protocol makes evaluating the underlying data critical to determine if asbestos was detected but not reported. Additionally, much of the negative testing results do not have any underlying data or very limited data to evaluate the results referenced.

Other limitations even when TEM was used included lack of utilizing a concentration method, affording insufficient time for analysis, analyzing only a limited number of samples or talc volume, and/or attributing the finding of asbestos to “laboratory contamination.”

There are limits to the use of epidemiological methods when studying diseases like malignant mesothelioma, which are exceedingly rare and generally not diagnosed until many decades after the initial exposure (prolonged latency). For example, to ensure sufficient power, large numbers of individuals need to be followed for an extended period of time. Relatively small sample sizes and/or insufficient follow-up will lead to under-ascertainment of disease. Moreover, malignant mesothelioma is an aggressive cancer, with a life expectancy generally measured in months, and thus there are limitations to obtaining accurate and complete exposure histories. Researchers often must rely upon the memory of relatives or friends to reconstruct a person’s exposure history. Confirmation bias can be introduced by the nature of the questions asked that may seek information only related to known causes and fail to ascertain information on other potential causes that may be relevant. Certainly, until recently physicians and researchers were not inquiring about talcum powder usage. Many studies rely on death certificates, and prior to 1999, the International Classification of Diseases (ICD), did not have a code specific for malignant mesothelioma. As a result, deaths from mesothelioma were often recorded as other types of cancer (for instance, “pleural cancer” or “peritoneal cancer”), resulting in significant under-ascertainment of mesothelioma cases. Finally, given the persistent past detection of asbestos in the ambient air, in some cases made even higher by surrounding industry or environment, there is no truly “unexposed” group with which to compare to the studied “exposed” group. This will lead to a false lowering of the calculated risk.

Epidemiological studies of talc are limited given there have been no studies on talc end-users. Studies have shown a higher rate of malignant mesothelioma in asbestos end-users as compared to asbestos miners and therefore one cannot make assumptions of asbestos exposed end-user risk based on studies of miners and millers.[McDonald, 1980][McDonald, 1997][Hillerdal, 1999] Studies on talc miners and millers are also limited, are often of comparatively small numbers with low power, may have included relatively short exposure durations, may not include sufficiently long latencies, and include “healthy worker” effect. In addition, consideration must be made for the source of the talc (i.e., how it was formed). Moreover, there may be differences in exposures between miners and millers and their exposures are not necessarily comparable to those of end-users. Claims that

talc miners and millers would have had greater exposures to asbestos than end-users fail to recognize important considerations. Nevertheless, a significant number of mesothelioma deaths were reported in the small cohort of Vermont miners and millers who were studied, and studies of Italian talc miners and millers have revealed increased numbers of peritoneal cancers. Industrial talc sources have been shown to have an increased risk of asbestos-related disease, including malignant mesothelioma. For example, miners and millers of industrial talc in New York have been shown to get asbestosis, lung cancer, and mesothelioma at a significantly elevated rate. Coggiola et al. reported that their results support that “excess mortality from mesothelioma...can be attributed to asbestiform fibers contained in talc exposure.”[Coggiola, 2003]

In addition to evaluating the actual talc miner and miller studies, I have reviewed documentation about Johnson & Johnson’s role and influence in those studies. Moreover, some papers have pooled miners and millers from different mines (e.g., Marsh, 2019). In each pooled study, there is no consideration whether the mines included in the pooled analysis are similar in terms of formation, or in terms of the presence, amount, or type of asbestos. Pooling randomized experimental trials can be problematic and misleading.[Green, 2011][Stroup, 2015]

I have also considered the few studies examining talc pleurodesis for non-malignant disease. These studies are looking at exposures from a different route than a person would have with cosmetic talc use, the dose from the procedure is approximately equivalent to only one day’s use of cosmetic talc (or even much less) and the source of the pharmaceutical talc used for pleurodesis in each study is unidentified. Therefore, no comparison can be made to the talc used by Johnson & Johnson. These studies are not instructive of the risk associated from inhalation of talc containing asbestos and are extremely limited because of their lack of power for detecting mesothelioma risk.

Animal studies can be helpful to scientists and physicians in understanding the pathophysiology of disease. For example, studies of rats have shown that asbestos causes malignant mesothelioma, including chrysotile, tremolite, and anthophyllite. It is important to recognize, however, that even though we know that asbestos causes mesothelioma, not all rat studies were able to demonstrate cases of mesothelioma. Johnson & Johnson has suggested their talcum powder is safe based, in part, on animal studies, however there are only two studies of their talcum powder (one Italian-sourced and one Vermont-sourced), both of which have limitations affecting their reliability. In addition to evaluating the animal studies, I

have reviewed documentation about Johnson & Johnson's role and influence in those studies.

In three studies (Moline 2020, Emory 2020, Moline 2023), there were over 270 cases of malignant mesothelioma who had repeated exposures to cosmetic talcum powder (and with the majority having no other documented asbestos exposure). Of those who had tissue analysis, all of the examined tissues revealed anthophyllite, tremolite, and/or chrysotile asbestos. The combination of tremolite and anthophyllite asbestos fibers found in tissue is felt to be unique to talc and is a fingerprint for such exposure.[Moline 2020][Steffen, 2018] Others have similarly concluded that the presence of noncommercial asbestos is suggestive of prior talc use. For example, an investigation of asbestos bodies in the general population found a high percentage of anthophyllite and tremolite cores in women but none in male blue-collar workers, suggested cosmetic talc as the source.[Roggli, 1989][Churg, 1981] Other researchers have noted the link between anthophyllite ferruginous bodies and talc use.[Dodson, 2001] Gordon et al. reported mesothelioma cases in women who had intensively used talcum products, including some with no other known source of asbestos exposure. In a case report of a woman who had died from mesothelioma and whose only known exposure was to cosmetic talcum powder, tremolite and anthophyllite was found in the lung and lymph tissues as well as in bottles of the same brand of talcum powder used by the women.[Gordon, 2014] In a tissue analysis of malignant mesothelioma cases, a significant percentage of the tremolite found was attributed to talc.

When evaluating the ability of a toxin to cause harm, in addition to dose, it is necessary to assess the route of exposure. For human malignant mesothelioma, the most important route is inhalation via the lungs. From there, the asbestos can reach mesothelial tissues, including those of the pleura and peritoneum. Powdered substances applied to the perineal area can directly enter the peritoneum through the female genital tract.

It is generally accepted in the scientific community that visible dust from asbestos-containing products or materials contains large amounts of asbestos fibers that greatly exceed background ambient levels. In fact, a visible dust cloud containing as little as 0.3% asbestos would still correspond to a level in excess of 0.1 fibers/cc.[Petty, 2020] Moreover, once airborne, it may take hours to days for an asbestos fiber to settle. Once asbestos is introduced into the home, it will spread to all rooms and is almost impossible to remove, even with the vacuum cleaner.[Hillerdal, 1999] Fibers that have settled on to other surfaces in the home become re-suspended into the air by sweeping, cleaning, or other common

household activities. As a result, household members may be continually exposed to asbestos in the home environment.

There is information about how much asbestos is released in the air when using cosmetic talc. I have reviewed and relied on several studies to understand the range of exposures likely experienced by talc users. The exposure range is likely 0.1-4 fibers/cc. This number is based on multiple studies that evaluate cosmetic talc exposures. The FDA reported that “the amounts of asbestos fibers dispersed by the use of talc containing more than trace amounts of this contaminant [asbestos] exceed the standards promulgated for occupational exposure.[FDA, 1972]

As with other asbestos-containing products or materials, there are studies that have examined airborne asbestos concentrations from various uses of cosmetic talc products and determined ranges of exposures. For example, in a published study by Gordon et al. of an Italian-sourced talc product, using a shaker container to apply 0.37 grams of talc to the shoulder, axilla, and upper arm area resulted in an exposure range of 1.2-2.9 fibers/cc over the course of 5 minutes. In their puff application test, using 6.25 g of talc, the exposure range was 3.5-5 fibers/cc. The short-term asbestos exposure reached a concentration of 13 fibers/cc. In a publication by Steffen et al., using a shaker container to the lower body with about 4 g of Italian-sourced talc, the 5-minute personal air sampling revealed an asbestos exposure range of 1.8-4.5 fibers/cc. In 1972, the FDA concluded that talc with above-trace levels of asbestos would produce exposures to over 5 fibers/cc. In 2018, MAS reported personal air sampling asbestos ranged from 0.8-1.9 fibers/cc for the adult and 1.5-2 fibers/cc for the baby during diapering. From below the waist usage, MAS found an asbestos range of 1.8-4.5 fibers/cc. Mattenklott reported the use of talcum powder containing less than 0.1% asbestos by weight would result in an asbestos exposure of up to 0.018 fibers/cc. Taylor reported an exposure range of 0.04-0.08 fibers/cc, assuming talc containing less than 0.1% asbestos by weight. Johnson & Johnson predicted an exposure range of 0.16-0.18 fibers/cc for diapering a baby and 4.5-9.3 fibers/cc for adult exposure using Johnson & Johnson’s baby powder. For exposures during diapering, Dement et al. from NIOSH found that an adult is exposed to 2.2 fibers/cc of PCM fibers and that a baby is exposed to 1.8 fibers/cc over the course of two minutes. Finkelstein analyzed the data from Burns et al. and found concentrations ranged from 0.02 to 6 fibers/cc. Addison (1988) reported an asbestos exposure range of 1.1-2.8 fibers/cc from dust containing 0.1% asbestos. Based on data from a reconstruction model by Sahmel, of a 2013 Exponent study, talc application for 2.5 minutes resulted in an exposure of 0.30 fibers/cc. CalOSHA and Pfizer calculated a tremolite asbestos exposure of 2-4 fibers/cc based on dust from talc containing a fiber frequency of

0.19-0.4%. As noted above, a visible dust cloud containing as little as 0.3% asbestos would still correspond to a level beyond the 0.1 fibers/cc. Thus, a reasonable range of asbestos exposure from cosmetic talc use is 0.1-4.0 fibers/cc, which is tens of thousands of times above ambient, and millions of times above ambient amphibole levels. Exposures from sources of talc containing higher percentages of asbestos or depending on the use could result in a higher exposure range.

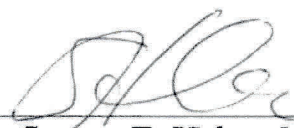
I rely on, and I have considered, the various sources of information contained and discussed in this report (including Exhibits B and C) regarding (a) the source talc in the specific products identified, when available, (b) the concentration of asbestos in the talc in the specific products identified, (c) the quantity of talc typically used during different applications of cosmetic talc products, and (d) the airborne concentration of asbestos that has been shown to result from the ordinary application of cosmetic talc products as reported in the literature and other well conducted analyses (e.g., Steffan 2020, Gordon 2014, MAS analyses, MVA analyses).

Just as I do (and the mainstream scientific community does) with other asbestos-containing products, I make a qualitative evaluation and comparison of such reported results to the exposure scenarios described, considering the described application process, the concentration of asbestos in the product, and other factors. Along with such information, I evaluate the onset, duration, frequency, regularity, intensity, nature, and proximity of exposures to each specific product, making a qualitative assessment of the exposure and dose relative to the peer-reviewed scientific literature, including epidemiological literature, on the asbestos exposures shown to cause mesothelioma. As discussed elsewhere in this report (including Exhibits B and C), the scientific community generally accepts that relatively low doses of asbestos exposure, including the ranges discussed above, can and do cause malignant mesothelioma. While this report provides some citations for the opinions outlined, they are often only examples and additional support is included in the reference lists attached to this report.

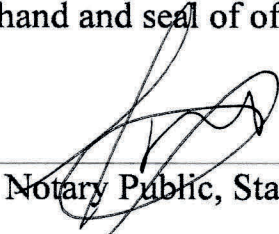
According to my review of Johnson & Johnson documents, studies on talc use estimated an adult used about 10-15 g of talcum powder after showering. Thus, Mr. Newton's estimated usage of 2-3 teaspoons of talc per day (equivalent to approximately 26 to 39 g) places him in a high usage category and some of the published studies on exposures might well be quite conservative. Moreover, for about 15 of those years, he used a puff applicator which he reported produced a heavier amount of dust in the air. Based on his history, Mr. Newton used the

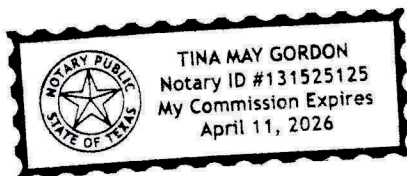
Johnson & Johnson's baby powder on at least a daily basis (sometimes twice a day) for around 40 or more years. Assuming usage twice daily for only two days per month and the remaining time once daily, Mr. Newton would have applied Johnson & Johnson's baby powder more than 15,500 times. This was applied in a relatively small space (bathroom) and even after taking a few minutes to apply it, he would then remain in the room for a few more minutes. In addition, he poured talcum powder into his shoes and socks during the warmer months. Assuming this was only five months per year, this would add an additional six thousand usages of this product. His description of the visible dust and the repeated ability to smell the powder in the air indicates that there was significant exposure in his breathing zone. This use estimate does not take into consideration any asbestos exposures from Johnson & Johnson's baby powder from use on him as an infant or child by his mother. It also does not include exposures from re-suspension of fibers into the air from re-entrainment of talc dust.

The average residual life expectancy for a 76-year-old Caucasian male is 10.0 years. This is based upon the statistical data obtained from the November 7, 2023 National Vital Statistics Reports; Vol. 72, No. 12, Table 17, Life Table for United States, 2021. This represents the average number of years of life remaining for race, gender, and age matched persons living in the USA who have attained a given age."


Steven E. Haber, M.D.

Sworn to and subscribed before me by Steven E. Haber, M.D. on this 4 day of April, 2024, to certify which witness my hand and seal of office.


Notary Public, State of Texas



Curriculum Vitae January 2024

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1986-1987 Internship in Internal Medicine
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1982-1986 Medical School
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1978-1981 Undergraduate in Plan II Honors
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Emergency Services
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Board of Socioeconomics, Harris County Medical Society
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Chest Radiology Consultant, Prime Healthcare Providers/Prime Health at Work
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Pulmonary Director, Select Specialty Hospital-Houston West
1999

Medical Advisory Board, Lincare
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Board of Socioeconomics, Harris County Medical Society
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Medical Co-director, Hyperbaric Oxygen Department,
Columbia-HCA Spring Branch Hospital
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Medical Advisory Board, Lincare
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Managed Care Committee member, Harris County Medical Society
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Pulmonary Director, American Transition Hospital
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Medical Co-director, Hyperbaric Oxygen Department,
Columbia-HCA Spring Branch Hospital
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Medical Advisory Board, Lincare
1997

Medical Advisory Board, Alert Medical Services
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President, Harris County Medical Society, Western Branch
1996

Board of Trustees, Houston Academy of Medicine
1996

Pulmonary Director, American Transition Hospital
1996

Executive Board, Harris County Medical Society
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Medical Co-director, Hyperbaric Oxygen Department,
Columbia-HCA Spring Branch Hospital
1996

Medical Advisory Board, Alert Medical Services
1995

President-Elect, Harris County Medical Society, Western Branch
1995

Pulmonary Director, American Transition Hospital
1995

Medical Co-director, Hyperbaric Oxygen Department,
Columbia-HCA Spring Branch Hospital
1995

Medical Advisory Board, Alert Medical Services
1994

Vice President, Harris County Medical Society, Western Branch
1994

Pulmonary Director, American Transition Hospital
1994

Medical Co-director, Hyperbaric Oxygen Department,
Columbia-HCA Spring Branch Hospital
1994

Medical Advisory Board, Alert Medical Services
1993

Secretary and Treasurer, Harris County Medical Society, Western Branch
1993

Pulmonary Director, American Transition Hospital
1993

ICU Committee, Sam Houston Memorial Hospital
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Medical Co-director, Hyperbaric Oxygen Department,
Columbia-HCA Spring Branch Hospital
1993

Pathology Committee, HCA Spring Branch Medical Center
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Medical Advisory Board, Alert Medical Services
1992

Medical Co-director, Hyperbaric Oxygen Department,
Columbia-HCA Spring Branch Hospital
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Invasive Surgical Therapeutic Committee
Columbia-HCA Spring Branch Hospital
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Utilization Review Committee, Spring Shadows Pines
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Clinical Instructor, Tuberculosis Control District of Houston
1990

Clinical Instructor, Tuberculosis Control District of Houston
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Professional Memberships:

National:

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Phi Delta Epsilon Medical Fraternity
American Board of Medical Specialties
American Thoracic Society

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Houston Academy of Medicine
Texas Academy of Internal Medicine

Hospital Affiliations:

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Kindred Triumph Healthcare
Select Specialty Hospital

Publications and Abstracts:

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Exhibit B

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46. Letter to R.N. Miller, Windsor Minerals, from G. Lee, Johnson & Johnson; Re: Windsor 66 Talc Specification, 2/23/78; JNJ000237200-201.
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383. Coty International Master Formula for L'aimant dusting powder, 7/8/87. (Ex. 5 to the deposition of Brian Kolman 10/17/18).
384. Coty Products Raw Material Specification for Italian Talc 5/0 Dec, 7/18/94, COT-HUG-0000235 (Ex. 5 to the deposition of Pfizer's Ed Gramling 4/6/16).
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388. CTFA Memo to Norman Estrin, from Anita Curry; Re: July 1969 vintage of Mt. Sinai Coty sample and Coty talc sources, 3/12/76; WCD 000004.
389. Excerpts of the Deposition of Dennis St. George, Representative for Whittaker, Clark & Daniels (on Talc 4601 and Metro #1 being the same talc from Canada), 3/2/21.
390. Exhibit 3 to the Deposition of Theodore Hubbard, Representative for Whittaker, Clark & Daniels (on the origin of talc in various talc codes), 3/2/16.
391. Cyprus Industrial Minerals Company Call Report to Coty Products, 7/11/90; IMERYs 096098.
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396. E-mail from Audrey Osborn of Revlon attaching prior certificate of analysis for RCT 1004CX (Timato), 3/24/04; Rev - NJ - 000788-90.
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399. Excerpts of the Deposition of Dr. Michael Burke, 8/19/21.
400. Colgate-Palmolive Cashmere Bouquet Formulas, 1968-1970; COL 00121, 00126, CPCNYCALTRSCPT00008833, 8838.
401. Colgate-Palmolive Cashmere Bouquet Formulas 1970-1975; COL 00124, CPC-NYCALTRSCPT00008828, 8836, QE-CPC00001537-1538.
402. Colgate-Palmolive Cashmere Bouquet Formulas, 1975-1978; QE-CPC00001536.
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457. Excerpts of the deposition of Theodore Hubbard, representative for Whittaker, Clark & Daniels (on the origin of talc in various talc codes), 8/8/16.
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475. Summary of sales of talc to Maybelline from WC&D (1977-1982) and CMC (1981-1987) (prepared by counsel).
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 510. Whittaker, Clark & Daniels Memo to C.E. Clark, from RGS; Re: Metropolitan Talc Meeting, 2/3/69; WCD(NY)Peltz-Tippin 000083-86.
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 515. Letter to F. McGonigle, Whittaker, Clark & Daniels, from J. Bonina, Revlon; Re: Revlon Raw Material Specifications for Talc 141 and Talc 1629, 5/28/86; ARBIT_000070.
 516. Exhibit 34 = WCD Codes, Moore v. WCD, 10/29/21. (Ex. 34 to the Deposition of Dennis St. George 10/29/21)
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 519. Noxell Request for Raw Material Approval No 71 to R.J. Gutowski, from R.H. Ashley; Re: Olympic Talc (Cyprus Industrial Minerals), 1/24/79; CG-PELTZ-000463-465.
 520. Noxell Master Formulas for Compact Powder, Laboratory Formula No CG1WP 12260-01, Honey Beige, Shade No 2, 12/15/82; CG-PELTZ-000780-783.
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525. Chart - Avon Raw Ingredient Codes 0747, 1961-2000; Bryant v. Avon Products (Exhibit 3 to the Deposition of Lisa Gallo, 12/7/21)
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547. Updated Cosmetic Talc Report, DOBS-16, J. Webber, 7/11/22.

548. Appendix B: DOB-16, Updated Tippin Cosmetic Talc Report, Summary Table of Pfizer TEM Results for Talc 1615, Updated Cosmetic Talc Report, DOBS-16, J. Webber, 7/11/22.
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552. Summary Table of Findings of Asbestos Minerals and Asbestos in Montana talc WCD Sold
553. Evaluation of Victorville Talcs, -8 Evaluation of Competitive Talcs and Victorville Talcs, Progress Report No 2, File No. 2692-8, 10/29/65; PFI_SEL_00010289-10299.
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558. Letter to W. McCrone, from C.M. Fairchild; Re: Three talcs for analysis - Civil, Arbit and Jaybar, 7/13/76; Rev-NJ-000413.
559. Letter to A. Osborne, from E. Browarny, Whittaker, Clark & Daniels; Re: Grades of talc that are active raw materials, 5/25/89; Rev-NJ-000800.
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- 753. Letter to JP Simko, Colgate, from GR Grieger, McCrone; Re: Examination of talc sample designated as 5-28-29, 6/24/76; McCrone2-00429-436.
- 754. Letter to JP Simko, Colgate, from GR Grieger, McCrone; Re: Analysis of talc sample designated as 6-13-14, 7/8/76; McCrone2-00428.
- 755. Letter to JP Simko, Colgate, from GR Grieger, McCrone; Re: Analysis of talc sample Lot 7-18-19, 8/6/76; McCrone2-00420-427.
- 756. Letter to JP Simko, Colgate, from GR Grieger, McCrone; Re: Analysis of talc sample designated as 8-6-7, 8/31/76; McCrone2-00578-582.
- 757. Letter to JP Simko, Colgate, from GR Grieger, McCrone; Re: Analysis of talc sample 8-14-15, 9/8/76; McCrone2-00419.
- 758. Letter to JP Simko, Colgate, from GR Grieger, McCrone; Re: Analysis of talc sample designated as 8-28-29, 9/15/76; McCrone2-00613-615.
- 759. Letter to JP Simko, Colgate, from GR Grieger, McCrone; Re: Analysis of two talc samples designated as 9-8-9 and 9-9-10, 10/5/76; MCCRONE0017-20.
- 760. Letter to JP Simko, Colgate, from GR Grieger, McCrone; Re: Analysis of talc sample designated as Lot 10-7-8, 10/28/76; McCrone2-00590-596.
- 761. Letter to JP Simko, Colgate, from GR Grieger, McCrone; Re: Examination of Talc Sample 4915, 11/18/76; McCrone2-00570-572.
- 762. Letter to JP Simko, Colgate, from GR Grieger; Re: Results of analysis, 12/2/76; McCrone2-00568.
- 763. Letter to JP Simko, Colgate, from GR Grieger, McCrone; Re: Analysis of ABE sample, 1/3/77; McCrone2-00565-567.
- 764. Letter to JP Simko, Colgate, from GR Grieger, McCrone; Re: Analysis of talc sample designated as Lot 1-5-76, 1/17/77; McCrone2-00598.
- 765. Letter to JP Simko, Colgate, from GR Grieger, McCrone; Re: Analysis of talc sample designated as Lot 1-21-22, 2/10/77; McCrone2-00599.
- 766. Letter to JP Simko, Colgate, from GR Grieger, McCrone; Re: Analysis of talc sample designated as 4166, 2/11/77; McCrone2-00600-604.
- 767. Letter to JP Simko, Colgate, from GR Grieger, McCrone; Re: Analysis of talc sample designated as Lot 2-10-11, 3/8/77; MCCRONE 0066.
- 768. Letter to JP Simko, Colgate, from GR Grieger, McCrone; Re: Analysis of talc sample designated as Lot 2-22-23, 3/10/77; MCCRONE 0067.
- 769. Letter to JP Simko, Colgate, from GR Grieger, McCrone; Re: Analysis of talc sample designated as Lot 3-31-4-1, 4/13/77; MCCRONE 0068.
- 770. Letter to JP Simko, Colgate, from RJ Shimps, McCrone; Re: TEM examination of Colgate Pre-shipment sample MTR Talc, Code M6670-2, Lot No 4-26-27, 4-26-77, 5/9/77; McCrone-00417.
- 771. Letter to JP Simko, Colgate, from RJ Shimps, McCrone; Re: Analysis of talc sample designated as MTR-Talc-Code M-6670-2, Lot 5-2-3, Date 5-3-77, 5/11/77; McCrone2-00416.
- 772. Letter to JP Simko, Colgate, from GR Grieger, McCrone; Re: Analysis of talc sample designated as Lot 6-1-2, 6/14/77; McCrone2-00642.

773. Letter to JP Simko, Colgate, from GR Grieger, McCrone; Re: Analysis of talc sample designated as MON-6, 040 dated 6-13-77, 7/12/77; McCrone2-00530.
774. Letter to JP Simko, Colgate, from GR Grieger, McCrone; Re: Analysis of talc sample designated as Lot 7-24-25 from the 1977 series, 8/12/77; McCrone 0063-65.
775. Letter to JP Simko, Colgate, from GR Grieger, McCrone; Re: Analysis of talc sample designated as Lot 9-21-22 from the 1977 series, 10/13/77; McCrone2-00683-686.
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777. Letter to JP Simko, Colgate, from LB McCrone; Re: Microscopical examination of your two samples - French talc - Lot 5854 - and Talc 1615 #4811, 11/16/77; MCCRONE 0075-77.
778. Letter to JP Simko, Colgate, from GR Grieger, McCrone; Re: Analysis of Preshipment talc sample designated as Lot 11-27-28 of the 1977 series, 1/5/78; MCCRONE 0078.
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780. Letter to JP Simko, Colgate, from RJ Shimps, McCrone; Re: Analysis of talc sample designated as Lot 2-6-7, 2/23/78; McCrone2-00688-690.
781. Letter to JP Simko, Colgate, from GR Grieger, McCrone; Re: Analysis of talc sample designated as 3-16-17, 4/7/78; McCrone2-00687.
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783. Letter to DR Ferry, Charles Mathieu, from GR Grieger, McCrone; Re: Examination of talc sample designated as Lot 11-2-3, 1978 Series, 11/22/78; McCrone2-00544-546.
784. Letter to DR Ferry, Charles Mathieu, from GR Grieger, McCrone; Re: Examination of talc sample designated as Lot 12-19-20, 1978 Series, 1/22/79; McCrone2-00541-543.
785. Letter to DR Ferry, Charles Mathieu, from GR Grieger, McCrone; Re: Examination of talc sample designated as Monital 100, Lot 881800, 2/9/79; McCrone2-00538-540.
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790. Letter to DR Ferry, Charles Mathieu, from GR Grieger, McCrone; Re: Analysis of talc sample designated as Monital 6040, Lot #791000, 9/6/79; MCCRONE0186-0188.
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792. Letter to JP Stiff, Cyprus Industrial Minerals, from RM Ellis, McCrone; Re: Asbestos analysis of talc sample Monoblend Code M6277 Lot #1291100, 1/8/80; MCCRONE0197-200.
793. Letter to McCrone, from JP Stiff, Cyprus Industrial Minerals; Re: Monoblend talc for analysis, 8/28/80; MCCRONE0201-0203.
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796. Letter to L. Murino, Cyprus Minerals, from R.M. Ellis, McCrone; Re: Analysis of Cyprus Monoblend Talc Lot #110865, 3/16/81; MCCRONE 0205.
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799. Letter to V. Alltus, Cyprus Industrial Minerals, from R.M. Ellis, McCrone; Re: Analysis of monoblend talc sample #Lot 812065, 9/22/81; McCrone2-00765.
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801. Letter to G. Roach, from R.M. Ellis; Re: Asbestos analysis of talc sample labeled RCT1004C, Lot #12873, 7/26/83; MCCRONE0215-0218.
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803. Letter to J.P. Simko, from D.P. Palenik, McCrone; Re: Asbestos analysis of one talc sample labeled Lot #S09063, 11/16/83; MCCRONE 0152-0153.
804. Letter to J.P. Simko, Colgate, from D.P. Palenik, McCrone; Re: Results of Analysis on 6 talc samples, 4/27/84; MCCRONE 0221-226.
805. Colgate TEM testing chart.
806. Sanchez slides re TEM testing.
807. Chart, Colgate corporate representative deposition exhibit, Lynne Roy v. Colgate-Palmolive Company, et al., 11/23/21.
808. Chart with Images, Colgate corporate representative deposition exhibit, Lynne Roy v. Colgate-Palmolive Company, et al., 11/23/21.
809. Letter to H.J. Eiermann, FDA, from N.F. Estrin, CTFA; Re: Analysis of talc for asbestos, 3/15/76; CTFA Memo to N.F. Estrin, from A.S. Curry; Re: Current talc analysis, 3/12/76; Letter to N. Estrin, CTFA, from J.J. Travers, Avon Products; Re: Results of Avon talc tests, 3/12/76; Letter to N. Estrin, CTFA, from M. Berdick, Chesebrough Ponds; Re: Concern re asbestos in talc, 3/12/76; Letter to N.F. Estrin, CTFA, from C.H. Costello, Colgate; Re: Summary of Analytical Data on 42 Talc Samples, 3/15/76; Colgate Memo to C.H. Costello, from J.P. Simko; Re: Analytical Data on Talc Samples 1972-Present, 3/12/76; Letter to N.F. Estrin, CTFA, from Mulryan, Cyprus; Re: March 11, 1976 CTFA Talc Sub-Committee Meeting, 3/12/76; Talc Investigations, Faberge, Undated; Letter to N.F. Estrin, CTFA, from G. Lee, Johnson & Johnson; Re: Examination for Asbestos in Talc, 3/15/76; Examination of American & British Talcum Powder Products, F.D. Pooley, 3/14/76; Letter to N. Estrin, CTFA, from I.M. Stewart, McCrone; Re: Recent conversation on talc analyses if asbestos, 3/12/76; Letter to N. Estrin, CTFA, from R.A. Mundy, Sterling Drug; Re: Testing of ZBT Baby Powder, 3/12/76; Letter to N. Estrin, CTFA, from F.F. Roesch, WCD; Re: August 1971 Test Program, 3/11/76.
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818. Avon formulas table, 1952-1961.
819. Avon formulas, All Products, 0755, 1963-1966; AV_Graham_000019-48.
820. Sierra Talc sales to Avon, 1964, 0755 – Supreme 325.
821. USD-CMC Talc Products, Supreme 325, 1/15/69; CAMC-Booker-002475.
822. Avon makeup formulas, 1969-2011; AV_ChapmanRita_000494-603.
823. Avon makeup Raw Ingredient Specs, 1969-2000; AV_ChapmanRita_000604-637.
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825. Avon Formulas, Eye Shadows, 1972-1979; AV_Payne_007270-7413.
826. Avon Formulas, Eye Shadows, Dazzle Dust, 1980-1989; AV_Payne_007414-7651.
827. Avon Cotillion Formulas chart, 1952 to 1995.
828. Avon Cotillion formulas, 1952-1995; Various Bates.
829. Luzenac Product List – Supra H for Mary Kay, Undated; LUZ00000057.
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831. Cyprus Industrial Minerals Sales Analysis by Customer, 1983; IMERYS 234909-994.
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834. Mary Kay powder history from 1978-1990.
835. Annual Scientific Meeting list and information, The Waldorf-Astoria, New York, NY, 11/30/78 – 12/1/78.
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837. CTFA Invitation for N Teetsel re meeting of Talc Interested Party Task Force with draft Agenda and Agenda with handwritten notes, 7/25/94; MARY KAY_000589-592.
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841. Fax cover sheet dated 8/1/94 with memo from N Teetsel to S Gettings; MARY KAY_001400-1405.
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849. Charles B Chrystal Material Safety Data Sheet (MSDS), MK Part #50-061400, 6/30/88; MARY KAY_000530-531.
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876. Whittaker, Clark & Daniels Responses to Plaintiff's First Set of Interrogatories, Edwards v Alcatel-Lucent USA, Inc, et al, Madison County, IL, 9/13/16.
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885. Excerpt of WCD Reference Book, Talc Product Codes, Undated; JNJ000308215-8217.
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887. Specialty Minerals Sales Order Acknowledgement with Invoices, Order 5049058, 6/29/11; VIJONPAYNE00016082 & various Bates.
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893. Declaration of William Longo (Old Spice), 7/30/21.
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895. MAS Project M71518, Talcum Powder Analysis of Sample Splits from Baby Magic & Mennen Exemplar Containers, W.E. Longo, MAS, 3/31/22.

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902. Talc Code 10362, Cyprus or WCD (MEN-125), 3/19/85.
903. Talc Code 10362, Cyprus or WCD (MEN-066), 3/19/85.
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909. MAS Project M71536, Talcum Powder Analysis, Jorge Garza-Gold Bond Powder, W.E. Longo, MAS, 6/22/22.
910. MAS Project M71534, Talcum Powder Analysis, Krista Teigland-Gold Bond Container, W.E. Longo, MAS, 6/22/22.
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912. MAS Project M23945, Talcum Powder Analysis of Gold Bond Powder, W.E. Longo, MAS, 4/4/22.
913. MAS Project M71376, Talcum Powder Analysis for Sheldon and Sandra Spiegelman's Gold Bond Container, W.E. Longo, MAS, 3/7/22.
914. MAS Project M71120, Talcum Powder Analysis of Gold Bond Medicated Powder, W.E. Longo, MAS, 3/1/22.
915. Declaration of William Longo and Summary Chart of Gold Bond Testing, 2/28/22.
916. Defendant Chattem, Inc.s Response to Plaintiff's Standard Talc Liability Interrogatories to Chattem, Inc., Tippin v 3M Company, et al, New York, NY, 1/24/22.
917. MAS Project M71379, Talcum Powder Analysis of Gold Bond Medicated Powder, W.E. Longo, MAS, 10/15/21.
918. Defendant Charles B. Crystal's Responses to Plaintiffs' Supplemental Interrogatories and Document Demands, Bvumbe v Avon Products, Inc., et al, Middlesex County, NJ, 1/27/22.
919. Estee Lauder Research & Development Consolidated Formula Ingredient Print Out, White Linen Perfumed Body Powder, 1/8/20 and 3/23/20; Payne_EL_00000034-37.
920. Estee Lauder Companies (ELC) Supplier Specification Compliance Agreement Form from Cosmetic Specialties, Inc., Alpine, Alabama and France, 7/31/96; Payne_EL_00000243-244.
921. Estee Lauder Research & Development Raw Material Specification Information, Code No 9999-69-0034, 4/28/94; Payne_EL_00000204-207.
922. Presperse, Inc. Talc Micro Ace P-2 Certificates of Analysis, 12/8/93; PAYNE_EL_00000115-119.
923. Message, David Miller, Subject-Talc, Active Talc Codes except as noted, 1/6/05; Payne_EL_00000167-168.

924. 115 times Pfizer identified asbestos fibers by TEM/SAED in Talc 1615 and/or Supra, 1976-1992; Chapman v Pfizer, Inc (Table with Images)(Exhibit 14 to the notice of deposition of Pfizer).
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926. Noxell Cover Girl International Pressed Powder formulas, 0510 to 0547, 11/30/77; CG-PELTZ-000510-547.
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928. Chanel Master Bath formulas, 11/18/74; Various Bates.
929. Chanel talc source table 1974-2002, 12/28/21.
930. Chanel Raw Material Specification, Supra A Talc (Product #1707), RM No 00-2431, 9/14/99; CHANEL – ROY – 000187.
931. Whittaker, Clark & Daniels Certificate of Analysis to Chanel, 8/18/99; CHANEL – ROY – 000196.
932. Letter to P Pieschi, Chanel, from P Driscoll, Whittaker, Clark & Daniels, Re No 3465 Supra A Talc/Chanel code number 88-2431, 4/19/99; CHANEL – ROY – 000195.
933. Whittaker, Clark & Daniels Quotation to Chanel, 3465 Supra A, 9/11/98; CHANEL – ROY – 000192.
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EXHIBIT 3

Malignant Mesothelioma: A Clinical Study of 238 Cases

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Abstract: Malignant mesothelioma is a diffuse tumor arising in the pleura, peritoneum, or other serosal surface and is closely associated with asbestos exposure. An estimated 2,500 to 3,000 cases are diagnosed each year in the United States. Although there are individual case reports and small series detailing the clinical aspects of mesothelioma, few studies examine a large series of patients with malignant mesothelioma from the clinical perspective. This study reports on the findings of 238 cases of malignant mesothelioma from a private consultative medical practice. Most cases had a history of occupational asbestos exposure. The mean latency was 48.5 yr, with women having a longer latency than men. The mean age at diagnosis was 70. Survival overall was poor (mean 8.8 months), but treatment was beneficial (mean 11.3 versus 6.4 months). Epithelioid histology conferred a survival advantage over sarcomatoid and responded better to treatment. Our data support an inverse relationship between asbestos dose and latency.

Key words: Mesothelioma, Asbestos, Pleural cancer, Peritoneal cancer, Exposure, Latency, Diagnosis

Introduction

Malignant mesothelioma is a diffuse tumor arising in the pleura, peritoneum, or other serosal surface. The most frequent site of origin is the pleura (>90%), followed by peritoneum (6–10%), and only rarely other locations^{1–4}). Mesothelioma is closely associated with asbestos exposure from a variety of occupational settings. Patients with non-occupational asbestos exposure, such as household contacts of asbestos workers and those residing near asbestos manufacturing plants or mining facilities also have experienced an increased risk of malignant mesothelioma. There is no apparent link between mesothelioma and tobacco.

There are an estimated 2,500 to 3,000 cases of malignant mesothelioma diagnosed each year in the United States^{5–7}). These numbers, which were based on inaccurate coding, likely underestimate the true occurrence of this disease⁸). It has been estimated that about 27

million Americans had exposure to asbestos between the 1940s and 1970s⁹). Overall, malignant mesothelioma is much more common in men than in women, probably reflecting higher rates of occupational asbestos exposure in the male population.

Although there are individual mesothelioma case reports and small series detailing clinical aspects, few studies examine a large series of patients with malignant mesothelioma from the clinical perspective. Many of the larger series have focused on occupational information and pathological findings, rather than clinical data^{1, 10, 11}).

The present study examines the available clinical information and observations of 238 individuals diagnosed with malignant mesothelioma.

Materials and Methods

From within the medical and consultative files of Texas Occupational Medicine Institute (TOMI), a private pulmonary and occupational medicine practice in Houston, Texas, we were able to identify 286 individu-

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als diagnosed with malignant mesothelioma between 1977 and 2009. Over 80% of the cases were diagnosed in the 1990s and 2000s. Of these cases, sufficient information for inclusion in our analysis was available in 238. The diagnosis of malignant mesothelioma was confirmed by review of the pathology reports from the medical record in all cases included for analysis.

We obtained information on the sex, age, tumor histology and location, smoking history, clinical presentation, concomitant medical conditions, treatment (if any), and survival. The diagnosis of asbestosis required ILO reading $\geq 1/0$, characteristic findings on CT scan, or pathological identification. The presence of pleural plaques (calcified or non-calcified) was identified by chest x-ray, CT scan (most cases), or at autopsy.

Cumulative asbestos dose is proportional to the intensity, frequency and duration of exposure. The nature of the exposure (direct, bystander or both) figures both in intensity and as a separate factor. Based on data from tissue analysis by others, given equal exposure durations, those working directly with asbestos products have greater lung burdens of asbestos than did workers with bystander exposure¹. Patient exposure information was culled from the elicited lifetime work history, and specific physician query regarding their asbestos exposure, both occupational and non-occupational. From these data, the TOMI pulmonary or occupational physician categorized the individual's exposure as light, moderate, or heavy. While subjective, this classification method is found in the literature, as most workplaces lack sufficient quantitative exposure data for individuals, workers change jobsites throughout their careers, and there are vast inconsistencies in historical measurements.

In addition, we noted general information of occupation and industry setting and the decade(s) of exposure. We examined for a relationship between exposure and latency. We also analyzed survival data based upon parameters such as treatment modality, age at diagnosis, tumor location, and histological type.

Results

Of the cases specifying tumor location, there were 221 pleural (94.4%) and 13 peritoneal (5.6%) mesotheliomas. There was a right-sided predominance (63.4%) for pleural mesotheliomas. The 238 mesotheliomas consisted of 118 epithelial (50.2%), 40 sarcomatoid (17%), 30 biphasic (12.8%) and 47 cases where the histological type was not recorded (20%). The diagnosis was based upon tissue biopsy in most cases (92%), and 26% underwent post-mortem examination. There was no difference in histological type between pleural and peritoneal tumors. The most common other underly-

ing medical conditions reported in the medical history were coronary artery disease (26.4%), diabetes mellitus (15.1%), and COPD (14.2%).

Demographic data

In the 217 men and 21 women, the mean age at diagnosis was 70.3 yr (range 34 to 92). The age at diagnosis for peritoneal mesotheliomas was slightly younger than for pleural cases (65.4 versus 70.6 yr), but this difference was not statistically significant. There was no significant sex difference regarding pleural or peritoneal tumor location. Of those with available smoking data, there were 94 non-smokers (42%) and 129 smokers or ex-smokers (58%), averaging 37.3 pack-years (n=119). Men were more likely smokers (60% versus 38%) and more likely to have COPD (15% versus 5%).

Occupation/Setting of exposure

Most patients had occupational asbestos exposure (91%). Pipefitter/plumber was the most commonly identified occupation (Table 1). All but two of the patients in the top six occupations were men. The exposure setting with the highest number of cases was petrochemical (possibly related to our location in Houston), followed by construction and shipyard (Table 2).

In the mesothelioma cases with a history of occupational asbestos exposure, there was a 35:1 male-to-female ratio. In those cases with non-occupational asbestos exposure, there was a female preponderance, with a female-to-male ratio of 8:1. Of all men, 97.8% had a history of occupational asbestos exposure, in contrast with only 23.8% of women.

Exposure data

Based upon the patient's lifetime occupational history and details of their asbestos exposure (including intensity, frequency, nature, and duration), the TOMI physician was able to categorize the exposure as heavy, moderate, or light in most cases.

Most individuals with mesothelioma in our series had heavy asbestos exposure (50%), followed by moderate (37.1%) and then light (12.9%). There was no statistical difference between intensity of exposure and histological type of mesothelioma. Of the pleural mesotheliomas, 49.2% had heavy exposure, as did 58.3% of the peritoneal mesotheliomas. There was, however, no statistical difference between intensity of exposure and location of mesothelioma. Those with a history of occupational asbestos exposure were far more likely to have had a heavy or moderate exposure rating compared to cases from non-occupational settings (96.1% versus 5.3%). The estimated exposure strongly correlated with

Table 1. Occupations in 202 cases of malignant mesothelioma

Occupation	Number of Cases	Percent of Total
Pipefitter/plumber	37	18.3%
Operator	24	11.9%
Laborer	20	9.9%
Insulator	19	9.4%
Electrician	15	7.4%
Boilermaker	13	6.4%
Machinist	8	4.0%
Engineer	8	4.0%
Carpenter	7	3.5%
Welder	7	3.5%
Merchant seaman	6	3.0%
Sheetmetal worker	3	1.5%
Brick worker	3	1.5%
Painter	3	1.5%
Other ¹	19	9.4%

¹Occupations with 2 or fewer cases; including millright, railroad worker, mechanic, drywall worker, truck driver, safety inspector, policeman, civil engineer, printer, pumper, sandblaster, managerial.

Table 2. Exposure setting in 209 cases of malignant mesothelioma

Exposure Setting	Number of Cases ¹	Percentage Occurrence ¹
Petrochemical	117	56%
Construction	95	45.5%
Shipyards	50	23.9%
Marine	26	12.4%
Non-occupational	21	10%
Power Plant	15	7.2%
Transportation	7	3.3%

¹In many cases, more than one exposure setting.

the presence of asbestosis (66.1% had heavy exposure, 32.1% moderate and only 1.8% light). The level of exposure also correlated with the presence of radiographic pleural plaquing. Those with heavy asbestos exposure had plaques in 57.4% of cases, moderate 37%, and light 5.6%. That these diseases are dose-responsive supports the rating of exposure by the clinician. Moreover, heavy exposure correlated with asbestos body count when performed.

Most individuals in our study with occupational exposure had daily (61.7%) rather than weekly (18.9%) or intermittent (19.4%) asbestos exposures. There was no trend toward decreasing exposure frequency based upon advancing decade of exposure. Those with daily exposures were more likely to have had a heavy exposure (70.2%) than those with weekly (31.6%) or intermittent (2.6%) exposure. As with degree of exposure, frequency correlated with the presence of asbestosis and pleural plaques. Exposure frequency does not appear to influence the histological type.

Table 3. Duration of asbestos exposure in 203 cases of malignant mesothelioma

Duration (yr)	Men	%	Women	%	Total	%
1–5	6	3.3	1	5.3	7	3.4
6–10	9	4.9	2	10.5	11	5.4
11–20	18	9.8	5	26.3	23	11.3
21–30	28	15.2	3	15.8	31	15.3
31–40	92	50.0	7	36.8	99	48.8
>40	31	16.8	1	5.3	32	15.8

Table 4. Latency¹ in 191 cases of malignant mesothelioma

Latency (yr)	Men	%	Women	%	Total	%
15–20	1	0.6	0	0	1	0.5
21–30	3	1.7	1	5.3	4	2.1
31–40	31	18.0	2	10.5	33	17.3
41–50	75	43.6	2	10.5	77	40.3
51–60	48	27.9	9	47.4	57	29.8
>60	14	8.2	5	26.3	19	10.0

¹Based on cases with both date of first exposure and date of diagnosis.

Eighty-four percent of our cases had reported either direct or direct and bystander asbestos exposure. Seven percent had only bystander exposure and 9% had household or other non-occupational exposure. Men were far more likely to have some direct asbestos exposure (91.1%), whereas women were more likely to have only non-occupational exposure (76.2%). Those with direct exposure, as would be expected, had higher frequency of daily and heavy asbestos exposure rating. Direct exposure also correlated with the presence of asbestosis.

Duration of exposure, the actual number of years working with or exposed to asbestos, not inclusive of time between exposures, was calculated in 203 cases (Table 3). Based upon the provided occupational history, the mean duration of exposure was 31 yr. On average, women had a slightly shorter duration of exposure (25.5 versus 31.5 yr). There was no demonstrable difference in duration of exposure between those with pleural versus peritoneal mesothelioma.

Our series includes individuals with potential asbestos exposure from the 1920s through the 1980s. All but two cases had their first asbestos exposure before 1973. The mean age at first occupational exposure was 22.7 yr.

Latency

Latency, defined as the time interval between first exposure and diagnosis of malignant mesothelioma, was calculated in 191 cases (Table 4). In the present study, the mean latency was 48.5 yr (range 18–70). There was no statistical difference in the latency for pleural versus

peritoneal cases (48.6 versus 45.9 yr, respectively). The latency for insulators (generally presumed to be a more heavily exposed group) was not statistically different from other occupations. Furthermore, there was no statistical difference in latency comparing those with and without asbestosis. On the other hand, women, whom one might anticipate had lesser exposures on average, did have a longer latency period than men (53.3 versus 47.9 yr, $p<0.05$).

Clinical presentation

Of the cases of pleural mesothelioma, the most common presenting signs and symptoms were ipsilateral pleural effusion (90%), shortness of breath (79%), chest pain (64%), and cough (36%). With peritoneal tumors, ascites (77%) and abdominal pain (54%) were the most common presenting findings. Both tumor locations produced weight loss (pleural 30% and peritoneal 69%). A number of the study cohort had a prior malignancy, including skin ($n=9$), prostate ($n=7$), lung ($n=4$) and colon ($n=4$).

Asbestosis and pleural plaques

Pleural plaques (calcified and/or non-calcified) occurred in 124 of 224 cases (55.3%). Men more often had identified pleural plaques than did women (59.1% versus 19%), but there were too few women with plaques for statistical analysis. It is possible that overlying breast shadows clinically masked non-calcified plaques in women. In both men and women, pleural plaques were more often calcified, correlating with the long latencies involved.

In this series, asbestosis was noted in 63 of 223 (28.3%). All cases of asbestosis occurred in men. Of these, 90.2% had pleural plaques as well. To examine the hypothesis that peritoneal mesotheliomas are associated with higher asbestos exposures on average than are pleural mesotheliomas, we looked at the occurrence of asbestosis in relationship to tumor location. In this series, asbestosis was more often present in those with peritoneal than pleural mesothelioma (38.5% versus 27.6%), but this difference did not reach statistical significance.

Treatment

Treatment for malignant mesothelioma has consisted of surgery, chemotherapy, radiation therapy, or a combination. There has been definite progress in the systemic treatment of this disease over the past 5–8 yr.

Of the 238 cases of mesothelioma reviewed in this series, we have information on 219 regarding the treatment they received, if any. Of the 219, 53% underwent some sort of treatment, with chemotherapy alone

the most likely choice (63.8% of those treated). The remaining 103 individuals had no treatment. Of note, the individuals diagnosed before 1993 were just as likely to undergo treatment as were those diagnosed in 2003 and beyond. Patients with peritoneal mesothelioma were somewhat more likely to undergo treatment than those with pleural mesothelioma (69.2% versus 51.9%). Despite recent innovations for surgery in peritoneal mesothelioma, none were performed in our group.

Survival

The overall survival from malignant mesothelioma has been poor. In our study, the trimmed mean survival was 8.8 months. There was a statistically significant difference comparing survival time with and without treatment (trimmed mean 11.3 versus 6.4 months, $p<0.001$). There was no statistical difference in survival between pleural mesotheliomas and peritoneal mesotheliomas.

We examined the hypothesis that a younger age at diagnosis conveys a survival advantage. In our study, we found a longer survival in those diagnosed with mesothelioma before age 60 compared to those 60 or older (13.7 versus 9.7 months), but the standard deviations were large and the difference not statistically significant.

In examining the three histological types for prognostic differences, we did find a significant survival benefit overall for epithelioid versus sarcomatoid tumors (mean 12.2 versus 7.3 months, $p<0.05$). Of those undergoing treatment, epithelioid histology conferred a survival advantage over sarcomatoid mesothelioma (trimmed mean 11.3 versus 7.8 months, $p<0.05$), despite no statistical differences in the provided therapy. Furthermore, treated epithelioid mesotheliomas fared better than non-treated tumors of the same histology (trimmed mean 11.3 versus 6.1 months, $p<0.001$). Although treatment of sarcomatoid tumors slightly prolonged survival (trimmed mean 7.8 versus 5.4 months), these values were not statistically different ($p=0.075$). Of note, untreated epithelioid mesotheliomas do just as poorly as untreated sarcomatoid varieties.

We compared the survival time of treated malignant mesotheliomas based upon the decade of diagnosis (1980s, 1990s, and 2000s). We were unable to detect a difference between those diagnosed in the former decade as compared to the latter.

Discussion

The majority of cases of malignant mesothelioma in the United States are caused by asbestos. An estimated 80% or more of patients with malignant mesothelioma

have a history of past asbestos exposure¹²). Given the long latency period involved, such exposure can be rather remote and involve poor recollection. The attribution to asbestos also depends on the degree of inquiry by the clinician. The proportion of mesothelioma cases recognized as asbestos-related seems to vary with the cohort and study^{1, 13}).

Out of concern for selection bias, as most of our cases were medicolegal, we compared our data to studies that surveyed all cases in an area, and therefore not involving selection bias. Our results are similar regarding occupational exposure, settings, and industry^{14, 15}. As an example, in our study, 91% had worked with or around asbestos, consistent with other investigators^{10, 11, 16}).

Pleural plaques were seen radiographically in 55%, with evidence of dose-response. Asbestosis was seen half as frequently (28%), again with evidence of dose-response. This is consistent with observations that, in general, malignant mesothelioma and pleural plaques require a lower dose of asbestos than does asbestosis¹⁷).

Chest pain, shortness of breath, and ipsilateral pleural effusion were the most common presenting signs and symptoms for the pleural mesotheliomas in our study. The peritoneal mesotheliomas usually had ascites, abdominal pain, and weight loss. These clinical findings are consistent with those of other investigators^{18–20}). Of the pleural mesotheliomas, we found a distinct right-sided predominance (63.4%), similar to that reported by other investigators^{11, 21–23}). No explanation for this predominance of right-sided disease has been identified, but some have postulated the less acute angle of the right main bronchus from the trachea as the cause²⁴).

Some have reported that women have a higher percentage of peritoneal versus pleural mesotheliomas than do men²⁵). Mischaracterization of other peritoneal tumors or carcinomas metastatic to the peritoneum might be one explanation for this finding. In our study, we were unable to detect a sex difference in tumor location.

In most cases of mesothelioma reported in the literature, the latency (time from first exposure to diagnosis) is long, with a peak at 30–40 yr^{26, 27}). In a review of 21 articles, encompassing 1,690 cases of malignant mesothelioma, Lanphear *et al.* found the median latency was 32 yr²⁸). Other cohorts of malignant mesotheliomas reported mean latencies of 42²⁹) and 49 yr³⁰). In the current study, we found a prolonged latency (48.5 yr), consistent with previous investigators. Furthermore, all cases in our study had sufficient latency for causation by asbestos.

We examined the latency for insulators compared to

all other occupations and found no significant difference. Additionally, we found no statistical difference in latency between those with or without asbestosis. These findings would seem contrary to the opinion that the heavier the asbestos exposure, the shorter the latency³¹). One explanation is that since almost all of our cases had moderate to heavy asbestos exposure even the non-insulators and non-asbestotics had heavy enough asbestos exposures to prevent detection of differences in latencies. Given that women, on average, likely had lesser asbestos exposures than did men, our finding of a longer latency for women would support this inverse dose-latency hypothesis.

In previous studies, younger age and epithelioid histological type appeared to be beneficial prognostic factors^{23, 32, 33}). Our study revealed a longer survival for those under the age of 60 at diagnosis, but this difference was not statistically significant. We were able to demonstrate improved survival with epithelioid histology, overall or with treatment, compared to sarcomatoid type. Epithelioid mesotheliomas also had a better response to therapy (as measured by survival) than sarcomatoid.

The survival from malignant mesothelioma has been poor, with a median reported at between 6–9 months³⁴). In our cohort, the median survival was 8.8 months. Some investigators have found no survival increase comparing those diagnosed in the 1980s to those diagnosed in the 1990s³⁵). We examined this and found no improvement in survival comparing treated mesotheliomas diagnosed in the 1980s versus the 2000s.

Due to its poor response to treatment, for many years physicians have held a nihilistic attitude towards malignant mesothelioma. Many physicians have reported little in the way of effective treatment^{36–39}). However, new and more effective chemotherapeutic agents, newer surgical techniques, and emerging new modalities (such as immunotherapy and gene therapy), may usher in new hope for sufferers of this disease⁴⁰). For example, in the treatment of peritoneal mesothelioma, some centers have used Continuous Hyperthermic Peritoneal Perfusion plus chemotherapy and/or cytoreductive surgery with dramatically improved survivals^{41–43}). Our data support a small but statistically significant prolongation of survival with treatment, but we were not able to detect a particular modality or combination as superior.

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EXHIBIT 4

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF LOS ANGELES

DEPARTMENT 7 HON. LAWRENCE P. RIFF, JUDGE

LAOSD ASBESTOS CASES	)	JCCP CASE NO. 4674
	)	
RITA-ANN CHAPMAN AND GARY	)	CERTIFIED COPY
CHAPMAN,	)	
	)	
PLAINTIFFS,	)	CASE NO.
	)	22STCV05968
VS.	)	
	)	
AVON PRODUCTS, INC., ET AL.,	)	
	)	
DEFENDANTS.	)	

REPORTER'S TRANSCRIPT OF PROCEEDINGS

OCTOBER 26, 2022

APPEARANCES:

FOR THE PLAINTIFFS:

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AURORA BOWSER, CSR NO. 12801,
OFFICIAL REPORTER PRO TEMPORE

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1	APPEARANCES CONTINUED:	1	I N D E X
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13	BY: GARY D. SHARP, ESQ.	13	BY MR. ADAMS 53 --- 154 ---
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Page 3		Page 5	
1	APPEARANCES CONTINUED:	1	INDEX
2	ALSO FOR THE DEFENDANT FORD MOTOR COMPANY:	2	OCTOBER 26, 2022; WEDNESDAY
3	LANKFORD CRAWFORD MORENO	3	
4	& OSTERTAG, LLP	4	EXHIBITS
5	BY: PAUL V. LANKFORD, ESQ.	5	(NOT ATTACHED HERETO)
6	1850 MT DIABLO BLVD., SUITE 600	6	
7	WALNUT CREEK, CA 94596	7	EXHIBIT DESCRIPTION MARKED FOR I.D. ADMITTED
8	925-300-3520	8	
9	PLANKFORD@LCLAW.COM	9	703 1970 LETTER FROM 32 32
10	~~AND~~	10	DR. SELIKOFF AT
11	HORVITZ & LEVY LLP	11	MOUNT SINAI
12	BY: EMILY V. CUATTO, ESQ.	12	1969 PROCEEDINGS OF THE
13	3601 W OLIVE AVE, 8TH FLOOR	13	INTERNATIONAL CONFERENCE
14	BURBANK, CA 91505	14	OF JOHANNESBURG ON
15	818-995-0800	15	PNEUMOCOONIOSIS
16	ECUATTO@HORVITZLEVY.COM	16	
17	FOR THE DEFENDANT THE BOEING COMPANY:	17	3078 DOCUMENT 52 52
18		18	3027 OVERVIEW OF FACILITY 92 92
19	MANNING GROSS + MASSENBURG LLP	19	122 PHOTOGRAPH 93 93
20	BY: HALEY L. HANSEN, ESQ.	20	123 PHOTOGRAPH 95 95
21	BY: BRENT M. KARREN, ESQ.	21	3029 SCHEMATIC OF BUILDING 11 96 96
22	201 SPEAR STREET	22	3053 MEL BURNS BUSINESS CARD 97 97
23	18TH FLOOR	23	3059 DOUGLAS PURCHASE ORDER
24	SAN FRANCISCO, CA 94105	24	SHEET, EARLY 1980'S
25	415-512-4381	25	1966 BOEING DOCUMENT RE:
26	HHANSEN@MGMLAW.COM	26	TRACTORS & FORKLIFT
27	BKARREN@MGMLAW.COM	27	PURCHASES
28		28	7/11/72 DOUGLAS MEMO RE:
			OSHA ASBESTOS STANDARD
			425 HAZARDOUS MATERIALS
			BULLETIN TO MCDONNELL
			DOUGLAS, 1972
			428 INTEROFFICE MEMO -
			SUBJECT: ASBESTOS
			UTILIZATION SURVEY

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OCTOBER 26, 2022; WEDNESDAY

EXHIBITS (CONTINUED)

(NOT ATTACHED HERETO)

EXHIBIT

DESCRIPTION

MARKED
FOR I.D.

ADMITTED

427

MEMO DATED 7/24/1972
RE: OSHA ASBESTOS
STANDARD

145

145

426

JULY 27TH MEMORANDUM
FROM INGRAM

148

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430

ATTACHMENT TO JULY 27TH
MEMORANDUM FROM INGRAM

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CASE NUMBER:

22STCV05968

CASE NAME:

RITA-ANN CHAPMAN VS. AVON
PRODUCTS, INC.

LOS ANGELES, CALIFORNIA

WEDNESDAY, OCTOBER 26, 2022

DEPARTMENT: 7

HON. LAWRENCE P. RIFF

APPEARANCES:

(AS HERETOFORE NOTED.)

REPORTER:

AURORA BOWSER, CSR NO. 12801

TIME:

8:15 A.M.

(WHEREUPON THE FOLLOWING PROCEEDINGS
WERE HELD IN OPEN COURT OUTSIDE THE
PRESENCE OF THE JURY:)

THE COURT: GOOD MORNING FOLKS IN THE CHAPMAN
MATTER. WE'RE OUTSIDE THE PRESENCE OF THE JURY. I
HAVE A QUESTION FOR COLGATE AND PLAINTIFF. I AM
WORKING THROUGH OBJECTIONS TO DESIGNATIONS OF SALVATORE
DE SALVA.

IN THE PAST I THINK IT'S BEEN MY UNDERSTANDING
THAT IF AN OBJECTION IS INTERPOSED AND THERE'S NO
RESPONSE TO THE OBJECTION, THAT THE PARTY IS CONCEDING
THE PROPRIETY OF THE OBJECTION. I RECEIVED THIS
NOTEBOOK BACK THIS MORNING. AND STARTING AT PAGE 12,
THERE ARE LOTS OF OBJECTIONS BY COLGATE AND NO RESPONSE
BY THE PLAINTIFF. I JUST WONDER IF MY UNDERSTANDING IS
ACCURATE.

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MR. OXAMENDI: I DON'T THINK SO, YOUR HONOR.

THESE ARE COLGATE'S DESIGNATIONS --

THE COURT: RIGHT.

MR. OXAMENDI: -- PLAINTIFF THEN

COUNTER-DESIGNATED. AND THEN WE INTERPOSED OUR

OBJECTIONS TO PLAINTIFFS' COUNTERS, AND THAT'S WHEN IT

WAS SUBMITTED TO YOUR HONOR.

THE COURT: I SEE.

MR. OXAMENDI: THEY ARE OBVIOUSLY OPPOSING

THOSE OBJECTIONS, OBVIOUSLY.

THE COURT: ALL RIGHT. I WILL HANDLE THAT.

THANK YOU.

OKAY. BOEING?

MR. KARREN: YES, GOOD MORNING, YOUR HONOR.

DO YOU WANT ME TO DEAL WITH YOUR OBJECTIONS

PROSPECTIVELY, THE ONES MS. HANSEN FILED THIS MORNING?

MS. HANSEN: YES, YOUR HONOR. HALEY HANSEN

FOR THE BOEING COMPANY.

THE COURT: COME ON UP.

MS. HANSEN: SORRY, AURORA. I SHOULD HAVE

CAME UP.

THE COURT: SO BOEING HAS PROSPECTIVELY FILED

AN OBJECTION TO 3051, 3052. MAYBE IT'S NOT EVEN

PROSPECTIVE.

MS. HANSEN: THEY WERE ADMITTED YESTERDAY.

AND WE RAISED THE ISSUE OF THE FACT THAT WE HAD NOT

SEEN THEM, AND WE DIDN'T HAVE THE RESERVED LIST. THIS

IS WHAT MR. KARREN HAD RAISED. WE WENT THROUGH THEM.

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PLAINTIFFS PROVIDED THEM AFTER COURT YESTERDAY TO US

AND I WAS ABLE TO GO THROUGH THEM, AND THESE ARE THE

TWO WE WOULD LIKE TO RAISE OBJECTIONS TO, THEIR

ADMISSIONS AS TO BOEING. FOR THE REASONS OUTLINED.

THE COURT: OKAY. LET ME SEE IF I CAN CATCH

UP WITH YOU HERE. YOU'RE RIGHT. THESE WERE EXHIBITS

ADMITTED RELATIVE TO, WHAT -- IN THE COURSE OF

MR. WILLIAMS' TESTIMONY FROM FORD, RIGHT?

MS. HANSEN: CORRECT, YOUR HONOR.

THE COURT: OKAY. YOUR OBJECTION RAISES A

DISCUSSION THAT I'M PREPARED TO HAVE, THE ONE THAT

MR. ADAMS CONTINUALLY REMINDS ME THAT WE HAVE HAD BUT

NEVER BROUGHT TO CONCLUSION, WHICH IS WHEN, IF EVER, IS

A DOCUMENT ADMITTED SUBJECT TO LIMITED ADMISSIBILITY,

AS OPPOSED TO TESTIMONY WHICH, I GUESS EVERYBODY

CONCEDES, CAN HAVE LIMITED ADMISSIBILITY ONLY.

MY VIEW ON THAT, HAVING THOUGHT ABOUT IT, IS

THAT WE'RE ASKING THE WRONG QUESTION. I THINK THE

RIGHT QUESTION IS FOR WHAT PURPOSE WAS THE DOCUMENT

ADMITTED. ONCE ONE UNDERSTANDS THE PURPOSE -- OR

POTENTIAL PURPOSE, THEN I THINK IT CAN -- THE

CONCLUSION FLOWS AS TO WHETHER IT'S ADMISSIBLE AGAINST

ALL OR LESS THAN ALL.

MS. HANSEN: I THINK, YOUR HONOR, THAT IS

ADDRESSED IN OUR OBJECTION, BECAUSE I THINK IT'S BEING

ADMITTED AGAINST ALL PARTIES -- IF I WAS UNDERSTANDING

PLAINTIFFS' INTENT -- SO I LAY OUT WHY IT'S HEARSAY AS

TO BOEING. IT DOESN'T GO TO NOTICE AS TO BOEING, AND

Page 10 1 IT'S PREJUDICIAL. SO I THINK THERE'S NO PURPOSE FOR 2 WHICH IT SHOULD COME IN. 3 THE COURT: LET ME FIND OUT IF PLAINTIFFS HAVE 4 EVEN SEEN THIS OBJECTION. HAVE YOU? 5 MR. ADAMS: WE HAVE, YOUR HONOR, JUST A FEW 6 SECONDS AGO. I THINK THEY DID SERVE IT LAST NIGHT. WE 7 WERE PRETTY BUSY, SO MS. HANSEN GAVE ME A COPY THIS 8 MORNING AND WE SKIMMED THROUGH IT. 9 THE COURT: OKAY. WHY DON'T YOU EXPLAIN A 10 LITTLE FURTHER YOUR POINT OF VIEW. YOUR POINT OF VIEW, 11 I THINK, IS THERE HAS BEEN AND WILL BE NO EVIDENCE IN 12 THIS CASE THAT BOEING -- OR ITS PREDECESSOR HAD ACTUAL 13 KNOWLEDGE OF THESE AT A RELEVANT TIME, AND ACCORDINGLY, 14 THEY CAN'T SERVE AS "NOTICE" TO BOEING OR ITS 15 PREDECESSOR. IS THAT THE ARGUMENT? 16 MS. HANSEN: CORRECT, YOUR HONOR. 17 THE COURT: OKAY. WELL, WHAT'S THE TEST FOR 18 NOTICE? IS IT ACTUAL NOTICE OR IS IT CONSTRUCTIVE 19 NOTICE, OR IS IT BOTH? I REMIND YOU OF -- WHAT I KNOW 20 YOU KNOW, WHICH IS -- IF PLAINTIFFS ARE PROCEEDING, 21 BOTH ON A NEGLIGENCE AND A STRICT LIABILITY 22 FAILURE-TO-WARN THEORY -- 23 MS. HANSEN: BUT NOT AS TO BOEING, YOUR HONOR. 24 THE COURT: REALLY? I DIDN'T KNOW THAT. IS 25 THAT TRUE? MAYBE I NEED TO LOOK AT THE COMPLAINT. IS 26 PLAINTIFF PURSUING A NEGLIGENCE CAUSE OF ACTION AGAINST 27 BOEING? 28 MR. ADAMS: YES.	Page 12 1 SOMETHING DIFFERENT ON A NEGLIGENCE THEORY THAN A 2 STRICT LIABILITY THEORY. A NEGLIGENCE THEORY, WELL, 3 LET'S TAKE A LOOK. LET'S SEE EXACTLY WHAT THE JURY 4 INSTRUCTIONS SAYS ABOUT NEGLIGENT FAILURE-TO-WARN. 5 ALL RIGHT. IT'S CACI 1222, WHICH PROVIDES IN 6 PERTINENT PART, "PLAINTIFF CLAIMS THAT DEFENDANT WAS 7 NEGLIGENT BY NOT USING REASONABLE CARE TO WARN TO WARN 8 ABOUT THE PRODUCT'S DANGEROUS CONDITION." OKAY. 9 THAT'S STILL A PRODUCT POINT. SO MAYBE THAT'S NOT THE 10 CORRECT INSTRUCTION. MAYBE IT'S THIS GARDEN VARIETY 11 NEGLIGENCE -- 12 MS. HANSEN: I THINK IT'S THE BASIC DUTY OF 13 CARE, CACI -- I THINK IS 1200 OR 1201, YOUR HONOR. 14 THE COURT: I'M NOT SURE, BECAUSE THE WHOLE 15 1200 SERIES STILL PERTAINS TO PRODUCTS. 16 MS. HANSEN: I DON'T HAVE THE CACI IN FRONT OF 17 ME. 18 THE COURT: I DO. DON'T WORRY, I'LL FIND IT. 19 MS. HANSEN: IT'S THE FIRST TWO OF 1200, 20 MAYBE, THAT'S THE 400 SERIES. YOU'RE TESTING MY MEMORY 21 FROM -- 400. SOMEONE ELSE REMINDED ME, IT IS 400. 22 THE COURT: ALL RIGHT. 401 IS THE BASIC 23 STANDARD OF CARE. "NEGLIGENCE IS THE FAILURE TO USE 24 REASONABLE CARE TO PREVENT HARM TO ONE SELF OR TO 25 OTHERS. A PERSON CAN BE NEGLIGENT BY ACTING OR FAILING 26 TO ACT. A PERSON IS NEGLIGENT IF THE PERSON DOES 27 SOMETHING THAT A REASONABLY CAREFUL PERSON WOULD NOT DO 28 IN THE SAME SITUATION, OR FAILS TO DO SOMETHING THAT A
Page 11 1 THE COURT: HOW ABOUT A STRICT LIABILITY, 2 FAILURE-TO-WARN CAUSE OF ACTION? 3 MS. HANSEN: MY UNDERSTANDING IS THEY CAN ONLY 4 PROVE NEGLIGENCE AS TO BOEING. 5 THE COURT: WHY? 6 MS. HANSEN: THE FAILURE-TO-WARN -- I DON'T 7 UNDERSTAND THAT CLAIM, BECAUSE IT'S A PRODUCTS CLAIM 8 AND BOEING DIDN'T MANUFACTURE OR SELL ANY PRODUCTS IN 9 THIS CASE. 10 THE COURT: OKAY. YOUR POINT IS MCDONNELL 11 DOUGLAS/BOEING IS IN ON A PREMISES-ONLY THEORY? 12 MS. HANSEN: CORRECT, YOUR HONOR. I DON'T 13 THINK THAT THEY WILL EVER MEET THE BURDEN NECESSARY 14 UNDER THAT CLAIM. 15 THE COURT: WHAT DO YOU THINK ABOUT THAT? 16 MR. ADAMS: I'D HAVE TO TAKE A LOOK AT IT. 17 CERTAINLY THEY FILED A MSJ AND LOSS, BUT -- 18 THE COURT: THAT'S NOT THE POINT. THIS IS THE 19 POINT. TO ME, I THINK IT'S A RELATIVELY EASY CASE 20 UNDER A STRICT LIABILITY FAILURE-TO-WARN TEST. THE 21 CONSTRUCTIVE NOTICE IS RELEVANT BECAUSE IT'S NOT, WHAT 22 DID DEFENDANT KNOW, IT IS WHAT WAS KNOWN OR KNOWABLE IN 23 LIGHT OF THE SCIENTIFIC AND MEDICAL KNOWLEDGE AT THE 24 TIME. I'M PARAPHRASING, BUT THAT'S THE IDEA. 25 THESE THINGS, NEWSPAPERS ARTICLES, AND THE 26 LIKE, IN MY VIEW, IS CIRCUMSTANTIAL EVIDENCE OF WHAT 27 WAS KNOWN OR KNOWABLE. AND IT'S FOR THE JURY TO DECIDE 28 THEREAFTER. THE QUESTION IN MY MIND IS, IS THERE	Page 13 1 REASONABLY CAREFUL PERSON WOULD DO IN THE SAME 2 SITUATION." I DON'T THINK THERE IS A CACI SPECIFIC TO 3 NEGLIGENT FAILURE-TO-WARN. 4 MS. HANSEN: OUTSIDE OF PRODUCTS, I DON'T 5 BELIEVE THAT THERE IS, YOUR HONOR. 6 THE COURT: GIVE ME ONE MORE MOMENT, PLEASE. 7 I DO THINK THAT THERE'S A USE NOTE IN CACI 1222 WHICH 8 IS INFORMATIVE. IT'S ACTUALLY UNDER SOURCES AND 9 AUTHORITY WHICH IS DISTINGUISHING, AT LEAST, IN THE 10 PRODUCTS SPHERE. THE SUBTLE DISTINCTION BETWEEN A 11 STRICT LIABILITY AND A NEGLIGENT FAILURE-TO-WARN CASE 12 RELATIVE TO A PRODUCT. 13 AND I QUOTE, IN PART, "THE KNOWN OR KNOWABLE 14 STANDARD ARGUABLY DERIVES FROM NEGLIGENCE PRINCIPLES 15 AND FAILURE-TO-WARN CLAIMS THAT ARE GENERALLY ROOTED IN 16 NEGLIGENCE TO A GREATER EXTENT THAN MANUFACTURING OR 17 DESIGN DEFECTS CLAIMS. UNLIKE THOSE OTHER DEFECTS, A 18 WARNING DEFECT RELATES TO A FAILURE EXTRANEIOUS TO THE 19 PRODUCT ITSELF, AND CAN BE ASSESSED BY EXAMINING THE 20 MANUFACTURER'S CONDUCT. 21 "THESE PRINCIPLES NOTWITHSTANDING, CALIFORNIA 22 LAW RECOGNIZES SEPARATE FAILURE-TO-WARN CLAIMS UNDER 23 BOTH STRICT LIABILITY AND NEGLIGENCE THEORIES. IN 24 GENERAL, A PRODUCT SUPPLIER WILL BE STRICTLY LIABLE FOR 25 A FAILURE-TO-WARN IF A WARNING WAS FEASIBLE. IN THE 26 ABSENCE OF A WARNING, CAUSED THE PLAINTIFF'S INJURY, 27 REASONABLENESS OF THE SELLERS FAILURE-TO-WARN IS 28 IMMATERIAL IN THE STRICT LIABILITY CONTEXT.

Page 14	Page 16
1 "CONVERSELY, TO PREVAIL ON A CLAIM FOR 2 NEGLIGENT FAILURE-TO-WARN, THE PLAINTIFF MUST PROVE 3 THAT THE SELLER'S CONDUCT FELL BELOW THE STANDARD OF 4 CARE. IF A PRUDENT SELLER WOULD HAVE ACTED REASONABLY 5 IN NOT GIVING A WARNING, THE SELLER WILL NOT HAVE BEEN 6 NEGLIGENT." THAT'S CITING WEBB V. SPECIAL ELECTRIC 7 COMPANY, INC., 63 CAL. 4TH 167, A 2016 CASE. 8 OKAY. SO WHY ARE THESE EXHIBITS NOT AT LEAST 9 CIRCUMSTANTIAL EVIDENCE OF WHAT WAS KNOWN OR KNOWABLE, 10 AND WHY IS IT NOT, THEN, FOR THE JURY TO DECIDE WHETHER 11 MCDONNELL DOUGLAS REASONABLY ACTED IN LIGHT OF THAT? 12 MS. HANSEN: YES, YOUR HONOR. AS TO MCDONNELL 13 DOUGLAS AND BOEING'S KNOWLEDGE, I DON'T THINK THE 14 PLAINTIFFS HAVE LAID THE FOUNDATION THIS WAS EVEN 15 KNOWABLE AS TO THEM, WHERE IT WAS AVAILABLE, HOW IT 16 COULD HAVE BEEN SEEN. THOSE NECESSARY ELEMENTS TO 17 ESTABLISH EVEN THAT LOWER STANDARD FOR "KNOWABLE." 18 THESE WERE ADMITTED JUST BECAUSE COUNSEL FOR FORD HAD 19 STIPULATED THEY WERE ABLE TO DO SO. 20 I DON'T THINK THAT THEY'VE ESTABLISHED ANY 21 OTHER PARTY WAS IN RECEIPT OR COULD HAVE BEEN IN 22 RECEIPT OF THEM. IF YOU LOOK AT THEM, THEY ARE THE AIR 23 HYGIENE FOUNDATION FROM APRIL 1941 AND THE INDUSTRIAL 24 HYGIENE DIGEST FROM SEPTEMBER '55. WHERE WERE THESE 25 AVAILABLE, WHERE WERE THEY PUBLISHED, HOW WAS IT THAT 26 IT WAS KNOWABLE TO MCDONNELL DOUGLAS OR BOEING AT THAT 27 TIME? 28 THE COURT: LET ME ASK PLAINTIFF. DOES	1 MINIMUM BASIS OF FOUNDATION HAS NOT BEEN ESTABLISHED 2 BEFORE A DOCUMENT LIKE THAT COMES IN FOR CONSTRUCTIVE 3 NOTICE, AT A MINIMUM. 4 THE OTHER ISSUE WE HAVE HERE IS, WE ALSO HAVE 5 INTERNAL DOCUMENTS FROM FORD AND HYSTER THAT, 6 ADDITIONALLY, THEY HAVEN'T EVEN ESTABLISHED THAT ANY 7 DEFENDANT HERE WOULD HAVE RECEIVED THOSE DOCUMENTS, 8 WOULD HAVE KNOWN OF THEIR EXISTENCE, OR EVEN SHOULD 9 HAVE KNOWN OF THEIR EXISTENCE. ESPECIALLY INTERNAL 10 MEMOS. 11 THE COURT: WHAT I UNDERSTAND -- 12 MR. OXAMENDI: ROUTINELY WHAT I'VE SEEN IN -- 13 ESPECIALLY IN, FOR EXAMPLE, NEW YORK, WHERE 14 STATE-OF-THE-ART IS SOMETHING THAT'S PART OF THE TRIAL 15 IS -- FOR EXAMPLE, THAT IHF DOCUMENT. TYPICALLY WHAT 16 WOULD HAPPEN IN THAT SITUATION IS, ONCE PLAINTIFFS 17 ESTABLISH THAT A DEFENDANT WAS A MEMBER AND OTHERS 18 WEREN'T, TYPICALLY MOST JUDGES WILL SAY, "THIS COMES IN 19 FOR NOTICE AS TO SO-AND-SO AND NO ONE ELSE." 20 MR. ADAMS: CAN I EXPOUND UPON THAT, YOUR 21 HONOR? 22 THE COURT: LET ME HEAR FROM MR. ADAMS. 23 MR. ADAMS: I HAVE A PROCEDURAL AND THEN A 24 SUBSTANTIVE COMMENT. PROCEDURALLY -- 25 THE COURT: MICROPHONE, PLEASE. 26 MR. ADAMS: HE STOOD UP IN OPEN COURT 27 YESTERDAY AND OFFERED THESE INTO EVIDENCE, AND THERE 28 WAS NO OBJECTION AND THEY WERE RECEIVED. SO TO SORT OF
Page 15	Page 17
1 PLAINTIFF HAVE, UNDER A NEGLIGENCE THEORY, SOME 2 OBLIGATION TO ESTABLISH FOUNDATION THAT A PIECE OF 3 INFORMATION WAS -- I'LL SAY REASONABLY AVAILABLE -- TO 4 A DEFENDANT? 5 THIS IS MY CLEVELAND SUN PRESS EXAMPLE. IN 6 1941, THE CLEVELAND SUN PRESS PUBLISHED AN ARTICLE 7 ABOUT ASBESTOS HAZARDS IN THE EASTERN SUBURBS OF 8 CLEVELAND. HOW IS MCDONNELL DOUGLAS -- IS THAT NOTICE 9 TO MCDONNELL DOUGLAS IN LONG BEACH IN 1941 OF THAT 10 FACT. 11 MR. ADAMS: YES. BUT THE WEIGHT OF IT -- IT'S 12 OUT THERE, IT'S KNOWABLE. SO IT'S RELEVANT. IT'S JUST 13 THE WEIGHT TO GIVE IT. 14 MR. OXAMENDI: DAVID OXAMENDI. IF I COULD 15 INTERJECT FOR JUST ONE MOMENT. I'LL GIVE YOU AN 16 EXAMPLE. THE INDUSTRIAL HYGIENE FOUNDATION DOCUMENT 17 YOU'RE TALKING ABOUT? THAT IS A TRADE DOCUMENT. SO 18 THE ONLY PERSON WHO RECEIVED THAT DOCUMENT WOULD BE A 19 MEMBER OF THAT ORGANIZATION. 20 THEY HAVEN'T LAID ANY FOUNDATION THAT ANY 21 DEFENDANT PRESENT HERE WAS A MEMBER OF THAT 22 ORGANIZATION, WOULD HAVE RECEIVED THAT MAGAZINE, SHOULD 23 HAVE RECEIVED THAT MAGAZINE, OR SHOULD HAVE BEEN ON 24 NOTICE THAT THAT MAGAZINE EXISTED. 25 OR THAT IT WOULD EVEN APPLY TO ANYBODY IN THIS 26 PARTICULAR -- ANY TALC DEFENDANT WAS IN AN AREA OF 27 BUSINESS, THAT THEY SHOULD HAVE KNOWN ABOUT THIS 28 DOCUMENT. I HAVE NEVER BEEN IN A TRIAL WHERE EVEN THAT	1 REHASH WHAT HAS PROCEDURALLY -- NOW, IF THEY DON'T 2 THINK IT'S RELEVANT TO THEM -- FIRST OF ALL, THEY CAN 3 ARGUE WE WEREN'T A MEMBER, WE DIDN'T SEE IT, THIS HAS 4 NOTHING TO DO WITH IT, THEY CAN ARGUE THAT TO THE JURY. 5 NO PROBLEM. 6 OR THEY CAN PROPOSE A LIMITING INSTRUCTION AND 7 YOUR HONOR CAN CONSIDER IT. AND CERTAINLY WE CAN ARGUE 8 THERE'S BEEN A WAIVER. WE STOOD UP, WE OFFERED IT INTO 9 EVIDENCE IN FRONT OF THE JURY. IT WAS RECEIVED. AND 10 NOW, I GUESS THEY WANT A DO-OVER. 11 THE COURT: HOLD ON. I WOULD BE FOUR-SQUARE 12 IN YOUR CORNER ON THAT POINT, BUT FOR THE FACT THAT 13 I'VE HEARD THAT THEY NEVER SAW THE DOCUMENTS BEFORE 14 THEY WERE OFFERED IN REAL TIME. THEY HAD NO 15 OPPORTUNITY TO OBJECT. BECAUSE IT ALL HAPPENED -- 16 BECAUSE THE DOCUMENTS HAD NOT BEEN SHOWN TO THEM BEFORE 17 THEY WERE OFFERED. 18 MR. OXAMENDI: WE ADDITIONALLY DID FILE A 19 DOCUMENT PREVIOUSLY OBJECTING TO ALL EXHIBITS BEING 20 OFFERED THROUGH NON-COLGATE WITNESSES. 21 THE COURT: OKAY. GO AHEAD. 22 MR. ADAMS: SO THAT WHEN WE STOOD UP AND 23 OFFERED IT, THEY SHOULD HAVE SAID, YOUR HONOR WE 24 OBJECT. WE HAVEN'T EVEN SEEN THESE AND SO WE'VE GOT TO 25 OBJECT AND PRESERVE OUR RECORD BECAUSE SOMETHING'S 26 BEING OFFERED IN TO EVIDENCE IN FRONT OF THE JURY THAT 27 DIDN'T. OKAY. 28 THE SUBSTANTIVE ISSUE. I THINK WE ALL AGREE

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1 BASED ON THE USE NOW, THAT OUR NEGLIGENCE CLAIM 2 INCLUDES WHAT WAS REASONABLE IS BASED ON WHAT WAS KNOWN 3 OR KNOWABLE BASED ON THE USE NOTES 1222 THAT THE COURT 4 JUST READ. 5 THESE DOCUMENTS ARE A LIST OF PUBLICLY 6 AVAILABLE PUBLISHED LITERATURE ON THE HAZARDS OF 7 ASBESTOS. SO IT'S NOT JUST THAT IT'S AN IHF OR 8 MEMBERSHIP DOCUMENT, IT'S JUST THAT THEY LIST OUT WHAT 9 WAS PUBLICLY AVAILABLE AND IN PUBLISHED LITERATURE 10 ABOUT THE HAZARDS OF ASBESTOS, WHICH WAS, CERTAINLY, 11 KNOWABLE TO THE DEFENDANTS. 12 AND SO IT'S RELEVANT. IT'S ADMISSIBLE. IT'S 13 ADMITTED, AND THESE ARGUMENTS GO TO WEIGHT. AND SO 14 THEY CAN EITHER ARGUE WEIGHT TO THE JURY OR THEY CAN 15 PROPOSE A LIMITING INSTRUCTION. THAT'S OUR POSITION. 16 THE COURT: I THINK THEY'RE PROPOSING A 17 LIMITING INSTRUCTION RIGHT NOW. THE LIMITING 18 INSTRUCTION BEING THAT IT DOESN'T APPLY TO THEM. 19 MS. HANSEN: THAT WAS THE REQUEST. 20 MR. MULARCZYK: CAN I JUST -- CAN I JUST ADD A 21 COUPLE OF POINTS THAT I DON'T WANT TO GET -- THAT I 22 DON'T WANT TO BE LOST ON THE COURT, WHICH IS NUMBER 23 ONE, THE STANDARD IS NOT JUST KNOWN OR KNOWABLE. IT'S 24 KNOWN OR KNOWABLE BASED UPON THE MEDICAL AND SCIENTIFIC 25 KNOWLEDGE AND INFORMATION BASED UPON THE TIME. 26 WEBB V. SPECIAL ELECTRIC SPEAKS TO THAT WITH 27 RESPECT TO ASBESTOS PRODUCTS. CARLIN V. SUPERIOR COURT 28 AND BROWN V. SUPERIOR COURT SPEAK TO THAT WITH RESPECT	1 FIRST THAT WE EVEN KNEW ABOUT THE DIGEST OR THE LIST 2 CONTAINED THEREIN AND THEY CAN'T DO THAT AS BOEING. 3 MR. ADAMS: NO, WE DON'T. WE DON'T HAVE TO DO 4 THAT. THE JURY DECIDES WHETHER IT'S RELEVANT AND THE 5 WEIGHT TO GIVE IT. ITS -- IT WAS PUBLICLY AVAILABLE 6 INFORMATION ABOUT THE SCIENTIFIC KNOWLEDGE AT THE TIME, 7 30 YEARS BEFORE GARY STEPPED FOOT ON BOEING'S PREMISES, 8 THAT SAID ASBESTOS IS GOING TO KILL YOU, AND HERE'S 9 SOME PRECAUTIONS TO TAKE; RESPIRATORS, OTHER THINGS. 10 AND IF BOEING WANTS TO ARGUE THAT IT WAS IMPOSSIBLE FOR 11 US TO -- 12 THE COURT: UNREASONABLE WOULD BE THE WORD. 13 MR. ADAMS: WELL, I THINK WHAT YOU HEARD WAS 14 THERE WAS NO WAY FOR BOEING TO KNOW THIS STUFF. 15 THE COURT: OKAY. 16 MR. ADAMS: SO THEY CAN ARGUE THAT, AND THE 17 JURY CAN GIVE IT THE WEIGHT THAT IT'S ACCORDED, BUT 18 IT'S UNDENIABLE THAT WHAT'S KNOWABLE IS RELATIVE TO A 19 NEGLIGENCE CLAIM. THIS WAS OUT THERE. IT WAS 20 KNOWABLE. THEY CAN ARGUE THE WEIGHT OF IT ALL THEY 21 WANT, BUT THAT'S FOR THE JURY TO DECIDE. THERE'S NO 22 LEGAL BASIS TO EXCLUDE THIS, OTHER THAN, I GUESS, 352. 23 AND HOW IS THIS SO UNFAIRLY PREJUDICIAL THAT IT'S GOING 24 TO INFLAME THE JURY WHAT WAS ACTUALLY KNOWN AND 25 PUBLISHED PUBLICLY AVAILABLE TO THIS COMPANY. 26 MS. HANSEN: JUST ONE LAST POINT, YOUR HONOR, 27 THAT WAS MADE BY COUNSEL FOR COLGATE. BUT THESE ARE 28 TRADE DOCUMENTS, SO THEY'RE A LITTLE BIT DIFFERENT. I
Page 19	Page 21
1 TO PRESCRIPTION DRUGS. 2 IT'S NOT WHETHER ANY DOCUMENT WAS OUT THERE 3 THAT WAS KNOWN OR KNOWABLE TO THE DEFENDANTS. IT'S 4 WHETHER IT'S WHAT THE STATE AND THE SCIENTIFIC 5 KNOWLEDGE WAS AT THE TIME. SO WHEN YOU'RE TALKING 6 ABOUT INTERNAL DOCUMENTS FROM COMPANIES FOR WHICH NO -- 7 THE COURT: WELL, I'M NOT TALKING ABOUT 8 INTERNAL DOCUMENTS. RIGHT NOW, I'M TALKING ABOUT 9 BOEING'S OBJECTION. 10 MR. MULARCZYK: BUT IT'S A BIGGER POINT 11 BECAUSE THIS ISSUE IS GOING TO COME UP REPEATEDLY. 12 THE COURT: WELL, I KNOW THAT, AND I WANT TO 13 TALK ABOUT INTERNAL DOCUMENTS IN A MINUTE, BUT LET'S 14 TALK ABOUT THESE TWO FIRST. OKAY? 15 MR. MULARCZYK: SURE. 16 MS. HANSEN: YOUR HONOR, IF I MAY BRIEFLY? 17 THE COURT: YES. 18 MS. HANSEN: I THINK THAT THE PREJUDICE ASPECT 19 OF OUR OBJECTION GOES FURTHER, BASED ON WHAT 20 PLAINTIFFS' COUNSEL SAID TOO, IS THERE'S A LIST OF ALL 21 THESE OTHER PUBLICATIONS, BUT I THINK THEY HAVE TO MEET 22 THE FIRST BARRIER SHOWING IT WAS ACTUALLY KNOWABLE TO 23 BOEING. 24 SO THEY ARE GOING TO PRESENT THIS LIST OF 25 PUBLICATIONS INCLUDED IN THESE DIGESTS THAT BOEING 26 NEVER KNEW ABOUT OR HAD ACCESS TO AND THEN TELL THE 27 JURY WE SHOULD HAVE KNOWN ABOUT ALL THESE OTHERS AS 28 WELL. AND SO I JUST THINK THAT THEY HAVE TO ESTABLISH	1 WENT THROUGH ALL THE DOCUMENTS, AND I SPECIFICALLY 2 PULLED OUT THESE TWO FOR WHICH BOEING AND MCDONNELL 3 DOUGLAS WERE NEVER A MEMBER OF AND SO THAT IS THE -- 4 THE COURT: BUT ARE YOU PREPARED IN -- 5 MS. HANSEN: -- UNREASONABLE NATURE OF THESE 6 DOCUMENTS SPECIFICALLY. 7 THE COURT: THANK YOU. ARE YOU PREPARED IN 8 YOUR CASE TO INTRODUCE EVIDENCE OF THAT FACT? WILL 9 YOUR WITNESS SAY, AND BY THE WAY, MCDONNELL DOUGLAS, WE 10 WERE NEVER A MEMBER OF THAT TRADE GROUP. WE DON'T -- 11 OR THAT TRADE GROUP. 12 MS. HANSEN: NO, YOUR HONOR. WE WERE NOT 13 PREPARED UNTIL I SAW THE DOC -- WE WERE NOT ON NOTICE 14 OF THESE DOCUMENTS UNTIL I SAW THEM YESTERDAY. 15 MR. ADAMS: YOUR HONOR, IF I MAY -- 16 THE COURT: HOLD ON. 17 MS. HANSEN: AND I THINK THAT'S THE DIFFICULT 18 THING, IS THEY ARE COMING IN THROUGH ANOTHER ENTITY WHO 19 WAS A MEMBER OR MAY HAVE BEEN A MEMBER, BUT WAS 20 STIPULATED BY COUNSEL FOR A DIFFERENT DEFENDANT, AND 21 THEY ARE BEING USED AGAINST BOEING NOW, WHOSE WITNESS 22 IS COMING TODAY. 23 MR. ADAMS: I'M NOT ACTUALLY GOING TO ASK THE 24 WITNESS ABOUT THESE DOCUMENTS TODAY, SO -- BUT FOR WHAT 25 IT'S WORTH. BUT THE LEGAL STANDARD IS NOT, WERE YOU A 26 MEMBERSHIP OF THE TRADE ORGANIZATION. IT'S WAS IT 27 KNOWABLE. SO THERE CAN'T BE A SERIOUS ARGUMENT THAT IT 28 WAS NOT KNOWABLE, BECAUSE FORD KNEW IT.

Page 22 1 THE COURT: OKAY. LET'S -- HOLD ON. WAIT A 2 SECOND, PLEASE. AND BY THE WAY, AS SOON AS WE HAVE THE 3 JURY, I'M BRINGING THEM IN. LET'S CHANGE THE HYPO. 4 LET'S SAY FORD DID NOT STIPULATE TO THIS. LET'S SAY 5 INSTEAD, I GUESS, MAYBE A HYPO ISN'T GOING TO WORK. 6 THESE DOCUMENTS CAME FROM FORD'S FILES. IS THAT HOW 7 THIS CAME TO US IN THIS TRIAL? 8 MS. DEAN: YOUR HONOR, WE GOT THESE FROM THE 9 INDUSTRIAL HYGIENE FOUNDATION. SORRY TO JUMP IN HERE, 10 BUT I -- 11 THE COURT: OKAY. BUT -- AND I GUESS I'M JUST 12 ASKING FORD AND PLAINTIFF, IS THE REASON IT WAS NO 13 OBJECTION IS BECAUSE FORD CONCEDED, AT LEAST FOR THIS 14 CASE, THAT THOSE DOCUMENTS CAME FROM FORD'S FILES OR 15 WERE -- WERE AVAILABLE AND PRESENT IN FORD'S FILES. 16 MS. DEAN: NO. THEY ARE NOT IN FORD'S FILES. 17 THESE ARE NOT ONE OF THE 80,000 DOCUMENTS THAT ARE PART 18 OF THE FORD. YOU DON'T SEE "PRODUCED BY FORD." THEY 19 ARE NOT FORD DOCUMENTS. 20 THE COURT: OKAY. ANYTHING YOU WANT TO SAY 21 ABOUT THAT? 22 MR. LANKFORD: IT DEPENDS ON THE PARTICULAR 23 DOCUMENT, BUT I THINK THE BOTTOM LINE IS, WE HAD 24 INTERROGATORY RESPONSES OF WHEN WE WERE MEMBER OF THESE 25 ORGANIZATIONS. AND SO TYPICALLY, BECAUSE OF THAT 26 MEMBERSHIP, THEY ARE USED IN DEPOSITION OR OTHERWISE 27 WITH OUR PERSON MOST KNOWLEDGEABLE. 28 THE COURT: OKAY. GOT IT. MS. HANSEN, LET ME	Page 24 1 HYSTER DOCUMENTS? IS THAT WHAT -- 2 MR. MULARCZYK: IT'S, BASICALLY, ALL THE 3 DOCUMENTS THAT HAVE BEEN ADMITTED THROUGH EITHER 4 DARREL LIBBY, JEFF WILLIAMS AND AL ROCKER, THAT THERE 5 SHOULD BE AN INSTRUCTION THAT NONE OF THAT EVIDENCE, 6 INCLUDING THE TESTIMONY, APPLIES WITH RESPECT TO OUR 7 CLIENTS. 8 THE COURT: OKAY. WELL, WHAT ABOUT THE 9 PROCEDURAL POINT, MR. ADAMS, RAISES AS TO THEM? WHY 10 DID YOU NOT MAKE A CONTEMPORANEOUS OBJECTION, OR IF YOU 11 DID, DID I ALREADY OVERRULE IT. 12 MR. MULARCZYK: SO BECAUSE I DON'T THINK -- SO 13 TYPICALLY, THE WAY THIS IS HANDLED, IS I DON'T THINK IF 14 THERE'S A PARTY AGAINST WHOM THE DOCUMENTS ARE OFFERED, 15 THAT THE DOCUMENTS DON'T COME IN BECAUSE ANOTHER PARTY 16 OBJECTS. 17 TYPICALLY, THE WAY THIS HAS BEEN DEALT WITH, 18 IS THAT THOSE DOCUMENTS ARE ADMITTED, BUT THEY'RE ONLY 19 ADMITTED AS AGAINST THE PARTY WITH WHOM THE AGREEMENT 20 IS MADE, AND THEN THERE'S AN INSTRUCTION THAT THEY ARE 21 NOT TO BE APPLIED OR CONSIDERED WITH RESPECT TO ANY 22 OTHER DEFENDANT IN THE CASE. SO AN OBJECTION 23 CONTEMPORANEOUSLY WOULD NOT RESOLVE THE ISSUE THAT WE 24 HAVE IN FRONT OF US. IT WOULDN'T HAVE MADE A 25 DIFFERENCE. 26 THE PROBLEM THAT I HAVE WITH THIS IS TWOFOLD. 27 FIRST, IS THAT WHAT THEY -- FOR LARGELY, THE DOCUMENTS 28 THAT ARE ADMITTED WERE INTERNAL NOTES OR MEMOS OR TRADE
Page 23 1 ASK YOU THE HYPOTHETICAL. IF -- WHAT IF THE PLAINTIFF 2 HAD INTRODUCED EXPERT TESTIMONY FROM SOMEBODY WHOSE 3 QUALIFIED TO SAY, IN EXHIBIT 3052, THE INDUSTRIAL 4 HYGIENE DIGEST CONTAINS A LISTING OF INFORMATION THAT 5 WAS KNOWN OR KNOWABLE IN THE RELEVANT SCIENTIFIC 6 COMMUNITY IN AMERICA IN 1955. HYPOTHETICALLY, IF THAT 7 HAD BEEN THE STATE OF THE EVIDENCE, WOULD THIS COME IN 8 AGAINST MCDONNELL DOUGLAS. 9 MS. HANSEN: ADMITTED AS AN EXHIBIT FOR THE 10 JURY TO TAKE BACK AND CONSIDER AND -- 11 THE COURT: YEAH. THAT'S WHAT I MEAN BY THAT. 12 MS. HANSEN: POTENTIALLY, I THINK IT DEPENDS 13 ON THE SCOPE OF THE QUESTIONING; BUT I ALSO THINK IN 14 THAT INSTANCE, BOEING HAS AN OPPORTUNITY TO CROSS THE 15 EXPERT WHOSE REVIEWING IT, AND THAT'S NOT WHAT'S 16 HAPPENING HERE. 17 WHAT'S HAPPENING HERE IS THIS DOCUMENT HAS 18 SIMPLY BEEN JUST ADMITTED BY A STIPULATION OF ONE 19 DEFENDANT AGAINST ALL DEFENDANTS, INCLUDING BOEING, IN 20 WHICH THE JURY CAN JUST TAKE IT BACK AND READ IT WITH 21 NO EXPLANATION OR OPPORTUNITY FROM BOEING TO RESPOND. 22 AND SO I THINK THE HYPOTHETICAL THAT THE COURT 23 POSES IS DIFFERENT. AND I THINK THAT'S THE PROBLEM, IS 24 WE'RE BEING TOLD WE CAN EXPLAIN TO THE JURY. WHEN? 25 WITH WHO? WHEN IS OUR OPPORTUNITY TO DO THAT? 26 THE COURT: OKAY. I UNDERSTAND. NOW, TO YOUR 27 POINT, MR. MULARCZYK, AND TO YOUR POINT, MR. OKAMENDI, 28 YOUR CLIENTS ARE AGGRIEVED BY THE ADMISSION OF, WHAT,	Page 25 1 DOCUMENTS THAT MY CLIENT WASN'T APART OF, AND SO THEY 2 HAVE NO APPLICABILITY WITH RESPECT TO AVON. AND IT'S 3 ALSO NOT WHAT THE CASE LAW TALKS ABOUT IS STATE OF THE 4 ART. 5 IT'S NOT WHETHER SOME DOCUMENT THAT WAS KNOWN 6 TO FORD WAS KNOWN OR KNOWABLE TO SOMEBODY ELSE ITS WHAT 7 THE SCIENTIFIC KNOWLEDGE TO SOMEBODY ELSE. IT'S WHAT 8 THE STATE OF THE MEDICAL AND SCIENTIFIC KNOWLEDGE WAS 9 AT THE TIME, AND THAT'S THE WEBB CASE. 10 THE COURT: AND DO YOU CONTEND THAT REQUIRES 11 EXPERT TESTIMONY TO ESTABLISH? 12 MR. MULARCZYK: YES. IT REQUIRES EXPERT 13 TESTIMONY OR ANY FOUNDATION THAT THIS IS APPLICABLE TO 14 THE PARTY AGAINST WHOM SOME ARGUMENT WILL BE MADE DOWN 15 THE ROAD. THERE HAS TO BE SOME MINIMUM FOUNDATION LAID 16 THAT A DOCUMENT THAT CAME IN THROUGH MR. LIBBY HAS 17 ANYTHING TO DO WITH AVON OR COLGATE. 18 THERE'S ALSO A SECOND PROBLEM HERE, WHICH IS 19 WITH RESPECT TO AT LEAST AL ROCKER, THE COURT 20 INSTRUCTED THE JURY THAT THAT TESTIMONY COULD ONLY BE 21 CONSIDERED WITH RESPECT TO FORD. IT'S NOT ADMISSIBLE, 22 OR IT CAN'T BE CONSIDERED WITH RESPECT TO ANY OTHER 23 PARTY. 24 AND SO TO BORROW A DOCTRINE FROM MY CRIMINAL 25 DAYS, IT WOULD BE FRUIT OF THE POISONOUS TREE FOR THAT 26 TESTIMONY NOT TO BE CONSIDERED AGAINST ANY OTHER PARTY, 27 BUT FOR THE DOCUMENTS THAT COME IN FOR WHICH FOUNDATION 28 WAS LAID FROM TESTIMONY THAT CAN'T BE CONSIDERED

Page 26 1 AGAINST ANY OTHER PARTY, FOR THAT INFORMATION TO THEN 2 BE ABLE TO BE CONSIDERED AGAINST OTHER PARTIES. 3 THE COURT: OKAY. 4 MR. MULARCZYK: IN OTHER WORDS, THE ONLY 5 REASON THOSE DOCUMENTS COME IN, IS BECAUSE THE COURT 6 DEEMED THAT THE FOUNDATION WAS LAID BY TESTIMONY THAT 7 THE JURY CAN'T CONSIDER WITH RESPECT TO ANY OTHER 8 PARTY. AND SO IF THAT'S THE INSTRUCTION -- 9 THE COURT: WAIT. SAY THAT SENTENCE AGAIN. 10 MR. MULARCZYK: THE ONLY REASON THOSE 11 DOCUMENTS WERE ULTIMATELY ADMITTED, IS BECAUSE THE 12 COURT FELT THAT THAT WITNESS LAID THE FOUNDATION FOR 13 THOSE DOCUMENTS TO COME IN, BUT INSTRUCTED THE JURY 14 THAT THAT TESTIMONY CAN'T BE CONSIDERED RESPECT TO ANY 15 OTHER PARTY, EXCEPT FOR FORD. 16 AND SO IF THE TESTIMONY IS OUT WITH RESPECT TO 17 ANY OTHER PARTIES, SO ARE THE DOCUMENTS, BECAUSE THAT'S 18 WHAT THE FOUNDATION WAS BASED ON. 19 THE COURT: ALL RIGHT. DO YOU MY HYPOTHETICAL 20 IN MIND THAT I PUT TO MS. HANSEN. 21 MR. MULARCZYK: YES. 22 THE COURT: IF AN EXPERT HAD COME IN, 23 PLAINTIFF PRODUCED AN EXPERT TO SAY, IN MY OPINION -- A 24 QUALIFIED EXPERT OFFERED THE OPINION THAT THE DOCUMENTS 25 IDENTIFIED IN EXHIBITS 3051 AND 3052 WERE KNOWN OR 26 KNOWABLE IN THE RELATIVE SCIENTIFIC AND MEDICAL 27 COMMUNITY AT THE TIME, THEN IT GOES TO WEIGHT AND NOT 28 ADMISSIBILITY? Page 27 1 MR. MULARCZYK: AS AGAINST AVON? SO IF AN 2 EXPERT CAME IN AND TALKED ABOUT FORD DOCUMENTS WITH 3 RESPECT TO -- NO. I DON'T THINK IT CHANGES ANYTHING. 4 I MEAN, AT LEAST WE HAVE AN OPPORTUNITY TO 5 CROSS-EXAMINE, LIKE MS. HANSEN MENTIONED, BUT I DON'T 6 THINK THERE'S ANY FOUNDATION THAT ANY EXPERT CAN LAY 7 THAT WHAT WAS IN A MEMO THAT WENT TO FORD OR TO 8 DARREL LIBBY AT HYSTER IS ANYTHING THAT AVON KNEW 9 ABOUT -- 10 THE COURT: JUST HYPOTHETICALLY -- MS. BIVENS, 11 WE'RE STILL WAITING? OH, OKAY. I DIDN'T KNOW THAT. 12 LET ME FINISH UP THIS. 13 LET'S TAKE THIS HYPOTHETICAL. A MANAGER AT 14 HYSTER WRITES TO ANOTHER MANAGER AT HYSTER, AN INTERNAL 15 MEMO, AND SAYS, I'M ATTACHING AN ARTICLE FROM THE 16 AMERICAN JOURNAL OF INDUSTRIAL HYGIENE FROM 1962. AND 17 THE MEMO IS FROM 1963 THAT SAYS, THIS JOURNAL ARTICLE 18 CONTAINS INFORMATION ABOUT THE RISKS OF ASBESTOS IN 19 WORKPLACES. 20 THAT'S MY HYPO. OKAY? AND THAT'S OFFERED. 21 IT COMES IN THROUGH A HYSTER WITNESS. AND I'LL ADD TO 22 MY HYPOTHETICAL, ANOTHER WITNESS SAYS, OH, YEAH THE 23 AMERICAN JOURNAL OF INDUSTRIAL HYGIENE WAS VERY WELL 24 KNOWN, AND I WOULD EXPECT AND IN MY OPINION CORPORATE 25 AMERICA WOULD HAVE ACCESS TO IT AND COULD KNOW ITS 26 CONTENTS WITH MINIMAL EFFORT. 27 THAT'S MY HYPO. OKAY? DOES IT COME IN AS 28 AGAINST AVON, AND GO TO WEIGHT AND NOT ADMISSIBILITY,	Page 28 1 EVEN THOUGH IT'S A HYSTER MEMO, INTERNAL, NEVER SAW THE 2 LIGHT OF DAY OUTSIDE OF PORTLAND, OREGON HYSTER 3 OFFICES. 4 MR. MULARCZYK: NO. IF WE'RE TALKING ABOUT A 5 HYSTER MEMO, THE ANSWER IS NO, EVEN IF AN EXPERT COMES 6 IN. 7 THE COURT: YEAH. I DON'T AGREE WITH YOU. I 8 THINK THAT IS CIRCUMSTANTIAL EVIDENCE OF WHAT WAS KNOWN 9 OR KNOWABLE. THE FACT THAT IT HAPPENED TO BE CONTAINED 10 IN A HYSTER MEMO, I THINK IS IRRELEVANT. OKAY. TO BE 11 CONTINUED. SHALL WE BRING IN THE JURY? 12 MS. HANSEN: THANK YOU, YOUR HONOR. 13 THE COURT: THANK YOU, MS. HANSEN. 14 MR. LANKFORD: AGAIN, YOUR HONOR, JUST SO THE 15 COURT KNOWS, WE ARE GOING TO HAVE MR. WILLIAMS AND 16 THEN, I GUESS, BOEING. 17 THE COURT: OKAY. 18 MR. LANKFORD: AND THEN WE'LL GO FROM THERE. 19 20 (WHEREUPON THE FOLLOWING PROCEEDINGS 21 WERE HELD IN OPEN COURT IN THE PRESENCE 22 OF THE JURY.) 23 THE COURT: HAVE A SEAT, EVERYONE, PLEASE. 24 GOOD MORNING TO OUR JURY AND ALTERNATES. WELCOME BACK. 25 THANK YOU FOR YOUR PROMPTNESS. ALL JURORS AND 26 ALTERNATES ARE PRESENT. COUNSEL ARE PRESENT. AND MY 27 UNDERSTANDING, LADIES AND GENTLEMEN, IS WE ARE, INDEED, 28 GOING TO FINISH UP WITH MR. WILLIAMS TODAY FROM FORD. Page 29 1 SO I SEE HIM ON ONE OF OUR SCREENS BUT NOT ON THE 2 SCREEN WE NEED. SO WHERE IS RYAN, THE TECH MAN? THERE 3 HE IS. 4 OKAY. NOT OKAY. LET'S SEE. WE NEED SOMEONE 5 TO ATTEND TO THIS. I'M NOT SURE IF IT'S -- ALL RIGHT. 6 SO WE NEED ONE OF THE PARTY'S TECHNICIANS TO HELP US. 7 MS. DEAN: IN THE LOGISTICS OF GETTING FORD'S 8 WITNESS HERE, WE DID NOT MANAGE, SO I'M NOT SURE. 9 WE'RE HAPPY TO TRY BUT THAT'S NOT US. 10 MR. LANKFORD: MR. WILLIAMS, CAN YOU HEAR US? 11 THE WITNESS: YES. 12 MR. LANKFORD: WE'RE JUST TRYING TO GET YOU ON 13 A SCREEN HERE SO IT MIGHT BE A MINUTE. WE'RE GOOD. 14 THE COURT: SO FOLKS, I CAN'T GUARANTEE THIS 15 IS GOING TO WORK, AND I GUESS, THE QUESTION IS: HOW DO 16 YOU WANT TO PROCEED? DO YOU WANT TO PROCEED WITH AUDIO 17 ONLY, OR DO YOU WANT TO PROCEED AT A LATER TIME WITH A 18 DIFFERENT TECHNOLOGY? SO OUR SPECULATION, FOR WHATEVER 19 IT'S WORTH, IS THAT IT IS A SIGNAL STRENGTH, NOT A 20 CONNECTION ISSUE, BUT I DON'T KNOW THAT. WHAT DO YOU 21 WANT TO DO, MR. LANKFORD? 22 MR. LANKFORD: WE DECIDED WE'RE GOING TO 23 PROCEED, AND I AGREED IF MS. DEAN HAS ANY -- 24 THE WITNESS: YOU'RE BREAKING UP. 25 MR. LANKFORD: WE DECIDED THAT WE'RE GOING TO 26 PROCEED WITH THE AUDIO, AND IF MS. DEAN HAS ANY 27 DIFFICULTIES WITH THAT, WE'LL CALL HIM BACK AT ANOTHER 28 TIME.

Page 30 1 MS. DEAN: THERE ARE SOME DOCUMENTS I FOR SURE 2 WILL WANT TO DISCUSS, AND MY UNDERSTANDING IS BECAUSE 3 HE'S FAMILIAR WITH THEM AND FORD IS COMFORTABLE WITH ME 4 SHOWING THEM TO THE JURY BUT NOT THE WITNESS. SO THAT 5 MAKES ME THINK MAYBE THIS WILL WORK, BUT I'M NOT 6 ENTIRELY CONFIDENT. 7 THE COURT: OKAY. WE WILL GIVE IT A TRY. IF 8 IT DOESN'T WORK, WE'RE GOING TO COME UP WITH A 9 DIFFERENT PLAN FOR MR. WILLIAMS. OKAY. MR. LANKFORD, 10 LET ME JUST REMIND MR. WILLIAMS, MR. WILLIAMS, YOU 11 REMAIN UNDER OATH. DO YOU UNDERSTAND THAT? 12 THE WITNESS: YES. 13 THE COURT: OKAY. THANK YOU. GO AHEAD, 14 MR. LANKFORD. 15 16 JEFFREY WILLIAMS, 17 HAVING BEEN PREVIOUSLY SWORN AS A WITNESS, 18 TESTIFIED AS FOLLOWS: 19 20 CROSS-EXAMINATION 21 BY MR. LANKFORD: 22 Q MR. WILLIAMS, I UNDERSTAND YOU HAVE TO GET TO 23 THE AIRPORT, SO I'M GOING TO TRY TO MAKE THIS BRIEF. 24 A YES. 25 Q HOW WOULD YOU RANK BRAKES IN TERMS OF THE -- 26 IN TERMS OF SAFETY MECHANISMS ON A VEHICLE? 27 A WELL, I SAID IT BEFORE AND I -- BECAUSE I 28 BELIEVE IT IS -- I THINK, YOU COULD ARGUE THAT THE	Page 32 1 THEY SHOULD UNTIL THE WATER GOT BASICALLY REMOVED FROM 2 THE BRAKES. 3 Q OKAY. I'M GOING TO SHOW YOU A DOCUMENT. CAN 4 YOU SEE THAT? IT'S PLAINTIFFS 3044. 5 A YES, IT LOOKS LIKE A BROCHURE FOR A C-SERIES 6 TRUCK. 7 Q WHY WERE THEY CALLED C-SERIES TRUCKS? 8 A C STANDS FOR "CAB OVER." THE CAB ESSENTIALLY 9 IS SITTING ON TOP OF THE ENGINE, IF YOU WILL. THAT'S 10 WHY IT WAS CALLED A C-SERIES. 11 Q OKAY. AND FORD HAD -- LET ME SHOW YOU A PAGE 12 FROM PLAINTIFFS 3043, I BELIEVE IT IS. FORD ALSO HAD 13 SOMETHING CALLED AN F SERIES, CORRECT? 14 A YES. 15 Q OKAY. AND WHAT WAS THE DIFFERENCE IN THAT, IN 16 TERMS OF THE CAB? 17 A THAT WAS MORE OF AN -- IT WAS SORT OF A 18 HALF-PICKUP TRUCK. THEY COULD HAVE A, YOU KNOW, FLAT 19 BED IN THE BACK OR SOMETHING ELSE, OR A BOX TRUCK. IT 20 WAS MOSTLY A FRONT END OF AN F-SERIES TRUCK UNTIL THEY 21 GET TO THE BIGGER ONES IN LATER YEARS. BUT MOSTLY IT 22 WAS THE FRONT END AN F-SERIES TRUCK. THEY HAD THE BACK 23 END -- USUALLY IT WAS SOLD AS AN INCOMPLETE VEHICLE IN 24 THESE KIND OF VEHICLES. 25 Q OKAY. AND SO YOU MENTIONED YESTERDAY THAT 26 FORD SHOWED EIGHT C-SERIES TRUCKS SOLD TO MCDONNELL 27 DOUGLAS, CORRECT? 28 A CORRECT.
Page 31 1 BRAKE SYSTEM IS THE MOST IMPORTANT SAFETY SYSTEM ON 2 YOUR VEHICLE. YOU ALWAYS GOT TO BE ABLE TO STOP. YOU 3 GOT TO BE ABLE TO STOP CONSISTENTLY. AND THAT'S 4 EXTREMELY IMPORTANT, OBVIOUSLY. 5 Q YOU MENTIONED YESTERDAY THAT THE UNITED STATES 6 GOVERNMENT REQUIRED ORIGINAL EQUIPMENT MANUFACTURERS, 7 THAT IS VEHICLE MANUFACTURERS LIKE FORD, TO COMPLY WITH 8 A REGULATION CALLED FMVSS. WHY WITH RESPECT TO BRAKES? 9 WHY DID THE GOVERNMENT REQUIRE THAT? 10 A I GUESS THEY WANTED TO ENSURE THAT THERE WAS 11 MORE CONSISTENCY IN THE DETERMINATION OF BRAKE 12 PERFORMANCE FOR VEHICLES. 13 Q NOW IN THE EARLY 1970S, MY UNDERSTANDING IS 14 FORD ATTEMPTED TO USE NON-ASBESTOS BRAKES ON SOME 15 POLICE VEHICLES. WHAT HAPPENED WITH THAT? 16 A YES, IN '72 TIME FRAME -- '72, '73, THEY WERE 17 TRYING TO USE SOME SEMI-METALLIC BRAKES -- FRONT BRAKES 18 FOR POLICE INTERCEPTOR. SO POLICE VEHICLES. AND, YOU 19 KNOW, THEY THOUGHT THEY HAD SOMETHING THAT WAS GOING TO 20 WORK AND PUT THEM ON THE VEHICLES, AND HAD A NUMBER OF 21 ISSUES WITH NOISE AND WEAR AND SOMETHING CALLED 22 "MORNING SICKNESS." 23 Q OKAY. BY THE WAY, WHAT IS MORNING SICKNESS 24 WITH RESPECT TO VEHICLES? 25 A WELL, WHAT HAPPENS IS OVERNIGHT OR, YOU KNOW, 26 DURING DRIVING, THE BRAKES MIGHT GET WET AND ABSORB 27 WATER. SO THE FIRST FEW TIMES IN THE MORNING WHEN YOU 28 PUSH ON THE BRAKES, THE BRAKES DIDN'T WORK AS WELL AS	Page 33 1 Q OKAY. AND IN FAIRNESS TO PLAINTIFFS, FORD 2 ALSO SHOWED OTHER VEHICLES SOLD TO MCDONNELL DOUGLAS. 3 YESTERDAY, I THINK YOU SAID 34, CORRECT? 4 A CORRECT. 5 Q AND A FEW OF THOSE, I'M LOOKING AT THIS -- BY 6 THE WAY, WHAT I'M DISPLAYING, PLAINTIFFS -- I'M SORRY. 7 3078, THAT'S ACTUALLY A DOCUMENT YOU CREATED, CORRECT? 8 A YES. 9 Q OKAY. AND YOU WERE TRYING TO DETERMINE FOR 10 PLAINTIFFS, PER THEIR REQUEST, WHO MADE THE BRAKES AND 11 OTHER COMPONENTS FOR THOSE VEHICLES, CORRECT? 12 A CORRECT. 13 Q AND YOU DID ONLY LOOK AT THE C-SERIES TRUCKS 14 THAT MR. CHAPMAN IDENTIFIED, BUT YOU ALSO LOOKED AT -- 15 WE SHOWED THREE F-SERIES, CORRECT? 16 A YES. CORRECT. 17 Q OKAY. SO YOU WERE NOTING YESTERDAY VARIOUS 18 CORRESPONDENCE BETWEEN FORD AND DR. SELIKOFF, CORRECT? 19 A YES. 20 Q I WANT TO JUST TALK TO YOU A SECOND ABOUT FORD 21 EXHIBIT 703. THIS IS A 1970 LETTER FROM DR. SELIKOFF 22 AT MOUNT SINAI, CORRECT? 23 A YES. 24 Q WE CAN SEE DR. SELIKOFF SIGNED IT, CORRECT? 25 A YES. 26 Q AND ONE OF THE THINGS -- WELL, THE MAIN THING 27 HE WAS DISCUSSING HERE IS BRAKE WEAR DEBRIS, CORRECT? 28 A RIGHT, THIS IS A LETTER THAT -- HE'S

Page 34 1 RESPONDING TO A LETTER THAT MR. PEARSON SENT TO HIM AND 2 HE WAS ASKING ABOUT, YOU KNOW, ASBESTOS AS IT RELATES 3 TO AIR POLLUTION. 4 Q OKAY. AND YOU NOTE -- FOR INSTANCE, HE NOTES 5 AT THE END OF THE FIRST PAGE, "IT MIGHT BE USEFUL TO 6 REPEAT THE BRAKE DUST STUDIES," CORRECT? 7 A YES. 8 Q AND WE TALKED ABOUT THAT A LITTLE YESTERDAY, 9 DR. LYNCH AT THE UNITED STATES PUBLIC HEALTH SERVICE 10 AND OTHERS DID VARIOUS BRAKE DUST STUDIES FINDING LESS 11 THAN ONE PERCENT ASBESTOS IN THE DUST, CORRECT? 12 A CORRECT. 13 Q AND -- 14 MS. DEAN: IS THAT 703? 15 MR. LANKFORD: YES. 703, I'M SORRY. 16 BY MR. LANKFORD: 17 Q BY THE WAY, I DON'T KNOW IF YOU'RE AWARE OF 18 THIS, BUT SOME SAMPLES DR. LYNCH HAD EXCEEDED LESS THAN 19 ONE PERCENT, CORRECT? ARE YOU AWARE OF THAT? 20 A YES. 21 Q OKAY. AND IN THOSE INSTANCES, DR. LYNCH 22 STATED THAT IT WOULDN'T BE REAL-WORLD CONDITIONS 23 BECAUSE IT WOULD HAVE HAD BRAKE FAILURE. IS THAT TRUE? 24 A RIGHT. DURING THE TEST, THEY EXCEEDED THE 25 BRAKE -- ESSENTIALLY THE BRAKE CAME APART. SO WHEN IT 26 CAME APART, IT SPRAYED OUT A LOT MORE PARTICLES, I 27 GUESS, BUT THAT'S NOT A NORMAL CONDITION WHEN YOUR 28 DRIVING.	Page 36 1 ASBESTOS CONTAMINATION OF THE AMBIENT AIR, I THINK THIS 2 SHOULD BE DETERMINED PRECISELY BECAUSE," -- OR 3 "DOCUMENTED PRECISELY BECAUSE OF COMMON ASSUMPTIONS," 4 CORRECT? 5 A CORRECT. 6 Q HE GOES ON, ESSENTIALLY, TO NOTE THAT HE WOULD 7 BE HAPPY TO ASSIST WITH STUDIES IN THAT REGARD, 8 CORRECT? 9 A YES. 10 Q FORD TOOK HIM UP ON THAT, CORRECT? 11 A RIGHT. I THINK THIS IS HIM SIGNALLING TO FORD 12 THAT HE WOULD BE HAPPY TO DO SOME STUDIES IN THOSE 13 GRANTS THAT, I THINK WE TALKED A LITTLE BIT ABOUT 14 YESTERDAY, WERE I THINK ONE OF THE RESULTS OF THAT. 15 Q AND SOME OF THOSE MOUNT SINAI STUDIES WERE 16 PUBLISHED IN THE PEER REVIEW LITERATURE ALONG WITH A 17 STUDY THAT FORD'S ENGINEER, DR. ANDERSON DID, CORRECT? 18 A RIGHT. THAT'S -- THAT'S -- THE STUDIES THEY 19 ENDED UP DOING IS PART OF THE GRANT, WAS WHAT KIND OF 20 DROVE THAT NIOSH MEETING IN 1975 THAT WE TALKED ABOUT. 21 Q THOSE STUDIES WERE PUT OUT THERE FOR THE WORLD 22 TO SEE, CORRECT? 23 A CORRECT. 24 Q NOW YOU MENTIONED YESTERDAY SOMETHING ABOUT 25 YOU THOUGHT YOU HAD SEEN IN A LETTER THAT DR. SELIKOFF 26 SAID THAT BRAKE LININGS DON'T CONSTITUTE A HAZARD, 27 CORRECT? 28 A RIGHT. I WAS THINKING OF THIS PARTICULAR --
Page 35 1 Q HERE IN THIS LETTER WITH DR. SELIKOFF, THEY 2 NOTE ONE COMPANY WANTED THE SUPPLIERS AT THE TOP OF 3 PAGE 2 -- ONE OF THE THINGS THAT'S NOTED IN THAT LETTER 4 IS THAT ONE OF THE SUPPLIERS WAS DOING TESTING AND 5 NOTED THAT, DUE TO THE TEMPERATURES, THERE WAS 6 BASICALLY DECOMPOSITION OF THE ASBESTOS TO SOME OTHER 7 SUBSTANCE, CORRECT? 8 A CORRECT. 9 Q BUT ONE OF THE POINTS DR. SELIKOFF MADE IN THE 10 LETTER WAS THAT FORD AND DR. SELIKOFF THOUGHT THAT 11 THERE SHOULD BE MORE STUDIES DONE TO ENSURE THAT, IN 12 FACT, THE ASBESTOS IN THE BRAKES WAS ESSENTIALLY 13 CONVERTED TO THE EXTENT PREVIOUS STUDIES DEMONSTRATED, 14 CORRECT? 15 A CORRECT. 16 Q AND HE NOTES, BY THE WAY, IN ONE SECTION OF 17 THE LETTER, THE RELATIVE PERCENTAGE IN TERMS OF TONS OF 18 ASBESTOS USED IN FRICTION MATERIALS, BRAKE AND 19 CLUTCHES, COMPARED TO THE MUCH LARGER AMOUNTS THAT WERE 20 IN OTHER PRODUCTS THAT WERE USED IN SOCIETY, CORRECT? 21 A CORRECT. 22 Q AND HE NOTES THAT, ESSENTIALLY, ABOUT FIVE 23 PERCENT FRICTION AND 95 PERCENT OTHER MATERIALS SUCH AS 24 ASBESTOS CEMENT FLOORING, ET CETERA, CORRECT? 25 A CORRECT. 26 Q AND THEN HE STATES IN THE LAST SENTENCE, "TO 27 REPEAT, WHILE IT IS MY INFORMED GUESS THAT BRAKE 28 LININGS CONTRIBUTE LESS THAN IS COMMONLY ASSUMED TO	Page 37 1 THE WORDING IS A LITTLE DIFFERENT HERE -- BUT I WAS 2 THINKING THIS PARTICULAR LETTER, BUT THOSE ACTUAL WORDS 3 WERE FROM THE CONFERENCE IN THE PNEUMOCONIOSIS 4 CONFERENCE IN 1969. 5 Q OKAY. SO THERE WAS A CONFERENCE THAT WAS DONE 6 TO LOOK AT -- BASICALLY A NUMBER OF SCIENTISTS GOT 7 TOGETHER AND WERE LOOKING AT VARIOUS ISSUES INCLUDING 8 ASBESTOS IN BRAKES, CORRECT? 9 A YES. 10 Q OKAY. AND AT ONE POINT IN THIS CONFERENCE, A 11 DR. SMITHER NOTES THAT, "EVEN IN CONDITIONS OF BRAKE 12 DRUM CLEANING BY COMPRESSED AIR, TIME-WEIGHTED AVERAGE 13 EXPOSURES ARE WITHIN THE LIMITS CONSIDERED NEGLIGIBLE 14 BY THE BRITISH OCCUPATIONAL HEALTH SERVICE STANDARDS," 15 CORRECT? 16 A CORRECT. 17 Q SO THEY'RE SPECIFICALLY TALKING ABOUT BRAKE 18 BLOW-OUT -- AIR BLOW-OUT, CORRECT? 19 A YES, THEY MENTIONED THE HICKISH AND KNIGHT 20 STUDY. 21 Q AND THEN YOU SEE -- THIS IS THE MEETING OR THE 22 CONFERENCE MINUTES, CORRECT? 23 A YES. 24 Q AND THEN WE HAVE DR. SELIKOFF. IS THIS THE 25 STATEMENT YOU WERE THINKING OF? 26 A IT IS, YES. 27 Q AND DR. SELIKOFF SAYS, "CLEARLY, BRAKE LININGS 28 DO NOT CONSTITUTE A HAZARD," CORRECT?

Page 38	Page 40
1 A YES. 2 Q THANK YOU, MR. WILLIAMS. I APPRECIATE YOUR 3 TIME. 4 THE COURT: MR. LANKFORD, WHAT ARE YOU DOING 5 WITH EXHIBIT 703 AND 3078, IF ANYTHING? 6 MR. LANKFORD: 703, WE'LL MOVE INTO EVIDENCE. 7 THE COURT: ANY OBJECTION? 8 MS. DEAN: NO, YOUR HONOR. 9 THE COURT: 703 IS ADMITTED. 10 (EXHIBIT 703 MARKED FOR IDENTIFICATION 11 AND ADMITTED INTO EVIDENCE.) 12 MR. LANKFORD: AND I THINK PLAINTIFFS -- 13 MS. DEAN: YES, YOUR HONOR. AFTER YESTERDAY, 14 WE HAD ASKED TO ADMIT EXHIBIT 3078 WHICH SHOWS 11 HEAVY 15 BRAKE TRUCKS. WE SEEK TO ADMIT THAT. 16 THE COURT: I DID NOT HAVE THAT ON MY LIST. 17 3078 IS BEING OFFERED. 18 MS. DEAN: IT WASN'T ON THE LIST YESTERDAY. 19 THE COURT: OKAY, THAT'S WHY. ANY OBJECTION? 20 MR. LANKFORD: NO, YOUR HONOR. 21 THE COURT: I'LL RESERVE ON THAT. OKAY. 22 MR. LANKFORD: THE LAST EXHIBIT IS THE MINUTES 23 OF THE 1969 PROCEEDINGS OF THE INTERNATIONAL CONFERENCE 24 OF JOHANNESBURG ON PNEUMOCONIOSIS. THIS IS JUST MARKED 25 FOR IDENTIFICATION, AND IT'LL BE FORD 701. 26 THE COURT: 701 IS ID ONLY? 27 MR. LANKFORD: AT SOME POINT, YES. 28 MS. DEAN: YOUR HONOR, WE SEEK TO ADMIT THAT	1 Q THANK YOU. THAT'S ALL THE QUESTIONS I HAVE. 2 MR. KARREN: THANK YOU, YOUR HONOR. 3 THE COURT: THANK YOU? ANY OTHER DEFENDANT 4 HAVE ANY OTHER QUESTIONS FOR THIS WITNESS? 5 MR. SHARP: YES, YOUR HONOR. 6 VERY QUICKLY. 7 8 CROSS-EXAMINATION 9 BY MR. SHARP: 10 Q GOOD MORNING, SIR. WOULD THE RESPONSE TO THAT 11 BE THE SAME TO ANY OTHER COMPANY THAT MIGHT BE HERE IN 12 THIS COURTROOM? 13 A CORRECT. I DON'T HAVE KNOWLEDGE THAT FORD 14 SENT THOSE DOCUMENTS TO ANY OTHER COMPANY. 15 Q ALL RIGHT. THANK YOU SIR. 16 MR. SHARP: THANK YOU, YOUR HONOR. 17 THE COURT: OKAY. REDIRECT WITHIN THE SCOPE? 18 MS. DEAN: YES, YOUR HONOR. 19 THE COURT: OKAY. 20 21 REDIRECT EXAMINATION 22 BY MS. DEAN: 23 Q I WANT TO PICK OFF WHERE ALL THESE COMPANIES 24 LET OFF. WE SAW DOCUMENTS SHOWING BIBLIOGRAPHIES OF 25 DOZEN OF ARTICLES ABOUT ASBESTOS IN CANCER. WE SAW 26 DOCUMENTS ABOUT FORD KNOWING YOU SHOULDN'T USE 27 COMPRESSED AIR. WE SAW DOCUMENTS ABOUT THE HAZARDS OF 28 ASBESTOS. NOT A SINGLE ONE OF THOSE IN ANY FORM, IN
Page 39	Page 41
1 INTO EVIDENCE. 2 MR. LANKFORD: WE'LL AGREE TO THAT, YOUR 3 HONOR. 4 THE COURT: ANY OBJECTION? HEARING NONE, 701 5 IS ADMITTED. 6 (EXHIBIT 701 IDENTIFIED AND ADMITTED 7 INTO EVIDENCE.) 8 MR. LANKFORD: THANK YOU, YOUR HONOR. 9 THE COURT: OKAY. COUNSEL, GIVE ME A HIGH 10 SIGN WHEN YOU'RE READY TO TELL ME ABOUT 3078. ANY 11 OTHER DEFENDANTS HAVE QUESTIONS FOR MR. WILLIAMS? MR. 12 KARREN? 13 MR. KARREN: THANK YOU, YOUR HONOR. 14 15 CROSS-EXAMINATION 16 BY MR. KARREN: 17 Q GOOD MORNING, MR. WILLIAMS. CAN YOU HEAR ME 18 OKAY, SIR? 19 A YES, I CAN. GOOD MORNING. 20 Q SIR, MY NAME IS BRENT KARREN I REPRESENT THE 21 BOEING COMPANY AND MCDONNELL DOUGLAS IN THIS CASE. I 22 JUST HAD A QUESTION FOR YOU. YESTERDAY, YOU TALKED 23 ABOUT A LOT OF DOCUMENTS -- OR SEVERAL DOCUMENTS, SIR, 24 WITH MS. DEAN. I JUST WANT TO MAKE SURE I UNDERSTAND, 25 SIR, TO YOUR KNOWLEDGE, DID THE FORD MOTOR COMPANY EVER 26 SEND A SINGLE ONE OF THOSE DOCUMENTS TO THE MCDONNELL 27 DOUGLAS COMPANY? 28 A NOT TO MY KNOWLEDGE, NO.	1 ANY WAY, WENT TO THE USERS AND PEOPLE USING YOUR 2 PRODUCT, WHETHER THAT IS MCDONNELL DOUGLAS OR OTHERS. 3 DID I UNDERSTAND YOUR ANSWER TO THOSE TYPES OF 4 QUESTIONS CORRECTLY? 5 A RIGHT. TO MY KNOWLEDGE, I DON'T HAVE ANY 6 EVIDENCE THAT IT SAYS THOSE DOCUMENTS WERE SENT TO 7 ANYBODY. 8 Q AND FORD MADE A DECISION AS A COMPANY TO MAKE 9 MONEY SELLING PRODUCTS THAT CONTAINED ASBESTOS FOR 10 DECADES; TRUE? 11 A AT SOME POINT IN TIME, FORD MADE VEHICLES THAT 12 HAD FRICTION PRODUCTS THAT INCLUDED ASBESTOS. THAT WAS 13 THE MATERIAL THAT SUPPLIERS WHO MADE THE BRAKES FOR US 14 CHOSE TO USE AS WITH MOST OF THE INDUSTRY, YES. 15 Q FORD'S LAWYER STARTED OFF YESTERDAY ASKING YOU 16 ABOUT THE FACT THAT YOU ARE NOT A MEDICAL DOCTOR. YOU 17 ARE NOT AN INDUSTRIAL HYGIENIST. YOU ARE AN ENGINEER, 18 BUT MS. DEAN ASKED YOU A BUNCH OF QUESTIONS ABOUT 19 MEDICINE AND SCIENCE. DO YOU BROADLY REMEMBER THAT? 20 A YES. 21 Q IT'S A GOOD POINT. OUT OF ALL THE PEOPLE THAT 22 WORK AT FORD, OUT OF ALL THE INDIVIDUALS IN THEIR 23 MEDICAL DEPARTMENT OR THEIR INDUSTRIAL HYGIENE 24 DEPARTMENT, THE PERSON FORD CHOSE -- NOT ME -- TO SPEAK 25 FOR THE COMPANY ABOUT ASBESTOS ISSUES IS YOU, CORRECT? 26 A THAT'S CORRECT. 27 Q OKAY. THE SECOND THING THAT THEY BROUGHT UP 28 HAD TO DO WITH MEL BURNS FORD, AND I WROTE DOWN THE

Page 42 1 QUESTION. THEY ASKED YOU IF THE DEALERSHIPS WERE 2 INDEPENDENT, YOU SAID YES. AND THEN THE NEXT QUESTION 3 WAS THIS. "THE DEALERSHIP MEL BURNS FORD IS BOTH 4 INDEPENDENT AND COMPLETELY SEPARATE FROM FORD." AND 5 YOU AGREED TO THAT, CORRECT? 6 A I MEAN, THERE'S CLEARLY A FRANCHISE AGREEMENT 7 BETWEEN THE COMPANIES, BUT YES, IT'S AN INDEPENDENT 8 COMPANY. 9 Q IT'S NOT THE INDEPENDENT PART I'M GOING TO 10 FOCUS. IT'S THAT "YES" THAT YOU GAVE TO IT BEING 11 COMPLETELY SEPARATE. THAT IS WRONG AND INACCURATE IN 12 MAY WAYS. WOULD YOU AGREE TO THAT NOW IN FRONT OF THE 13 JURY? 14 A I HAD MENTIONED, WHEN WE TALKED DURING THAT 15 DISCUSSION, THAT THERE WAS A FRANCHISE AGREEMENT 16 BETWEEN THE TWO. IT'S STILL AN INDEPENDENT COMPANY. 17 JUST BECAUSE YOU HAVE AN AGREEMENT WITH, YOU KNOW, A 18 FRANCHISE AGREEMENT, IT'S STILL AN INDEPENDENT COMPANY. 19 Q I'LL REPEAT THE QUESTION BECAUSE IT'S NOT THE 20 INDEPENDENT PART THAT I'M FOCUSING ON. IT'S THE CLAIM 21 WHEN YOU WERE ASKED A COMPOUND QUESTION BY A LAWYER 22 THAT IT IS COMPLETELY SEPARATE. WILL YOU ADMIT NOW 23 THAT THAT IS JUST FUNDAMENTALLY AND CLEARLY UNTRUE? 24 MR. OXAMENDI: OBJECTION, YOUR HONOR. 25 ARGUMENTATIVE. 26 THE COURT: OVERRULED. 27 YOU CAN ANSWER, SIR. 28 THE WITNESS: IT'S AN INDEPENDENT COMPANY WHO	Page 44 1 CAN SPEAK A LITTLE BIT TO THAT. I MEAN, YES. FORD 2 OFFERS TRAINING TO THE DEALERSHIPS SO THAT WE CAN MAKE 3 SURE THAT THE CARS ARE FIXED PROPERLY. SO YES, 4 THERE'S -- I'M NOT GOING TO DENY THAT WE OFFER 5 TRAINING. 6 Q SO IN THESE TWO COMPANIES, SOME OF THE WAYS 7 THAT THEY ARE TOGETHER IS USING THE SAME NAME, THE SAME 8 LOGO, SELLING FORD PRODUCTS, AUTHORIZING THAT SALE AND 9 MANAGING TRAINING. ARE WE ON THE SAME PAGE SO FAR? 10 A YES. 11 Q ARE YOU AWARE, WHEN YOU TALK ABOUT THE 12 COMPANIES BEING INDEPENDENT VERSUS TOGETHER, WHAT IS 13 THE LAW IN THE STATE OF CALIFORNIA FOR WHEN A 14 DEALERSHIP THAT IS INDEPENDENT IS GOING TO BE IN TERMS 15 OF THEIR SALES, WHEN FORD'S GOING TO BE RESPONSIBLE FOR 16 THAT? DO YOU KNOW ONE WAY OR ANOTHER? 17 A WELL, I'M NOT A LAWYER. IF YOU'RE GOING TO 18 GET INTO THAT KIND OF QUESTIONS, I GUESS, YOU HAVE TO 19 TALK TO A LAWYER. I CAN'T SPEAK TO THE DETAILS OF THAT 20 AGREEMENT. 21 Q BUT WHAT YOU DO KNOW AND WHAT WE HAVE TALKED 22 ABOUT, IS THE CLOSENESS BETWEEN MEL BURNS FORD, AS AN 23 AUTHORIZED DEALER, EVERY SINGLE YEAR THAT GARY CHAPMAN 24 INDICATED HE WAS PURCHASING PRODUCTS FROM MEL BURNS 25 FORD. WE TALKED ABOUT THAT YESTERDAY, CORRECT? 26 A RIGHT. THERE'S NO DISAGREEMENT THAT MEL BURNS 27 FORD WAS AN AUTHORIZED FORD FRANCHISE DEALER, YES. 28 Q YOU DISCUSSED WHEN YOU WERE ASKED SOME
Page 43 1 HAS A FRANCHISE AGREEMENT WITH FORD MOTOR COMPANY TO 2 SELL ITS VEHICLES. 3 BY MS. DEAN: 4 Q MEL BURNS FORD HAS A RELATIONSHIP WITH FORD 5 WHICH YOU CAN KNOW BY THEIR NAME. THEY ARE ALLOWED TO 6 USE THE FORD NAME AND THE FORD LOGO, CORRECT? 7 A YES. AS A FRANCHISEE OF -- AGREEMENT WITH 8 FORD, YES. 9 Q AND THE CONNECTION, MEANING, TOGETHERNESS AS 10 OPPOSED TO COMPLETE SEPARATION THAT YOU ALSO KNOW, IS 11 THAT THEY HAD TO GO THROUGH A PROCESS DICTATED BY FORD 12 TO BECOME AN AUTHORIZED DEALER. YOU TOLD ME ABOUT THAT 13 YESTERDAY. DO YOU RECALL THAT? 14 A I GUESS I DON'T RECALL THAT SPECIFIC PART OF 15 THE CONVERSATION BUT, YES. THEY HAD TO GO THROUGH 16 CERTAIN STEPS TO BE AN AUTHORIZED DEALER, YES. 17 Q THE JURY HEARD THE SWORN AND WRITTEN DOWN 18 TESTIMONY OF MR. ROCKER ABOUT HOW FORD, THE COMPANY 19 THAT YOU ARE SPEAKING ON TODAY, HANDLED THE TRAINING 20 FOR FORD, LINCOLN AND MERCURY DEALERSHIPS ALL 21 THROUGHOUT THE COUNTRY. YOU'RE AWARE OF THAT, CORRECT? 22 MR. LANKFORD: MISSTATES EVIDENCE, YOUR HONOR. 23 THE COURT: SUSTAINED. 24 BY MS. DEAN: 25 Q HAVE YOU SEEN THE TESTIMONY OF MR. ROCKER 26 DISCUSSING HOW FORD HANDLED THE TRAINING FOR THE FORD 27 DEALERSHIPS, NOT JUST FORD BUT LINCOLN AND MERCURY? 28 A I DON'T RECALL SEEING THIS TESTIMONY, BUT I	Page 45 1 QUESTIONS FROM MR. LANKFORD, PAUL'S LAWYERS, THE 2 FUNDING THAT FORD PROVIDED THE MOUNT SINAI, WHERE 3 DR. SELIKOFF WORKS. DO YOU RECALL THAT? 4 A YES. 5 Q TO BE MORE SPECIFIC, THERE WERE THREE 6 \$5000 GRANTS THAT FORD PROVIDED TO MOUNT SINAI, 7 CORRECT? 8 A THAT'S CORRECT, OVER THREE DIFFERENT ACADEMIC 9 YEARS. 10 Q THE LAST YEAR THAT FORD GAVE MONEY TO 11 MOUNT SINAI FOR DR. SELIKOFF'S STUDIES WAS THE YEAR 12 THAT DR. SELIKOFF TOLD FORD THAT THERE WAS A PROBLEM 13 WITH BRAKE LINING AND BRAKE LINING WORKERS GETTING 14 MESOTHELIOMA, CORRECT? 15 A THE LAST LETTER HE GOT, GIVING HIM THAT LAST 16 GRANT, SAID IN THAT LETTER, BEFORE HE PUBLISHED ANY 17 INFORMATION, THAT SAID IN THAT LETTER, HEY, THIS IS 18 GOING TO BE THE LAST YOU'RE GOING TO GET BECAUSE WE 19 HAVE OTHER PEOPLE WHO WE'RE GOING TO FUND. SO YES, IT 20 WAS IN 1975, BUT THEY GOT THE LETTER BEFORE HE 21 PUBLISHED ANYTHING AND BEFORE THAT NIOSH MEETING. 22 Q IN TERMS OF JUST BEING CLEAR ON THE TIMING, 23 THE LAST YEAR FORD GAVE MONEY TO MOUNT SINAI FOR 24 DR. SELIKOFF'S STUDIES WAS THE SAME YEAR THAT 25 DR. SELIKOFF TOLD FORD THAT THERE WERE PROBLEMS WITH 26 BRAKE LINING WORKERS GETTING THE DISEASE MESOTHELIOMA. 27 THAT IS CORRECT? 28 A THE LETTER WENT FOR THE '74, '75 CALENDAR

Page 46 1 ACADEMIC YEAR, AND IT WENT OUT BEFORE AND, LIKE I SAID, 2 IT SAID IN THE LETTER, THIS IS THE LAST ONE YOU'RE 3 GOING TO GET, AND THAT WAS PRIOR TO HIM -- YOU KNOW, 4 THE NIOSH MEETING. 5 Q IS WHAT I SAID ACCURATE? 6 A I'M SORRY. I MISSED THAT. 7 Q THE LAST YEAR FORD GAVE MONEY TO MOUNT SINAI 8 FOR DR. SELIKOFF'S STUDIES WAS THE SAME YEAR THAT 9 DR. SELIKOFF TOLD FORD THAT THERE'S A PROBLEM WITH 10 BRAKE LINING WORKERS GETTING MESOTHELIOMA. THAT IS AN 11 ACCURATE STATEMENT; TRUE? 12 A IT WAS FOR THE '74, '75 CALENDAR YEAR, 13 ACADEMIC YEAR. THAT'S THE LAST ONE THEY GOT, YES. 14 Q YOU WERE ASKED BY FORD'S LAWYER ABOUT WHETHER 15 SANDING IS NEEDED FOR FORD'S BRAKE LININGS. DO YOU 16 RECALL THAT? 17 A AGAIN, I MISSED ONE OF THE WORDS THERE. CAN 18 YOU REPEAT. I'M SORRY. 19 Q OF COURSE, YOU WERE ASKED BY FORD'S LAWYER 20 ABOUT WHETHER SANDING OF A NEW BRAKE WAS NEEDED FOR 21 FORD'S BRAKES. DO YOU RECALL THAT? 22 A YES. 23 Q AND IN TERMS OF TIME FRAME, YOU DIDN'T START 24 WITH THE COMPANY UNTIL 1985, CORRECT? 25 A THAT'S CORRECT. 26 Q AND IF WE GO TO THE TIME FRAME THAT MATTERS 27 FOR THIS CASE, IN THE '60S AND '70S, YOU KNOW THAT FORD 28 NOT ONLY WAS AWARE THAT SANDING OCCURRED ON BRAKES, BUT	Page 48 1 1969 JOHANNESBURG CONFERENCE? 2 A I MEAN, I'VE SEEN SOME TALK OF THAT, BUT NO, I 3 HAVEN'T REVIEWED IN DETAIL ANYTHING. 4 Q DID YOU REVIEW HIS WORK AFTER THE JOHANNESBURG 5 CONFERENCE? 6 A WELL, AGAIN, THERE'S A LOT OF DOCUMENTATION 7 THAT WHERE WE WERE WORKING WITH HIM, ASKING HIM 8 QUESTIONS, AND THEN THE PAPERS, OF COURSE, THAT HE 9 WROTE AS A RESULT OF THE STUDIES HE HAD DONE. HE WAS A 10 COAUTHOR ON THAT. 11 Q LET'S GO TO THE DOCUMENT THAT YOU DID GET 12 PROVIDED BY THE FORD'S LAWYER AND SEE WHAT IT ACTUALLY 13 SAYS. 14 FIRST OF ALL, I PULLED UP THE PROCEEDINGS OF 15 THE INTERNATIONAL CONFERENCE IN JOHANNESBURG 1969 16 CALLED PNEUMOCONIOSIS. IS THAT WHAT YOU WERE 17 REFERENCING? 18 A I BELIEVE IT IS. THAT LOOKS TO BE A MUCH 19 BETTER COPY THAN WHAT I HAVE. 20 Q THERE WAS A PRESENTATION ABOUT DUST PROBLEMS 21 IN THE USE OF ASBESTOS PRODUCTS, AND AT THE END, A 22 QUESTION AND ANSWER SESSION. YOU WERE JUST SHOWN THE 23 END OF THE THIS DOCUMENT WHERE THEY WERE QUESTIONS AND 24 ANSWERS. DO YOU RECALL THAT? 25 A YES. 26 Q DO YOU KNOW WHAT QUESTION WAS ASKED AFTER 27 SELIKOFF? 28 A ALL I CAN SAY IS WHAT WAS IN THERE IN THE
Page 47 1 IN SOME CASES, THEY RECOMMENDED IT, CORRECT? 2 A I DON'T REMEMBER THAT EXACT TIME FRAME, BUT 3 THERE IS DOCUMENTATION THAT RECOMMENDS UNDER VERY 4 STRICT SPECIFIC CIRCUMSTANCE THAT BRAKES MIGHT BE 5 SANDED LIGHTLY IF THERE'S A SQUEAL NOISE OR IF THE -- 6 THE NAME'S ESCAPING ME -- BUT IF THEY ARE GLAZED. 7 THAT'S IT. IF THE BRAKES WERE GLAZED THEN THERE WAS 8 SOME INSTRUCTION TO SAND LIGHTLY, YES. 9 Q YOU CLAIM TO THE JURY THAT THERE WAS 10 INFORMATION BY DR. SELIKOFF, ONE OF THE MOST IMPORTANT 11 PEOPLE, INDICATING THAT WORKING WITH BRAKES WAS SAFE. 12 DO YOU RECALL THAT? 13 A YES. 14 Q AND WHEN YOU WENT TO GO FIND THE LETTER, YOU 15 RECOGNIZED IT WASN'T IN THE LETTER, BUT YOU BELIEVE 16 IT'S IN A CONFERENCE CALLED THE JOHANNESBURG 17 CONFERENCE. DID I HEAR THAT CORRECTLY? 18 A CORRECT. 19 Q WHERE DID YOU GET THE CONFERENCE MINUTES FROM? 20 A I'M SORRY. SAY THAT AGAIN. 21 Q WHERE DID YOU GET THE CONFERENCE MINUTES FROM? 22 IT DOESN'T SAY PRODUCED BY FORD. WE DIDN'T GET IT IN 23 THE PRODUCTION FOR FORD. I'M VERY AWARE OF IT, BUT 24 WHERE DID YOU GET IT FROM? 25 A I DON'T KNOW. IT WAS IN THE INFORMATION THAT 26 WAS GIVEN TO ME OVER THE YEARS WHEN I WAS STUDYING 27 THIS. 28 Q DID YOU REVIEW DR. SELIKOFF'S WORK BEFORE THE	Page 49 1 DOCUMENT. I DON'T KNOW WHAT QUESTION WAS ASKED. IT 2 LOOKED LIKE HE OFFERED THAT -- HE OFFERED THOSE WORDS 3 AND IT WAS WRITTEN DOWN IN THE MINUTES. THAT'S ALL I 4 KNOW. 5 Q ALL I CAN SAY IS -- 6 THE COURT: HOLD ON. HOLD ON. USE THE MIC SO 7 HE CAN HEAR YOU, PLEASE. 8 BY MS. DEAN: 9 Q ALL I CAN SAY IS WHAT'S WRITTEN IN THE 10 DOCUMENT, BUT YESTERDAY, WHAT YOU SAID IS, THIS HAD TO 11 DO WITH BRAKE WORK. LAST WEEK, WHAT FORD LAWYERS TOLD 12 DR. BRODY IS THAT THIS HAD TO DO WITH BRAKE WORK. THE 13 WEEK BEFORE THAT, WHAT MR. LANKFORD SAID TO THIS JURY 14 IS, THIS HAD TO DO WITH WORKING ON BRAKES. SO THERE'S 15 A DIFFERENT STORY BETWEEN WHAT YOU JUST SAID A MOMENT 16 AGO AND WHAT YOU SAID YESTERDAY. DO YOU AT LEAST 17 ACKNOWLEDGE THAT? 18 MR. LANKFORD: ARGUMENTATIVE. MISSTATEMENTS 19 TESTIMONY. 20 THE COURT: SUSTAINED ON ARGUMENT. 21 BY MS. DEAN: 22 Q YOU TOOK A ANSWER WITHOUT A QUESTION, 23 PROVIDING NO CONTEXT AND TOLD THE JURY YESTERDAY THAT 24 WORKING WITH BRAKES -- AND I STOPPED. YOU MEAN 25 GRINDING, COMPRESSED AIR IS SOMETHING THAT DOESN'T 26 CONSTITUTE A HAZARD. DO YOU RECALL THAT YESTERDAY? 27 A WHAT WE'RE TALKING ABOUT TODAY AS WELL, BUT 28 AGAIN, I ASSUME WHEN THEY WERE WRITING THE MINUTES

Page 50 1 DOWN, THEY WERE IN ORDER, AND ABOVE THAT, WE TALKED 2 ABOUT THE GENTLEMAN, SMITHERS, I BELIEVE IS HIS NAME, 3 WAS TALKING ABOUT THE HICKISH AND KNIGHT STUDY, WHICH 4 WAS ABOUT BRAKES, AND THEN DR. SELIKOFF SAID, "BRAKE 5 LININGS DON'T CONSTITUTE A HAZARD." THAT'S WHAT I WAS 6 REMEMBERING. 7 Q AND WHETHER HE WAS TALKING ABOUT BLOWING OUT 8 COMPRESSED AIR OR EMISSIONS IN THE BACKGROUND, LIKE IN 9 THE LETTER THAT WE JUST ADMITTED INTO EVIDENCE TODAY, 10 YOU DIDN'T TELL THE JURY ONE WAY OR ANOTHER; TRUE? 11 A I'M CONFUSED WITH WHAT YOU'RE ASKING. COULD 12 YOU REPEAT. 13 Q SURE. WHEN DR. SELIKOFF INDICATES THAT BRAKE 14 LININGS DO NOT CONSTITUTE A HAZARD, WHETHER HE'S 15 TALKING ABOUT GRINDING A 50 PERCENT ASBESTOS PRODUCT OR 16 EMISSIONS FROM DRIVING AROUND A TOWN, IT'S NOT WRITTEN 17 THERE, IS IT? 18 A NO, I GET IT. IT IMPLIED THAT HE'S TALKING -- 19 HE MAY BE HE WAS TALKING ABOUT THE HICKISH AND KNIGHT 20 STUDY THAT WAS ABOVE THAT, BUT NO. I DON'T KNOW 21 EXACTLY. 22 Q LET'S LOOK AT THE ACTUAL DOCUMENT. 23 IMMEDIATELY BEFORE THE QUESTION AND ANSWER, DO YOU KNOW 24 THAT THERE WAS A SECTION BY A DR. LYNCH, WHO YOU'VE 25 DESCRIBED BEFORE TO THIS JURY, AS SOMEONE WHO WAS DOING 26 WORK ABOUT EMISSIONS? 27 A YES. I SAW IT IN THERE AS WELL, AND HE, 28 ESSENTIALLY, SAYS THE SAME THING AS WHAT DR. SELIKOFF	Page 52 1 DR. LYNCH, HEY, YOU KNOW, I'VE BEEN ASKED TO LOOK AT 2 URBAN AIR POLLUTION PROBLEM, AND SO THEY STARTED 3 TALKING ABOUT THAT AND THEN IT BECAME WHERE WE OFFERED 4 HIM A GRANT AND THEN HE DECIDED AT THAT TIME TO STUDY 5 BRAKE WORKERS. AND THAT'S HOW THIS ALL PROGRESSED. 6 Q LET'S BACK UP FOR A MOMENT. WE'VE TALKED 7 ABOUT A BRAKE DRUM. WE'VE SEEN PHOTOGRAPHS OF HOW THE 8 BRAKE WEAR DEBRIS GETS CAPTURED IN THAT DRUM AND BLOW 9 OUT, AND HOW MUCH FIBERS THAT BLOWS INTO THE AIR. WAS 10 THAT INFORMATION SHARED WITH YOU? THE JURY SAW IT IN 11 SEVERAL CONTEXT BEFORE TODAY. 12 A I'M SORRY. I'M NOT SURE WHAT YOU'RE ASKING. 13 Q THE FACT THAT A DESIGN OF A FORD CAR WITH 14 BRAKE DRUMS CAPTURES THE BRAKE DUST, SO THAT IT'S IN 15 THE DRUM, AS OPPOSED TO THE URBAN ENVIRONMENT. HAVE 16 YOU SEEN THE VIDEOS SHOWING THAT? 17 A I UNDERSTAND HOW A BRAKE WORKS, AND I CAN -- I 18 UNDERSTAND THE CONCEPT, YES. 19 Q YOU SUGGESTED TO A JURY THE MOMENT AGO THAT IT 20 WAS ONLY AFTER THIS THAT DR. SELIKOFF CONSIDERED THE 21 ISSUES OF BRAKES. DO YOU KNOW IF THAT'S TRUE? 22 A IT'S ONLY -- I'M SORRY. I DON'T KNOW WHY I'M 23 HAVING SUCH A HARD TIME UNDERSTANDING YOU. I REALLY 24 APOLOGIZE, BUT COULD YOU REPEAT IT, PLEASE. 25 Q SURE. YOU SUGGESTED TO THE JURY THAT IT WAS 26 ONLY AFTER THE 1969 JOHANNESBURG CONFERENCE, THAT 27 SELIKOFF STARTED REVIEWING HOW MUCH ASBESTOS GOT IN THE 28 AIR WHEN YOU WORKED WITH BRAKES. DO YOU RECALL SAYING
Page 51 1 SAYS. 2 Q AND WHAT HE SAYS IS THAT ALTHOUGH URBAN AIR 3 CONTAINS A FEW FREE FIBERS AS A RESULT OF BRAKE LINING 4 WEAR, THEY REPRESENT VERY SMALL PROPORTIONS OF THE 5 TOTAL ASBESTOS AND MANUFACTURING OF BRAKES. DO YOU SEE 6 WHERE I'M AT? 7 A YES. 8 Q THE JURY HAS ALREADY SEEN -- IT'S BEEN A WHILE 9 AGO -- BUT A 2004 DOCUMENT FROM DR. LEMEN, DISCUSSING 10 THIS WORK BY LYNCH, THAT EXPLICITLY SAYS THAT HE WAS 11 NOT LOOKING AT ANY TYPE OF WORK IN REPAIR AND 12 MAINTENANCE OF BRAKES. DO YOU KNOW THAT EITHER FROM 13 DR. LEMEN'S WORK OR LYNCH'S WORK DIRECTLY? 14 A WELL, WHAT I UNDERSTAND IS LYNCH WAS TRYING TO 15 UNDERSTAND WHAT WAS COMING OFF ARE BRAKES, AND SO 16 LOOKING AT THE MATERIAL AND UNDERSTANDING WHAT THE 17 MATERIAL WAS IN TERMS OF URBAN AIR POLLUTION PROBLEM. 18 THAT'S HOW THIS ALL STARTED. SO THAT'S MY 19 UNDERSTANDING OF WHAT HE WAS DOING. IT WAS NOT WORKING 20 ON BRAKES AT THAT TIME, NO. 21 Q AND IF WE WANTED TO KNOW THE ISSUE, NOT ABOUT 22 URBAN AIR POLLUTION, BUT HOW MUCH ASBESTOS IS RELEASED 23 IN THE AIR WHEN YOU GRIND A BRAKE OR USED COMPRESS AIR, 24 THERE WERE STUDIES DONE BY MANY, INCLUDING DR. SELIKOFF 25 HIMSELF, THAT ADDRESSED THAT ISSUE, CORRECT? 26 A RIGHT. IT'S FAST FORWARD, AND LIKE I SAID, 27 WHAT HAPPENED WAS, THIS STARTED, AS WE TALKED ABOUT. 28 THIS STARTED AS FORD SAYING TO DR. SELIKOFF AND	Page 53 1 THAT A MOMENT AGO? 2 A YEAH. THAT'S BASED ON THE DOCUMENTS AND THE 3 LETTERS THAT WENT BACK AND FORTH, THAT'S MY 4 UNDERSTANDING. 5 Q 1965 IS BEFORE 1969. DO YOU AGREE? 6 A IT IS. 7 Q YOU'RE AWARE THAT DR. SELIKOFF HAD ANOTHER 8 CONFERENCE DEDICATED TO THE BIOLOGICAL EFFECTS OF 9 ASBESTOS? 10 A NO. I'M NOT FAMILIAR WITH THAT. 11 Q I'M GOING TO TALK TO THIS MORE WITH IT WHEN WE 12 HAVE A MEDICAL EXPERT HERE, BUT I WANT TO TAKE YOU 13 RIGHT HERE. DO YOU SEE THE SECTION ON OCCUPATIONAL 14 ACTIVITIES PROCESSES AND PRODUCTS WITH ASBESTOS 15 HAZARDS? 16 A MOST OF THAT I SEE, YES. 17 Q HERE WE'RE TALKING ABOUT PRODUCTS, NOT URBAN 18 AIR ENVIRONMENT, RIGHT? IT'S IN THE TITLE OF THIS 19 SUBSECTION. DO YOU SEE THAT? 20 A I DON'T KNOW WHAT OCCUPATIONS THEY ARE TALKING 21 ABOUT. I HAVEN'T READ THE PAPER SO I CAN'T REALLY 22 SPEAK TO IT. 23 Q THAT'S A TABLE THAT TELLS YOU, BRAKE LINING 24 PRODUCTS, AUTOMOBILE MAKERS, GARAGE ATTENDANTS WITH THE 25 PRODUCTS SUCH AS BRAKE LININGS, CLUTCH FACINGS GASKETS. 26 AND IN THE CONTEXT OF THE HAZARD, THEY MENTION IT'S 27 PEOPLE WHO MAY BE AROUND THESE THINGS ON AN INCIDENTAL 28 BASES. DID YOU KNOW ABOUT THIS WHEN YOU SUGGESTED TO

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1 THE JURY THAT WORKING WITH BRAKES WAS DEEMED SAFE BY
2 DR. SELIKOFF?
3 MR. LANKFORD: OBJECTION. FOUNDATION AND
4 HEARSAY.
5 THE COURT: HOLD ON, MR. WILLIAMS. WHAT IS
6 THIS WITNESS SAID WITH RESPECT TO HIS FAMILIARITY WITH
7 THIS DOCUMENT?
8 THE WITNESS: I THINK THAT HE DIDN'T KNOW IT
9 WHEN HE TOLD THE JURY ABOUT DR. SELIKOFF YESTERDAY.
10 THE COURT: SUSTAINED. THE OBJECTION IS
11 SUSTAINED.
12 BY MS. DEAN:
13 Q I WANT TO GET A FEW OTHER THINGS OUT THERE TO
14 SEE IF YOU KNEW ABOUT THEM. YOU CERTAINLY KNOW ABOUT
15 THE PEER-REVIEWED PUBLISHED ARTICLE BY DR. SELIKOFF'S
16 GROUP, ONE BY ROHL AND ONE BY MORTIMER QUANTIFYING THE
17 AMOUNT OF ASBESTOS THAT WENT IN THE AIR WHEN YOU WORK
18 WITH BRAKES, BECAUSE FORD RECEIVED A COPY OF IT, TO
19 LOOK AT AND COMMENT ON BEFORE IT WAS PUBLISHED; TRUE?
20 A IT'S MY UNDERSTANDING. YES.
21 Q IN ADDITION TO THAT, ARE YOU AWARE THAT
22 DR. SELIKOFF PUBLISHED IN THE PEER-REVIEWED LITERATURE
23 AN ARTICLE IN THE EARLY 70S TALKING ABOUT LOW LEVELS OF
24 ASBESTOS CAUSING DISEASE WITH A DOCTOR CALLED LEE,
25 L-E-E?
26 A I'M NOT FAMILIAR WITH THIS PARTICULAR STUDY
27 YOU'RE TALKING ABOUT.
28 Q WHETHER THAT TALKS ABOUT BRAKES AND THE

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1 DIFFERENCE BETWEEN URBAN POLLUTION CONCERNS AND
2 CONCERNS WITH PEOPLE THAT ARE MANIPULATING THE PRODUCT
3 AND REPAIR, YOU DON'T KNOW ONE WAY OR ANOTHER BECAUSE
4 YOU HAVEN'T LOOKED AT THAT, CORRECT?
5 A I'M NOT FAMILIAR WITH WHAT YOU'RE REFERRING
6 TO.
7 Q DR. SELIKOFF HAS A TEXTBOOK THAT TALKS ABOUT
8 ASBESTOS AS AN ASBESTOS DISEASE WITH A CHAPTER
9 DEDICATED TO BRAKE WORK. DID YOU KNOW THAT?
10 A AGAIN, I'M HERE TO MORE TALK ABOUT THE
11 DOCUMENTS THAT ARE IN THE FORD COLLECTION. I DON'T
12 RECALL THE TEXTBOOK BEING IN THE FORD DOCUMENTS.
13 Q TO BE CLEAR, THIS JOHANNESBURG ARTICLE WITH A
14 QUESTION -- AN ANSWER WITHOUT A QUESTION WASN'T IN THE
15 FORD DOCUMENTS, IT'S SOMETHING THE FORD LAWYERS PULLED
16 UP AND ASKED YOU TO TALK ABOUT, AFTER I SAID, "WHERE IS
17 THE DOCUMENT;" TRUE?
18 A NO, WHAT I THINK WHAT HAPPENED YESTERDAY, YOU
19 WERE SAYING -- YOU WERE SAYING THERE'S NO -- THERE'S
20 EVIDENCE THAT ALL OF THE PLACES HAD BRAKES WERE BAD. I
21 SAID I RECALL SOME DOCUMENTS THAT SELIKOFF SAID THAT
22 THEY WEREN'T. AND ONE OF THOSE DOCUMENTS WAS THAT,
23 OBVIOUSLY, I THOUGHT IT WAS A LETTER. I WAS WRONG. IT
24 WAS THAT PNEUMOCONIOSIS THING THAT I HAD SEEN. THAT'S
25 HOW THIS LINE OF QUESTIONING STARTED, I THINK.
26 Q THE LETTER YOU MISREMEMBERED IS A FORD
27 DOCUMENT PRODUCED BY FORD. AND NOW THE JURY CAN LOOK
28 AT IT; TRUE? WE'VE MARKED IT IN EVIDENCE. YOU WERE

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1 HERE WHEN WE DID THAT.
2 A SAY AGAIN, PLEASE.
3 Q THE FORD DOCUMENT THAT YOU MISREMEMBERED, THAT
4 YOU TOLD THE JURY YESTERDAY INDICATED SELIKOFF THOUGHT
5 THERE WASN'T A PROBLEM. MR. LANKFORD BROUGHT IT, WE
6 MARKED IT IN EVIDENCE, YOU WERE VERY CLEAN THAT THAT'S
7 NOT IN THERE, CORRECT?
8 A RIGHT, I DON'T THINK IT IS. THERE WAS A
9 LETTER THAT SAID THAT HE DIDN'T THINK IT WAS -- IT
10 WASN'T THE SAME WORDS AS WHAT HE SAID IN THE
11 PNEUMOCONIOSIS WORDING, BUT THERE WAS A LETTER THAT
12 BASICALLY SAID HE DIDN'T THINK -- HE DIDN'T THINK IT
13 WAS AN ISSUE, THAT IT SHOULD BE STUDIED MORE. IS WHAT
14 HE SAID IN THE LETTER.
15 Q SO OVER THE EVENING, A CONFERENCE NOTE WITH AN
16 ANSWER WITHOUT A QUESTION WAS PULLED AND THAT DOESN'T
17 SAY ANYWHERE ON THE DOCUMENT THAT IT WAS PRODUCED BY
18 FORD. YOU'RE AWARE OF THAT, CORRECT?
19 A I THINK THAT'S TRUE, YES.
20 Q YOU SUGGESTED THAT THE TIME FRAME OF THIS AS I
21 BROUGHT IT UP YESTERDAY, ARE YOU AWARE THAT THE JURY
22 WAS TOLD THREE TIMES BEFORE I BROUGHT THIS UP, BY FORD
23 PEOPLE, THAT DR. SELIKOFF, THE FATHER OF MEDICINE,
24 SUGGESTED WORKING ON BRAKES WAS SAFE. DID YOU KNOW
25 THAT?
26 A IF YOU'RE TALKING ABOUT THE PROCEEDINGS BEFORE
27 I JOINED, NO. I GUESS I DON'T KNOW THAT.
28 Q AND SO THE THING THAT THEY HAPPEN TO BRING UP

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1 REPEATEDLY, YOU BROUGHT UP WHEN I WAS ASKING YOU
2 QUESTIONS, AND AT THE END OF THE DAY, THAT IS NOT IN
3 FORD'S FILE AND THE CONTEXT OF DOCUMENTS -- BEFORE
4 DOCUMENTS, AFTER TEXTBOOKS PUBLIC MEDICAL LITERATURE,
5 YOU DON'T KNOW ANYTHING ABOUT. DO I HAVE THAT RIGHT?
6 A THAT'S THE DOCUMENT THAT I REMEMBER. I
7 APOLOGIZE. THAT'S THE ONE I WAS REMEMBERING AND I
8 DIDN'T REALIZE IT WASN'T IN THE COLLECTION BUT IT WAS
9 ONE THAT I HAD SEEN.
10 Q WHEN FORD CHOOSES TO SELL A PRODUCT THAT THEY
11 KNOW -- BECAUSE OF THE WAY THAT THEY DESIGNED THEIR
12 PRODUCT -- HAS TO BE MANIPULATED, DO THEY AGREE THAT
13 BEFORE THEY SELL THAT PRODUCT TO THE AMERICAN PUBLIC,
14 THEY SHOULD BE COMPLETE AND DIRECT ABOUT THE ACTUAL
15 HAZARDS ASSOCIATED WITH IT, NOT TRY TO CHERRY-PICK
16 INFORMATION THAT HELPS THEIR BOTTOM LINE?
17 A COULD YOU SAY THAT AGAIN, PLEASE.
18 Q YES. WHEN FORD CHOOSES TO SELL A PRODUCT THAT
19 HAS A KNOWN CARCINOGEN, ASBESTOS, AND THEY DO SO
20 KNOWING THAT THE DESIGN OF THE PRODUCT THEY CHOSE TO
21 SELL REQUIRES MANIPULATION OF THAT PRODUCT, DO YOU
22 AGREE WITH ME THAT THEY MUST BE CLEAR ABOUT THE
23 COMPLETE HEALTH INFORMATION ABOUT THAT PRODUCT NOT
24 CHERRY-PICK THINGS THAT PROTECT THEIR BOTTOM LINE?
25 MR. LANKFORD: OBJECTION, YOUR HONOR.
26 ARGUMENTATIVE. COMPOUND.
27 THE COURT: SUSTAINED.
28 BY MS. DEAN:

Page 58 1 Q DO YOU BELIEVE YOU'VE BEEN STRAIGHT WITH THIS 2 JURY ABOUT THE HEALTH HAZARDS ASSOCIATED WITH ASBESTOS 3 BRAKES? 4 A YES, I DO. 5 Q THAT'S ALL I HAVE. 6 THE COURT: REDIRECT? RECROSS? MR. LANKFORD? 7 MR. LANKFORD: NO, YOUR HONOR. 8 THE COURT: ANYTHING FURTHER FOR THE WITNESS? 9 HEARING NONE. 10 MAY THE WITNESS BE EXCUSED? 11 MR. LANKFORD: YES, YOUR HONOR. 12 THE COURT: PLAINTIFF? 13 MS. DEAN: YES, YOUR HONOR. 14 THE COURT: MR. WILLIAMS. THANK YOU SO MUCH. 15 YOU ARE EXCUSED. 16 THE WITNESS: THANK YOU. 17 THE COURT: COUNSEL, HAVE YOU HAD A CHANCE TO 18 LOOK AT 3078. 19 MR. LANKFORD: NO OBJECTION. 20 THE COURT: 3078 IS ADMITTED. PLAINTIFF, 21 WHAT'S NEXT? 22 (EXHIBIT 3078 IDENTIFIED AND ADMITTED 23 INTO EVIDENCE.) 24 MR. ADAMS: YOUR HONOR, NEXT WE HAVE THE 25 DEFENDANT THE BOEING COMPANY, IT WAS LIVE WITH THEIR 26 CORPORATE REPRESENTATIVE. I JUST NEED A MOMENT. 27 THE COURT: ALL RIGHT. YOU CAN REORGANIZE 28 YOUR REAL ESTATE THERE.	Page 60 1 A ROBERT HOLLENBECK. 2 Q MR. HOLLENBECK, I UNDERSTAND YOU'RE HERE TODAY 3 TO SPEAK FOR THE BOEING COMPANY? 4 A YES, I AM. 5 Q AS THEIR CORPORATE REPRESENTATIVE? 6 A YES. 7 Q IN THE RITA AND GARY CHAPMAN CASE? 8 A THAT'S CORRECT. 9 Q AND YOU UNDERSTAND THAT AS THE CORPORATE 10 REPRESENTATIVE FOR THE BOEING COMPANY, YOUR TESTIMONY 11 BINDS THE COMPANY? 12 A YES, I DO. 13 Q AND IT'S AS IF THE COMPANY ITSELF WERE SITTING 14 IN THAT CHAIR ANSWERING MY QUESTIONS; RIGHT? 15 A YES. 16 THE COURT: COULD YOU DO ME A FAVOR. PULL IN 17 JUST A LITTLE BIT, THAT MICROPHONE IS HIGHLY 18 DIRECTIONAL. LET ME MAKE SURE IT'S ON. GO AHEAD, 19 MR. ADAMS. 20 BY MR. ADAMS: 21 Q THANK YOU, YOUR HONOR. MR. HOLLENBECK, I'D 22 LIKE TO SEE IF WE CAN'T START WITH SOME THINGS THAT 23 MIGHT AGREE ON. OKAY? 24 A OKAY. 25 Q DOES THE BOEING COMPANY AGREE THAT IT MERGED 26 WITH MCDONNELL DOUGLAS IN 1997? 27 A YES. 28 Q OKAY.
Page 59 1 MR. ADAMS: BUT WE DO CALL AS OUR NEXT WITNESS 2 FOR THE BOEING COMPANY THROUGH THEIR CORPORATE 3 REPRESENTATIVE, ROBERT HOLLENBECK. 4 THE COURT: OKAY. PERHAPS MR. HOLLENBECK CAN 5 BE BROUGHT IN FROM THE COLD. MAYBE THAT'S HIM RIGHT 6 THERE. TELL YOU WHAT, MR. HOLLENBECK, COME ON AROUND 7 HERE. IF YOU WOULD, GO THAT WAY AND STOP RIGHT THERE 8 WHERE I'M POINTING. I WANT YOU TO FACE OUR CLERK RIGHT 9 THERE AND -- 10 THE JUDICIAL ASSISTANT: RAISE YOUR RIGHT 11 HAND? 12 ROBERT HOLLENBECK, 13 HAVING BEEN PREVIOUSLY SWORN AS A WITNESS, 14 TESTIFIED AS FOLLOWS: 15 16 THE JUDICIAL ASSISTANT: STATE AND SPELL YOUR 17 FIRST AND LAST NAME. 18 THE WITNESS: ROBERT R-O-B-E-R-T HOLLENBECK 19 H-O-L-L-E-N-B-E-C-K. 20 THE COURT: THANK YOU, MR. HOLLENBECK. YOU 21 CAN HAVE A SEAT THERE. PLEASE BE CAREFUL GETTING IN 22 AND OUT. IN CASE THE JURY DIDN'T HEAR IT, 23 H-O-L-L-E-N-B-E-C-K. 24 WHENEVER YOU'RE READY. 25 26 DIRECT EXAMINATION 27 BY MR. ADAMS: 28 Q CAN YOU TELL THE JURY YOUR FULL NAME?	Page 61 1 A THAT'S TRUE. 2 Q SO I'M GOING TO ASK YOU SOME QUESTIONS ABOUT 3 DOUGLAS -- MCDONNELL DOUGLAS AND BOEING. 4 A OKAY. 5 Q IF I TALK ABOUT THE LONG BEACH PLANT, I'M 6 PROBABLY JUST GOING TO SAY DOUGLAS TO MAKE IT SHORTER. 7 IS THAT OKAY? YOU WILL KNOW WHAT I MEAN? 8 A YES. 9 Q DO WE AGREE THAT DOUGLAS AIRCRAFT WAS FOUNDED 10 IN ABOUT 1920? 11 A THAT IS CORRECT. 12 Q AND DO YOU AGREE THAT IN 1947 -- EXCUSE ME 13 1967 -- DOUGLAS AIRCRAFT AND A COMPANY CALLED MCDONNELL 14 AIRCRAFT, MERGED? 15 A THAT'S CORRECT. 16 Q SO A YEAR AFTER MR. CHAPMAN STARTED WORKING AT 17 THE LONG BEACH DOUGLAS FACILITY, DOUGLAS AND MCDONNELL 18 MERGED AND THEY BECAME MCDONNELL DOUGLAS; IS THAT 19 CORRECT? 20 A THAT'S CORRECT. 21 Q AND THEN IN 1997, MCDONNELL DOUGLAS AND THE 22 BOEING COMPANY MERGED? 23 A THAT IS CORRECT, YES. 24 Q AND IT WASN'T A SITUATION WHERE MAYBE BOEING 25 BOUGHT MCDONNELL DOUGLAS AND THEN BOEING GOT STUCK WITH 26 A BUNCH OF SORT OF, LIABILITIES FOR WHAT MCDONNELL 27 DOUGLAS HAD DONE, CORRECT? 28 A THAT IS CORRECT.

Page 62 1 Q OKAY. WHAT HAPPENED -- THAT'S NOT WHAT 2 HAPPENED? 3 A YES, THAT IS NOT WHAT HAPPENED. 4 Q WHAT HAPPENED IS THE TWO COMPANIES LITERALLY 5 MERGED INTO ONE? 6 A YES. 7 Q AND, IN FACT, THE CEO FOR MCDONNELL DOUGLAS 8 BECAME THE PRESIDENT AND CHIEF OPERATING OFFICER OF 9 BOEING, CORRECT? 10 A YES. 11 Q THAT'S WHY WE'VE GOT THE BOEING COMPANY HERE 12 AS A DEFENDANT FOR SOMETHING THAT MCDONNELL DOUGLAS 13 DID, CORRECT? 14 A YES. 15 Q THAT'S ALSO WHY THIS LOGO RIGHT HERE NEXT TO 16 THE BOEING COMPANY IS THE MCDONNELL DOUGLAS LOGO, 17 CORRECT? 18 A THAT IS CORRECT. 19 Q OKAY. I ALSO WANT TO SEE IF WE CAN AGREE TO 20 SOME REALLY BASIC FACTS ABOUT THE MCDONNELL DOUGLAS 21 FACILITY IN LONG BEACH. OKAY? 22 A OKAY. 23 Q WE'VE HEARD A LOT ABOUT -- FROM EXPERTS IN 24 SCIENCE AND FIBERS PER CC. I'M GOING TO ASK YOU ABOUT 25 SUPER BASIC FACTS, OKAY? 26 A OKAY. 27 Q NUMBER ONE, MCDONNELL DOUGLAS HAD A FACILITY 28 IN LONG BEACH, CALIFORNIA?	Page 64 1 A COULD YOU RESTATE THE QUESTION. 2 Q THAT'S NOT WHAT HAPPENED. THE ASBESTOS 3 PRODUCTS AND MR. CHAPMAN WERE AT THE MCDONNELL DOUGLAS 4 FACILITY AT THE SAME TIME? 5 A YES, THAT'S MY UNDERSTANDING. 6 Q HOW WOULD YOU CHARACTER THE SIZE OF THE 7 DOUGLAS FACILITY? 8 A IN THAT TIME PERIOD, EXTREMELY LARGE. 9 APPROXIMATELY 25- TO 30,000 EMPLOYEES. 3- TO 400 ACRES 10 OF PROPERTY. HUNDREDS OF BUILDINGS. EXTREMELY LARGE 11 SITE. ONE OF THE LARGEST, PROBABLY, IN SOUTHERN 12 CALIFORNIA AT THAT TIME. 13 Q WAS THERE A DOUGLAS FACILITY AT THE TIME THAT 14 WAS LARGER? 15 A PROBABLY NOT AT THAT TIME. 16 Q YOU TESTIFIED AT YOUR DEPOSITION IT WAS LIKE 17 THE SIZE OF A SMALL CITY? 18 A IT WAS, YES. 19 Q OUT OF THE HUNDREDS AND HUNDREDS OF BUILDINGS 20 AT THE DOUGLAS FACILITY AT THAT TIME PERIOD, HOW MANY 21 OF THEM -- IN HOW MANY OF THEM, WERE PEOPLE GRINDING 22 ASBESTOS PRODUCTS WITH A POWER TOOL? 23 A NONE THAT I'M AWARE OF. 24 Q OKAY. OTHER THAN BUILDING 11; RIGHT? 25 A I WOULD ARGUE THAT THERE WAS GRINDING GOING ON 26 IT WAS A VEHICLE MAINTENANCE SHOP THAT HAD ASBESTOS 27 BRAKES IN THEIR INVENTORY, FOR SERVICING VEHICLES AT 28 THE SITE.
Page 63 1 A THAT IS CORRECT. 2 Q OKAY. AND GARY CHAPMAN WORKED THERE? 3 A THAT'S MY UNDERSTANDING, YES. 4 Q DURING THE TIME PERIOD THAT GARY CHAPMAN 5 WORKED THERE, WHICH WAS -- LET ME TAKE A STEP BACK. 6 GARY CHAPMAN WORKED THERE FROM 1966 TO 1973, CORRECT? 7 A THAT'S MY UNDERSTANDING, YES. 8 Q OKAY. HAVE YOU SEEN MR. CHAPMAN'S PENSION 9 RECORDS IN THE CASE? 10 A I HAVE NOT. 11 Q OKAY. DOES BOEING AGREE THAT MR. CHAPMAN LEFT 12 THE LONG BEACH DOUGLAS FACILITY IN SEPTEMBER OF 1973? 13 A I BELIEVE THAT WAS THE DATE THAT WAS 14 DISCOVERED, YES. 15 Q OKAY. SO MR. CHAPMAN WAS THERE. THERE WERE 16 ALSO ASBESTOS-CONTAINING PRODUCTS AT THE DOUGLAS 17 FACILITY, CORRECT? 18 A YES, THERE WERE. 19 Q AND THE ASBESTOS PRODUCTS WERE AT THE DOUGLAS 20 FACILITY AT THE SAME TIME MR. CHAPMAN WAS THERE, 21 CORRECT? 22 A CORRECT. 23 Q CERTAINLY IT COULD HAVE BEEN POSSIBLE THAT 24 SOME ASBESTOS WAS AT THE FACILITY AND MR. CHAPMAN CAME 25 THERE LATER AND THEY MISSED EACH OTHER. THAT COULD BE 26 POSSIBLE? 27 A THAT COULD BE POSSIBLE. 28 Q THAT'S NOT WHAT HAPPENED; RIGHT?	Page 65 1 Q IS IT BOEING'S TESTIMONY THAT THERE WAS NO 2 GRINDING OF ASBESTOS BRAKES IN BUILDING 11? 3 A THEY DID HAVE A ARC GRINDER, WHICH IS AN 4 ENCLOSED UNIT WHERE YOU ENCLOSED THE BRAKES INSIDE, 5 THAT CONSTITUTES GRINDING, BUT YEAH, THAT WOULD BE THE 6 EXTENT OF IT, THAT I'M AWARE OF IN BUILDING 11. 7 Q THE ARC GRINDER HAS GRINDING -- THE WORD 8 "GRIND" IN THE NAME; RIGHT? 9 A YES. 10 Q AND IT'S USED ON BRAKES, CORRECT? 11 A YES. 12 Q IT'S A POWER TOOL? 13 A YES, IT IS POWERED. 14 Q OKAY. THE JURY HAS SEEN A VIDEO -- I DON'T 15 THINK YOU WERE HERE, BUT MAYBE YOU'VE SEEN IT -- OF 16 SOMEONE USING HAND SANDING TO GRIND -- OR TO SAND A 17 BRAKE SHOE. DID YOU KNOW THAT? 18 A I'M NOT AWARE OF THAT WAS DONE, NO. 19 Q AN ARC GRINDING MACHINE IS LIKE THAT, EXCEPT 20 IT'S A POWER TOOL? 21 A THAT'S RIGHT. 22 Q THAT'S WHAT DOUGLAS HAD IN BUILDING 11 BETWEEN 23 1966 AND '73, CORRECT? 24 A THAT'S CORRECT. 25 Q WAS THERE ANY OTHER BUILDING OUT OF THE 26 HUNDREDS AND HUNDREDS OF BUILDINGS AT THE MCDONNELL 27 DOUGLAS FACILITY WHERE THERE WAS A POWER TOOL USED TO 28 GRIND AN ASBESTOS PRODUCT?

Page 66 1 A NOT THAT I'M AWARE OF. NO. 2 Q OKAY. SO SOME OF THE THINGS WE CAN AGREE ON 3 IS THAT THERE WAS A DOUGLAS FACILITY. MR. CHAPMAN WAS 4 THERE. ASBESTOS PRODUCTS WERE THERE, AND AT THAT TIME, 5 CERTAIN ASBESTOS PRODUCTS WERE BEING GROUND WITH A 6 POWER TOOL? 7 A YES. 8 Q OKAY. AND THAT WAS IN BUILDING 11? 9 A THAT'S CORRECT. 10 Q OKAY. WHERE DID MR. CHAPMAN WORK AT 11 MCDONNELL DOUGLAS? 12 A MY UNDERSTANDING WAS BUILDING 11 IN THE PARTS 13 DEPARTMENT. 14 Q ALL RIGHT. AND THAT WAS FROM 1967 TO '73? 15 A YES. 16 Q OKAY. THE FIRST YEAR OR SO, HE WORKED ON 17 BICYCLES ACROSS THE STREET? 18 A YES, AND PUMPING GAS, AS I ALSO UNDERSTAND. 19 Q WERE YOU AWARE THAT MR. CHAPMAN, DURING THAT 20 FIRST YEAR, '66 TO '67, CLOCKED IN EVERY DAY IN 21 BUILDING 11? 22 A I WASN'T AWARE THAT HE CLOCKED IN THERE. I 23 WAS AWARE THAT HE WORKED THERE. 24 Q IF THAT WAS SOMETHING HE TESTIFIED TO IN THIS 25 TRIAL WHEN HE TESTIFIED DOES BOEING HAVE ANY 26 INFORMATION TO DISPUTE THAT? 27 A NO, THEY DON'T. 28 Q OKAY. SO WE KNOW THAT MR. CHAPMAN WORKED AT	Page 68 1 SEPARATING MR. CHAPMAN FROM THAT WORK? 2 A THAT'S MY UNDERSTANDING, YES. 3 Q DOES BOEING ALSO AGREE THAT IN BUILDING 11, 4 ASBESTOS-CONTAINING PRODUCTS WERE SANDED WITH SAND 5 PAPER? 6 A I HAVE NO KNOWLEDGE OF THAT. 7 Q YOU READ MR. CHAPMAN'S DEPOSITION, THOUGH; 8 RIGHT? 9 A I DID, YES. 10 Q AND HE TESTIFIED THAT THE WORKERS SANDED TO 11 GET THE GLAZE OFF THE ASBESTOS BRAKES IN BUILDING 11 12 WHEN HE WAS THERE, CORRECT? 13 A THAT WAS IN HIS DEPOSITION, YES. 14 Q DOES BOEING HAVE ANY INFORMATION TO DISPUTE 15 MR. CHAPMAN'S TESTIMONY? 16 A NO, THEY DON'T. 17 Q MR. CHAPMAN ALSO TESTIFIED -- WELL, LET ME ASK 18 YOU THIS: DOES BOEING AGREE THAT THERE WAS COMPRESSED 19 AIR IN BUILDING 11? 20 A YES, THERE WOULD BE. 21 Q OKAY. AND WAS THERE COMPRESSED AIR AT EVERY 22 SINGLE BAY IN BUILDING 11, THE AUTO MAINTENANCE GARAGE? 23 A I BELIEVE SO, YES. 24 Q OKAY. THERE WERE SIX BAYS? 25 A YES. 26 Q OKAY. DOES BOEING AGREE THAT THE WORKERS IN 27 BUILDING 11 USED COMPRESSED AIR TO BLOW OUT BRAKE DUST 28 FROM BRAKE DRUMS?
Page 67 1 MCDONNELL DOUGLAS FROM '66 TO '73. THERE WERE ASBESTOS 2 PRODUCTS THERE, AND THEY WERE GROUND WITH A POWER TOOL 3 IN ONLY ONE OF THE SEVERAL HUNDRED BUILDINGS THERE. 4 CORRECT? 5 A IT'S MY UNDERSTANDING, YES. 6 Q AND THAT JUST HAPPENED TO BE THE BUILDING THAT 7 MR. CHAPMAN WORKED IN FOR SIX YEARS, CORRECT? 8 A YES. 9 Q OKAY. HE CERTAINLY COULD HAVE WORKED AT ANY 10 OF THE OTHER BUILDINGS AT MCDONNELL DOUGLAS; RIGHT? 11 A SURE. 12 Q OKAY. THE OTHER THING THAT WE KNOW IS THAT 13 MR. CHAPMAN'S WORK SPACE WAS IN THE SAME AREA AS THE 14 ARC GRINDER, CORRECT? 15 A IT WAS IN THE SAME BUILDING, YES. 16 Q OKAY. AND THE AIR CIRCULATION IN THAT 17 BUILDING -- LET ME ASK A BETTER QUESTION. 18 HE HAD A PARTS DEPARTMENT AREA IN BUILDING 11; 19 RIGHT? 20 A YES. 21 Q OKAY. BUT THAT WASN'T A SEPARATE WALLED-OFF 22 AREA, CORRECT? 23 A NO. I DON'T BELIEVE IT WAS A FLOOR-TO-CEILING 24 WALLED AREA. IT WAS AN AREA THAT WAS SEPARATE AND 25 APART FROM THE SHOP AREAS WHERE THEY WERE SERVICING THE 26 VEHICLES. 27 Q OKAY. AND SO THE AIR CIRCULATION WITHIN THAT 28 BUILDING 11, THERE WASN'T A WALL OR A SEPARATE ROOM	Page 69 1 A I WOULDN'T HAVE KNOWLEDGE OF THAT, NO. 2 Q OKAY. DO YOU KNOW ONE WAY OR THE OTHER? 3 A NO, I DON'T. 4 Q DO YOU HAVE ANY INFORMATION TO DISPUTE 5 MR. CHAPMAN'S TESTIMONY ABOUT THAT? 6 A NOT AT THIS TIME, NO. 7 Q OKAY. HAVE YOU DONE AN INVESTIGATION TO TRY 8 TO DETERMINE IF THAT WAS TRUE? 9 A NO. I DON'T BELIEVE WE HAVE. 10 Q OKAY. WHY NOT? 11 A JUST DIDN'T SEEM TO BE RELEVANT AND THAT HE 12 WAS WORKING IN THE PARTS DEPARTMENT OF THAT BUILDING. 13 Q OKAY. DOES BOEING AGREE THAT IN THE PARTS 14 DEPARTMENT, BOXES OF ASBESTOS-CONTAINING MATERIAL WERE 15 OPENED? 16 A YES, THEY WERE OPENED. 17 Q WHOSE JOB WAS THAT? 18 A I ASSUME THOSE THAT WORKING IN THE PARTS 19 DEPARTMENT TO PROVIDE THOSE TO THE MECHANICS. 20 Q DO YOU KNOW WHETHER -- WELL, ARE YOU FAMILIAR 21 WITH WHAT A PARTS MAN IS? 22 A I ASSUMED IT'S JUST AN INDIVIDUAL THAT WORKS 23 IN THE PARTS DEPARTMENT TO PROVIDE THOSE PIECES OF 24 EQUIPMENT TO THE MECHANICS FOR VARIOUS NEEDS. 25 Q DOES BOEING AGREE THAT MR. CHAPMAN'S JOB IN 26 BUILDING 11 WAS AS A PARTS MAN? 27 A YES. 28 Q DOES BOEING AGREE THAT AS PART OF THAT JOB,

Page 70	Page 72
1 MR. CHAPMAN WOULD HAVE OPENED BOXES CONTAINING BRAKES, 2 GASKETS AND CLUTCHES? 3 A YES, I BELIEVE SO. 4 Q WERE THE USED PARTS, THE ASBESTOS-CONTAINING 5 PARTS, TAKEN OFF VEHICLES IN BUILDING 11 RETURNED TO 6 THE PARTS MAN? 7 A YES. I DO UNDERSTAND THAT THAT DID OCCUR. 8 Q HAVE YOU HEARD OF SOMETHING CALLED "CORE 9 RETURN"? 10 A YES. 11 Q AND THAT'S WHERE -- WHAT IS THAT? 12 A PARTS THAT HAVE BEEN PREVIOUSLY USED ARE 13 RETURNED BACK TO THE PARTS DEPARTMENT FOR SENDING BACK 14 TO THE MANUFACTURER/SUPPLIER. 15 Q WAS THERE SWEEPING DONE IN BUILDING 11? 16 A MY KNOWLEDGE WAS YES, THAT THERE WAS SOME 17 HOUSEKEEPING DONE ON A ROUTINE BASIS. 18 Q DO YOU KNOW WHAT THE WORKERS WERE SWEEPING UP? 19 A PRESUMABLY, JUST THE DUST AND DEBRIS FROM THE 20 MECHANICS WORK AND THE VARIOUS AREAS. 21 Q DID YOU READ MR. CHAPMAN'S TESTIMONY WHERE HE 22 INDICATED THE WORK CLOTHES HE WORKED WITH, HE WORE 23 HOME? 24 A YES. 25 Q DO YOU HAVE ANY INFORMATION TO DISPUTE HIS 26 TESTIMONY? 27 A NO. 28 Q OKAY. DOES BOEING AGREE THAT MR. CHAPMAN'S	1 A CORRECT. 2 Q AND THAT THEY LIVED IN A CARPETED BEDROOM IN A 3 SMALL HOME THAT WAS ABOUT 20 BY 20 FEET, THE ENTIRE 4 HOME, NOT JUST THE BEDROOM? 5 A YES. 6 Q DOES BOEING AGREE THAT MRS. CHAPMAN SHOOK OUT 7 MR. CHAPMAN WORK CLOTHES FROM THE BOEING FACILITY 8 HUNDREDS OF TIMES? 9 A I WOULDN'T HAVE ANY KNOWLEDGE, OTHER THAN WHAT 10 WAS IN HER DEPOSITION. 11 Q DO YOU HAVE ANY INFORMATION TO DISPUTE THAT? 12 A NO. 13 Q WHEN MS. CHAPMAN TESTIFIED MR. CHAPMAN'S WORK 14 CLOTHES WERE DUSTY AND SHE SHOOK THEM OUT WHEN DOING 15 THE LAUNDRY, DOES BOEING HAVE ANY INFORMATION TO 16 DISPUTE THAT? 17 A NO. 18 Q BOEING UNDERSTANDS THAT MR. CHAPMAN TESTIFIED 19 HE OPENED HUNDREDS OF BOXES OF BRAKES WHEN HE WORKED AT 20 DOUGLAS, CORRECT? 21 A OVER THAT TIME PERIOD, YES. 22 Q OKAY. HAVE YOU EVER SEEN THAT VIDEO OF A 23 PERSON OPENING A BOX OF BRAKES WITH ALL THE DUST THAT 24 COMES OUT WITH TYNDALL LIGHTING? HAVE YOU EVER SEEN 25 THAT? 26 A I HAVE NOT. 27 Q DID LAWYERS FOR BOEING SHOW YOU THAT? 28 A NO, THEY DIDN'T.
Page 71	Page 73
1 WIFE, RITA CHAPMAN, WASHED HIS WORK CLOTHES? 2 A NOTHING TO DISPUTE THAT, NO. 3 Q OKAY. DOES BOEING HAVE ANYTHING TO DISPUTE 4 THAT MR. CHAPMAN'S WIFE, RITA CHAPMAN, SHOOK OUT HIS 5 WORK CLOTHES THAT HE WORE AT THE DOUGLAS FACILITY? 6 A NO. 7 Q BOEING IS AWARE THAT MR. CHAPMAN -- WELL, LET 8 ME ASK YOU A DIFFERENT QUESTION. 9 DOES BOEING AGREE THAT MR. CHAPMAN AND 10 MRS. CHAPMAN LIVED TOGETHER DURING THE TIME PERIOD THAT 11 MR. CHAPMAN WORKED AT THE DOUGLAS FACILITY? 12 A YES. 13 Q DOES BOEING KNOW THE SIZE OF THEIR HOUSE? 14 A I DON'T BELIEVE SO, NO. 15 Q DO YOU REMEMBER MR. CHAPMAN TESTIFYING THAT IT 16 WAS ABOUT -- IT WAS EITHER MR. CHAPMAN OR 17 MRS. CHAPMAN -- TESTIFYING THEIR HOUSE WAS ABOUT 18 20 FEET BY 20 FEET? 19 A I DON'T RECALL THAT, BUT I DON'T DISPUTE THAT. 20 Q ALL RIGHT. DO YOU REMEMBER -- DID YOU READ 21 RITA CHAPMAN'S DEPOSITION? 22 A I DID, YES, I DID. 23 Q OKAY. DO YOU REMEMBER HER TESTIFYING THAT 24 MR. CHAPMAN WOULD COME HOME AND TAKE OFF HIS WORK 25 CLOTHES IN THEIR BEDROOM? 26 A I DON'T RECALL THAT FROM THE DEPOSITION, YES. 27 Q DO YOU REMEMBER -- AND YOU HAVE NO INFORMATION 28 TO DISPUTE THAT; RIGHT?	1 Q DOES BOEING DISPUTE THAT DUST, ASBESTOS DUST, 2 IS RELEASED FROM A BOX OF ASBESTOS-CONTAINING BRAKES 3 WHEN IT'S OPEN? 4 A I WOULDN'T HAVE KNOWLEDGE OF THAT. I'M NOT 5 FAMILIAR WITH WHAT VIDEO YOU'RE REFERRING TO OR ANY 6 STUDY AROUND THAT. 7 Q DOES BOEING DISPUTE MR. CHAPMAN'S TESTIMONY 8 THAT HE OPENED HUNDREDS OF BOXES OF CLUTCHES WHILE 9 WORKING AT DOUGLAS? 10 A NO. 11 Q DOES BOEING DISPUTE MR. CHAPMAN'S TESTIMONY 12 THAT HE OPENED HUNDREDS OF CONTAINERS OF GASKETS AT 13 DOUGLAS? 14 A NO. 15 Q DOES BOEING DISPUTE MR. CHAPMAN'S TESTIMONY 16 THAT HE WAS WITHIN 3 OR 4 FEET OF WORKERS BLOWING OUT 17 BRAKES, BRAKE DRUMS AND BRAKE ASSEMBLIES WITH 18 COMPRESSED AIR HUNDREDS OF TIMES AT DOUGLAS? 19 A WELL, ONLY IN THAT OTHER INDIVIDUAL WE TALKED 20 TO AS PART OF OUR INVESTIGATION INDICATED IT WAS A 21 LITTLE WAYS AWAY, MORE THAN 3 FEET FROM THE PARTS 22 DEPARTMENT. IT WAS IN THE BAYS OF THE MECHANICS WHERE 23 THE VEHICLES WERE BEING SERVICED, SO 3 FEET DOESN'T 24 STICK IN MY MIND AS WHAT WAS -- WHAT I LEARNED. 25 Q WAS THAT OTHER INDIVIDUAL TALKING ABOUT THE 26 PARTS DEPARTMENT? 27 A YES. 28 Q HOW FAR AWAY WAS THE PARTS DEPARTMENT FROM THE

Page 74 1 BASE WHERE THE AUTO WORK WAS DONE? 2 A WELL, IT WAS ADJACENT TO -- FROM THE SCHEMATIC 3 THAT WAS SHARED WITH ME, THE PARTS DEPARTMENT WAS 4 ADJACENT TO THE BAYS. THE MECHANICS WOULD, OBVIOUSLY, 5 WOULD WORK, SERVICE THE VEHICLES OUT IN THOSE BAYS. 6 THE 3 FEET MIGHT BE A LITTLE CLOSER THAN MY 7 UNDERSTANDING. 8 Q HOW FAR WAS IT? DO YOU KNOW? 9 A I WOULD VENTURE TO SAY ITS MORE OF A 5- TO 10 10-FOOT DISTANCE. 11 Q SO THE PLACE WHERE MR. CHAPMAN WORKED EVERY 12 DAY IN BUILDING 11 WAS ABOUT 5 TO 10 FEET AWAY FROM THE 13 BAYS WHERE THE VEHICLES WERE WORKED ON BY THE 14 MECHANICS? 15 A THAT'S MY UNDERSTANDING IN LOOKING AT THE 16 SCHEMATICS OF THAT LAYOUT. 17 Q AND THAT WAS AN OPEN-AIR SITUATION, AS WE 18 DISCUSSED BEFORE; RIGHT? 19 A CORRECT. 20 Q SO THERE WASN'T LIKE A WALL THAT SEALED OFF 21 MR. CHAPMAN FROM THE WORK. OKAY. CORRECT? 22 A CORRECT. 23 Q ALL RIGHT. DO YOU UNDERSTAND THAT MR. CHAPMAN 24 TESTIFIED HE WOULD LEAVE THE PARTS AREA AND GO OUT INTO 25 THE BAYS WHERE THE MECHANICS WERE WORKING? 26 A YES, ON OCCASION. I DO RECALL THAT. 27 Q AND BY THE WAY, IF YOU FORGET SOME TESTIMONY, 28 I'VE GOT THE DEPOSITIONS READY. THEY ARE RIGHT THERE,	Page 76 1 RIGHT? 2 A NO. I DON'T BELIEVE SO. 3 Q YOU DON'T THINK ASBESTOS CONTAMINATED THAT 4 BUILDING? 5 A NO. I WOULDN'T THINK SO. 6 Q HOW LONG HAD THAT BUILDING BEEN THERE AS AN 7 AUTOMOTIVE GARAGE BEFORE MR. CHAPMAN GOT THERE? 8 A I DON'T KNOW WHEN INITIALLY THE BUILDING WAS 9 BUILT. IT WAS DECOMMISSIONED IN 2000 AND DEMOLISHED IN 10 2004. BUT IN TERMS OF THE ENVIRONMENTAL REPORT THAT 11 WAS DONE AT A LATER TIME, THERE WAS NO -- ANY 12 INDICATION THAT IT WAS A ASBESTOS-CONTAMINATED 13 BUILDING. 14 Q WERE YOU AWARE THAT SOME OF THE DOCUMENTS 15 BOEING PRODUCED IN THIS CASE SHOW THAT THE BUILDING WAS 16 BUILT IN 1941? 17 A OKAY. SOUNDS RIGHT. 18 Q OKAY. THAT'S 25 YEARS BEFORE MR. CHAPMAN GOT 19 THERE? 20 A CORRECT. 21 Q AND IT WAS OPERATED AS AN AUTOMOTIVE GARAGE 22 THOSE ENTIRE 25 YEARS, CORRECT? 23 A IT'S MY UNDERSTANDING, YES. 24 Q AND SO BEFORE MR. CHAPMAN STEPPED FOOT IN 25 BUILDING 11, THERE HAD BEEN 25 YEARS OF AUTOMOTIVE WORK 26 DONE IN THAT BUILDING, CORRECT? 27 A CORRECT. 28 Q YOU DON'T THINK -- STRIKE THAT. SORRY, I
Page 75 1 AND I CAN SHOW YOU IF YOU FORGET OR ANYTHING. 2 A OKAY. THANK YOU. 3 Q LET ME JUST MAKE ONE THING CLEAR. YOU 4 YOURSELF WERE NOT THE PERSON AT DOUGLAS MAKING THE 5 DECISIONS WHEN MR. CHAPMAN WORKED THERE; RIGHT? 6 A THAT IS CORRECT. 7 Q YOU DIDN'T START AT BOEING UNTIL 1979? 8 A THAT IS CORRECT. 9 Q OKAY. AND SO YOU PERSONALLY, MR. HOLLENBECK, 10 DIDN'T MAKE ANY DECISIONS ABOUT SAFETY, ASBESTOS, ANY 11 PROCEDURES OR TRAINING IN BUILDING 11 WHEN MR. CHAPMAN 12 WAS THERE; RIGHT? 13 A THAT IS CORRECT. 14 Q BUT THEY CHOSE YOU TO SPEAK FOR THE COMPANY ON 15 THAT ISSUE; RIGHT? 16 A YES. 17 Q BOEING DID? 18 A YES. 19 Q ALL RIGHT. DO YOU REMEMBER MR. CHAPMAN SAYING 20 THAT DURING THE NIGHT SHIFT -- FIRST OF ALL, THERE WERE 21 THREE SHIFTS IN BUILDING 11; RIGHT? 22 A YES. 23 Q IT WAS OPERATED 24 HOURS A DAY? 24 A YES. 25 Q HAVE YOU HEARD OF ASBESTOS CONTAMINATING A 26 BUILDING? 27 A YEAH, IN A GENERAL SENSE. 28 Q OKAY. THAT'S WHAT HAPPENED IN BUILDING 11;	Page 77 1 WITHDRAW THAT. 2 WHEN MR. CHAPMAN GOT THERE, THERE WERE 3 3 SEPARATE SHIFTS DOING AUTOMOTIVE WORK THE ENTIRE TIME 4 HE WORKED THERE; RIGHT? 5 A CORRECT. 6 Q SO THERE WAS AUTOMOTIVE WORK DONE, GRAVEYARD 7 SHIFT, SWING SHIFT, AND DAY SHIFT? 8 A YES, THAT'S MY UNDERSTANDING. 9 Q HAD THAT BEEN THE PROCEDURE FOR THE LAST 25 10 YEARS BEFORE MR. CHAPMAN GOT THERE? 11 A I WOULDN'T KNOW THE FREQUENCY. I ASSUME THERE 12 WAS A RAMP-UP PERIOD IN THE 40S AND 50S TO THE NUMBER 13 OF EMPLOYEES THAT THEY HAD IN THE EARLY 60S, WHICH WAS 14 SEVERAL -- 30, 40,000 PEOPLE. 15 Q SO IF MR. CHAPMAN ONLY WORKED ONE OF THOSE 3 16 SHIFTS -- HE DID A NIGHT SHIFT SOMETIMES, AND HE DID 17 DAY SHIFT -- BUT IF HE ONLY WORKED ONE OF THOSE 3 AT 18 ANY GIVEN TIME, HE COULD ONLY BE IN ONE PLACE AT ONE 19 TIME, YOU WITH ME? 20 A CORRECT. 21 Q THE WORK THAT HE OBSERVED AND THE FREQUENCY 22 WITH WHICH HE OBSERVED THAT WORK, DO YOU AGREE THAT 23 THAT WOULD HAVE BEEN OCCURRING DURING THE OTHER TWO 24 SHIFTS WHEN HE WAS NOT THERE? 25 A I WOULDN'T KNOW THAT. I WOULD ASSUME SO, BUT 26 I WOULDN'T KNOW THAT FOR SURE. 27 Q DO YOU KNOW WHEN MR. CHAPMAN TESTIFIED WHEN HE 28 WORKED GRAVEYARD SHIFT, THERE WAS BRAKE, CLUTCH, AND

Page 78 1 GASKET WORK DONE; RIGHT? 2 A I BELIEVE, NOW THAT YOU MENTION THAT, YES, IN 3 HIS DEPOSITION. 4 Q WHEN HE WORKED DAY SHIFT; BRAKE, CLUTCH, AND 5 GASKET WORK AS WELL? 6 A CORRECT. 7 Q ANY REASON TO THINK THAT BRAKE CLUTCH, AND 8 GASKET WORK WASN'T DONE 24/7 IN BUILDING 11? 9 A PROBABLY NOT. NO. 10 Q SO IT'S STILL BOEING'S POSITION THAT DESPITE 11 THE FACT THAT FOR 25 YEARS THAT WORK WAS DONE IN THAT 12 BUILDING BEFORE MR. CHAPMAN GOT THERE, AND IT WAS DONE 13 24/7 DURING THE 7 OR 8 YEARS HE WORKED THERE, BUILDING 14 11 WASN'T CONTAMINATED WITH ASBESTOS? 15 A YES, I WOULD DISPUTE THAT. 16 Q HOW COME? 17 A I MIGHT ADD THAT BRAKES WAS NOT ALL THEY DID 18 THERE. MY UNDERSTAND WAS BRAKES WERE ONCE OR TWICE A 19 WEEK, THAT THEY WERE SERVICING THE VEHICLES. TIRE 20 PRESSURE, OIL CHECKS, COOLANT ADS ON VARIETY OF 21 VEHICLES. BRAKES, QUITE FRANKLY, WAS A FAIRLY MINOR 22 PORTION OF THE WORK, AS I UNDERSTOOD, BEING DONE AT 23 THAT FACILITY. 24 Q MR. CHAPMAN SAID IT WAS DONE HUNDREDS OF TIMES 25 WHILE HE WAS THERE; IS THAT CORRECT? 26 A PROBABLY OVER THE COURSE OF HIS EMPLOYMENT, 27 YES. 28 Q I JUST WANT TO CLARIFY ONE THING. MR. CHAPMAN	Page 80 1 Q ANY REASON TO DISPUTE HIS TESTIMONY? 2 A NO, I HAVE -- NO. 3 Q WHEN SOMEONE IS 3 OR 4 FEET AWAY FROM 4 COMPRESSED AIR USED ON A BRAKE ASSEMBLY DUST GETS ON 5 THEM; RIGHT? 6 A POSSIBLY YES. 7 Q ASBESTOS DUST GETS ON THEM? 8 A POSSIBLY YES. 9 Q WHY DO YOU SAY "POSSIBLY"? 10 A WE HAVE NO DEFINITIVE DATA TO SUGGEST THAT 11 THAT WAS MACHINE DUST OR ANY KIND OF DUST, FOR THAT 12 MATTER. 13 Q THE BOEING COMPANY IN 2022 HAS NO DEFINITIVE 14 DATA THAT A PERSON 3 FEET AWAY FROM BLOWING OUT 15 COMPRESSED AIR ASBESTOS FROM A BRAKE DRUM GETS ASBESTOS 16 ON THEIR CLOTHES? THAT'S WHAT YOU ARE TELLING US? 17 A WELL, AT THE TIME PERIOD OF 1972 -- ARE YOU 18 REFERRING TO THAT WINDOW OF TIME OR TODAY? 19 Q FOR THIS QUESTION, I WAS REFERRING TO TODAY. 20 TODAY, THE BOEING COMPANY, YOU KNOW, GOT SPACESHIPS 21 FLYING AROUND, AIRPLANES FLYING AROUND. WITH ALL IT'S 22 KNOWLEDGE AND EXPERTISE, IT KNOWS, RIGHT, THAT IF 23 SOMEONE IS 3 FEET AWAY FROM A WORKER BLOWING OUT 24 ASBESTOS DUST FROM A BRAKE DRUM, THE ASBESTOS GETS ON 25 THE CLOTHES OF A PERSON 3 FEET AWAY, CORRECT? 26 A IT WOULD BE POSSIBLE. 27 Q IT'S NOT JUST POSSIBLE, IT'S FOR SURE; RIGHT? 28 A I WOULDN'T SAY FOR SURE, NO.
Page 79 1 TESTIFIED THAT HE LEFT THE PARTS AREA IN THE BUILDING 2 AND WENT OUT INTO THE BAYS AMONGST THE MECHANICS. DO 3 YOU REMEMBER THAT? 4 A YES. 5 Q ANY REASON TO DISPUTE THAT? 6 A NO. 7 Q SOUND REASONABLE? 8 A SURE. 9 Q MR. CHAPMAN TESTIFIED THAT HE LEFT THE PARTS 10 AREA WHEN HE WAS ON GRAVEYARD SHIFT, ABOUT 40 PERCENT 11 OF HIS TIME, WAS OUT IN THE BAYS AMONGST THE MECHANICS. 12 DO YOU REMEMBER THAT? 13 A I BELIEVE THAT WAS IN HIS DEPOSITION, YES. 14 Q WHEN HE SAID HE WORKED DAY SHIFT, ABOUT 20 15 PERCENT OF THE TIME. DO YOU REMEMBER THAT? 16 A YES. 17 Q ANY REASON TO DISPUTE HIS TESTIMONY? 18 A NO, I DON'T THINK SO. 19 Q DID THE PERSON YOU TALK TO ABOUT BUILDING 11 20 SAY MR. CHAPMAN GOT IT WRONG? 21 A NO, NOT IN TERMS OF THE FREQUENCY OF LEAVING 22 THE PARTS AREA. 23 Q AND SO WHAT I WAS TALKING ABOUT BEFORE, WHEN 24 MR. CHAPMAN TESTIFIED HE WAS 3 OR 4 FEET AWAY FROM 25 COMPRESSED AIR WORK, HUNDREDS OF TIMES ON BRAKES, WHAT 26 I WAS REFERRING TO WAS WHEN HE WAS OUTSIDE IN THE BAYS. 27 DO YOU UNDERSTAND? 28 A YES.	Page 81 1 Q WHY NOT? 2 A I HAVE NOT SEEN ANY DATA SPECIFICALLY THAT 3 INDICATES THAT THAT'S THE CASE. 4 Q HAVE YOU LOOKED? 5 A I CAN'T BE DEFINITIVE ON THAT. 6 Q HAVE YOU LOOKED? 7 A NOT SPECIFICALLY ON THAT, NO. 8 Q ANOTHER THING THAT WE KNOW ABOUT -- OKAY. I 9 JUST WANT TO MAKE SURE WE'RE ON THE SAME PAGE. WHEN 10 MR. CHAPMAN TESTIFIED HE WAS 3 OR 4 FEET AWAY, HE ALSO 11 SAID THAT -- I'M SORRY, LET ME JUST START OVER. 12 DOES BOEING HAVE ANY INFORMATION TO DISPUTE 13 MR. CHAPMAN'S TESTIMONY THAT HE WAS 3 OR 4 FEET AWAY 14 FROM THE ARC GRINDER WHEN IT WAS GRINDING BRAKES IN 15 BUILDING 11, HUNDREDS OF TIMES? 16 A OTHER THAN FROM THE INTERVIEW WITH ANOTHER 17 INDIVIDUAL THAT WORKED IN THAT PARTS DEPARTMENT, HE DID 18 NOT DESCRIBE IT AS BEING THAT CLOSE. 19 Q I'M NOT TALKING ABOUT THAT CLOSE TO THE PARTS 20 DEPARTMENT. I'M TALKING ABOUT WHEN MR. CHAPMAN LEFT 21 THE PARTS DEPARTMENT AND WAS IN THE BAYS. YOU WITH ME? 22 A YES. 23 Q ALL RIGHT. THEN MR. CHAPMAN TESTIFIED WHEN HE 24 LEFT THE PARTS DEPARTMENT AND HE WAS OUT IN THE BAYS, 25 HE WAS 3 OR 4 FEET AWAY FROM THE ARC GRINDER WHEN IT 26 WAS GRINDING BRAKES, HUNDREDS OF TIMES, CORRECT? 27 A CORRECT. 28 Q ANY REASON TO DISPUTE HIS TESTIMONY?

Page 82 1 A NO. 2 Q MR. CHAPMAN ALSO TESTIFIED WHEN HE LEFT THE 3 PARTS DEPARTMENT, AND WENT OUT INTO THE BAYS, HE WAS 3 4 OR 4 FEET AWAY FROM MECHANICS, HAND SANDING, BRAKES 5 SHOES, HUNDREDS OF TIMES, CORRECT? 6 A THAT'S IN HIS DEPOSITION, YES. 7 Q ANY REASON TO DISPUTE HIS TESTIMONY? 8 A NO. 9 Q ANOTHER THING BOEING KNOWS ABOUT BUILDING 11, 10 THE AUTOMOTIVE REPAIR GARAGE, IS THAT THE BRAKE WORK IN 11 THERE WASN'T JUST ON SMALL BRAKES; RIGHT? 12 A YES, THERE'S A VARIETY OF VEHICLES THAT WERE 13 SERVICED. 14 Q DOUGLAS HAD A FLEET OF HUNDREDS OF VEHICLES; 15 RIGHT? 16 A YES. 17 Q THERE WERE TUGS WHICH TOW AROUND AIRPLANES; 18 RIGHT? 19 A RIGHT. 20 Q HUNDREDS OF THOSE? 21 A YES. 22 Q THERE WERE BIG 16-WHEELER FORD TRUCKS THAT 23 TRANSPORTED LARGE AIRPLANE PARTS FROM ST. LOUIS TO THE 24 PLANT IN LONG BEACH, CORRECT? 25 A I BELIEVE SO, YES. 26 Q THOSE WERE FORD TRUCKS; RIGHT? 27 A I DON'T RECALL THE MANUFACTURER. 28 Q YOU KNOW THAT THERE WERE MANY FORD TRUCKS THAT	Page 84 1 GARAGE? 2 A YES, MY UNDERSTANDING, YES. 3 Q FORD ECONOLINE VANS, SORT OF LIKE A MID-SIZED 4 VAN -- WERE WORKED ON IN THAT GARAGE, CORRECT? 5 A I BELIEVE SO. 6 Q WHAT OTHER TYPES OF VEHICLE DID DOUGLAS HAVE. 7 OH, I FORGOT ONE. FORKLIFTS? 8 A YES. 9 Q THEY HAD FORKLIFTS AND THEY WERE WORKED ON IN 10 THAT GARAGE, CORRECT? 11 A YES. 12 Q SOME OF THE BRAKES FOR THOSE LARGE FORD TRUCKS 13 WERE VERY LARGE. DO YOU AGREE? 14 A I WOULD AGREE. 15 Q MR. CHAPMAN SAID SOME OF THE BRAKES WERE SOME 16 OF THOSE BIG 16, 18-WHEELER FORD TRUCKS WERE, 3 FEET 17 LONG. DO YOU REMEMBER THAT? 18 A YES. 19 Q SO IT'S NOT JUST MR. CHAPMAN WAS IN THIS 20 DEPARTMENT AROUND ASBESTOS PRODUCTS THAT WERE BEING 21 ABRADED, AND SANDED, AND GRINDED. IT'S THAT THEY WERE 22 VERY, VERY LARGE ASBESTOS BRAKES. 23 A YES, THERE WERE A FEW THAT WERE LARGE. 24 Q THE JURY SAW A VIDEO OF A WORKER BLOWING OUT 25 ASBESTOS DUST FROM A CAR BRAKE ASSEMBLY. HAVE YOU SEEN 26 THAT VIDEO? 27 A NO, I HAVE NOT. 28 Q OKAY. DO YOU KNOW HOW DUSTY THAT IS?
Page 83 1 MCDONNELL DOUGLAS HAD, THAT WERE REPAIRED IN BUILDING 2 11, THOUGH, CORRECT? 3 A YES, I DO UNDERSTAND FORD WAS ONE OF SEVERAL 4 PROVIDERS OF VEHICLES THERE. 5 Q THERE WERE C-SERIES TRUCKS AS WELL, FORD 6 C-SERIES TRUCKS THAT DOUGLAS USED TO OPERATE HIS 7 BUSINESS, CORRECT? 8 A YES, IT'S MY UNDERSTANDING. 9 Q AND THERE WERE REGULAR-SIZED TRUCKS THAT -- 10 YOU KNOW, LIGHT TRUCKS AS WELL? 11 A YES. 12 Q CORRECT? FORD -- FORD LIGHT TRUCKS? 13 A AGAIN, I CAN'T SPEAK TO WHO THE MANUFACTURERS 14 WERE OF THE VEHICLES AT THAT TIME. 15 Q DID BOEING REVIEW ANY OF THE DOCUMENTS THAT 16 FORD PRODUCED IN THE CASE WHERE FORD SAID JUST 17 DURING '67 TO '73 THEY SOLD 34 VEHICLES JUST TO DOUGLAS 18 LONG BEACH? 19 A I'M AWARE OF THAT BUT I'VE NOT SEEN DOCUMENTS 20 ON THAT. 21 Q THERE WERE ALSO REGULAR AUTOMOBILES THAT WERE 22 WORKED ON IN THE DOUGLAS GARAGE, CORRECT? 23 A YES. 24 Q FORD TORINOS AND OTHER AUTOMOBILES? 25 A YES. 26 Q THERE WERE BUSES WORKED ON IN THAT GARAGE? 27 A I BELIEVE SO. 28 Q THERE WAS EVEN FIRE TRUCKS WORKED ON IN THAT	Page 85 1 A FROM THE VIDEO OR JUST IN GENERAL? 2 Q YEAH, HAVE YOU SEEN A VIDEO OF IT DONE? 3 A NO, I HAVE NOT SEEN THE VIDEO. 4 Q DO YOU HAVE ANY IDEA HOW MUCH MORE DUSTY IT IS 5 THAN WHEN THE BRAKE SHOES ARE 3 FEET LONG? 6 A NO, I DON'T. 7 Q DOES BOEING AGREE THAT MRS. CHAPMAN, RITA 8 CHAPMAN, HAS BEEN DIAGNOSED WITH PLEURAL MESOTHELIOMA? 9 A YES IT'S MY UNDERSTANDING. 10 Q WHAT CAUSES THAT DISEASE? 11 MR. KARRIN: OBJECTION, YOUR HONOR. CALLS FOR 12 EXPERT OPINION. 13 THE COURT: FOUNDATION. SUSTAINED. 14 BY MR. ADAMS: 15 Q DOES BOEING EMPLOY MEDICAL DOCTORS? 16 A YES, THEY DO. 17 Q HOW MANY? 18 A AT THAT TIME, OR? 19 Q TODAY. 20 A TODAY, I CAN'T SPEAK TO -- I WOULD SAY AT 21 LEAST 6 AROUND THE CORPORATION. 22 Q AND BOEING EMPLOYS OTHER SCIENTISTS; 23 PHYSICISTS, AND CHEMISTS, AND LOTS OF OTHER PEOPLE WITH 24 BIG FANCY DEGREES; RIGHT? 25 THE COURT: CAN WE TAKE A BREAK NOW? 26 MR. ADAMS: YES. 27 THE COURT: ALL RIGHT. FOLKS TAKE 15 MINUTES. 28 PLEASE DO NOT FORM OR EXPRESS ANY OPINIONS. DO NOT

Page 86 1 DISCUSS THE CASE. DO NOT DO ANY RESEARCH. SEE YOU 2 BACK SHORTLY. THANK YOU. WE'RE IN RECESS. 3 4 (PAUSE IN THE PROCEEDINGS.) 5 6 THE COURT: HAVE A SEAT FOLKS, PLEASE. ALL 7 JURORS AND ALTERNATES ARE PRESENT. COUNSEL ARE 8 PRESENT. WITNESS IS ON THE STAND. FURTHER DIRECT 9 TESTIMONY, PLEASE. 10 11 BY MR. ADAMS: 12 Q THANK YOU, YOUR HONOR. 13 ARE YOU READY TO CONTINUE MR. HOLLENBECK 14 A YES, SIR. 15 Q ALL RIGHT. WE WERE TALKING ABOUT BOEING AND 16 THE MEDICAL DOCTORS THAT IT EMPLOYS. BOEING ALSO 17 EMPLOYS OTHER INDIVIDUALS WITH HEALTH AND SAFETY 18 EXPERTISE, CORRECT? 19 A YES, THEY DO. 20 Q AND THEY EMPLOYED YOU AS SOMEONE WITH HEALTH 21 AND SAFETY EXPERTISE FOR 30 YEARS, CORRECT? 22 A YES, THEY DID. 23 Q YOU HAVE A MASTER'S IN PUBLIC HEALTH? 24 A THAT'S CORRECT. 25 Q AND YOU WERE INVOLVED IN SAFETY AND HEALTH AT 26 MCDONNELL DOUGLAS IN '79. YOU STAYED WITH THEM THROUGH 27 THE MERGER WITH BOEING, WORKED YOUR WAY UP. YOU WERE A 28 MANAGER OF PUBLIC SAFETY HEALTH, CORRECT?	Page 88 1 DISEASES AT BOEING? 2 A YES. ONE OF MANY OTHER RESPONSIBILITIES AS 3 WELL. THAT CERTAINLY WAS IN THE -- 4 Q WAS CAUSES MESOTHELIOMA? 5 A GENERAL ACCEPTED KNOWLEDGE IS ASBESTOS. 6 Q WHERE DOUGLAS TO SCHOOL? 7 A UNIVERSITY OF MICHIGAN. 8 Q OKAY. AND DID YOU LEARN ABOUT ASBESTOS WHEN 9 YOU WERE GETTING YOUR MASTER'S IN PUBLIC HEALTH? 10 A YES. IT WAS A TOPIC COVERED. 11 Q ASBESTOS IS A PRETTY SERIOUS ISSUE, AND IT HAS 12 BEEN FOR A LONG TIME, WITH RESPECT TO WORKERS AND 13 HEALTH ISSUES; FAIR? 14 A YES. 15 Q ALL RIGHT. WHEN YOU WENT TO SCHOOL FOR YOUR 16 MASTER'S IN PUBLIC HEALTH, WHAT WERE YOU TAUGHT, IF 17 ANYTHING, ABOUT ASBESTOS AND MESOTHELIOMA? 18 A I DO RECALL INFORMATION PROVIDED AROUND THE 19 MINING INDUSTRY, TEXTILE INDUSTRY, THE EXPOSURE TO RAW 20 FIBERS. IT WAS GENERALLY THOUGHT OF TO BE A RISK, AT 21 POTENTIALLY HIGH CONCENTRATIONS AND LARGE VOLUMES, 22 WITHOUT PROPER PROTECTION. 23 Q DID YOU HAVE PROFESSORS WHO TAUGHT YOU ABOUT 24 THAT? 25 A YES. 26 Q WERE THERE TEXTBOOKS THAT YOU READ ON THAT 27 TOPIC, GENERALLY? 28 A YES.
Page 87 1 A YES. 2 Q DIRECTOR OF SAFETY AND HEALTH? 3 A YES. 4 Q AND THEN CORPORATE DIRECTOR OF SAFETY AND 5 HEALTH. WAS IT FOR ALL OF BOEING? 6 A YES. 7 Q OKAY. AND SO YOU HAVE EXPERIENCE AND 8 EXPERTISE IN ADDITION TO THE OTHER MEDICAL DOCTORS -- 9 YOU'RE NOT A MEDICAL DOCTOR? 10 A I AM NOT, NO. 11 Q YOU ARE NOT. BUT YOU HAVE EXPERIENCE TRAINING 12 AND EXPERTISE IN SAFETY AND HEALTH ISSUES ALONG WITH 13 THE OTHER MEDICAL DOCTORS AT BOEING; FAIR? 14 A YES. 15 Q ALL RIGHT. WHAT CAUSES MESOTHELIOMA? 16 MR. KARREN: OBJECTION. FOUNDATION, YOUR 17 HONOR. 18 THE COURT: SUSTAINED. 19 BY MR. ADAMS: 20 Q DO YOU KNOW WHETHER OR NOT BOEING KNOWS WHAT 21 CAUSES MESOTHELIOMA? 22 MR. KARREN: OBJECTION. CALLS FOR 23 SPECULATION. 24 THE COURT: OVERRULED. 25 THE WITNESS: YES. I BELIEVE THEY WOULD. 26 BY MR. ADAMS: 27 Q IS ONE OF THE SPECIFIC THINGS THAT YOU STUDIED 28 AND WERE TASKED WITH ASBESTOS AND ASBESTOS-RELATED	Page 89 1 Q ALL RIGHT. AND THEN, LIKE WE SAID, YOU WENT 2 TO BOEING, AND YOU WORKED THERE FOR 30 YEARS, 3 OVERSEEING SAFETY AND HEALTH, CORRECT? 4 A THAT'S CORRECT. 5 Q DID YOUR WORK FOR DOUGLAS AND THEN BOEING HAVE 6 TO DO WITH ASBESTOS? 7 A FAIRLY AND FREQUENTLY, QUITE HONESTLY, IT WAS 8 NOT A SIGNIFICANT ISSUE AS PART OF OUR AREAS OF RISK. 9 Q OKAY. WAS IT SOME OF WHAT YOU WERE TASKED 10 WITH CONTROLLING OR PROTECTING? 11 A YEAH. THAT WOULD HAVE BEEN IN THE SCOPE OF 12 RESPONSIBILITIES OF THE SAFETY COMMUNITY. 13 Q DO YOU HAVE TO EDUCATE YOURSELF, AS THE 14 MANAGER AND DIRECTOR OF HEALTH AND SAFETY AT DOUGLAS 15 AND BOEING, ABOUT SOME OF THE RISKS OF BEING EXPOSED TO 16 ASBESTOS? 17 A TO SOME EXTENT. 18 Q ALL RIGHT. WHEN DID YOU GET YOUR DEGREE IN -- 19 SORRY. I KNOW YOU GOT YOUR MASTER'S IN PUBLIC HEALTH 20 IN '79? 21 A CORRECT. 22 Q AND THEN, WHAT WAS IT, A FOUR YEARS OF SCHOOL 23 OR THREE YEARS? 24 A IT WAS A TWO-YEAR PROGRAM. 25 Q TWO-YEAR PROGRAM, OKAY. SO YOU STARTED 26 LEARNING ABOUT ASBESTOS AND HEALTH, ROUGHLY, IN 1977? 27 A THAT IS CORRECT. 28 Q AND THEN YOU RETIRED FROM BOEING IN 2008?

Page 90 1 A THAT IS CORRECT. 2 Q IS THAT 30 OR 40 YEARS, 40 -- 39 YEARS, 3 ROUGHLY. IT'S BEEN AT LEAST PART OF YOUR LIFE TO KNOW 4 AND LEARN AND EDUCATE YOURSELF ABOUT ASBESTOS, AT LEAST 5 TO SOME DEGREE? 6 A YES. 7 Q HAVE YOU EVER HEARD, EVER, ONCE, THAT AGE AND 8 NOTHING ELSE CAUSES THE DISEASE MESOTHELIOMA? 9 MR. KARREN: OBJECTION. FOUNDATION. 10 SPECULATION. 11 THE COURT: OVERRULED. 12 THE WITNESS: AGE IN ITSELF CAUSES ASBESTOS? 13 BY MR. ADAMS: 14 Q YES, CAUSES MESOTHELIOMA? 15 A WELL, THERE ARE OTHER CONTRIBUTING FACTORS 16 BESIDES AGE. 17 Q LET'S SAY A PERSON IS NOT EXPOSED TO ASBESTOS. 18 HAVE YOU EVER HEARD THAT MOST MESOTHELIOMA IN PEOPLE 19 NOT EXPOSED TO ASBESTOS ARE CAUSED BY AGE? DID YOU 20 LEARN ABOUT THAT IN MEDICAL SCHOOL OR ANYWHERE ELSE? 21 MR. KARREN: OBJECTION. FOUNDATION. 22 THE COURT: HOLD ON A SECOND. OVERRULED. 23 YOU CAN ANSWER. 24 THE WITNESS: WOULD YOU REPEAT THE QUESTION 25 AGAIN? I'M SORRY. 26 BY MR. ADAMS: 27 Q SURE. DID YOUR PROFESSORS IN MEDICAL SCHOOL, 28 WHO WERE TELLING YOU HOW ASBESTOS CAUSES MESOTHELIOMA,	Page 92 1 A YES. THAT'S IN HIS DEPOSITION, YES. 2 Q DOES BOEING CLAIM THAT MRS. CHAPMAN'S 3 MESOTHELIOMA HAS ABSOLUTELY NOTHING TO DO WITH 4 MR. CHAPMAN'S WORK? 5 MR. KARREN: OBJECTION. FOUNDATION. EXPERT 6 OPINION. 7 THE COURT: HOLD OWN. 8 MR. ADAMS: I'LL WITHDRAW IT AND ASK IT AGAIN. 9 THE COURT: THANK YOU. 10 BY MR. ADAMS: 11 Q WE ALSO TALKED ABOUT HOW MR. CHAPMAN COULD 12 HAVE WORKED IN ANY OF THOSE OTHER HUNDREDS OF BUILDINGS 13 AT DOUGLAS, BUT HE JUST SO HAPPENED TO WORK IN THE ONE 14 WHERE THEY WERE GRINDING A 30 TO 70 PERCENT ASBESTOS 15 PRODUCT WITH A POWER TOOL HUNDREDS OF TIMES, CORRECT? 16 A YES. 17 Q OKAY. AND HE BROUGHT HIS CLOTHES HOME, AND 18 MRS. CHAPMAN DID THE LAUNDRY, RIGHT? 19 A THAT'S MY UNDERSTANDING, YES. 20 Q IS IT BOEING'S CLAIM THAT MRS. CHAPMAN 21 DEVELOPED AN ASBESTOS-RELATED CANCER, AND ALL THAT WORK 22 HAPPENED, AND THE TWO THINGS HAD ABSOLUTELY NOTHING TO 23 DO WITH ONE ANOTHER? 24 MR. KARREN: OBJECTION. FOUNDATION. 25 SPECULATION. 26 THE COURT: LET ME GET SOME CLEARER. ARE YOU 27 ASKING A CONTENTION QUESTION OF THIS WITNESS? 28 MR. ADAMS: I AM. IT'S NOT A PMK ANYMORE,
Page 91 1 EVER TEACH YOU, ACTUALLY, MOST MESOTHELIOMAS ARE CAUSED 2 BY AGE AND HAVE NOTHING TO DO WITH ASBESTOS? IS THAT 3 SOMETHING YOU WERE EVER TAUGHT IN MEDICAL SCHOOL? 4 A NO. I DON'T BELIEVE SO. 5 Q WHAT ABOUT YOUR TRAINING AT BOEING? CAN YOU 6 POINT US TO ANY TRAINING MATERIALS, EDUCATION 7 MATERIALS, ANYTHING THAT YOU LEARNED ABOUT THAT SAID, 8 YOU KNOW WHAT, MOST MESOTHELIOMAS ARE CAUSED BY AGE AND 9 AGE ALONE, AND IT'S NOT REALLY ASBESTOS? 10 A NO. WE WOULDN'T HAVE HAD THAT IN THE 11 MATERIAL. 12 Q I WANT TO GO BACK TO WHAT WE WERE TALKING 13 ABOUT BEFORE, AND I'VE ACTUALLY GOT PICTURES. SO LET 14 ME GO THROUGH THOSE NOW. WELL, HERE'S WHAT I WANT TO 15 ASK: SO WE TALKED ABOUT MR. CHAPMAN'S WORK AT DOUGLAS 16 AND ALL THOSE WORK PRACTICES AND THE WAYS HE WAS IN 17 THAT BUILDING WHERE ASBESTOS PRODUCTS WERE BEING WORKED 18 WITH. DO YOU REMEMBER THAT? 19 A YES. 20 Q OKAY. AND NOW MRS. CHAPMAN HAS MESOTHELIOMA, 21 CORRECT? 22 A THAT'S MY UNDERSTANDING, YES. 23 Q AND MR. CHAPMAN WORKED IN THAT DOUGLAS GARAGE 24 WHERE THEY WERE GRINDING THE BRAKES, SANDING THE 25 BRAKES, BLOWING OUT THE BRAKES. HE WENT HOME. 26 MRS. CHAPMAN WASHED HIS CLOTHES. THAT HAPPENED FOR 27 YEARS, AND NOW SHE HAS MESOTHELIOMA. DO WE AGREE ON 28 ALL THAT?	Page 93 1 YOUR HONOR. 2 MR. KARREN: CALLS FOR A LEGAL CONCLUSION. 3 THE COURT: AND YOUR OBJECTION IS WHAT? 4 MR. KARREN: CALLS FOR A LEGAL CONCLUSION. 5 LACK OF FOUNDATION. CALLS FOR SPECULATION. IT'S AN 6 IMPROPER CONTENTION QUESTION, YOUR HONOR. 7 THE COURT: SUSTAINED. 8 BY MR. ADAMS: 9 Q MR. HOLLENBECK, YOU'RE NOT A LAWYER; RIGHT? 10 A I AM NOT. 11 Q YOU GOT LAWYERS BUT YOU'RE NOT ONE. I'M NOT 12 ASKING YOU ABOUT ANY LEGAL THING, OKAY. I JUST WANT TO 13 ASK YOU ABOUT WHETHER BOEING HAS TAKEN A POSITION ABOUT 14 THE FACTS OF THIS CASE, OKAY? I WANT TO ASK YOU ABOUT 15 THE FACTS. ARE YOU WITH ME? 16 A YES. 17 Q OKAY. DOES BOEING BELIEVE THAT MR. CHAPMAN'S 18 WORK WITH ASBESTOS AT DOUGLAS AND MS. CHAPMAN'S 19 ASBESTOS-RELATED DISEASE ARE JUST A COINCIDENCE? 20 MR. KARREN: SAME OBJECTIONS, YOUR HONOR. 21 THE COURT: SUSTAINED. 22 BY MR. ADAMS: 23 Q DOES BOEING BELIEVE THAT THE ASBESTOS -- DOES 24 BOEING AGREE THAT MR. CHAPMAN BROUGHT HOME ASBESTOS ON 25 HIS CLOTHES INTO THE FAMILY HOME? 26 A THAT'S IN HIS DEPOSITION, YES. 27 Q OKAY. ALL RIGHT. DO YOU KNOW WHETHER OR NOT 28 THAT ASBESTOS PLAYED A ROLE IN THE DISEASE THAT

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1 MRS. CHAPMAN HAS? 2 A I DO NOT. 3 MR. KARREN: SAME OBJECTIONS, YOUR HONOR. 4 THE COURT: I'LL SUSTAIN THE OBJECTION. I 5 DIDN'T HEAR THE ANSWER. WHATEVER IT IS, I'LL STRIKE 6 THE ANSWER. 7 BY MR. ADAMS: 8 Q DOES BOEING TAKE ANY RESPONSIBILITY FOR 9 MR. CHAPMAN'S -- DOES BOEING TAKE ANY RESPONSIBILITY 10 FOR MRS. CHAPMAN'S CANCER? 11 MR. KARREN: SAME OBJECTIONS, YOUR HONOR. 12 THE COURT: HOLD ON. SUSTAINED. 13 BY MR. ADAMS: 14 Q YOU KNOW WHAT PERSONAL RESPONSIBILITY IS; 15 RIGHT? 16 A YES. 17 Q WHAT IS IT? 18 A TAKING OWNERSHIP OF THE ISSUE AT HAND. 19 Q OKAY. AND DOES BOEING TAKE ANY RESPONSIBILITY 20 FOR MRS. CHAPMAN'S CANCER? 21 MR. KARREN: SAME OBJECTIONS, YOUR HONOR. 22 THE COURT: SUSTAINED. 23 I'M OF THE VIEW THESE ARE CONTENTION QUESTIONS 24 BEING ASKED OF A FACT WITNESS, AND THEY ARE NOT PROPER. 25 THAT'S WHY I'M SUSTAINING THE OBJECTION. 26 MR. ADAMS: OKAY. I'M NOT ASKING ABOUT LEGAL 27 CONTENTION FACTUAL, THOUGH. I THINK THAT'S PERMITTED. 28 THE COURT: I'M STANDING BY MY RULINGS.	1 THE COURT: ALL RIGHT. 2 MR. ADAMS: YOUR HONOR, PAGE 4 IS WHAT WE'RE 3 GOING TO DISPLAY. 4 THE COURT: DOUGLAS AIRCRAFT COMPANY 5 DIRECTORY? 6 MR. ADAMS: NO. OH, THAT IS -- YES. THAT IS 7 THE RIGHT DOCUMENT BUT NOT THE RIGHT PAGE. IT SHOULD 8 BE PAGE 4 OF THE DOCUMENT. 9 THE COURT: OH, I SEE. ALL RIGHT. LADIES AND 10 GENTLEMEN, I JUST NEED TO TALK TO THE LAWYERS ABOUT 11 SOMETHING HERE, A REOCCURRING THING THAT HAS COME UP. 12 IS THIS BEING OFFERED FOR NOTICE? 13 MR. ADAMS: NO. 14 THE COURT: THEN WHY ARE YOU ENTITLED TO A 15 LIMITING INSTRUCTION? 16 MR. MULARCZYK: YOUR HONOR, I DON'T WANT TO 17 REGURGITATE ALL THE ARGUMENTS WE MADE PREVIOUSLY, BUT 18 WE BELIEVE IT'S THE SAME BASES FOR ALL THE DOCUMENTS 19 THAT BEING AUTHORED WHEN ANOTHER REP IS UP. 20 THE COURT: ALL RIGHT. 3057 IS ADMITTED. 21 MR. KARREN: YOUR HONOR, FOR THE RECORD, WE 22 AGREED NOT TO OBJECT SUBJECT TO REDACTIONS WE'VE AGREED 23 TO AS TO RELEVANCY. 24 MR. ADAMS: THAT IS CORRECT, YOUR HONOR, AND 25 THESE WILL NOT BE DISPLAYED. 26 THE COURT: ALL RIGHT. 3057 IS ADMITTED. 27 BY MR. ADAMS: 28 Q MR. HOLLENBECK, I DON'T KNOW IF YOU ARE ABLE
Page 95	Page 97
1 BY MR. ADAMS: 2 Q ALL RIGHT. DO YOU KNOW WHETHER THE EXPERTS 3 THAT BOEING HIRED IN THIS CASE, ARE GOING TO COME TELL 4 THE JURY THAT MRS. CHAPMAN'S MESOTHELIOMA WAS JUST A 5 COINCIDENCE AND HAD NOTHING TO DO WITH HER HUSBAND'S 6 YEARS OF WORK AROUND ASBESTOS PRODUCTS AT DOUGLAS? 7 MR. KARREN: YOUR HONOR, OBJECTION. CALLS FOR 8 SPECULATION. ITS ARGUMENTATIVE AND IT REQUESTS -- IT 9 INCLUDES HEARSAY. 10 THE COURT: OVERRULED. DO YOU KNOW IF THAT 11 WAS THE QUESTION ANSWER THAT YES OR NO, PLEASE? 12 THE WITNESS: NO. I DO NOT KNOW WHAT THE OTHER 13 WITNESSES WILL BE SPEAKING ON. 14 BY MR. ADAMS: 15 Q LET'S GO THROUGH SOME PICTURES. 16 MR. ADAMS: AND I'M GOING DISPLAY WHAT WE HAVE 17 MARKED AS EXHIBIT 3057, YOUR HONOR, AND I UNDERSTAND 18 THERE'S NO OBJECTION TO THE ADMISSION OF THAT EXHIBIT. 19 SO WE WILL MOVE IT INTO EVIDENCE AT THIS TIME. 20 THE COURT: LET ME CATCH UP WITH YOU, PLEASE. 21 ALL RIGHT. 3057 IS BEING OFFERED. ANY OBJECTION? AND 22 BY THE WAY, THAT MEANS ANY OBJECTION FROM ANYBODY? 23 MR. MULARCZYK: YOUR HONOR, NO OBJECTION 24 SUBJECT TO THE REQUEST FOR THE INSTRUCTION WE'VE 25 PREVIOUSLY DISCUSSED. 26 THE COURT: ALL RIGHT. I NEED TO SEE 3057, 27 PLEASE. HAS IT BEEN DELIVERED TO THE CLERK. 28 MR. ADAMS: YES.	1 TO SEE THAT. IT MIGHT BE EASIER ON THAT COMPUTER. I 2 JUST WANT TO ASK YOU QUICKLY, THIS IS A DOCUMENT THAT 3 LIST SOME OF THE BUILDINGS AT THE DOUGLAS FACILITY? 4 A YES, IT IS. 5 Q AND IT LISTS HERE THE AUTOMOTIVE GARAGE? 6 A CORRECT. 7 Q DO YOU SEE THE SQUARE FOOTAGE THERE? 8 A YES, I CAN. 9 Q AND THEN IT LISTS THE TOTAL SQUARE FOOTAGE 10 DOWN AT THE BOTTOM FOR THE ENTIRE AREA. IT'S A LITTLE 11 OVER 5.6 MILLION SQUARE FEET. 12 A OKAY. YES. 13 Q I TOLD THE JURY IN OPENING STATEMENT IT WAS 26 14 FOOTBALL FIELD. IT'S REALLY 97 FOOTBALL FIELDS. I DID 15 THE MATH LAST NIGHT AND I'M SORRY ABOUT THAT. IT'S 97 16 FOOTBALL FIELDS. IF A FOOTBALL FIELD IS 57,000 SQUARE 17 FEET, YOU DIVIDE THAT INTO 5.6 MILLION, CAN WE AGREE 18 IT'S AROUND 97? 19 A YES. 20 Q BIG PLACE; RIGHT? 21 A BIG PLACE. 22 Q IF YOU DIVIDE THE SQUARE FOOTAGE OF THE GARAGE 23 BY 5.6 MILLION OF THE TOTAL AREA -- 24 A UH-HUH. 25 Q -- WHICH I DID LAST NIGHT, IT'S ABOUT 0.4 26 PERCENT OF THE TOTAL AREA OF THE DOUGLAS FACILITY, WAS 27 THE GARAGE; WE AGREE ON THAT? 28 A I TRUST YOUR MATH.

Page 98 1 Q OKAY. OF ALL THE BUILDINGS AT THE DOUGLAS 2 FACILITY, THE AUTOMOTIVE GARAGE WAS VERY SMALL? 3 A YES. 4 Q THAT'S WHERE GARY CHAPMAN WORKED? 5 A THAT'S CORRECT. 6 Q I'M SORRY, YOUR HONOR. THE NEXT EXHIBIT WE 7 HAVE MARKED AS 3027, YOUR HONOR, AND I UNDERSTAND 8 THERE'S NO OBJECTION. IT'S AN OVERVIEW OF THE 9 FACILITY. WE WOULD OFFER IT INTO EVIDENCE AT THIS 10 TIME. 11 THE COURT: ANY OBJECTION? 12 MR. KARRIN: NO OBJECTION, YOUR HONOR. 13 THE COURT: ADMITTED. 14 (EXHIBIT 3027 IDENTIFIED AND ADMITTED 15 INTO EVIDENCE.) 16 BY MR. ADAMS: 17 Q MR. HOLLENBECK, THAT'S A PICTURE OF THE LONG 18 BEACH FACILITY, CORRECT? 19 A YES, IT IS. 20 Q THERE'S A BUNCH OF BUILDINGS THERE. IS THAT 21 THE DOUGLAS GARAGE THAT I'M POINTING TO, RIGHT THERE 22 (INDICATING)? 23 A YES, IT IS. 24 Q OKAY. I JUST WANTED EVERYONE TO SEE THAT. 25 THAT'S THE DOUGLAS GARAGE? 26 A YES, IT IS. 27 Q ALL RIGHT. THAT WILL BE IN EVIDENCE. AND 28 THEN I WANT TO SHOW EXHIBIT 122, WHICH IS ANOTHER	Page 100 1 Q ITS ALSO PART OF 122 WHICH IS IN EVIDENCE. IS 2 THIS AN IMAGE OF THE INSIDE OF THE AUTOMOTIVE GARAGE? 3 A I BELIEVE SO, YES. 4 Q THIS AREA HERE (INDICATING) IS GENERALLY WHERE 5 THE PARTS DEPARTMENT WAS, CORRECT? 6 A YOU'RE POINTING UP TOWARDS THE CEILING. I 7 BELIEVE IT'S MORE FLOOR LEVEL. MAYBE IT'S MY 8 PERSPECTIVE HERE. DO YOU WANT TO POINT AGAIN AS TO 9 WHERE YOU BELIEVE IT IS? 10 Q THERE'S THIS WALL RIGHT HERE (INDICATING). 11 YOU SEE? 12 A YES. 13 Q AND THEN THERE'S AN OPENING ABOVE IT. DO YOU 14 SEE WHERE I'M INDICATING? 15 A YES. 16 Q IS THAT WHERE THE PARTS DEPARTMENT'S WAS, OR 17 IS IT YOUR UNDERSTANDING SOMEWHERE ELSE? 18 A MY UNDERSTANDING IT WAS ON THE GROUND FLOOR. 19 IT APPEARS YOU'RE ON THE UPPER FLOOR? OR NOT? 20 Q I DON'T THINK SO. I THINK IT WAS JUST -- I 21 GUESS WE CAN FIND OUT WHEN MR. CHAPMAN TESTIFIES -- 22 A ELEVATION PERSPECTIVE -- 23 Q -- I THINK THERE'S A WALL THAT GOES PART WAY 24 UP, AND BEHIND THAT WALL IS THE PARTS DEPARTMENT. IS 25 THAT YOUR UNDERSTANDING? 26 A THAT'S MY UNDERSTANDING, YES. 27 Q OKAY. THE NEXT PHOTOGRAPH THAT WE HAVE MARKED 28 AS EXHIBIT 123 AND I WANT TO OFFER INTO EVIDENCE, YOUR
Page 99 1 PHOTOGRAPH YOUR HONOR THERE'S NO OBJECTION. I'LL OFFER 2 THAT INTO EVIDENCE. 3 THE COURT: NO OBJECTION? 4 MR. KARRIN: NONE, YOUR HONOR. 5 THE COURT: ADMITTED. 6 7 (EXHIBIT 122 IDENTIFIED AND ADMITTED 8 INTO EVIDENCE.) 9 BY MR. ADAMS: 10 Q WHAT ARE WE LOOKING AT HERE IN EXHIBIT 122? 11 A MY UNDERSTANDING IS THAT'S BUILDING 11, THE 12 MECHANIC GARAGE ELEMENT -- OR THE HIGH BAY DOORS THAT 13 YOU SEE THERE ON THE LEFT. 14 Q JUST SO EVERYONE UNDERSTANDS -- WELL, WE'LL 15 HAVE ANOTHER IMAGE, BUT IT WAS THE MIDDLE 6 BAYS THAT 16 WERE WHERE THE AUTOMOTIVE SERVICE DEPARTMENT WAS, 17 CORRECT. ARE YOU AWARE OF THAT? 18 A APPROXIMATELY MIDDLE, I GUESS. YES. 19 Q ALL RIGHT. AND THIS IS ANOTHER PORTION OF 20 EXHIBIT 122 THAT'S SORT OF A ZOOMED-OUT IMAGE OF THE 21 AUTOMOTIVE SERVICE GARAGE, BUILDING 11? 22 A YES. 23 Q IT WAS TAKEN IN 1942, BUT DID IT LOOK 24 SUBSTANTIALLY SIMILAR IN 1966 TO 1973, DO YOU KNOW? 25 A I BELIEVE SO, YES. 26 Q THIS IS A PHOTOGRAPH -- I THINK IT'S ALSO FROM 27 1941 OR '42, CORRECT? 28 A I BELIEVE SO.	Page 101 1 HONOR, I UNDERSTAND THERE'S NO OBJECTION AS WELL. 2 THE COURT: NO OBJECTION? 3 MR. KARRIN: NO OBJECTION. 4 THE COURT: ADMITTED. 5 (EXHIBIT 123 IDENTIFIED AND ADMITTED 6 INTO EVIDENCE.) 7 BY MR. ADAMS: 8 Q MR. HOLLENBECK, WHAT ARE WE LOOKING AT HERE IN 9 EXHIBIT 123? 10 A FLAG RAMP AREA, ADJACENT TO THE MANUFACTURING 11 AREA. 12 Q DO YOU SEE THE BUILDING IN THE UPPER-RIGHT 13 CORNER THAT I HAVE HIGHLIGHTED IN RED? 14 A YES, I DO. 15 Q OKAY. IS THAT THE BUILDING 11, THE AUTOMOTIVE 16 SERVICE GARAGE? 17 A I BELIEVE SO. YES. 18 Q ALL RIGHT. AND I JUST WANTED TO SHOW YOU THE 19 OTHER AREA THERE. LET ME WITHDRAW THAT. 20 I THINK THIS IS MOST OF THE DOUGLAS PLANT IS 21 OFF TO THE RIGHT OF THIS PHOTOGRAPH, CORRECT? 22 A THAT WOULD BE CORRECT, YES. 23 Q SO WE'RE LOOKING AT A SLIVER FROM A DIFFERENT 24 ANGLE FROM THE PREVIOUS PHOTOGRAPHS; RIGHT? DO YOU SEE 25 THE PARKING LOT THAT I'VE HIGHLIGHTED ON THE LEFT? 26 A YES, I DO. 27 Q OKAY. IF MR. CHAPMAN SAID THAT'S WHERE HE 28 PARKED AND THEN WALKED TO THE SERVICE GARAGE, DO YOU

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1 HAVE ANY INFORMATION TO DISPUTE HIS TESTIMONY? 2 A NO, I WOULD NOT. 3 Q OKAY. ALL RIGHT. YOUR HONOR, THE NEXT 4 EXHIBIT IS EXHIBIT 3029 THAT WE'VE MARKED, AND I 5 UNDERSTAND THERE'S NO OBJECTION. WE WOULD OFFER IT 6 INTO EVIDENCE AT THIS TIME. IT'S A SCHEMATIC OF 7 BUILDING 11. 8 THE COURT: ADMITTED. 9 10 (EXHIBIT 3029 IDENTIFIED AND ADMITTED 11 INTO EVIDENCE.) 12 BY MR. ADAMS: 13 Q DID I DESCRIBE EXHIBIT 3029 CORRECTLY? 14 A IS THAT THIS ONE? 15 Q THAT'S THIS ONE. I KNOW IT'S HARD TO SEE. WE 16 ZOOM IN A SECOND, DON'T WORRY. 17 A WHAT DID YOU DESCRIBE ON THIS? 18 Q THIS IS A DOCUMENT BOEING PRODUCED IN THIS 19 CASE; RIGHT? 20 A I BELIEVE SO, YES. 21 Q ITS GOT THE BATES NUMBER? 22 A OKAY. 23 Q IS IT YOUR UNDERSTANDING THAT THIS IS AN 24 OVERVIEW OF THE AUTOMOTIVE SERVICE GARAGE WITH THE 25 FRONT OF IT SORT OF FACING UP, IN THE DOCUMENT? 26 A THAT'S CORRECT, YES. 27 Q OKAY. AND THEN THIS IS JUST A ZOOMED-IN 28 PORTION OF THE MIDDLE; DO YOU UNDERSTAND?	1 MR. ADAMS: IT'S A LITTLE HARD TO SEE, MR. 2 HOLLENBECK, IN THE PICTURE, BUT THIS IS THE FRONT AND 3 BACK OF MEL BURNS FORD BUSINESS CARD. 4 A YES, I SEE THAT. 5 Q MEL BURNS FORD -- DOES BOEING AGREE, WAS A 6 SUPPLIER OF FORD VEHICLES TO DOUGLAS, CORRECT? 7 A IT'S MY UNDERSTANDING, YES. 8 Q DURING THE TIME PERIOD WHEN MR. CHAPMAN WAS 9 THERE; RIGHT? 10 A YES. 11 Q MEL BURNS FORD ALSO SOLD FORD VEHICLES -- NEW 12 FORD VEHICLES TO MCDONNELL DOUGLAS, CORRECT? 13 A I UNDERSTAND THAT IS THE CASE, YES. 14 Q OKAY. DOES BOEING DISPUTE MR. CHAPMAN'S 15 TESTIMONY WHERE HE TESTIFIED ON A DAILY OR NEAR-DAILY 16 BASIS, HE CALLED UP MEL BURNS FORD WHEN HE WORKED IN 17 BUILDING 11 AND ORDERED PARTS? 18 MR. SMELSER: OBJECTION. HEARSAY. 19 THE COURT: OVERRULED. 20 THE WITNESS: WOULD YOU MIND REPEATING THE 21 QUESTION AGAIN? I'M SORRY. 22 BY MR. ADAMS: 23 Q YOU REVIEWED MR. CHAPMAN'S DEPOSITION, RIGHT, 24 AS PART OF YOUR PREPARATION? 25 A YES, I BELIEVE IT WAS IN HIS DEPOSITION. 26 Q DO YOU REMEMBER WHEN MR. CHAPMAN TESTIFIED 27 THAT ON A DAILY OR NEAR-DAILY BASIS, HE ORDERED PARTS 28 FROM MEL BURNS FORD?
Page 103	Page 105
1 A CORRECT, YES. 2 Q DO YOU SEE WHERE IT SAYS "AUTOMOBILE PARTS 3 STORAGE"? 4 A YES, I DO. 5 Q THAT'S THE AREA WHERE MR. CHAPMAN WORKED, 6 CORRECT? 7 A THAT'S MY UNDERSTANDING, YES. 8 Q OKAY. AND THEN I'VE ALSO ENCIRCLED IN RED THE 9 SIX BAYS IN BUILDING 11. DO YOU AGREE? 10 A YES. 11 Q OKAY. SO THIS IS THAT WALL THAT WE WERE 12 LOOKING AT BEFORE IN THE PICTURE FROM 1942, CORRECT? 13 A CORRECT. 14 Q I JUST WANT TO MAKE SURE EVERYONE KNOWS WHAT 15 WE'RE TALKING ABOUT. 16 A YES, THAT'S CORRECT. 17 Q SO WHEN THE MECHANICS WORKING IN THE BAYS, 18 THERE WAS NOTHING HERE PREVENTING THAT AIR FROM THE 19 MECHANICS WORK FROM GETTING TO MR. CHAPMAN; FAIR? 20 A YES. 21 Q OKAY. THE NEXT EXHIBIT I HAVE IS 3053, YOUR 22 HONOR. I UNDERSTAND THERE'S NO OBJECTION TO THIS AS 23 WELL. WE WOULD OFFER IT INTO EVIDENCE AT THIS TIME. 24 THE COURT: WHAT IS IT? 25 MR. ADAMS: MEL BURNS FORD BUSINESS CARD. 26 THE COURT: OKAY. ADMITTED. 27 (EXHIBIT 3053 IDENTIFIED AND ADMITTED 28 INTO EVIDENCE.)	1 A YES, I DO RECALL THAT. 2 Q DOES BOEING DISPUTE THAT TESTIMONY IN ANY WAY? 3 A I DON'T BELIEVE SO, NO. 4 Q THE NEXT EXHIBIT, YOUR HONOR, IS EXHIBIT 3059. 5 IT'S A DOUGLAS PURCHASE ORDER SHEET FROM THE EARLY 6 1980S. I DO UNDERSTAND THERE'S AN OBJECTION FROM 7 HYSTER ON THIS DOCUMENT? 8 THE COURT: LET ME TAKE A LOOK AT 3039, 9 PLEASE. 10 MR. KARREN: YOUR HONOR, I BELIEVE HE SAID 11 3059. 12 MR. ADAMS: I DID. 13 THE COURT: 3059. I MISSPOKE. OKAY. WHY 14 DON'T YOU SEE IF YOU CAN LAY FOUNDATION WITHOUT 15 DISPLAYING IT. SEE WHAT HAPPENS. 16 MR. ADAMS: YES, SIR. 17 BY MR. ADAMS: 18 Q MR. HOLLENBECK -- AND I HAVE A COPY FOR YOU 19 HERE. 20 THE COURT: YOU MAY APPROACH. 21 MR. ADAMS: THANK YOU, YOUR HONOR. 22 BY MR. ADAMS: 23 Q MR. HOLLENBECK, I DO NOT WANT TO RUSH YOU. 24 HAVE YOU HAD AN OPPORTUNITY TO AT LEAST GLANCE QUICKLY 25 AT 3059? 26 A YES, I HAVE. 27 Q AND DID YOU REVIEW THE DOCUMENTS PRODUCED BY 28 BOEING IN THIS CASE BEFORE YOUR DEPOSITION?

Page 106 1 A YES. 2 Q OKAY. AND DO YOU SEE ON THE BOTTOM RIGHT-HAND 3 CORNER, THIS DOCUMENT IS BATES NUMBER BOEING/CHAPMAN 4 AND THEN THERE'S A BUNCH OF ZEROS AND 1196, CORRECT? 5 A CORRECT. 6 Q THE DOCUMENTS THAT BOEING PRODUCED IN THIS 7 CASE WERE BATES LABELED IN THAT WAY, CORRECT? 8 A THAT'S CORRECT. 9 Q AND SO IT'S YOUR UNDERSTANDING THAT THIS IS A 10 TRUE AND CORRECT COPY OF A DOCUMENT THAT BOEING 11 PRODUCED IN THIS CASE, CORRECT? 12 A YES. 13 Q IT'S NOT A FORGERY; RIGHT? 14 A NO, I DON'T BELIEVE SO. 15 Q AND IT'S DATED IN THE EARLY 80S. DO YOU SEE 16 THAT ON THE FRONT PAGE? 17 A YES. 18 Q OKAY. YOUR UNDERSTANDING THIS DOCUMENT WAS 19 CREATED IN APPROXIMATELY THE EARLY 80S? 20 A CORRECT. 21 Q ALL RIGHT. AND BOEING HAS KEPT IT EVER SINCE 22 FOR - I GUESS IT WOULD HAVE BEEN DOUGLAS AT THE TIME -- 23 HAS KEPT THE DOCUMENT EVER SINCE, AND THAT'S HOW YOU 24 WERE ABLE TO PRODUCE IT IN THIS CASE WHEN WE ASKED FOR 25 IT, CORRECT? 26 A YES. 27 Q YOUR HONOR, WE WOULD OFFER EXHIBIT 3059 INTO 28 EVIDENCE AT THIS TIME. I DO BELIEVE THE OBJECTION IS	Page 108 1 A YES, IT WAS. 2 Q MR. CHAPMAN, YOU RECALL, TESTIFIED AT HIS 3 DEPOSITION THAT THERE WERE HYSTER FORKLIFTS AT 4 MCDONNELL DOUGLAS IN THE GARAGE DURING THE TIME PERIOD 5 WHEN HE WORKED THERE. DO YOU REMEMBER THAT? 6 A YES. THAT WAS IN HIS DEPOSITION. 7 Q DOES BOEING HAVE ANY REASON TO DISPUTE HIS 8 TESTIMONY? 9 A NO. 10 Q DOES BOEING AGREES THAT THERE WERE HYSTER 11 FORKLIFTS THERE OR YOU DON'T KNOW? 12 A I PERSONALLY DON'T KNOW. IT'S REFLECTED IN 13 HIS DEPOSITION. 14 Q DID YOU ASK THE OTHER INDIVIDUAL WHO WORKED IN 15 THAT GARAGE ABOUT HYSTER FORKLIFTS? 16 A WE DID HE DIDN'T RECALL THE SPECIFIC 17 EQUIPMENT. 18 Q DID HE RECALL FORKLIFTS? 19 A YES. 20 Q ALL RIGHT. AND DO YOU KNOW BOEING BOUGHT LOTS 21 AND LOTS AND LOTS OF FORKLIFTS DURING THE TIME PERIOD 22 MR. CHAPMAN WAS THERE? 23 A YES. 24 Q SO THIS DOCUMENT INDICATES MEL BURNS FORD, DO 25 YOU SEE THAT? 26 A IS THAT ON THE PAGE THAT I HAVE? 27 Q THIS IS A LONG ONE AND I DIDN'T WRITE DOWN THE 28 EXACT PAGE WHERE IT'S ON. BUT I SHOULD HAVE DONE THAT.
Page 107 1 NOT ON FOUNDATION FROM HYSTER, BUT WE'LL FIND OUT. 2 THE COURT: LET'S FIND OUT. 3 MR. HUIE: YOUR HONOR. JEREMY HUIE FOR 4 HYSTER-YALE. OBJECTION, RELEVANCE. IT POST DATES HIS 5 BOEING EMPLOYMENT. 6 THE COURT: I CAN'T TELL YET. WHAT'S THE 7 RELEVANCE? 8 MR. ADAMS: IT INDICATES A RELATIONSHIP 9 BETWEEN BOEING AND HYSTER WHICH WE BELIEVE IS 10 CIRCUMSTANTIAL EVIDENCE THAT THERE WAS A PREVIOUS 11 RELATIONSHIP AS MR. CHAPMAN TESTIFIED. 12 MR. HUIE: YOUR HONOR, EVIDENCE THAT SUGGESTS 13 ANY RELATIONSHIP IN THE 1980S AFTER MR. CHAPMAN STOPPED 14 WORKING AT BOEING IS NOT PROBATIVE AS TO WHAT HAPPENED 15 IN THE 1960S OR 70S. 16 THE COURT: OKAY. I'M OVERRULING THE 17 OBJECTION. THE JURY CAN GIVE IT WHATEVER WEIGHT, IF 18 ANY, IT WISHES TO THIS EXHIBIT. 3059 IS ADMITTED. 19 20 (EXHIBIT 3059 IDENTIFIED AND ADMITTED 21 INTO EVIDENCE.) 22 BY MR. ADAMS: 23 Q MR. HOLLENBECK, DO YOU SEE AT THE TOP THIS 24 DOCUMENT IT INDICATES PURCHASE ORDERS, TRANSPORTATION, 25 AND THEN ITS GOT DATES 1980 THROUGH '83, CORRECT? 26 A CORRECT. 27 Q NOW THAT WAS AFTER MR. CHAPMAN LEFT MCDONNELL 28 DOUGLAS; RIGHT?	Page 109 1 IF YOU GO TO 1211, PAGE 1211? 2 A OKAY. 3 Q THAT MEL BURNS FORD ENTRY IS THERE, DO YOU SEE 4 THAT? 5 A IT'S NOT ON MY 1211. 6 Q ON THE VERY TOP OF THE PAGE ENTRY, IT SAYS MEL 7 BURNS FORD? 8 A 1211 IS A DIFFERENT PAGE THAN WHAT YOU'RE 9 SHOWING THERE. 10 Q MAY I APPROACH, YOUR HONOR, SORRY? 11 THE COURT: YOU MAY. 12 BY MR. ADAMS: 13 Q THE WORDS MEL BURNS FORD ARE ON PAGE 1211? 14 A I DO SEE THAT. 15 Q IT'S A LITTLE DIFFERENT FROM WHAT'S BEING 16 DISPLACED ON THE SCREEN? 17 A CORRECT. 18 Q BUT IT'S THE WORD MEL BURNS FORD IN THE 19 DOCUMENT. 20 A YES. 21 Q OKAY. THE WORD MEL BURNS FORD OCCURS MANY 22 TIMES IN THE DOCUMENT. CORRECT? 23 A I'M ONLY SEEING IT ON THAT PAGE AT THIS POINT. 24 Q IF YOU GO TO PAGE 1213, THERE'S ANOTHER ENTRY 25 FOR MEL BURNS FORD? 26 A YES, I DO SEE THAT. 27 Q DO YOU SEE THAT? 28 A YES.

Page 110 1 Q OKAY. ALL RIGHT. SO THE POINT IS, THIS IS A 2 DOCUMENT PRODUCED BY BOEING THAT SHOWS WHAT YOU JUST 3 TESTIFIED TO A FEW MINUTES AGO, THAT BOEING HAD A 4 RELATIONSHIP WITH MEL BURNS FORD JUST LIKE MR. CHAPMAN 5 TESTIFIED TO, CORRECT? 6 A CORRECT. 7 Q ALL RIGHT. THIS IS ANOTHER ENTRY, SEVERAL 8 TIMES IN THE DOCUMENT, IF YOU'RE ON 1213 AND GO DOWN TO 9 THE 4TH FROM THE BOTTOM, YOU'LL SEE THIS ENTRY FOR 10 HYSTER CO.? 11 A YES, I DO SEE IS IT ONE TIME ON THIS PAGE. 12 Q IT'S ALSO ON 1211, CORRECT, ABOUT TWO THIRDS 13 DOWN THE PAGE HYSTER CO. AGAIN? 14 A YES, I SEE THAT. 15 Q OKAY. AND WHAT THAT MEANS IS THAT IN 1981, 16 BOEING MADE SOME PURCHASES OR, AT LEAST, A PURCHASE 17 FROM HYSTER CO., CORRECT? 18 A I WOULD ASSUME SO, YES. 19 Q ARE YOU ASSUMING OR THAT'S WHAT THE DOCUMENT 20 INDICATES? 21 A THESE ARE WORK ORDERS AND CONTRACTS WITH 22 HUNDREDS OF SUPPLIERS. I CAN'T BE CERTAIN THAT'S FROM 23 THIS DOCUMENT, THAT SOMETHING WAS ACTUALLY PURCHASED, 24 REALLY, ESTABLISHING A CONTRACT RELATIONSHIP WITH THESE 25 SUPPLIERS. 26 Q SO SOME KIND OF BUSINESS RELATIONSHIP BETWEEN 27 MCDONNELL DOUGLAS, MEL BURNS FORD, AND WITH MCDONNELL 28 DOUGLAS AND HYSTER, WHICH IS EXACTLY WHAT MR. CHAPMAN	Page 112 1 Q WE GOT A LOT OF THESE DOCUMENTS AFTER YOU 2 TESTIFIED. I KNOW IT'S A LITTLE TEDIOUS TO GO THROUGH 3 THESE. DO YOU UNDERSTAND -- THAT'S WHY I'M DOING IT? 4 A OKAY. FAIR ENOUGH. 5 Q OKAY. ONE OTHER DOCUMENT THAT I WANTED TO 6 SHOW AND ADMIT INTO EVIDENCE, SORRY, THAT PICTURE OF 7 HYSTER FORKLIFT IS CONSISTENT WITH A PURCHASE ORDER WE 8 JUST WENT OVER; RIGHT? 9 A YES. 10 Q OKAY. THIS IS EXHIBIT 3060, YOUR HONOR, THAT 11 WE'VE MARKED. I'LL OFFERED INTO EVIDENCE. THERE'S 12 BEEN NO OBJECTION. 13 THE COURT: WHAT IS IT? 14 MR. ADAMS: IT IS A 1966 DOCUMENT FROM BOEING 15 INDICATING SOME PURCHASES ABOUT TRACTORS AND FORKLIFTS. 16 THE COURT: OKAY. NO OBJECTION? ADMITTED, 17 3060. 18 (EXHIBIT 3060 IDENTIFIED AND ADMITTED 19 INTO EVIDENCE.) 20 BY MR. ADAMS: 21 Q MR. HOLLENBECK, DID I ACCURATELY DESCRIBE THAT 22 DOCUMENT TO THE JUDGE A MINUTE AGO? 23 A I BELIEVE SO. 24 Q AND THIS IS A DOCUMENT INDICATING THAT IT'S 25 FROM 1966, DO YOU SEE THAT? 26 A YES. 27 Q FACILITY LOG EXPENSES, CORRECT? 28 A YES.
Page 111 1 TESTIFIED TO, ALTHOUGH, ADMITTEDLY, IT WAS YEARS 2 EARLIER; FAIR? 3 A YES. 4 Q OKAY. THERE ARE SOME OTHER ENTRIES OF THE 5 SAME TYPE WITHIN THE DOCUMENT. THAT WE'RE DISPLAYING. 6 OKAY. 7 A OKAY. 8 Q THE NEXT EXHIBIT IS IN EVIDENCE. IT'S EXHIBIT 9 130. THIS IS A 1967 ANNUAL REPORT FROM HYSTER. 10 A OKAY. 11 Q ALL RIGHT. HYSTER FORKLIFTS WAS SOMETHING 12 THAT WERE REGULARLY USED IN THE AVIATION INDUSTRY; 13 FAIR? 14 A YES. 15 MR. HUIE: OBJECTION, LACKS FOUNDATION. 16 THE COURT: OVERRULED. THE ANSWER STANDS. 17 BY MR. ADAMS: 18 Q AND DO YOU SEE THE -- IT'S KIND OF HARD TO 19 SEE, ON THE COVER PAGE HERE, WE GOT THE HYSTER FORKLIFT 20 AND AN AIRPLANE IN THE BACKGROUND THAT SAYS BOEING ON 21 IT, DO YOU SEE THAT? 22 A YES. 23 Q IT'S PRETTY HARD TO SEE. IF MR. CHAPMAN 24 TESTIFIED THAT THERE WERE HYSTER FORKLIFTS USED AT 25 MCDONNELL DOUGLAS FOR THEIR AVIATION WORKS, THAT 26 CONSISTENT WITH YOUR UNDERSTANDING AND WITH THIS IMAGE 27 ON THE COVER PAGE OF HYSTER'S ANNUAL REPORT; FAIR? 28 A YES.	Page 113 1 Q FOR MCDONNELL DOUGLAS; RIGHT? 2 A YES. 3 Q IT INDICATES THIS IS JUST A PORTION OF THE 4 DOCUMENT BUT IT INDICATES, FOR EXAMPLE, DOUGLAS BOUGHT 5 24 FORKLIFTS, IT INDICATES THE PRICE AND A BUNCH OF 6 SEWING TRACTORS JUST IN THE YEAR 1966 INCLUDING 36 TOW 7 TRACTORS? 8 A YES. 9 Q WHAT IS A TOW TRACTOR? 10 A I ASSUME IT'S FOR MOVING AIRCRAFT. IT COULD 11 BE ALSO FOR MOVING LARGE PLATFORMS, DOLLIES, IF YOU 12 WILL, OF CONTAINERS PARTS. 13 Q IF MR. CHAPMAN TESTIFIED THOSE ARE THE KINDS 14 OF EQUIPMENT, AT LEAST, IN PART THAT WAS WORKED ON IN 15 THE AUTO MAINTENANCE GARAGE, DO YOU HAVE ANY TO THAT -- 16 DISPUTE HIS TESTIMONY? 17 A NO, I DON'T. 18 Q OKAY. I HAVE ONE MORE TOPIC. I JUST WITH A 19 JUST ASK YOU QUESTIONS ABOUT, SORT OF THE 20 SOPHISTICATION OF THE MCDONNELL DOUGLAS COMPANY. YOU 21 TOUCHED ON IT A LITTLE BIT. DO YOU THINK IT WOULD BE 22 FAIR TO DESCRIBE MCDONNELL DOUGLAS IN THE 1960 AS ONE 23 OF THE MOVEMENT SOPHISTICATED COMPANIES IN THE WORLD? 24 A I WOULDN'T SAY MOST BUT CERTAINLY 25 SOPHISTICATED IN MANY ASPECTS OF AIRSPACE AND AIR CRAFT 26 MANUFACTURING. 27 Q THEY MANUFACTURED AIRPLANES, FIGHTER JETS, 28 ROCKETS, MISSILES, SPACECRAFT AS WELL, CORRECT?

Page 114 1 A CORRECT. 2 Q OKAY. YOU KNOW, YOU'VE HEARD OF A MOM AND POP 3 BUSINESS AND THEN THERE'S A HUGE MULTI-NATIONALLY 4 EXTREMELY SOPHISTICATED BUSINESS. DOUGLAS WAS HUGE AND 5 SOPHISTICATED; FAIR? 6 A FAIR. 7 Q NOTHING WRONG WITH THAT, OF COURSE, BUT WOULD 8 YOU EXPECT DOUGLAS TO BE AWARE OF THE LAWS THAT APPLY 9 TO ITS BUSINESS? 10 A YES. 11 Q OKAY. AND WOULD YOU EXPECT DOUGLAS TO COMPLY 12 WITH THE REGULATIONS AND LAWS THAT APPLY TO ASBESTOS 13 BUSINESS? 14 A YES. 15 Q ALL RIGHT. IT'S A LAW ABIDING COMPANY; RIGHT? 16 A ABSOLUTELY, YES. 17 Q DO YOU AGREE REASONABLE COMPANIES COMPLY WITH 18 THE LAW? 19 A YES. 20 Q AND REASONABLE COMPANIES COMPLY WITH SAFETY 21 REGULATIONS? 22 A YES. 23 Q ARE YOU AWARE THAT THERE WERE SAFETY 24 REGULATIONS ABOUT ASBESTOS IN THE STATE OF CALIFORNIA 25 SINCE 1936? 26 A YES. 27 Q OKAY. DID DOUGLAS COMPLY WITH THOSE? 28 A YES.	Page 116 1 LIMITS? 2 A NO. I WOULDN'T HAVE THAT DOCUMENT. 3 Q WE HEARD YESTERDAY ABOUT WHEN OSHA WAS 4 CREATED -- OH, EXCUSE ME. IN 1960, DOUGLAS HAD 5 CONTRACTS WITH THE UNITED STATES MILITARY? 6 A CORRECT. 7 Q ARE YOU -- HAVE YOU EVER HEARD OF THE 8 WALSH-HEALEY ACT? 9 A YES, I HAVE. 10 Q OKAY. WHAT IS THAT? 11 A IF YOU'RE DOING WITH THE GOVERNMENT, THE 12 FEDERAL GOVERNMENT, YOU GOT TO COMPLY WITH VARIOUS 13 REQUIREMENTS, HEALTH AND SAFETY ARE ONE OF THOSE 14 REQUIREMENTS. 15 Q AND THAT ACT WAS PASSED IN 1960? 16 A I BELIEVE SO. 17 Q SINCE DOUGLAS WAS ENGAGING IN BUSINESS WITH 18 THE UNITED STATES MILITARY AT THAT TIME, DO YOU AGREE 19 THAT MCDONNELL DOUGLAS WOULD HAVE BEEN AWARE OF THE 20 WALSH-HEALEY ACT, AND REQUIRED TO COMPLY WITH IT? 21 A YES. 22 Q AND WHAT DO YOU UNDERSTAND THE WALSH-HEALEY 23 ACT SAID ABOUT ASBESTOS? 24 A I BELIEVE IT SET FORTH AN EXPOSURE LEVEL AT 25 THAT TIME. OFF THE TOP OF MY HEAD, I CAN'T REMEMBER 26 THAT NUMBER, BUT IT'S 5 MILLION PARTICLES PER CUBIC 27 FOOT, IT WAS A PRETTY SUBSTANTIAL THRESHOLD LIMIT, 28 EXPOSURE LIMIT.
Page 115 1 Q OKAY. WAS DOUGLAS AWARE OF THOSE? 2 A YES. 3 Q WHAT EVIDENCE DO YOU HAVE THAT DOUGLAS 4 COMPLIED WITH THE SAFETY REGULATIONS ABOUT ASBESTOS IN 5 CALIFORNIA THAT WERE IN PLACE IN 1936? 6 A OBVIOUSLY, I WASN'T THERE BUT FROM MY 7 EXPERIENCE, THERE'S STRICT ADHERENCE DISCIPLINE TO 8 FOLLOWING THE LOCAL FEDERAL STATE REGULATIONS AND 9 REQUIREMENTS. SO KNOWING THE COMPANY'S COMMITMENT TO 10 WORKPLACE SAFETY AND COMPLYING WITH REQUIREMENTS, 11 WITHOUT A DOUBT THEY WOULD BE COMPLIANT WITH THOSE 12 REQUIREMENTS AS FAR BACK AS THE PERSONNEL. 13 Q DO YOU HAVE ANY DOCUMENTS INDICATING, FOR 14 EXAMPLE, DOUGLAS TRAINED ITS EMPLOYEES ABOUT ASBESTOS 15 BEFORE 1973? 16 A I DO NOT. 17 Q OKAY. ARE YOU AWARE THAT THERE WAS A 18 REGULATION IN 1945 IN CALIFORNIA, ANOTHER REGULATION 19 THAT MENTIONED CHANGE ROOMS, ASBESTOS HAZARD, DUST 20 LEVELS, MEASURING THE AIR, AND TRAINING EMPLOYEES? 21 A GENERALLY, YES, FOR EXPOSURES ABOVE A 22 CERTAINLY LIMIT, YES. 23 Q WOULD DOUGLAS HAVE BEEN AWARE OF THAT 24 REGULATION? 25 A I BELIEVE SO. 26 Q DO YOU HAVE ANY INFORMATION THAT DOUGLAS EVER 27 TESTED THE AIR IN THE 1940 IN ANY OF ITS PLANS TO MAKE 28 SURE THE ASBESTOS LEVELS WERE BELOW THE REGULATORY	Page 117 1 Q DO YOU KNOW WHAT THE WALSH-HEALEY ACT SAID 2 ABOUT THE HAZARDS OF ASBESTOS? 3 A SPECIFICALLY, NO, I DON'T. 4 Q WHATEVER IT SAID, DOUGLAS WOULD HAVE BEEN 5 AWARE OF IT BEFORE IN THE 60S, CORRECT? 6 A YES. 7 Q WE HEARD ABOUT THE 1970, WHEN OSHA WAS 8 CREATED, YESTERDAY, ARE YOU AWARE OF THAT? 9 A YES. 10 Q ARE YOU AWARE OF 1971 OSHA PUBLISHED AN 11 EMERGENCY STANDARD FOR ASBESTOS IN THE FEDERAL 12 REGISTER? 13 A YES, I AM. 14 Q MCDONNELL DOUGLAS WAS AWARE OF THAT, CORRECT? 15 A PRETTY MUCH SO. 16 Q WHEN THAT CAME OUT, MR. CHAPMAN WAS IN THAT 17 BUILDING, BUILDING A LADDER, WORKING AROUND ASBESTOS 18 PRODUCTS THAT WERE BEING GROUND WITH A POWER TOOL; 19 FAIR? 20 A YES. 21 Q DID DOUGLAS DID DO ANYTHING TO TRAIN OR 22 PROTECT MR. CHAPMAN? 23 A THEY WOULD HAVE AS REQUIRED BY THAT OSHA LAW, 24 YES. 25 Q WHAT DID THEY DO? 26 A WELL, FOLLOWING THE RELEASE OF THAT STANDARD, 27 THERE WAS IMMEDIATE RESPONSE FROM OUR SENIOR LEADERSHIP 28 AND SAFETY ORGANIZATION. THAT WAS COMMUNICATED TO ALL

Page 118 1 MANAGERS INCLUDING OTHER FUNCTIONS WITHIN THE COMPANY. 2 CHEMISTRY AREAS, MANUFACTURING AREAS, OR ENGINEERING 3 AREAS TO MAKE SURE THAT WE GO OUT AND ASSESS THE 4 WORKPLACE FOR ASBESTOS, ITS LOCATION, ITS USE, ITS 5 PURPOSE, SO A VARIETY OF THINGS WERE INITIATED ACROSS 6 THE COMPANY TO RESPOND TO THAT REQUIREMENT FROM FEDERAL 7 OSHA. 8 Q WHAT DID DOUGLAS DO TO PROTECT MR. CHAPMAN? 9 A PRESUMABLY, THEY SURVEYED HIS WORK AREA. THEY 10 WOULD HAVE -- IF THERE'S ASBESTOS, THEY WOULD HAVE 11 ASSESSED ANY EXPOSURES THAT WERE OCCURRING. TO MY 12 KNOWLEDGE, THERE WAS NO INDICATION THAT THERE WAS ANY 13 EXPOSURE SITUATION THAT WOULD REQUIRE THE STANDARD TO 14 BE FOLLOWED. SO IT WAS ABOVE -- BELOW A THRESHOLD THAT 15 WOULD HAVE REQUIRED SOME OTHER THINGS YOU MENTIONED. 16 Q ONE OF THE THINGS IN THE '72 OSHA REGULATIONS 17 IS THAT CHEST X-RAYS WERE SUPPOSED TO BE TAKEN OF 18 EMPLOYEES? 19 A CORRECT. 20 Q WAS THAT DONE FOR MR. CHAPMAN? 21 A NO. AGAIN, MOST LIKELY WAS NOT ABOVE THE 22 ACTUAL LEVEL TO REQUIRE THAT THE STANDARD IS PREDICATED 23 ON THE STANDARD THRESHOLD OF EXPOSURE. SO PRESUMABLY, 24 HE DIDN'T HAVE A LEVEL OF EXPOSURE THAT WOULD WARRANT. 25 Q WHEN YOU ANSWERED THE LAST QUESTION, YOU'RE 26 REFERRING TO A CORPORATE DOCUMENT THAT WE'LL SHOW IN 27 JUST A SECOND. FROM DOUGLAS, WHERE THEY DOCUMENT THAT 28 THIS NATIONAL ASBESTOS STANDARD COME OUT -- WHICH CAME	Page 120 1 EVIDENCE THAT THAT ACTUALLY HAPPENED IN BUILDING 11; 2 TRUE? 3 A WELL, BUT BY NATURE OF THAT SERIES OF 4 MEMORANDUM FROM SENIOR LEADERSHIP, REST ASSURED, IT WAS 5 DONE. RESULTS OF THOSE SURVEYS ARE NOT RETAINED FOR A 6 PERIOD OF 30 YEARS OR WHATEVER -- ACTUALLY NOW IT'S 7 BEEN 50 YEARS. BUT THE SURVEY WAS DONE. 8 Q YOU WEREN'T THERE; RIGHT? 9 A I WAS NOT. 10 Q THERE'S NO DOCUMENTS INDICATING THAT IT WAS 11 DONE IN BUILDING 111, RIGHT, NO DOCUMENTS EXIST. AND 12 IT'S YOUR TESTIMONY THAT THERE MAY HAVE BEEN SOME 13 DOCUMENTS AT SOME TIME INDICATING THAT SOME KIND OF 14 ASBESTOS PROTECTION WAS DONE IN BUILDING 11. YOU'VE 15 NEVER SEEN THEM? 16 A CORRECT. 17 Q OKAY. BOEING HAS NOT PRODUCED THEM, CORRECT? 18 A CORRECT. 19 Q OKAY. YOU SPOKE WITH WELL-- STRIKE THAT. YOU 20 READ MR. CHAPMAN'S DEPOSITION; RIGHT? 21 A YES. 22 Q AND HE WAS THERE FOR ALMOST A YEAR AND A HALF 23 AFTER THE OSHA REGULATIONS CAME OUT. I GUESS HE WAS 24 THERE 3 YEARS AFTER '70 OSHA. TWO YEARS AFTER '71 25 OSHA. AND A YEAR AND A HALF AFTER '72 OSHA, CORRECT? 26 A YES. 27 Q HE WAS THERE AND HE WAS IN BUILDING 11; RIGHT? 28 A YES.
Page 119 1 OUT IN JUNE OF 1972, CORRECT? 2 A I BELIEVE SO, YES. 3 Q AND THAT WAS A STANDARD THAT SAID ASBESTOS 4 CAUSES ASBESTOSIS, LUNG CANCER, AND MESOTHELIOMA, 5 CORRECT? 6 A RIGHT. 7 Q AND IT SAID, "LIVES ARE AT STAKE." 8 A OKAY. 9 Q DO YOU REMEMBER THAT? 10 A YES. 11 Q THE '71 STANDARD THAT CAME OUT BEFORE THAT 12 SAID, "COMPANIES MUST ACT NOW," CORRECT? 13 A CORRECT. 14 Q MCDONNELL DOUGLAS HAS NO EVIDENCE TO INDICATE 15 THAT IT EVER DID ANYTHING TO PROTECT EMPLOYEES IN 16 BUILDING 11, CORRECT? 17 A AGAIN, FOLLOWING THE RELEASE OF THAT STANDARD, 18 THERE WAS AN ENTERPRISE-WIDE EFFORT TO ASSESS THE 19 WORKPLACE. I PERSONALLY HAVE NOT SEEN THE RECORDS AS A 20 RESULT OF THAT, BUT WITH OUR RECORD-RETENTION POLICY, 21 IT'S UNDERSTANDABLE THAT THERE WOULDN'T BE RECORDS. SO 22 BUT REST ASSURED, THAT THERE WAS THIS SIGNIFICANT 23 EFFORT ACROSS THE COMPANY TO ASSESS THE WORKPLACE FOR 24 ASBESTOS IN RESPONSE TO THAT STANDARD. 25 Q SO WHEN YOU TESTIFIED ABOUT HOW THE STANDARD 26 CAME OUT IN '72, DOUGLAS KNEW ABOUT IT, AND THEY WENT 27 OUT AND DID A SURVEY AREAS OF ALL THE AREAS WHERE 28 ASBESTOS WORK MIGHT HAVE OCCURRED, THERE'S ZERO	Page 121 1 Q DO YOU REMEMBER HIS TESTIMONY WHERE HE SAID 2 THERE WAS NEVER ANY AIR SAMPLING. DO YOU REMEMBER 3 THAT? 4 A YES. 5 Q THERE WAS NEVER ANY TRAINING. DO YOU REMEMBER 6 THAT? 7 A YES. 8 Q THERE WAS NEVER ANY WARNINGS. DO YOU REMEMBER 9 THAT? 10 A YES. 11 Q THERE WAS NEVER ANY CAUTION SIGNS PUT UP ABOUT 12 ASBESTOS. DO YOU REMEMBER THAT? 13 A CORRECT. 14 Q THERE WAS NEVER ANY WET-DOWN PROCEDURES 15 EXPLAINED. DO YOU REMEMBER THAT? 16 A YES. 17 Q THERE WAS NEVER ANY -- WELL, THERE WAS A 18 LAUNDRY SERVICE AVAILABLE AT DOUGLAS, IT WAS NEVER 19 EXPLAINED TO HIM THAT THE REASON THE LAUNDRY SERVICE 20 EXISTED -- IF THIS WAS THE REASON -- WAS BECAUSE YOU 21 COULD TAKE HOME ASBESTOS DUST ON YOUR CLOTHING AND YOU 22 COULD HURT YOUR FAMILY. DO YOU REMEMBER ALL HIS 23 TESTIMONY ABOUT THAT? 24 A YES, I DO RECALL SOME OF THAT FROM HIS 25 DEPOSITION. 26 Q HE TESTIFIED THERE WERE NO CHEST X-RAYS THAT 27 WERE EVER DONE; RIGHT? 28 A CORRECT.

Page 122 1 Q OKAY. HE TESTIFIED THAT HE WAS NEVER TOLD OR 2 WARNED IN ANY WAY ABOUT ASBESTOS HE WAS AT MCDONNELL 3 DOUGLAS; RIGHT? 4 A I BELIEVE THAT WAS HIS TESTIMONY. 5 Q AND YOUR TESTIMONY TO THE JURY IS DESPITE THE 6 FACT THAT MR. CHAPMAN WAS THERE, AND YOU WEREN'T, YOU 7 KNOW IT HAPPENED BECAUSE OF THE TYPE OF COMPANY THAT 8 DOUGLAS WAS? 9 A CORRECT. AND THE INDIVIDUALS INVOLVED WITH 10 THE RESPONSE TO THAT STANDARD. 11 Q BUT YOU HAVE ABSOLUTELY NO EVIDENCE OF THAT, 12 CORRECT? 13 A WE HAVE RECORDS TO REFLECT THAT THE SURVEY WAS 14 DONE FOLLOWING THE RELEASE OF THE STANDARD FROM THE 15 SENIOR LEADER OF SAFETY, WHO I KNEW. IT WAS 16 COMMUNICATED TO HIS DIRECTOR AT MULTIPLE SITES. 17 FURTHER COMMUNICATED TO HIS MANAGER. IT WAS COPIED AND 18 DISTRIBUTED WIDE ACROSS THE ENTERPRISE AND, WITHOUT A 19 DOUBT, THAT SURVEY WOULD HAVE BEEN DONE. 20 Q LET'S TAKE A LOOK AT EXHIBIT 429, YOUR HONOR, 21 WE WOULD OFFER THAT INTO EVIDENCE. THERE'S NO 22 OBJECTION. 23 THE COURT: WHAT IS IT? 24 MR. ADAMS: IT'S A JULY 11TH, '72 MEMO FROM 25 DOUGLAS ABOUT THE OSHA ASBESTOS STANDARD. 26 MR. KARREN: NO OBJECTION. 27 THE COURT: ADMITTED -- 28 MR. MULARCZYK: NO OBJECTION, SUBJECT TO AN	Page 124 1 A YES. 2 Q THAT'S DATED JULY 11TH, 1972? 3 A YES. 4 Q IT INDICATES THAT DOUGLAS NEEDS TO DO A SURVEY 5 OF ALL OF THE WORK AREAS INVOLVED WITH ASBESTOS, 6 CORRECT? 7 A CORRECT. 8 Q AND THAT IT NEEDS TO DO IT AT LEAST 9 SEMI-ANNUALLY AFTER THAT? 10 A CORRECT. 11 Q ZERO DOCUMENTS EXIST THAT INDICATE THAT EVER 12 HAPPENED, CORRECT? 13 A THAT'S CORRECT AND I'M NOT SURPRISED. 14 Q INCLUDING IN BUILDING 11? 15 A CORRECT. 16 Q YOU'RE NOT SURPRISED THAT DOUGLAS WOULD 17 DESTROY RECORDS OF HEALTH AND SAFETY THAT WERE 18 CONDUCTED AT ITS FACILITY? 19 A AT THAT TIME PERIOD, NO. WE HAD A RECORDS 20 RETENTION POLICY FOR RECORDS IN THAT TIME PERIOD. I 21 BELIEVE IT WAS A FIVE-YEAR WINDOW WHICH EXCEEDS WHAT 22 THE OSHA REQUIREMENT FOR RECORDS RETENTION IS, WHICH IS 23 THREE. SO WE WERE BEYOND THE OSHA RECORDS FOR RECORDS 24 RETENTION AS SURVEYS WERE COMPLETED AND ACTIONS WERE 25 ADDRESSED, THERE WOULD BE NO REASON, 50 YEARS LATER, TO 26 KEEP A REPORT. 27 SO WITH THE RECORDS RETENTION POLICY, 28 ROUTINELY, DOCUMENTS ARE REVIEWED FOR THEIR USEFULNESS.
Page 123 1 INSTRUCTION. 2 THE COURT: OKAY. WHO SAID THAT, PLEASE? 3 MR. MULARCZYK SAID THAT. IS THIS BEING OFFERED FOR 4 NOTICE? 5 MR. ADAMS: NO, IT IS NOT. 6 THE COURT: COULD I SEE 429? 7 MR. ADAMS: IT'S NOT JUST BEING OFFERED FOR 8 NOTICE. IT'S BEING OFFERED FOR THE TRUTH. 9 THE COURT: ONE MOMENT, FOLKS I'M GOING TO 10 ADMIT 429. I'M RESOLVING ON AN ISSUE OF A LIMITING 11 INSTRUCTION. SO MAKE A NOTE THERE, PLEASE. 12 MR. MULARCZYK: THANK YOU, YOUR HONOR. 13 (EXHIBIT 429 IDENTIFIED AND ADMITTED 14 INTO EVIDENCE.) 15 MR. AMES: RICHARD AMES FOR COLGATE. WE JOIN, 16 AND ALSO OUR PREVIOUSLY INSERTED OBJECTION IN ADDITION 17 TO THE REQUEST FOR INSTRUCTION. 18 THE COURT: OKAY. SAME RULING. 19 BY MR. ADAMS: 20 Q MR. HOLLENBECK, DO YOU SEE EXHIBIT 429? 21 A YES, I DO. 22 Q THAT'S THE DOCUMENT YOU WERE TALKING ABOUT 23 WHERE IN JULY OF 1972, DOUGLAS DOCUMENTED THAT THE OSHA 24 ASBESTOS STANDARD HAD GONE INTO EFFECT; TRUE? 25 A CORRECT. 26 Q AND IT SAYS IT WAS ONE OF THE MOST STRINGENT 27 OCCUPATIONAL HEALTH STANDARDS EVER PROMULGATED, 28 CORRECT?	Page 125 1 AND IF THEY ARE NO LONGER USEFUL, THEY'RE REMOVED FROM 2 THE FILING SYSTEM. 3 Q WHAT IS SEMI-ANNUALLY, IS THAT TWICE A YEAR? 4 A YES, I WOULD ASSUME SO. 5 Q SO IT'S BOEING'S TESTIMONY TO THIS JURY THAT 6 MCDONNELL DOUGLAS WENT INTO MR. CHAPMAN'S BUILDING 7 TWICE A YEAR, MEASURED THE ASBESTOS LEVELS, TRAINED 8 EVERYBODY, PROTECTED EVERYBODY, AND MR. CHAPMAN JUST 9 MISSED IT? 10 A WELL, THE STANDARD IS PREDICATED ON THE FACT 11 THAT YOU HAVE TO EXCEED AN EXPOSURE LIMIT. SO IF YOU 12 ARE BELOW THAT EXPOSURE LIMIT -- WHICH YOU DESCRIBES 13 PREVIOUSLY -- IS NOT REQUIRED. 14 Q ISN'T THE ONLY WAY TO KNOW IF YOU'RE BELOW THE 15 EXPOSURE LIMIT, TO MEASURE THE AIR AND TEST AND FIND 16 OUT? 17 A RIGHT, I BELIEVE THAT WAS DONE. 18 Q WERE YOU HERE WHEN DR. LONGO TESTIFIED THE 19 OTHER DAY? WERE YOU LISTENING IN? 20 A NO, I WAS NOT. 21 Q WERE YOU HERE WHEN HE TESTIFIED ABOUT 22 EXPOSURES FROM ARC-GRINDING BRAKES THAT WERE UP AROUND 23 TRIPLE THE PEAK EXPOSURE LIMIT IN THE INITIAL OSHA 24 STANDARD? 25 A NO, I WAS NOT. 26 Q BUT THAT ARC GRINDING WAS THE WORK THAT WAS 27 DONE IN BUILDING 11, CORRECT? 28 A ARC GRINDING WAS DONE. I'M NOT SURE THE TYPE

Page 126 1 OF EQUIPMENT IT WAS. 2 Q NEXT THING IT SAYS IS -- DOUGLAS SAYS IT'S, 3 "GOING TO DOCUMENT AND IMPLEMENT AN EFFECTIVE ASBESTOS 4 CONTROL PROGRAM CONSISTENT WITH ALL PHASES OF THE 5 ENCLOSURE," AND THERE'S AN ATTACHMENT THAT LISTS OFF -- 6 SORT OF A CHECKLIST OF THINGS IT'S GOING TO DO. 7 A YES. 8 Q I THINK THE LAWYER FOR BOEING WILL SHOW YOU 9 THAT. BUT THAT CHECKLIST -- NO SUCH CHECKLIST EXISTS 10 FOR ANY OF THOSE ASBESTOS CONTROL MEASURES THAT BOEING 11 CLAIMS WERE PERFORMED IN BUILDING 11; TRUE? 12 THE REPORTER: I'M SORRY. 13 MR. ADAMS: I'M SORRY, THAT WAS A BAD 14 QUESTION. IN BUILDING 11. 15 THE WITNESS: I'M SORRY, YOU WANT TO REPEAT 16 THAT QUESTION AGAIN, PLEASE? 17 BY MR. ADAMS: 18 Q ARE THERE DOCUMENTS THAT SHOWED SUBPART B EVER 19 HAPPENED? 20 A AGAIN, WITH RESPECT TO THE RECORDS RETENTION 21 POLICY, WE WOULDN'T EXPECT THOSE RECORDS TO BE 22 AVAILABLE, SO... 23 Q DOUGLAS SAYS IN 1972, IT NEEDS TO, "PROVIDE 24 APPROPRIATE EDUCATION AND TRAINING OF SUPERVISORS AND 25 EMPLOYEES TO ENSURE THEIR UNDERSTANDING OF THE 26 OCCUPATIONAL HEALTH REQUIREMENTS FOR ASBESTOS WORK," 27 CORRECT? 28 A CORRECT.	Page 128 1 Q -- HE WAS THE CORPORATE DIRECTOR OF SAFETY AT 2 DOUGLAS AT THE TIME? 3 A YES, HE WAS. 4 Q DID YOU KNOW HIM? 5 A I DID. 6 Q WAS THERE ANYONE AT DOUGLAS HIGHER UP WITH 7 MORE RESPONSIBILITY FOR SAFETY IN 1972 THAN MR. LEVENS? 8 A NO. 9 MR. ADAMS: THANK YOU SO MUCH. I APPRECIATE 10 IT. 11 THE COURT: ALL RIGHT. MR. KARREN, 12 MS. HANSEN, AT THIS TIME WILL YOU BE ASKING QUESTIONS 13 OR WILL YOU BE RESERVING? 14 MR. KARREN: NO, I WOULD LIKE TO ASK NOW, YOUR 15 HONOR. 16 THE COURT: GO AHEAD. 17 MR. KARREN: THANK YOU. 18 19 CROSS-EXAMINATION 20 BY MR. KARREN: 21 Q GOOD MORNING, MR. HOLLENBECK. 22 A GOOD MORNING, SIR. 23 Q DO YOU SEE ME OKAY THROUGH THE GLASS? 24 A YES. 25 Q SIR, THANK YOU FOR BEING HERE. FIRST, I WANT 26 TO ESTABLISH THIS, IS THIS THE FIRST TIME, SIR, THAT 27 YOU EVER TESTIFIED IN A COURTROOM? 28 A IT IS.
Page 127 1 Q MR. CHAPMAN WAS AN EMPLOYEE AT THAT TIME, 2 CORRECT? 3 A YES, HE WAS. 4 Q HE WAS AN EMPLOYEE FOR ANOTHER YEAR AND A 5 HALF? 6 A OKAY. YES. 7 Q RIGHT? WAS HE A VALUED EMPLOYEE AT DOUGLAS? 8 A I'M SURE HE WAS. 9 Q DO YOU HAVE ANY INFORMATION THAT MR. CHAPMAN 10 WAS ACTUALLY EVER TRAINED, IN ANY WAY, ABOUT ASBESTOS 11 HAZARDS? 12 A I WOULDN'T HAVE THOSE RECORDS, NO. 13 Q YOU WOULD AGREE A COMPANY SHOULD FOLLOW ITS 14 OWN RULES THAT IT WRITES DOWN IN A MEMO SENT TO THE 15 WHOLE COMPANY? 16 A CORRECT. 17 Q THE LAST PART OF THIS MEMO SAYS, "DOUGLAS 18 SHOULD MONITOR ALL ASBESTOS WORK TO ENSURE CONTINUED 19 CONFORMANCE WITH THE ESTABLISHED CONTROL REQUIREMENTS 20 AND AS A BASIS FOR APPROPRIATE PROGRAM IMPROVEMENTS." 21 DO YOU KNOW WHAT THAT MEANS? 22 A TO PERIODICALLY CHECK ON THE PERFORMANCE OF 23 THE PROGRAM IN THOSE AREAS. 24 Q IS THERE ANY DOCUMENT THAT SAYS THAT OCCURRED 25 IN BUILDING 11? 26 A NOT AT THIS TIME, NO. 27 Q THIS WAS SIGNED BY ERNEST LEVENS -- 28 A CORRECT.	Page 129 1 Q THANK YOU, SIR. WHAT WAS YOUR ROLE BEFORE YOU 2 RETIRED FROM THE BOEING COMPANY, SIR? 3 A I WAS THE DIRECTOR OF SAFETY AND HEALTH IN 4 SEATTLE FOR THE BOEING COMPANY. 5 Q AND BEFORE THAT, YOU WERE INVOLVED IN THE 6 SAFETY AND HEALTH AT MCDONNELL DOUGLAS AS WELL, 7 CORRECT? 8 A THAT'S CORRECT. 9 Q HOW BIG WAS YOUR DEPARTMENT, MR. HOLLENBECK, 10 BOTH AT MCDONNELL DOUGLAS AND THEN AT BOEING? 11 A WHEN IT FIRST STARTED OR WHAT TIME FRAME? 12 Q DURING -- JUST TAKE US THROUGH THE 30 YEARS? 13 A WHEN I WAS HIRED IN 1979, THERE WERE PROBABLY 14 SIX TO EIGHT SAFETY INDUSTRIAL HYGIENE FOLKS IN THE 15 DEPARTMENT. MY ROLE EXPANDED LATER IN THE 80S TO 16 INCLUDE OTHER FUNCTIONS, WORKERS' COMPENSATION, THE 17 MEDICAL SERVICES, THINGS OF THAT NATURE. SO THAT 18 PROBABLY GREW TO 20 SOME FOLKS. 19 THROUGH THE MCDONNELL DOUGLAS'S BASE SYSTEM, 20 THE DIRECTOR ROLE I HAD, IT WAS PROBABLY 30 SOME FOLKS 21 WITH THE DATA LINE RESPONSIBILITY TO FACILITIES AROUND 22 THE COUNTRY FROM VANDENBERG AIR FORCE BASE, TO FLORIDA, 23 TO HUNTSVILLE, HOUSTON, THEN I WAS WITH A MILITARY 24 TRANSPORT AIRCRAFT, PART OF THE BUSINESS IN LONG BEACH, 25 WEST AIRPORT PART OF THE FACILITY. 26 WE PROBABLY HAD 25, 30 FOLKS WITHIN THAT 27 ORGANIZATION. FOLLOWING A MERGER WITH BOEING AND THE 28 OPPORTUNITY TO TAKE A POSITION IN SEATTLE. DIRECT

Page 130 1 STAFF THERE WAS PROBABLY AROUND A HUNDRED, BUT WE HAD 2 DATA LINE RELATIONSHIPS TO ALL OF OUR SITES AROUND THE 3 COUNTRY. SO WE ROUTINELY COMMUNICATED WITH SITES, 4 DEVELOPED POLICIES AND PROGRAMS, AND COLLABORATIONS 5 PARTNERSHIP WITH FOLKS AT THE VARIOUS SITES AROUND THE 6 COUNTRY. THAT'S PROBABLY THE WAY IT WAS UNTIL I 7 RETIRED. 8 Q OKAY. THANK YOU, SIR. SO IN ALL THOSE YEARS 9 THAT YOU JUST DESCRIBED, ALL OF THE NUMBERS THAT YOU 10 WERE LISTING, THOSE DEPARTMENTS, THE PURPOSE WAS TO 11 PROTECT THE HEALTH AND SAFETY OF THE WORKERS OF 12 DOUGLAS, MCDONNELL DOUGLAS AND THE BOEING COMPANY, 13 CORRECT? 14 A YES. 15 Q THAT WAS WHY YOU WERE THERE? 16 A CORRECT. 17 Q SIR, DO YOU KNOW WHETHER WE'RE HERE 50 YEARS 18 LATER, DO YOU KNOW WHETHER ANY OF THE GENTLEMEN LISTED 19 IN THE MEMORANDA THAT YOU WERE JUST SHOWN ARE STILL 20 WITH US OR STILL ALIVE, SIR? 21 A I DON'T BELIEVE THEY ARE, NO. 22 Q OKAY. NOW, MR. ADAMS ASKED YOU WHETHER 23 MCDONNELL DOUGLAS AND NOW THE BOEING COMPANY, HAS A 24 DOCUMENT FROM 1972 SHOWING THE SURVEYS DONE IN BUILDING 25 11, DO YOU RECALL THAT? 26 A YES. 27 Q DOES IT SURPRISE YOU AT ALL, SIR, THAT IN THE 28 YEAR 2022, THE BOEING COMPANY WOULD NOT HAVE THE	Page 132 1 PROTECTION OF THE WORKERS AT PRESENT AND THE FUTURE OR 2 IS IT THE PURPOSE FOR THE PROTECTION OF THE WORKERS IN 3 THE PAST? 4 A IT WOULD BE TO PROTECT THOSE AT THE PRESENT 5 AND GOING FORWARD, HISTORICAL DOCUMENTS WERE SURVEYS, 6 RECORDS THAT'S BEEN -- ISSUES BEEN ADDRESSED OR CLOSED. 7 REALLY, NO USEFUL PURPOSE OF RETAINING 20-YEAR-OLD 8 DOCUMENTS OF ISSUES OR WORK AREAS THAT MAY OR MAY NOT 9 EVEN EXIST TODAY. 10 Q SO IF A SURVEY OF EXPOSURES IN THE 1972 OR 11 1982 FOR THAT MATTER, SHOWED LOW LEVELS OF EXPOSURE TO 12 ANY KIND OF SUBSTANCE, WOULD THERE BE ANY REASON TO 13 KEEP THAT MORE THAN WHAT IS IN THE DOCUMENT RETENTION 14 POLICY? 15 A NO. THE CODE OF STANDARD REQUIRED SOMETHING 16 BEYOND THAT. 17 Q BUT IN TERMS OF PROTECTING THE HEALTH OF THE 18 WORKERS, THERE'S NO PURPOSE FOR THAT; IS THERE, SIR? 19 A NO. 20 Q HOW MANY DOCUMENTS IF YOU KNOW, SIR, DOES THE 21 BOEING COMPANY NOW HAVE? HOW MANY BUNKERS, BOXES OF 22 DOCUMENTS DO THEY HAVE? 23 A MY UNDERSTANDING, IT'S OVER A MILLION. 24 Q IS THAT YOUR UNDERSTANDING THAT THAT IS THE 25 LEAST IN PART WHY THERE'S A DOCUMENT RETENTION POLICY 26 SO THEY CAN GET RID OF THE OLD DOCUMENTS THEY DO NOT 27 NEED AND KEEP OF THE ONCE THAT ARE MORE FRESH? 28 A CORRECT.
Page 131 1 SURVEYS FROM THE YEAR 1972? 2 A NO, IT DOES NOT SURPRISE ME. 3 Q WHY DOESN'T THAT SURPRISE YOU? 4 A ONE, JUST THE LENGTH OF TIME, BUT ALSO THE 5 RECORDS RETENTION POLICY THAT WAS IN EFFECT WHEN I WAS 6 THERE. CERTAINLY, EVEN BEFORE MY TIME, REQUIRED -- 7 FREQUENT BASES TO ASSESS WHAT RECORDS ARE IN YOUR 8 INVENTORY, IN YOUR DEPARTMENT. 9 AGAIN, BEFORE ELECTRIC FILES THAT WERE -- 10 STOCK OF FILES IN THE CABINETS, PULLING FOLDERS OUT, TO 11 ROUTINELY GO -- DETERMINE THE USEFULNESS OF THESE 12 DOCUMENTS. SHOULD THEY BE RETAINED IN YOUR FILES OR 13 SHOULD THEY BE SENT FOR STORAGE IN OFF-SITE FACILITIES. 14 SO IT'S A ROUTINE ACTIVITIES THROUGHOUT THE 15 COURSE OF THE YEAR TO ASSESS DOCUMENTS AS YOU ENCOUNTER 16 THEM, OUT OF THE WINDOW OF TIME APPROPRIATE TO THAT 17 DOCUMENT, THEY WOULD BE CATEGORIZED, CATALOGED, PUT 18 INTO A BOX, AND EVENTUALLY, THAT BOX WOULD END UP IN A 19 STORAGE FACILITY OFF-SITE. 20 Q AND WHAT IS THE PURPOSE, MR. HOLLENBECK, FOR A 21 SAFETY PERSON THAT'S CONDUCTING SURVEYS IN 1972 OR ANY 22 OTHER YEAR, WHAT IS THE PURPOSE OF THE SURVEYS? 23 A TO ACCESS WORKPLACE EXPOSURES, TO DETERMINE 24 HOW THAT ALIGNS TO THE REQUIREMENTS OF THE LAW AND 25 REGULATION, TO ENSURE WE GOT THE PROGRAMS IN PLACE, NOT 26 JUST TO PROTECT THE EMPLOYEES, BUT THE ALIGNMENT OF THE 27 STANDARDS THAT ARE OUT THERE. 28 Q AND IS IT PURPOSE, MR. HOLLENBECK, FOR THE	Page 133 1 Q NOW, MR. ADAMS ASKED YOU WHETHER A COMPANY 2 THAT'S REASONABLE SHOULD FOLLOW ITS OWN RULES, AND 3 WHETHER THAT YOU HAVE ANY DOUBT THAT THE MCDONNELL 4 DOUGLAS COMPANY WAS TAKING THE ACTIONS NECESSARY BACK 5 IN 1972 TO PROTECT ITS WORKERS, DO YOU REMEMBER THAT 6 LINE OF QUESTIONING, SIR? 7 A I DO, YES. 8 Q I WANT TO SHOW YOU, AND LET US HAVE TO SHOW 9 THE JURY, PLEASE, MR. HOLLENBECK, WHY IT IS THAT YOU 10 KNOW THAT MCDONNELL DOUGLAS COMPANY WAS COMPLYING WITH 11 OSHA WHEN THAT CAME OUT? OKAY. SO I WOULD LIKE TO 12 PULL UP WHAT'S BEEN MARKED AS EXHIBIT NUMBER 425, 13 PLEASE. 14 THE COURT: IS THIS BEING MARKED FOR ID RIGHT 15 NOW? 16 MR. KARREN: YOUR HONOR, IT'S GOING TO BE 17 ADMITTED, OFFERED FOR ADMISSION WITHOUT OBJECTION. 18 THE COURT: OKAY. IS THAT ACCURATE? 19 MR. ADAMS: THAT'S CORRECT. 20 THE COURT: ALL RIGHT. 425 IS ADMITTED. WHAT 21 IS IT? 22 (EXHIBIT 425 IDENTIFIED AND ADMITTED 23 INTO EVIDENCE.) 24 MR. KARREN: YOUR HONOR, IT IS A HAZARDOUS 25 MATERIALS BULLETIN TO MCDONNELL DOUGLAS FROM 1972. 26 THE COURT: THANK YOU. GO AHEAD. 27 BY MR. KARREN: 28 Q MR. HOLLENBECK, HAVE YOU SEEN THE DOCUMENT

Page 134 1 REFLECTED ON THE SCREEN BEFORE? 2 A YES, I HAVE. 3 Q CAN YOU DESCRIBE WHAT THAT IS, PLEASE? 4 A THIS IS A DIRECTIVE FROM THE MOST SENIOR 5 LEADER IN THE COMPANY, DONALD DOUGLAS, TO ENSURE THAT 6 THERE'S PROCESSES IN PLACE TO ADDRESS HAZARDOUS 7 MATERIALS. 8 Q SIR, IS DONALD DOUGLAS THE PERSON WHO'S 9 INVOLVED IN THE NAME OF THE DOUGLAS CORPORATION AND 10 THEN MCDONNELL DOUGLAS? 11 A YES. HE'S THE SON OF THE FOUNDER. 12 Q WHAT IS AN ADMINISTRATIVE BULLETIN? 13 A THIS IS A DIRECTIVE THAT WOULD BE OUT 14 ENTERPRISE-WIDE, THROUGH THE MAIL SYSTEM OR TO BE 15 POSTED IN WORK AREAS. IT COULD BE SOMETHING THAT WOULD 16 BE SHARED AT A DEPARTMENTAL STAFF MEETING, BUT IT'S A 17 DOCUMENT TO COMMUNICATE SOMETHING OF SIGNIFICANCE THAT 18 WOULD BE ACROSS THE ENTERPRISE. 19 Q SIR, IN YOUR TIME WORKING AT MCDONNELL 20 DOUGLAS, HAVE YOU SEEN MANY ADMINISTRATIVE BULLETIN ON 21 ALL KINDS OF ISSUES? 22 A YES. 23 Q DO YOU SEE THAT THIS ONE, SIR, IS DATED MAY 24 18TH, 1972? 25 A YES. 26 Q AND, SIR, IF YOU -- IF YOU LOOK DOWN, THE 27 SUBJECT IS "HAZARDOUS MATERIALS SELECTION TO MINIMIZE 28 RISKS," AND THE VERY FIRST LINE IN SECTION A,	Page 136 1 SAFETY AND HEALTH STANDARDS WILL BE ESTABLISHED FOR 2 CONTROL OF RESIDUAL RISK, AFTER A TRAILED OFF STUDY IN 3 COORDINATION WITH THE ORGANIZATION ORIGINATING THE 4 PROCESS SPECIFICATION TO DETERMINE THAT A LESS 5 HAZARDOUS MATERIAL CANNOT BE SUBSTITUTED." DO YOU SEE 6 THAT, SIR? 7 A YES, I DO. 8 Q OKAY. AND THEN IN C, IT SAYS, "THE M.D.C. 9 DIRECTOR OF SAFETY, IN COORDINATION WITH COGNIZANT 10 M.D.C. ORGANIZATIONS WILL PROVIDE INTERPRETATION AND 11 GUIDANCE IN THE IMPLEMENTATION OF THIS DIRECTIVE, AND 12 WILL PERIODICALLY ASSESS COMPLIANCE BY M.D.C. 13 COMPONENTS." DID I READ THAT RIGHT, SIR? 14 A YES. 15 Q WHAT WAS THAT MEAN TO YOU, SIR? WHAT WAS 16 MR. DOUGLAS TELLING ALL EMPLOYEES OF THE MCDONNELL 17 DOUGLAS COMPANY? 18 A WELL, HE WAS DIRECTING THEM, THE DIRECTOR OF 19 SAFETY, TO ENSURE THAT ACROSS THE ENTERPRISE, THEY 20 WOULD LOOK FOR ALTERNATIVE MATERIALS, LESS HAZARD 21 MATERIALS, AND IMPLEMENT CERTAIN ASPECTS TO REDUCE THE 22 RISKS, AND THAT SHOULD BE DONE ON A PERIODIC BASIS. 23 Q SO AS A FORMER SAFETY AND HEALTH MAN, IS THAT 24 A FAIR WAY TO DESCRIBE YOU, SIR? 25 A YES, THAT'S FINE. 26 Q AS A FORMER SAFETY AND HEALTH MAN, IS THIS 27 WHAT YOU WANT TO SEE FROM THE HEAD OF THE AN 28 ORGANIZATION TO MAKE SURE THAT THE ORGANIZATION IS
Page 135 1 MR. HOLLENBECK, SAYS, "THE SAFETY OF M.D.C." THAT'S 2 MCDONNELL DOUGLAS; ISN'T IT, SIR? 3 A YES, IT IS. 4 Q "THE SAFETY OF M.D.C. PERSONNEL, FACILITIES, 5 OPERATIONS, AND THE PUBLIC, REQUIRES THAT HAZARDS SHALL 6 BE IDENTIFIED AND EVALUATED, AND APPROPRIATE ACTION 7 TAKEN TO MINIMIZE RISKS." DID I READ THAT RIGHT, SIR? 8 A YES, YOU DID. 9 Q AND THIS IS A DOCUMENT THAT WAS POSTED BY THE 10 LEADER, THE HEAD OF MCDONNELL DOUGLAS, TO ALL OF ITS 11 EMPLOYEES FROM TOP TO BOTTOM, INDICATING THAT WE'RE 12 GOING TO LOOK OUT FOR HAZARDS AND MAKE SURE THAT 13 EVERYONE THAT WORKS HERE IS SAFE; RIGHT? 14 A THAT IS CORRECT. 15 Q OKAY. AND THIS WOULDN'T HAVE BEEN SENT ONLY 16 THIS BULLETIN WHICH HAVE BEEN SENT ONLY TO PEOPLE IN 17 THE BIG BUILDINGS, OR THE PEOPLE IN THE LITTLE 18 BUILDINGS, THIS WOULD HAVE GONE TO ALL EMPLOYEES AT THE 19 LONG BEACH PLANT; RIGHT, SIR? 20 A YES. THERE'S AN EXPECTATION THESE WOULD BE 21 COMMUNICATED TO ALL EMPLOYEES. 22 Q SIR, IF YOU LOOK DOWN ON THIS DOCUMENT, CAN 23 YOU SEE THE NEXT SENTENCE IT MENTIONED "HAZARDOUS 24 MATERIALS." DO YOU SEE THAT? 25 A YES. 26 Q OKAY. IF YOU KEEP GOING DOWN, MR. HOLLENBECK, 27 IT SAYS, IN SECTION B, IF I CAN GET THAT BLOW UP, IN 28 THE MIDDLE THERE IT SAYS, "APPROPRIATE OCCUPATIONAL	Page 137 1 PROTECTING ITS WORKERS WHICH YOU'RE THERE TO DO? 2 A ABSOLUTELY. 3 Q NOW, THAT WAS IN MAY OF 1972. THEN I WOULD 4 LIKE TO PULL UP EXHIBIT, ACTUALLY, I THINK ITS EXHIBIT 5 421, IT'S '91, THAT WE JUST ADMITTED BY MR. ADAMS, THAT 6 WAS DATED JULY 11TH. I WANT TO TALK ABOUT THAT A 7 LITTLE MORE, SIR. YOU MENTIONED BRIEFLY MR. LEVENS, 8 CAN YOU TELL US ABOUT WHAT'S HIS ROLE WAS AT THAT TIME 9 WITH MCDONNELL DOUGLAS. 10 A YEAH. HE WOULD BE THE MOST SENIOR PERSON 11 RESPONSIBLE FOR SAFETY AT THE COMPANY. 12 Q AND WHEN YOU SAY AT THE COMPANY, DO YOU MEAN 13 JUST FOR LONG BEACH? 14 A NO, THIS WOULD BE MCDONNELL DOUGLAS. 15 Q NATIONALLY? 16 A CORRECT. 17 Q INTERNATIONALLY OR JUST NATIONALLY, DO YOU 18 KNOW? 19 A I THINK, PRIMARILY, NATIONALLY. I DON'T 20 BELIEVE WE HAD MUCH OF A PRESENCE INTERNATIONALLY AT 21 THAT TIME. 22 Q WHEN YOU CAME ON IN 1979, DID YOU KNOW MR. -- 23 DID YOU MEET AND KNOW MR. LEVENS? 24 A I DID MEET HIM, YES. 25 Q WAS HE STILL THE SAFETY DIRECTOR AT THAT TIME? 26 A YES, DURING THAT PERIOD OF TIME. 27 Q OKAY. DID YOU KNOW MR. LEVENS TO BE SOMEONE 28 WHOSE INTENTION AND PURPOSE WAS TO MAKE SURE THE

Page 138 1 COMPANY WAS PROTECTING ITS WORKERS? 2 A YES. 3 Q NOW, I WANT TO JUST FOCUS IN A LITTLE BIT 4 MORE, SIR, WE SEE IT SAYS, "2 M.D.C. SAFETY 5 DEPARTMENT." WHAT DOES THAT MEAN? 6 A SO THIS WOULD BE COMMUNICATED TO ALL THE 7 ORGANIZATIONS WITH THE EXCEPTION OF CANADA WHICH IS 8 NOTED THERE. TO ENSURE THAT THIS IS COMMUNICATED, THE 9 STANDARD, SO THIS WOULD AGAIN GO OUT TO ALL THE SAFETY 10 ORGANIZATIONS ACROSS THE ENTERPRISE. 11 Q AND THE SOLE PURPOSE OF THIS MEMO SERVE TO ALL 12 THE SAFETY DEPARTMENT WAS DIRECTLY ABOUT THE NEW OSHA 13 STANDARD, CORRECT? 14 A THAT'S CORRECT. 15 Q AND, IN FACT, IT'S DATED JULY 11TH, ONLY -- 16 THAT'S ONLY FOUR DAYS AFTER THE OSHA STANDARD CAME INTO 17 AFFECT; ISN'T IT? 18 A THAT'S CORRECT. 19 Q AND, SIR, I SEE THAT IT WAS COPIED TO SEVERAL 20 PEOPLE. DO YOU KNOW THOSE GENTLEMEN, FORBES, KIRBY, 21 AND SAULSMAN? 22 A I DON'T. I ASSUME THEY ARE PROBABLY SENIOR 23 LEADERS ABOVE MR. LEVENS. I DON'T KNOW. 24 Q OKAY. NOW, IS THERE ANYTHING ABOUT THIS 25 DOCUMENT, SIR, THAT TELLS YOU THAT MR. LEVENS WAS OR 26 WASN'T TRYING TO MAKE SURE THAT ALL PERSONNEL WORKING 27 AT THE MCDONNELL DOUGLAS CORPORATION, AND ALL THEIR 28 FACILITIES INCLUDING LONG BEACH WERE GOING TO CHECK FOR	Page 140 1 THAT -- FIRST OF ALL, LET ME ASK YOU THIS: IS IT YOUR 2 UNDERSTANDING, SIR, FROM THAT DOCUMENT, HAVING REVIEWED 3 THAT DOCUMENT, AND FROM WHAT MR. ADAMS SHOWED UP THAT 4 MR. LEVENS ACTUALLY ATTACHED -- BY SAYING "ENCLOSED," 5 HE ACTUALLY ATTACHED AND SENT THE STANDARD ITSELF TO 6 ALL OF THE PEOPLE WORKING UNDERNEATH HIM; RIGHT? 7 A THAT'S CORRECT. 8 Q OKAY. NOW, IF WE GO TO THE STANDARD ITSELF, 9 SIR, IF WE GO TO THE FIRST PAGE B. I'LL HAVE TIM BLOW 10 THAT UP SINCE ITS SO HARD TO SEE. AND THEN I REALIZE 11 THIS IS AN OLD DOCUMENT -- BUT TELL ME IF I'VE GOT IT 12 RIGHT. IT'S TALKING ABOUT PERMISSIBLE EXPOSURE TO 13 AIRBORNE CONCENTRATION OF ASBESTOS FIBERS, ISN'T IT? 14 A YES, IT IS. 15 Q WHAT DOES THAT MEAN SINCE YOU HAVE AN 16 INDUSTRIAL HYGIENE BACKGROUND? SIR, WHAT DOES THAT 17 MEAN? 18 A THAT EXPOSURES ABOVE THAT PERMISSIBLE EXPOSURE 19 LIMIT WOULD KICK IN THE VARIOUS ELEMENTS OF THE 20 STANDARD. SO IT'S KIND OF SETTING THE FOUNDATION FOR 21 THE STANDARD AROUND AN EXPOSURE LIMIT. 22 Q OKAY. AND SO IT MEANS THAT IT'S AN 23 INSTRUCTION -- YOU TELL ME IF I'M RIGHT. IT'S AN 24 INSTRUCTION TO EMPLOYERS, LIKE MCDONNELL DOUGLAS, GO 25 OUT AND CHECK TO SEE IF THE EXPOSURE LEVELS IN YOUR 26 FACILITY ARE BELOW PERMISSIBLE EXPOSURE LIMITS; IS THAT 27 RIGHT? 28 A THAT'S CORRECT.
Page 139 1 THE LEVELS OF ASBESTOS TO MAKE SURE THAT BUILDINGS AND 2 THEIR -- FOR THEIR EMPLOYEES WERE SAFE? 3 A CORRECT. THAT WOULD BE THE INTENT THERE. 4 Q IS THERE ANY OTHER INTENT? 5 A NO. IT WAS PRETTY FOCUSED ON THE ASBESTOS 6 STANDARD AND TO GO OUT AND LOOK AT THE FACILITY 7 COMPANY-WIDE ON THIS. 8 Q AND IF YOU LOOK, SIR, DOWN ON NUMBER 3. I'M 9 NOT GOING TO REPEAT WHAT MR. ADAMS ALREADY READ, BUT 10 DOWN ON NUMBER 3, MR. LEVENS EVEN SAID, "QUESTIONS OR 11 PROBLEMS ASSOCIATED WITH THE FOREGOING SHOULD BE 12 REFERRED TO THIS OFFICE." IS THAT SOMETHING THAT WAS 13 COMMONLY DONE BY THE SAFETY DIRECTOR? 14 A PROBABLY NOT, CONSIDERING THE SIGNIFICANCE OF 15 THIS, APPEARS THAT HE PERSONALLY WANTED TO GET THE 16 RESULTS OF WHAT WAS BEING SURVEYED ACROSS THE COMPANY. 17 Q AND COULD THAT BE, SIR, THAT BECAUSE IN 1972 18 OF JULY, IT WAS THE FIRST TIME EVER THAT THERE WAS ANY 19 KIND OF FEDERAL REGULATION THAT TOLD WORKPLACES WHAT TO 20 DO ABOUT ASBESTOS? 21 A THAT'S CORRECT. 22 Q AND DO YOU THINK THAT THIS IS A SIGN 23 MR. LEVENS THOUGHT THAT THIS WAS A SERIOUS ISSUE THAT 24 EVERYONE WORKING UNDER HIM IN THE SAFETY DEPARTMENT 25 SHOULD TAKE? 26 A IT WOULD INDICATE THE SIGNIFICANCE OF THIS 27 WHOLE SURVEY. 28 Q NOW, IF WE FLIP TO THE ACTUAL DOCUMENT ITSELF	Page 141 1 Q NOW, IF WE GO, SIR, TO -- LET'S SEE. IF WE 2 GO, FOR EXAMPLE, TO THE NEXT PAGE, LET'S GO TO G. THIS 3 IS JUST AN EXAMPLE. IT'S A LONG DOCUMENT. I DON'T 4 WANT TO HAVE THE JURY TO READ IT ALL, BUT THEY'LL HAVE 5 THIS, MR. HOLLENBECK, TO THEMSELVES. 6 A OKAY. 7 Q IF WE BLOW UP G, MR. ADAMS ASKED YOU ABOUT 8 CAUTION SIGNS AND LABELS. DO YOU RECALL HIM ASKING YOU 9 ABOUT THAT? 10 A YES, I DO. 11 Q IF WE READ THAT SECTION, SIR, I'M GOING READ 12 IT. IT SAYS, "CAUTION SIGNS" AND THEN IT SAYS, 13 "POSTING CAUTION SIGNS SHALL BE PROVIDED AND DISPLAYED 14 AT EACH LOCATION WHERE AIRBORNE CONCENTRATION OF 15 ASBESTOS FIBERS MAY BE IN EXCESS OF THE EXPOSURE LIMITS 16 PRESENTED IN PARAGRAPH B," WHICH WE JUST READ. DID I 17 READ THAT RIGHT? 18 A YES, YOU DID. 19 Q SO IT'S NOT SAYING THAT YOU HAVE TO POST 20 CAUTION SIGNS THROUGHOUT, ABOUT ASBESTOS IN THE 21 FACILITY, BUT INSTEAD, IT'S SAYING, "WHERE AIRBORNE 22 CONCENTRATIONS MAY BE IN EXCESS OF THE LIMITS"; RIGHT, 23 SIR? 24 A RIGHT. 25 Q AND WHEN YOU WERE WORKING AS A SAFETY MAN AND, 26 AS YOU STATED EARLIER, DEALING WITH ASBESTOS, WAS THAT 27 STILL THE PRACTICE STARTING IN 1979? 28 A YES, IT WAS.

Page 142 1 Q NOW, IN FAIRNESS, THE LEVELS OF EXPOSURE WERE 2 LOWER AT THAT POINT IN TIME, WEREN'T THEY? 3 A YES, THEY WERE. 4 Q BUT AT THIS TIME, IT'S THE SAME PRINCIPAL; 5 RIGHT? 6 A CORRECT. 7 Q OKAY. AND THEN I WANT TO FOCUS ON SOMETHING 8 THAT'S REALLY IMPORTANT FOR ME TO BRING OUT, SIR, FOR 9 THE JURORS. IF WE GO TO SECTION I ON THE SAME PAGE, 10 THERE'S A SECTION CALLED "RECORD KEEPING," ISN'T THERE? 11 A YES THERE US. 12 Q AND WHAT DOES RECORD KEEPING MEAN? 13 A THE RETENTION OF RECORDS AROUND TRAINING OR 14 EXPOSURES OR OTHER ASPECTS THAT THE STANDARD REQUIRE 15 YOU, THE RECORD ELEMENTS THAT NEED TO BE ADDRESSED. 16 Q AND, SIR, IS A SURVEY OF THE AIR IN A 17 PARTICULAR BUILDING A RECORD? 18 A YES, IT WOULD BE. 19 Q WOULD IT FALL DIRECTLY WITHIN THIS SECTION OF 20 THE STATUTE, THE REGULATION? 21 A YES. 22 Q I WANT TO READ IT THEN, SIR. IT SAYS, "EVERY 23 EMPLOYER" -- AND AGAIN, THIS IS -- THIS ISN'T SPECIFIC 24 TO MCDONNELL DOUGLAS; RIGHT? THIS IS TO ALL AMERICAN 25 COMPANIES. 26 A CORRECT. 27 Q IT SAYS, "EVERY EMPLOYER SHALL MAINTAIN 28 RECORDS OF ANY PERSONAL OR ENVIRONMENTAL MONITORING	Page 144 1 THE RECORDS SHOW LEVELS THAT DO NOT PRESENT A HAZARD 2 UNDER THE LAW OR REGULATION THAT WAS IN AFFECT IN 1972? 3 A CORRECT. 4 Q ALL RIGHT. NOW, I'D LIKE TO GO THEN, PLEASE, 5 SIR, TO THE NEXT DOCUMENT, WHICH IS EXHIBIT 428, THAT 6 WILL BE OFFERED WITHOUT OBJECTION, YOUR HONOR? 7 THE COURT: WHAT IS IT? 8 MR. KARREN: IT IS AN INTEROFFICE MEMO, 9 SUBJECT: ASBESTOS UTILIZATION SURVEY. 10 THE COURT: ADMITTED. 11 (EXHIBIT 428 IDENTIFIED AND MARKED FOR 12 IDENTIFICATION.) 13 BY MR. KARREN: 14 Q AND I'LL BLOW THAT UP, SIR. HAVE YOU SEEN 15 THIS DOCUMENT BEFORE? 16 A YES, I BELIEVE I HAVE. 17 Q DO YOU SEE THE DATE ON THAT DOCUMENT, 18 MR. HOLLENBECK? 19 A JULY 12TH. 20 Q IS THAT LITERALLY ONE DAY AFTER THE MEMO CAME 21 OUT FROM MR. LEVENS, THE SAFETY DIRECTOR, TALKING ABOUT 22 MAKING SURE WE COMPLY WITH THE OSHA STANDARD? 23 A YES. 24 Q THE NEXT DAY THEN THERE'S ANOTHER MEMO FROM 25 MR. LEVENS, AGAIN, AND THIS ONE IS TO THE MDC SAFETY 26 DEPARTMENTS, AND HE REFERENCES, DOES HE NOT, TWO 27 THINGS; A MEMORANDUM AND THEN THE HAZARDOUS MATERIALS 28 BULLETIN THAT WE TALKED ABOUT A FEW MINUTES AGO; RIGHT?
Page 143 1 REQUIRED BY THIS SECTION." AND THEN IT SAYS, "RECORDS 2 SHALL BE KEPT" -- AND BLOW IT UP MORE AND HIGHLIGHTED 3 -- "AT LEAST THREE YEARS AND SHALL BE MADE AVAILABLE 4 UPON REQUEST TO THE ASSISTANT SECRETARY OF LABOR FOR 5 THE OCCUPATIONAL SAFETY AND HEALTH ADMINISTRATION." 6 SO IS THAT MR. HOLLENBECK SAYING THAT ANY 7 SURVEYS DONE IN 1972 NEED TO BE KEPT FOR THREE YEARS? 8 IS THAT WHAT IT'S SAYING? 9 A IF YOU'RE IN EXCESS OF THE PERMISSIBLE 10 EXPOSURE LIMITS. 11 Q SO EVEN IF YOU'RE IN EXCESS OF THE EXPOSURE 12 LIMIT -- AND WE'RE GOING TO GET TO THAT WITH REGARD TO 13 OUR MCDONNELL DOUGLAS FACILITY. IT'S SAYING THAT THE 14 RECORDS IN 1972, THE INSTRUCTION FROM OSHA WAS TO KEEP 15 THOSE FOR THREE YEARS? 16 A THAT WOULD BE CORRECT. 17 Q SO DOES THAT IMPACT YOUR THOUGHTS, SIR, OR 18 OPINIONS OR BELIEFS ABOUT WHY, IN THE YEAR 2022, THERE 19 WOULD NOT BE A RECORD WHEN MR. ADAMS' LAW FIRM COMES TO 20 THE BOEING COMPANY AND SAYS, SHOW US THE SURVEY RECORDS 21 FROM 1972 OR 1973. DOES THAT IMPACT YOUR THINKING AT 22 ALL ABOUT WHY WE WOULD NOT HAVE THOSE 50 YEARS LATER? 23 A SURE. I MEAN, THE EXPECTATION WOULD BE YOU 24 WOULD KEEP THOSE RECORDS THAT ARE RELEVANT IN MOST 25 RECENT YEARS. THE VALUE OF RECORDS FROM 1972, WHERE 26 THE BUILDING AND THE SITE IS NO LONGER THERE, WOULD BE 27 KIND OF POINTLESS TO KEEP THOSE KIND OF RECORDS. 28 Q AND ESPECIALLY POINTLESS, ISN'T IT, SIR, IF	Page 145 1 A YES. 2 Q AND, SIR, IF YOU LOOK AT NUMBER 1, IT'S 3 MR. LEVENS TELLING ALL SAFETY DEPARTMENT'S, "YOU'RE 4 REQUIRED TO CONDUCT A SURVEY BY SEPTEMBER 1ST." THAT'S 5 LESS THAN TWO MONTHS AFTER THIS MEMO, CORRECT, SIR? 6 A YES. 7 Q DO YOU FIND THAT TO BE A REASONABLE TIME IN 8 WHICH TO GET THAT DONE IN A COMPANY OF THIS SIZE? 9 A PROBABLY NOT. IT'S A VERY AGGRESSIVE, FAST 10 TRACK, KIND OF TARGET THAT -- 11 Q AND KNOWING WHAT YOU KNOW AND HAVING DONE WHAT 12 YOU'VE DONE, DO YOU BELIEVE THAT THAT'S A SIGN THAT 13 MR. LEVENS IS SHOWING THAT THIS HAS GREAT IMPORTANCE? 14 A ABSOLUTELY. 15 Q IT SAYS, "REQUIRED CONDUCT, DO YOU A SURVEY 16 BOY 9/1 OF '72 TO IDENTIFY ANY WORK INVOLVING 17 MCDONNELL DOUGLAS' USE OF ASBESTOS OR POTENTIAL 18 EXPOSURE OF MCDONNELL DOUGLAS EMPLOYEES TO AIRBORNE 19 ASBESTOS FIBERS." DID I READ THAT RIGHT? 20 A YES, YOU DID. 21 Q NOW, IT SAYS, NEXT, SIR, "WHERE SUCH USE OR 22 POTENTIAL EXPOSURE IS FOUND, A PROGRAM WILL BE 23 INITIATED IN ACCORDANCE WITH REFERENCE TO, TO 24 SUBSTITUTE LESS HAZARDOUS MATERIALS FOR ASBESTOS TO THE 25 EXTENT FEASIBLE CONSISTENT WITH EN-USE REQUIREMENTS." 26 DO YOU SEE THAT? 27 A YES, I DO. 28 Q IS THAT MR. LEVENS INDICATING AN INTEREST IN

Page 146 1 MAKING SURE THAT THE PEOPLE WORKING FOR 2 MCDONNELL DOUGLAS ARE SAFE FROM ANY HAZARDOUS ASBESTOS 3 EXPOSURE? 4 A YES, IT DOES. 5 Q OKAY. NOW, HE NEXT SAYS IN NUMBER 2, SIR, 6 SAYS, "YOU ARE REQUESTED TO PROVIDE THIS OFFICE WITH A 7 COPY OF THE RESULTS OF YOUR ASBESTOS UTILIZATION 8 SURVEY, INCLUDING IDENTIFICATION OF PROGRAMS, 9 LOCATIONS, AMOUNTS AND FORMS OF ASBESTOS USED AND 10 SOURCES OF POTENTIAL EXPOSURE TO AIRBORNE FIBERS." DID 11 I READ THAT CORRECT? 12 A YES, YOU DID. 13 Q DOES THAT TELL YOU WHETHER HE WAS MAKING SURE 14 THAT THEY WERE DOING EVERYTHING THEY COULD TO CHECK FOR 15 THE SAFE ENVIRONMENT WHEN IT COMES TO ASBESTOS? 16 A YES, ITS VERY INCLUSIVE. 17 Q NOW IT ALSO SAYS -- I'D LIKE TO KNOW WHAT THIS 18 MEANS, SIR. IT SAYS, "TO ENSURE FULL COVERAGE A SURVEY 19 SHOULD BE CONDUCTED IN COORDINATION WITH COMPONENT 20 PURCHASING FACILITIES, MATERIALS, LABORATORIES AND 21 OTHER AGENCIES AS APPROPRIATE." WHAT DOES THAT MEAN, 22 SIR? 23 A WELL, I THINK HE'S SUGGESTING, NOT AS A SAFETY 24 ORGANIZATION TO GO OUT, BUT PARTNER WITH THESE OTHER 25 SIGNIFICANT PARTS OF THE COMPANY; FACILITIES, 26 MATERIALS, LABORATORIES, PURCHASING TO DO A BROADER 27 LOOK AT ACROSS THE ENTERPRISES TO WHERE ASBESTOS MIGHT 28 BE LOCATED. SO IT WASN'T JUST STRICTLY LIMITED TO THE Page 147 1 WORK PLACE. IT WAS LOOKING AT MATERIALS. IT WAS 2 LOOKING AT FACILITY OPERATIONS, THINGS OF THAT NATURE. 3 Q SO IT'S TELLING THAT -- 4 THE COURT: MR. KARREN, MR. KARREN. 5 MR. KARREN: OH, I'M SORRY, YOUR HONOR. 6 THE COURT: LET US BREAK FOR ALL OF OUR 7 BENEFITS, AND WE'LL SEE YOU ALL IN ABOUT 15 MINUTES. 8 STANDARD ADMONITIONS. ENJOY YOUR TIME OFF. 9 (PAUSE IN THE PROCEEDINGS.) 10 (WHEREUPON THE FOLLOWING PROCEEDINGS 11 WERE HELD OUTSIDE THE PRESENCE OF THE 12 JURY.) 13 THE COURT: LET'S GO BACK ON THE RECORD 14 OUTSIDE THE PRESENCE OF THE JURY. MR. LANKFORD, WHAT'S 15 UP? 16 MR. LANKFORD: THERE'S JUST ONE THING I WANTED 17 TO RAISE TO THE COURT BEFORE MR. HABER HITS THE STAND. 18 I DON'T KNOW WHEN YOU WANT TO DO THAT. 19 THE COURT: OKAY. WELL, I DON'T KNOW. WHEN 20 IS DR. HABER GOING TO HIT THE STAND? 21 MR. LANKFORD: WELL, I THINK WE'LL 22 CERTAINLY -- I WOULD EXPECT BEFORE 1:25 TODAY. 23 THE COURT: OKAY. 24 MR. LANKFORD: I DON'T THINK I HAVE MUCH MORE, 25 YOUR HONOR. 26 THE COURT: OKAY. WELL, SIT DOWN, FOLKS. 27 RELAX. WHAT IS ON YOUR MIND? 28 MR. LANKFORD: WELL, YOUR HONOR, BASED ON	Page 148 1 PLAINTIFFS' EXPERT DISCLOSURE AND BASED ON BONDS FOR 2 ROY 20 CAL. 4TH 140. 3 THE COURT: I KNOW IT WELL. 4 MR. LANKFORD: AND THE FACT THAT WE WERE 5 PRECLUDED FROM BEING ABLE TO KENNEMUR DR. HABER AND 6 COMPLETE HIS DEPOSITION BECAUSE PLAINTIFFS STOPPED THE 7 DEPOSITION. WE WOULD OBJECT TO HIM OFFERING ANY 8 TESTIMONY ON CAUSATION WITH RESPECT TO FRICTION BECAUSE 9 HIS DISCLOSURE SAYS THAT HIS CAUSATION OPINIONS REFER 10 TO TALC. AND WE WOULD ALSO MOVE TO PRECLUDE HIM FROM 11 OFFERING ANY STATE-OF-THE-ART OPINIONS WITH RESPECT TO 12 FRICTION. AND I CAN PROVIDE THE DISCLOSURE. 13 MR. MULARCZYK: YOUR HONOR, CAN WE HAVE 14 DR. HABER STEP OUT FOR THIS DISCUSSION? 15 THE COURT: OKAY. I'M SENSITIVE TO THE 16 QUESTIONS, AND I THINK WHAT I WANT TO DO IS, I WANT TO 17 FINISH UP WITH MR. HOLLENBECK. WE CAN GET STARTED, 18 PERHAPS, WITH DR. HABER AND THEN, YES, WE WILL TAKE IT 19 UP. WE'LL TAKE IT UP BEFORE ANY SUBSTANTIVE OPINIONS 20 ARE OFFERED, OKAY? 21 MR. LANKFORD: MAY I PROVIDE THE COURT WITH 22 THE EXPERT DISCLOSURE? 23 THE COURT: YEAH, AND THE TRANSCRIPT OF THE 24 DEPO. I'D RATHER SEE THAT, TOO. HAVE YOU MET AND 25 CONFERRED, BY THE WAY, WITH ANYBODY ON THIS? 26 MR. LANKFORD: I DID RAISE IT WITH MS. DEAN. 27 THE COURT: WITH WHO? 28 MR. LANKFORD: I MENTIONED IT TO MS. DEAN, BUT Page 149 1 THAT WAS IT. 2 THE COURT: OKAY. AND SO I GUESS AN INITIAL 3 QUESTION I HAVE IS, IS THERE EVEN AN ISSUE. ARE YOU 4 EXPECTING TO ELICIT STATE-OF-THE-ART AND/OR CAUSATION 5 OPINIONS FROM DR. HABER. 6 MS. DEAN: YES, YOUR HONOR. AND I DID GET A 7 CALL ABOUT 8:30 LAST NIGHT. I THINK THE THIRD THING 8 YOU SHOULD LOOK AT TO EVALUATE THIS ISSUE THAT'S RAISED 9 THE NIGHT BEFORE HE WAS TO TESTIFY, IS HIS DECLARATION 10 AND MAYBE THE PART CALLED "SPECIFIC CAUSATION 11 OPINIONS." 12 THE COURT: OKAY. HIS DECLARATION. 13 MS. DEAN: THE DECLARATION PROVIDED WITH 14 MULTIPLE MOTIONS ON BOTH SIDES THAT HAS A SPECIFIC 15 CAUSATION SECTION; ONE, SPECIFICALLY FOR FORD; ONE, 16 SPECIFICALLY FOR HYSTER; ONE, SPECIFICALLY FOR BOEING. 17 THE COURT: OKAY. I'LL DO THAT. ALL RIGHT. 18 LET ME -- IF I SIT DOWN, WILL EVERYBODY ELSE SIT DOWN, 19 TOO, THEN? 20 MR. HUIE: YOUR HONOR, I WILL SUBMIT I JOINS 21 FORD'S OBJECTION. 22 THE COURT: OKAY. SO I UNDERSTAND. I'LL SORT 23 IT OUT. I HAVE ANOTHER QUESTION OR CONCERN. COURT 24 STAFF WAS CONCERNED THAT SOMEBODY, PERHAPS, AFFILIATED 25 WITH THE TRIAL WAS TALKING WITH JURORS. 26 MR. ADAMS: I HEARD THE SAME AND WAS ABOUT TO 27 RAISE IT WITH THE COURT. 28 THE COURT: OKAY. DOES ANYBODY HAVE ANY

Page 150 1 INSIGHT AS TO WHAT THAT IS ABOUT. 2 MR. ADAMS: MY UNDERSTANDING IS THE PERSON ON 3 THE DEFENSE SIDE -- I DON'T KNOW WHO IT IS -- IS IN THE 4 COURTROOM. I FEEL A LITTLE UNCOMFORTABLE JUST SORT OF 5 CALLING THEM OUT IN FRONT OF THEM. I DON'T KNOW WHO IT 6 IS, BUT I WAS TOLD THAT THERE WAS A CONVERSATION WITH 7 ONE OF THE JURORS THAT WAS QUITE LENGTHY, SO I WAS 8 GOING TO RAISE IT. 9 THE COURT: OKAY. WELL, IS THERE SOMEBODY IN 10 THE COURTROOM WHOSE TALKING TO JURORS ABOUT ANYTHING? 11 UNIDENTIFIED SPEAKER: I'M JUST HERE AS AN 12 OBSERVER. I'M NOT AFFILIATED WITH ANY PARTY. I'M JUST 13 OBSERVING (INAUDIBLE). 14 THE COURT: OKAY. AND WHOEVER YOU ARE, YOU'RE 15 TELLING ME THAT YOU HAVE NO AFFILIATION WITH ANY OF THE 16 PARTIES HERE TODAY. 17 OKAY. FINE. THANK YOU. ALL RIGHT. AND BY 18 THE WAY, AS A MEMBER OF THE PUBLIC, YOU ARE WELCOME TO 19 BE IN OUR COURTROOM. ALL RIGHT. SO LET US BRING IN 20 THE JURY, PLEASE. 21 (WHEREUPON THE FOLLOWING PROCEEDINGS 22 WERE HELD IN OPEN COURT IN THE PRESENCE 23 OF THE JURY.) 24 THE COURT: HAVE A SEAT, FOLKS. ALL RIGHT. 25 ALL JURORS AND ALTERNATES ARE PRESENT. COUNSEL ARE 26 PRESENT. WITNESS ON THE STAND STILL UNDER OATH AND 27 FURTHER -- OKAY. WITNESS WAS SWORN. I REMEMBER THAT 28 NOW. FURTHER EXAMINATION BY BOEING.	Page 152 1 (EXHIBIT 427 IDENTIFIED AND ADMITTED 2 INTO EVIDENCE) 3 BY MR. KARREN: 4 Q WHO IS "ML GORDON"? 5 A THAT WOULD BE MURRAY GORDON, THE DIRECTOR OF 6 SAFETY FOR THE LONG BEACH LOCATION AND OTHERS UNDER HIS 7 SCOPE OF RESPONSIBILITY. 8 Q SO DOES HE WORK ESSENTIALLY FOR MR. LEVENS? 9 A YES, HE DOES. 10 Q THERE'S A HIERARCHY? IN OTHER WORDS, DOUGLAS 11 AT THE TOP, AND THEN LEVENS IS THE SAFETY DIRECTOR, AND 12 THEN MR. GORDON UNDER HIM? 13 A YES. 14 Q DID YOU WORK WITH MR. GORDON? 15 A I DID KNOW MR. GORDON. 16 Q DID YOU KNOW MR. GORDON TO BE A CONSCIENTIOUS 17 HEALTH AND SAFETY PROponent FOR THE WORKERS OF THE 18 COMPANY -- EMPLOYEES OF MCDONNELL DOUGLAS? 19 A YES, VERY MUCH SO. 20 Q SO SIR, ON JULY THE 24TH -- WHICH IS THE DATE 21 OF THIS DOCUMENT JUST A COUPLE OF DAYS LATER -- 22 MR. GORDON IS SENDING A MEMORANDUM TO L.A. GATES AND 23 J.P. INGRAM. WHO ARE THEY, SIR? 24 A MR. GATES WOULD MOST LIKELY BE AT THE TORRANCE 25 LOCATION AND MR. INGRAM WOULD BE THE SAFETY MANAGER AT 26 THE LONG BEACH FACILITY. 27 Q SO MCDONNELL DOUGLAS HAD A FACILITY IN 28 TORRANCE AS WELL?
Page 151 1 MR. KARREN: THANK YOU, YOUR HONOR. 2 3 CROSS-EXAMINATION CONT. 4 BY MR. KARREN: 5 Q MR. HOLLENBECK? 6 A YES, SIR. 7 Q WE'RE CLOSE TO BEING DONE, SIR, SO THANK YOU 8 FOR YOUR PATIENCE. JUST TO FINISH THE DOCUMENT THAT 9 WE'RE JUST TALKING ABOUT. IF WE LOOK AT NUMBER 3, SIR, 10 WHICH TIM WILL BLOW UP, IT'S THE -- MR. LEVENS, THE 11 SAFETY DIRECTOR, IS TELLING ALL SAFETY DEPARTMENTS 12 THAT, "YOU ARE REQUESTED TO ENSURE THAT ALL MATERIALS 13 AND PROCESS SPECIFICATIONS AND OTHER DOCUMENTS RELATED 14 TO THE USE OF ASBESTOS INCLUDE APPROPRIATE 15 PRECAUTIONARY INFORMATION, CONSISTENT WITH THE OSHA 16 STANDARD." DID I READ THAT RIGHT? 17 A YES, YOU DID. 18 Q IS MR. LEVENS ESSENTIALLY TELLING ALL SAFETY 19 DEPARTMENTS THAT WORK UNDER HIM, "MAKE SURE THAT 20 EVERYTHING THAT MCDONNELL DOUGLAS DOES IS CONSISTENT 21 WITH THE REQUIREMENTS OF THIS BRAND NEW REGULATION"? 22 A YES, IT IS. 23 Q OKAY. NOW, I WANT TO TURN NEXT, SIR, TO 24 EXHIBIT 427 THAT I WILL OFFER WITHOUT OBJECTION, YOUR 25 HONOR, AND IT IS A MEMORANDUM DATED 7/24/1972 ABOUT THE 26 OSHA ASBESTOS STANDARD. 27 THE COURT: ADMITTED 427. 28 MR. KARREN: THANK YOU. SIR.	Page 153 1 A I DON'T KNOW THE NAME GATES BUT I DO KNOW MR. 2 INGRAM. 3 Q WAS MR. GORDON IN CHARGE OF BOTH TORRANCE AND 4 LONG BEACH? 5 A YES, HE WAS. 6 Q MR. GORDON IS TELLING THESE PEOPLE THAT -- IS 7 MR. INGRAM DIRECTLY BELOW MR. GORDON IN TERMS OF 8 HIERARCHY? 9 A YES. 10 Q SO MR. GORDON IS SENDING THIS MEMORANDUM, SIR, 11 SAYING, "PLEASE ARRANGE FOR IMPLEMENTATION OF 12 MR. LEVENS REQUEST FOR A SURVEY OF ASBESTOS UTILIZATION 13 WITHIN YOUR RESPECTIVE AREAS. THE SURVEYS SHOULD BE 14 RETURNED TO THE WRITER BY AUGUST 21ST SO THAT MAY BE 15 CONSOLIDATED AND BE RETURNED TO MR. LEVENS BY SEPTEMBER 16 1ST." DID I READ THAT RIGHT? 17 A YES, YOU DID. 18 Q WHAT IS MR. GORDON TELLING THE PEOPLE IN 19 CHARGE OF TORRANCE AND LONG BEACH SAFETY THAT THEY 20 SHOULD BE DOING? 21 A TO MOVE FORWARD ON THE SURVEY, ASSESSING THE 22 WORKPLACE AGAINST THE NEW FEDERAL STANDARD ON ASBESTOS. 23 Q AND SIR, REQUESTING THE SURVEYS BY AUGUST 21ST 24 WHEN THE DATE IS JULY THE 24TH, IS THAT A RAPID AND 25 QUICK TURN-AROUND FOR SUCH A BIG TASK? 26 A YES, IT IS. 27 Q WERE THERE A LOT OF BUILDINGS MADE UP IN 28 TORRANCE AND LONG BEACH, AS WE SAW, SOME PHOTOGRAPHS TO

Page 154 1 SURVEY? 2 A YES, I ASSUME IT WAS A FULL-COURT PRESS ON THE 3 STAFF TO GET OUT THROUGHOUT THE FACTORY, TO START 4 ASSESSING THE WORKPLACE. 5 Q DOES THIS SHOW MCDONNELL DOUGLAS' INTEREST IN 6 MAKING SURE THAT ITS EMPLOYEES WERE SAFE FROM ANY 7 ASBESTOS HAZARDS IN YOUR MIND? 8 A YES, IT DOES. 9 Q NEXT, SIR, I WOULD LIKE TO SHOW YOU THE LAST 10 SET OF DOCUMENTS AND THAT IS WHAT I WILL OFFER, YOUR 11 HONOR, EXHIBITS 426 AND 430, WHICH GO TOGETHER. THE 12 FIRST IS A JULY 27TH MEMORANDUM FROM INGRAM AND THE 13 ATTACHMENT ABOUT AN ASBESTOS MATERIAL SURVEY, WITHOUT 14 OBJECTION. 15 THE COURT: SO THAT'S BOTH 426 AND 430 BEING 16 OFFERED? 17 MR. KARREN: YES, YOUR HONOR. 18 THE COURT: ADMITTED AND ADMITTED. 19 MR. KARREN: THANK YOU. 20 (EXHIBITS 426 AND 430 IDENTIFIED AND 21 ADMITTED INTO EVIDENCE.) 22 BY MR. KARREN: 23 Q SIR, I'LL BLOW THAT UP. 427, THANK YOU. 427, 24 MR. HOLLENBECK, YOU SEE ITS DATED 7/27/1972? 25 A I CAN'T SEE THAT FROM HERE. 26 Q OKAY. HOW ABOUT NOW? 27 A THANK YOU, YES. 28 Q YOU UNDERSTAND THIS IS FROM J.P. INGRAM. DO	Page 156 1 Q OKAY. AND SO IS THIS AN INSTRUCTION TO ALL 2 SAFETY ENGINEERS AT THE LONG BEACH MCDONNELL DOUGLAS 3 FACILITY TO FOLLOW HIS DIRECTIVE? 4 A YES. 5 Q WHEN YOU WERE THERE, SIR, FROM 1979 ON, DID 6 YOU RECEIVE OR SEND OUT MEMORANDA SIMILAR TO THIS? 7 A YES, SIMILAR FORMAT. IT'S A STANDARD 8 MEMORANDUM FORMAT, DIRECTING STAFF TO MOVE FORWARD ON A 9 CERTAIN SUBJECT. 10 Q AND WAS IT THE NORMAL PRACTICE THAT THOSE 11 INSTRUCTIONS BY THE SAFETY ENGINEERS OR DIRECTORS OR 12 MANAGERS WERE FOLLOWED OUT? 13 A ABSOLUTELY. 14 Q OKAY. MR. INGRAM SAYS, "YOU ARE REQUESTED TO 15 CONDUCT A SURVEY OF YOUR RESPECTIVE AREAS OF 16 RESPONSIBILITY TO IDENTIFY ANY WORK INVOLVING THE USE 17 OF ASBESTOS OR POTENTIAL EXPOSURE OF EMPLOYEES TO 18 AIRBORNE ASBESTOS FIBERS. SURVEYS WILL BE COMPLETED 19 AND RETURNED TO THE UNDER-SIGNED ON OR BEFORE AUGUST 20 17TH, 1972." 21 AND THEN HE SAYS, "FOR UNIFORMITY OF SURVEY 22 AND FINDINGS, THE ATTACHED GENERAL SURVEY FORMAT IS 23 ATTACHED FOR YOUR CONVENIENCE." AND THE SECOND PAGE OF 24 THAT, SIR, IS EXHIBIT 430, WHICH IT WILL CATCH UP. AND 25 THIS IS JUST -- THE JURY WILL SEE THIS, BUT THE POINT 26 IS, THIS IS JUST A GENERIC FORM OF GUIDANCE FOR THE 27 PEOPLE GOING OUT TO CONDUCT THE SURVEYS; RIGHT? 28 A YES, IT IS.
Page 155 1 YOU SEE THAT? 2 A CORRECT, YES. 3 Q WAS J.P. INGRAM THE DIRECTOR AT LONG BEACH, OF 4 SAFETY, THAT WORKED DIRECTLY UNDER MR. GORDON THAT WE 5 JUST TALKED ABOUT? 6 A HE WAS A MANAGER. NOT A DIRECTOR, BUT... 7 Q JUST A COUPLE OF DAYS AFTER MR. GORDON'S 8 MEMORANDUM THIS IS MR. INGRAM SENDING A MEMORANDUM TO 9 SAFETY ENGINEERS. WHAT DOES THAT MEAN? WHO ARE SAFETY 10 ENGINEERS? 11 A THIS WOULD BE JUST CONTINUE FLOW-DOWN OF THE 12 DIRECTIVE FROM MR. LEVENS TO HIS STAFF IN C-1, WOULD BE 13 THE LONG BEACH LOCATION. 14 MR. ADAMS: YOUR HONOR. 15 THE COURT: CAN YOU HOLD IT FOR A BREAK. BY 16 THE WAY, LET ME TELL JURORS IF YOU SEE ME DOING OTHER 17 THINGS OVER HERE, DON'T BE DISTRACTED BY THAT. WHEN 18 YOU'RE NOT IN THE ROOM, WE'RE DOING OTHER THINGS AND 19 I'M DOING PREP WORK TO DO THOSE OTHER THINGS. I'M ALSO 20 LISTENING. I PROMISE YOU. DON'T PAY ANY ATTENTION TO 21 ME, IF YOU ARE. PLEASE. PROCEED. 22 MR. KARREN: THANK YOU, YOUR HONOR. 23 BY MR. KARREN: 24 Q SO MR. INGRAM, THEN, IS SENDING THIS TO ALL 25 THE SAFETY ENGINEERS -- IT SAYS, "C-1-306." WHAT DOES 26 C-1 MEAN? 27 A C-1 WOULD BE THE SITE LOCATION OF LONG 28 BEACH. 306 WOULD BE THE DEPARTMENT.	Page 157 1 Q IS IT YOUR IMPRESSION, MR. HOLLENBECK, THAT 2 EVERYONE RECEIVING THAT MEMORANDA FROM MR. DOUGLAS DOWN 3 TO MR. LEVENS, DOWN TO MR. GORDON, DOWN TO MR. INGRAM 4 WOULD HAVE FOLLOWED THROUGH WITH THAT INSTRUCTION? 5 A ABSOLUTELY. 6 Q DID THIS MEMORANDUM, SIR, FROM MR. INGRAM MEAN 7 THAT THE ENTIRETY OF THE FACILITY SHOULD BE SURVEYED 8 AND CHECKED FOR ASBESTOS LEVELS? 9 A YES, IT WOULD. 10 Q SO BEING THAT YOU'VE SEEN THESE DOCUMENTS AND 11 YOU WERE THERE DOING SIMILAR WORK, DO YOU BELIEVE THAT 12 THOSE ASBESTOS-SAMPLING REQUIREMENTS OF OSHA WERE MET 13 THROUGHOUT THE MCDONNELL DOUGLAS FACILITY OF LONG 14 BEACH? 15 A YES, I DO. 16 Q SIR, IS IT UNUSUAL THAT MANY OF THE EMPLOYEES 17 IN A PARTICULAR BUILDING WOULDN'T KNOW THAT THE 18 SURVEYING OR AIR MONITORING OR SAMPLING IS GOING ON? 19 A YEAH. SINCE MOST OF THE BUILDINGS DID NOT 20 EVEN CONTAIN ASBESTOS, IT WOULD HAVE BEEN MORE OF A 21 REVIEW OF THE WORKPLACE. TO DOCUMENT SOME OF THE 22 THINGS IN THAT SURVEY WHERE THERE IS ASBESTOS 23 PRESENT -- AIRBORNE MONITORING PER THAT MEMO DIRECTION 24 -- WOULD HAVE OCCURRED. 25 IF IT HAD BEEN A PERSONAL SAMPLE, IT WOULD 26 HAVE BEEN ATTACHED TO AN EMPLOYEE OR AN AREA SAMPLE SET 27 IN THE GENERAL WORK AREA. SO IT COULD HAVE OCCURRED IN 28 A NUMBER OF WAYS.

Page 158 1 Q WHEN THE SURVEY IS COMPLETED AND THE SAMPLE 2 COMES BACK AND SHOWED LEVELS BELOW THE PERMISSIBLE 3 EXPOSURE LEVELS THAT WERE LISTED IN OSHA, WAS ANY 4 ACTION REQUIRED TO BE TAKEN? 5 A NO, THAT WOULD BE REFLECTED IN THE REPORT THAT 6 WOULD BE ISSUED FOLLOWING THE CONCLUSION OF THE SURVEY. 7 BUT THERE WOULD BE NO ACTION NECESSARY PER THE 8 STANDARD. 9 Q HAVING SEEN THESE DOCUMENTS FROM THE PEOPLE 10 THAT YOU KNEW AND WHO WERE RESPONSIBLE FOR SAFETY AT 11 MCDONNELL DOUGLAS, IS THERE ANY DOUBT IN YOUR MIND THAT 12 THE COMPANY CARRIED OUT THE SAMPLING NECESSARY TO 13 ENSURE SAFE WORKPLACES FOR EMPLOYEES OF MCDONNELL 14 DOUGLAS IN 1972? 15 A NO, THERE'S NO DOUBT THAT WAS ACCOMPLISHED. 16 Q WAS MCDONNELL DOUGLAS, AT ALL TIMES THAT YOU 17 WORKED THERE, SIR, INTERESTED IN PROTECTING THE SAFETY 18 AND HEALTH OF ITS EMPLOYEES, FOR ALL KINDS OF DIFFERENT 19 CHEMICALS, THAT INCLUDING ASBESTOS? 20 A CORRECT, YES. 21 Q MR. HOLLENBECK I THANK YOU FOR YOUR TIME, SIR. 22 PASS THE WITNESS. 23 THE COURT: ALL RIGHT. ANY OTHER DEFENDANTS 24 HAVE QUESTIONS FOR MR. HOLLENBECK? 25 MR. HUIE: YES, YOUR HONOR. 26 THE COURT: ALL RIGHT. MR. HUIE. 27 28	Page 160 1 FORKLIFT REFERENCED IN THAT EXHIBIT OR HYSTER FORKLIFT 2 AS OPPOSED TO SOME OTHER BRAND? 3 A NO. I DON'T BELIEVE SO. 4 Q THANK YOU. THAT'S ALL I HAVE. 5 THE COURT: ANY OTHER DEFENSE QUESTIONS FOR 6 THE WITNESS? HEARING NONE. REDIRECT? 7 MR. ADAMS: YES, YOUR HONOR. 8 THE COURT: GO AHEAD. 9 10 REDIRECT EXAMINATION 11 BY MR. ADAMS: 12 Q MR. HOLLENBECK, YOU WERE JUST SHOWN A SERIES 13 OF DOCUMENTS BY THE LAWYER FOR BOEING, MR. KARREN? 14 A YES. 15 Q EVERY SINGLE ONE OF THE DOCUMENTS WAS DATED 16 1972? 17 A CORRECT. 18 Q MR. CHAPMAN WORKED AT THE DOUGLAS FACILITY IN 19 BUILDING 11 FOR FIVE YEARS BEFORE 1972? 20 A I BELIEVE SO, YES. 21 Q AND SO YOU WERE ALSO ASKED BY MR. KARREN, AND 22 IT WAS MENTIONED SEVERAL TIMES THAT THE 1972 OSHA 23 REGULATION WAS A BRAND NEW REGULATION, AND IT WAS THE 24 FIRST TIME EVER THAT THE COMPANY HAD BEEN ASKED TO 25 MEASURE ASBESTOS, DO YOU REMEMBER THAT? 26 A YES. 27 Q THAT'S NOT TRUE; IS IT? 28 MR. KARREN: I'M SORRY, YOUR HONOR. I WILL
Page 159 1 CROSS-EXAMINATION 2 BY MR. HUIE: 3 Q GOOD AFTERNOON, SIR. 4 A GOOD AFTERNOON. 5 Q MY NAME IS JEREMY HUIE. I REPRESENT HYSTER 6 AND I HAVE TO DO FOLLOW-UP FOR YOU. 7 A OKAY. 8 Q YOU WERE SHOWN EXHIBIT 3059 WHICH RELATED TO 9 PURCHASE ORDERS BY MCDONNELL DOUGLAS IN THE 1980S, DO 10 YOU HAVE THAT IN MIND? 11 A YES, I DO. 12 Q GARY CHAPMAN WORKED AT MCDONNELL DOUGLAS FROM 13 1966 TO 1973, OR PRIOR TO THE 1980S; RIGHT? 14 A YES. 15 Q DOES BOEING HAVE ANY DOCUMENTS SHOWING THAT 16 MCDONNELL DOUGLAS PURCHASED HYSTER FORKLIFTS IN THE 17 1966 TO 1973 TIME PERIOD? 18 A I HAVE NOT SEEN THOSE RECORDS, NO. 19 Q DOES BOEING HAVE ANY DOCUMENTS SHOWING THAT 20 MCDONNELL DOUGLAS PURCHASED ANY PRODUCTS FROM HYSTER 21 DURING THE 1966 TO 1973 TIME PERIOD? 22 A I HAVE NOT SEEN THOSE RECORDS EITHER, NO. 23 Q YOU WERE ALSO SHOWN EXHIBIT 3060, A 1966 24 DOCUMENT, INDICATING SOME MCDONNELL DOUGLAS PURCHASE OF 25 TRACTORS AND FORKLIFTS. DO YOU HAVE THAT DOCUMENT IN 26 MIND? 27 A YES, I DO. 28 Q DOES BOEING HAVE ANY INFORMATION THAT THE	Page 161 1 OBJECT. MISSTATES PRIOR TESTIMONY. 2 THE COURT: OVERRULED. 3 BY MR. ADAMS: 4 Q THAT'S NOT TRUE; RIGHT? 5 A WITH RESPECT TO ASBESTOS MONITORING? 6 Q YES. 7 A DO YOU WANT TO RESTATE YOUR QUESTION, PLEASE? 8 Q DO YOU KNOW WHEN WE TALKED ABOUT IT THAT IN 9 1936, THERE WERE CALIFORNIA REGULATIONS ON THE BOOKS 10 THAT APPLIED TO DOUGLAS, THAT DOUGLAS KNEW ABOUT AND 11 THAT DOUGLAS COMPLIED WITH, THAT REQUIRED TO MEASURE 12 THE AIR FOR ASBESTOS IN ITS FACILITY, CORRECT? 13 A YES. I MEAN, IF THE STANDARD REQUIRED IT, 14 PRESUMABLY, THE STAFF WOULD HAVE DONE THAT. 15 Q AND THERE WERE REGULATIONS IN 1945 THAT WE 16 DISCUSSED, WE DISCUSSED 1960, WALSH-HEALEY ACT THAT SET 17 A MAXIMUM PERMISSIBLE EXPOSURE LIMIT? 18 A YES. 19 Q AND WE ALSO DISCUSSED THE 1970 OSHA CREATION, 20 AND 1971 OSHA MERGE STANDARD, CORRECT? 21 A YES. 22 Q ALL OF THOSE LAWS APPLY TO DOUGLAS'S BUSINESS? 23 A YES, THEY DO. 24 Q AND MR. CHAPMAN WAS THERE FOR FIVE YEARS 25 BEFORE DOUGLAS DID A THING, CORRECT? 26 A PRESUMABLY, AS REQUIRED IN THOSE STANDARDS, 27 ACTION WAS TAKEN. 28 Q DO YOU HAVE A SINGLE DOCUMENT THAT SAYS THAT?

Page 162 1 A NOT FROM 50, 60 YEARS AGO NOW. 2 Q IS THERE A SINGLE PERSON WHOSE GOING TO COME 3 AND TELL THIS JURY THAT THAT ACTUALLY HAPPEN WHO WAS 4 THERE? 5 A NOT THAT I'M AWARE OF. 6 Q DO YOU BELIEVE THAT -- SO JUST -- SO EVERYONE 7 UNDERSTAND, MR. CHAPMAN WAS THERE FOR FIVE YEARS IN 8 BUILDING 11, BUT FOR A SINGLE ONE OF THOSE DOCUMENTS 9 DATED 1972 EVER EXISTED; RIGHT? 10 A YES. 11 Q OKAY. DOES DOUGLAS BELIEVE IT HAS ANY 12 OBLIGATION TO THE SAFETY OF ITS EMPLOYEES UNTIL THE 13 GOVERNMENT ORDERS DOUGLAS TO DO SOMETHING, OR BOEING? 14 A YES. I MEAN, CERTAINLY, IT'S NOT STRICTLY 15 BASED ON THE REQUIREMENTS IN THE REGULATION AS EVIDENCE 16 OF MR. DOUGLAS'S E-MAIL, OR ADMINISTRATIVE BULLETIN. 17 THERE'S NOTHING REQUIRED TO INITIATE ADMINISTRATIVE 18 BULLETIN IN MAY OF '71, OR '72, PERTAINING TO HAZARDOUS 19 MATERIALS. 20 Q AND SO YOU WERE TRYING TO SUGGEST TO THE JURY 21 FOR THAT FIRST FIVE YEARS, MR. CHAPMAN WAS AT DOUGLAS 22 IN THAT GARAGE AND THEY WERE GRINDING SOMETHING THAT 23 WAS 70 PERCENT ASBESTOS, DOUGLAS HAD NO DUTY TO DO 24 ANYTHING TO PROTECT HIS HEALTH, YOU WEREN'T SUGGESTING 25 THAT; WERE YOU? 26 A NO. 27 Q OKAY. YOU WEREN'T SUGGESTING THAT DOUGLAS 28 DIDN'T HAVE TO INVESTIGATE PUBLICLY AVAILABLE	Page 164 1 Q WHY WOULD DOUGLAS DO THAT? 2 A TO RETAIN RECORDS. 3 Q YEAH. TO DESTROY ALL THOSE HUNDREDS AND 4 HUNDREDS AND HUNDREDS OF SURVEYS OF BUILDINGS THAT THEY 5 CLAIM THEY DID RIGHT AFTER THE OSHA REGULATIONS CAME 6 OUT? 7 A IT WOULDN'T BEEN RIGHT AFTER, IT WOULD HAVE 8 BEEN FIVE YEARS AFTER THAT. AGAIN, SERVE NO USEFUL 9 PURPOSE, FIVE YEARS POST-EXPOSURE. PARTICULARLY, IF 10 THERE WERE NO ISSUES FOUND, IF THERE WERE NO ISSUE 11 FOUND, RECORDS WOULD HAVE BEEN RETAINED. IF THERE'S 12 CORRECTIVE ACTIONS ASSOCIATED WITH FINDINGS, THOSE 13 WOULD BE RETAINED IN A LONGER PERIOD OF TIME UNTIL THEY 14 ARE RESOLVED, BUT FIVE YEARS IS GENERALLY AN ACCEPTED 15 WINDOW OF CLOSING OFF AN ACTION ITEM THAT YOU IDENTIFY 16 A RISK IN THE WORKPLACE. 17 Q YOU CAN'T THINK OF ANY USEFUL PURPOSE OF THOSE 18 RECORDS? 19 A NOT IF IT INDICATES THERE'S NO EXPOSURE. 20 Q WHAT ABOUT THE FACT THAT DOUGLAS KNEW THAT THE 21 LATENCY WAS DECADES BETWEEN THE TIME OF EXPOSURE AND 22 THE TIME WHEN PEOPLE DEVELOPED DISEASES LIKE 23 MESOTHELIOMA, WOULDN'T IT HAVE BEEN USEFUL FOR DOUGLAS 24 TO KEEP SOME RECORDS THAT SAID, "WE DID EVERYTHING 25 RIGHT"? 26 A YEAH. WITHIN A REASONABLE PERIOD OF TIME. 27 STANDARD REQUIRED THREE YEARS, WE ACTUALLY DID FIVE 28 YEARS. IF THERE WAS SOME SUSPECT CONCERNS FOR
Page 163 1 INFORMATION AND TAKE ACTION TO PROTECT ITS EMPLOYEES 2 BEFORE THE GOVERNMENT ORDERED IT TO DO SO FOR THE 4TH 3 OR 5TH TIME IN THE 1972 OSHA REGULATIONS, THAT WASN'T 4 WHAT YOU WERE TRYING TO SUGGEST; WAS IT? 5 A THAT IS CORRECT. 6 Q WHAT -- WAS ALSO IN THOSE 1972 OSHA 7 REGULATION, IS THIS CONCEPT OF LATENCY THAT WE'VE HEARD 8 ABOUT, ARE YOU FAMILIAR WITH THAT? 9 A YES, I AM. 10 Q WHAT IS THAT? 11 A LONG-TERM EFFECTS FROM A, TYPICALLY, A VERY 12 HIGH EXPOSURE, REPEATED HIGH EXPOSURE, IN THIS CASE, OF 13 ASBESTOS. 14 Q THE LONG TERM AFFECT BETWEEN THE FIRST DATE OF 15 EXPOSURE TO ASBESTOS AND THE DEVELOPMENT OF DISEASE; 16 RIGHT? 17 A CORRECT. 18 Q LIKE MESOTHELIOMA? 19 A CORRECT. 20 Q AND YOU WERE ASKED A BUNCH OF QUESTIONS ABOUT 21 3-YEAR RECORDS RETENTION POLICY IN OSHA THAT SAID, YOU 22 HAVE TO KEEP THE RECORDS FOR A MINIMUM OF THREE YEARS 23 WHEN YOU TEST THE AIR, DO YOU REMEMBER? 24 A CORRECT. 25 Q AND IT'S YOUR TESTIMONY THAT AFTER THREE 26 YEARS, DOUGLAS GOT RID OF ALL THOSE RECORDS? 27 A I BELIEVE OUR RECORDS FOR RETENTION WINDOW WAS 28 FIVE YEARS.	Page 165 1 EXPOSURE, THOSE WOULD HAVE BEEN RETAINED LONGER. IT 2 WOULD SUGGEST TO ME THAT THERE WAS NO ISSUE, THERE WAS 3 NO EXPOSURE ABOUT SIGNIFICANCE OR ABOVE THE STANDARDS, 4 THEREFORE, THERE WOULD BE NO RECORDS. 5 Q SO IT'S YOUR TESTIMONY TO THIS JURY THAT EVERY 6 SINGLE RECORD AND EVERY SINGLE COPY OF EVERY SINGLE 7 RECORD, AND EVERY SINGLE SURVEY THAT WAS GIVEN TO EVERY 8 SINGLE EMPLOYEE, AT A PLACE THAT EMPLOYED 25 TO 30,000 9 PEOPLE, AND HAVE HUNDREDS AND HUNDREDS OF BUILDING HAVE 10 BEEN DESTROYED? 11 A RECORDS OF THAT NATURE WOULD NOT BE RETAINED, 12 WHATEVER THE STANDARD IS. AT THAT TIME, IT'S FIVE 13 YEARS, TODAY IT'S MAYBE 30 YEARS. AT THAT TIME, THAT 14 WAS THE RECORDS RETENTION POLICY, IT WAS FIVE YEARS. 15 THE RECORDS WERE ASSESSED FOR THE USEFULNESS, AND SOME 16 CASES, THEY MAY HAVE BEEN RETAINED ANOTHER FIVE, 10, 20 17 YEARS. AS WE SIT HERE TODAY, 50 SOME YEARS PASSED, 18 THOSE RECORDS WILL NOT BE AVAILABLE. 19 Q WHEN WERE THEY DESTROYED? 20 A AGAIN, THE RECORDS RETENTION POLICY, THIS 21 ISN'T UNIQUE TO SAFETY RECORDS OR PERTAINS TO 22 MANUFACTURING RECORDS, INVENTORY RECORDS, KEEP IN MIND 23 OF THE SIDES OF THIS FACILITY. SO THEY REVIEWED IN 24 COLLABORATION WITH THOSE THAT ARE MAKING THESE RECORDS, 25 TO DETERMINE WHAT'S THE APPROPRIATE TIME TO KEEP THESE. 26 IN THIS CASE, THE FIVE-YEAR WINDOW WOULD BE THE POINT 27 OF LOOKING AT IT, IF IT'S CONSIDERABLY USEFUL, IT WOULD 28 BE RETAIN FURTHER.

Page 166 1 Q SO ALL THE RECORDS WERE DESTROYED IN 1977? 2 A I CAN'T SPEAK TO THAT SPECIFICALLY, BUT IF 3 THERE WAS NO USEFUL PURPOSE TO RETAIN A SURVEY THAT WAS 4 ON FIVE YEARS PREVIOUSLY, WHERE THERE INDICATES NO 5 EXPOSURE, THAT THERE WAS NO WORKPLACE RISK OF 6 SIGNIFICANCE, THERE WOULD BE NO REASON TO KEEP THAT 7 RECORD. 8 Q WHO DESTROYED THEM? 9 A THEY'RE CATALOGUED AND ARCHIVED, SENT TO A 10 FACILITY FOR DISPOSITION, OR RETENTION. 11 Q WHO DESTROYED THEM? 12 A I CAN'T TELL YOU PERSONALLY WHO. COULD HAVE 13 BEEN AT THE DEPARTMENT LEVEL AS WELL. 14 Q CAN YOU NAME ONE PERSON WHO KNOWS ANYTHING 15 ABOUT THIS DESTRUCTION OF SURVEYS AND DOCUMENTS SENT TO 16 THE WHOLE COMPANY OF HUNDREDS OF BUILDINGS THAT YOU SAY 17 WHAT HAPPENED IN 1977? 18 A NO. I'M SURE WE CAN GET TO YOU THE PERSON'S 19 NAME THAT HAS THAT FUNCTION TODAY, IT'S AN 20 ORGANIZATION. 21 Q HOW WERE THEY DESTROYED? 22 A I WOULD ASSUME SHREDDING PROCESSED OF SOME 23 SORT. 24 Q WHO GOT THE SHREDDERS, DO YOU KNOW? 25 A I DON'T. 26 Q DO YOU KNOW WHAT COMPANY? WAS AN OUTSIDE 27 COMPANY HIRED? 28 A MOST -- IN MY RECOLLECTION, IT WAS A COMPANY	Page 168 1 PROCESS TO ASSESS WHAT'S IN YOUR FILE CABINETS, IF 2 THERE'S NO USEFUL PURPOSE, THEY ARE CATALOGUED, BOXED, 3 EITHER RETAINED OR MOVED TO THE DISPOSAL SITE. 4 Q AND SO WHEN DOUGLAS HIRED IRON MOUNTAIN 1977 5 TO COME SHRED ALL THE RECORDS, PRESUMABLY, THEY HAD TO 6 PAY FOR ALL OF THAT; RIGHT? 7 A PRESUMABLY, YES. 8 Q AND THERE WOULD BE A RECEIPT, CORRECT? 9 A I WOULD ASSUME SO. 10 Q AND THERE'S SOME KIND OF CONTRACT FOR AN 11 OPERATION OF THAT SIZE? 12 A YES. 13 Q OKAY. DID IRON MOUNTAIN SHRED THOSE DOCUMENTS 14 TOO? 15 A I CAN'T SPEAK TO THAT. 16 Q SO THERE WERE MORE RECORDS CREATED IN '77 FROM 17 THIS SHREDDING, AND THOSE HAVE BEEN DESTROYED AS WELL? 18 A THE RECORDS CREATED FROM SHREDDING? 19 Q THE CONTRACT, THE RECEIPT, YOU HAVE TO PAY FOR 20 IT? 21 A YEAH. AGAIN, IF THERE WAS NO USEFUL PURPOSE 22 TO RETAIN A CONTRACT OF 50 YEARS AGO, THEY WERE 23 PROBABLY SHREDDING AT SOME POINT. PROCUREMENT DOCUMENTS 24 HAVE A LIFE TO THEM AS WELL, AS TO MANUFACTURING 25 RECORDS, AND QUALITY RECORD, AND ENGINEERING RECORDS, 26 CHEMISTRY RECORDS, ALL HAVE VARIOUS LIVES TO THEIR 27 USEFULNESS. 28 Q DON'T YOU THINK IT'S SUSPICIOUS THAT ALL THE
Page 167 1 CALLED IRON MOUNTAIN, RETAINED AND DISPOSED OF THE 2 RECORDS, BACK THEN, I COULDN'T TELL YOU. 3 Q SO IRON MOUNTAIN, DO YOU KNOW WHO'S IRON 4 MOUNTAIN? 5 A YES. 6 Q SO IRON MOUNTAIN CAME IN WITH A BUNCH OF 7 SHREDDERS? 8 A AGAIN, AT THAT TIME PERIOD, I DON'T KNOW. I 9 THINK THEY HAD THE RESPONSIBILITY WHEN I WAS IN 10 SOUTHERN CALIFORNIA. 11 Q THAT WAS 1979 THOUGH; RIGHT? 12 A YEAH, AROUND THAT TIME. 13 Q HAVE YOU GOT TO DOUGLAS IN 1979? 14 A CORRECT. 15 Q HAD ALL THE RECORDS BEEN DESTROYED BY THEN? 16 A AGAIN, I CAN'T SPEAK TO THE SPECIFICS. I WAS 17 IN HUNTINGTON BEACH AT THE TIME. SO I DIDN'T HAVE 18 ACTIVE INVOLVEMENT WITH THE SURVEY IN LONG BEACH BUT, 19 GENERALLY, SAME SERVICES THAT WERE PROVIDED. LONG 20 BEACH WERE ALSO IN HUNTINGTON BEACH. 21 Q WHEN YOU STARTED AT DOUGLAS IN '79, DID YOU 22 HEAR ANYTHING ABOUT GATHERING ALL THE ASBESTOS SURVEY 23 RECORDS TOGETHER AND SHREDDING THEM? 24 A NO. 25 Q AND SO PRESUMABLY, IF WHAT YOU TOLD THE JURY 26 IS ACCURATE, THAT ALL OCCURRED BEFORE YOU GOT THERE? 27 A CORRECT. IT'S AN ONGOING PROCESS TO ASSESS 28 THE RECORDS IN YOUR FILE. IT'S A VERY ROUTINE BUSINESS	Page 169 1 RECORDS ARE GONE? 2 MR. KARRIN: OBJECTION, ARGUMENTATIVE, YOUR 3 HONOR. 4 THE COURT: SUSTAINED. 5 BY MR. ADAMS: 6 Q I WANT TO MAKE SURE I UNDERSTAND THE DETAILS 7 OF WHAT YOU JUST TOLD THE JURY. THAT IN 1972, THE OSHA 8 ASBESTOS REGULATIONS COME OUT AND THERE ARE DIRECTIVE 9 SENT TO SURVEY THIS MASSIVE COMPLEX OF HUNDREDS OF 10 BUILDINGS, ARE YOU WITH ME? 11 A YES. 12 Q OKAY. AND I THINK WHAT YOU TESTIFIED TO IS, 13 "SOME OF THOSE MEMOS WHERE I WROTE IT DOWN, 14 COMMUNICATED TO ALL EMPLOYEES." DID I HAVE THAT RIGHT? 15 A CORRECT. 16 Q AND SO, IF MR. CHAPMAN TESTIFIES HE NEVER GOT 17 IT, HE MUST HAVE FORGOT? 18 A I CAN'T SPEAK TO THAT. 19 Q OKAY. BUT IT'S YOUR TESTIMONY THAT A MEMO 20 ABOUT THIS ASBESTOS SURVEY WAS DELIVERED TO 21 MR. CHAPMAN; RIGHT? 22 A I WOULDN'T SAY "DELIVERED." IT COULD HAVE 23 BEEN COMMUNICATED -- I'M ASSUMING YOU'RE REFERRING TO 24 THAT ADMINISTRATIVE BULLETIN. THE OTHER MEMOS WERE 25 MORE DIRECTED TO THE SAFETY STAFF. I BELIEVE YOU'RE 26 REFERENCING THE ADMINISTRATIVE BULLETIN. IT COULD HAVE 27 BEEN POSTED IN HIS WORK AREA, THE BREAK ROOM. IT COULD 28 HAVE BEEN COMMUNICATED AT A STAFF MEETING OR A VARIETY

Page 170 1 OF WAYS THAT THIS INFORMATION COMES OUT TO THE 2 EMPLOYEES. 3 Q WELL, HOW DID IT HAPPEN? 4 A I CAN'T SPEAK TO THE SPECIFICS IN 1972, HOW 5 THAT GOT COMMUNICATED. 6 Q YOU DON'T KNOW WHETHER IT WAS A WORD OF MOUTH, 7 A LETTER DELIVERED. LET ME JUST TAKE A STEP BACK. 8 YOUR TESTIMONY WAS THAT LETTER, THAT MEMO -- 9 A MAY HAVE BEEN A BULLETIN. 10 Q -- WAS DELIVERED TO EVERY EMPLOYEE; RIGHT? 11 A CORRECT. 12 Q OKAY. 13 A IT WAS VISIBLE TO EVERY -- DELIVERED. IF I 14 SAID "DELIVERED, "IT SHOULD HAVE BEEN VISIBLE TO EVERY 15 EMPLOYEE BY WAY OF, AS I SAID, STAFF MEETINGS OR POSTED 16 IN THE WORK AREAS. 17 Q THAT'S 30,000 PEOPLE; RIGHT? 18 A CORRECT. 19 Q EVERY SINGLE ONE GOT THE MEMO? 20 A PRESUMABLY SO, YES. 21 Q AND YOU WEREN'T THERE; RIGHT? 22 A I WAS NOT. 23 Q OKAY. ARE YOU AWARE OF A SINGLE ONE OF THOSE 24 30,000 PEOPLE, OTHER THAN MR. CHAPMAN, WHO IS GOING TO 25 COME TELL THIS JURY, I WAS THERE AND I ACTUALLY SAW IT? 26 A I'M NOT AWARE OF THAT. 27 Q ARE YOU AWARE OF A SINGLE PERSON OUT OF THOSE 28 30,000 PEOPLE, WHO'S GOING TO COME TELL THIS JURY THAT	Page 172 1 HAVE NO ONE SEE IT? 2 A CORRECT. 3 Q ARE YOU AWARE OF A SINGLE PERSON ON EARTH 4 WHO'S GOING TO COME TELL THIS JURY, WHO WAS ACTUALLY 5 THERE, THAT I WAS THERE IN BUILDING 11, AND I SAW THEM 6 MONITOR THE AIR? 7 A I'M NOT AWARE OF ANYBODY. 8 Q YOUR TESTIMONY IS THEY WENT INTO BUILDING 11, 9 AND DOUGLAS -- AND THEY SAW GRINDING OF BRAKES, SANDING 10 OF BRAKES, HAND SANDING, BLOW OUT OF BRAKE DRUMS. THEY 11 MEASURED THE AIR THAT NO ONE SAW AND THEN DOUGLAS 12 DECIDED THIS IS SAFE; RIGHT? 13 A YES. 14 Q AND THEY DIDN'T TELL ANYBODY ABOUT IT; RIGHT? 15 A YES. THEY WERE FOLLOWING THE FORMAT OF THE 16 SURVEY THAT WE'VE SEEN. THEY WERE FOLLOWING THE 17 REQUIREMENTS OF THE STANDARD AND COLLECTING THE DATA. 18 Q AND THAT DECISION WAS MADE, YOU SHOWED US, BY 19 THE VERY TIPPY TOP, EXECUTIVES AND DIRECTORS OF SAFETY 20 AT DOUGLAS; RIGHT? 21 A CORRECT. 22 Q DO YOU THINK THAT WAS REASONABLE? 23 A YES, I DO. 24 Q THOSE ARE ALL MY QUESTIONS? 25 THE COURT: ANYTHING FURTHER? 26 MR. KARREN: VERY BRIEFLY, YOUR HONOR. THANK 27 YOU. 28
Page 171 1 I WAS THERE AND I SAW THE SHREDDING? 2 A NO, I'M NOT. 3 Q DO YOU KNOW WHETHER -- WELL, LET ME ASK YOU A 4 DIFFERENT QUESTION. I'M SORRY. I'M ALMOST DONE. IT'S 5 YOUR TESTIMONY THAT SOMEONE FROM DOUGLAS WENT INTO 6 EVERY SINGLE BUILDING PER THOSE 1972 MEMOS THAT WE SAW 7 RIGHT? 8 A YES. THAT WOULD BE THE EXPECTATION OUT OF 9 THOSE MEMOS. 10 Q AND SO THEY WOULD HAVE GONE INTO BUILDING 11 NUMBER 11? 12 A CORRECT. 13 Q AND THEY WOULD HAVE MEASURED THE AIR? 14 A CORRECT. 15 Q ALL RIGHT. AND I THINK YOU ALSO TESTIFIED 16 THAT MAY BE SOME OF THE EMPLOYEES DIDN'T NOTICE THE AIR 17 MONITORING HAPPENING? 18 A THAT'S POSSIBLE. 19 Q OKAY. BUT THAT'S NOT POSSIBLE IN BUILDING 11; 20 RIGHT? 21 A I DON'T SEE WHY IT WOULDN'T BE. 22 Q WELL, BECAUSE IT WAS A 24-HOUR SHIFT? 23 A CORRECT. 24 Q AND SO THERE WERE WORKERS THERE AT ALL TIMES; 25 RIGHT? 26 A CORRECT. 27 Q SO THERE WAS NO OPPORTUNITY TO GO INTO 28 BUILDING NUMBER 11 AFTER HOURS AND MEASURE THE AIR AND	Page 173 1 RECROSS-EXAMINATION 2 BY MR. KARREN: 3 Q MR. HOLLENBECK, VERY BRIEFLY, SIR. 4 PRIOR TO OSHA, THE LAWS THAT MR. ADAMS WAS 5 REFERRING TO WALSH-HEALEY IN CALIFORNIA, DO YOU KNOW 6 WHAT THE LEVEL OF EXPOSURE WAS FOR THOSE LAWS THAT WAS 7 THE MAXIMUM PERMISSIBLE EXPOSURE LEVEL? 8 A THE SPECIFIC NUMBERS, NO, BUT I DO RECALL IT 9 WAS SUBSTANTIALLY HIGHER THAN WHAT THAT OSHA REQUIRED 10 WAS. 11 Q WOULD IT SURPRISE YOU IF IT WAS 5 MILLION 12 PARTICLES PER CUBIC FOOT? 13 A NO. 14 Q SIR, DO YOU KNOW WHETHER A COMPANY THAT 15 DOESN'T USE ASBESTOS FIBER IN ITS PRODUCT COULD REACH 16 LEVELS OF 5 MILLION PARTICLES PER CUBIC FOOT IN ITS 17 WORKPLACE? 18 A VERY UNLIKELY. THAT KIND OF NUMBER, IT WOULD 19 BE, TYPICALLY, IN A MINING OPERATION, IN A MILLING 20 OPERATION INVOLVING ASBESTOS. 21 Q AND, SIR, WOULD IT EVEN -- IN FACT, WOULD YOU 22 BE SURPRISED IF THE PLAINTIFFS' OWN EXPERT IN THIS 23 CASE, DR. LONGO, SAID THAT THE ACTIVITIES THAT HE 24 DESCRIBED WOULD NOT REACH 5 MILLION PARTICLES PER CUBIC 25 FOOT? 26 A CORRECT. I WOULD NOT BE SURPRISED. 27 Q THANK YOU, SIR. 28 MR. KARREN: FURTHER QUESTIONS, YOUR HONOR.

Page 174 1 THE COURT: ALL RIGHT. MAY THIS WITNESS BE 2 EXCUSED? 3 MR. KARREN: PLEASE, YOUR HONOR. 4 MR. ADAMS: YES. 5 THE COURT: ALL RIGHT. THANK YOU VERY MUCH, 6 SIR, FOR COMING IN. I APPRECIATE IT. YOU'RE FREE TO 7 GO. ALL RIGHT. PLAINTIFF, WHAT'S NEXT. 8 MS. DEAN: YOUR HONOR, AT THIS TIME I WOULD 9 LIKE TO CALL DR. STEVEN HABER TO THE STAND. 10 THE COURT: ALL RIGHT. DR. HABER, IF YOU 11 WOULD COME ON UP. TELL YOU WHAT, THAT'S A GOOD SPOT 12 RIGHT THERE. PLEASE FOLLOW THE CLERK'S DIRECTION. 13 14 STEVEN HABER, M.D. 15 HAVING BEEN PREVIOUSLY SWORN AS A WITNESS, 16 TESTIFIED AS FOLLOWS: 17 18 THE WITNESS: I DO. 19 THE JUDICIAL ASSISTANT: PLEASE STATE AND 20 SPELL YOUR LAST NAME FOR THE RECORD. 21 THE WITNESS: STEVEN HABER, DR. STEVEN HABER, 22 S-T-E-V-E-N, H-A-B-E-R. 23 THE JUDICIAL ASSISTANT: THANK YOU. YOU MAY 24 BE SEATED. 25 THE COURT: BE CAREFUL GETTING IN AND OUT OF 26 THAT CHAIR. IT'S A TIGHT FIT. ALL RIGHT. MS. DEAN, 27 WHENEVER YOU'RE READY, YOU MAY INQUIRE. 28 LET ME JUST TELL THE JURY, I'M GOING TO CUT	Page 176 1 IN OTHER WORDS. 2 (PAUSE IN THE PROCEEDINGS.) 3 THE COURT: DR. HABER, WOULD YOU KINDLY HAVE A 4 SEAT IN THE GALLERY. MR. HOLLENBECK, COME ON BACK UP. 5 I THINK THERE'S A FEW QUESTIONS THAT DID NOT GET ASKED 6 OF YOU. I APPRECIATE YOU COMING BACK. YOU PROBABLY 7 THOUGHT YOU WERE ON YOUR WAY HOME. OKAY. LET US, 8 RESPECTFULLY, LET ME ASK YOU, GET RIGHT TO IT, 9 MR. ADAMS AND MR. KARREN, PLEASE. 10 MR. ADAMS: YES, YOUR HONOR. 11 THE COURT: ALL RIGHT. SO MR. HOLLENBECK IS 12 BACK ON THE STAND, STILL UNDER OATH. GO AHEAD, 13 MR. ADAMS. 14 FURTHER DIRECT EXAMINATION 15 BY MR. ADAMS: 16 Q MR. HOLLENBECK, WHAT TOOL WAS USED TO MEASURE 17 THE AIR? 18 A TYPICALLY, IT WOULD BE AN OPEN-FACE MEMBRANE 19 ATTACHED TO A SMALL PUMP THAT WOULD BE CLIPPED ON TO 20 THEIR BELT. IT COULD BE A CASSETTE WITH A -- OR A 21 LITTLE MEMBRANE FILTER WOULD ATTACHED TO THE LAPEL. 22 SIMILARLY, IF IT WAS AN AREA SAMPLE, IT WOULD BE THE 23 PUMP SETTING IN A GENERAL WORK AREA TO GATHER THAT 24 INFORMATION, DATA. 25 Q AND DOUGLAS HAD THAT KIND OF EQUIPMENT AT THAT 26 TIME? 27 A YES, IT DID. 28 Q OKAY. DO YOU KNOW WHERE THAT EQUIPMENT WENT?
Page 175 1 YOU LOSE AT 12:15 TODAY. I'VE GOT TO WORK WITH THESE 2 LAWYERS. 1:15 TODAY. I DON'T HAVE THAT MACHINE TO DO 3 IT THE OTHER WAY AROUND. 4 MS. DEAN: YOUR HONOR, I DON'T KNOW IF THERE 5 IS ANYTHING WE CAN DO ABOUT THIS, BUT I DON'T KNOW IF 6 THE QUESTIONS THAT WERE ASKED -- 7 THE COURT: I KNOW. I WAS JUST THINKING THE 8 SAME THING. DO ME A FAVOR, GO GET MR. HOLLENBECK BACK. 9 GO GET MR. HOLLENBECK BACK, BECAUSE I HAD CROSSED MY 10 FINGERS INTENDING TO DO THIS. 11 MS. BIVENS, WOULD YOU GET HIS QUESTION FROM 12 JUROR NUMBER 7 AND LET ME SEE IT? IS THERE MORE THAN 13 ONE? YEAH. COLLECT THEM ALL UP, AND LET ME SEE THEM, 14 PLEASE. 15 THE WITNESS: SHOULD I -- 16 THE COURT: SORRY, DR. HABER. NO, YOU'RE 17 FINE. MR. HOLLENBECK, I MAY HAVE LET YOU GO TOO SOON. 18 I'M NOT SURE. IF YOU WOULD BE PATIENT FOR ONE MOMENT. 19 OKAY. HERE'S WHAT I WANT TO DO. I WOULD 20 LIKE -- MR. HOLLENBECK, JUST HAVE A SEAT IN THAT FRONT 21 BENCH THERE. MAKE YOURSELF COMFORTABLE. I WANT TO 22 SHARE THESE FOUR QUESTIONS WITH PLAINTIFFS' COUNSEL AND 23 DEFENSE COUNSEL. WE'RE GOING TO DO IT IN REAL TIME AND 24 THEN I WANT TO FIND OUT IF ANYBODY WANTS TO ASK ANY 25 FURTHER QUESTIONS OF MR. HOLLENBECK, OKAY. SO JUST 26 BEAR WITH US, FOLKS. I'M GOING TO PUT THEM HERE, 27 PLEASE SOTTO VOCE LOOK AT THOSE, AND TELL ME WHEN YOUR 28 DONE WITH THEM. SOTTO VOCE MEANS LOW VOICE, QUIETLY,	Page 177 1 WAS THAT DESTROYED, KEPT? 2 A I DON'T KNOW. 3 Q OKAY. YOU DON'T KNOW WHERE IT IS TODAY? 4 A WELL, THE FACILITY IS GONE SO PRESUMABLY IT 5 WAS ACCESSED OR DISPOSED OF OR POSSIBLY DONATED TO THE 6 UNIVERSITIES OR SOMETHING OF THAT SORT. 7 Q WAS A COPY OF THE SURVEYS THAT DOUGLAS -- LET 8 ME JUST ASK GENERALLY. WAS A COPY OF THE SURVEYS 9 INDICATED IN THOSE MEMOS PROVIDED TO OSHA? 10 A NO. THEY WOULD NOT HAVE BEEN. THERE WAS NO 11 REQUIREMENT TO DO THAT, NO. THEY WOULD NOT HAVE BEEN 12 SUBMITTED TO OSHA. 13 Q WAS A COPY OF THE SURVEY IN BUILDING 11 14 PROVIDE TO OSHA? 15 A NO, IT WAS NOT. 16 Q I THINK THE QUESTION THAT THREE SEPARATE 17 PEOPLE ASKED WAS, HOW COME THERE ARE SOME DOCUMENTS 18 FROM THIS TIME PERIOD THAT STILL EXISTS, SOME DOUGLAS 19 DOCUMENTS, BUT ALL THE SURVEY DOCUMENTS ARE GONE. CAN 20 YOU EXPLAIN THAT? 21 A THAT'S A GOOD QUESTION. SO WE SUSPECT THAT 22 THE DOCUMENTS MR. KARREN SHOWED WERE WITHIN SOMEBODY'S 23 PERSONAL FILES. SURVEY DOCUMENTS TYPICALLY ARE MULTI 24 PAGES, BINDERS, LARGE COLLECTION SO IT'S CONCEIVABLE 25 THOSE ENDED UP, AS THEY SHOULD HAVE, IN THE RECORDS 26 RETENTION PROCESS. BUT WHY THESE TWO OR THREE 27 INDIVIDUAL MEMOS, WE JUST SUSPECT SOME EMPLOYEE KEPT 28 THOSE FOR SOME PURPOSE. MAYBE IT WAS HISTORICAL IN

Page 178 1 THAT IT WAS FROM MCDONNELL DOUGLAS. I DON'T KNOW BUT 2 IT'S A QUESTION THAT WE HAD, AS WELL, TO UNDERSTAND HOW 3 WE HAD THESE. BUT QUITE FRANKLY, WE'RE GLAD WE HAD 4 THEM IT BECAUSE THEY DO KIND OF ESTABLISH THE 5 COMMITMENT WE HAD AT THAT TIME TO ADDRESS THAT PROBLEM. 6 Q DO YOU KNOW WHICH EMPLOYEES SAVED THEM? 7 A WE DO NOT, NO. 8 Q OKAY. YOUR TESTIMONY WAS THAT DOUGLAS KEPT 9 RECORDS THAT WERE IMPORTANT -- OR EXCUSE ME. THE GUIDE 10 FOR DOUGLAS IN KEEPING RECORDS IS THAT IT HAD A USEFUL 11 PURPOSE, CORRECT? 12 A CORRECT. 13 Q ARE DOCUMENTS ABOUT EMPLOYEE HEALTH AND 14 SAFETY, DO THEY HAVE A USEFUL PURPOSE? 15 A MANY CASES THEY DO. AT SOME POINT, THEY -- 16 REGULATIONS CHANGE. THE WORK ENVIRONMENT CHANGES. 17 EMPLOYEES CHANGE LOCATIONS, SO FREQUENTLY, AFTER A 18 PERIOD OF YEARS, THEY DON'T HAVE A LOT OF USE. 19 Q SORRY. LAST QUESTION. WHAT IS THE DIFFERENCE 20 BETWEEN THE CONTENTS, THE SUBJECT, OF THE DOCUMENTS 21 THAT WE VIEWED VERSUS THE DOCUMENTS THAT -- LET ME ASK 22 A BETTER QUESTION. 23 ISN'T THE CONTENT OF THE DOCUMENTS WE REVIEWED 24 AND THE DOCUMENTS DESTROYED THE SAME CONTENT? 25 A NO. THE CONTENTS THAT WERE SENT TO RECORDS 26 RETENTION WOULD HAVE BEEN THE RESULTS OF THOSE MEMOS, 27 SO THAT WAS KIND OF THE ACTIVATING DOCUMENTS TO GO OUT 28 AND DO THESE SURVEYS. SO WHY THE SURVEYS WOULD HAVE	Page 180 1 SUBMITTED TO OSHA. SIR, WERE THEY REQUIRED TO BE 2 SUBMITTED TO OSHA, PARTICULARLY IF THEY SHOWED LEVELS 3 THAT WERE BELOW THE PERMISSIBLE LEVELS? 4 A THAT IS CORRECT. I THINK I DID STATE THAT 5 THERE WAS NO REQUIREMENT TO SUBMIT THOSE TO OSHA. 6 Q OKAY. AND IN FACT, THE STATUTE -- THE 7 REGULATION, RATHER, SAID, "THEY SHALL BE KEPT AND SHALL 8 BE MADE AVAILABLE UPON REQUEST FROM OSHA," CORRECT, 9 SIR? 10 A CORRECT. 11 Q OKAY. THOSE ARE ALL THE QUESTIONS I HAVE. 12 MR. KARREN: THANK YOU, YOUR HONOR. 13 THE COURT: LET ME JUST MAKE SURE. ANYBODY 14 ELSE HAVE FOLLOW-UP? HEARING NONE. ALL RIGHT. 15 MR. HOLLENBECK, AT THIS TIME YOU REALLY CAN GO AND WALK 16 FAST SO THAT NOBODY -- THAT I DON'T CHANGE MY MIND 17 AGAIN. 18 OKAY. AND, DR. HABER, IF YOU WOULD COME BACK 19 UP. AND THERE WE GO. WHEREVER YOU'RE READY, MS. DEAN. 20 21 DIRECT EXAMINATION 22 BY MS. DEAN: 23 Q GOOD AFTERNOON. DR. HABER, CAN YOU HEAR ME 24 OKAY? 25 A YES, MA'AM. 26 Q COULD YOU START OFF BY INTRODUCING YOURSELF? 27 A MY NAME IS DR. STEVEN HABER. 28 Q EVERYBODY ABLE TO HERE OKAY? OKAY. ARE YOU A
Page 179 1 BEEN DONE AND COLLECTED IN A FASHION FOR MR. LEVENS TO 2 REVIEW. 3 Q BUT THEY ALL HAVE TO DO WITH ASBESTOS SURVEYS, 4 MONITORING, THAT KIND OF THING. IT'S THE SAME TOPIC; 5 RIGHT? 6 A CORRECT. 7 Q AND SO WHY WOULD THIS UNKNOWN PERSON, WHO KEPT 8 SOME OF THEM, HAVE THROWN ALL THE REST AWAY IF THEY ARE 9 ALL ON THE SAME TOPIC? 10 A AGAIN, WE DON'T KNOW WHERE THOSE MEMOS CAME 11 FROM. PRESUMABLY, MAYBE THAT'S ALL THEY WERE INVOLVED 12 WITH WAS THAT MEMO. IT COULD HAVE BEEN A 13 ADMINISTRATIVE PERSON OR COULD HAVE BEEN SOMEBODY IN AN 14 UNRELATED DEPARTMENT SO WE DON'T KNOW. AGAIN, 15 TYPICALLY, EVEN THOSE KIND OF MEMOS, AFTER A PERIOD OF 16 TIME, WOULD HAVE BEEN SENT TO RECORDS RETENTION. 17 Q THAT'S ALL I HAVE. 18 THE COURT: MR. KARREN, ANY FOLLOW-UP. 19 MR. KARREN: YES, YOUR HONOR. THANK YOU. BUT 20 VERY BRIEFLY. 21 THE COURT: OKAY. 22 23 FURTHER CROSS-EXAMINATION 24 BY MR. KARREN: 25 Q MR. HOLLENBECK, I DO WANT TO JUST CLARIFY 26 THAT -- BECAUSE THERE WAS A QUESTION ABOUT WHETHER -- 27 LET ME MAKE SURE I HAVE IT CORRECT, SIR. 28 WHETHER THE COPIES OF THE SURVEYS WERE	Page 181 1 MEDICAL DOCTOR? 2 A YES, I AM. 3 Q THERE'S A LOT OF NUMBERS BEHIND YOUR NAME UP 4 THERE, WHAT DO THOSE MEANS? OH, NOT NUMBERS, LETTERS. 5 A M.D. STANDS FOR MEDICAL DOCTOR. FACP IS A 6 FELLOW OF THE AMERICAN COLLEGE OF PHYSICIANS, AND FCCP 7 IS FELLOW OF THE AMERICAN COLLEGE OF CHEST PHYSICIAN. 8 Q HOW LONG HAVE YOU BEEN A MEDICAL DOCTOR? 9 A FOR 31 YEARS NOW. 10 Q AND IT SAYS UNDER THERE, "RESPIRATORY MEDICINE 11 CONSULTANT," WHAT'S THAT -- WHAT IS THAT? 12 A THAT'S THE COMPANY WHERE I WORK FOR CURRENTLY. 13 Q AND WHAT KIND OF WORK DO YOU DO? 14 A PULMONARY MEDICINE AND INTERNAL MEDICINE. 15 Q DO YOU REGULARLY SEE PATIENTS? 16 A YES, MA'AM. 17 Q YOU'VE BEEN ABLE TO BE HERE THE LAST COUPLE OF 18 DAYS. NORMALLY, IF YOUR VACATION HADN'T BEEN CANCELED, 19 WOULD YOU HAVE TO BE IN HOUSTON SEEING PATIENTS? 20 A YES. 21 Q I WANT TO GO THROUGH A FEW OF YOUR 22 QUALIFICATIONS. WHAT IS THE AMERICAN BOARD OF INTERNAL 23 MEDICINE? 24 A AMERICAN BOARD OF INTERNAL MEDICINE IS A 25 BRANCH OF THE AMERICAN BOARD OF MEDICAL SPECIALTIES AND 26 THEY DO BOARD CERTIFICATION. BOARD CERTIFICATION MEANS 27 THAT A POSITION HAS HAD TRAINING IN A CERTAIN AREA, AND 28 THEN IS RECOMMENDED AFTER THE TRAINING TO SIT FOR AN

Page 182 1 EXAMINATION. AND I'VE BEEN BOARD CERTIFIED IN INTERNAL 2 MEDICINE AND PULMONARY DISEASES THROUGH THE AMERICAN 3 BOARD OF INTERNAL MEDICINE. 4 Q AND YOU PROVIDED US YOUR RESUME THAT GOES 5 THROUGH YOUR EDUCATION, PUBLICATIONS, AND THINGS OF 6 THAT NATURE, CORRECT? 7 A YES, I DO. 8 Q CAN YOU JUST BRIEFLY GO THROUGH YOUR EDUCATION 9 BACKGROUND? 10 A SURE. SO AFTER GRADUATING THERE, I WENT TO 11 THE UNIVERSITY OF TEXAS AT AUSTIN, GRADUATING IN 1981. 12 FOLLOWING THAT, I WENT TO A MEDICAL SCHOOL AT THE 13 UNIVERSITY OF TEXAS HEALTH SCIENCE CENTER IN HOUSTON. 14 GRADUATING MEDICAL SCHOOL IN 1986. AFTER THAT, I DID A 15 ONE YEAR INTERNSHIP IN INTERNAL MEDICINE, AT THE BAYLOR 16 COLLEGE OF MEDICINE. AND THEN DID A TWO-YEAR RESIDENCY 17 IN INTERNAL MEDICINE. AND THEN I DID A TWO-YEAR 18 FELLOWSHIP IN PULMONARY DISEASES. AND THEN, SINCE 19 1991, I'VE BEEN IN PRIVATE PRACTICE IN HOUSTON. 20 Q AS A TREATING PHYSICIAN IN PRIVATE PRACTICE, 21 HAVE YOU SEEN THOUSANDS OF PATIENTS WITH LUNG DISEASE? 22 A PROBABLY, TENS OF THOUSANDS. 23 Q HAVE YOU, SPECIFICALLY, DEALT WITH 24 ASBESTOS-RELATED DISEASES DAY IN AND DAY OUT THROUGHOUT 25 YOUR CAREER? 26 A YES, MA'AM. 27 Q WE ALREADY MENTIONED THE BOARD CERTIFICATION 28 PROCESS, SO I WANT TO TALK ABOUT A VERY SPECIFIC THINGS	Page 184 1 A YES, I READ X-RAYS EVERY DAY, LOTS OF THEM. 2 Q IF SOMEONE SAID, "YOU WOULD EXPECT TO SEE 3 ASBESTOS ON A CHEST X-RAY," DOES THAT MAKE SENSE TO 4 YOU? 5 A NO. ASBESTOS IS NOT VISIBLE ON X-RAYS, NOT 6 EVEN VISIBLE REALLY WITHOUT A MICROSCOPE. NO, IT'S NOT 7 VISIBLE ON A CHEST X-RAY. 8 Q OUTSIDE OF YOUR CONSULTING BUSINESS OR 9 PRACTICE WITH PATIENTS THAT YOU SEE OVER AND OVER 10 AGAIN, DO YOU HAVE HOSPITAL PRIVILEGES? 11 A YES, MA'AM. 12 Q ARE THESE SOME OF THE HOSPITALS THAT YOU'VE 13 HAD PRIVILEGES IN? 14 A YES, MA'AM. 15 Q GIVE US A LITTLE CONTEXT ABOUT WHAT 16 INVOLVEMENT YOU HAVE WITH PATIENTS AND HOSPITAL? 17 A SO I SEE PATIENTS IN THE OFFICE EVERY DAY. 18 AND I DO CONSULTS FOR AREA PHYSICIANS. AND WHEN I GET 19 CONSULTS TO GO SEE PATIENTS IN THE HOSPITAL, I ALSO -- 20 WHEN MY OWN PATIENTS GET SICK, I WILL SEE THEM IN THE 21 HOSPITAL. I DO MEDICAL PROCEDURES THAT I WILL DO, 22 TYPICALLY, IN THE HOSPITAL. AND THAT'S -- I DO THAT 23 PRETTY MUCH EVERY DAY. 24 Q NOW, RITA CHAPMAN TREATED AT THE MAYO CLINIC, 25 WERE YOU EVER HER DOCTOR? 26 A I WAS NOT. 27 Q HAVE YOU HAD AN OPPORTUNITY TO REVIEW HER 28 MEDICAL RECORDS?
Page 183 1 THAT YOU HAVE. THE JURY HASN'T HEARD ABOUT A B READER. 2 FIRST OF ALL, ARE YOU A B READER? 3 A YES, MA'AM. 4 Q SECOND, DO MOST PULMONOLOGIST NOT HAVE THIS 5 EXTRA CERTIFICATION? 6 A CORRECT. 7 Q TELL US WHAT A B READER IS? 8 A SO NIOSH ALONG IN CONJUNCTION WITH THE WORLD 9 HEALTH ORGANIZATION AND THE INTERNATIONAL LABOR 10 ORGANIZATION, ILO. BACK -- GOING BACK NOW, SINCE IN 11 THE 70S, SET UP A PROGRAM FOR PHYSICIANS TO BE 12 RECOGNIZED AS -- AND YOU HAVE TO PASS AN EXAMINATION TO 13 READ CHEST X-RAYS RELATED TO DUST DISEASES OF THE LUNG, 14 PNEUMOCONIOSES, WHICH ASBESTOSIS IS ONE. 15 THE PROGRAM OVER THE YEARS HAS EVOLVED AND 16 DEVELOPED, AND NOW, WE USE X-RAY, WE LOOK AT X-RAY'S, 17 BOTH ON OLD TIMELY FILM AS WELL AS, ON COMPUTERS, BUT 18 IT IS A PROGRAM THAT THE "B" STANDS FOR BLANK LUNG. IT 19 ACTUALLY STARTED IN WEST VIRGINIA. WHERE THE MINORS 20 WORKING IN COAL, WE WERE GETTING BLANK LUNG AND SO EVEN 21 OUR PROBLEM TODAY. SO THAT'S WHERE THE "B" STANDS FOR, 22 BUT IT INVOLVES READING X-RAYS, AND YOU'RE CERTIFIED 23 THROUGH NIOSH TO READ X-RAYS RELATED TO DUST DISEASES 24 OF THE LUNG LIKE ASBESTOS, OR SILICATE, OR COAL. 25 Q IN TERMS OF WHAT YOU WOULD EXPECT IN A CHEST 26 X-RAY, IS THAT SOMETHING YOU HAVE BOOTS ON THE GROUND, 27 DECADES OF EXPERIENCE ON, AND WITH CERTIFICATIONS THAT 28 HAVE BEEN PROVED OVER AND OVER AND OVER AGAIN?	Page 185 1 A I DID. 2 Q AND IN TERMS OF YOUR BACKGROUND, ARE THE 3 VARIOUS DISEASES THAT ASBESTOS CAUSES, ALL DIFFERENT 4 DISEASES THAT YOU HAVE FIRSTHAND, NOTHING TO DO WITH 5 LITIGATION, TREATED HUMAN PATIENTS THROUGHOUT YOUR 6 CAREER? 7 A YES. 8 Q OKAY. ONE OF THE THINGS THAT YOU REFERENCED 9 IN YOUR RESUME IS THAT YOU WERE PART OF THIS DISASTER 10 PREPAREDNESS & RESPONSE TASK FORCE FOR HARRIS COUNTY, 11 COULD YOU TELL US A LITTLE BIT ABOUT THAT? 12 A YES. SO HARRIS COUNTY, WHICH IS THE AREA 13 SURROUNDING HOUSTON, WE'VE HAD A COMMITTEE OF 14 PHYSICIANS, OF VARIETY, OF DIFFERENT TYPES OF 15 PHYSICIANS, FROM PULMONOLOGISTS, CARDIOLOGISTS, 16 SURGEONS, ER DOCTORS, ALSO, AMBULANCE AND FIRE. 17 THERE'S A NUMBER OF DIFFERENT GROUPS OF PHYSICIANS AND 18 NONPHYSICIANS THAT SIT ON THIS COMMITTEE. AND WE 19 BASICALLY MEET AND DISCUSS ISSUES THAT HAVE TO DO WITH 20 EITHER MANMADE OR NATURAL DISASTERS. 21 SO EVERYTHING FROM, RECENTLY HERE, COVID, TO 22 WHETHER THERE COULD BE A TAX OR DISEASES THAT SUDDENLY 23 POPUP, OR ACCIDENTS, OR FIRES, OR RADIATION, OR 24 WHATEVER IT WOULD BE. WE HAVE A COMMITTEE THAT DISCUSS 25 PROTOCOLS, SO THAT THE HOUSTON -- SO THAT HOUSTON AND 26 THE SURROUNDING AREAS ARE PREPARED TO DEAL WITH ANY 27 SORT OF DISASTER THAT WOULD HIT OUR AREA. 28 Q HAVE YOU BEEN INVOLVED WITH THAT TASK FORCE

Page 186 1 FOR YEARS? 2 A YES, MA'AM. 3 Q OKAY. I PUT UP HERE DIFFERENT GROUPS THAT 4 WERE IDENTIFIED IN YOUR CURRICULUM VITAE, COULD YOU 5 TELL US A LITTLE BIT ABOUT YOUR AFFILIATION WITH EACH 6 AND WHAT ARE THEIR PURPOSES? 7 A SURE. SO THE TOP ONE THERE, THE AMERICAN 8 COLLEGE OF PHYSICIANS, THAT IS THE LARGEST GROUP OF 9 PHYSICIANS THAT ARE INTERNAL MEDICINE DOCTORS. SO 10 DOCTORS THAT TAKE CARE OF ALL YOUR MEDICAL PROBLEMS 11 FROM HIGH BLOOD PRESSURE TO DIABETES, WHATEVER. AND 12 I'M A FELLOW OF THAT WHICH IS A CERTIFICATION OF 13 EXCELLENCE IN THE AMERICAN COLLEGE OF PHYSICIANS. 14 THE AMERICAN COLLEGE OF CHEST PHYSICIANS IS 15 SIMILAR TO COLLEGE, BUT THIS IS -- PHYSICIANS RELATED 16 TO DISEASES OF THE CHEST. SO IT'S PRETTY MUCH 17 PULMONOLOGISTS, RADIOLOGISTS, CARDIOLOGISTS, 18 CARDIOTHORACIC SURGEONS, DOCTORS WHO SPECIALIZE IN 19 DISEASES OF THE CHEST, AND I'M ALSO A FELLOW OF THAT 20 COLLEGE. I'M A MEMBER OF THE AMERICAN COLLEGE OF 21 OCCUPATIONAL AND ENVIRONMENTAL MEDICINE, THAT'S A GROUP 22 OF PHYSICIANS THAT DEDICATE THEIR CAREER TO DISEASES 23 RELATED TO OCCUPATIONAL AND ENVIRONMENTAL DISEASES AND 24 MEDICINE. 25 Q BEFORE YOU MOVE TO THE NEXT ONE, AND I 26 APOLOGIZE FOR INTERRUPTING. BUT HAVE YOU, FIRST HAND, 27 BEEN INVOLVED THROUGHOUT YOUR CAREER FOR DECADES, AND 28 NOT ONLY THE DIAGNOSES OF THE DISEASE, BUT LOOKING AT	Page 188 1 CIRCUMSTANCES UNDER WHICH THE DOCUMENT ADMITTED IN 2 EVIDENCE THROUGH, I GUESS, A PARTY AFFILIATED WITNESS, 3 IS ADMISSIBLE OR NOT ADMISSIBLE AGAINST OTHER PARTIES? 4 AND, BOEING AND COLGATE -- I'M SORRY, AND AVON, AND 5 PERHAPS, COLGATE, HAVE EXPRESSED A CATEGORICAL VIEW AND 6 THE PLAINTIFFS -- PLAINTIFFS HAD ESTABLISHED A 7 CATEGORICAL VIEW, NAMELY, THE DEFENSE CATEGORICAL VIEW 8 IS ESSENTIALLY NEVER, AND THE PLAINTIFF CATEGORICAL 9 VIEW IS ESSENTIALLY ALWAYS, AND I'M OF THE VIEW TO BOTH 10 SIDES ARE WRONG. IT'S NOT THAT SIMPLE. 11 I THINK IT COMES DOWN TO THE PURPOSE FOR WHICH 12 THE DOCUMENT HAS BEEN ADMITTED. AND SOME OTHER 13 PRACTICAL THINGS AS WELL. SO WHEN WE SAY, IN A CASE 14 LIKE THIS, THAT SOMETHING IS BEING OFFERED FOR NOTICE, 15 THAT'S SHORTHAND, RIGHT? WHAT IT'S SHORTHAND FOR IS, 16 EVIDENCE TOUCHING AND CONCERNING THE QUESTION, WHETHER 17 A PRODUCT OR AN ACTIVITY -- LET ME JUST GO WITH 18 PRODUCT. HAD A POTENTIAL RISK THAT WAS KNOWN OR 19 KNOWABLE IN LIGHT OF THE SCIENTIFIC AND MEDICAL 20 KNOWLEDGE THAT WAS GENERALLY ACCEPTED IN THE SCIENTIFIC 21 COMMUNITY AT THE TIME OF THE SALE OF THE PRODUCT. 22 AND THE REASON NOTICED OF THOSE RISKS SO KNOWN 23 IS IMPORTANT OR, AT LEAST, POTENTIALLY IMPORTANT IS, 24 THAT IT INFORMS THE QUESTION ON A NEGLIGENCE THEORY 25 WHETHER THE DEFENDANT ACTED REASONABLY OR UNREASONABLY 26 WITH RESPECT TO STRICT LIABILITY, WHETHER A WARNING WAS 27 OR WAS NOT ADEQUATE, IRRESPECTIVE OF REASONABLENESS OF 28 CONDUCT.
Page 187 1 OCCUPATIONAL AND ENVIRONMENTAL MEDICINES TO UNDERSTAND 2 THE CAUSE AND EFFECT BETWEEN A PERSON'S SICKNESS AND 3 WHAT THEY'VE BEEN AROUND? 4 A YES. 5 Q OKAY. 6 THE COURT: LET'S STOP THERE FOR THE DAY. WE 7 DIDN'T GET VERY FAR DR. HABER, BUT I UNDERSTAND YOU MAY 8 COME BACK TOMORROW? 9 THE WITNESS: YES. 10 THE COURT: ALL RIGHT. THAT'S THE PLAN. 11 LADIES AND GENTLEMEN, LET ME REMIND YOU, YOU'RE NOT 12 HERE ON FRIDAY. TOMORROW IS YOUR FRIDAY, EVEN THOUGH 13 IT'S THURSDAY, BUT YOU WILL BE HERE NEXT MONDAY. WHAT 14 ELSE DO I NEED TO TELL YOU? NOTHING. LEAVE YOUR 15 NOTEBOOKS, STANDARD ADMONITIONS, PLEASE BE HERE ON 16 TIME, YOU'RE DOING GREAT IN THAT REGARD. THE PARTIES 17 AND I THANK YOU SO MUCH. YOU ARE EXCUSED. GOODBYE. 18 COUNSEL REMAIN, PLEASE, FOR A MOMENT. 19 ALL RIGHT. HAVE A SEAT. WE'RE OUTSIDE THE 20 PRESENCE OF THE JURY. COUNSEL ONLY. 21 (JURORS EXIT THE COURTROOM.) 22 THE COURT: MS. HANSEN, ARE YOU STILL HERE? 23 AND, MR. MULARCZYK, ARE YOU STILL HERE? ALL 24 RIGHT. AND, MR. ADAMS? 25 MR. ADAMS: YES, STILL HERE. 26 THE COURT: SO I'M READY TO BITE OFF THE 27 QUESTION AT HAND, AND I'M GOING TO TELL YOU WHAT I 28 THINK. THE QUESTION AT HAND IS, WHAT ARE THE	Page 189 1 I AM OF VIEW, THE COURT IS OF THE VIEW, THAT 2 DEPENDING ON THE RISK, DEPENDING ON THE TIME FRAME, 3 DEPENDING ON THE DOCUMENT, IT MAY BE THAT THAT DOCUMENT 4 IS ADMISSIBLE TO ESTABLISH KNOWN OR KNOWABLE RISKS 5 WITHOUT BENEFIT OF EXPERT TESTIMONY. AND IN OTHER 6 CIRCUMSTANCES, IT MAY REQUIRE EXPERT TESTIMONY. AND IT 7 COMES DOWN TO THE QUESTION OF WHETHER THE QUESTION, 8 WHETHER THE ISSUE IS ONE WITHIN THE COMMON EXPERIENCE 9 OF LAYPERSONS OR REQUIRES SPECIALIZED KNOWLEDGE, 10 TRAINING, AND EXPERIENCE. 11 BY WAY OF EXAMPLE, I SUSPECT THAT A DOCUMENT 12 IN 2022 IDENTIFYING HEART DISEASE AS A KNOWN RISK OF 13 CIGARETTE SMOKING, GENERALLY, AS A GENERAL PROPOSITION, 14 PROBABLY DOES NOT NEED EXPERT TESTIMONY. TO BE 15 RECEIVED FOR THE PURPOSE OF ESTABLISHING KNOWN OR 16 KNOWABLE RISKS AS OF 2022. BUT KNOWN OR KNOWABLE RISKS 17 AS OF 1938 PROBABLY DOES, ON THAT VERY SAME QUESTION. 18 OKAY. MOVING ON WITH MY THOUGHTS. 19 I THINK THAT A DOCUMENT IN THE POSSESSION OF A 20 PARTY AND/OR CREATED BY A PARTY, GENERALLY CAN BE, AND 21 GENERALLY WILL BE, RECEIVED FOR THE PURPOSE OF 22 ESTABLISHING FOR THAT PARTY, WHAT THAT PARTY KNEW OR 23 COULD HAVE KNOWN. AND ARGUABLY KNEW AND SHOULD HAVE 24 KNOWN. THE QUESTION IS, CAN IT BE EXPANDED TO SHOW 25 WHAT OTHER PARTIES KNEW, OR SHOULD HAVE KNOWN, OR WHAT 26 WAS KNOWN OR KNOWABLE? 27 SO JUST TO BRING THIS FROM THE ABSTRACT TO THE 28 DISCRETE, I DON'T THINK ANYBODY WILL HAVE A PROBLEM

Page 190 1 WITH THIS PROPOSITION. IF THERE ARE DOCUMENTS DRAWN 2 FROM THE HYSTER FILES CONCERNING POTENTIAL RISKS OF 3 ASBESTOS AS OF A CERTAIN DATE, I THINK IT'S ADMISSIBLE 4 AGAINST HYSTER FOR THE JURY'S CONSIDERATION AS TO 5 WHETHER IT WAS KNOWN OR KNOWABLE AS TO HYSTER. BUT 6 IT'S NOT ONLY NOTICE FOR WHICH DOCUMENTS MIGHT COME IN 7 AGAINST OTHER PARTIES. 8 SO, FOR EXAMPLE, ON A NEGLIGENCE THEORY, IF 9 WE'VE GOT A DOCUMENT FROM A COMPANY THAT SAYS AS OF 10 DATE X, LET'S JUST SAY 1968. AS OF 1968, WE, THIS 11 COMPANY, ARE GOING TO DO ONE, TWO, THREE, FOUR, FIVE, 12 SIX, SEVEN, AND EIGHT, IN ORDER TO MITIGATE THE RISK TO 13 OUR EMPLOYEES FROM EXPOSURE TO A GIVEN AGENT, THAT MAY 14 WELL BE RELEVANT TO SHOW WHAT CONDUCT WAS FEASIBLE AND 15 REASONABLE ELSEWHERE. WHICH IS WHY I THINK THE DEFENSE 16 POSITION THAT CATEGORICALLY, A DOCUMENT FROM COMPANY A, 17 CAN NEVER BE ADMITTED AGAINST COMPANY B IS WRONG. 18 NOW, HERE'S WHERE I COME OUT ON THE DISCRETE 19 MATTERS THAT I ACTUALLY HAVE TO RULE ON. WELL, LET ME 20 JUST SAY THIS, MR. ADAMS. I DON'T AGREE WITH YOU, THAT 21 ANY NOTICE, I'LL SAY THAT DIFFERENTLY. THAT ANY 22 INFORMATION PUBLISHED, BASICALLY, ANYWHERE, IS 23 ADMISSIBLE TO SHOW WHAT WAS KNOWN OR KNOWABLE, AND THE 24 BURDEN SHIFTS TO SOMEBODY ELSE TO SHOW WHY IT WASN'T 25 KNOWN OR KNOWABLE. I KEEP USING MY CLEVELAND SUN-PRESS 26 EXAMPLE. A VERY MODEST NEWSPAPER PUBLISHED IN THE 27 EASTERN SUBURBS OF CLEVELAND. 28 WITH RESPECT TO EXHIBIT 3051 AND 3052, I'M	Page 192 1 IS RIGHT NOW. IF IT'S BEEN ADMITTED, AND I TELL THE 2 JURY, AGAINST WHOM IT'S ADMITTED, BUT THEN WHAT IF THAT 3 FOUNDATION IS LATER ESTABLISHED, THEN WHAT? I TELL 4 THEM, OH, NEVER MIND. REMEMBER THAT LIMITING 5 INSTRUCTION? I'M UNLIMITING IT. I THINK THAT IS JURY 6 CONFUSION LAND, AND I DON'T WANT TO GO THERE. I THINK 7 THE BETTER COURSE IS FOR THESE THINGS TO BE ADMITTED 8 AND THEN, FRANKLY, AT THE END OF THE EVIDENCE, SINCE I 9 DON'T KNOW WHAT'S GOING TO COME INTO THE DEFENSE CASE 10 EITHER, FOR THE LIMITING INSTRUCTION THEN TO BE GIVEN. 11 MS. HANSEN: I AGREE WITH THAT, YOUR HONOR. 12 AND I JUST WANT TO POINT OUT FOR THE RECORD, I THINK IT 13 WAS STATED THAT THIS WAS LAID WITH THE TESTIMONY OF 14 FORD'S WITNESS. I DON'T NECESSARILY AGREE WITH THAT. 15 IT WAS STIPULATED BY FORD'S COUNSEL AND THEN ADMITTED. 16 I DON'T RECALL THESE DOCUMENTS ACTUALLY EVER BEING USED 17 WITH FORD'S WITNESS IN THE TRIAL. SO I THINK THE 18 FOUNDATION AND THE HEARSAY OBJECTIONS STILL STAND AS 19 WELL. I JUST WANT TO MAKE THAT CLEAR FOR THE RECORD. 20 BUT I UNDERSTAND THE COURT'S RULING, AND I AGREE THAT 21 THE INSTRUCTION IS MORE APPROPRIATE FOR LATER. 22 THE COURT: AND YOU UNDERSTAND IF IT'S BEING 23 OFFERED FOR NOTICE, IT'S NOT HEARSAY. 24 MS. HANSEN: I UNDERSTAND THAT, TOO. THANK 25 YOU. 26 THE COURT: ALL RIGHT. SO I HAVE ONE MORE 27 THOUGHT ON ALL OF THIS WHICH IS, I THINK IT IS 28 IMPORTANT FOR THE COURT AND FOR THE PARTIES TO KNOW AT
Page 191 1 TRYING REMEMBER, THESE CAME IN -- THESE CAME IN VIA A 2 FORD PROPONENT, RIGHT? OKAY. WELL, THEY ARE CLEARLY 3 ADMISSIBLE AGAINST FORD AND NOBODY WOULD CONTEND 4 OTHERWISE. FOR WHATEVER PURPOSE THEY ARE COMING IN, 5 THEY ARE ADMISSIBLE AGAINST FORD. 6 IF THEY ARE BEING OFFERED FOR NOTICE, WHICH, 7 AGAIN, A SHORTHAND FOR THE QUESTION, WHAT WAS KNOWN OR 8 KNOWABLE IN LIGHT OF THE SCIENTIFIC AND MEDICAL 9 KNOWLEDGE THAT WAS GENERALLY ACCEPTED IN THE SCIENTIFIC 10 COMMUNITY, AT THE TIME OF THE SALE OF THE PRODUCTS, OR 11 IN THIS CASE, AT THE TIME OF THE CREATION OF THESE 12 DOCUMENTS. I SAY IT NEEDS EXPERT TESTIMONY. 13 I THINK THERE IS EXPERT TESTIMONY IS NECESSARY 14 TO ESTABLISH AS A FOUNDATION MATTER THAT THESE TOPICS 15 WERE GENERALLY ACCEPTED IN THE SCIENTIFIC COMMUNITY AT 16 THE TIME OF THE SALE OF THE PRODUCTS. AND SO FAR, THAT 17 RECORD HASN'T BEEN ESTABLISHED. SO FAR. 18 SO I AM INCLINED TO AGREE WITH BOEING THAT 19 3051 AND 3052 SHOULD NOT COME IN AGAINST IT AT THIS 20 TIME, BUT, BOEING, HERE'S THE HARDER QUESTION: WE ARE 21 NOT DONE WITH THIS TRIAL. I HAVE NO IDEA WHAT THE 22 EVIDENCE IS GOING TO SHOW, WHAT WITNESSES ARE GOING TO 23 COME IN, WHAT CONCESSIONS ARE GOING TO BE MADE BY 24 DEFENSE EXPERTS OR AFFIRMATIVE SHOWING BY PLAINTIFF 25 EXPERTS. AND IT MAY WILL BE THAT THAT FOUNDATION WILL 26 BE LAID. 27 SO THE QUESTION I AM WRESTLING WITH IS: WHEN 28 SHOULD THAT LIMITING INSTRUCTION BE GIVEN? ONE OPTION	Page 193 1 THE TIME THE DOCUMENT IS ADMITTED THAT A PARTY MAY BE 2 SEEKING A LIMITING INSTRUCTION. I DON'T WANT TO FIND 3 OUT SIX WEEKS FROM NOW THAT SAYS OH, REMEMBER THAT 4 THING YOU ADMITTED ON OCTOBER 26, WELL, WE WANT A 5 LIMITING INSTRUCTION ON THAT. SO I WANT TO KNOW NOW 6 WHEN THE DOCUMENT IS OFFERED, AND IT CAN BE A 7 RELATIVELY BRIEF CODE, SUBJECT TO POTENTIAL LIMITING 8 INSTRUCTION, BUT I WANT YOU TO SAY IT. AND IF YOU 9 DON'T SAY IT, THEN YOU WILL HAVE WAIVED THAT DOWN THE 10 ROAD. OKAY? 11 MR. MULARCZYK: IN RESPONSE TO THAT, YOUR 12 HONOR -- THIS PETER MULARCZYK FOR AVON. FOR MANY OF 13 THESE DOCUMENTS, AND I THINK YOU'LL NOTICE THIS 14 HAPPENING, ESPECIALLY WITH THE CORPORATE REP TESTIMONY, 15 WE JUST DON'T KNOW WHAT DOCUMENTS ARE COMING UP ON 16 DIRECT. THERE'S NO WAY FOR US TO BE ABLE TO VOICE -- 17 THE COURT: OKAY. WELL, THAT'S MY NEXT AND 18 LAST POINT. THAT NEEDS TO STOP. THE -- I MADE AN 19 ORDER ABOUT BEST EFFORTS OF DOCUMENTS BEING IDENTIFIED 20 48 HOURS IN ADVANCE. THAT'S, APPARENTLY, NOT WORKING. 21 I NEED A DIFFERENT ORDER. I CAN'T HAVE THE DEFENDANTS 22 TELLING ME IN THE MIDDLE OF TRIAL, I HAVE NO IDEA WHAT 23 THAT DOCUMENT IS. 24 MR. ADAMS: WELL, LET'S FIND OUT IF WHAT YOU 25 WERE JUST TOLD WAS TRUE. 26 THE COURT: OKAY. 27 MR. ADAMS: I THINK THAT'S THE FIRST STEP. 28 BECAUSE I WENT OVER THERE THIS MORNING WITH ALL THE

Page 194 1 DEFENDANTS BEFORE WE STARTED AND WENT THROUGH EVERY 2 EXHIBIT AND DOCUMENT I INTENDED TO OFFER AND TALKED TO 3 EACH AND EVERY ONE OF THEM ABOUT IT AND DIDN'T HAVE AN 4 ISSUE. 5 MR. MULARCZYK: THAT'S NOT WHAT I'M TALKING 6 ABOUT. 7 MR. ADAMS: WELL, THAT'S WHAT HAPPENED. SO 8 BEFORE THE COURT ENTERS SOME KIND OF EXTREME ORDER THAT 9 IS REALLY GOING TO -- 10 THE COURT: ME? ME, EXTREME ORDER. 11 MR. ADAMS: I DON'T THINK THAT IT'S NOT 12 WORKING. IT WORKED TODAY. 13 THE COURT: OKAY. WELL, LET ME FIND OUT WHAT 14 MR. MULARCZYK IS TALKING ABOUT THEN. 15 MR. MULARCZYK: I'M TALKING ABOUT DOCUMENTS 16 THAT COUNSEL FEELS ARE NECESSARY TO REFUTE THE 17 CROSS-EXAMINATION THAT'S HAPPENING, WHICH IN THE 18 MOMENT, MOST OF US WILL NOT KNOW WHAT THOSE WILL BE 19 BECAUSE WE DON'T KNOW WHAT WE WILL INTEND TO USE IN 20 RESPONSE TO THEIR CROSS-EXAMINATION OF CORPORATE 21 REPRESENTATIVES. AND SO MR. KARREN FELT HE NEEDED TO 22 USE A DOCUMENT WITH HIS REPRESENTATIVE, OR IF 23 MR. LANKFORD FELT HE NEEDED TO USE A DOCUMENT. THAT'S 24 NOT KNOWN UNTIL THAT CROSS-EXAMINATION IS HAPPENING OR 25 IS DONE. SO THOSE ARE THE MOMENTS WHERE THEY ARE 26 SEEKING TO ADMIT DOCUMENTS THAT WE DON'T KNOW BECAUSE 27 WE HAVEN'T SEEN. 28 THE COURT: OKAY. WELL, THEN WE HAVE TO DO IT	Page 196 1 TODAY, THE 48-HOUR RULE IS NOT BEING ORGANIZED. I 2 REMINDED EVERYONE YESTERDAY TO SEE IF MY UNDERSTANDING 3 WAS WRONG. THIS IS AN ADVERSE WITNESS. SO WHAT WE 4 HAVE DONE TO TRY TO MAKE THIS WORK MORE SMOOTHLY, IS 5 WHERE THERE ARE AGREEMENTS IN ADVANCE, WE'RE GOING TO 6 SEND A LINK TO EVERYONE, AND WHERE THEY ARE NOT, WE'LL 7 HAVE COPIES AND WE JUST ASK FOR FOLKS TO DO THE SAME 8 FOR THESE THINGS THAT ARE AKIN TO A CROSS OR AN -- 9 THE COURT: OKAY. ALL RIGHT. SO HENCEFORTH, 10 WHEN THE DOCUMENT'S BEING OFFERED AND A PARTY HAS NO 11 OBJECTION SUBJECT TO A POTENTIAL LIMITING INSTRUCTION, 12 JUST SAY THAT, AND IDENTIFY YOURSELF FOR -- WELL, THE 13 COURT REPORTER WILL KNOW WHO'S SPEAKING. MR. AMES? 14 MR. AMES: THANK YOU, YOUR HONOR. 15 RICHARD AMES FOR COLGATE. I AGREE IN GENERAL WITH THE 16 BREAKDOWN FOR THE NOTICE. SEVERAL OF THE DOCUMENTS 17 THAT HAVE BEEN ADMITTED HAVE BEEN, QUOTE, ADMITTED FOR 18 ALL PURPOSES. PLAINTIFFS WANT TO ADMIT THEM FOR ALL 19 PURPOSES, WHICH IS NOT FOR NOTICE. WE HAVEN'T FILED 20 YET ON THIS BECAUSE THERE HAVE BEEN SO MANY DOCUMENTS, 21 AND WE HAVEN'T HAD A CHANCE TO MEET WITH THEM. 22 BUT WHEN THEY WERE ADMITTING A HYSTER DOCUMENT 23 FOR, QUOTE, ALL PURPOSES, AND THEN THERE'S AN 24 ATTACHMENT TO THAT DOCUMENT, THERE'S HEARSAY IN THERE. 25 IT'S NOT JUST FOR NOTICE. THAT'S WHAT WE OBJECT TO, TO 26 THE EXTENT THEY USE IT. AND THE CASE CITATION IS 27 PEOPLE V. CONAGRA FOODS 2017, 17 CAL. APP. 651. 28 PROVISIONALLY, IF THEY ARE PUTTING THINGS IN FOR
Page 195 1 LIKE TRIAL LAWYERS IN MEMORIAL HAVE DONE IT. YOU HAND 2 THE DOCUMENT OVER TO OPPOSING COUNSEL AND SHOW THEM THE 3 DOCUMENT. I'M OF THE SCHOOL THAT BEFORE A WITNESS IS 4 SHOWN A DOCUMENT, THE OTHER SIDE GETS TO SEE IT. SO 5 LET'S DO THAT. IF THAT MEANS THERE'S SOME HANDING OF 6 DOCUMENTS BACK AND FORTH, SO BE IT. 7 MS. DEAN: AND FOR THE RECORD, JUST FOR 8 ADVERSE WITNESSES, IT WASN'T THAT THE 48-HOUR RULE WAS 9 IGNORED AND BEST EFFORTS WEREN'T. WE TALKED ABOUT THEM 10 BEING ADVERSE WITNESSES. I EXPLICITLY TALKED TO FORD. 11 WE DON'T THINK WE HAVE TO PREVIEW WHAT IS, ESSENTIALLY, 12 A CROSS. THERE WAS NO DISAGREEMENT, FIRST THING. 13 THE COURT: I AM -- NO DISAGREEMENT FOR ME 14 EITHER. 15 MS. DEAN: SECOND, THERE WAS AN EFFORT TO NOT 16 ONLY EXCHANGE EXHIBITS IN ADVANCE, BUT BECAUSE WE HAD A 17 ZOOM PERSON, WE SENT LINKS. THOSE LINKS COULD HAVE 18 BEEN SENT TO EVERYONE. WE WILL DO THAT IN THE FUTURE. 19 THAT WAS JUST SOMETHING -- THEY WERE FORD DOCUMENTS. I 20 UNDERSTAND THEIR CONCERNS. I'VE ALREADY WRITTEN TO 21 EVERYONE TO SAY THAT WON'T HAPPEN. THE ONLY PART OF 22 THE PROTOCOL, THOUGH, THAT HAS BROKE DOWN WAS -- AND I 23 THINK IT'S GOING TO RESULT TO NEEDING TO DISCUSS 24 SOMETHING TOMORROW MORNING ON THE RECORD. 25 TWO EXHIBITS BY FORD NOT HANDED TO ME, NOT 26 DISCUSSED. I THINK I GOT 701 AND 703 CONFUSED. AS A 27 RESULT, I DIDN'T EVEN HAVE A COPY OF ONE OF THEM. WHEN 28 THERE'S JUST SUGGESTIONS REPEATEDLY, BOTH YESTERDAY AND	Page 197 1 NOTICE, AND WE'RE GOING TO WAIT TO DETERMINE IF THEY 2 CAN SATISFY THE REQUIREMENTS FOR NOTICE, FINE. BUT WE 3 OBJECT TO THE SUBSEQUENT LAYERS OF HEARSAY WITHIN THESE 4 DOCUMENTS. THEY CAN'T BRING IN THE MEMO THAT SAYS 5 ASBESTOS CAUSES MESOTHELIOMA FOR THE TRUTH OF THAT. 6 THEY CAN'T BRING IN THE NOTICE. IT'S A SEPARATE THING 7 SO I WANT TO MAKE SURE THAT'S BEEN WE'RE RESERVING 8 THOSE ISSUES. 9 THE COURT: YOU'RE NOT RESERVING THEM. IF YOU 10 HAVE AN OBJECTION TO AN EXHIBIT, YOU HAVE TO TELL ME 11 WHAT IT IS WHEN IT'S OFFERED. THE ONLY THING I'M 12 RESERVING IS WHETHER THERE WILL BE A LIMITING 13 INSTRUCTION, BUT IF YOU'VE GOT A HEARSAY OBJECTION, 14 MAKE IT. 15 MR. AMES: WE HAVE REPEATEDLY DONE SO. WE'LL 16 FILE WE OBJECT TO THE HEARSAY. 17 THE COURT: WELL, DON'T FILE IT. STAND UP AND 18 SAY IT. WHEN COUNSEL SAYS, I OFFER EXHIBIT X, IF 19 YOU'VE GOT A HEARSAY OBJECTION, MAKE IT SO I CAN RULE 20 ON IT RIGHT THERE AND THEN. OKAY? 21 MR. AMES: FINE. 22 THE COURT: THANK YOU. I MEAN, I'M NOT TRYING 23 TO TALK YOU OUT OF FILING MEMOS AND BRIEFS, BUT I NEED 24 TO RULE ON THESE THINGS IN REAL TIME. IT'S OFFERED. 25 IT'S EITHER ADMITTED, NOT ADMITTED, ADMITTED FOR A 26 LIMITED PURPOSE OR SOMETHING ELSE. THAT'S THE TIME 27 MR. AMES, YOU SAY, "OBJECTION, HEARSAY." I CAN TURN TO 28 MR. ADAMS OR MS. DEAN AND SAY, "FOR WHAT PURPOSE?" AND

Page 198 1 THEY SAY, "NOTICE," AND THAT SOLVES THAT PROBLEM, 2 POTENTIALLY. 3 MR. AMES: THEY DON'T SAY THAT. EVEN THOUGH 4 YOU'VE REPEATEDLY RULED THAT THE HEARSAY OBJECTIONS 5 AREN'T SATISFIED. THEY KEEP SAYING, "WE'VE SATISFIED 6 IT AS TO FORD. WE STIPULATED IT AS TO FORD." IT COMES 7 IN AS EVERYONE. WE KEEP OBJECTING. WE CAN KEEP DOING 8 IT, I GUESS, THE WHOLE TRIAL. BUT THIS IS THE PATTERN 9 THAT THEY KEEP DOING, SO WE OBJECT TO THE HEARSAY 10 CONTENT OF -- 11 THE COURT: WELL, I'M NOT SAYING I HAVEN'T 12 HEARD SOMEBODY ON THE DEFENSE SIDE SAY, "OBJECTION, 13 HEARSAY," BUT I DON'T RECALL THAT HAPPENING DURING THE 14 TRIAL. SO IF THAT'S HAPPENED, FINE, BUT KEEP DOING IT, 15 AND -- TO PROTECT YOUR RECORD. AND WHAT I'M SUGGESTING 16 TO YOU IS YOU'RE NOT GOING TO BE ABLE TO PROTECT YOUR 17 RECORD ON APPEAL BY REMAINING SILENT AND FILING A BRIEF 18 TWO DAYS LATER, SAYING, OH, I OBJECTED TO THAT DOCUMENT 19 BECAUSE THERE'S HEARSAY IN IT. IT'S TOO LATE. I NEED 20 A CONTEMPORANEOUS OBJECTION. OKAY? 21 MR. AMES: UNDERSTOOD. 22 THE COURT: OKAY. 23 MS. DEAN: SORRY, JUDGE. THE ONLY -- RIGHT 24 BEFORE WE BROKE WITH DR. HABER, THERE WAS SOME CONCERNS 25 THAT I SUSPECT WE'RE GOING TO TAKE UP TOMORROW. 26 THE COURT: WELL, I WANT TO TAKE THEM UP 27 BRIEFLY NOW. I WANT TO GIVE YOU SOME PRELIMINARY 28 THOUGHTS, AND WE WILL TAKE THEM UP TOMORROW. ALL Page 199 1 RIGHT. 2 SO THE PROPOSITION PUT TO ME IS THAT 3 DR. HABER'S -- THE SCOPE OF DR. HABER'S OPINION 4 TESTIMONY SHOULD BE LIMITED, AND AT A BEAR MINIMUM, 5 SHOULD BE LIMITED BY THE EXPERT DECLARATION, WHICH I 6 HAVE. PLAINTIFFS' EXPERT DECLARATION. IT'S 7 MR. ADAMS'S, JULY 22, PARAGRAPH 3. AND, MR. LANKFORD, 8 I CAN'T IMAGINE HOW MANY OF THESE EXPERT DECLARATIONS 9 YOU HAVE SEEN AND DRAFTED IN YOUR CAREER. PROBABLY 10 EXCEEDING THE NUMBER I HAVE SEEN AND DRAFTED IN MY 11 CAREER, AND THERE'S ALWAYS A TENSION BETWEEN THE 12 GENERAL AND THE SPECIFIC. I DO NOT AGREE WITH YOU THAT 13 PARAGRAPH 3 LIMITS THE SCOPE OF DR. HABER'S CAUSATION 14 TESTIMONY TO TALC PRODUCTS. I DO AGREE WITH YOU THAT 15 HE SPECIFICALLY CALLS OUT, OR MR. ADAMS SPECIFICALLY 16 CALLS OUT CAUSATION CAUSED BY MRS. CHAPMAN'S EXPOSURE 17 TO ASBESTOS FROM DEFENDANTS' ASBESTOS-CONTAINING TALCUM 18 POWDER PRODUCTS. AND THAT IS SPECIFIC, I AGREE, BUT IF 19 YOU LOOK AT OUR SENTENCES IN HERE, IT DOES NOT PRECLUDE 20 CAUSATION FROM OTHER KINDS OF PRODUCTS. THAT'S 21 NUMBER 1. 22 NUMBER 2, THE DECLARATION OF DR. STEVEN HABER 23 WAS FILED IN THIS CASE IN RESPONSE TO -- I DON'T EVEN 24 KNOW. WAS IT SUMMARY JUDGMENT OR WAS IT SOMETHING 25 ELSE -- 26 MR. ADAMS: YES, SUMMARY JUDGMENT. 27 THE COURT: ON AUGUST 26TH, SERVED ON 28 EVERYBODY, AND I ASSUME READ BY EVERYBODY. AND I WON'T	Page 200 1 COVER IT IN DETAIL, BUT I THINK WE CAN ALL AGREE, 2 DR. HABER COVERS IN THIS DECLARATION LOTS OF STUFF 3 ABOUT HIS OPINION FROM FRICTION PRODUCTS AND THEN HE 4 WAS DEPOSED. AND THEN THERE WAS A PROBLEM WITH HIS 5 DEPOSITION, WHICH RESULTED IN AN EX PARTE APPLICATION 6 BROUGHT BY HONEYWELL A MONTH LATER, AND WE HAD HEARINGS 7 ON THAT. AND I PROBABLY DISAPPOINTED THE DEFENSE WITH 8 MY RULING AFTER HEARINGS ON THAT, BUT I DID NOT PERMIT 9 FURTHER TIME SPENT IN DEPOSITION, IS MY RECOLLECTION, 10 OR DID I? 11 MS. DEAN: IT WAS MIXED. THERE WERE 12 TWO DEFENDANTS WHO SAID I HAVE MORE QUESTIONS. 13 EVERYONE ELSE SAID THEY WERE DONE. THEN THEY SAID BUT 14 WE DIDN'T DO STUFF. YOU SAID YOU HAVE TO LIVE BY YOUR 15 DECISION. YOU GAVE AN HOUR TO NOXELL FOR THE 16 QUESTIONS. WE SPENT QUITE A BIT OF TIME ON WCD, AND 17 YOU DECIDED NOT TO LET WCD ASK QUESTIONS. THEY WERE 18 KIND OF ON THE BULB. 19 THE COURT: OKAY. SO IF I DISAPPOINTED THE 20 DEFENSE IN THE PAST, I'M PROBABLY GOING TO DO IT AGAIN 21 NOW, BECAUSE I'M NOT GOING TO REVISIT THAT DISCOVERY 22 ORDER I MADE AFTER THAT LONG HEARING. MY POINT BEING, 23 FRICTION DEFENDANTS CERTAINLY WERE ON NOTICE THAT 24 DR. HABER HAD OPINION CONCERNING FRICTION PRODUCTS AND 25 CAUSATION IN THIS CASE FROM A DECLARATION FILED A MONTH 26 BEFORE HIS DEPOSITION. SO AND AGAIN, I AM FINDING THAT 27 THE EXPERT DECLARATION DOES NOT PRECLUDE, OR IT DOES 28 NOT LIMIT THE EXPECTED TESTIMONY OF DR. HABER TO TALCUM Page 201 1 POWDER PRODUCTS. 2 SO I WILL HEAR FROM FOLKS TOMORROW, BUT I WANT 3 TO GIVE YOU A TENTATIVE RULING WHICH IS TO DENY THE 4 MOTION TO PRECLUDE DR. HABER'S CAUSATION OPINIONS ON 5 FRICTION PRODUCTS, AND I SUPPOSE -- WELL, I SHOULDN'T 6 SUPPOSE. MR. LANKFORD, YOU ALSO SAID THE MOTION IS 7 BASED ON STATE-OF-THE-ART CONCERNS, AND I'LL WANT TO 8 HEAR MORE ABOUT THAT. 9 THE DESIGNATION IS NOT VERY EXPLICIT. IT'S 10 QUITE GENERAL. QUOTE, HE MAY TESTIFY AS TO THE 11 HAZARDOUS NATURE OF ASBESTOS OR ASBESTOS-CONTAINING 12 PRODUCTS. AND AS A RESULT THAT SUCH ASBESTOS AND/OR 13 ASBESTOS-CONTAINING PRODUCTS ARE UNREASONABLY 14 DANGEROUS. NOT OBVIOUSLY STATE OF THE ART. 15 AND JUST TO MAKE SURE YOU KNOW, MR. LANKFORD, 16 THAT I DID HEAR YOU, I HEARD YOU SAY THAT AS A 17 CONSEQUENCE OF THE EVENTS OF THE DEPOSITION AND, 18 PERHAPS, THIS COURT'S ORDER, FORD AT LEAST DID NOT GET 19 A CHANCE TO ASK A KENNEMUR CUTOFF QUESTION. SO I 20 UNDERSTAND THAT. OKAY. 21 NOW, WITH THAT, I REALLY MUST SEND YOU OUT THE 22 BACK DOOR. COME BACK TOMORROW AT 8:15, PLEASE. THANK 23 YOU. 24 (WHEREUPON THE PROCEEDINGS ADJOURNED AT 25 1:43 P.M.) 26 27 28

Page 202

1 SUPERIOR COURT OF THE STATE OF CALIFORNIA
2 FOR THE COUNTY OF LOS ANGELES
3
4 DEPARTMENT 7 HON. LAWRENCE P. RIFF, JUDGE
5 LAOSD ASBESTOS CASES) JCCP CASE NO. 4674
6)
7 RITA-ANN CHAPMAN AND GARY)
8 CHAPMAN,)
9)
10 PLAINTIFFS,) CASE NO.
11) 22STCV05968
12)
13 VS.)
14)
15 AVON PRODUCTS, INC., ET AL.,)
16)
17 DEFENDANTS.)
18)
19)
20)
21)
22)
23)
24)
25)
26)
27)
28)

14 I, AURORA BOWSER, OFFICIAL REPORTER
15 PRO TEMPORE OF THE SUPERIOR COURT OF THE STATE OF
16 CALIFORNIA, FOR THE COUNTY OF LOS ANGELES, DO HEREBY
17 CERTIFY THAT I DID CORRECTLY REPORT THE PROCEEDINGS
18 CONTAINED HEREIN AND THAT THE FOREGOING PAGES 1 THROUGH
19 195, COMPRISE A FULL, TRUE AND CORRECT TRANSCRIPT OF
20 THE PROCEEDINGS AND TESTIMONY TAKEN IN THE MATTER OF
21 THE ABOVE-ENTITLED CAUSE ON OCTOBER 26, 2022.
22
23 EXECUTED THIS DAY, OCTOBER 26, 2022, AT
24 LOS ANGELES, CALIFORNIA.
25 
26 _____
27 AURORA BOWSER, CSR NO. 12801
28

EXHIBIT 5

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF LOS ANGELES

DEPARTMENT 7

HON. LAWRENCE P. RIFF, JUDGE

LAOSD ASBESTOS CASES

) JCCP4674

RITA-ANN CHAPMAN AND GARY
CHAPMAN,

) CASE NO. 22STCV05968

CERTIFIED
ORIGINAL

PLAINTIFFS,

VS.

AVON PRODUCTS, INC., ET AL.,

DEFENDANTS.

REPORTER'S TRANSCRIPT OF DAILY PROCEEDINGS

OCTOBER 27, 2022

APPEARANCES:

FOR PLAINTIFFS:

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VERONICA RODRIGUEZ, CSR #12215, RPR
OFFICIAL REPORTER PRO TEMPORE

[illegible]

Page 6				Page 8			
E X H I B I T S				BEFORE THE SUBSTANTIVE CROSS-EXAMINATIONS OF LONGO AND			
MARKED				HABER BEGAN, BECAUSE, OF COURSE, DEFENSE COUNSEL COULD			
FOR I.D.				ARGUE, WELL, THEY RELIED ON THE TIME ESTIMATES AND DID A			
RECD' IN EVD.				SHORTER CROSS. SO I SENT AN E-MAIL TO DEFENSE COUNSEL			
183				LAST NIGHT, AND WE ARE, FRANKLY, PANICKED ABOUT THE TIME			
183				ESTIMATES.			
261 - 9/17/74 MEMORANDUM				AND I UNDERSTAND THAT SORT OF MONDAY MORNING			
183				QUARTERBACKING OUR SIDE AND NIT-PICKING WHAT WE'VE DONE			
262 - 12/18/87 CORRESPONDENCE				AND SAYING: WELL, YOU COULD HAVE BEEN MORE EFFICIENT			
183				WITH THIS. WE COULD DO THAT ALL DAY. AND SOME OF IT IS			
263 - AVON DOCUMENT				PROBABLY LEGITIMATE. LIKE, THE COURT HAS TALKED ABOUT			
183				ASYMMETRIES IN THE CASE. THE FACT THAT WE GET TO CALL			
264 - RAW INGREDIENT SPECIFICATION AND METHODS REVISION REQUEST - 9/19/89				THE PLAINTIFFS BY THEIR FIRST NAME AND THE DEFENSE			
183				DOESN'T, AND THAT'S AN ASYMMETRY, BUT THERE ARE OTHER			
265 - 7/12/74 MEMORANDUM				ASYMMETRIES IN THIS CASE. JUST WITH THE BURDEN THAT WE			
183				HAVE TO BUILD THIS CASE, WE HAVE TO GO FIRST, THERE ARE			
266 - 1/11/72 AVON DOCUMENT				MANY MORE OF THEM THAN THERE ARE US, AND WE SIGNED UP			
183				FOR IT. I UNDERSTAND. BUT THEY OBJECT TO EVERYTHING WE			
267 - 3/28/72 MEMORANDUM				DO, EVERY DOCUMENT. WE HAVE ENDLESS E-MAILS EVERY NIGHT			
183				ABOUT MEETING AND CONFERRING ON MOTIONS FOR			
268 - ANALYTICAL LABORATORY ALTERNATE SOURCE EVALUATION				RECONSIDERATION OF RULINGS OF THE COURT THAT HAVEN'T			
183				BEEN FILED, ON LIMITING INSTRUCTIONS TO EVERY PIECE OF			
269 - 1/3/72 MEMORANDUM				EVIDENCE THAT THEY HAVEN'T FILED WITH THE COURT, AND WE			
183				JUST DON'T DO THAT.			
270 - 3/23/72 MEMORANDUM				SO PERFECT EXAMPLE WAS YESTERDAY WITH BOEING.			
183				WE DIDN'T OBJECT A SINGLE TIME. WE AGREED TO ALL OF			
271 - HANDWRITTEN NOTES				THEIR EXHIBITS. EXHIBITS THAT THEY PROBABLY COULD NOT			
183				HAVE LAID A FOUNDATION WITH THIS WITNESS BECAUSE HE			
272 - TALC MEETING - 8/18/70							
183							
273 - 6/1/09 CORRESPONDENCE							
183							
274 - 8/24/71 MEMORANDUM							
183							
275 - AVON DOCUMENT							
183							
276 - AVON DOCUMENT							
183							
277 - AVON DOCUMENT							
183							
281 - 10/28/71 MEMORANDUM							
183							
283 - 2/1/72 MEMORANDUM							
183							

Page 10 1 AND WE JUST NEED MORE TIME TO PUT ON OUR CASE. WE'VE 2 COME THIS FAR. WE'VE DONE EVERYTHING WE CAN TO GET THIS 3 CASE READY. YOU KNOW, I THINK -- WE SIGNED UP FOR IT, 4 BUT THE REALITY OF THIS IS IS THAT MS. DEAN, I THINK, 5 GOES TO BED AT 2:00 A.M. AND GETS UP AT 4:00 A.M. EVERY 6 NIGHT, AND THAT'S BEEN GOING ON FOR WEEKS. IF YOU 7 COMPARE IT TO THE DEFENSE SIDE, I KNOW THEY DON'T HAVE 8 AN EASY JOB, REMEMBER ED SLAUGHTER? HE HASN'T SAID A 9 WORD IN A WEEK AND A HALF. REMEMBER PETER MULARCZYK? 10 HE HASN'T SAID A WORD TO THE JURY IN A WEEK AND A HALF. 11 THEY'RE JUST WORKING EVERY DAY ON THEIR 12 CROSS-EXAMINATIONS OF OUR EXPERTS AND THEIR CASE AND ALL 13 WE'RE DOING IS FRICTION, AND PAUL LANKFORD AND THOSE 14 LAWYERS ARE WORKING. BUT THE OTHER LAWYERS ARE JUST 15 SITTING HERE CRAFTING. MR. SHARP, THEY'RE JUST CRAFTING 16 THEIR CROSS-EXAMINATIONS TO MAKE THEM AS EFFICIENT AND 17 QUICK AS POSSIBLE. THERE ARE ASYMMETRIES HERE. AND SO 18 WHEN THEY GET UP AND THEIR PRESENTATION IS A LITTLE 19 QUICKER AND A LITTLE SMOOTHER THAN OURS, THEY'RE JUST 20 REALITIES OF ASYMMETRIES. THAT'S WHY WE ALMOST ALWAYS 21 GET MORE TIME THAN THE DEFENSE. 22 WE ALSO HAVE THE BURDEN OF PROOF. THEY HAVE 23 SOME BURDENS OF PROOF ON AFFIRMATIVE DEFENSES. YOU KNOW 24 HOW THEY PROVE THEM? FROM OUR EVIDENCE ELICITED FROM 25 OUR EXPERTS ABOUT WHAT WE SAID ABOUT OTHER DEFENDANTS. 26 IT'S EASY. NOT ALL THE THINGS THEY DO ARE EASY, I'M NOT 27 SAYING THAT, BUT CARRYING THEIR BURDEN OF PROOF IS EASY. 28 THEY DO IT WITH OUR EVIDENCE AND OUR EXPERTS. THAT'S	Page 12 1 FORD MOTOR COMPANY. 2 YOUR HONOR, WE'VE ALREADY BEEN GREATLY 3 PREJUDICED BY THE ARGUMENT THAT THIS CASE HAS TO MOVE 4 ALONG DUE TO MRS. CHAPMAN'S HEALTH, AND WE AGREE WITH 5 THAT. WE'RE VERY SYMPATHETIC TO THE SITUATION. THEY 6 USED THIS ARGUMENT ABOUT NEEDING TO MOVE THINGS ALONG TO 7 CUT OFF OUR RIGHT TO FULLY EXAMINE AT DEPOSITION 8 DR. HABER, AND THE COURT AGREED. THEY DID IT TO CUT OFF 9 OUR RIGHT TO FULLY AND EFFECTIVELY TAKE A DEPOSITION OF 10 DR. LONGO, AND THE COURT AGREED AND CUT OUR TIME. WITH 11 RESPECT TO DR. BRODY, WE ALREADY DID WHAT WE DID BASED 12 ON THE COURT'S -- HIS TRIAL TESTIMONY BASED ON THE 13 COURT'S TIME LIMITS IN TERMS OF HOW WE CRAFTED OUR 14 CROSS-EXAMINATION OF HIM. 15 WITH RESPECT TO MR. WILLIAMS, YOU CAN SEE IN 16 THE QUESTIONS FROM THE JURORS. WE CUT DOWN WHAT WE 17 USUALLY DO WITH HIM IN TERMS OF DOCUMENTS. USUALLY I'LL 18 PUT EACH OF THOSE SELIKOFF DOCUMENTS, EACH OF THOSE IN. 19 I HAVE AN OUTLINE, ADMIT THIS, ADMIT THAT. I DID IT. 20 MR. SMELSER AND I TALKED, AND WE SAID, HEY, JUST MENTION 21 IT, AND, YOU KNOW, THE RELATIONSHIP WITH SELIKOFF, MOVE 22 ON. WE DON'T HAVE TO GO DOCUMENT BY DOCUMENT. YOU 23 KNOW, KEEP THE TIME. SO, YOU KNOW, THE SHIP HAS SAILED. 24 THEY ASKED FOR THIS CASE TO BE DONE WITHIN A CERTAIN 25 PERIOD OF TIME OR AT LEAST MOVE QUICKLY. THEY SAID, 26 HEY, DEFENDANTS DON'T HAVE TIME TO OR SHOULDN'T BE GIVEN 27 TIME TO ADEQUATELY EXAMINE DR. HABER, SHOULDN'T BE GIVEN 28 TIME TO ADEQUATELY EXAMINE DR. LONGO, ET CETERA, AND NOW
Page 11 1 HOW THEY CARRY THEIR PROP 51 BURDEN OF PROOF. WE 2 ACTUALLY HAVE TO BUILD SOMETHING. AND IT'S NOT ALWAYS 3 PRETTY AND IT'S NOT EASY AND IT TAKES TIME, AND IT 4 REALLY TAKES A LOT OF TIME WHEN THEY OBJECT TO 5 EVERYTHING WE DO. AND SO WE NEED MORE TIME. 6 THE COURT: SO WHAT'S YOUR REQUEST? 7 MR. ADAMS: OUR REQUEST IS THAT THE 8 HOURS THAT 8 WERE REMOVED WHEN THE TWO DEFENDANTS SETTLED BE 9 REINSTATED. 10 THE COURT: BILATERALLY, ADDING 16 HOURS TO THE 11 CASE? 12 MR. ADAMS: JUST THE ORIGINAL TIME ESTIMATES. SO 13 THE ORIGINAL TIME ESTIMATES, WHEN WE STARTED, WE HAD 14 MORE DEFENDANTS, BUT THE COURT WITHDREW 4 HOURS EACH 15 TIME WE SETTLED WITH TWO DEFENDANTS. I THINK IT WAS 16 FROM THE TOTAL TIME. 17 THE COURT: THAT'S NOT EXACTLY RIGHT, BUT YOU'RE 18 CLOSE. THE ORIGINAL TIME ESTIMATE LIMITATION I SET WAS 19 48 HOUR PER SIDE, 96 HOURS. AND ON OCTOBER 18 I REDUCED 20 IT TO 44 PER SIDE, AND OCTOBER 19 I REDUCED IT TO 40 21 HOURS PER SIDE, AND I SAID WHAT I SAID AT THE TIME, BUT, 22 IN DOING THAT, I HAD IN MIND THAT MORSE TEC, NOXELL AND 23 THE PEP BOYS WERE NO LONGER PARTICIPATING IN THE CASE. 24 ANYWAY. ARE YOU ASKING FOR 8 HOURS ADDITIONAL FOR 25 PLAINTIFF AND NO ADDITIONAL TIME FOR THE DEFENSE? 26 MR. ADAMS: WE ARE, YOUR HONOR. 27 THE COURT: OKAY. DEFENSE WANT TO BE HEARD? 28 MR. LANKFORD: YES, YOUR HONOR. PAUL LANKFORD FOR	Page 13 1 THEY'RE SAYING, OH, WE CAN DELAY THIS TWO, PROBABLY 2 THREE MORE DAYS IF WE'RE TALKING ABOUT 8 HOURS, TRYING 3 TO GET 8 HOURS ON THE RECORD. 4 SO, YOUR HONOR, IT'S TOO LATE AT THIS POINT. 5 IT WILL PREJUDICE THE DEFENDANTS BASED ON WHAT'S ALREADY 6 OCCURRED AND THE DECISIONS WE'VE ALREADY MADE BASED ON 7 THE TIME ESTIMATES OR RATHER THE TIME LIMITS THE COURT 8 GAVE US. THANK YOU. 9 THE COURT: ANY OTHER DEFENDANTS WISH TO BE HEARD? 10 MR. HUIE: YES, YOUR HONOR. JEREMY HUIE FOR 11 HYSTER-YALE. 12 I OPPOSE THE REQUEST FOR EIGHT MORE HOURS 13 BACK, AND I WOULD ASK THAT THE COURT ENFORCE THE CURRENT 14 TIME LIMITS OF 40 HOURS. I THINK THE WAY THAT I'VE 15 BLOCKED IT OUT THAT WOULD PROJECT PLAINTIFF LIKELY 16 RESTING NOVEMBER 9TH OR THEREABOUTS. I THINK EXTENDING 17 IT FURTHER RUNS A SERIOUS RISK THAT DEFENDANTS WILL NOT 18 HAVE A CHANCE TO PUT ON THEIR CASE, WHILE ALLOTING TIME 19 TO JURY DELIBERATIONS AND A POSSIBLE PHASE 2 FOR US TO 20 BE ABLE TO MEET OUR PROMISE OF LETTING THE JURORS GO BY 21 DECEMBER 15. 22 WITH REGARD TO THE TIME LIMITS, I WANTED TO 23 QUICKLY CITE THE CASE OF CALIFORNIA CRANE SCHOOL, INC. 24 VS. NATIONAL COMMITTEE FOR CERTIFICATION OF CRANE 25 OPERATORS 226 CAL.APP.4TH 12. IT'S A 2014 CASE. 26 THE COURT: MR. HUIE, DID YOU NOT HEAR MY SPEECH 27 THE OTHER DAY WHERE I CITED HEAVILY FROM CALIFORNIA 28 CRANE?

Page 14 1 MR. HUIE: I'M SORRY. IT'S BEEN A WHILE, YOUR 2 HONOR. 3 THE COURT: YEAH, I'M WELL AWARE OF CALIFORNIA 4 CRANE, AND MUCH OF MY ORDER IS BASED ON CALIFORNIA 5 CRANE. THIS IS THE NO CAMPING RIGHTS CASE. 6 MR. HUIE: I WILL NOT WASTE THE COURT'S TIME. 7 MR. ADAMS: YOUR HONOR, JUST VERY BRIEFLY. 8 THE COURT: HOLD ON. LET ME HEAR FROM -- ANYBODY 9 ELSE WHO WISHES TO BE HEARD ON THIS POINT? 10 MR. COGGSHALL: YES, GOOD MORNING, YOUR HONOR. 11 WILL COGGSHALL ON BEHALF OF COLOR TECHNIQUES. 12 I WAS ONE OF THE LAWYERS THAT WAS TRYING TO 13 MEET AND CONFER WITH PLAINTIFF AS IT RELATES TO COLOR 14 TECHNIQUES. I ASKED HIM WHICH EXHIBITS ARE GOING TO 15 PRESENTED WITH DR. HABER AS IT RELATES TO COLOR 16 TECHNIQUES. I WAS TOLD ALL THE EXHIBITS THAT THEY 17 IDENTIFIED FOR DR. HABER EVEN THOUGH NONE OF THOSE 18 RELATE TO ANY ISSUE THAT IS SET FORTH IN DR. HABER'S 19 PARAGRAPH 73. YOU'LL RECALL THAT MS. DEAN SAYS: AS IT 20 RELATES TO COLOR TECHNIQUES, IT'S DR. HABER'S PARAGRAPH 21 73 THAT SETS FORTH THE EVIDENCE. 22 THE COURT: YOU ARE ON A DIFFERENT TOPIC. 23 MR. COGGSHALL: IT HAS TO DO WITH THE SAME THING. 24 I'M TRYING TO LIMIT THE AMOUNT OF QUESTIONS THAT I COULD 25 HAVE OF DR. HABER AND THE AMOUNT OF OBJECTIONS THAT I 26 MAY MAKE WHEN HE'S TESTIFYING. SO I'M TRYING TO 27 SIMPLIFY THAT PROCESS AS IT RELATES TO MY CLIENT, AND 28 THE PLAINTIFF IS PUTTING A BAR IN FRONT OF THAT. SO IF	Page 16 1 ALL RIGHT. SO YOUR RECORD IS MADE. 2 MR. ADAMS: YOUR HONOR, JUST VERY QUICKLY. THREE 3 RESPONSES. NUMBER 1, IT'S NOT AN EXTENSION OF THE 4 DEADLINES OF THE TRIAL. IT'S A RESET BACK TO THE 5 ORIGINAL DEADLINES SO WE'RE NOT ASKING ANYBODY TO STAY 6 LONGER THAN DECEMBER 15. THAT'S NOT WHAT WE'RE ASKING 7 FOR AT ALL. NUMBER 2, FORD HAS NOT BEEN PREJUDICED IN 8 ANY WAY. THEIR WITNESS LEFT BECAUSE HE HAD A FLIGHT. 9 HE HAD A FLIGHT AND A DEADLINE TO LEAVE. HE WASN'T CUT 10 SHORT. THERE WASN'T ANY OF THAT. HE HAD A FLIGHT. HE 11 HAD TO LEAVE. 12 THERE'S NO SURPRISE HERE TO THE DEFENSE 13 BECAUSE THE COURT SAID AT THE OUTSET THAT THE COURT 14 WOULD ADJUST TIME LIMITS BASED ON HOW THE CASE PROCEEDED 15 AND SO IT WAS ALWAYS SOMEWHAT IN FLUX FROM THE 16 BEGINNING. THIS IS NOT SOME KIND OF BIG SURPRISE. I 17 DON'T THINK THE CROSS OF BRODY WAS CUT SHORT IN ANY WAY. 18 I MEAN, THEY THOROUGHLY CROSS-EXAMINED HIM. IT'S 19 TYPICALLY A QUICK CROSS. IT WAS A RELATIVELY QUICK 20 CROSS IN THIS CASE. AND SO WITH THAT, WE WOULD REQUEST 21 THE 8 HOURS. 22 THE COURT: ALL RIGHT. LET ME COMMENT AND RULE. 23 I'LL COMMENT AND THEN RULE. WHEN I MADE THIS TIME LIMIT 24 ORDER, I PREFACED IT BY SAYING I WAS GOING TO MAKE A 25 SPEECH WHICH I THEN DID. AND I WOULD URGE THE 26 INTERESTED READER OF THIS TRANSCRIPT TO GO BACK TO THOSE 27 COMMENTS BECAUSE WHAT I WAS TRYING TO DO WAS TO EXPLAIN 28 TO ANY PERSON OR ENTITY EVALUATING THE EXERCISE OF MY
Page 15 1 THEY'RE SAYING THAT SOMEHOW THEY'RE TRYING TO STREAMLINE 2 THIS AND THEN THEY ALSO NEED MORE TIME, THEY'RE THE 3 OBSTACLE AS IT RELATES TO COLOR TECHNIQUES. 4 THE COURT: THANK YOU. 5 MR. STRUNK: CHRISTOPHER STRUNK ON BEHALF OF 6 COLGATE-PALMOLIVE. 7 YOUR HONOR, I WILL ECHO WHAT THE OTHER 8 DEFENDANTS HAVE SAID. OF COURSE THIS COURT HAS ALSO 9 MADE VARIOUS STATEMENTS TO THE JURORS AS DEFENDANTS HAVE 10 RESOLVED ABOUT TIME NOT BEING REQUIRED AND WE'RE MOVING 11 FASTER. SO IT WOULD BE, I THINK, A PROBLEM TO GO BACK 12 TO THE JURY AND NOW SAY, WELL, WE WERE WRONG BEFORE. 13 WE'RE GOING TO ADD MORE TIME. THAT'S A BIG CONCERN OF 14 OURS. I'LL ALSO ECHO THE COMMENTS OF MY COLLEAGUE ABOUT 15 EFFICIENCIES. WE OURSELVES ARE IN THE PROCESS OF TRYING 16 TO PREPARE OUR CROSS-EXAMINATIONS. WE'VE BEEN STYMIED. 17 WE HAVE A MOTION SHORTLY BROUGHT BEFORE THE COURT ABOUT 18 WHERE WE'VE BEEN STYMIED IN TERMS OF OUR ABILITY TO GET 19 CERTAIN EXHIBITS THAT WERE ALREADY MARKED IN THE 20 DEPOSITION. SO THAT'S ANOTHER EXAMPLE OF HOW THE DELAY 21 SEEMS TO BE CREATED BY THE PLAINTIFFS ON THIS SIDE. SO 22 WE WOULD SIMPLY, AGAIN, JOIN IN THE COMMENTS OF OTHERS 23 WHERE WE WOULD OPPOSE ANY REQUEST FOR ADDITIONAL TIME. 24 THE COURT: OKAY. LET ME ASK THIS QUESTION. DOES 25 ANY DEFENDANT NOT JOIN IN THE DEFENSE COMMENTS OPPOSING 26 PLAINTIFF'S REQUEST? THAT'S ASKING A DOUBLE NEGATIVE. 27 IS ANYBODY NEUTRAL OR SUPPORTIVE OF THE PLAINTIFF'S 28 PROPOSAL?	Page 17 1 DISCRETION WHAT WENT INTO INFORMING MY DISCRETION. 2 WHILE I DIDN'T SAY IT, I THINK -- I'LL SAY IT 3 NOW. WHILE I DIDN'T SAY IT THEN, IT HAS BEEN SAID A 4 DOZEN TIMES PRETRIAL IN THIS CASE, WHICH IS, THIS CASE 5 IS BEING DRIVEN INEXORABLY -- THAT'S THE WRONG WORD. IT 6 HAS BEEN DRIVEN ALMOST INTOLERABLY FAST BILATERALLY, 7 EVERYBODY WOULD AGREE, ON ACCOUNT OF THE REALITY OF 8 MRS. CHAPMAN'S HEALTH CONDITION AND THE LAW AS SET FORTH 9 UNDER CCP 36(D), I BELIEVE IT IS. THERE IS NOT MUCH THE 10 COURT CAN DO ONCE A MOTION FOR PREFERENCE HAS BEEN 11 GRANTED. 12 I'VE ASKED A COUPLE OF TIMES DURING THE 13 PRETRIAL PERIOD, AND AT LEAST ONCE AT TRIAL, I THINK, 14 INFORMALLY WHAT COUNSEL'S UNDERSTANDING OF 15 MRS. CHAPMAN'S SITUATION WAS. IT WAS REPORTED TO ME 16 THAT IT IS INCREASINGLY DIRE. I'VE HAD NO REASON TO 17 QUESTION THAT. NO ONE HAS SAID OTHERWISE; ALTHOUGH I 18 UNDERSTAND THE DEFENSE WOULD NOT BE IN A POSITION TO 19 QUESTION THAT OTHERWISE AND WHAT MR. ADAMS JUST TOLD ME 20 TODAY AS TO WHAT THE EVIDENCE WILL SHOW IS CONSISTENT 21 WITH THAT. WHAT'S MY POINT? MY POINT IS THAT I THINK 22 JUSTICE REQUIRES, TO THE EXTENT IT CAN BE DONE, 23 CONSISTENT WITH THE RIGHTS, ALL THE OTHER COMPETING 24 RIGHTS, THAT THE CHAPMANS GET A JUDGMENT BEFORE 25 MRS. CHAPMAN DIES. AND I DON'T KNOW WHEN THAT'S GOING 26 TO BE, BUT IT MIGHT BE VERY, VERY SOON. 27 SO I AM NOT -- WELL, THIS IS ANOTHER POINT 28 ADDING TO MY THINKING ON THIS. ONE OF THE THINGS I'VE

Page 18 1 TRIED TO DO WITH YOU ALL PRETRIAL IS TO WARN YOU, WHEN I 2 SEE A STORM CLOUD ON THE HORIZON, THAT I SEE A PROBLEM 3 COMING UP AND PLEASE, PLEASE SEE WHAT I SEE WHETHER IT'S 4 THE ADMISSION OF EXHIBITS THROUGH FORMER TESTIMONY OR 5 SOMETHING ELSE, AND I SAW THIS. THAT'S ONE OF THE 6 REASONS I MADE THE SPEECH I MADE. 7 AND WHAT I SAID WAS THAT I WASN'T LAYING DOWN 8 AN IRON CLAD DEADLINE NO MATTER WHAT AND THAT THE COURT 9 WOULD KEEP AN OPEN MIND AND EXTEND TIME IF JUSTICE 10 REQUIRES, BUT DON'T COUNT ON IT. I THINK I SAID THAT AT 11 LEAST TWICE. I AM NOT CRITICAL OF ANY SIDE'S 12 PRESENTATION OF EVIDENCE. YOU ALL ARE VERY GOOD TRIAL 13 LAWYERS AND YOU KNOW HOW TO TRY A CASE. AND HOW YOU 14 CHOOSE TO EMPHASIZE SOME THEMES, SOME STORY ELEMENTS. 15 WHO AM I TO SAY THAT THAT IS A GOOD OR BAD USE OF TIME? 16 I'LL ALSO NOTE THAT I'M AS SCRUPULOUS AS I CAN 17 BE WITH RESPECT TO KEEPING TRACK OF TIME. I DON'T KNOW 18 IF YOU'VE SEEN ME STARE AT THE CLOCK AND TAKING NOTES, 19 BUT NO ONE IS GETTING CHARGED FOR ONE MINUTE FOR TIME 20 NOT ON THE RECORD WITH THE JURY IN THE ROOM. ALL RIGHT. 21 SO IN LIGHT OF ALL THINGS, MR. ADAMS, I'M 22 DENYING YOUR REQUEST. I DON'T THINK THERE IS GOOD CAUSE 23 TO CHANGE MY RULING. AND I DO THINK THAT IT IS SOMEWHAT 24 BAKED IN THE CAKE AT THIS POINT WITH A NUMBER OF 25 WITNESSES HAVING BEEN CALLED AND EXCUSED. SO THE ANSWER 26 IS NO. AND I URGE BOTH SIDES TO KEEP A CLOSE EYE ON THE 27 CLOCK AND ADJUST YOUR PRESENTATIONS ACCORDINGLY. 28 ALL RIGHT. AND, MR. ADAMS, YOU AND YOUR FIRM	Page 20 1 HAD SOME OBJECTIONS TO IT. 2 MS. DEAN: THE FIRST 70 SLIDES THAT I WAS HOPING 3 WE'D GET TO YESTERDAY HAVE BEEN. THEY'RE CURRENTLY 4 ADDING EXHIBIT STICKERS AND EDITING THE REST, BUT THEY 5 WILL HAVE, BY THE TIME WE GET TO 70, THE REST. SOME OF 6 THE STATE OF THE ART MATERIALS ARE IN THE POWERPOINT. 7 SOME OF THEM ARE THE ACTUAL DOCUMENTS ON THIS THING 8 (INDICATING). 9 THE COURT: IN THE BIG PICTURE, IF YOU CAN REDUCE 10 IT TO A COUPLE SENTENCES. CATEGORICALLY, WHAT DO YOU 11 EXPECT HIM TO SAY ABOUT STATE OF THE ART? 12 MS. DEAN: I CAN ANSWER THAT. WHAT HE STATED IN 13 HIS DECLARATION THAT THEY HAVE HAD SINCE THE FILINGS OF 14 MOTIONS FOR SUMMARY JUDGMENT THAT DETAIL GOING BACK 15 ALMOST HUNDRED YEARS, WHAT WAS KNOWN AND KNOWABLE ABOUT 16 HOUSEHOLD EXPOSURES RESULTING IN -- OR EXPOSURES IN THE 17 WORKPLACE GETTING ON THE CLOTHES, RESULTING IN A 18 LAUNDERING HOUSEHOLD EXPOSURE PROBLEM. THOSE WERE 19 IDENTIFIED WITH SPECIFICITY. DURING THE DEPOSITION, 20 BOEING'S LAWYER ASKED FOR THE CITATIONS FOR THOSE. 21 THOSE WERE ATTACHED IN THE DEPOSITION AS AN EXHIBIT TO 22 THE DEPOSITION. SO THEY HAD EXAMPLES. 23 THEY AGREED AN EXAMPLE WAS SUFFICIENT, BUT NOT 24 ENTIRE -- EVERYONE FOR EACH STATEMENT IN HIS 25 DECLARATION. HE IS ALSO GOING TO TALK ABOUT 26 EPIDEMIOLOGY AND STATE OF THE ART AS TO BRAKES WHEN 27 FORD'S LAWYER IN DAY TWO OF THE DEPOSITION ASKED HIM IF 28 HE WAS GOING TO DO SO. HE ANSWERED AND ANSWERED
Page 19 1 SIGNED UP FOR A DIFFICULT TASK. SO DID I. I SIGNED UP 2 FOR A DIFFICULT TASK WHEN I BECAME A JUDGE AND HAD TO 3 PRESIDE OVER VERY DIFFICULT CASES LIKE THIS. THIS IS A 4 HARD DECISION FOR ME. I AM AN OLD JURY TRIAL LAWYER 5 MYSELF, AND I THINK GIVING THE JURY INFORMATION NEEDS -- 6 IS A CRITICAL ELEMENT OF A JURY TRIAL. AND IN DOING 7 WHAT I'M DOING, I SURE HAVE THAT IN MIND. WHATEVER 8 SOLACE THAT HAS. PROBABLY NONE. 9 ALL RIGHT. I WANT TO MOVE ONTO DR. HABER. 10 PENDING IS FORD'S MOTION WITH JOINDER TO LIMIT DR. HABER 11 WITH RESPECT TO OFFERING CAUSATION OPINIONS ON FRICTION 12 PRODUCTS AND STATE OF THE ART TESTIMONY. NOW, LET ME 13 JUST FIND OUT BECAUSE I DIDN'T ASK YESTERDAY. IS THE 14 PLAN -- AND BY THE WAY, DR. HABER IS IN THE ROOM. DOES 15 THAT CAUSE ANYBODY ANY HEARTBURN? I CAN'T -- IT DOESN'T 16 CAUSE ME ANY HEARTBURN, BUT IF SOMEBODY WANTS HIM OUT, 17 I'LL ASK HIM TO EXCUSE HIMSELF. 18 MR. LANKFORD: I THINK IT WOULD BE BETTER IF HE IS 19 NOT HERE, YOUR HONOR. 20 THE COURT: ALL RIGHT. WOULD YOU MIND? 21 DR. HABER IS OUT. QUESTION FOR PLAINTIFF'S 22 SIDE: DO YOU EXPECT TO ELICIT STATE OF THE ART OR 23 NOTICE EVIDENCE FROM DR. HABER? 24 MR. ADAMS: YES, YOUR HONOR. 25 THE COURT: IS THAT IN YOUR POWERPOINT? 26 MR. ADAMS: YES, YOUR HONOR. 27 THE COURT: HAS THE POWERPOINT BEEN DISTRIBUTED? 28 MR. ADAMS: I BELIEVE SO BECAUSE I JUST SAW FORD	Page 21 1 CLEANLY. I'M NOT GETTING INTO INDUSTRY SPECIFIC 2 DOCUMENTS, BUT FOR MEDICINE AND SCIENCE I ABSOLUTELY AM. 3 AND SO HE'S GOING TO DO WHAT HE'S DONE IN EVERY TRIAL, 4 TALK ABOUT MEREWETHER AND PRICE IN 1930 AND HOW THAT WAS 5 THE SEMINAL TIME FOR ASBESTOSIS, TALK ABOUT LUNG CANCER, 6 TALK ABOUT MESOTHELIOMA, TALK ABOUT HOW THAT INCLUDED 7 INFORMATION ABOUT ASBESTOS COMMONLY BEING IN TALC. 8 STATE OF THE ART. 9 THE COURT: ALL RIGHT. I DO WANT TO SAY SOMETHING 10 THAT IS INTERESTING TO ME. I DID READ THIS DEPOSITION 11 OF DR. HABER. IT WAS AN UNUSUAL EXPERT DEPOSITION, IN 12 MY EXPERIENCE, BECAUSE IT REALLY DIDN'T FOCUS ON WHAT 13 OPINIONS THE WITNESS PLANS TO OFFER AT TRIAL. AND I 14 WONDERED IF THAT'S BECAUSE IT WAS UNDERSTOOD FROM THE 15 DECLARATION ATTACHED AS EXHIBIT 6 THAT THOSE ARE THE 16 OPINIONS TO BE OFFERED AT TRIAL AND IT WASN'T NECESSARY 17 FOR THE DEFENSE THEN TO FOLLOW UP SPECIFICALLY BUT TO 18 INSTEAD FOLLOW UP ON WHAT THEY CHOSE TO FOLLOW UP ON. I 19 JUST NOTE THAT FOR WHATEVER IT'S WORTH. 20 ALL RIGHT. ANYTHING ELSE -- YOU'RE ON YOUR 21 FEET. ANYTHING ELSE YOU WANT TO ADD? 22 MR. ADAMS: NO. I GUESS I'LL WAIT TO SEE WHAT FORD 23 HAS TO SAY IN RESPONSE. 24 THE COURT: I WANT TO GIVE YOU A TENTATIVE, WHICH 25 IS TO DENY FORD'S MOTION AND JOINDER, THIS IS IN THE 26 NATURE OF A DISCOVERY ABUSIVE MOTION. THAT THE 27 DESIGNATION WAS INADEQUATE AND THE THEORY OF AN 28 INADEQUATE DESIGNATION IS THAT IT DOESN'T REASONABLY PUT

Page 22 1 THE RECIPIENT ON NOTICE OF THE NATURE AND SCOPE OF THE 2 OPINIONS TO BE OFFERED SO THAT, IN A SUBSEQUENT 3 DEPOSITION, THEY DON'T KNOW TO ASK ABOUT CERTAIN TOPICS. 4 I AM OF THE VIEW THAT AN INADEQUATE 5 DESIGNATION IS CURED BY THE MEETS AND BOUNDS OF A 6 DEPOSITION. AND I'M ALSO OF THE VIEW THAT THE MEETS AND 7 BOUNDS OF A DEPOSITION -- LET ME SAY THAT DIFFERENTLY. 8 PARTIES ARE PUT ON NOTICE OF TOPICS THAT MAY BE OFFERED 9 AT TRIAL BY WAY OF OPINION TESTIMONY VIA EXHIBITS TO 10 DEPOSITIONS. SO I THINK IT REQUIRES A HOLISTIC VIEW OF 11 ALL OF THE FACTS AND CIRCUMSTANCES TO EVALUATE WHETHER 12 THERE'S DISCOVERY ABUSE THAT SHOULD RESULT IN A TRIAL 13 TESTIMONY PRECLUSION. 14 YESTERDAY I WAS WRONG IN SOME OF THE TIMING. 15 I HAD SUGGESTED THAT THERE WAS ABOUT A MONTH PERIOD 16 BETWEEN THE FILING OF THE LATE AUGUST 2022 DECLARATION 17 OF DR. HABER AND THE DEPOSITIONS OF DR. HABER. THAT'S 18 NOT TRUE. THE FIRST SETTING WAS SEPTEMBER 6, THE SECOND 19 SEPTEMBER 12 AND THE THIRD SEPTEMBER 26. SO I HAVE ALL 20 THAT IN MIND. SO THAT'S THE TENTATIVE. 21 MR. LANKFORD, DO YOU WANT TO GET A LAST WORD 22 IN? 23 MR. LANKFORD: YES, YOUR HONOR. FIRST OF ALL, I 24 HAVEN'T SEEN THESE STATE OF THE ART SLIDES. THE SLIDES 25 WE WERE GIVEN, THE LAST SLIDE ENDS ON 74, BRAKE 26 EPIDEMIOLOGY. SUPPOSEDLY THAT'S WHERE THEY'RE GOING TO 27 START GETTING INTO ALL THE AUTOMOTIVE STUFF. I DON'T 28 HAVE IT. I HAVEN'T SEEN IT. SO WHAT I DO KNOW IS THAT	Page 24 1 AND THEN, ULTIMATELY, YOU WOULD, AT THE END OF THE 2 DEPOSITION, ASK A KENNEMUR QUESTION. 3 ONE IMPORTANT THING HERE, THIS IS NOT -- FOR 4 INSTANCE, IF WE GO BACK TO YOUR WORLD, BEFORE YOU TOOK 5 THE BENCH, THIS IS NOT A LIKE A DR. INFANTE (PHONETIC) 6 DEPOSITION, WHERE HE'S BEEN DEPOSED ON FRICTION A 7 MILLION TIMES OR BENZENE A MILLION TIMES. HE HAS BARELY 8 TESTIFIED ABOUT FRICTION. WE HAVE VERY LITTLE PAST 9 TESTIMONY FROM HIM. HE MAINLY TESTIFIES IN TALC CASES. 10 SO HERE WE ARE TRYING TO DO A DEPOSITION WHERE HE'S 11 PRIMARILY, BECAUSE OF THE NUMBER OF DEFENDANTS IN THE 12 CASE AND THE THINGS THEY WERE DEALING WITH, A HUGE 13 PORTION OF THE DEPOSITION IS TAKEN BY TALC. WE'RE HERE 14 AS FRICTION, REALLY KIND OF STARTING ANEW WITH HIM. 15 I THINK THE FIRST TIME WE HAD DEPOSED HIM, 16 FORD HAD DEPOSED HIM, THAT I'M AWARE OF, WAS ONE 17 TRANSCRIPT EARLIER IN THE YEAR IN A CASE. THAT WAS IT. 18 OKAY. SO HERE WE ARE, YOU KNOW, IN A SITUATION WHERE WE 19 DON'T HAVE VOLUMES AND VOLUMES OF PAST TESTIMONY. THEN 20 WHAT DO WE HAVE? THEY GIVE US -- HE IDENTIFIES HE HAS 21 TWO RELIANCE LISTS. ONE IS 645 ITEMS. THE OTHER ONE, 22 FED TO HIM BY PLAINTIFFS, IT APPEARS, IS PROBABLY 23 THOUSANDS MORE. SO WE'RE TALKING OVER A THOUSAND ITEMS, 24 AND WE WERE GIVEN VERY LIMITED TIME TO DEPOSE HIM. ONE 25 COULD SAY THREE DAYS BUT THAT IS, ESSENTIALLY, 26 MISLEADING, BECAUSE, WHEN YOU LOOK AT THE AMOUNT OF TIME 27 THAT WE ACTUALLY HAD EACH DAY, IT WAS VERY SHORT. AND 28 LAST DAY, I THINK, YOU GAVE -- WELL, I KNOW YOU JUST
Page 23 1 THERE ARE CERTAIN DOCUMENTS THEY IDENTIFY THAT THEY'RE 2 GOING TO USE WITH DR. HABER. THE FIRST IS A ARTICLE 3 FROM DR. HUEPER PUBLISHED IN THE LITERATURE. I THINK 4 IT'S IN THE '40S, LATE '30S. I CAN'T RECALL. IT'S NOT 5 ON HIS -- IT WASN'T MENTIONED IN HIS DEPO, AND IT'S NOT 6 IN HIS DECLARATION. SO WE'RE NOT JUST TALKING HERE 7 ABOUT A DISCLOSURE ISSUE. WE'RE TALKING ABOUT A 8 KENNEMUR ISSUE. IF YOU LOOK AT THE TRANSCRIPT, THE LAST 9 PAGE OF VOLUME 3, WE TRIED TO ASK THE KENNEMUR QUESTION, 10 AND THEY SAID NO. THE COURT SAID YOU CAN'T ASK THE 11 KENNEMUR QUESTION. 12 THE COURT: THAT'S NOT EXACTLY RIGHT. WELL, I 13 SHOULDN'T INTERRUPT YOU. KEEP GOING. 14 MR. LANKFORD: SO YOU WILL SEE, IF YOU LOOK AT IT, 15 THAT COLOR TECHNIQUES ASKED A BROAD QUESTION A FEW PAGES 16 BEFORE THE END OF THE DEPOSITION ABOUT ALL OPINIONS AND, 17 ESSENTIALLY, THERE'S A BACK AND FORTH MS. DEAN SAYING: 18 THERE'S A LOT MORE. AND THEN HONEYWELL TRIES TO ASK THE 19 KENNEMUR QUESTION. SHE SAYS NO-GO. JUDGE SAID NO. AND 20 THEN FORD, YOU KNOW, ESSENTIALLY MEET AND CONFERS WITH 21 HER ON THE RECORD. SHE SAYS, YEAH, NO. YOU'RE NOT 22 GOING TO DO THAT EITHER. SO WE WERE PRECLUDED FROM 23 ASKING KENNEMUR QUESTIONS OF THIS WITNESS. 24 AND YOU'RE RIGHT. THE DEPOSITION TOOK 25 PLACE -- AND THE WAY THE DEPOSITION PROCEEDED, BECAUSE 26 OF THE NUMBER OF PARTIES AND CONTINUED THREATS BY 27 MS. DEAN ABOUT HOW MUCH TIME PEOPLE WOULD HAVE, PEOPLE 28 WERE HOPPING AROUND, TRYING TO COVER GAPS IN THINGS.	Page 25 1 GAVE COLOR TECHNIQUES AN HOUR. 2 SO WE'RE GOING INTO THIS DEPOSITION -- WE 3 HAVE -- WE'RE FOLLOWING THE DISCOVERY ACT. A 4 DECLARATION IN SUPPORT OF A SUMMARY JUDGMENT MOTION IN 5 OPPOSITION DOESN'T CUT IT UNDER 2034. YOU HAVE TO MOVE 6 TO AMEND. THAT'S THE LAW. IT DOESN'T SAY IF THE EXPERT 7 HAPPENED TO FILE SOMETHING, IF SOMETHING ELSE WAS FILED 8 IN THE CASE WITH SOME OTHER OPINION FROM THE EXPERT, 9 SUDDENLY THAT'S WITHIN FAIR GAME. NO. THE DISCOVERY 10 ACT SAYS IT HAS TO BE IN THE DISCLOSURE AND IT'S NOT. 11 THE COURT: WAS THE QUESTION ASKED AND/OR THE 12 STATEMENT MADE BY THE PLAINTIFF'S SIDE -- WAS THE 13 QUESTION ASKED OF THE WITNESS WHICH HE ANSWERED AND/OR 14 STATEMENT MADE BY PLAINTIFF'S COUNSEL THAT THE OPINIONS 15 HE INTENDS TO OFFER ARE CONTAINED WITHIN EXHIBIT 6 TO 16 THE DEPOSITION? 17 MR. LANKFORD: NO. THEY KEPT SAYING THERE'S ALL 18 KINDS OF OTHER STUFF. THEY SAID THAT A FEW TIMES. IN 19 FACT, WHEN PEOPLE TRIED TO DO THAT, OKAY, ALL OF YOUR 20 OPINIONS ARE COVERED HERE AND THEN THEY WERE LIKE, WELL, 21 THERE'S A DEC, AND THEN PEOPLE WERE SAYING, OKAY, AND 22 THEN THE DECLARATION, MS. DEAN WAS LIKE NO, THAT'S NOT 23 THE UNIVERSE. THERE COULD BE MORE. AND THERE IS MORE. 24 FIRST TIME IN VOLUME II, PAGE 246 IS THE FIRST TIME SHE 25 SAYS HE'S GOING TO OFFER STATE OF THE ART AS WELL. 26 WE'RE NOW A DAY-AND-A-HALF INTO THE 27 DEPOSITION, THAT SHE THEN TERMINATED NOT TOO LONG AFTER 28 THAT, AND SHE RAISES IT FOR THE FIRST TIME. IN TERMS OF

Page 26 1 OUR QUESTIONING, WE DIDN'T GO INTO STATE OF THE ART. WE 2 ASKED HIM ONE QUESTION THAT DEALT WITH SOMETHING BEYOND 3 THE CURRENT SIGNS, WHICH IS, IN 1975 THE DETERMINATION 4 WAS YOU NEED TO LOOK AT THE EPI. THAT WAS SAID AT NIOSH 5 '75 THAT WAS DISCUSSED WITH MR. WILLIAMS THE OTHER DAY. 6 AND THEN WE SAID: SO LET'S TURN TO THE EPI, AND WE 7 STARTED GOING THROUGH THE EPIDEMIOLOGY WITH HIM AND THEN 8 WE WENT THROUGH SOME OTHER SCIENCE WITH HIM. WE DIDN'T 9 DO THIS GOING BACK TO THE BEGINNING OF TIME AS THEY ARE 10 WITH MEREWETHER AND HUEPER AND ALL THESE OTHER THINGS. 11 WE NEVER HAD AN OPPORTUNITY TO DO THAT BECAUSE SHE 12 UNILATERALLY VIOLATED THE CODE -- 13 THE COURT: OKAY. I GOT THE PICTURE. SO IS THIS 14 YOUR STATE OF THE ART WITNESS? 15 MS. DEAN: YES, YOUR HONOR. 16 THE COURT: TO WHAT EXTENT IS THIS CUMULATIVE OF 17 WHAT DR. BRODY HAS ALREADY SAID? 18 MS. DEAN: NOT AT ALL. DR. BRODY OFFICIALLY IS NOT 19 A STATE OF THE ART WITNESS. HE INDICATES THINGS LIKE: 20 BY THE TIME I STARTED WORKING WITH DR. WAGNER, ALL OF 21 THIS WAS KNOWN. BUT WHEN THEY ASKED HIM WHETHER IN 1960 22 WAGNER WAS THE FIRST TIME IT WAS ESTABLISHED? HE SAID: 23 YOU SHOULD ASK SOMEONE ELSE. THERE ARE SO MANY THINGS 24 STATED BY FORD THAT ARE PLAINLY INACCURATE OR 25 MISLEADING. FIRST, THEY HAVEN'T SEEN THE POWERPOINT. 26 I WILL STATE AGAIN WHAT'S BEEN ON THE RECORD 27 THREE TIMES. THE AGREEMENT THEY ASKED FOR AND AGREED TO 28 IS, BEFORE WE START, WE HANDED IT TO THEM. I'VE GONE Page 27 1 ABOVE AND BEYOND. SECOND, THEY SAID THEY DIDN'T HAVE 2 HUEPER IN THE DECLARATION. LET'S BE VERY CLEAR HOW THIS 3 HAPPENED. THREE TIMES IN THE DECLARATION HE STATES THIS 4 IS LIMITED TO RESPOND TO LEGAL MOTIONS. SO WHILE THEY 5 DISCUSS A SPECIFIC CAUSATION AS TO FORD, CLEARLY AND AT 6 LENGTH IT DOESN'T FOR ALL PARTIES BECAUSE NOT ALL 7 PARTIES FILED A MOTION. 8 SO I DID STATE REPEATEDLY THAT THAT'S NOT 9 GOING TO BE THE ONLY THING. THREE, DID THEY KNOW ABOUT 10 STATE OF THE ART? YES, IN THE DECLARATION. YES, 11 BECAUSE FORD ASKED. YES, BECAUSE I FLAGGED IT. AND 12 AFTER HE CONFIRMED I'M TALKING ABOUT STATE OF THE ART, 13 THEY SAID NOTHING. TO PAINT THE PICTURE THAT I WAS 14 DRAGGING THINGS OUT OR TELLING THEM THEY HAD TO STOP, 15 UNILATERALLY STOP IT, AND WOULDN'T WORK WITH THEM IS A 16 FALSEHOOD. 17 FIRST, ANYTHING YOU WANT, ANY DOCUMENT ON THE 18 LIST, THAT HUEPER ARTICLE HE REFERENCES EXPLICITLY, I 19 WILL GIVE IT TO YOU AND ATTACH IT TO THE RECORD. LET ME 20 KNOW. BOEING TOOK ME UP ON THAT. THAT'S WHY THEY HAVE 21 SIX OF THE HOUSEHOLD EXPOSURES ATTACHED AS EXHIBIT 9 TO 22 THE DEPOSITION. WHAT OCCURRED IS THEY ESTIMATED A TIME. 23 I HAVE ANOTHER HOUR TONIGHT. DO YOU WANT TO TAKE IT? 24 NO. HOW MUCH TIME DO YOU NEED? TWO-AND-A-HALF HOURS. 25 I WANT TO START AT NOON. WE PREFER TO START AT 2:00. 26 OKAY. BUT HE HAS TO BE DONE AT 5:00. THEN THEY GO OVER 27 THEIR TIME ESTIMATES. HE STAYS LATE. FORD SAYS I'M 28 DONE. IT'S ON THE RECORD. NOXELL SAYS: I STILL HAVE	Page 28 1 QUESTIONS. I SAID YOU'VE HAD TWO DAYS. YOU TOLD ME 2 YOU'RE DONE. HE HAS TO -- 3 THE COURT: YOU DON'T HAVE TO REHEARSE ALL THAT 4 BECAUSE I'VE HEARD IT ALL BEFORE AND MADE THE RULING I 5 DID. OVER YOUR OBJECTION, I PERMITTED ADDITIONAL 6 QUESTIONING BY NOXELL. 7 MS. DEAN: WHO ACTUALLY SAID: I HAVE MORE 8 QUESTIONS. WHAT HONEYWELL, MR. UNGARO SAID, IS ANOTHER 9 LAWYER CAME. HE DIDN'T DO IT, AND I WANT TO DO OVER. 10 THEN FORD SAID: ME TOO. THEY'RE NOW TRYING TO REINVENT 11 A RECORD. AGAIN, AN EXAMPLE OF WHAT MR. ADAMS TALKED 12 ABOUT. INSTEAD OF PREPARING TO BE EFFICIENT, I DEALT 13 WITH HOURS READING THIS CASE, LOOKING AT THIS ISSUE, 14 REINVENTING THINGS AND THEY STILL COME HERE AND TELL YOU 15 A FICTION THAT THEY DIDN'T KNOW HE WAS GOING TO TALK 16 ABOUT STATE OF THE ART WHEN THEY ADMIT IN THE MIDDLE OF 17 THE ARGUMENT I FLAGGED IT FOR THEM, BUT THEY DON'T ADMIT 18 THAT FORD'S LAWYER ASKED HIM, AND HE SAID IT AND THAT HE 19 DISCUSSED IT IN THE DECLARATION. 20 THE LAW IS CLEAR. WE SAID HE'S GOING TO TALK 21 ABOUT ASBESTOS AND ASBESTOS DISEASE. IF THAT WAS NOT 22 CLEAR ENOUGH, GIVEN WE JUST HAVE TO GIVE BROAD THINGS, 23 IT COULDN'T HAVE BEEN MADE CLEARER BY THE DECLARATION, 24 BY THEIR QUESTIONS. THEY DIDN'T SAY, MAN, THAT'S A LOT 25 OF HISTORY, ASBESTOS GOING BACK HUNDRED YEARS. WE MIGHT 26 NEED MORE TIME. THEY SAID, AFTER ASKING A HUNDRED PAGES 27 WORTH OF QUESTIONS, I'M DONE. 28 THE COURT: OKAY. ANYTHING FURTHER, MS. DEAN? Page 29 1 MS. DEAN: NO, YOUR HONOR. 2 THE COURT: LAST WORDS? 3 MR. LANKFORD: YES, YOUR HONOR, JUST A FEW THINGS 4 QUICKLY FOR THE RECORD. SO FIRST OF ALL, THEIR 5 DISCLOSURE DOES DISCLOSE A DR. ZHANG WHO THEY SAY WILL 6 TESTIFY AS TO STATE OF THE ART. SO THEY IDENTIFIED AN 7 EXPERT AS TO STATE OF THE ART, AND IT WASN'T THIS 8 EXPERT. THREE THINGS THAT WE'RE SPECIFICALLY OBJECTING 9 TO. THEIR DISCLOSURE AS TO HABER DOES NOT HAVE SPECIFIC 10 CAUSATION AS TO FRICTION. IT DOES NOT HAVE STATE OF THE 11 ART, AND FROM WHAT I SAW LAST NIGHT OF THE VARIOUS 12 EXHIBITS -- BY THE WAY, I STILL DON'T HAVE THIS 13 POWERPOINT. I'M NOT SURE -- 14 THE COURT: I'M GOING TO LEAVE IT TO THE TWO OF YOU 15 TO FIGURE OUT WHY THAT IS SINCE I'M HEARING, YES, YOU 16 DO, AND YOU'RE SAYING, NO, YOU DON'T. 17 MR. LANKFORD: I HAVE THE FIRST WHATEVER 50, 70 18 SLIDES WHICH IS JUST HIS BACKGROUND, ET CETERA. I DON'T 19 HAVE WHATEVER THIS STATE OF THE ART OR IF HE'S GOING 20 INTO -- 21 MS. DEAN: I'D LIKE TO SAY FOR THE RECORD AND 22 OBJECTIVELY SHOW THAT THE COURT WAS JUST LIED TO. 23 MR. LANKFORD: WHERE IS IT THEN? 24 THE COURT: TALK TO ME, MR. LANKFORD. 25 MR. LANKFORD: HERE'S ONE COPY, I GUESS. IT 26 ENDS -- 27 THE COURT: HOLD ON A SECOND. YOU ARE MIXING 28 ISSUES HERE.

Page 30 1 MR. LANKFORD: OKAY. 2 THE COURT: THE TOPIC IS WHETHER THERE'S DISCOVERY 3 ABUSE THAT SHOULD RESULT IN PRECLUSION OR LIMITATION OF 4 DR. HABER. 5 MR. LANKFORD: SO LET ME FINISH. SO I DON'T KNOW 6 IF SHE'S GOING INTO INDUSTRIAL HYGIENE AS WELL, BASED ON 7 SOME OF THE STUFF I SAW LAST NIGHT. SO I'M ALSO 8 OBJECTING TO ANY INDUSTRIAL HYGIENE TESTIMONY FROM THIS 9 WITNESS ON THE SAME BASIS, NON-DISCLOSURE AND KENNEMUR. 10 AGAIN, THESE SLIDES DO NOT -- THEY'RE INCOMPLETE. SO 11 I'M -- 70. I'M EXPECTING SHE HAS AT LEAST 70 MORE. I 12 HAVEN'T SEEN THEM. 13 I'M GOING TO OBJECT TO ANY OF THAT TESTIMONY 14 AS WELL AS CUMULATIVE. THEY'VE ALREADY ESTABLISHED, 15 THROUGH OUR OWN WITNESS, MR. WILLIAMS, HERE IS THESE 16 BIBLIOGRAPHIES GOING BACK TO STUDIES FROM THE BEGINNING 17 OF TIME, AND IT'S BEEN ESTABLISHED WITH OTHER WITNESSES 18 AS WELL. I THINK IT'S PRETTY CLEAR TO THIS JURY THAT 19 VERY, VERY EARLY ON THERE WAS A DISCUSSION IN THE 20 LITERATURE ABOUT ASBESTOS, AND THEY HAVE -- YOU KNOW, 21 VARIOUS EVENTS WERE ALSO DISCUSSED WITH THE JURY ABOUT 22 THAT. SO I'M OBJECTING ON THAT GROUND AS WELL. 23 THE COURT: ONE QUESTION FOR YOU. I UNDERSTAND 24 YOUR POINT ABOUT TIME CRUNCH, TIME PRESSURE. SO YOU 25 DON'T HAVE TO MAKE THAT POINT BECAUSE I UNDERSTAND THAT 26 WELL. DO YOU CONTEND THAT DR. HABER, WHEN PRESENTED FOR 27 DEPOSITION, WAS SUFFICIENTLY FAMILIAR WITH THE PENDING 28 ACTION TO SUBMIT TO A MEANINGFUL ORAL DEPOSITION	Page 32 1 THE OPINIONS TO BE OFFERED AND THE BASES THEREFORE. I 2 AGREE WITH THE DEFENSE THAT THE DESIGNATION OF DR. HABER 3 IS QUITE GENERAL AND DOESN'T SAY A THING ABOUT STATE OF 4 THE ART. OKAY? I AGREE WITH YOU. HOWEVER, AS I 5 EARLIER STATED, THAT'S NOT THE END OF THE DISCUSSION. 6 WHAT ACTUALLY HAPPENS IN DEPOSITION, I THINK, IS HIGHLY 7 RELEVANT TO THE QUESTION OF EXPERT DISCOVERY. AND THE 8 RECORD, AS I APPRECIATE IT, PUT THE DEFENSE ON NOTICE 9 THAT THIS GENTLEMAN WAS GOING TO OFFER OPINIONS ON STATE 10 OF THE ART, AND IN THE TIME THAT WAS AVAILABLE AND THE 11 TIME EXTENDED BY THE COURT, THE QUESTIONING OCCURRED ON 12 THE DEFENSE SIDE AS IT OCCURRED. AND I ACKNOWLEDGE THAT 13 THERE CAME A POINT WHEN THE DEFENSE CAME TO THE COURT 14 AND SAID: WE HAVE A SERIOUS PROBLEM. WE NEED RELIEF. 15 I LISTENED CAREFULLY. WE HAD A HEARING, AT LEAST AS 16 LONG AS THIS ONE, PROBABLY LONGER, AND BASED ON WHAT I 17 HEARD, I MADE AN ORDER GRANTING RELIEF. 18 SO THAT'S THE ORDER. 19 MS. CUATTO, WHY ARE YOU ON YOUR FEET? YOU'RE 20 NOT GOING TO TRY TO ARGUE SOMETHING AFTER I'VE RULED, 21 ARE YOU? 22 MS. CUATTO: NO, YOUR HONOR. 23 EMILY CUATTO FOR FORD. I HAVE TWO OBJECTIONS 24 TO THE SLIDES THAT I THINK I NEED BEFORE DR. HABER TAKES 25 THE STAND. 26 THE COURT: ALL RIGHT. 27 MS. CUATTO: FIRST OF ALL, WITH RESPECT TO THE 28 SLIDES WE HAVE AND THE SLIDES, I THINK, WE'RE GOING TO
Page 31 1 CONCERNING THE SPECIFIC TOPICS OF HIS TESTIMONY? 2 MR. LANKFORD: I HAVE NO IDEA, YOUR HONOR, BECAUSE 3 I WAS NEVER GIVEN THE OPPORTUNITY TO ASK THE QUESTION AT 4 THE END: WHAT ARE ALL OF YOUR OPINIONS, ET CETERA. WE 5 COVERED VARIOUS THINGS WHERE WE HAD TO HOP AROUND 6 BECAUSE OF THESE UNILATERALLY IMPOSED TIME LIMITS. SO I 7 DON'T KNOW. WHAT I DO KNOW IS THAT MRS. ADAMS SAID -- 8 THE COURT: MS. DEAN. 9 MR. LANKFORD: I'M SORRY. MS. DEAN SAID SEVERAL 10 TIMES, OH, THAT'S NOT THE UNIVERSE. THAT'S NOT THE 11 UNIVERSE. SO WE WERE NOT ABLE TO EFFECTIVELY KENNEMUR 12 THE WITNESS AND THEN SHE STOPPED THE DEPOSITION. AND 13 I'D LIKE TO LODGE FOR THE RECORD THE THREE VOLUMES OF 14 TESTIMONY. 15 THE COURT: THAT'S FINE. I HAVE THEM, AND I'M NOT 16 SURE EXACTLY WHAT LODGING MEANS IN THIS CIRCUMSTANCE, 17 BUT THEY'RE LODGED. I HAVE THEM RIGHT HERE. 18 MR. LANKFORD: THANK YOU, YOUR HONOR. 19 THE COURT: ALL RIGHT. HERE'S THE RULING. I'M 20 DENYING THE MOTION ON THE BASIS ASSERTED. THE 21 LEGISLATURE, FOR WHATEVER REASON, DRAFTED 2034.260 OF 22 THE CODE OF CIVIL PROCEDURE TO REQUIRE, QUOTE, "A BRIEF 23 NARRATIVE STATEMENT OF THE GENERAL SUBSTANCE OF THE 24 TESTIMONY THAT THE EXPERT IS EXPECTED TO GIVE," END 25 QUOTE. 26 IN DOING THAT, SURELY THEY KNEW THERE WERE 27 WAYS OF MAKING MORE SPECIFIC REQUIREMENTS SUCH AS RULE 28 26 OF THE FEDERAL RULES, REQUIRING A WRITTEN REPORT OF	Page 33 1 SEE, I SEE CALL-OUTS AND PRINTS FROM THE WORLD HEALTH 2 ORGANIZATION 2006. 3 THE COURT: FROM WHAT? 4 MS. CUATTO: THE WORLD HEALTH ORGANIZATION 2006. 5 THE COURT: IS THAT HELSINKI? 6 MS. CUATTO: NO. OSHA -- HILLERDAL ARTICLE: 7 MESOTHELIOMA CASES ASSOCIATED WITH NON-OCCUPATIONAL AND 8 LOW DOSE EXPOSURES. EVIDENCE CODE 802 PERMITS AN EXPERT 9 TO STATE ON DIRECT THE MATTER UPON WHICH THE OPINION IS 10 BASED. THIS MEANS AN EXPERT CAN IDENTIFY THE SOURCES OF 11 MATERIAL UPON WHICH HIS OPINION RELIES AND RELATE THEM 12 TO THE JURY IN GENERAL TERMS, AND THE VEAMATAHAU -- I 13 THINK THAT'S HOW YOU PRONOUNCE IT -- CASE WE DISCUSSED 14 THE OTHER DAY DOES MAKE CLEAR THAT AN EXPERT CAN INCLUDE 15 NON-CASE SPECIFIC FACTS IN THEIR TESTIMONY. 16 I'M NOT AWARE OF ANY AUTHORITY THAT PERMITS 17 COUNSEL TO SIMPLY PUBLISH HEARSAY MATERIAL THAT AN 18 EXPERT PURPORTS TO RELY ON AND READ FROM IT AND NOT ONLY 19 READ FROM IT DURING DR. BRODY'S TESTIMONY, QUESTIONS 20 ASKING TO VALIDATE THE HEARSAY MATERIAL. I'M VERY 21 CONCERNED WE'RE GOING TO SEE THE SAME FOR THE NEXT TWO 22 DAYS FROM DR. HABER. I THINK IT'S IMPROPER. AND I 23 THINK THE WAY THAT THE EXAMINATION SHOULD PROCEED IS 24 THAT, IF THE EXPERT BRINGS IT UP AND THERE IS SOME MINOR 25 POINT OF THE RELIANCE MATERIAL THAT THE EXPERT WANTS TO 26 RECITE, THAT'S ONE THING, BUT TO HAVE COUNSEL PUBLISH 27 HEARSAY SOURCES TO THE JURY THAT ARE NOT IN EVIDENCE, 28 AND, SPECIALLY, THEY'RE NOT COMING INTO EVIDENCE, I

Page 34 1 THINK IS HIGHLY IMPROPER. 2 AND SO -- IF IT DOESN'T HAPPEN, I THINK, THE 3 EXAMINATION WILL GO MORE QUICKLY. BUT I'M PARTICULARLY 4 CONCERNED ABOUT THE SLIDES THAT I HAVE NOT YET SEEN AND 5 WHAT STATE OF THE ART MATERIALS WILL BE IN THERE. ARE 6 WE GOING TO SEE "WELCH: DON'T BLOW IT" PUBLISHED TO THE 7 JURY AND MENTIONED ANYTHING BUT IN GENERAL TERMS? I'M 8 VERY CONCERNED, SPECIALLY ABOUT MATERIALS THAT ARE NOT 9 FACTUAL IN NATURE BUT OPINION BASED. 10 THE COURT: WHY DO YOU SUPPOSE JUSTICE CORRIGAN 11 DIDN'T SAY ANYTHING IN SANCHEZ ON THIS POINT? 12 MS. CUATTO: I DON'T THINK THAT WAS THE ISSUE IN 13 SANCHEZ. THE ISSUE IN SANCHEZ IS CAN EXPERTS RELATE 14 CASE SPECIFIC FACTS? NO. IT WASN'T AN 802 ISSUE THAT 15 WE'RE TALKING ABOUT HERE ABOUT THE EXPERT TALKING ABOUT 16 GENERAL BACKGROUND MATERIAL. THEIR RELIANCE MATERIAL 17 IT'S NOT CASE SPECIFIC. 18 THE COURT: WHAT ABOUT CASE SPECIFIC HEARSAY IS 19 THAT LIMITED TO GENERAL -- 20 MS. CUATTO: CASE SPECIFIC HEARSAY ISN'T 21 ADMISSIBLE. 22 THE COURT: I SUPPOSE ONCE IT'S ADMITTED -- 23 MS. CUATTO: CORRECT. CORRECT. 24 THE COURT: ONCE IT'S ADMITTED, THEN IT'S NOT 25 USABLE. 26 MS. CUATTO: IT'S NOT HEARSAY. AND I THINK -- 27 THE COURT: OKAY. LET ME JUST THINK ABOUT THIS FOR 28 A SECOND.	Page 36 1 AUTHORITY THAT AN INTERNAL DOCUMENT CAN BE OFFERED AS 2 CIRCUMSTANTIAL EVIDENCE OF WHAT WAS KNOWABLE IN THIS 3 SCIENTIFIC COMMUNITY THAT WOULDN'T BE OFFERING THAT FOR 4 THE HEARSAY PURPOSE OF ITS TRUTH BECAUSE IT CAN'T BE 5 CIRCUMSTANTIAL EVIDENCE OF WHAT WAS KNOWABLE UNLESS IT 6 WAS, IN FACT, KNOWABLE IN THE COMMUNITY, AND YOU COULD 7 HAVE ACCESSED THAT INFORMATION FROM ANOTHER SOURCE. 8 SO IF WE START TO SEE -- 9 THE COURT: LET ME ASK YOU. ACCORDING TO YOU THEN, 10 THE ONLY WAY TO PROVE WHAT WAS KNOWN OR KNOWABLE AT A 11 RELEVANT TIME IS THROUGH EXPERT TESTIMONY? 12 MS. CUATTO: YES, IF IT'S A SCIENTIFIC MATTER LIKE 13 IT IS AT ISSUE IN THIS CASE, YES. 14 THE COURT: OKAY. 15 MS. CUATTO: OR THROUGH DOCUMENTS THAT APPLY TO THE 16 PARTICULAR DEFENDANT, BECAUSE THEY WERE THE DOCUMENTS 17 AVAILABLE TO THAT PARTICULAR DEFENDANT. WHAT I DON'T 18 THINK YOU CAN DO IS USE AN INTERNAL DOCUMENT OF AN 19 ORGANIZATION OR COMPANY OR, YOU KNOW, SOME UNIVERSITY 20 PROFESSOR'S FINAL TO SAY THIS WAS KNOWABLE IN THE 21 SCIENTIFIC COMMUNITY IF IT WASN'T PUBLICLY AVAILABLE AND 22 ACCESSIBLE. SO THEY HAVE TO HAVE EITHER ACTUAL NOTICE 23 OR CONSTRUCTIVE NOTICE THROUGH WHAT IS PUBLICLY 24 AVAILABLE; OTHERWISE, IT'S ONLY BEING OFFERED FOR THE 25 HEARSAY PURPOSE, AND IT'S NOT BEING OFFERED FOR 26 NON-HEARSAY PURPOSE. WE'LL SEE WHAT SLIDES COME UP ON 27 THAT, BUT I JUST WANTED TO MAKE SURE I DIDN'T LET THAT 28 GO TOO LONG FROM YESTERDAY WITHOUT MAKING THAT POINT
Page 35 1 WHERE WERE YOU THE OTHER DAY WHEN I ASKED 2 EVERYBODY: AM I WRONG? AND NOBODY SAID A THING? 3 MS. CUATTO: BECAUSE WHAT YOU SAID AT THE TIME, I 4 AGREED WITH. BUT THEN HOW IT PLAYED OUT, I THINK, WENT 5 TOO FAR. SO I THINK UNDER VEAMATAHAU, YES, AN EXPERT 6 CAN DESCRIBE THE BASIS OF THEIR OPINION, AND IF THAT 7 REQUIRES SOME LIMITED RECITATION OF BACKGROUND FACTS, 8 THAT'S OKAY. BUT PUTTING THE HEARSAY AND PUBLISHING IT 9 IN FRONT OF THE JURY, SPECIALLY IN THE CONTEXT OF 10 COUNSEL ASKING THE QUESTION AND IT NOT COMING FROM THE 11 WITNESS, GOES WELL BEYOND WHAT THAT CASE ALLOWS, AND I 12 THINK IS IMPROPER, SPECIALLY WHEN IT'S NOT FACTS; IT'S 13 OPINIONS. 14 THE COURT: OKAY. WHAT'S THE OTHER SLIDE? 15 MS. CUATTO: THOSE ARE THE SLIDES. IT'S 56, 58, 67 16 THROUGH 69. MY NEXT OBJECTION IS ABOUT THE SLIDES THAT 17 WE DON'T HAVE YET ABOUT THE STATE OF THE ART, BUT I 18 DON'T WANT TO GET THE QUESTION WHERE WERE YOU YESTERDAY 19 BECAUSE, WHEN YESTERDAY WE TALKED ABOUT THE ISSUE OF 20 NOTICE, I THINK WE'RE STARTING TO MIX TWO CONCEPTS. 21 THERE'S THE QUESTION OF NOTICE TO A DEFENDANT 22 THAT'S RELEVANT FOR THE NON-HEARSAY PURPOSE OF SHOWING 23 ITS EFFECT ON THE LISTENER. THAT'S A VERY DIFFERENT 24 QUESTION THAN NOTICE IN TERMS OF CONSTRUCTIVE NOTICE OF 25 WHAT IS KNOWABLE. AND ON THAT PARTICULAR QUESTION, 26 THOSE DOCUMENTS ARE NOT BEING OFFERED FOR A NON-HEARSAY 27 PURPOSE. THEY'RE BEING OFFERED FOR THE HEARSAY PURPOSE 28 OF SHOWING WHAT WAS KNOWABLE, AND I'M NOT AWARE OF ANY	Page 37 1 THAT DIDN'T COME UP AS TO FORD YESTERDAY. 2 THE COURT: GIVE ME A SECOND. 3 MS. DEAN, WHY DON'T YOU BRING DR. HABER IN. 4 MS. CUATTO, I DON'T KNOW WHERE THE LINE IS, 5 BUT YOUR POINT TO ME IS WHEREVER THE LINE IS, WHAT 6 PLAINTIFFS PROPOSE TO DO WITH THESE SLIDES IS OVER THE 7 LINE? 8 MS. CUATTO: CORRECT. 9 THE COURT: I UNDERSTAND THAT. AND I HAVE LONG 10 WONDERED WHAT IS LEFT OF THE CASE, THE NAME OF WHICH I 11 CAN'T REMEMBER, BUT IT'S SOMETHING LIKE MCCONNELL VS. 12 CONTINENTAL AIRLINES, WHICH IS A PRE-SANCHEZ CASE, WHICH 13 ALSO DISCUSSES WHAT AN EXPERT MAY RELAY CONCERNING THE 14 FOUNDATION FOR HIS OR HER OPINIONS WHEN IT'S OTHERWISE 15 INADMISSIBLE AND IT TOO SPEAKS OF GENERAL -- SORT OF 16 GENERALLY AND WITHOUT TOO MUCH DETAIL OR SOMETHING IS 17 WHAT I THINK THE COURT OF APPEAL SAID. 18 ALL RIGHT. WELL, I AGREE THERE'S A LINE. AND 19 I DON'T KNOW WHERE IT IS, AND IT'S GOING TO VARY ON A 20 CASE BY CASE BASIS OR A QUESTION BY QUESTION, SLIDE BY 21 SLIDE BASIS. SO THANK YOU. 22 LET'S BRING IN THE JURY, PLEASE. 23 24 (THE FOLLOWING PROCEEDINGS WERE HELD 25 IN THE PRESENCE OF THE JURY:) 26 27 THE COURT: LADIES AND GENTLEMEN, GOOD MORNING. 28 HAVE A SEAT, EVERYBODY. I SEE ALL JURORS AND

Page 38 1 ALTERNATES, COUNSEL ARE PRESENT. WITNESS IS ON THE 2 STAND. 3 AND, LADIES AND GENTLEMEN, I'M SO SORRY TO 4 LEAVE YOU STANDING OUT THERE IN THE HALLWAY. THERE WERE 5 SOME THINGS THAT I HAD TO COVER WITH THE LAWYERS HERE TO 6 MAKE THIS TESTIMONY GO SMOOTHLY. WE ARE STILL ON TRACK. 7 I WANT TO REASSURE YOU THAT WE ARE STILL ABSOLUTELY 8 WITHIN THE TIME FRAME I HAVE TOLD YOU. NOTHING IS 9 SLIPPING. OKAY? 10 SO WITH THAT, DR. HABER, YOU ARE STILL UNDER 11 OATH. 12 DO YOU UNDERSTAND THAT? 13 THE WITNESS: YES, SIR. 14 THE COURT: OKAY. MS. DEAN WOULD YOU LIKE TO 15 PROCEED? 16 MS. DEAN: YES, YOUR HONOR. 17 THE COURT: WHENEVER YOU ARE READY. 18 MS. DEAN: YOUR HONOR, WE WANT TO START OFF BY 19 ADMITTING -- WELL, FIRST WE'VE MARKED FOR IDENTIFICATION 20 EXHIBITS 1 THROUGH 10, 12 THROUGH 13. 21 THE COURT: OKAY. WAIT A SECOND. LOUDER. 22 MS. DEAN: 1 THROUGH 10, 12 THROUGH 13, 15 THROUGH 23 17, 19 THROUGH 22, 26 THROUGH 29, 32, 34, 36 THROUGH 37, 24 41, 54, 56 -- 25 THE COURT: SLOWER. 41. 26 MS. DEAN: 54 THROUGH 56, 74, 259 THROUGH 269, 270, 27 277, 281 AND 283. 28 THE COURT: OKAY. SO I LOST YOU AT 269.	Page 40 1 MS. DEAN: YOUR HONOR, WE'D ALSO SEEK TO ADMIT 701 2 AND 703 INTO EVIDENCE. THERE WERE TWO DOCUMENTS. THESE 3 ARE FORD DEFENSE DOCUMENTS SHOWN TO THE WITNESS 4 YESTERDAY. I THINK THINGS JUST GOT CONFUSED, BUT I 5 DIDN'T GET MY COPY. ONE GOT ADMITTED. ONE DID NOT. I 6 WANT TO MAKE SURE BOTH ARE ADMITTED INTO EVIDENCE. 7 THE COURT: EXHIBIT 701 AND 704, THEY ARE FORD 8 DOCUMENTS, YOU SAID? 9 MS. DEAN: I THOUGHT IT WAS 701 AND 703. 10 THE COURT: OH, OKAY. AND THEY ARE FORD DOCUMENTS, 11 YOU SAY? 12 MS. DEAN: YES. SHOWN TO MR. WILLIAMS BY FORD. 13 MR. LANKFORD: I DON'T HAVE AN OBJECTION, BUT 14 MS. DEAN, ISN'T 701 THE PNEUMOCONIOSIS? 15 MS. DEAN: ONE WAS A LETTER SELIKOFF. ONE IS 16 PNEUMOCONIOSIS. 17 THE COURT: OKAY-- LET ME SAY I NOTE THE OFFER. 18 AND I'LL RESERVE RULING. MR. LANKFORD AND OTHERS, 19 PLEASE INFORM YOURSELF. 20 MR. SLAUGHTER: YOUR HONOR, IF WE COULD BE TOLD 21 WHICH TWO ARE NOT AVON, THAT COULD SAVE A LOT OF TIME. 22 MS. DEAN: 74 AND 41. 23 MR. SLAUGHTER: AND THAT WAS SLAUGHTER. 24 THE COURT: HELP US OUT. TELL US WHO YOU ARE 25 BEFORE YOU SPEAK EVEN THOUGH YOU THINK WE KNOW WHO YOU 26 ARE, WHICH WE PROBABLY DON'T. 27 MS. DEAN: YES, YOUR HONOR. 28 ///
Page 39 1 MS. DEAN: 270 TO 277, 281 AND 283. 2 THE COURT: DO YOU MIND IF I JUST GO OVER THOSE 3 WITH YOU? 4 MS. DEAN: NOT AT ALL. 5 THE COURT: 1, 2, 3, 4, 5, 6, 7, 8, 9. DO I GO TO 6 10? 7 MS. DEAN: YES. 8 THE COURT: 10, 12, 13, 15, 16, 17, 19, 20, 21, 22, 9 26, 27, 28, 29, 32, 34, 36, 37, 41, 54, 55, 56, 74, 259, 10 260, 261, 262, 263, 264, 265, 266, 267, 268, 269, 270, 11 271, 272, 273, 274, 275, 276, 277, 281 AND 283. DID I 12 GET ALL OF THOSE CORRECTLY? 13 MS. DEAN: YES, YOUR HONOR. 14 THE COURT: OKAY. AND I PRESUME THE DEFENDANT IS 15 GOING TO NEED A FEW MINUTES TO LOOK AT THOSE TO 16 DETERMINE WHETHER THERE ARE ANY OBJECTIONS? 17 MR. LANKFORD: YES, YOUR HONOR. 18 THE COURT: OKAY. I'LL RESERVE ON THAT. I NOTE 19 THAT THEY'RE BEING OFFERED. 20 MS. DEAN: YOUR HONOR, I DO KNOW THAT AVON HAS 21 INDICATED NO OBJECTION, AND THESE ARE ALL, BUT TWO, AVON 22 SPECIFIC DOCUMENTS. AND THEN I PROVIDED NOT ONLY THIS 23 LIST BUT THE SUBLIST TO ALL COUNSEL. 24 THE COURT: OKAY. SO WE WILL -- I UNDERSTAND. BUT 25 GO AHEAD AND PROCEED. I'M GOING TO RESERVE RULING UNTIL 26 I GIVE COUNSEL A CHANCE JUST TO MAKE SURE THEY KNOW WHAT 27 WE'RE TALKING ABOUT. 28 ALL RIGHT. GO AHEAD AND PROCEED, PLEASE.	Page 41 1 DIRECT EXAMINATION (CONTINUED) 2 BY MS. DEAN: 3 Q GOOD MORNING, DR. HABER. 4 A GOOD MORNING, MS. DEAN. 5 Q RIGHT BEFORE WE KIND OF BARELY STARTED, WE 6 WERE JUST ORIENTING THE JURY WHO YOU ARE. AND WE WERE 7 LOOKING AT THESE ORGANIZATIONS, AND I THINK YOU WERE 8 TELLING US ABOUT THE MIDDLE ONE THAT SAYS AMERICAN 9 COLLEGE OF OCCUPATIONAL AND ENVIRONMENTAL MEDICINE. 10 CAN YOU TELL US ABOUT THAT? 11 A YES. SO THAT IS AN ORGANIZATION OF PHYSICIANS 12 THAT HAVE EXPERTISE AND EXPERIENCE AND FOCUS THEIR 13 ATTENTION ON DISEASES RELATED TO OCCUPATIONAL AND 14 ENVIRONMENTAL EXPOSURES AND, THEREFORE, RELATED 15 DISEASES. 16 Q IN PART OF YOUR EDUCATION AND TRAINING AND 17 EXPERIENCE AS A DOCTOR, IS UNDERSTANDING NOT ONLY WHAT 18 DISEASE YOUR PATIENTS HAVE, BUT THE CAUSE OF THE DISEASE 19 AN INTEGRAL PART OF YOUR WORK? 20 A YES. VERY OFTEN. 21 Q HAS THAT BEEN THE CASE FOR ASBESTOS-RELATED 22 DISEASES? 23 A SPECIFICALLY, YES. 24 Q IN TERMS OF UNDERSTANDING CAUSE AND EFFECT FOR 25 DISEASE, WHAT ARE SOME AREAS OR DISCIPLINE IN THE 26 SCIENTIFIC COMMUNITY THAT YOU ROUTINELY LOOK AT AND RELY 27 ON? 28 A WELL, YOU WOULD LOOK AT -- PARTICULARLY WITH,

Page 42 1 FOR EXAMPLE, THE DUST DISEASES, YOU'RE LOOKING AT 2 INFORMATION FROM GEOLOGISTS OR FROM TOXICOLOGISTS OR 3 FROM ENVIRONMENTAL HEALTH, INDUSTRIAL HEALTH, INDUSTRIAL 4 HYGIENE, CHEMISTS. THERE'S A VARIETY OF DIFFERENT 5 DISCIPLINES IN SCIENCE, AS WELL AS, OF COURSE, 6 PHYSICIANS AND OTHER SCIENTISTS. 7 Q WE'VE SEEN SOME OF THIS WITH DR. LONGO, BUT WE 8 ONLY GOT PARTIALLY FOR -- THE OTHER SIDE HAS NOT HAD A 9 CHANCE TO TALK TO HIM. BUT IS IT IMPORTANT WHEN YOU'RE 10 EVALUATING WHAT CAUSED YOUR PATIENTS' DISEASES TO 11 UNDERSTAND HOW MUCH ASBESTOS IS IN THE PRODUCT, WHAT 12 TYPES AND HOW MUCH GETS RELEASED IN THE AIR DEPENDING ON 13 THE WORK THAT THEY'RE DOING? 14 A YES, IT IS. 15 Q AND THEN, IN TERMS OF JUST MAKING BROADER 16 DECISIONS ABOUT WHETHER DIFFERENT TYPES OF 17 ASBESTOS-CAUSED DISEASE, IS EPIDEMIOLOGY IMPORTANT? 18 A YES, IT IS. 19 Q IS TOXICOLOGY IMPORTANT? 20 A YES, MA'AM. 21 Q ARE ANIMAL STUDIES IMPORTANT? 22 A YES. 23 Q IS MOLECULAR SCIENCE IMPORTANT? 24 A YES. ABSOLUTELY. 25 Q YOU HAVE TWO OTHER ORGANIZATIONS AT THE BOTTOM 26 HERE. CAN YOU TELL US WHAT THEY ARE AND WHAT YOUR 27 AFFILIATION WITH THOSE ORGANIZATIONS IS? 28 A SURE. THE A.T.S. OR AMERICAN THORACIC SOCIETY	Page 44 1 AND THEN THE SECOND WAS JUST A CASE REPORT OF 2 A PERSON WHO HAD SIMULTANEOUSLY BOTH MALIGNANT 3 MESOTHELIOMA AND A LUNG CANCER. 4 Q IS HAVING BOTH MESOTHELIOMA AND LUNG CANCER 5 REMARKABLY RARE? 6 A EXCEPTIONALLY RARE. 7 Q IF WE GO TO YOUR FIRST PAPER AND WE WANT TO 8 EVALUATE A CLAIM THAT WAS TOLD THE JURY EARLY ON ABOUT 9 WHETHER, BASED ON JUST OBJECTIVE DATA, YOU WOULD EXPECT 10 TO SEE IN A MESOTHELIOMA CAUSED BY ASBESTOS TO HAVE 11 PLEURAL PLAQUES OR ASBESTOSIS, ARE YOU ONE OF MANY THAT 12 HAVE CONTRIBUTED TO SUCH DATA ABOUT THAT? 13 A YES. 14 Q NOW, WE HAVE MET AND TALKED TO DR. BRODY WHO 15 HAS OVER 100 ARTICLES IN THE PEER-REVIEWED PUBLISHED 16 ARENA. DO YOU HAVE ANYTHING LIKE THAT? 17 A NO, MA'AM. 18 Q DO YOU SPEND MOST OF YOUR TIME DAY IN AND DAY 19 OUT WITH PATIENTS? 20 A YES. I DON'T DO THE RESEARCHING, NO. 21 Q HAVE I ASKED YOU TO COME AND HELP US 22 UNDERSTAND WHAT DISEASE RITA CHAPMAN HAS, WHAT CAUSED IT 23 AND HOW LONG IT HAS BEEN KNOWN IN YOUR ARENA, IN THE 24 MEDICAL AND SCIENTIFIC COMMUNITY, ABOUT THAT CAUSE AND 25 EFFECT RELATIONSHIP TODAY? 26 A YES, YOU DID. 27 Q WHEN I ASK YOU THOSE QUESTIONS, CAN I ASK YOU 28 TO GIVE ALL OF YOUR OPINIONS WITHIN A REASONABLE DEGREE
Page 43 1 IS SIMILAR TO THE AMERICAN COLLEGE OF CHEST PHYSICIANS. 2 IT'S A LARGE GROUP OF PHYSICIANS RELATED TO THORAX -- 3 THORACIC IS CHEST -- RELATED TO DISEASES OF THE CHEST. 4 THE A.T.S. PUTS OUT GUIDANCE PAPERS FROM 5 DIAGNOSING ASBESTOS-RELATED DISEASES AND OTHER DISEASES, 6 AS WELL AS PERFORMING PULMONARY FUNCTION TESTING AND 7 OTHER TYPES OF TESTS. SO THEY HAVE A JOURNAL THAT 8 PHYSICIANS LIKE MYSELF WILL READ THAT HAVE ARTICLES, 9 PEER-REVIEWED JOURNALS. 10 AND THEN THE AMERICAN BOARD OF MEDICAL 11 SPECIALTIES IS THE BOARD THAT OVERSEES THE TRAINING AND 12 CERTIFICATION OF PHYSICIANS FROM INTERNAL MEDICINE, 13 PULMONARY, CARDIOLOGY, WHATEVER SPECIALIST THAT YOU'RE 14 SEEING. 15 Q HAVE YOU ALSO PUBLISHED AND CONTRIBUTED TO THE 16 SCIENTIFIC AND MEDICAL PEER-REVIEWED PUBLISHED 17 LITERATURE? 18 A SOMEWHAT. IT'S LIMITED. BUT, YES, I HAVE. 19 Q ARE THESE EXAMPLES OF YOUR PUBLICATIONS? 20 A YES, MA'AM. 21 Q TELL US A LITTLE BIT ABOUT THOSE. 22 A SO ONE WAS A STUDY RELATED TO MALIGNANT 23 MESOTHELIOMA. THIS HAD BEEN A CLINICAL EVALUATION OF 24 238 CASES OF MESOTHELIOMA THAT HAD COME THROUGH THE 25 CLINIC THAT I WAS WORKING AT. AND THIS WAS LOOKING AT 26 WHAT THEIR -- HOW THEY WERE TREATED, WHAT THEIR 27 PROGNOSIS WAS, THEIR SYMPTOMS, ET CETERA. SO IT WAS 28 LOOKING AT MESOTHELIOMA FROM A CLINICAL PERSPECTIVE.	Page 45 1 OF MEDICAL AND SCIENTIFIC CERTAINTY? 2 A I WILL. 3 MS. DEAN: YOUR HONOR, AT THIS TIME WE WOULD LIKE 4 TO OFFER DR. HABER AS AN EXPERT IN INTERNAL MEDICINE AND 5 PULMONOLOGY WITH EDUCATION, TRAINING, AND KNOWLEDGE 6 SPECIFICALLY IN ASBESTOS AND DISEASE. 7 THE COURT: ALL RIGHT. IS THERE ANY OBJECTION TO 8 THE WITNESS'S QUALIFICATIONS? HEARING NONE. THE COURT 9 FINDS THAT DR. HABER POSSESSES AT LEAST THE MINIMUM 10 QUALIFICATIONS TO BE SO QUALIFIED, AND HE IS SO 11 QUALIFIED BY THE COURT. 12 YOU MAY PROCEED. 13 MS. DEAN: THANK YOU, YOUR HONOR. 14 Q THE FIRST THING I WANT TO DO IS JUST GET AN 15 UNDERSTANDING OF WHAT MATERIALS THAT ARE SPECIFIC TO 16 RITA CHAPMAN THAT YOU REVIEWED IN ORDER TO BE ABLE TO 17 TALK TO EVERYBODY TODAY, BUT THIS SLIDE REMINDS ME OF 18 SOMETHING I NEED TO ASK FIRST. 19 AND, YOU KNOW, PAUSING ON THAT, I KNOW YOU 20 HAVE SENT ME CERTAIN THINGS LIKE CT SCANS AND MEDICAL 21 RECORDS THAT YOU THOUGHT WERE IMPORTANT AND A 55-PAGE 22 DECLARATION AND LIST OF ARTICLES THAT YOU THOUGHT WERE 23 IMPORTANT. BUT IN TERMS OF ACTUALLY PREPARING THIS 24 POWERPOINT, WHO DID THE WORK? 25 A IT WAS, I THINK, COLLABORATION. I MEAN, I 26 CERTAINLY -- 27 Q WHO DID THE TYPING? 28 A OH, YOU DID THE TYPING. I DON'T TYPE.

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1 Q AND SO IF THERE ARE TYPOS, I JUST WANT TO BE
2 REALLY CLEAR, THAT'S ME AND NOT ANYBODY ELSE.
3 IN TERMS OF -- BEFORE WE GET INTO THIS CASE,
4 HAVE YOU TESTIFIED IN OTHER CASES BEFORE?
5 A YES, MA'AM.
6 Q YOU AND I HAVE WORKED TOGETHER SEVERAL TIMES
7 IN THE COURTROOM; CORRECT?
8 A YES.
9 Q WHERE I'VE ASKED YOU TO COME AND REVIEW A
10 PERSON'S WORK HISTORY, ENVIRONMENTAL HISTORY, MEDICAL
11 RECORDS AND HELP US UNDERSTAND WHAT HAPPENED?
12 A YES.
13 Q HAVE YOU ALSO BEEN ASKED BY COMPANIES TO COME
14 AND TESTIFY IN ASBESTOS-RELATED MATTERS?
15 A YES.
16 Q CAN YOU GIVE US AN IDEA ABOUT THE SPLIT
17 BETWEEN WHAT IS THE SIDE THAT BELIEVES THEY WERE HURT
18 FROM ASBESTOS VERSUS THE SIDE THAT BELIEVES -- THAT WERE
19 SUED?
20 A ABOUT HALF OF MY WORK WHEN I'M DOING THE
21 MEDICAL LEGAL ON ASBESTOS IS BETWEEN DEFENDANTS AND HALF
22 WITH PLAINTIFF.
23 Q OKAY. WHEN YOU COME, DO YOU CHARGE FOR YOUR
24 TIME?
25 A I DO.
26 Q CAN YOU GIVE US AN IDEA OF HOW MUCH YOU
27 CHARGE?
28 A THIS WILL BE CHARGED AT \$600 AN HOUR.

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1 Q AND IN TERMS OF HOW YOU SPENT YOUR TIME, PART
2 OF WHAT YOU'VE DONE IS REVIEWED MATERIALS. CAN YOU TELL
3 US A LITTLE BIT ABOUT WHAT YOU REVIEWED?
4 A YES. SO I REVIEWED MRS. CHAPMAN'S MEDICAL
5 RECORDS FROM MAYO CLINIC. I LOOKED AT A NUMBER OF HER
6 CHEST X-RAYS AND CT SCANS AND PET SCANS. IT'S A SPECIAL
7 TYPE OF CAT SCAN. I TALKED WITH HER ON THE PHONE. I
8 CALLED HER UP, AND WE HAD A CHAT. AND THEN I'VE LOOKED
9 AT DEPOSITION TESTIMONIES.
10 Q WHAT WAS THE FUNCTION OF THE CHAT?
11 A WELL, AS A PHYSICIAN, I LIKE TO GET
12 INFORMATION DIRECTLY FROM THE PATIENT JUST LIKE IF THEY
13 WERE IN MY OFFICE.
14 Q SO YOU REVIEWED THE DAYS AND DAYS AND DAYS OF
15 SWORN TESTIMONY WHERE THE LAWYERS GOT TO ASK HER
16 QUESTIONS, BUT YOU ALSO THEN FOLLOWED UP YOURSELF?
17 A YES.
18 Q DO YOU AGREE WITH THE DIAGNOSIS OF HER ACTUAL
19 TREATING PHYSICIANS?
20 A I DO.
21 Q WHAT DISEASE DOES SHE HAVE?
22 A MALIGNANT PLEURAL MESOTHELIOMA.
23 Q SHE HAD TO GO HOME FOR DOCTORS' APPOINTMENTS,
24 AND I THINK IN MANY WAYS THAT MAKES THIS EASIER. IN
25 YOUR OPINION AS A DOCTOR, WHAT IS SHE LIKELY GOING TO
26 DIE FROM?
27 A MALIGNANT PLEURAL MESOTHELIOMA.
28 Q DID YOU TAKE TIME AND EFFORT TO UNDERSTAND

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1 KIND OF HER GENERAL HEALTH BACKGROUND BEFORE SHE GOT
2 THIS DIAGNOSIS?
3 A YES.
4 Q TELL US A LITTLE BIT ABOUT HER MEDICAL
5 HISTORY.
6 A SURE. SO SHE WAS ACTUALLY PRETTY HEALTHY.
7 SHE HAD SOME OSTEOARTHRITIS AND JUST ACHES AND PAINS
8 TYPE OF ARTHRITIS, NOTHING SIGNIFICANT. SHE HAD GERD OR
9 GASTROESOPHAGEAL DISEASE, ACID REFLUX. SHE HAD SOME
10 CATARACTS IN HER EYES AND DYSLIPIDEMIA. THAT'S THE
11 MEDICAL TERM FOR ABNORMAL LIPIDS OR CHOLESTEROL,
12 TRIGLYCERIDES. AND SHE WAS ON MEDICATION TO CONTROL
13 THAT. BUT NO ACTIVE OR CHRONIC LUNG CONDITIONS, HEART
14 CONDITIONS, ANYTHING LIKE THAT.
15 Q WERE ANY OF THESE CONDITIONS IN A STATE WHERE
16 YOU WOULD SAY THEY'RE NOT WELL CONTROLLED?
17 A NO. AND THEY HAD -- SHE HAD HAD EVEN A CHEST
18 X-RAY AND PULMONARY FUNCTION TESTING, WHICH IS A
19 BREATHING TESTING DONE, ABOUT A YEAR TO TWO YEARS BEFORE
20 SHE WAS DIAGNOSED WITH CANCER, AND THEY WERE COMPLETELY
21 NORMAL.
22 Q ONE OF THE THINGS DR. BRODY SAYS WITH
23 MESOTHELIOMA IS THAT IT CAN BE IN YOUR BODY FOR YEARS
24 AND IF NOT DECADES AND YOU DON'T HAVE ANY PROBLEMS, YOU
25 DON'T SEE ANY PROBLEM, AND THEN THE CANCER APPEARS. IS
26 THAT YOUR EXPERIENCE AS A DOCTOR IN THE FIELD ABOUT HOW
27 MESOTHELIOMA WORKS?
28 A YES.

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1 Q CAN YOU TELL US A LITTLE BIT ABOUT HER
2 CLINICAL COURSE?
3 A SURE. SO IN MARCH OF 2021, SHE STARTED
4 EXPERIENCING SOME LEFT-SIDED CHEST PAINS, AND SHE WAS
5 FEELING OUT OF BREATH. AND SHE WENT TO THE DOCTOR.
6 THEY DID A CHEST MRI AND CHEST X-RAY, AND THESE BOTH
7 SHOWED A VERY LARGE WHAT'S CALLED PLEURAL EFFUSION.
8 Q DID YOU PROVIDE THIS TO ME TO HELP KIND OF
9 EXPLAIN WHAT A PLEURAL EFFUSION IS?
10 A YES.
11 Q CAN YOU DO THAT?
12 A YES. SO NORMALLY THE LUNGS ARE LIKE A PILLOW
13 WITH A PILLOWCASE AROUND IT. WE HAVE THIS -- THE LUNGS
14 ARE ENCASED IN WHAT'S CALLED THE PLEURA. AND NORMALLY
15 THE -- THERE'S TWO LININGS OF THE PLEURA, ONE THAT GOES
16 UP AGAINST THE CHEST AND ONE THAT GOES UP AGAINST THE
17 LUNGS. AND THEY'RE NORMALLY TISSUE PAPER THIN AND VERY
18 CLOSE TOGETHER WITH JUST A SMALL AMOUNT OF LUBRICATION
19 SO THAT THEY SLIDE APART. NOT MUCH FLUID AT ALL.
20 BUT IN ABNORMAL CONDITIONS LIKE CANCER, YOU
21 CAN START DEVELOPING FLUID CALLED A PLEURAL EFFUSION
22 BETWEEN THOSE TWO LAYERS, AND IT ACTUALLY STARTS TO
23 COMPRESS AGAINST THE LUNG MAKING IT HARDER AND HARDER
24 FOR THE LUNG TO EXPAND AND CAUSE YOU TO HAVE SHORTNESS
25 OF BREATH.
26 AND SO WHAT WE HAVE PICTORIALLY HERE IS ON
27 THE -- WHAT LOOKS LIKE ON THE LEFT SIDE, WHICH WOULD BE
28 THE PERSON'S RIGHT LUNG, YOU SEE THAT BLUE AREA, THAT

Page 50 1 WOULD BE THE FLUID AS IT STARTS TO PUSH AGAINST THE 2 LUNG. 3 Q MR. ADAMS POINTED OUT I ASKED YOU A QUESTION 4 ABOUT WHETHER ASBESTOS CAN BE IN YOUR BODY FOR YEARS AND 5 IF YOU DON'T SEE IT AND THEN IT SHOWS UP, AND HE SAID I 6 ACCIDENTALLY SAID MESOTHELIOMA COULD BE IN YOUR BODY 7 INSTEAD OF ASBESTOS. 8 DID YOU FOLLOW ME WHEN I ASKED THAT QUESTION? 9 A I DID. 10 Q SORRY ABOUT THAT. 11 IN TERMS OF PLEURAL EFFUSION, DO YOU HAVE AN 12 X-RAY OF RITA CHAPMAN THAT HELPS US UNDERSTAND WHAT SHE 13 WAS GOING THROUGH? 14 A YES. IS THERE A POINTER OR -- CAN I -- 15 Q DO YOU HAVE ONE? 16 A I DO NOT. 17 Q LET ME SEE IF I CAN FIND ONE. 18 THE COURT: MS. DEAN, IF IT'S IMPORTANT, THE 19 WITNESS CAN LEAVE THE WITNESS STAND AND STAND ELSEWHERE 20 TO ILLUSTRATE TESTIMONY. 21 Q BY MS. DEAN: AS WE LOOK AT RITA CHAPMAN'S 22 X-RAY, WOULD THAT BE HELPFUL? 23 A YES, IT WOULD. 24 THE COURT: LET ME ASK THE JURY. WHAT'S BETTER? 25 IF THE WITNESS IS THERE OR THERE (INDICATING)? LOOKS 26 LIKE IT'S A 9/3 VOTE. 27 ALL RIGHT. TELL YOU WHAT, DOCTOR. WOULD YOU 28 MIND GOING OVER THERE?	Page 52 1 BREATHING? 2 A YES. THAT'S A PROCEDURE THAT I DO. 3 Q IS THAT THAT PROCEDURE? 4 A YES. 5 Q TELL US ABOUT IT. 6 A SO THIS IS CALLED A THORACENTESIS. AND THIS 7 IS WHERE I STICK A NEEDLE -- THE DOCTOR WILL STICK A 8 NEEDLE INTO THE PERSON'S CHEST. SO WHAT THEY DO IS HAVE 9 THEM SIT IN THIS POSITION. WE PUT SOME LIDOCAINE IN THE 10 BACK AREA, AND WE STICK A LONG CATHETER. IT'S LIKE AN 11 IV, BUT IT'S ABOUT EIGHT INCHES LONG AND A LITTLE 12 THICKER. AND WE PUT THIS CATHETER INTO THAT CAVITY 13 WHERE THE LIQUID WAS, AND THEN PUT IT -- ATTACH IT TO A 14 VACUUM BOTTLE AND SUCK ALL OR AS MUCH FLUID AS WE CAN 15 GET OUT SAFELY OUT EITHER SAFELY OR FROM A COMFORT 16 STANDPOINT. 17 Q DOES THAT HELP THE PATIENT BREATHE? 18 A YES. SO THEY'LL -- INITIALLY WHEN THE LUNG 19 REEXPANDS, IT'S ACTUALLY QUITE PAINFUL, CAN CAUSE A LOT 20 OF COUGHING AND SYMPTOMS. BUT SHORTLY THERE AFTERWARDS, 21 THEIR BREATHING IS MUCH IMPROVED. 22 Q IS THIS A PROCEDURE THAT RITA CHAPMAN HAS HAD 23 DONE SEVERAL TIMES? 24 A YES. 25 Q TELL US ABOUT THAT. 26 A SO A FEW DAYS LATER AFTER RECOGNIZING SHE HAD 27 THIS PLEURAL EFFUSION, THEY DRAINED THE FLUID 900 CC'S. 28 AND SO JUST TO GIVE YOU AN IDEA, YOU THINK ABOUT
Page 51 1 THE WITNESS: OKAY. 2 THE COURT: SORRY FOR THE FOLKS WHO THINK 3 OTHERWISE. THANK YOU. 4 THE WITNESS: SO THIS IS MRS. CHAPMAN'S X-RAY FROM 5 MARCH 8TH OF 2021 WHEN SHE CAME IN. AND JUST TO ORIENT 6 YOU, THE WAY WE PUT UP A CHEST X-RAY, IT'S AS IF YOU'RE 7 LOOKING AT THE PERSON. SO THIS IS THE RIGHT LUNG, AND 8 THIS IS THE LEFT LUNG. 9 AND NORMALLY, THE LUNG HAS THIS SORT OF 10 DARKISH GRAY APPEARANCE BECAUSE IT'S MOSTLY AIR BUT SOME 11 TISSUE IN THERE. AND YOU SHOULD BE ABLE -- THIS IS THE 12 DIAGRAM RIGHT HERE ON THE RIGHT. 13 ON THE LEFT SIDE, IT LOOKS LIKE IT'S JUST 14 COMPLETELY PAINTED OVER SOLID THERE. YOU CAN'T REALLY 15 SEE ANY OF THAT. IT SHOULD BE SYMMETRICAL JUST LIKE IT 16 IS OVER HERE. AND ALL OF THAT IS THE PLEURAL EFFUSION. 17 IT'S ABOUT HALF -- FILLING UP HALF OF THE LEFT SIDE OF 18 HER CHEST. 19 SO THIS IS ALL PLEURAL EFFUSION, AND THERE'S 20 ALSO SOME THICKENING OF THE PLEURA. NORMALLY IT'S THAT 21 TISSUE PAPER THIN. IN HER CASE IT WAS THICK. 22 Q BY MS. DEAN: DOES MESOTHELIOMA CAUSE PLEURAL 23 EFFUSIONS TO HAPPEN IN THE LUNG? 24 A YES. IT'S ONE OF THE MOST COMMON EFFECTS THAT 25 YOU WILL SEE IN THE PRESENTATION FROM MALIGNANT PLEURAL 26 MESOTHELIOMA IS THE PLEURAL EFFUSION. 27 Q IS THERE A PROCEDURE IN WHICH THE DOCTOR CAN 28 REMOVE THAT FLUID SO THE PERSON CAN HAVE AN EASIER TIME	Page 53 1 MILLILITERS OR CUBIC CENTIMETERS. IT WOULD BE ABOUT 2 THREE OF THESE APPLE JUICE BOTTLES WORTH THAT THEY TOOK 3 OUT, WHICH IS QUITE A LOT. I MEAN, OUR NORMAL BREATH IS 4 ABOUT 500 CC'S. SO THIS WAS TAKING UP ALMOST TWO FULL 5 BREATHS WORTH IN HER CHEST ON HER LEFT SIDE. 6 Q DID YOU HAVE TO GO THROUGH THIS PROCESS MORE 7 THAN ONCE? 8 A YES. 9 Q TELL US ABOUT THAT. 10 A SO LATER ON SHE STARTS -- SHE STARTS GETTING 11 SHORT OF BREATH AGAIN. SHE WENT BACK TO THE DOCTOR. 12 THEY FOUND OUT THAT THE PLEURAL EFFUSION HAD COME BACK, 13 WHICH IS A BAD SIGN. SO THE FIRST TIME THEY DID IT, 14 THEY SENT IT TO SEE WHAT THE CAUSE, BUT THEY COULDN'T 15 FIGURE IT OUT WITH THE FLUID. SOMETIMES THAT HAPPENS IN 16 THE FIRST GO. 17 SO THEY WENT AND DID ANOTHER ONE. THEY, 18 AGAIN, TOOK OUT 900 CC'S. AGAIN, THERE WAS SOME 19 CONCERNING FEATURES WHEN THEY LOOKED AT THE CHEMICAL 20 ANALYSIS OF THE FLUID. BUT WHEN THEY LOOKED AT THE 21 MICROSCOPE, THEY COULDN'T FIND ANY SORT OF CANCER. THEY 22 STILL DIDN'T KNOW WHAT WAS GOING ON WITH HER, BUT THIS 23 WAS A CONCERN BECAUSE IT'S RECURRENT. 24 Q SO WHAT'S THE NEXT STEP? 25 A THE NEXT STEP IS TO DO A BIOPSY. 26 Q CAN YOU TELL US A LITTLE BIT ABOUT THAT? 27 A YES. SO SHE HAD -- IN DECEMBER 7TH SHE GOES 28 TO A LUNG DOCTOR. AND SHE HAD TWO PROCEDURES DONE. ONE

Page 54 1 IS CALLED A BRONCHOSCOPY. THAT'S WHERE I TAKE A LIGHTED 2 SCOPE. IT GOES DOWN THROUGH THE MOUTH, DOWN THROUGH THE 3 VOCAL CORDS INTO THE LUNGS. AND THEN THROUGH THE LUNGS, 4 WE TAKE A BIOPSY OF THE LYMPH NODES USING ULTRASOUND. 5 AND THEN SHE ALSO HAD WHAT'S CALLED A PLEUROSCOPY WITH A 6 PLEURAL BIOPSY. SO THEY BASICALLY USED A SCOPE TO 7 TAKE -- THIS IS THE PLEURA UP HERE (INDICATING). THEY 8 WOULD TAKE A SCOPE TO TAKE THIS BIOPSY. 9 Q TWO QUESTIONS. ARE THESE THE TYPES OF 10 PROCEDURES THAT YOU DO AS A DOCTOR REGULARLY? 11 A YES. ALTHOUGH I DO IT BY A SLIGHTLY DIFFERENT 12 TECHNIQUE, BUT I DO PLEURAL BIOPSIES, BRONCHOSCOPIES. 13 Q AND SECOND, YOU'VE MENTIONED THAT THERE WAS 14 TISSUE FROM THE LYMPH AND THE PLEURA. DID THEY GET 15 ANYTHING FROM THE LUNG? 16 A NO. 17 Q WHAT IS THIS? 18 A SO AFTER SHE HAD THIS PLEURAL FLUID COMING 19 BACK, COMING BACK AND BACK AND BACK, WE DO A PROCEDURE 20 WHERE WE -- AFTER -- NORMALLY WHEN WE DO THE 21 THORACENTESIS, WE JUST PUT THE CATHETER IN, DRAIN IT OUT 22 AND THEN TAKE THE CATHETER OUT. WHEN IT KEEPS COME 23 BEING BACK, YOU CAN'T JUST KEEP DOING THAT. I MEAN, THE 24 PERSON'S -- YOU KNOW, AGAIN, IT'S A LOT DISCOMFORT AND 25 IT'S CAUSED THEM PROBLEMS ALL THE TIME. 26 SO INSTEAD, WE WILL INSERT A CATHETER, AND IT 27 STAYS THERE. AND THE PERSON ACTUALLY GOES HOME WITH 28 THIS SORT OF PLASTIC BOTTLE, AND THEY JUST -- IT HAS A	Page 56 1 (INDICATING), MID CHEST, AND THAT LYMPH NODE ALSO SHOWED 2 MALIGNANT MESOTHELIOMA. SAME TYPE. 3 Q THERE WAS A SUGGESTION, I WANT YOU TO ASSUME, 4 MADE TO THE JURY THAT THEY DIDN'T FIND ANY ASBESTOS IN 5 HER LUNGS. DID THEY TAKE A BIOPSY OF HER LUNGS? 6 A NO. NEVER. THERE'S NEVER BEEN ANY SPECIMEN 7 OF MRS. CHAPMAN'S LUNGS. 8 Q ARE THERE SOMETIMES IN A BIOPSY WHERE YOU CAN 9 FIND ASBESTOS BODIES IN THE LUNG? 10 A THAT'S WHERE YOU GENERALLY SEE THEM. 11 Q WAS THERE ANY LUNG TO LOOK AT WITH RITA 12 CHAPMAN? 13 A NO. 14 Q WHAT'S THIS NEXT SLIDE? 15 A SO AFTER THEY FOUND OUT THAT SHE HAD 16 MESOTHELIOMA, THEY DID WHAT'S CALLED A PET SCAN. PET IS 17 POSITRON EMISSION TOMOGRAPHY. AND IT'S BASICALLY A 18 GLUCOSE MOLECULE THAT'S BEEN RADIOLABELED, AND IT GOES 19 THROUGHOUT -- IT'S INJECTED, AND IT GOES THROUGHOUT THE 20 BODY. AND CANCER CELLS WILL METABOLIZE GLUCOSE MORE 21 RAPIDLY. AND THEN WE DO A PET SCAN, AND WE CAN SEE 22 WHERE IT KIND OF SHOWS UP IN THE BODY. 23 AND ON -- THIS IS THE LEFT SIDE. THIS IS THE 24 RIGHT SIDE HERE. AND ALL OF THE -- THIS REDNESS, THIS 25 IS ALL CONSISTENT WITH ABNORMAL UPTAKE WITHIN THAT -- 26 AROUND THAT LEFT LUNG. AND WHAT'S ALSO CONCERNING 27 HERE -- SO THIS IS NORMALLY ON THE -- ON THE SCAN THE 28 LUNG IS JUST ALL DARK LIKE THIS. YOU DON'T SEE THE
Page 55 1 STOP CLOCK ON IT. AND EVERY DAY THEY JUST OPEN IT UP. 2 IT DRAINS OUT. THEY CLOSE IT UP. AND THEN IT STAYS 3 WITH THEM LIKE IN THEIR POCKET OR ON THEIR WAISTBAND. 4 AND IT JUST STAYS IN THERE CONSTANTLY DRAINING AS THE 5 FLUID REACCUMULATES. 6 Q IS THIS SOMETHING RITA CHAPMAN HAD TO LIVE 7 THROUGH BECAUSE OF HER MESOTHELIOMA? 8 A IT IS. 9 Q AFTER DOING THE BIOPSY OF THE PLEURA, THE LEFT 10 SIDE, WERE THEY ABLE TO FIGURE OUT WHAT WAS GOING ON? 11 A YES. 12 Q DO WE HAVE THE ACTUAL MEDICAL REPORTS FROM THE 13 MAYO CLINIC ABOUT DETERMINING HER DIAGNOSIS? 14 A YES. 15 Q TELL US ABOUT THAT. 16 A SO THIS IS THE PATHOLOGY REPORT, MAYO CLINIC. 17 AND THIS COMES FROM THE LEFT PLEURAL BIOPSY HE TOOK. 18 THE DOCTOR TOOK TWO BIOPSIES WHEN HE DID THAT 19 PLEUROSCOPY. AND BOTH OF THESE SPECIMENS SHOWED DIFFUSE 20 MALIGNANT MESOTHELIOMA, WHICH IS CALLED EPITHELIOID 21 TYPE. THERE'S THREE TYPES OF CELLULAR TYPES. THIS IS 22 THE MOST COMMON TYPE ONE OF MALIGNANT PLEURAL 23 MESOTHELIOMA. 24 Q AND DID THEY ALSO HAVE A REPORT FROM THE OTHER 25 BIOPSY DONE? 26 A YES. SO IN ADDITION TO THE PLEURA, WHICH NOT 27 THE LUNG BUT OUTSIDE THE LUNG, THEY DID A LYMPH NODE ON 28 THE LEFT SIDE. IT'S ABOUT -- OCCURS AROUND HERE	Page 57 1 PLEURA. IT'S JUST ALONG THE EDGE THERE. IT'S PRETTY 2 MUCH INVISIBLE, IT'S SO THIN. 3 IN MS. CHAPMAN'S CASE HERE, THE PLEURA IS SO 4 THICKENED THAT IT'S -- I MEAN, IT'S LIKE THREE INCHES -- 5 TWO, THREE INCHES THICK IN SOME PLACES. SO IT'S VERY, 6 VERY THICKENED. AND THIS SHOWED, IN HER CASE, MALIGNANT 7 PLEURAL MESOTHELIOMA PRETTY MUCH ENCASING THAT ENTIRE 8 LEFT LUNG, BUT SHE DID NOT HAVE ANY EVIDENCE OF CANCERS 9 ANYWHERE ELSE IN THE BODY, JUST THE MESOTHELIOMA. 10 Q I WANTED TO GET THE EXACT QUOTE. THE JURY WAS 11 TOLD SOMETHING LIKE A TISSUE DIGESTION IS REALLY NOT 12 THAT COMPLICATED. IT'S SIMPLE, AND IT PROVIDES VALUABLE 13 INFORMATION. LET ME ASK YOU A FEW QUESTIONS. 14 CAN THE TISSUE OF THE LUNGS OF A HUMAN BE 15 DIGESTED IN A WAY THAT CAN PROVIDE VERY USEFUL 16 INFORMATION FOR DOCTORS? 17 A YES. 18 Q WAS THERE ANY MEDICAL REASON TO SUBMIT RITA 19 CHAPMAN TO A TISSUE DIGESTION? 20 A NO. NONE WHATSOEVER. 21 Q IS IT SIMPLE SPECIFICALLY IN A PERSON WHOSE 22 LUNG LOOKS LIKE THAT? 23 A NO. I COULD EXPLAIN. 24 Q PLEASE DO. 25 A SO AFTER THEY FIGURED OUT, OKAY, SHE'S GOT 26 CANCER, YOU WOULD NEED TO DO A TISSUE DIGESTION. YOU 27 NEED TO TAKE SPECIMENS FROM THE LUNG. THAT'S ANOTHER 28 SURGERY, ANOTHER ANESTHESIA.

Page 58 1 AND WHILE YOU'RE DOING IT, IF YOU'RE GOING TO 2 TAKE IT FROM THE LEFT LUNG, IN HER CASE, YOU WOULD BE 3 VENTILATING DURING ANESTHESIA THE RIGHT LUNG, WHICH IS 4 HER GOOD LUNG, AND TRYING TO GO THROUGH ALL OF THE 5 CANCEROUS TISSUE, WHICH IS A RISK OF SPREADING CANCER. 6 IF YOU'RE GOING THROUGH CANCER WITH SURGICAL 7 INSTRUMENTS, YOU HAVE A RISK OF TISSUE SPREAD OF THAT 8 CANCER. 9 SO IT'S ALREADY JUST RISKY FROM THE CANCER 10 PERSPECTIVE. LET ALONE THAT, ONCE YOU GET INTO THE 11 LUNG, YOU HAVE GOT THIS LUNG THAT'S ALL DISEASED AND ALL 12 CRUSHED DOWN LIKE THAT, AND THERE'S TREMENDOUS RISK OF 13 UNCONTROLLABLE BLEEDING AND INFECTION BECAUSE THE LUNG 14 IS JUST NOT WORKING CORRECTLY. 15 Q WHY NOT THE GOOD LUNG? 16 A WELL, THE GOOD LUNG, TWO REASONS. ONE IS THAT 17 YOU NOW VENTILATE -- YOU PUT A TUBE INTO THE LEFT LUNG 18 TO TRY TO VENTILATE HER DURING THE SURGERY, YOU HAVE GOT 19 A LUNG THAT DOESN'T WORK BECAUSE IT'S ALL ENCASED WITH 20 CANCER, SO YOU HAVE GOT A REAL PROBLEM IF SHE'S -- YOU 21 KNOW, YOU DON'T -- YOU'RE TRYING TO GIVE HER OXYGEN, AND 22 IT'S NOT GETTING INTO THE SYSTEM. 23 AND THEN, IF YOU HAVE WHAT'S CALLED A 24 PNEUMOTHORAX OR SOME SORT OF PROBLEM THERE, COLLAPSED 25 LUNG OR BLEEDING OF THE GOOD LUNG, I MEAN, SHE WOULDN'T 26 MAKE IT OUT THROUGH THE SURGERY. AND THERE'S REALLY -- 27 AGAIN, THERE'S NO REASON TO PUT A WOMAN -- YOU HAVE TO 28 HAVE A MEDICAL INDICATION, AND IT WOULD NOT -- THERE	Page 60 1 A YES. SO HE -- THE SURGEON, DR. DCUNHA -- 2 THAT'S D-C-U-N-H-A -- HE DID THREE DIFFERENT PROCEDURES. 3 ONE WAS CALLED A MEDIASTINOSCOPY WITH A LYMPH NODE 4 BIOPSY. ONE IS CALLED A LAPAROSCOPY. AND ONE IS CALLED 5 A THORACOSCOPY. AND THEN ACTUALLY FIVE -- FOUR 6 PROCEDURES. AND HE ALSO DID ANOTHER BRONCHOSCOPY. 7 Q CAN YOU TELL US ABOUT EACH ONE OF THOSE? 8 A YES. SO THE MEDIASTINOSCOPY IS WHERE THE 9 SURGEON MAKES A SMALL INCISION ABOUT AN INCH RIGHT 10 ACROSS IN THE MIDDLE OF THE CHEST AND INSERTS A SCOPE 11 DOWN THROUGH IN THE MIDDLE AND GOES DOWN. WE HAVE LYMPH 12 NODES IN THE CENTRAL AREA OF THE CHEST. AND HE CAN LOOK 13 WITH A SCOPE, AND THEN HE CAN -- THEY HAVE LITTLE BIOPSY 14 FORCEPS THAT GO THROUGH THE SCOPE. THEY'RE VERY, VERY 15 TINY BIOPSIES. AND HE CAN TAKE BIOPSIES OF THE VARIOUS 16 LYMPH NODES DOWN IN THE CENTRAL AREA, WHAT'S CALLED THE 17 MEDIASTINAL AREA. 18 Q THE NEXT PROCEDURE YOU TALKED ABOUT WAS THE 19 LAPAROSCOPY. CAN YOU TELL US WHAT THAT IS? 20 A YES. SO A LAPAROSCOPE IS WHERE -- PEOPLE MAY 21 HAVE HEARD OF WHERE THEY DO THIS, YOU KNOW, TO TAKE OUT 22 YOUR GALLBLADDER OR YOUR APPENDIX, DO IT WITH A SCOPE. 23 SO THIS IS THE PROCEDURE WHERE THERE IS 24 SEVERAL INCISIONS MADE, SOME FOR INSTRUMENTATION, SOME 25 FOR LIGHTING. AND THE DOCTOR COULD LOOK INSIDE THE 26 ABDOMINAL CAVITY AND SEE IF THERE'S ANY AREAS OF CANCER 27 OR CONCERN. 28 Q HAD THE CANCER SPREAD TO HER PERITONEAL AREA
Page 59 1 WOULD BE NO MEDICAL INDICATION TO DO THAT. 2 Q IF A DOCTOR TOOK THE LAWYER'S SUGGESTION AND 3 DO THIS, QUOTE/UNQUOTE, EASY PROCEDURE, WHAT WOULD YOUR 4 OPINION BE ABOUT THAT DOCTOR? 5 A THAT'S WRONG. 6 Q ARE YOU AWARE OF ANY DOCTOR THAT WOULD DO A 7 TISSUE DIGESTION IN A LIVE PATIENT THAT HAS THIS 8 PROBLEM? 9 A NO. 10 COULD I SIT DOWN AGAIN OR... 11 THE COURT: PLEASE. AS SOON AS YOU CAN AND YOU 12 DON'T NEED TO BE THERE, I PREFER FOR YOU TO BE BACK IN 13 YOUR SEAT. 14 THE WITNESS: YES, YOUR HONOR. 15 THE COURT: THANK YOU. 16 MS. DEAN: SORRY. 17 Q AFTER THEY DETERMINED SHE NOT ONLY HAD 18 MESOTHELIOMA BUT THAT IT WAS ENCASED HER ENTIRE LEFT 19 LUNG, WHAT WAS THE NEXT STEP? 20 A SO THE NEXT STEP WAS TO -- SHE WENT TO AN 21 ONCOLOGIST, CANCER DOCTOR, WHO THEN SENT HER TO A 22 SURGEON TO DECIDE WHETHER OR NOT SHE WOULD BE A 23 CANDIDATE FOR SURGERY. SO THERE'S DIFFERENT OPTIONS ON 24 HOW WE CAN TREAT MESOTHELIOMA. AND SO SHE NEEDS TO BE 25 EVALUATED AND WHAT WE CALL STAGED TO SEE IF SHE COULD BE 26 A SURGICAL CANDIDATE AT SOME POINT. 27 Q CAN YOU TELL US A LITTLE BIT ABOUT THAT 28 STAGING SURGERY AND WHAT IT INVOLVED?	Page 61 1 AT ALL? 2 A IT HAD NOT, FORTUNATELY. 3 Q AND THEN THE NEXT PROCEDURE THAT YOU 4 MENTIONED, CAN YOU TELL US A LITTLE BIT ABOUT THAT? 5 A YES. SO THIS IS CALLED A VIDEO-ASSISTED 6 THORACOSCOPY SURGERY, OR VATS. AND WHAT THIS SURGEON 7 DOES IS PUTS THE PATIENT ON THEIR SIDE, MAKES GENERALLY 8 THREE INCISIONS UNDERNEATH THE ARM AREA THERE. ONE FOR 9 LIGHTING. ONE FOR INSTRUMENTATION. AND ANOTHER ONE FOR 10 SPECIMENS AND OTHER INSTRUMENTATION. AND BASICALLY, 11 THEY'RE ABLE TO DRAIN THE FLUID OUT WHEN THEY -- SO IF 12 THERE'S MORE PLEURAL FLUID IN THERE, THEY CAN DRAIN THAT 13 FLUID OUT. AND THEN THEY CAN TAKE BIOPSIES OF THE 14 PLEURA TO SEE -- TO BE CONFIRMING THE DIAGNOSIS. 15 Q SO WE HAVE ANOTHER SERIES OF BIOPSIES 16 INVOLVING THE LUNG AND THE PLEURA STILL AT THIS TIME? 17 A YES. 18 Q DO THEY HAVE ANY TISSUE OF THE LUNG? 19 A NO. NONE WAS EVER TAKEN OF THE LUNG. 20 Q OKAY. 21 A NO NEED TO. 22 Q DID RITA CHAPMAN HAVE PLEURAL PLAQUES? 23 A AS FAR AS WE KNOW, NO. SHE HAD TREMENDOUS 24 PLEURAL THICKENING ON THAT SIDE. YOU WOULDN'T BE ABLE 25 TO SEE IF THERE WAS A BENIGN PLAQUE. BUT ON X-RAY OR 26 CAT SCAN, I DID NOT SEE ANY PLEURAL PLAQUE. 27 Q DID SHE HAVE ASBESTOSIS? 28 A SHE DID NOT. AS FAR AS -- FROM A RADIOGRAPHIC

Page 62 1 STANDPOINT, DID NOT SEE EVIDENCE. 2 Q GIVEN THERE WAS NO LUNG TISSUE AND NO DOCTOR 3 WOULD EVER DO A TISSUE DIGESTION IN HER STATE AND GIVEN 4 THAT SHE DIDN'T HAVE PLEURAL PLAQUES OR ASBESTOSIS, DO 5 YOU THINK YOU'RE JUST STUCK IN TERMS OF FIGURING OUT 6 WHAT CAUSED HER DISEASE? 7 A NO. 8 Q IS IT WELL ESTABLISHED IN MEDICINE AND SCIENCE 9 THAT MESOTHELIOMA CAN BE ATTRIBUTED -- IN OTHER WORDS, 10 YOU CAN FIGURE OUT THE CAUSE -- IF THERE'S A HISTORY OF 11 EXPOSURE TO ASBESTOS? 12 A YES. THAT'S THE MOST COMMON WAY. 13 Q THE NEXT THING IS DISCUSSED WHEN THEY'RE DOING 14 THIS EXPLORATORY SURGERY IS A TALC PLEURODESIS. WHAT IS 15 THAT? 16 A SO WHEN THE SURGEON DID THIS VATS PROCEDURE 17 AND DRAINED THE FLUID OUT, HE SAW THAT MRS. CHAPMAN'S 18 LUNG CAME BACK UP AGAIN. SOMETIMES WITH CANCER, EVEN IF 19 YOU DRAIN THE FLUID OUT, THE LUNG DOESN'T REEXPAND 20 ANYMORE. IT'S BASICALLY GONE. IN HER CASE IT DID GO 21 UP. SO THE SURGEON MADE A DECISION TO PUT -- DO A 22 PROCEDURE CALLED A TALC PLEURODESIS. WE CAN DO THIS 23 PLEURODESIS WITH SEVERAL DIFFERENT TYPES OF SUBSTANCES. 24 TALC BEING ONE OF THEM. IT'S VERY IRRITATING TO THE 25 SURFACE. 26 AND THE PLEURODESIS CAUSES AN INFLAMMATION ON 27 THE SURFACE SO THAT IT CAUSES SCAR TISSUE TO DEVELOP SO 28 THOSE TWO LAYERS BETWEEN WHAT'S CALLED THE VISCERAL	Page 64 1 DO A TALC PLEURODESIS? 2 A YES. 3 Q WHAT IS THAT? 4 A SOMETIMES THEY'LL DO THAT WITH SOMEONE WHO HAS 5 WHAT'S CALLED A RECURRENT PNEUMOTHORAX OR COLLAPSE OF 6 THE LUNG. 7 Q IS THERE INFORMATION THAT YOU AND DOCTORS IN 8 YOUR FIELD RELY ON SPECIFICALLY INDICATING THAT YOU 9 SHOULDN'T DO THIS IN NON-TERMINAL SITUATIONS SUCH AS THE 10 PNEUMOTHORAX? 11 A YES. AND THAT'S -- I AGREE. 12 Q OKAY. IS THIS THE ARTICLE THAT DISCUSSES IT 13 THAT YOU'RE AWARE? 14 A YES. THAT'S ONE. 15 Q IS THIS FROM THE AMERICAN JOURNAL OF 16 RESPIRATORY AND CRITICAL CARE MEDICINE FROM 2001, "TALC 17 SHOULD NOT BE USED FOR PLEURODESIS IN PATIENTS WITH 18 NONMALIGNANT PLEURAL EFFUSIONS"? I DON'T MEAN TO BE 19 INSENSITIVE. BUT IF YOU ARE DYING WITH CANCER, 20 LONG-TERM CONCERNS OF TALC JUST DON'T MATTER; RIGHT? 21 A CORRECT. 22 Q THE AUTHOR SAYING HERE IS SAYING, THOUGH, IF 23 YOU HAVE REPEAT -- PNEUMOTHORAX IS LUNG COLLAPSING; 24 RIGHT? 25 A YES. 26 Q YOU SHOULDN'T BE USING TALC. 27 A RIGHT. 28 Q WHY IS THAT?
Page 63 1 PLEURA AND PARIETAL PLEURA STICK TOGETHER AND SO THERE'S 2 NO ROOM -- THERE'S NO WAY FOR THE FLUID TO START 3 COLLECTING BETWEEN -- THOSE TWO OF THEM BECAUSE THEY'RE 4 BASICALLY FUSING THOSE TWO LAYERS. 5 SO YOU MIGHT GET A SMALL EFFUSION IN BETWEEN 6 SOME AREAS WHERE IT DIDN'T COMPLETELY FUSE, BUT YOU'RE 7 NOT GOING TO GET THAT HUGE COLLECTION LIKE SHE HAD, YOU 8 KNOW, OVER 1700 CC'S BY THE TIME SHE HAD HER THIRD 9 THORACENTESIS. 10 Q THE JURY WAS TOLD THE REASON TALC WAS USED IN 11 THIS PROCEDURE IS TO BE A LUBRICANT IN OPENING 12 STATEMENTS. IS THAT TRUE? 13 A NO. NO. IT'S NOT A LUBRICANT. YOU'RE TRYING 14 TO FUSE THE LAYERS. 15 Q WHEN TALC IS PUT INTO THE BODY, WHAT YOU'RE 16 TELLING US IS THAT MEDICINE AND SCIENCE KNOW IS THAT 17 IT'S IRRITATING, CAUSES INFLAMMATION, AND RESULTS IN 18 SCAR TISSUE? 19 A YES. 20 Q FOR THIS PURPOSE, USING TALC PLEURODESIS TO 21 HOPEFULLY MAKE IT WHERE THESE PLEURAL EFFUSIONS STOP IN 22 A PERSON THAT HAS A TERMINAL CANCER, DO YOU HAVE TO BE 23 CONCERNED WITH LONG-TERM RISKS IN A PERSON THAT HAS 24 MESOTHELIOMA? 25 A NO, YOU DON'T. 26 Q OTHER THAN HAVING THIS PROCEDURE FOR PEOPLE 27 THAT HAVE PLEURAL EFFUSIONS ASSOCIATED WITH CANCER 28 CONCERNS, IS THERE ANY OTHER REASON THAT A DOCTOR MIGHT	Page 65 1 A WELL, BECAUSE THERE ARE POTENTIAL HEALTH 2 CONCERNS, NOT ONLY -- YOU KNOW, I HAVE SEEN IN MY OWN 3 PATIENTS WHERE THEY'VE DEVELOPED EVEN PLEURAL PLAQUING. 4 IT CAN CAUSE WHAT'S CALLED ADULT RESPIRATORY DISTRESS 5 SYNDROME, OR A.R.D.S., WHICH CAN BE A LIFE-THREATENING 6 RESPIRATORY CONDITION. AND THEN, YOU KNOW, IF THE TALC 7 HAS CONTAMINATION WITH ASBESTOS, THEN THERE'S RISK OF 8 30, 40, 50, 60 YEARS LATER OF DEVELOPING MALIGNANCY. 9 Q IF THAT WANTED TO BE TESTED, WE WANTED TO SEE 10 IF PEOPLE THAT WERE GETTING THIS PROCEDURE USING TALC 11 THAT LIVE LONG ENOUGH, IS THERE A GROUP LARGE ENOUGH TO 12 EVEN DO THAT TEST THAT HAS ENOUGH POWER TO HAVE MEANING? 13 A NO. 14 Q IN TERMS OF DOSE, WE'VE HEARD THE CONCEPT 15 "DOSE MAKES THE POISON." ARE YOU FAMILIAR WITH THE 16 AMOUNT OF TALC THAT WAS PUT IN RITA CHAPMAN'S BODY? 17 A YES. 18 Q WHAT IS THAT? 19 A I THINK IT WAS -- I THINK HE DID FOUR OR FIVE 20 GRAMS. 21 Q HOW DOES THAT COMPARE TO TALC USE WHEN YOU'RE 22 PUTTING A DUSTY PRODUCT ON YOUR BODY OR FACE? IT'S A 23 COSMETIC PRODUCT. 24 A RIGHT. IT'S LESS. 25 Q ONE DIAPER CHANGE, CAN YOU GIVE ME AN IDEA OF 26 HOW THAT COMPARES TO THE AMOUNT OF TALC USED IN THIS 27 PROCEDURE PUT ON THE PLEURA? 28 A ABOUT EQUAL TO ONE DIAPER CHANGE.

Page 66 1 Q HAVE YOU EVER SEEN ANY INDICATION THAT THE 2 SAME TYPE OF TALC, STERILE TALC USED FOR A PLEURODESIS 3 CAME FROM THE SAME SOURCES AS CASHMERE BOUQUET, AVON OR 4 COLOR TECHNIQUES? 5 A NO. 6 Q AFTER DOING THIS EXPLORATORY SURGERY AND 7 GETTING A SECOND SET OF BIOPSIES, DID THE DOCTORS 8 FURTHER CONFIRM WHAT'S HAPPENING TO RITA CHAPMAN? 9 A YES. SO THE LYMPH NODES THIS TIME WERE 10 NEGATIVE. HE DID NOT SEE ANYTHING IN THE ABDOMEN, THE 11 PERITONEUM, BUT THE LEFT PLEURAL BIOPSY, AGAIN, SHOWED 12 AND CONFIRMED MALIGNANT MESOTHELIOMA. AND, 13 UNFORTUNATELY, BECAUSE OF THE EXTENT OF THE CANCER THAT 14 THE SURGEON SAW, SHE WAS NOT FELT TO BE A CANDIDATE FOR 15 AN EXTENSIVE SURGERY. SO THAT WAS OFF THE TABLE. 16 Q THE JURY HASN'T HAD A CHANCE TO MEET RITA 17 CHAPMAN YET AND TALK ABOUT ALL THE WAYS HER LIFE CHANGED 18 ON THAT DAY. BUT THERE ARE CONTAIN THINGS THAT YOU KNOW 19 ABOUT IN HER MEDICAL RECORDS DIRECTLY BECAUSE SHE HAS 20 THIS CANCER; CORRECT? 21 A YES. 22 Q EXPLAIN WHAT THIS IS. 23 A SO SHORTLY AFTER THEY DID THE SECOND SURGERY, 24 THE STAGING SURGERY, THEY WERE GETTING READY TO START 25 LOOKING AT PUTTING HER ON SOME CHEMOTHERAPY OR 26 IMMUNOTHERAPY. SHE STARTED EXPERIENCING SOME CHEST 27 PAINS AND TREMENDOUS SHORTNESS OF BREATH. AND WHAT SHE 28 FOUND -- WHAT THEY FOUND IS SHE HAD WHAT'S CALLED	Page 68 1 PRETTY MUCH A LOT OF DIFFERENT CELLS. THE IMMUNOTHERAPY 2 IS MORE -- SEEMS TO BE A MORE EFFECTIVE TOOL. 3 Q HOW LONG HAS SHE BEEN UNDERGOING 4 IMMUNOTHERAPY? 5 A SO THEY STARTED WITH TWO TYPES OF 6 IMMUNOTHERAPY -- ONE EVERY TWO WEEKS, ONE EVERY SIX 7 WEEKS -- STARTING IN FEBRUARY OF THIS YEAR. AND THEN 8 THEY HAD TO STOP IT ABOUT TWO OR THREE WEEKS AGO BECAUSE 9 SHE STARTED DEVELOPING SOME COMPLICATIONS OF 10 IMMUNOTHERAPY WITH ULCERATIONS AND SORES IN HER MOUTH. 11 AND SHE'S ACTUALLY BACK NOW BEING EVALUATED TO SEE -- 12 THEY'RE GOING TO HOPEFULLY TRY TO REINTRODUCE THE 13 IMMUNOTHERAPY NEXT WEEK. AND AT THAT TIME WHEN THEY 14 TALKED TO HER -- THIS WAS IN FEBRUARY OF THIS YEAR -- 15 THEY SAID THAT THEY GAVE HER AN 18-MONTH SURVIVAL 16 EXPECTATION. 17 Q I MEAN, IT SEEMS SMALL, BUT SHE HAS A SORE 18 RIGHT HERE ON HER LIP. AND SHE'S JUST SUPER 19 SELF-CONSCIOUS ABOUT IT BECAUSE IT'S RIGHT THERE. IS 20 THAT BECAUSE OF HER TREATMENT? 21 A YES. 22 Q AND THIS NEWS THAT YOU JUST TALKED ABOUT, 23 ABOUT HEARING THAT THE IMMUNOTHERAPY IS NOT BEING AS 24 RESPONSIVE AND CHEMO IS WHAT'S COMING UP NEXT, IS THERE 25 ANY NEXT AFTER CHEMO FAILS? 26 A RIGHT. SO I THINK, YOU KNOW, THE HOPE IS TO 27 MAYBE REINTRODUCE IMMUNOTHERAPY, BUT THE OTHER OPTION IS 28 GOING TO BE CHEMOTHERAPY. AND THEN AFTER THAT, NO, IT'S
Page 67 1 PERICARDIAL EFFUSION WITH TAMPONADE. 2 AND NORMALLY THE PERICARDIUM IS A SAC AROUND 3 THE HEART JUST LIKE THE PLEURA IS A SAC AROUND THE 4 LUNGS. AND SHE STARTED DEVELOPING FLUID BETWEEN THAT 5 SAC IN THE HEART AND THE HEART. AND SO IT STARTS -- IT 6 WEARS THE LUNGS ON ONE SIDE. IT CAN COMPRESS. WE CAN 7 STILL PRETTY -- YOU KNOW, WE CAN STILL SURVIVE WITH ONE 8 LUNG. YOU CAN'T SURVIVE WITHOUT A HEART. 9 AND SO IT WAS COMPRESSING AND COMPRESSING AND 10 COMPRESSING THAT HEART BECAUSE THERE'S NOWHERE -- THE 11 HEART, UNLIKE THE LUNG, DOESN'T HAVE A LOT OF AIR IN IT. 12 IT'S A SOLID ORGAN. IT STARTED BEING COMPRESSED, AND IT 13 COULDN'T PUMP. AND SO SHE PRESENTED TO THE EMERGENCY 14 ROOM. THIS IS AN ABSOLUTE MEDICAL EMERGENCY. AND SHE 15 HAD TO HAVE WHAT'S CALLED A PERICARDIOCENTESIS AND A 16 PERICARDIAL DRAIN. 17 AND SO WHAT THEY'LL DO IS THEY STICK NEEDLES 18 DIRECTLY THROUGH THE CHEST INTO THE HEART CAVITY TO DRAW 19 FLUID OUT. AND THEN JUST LIKE THAT THORACENTESIS 20 WHERE -- A PROCEDURE LIKE I DO WHERE WE PUT IT INTO THE 21 PLEURA, THEY PUT A DRAIN INTO THE HEART TO KEEP THAT 22 FLUID OUT AND TO SAVE HER LIFE AT THAT POINT. 23 Q YOU MENTIONED THAT SHE STARTED -- BEFORE SHE 24 HAD THIS EMERGENCY, HAD VARIOUS TYPES OF TREATMENT. 25 WHAT IS IMMUNOTHERAPY IN THE BROADEST SENSE? 26 A THESE ARE THERAPIES -- NEW THERAPIES THAT WORK 27 WITH TRYING TO KEEP THE CANCER IN CHECK RATHER THAN SOME 28 OF THE CHEMOTHERAPIES WHICH IS MEANT TO SORT OF KILL	Page 69 1 GENERALLY GOING TO BE SYMPTOMATIC, WHAT WE CALL 2 PALLIATIVE CARE: PAIN MEDICATION, SYMPTOMATIC RELIEF 3 FOR ANXIETY, THINGS LIKE THAT, OXYGEN. 4 Q IN TERMS OF SOME OF THE ACTUAL THINGS THAT 5 SHE'S ALREADY LIVING WITH AND DEALING WITH, DID YOU 6 IDENTIFY SOME OF THE SYMPTOMS THAT ARE DISCUSSED IN HER 7 MEDICAL RECORDS? 8 A I DID. 9 Q CAN YOU TELL US ABOUT THOSE? 10 A SO, YOU KNOW, SHE'S -- THE SHORTNESS OF 11 BREATH. SHE'S CONSTANTLY HAVING THIS LEFT-SIDED CHEST 12 PAIN AND PRESSURE. SHE FEELS VERY FATIGUED AND SHE'S 13 HAVING WEAKNESS. SHE'S LOST HER APPETITE, AND SHE IS 14 LOSING WEIGHT, WHICH IS, UNFORTUNATELY, VERY COMMON BUT 15 OMINOUS SIGN IN A CANCER PATIENT. 16 SHE'S HAVING CHRONIC COUGH BECAUSE THE LUNG IS 17 BEING FOOLED. IT THINKS THAT THERE'S MAYBE JUST 18 SOMETHING IN IT, BUT IT'S JUST BEING COMPRESSED. AND SO 19 IT SENDS A SIGNAL TO THE BRAIN TO COUGH. AND SO 20 THERE'S -- HAVING TO COUGH A LOT. BUT THERE'S NOTHING 21 TO COME UP. SHE FEELS BLOATING. SHE'S STILL 22 EXPERIENCING SOME PALPITATIONS PROBABLY BECAUSE SHE'S 23 GOT THIS INVOLVEMENT SURROUNDING THE HEART. SHE HAS 24 DIZZINESS. SHE'S GOT ANXIETY. 25 HOARSENESS. YOU'D WONDER WHY WOULD SHE HAVE 26 THAT. BUT WHEN THEY DID THE SECOND SURGERY, THE SURGEON 27 DID THE PROCEDURES TO SEE WHERE -- YOU KNOW, WHERE THE 28 CANCER HAD SPREAD TO. ANY TIME YOU GO UNDER GENERAL

Page 70 1 ANESTHESIA, THEY HAVE TO PUT AN ENDOTRACHEAL TUBE, WHICH 2 IS A TUBE INTO THE LUNG TO BREATHE. IT DAMAGED HER 3 VOCAL CORD DOING THE PROCEDURE. SO SHE HAS THIS 4 HOARSENESS, AND NOW SHE'S DEVELOPED THESE MOUTH SORES. 5 Q DID YOU REVIEW, AT LEAST AS OF TWO WEEKS AGO, 6 HER MEDICAL BILLS? 7 A I DID. 8 Q AND DID YOU REVIEW THEM IN ORDER TO ASCERTAIN, 9 NOT WHAT WAS BILLED, BUT WAS ACTUALLY INCURRED ON BEHALF 10 OF RITA CHAPMAN? 11 A I DID. 12 Q AND DID YOU LOOK THROUGH THEM TO IDENTIFY 13 THOSE THAT WERE REASONABLE AND NECESSARY BECAUSE OF HER 14 CARE, DIAGNOSIS AND TREATMENT OF MESOTHELIOMA? 15 A I DID. 16 Q SO, FOR INSTANCE, IF SHE CAME IN FOR A ROUTINE 17 BREAST EXAM OR TO TAKE CARE OF HER EYES, WERE YOU 18 INCLUDING THAT? 19 A NO. I TOOK THOSE OUT. 20 Q ARE YOU PREPARED TO GIVE US A NUMBER OF HER 21 REASONABLE AND NECESSARY MEDICAL BILLS BECAUSE OF THIS 22 CANCER, MESOTHELIOMA? 23 A YES. 24 Q AS OF TWO WEEKS AGO. AND I'LL WRITE "PAST" ON 25 HERE JUST SO THAT'S CLEAR. 26 A \$318,191.27. 27 Q AND THEN I WANT TO ASK YOU ABOUT HER FUTURE. 28 AND BEFORE I ASK YOU ABOUT THE AMOUNT ON THAT, I WANT TO	Page 72 1 THERE. AND THEN IT WILL ACTUALLY GET INTO THE MUSCLES 2 BETWEEN THE RIBS AND CAN GET INTO THE NERVES. AND THEN, 3 YOU KNOW, YOU CAN HAVE -- START HAVING CONSTANT AND 4 SEVERE PAIN FROM NERVE INVOLVEMENT. 5 Q IS THERE EXTRAORDINARY DIFFICULTY WITH 6 END-STAGE MESOTHELIOMA IN JUST CONTROLLING THE PAIN? 7 A YES. 8 Q HAVE YOU HEARD OF PROCEDURES TO USE RADIATION, 9 NOT TO SLOW DOWN THE CANCER, BUT TO KILL THE NERVES TO 10 HELP MANAGE PAIN? 11 A YES. SOMETIMES WE WILL USE SOME RADIATION 12 TREATMENT TO HELP FOR PALLIATIVE PURPOSES. 13 Q ARE THE PAIN MEDICATIONS THAT ARE INVOLVED, 14 THINGS LIKE FENTANYL, NARCOTICS AND MORPHINE, THINGS OF 15 THAT NATURE? 16 A YES. OPIOIDS WE WILL TYPICALLY GO TO. AND 17 THERE'S, OBVIOUSLY, A LOT OF SIDE EFFECTS: 18 CONSTIPATION, CONFUSION, DIZZINESS, OTHER THINGS. 19 Q JUST FROM A PRACTICAL MATTER, WHEN YOU START 20 HAVING TO LIVE WITH THAT KIND OF PAIN AND HAVING PAIN 21 MEDICATION, DOES IT AFFECT YOUR ABILITY TO READ? 22 A YES. 23 Q WATCH TV? 24 A YES. 25 Q HOLD A CONVERSATION? 26 A YES. 27 Q DRIVE? 28 A YES. FOR SURE DRIVING. YOU CAN'T.
Page 71 1 RETURN TO THE POWERPOINT FOR A MOMENT. 2 WHAT ARE WE LOOKING AT? 3 A SO THIS IS -- WOULD BE A GROSS PICTURE, 4 ANATOMICAL PICTURE. THE ONE ON THE LEFT SIDE IS THE 5 NORMAL APPEARANCE OF A LUNG. THE ONE ON THE RIGHT SIDE 6 SHOWS HOW THE LUNG IS BASICALLY -- ALL THAT -- THE WHITE 7 AREA SURROUNDING THE RED IS ALL THAT THICKENED PLEURA, 8 AND THIS IS MALIGNANT MESOTHELIOMA. 9 Q WHAT'S THIS (INDICATING)? 10 A THAT'S THE HEART. 11 Q AND WHAT ORGAN IS THIS? SORRY. 12 A THAT'S THE LUNG THERE. 13 Q OKAY. WHEN A PERSON HAS MESOTHELIOMA AND IT 14 STARTS ENCASING THE LUNG, WE'VE ALREADY HEARD ABOUT HOW 15 THAT MAKES IT MORE AND MORE DIFFICULT TO BREATHE. IS 16 THAT PROGRESSIVE? 17 A YES. 18 Q WHAT DOES THAT MEAN? 19 A IT MEANS IT'S -- IT GETS WORSE. SO THE 20 MESOTHELIOMA NOT ONLY CAUSES THIS THICKNESS. IT 21 CONTINUALLY -- IT PROGRESSES. IT GETS LITTLE FINGER 22 POINTS AS IT GETS INTERTWINED THROUGHOUT THE TISSUES. 23 IT STARTS TO INVADGE INTO OTHER SURROUNDING TISSUES LIKE 24 THE CHEST WALL, FOR EXAMPLE. 25 Q THAT WAS THE NEXT THING I WAS GOING TO ASK 26 YOU. WHEN THIS TISSUE STARTS HITTING YOUR CHEST WALL, 27 WHAT IS OUR CHEST WALL LINED WITH? 28 A IT'S -- AGAIN, THIS IS PART OF THAT PLEURA	Page 73 1 Q YOU MENTIONED THAT SHE HAS PROBABLY 18 MONTHS 2 OF DEALING WITH THIS CANCER. WHEN YOU THINK ABOUT HOW 3 MUCH SHE'S ALREADY INCURRED IN COSTS, HOW MANY MONTHS OF 4 TREATMENT APPROXIMATELY HAS SHE HAD? 5 A ABOUT EIGHT. 6 Q IN HER FUTURE ARE WE HOPING THAT THERE ARE 7 GOING TO AT LEAST BE SOME MORE TREATMENTS WITH 8 IMMUNOTHERAPY? 9 IN TERMS OF HER FUTURE CARE, IS THERE HOPE 10 THAT SHE'S GOING TO HAVE TO INCUR MORE COSTS AND AT 11 LEAST HAVE SOME MORE IMMUNOTHERAPY? 12 A YES. 13 Q AFTER THAT, IS CHEMOTHERAPY LIKELY IN HER 14 FUTURE? 15 A YES. 16 Q DO YOU HAVE THE UNDERSTANDING OF THE ROUTINE 17 COST OF CHEMOTHERAPY AND IMMUNOTHERAPY? 18 A YES. 19 Q WITH THIS DISEASE IS HOSPICE CARE OFTEN 20 NEEDED? 21 A YES. 22 Q HAVE YOU CONSIDERED HER FUTURE TO GIVE US AN 23 ESTIMATE OF WHAT IS THE LIKELY RANGE OF FUTURE BILLS FOR 24 HER AND HER FAMILY? 25 A YES. 26 Q CAN YOU GIVE ME THAT ESTIMATE? 27 A I'M SORRY. I DIDN'T HEAR THAT QUESTION. 28 Q IT MEANS I CLEARLY NEED TO SPEAK UP.

Page 74 1 I JUST ASKED IF YOU WOULD GIVE ME THAT 2 ESTIMATE. 3 A YES. SO NORMALLY IT DEPENDS -- IT'S A RANGE. 4 IT DEPENDS ON WHAT -- THE LIKELIHOODS OF 5 HOSPITALIZATIONS, OF OTHER TREATMENTS AND THE TIME 6 COURSE, HOW LONG HAS ALREADY SURPASSED. NORMALLY I 7 WOULD BE AT SOMEWHERE BETWEEN TWO AND FIVE TIMES WHAT 8 SHE HAS HAD. 9 I THINK IN HER CASE, IT'S MORE FAIRLY TWO TO 10 THREE TIMES THE COST THAT SHE'S HAD. SO THAT WOULD BE 11 AT TWO TIMES, \$636,382.54, GOING UP TO \$954,573.81. 12 Q OKAY. VERY BROADLY SPEAKING, IF WE GO BACK TO 13 THE POWERPOINT, WHAT ARE YOUR OPINIONS ABOUT HER MEDICAL 14 PROGNOSIS? 15 A SO BASICALLY, HER OTHER MEDICAL CONDITIONS 16 THAT SHE HAD -- THE CHOLESTEROL ISSUES, THE ACID 17 REFLUX -- THEY'RE NOT LIFE THREATENING. SHE'S STILL 18 HAVING TREMENDOUS SUFFERING AND PAIN FROM THIS CANCER. 19 AND THAT, UNFORTUNATELY, THE COURSE OF MALIGNANT 20 MESOTHELIOMA IS A PROGRESSIVE CANCER, AND THIS WILL 21 CONTINUE TO PROGRESS. YOU KNOW, WE TRY TO SLOW THINGS 22 DOWN. THIS IS NOT A CURABLE CANCER, AND IT WILL END UP 23 CAUSING HER DEATH, UNFORTUNATELY. 24 Q IN TERMS OF TRYING TO UNDERSTAND WHY THIS 25 HAPPENED, HAVE YOU REVIEWED INFORMATION AND TAKEN 26 FIRSTHAND EFFORTS TO UNDERSTAND RITA CHAPMAN'S HISTORY? 27 A YES. 28 Q HAVE YOU REVIEWED NOT JUST HER TESTIMONY, BUT	Page 76 1 MATERIALS. 2 Q THE JURY HAS HEARD THAT THERE WERE MORE THAN 3 SIX PEOPLE INVOLVED IN THIS CASE, AND I HAD MEANT TO 4 TALK ABOUT THAT IN OPENING AND RAN OUT OF TIME. BUT I 5 WANT TO BE REALLY CLEAR. THE SIX ENTITIES THAT ARE 6 STILL HERE ARE NOT THE ONLY ONES THAT CONTRIBUTED TO THE 7 CAUSE OF HER DISEASE. 8 DO YOU AGREE WITH THAT? 9 A I DO. 10 Q DID JOHNSON & JOHNSON HAVE A SIGNIFICANT ROLE 11 IN WHY SHE'S SICK? 12 A YES, THEY DID. 13 Q DID REVLON HAVE A SIGNIFICANT ROLE IN WHY SHE 14 HAS THIS CANCER? 15 A YES. 16 Q DID BENDIX, THE COMPANY THAT SUPPLIED THE 17 BRAKES THAT WERE USED IN FORD'S CARS, SIGNIFICANTLY 18 CONTRIBUTE AS TO WHY SHE HAS THIS DISEASE? 19 A YES. 20 Q AND WHILE I'M GOING TO FOCUS TODAY -- I THINK 21 FOR OBVIOUS REASONS BECAUSE WE HAVE THE BURDEN OF PROOF 22 ON THOSE THAT ARE IN THIS ROOM, I WANT TO BE REALLY 23 CLEAR, THERE ARE OTHER PEOPLE THAT WERE PART OF THE 24 PROBLEM? 25 A YES. 26 Q OKAY. IN TERMS OF UNDERSTANDING THE 27 CIRCUMSTANCES IN WHICH IT MAKES SENSE FOR A DOCTOR TO 28 SAY THIS CANCER, MESOTHELIOMA, IS RELATED TO ASBESTOS,
Page 75 1 THAT OF HER HUSBAND'S, GARY CHAPMAN? 2 A YES. 3 Q AND HIS FRIEND THAT WORKED WITH HIM ON CARS, 4 HAVE YOU REVIEWED THAT AS WELL? 5 A YES. MR. BAKER. 6 Q AND A GENTLEMAN THAT WORKED WITH HIM AT THE 7 TIME THAT HE WAS WORKING WITH HYSTER, DID YOU REVIEW 8 THAT AS WELL? 9 A I DID. 10 Q WHY IS SHE SICK? WHY DOES SHE HAVE THIS 11 CANCER? 12 A SHE HAD EXPOSURES FROM SEVERAL DIFFERENT 13 SOURCES OF ASBESTOS. 14 Q CAN YOU TELL US ABOUT THAT? 15 A SURE. SO SHE USED OVER MANY YEARS VARIOUS 16 COSMETIC OR TALC FOR COSMETIC PURPOSES, VARIOUS 17 PRODUCTS, STARTING FROM -- AT A YOUNG AGE, LIKE EIGHT 18 YEARS OLD. 19 AND SHE HAD -- HER HUSBAND WORKED IN THE PARTS 20 DEPARTMENT AND WAS GETTING REPEATEDLY EXPOSED TO DUST 21 FROM MECHANICS WHO WERE WORKING ON CARS, ON TRUCKS, ON 22 OTHER EQUIPMENT, WORKING WITH VARIOUS FRICTION PRODUCTS 23 IN WHICH HE GOT ASBESTOS ONTO HIS CLOTHING, BROUGHT INTO 24 THEIR HOME, AND THEN EVERY WEEK SHE WAS SHAKING OUT HIS 25 CLOTHING AND DOING HIS LAUNDRY. 26 AND THERE'S ALSO -- SHE HAD SOME OTHER 27 EXPOSURES TO SOME WORK WHERE THEY WERE DOING ON THEIR -- 28 SOME WORK WITH -- ON THEIR HOME WITH SOME JOINT COMPOUND	Page 77 1 ARE THERE SOME BROAD OPINIONS YOU CAN SHARE THAT WILL 2 HELP ORIENT THE JURY ON HOW YOU FIGURE THAT OUT? 3 A YES. 4 Q TELL US ABOUT THAT. 5 A SO THERE ARE SIX TYPES OF CANCER -- FIBER 6 TYPES AND ALL OF THE FIBER TYPES -- DOESN'T MATTER WHERE 7 THE FIBER COMES FROM -- ALL SIX OF THOSE FIBER TYPES ARE 8 CAPABLE OF CAUSING MALIGNANT MESOTHELIOMA. AND 9 CERTAINLY, IF YOU HAVE THEM IN COMBINATION, EVEN MORE 10 SO. THAT IT'S WELL ACCEPTED IN THE SCIENTIFIC COMMUNITY 11 THAT THERE IS NO ACCEPTED THRESHOLD BELOW WHICH THERE'S 12 NO RISK. 13 SO YOU CAN'T SAY, OKAY, WELL, AS LONG AS I'M 14 HERE, YOU'RE GOOD. THERE IS NO ACCEPTED LEVEL FOR THAT. 15 AND EVERY STUDY WHERE THEY'VE LOOKED AT LOWER AND LOWER 16 DOSES, THEY'RE STILL FINDING RISK. AND, UNFORTUNATELY, 17 AS I SAID, IT IS A FATAL AND INCURABLE CANCER. 18 Q IN TERMS OF FIGURING OUT WHETHER A PARTICULAR 19 EXPOSURE THAT A PERSON HAS MATTERS, IS ONE OF THE FIRST 20 THINGS YOU GOT TO KNOW IS IF THE EXPOSURE INVOLVED 21 ASBESTOS? 22 A YES. 23 Q ARE THERE DIFFERENT POTENCIES -- WE ALREADY 24 HEARD ABOUT THIS A LITTLE BIT -- BUT INVOLVED WITH 25 DIFFERENT FIBER TYPES? 26 A YES. 27 Q IS IT IMPORTANT TO KNOW DOSE? HOW MUCH 28 EXPOSURE A PERSON IS GETTING?

Page 78 1 A YES. WHETHER IT'S A -- SOMETIMES WE HAVE IT 2 WHERE YOU GOT A RANGE OR A NUMBER. SOMETIMES WE GET A 3 DOSE JUST BY -- BASED ON WHAT WE CALL A QUALITATIVE, BUT 4 YOU HAVE TO HAVE SOME SORT OF ASSESSMENT OF HOW MUCH THE 5 PERSON BREATHED IN. 6 Q IN TERMS OF JUST TRYING TO FIGURE THAT OUT FOR 7 ANY PARTICULAR PRODUCT, FOR SOME PRODUCTS ARE THEY 8 PUBLISHED IN PEER-REVIEWED LITERATURES, BRAKES HAVE 50 9 PERCENT ASBESTOS AS AN EXAMPLE? 10 A YES. 11 Q ARE THERE OTHER THINGS WHERE IT WASN'T 12 INTENTIONALLY ADDED, BUT THERE'S SCIENTIFIC AND MEDICAL 13 LITERATURE SAYING, THIS TALC HAS IMPURITIES AND THIS 14 PRODUCT HAS IMPURITIES THAT INVOLVED ASBESTOS? 15 A YES. 16 Q AND SO WHEN YOU MENTIONED EARLIER THAT YOU 17 LOOK AT DATA FROM INDUSTRIAL HYGIENISTS AND GEOLOGISTS 18 AND SCIENTISTS AND TOXICOLOGISTS, IS THAT IMPORTANT TO 19 YOU AND OTHERS IN YOUR FIELD TO MAKE INTELLIGENT 20 DECISIONS ABOUT ASBESTOS DISEASE CAUSATION? 21 A IT IS. 22 Q IN A SITUATION WHERE YOU GET TESTING ABOUT 23 ASBESTOS IN A PRODUCT, IS KNOWING THE LIMITS OF THE TEST 24 IMPORTANT TO YOU AS A DOCTOR? 25 A ABSOLUTELY. 26 Q I WANT TO BE VERY CLEAR, BECAUSE WE MET 27 DR. LONGO WHO DOES TESTING. HE SITS BEHIND THIS GIANT 28 MICROSCOPE AND ACTUALLY DOES THE TESTING. HE PUTS ON	Page 80 1 MS. CUATTO, I THINK YOU'RE RIGHT ABOUT 2 SOMETHING, AND I WANT TO COMMENT. 3 THE CASE I HAVE IN MIND IS CONTINENTAL 4 AIRLINES, INCORPORATED VS. MCDONNELL DOUGLAS 5 CORPORATION, A 1989 CASE, 216 CAL.APP.3D 388. AND THE 6 DISCUSSION IN QUESTION IS AT PAGE 414. 7 IT DOES NOT STATE NEW LAW. IT SUMMARIZES SOME 8 PREEXISTING LAW, INCLUDING PEOPLE VS. COLEMAN, 9 CALIFORNIA SUPREME COURT, CASE 1985, 38 CAL.3D 69 AT 92. 10 GRIMSHAW VS. FORD MOTOR COMPANY, (1981), 19 CAL.APP.3D 11 757 AT 788 TO 789. AND BASICALLY QUOTING FROM GRIMSHAW, 12 THE CONTINENTAL AIRLINES CASE, SITES WITH APPROVAL, 13 "WHILE AN EXPERT MAY STATE ON DIRECT EXAMINATION THE 14 MATTERS ON WHICH HE RELIED IN FORMING HIS OPINION, HE 15 MAY NOT TESTIFY AS TO THE DETAILS OF SUCH MATTERS IF 16 THEY ARE OTHERWISE INADMISSIBLE." 17 HERE IS WHERE IT GETS TRICKY, THOUGH. THAT'S 18 ME, NOT FROM THE OPINION. GOING ON, QUOTE, "THE RULE 19 RESTS ON THE RATIONALE THAT, WHILE AN EXPERT MAY GIVE 20 REASONS ON DIRECT EXAMINATION FOR HIS OPINIONS, THE 21 MATTERS HE CONSIDERED IN FORMING THEM HE MAY NOT, UNDER 22 THE GUISE OF REASONS, BRING IN BEFORE THE JURY" -- I 23 MUST HAVE DONE THAT WRONG. START AGAIN. 24 "THE RULE RESTS ON THE RATIONALE THAT, WHILE 25 AN EXPERT MAY GIVE REASONS ON DIRECT EXAMINATION FOR HIS 26 OPINIONS, INCLUDING THE MATTERS HE CONSIDERED IN FORMING 27 THEM, HE MAY NOT, UNDER THE GUISE OF REASONS, BRING 28 BEFORE THE JURY INCOMPETENT HEARSAY EVIDENCE.
Page 79 1 THE AIR MEASURER THING AND MEASURES THE AMOUNT OF FIBERS 2 IN THE AIR. IS THAT YOUR JOB? 3 A IT IS NOT. 4 Q IF SOMEONE SAID, I WANT YOU TO LOOK AT THIS 5 FIBER AND TELL ME IF THAT'S A BUNDLE OR A FIBER, IS THAT 6 WHAT YOU DO DAY IN AND DAY OUT? 7 A NO, IT IS NOT. 8 Q IF SOMEONE SAID, I WANT YOU TO LOOK AT THIS 9 E.D.S., WHICH TELLS US THE CHEMISTRY, SO WE CAN KNOW IF 10 THAT'S TALC OR CHRYSOTILE OR ANTHOPHYLLITE, IS THAT YOUR 11 JOB? 12 A NO, IT IS NOT. 13 THE COURT: MS. DEAN, LET US STOP FOR THE MOMENT. 14 I WANT TO GIVE THE JURY A BREAK. NORMALLY TEN MINUTES. 15 I WANT YOU TO TAKE 15 TODAY BECAUSE I NEED TO JUST 16 FINISH UP ONE PIECE OF WORK WITH THE LAWYERS. IT WILL 17 TAKE ME FIVE MINUTES. 18 SO AS ALWAYS, LEAVE YOUR NOTEBOOKS. PLEASE DO 19 NOT FORM OR EXPRESS ANY OPINIONS AND COME BACK IN ABOUT 20 12, 13, OR 14 MINUTES. 21 COUNSEL, PLEASE REMAIN. 22 23 (THE FOLLOWING PROCEEDINGS WERE HELD 24 OUTSIDE THE PRESENCE OF THE JURY.) 25 26 THE COURT: MISS CUATTO, COME ON BACK HERE PLEASE 27 IF YOU'RE STILL IN THE COURTROOM. THERE YOU ARE. 28 WE'RE OUTSIDE THE PRESENCE.	Page 81 1 ORDINARILY, THE USE OF A LIMITING INSTRUCTION THAT 2 MATTERS ON WHICH AN EXPERT BASED HIS OPINION ARE 3 ADMITTED ONLY TO SHOW THE BASIS OF THE OPINION AND NOT 4 FOR THE TRUTH OF THE MATTER CURES ANY HEARSAY PROBLEM 5 INVOLVED, BUT IN AGGRAVATED SITUATIONS WHERE HEARSAY 6 EVIDENCE IS RECITED IN DETAIL, A LIMITING INSTRUCTION 7 MAY NOT REMEDY THE PROBLEM," END QUOTE. 8 THE REASON IT GETS TRICKY IS THAT COLEMAN AND 9 GRIMSHAW WERE OVERRULED BY SANCHEZ ON THAT POINT TO THE 10 EXTENT THEY'RE SUGGESTING THAT AN EXPERT'S -- MAY -- 11 THAT THIS KIND OF EVIDENCE COMES IN TO SHOW THE BASIS OF 12 OPINION AND IS NOT BEING OFFERED FOR THE TRUTH. 13 NOW, THAT SAID, I'M OF THE VIEW THAT PEOPLE 14 VS. SANCHEZ DID NOT WHOLESAL REPEAL THE LAW OF HEARSAY. 15 AND I AM OF THE VIEW THAT THE BASIC RULE EXPRESSED IN 16 CONTINENTAL AIRLINES ABOUT EXPERTS CITING INADMISSIBLE 17 HEARSAY IN UNDUE DETAIL ON DIRECT REMAINS IMPROPER. 18 THE QUESTION, AS I SAID BEFORE, IS WHERE IS 19 THE LINE. I FIND FASCINATING THAT THE FEDERAL RULES OF 20 EVIDENCE IN DEALING WITH THIS PROBLEM, AND RULE 703 21 STATES IN A LAST SENTENCE: DESCRIBE -- WELL, THE 22 SUBJECT MATTER OF THE RULE IS, "INFORMATION OF THE TYPE 23 ON WHICH AN EXPERT MAY RELY" AND THE SENTENCE IN 24 QUESTION READS, QUOTE, "BUT IF THE FACTS OR DATA WOULD 25 OTHERWISE BE INADMISSIBLE, THE PROPONENT OF THE OPINION 26 MAY DISCLOSE THEM TO THE JURY ONLY IF THEIR PROBATIVE 27 VALUE IN HELPING THE JURY EVALUATE THE OPINION 28 SUBSTANTIALLY OUTWEIGHS THEIR PREJUDICIAL EFFECT," WHICH

Page 82 1 PUTS IT RIGHT BACK IN THE JUDGE'S LAP, AS I DO THINK IS 2 THE STATE OF THE LAW HERE. 3 SO TO THE EXTENT I EARLIER RULED THAT ANYTHING 4 AN EXPERT RELIED UPON IN FORMING AN OPINION WHICH IS 5 NONCASE-SPECIFIC HEARSAY MAY BE DISPLAYED TO THE JURY, 6 I'M RETRACTING THAT. AND I WILL BE, UPON APPROPRIATE 7 OBJECTION, EMPLOYING THE RULE, AS I UNDERSTAND IT, THAT 8 CONTINUES TO EXIST AFTER CONTINENTAL AIRLINE -- UNDER 9 THE CONTINENTAL AIRLINES CASE. ALL RIGHT? 10 MS. CUATTO: THANK YOU. 11 THE COURT: ANYBODY WANT TO SAY ANYTHING ABOUT 12 THAT? 13 MS. DEAN: JUST A COUPLE THINGS. FIRST, THE ACTUAL 14 SPECIFIC OBJECTIONS LODGED ARE TO GOVERNMENT REGULATIONS 15 IN THE FEDERAL REGISTER. AND SO GIVEN THAT THIS IS 16 JUST -- I WASN'T GOING TO SEEK JUDICIAL NOTICE. BUT THE 17 EPA 1986 RISK ASSESSMENT AND THE 1994 FEDERAL 18 REGULATIONS FROM THE OSHA WEBSITE ARE THE FIRST TWO 19 THINGS WHICH, IF THEY'RE JUDICIAL NOTICE, THE LAW AS AN 20 EXCLUSIONARY RULE OF EVIDENCE DOES NOT APPLY. 21 THE SECOND POINT I WOULD MAKE, WHICH IS NOT 22 BEFORE YOU, BUT BEFORE WE HAD -- THE JURY CAME IN, FORD 23 TALKED FOR A WHILE AND THERE WAS NO RESPONSE, ABOUT A 24 FUNDAMENTAL MISUNDERSTANDING OF WHAT HEARSAY IS. THEY 25 INDICATED IF SOMETHING GOES TO KNOWLEDGE, WHAT IS KNOWN 26 OR KNOWABLE, THAT THAT IS NOT NOTICE. THAT IS THE 27 DEFINITION OF NOTICE. THAT IS WHAT THE CASE LAW IN 28 CALIFORNIA SAYS. THAT IS WHAT THE FEDERAL LAW SAYS.	Page 84 1 AND PUT THE EXHIBIT STICKERS ON THE REST. AND BEFORE I 2 EVER GET TO THEM, I PROMISE YOU I'LL GIVE YOU A COPY. I 3 HAVE IN MY HAND SAID COPY. I'VE HONORED THE AGREEMENT. 4 THIS IS THE FIFTH TIME THAT FORD PRETENDS LIKE THERE'S A 5 PROBLEM WHEN THERE IS NONE WHEN TIME DESPERATELY 6 MATTERS. 7 MR. COGGSHALL: WILL COGGSHALL FOR COLOR 8 TECHNIQUES. DR. HABER IS NOT A FACT WITNESS. THERE'S 9 BEEN NO EVIDENCE IN THIS CASE AS TO WHAT COLOR 10 TECHNIQUES SUPPLIED TO ANY PRODUCT, AND, THEREFORE, HE 11 WON'T BE ABLE TO GIVE OPINION TESTIMONY AS TO COLOR 12 TECHNIQUES. I ANTICIPATE MS. DEAN IS GOING TO DO WHAT 13 SHE TRIED TO DO THERE, WHICH WAS TO IMPLICATE COLOR 14 TECHNIQUES AS BEING A CAUSE OF MS. CHAPMAN'S 15 MESOTHELIOMA. AND THAT LACKS FOUNDATION, AND I'M GOING 16 TO OBJECT TO THAT. 17 THE COURT: ALL RIGHT. WELL -- 18 MR. COGGSHALL: I JUST WANT TO GIVE YOU THE CONTEXT 19 OF WHY I'M GOING TO OBJECT TO THAT, BECAUSE THERE'S BEEN 20 NO FOUNDATION LAID AS TO COLOR TECHNIQUES AT ALL. 21 THE COURT: OKAY. I WILL WAIT TO SEE WHAT THE 22 QUESTION IS. I WANT TO GIVE EVERYBODY, INCLUDING OUR 23 REPORTER, A BREAK. COME BACK SOON. PLEASE. 24 25 (RECESS.) 26 27 THE COURT: WE HAVE ALL OF OUR JURORS AND 28 ALTERNATES. I THINK SHE'LL BE HERE PROMPTLY.
Page 83 1 SO IF I HAVE A ARTICLE FROM, I DON'T KNOW, 2 1999 BEFORE THE LAST DATE OF EXPOSURE FOR HYSTER, 3 THERE'S TWO DIFFERENT WAYS IT COULD BE ADMITTED. ONE IS 4 FOR TRUTH; ONE IS FOR NOTICE, AND THEN IT COULD BE A 5 RELIANCE. MANY OF THESE DOCUMENTS ARE FOR NOTICE, AND 6 FORD'S -- THE COMMENTS TO RULE 1200 GIVE THE EXAMPLE OF 7 THINGS THAT YOU CAN SHOW SOMEONE KNEW INDEPENDENT OF 8 WHETHER THEY'RE TRUE. 9 THE COURT: OKAY. I UNDERSTAND. I WANT TO GIVE 10 EVERYBODY THEIR BREAK. I JUST WANTED TO MAKE THE 11 STATEMENT I MADE. 12 MS. DEAN: I HAVE A POWERPOINT THAT WAS CREATED 13 BASED ON THE COURT RULING THAT I'M ABOUT TO START ON. 14 THE COURT: I KNOW. I WANT TO SEE YOUR POWERPOINT. 15 DO YOU HAVE A SET FOR ME SO I CAN FOLLOW ALONG IN HARD 16 COPY? 17 MS. DEAN: YES. 18 THE COURT: LET ME HAVE THAT. 19 AND, COUNSEL, IF COUNSEL NEEDS TO FLAG A SLIDE 20 COMING UP, LET ME KNOW BEFORE IT'S DISPLAYED. 21 MR. LANKFORD: WE CAN'T DO THAT WITHOUT A COPY, 22 THOUGH, YOUR HONOR. PAUL LANKFORD FOR FORD. 23 THE COURT: HOW DO YOU NOT HAVE A COPY? 24 MS. DEAN: FORD PRETENDS LIKE THIS IS MYSTERIOUS. 25 THE AGREEMENT WAS, BEFORE I DISPLAYED THINGS, I WOULD 26 PROVIDE IT. I HAVE HONORED THAT AGREEMENT. THEY HAVE 27 NOT ONLY THE SLIDES BUT 50 BEFORE I GOT THERE. I 28 E-MAILED THEM AND TOLD THEM I'M HAVING SOMEONE PROOFREAD	Page 85 1 MS. DEAN: I'M SO SORRY. 2 THE COURT: THAT'S ALL RIGHT. I EXPLAINED THAT I 3 LET YOU SLIP OUT FOR A MOMENT. 4 OKAY. EVERYBODY IS HERE WHO NEEDS TO BE HERE 5 AND YOU MAY PROCEED. 6 7 DIRECT EXAMINATION (CONTINUED) 8 BY MS. DEAN: 9 Q WHEN WE WERE ON A BREAK, WE RECEIVED SOME 10 QUESTIONS. I WANT TO JUST TACKLE THEM. 11 FOR RITA CHAPMAN, WAS A TISSUE DIGESTION DONE? 12 A NO. 13 Q AS A MEDICAL DOCTOR, WOULD IT MAKE ANY SENSE 14 TO PUT RITA CHAPMAN THROUGH A TISSUE DIGESTION? 15 A NO. 16 Q IS THERE ANY MEDICAL REASON TO DO A TISSUE 17 DIGESTION FOR A PERSON THAT HAS MESOTHELIOMA BEFORE THEY 18 PASS AWAY? 19 A NO. 20 Q THIS JUROR -- JUROR NUMBER 7 -- 21 THE COURT: JUST ASK THE QUESTION, PLEASE. 22 MS. DEAN: -- IS GOING TO MAKE ME -- 23 THE COURT: JUST ASK THE QUESTION. 24 MS. DEAN: CAN WE PUT UP ON THE SCREEN SO I DON'T 25 HAVE TO MISPRONOUNCE THE WORD. THIS WAS THE FIRST OF 26 THE THREE PROCEDURES BEFORE THE TALC PLEURODESIS. 27 MR. SHARP: I APOLOGIZE. I NEED TO OBJECT. THIS 28 IS NOT PROPER.

Page 86 1 THE COURT: RATHER THAN SHOWING IT, JUST FORMULATE 2 A QUESTION BASED ON THE JUROR'S QUESTION, IF YOU WISH, 3 OR WHATEVER OTHER QUESTION YOU WISH TO ASK. 4 Q MS. DEAN: IN 2022, WHEN YOU DESCRIBED THE 5 FIRST PROCEDURE, HOW DO YOU PRONOUNCE THAT? 6 A MEDIASTINOSCOPY. 7 Q WHEN THAT WAS PERFORMED FOR MS. CHAPMAN AND 8 THEY TOOK A BIOPSY, COULD THAT SAMPLE TISSUE HAVE BEEN 9 TESTED FOR ASBESTOS FIBERS? 10 A NO. IT'S LYMPH NODES OUTSIDE OF THE CHEST, 11 OUTSIDE OF THE LUNGS. 12 Q CAN THAT BE USED TO PROVE OR SHOW THE PRESENCE 13 OF ASBESTOS FIBERS? 14 A NO. THAT'S NOT USUALLY WHERE YOU'RE -- YOU 15 WANT TO TAKE TISSUE FROM THE LUNGS. 16 Q OKAY. WHAT IS THE CAUSE OF WATER ACCUMULATION 17 AROUND THE HEART? IS IT RELATED TO ASBESTOS? 18 A IN THIS CASE, YES. THEY DID THE CYTOLOGY 19 WHICH IS LOOKING UNDER THE MICROSCOPE, AND THE CELLS 20 WERE SUSPICIOUS TO THE PATHOLOGISTS FOR THE SAME 21 MALIGNANT MESOTHELIOMA, AND, CLINICALLY, IT FITS BECAUSE 22 THIS IS ONE OF THE -- YOU KNOW, SHE ALREADY HAD THE 23 PLEURAL EFFUSION -- IT FITS THAT IT WAS GOING TO BE FROM 24 THE CANCER. 25 Q DO YOU OR HER TREATERS OR ANYONE, TO YOUR 26 KNOWLEDGE, BELIEVE THAT THAT ACCUMULATION IN THE HEART 27 AND IN THE LUNGS HAD ANYTHING TO DO WITH ANYTHING OTHER 28 THAN HER CANCER?	Page 88 1 ABOUT BRAKES. ARE YOU FAMILIAR WITH THAT PAPER? 2 A I AM. 3 Q HAVE YOU ALSO REVIEWED THE WORK BY THE MOUNT 4 SINAI GROUP -- 5 A I HAVE. 6 Q -- ON THAT ISSUE? AND ARE YOU PREPARED TO 7 TELL US YOUR OPINION ABOUT WHETHER BRAKE EXPOSURES ARE 8 RENDERED UNDANGEROUS BECAUSE THERE'S NOT ASBESTOS IN 9 THEM DUE TO HEAT? 10 A I AM. 11 Q TELL ME ABOUT THAT. 12 A FIRST OFF, YOU KNOW, AS FAR AS THINGS LIKE 13 GRINDING OR SANDING, I MEAN, THIS IS 30 TO 60 PERCENT 14 ASBESTOS PRODUCT. THE HEAT THAT IS PERHAPS USED IN 15 MAKING -- MOLDING THE BRAKE. THERE'S STILL A LOT OF 16 ASBESTOS IN THE PRODUCT. AS FAR AS BLOWOUT IS 17 CONCERNED, THE BRAKEWARE DEBRIS, YES, THERE ARE SOME 18 STUDIES THAT HAVE LESS THAN 1 PERCENT BUT THERE'S ALSO 19 STUDIES THAT ARE 10, 15, EVEN, YOU KNOW, 30 PERCENT 20 ASBESTOS STILL PRESENT IN THE BRAKEWARE. 21 Q AND AS BETTER TECHNIQUES WERE USED TO EVALUATE 22 WHAT WAS IN THE BRAKEWARE, WHEN YOU'RE TALKING ABOUT THE 23 COMPRESSED AIR, DID THEY FIND MORE AND MORE ASBESTOS? 24 A YES. 25 Q WE HAVE HEARD A LOT ABOUT FIBER RELEASE 26 STUDIES. MR. ADAMS, I THINK WAS TEASING ME A LITTLE BIT 27 ABOUT TALKING TOO MUCH ABOUT FIBERS PER CC. BUT ARE 28 THOSE THE TYPE OF STUDIES YOU REVIEWED IN ORDER TO
Page 87 1 A NO. IT WAS FROM THE MESOTHELIOMA. 2 Q THE FORD WITNESS IMPLIED FORD GAVE A GRANT TO 3 DR. SELIKOFF TO STUDY AIR POLLUTION, BUT HE DECIDED TO 4 STUDY BRAKE WORK. DO YOU KNOW ABOUT THE FINANCING 5 BEHIND THE SCENES OF DR. SELIKOFF'S WORK BY FORD, OTHER 6 THAN WHAT YOU HEARD IN THE COURTROOM AND THE JURY DID? 7 A I DO NOT. 8 Q OKAY. MR. WILLIAMS FROM FORD MENTIONED 9 SOMETHING ALONG THE LINES THAT HEAT APPLIED IN BRAKES 10 COULD RENDER THE ASBESTOS FIBERS INEFFECTIVE. WILL 11 ANYONE BE ABLE TO CONFIRM OR DENY THIS? IS THIS 12 SOMETHING YOU HAVE REVIEWED THE MEDICAL AND SCIENTIFIC 13 LITERATURE ON SPECIFICALLY? 14 A YES. 15 Q DOES HEAT RENDER BRAKES, AS IT RELATES TO 16 ASBESTOS FIBERS, UNHARMFUL? 17 MR. LANKFORD: OBJECTION, YOUR HONOR. FOUNDATION. 18 THE COURT: SUSTAINED ON FOUNDATION. 19 Q BY MS. DEAN: AS A MEDICAL DOCTOR, IS KNOWING 20 WHETHER YOU HAVE ASBESTOS OR SOMETHING ELSE IN A 21 MATERIAL AN IMPORTANT THING TO KNOW IN ORDER TO EVALUATE 22 CAUSATION? 23 A YES. 24 Q ARE THERE DOCUMENTS IN PEER REVIEWED PUBLISHED 25 LITERATURE AND MEDICAL JOURNALS DISCUSSING THIS EXACT 26 ISSUE? 27 A YES. 28 Q THE JURY HAS SEEN ONE BY DR. LEMON FROM 2004	Page 89 1 ASSESS AN EXPOSURE AND ITS RELATIONSHIP TO DISEASE? 2 A YES, IT IS. 3 Q WHEN THEY'RE DETERMINING HOW MANY FIBERS GET 4 INTO THE AIR, ARE THEY INCLUDING FORSTERITE? 5 A NO. 6 Q SO WHEN WE HEAR THAT GRINDING A BRAKE RESULTS 7 IN 30 FIBERS PER CC, ARE THEY INCLUDING ANYTHING OTHER 8 THAN ASBESTOS? 9 A NO. 10 Q NOT JUST IN THE STUDIES THAT I THOUGHT OF TO 11 ASK YOU ABOUT, IN ANY STUDY ANYWHERE THAT YOU HAVE EVER 12 SEEN IN THE SCIENTIFIC COMMUNITY, DOES ANYONE CONFIRM 13 THE SUGGESTION THAT GRINDING OR SANDING BRAKES DOESN'T 14 INVOLVE ASBESTOS BECAUSE OF HEAT? 15 A NO. I'VE NOT SEEN THAT. 16 Q OKAY. WE WERE TALKING ABOUT -- BEFORE WE 17 INTERRUPTED -- HOW THE LIMITATIONS OF TESTING IS 18 IMPORTANT, AND I WAS ASKING YOU WHETHER YOU WERE LIKE 19 DR. LONGO AND SAT BEHIND THE MICROSCOPE. IS IT 20 IMPORTANT, EVEN IF YOU'RE NOT THE PERSON DOING THE 21 TESTING, TO UNDERSTAND ITS STRENGTHS AND ITS WEAKNESSES? 22 A OF COURSE. 23 Q IS THAT SOMETHING IN YOUR MEDICAL PRACTICE 24 DAILY THAT YOU HAVE TO DO? 25 A IT IS. 26 Q CAN YOU GIVE ME AN EXAMPLE? 27 A SURE. SO FOR EXAMPLE, AS A PULMONOLOGIST, 28 I'LL GET A PATIENT WHO COMES IN AND WE PERHAPS ARE GOING

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1 TO DO A CHEST X-RAY WHICH HAS A LOWER LIMIT OF DETECTION
2 FOR CANCER THAN A CAT SCAN. WELL, YEARS AGO, WE USED TO
3 SCREEN. WE TESTED. WE RAN TESTS TO SEE WHETHER
4 SCREENING FOR LUNG CANCER -- FOR CHEST X-RAY WAS GOING
5 TO SAVE LIVES, AND AFTER A LONG, LONG STUDY, IT DIDN'T,
6 BECAUSE BY THE TIME THE CANCER WAS DETECTABLE ON CHEST
7 X-RAY, IT WAS ALREADY TOO LATE. SO THEN WE REDID THE
8 STUDY AGAIN WITH CAT SCAN AND NOW WE DO SCREENING CAT
9 SCANS FOR PEOPLE WHO HAVE HAD A CERTAIN AMOUNT OF
10 SMOKING HISTORY.
11 AND WHEN A PATIENT COMES TO ME AND SAYS YOU
12 KNOW -- WE DO A CHEST X-RAY, AND THEY SAY, WELL, THERE'S
13 NO CANCER AND I GO, YOU'RE RIGHT. I DON'T SEE A CANCER
14 ON THE CHEST X-RAY BUT YOU HAVE TO UNDERSTAND THAT THE
15 CANCER HAS TO BE REALLY BIG ON A CHEST X-RAY FOR US TO
16 SEE IT; AND SO NO, WE CAN'T SAY THAT YOU DON'T HAVE ONE,
17 BECAUSE THE LIMIT OF DETECTION. ON THE CAT SCAN, MUCH,
18 MUCH BETTER, LIKE, THE TEM IS MUCH BETTER. BUT EVEN THE
19 CAT SCAN -- IF THE PERSON HAS A CAT SCAN, WE DO A
20 SCREENING CAT SCAN AND WE DON'T SEE ANYTHING, AND SAYS
21 TO ME, AM I CANCER FREE? NO. I CAN'T SAY THAT YOU ARE.
22 I CAN SAY THAT, YOU KNOW, IF THERE'S A CANCER THERE,
23 IT'S GOING TO HAVE TO BE VERY, VERY SMALL, THAT IT'S
24 BELOW OUR LIMIT OF DETECTION, ABOUT A MILLIMETER OR TWO
25 MILLIMETERS. BUT WE STILL HAVE TO CONTINUE TO MONITOR
26 YOU BECAUSE I CAN'T SAY THAT YOU'RE, YOU KNOW, YOU'RE
27 GOOD AND CLEAR. AND THAT'S SOMETHING FOR ME EVERY DAY.
28 Q FOR TRADITIONAL PRODUCTS AND WHAT I MEAN BY

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1 THAT, IS PRODUCTS WHERE A COMPANY MAKES THE DECISION TO
2 PUT ASBESTOS IN IT INTENTIONALLY. HAVE YOU BEEN ASKED
3 FOR YEARS, BOTH IN THE COURTROOM BY DEFENDANTS AND
4 PLAINTIFFS AND WITH YOUR OWN PATIENTS, TO CONSIDER
5 EXPOSURES THAT PEOPLE HAVE AND WHETHER THE ASBESTOS
6 CAUSED THE DISEASE?
7 A YES.
8 Q OKAY. AND WHEN YOU'RE LOOKING AT SOMETHING
9 LIKE A BRAKE, IS IT IMPORTANT TO UNDERSTAND, WHEN YOU
10 LOOK AT THE TESTS, WHAT TOOL WAS USED TO DO THE TEST?
11 A OF COURSE.
12 Q THE JURY HAS ALREADY HEARD THAT OSHA SUGGESTED
13 DOING TESTING BY PCM, WHICH DOESN'T FIND SHORTER FIBERS
14 OR THINNER FIBERS. IF YOU GET A TEST, AND IT SAYS I
15 HAVE FOUND 10 FIBERS PER CC OF ASBESTOS BY PCM, IS IT
16 IMPORTANT FOR YOU -- OR DO YOU CONSIDER THE LIMITS OF
17 THAT RESULT?
18 A SURE. AND YOU KNOW, BY THE SAME TOKEN, I
19 DON'T DO THE CHEST X-RAYS OF THE CAT SCAN MYSELF BUT I
20 HAVE TO UNDERSTAND THE LIMITS. I DON'T DO THESE OTHER
21 TESTS, BUT, YES, YOU HAVE TO UNDERSTAND, OKAY, WHAT IS
22 THE STRENGTH? WHAT IS THE WEAKNESS? SOME TESTS CAN SEE
23 CERTAIN FIBERS AND THEY CAN'T SEE OTHER FIBERS. MAYBE
24 THEY'RE TOO THIN. SOME MAY NEED TO BE A CERTAIN LENGTH
25 OR A CERTAIN WIDTH. SOME ARE MUCH MORE MAGNIFIED. SO
26 THEY ALL HAVE CERTAIN ADVANTAGES AND SOME DISADVANTAGES.
27 YOU HAVE TO UNDERSTAND THAT, IN ORDER TO -- WHEN YOU
28 LOOK AT A RESULT, JUST LIKE I WOULD WITH A PATIENT, BE

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1 ABLE TO SAY, HOW DO I MAKE SENSE OF THIS?
2 Q NOW, I WANT TO MAKE THAT A LITTLE BIT MORE
3 CONCRETE. I'M KIND OF JUMPING AHEAD IN MY OUTLINE. BUT
4 ARE SHORTER FIBERS THAT ARE MISSED BY PCM OR THINNER
5 FIBERS THAT ARE ALSO MISSED BY PCM IMPORTANT TO
6 UNDERSTANDING WHY A PERSON GETS MESOTHELIOMA?
7 A YES. THESE FIBERS ARE A HEALTH CONCERN,
8 ABSOLUTELY.
9 Q SO IF YOU HAVE ONE TEST THAT GIVES YOU FIBERS
10 AND SHOWS A LOT OF ASBESTOS, BUT A SECOND TEST WITH A
11 BETTER METHOD THAT SHOWS YOU EVERYTHING YOU NEED TO SEE,
12 WOULD YOU KEEP THE LIMITS OF THOSE TESTS IN MIND?
13 A YES.
14 Q SAME KIND OF QUESTIONS WITH TALC. IF YOU HAVE
15 A TEST THAT LOOKS AT IT AND HAS A VERY POOR LIMIT OF
16 DETECTION AND ONE THAT HAS VERY WEAK, WOULD YOU -- VERY
17 STRONG, SORRY, WOULD YOU CONSIDER THAT IN YOUR REVIEW OF
18 INFORMATION?
19 A YES.
20 Q AND IS THAT TYPE OF THING SOMETHING THAT
21 DOCTORS LIKE YOURSELF ROUTINELY DO IN EVALUATING HEALTH
22 ISSUES?
23 A YES. YOU HAVE TO -- ANY TEST -- JUST LIKE YOU
24 KNOW WHEN WE -- EVERYONE GETS COVID TESTS NOWADAYS. YOU
25 HAVE TO UNDERSTAND THERE'S FALSE POSITIVES. THERE'S
26 LOTS OF FALSE NEGATIVES SO YOU HAVE TO UNDERSTAND THE
27 LIMITS OF THE DETECTION OF THE TEST.
28 Q WE HEARD A LOT ABOUT THIS, BUT WE'RE GOING TO

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1 HEAR FROM SOME GEOLOGISTS, WHICH IS WHY I'M GOING TO
2 TAKE SOME TIME NOW. FROM A MEDICAL DOCTOR'S
3 PERSPECTIVE, AS A PERSON WHO EVALUATES THE HEALTH OF
4 PATIENTS. WHAT IS ASBESTOS?
5 A ASBESTOS IS A NATURAL MINERAL THAT IS ONE OF
6 SIX CHEMICAL MAKEUP IN A FIBROUS FORM.
7 Q IF YOU HAVE ONE OF THOSE SIX AND IT'S IN THE
8 RIGHT FIBER FORM OR MORPHOLOGY, HAS THAT BEEN STUDIED
9 REPEATEDLY THROUGH LITERATURE TO HAVE AN EFFECT ON THE
10 HUMAN BODY THAT'S NEGATIVE?
11 A YES.
12 Q WE'VE HEARD THAT CHRYSOTILE WAS THE VAST
13 MAJORITY OF ASBESTOS USED. IF AMOSITE AND CROCIDOLITE
14 WERE THE OTHER FIVE PERCENT, DO YOU AGREE WITH THOSE
15 BROAD NUMBERS?
16 A YES.
17 Q ARE THERE OTHER FIBER TYPES THAT REALLY
18 WEREN'T USED COMMERCIALY?
19 A YES.
20 Q WHAT ARE THOSE?
21 A ANTHOPHYLLITE AND TREMOLITE AND ACTINOLITE.
22 Q GIVEN THAT THEY AREN'T USED, WHEN PEOPLE ARE
23 DOING STUDIES TO FIGURE OUT WHAT IS IN THE AMBIENT AIR?
24 AND THE JURY HAS HEARD ABOUT THAT. WHAT TYPE OF
25 ASBESTOS IS BEING FOUND?
26 A IT'S PRIMARILY CHRYSOTILE ASBESTOS.
27 Q WHEN YOU LOOK INTO THE TISSUE OF SOMEONE THAT
28 HAS PASSED AWAY AND COUNT WHAT'S THERE, WHAT TYPE OF

Page 94 1 ASBESTOS IS TYPICALLY FOUND? 2 A THE SAME. 3 Q ARE THERE STUDIES THAT LOOK AT PEOPLE WHO HAVE 4 A DOCUMENTED HISTORY TO COSMETIC TALC THAT LOOKS AT 5 TISSUE AND SEES WHAT'S THERE? 6 A YES. 7 Q ARE THESE COMMERCIAL TYPES THAT WEREN'T USED 8 FOR ANY PURPOSE MARKERS OF EXPOSURE? 9 A YES. 10 Q WE'VE HEARD A LOT ABOUT THIS. I JUST WANT TO 11 CONFIRM FROM A MEDICAL DOCTOR. FOR EACH OF THESE 12 DISEASES -- ASBESTOSIS, PLEURAL DISEASE, LUNG CANCER, 13 MALIGNANT MESOTHELIOMA AND OTHER CANCERS -- DO ALL OF 14 THE SIX FIBER TYPES OF ASBESTOS CAUSE THESE DISEASES? 15 A YES. 16 Q DR. BRODY CAME AND TALKED ABOUT GENETICS AND 17 MUTATION FOR A LONG TIME. IF SOMEONE SUGGESTED THAT IT 18 NEEDS -- YOU NEED TO FIND THE ONE SPECIFIC FIBER THAT 19 CAUSED THE DISEASE, IS THERE A FUNDAMENTAL 20 MISUNDERSTANDING ABOUT HOW CANCER IS CAUSED AS IT 21 RELATES TO ASBESTOS? 22 A YES. 23 Q IS ASBESTOS-RELATED MESOTHELIOMA A CUMULATIVE 24 DOSE DISEASE? 25 A YES. 26 Q WHAT DOES THAT MEAN? 27 A IN OTHER WORDS, THE HIGHER THE DOSE, THE 28 HIGHER THE RISK IN A GENERAL POPULATION. SO IT'S NOT --	Page 96 1 .00002 PERCENT THAT THEY DETERMINED THAT WAS 2 ADULTERATED, DANGEROUS AND POISONOUS. YOU HAVE FROM THE 3 PUBLISHED JOURNAL OF AMERICAN OF INDUSTRIAL MEDICINE 4 SHOWING THAT AT LESS THAN .01 PERCENT THAT YOU CAN HAVE 5 300 BILLION ASBESTOS FIBERS, GREATER THAN FIVE MICRONS 6 THEN YOU'RE TALKING ABOUT 90 TRILLION IF YOU'RE LOOKING 7 AT ALL FIBERS. IT'S A HUGE AMOUNT OF FIBERS. IT'S HARD 8 TO UNDERSTAND WHEN YOU START GETTING INTO BILLION AND 9 TRILLIONS BUT VERY, VERY HIGH NUMBER. AND THEN THE EPA 10 SAID THAT VERY LOW EXPOSURES CAN RESULT IN CANCERS. 11 THEY UNDERSTAND THAT ASBESTOS LINGERS IN THE AIR AND 12 THAT THIS RISK IS NOT ONLY TO THE MECHANIC BUT THE 13 PEOPLE THAT ARE AROUND. 14 Q I WANT TO FOLLOW UP ON A FEW THINGS. FIRST, 15 THIS REALLY LOW PERCENTAGE SHOWN UP HERE WITH A LOT OF 16 ZEROS AND A TWO, IS THAT THE SAME THING AS THE FIBER PER 17 CC NUMBERS? 18 A NO. 19 Q I WANT TO BE CLEAR ABOUT THIS. ARE THERE 20 PUBLISHED PAPERS, INTERNAL STUDIES BY COMPANIES, FDA 21 DATA TALKING ABOUT HOW MUCH ASBESTOS GETS INTO THE AIR 22 EVEN WHEN A PRODUCT HAS LESS THAN ONE PERCENT? 23 A YES. 24 Q AND FOR COSMETIC TALC, WHAT RANGES ARE YOU 25 SEEING, IF WE'RE NOT GOING TO KNOW WEIGHT, THE ACTUAL 26 FIBER THAT'S IN THE AIR OF THE PERSON WHO'S BREATHING. 27 IS THERE A RANGE? 28 A YES.
Page 95 1 YOU CAN HAVE PEOPLE -- YOU DON'T HAVE TO HAVE A HIGH 2 DOSE, BUT THE HIGHER THE DOSE OF A POPULATION OR GROUP 3 THAT YOU'RE STUDYING, THE MORE CASES YOU WILL SEE. BUT 4 THERE'S INDIVIDUAL'S SUSCEPTIBILITY SO PEOPLE CAN STILL 5 HAVE -- AS WE SAID, THERE'S NO LIMIT BELOW WHICH WE 6 DON'T KNOW YET. THERE'S NO RISK. BUT THE MORE THE 7 DOSE, THE HIGHER THE RISK. 8 Q WHY DO YOU HAVE A GLASS OF WATER TIPPING OVER 9 IN THIS PICTURE? 10 A SO IT'S KIND OF A PICTORIAL TO UNDERSTAND THIS 11 CONCEPT THAT, YOU KNOW, AS THE DOSE IS ADDED, YOU CAN'T 12 REALLY TELL WHAT PART OF THAT, AS YOU'RE POURING THE 13 WATER IN, WHICH PART MADE IT OVERFLOW. IT ALL DID. 14 EVERYTHING THAT WENT IN EVENTUALLY FILLED UP THE GLASS 15 TO OVERFLOW. 16 Q AND IN TERMS OF SCIENCE, DOES IT MAKE ANY 17 SENSE TO SAY IT WAS THE FIRST DROP OR THE FIRST THIRD, 18 MIDDLE THIRD OR THE LAST DROP THAT IS SIGNIFICANT OR DO 19 YOU NEED TO LOOK AT ALL OF THEM? 20 A YOU HAVE TO LOOK AT THE WHOLE CUMULATIVE DOSE. 21 Q WE'VE HEARD A LOT ABOUT HOW LIGHT ASBESTOS IS. 22 CAN YOU TELL US A LITTLE BIT ABOUT YOUR OPINIONS ABOUT 23 HOW DANGEROUS ASBESTOS CAN BE EVEN AT VERY LIGHT 24 WEIGHTS? 25 A SO ASBESTOS IS EXTRAORDINARILY LIGHT AND SO 26 EVEN A VERY, VERY SMALL PERCENTAGE BY WEIGHT CAN CARRY 27 BILLIONS EVEN TRILLIONS OF FIBERS IN JUST THE SMALLEST 28 VOLUME OR WEIGHT. AND SO YOU'VE GOT FDA SHOWING THAT AT	Page 97 1 Q WHAT IS THAT? 2 A THAT RANGE DEPENDS UPON THE SOURCE OF THE TALC 3 BECAUSE SOME HAS MORE, SOME HAS LESS ASBESTOS IN IT. 4 BUT OF THE TESTS THAT I'VE SEEN, THE RANGE IS SOMEWHERE 5 AROUND BETWEEN .1 TO 4 FIBERS PER CC. 6 Q WHEN YOU KNOW THAT THIS REALLY SMALL 7 PERCENTAGE BY WEIGHT, NOT BY WHAT'S IN THE AIR, IS 8 ADULTERATED AND THAT THAT'S STATED BY THE FDA, IS THAT 9 AN OFFICIAL FDA STATEMENT ON THEIR WEBSITE? 10 A IT IS. 11 Q IS THAT BURIED IN A DOCUMENT THAT YOU CAN ONLY 12 GET FROM A FOIA, FREEDOM OF INFORMATION ACT, REQUEST 13 FROM 30 YEARS AGO? 14 A NO. 15 Q THE JURY WAS TOLD THAT THE FDA BELIEVES THAT 16 0.1 PERCENT -- WE'RE BACK TO WEIGHT -- IS SAFE. IS THAT 17 ACCURATE BASED ON THE DATA THAT'S ON THE FDA WEBSITE 18 FROM THE OFFICIAL FDA STATEMENT? 19 A NO. 20 Q AND THEN, I THINK, THIS JUST MIGHT BE AN 21 EXAMPLE OF WHAT WE WERE TALKING ABOUT EARLIER. THE TYPE 22 OF TOOL USED TO DO THE TESTING, WHETHER YOU USE PCM THAT 23 ONLY SHOWS FIVE MICRONS OR THAT TRANSMISSION ELECTRON 24 THAT SHOWS SHORTER, MAKES A HUGE DIFFERENCE ON WHAT YOU, 25 AS THE DOCTOR, CAN SEE? 26 A YES. 27 Q AND IS THAT THE TYPE OF THING YOU WOULD WANT 28 TO KEEP IN MIND WHEN MAKING HEALTH DECISIONS?

Page 98 1 A YES. 2 Q IN TERMS OF UNDERSTANDING HOW MUCH DOSE, HAVE 3 YOU HEARD THE IDEA THAT DOSE MAKES THE POISON? 4 A YES. 5 Q WE'RE GOING TO KIND OF GET TO THE HISTORY OF 6 WHAT WAS KNOWN ABOUT ASBESTOS AND ASBESTOS DISEASE IN A 7 MOMENT. BUT BROADLY SPEAKING, WHEN PEOPLE WERE WORRIED 8 ABOUT THE SCARRING, THE ASBESTOSIS, WHAT KIND OF DOSES 9 WERE ASSOCIATED WITH THAT? 10 A MUCH HIGHER DOSES. 11 Q WHEN MESOTHELIOMA FIRST BECAME KNOWN, WAS IT A 12 GAME CHANGER BECAUSE OF ISSUES WITH DOSE? 13 A YES. 14 Q HELP US UNDERSTAND. 15 A SO THE EARLIEST STUDIES WHEN THEY'RE LOOKING 16 AT ASBESTOSIS, THE AMOUNTS OF ASBESTOS THAT THESE 17 WORKERS WERE BEING EXPOSED TO WERE MUCH HIGHER. NOW 18 THAT WE'VE BEEN IDENTIFYING MESOTHELIOMA, THE STUDY 19 AFTER STUDY AFTER STUDY SHOWING LOWER AND LOWER DOSES, 20 ORDERS OF MAGNITUDE BELOW THE DOSE THAT ONE CC EVEN AT 21 THE LOWEST END TO BE CAPABLE OF CAUSING ASBESTOSIS. 22 Q WAS THERE EXTENSIVE EFFORT, NOT JUST IN THE 23 U.S., BUT THROUGHOUT THE WORLD TO TRY TO FIGURE OUT A 24 WAY TO USE ASBESTOS? THAT IF YOU -- IN OTHER WORDS, IF 25 WE CAN JUST KEEP IT AT THIS LEVEL OR THIS LEVEL, PEOPLE 26 WOULDN'T GET SICK? ARE YOU AWARE OF THAT EFFORT. SORRY 27 IT'S AN AWKWARD QUESTION. 28 A YES.	Page 100 1 A YES. SO MANY STUDIES AND SCIENTISTS HAVE 2 PUBLISHED SHOWING THAT THERE IS NO RISK -- THERE'S NO 3 LEVEL THRESHOLD BELOW WHICH YOU DON'T HAVE A RISK. THAT 4 THERE ARE MANY, MANY STUDIES SHOWING THAT VERY, VERY 5 MINIMAL, BRIEF, INTERMITTENT -- EVEN SOME CASE REPORTS 6 ONE DAY, ONE WEEK, ONE MONTH TYPE OF EXPOSURE -- SO IT 7 CAN BE VERY LIMITED IN TIME FRAME -- WERE CAPABLE OF 8 CAUSING MESOTHELIOMA. 9 Q THROUGHOUT THIS PRESENTATION, YOU HAVE PUT 10 THESE FOOTNOTES AND CITATIONS. CAN I ASK YOU, WHEN 11 YOU'VE CITED TO SOMETHING OR REFERENCED SOMETHING IN 12 THIS POWERPOINT WE TALKED TO THE JURY, ARE THOSE THINGS 13 YOU HAVE REVIEWED, CONSIDERED, RELIED ON AND FOUND TO BE 14 AUTHORITATIVE? 15 A YES. 16 MR. LANKFORD: I'M GOING TO OBJECT, YOUR HONOR, AS 17 HEARSAY, FOUNDATION, 352, AND I STILL DON'T HAVE THE 18 SLIDES. 19 THE COURT: TO THE NEXT SLIDE? 20 MR. LANKFORD: THIS ONE EVEN. I DON'T HAVE THIS. 21 I DON'T HAVE ANY. 22 MS. DEAN: YOU DON'T HAVE THIS SLIDE? I GAVE IT TO 23 YOU YESTERDAY. MIDDAY YESTERDAY. 24 MR. LANKFORD: WE CAN MOVE ON, YOUR HONOR. 25 THE COURT: OKAY. YOUR OBJECTION TO THE SLIDE 26 PRESENTLY DISPLAYED: ASBESTOS AND MESOTHELIOMA IS 27 OVERRULED. 28 MR. LANKFORD: I WITHDRAW THE OBJECTION. YOU CAN
Page 99 1 Q WAS ASBESTOS USEFUL IF IT DIDN'T CAUSE HARM TO 2 THE LUNGS? 3 A YES. I MEAN, HE ACTUALLY CALLED IT THE MAGIC 4 MINERAL, BUT YES. 5 Q AFTER DECADES OF EFFORTS TO TRY TO FIGURE OUT 6 IF THERE'S A LEVEL THAT, IF YOU JUST KEEP IT HERE, 7 SIGNIFICANT PEOPLE WON'T GET SICK. HAVE THEY BEEN ABLE 8 TO FIND THAT LEVEL AS IT RELATES TO THE DISEASE THAT 9 RITA CHAPMAN HAS, MALIGNANT MESOTHELIOMA. 10 A NO. 11 Q IN TERMS OF UNDERSTANDING HOW YOU 12 UNDERSTAND -- OR HOW YOU'VE GOTTEN TO THAT, CAN YOU TELL 13 US A LITTLE BIT ABOUT THIS SLIDE? 14 A YES. AND THIS IS PUBLISHED IN MEDICAL 15 JOURNALS AND IT'S WIDELY UNDERSTOOD THAT ASBESTOS CAUSES 16 MOST OF THE MESOTHELIOMAS IN THE UNITED STATES. AND 17 THAT IT'S CALLED WHAT WE CALL A SENTINEL CANCER. IN 18 OTHER WORDS, WHEN YOU HAVE SOMEONE WHO HAS MESOTHELIOMA, 19 WE'RE TAUGHT IN MEDICAL SCHOOL, THINK ABOUT ASBESTOS. 20 AND IF YOU HAVE SOMEONE WHO HAS EXPOSURE TO ASBESTOS, 21 RISK FOR MESOTHELIOMA. THOSE TWO ARE EXTREMELY TIGHTLY 22 LINKED. 23 Q IN TERMS OF THIS IDEA THAT YOU JUST EXPLAINED, 24 THERE'S NOT A THRESHOLD OR A DOSE THAT HAS BEEN FOUND TO 25 BE OKAY. AND WHAT I MEAN BY OKAY IS NOT HAVE A 26 SIGNIFICANT INCREASE FOR THE DEVELOPMENT OF DEATH AND 27 DISEASE SPECIFICALLY, THE DISEASE MESOTHELIOMA. CAN YOU 28 TELL US A LITTLE BIT MORE ABOUT THAT?	Page 101 1 GO AHEAD. 2 THE COURT: OKAY. GO AHEAD. 3 Q BY MS. DEAN? WHAT IS THE WORLD HEALTH 4 ORGANIZATION? 5 A THAT IS AN ORGANIZATION THAT DEALS WITH HEALTH 6 ISSUES ACROSS THE WORLD. MOST PEOPLE EVEN -- THEY WERE 7 INVOLVED WITH ALL THE COVID, THEIR RELATIONSHIP WITH THE 8 I.L.O., WHICH IS THE INTERNATIONAL LABOR ORGANIZATION, 9 WHICH DOES THE READING WHICH I TOLD YOU ABOUT EARLIER. 10 Q HAVE THEY DONE AN EVALUATION OF THE WORLD 11 LITERATURE OF ASBESTOS DISEASE TO EVALUATE THE ISSUE 12 ABOUT WHEN AND UNDER WHAT CIRCUMSTANCES YOU'RE SEEING 13 MESOTHELIOMA AS IT RELATES TO EXPOSURES TO ASBESTOS? 14 A YES. 15 MR. LANKFORD: YOUR HONOR, I WILL OBJECT TO THE 16 NEXT SLIDE. AGAIN, HEARSAY, FOUNDATION. 352. 17 THE COURT: HOLD ON. LET ME FIND OUT. DO YOU PLAN 18 TO DISPLAY 55? 19 MS. DEAN: I DO. 20 THE COURT: I'M SUSTAINING THE OBJECTION. IT'S 21 UNDULY DETAILED AS TO NON-CASE SPECIFIC HEARSAY. BUT 22 YOU CAN INQUIRE MORE GENERALLY. 23 Q BY MS. DEAN: DID THE WORLD HEALTH 24 ORGANIZATION LOOK AT BRIEF, SHORT EXPOSURES AND FIND 25 THAT THERE WAS STILL MESOTHELIOMA? 26 A RISK, YES. 27 Q TELL US ABOUT THAT. 28 A AGAIN, THEY LOOKED AT IT THAT THERE'S NO

Page 102 1 THRESHOLD AND THAT, WHEN THEY LOOKED AT THE STUDIES, 2 THEY STILL FOUND INCREASED RISK IN POPULATIONS THAT WERE 3 EXPOSED TO VERY LOW DOSES AND BRIEF EXPOSURES WERE STILL 4 CAPABLE OF INDUCING RISK. 5 Q HAS THE WORLD HEALTH ORGANIZATION MADE A 6 DETERMINATION WHETHER THERE IS NO SAFE LEVEL OF EXPOSURE 7 TO ASBESTOS AS IT RELATES SPECIFICALLY TO THE DISEASE 8 THAT RITA CHAPMAN HAS, MALIGNANT MESOTHELIOMA? 9 A YES. 10 Q HAS THE EPA? 11 A YES. 12 Q HAS THE AMERICAN CANCER SOCIETY? 13 A YES. 14 Q HAS THE NATIONAL CANCER -- HELP ME OUT. 15 A INSTITUTE. 16 Q HAS THE NATIONAL CANCER INSTITUTE LOOKED AT 17 THIS? 18 A YES. 19 Q OSHA? 20 A YES. 21 Q NIOSH? 22 A YES. 23 Q THE INTERNATIONAL AGENCY FOR RESEARCH ON 24 CANCER? 25 A YES, IARC. 26 Q ARE THEY ALL ON THE SAME PAGE? 27 A YES. 28 Q IS THERE SOME HEALTH ORGANIZATION OR GROUP	Page 104 1 AGAINST MALIGNANCY. 2 Q IN TERMS OF HOW THEY DESCRIBE THAT RISK, 3 WHETHER IT'S A SMALL RISK, A LITTLE RISK -- WHAT'S THE 4 TERMINOLOGY USED BY OSHA? 5 A I ACTUALLY DON'T RECALL THE TERMINOLOGY. 6 MR. LANKFORD: YOUR HONOR, I'LL OBJECT TO THE NEXT 7 SLIDE 58 AGAIN. HEARSAY. FOUNDATION. 8 THE COURT: I THINK WE'RE ON 57. ARE YOU GOING TO 9 SHOW 57? 10 MS. DEAN: I'M CURRENTLY ON 57. THE NEXT SLIDES 11 ARE FROM THE FEDERAL REGISTER FROM THE UNITED STATES 12 GOVERNMENT, AND I WILL NOT ONLY LAY A FOUNDATION, BUT WE 13 REQUEST JUDICIAL NOTICE. 14 THE COURT: OKAY. SO MY NUMBERING AND YOUR 15 NUMBERING MAY BE DIFFERENT. ARE YOU REFERRING TO THE 16 SLIDE, TABLE SIX, MR. LANKFORD? 17 MR. LANKFORD: WELL, ONE SET I HAVE DOESN'T HAVE 18 ANY NUMBERS. THE ONE FROM YESTERDAY IF IT'S THE SAME -- 19 NO, IT'S THE ONE BEFORE THAT. I'M FINE WITH THE TABLE. 20 IT'S THE ONE BEFORE THAT WHICH IS FROM YESTERDAY. IT'S 21 58. THE ONE I HAVE TODAY DOESN'T HAVE NUMBERS. SO IT'S 22 THE ONE THAT HAS A LOT OF TEXT ON IT. 23 MS. DEAN: FROM THE OSHA WEBSITE AND THE FEDERAL 24 REGISTER. 25 THE COURT: HOLD ON. 26 OVERRULED. YOU CAN USE IT. 27 MS. DEAN: WE'RE NOT QUITE THERE YET SO I WANT TO 28 FINISH WITH THIS SLIDE.
Page 103 1 THAT I'VE MAYBE FORGOTTEN ABOUT, THAT HAS EVALUATED THE 2 ISSUE ABOUT ASBESTOS AND THE DISEASE MESOTHELIOMA AND 3 REACHED A DIFFERENT CONCLUSION OTHER THAN AFTER MUCH 4 RESEARCH THERE'S NOT A SAFE LEVEL OF EXPOSURE TO 5 ASBESTOS? 6 A NO. I'M NOT AWARE OF THAT. 7 Q I WANT TO TALK TO YOU FOR A MINUTE ABOUT OSHA. 8 BEFORE I ASK YOU ABOUT THIS, IT WAS REPRESENTED TO THE 9 JURY FROM THE GET-GO -- I'LL REPRESENT TO YOU -- I'LL 10 ASK YOU TO ASSUME THAT OSHA LEVELS ARE SAFE. THAT, IF 11 YOU TOOK THE LEVEL THAT OSHA HAS NOW AND YOU ASSUME THAT 12 SOMEBODY THROUGH THEIR ENTIRE WORKING LIFE WAS EXPOSED 13 TO THAT LEVEL, THAT OSHA HAS GIVEN THAT A BILL OF HEALTH 14 AS BEING OKAY. IS THAT TRUE OR UNTRUE? 15 A UNTRUE. 16 Q OKAY. TELL US A LITTLE BIT ABOUT WHAT OSHA IS 17 AND WHAT REGULATORY STANDARDS EXIST NOW? 18 A SO OSHA, OCCUPATIONAL SAFETY HEALTH 19 ADMINISTRATION, THEY SET LEVELS FOR EXPOSURES IN THE 20 WORKPLACE AND RULES AND THE CURRENT LEVEL AS FAR AS WHAT 21 THEY CALL A TIME-WEIGHTED AVERAGE, AN AVERAGE OVER THE 22 EIGHT-HOUR WORKDAY, .1 FIBER PER CC. AND THAT WAS 23 INTENDED TO PRIMARILY DECREASE THE NONMALIGNANT 24 PRIMARILY ASBESTOSIS, BUT THEY RECOGNIZED THAT, EVEN AT 25 THAT LEVEL, THEY WOULD HAVE WANTED TO, YOU KNOW, 26 COMPLETELY, YOU KNOW, SAY NOT ALLOW, BUT AT THIS LEVEL 27 THEY RECOGNIZE THAT THERE'S STILL RISK FOR MALIGNANCY 28 AND THAT THAT LEVEL DROPPING TO .1 WAS NOT PROTECTIVE	Page 105 1 Q HAS THE EPA AND OSHA DONE A RISK ASSESSMENT IN 2 ORDER TO GIVE SCIENTISTS LIKE YOURSELF AND OTHERS AN 3 IDEA OF HOW MUCH RISK IS ASSOCIATED AT VARIOUS EXPOSURE 4 LEVELS? 5 A YES. 6 Q ARE YOU FAMILIAR WITH THAT RISK ASSESSMENT? 7 A YES. 8 Q WE'RE GOING TO LOOK AT IT IN A MOMENT. BUT IF 9 A PERSON WAS EXPOSED AT THIS CURRENT LEVEL .1, NOT FOR 10 THEIR WHOLE LIFE, BUT FOR ONE YEAR, AND WE ALLOWED EVERY 11 ONE IN AMERICA TO BE EXPOSED AT THAT LEVEL, DO THEY GIVE 12 AN ESTIMATE OF HOW MANY PEOPLE WOULD DIE OF 13 MESOTHELIOMA, JUST THIS CANCER? 14 A YES. 15 Q WHAT'S THAT ESTIMATE? 16 A IF EVERYONE WAS EXPOSED TO THAT LEVEL, IT 17 WOULD BE OVER 22,000 PEOPLE WOULD DIE OF MESOTHELIOMA. 18 Q DOCTOR, IS THAT SAFE? 19 A NO. 20 Q ARE THERE PUBLISHED ESTIMATES IN MEDICAL AND 21 SCIENTIFIC JOURNALS AND BY THE WORLD HEALTH ORGANIZATION 22 ABOUT HOW MANY PEOPLE, BECAUSE OF ASBESTOS, WORLDWIDE 23 DEVELOPED THE DISEASE MESOTHELIOMA? 24 A YES. 25 Q TELL ME ABOUT THAT. 26 A WELL, THERE ARE THOUSANDS EVERY DAY -- 3,000 27 APPROXIMATELY IN THE UNITED STATES ALONE EVERY YEAR. 28 Q I WANT TO NOW TURN TO THE CURRENT OSHA WEBSITE

Page 106 1 AND REGULATIONS AND ASK YOU ABOUT THAT. 2 THE COURT: BEFORE YOU DO, CAN I ASK YOU ONE 3 QUESTION? DO YOU ANTICIPATE USING THAT UNDER EVIDENCE 4 CODE 721 LATER IN THE TRIAL? 5 MS. DEAN: THE PRIOR SLIDE? 6 THE COURT: THIS ONE. 7 MS. DEAN: OH, YES, I DO. 8 THE COURT: OKAY. THANK YOU. YOU CAN PROCEED. 9 Q BY MS. DEAN: ARE YOU FAMILIAR WITH THIS OSHA 10 REGULATION? 11 A YES. 12 Q I JUST WANT TO ASK YOU A COUPLE THINGS. WE 13 HEARD ABOUT 1972 AND HOW IT STARTED OFF AT 10 FIBERS FOR 14 THE CEILING AND FIVE FOR TIME-WEIGHTED AVERAGE. DID 15 THAT MARCH DOWN OVER YEARS? 16 A YES. 17 Q BEFORE OUR CURRENT STANDARDS, THEY'RE 18 DISCUSSING A CHANGE FROM .2 TO .1. I WANT TO ASK YOU 19 SOME QUESTIONS ABOUT THAT. OSHA'S RISK ASSESSMENTS ALSO 20 SHOW THAT REDUCING EXPOSURES TO 0.1 FIBERS PER CC WOULD 21 FURTHER REDUCE BUT NOT ELIMINATE SIGNIFICANT RISK. 22 DO YOU AGREE WITH THAT? 23 A YES. 24 Q OSHA'S CURRENT PERMISSIBLE EXPOSURE LIMITS, 25 PEL, FOR ASBESTOS OF 0.2 FIBERS PER CUBIC CENTIMETER 26 FIBERS PER CC DOES NOT ELIMINATE ALL SIGNIFICANT RISK TO 27 WORKERS. 28 FIRST OF ALL, IS THERE A SECTION WHERE THEY	Page 108 1 Q IN TERMS OF TRYING TO, FOR A PARTICULAR 2 PATIENT, DETERMINE WHAT WAS THE CAUSE OF THEIR DISEASE, 3 ARE THERE PUBLISHED DOCUMENTS THAT GIVE GUIDANCE THAT 4 YOU RELY ON AND BELIEVE IN? 5 A YES. 6 Q CAN YOU TELL THE JURY ABOUT THOSE? 7 A YES. AND I THINK I KIND OF ALLUDED TO THIS 8 THAT THERE ARE MANY STUDIES OUT THERE SHOWING THAT AN 9 EXPOSURE, EVEN JUST A BRIEF -- WHAT THEY CALL IN SOME 10 PAPERS -- A SLIGHT EXPOSURE OF A DAY, WEEK, MONTH, 11 THEY'VE ALL BEEN SHOWN TO BE ABLE TO CAUSE MESOTHELIOMA. 12 Q I'M NOT GOING TO ASK THIS EVERY TIME, BUT, 13 AGAIN, WHEN YOU CITE TO STUDIES, THESE ARE STUDIES YOU 14 HAVE RELIED ON, CONSIDERED AND BELIEVE ARE 15 AUTHORITATIVE. 16 A YES. 17 Q IF I EVER SKIP AHEAD, I'M JUST TRYING TO MESH 18 TIME. SORRY. 19 THE JURY HAS HEARD FROM DR. BRODY THAT 20 DIFFERENT TYPES OF CANCER HAS CAUSES, BEHAVE VERY 21 DIFFERENTLY, GROW AT DIFFERENT RATES, RESPOND TO 22 TREATMENTS DIFFERENTLY. HE DIDN'T TALK ABOUT THE 5TH 23 ONE. SO LET ME ASK YOU ON THE FIRST FOUR, DO YOU AGREE? 24 A YES. 25 Q DO THEY ALSO HAVE A DIFFERENT PROGNOSIS? 26 A YES. 27 Q WHAT DOES THAT MEAN? 28 A PROGNOSIS IS YOUR CHANCE OF SURVIVAL. SOME
Page 107 1 TALK ABOUT LEGISLATIVE HISTORY WHEN THEY CHANGE FROM .2 2 TO .1 IN 1994? 3 A YES. 4 Q JUST TO GIVE THAT A LITTLE BIT OF CONTEXT. 5 EVEN WITH THIS CHANGE GOING DOWN FROM .2 TO .1, DOES A 6 SIGNIFICANT RISK REMAIN IN TERMS OF THE DISEASE THAT 7 RITA CHAPMAN HAS? 8 A YES. 9 Q AND THEN THE ACTUAL RISK ASSESSMENT THAT WAS 10 DONE IN 1986, IS THAT WHAT WE'RE LOOKING? 11 A YES. 12 Q I WANT TO TRY TO DIGEST THIS. FIRST OF ALL, 13 IF WE LOOK RIGHT HERE WHAT IS CIRCLED, WE'RE LOOKING AT 14 MESOTHELIOMAS; CORRECT? 15 A YES. 16 Q FOR THE ONE THAT I'VE CIRCLED, WHAT'S THE 17 ASSUMPTION ABOUT THE AMOUNT OF EXPOSURE IN THAT PART OF 18 THE TABLE? 19 A .1 FIBER PER CC FOR ONE YEAR. 20 Q SO IT'S ONE YEAR OF EXPOSURE. AND WHEN 21 THEY'RE SAYING 6.9, WHAT DOES THAT MEAN? 22 A THAT MEANS THERE WOULD BE AN EXCESS. SO MORE 23 CASES, 6.9 PER HUNDRED THOUSAND. 24 Q AND IF YOU EXTRAPOLATED APPROXIMATELY SEVEN 25 MESOTHELIOMA DEATHS OUT OF EVERY HUNDRED THOUSAND, JUST 26 AT .1 PER YEAR, IS THAT HOW YOU GOT THAT NUMBER OF OVER 27 20,000 DEATHS? 28 A YES.	Page 109 1 CANCERS CAN BE VERY INDOLENT, SLOW GROWING. YOU'RE NOT 2 LIKELY TO DIE FROM IT. SOME CANCERS LIKE MESOTHELIOMA, 3 VERY RAPIDLY GROWING. UNIFORMLY FATAL. 4 Q THERE'S A SUGGESTION THAT, IF YOU DON'T HAVE 5 SCARRING IN THE LUNGS OR IN THE PLEURA, THAT YOU CAN'T 6 DETERMINE THAT A PERSON'S MESOTHELIOMA IS ASBESTOS 7 RELATED. DO YOU AGREE? 8 A NO. 9 Q IN TERMS OF HOW WIDELY THAT'S UNDERSTOOD, THE 10 JURY HAS ALREADY HEARD ABOUT THE HELSINKI CRITERIA. IS 11 THAT SOMETHING YOU AGREE WITH? 12 A YES. 13 Q ARE THERE OTHER STUDIES, IN ADDITION TO THE 14 STUDY YOU PUBLISHED AND PUT IN THE PEER REVIEWED 15 LITERATURE THAT LOOK AT HOW MANY PEOPLE HAVE WHAT ARE 16 CONCLUDED BY THE AUTHORS TO BE ASBESTOS-RELATED 17 MESOTHELIOMAS AFTER TALKING TO THE PATIENTS? 18 A YES. 19 Q BUT DON'T HAVE PLEURAL PLAQUES? 20 A YES. 21 Q CAN YOU TELL US ABOUT A COUPLE OF THOSE 22 STUDIES? 23 A SURE. SO THIS IS PUBLISHED OCCUPATIONAL 24 ENVIRONMENTAL MEDICINE JOURNAL. HUGE STUDY. OVER 4,000 25 PEOPLE WITH MESOTHELIOMA. THEY FOUND THAT ONLY 8 26 PERCENT OF WOMEN, 13.8 PERCENT OF MEN HAD PLEURAL 27 PLAQUES. JUST ABOUT TWO WEEKS AGO, ANOTHER STUDY WAS 28 JUST PUBLISHED OUT OF ITALY, ABOUT ALMOST 600

Page 110 1 MESOTHELIOMA CASES. AGAIN, IT WAS AROUND 13, 14 PERCENT 2 OF THE PATIENTS HAD EVIDENCE OF PLEURAL PLAQUES. 3 Q EVEN THOUGH THE VAST MAJORITY OF THE PATIENTS 4 DIDN'T HAVE THESE MARKERS -- PLEURAL PLAQUES OR 5 ASBESTOSIS -- DID THE AUTHORS CONCLUDE THAT THE MAJORITY 6 OF THEM HAD ASBESTOS-RELATED MESOTHELIOMA? 7 A YES. 8 Q IS THAT TWO STUDIES GOING OUT ON A LIMB OR IS 9 THAT THE CONSENSUS OR HOW WELL ESTABLISHED IS THAT? 10 A I THINK IT'S PRETTY WELL ESTABLISHED THAT YOU 11 DON'T NEED TO HAVE A MARKER. CERTAINLY, YOU KNOW, 12 ASBESTOSIS IS ASSOCIATED WITH MUCH HIGHER DOSES AND THE 13 SAME STUDIES THAT, LIKE MENSEI HERE, THE NUMBER OF CASES 14 THEY HAD WITH ASBESTOSIS IS EXTRAORDINARILY SMALL. BUT 15 WITH PLEURAL DISEASE IT RUNS THE GAMUT. IT DEPENDS ON 16 WHAT THE EXPOSURE WAS AND OTHER FACTORS. SOME STUDIES 17 MAY HAVE HIGHER, BUT CERTAINLY LARGE STUDIES LIKE THIS 18 SHOW YOU DO NOT HAVE TO HAVE A MARKER LIKE PLEURAL 19 PLAQUES AND HELSINKI SAYS YOU DO NOT. 20 Q WHETHER THE AMOUNT OF PLEURAL PLAQUES FOUND IS 21 13 PERCENT OR 16 PERCENT OR 40 PERCENT, IN YOUR FIELD, 22 IN THE MEDICAL COMMUNITY, ARE THEY FINDING MANY PEOPLE 23 WITHOUT THOSE MARKERS INDICATING THEY HAVE AN 24 ASBESTOS-RELATED MESO AND PUBLISHING THAT IN THE 25 SCIENTIFIC COMMUNITY? 26 A YES. 27 Q WE HAVE TALKED ABOUT -- ACTUALLY, LET ME PAUSE 28 HERE. IN FIGURING OUT WHETHER ASBESTOS CAUSES DISEASE,	Page 112 1 A WELL, THERE'S NEVER -- THERE'S NO -- THERE'S 2 STILL A HEALTH RISK FOR THESE SHORT FIBERS. I MEAN, 3 IT'S GAMUT. PEOPLE DON'T JUST HAVE -- THERE'S ALL KIND 4 OF DIFFERENT FIBER LENGTHS THAT NO ONE JUST HAS ONE 5 FIBER LENGTH. THERE'S GOING TO BE A VARIOUS LENGTHS 6 THAT PEOPLE ARE GOING TO INHALE AND THAT ARE GOING TO 7 GET RETAINED AND BROUGHT DOWN INTO THE MESOTHELIAL 8 TISSUE. BUT THERE'S NO EVIDENCE TO SAY THAT THESE 9 SHORTER FIBERS ARE HARMLESS. IN FACT, I THINK TO THE 10 CONTRARY THAT THE EVIDENCE SHOWS THAT THEY ARE 11 DANGEROUS. NOT AS DANGEROUS AS THE LONGER FIBERS 12 PERHAPS, BUT DANGEROUS. 13 Q AND THAT'S WHAT I WAS GOING TO ASK YOU. ARE 14 THE LONGER ONES ASSOCIATED WITH A GREATER CARCINOGENIC 15 POTENTIAL? 16 A THEY SEEM TO BE. 17 Q DO THE SHORTER ONES PREFERENTIALLY GET TO THE 18 TARGET CELL FOR THE TYPE OF CANCER RITA CHAPMAN HAS? 19 A YES, THEY DO. 20 Q I WANT TO ASK ABOUT BACKGROUND. THE JURY HAS 21 HEARD QUITE A BIT THAT THERE'S AN AMBIENT LEVEL. FIRST 22 OF ALL, CAN YOU DEFINE WHEN YOU USE THAT TERM, BASED ON 23 THE MEDICAL AND SCIENTIFIC LITERATURE, WHAT LEVELS YOU 24 MEAN? 25 A YOU'RE TALKING ABOUT AMBIENT LEVEL OF 26 ASBESTOS? 27 Q YES. 28 A SO THE ATSDR WHICH IS THE AGENCY FOR TOXIC
Page 111 1 ARE THE SHORTER FIBERS -- AND THE JURY HAS HEARD THAT'S 2 UNDER 5 MICRONS -- PART OF HOW A CANCER IS CAUSED, 3 SPECIFICALLY MESOTHELIOMA? 4 A YES. 5 Q ARE THERE REPEATED STUDIES LOOKING AT THIS 6 ISSUE? 7 A YES. 8 Q CAN YOU TELL US ABOUT THOSE? 9 A SURE. I MEAN, THERE ARE STUDIES THAT HAVE 10 LOOKED AT THE ASBESTOS IN THE AUTOPSY AND HAVE SEEN THAT 11 WITH MESOTHELIOMA THAT THERE IS -- THERE ARE SHORT 12 FIBERS IN THE AREA OF THE CANCER. 13 Q ARE YOU FAMILIAR WITH THE WORK OF DR. DODSON? 14 A YES. 15 Q WHAT ABOUT SUZUKI AND YUEN? 16 A YES. 17 Q ARE THERE ANY OTHERS THAT YOU CAN THINK OF? 18 A KOHYAMA, I THINK. 19 Q THANK YOU FOR MAKING ME -- I'M GLAD I DIDN'T 20 HAVE TO SAY IT. ARE THOSE JUST EXAMPLES OF PUBLISHED 21 PAPERS THAT DISCUSS THE ISSUE ABOUT WHETHER SHORTER 22 FIBERS CAUSE CANCER? 23 A WELL, THEY'RE SHOWING THAT YOU MIGHT -- WHEN 24 YOU LOOK IN THE LUNG, YOU MIGHT SEE CERTAIN FIBERS, BUT 25 THAT, WHEN YOU LOOK IN THE PLEURA WHERE THE CANCER IS, 26 THAT'S WHERE YOU CAN SEE THESE SHORT FIBERS THERE. 27 Q AND THE SIGNIFICANCE OF THAT TO YOU, AS A 28 DOCTOR, IS WHAT?	Page 113 1 DISEASES AND THEY HAVE LOOKED AT THE LEVELS IN URBAN AND 2 IN RURAL AREAS, BUILDINGS. THERE'S ALSO BEEN STUDIES BY 3 EPA AND OTHER SCIENTISTS AND THE BACKGROUND THAT 4 GENERALLY -- AND THIS WAS FROM DATA FROM A NUMBER OF 5 YEARS AGO -- WAS AT .00005 FIBERS PER CC. SOME SAY 6 THREE. THERE'S SOME RANGES IN THERE AND THEN THIS IS 7 MOSTLY SHORT FIBER, LESS THAN 1 MICRON LONG CHRYSOTILE 8 ASBESTOS. 9 Q WHEN WE'VE TALKED ABOUT SHORT FIBER IN THE 10 PAST, WE'VE BEEN TALKING ABOUT LESS THAN FIVE MICRONS. 11 HERE YOU'RE SAYING THESE ARE FIVE TIMES SHORTER ON 12 AVERAGE? 13 A YES. 14 Q OKAY. YOU SAID THAT THIS IS OLD DATA. HAS 15 THE AMOUNT OF ASBESTOS USED IN THIS COUNTRY RADICALLY 16 DECLINED? 17 A YES. 18 Q THE JURY HAS HEARD THE SUM, BUT IN MOST 19 COUNTRIES, OVER 70, ASBESTOS IS BANNED. IT CAN'T BE 20 USED; RIGHT? 21 A YES. 22 Q IN THE UNITED STATES, FOR MOST PURPOSES IS IT 23 FUNCTIONALLY BANNED BECAUSE OF THE REGULATIONS? 24 A YES. 25 Q IF SOMEONE WERE TO SUGGEST THAT BACKGROUND 26 RATES FROM THE '60S OR THE '70S HAVE ANYTHING TO DO WITH 27 WHAT WE'RE BREATHING IN THE AIR TODAY, DO YOU AGREE WITH 28 THAT?

Page 114 1 A NO. 2 Q I WANT TO COME BACK TO THAT IN A MOMENT, BUT 3 THERE'S A WHOLE DIFFERENT TYPE OF BACKGROUND RATE WE 4 HAVEN'T TALKED ABOUT THAT I WANT TO SPEAK WITH YOU A 5 LITTLE BIT. ARE YOU FAMILIAR WITH THE CONCEPT THAT, FOR 6 THE CANCER MESOTHELIOMA, THERE IS A BACKGROUND RATE, A 7 RATE OF MESOTHELIOMAS THAT OCCUR PER MILLION PEOPLE THAT 8 DON'T APPEAR TO BE CONNECTED TO ANY EXPOSURE? 9 A RIGHT, WELL, IT IS -- IT IS A BACKGROUND RATE 10 IN THE GENERAL POPULATION. SO YOU'RE NOT LOOKING AT IT 11 FROM, LIKE, A WORK PERSPECTIVE WHERE YOU KNOW SOMEONE IS 12 WORKING WITH ASBESTOS PRODUCT, FOR EXAMPLE. THAT 13 DOESN'T MEAN THAT THOSE PEOPLE DIDN'T HAVE SOME 14 EXPOSURES TO ASBESTOS. MAYBE THEY DIDN'T WORK WITH 15 ASBESTOS, BUT MAYBE IT WAS A SPOUSE. MAYBE THERE WAS 16 SOME OTHER EXPOSURES THAT WERE NOT RECOGNIZED BUT THIS 17 WAS IN -- AS A GENERAL POPULATION THAT THERE IS A RATE 18 OF ABOUT ONE TO TWO ESTIMATED -- ONE TO TWO PER MILLION 19 PER YEAR AS THIS GENERAL POPULATION MADE -- AGAIN, SOME 20 STUDIES TALK ABOUT PROBABLY EVEN LESS. 21 Q HAS THIS IDEA OF ONE OR TWO PER MILLION PER 22 YEAR BEEN REJECTED BY SOME OF THE SCIENTIFIC LITERATURE 23 AS BEING TOO HIGH? 24 A NO. 25 Q HAVE YOU SEEN INFORMATION THAT SUGGESTS THAT 26 THE RATE IS MUCH LOWER GOING ALL THE WAY BACK TO THE 27 1990? 28 A RIGHT. SO YOU KNOW, HILLERDAL IN THE LATE	Page 116 1 COUNTRY, AFTER A LAG PERIOD, THAT'S WHEN WE START SEEING 2 MESOTHELIOMA AND THE RATE INCREASING. 3 Q ARE THERE PEER REVIEWED PUBLISHED LITERATURES 4 FROM MEDICAL INSTITUTIONS LIKE MASS GENERAL THAT HAVE 5 ACTUALLY ANALYZED THIS TO SEE WHAT THEY CAN FIND? 6 A YES. 7 Q CAN YOU TELL US A LITTLE BIT ABOUT THAT? 8 A YES. SO THE STUDY BY DR. EUGENE MARK AND OUT 9 OF MASS GENERAL, AND THEY WENT BACK HUNDRED YEARS AT 10 MASS GENERAL. SO THE AUTOPSY WAS THE WAY FOR MANY, MANY 11 YEARS. THAT'S WHERE WE LEARNED MEDICINE WAS STUDYING 12 THE BODY AT AUTOPSY. AND SO IT'S LESS SO NOWADAYS. 13 WE'RE BECOMING MORE SOPHISTICATED. BUT BACK THEN, 14 PEOPLE GOT AUTOPSIES AND THEY WENT BACK AND LOOKED AT 15 HUNDRED YEARS AND THERE WAS NO CASE OF MESOTHELIOMA 16 UNTIL AFTER USE OF ASBESTOS IN THIS COUNTRY. 17 Q BY THE WAY, THAT ARTICLE FROM DR. HILLERDAL 18 THAT YOU MENTIONED, IS THAT MESOTHELIOMA CASES 19 ASSOCIATED WITH NON-OCCUPATIONAL AND LOW DOSE EXPOSURES? 20 A YES. THAT'S THE ARTICLE. 21 Q DO YOU BELIEVE THAT THAT IS RELIABLE AND 22 AUTHORITATIVE? 23 A YES, I DO. 24 Q THE IDEA THAT THERE IS NO EVIDENCE OF A 25 THRESHOLD LEVEL AT WHICH THERE IS NO RISK FOR 26 MESOTHELIOMA, IS THIS ONE OF THE MANY ARTICLES THAT 27 DISCUSS THAT ISSUE? 28 A YES.
Page 115 1 '90S TALKED ABOUT THAT STUDIES FROM MCDONALD AND OTHERS 2 HAD LOOKED AT ABOUT ONE TO TWO PER MILLION. HE EVEN 3 SAID THAT IT COULD BE LOWER, AND I AGREE WITH THAT. 4 Q WHY IS THAT? 5 A WELL, BECAUSE YOU'RE HAVING LESS BACKGROUND 6 USE OF ASBESTOS PRODUCTS. SO AGAIN, YOU KNOW, IT 7 DOESN'T MEAN THAT THE PEOPLE IN THE BACKGROUND HAD NO 8 EXPOSURE. IT'S JUST NOT A KNOWN EXPOSURE GROUP, BUT 9 THERE'S GOING TO BE SOME PEOPLE PERHAPS THAT HAD 10 EXPOSURES FROM SOME UNRECOGNIZED SOURCE AND OVERTIME 11 SINCE THE '80S, YOU KNOW, SINCE REALLY OSHA, BUT 12 CERTAINLY MARCHING ON NOW, WE'RE IN 2022, THEN THE 13 LEVELS IN THE BACKGROUND ARE BECAUSE PEOPLE ARE WORKING 14 LESS AND LESS. IT'S FUNCTIONALLY BANNED. 15 Q LET ME ASK ABOUT SOME SPECIFIC IDEAS. IS THE 16 EXISTENCE OF MESOTHELIOMA IN THE MEDICAL COMMUNITY 17 DIRECTLY RELATED TO WHEN ASBESTOS WAS HIGHLY BEING USED 18 IN OUR COUNTRY'S HISTORY? SORRY FOR THE AWKWARDNESS OF 19 THE QUESTION. DO YOU KNOW WHAT I MEAN? 20 A I'M SORRY. IF YOU COULD ACTUALLY TRY THAT 21 AGAIN? 22 Q IS THERE A PATTERN BETWEEN WHEN ASBESTOS FIRST 23 STARTED BEING USED IN THE INDUSTRIAL REVOLUTION AND WHEN 24 WE STARTED SEEING THE DISEASE MESOTHELIOMA? 25 A YES. 26 Q CAN YOU TELL US ABOUT THAT? 27 A YES. SO WITH A LAG PERIOD BECAUSE OF THE 28 LATENCY, BUT AS THE USE OF ASBESTOS INCREASED IN OUR	Page 117 1 Q IN TERMS OF THE BACKGROUND LEVEL, I WANT TO 2 ASK YOU ABOUT THE IDEA THAT THERE WAS A ASSUMPTION BY 3 MCDONALD. YOU MENTIONED THAT AUTHOR. WHO IS THAT? 4 A HE'S A CANADIAN SCIENTIST THAT WORKS OUT OF 5 QUEBEC, BUT THEY DID PUBLISH -- THERE WERE TWO OF THEM 6 THAT DID PUBLICATIONS REGARDING ASBESTOS. 7 Q IS THAT THE SAME MCDONALD THAT WROTE THE 8 EPIDEMIOLOGY STUDY? THE ONE STUDY THAT MR. WILLIAMS 9 COULD NOT RECALL YESTERDAY. DO YOU RECALL THAT? 10 A YES, THAT IS. 11 Q I WANT TO ASK YOU, WHEN HILLERDAL LOOKS AT HIS 12 WORK AND INDICATES THAT THERE IS NOT A NATURAL LEVEL OR 13 PROOF OF A NATURAL LEVEL OF ASBESTOS, IT'S PROBABLY MUCH 14 LOWER THAN ONE TO 2,000,000 PER YEAR, DO YOU AGREE OR 15 DISAGREE? 16 A I AGREE. 17 Q IS THIS IDEA OF A BACKGROUND RATE TIED TO THE 18 CONCEPT OF WHETHER CANCERS CAN BE SPONTANEOUS? 19 A WELL, IT MIGHT HAVE SOME -- SOME PEOPLE MIGHT 20 USE IT AS SAYING THAT, WELL, THAT MEANS THAT IT CAN 21 OCCUR SPONTANEOUSLY, BUT I DON'T THINK THAT THAT -- AND 22 EVEN DR. HILLERDAL SAYS THAT HAS NOT BEEN PROVEN. 23 Q THAT'S WHAT I WAS GETTING TO. IS THERE 24 PUBLISHED LITERATURE THAT INDICATE THAT, WHEN YOU LOOK 25 AT THE PATTERNS OF DISEASE IN THIS COUNTRY AND ITS 26 RELATIONSHIP TO ASBESTOS, THAT THERE IS NOT A GOOD BASIS 27 FOR THIS IDEA THAT IT'S SPONTANEOUS? 28 A RIGHT. AND JUST AS RECENTLY AS JUST A FEW

Page 118 1 YEARS AGO, BETTI PUBLISHED AGAIN THAT THERE'S NO PROOF 2 THAT WITHOUT EXPOSURE TO MUTAGEN, SOME SORT OF 3 CARCINOGEN, YOU'RE NOT -- YOU'RE NOT -- THERE'S NO PROOF 4 THAT YOU'RE GOING TO BE GETTING A SPONTANEOUS 5 MESOTHELIOMA. 6 Q AT LEAST FOR SOME PERIODS OF OUR HISTORY, WERE 7 MOST PEOPLE, IF NOT ALL PEOPLE, GETTING EXPOSURE TO 8 ASBESTOS JUST LIVING AND BREATHING AFTER THERE WAS SO 9 MUCH ASBESTOS USED IN THIS COUNTRY? 10 A YES. 11 Q ONE OF THE THINGS THAT DR. HILLERDAL TALKS 12 ABOUT IS PROVING WHETHER THAT BACKGROUND RATE WE ALL 13 HAVE IS DANGEROUS OR NOT IS IMPOSSIBLE BECAUSE THERE'S 14 NOT A GROUP OF UNEXPOSED PEOPLE TO COMPARE? 15 A CORRECT. 16 Q DO YOU AGREE WITH THAT? 17 A YES, I DO. 18 Q ONCE WE -- BEYOND THE LEVEL THAT ALL OF US 19 HAVE, EVERY TIME THEY HAVE STUDIED EXPOSURES ABOVE THAT 20 LEVEL AND DISEASE INCIDENCES, HAVE THEY FOUND A 21 SIGNIFICANT RISK? 22 A YES. 23 Q AND JUST FOR REFERENCE, IS THIS THE PAPER YOU 24 WERE TALKING ABOUT WITH GUNNAR? 25 A YES. 26 Q CAN YOU EXPLAIN THIS GRAPH AND WHY YOU PUT IT 27 IN HERE? 28 A SURE. IN THE BLUE YOU HAVE SOME -- ASSUME	Page 120 1 SAY ONE FIBER PER CC, IF YOU WORKED WITH ONE FIBER PER 2 CC FOR ONE YEAR, WE CALL THAT A ONE FIBER YEAR. IF 3 YOU'RE TALKING ABOUT SOMEONE WHO'S -- YOU'RE DOING IT 4 NOT FROM WORKING, BUT FROM JUST HAVING THAT EXPOSURE 5 EVERY DAY IN THE BACKGROUND, BECAUSE WE WORK FOR ONLY 6 2000 HOURS A YEAR, BUT WE LIVE AND BREATHE FOR LONGER, 7 YOU ACTUALLY END UP MULTIPLYING THAT BY A CERTAIN FACTOR 8 TO COME UP WITH HOW THAT FIBER YEAR WOULD RELATE TO 9 SOMEONE WHO'S GETTING IT IN THE SO-CALLED BACKGROUND. 10 Q SO I WANT YOU TO ASSUME THAT WHAT HAPPENS IS 11 SOMEONE TAKES A BACKGROUND. THEY DON'T TAKE THE NUMBER 12 THAT THE ATSDR OR EPA OR SCIENTISTS USE AS AN AVERAGE. 13 THEY TAKE A HIGH NUMBER. SO NOT 00005. SOMETHING MUCH 14 HIGHER. THEY ASSUME YOU'RE AT THAT HIGH LEVEL FOR 70 15 YEARS. THEY THEN GIVE A FIBER PER CC YEAR AND THEN THEY 16 TAKE AN EXPOSURE, NOT TO AN ENTIRE CLASS, BUT AN 17 EXPOSURE TO A PARTICULAR COMPANY, LET'S SAY OVER A YEAR. 18 AVERAGE THAT OUT OVER 70 YEARS AND SAY THAT'S LESS THAN 19 BACKGROUND, IT MUST BE SAFE. DO YOU AGREE WITH THAT 20 KIND OF APPROACH? 21 MR. SHARP: OBJECTION. FOUNDATION. INCOMPLETE 22 HYPOTHETICAL. RELEVANCE. 23 THE COURT: OVERRULED. YOU MAY ANSWER. 24 THE WITNESS: NO. 25 MS. DEAN: YOUR HONOR, IF THEY'RE GOING TO 26 STIPULATE THEY'RE NOT DOING THIS -- 27 THE COURT: JUST ASK QUESTIONS, PLEASE. 28 Q BY MS. DEAN: ONE OF THE QUESTIONS THAT A
Page 119 1 SOME SORT OF DISEASE AND YOU HAVE A CERTAIN NUMBER OF 2 CASES IN THE BACKGROUND REPRESENTING THE BLUE AND IF YOU 3 HAVE SOMEONE WHO HAS THREE DIFFERENT EXPOSURE SOURCES. 4 OKAY? AND ALL THESE EXPOSURES SOURCES ARE CAPABLE OF 5 PRODUCING THE DISEASE, IF YOU WERE TO JUST LOOK AT EACH 6 ONE INDIVIDUALLY, YOU'RE NOT DOING WHAT WE CALL THE 7 CUMULATIVE DOSE. IF YOU JUST LOOK AT, YOU KNOW, JUST 8 LOOK AT THIS SOURCE BY ITSELF COMPARED TO BACKGROUND, 9 MAYBE YOU DON'T SEE A SIGNIFICANT DIFFERENCE OR CLOSE. 10 MAYBE THE SECOND EXPOSURE. AGAIN, NOT MUCH DIFFERENCE. 11 THIRD EXPOSURE DOSE. BUT IF YOU WERE TO DO A CUMULATIVE 12 DOSE, THEN YOU SEE THAT, YES, WHEN YOU GET ALL OF THESE 13 EXPOSURES AS A CUMULATIVE DOSE, WHICH IS THE WAY THAT 14 MESOTHELIOMA WORKS, AND COMPARE IT TO THE BACKGROUND YOU 15 SEE THAT THERE'S A RISK. 16 Q ARE THE EXPOSURES THAT INDIVIDUAL PATIENTS 17 THAT YOU DEAL WITH THAT THEY HAVE ON YOUR REPORT, 18 EXPOSURES THAT ARE GOING TO BE ADDED TO THE BACKGROUND 19 LEVEL THAT ALL OF US MIGHT HAVE? 20 A YES. 21 Q IF SOMEONE SAID, LOOK, I'M GOING TO TAKE THIS 22 BACKGROUND RATE FROM THE '60S AND '70S. I'M GOING TO 23 ASSUME THAT'S TRUE FOR THE ENTIRE 70 YEAR LIFETIME OF A 24 PERSON. I'M GOING TO EXTRAPOLATE THAT OUT TO A BIG 25 NUMBER OF FIBER PER CC YEARS, AND I'M GOING TO PAUSE -- 26 WHAT ARE FIBER PER CC YEARS? 27 A SO THIS IS A UNIT THAT WE USE WHICH, 28 BASICALLY, ASSUMES THAT AT A PARTICULAR EXPOSURE, LET'S	Page 121 1 JUROR ASKED LAST WEEK, I THINK, WAS TO DR. BRODY ASKING 2 WHETHER HE WAS GOING TO BE THERE TO TALK ABOUT BRAKE 3 EPIDEMIOLOGY AND WHAT IT MEANS AND HE WASN'T. ARE YOU 4 SOMEONE THAT HAS STUDIED THIS LITERATURE, UNDERSTANDS IT 5 AS A MEDICAL DOCTOR AND PREPARED TO DISCUSS IT? 6 A YES. 7 Q OKAY. I GOT THIS SLIDE ACTUALLY FROM ONE OF 8 THE COMPANY'S EXPERTS. SO I STOLE IT. BUT I WANTED TO 9 USE IT JUST AS A BASELINE TO EXPLAIN WHAT IS 10 EPIDEMIOLOGY? 11 A BASICALLY, IT IS THE STUDY OF DISEASE IN A 12 GROUP OF POPULATION. 13 Q WHAT'S THE GOAL? WHY DO YOU LOOK AT STUDIES 14 OF POPULATIONS TO TRY TO UNDERSTAND CAUSE AND EFFECT? 15 A WELL, IN AN IDEAL SITUATION YOU WANT TO HAVE A 16 GROUP THAT IS EXPOSED TO SOME SUBSTANCE AND COMPARE IT 17 TO A GROUP THAT HAS HAD NO EXPOSURE TO THAT SUBSTANCE. 18 THEN YOU LOOK TO SEE, DEPENDING ON WHAT THE DISEASE IS, 19 YOU MIGHT HAVE TO WAIT A LONG TIME, BUT YOU WANT TO LOOK 20 TO SEE IS THERE A DIFFERENCE BETWEEN THOSE GROUPS AND 21 THAT CAN GIVE US AN IDEA TO SAY, WELL, THIS SUBSTANCE 22 SEEMS TO BE ASSOCIATED WITH THIS DISEASE AND THEN WE CAN 23 MAKE INFORMED DECISIONS ABOUT HOW TO PROTECT PEOPLE FROM 24 THAT DISEASE BY NOT GETTING THAT EXPOSURE. 25 Q THE EXAMPLE IN THIS SLIDE TALKS ABOUT AN 26 EXPOSED GROUP OF COFFEE DRINKERS VERSUS PEOPLE THAT 27 DON'T DRINK COFFEE COMPARING IT TO SEE IF THERE'S A 28 DIFFERENCE IN THE AMOUNT OF DISEASE. DO YOU SEE THAT?

Page 122 1 A YES. 2 Q IF INSTEAD OF ASKING THE DIRECT QUESTION, DO 3 YOU DRINK COFFEE? THE STUDY ASKED THE QUESTION, DO YOU 4 GO TO STARBUCKS AND THAT'S THE EXPOSED GROUP. DO YOU 5 HAVE A PROBLEM IF YOU INCLUDE A BUNCH OF PEOPLE IN THAT 6 GROUP THAT DON'T DRINK COFFEE BUT LIKE TEA OR EGG 7 WHITES? 8 A RIGHT. ABSOLUTELY. I MEAN, THERE ARE PEOPLE 9 THAT GO TO STARBUCKS THAT DON'T DRINK COFFEE OR JUST 10 GOING IN THERE TO GET SOMETHING ELSE -- DANISHES OR 11 WHATEVER. AND YOU KNOW, ON THE OTHER HAND, YOU'RE NOT 12 GOING TO CAPTURE EVERYONE THAT IS A COFFEE DRINKER 13 BECAUSE PEOPLE MAY DRINK COFFEE AT HOME OR DRINK COFFEE 14 AT SOME OTHER COFFEE SPOT. AND EVEN JUST ASKING THEM, 15 ARE YOU A COFFEE DRINKER, WELL, SOMEONE MIGHT BE -- 16 MAYBE THEY JUST STARTED DRINKING COFFEE. THE VERY FIRST 17 TIME. I'VE HAD -- AND THEY CALL THEMSELVES THE COFFEE 18 DRINKER. EVEN JUST ASKING SPECIFICALLY YOU'RE A COFFEE 19 DRINKER MIGHT STILL NOT BE GOOD ENOUGH TO CAPTURE 20 BECAUSE, IF EVERYBODY YOU JUST GOT, JUST STARTED 21 DRINKING AND THEN YOU START YOUR STUDY MAYBE YOU WON'T 22 NOTICE SOMETHING AND YOU MAY NEED TO ASK A MORE DETAILED 23 QUESTION ABOUT COFFEE DRINKING. 24 Q IF YOU'RE INCLUDING PEOPLE IN THE GROUP THAT 25 ARE SUPPOSED TO BE EXPOSED THAT ARE NOT, DOES THAT LOOK 26 TO DILUTE THE RESULTS? 27 A YES. IT WILL TEND TO PUSH THE RESULTS TO WHAT 28 WE CALL NULL, WHICH BASICALLY MEANS THAT YOU -- IF YOU	Page 124 1 A NO. 2 Q DOES THAT MEAN -- WE ARE THE PARTY THAT HAS 3 THE BURDEN OF PROOF? DOES THAT MEAN WE JUST CAN'T 4 FIGURE THIS OUT, WHETHER GRINDING OF ASBESTOS PRODUCT 5 DAY IN AND DAY OUT CAUSES DISEASE? 6 A NO. 7 Q I WANT TO TALK ABOUT THAT A LITTLE BIT. I 8 ACTUALLY WANT TO START WITH DR. WAGNER. WE HEARD ABOUT 9 DR. WAGNER SPELLED LIKE "WAGNER" FROM DR. BRODY. DO YOU 10 KNOW ABOUT HIS PAPER? 11 A YES. 12 Q THERE'S MORE THAN ONE BUT IS THERE A PAPER? 13 A YES. 14 Q THAT EVERYBODY KNOWS? 15 A YES. HIS 1960 PAPER. 16 Q WHICH ONE IS IT? 17 A 1960 SEMINAL PAPER. 18 Q WHY IS THAT A SEMINAL PAPER? 19 A WELL, THIS IS THE PAPER THAT BASICALLY WE'RE 20 TAUGHT IN MEDICAL SCHOOL AND IT'S EVERY TEXT BOOK -- 21 THIS IS WHEN, YOU KNOW, WE HAD HAD -- THAT WE DECIDED 22 THIS IS NOW -- IT IS KNOWN THAT ASBESTOS CAUSES 23 MESOTHELIOMA. THERE HAVE BEEN SOME CASES BEFOREHAND 24 OVER THE 20 YEARS BEFORE THAT OR SO, BUT IT IS SAID THAT 25 THIS WAS THE SEMINAL PAPER. THIS IS THE ONE THAT SAID, 26 YES. IT'S ESTABLISHED. AND IT'S WHAT THEY TEACH US IN 27 MEDICAL SCHOOL. 28 Q NOW, WAS THAT AN EPIDEMIOLOGICAL STUDY WITH A
Page 123 1 DON'T HAVE PEOPLE THAT -- IN YOUR TREATMENT, IN YOUR 2 EXPOSED GROUP THAT AREN'T EXPOSED, YOU'RE GOING TO HAVE 3 FEWER OF WHATEVER IT IS THAT YOU'RE TRYING TO DETECT. 4 Q AND YOU STARTED MENTIONING THIS, BUT IF THE 5 NON-EXPOSED GROUP OR NON-STARBUCKS DRINKERS THAT LOVE 6 DUNKIN DONUTS OR KEURIG AT HOME, WHAT IS THE EFFECT OF 7 INCLUDING PEOPLE THAT ARE EXPOSED OVER HERE IN TERMS OF 8 THE RELIABILITY OF THE RESULTS OF THE STUDY? 9 A RIGHT. SO IF YOU HAVE NON-EXPOSED IN THE 10 EXPOSED GROUP, IT DECREASES HOW MANY CASES YOU'RE GOING 11 TO SEE. IF YOU HAVE EXPOSED IN THE NON-EXPOSED, YOU'RE 12 GOING TO INCREASE THE AMOUNT. AND SO YOU COULD GO FROM 13 HERE TO HERE WHERE IT'S EVEN. YOU COULD EVEN DO A TOO 14 MUCH WHERE YOU'VE GOT SO MANY PEOPLE THAT ARE NOT BEING 15 EXPOSED PUSHING IT DOWN HERE, AND YOU'RE GETTING SO MANY 16 PEOPLE IN THE NON-EXPOSED WHO ARE EXPOSED THAT YOU CAN 17 ACTUALLY THINK THAT DRINKING COFFEE PROTECTS YOU OR 18 WHATEVER -- WHATEVER THE EXPOSURE IS BUT ACTUALLY KEEPS 19 YOU FROM GETTING SOME SORT OF DISEASE OR CONDITION. 20 Q CAN EPIDEMIOLOGY BE A POWERFUL TOOL TO HELP US 21 UNDERSTAND WHY PEOPLE GET SICK? 22 A YES. 23 Q CAN IT SOMETIMES BE AN INEFFECTIVE TOOL 24 BECAUSE OF THE NATURE OF THE DISEASE OR THE EXPOSURE? 25 A YES. 26 Q AS IT RELATES TO BRAKE MECHANICS, HAS 27 EPIDEMIOLOGY BEEN AN EFFECTIVE TOOL FOR DETERMINING RISK 28 OVERALL?	Page 125 1 CASE IN CONTROL, COMPARING, DOUBLING OF RISK BETWEEN TWO 2 GROUPS? 3 A NO. IT WAS JUST A CASE SERIES OF 33 PEOPLE 4 WITH MESOTHELIOMA. 5 Q I'LL REPRESENT TO YOU A LAWYER -- NOT A 6 MEDICAL PERSON BUT A LAWYER -- SUGGESTED THAT, WITHOUT 7 THAT, WE REALLY DIDN'T KNOW. IT WASN'T THE SEMINAL 8 PAPER BY 1960 THAT ASBESTOS WAS THE CAUSE OF 9 MESOTHELIOMA. CAN YOU ASSUME THAT FOR ME? 10 A OKAY. I WILL. 11 Q DO YOU AGREE IN ANY WAY? 12 A I DO NOT. THAT'S NOT WHAT THEY -- THAT'S NOT 13 HOW WE'RE TAUGHT IN MEDICAL SCHOOL. 14 Q ARE YOU FAMILIAR WITH DR. SELIKOFF'S TEXTBOOK? 15 A ROGGLI? 16 Q SORRY, WE TALK ABOUT SELIKOFF A LOT. THAT'S 17 THIS ONE? 18 A YES. 19 Q ARE YOU FAMILIAR WITH DR. ROGGLI'S TEXTBOOK? 20 A YES. 21 Q ARE YOU AWARE HE'S AN EXPERT HIRED BY THE 22 COMPANY IN THIS CASE OR AT LEAST SOME OF THEM? 23 A YES. 24 Q IS THIS A TEXTBOOK YOU HAVE REVIEWED AND 25 RELIED ON? 26 A YES. 27 Q I WANT TO SHOW YOU THE SECTION ON MESOTHELIOMA 28 AND ASK YOU SOME QUESTIONS. SAME THING?

Page 126 1 A YES. 2 Q HE HAS AN ENTIRE CHAPTER THAT'S HE'S 3 DISCUSSING MESOTHELIOMA WHERE HE IS ONE OF THE AUTHORS; 4 CORRECT? 5 A YES. 6 Q AND TALKING ABOUT MESOTHELIOMA, ONE OF THE 7 FIRST THINGS I HIGHLIGHTED IS ITS RARITY COMBINED WITH 8 ITS STRONG ASSOCIATION WITH ASBESTOS EXPOSURE MAKE IT A 9 SIGNAL MALIGNANCY THAT IS AN EPIDEMIOLOGIC MARKER FOR 10 EXPOSURE TO ASBESTOS. 11 FIRST OF ALL, DO YOU AGREE? 12 A YES. A SIGNAL OR SENTINEL. THAT'S EXACTLY 13 WHAT IT IS. 14 Q WHAT DOES THAT MEAN? 15 A THAT MEANS THAT, WHEN YOU SEE MESO, YOU KNOW 16 THAT YOU'VE GOT TO LOOK FOR ASBESTOS EXPOSURE, AND IF 17 YOU'VE GOT ASBESTOS EXPOSURE, YOU ARE AT RISK FOR 18 MESOTHELIOMA. 19 Q IN TALKING ABOUT THE HISTORY OF WHEN WE KNEW 20 ABOUT MESOTHELIOMA. THERE WERE REPORTS ABOUT PLEURAL 21 MALIGNANCY WELL BEFORE WAGNER'S WORK. IS PLEURAL 22 MALIGNANCY ANOTHER WORD FOR MESOTHELIOMA? 23 A YES. 24 Q SO THEY GO THROUGH THESE REPORTS FROM 1933, 25 1943, 1947, THE 1940S, '50S AND WE GET DOWN TO HERE. 26 ANY REMAINING DOUBT CONCERNING THE ASSOCIATION BETWEEN 27 ASBESTOS EXPOSURE WAS DISPELLED BY WAGNER IN 1960. DO 28 YOU SEE THAT?	Page 128 1 Q DIFFERENT STORY. IT OCCURS IN PEOPLE THAT 2 HAVE LARGE AMOUNTS OF ASBESTOS OVER LONG PERIODS OF 3 TIME; RIGHT? 4 A YES. 5 Q MESOTHELIOMA WAS A GAME CHANGER; FAIR? 6 A YES. 7 Q ARE YOU FAMILIAR WITH THIS STUDY AND THE 8 FOLLOW-UP STUDY DONE ON -- I'LL READ IT -- MESOTHELIOMA 9 AND LUNG CANCER AMONG MOTOR VEHICLE MECHANICS, A 10 META-ANALYSIS BY GOODMAN AND OTHERS IN 2004 AND THEN THE 11 FOLLOW UP BY GARABRANT IN 2015? 12 A YES. 13 Q YOU'RE FAMILIAR WITH BOTH THOSE PAPERS? 14 A YES. 15 Q FIRST OF ALL, THE VAST MAJORITY OF THE AUTHORS 16 ON THIS PAPER CAME FROM WHAT GROUP? 17 A EXPONENT. 18 Q WE HEARD FROM THE JURY THIS WAS A GROUP THAT 19 WAS PAID JUST BY FORD OVER \$22 MILLION. WERE YOU IN THE 20 COURTROOM WHEN WE HEARD THAT? 21 A YES. 22 Q IN TERMS OF THE SPECIFIC PAPER, THEY TALK 23 ABOUT HOW IT WASN'T JUST PAID FOR PRIMARILY BY FORD, BUT 24 OTHER PEOPLE HAVE ADDED MORE MONEY ON TOP OF THAT \$22 25 MILLION THAT WENT TO EXPONENT. HERE, CHRYSLER AND 26 GENERAL MOTORS; CORRECT? 27 A YES. 28 Q FIRST, IS IT A GOOD THING FOR PEOPLE --
Page 127 1 A I DO. 2 Q DO YOU AGREE? 3 A I DO. 4 Q THIS CONCEPT THAT YOU HAVE TO HAVE AN 5 EPIDEMIOLOGY GIVEN THE RARITY OF THE DISEASE AND THE 6 STRONG ASSOCIATION WITH ASBESTOS IS REJECTED IN MANY 7 PUBLISHED TEXTBOOKS; CORRECT? 8 A YES. 9 Q ON A SIMILAR ISSUE. HE GOES ON TO SAY A 10 THRESHOLD LEVEL OF EXPOSURE BELOW WHICH MESOTHELIOMA 11 WILL NOT OCCUR HAS NOT YET BEEN IDENTIFIED. DO YOU SEE 12 THAT? 13 A I DO. 14 Q DO YOU AGREE? 15 A I DO. 16 Q NOW, WE HEARD SOME SUGGESTIONS YESTERDAY FROM 17 SOMEONE WHO HAS A BACKGROUND IN HEALTH AND SCIENCE THAT 18 YOU ACTUALLY NEED HIGH LEVELS OF EXPOSURE FOR LONG 19 PERIODS OF TIME. IS THAT TRUE FOR SOME ASBESTOS 20 DISEASES? 21 A THAT YOU NEED A HIGHER LEVEL? 22 Q YES. 23 A YES. 24 Q IS THAT THE CASE FOR MESOTHELIOMA? 25 A NO. 26 Q HE HAS A CHAPTER IN HIS BOOK ON ASBESTOSIS; 27 CORRECT? 28 A YES.	Page 129 1 COMPANIES TO DONATE MONEY TO RESEARCH? IS THAT A GOOD 2 THING? 3 A ABSOLUTELY. 4 Q IS IT A GOOD THING TO DISCLOSE WHEN YOU DO 5 THAT? 6 A YES. 7 Q IN TERMS OF THE TIME FRAME OF WHEN MONEY WAS 8 INVESTED, WAS THIS BEFORE OR AFTER THEY WERE SELLING 9 ASBESTOS PRODUCTS THROUGHOUT THE WORLD? 10 A AFTER. 11 Q IN TERMS OF UNDERSTANDING YOUR OPINION -- LET 12 ME BACKUP. THE OVERALL PREMISES OF THESE META-ANALYSES 13 IS THAT BRAKE MECHANICS DON'T HAVE AN INCREASED RISK FOR 14 DISEASE; CORRECT? 15 A YES. 16 Q HAVE YOU REVIEWED BOTH OF THE PAPERS AND 17 STUDIED THEM? 18 A YES. 19 Q IN TERMS OF UNDERSTANDING YOUR OPINION ABOUT 20 HOW WE UNDERSTAND THAT BRAKE MECHANIC WORK RESULTS IN 21 MESOTHELIOMA, HAVE YOU IDENTIFIED MULTIPLE WAYS THAT 22 YOU'VE APPROACHED THAT ISSUE? 23 A YES. 24 Q I WANT TO GO THROUGH EACH, HOPEFULLY, QUICKLY. 25 YOU HAVE FIRST THAT THE LEVEL OF ASBESTOS EXPOSURE FROM 26 BRAKE WORK IS REPEATEDLY SHOWN TO CAUSE DEATH AND 27 DISEASE. IS THIS THE TEXTBOOK THAT YOU WERE ALSO 28 FAMILIAR WITH THAT YOU HAVE RELIED ON?

Page 130 1 A YES. 2 Q I WANT TO JUST SHOW A SMALL PORTION OF THIS TO 3 ASK YOU SOME QUESTIONS. IS THERE A SECTION DEDICATED TO 4 EPIDEMIOLOGY? 5 A YES. 6 Q ARE YOU ABLE TO READ THAT? 7 A YES. 8 Q DO YOU MIND? 9 A NO, NOT AT ALL. (READING): SPECIFIC 10 OCCUPATIONS HAVE BEEN IDENTIFIED AND SOME STUDIED TO 11 BETTER DEFINE THEIR RISK OF ASBESTOS RELATED DISEASES. 12 SPECIFIC OCCUPATIONS DO NOT NEED TO BE STUDIED NOR DO 13 EPIDEMIOLOGICAL STUDIES NEED TO BE PERFORMED TO SHOW 14 RISK OF DISEASE BEFORE PREVENTION ACTIONS ARE TAKEN OR 15 CAUSAL CONNECTIONS CONCLUDED. ASBESTOS-RELATED DISEASES 16 DO NOT OCCUR IN JUST THOSE OCCUPATIONS THAT HAVE BEEN 17 STUDIED AND TO CONCLUDE SUCH, UNTIL STUDIES OF EACH AND 18 EVERY OCCUPATION OR JOB CATEGORIES ARE CONDUCTED OR FROM 19 WHICH CASES ARE REPORTED IS TO IGNORE THE ESTABLISHED 20 FACT THAT IT IS EXPOSURE TO ASBESTOS NOT THE OCCUPATION 21 OR THE SPECIFIC JOB THAT IS RESPONSIBLE FOR 22 ASBESTOS-RELATED DISEASES. 23 Q FIRST OF ALL, YOU AGREE WITH THAT? 24 A HUNDRED PERCENT. 25 Q SECOND, WITH THE MANY DIFFERENT GROUPS AND 26 JOBS THAT HAVE BEEN EXPOSED TO ASBESTOS OVERTIME, IS 27 EPIDEMIOLOGY A REASONABLE, IN TERMS OF EXPENSE AND 28 RESOURCES, METHOD TO EVALUATE EACH DIFFERENT POSSIBLE	Page 132 1 EVEN AT THE LOWEST EXPOSURE RANGES WELL BELOW ONE FIBER 2 YEAR THERE'S MORE THAN A DOUBLING OF THE RISK. SOME 3 MUCH HIGHER THAN A DOUBLING OF THE RISK FOR 4 MESOTHELIOMA. 5 Q SO I WANT TO MAKE SURE I UNDERSTAND THIS 6 CATEGORY CALLED DOSE. DID THEY JUST LOOK AT THIS DOSE 7 OR DID THEY LOOK AT A VARIETY OF DIFFERENT DOSES IN 8 THESE STUDIES? 9 A RIGHT. IT WAS A RANGE OF DOSES. AND EVEN THE 10 LOWEST, LIKE, FOR EXAMPLE, THE FIRST ONE HERE EVEN BELOW 11 .1 FIBER YEAR HAD A FOURFOLD INCREASE. 12 Q IF PEOPLE BEING EXPOSED AT .1 FIBER PER CC 13 YEARS OR LESS ARE GETTING FOUR TIMES MORE MESOTHELIOMA, 14 IS THAT SIGNIFICANT IN SHOWING A CAUSE AND EFFECT 15 RELATIONSHIP IN EPIDEMIOLOGY? 16 A YES. 17 Q SOME OF THESE SHOW EVEN GREATER RISKS. AND 18 LET ME BACKUP. ARE SOME OF THESE STUDIES LIKE 19 RODELSPERGER AND IWATSUBO POPULATIONS STUDIES IN 20 DIFFERENT COUNTRIES? 21 A YES, DIFFERENT COUNTRIES AROUND THE WORLD. 22 THE COURT: MS. DEAN, LET'S TAKE A 15 MINUTE BREAK. 23 IT'S HIGH NOON. 24 FOLKS ON THE JURY, LEAVE YOUR NOTEBOOKS. 25 PLEASE ENJOY YOUR LONG 15-MINUTE BREAK. 26 COUNSEL, REMAIN FOR JUST A MOMENT, PLEASE. 27 /// 28 ///
Page 131 1 SCENARIO? 2 A NO. 3 Q ARE DENTISTS A GROUP THAT ARE FOUND TO HAVE A 4 DOUBLING OF THE RISK OF MESOTHELIOMA? 5 A NEVER SEEN SUCH A STUDY, NO. 6 Q ARE THERE CASE REPORTS THAT INDICATE THAT NOT 7 MANY, BUT SOME RIP ASBESTOS TAPE AND WORK WITH ASBESTOS 8 MOLDS IN CREATING DENTURES THAT DEVELOP MESOTHELIOMA? 9 A YES. 10 Q TO SUGGEST, BECAUSE WE DON'T HAVE A POPULATION 11 STUDY OF DENTISTS, THAT THERE ISN'T A CAUSE AND EFFECT; 12 IS THAT LEGITIMATE? 13 A NO. 14 Q IN TERMS OF, THOUGH, ARE WE STUCK? ARE THERE 15 OTHER WAYS TO USE EPIDEMIOLOGY, THIS EXACT TOOL, TO 16 VERIFY FOR A VARIETY OF DIFFERENT OCCUPATIONS AND 17 EXPOSURES WHETHER EPIDEMIOLOGY PROVES, NOT JUST 18 CORRELATION, SHOWS CAUSATION BETWEEN EXPOSURE AND THE 19 DISEASE MESOTHELIOMA? 20 A YES. 21 Q OKAY. I WANT TO TALK ABOUT THAT. WHAT IS 22 THIS CHART THAT YOU'VE MADE? 23 A SO THIS IS A NUMBER OF STUDIES THAT HAVE 24 LOOKED AT POPULATIONS FROM VARIOUS PLACES ACROSS THE 25 WORLD THAT DEVELOPED MESOTHELIOMA AND WHERE THEY LOOKED 26 AT EXPOSURE RANGES AND EVEN AT THE LOWEST OF EXPOSURE 27 RANGES. THESE ARE PUBLICATIONS FROM THE 1990S TO 28 THROUGH HERE AT LEAST 2018. THEY'RE ALL SHOWING THAT	Page 133 1 (THE FOLLOWING PROCEEDINGS WERE HELD 2 OUTSIDE THE PRESENCE OF THE JURY.) 3 4 THE COURT: A JUROR HAS A QUESTION AND WAS OFFERING 5 IT TO COUNSEL. 6 ALL RIGHT. HAVE A SEAT FOLKS. 7 ALL I WANT TO KNOW IS, DEFENSE, WHEN WILL YOU 8 BE ABLE TO TELL ME YOUR POSITION ON THIS RATHER LARGE 9 OFFER OF EXHIBITS? I'M NOT ASKING YOU FOR YOUR -- I 10 DON'T WANT -- IF THE ANSWER IS NO OBJECTION, THAT'S 11 FINE. IF IT'S MORE THAN THAT, THEN I WANT TO KNOW WHEN 12 WILL YOU BE PREPARED TO TELL ME THAT. 13 MR. SLAUGHTER: MONDAY, YOUR HONOR? 14 MR. LANKFORD: WELL, I THINK SOME OF THEM ARE GOING 15 TO COME UP TODAY THAT I HAVE OBJECTIONS TO. 16 MS. DEAN: YOUR HONOR, THESE WERE EXCHANGED -- 17 MR. SHARP: IF THE COURT IS INQUIRING AS TO THE 18 EXHIBITS THAT HAVE BEEN OFFERED BY MS. DEAN FOR 19 ADMISSION -- 20 THE COURT: YEAH. 21 MR. SHARP: -- EXCEPT FOR TWO, AVON, AND WE 22 STIPULATE TO THE ADMISSION. THE OTHER TWO, I AGREE, BUT 23 I CAN'T SPEAK FOR ANYONE ELSE. 24 MS. DEAN: ALL OF THESE WERE PROVIDED NOT JUST IN 25 48 HOURS IN ADVANCE, I THINK 60. THEY'VE KNOWN ABOUT 26 IT. CONTEMPORANEOUS OBJECTIONS ARE REASONABLE. THIS IS 27 NOT NEW. THEY'VE HAD THEM. I DID WHAT YOU ASKED AND 28 MORE.

Page 134 1 THE COURT: OKAY. 2 MR. SLAUGHTER: I CAN DO BETTER. 3 THE COURT: WHAT'S THAT? 4 MR. SLAUGHTER: YOUR HONOR, I DON'T HAVE ANY 5 OBJECTION TO THE AVON DOCUMENTS. THAT LEAVES ME WITH 6 ONLY 2, 74 AND 41. I DO HAVE OBJECTIONS TO THOSE. I 7 THINK ONE OF THEM IS AN ARTICLE THAT SHOULD NOT GO INTO 8 EVIDENCE. IT'S HEARSAY AND THE OTHER IS A CHART THAT I 9 BELIEVE THE ATTORNEYS GENERATED WHICH IS ALSO HEARSAY. 10 THE COURT: I'M GOING TO TAKE THIS UP AT 1:20 WITH 11 YOU ALL TODAY. IF YOU'RE GOING TO BE USING ANY OF THEM 12 BETWEEN NOW AND THEN, I'LL TAKE IT UP AS YOU GET -- AS 13 YOU HIT THEM. OKAY? 14 MS. DEAN: I DON'T THINK THE TWO THAT WERE 15 IDENTIFIED BY MR. SLAUGHTER MAY COME UP BY 1:20. THE 16 REST, I'M HOPING WILL. 17 MR. LANKFORD: YOUR HONOR, I WAS ALSO HOPING AT THE 18 END OF THE DAY WE COULD TALK SCHEDULE A LITTLE SO WE -- 19 WE HAVE TO PLAN OUR EXPERTS, AND WE'RE RUNNING OUT OF 20 TIME. 21 THE COURT: WELL, WE CAN DO THAT. BUT JUST BARE IN 22 MIND, I'VE GOT TO GIVE THE STAFF 90 MINUTES STARTING AT 23 1:30. I'M HAPPY TO HAVE YOU BACK AT 3:00 O'CLOCK TO 24 DISCUSS SCHEDULING IF THAT'S WHAT YOU WANT TO DO. BUT 25 IT'S A PUSH PULL; RIGHT? WE ARE ALREADY IN A CUSTOM 26 AND PRACTICE OF KEEPING -- OF RUNNING OVER TO ABOUT 27 1:45. 28 MR. LANKFORD: IF WE COULD BREAK A LITTLE EARLY AND	Page 136 1 DOCTOR LIKE YOURSELF CAN CONSIDER THAT, CONSIDER THE 2 FREQUENCY AND REGULARITY OF THAT WORK AND DETERMINE AN 3 ESTIMATE FOR LIFETIME DOSE AND SEE THAT EXPOSURE FOR 4 THAT MECHANIC CLEARLY CREATED A SIGNIFICANT INCREASED 5 RISK FOR DISEASE? 6 A YES. 7 Q AND IF WE'RE TALKING ABOUT MECHANICS WHO DID 8 WORK WITH THOSE THREE EXAMPLES I GAVE YOU -- GRINDING, 9 BLOWING OUT, AND SANDING WITHOUT PROTECTION -- IS THERE 10 ANY QUESTION THEY'RE GOING TO GET IN THESE RANGES -- 11 A NO. 12 Q -- IF THEY'RE DOING THIS WORK ROUTINELY? 13 A NO. 14 Q SPECIFICALLY, NOT TALKING ABOUT MECHANICS AND 15 MECHANIC EPIDEMIOLOGY, BUT THIS CASE, HAVE YOU 16 CONSIDERED AND STUDIED RITA CHAPMAN'S EXPOSURES FROM 17 DOING LAUNDRY OF HER HUSBAND AFTER WORKING AROUND 18 BRAKES? 19 A YES. 20 Q HAVE YOU CONSIDERED THE FREQUENCY AND 21 REGULARITY OF THAT WORK, THE INTENSITY OF THE DATA ABOUT 22 EXPOSURES TO DETERMINE IF SHE HAD A SIGNIFICANT RISK FOR 23 THE DEVELOPMENT OF DISEASE BASED ON DECADES OF 24 EPIDEMIOLOGICAL STUDIES? 25 A YES. 26 Q DOES SHE? 27 A YES. 28 Q SAME QUESTION FOR COSMETIC TALC. DID YOU DO
Page 135 1 TALK ABOUT IT, THAT WOULD BE GREAT. IF WE HAVE TO PUSH 2 IT OFF -- 3 THE COURT: ARE YOU GOING TO COMPLETE YOUR DIRECT 4 OF DR. HABER TODAY? 5 MS. DEAN: PROBABLY NOT. THE CHANGE IN HOW THIS 6 WAS PRESENTED IS ALSO CREATING TIME DELAYS. 7 THE COURT: OKAY. ALL RIGHT. TAKE 15. SEE YOU 8 SOON. 9 10 (RECESS.) 11 12 (THE FOLLOWING PROCEEDINGS WERE HELD 13 IN THE PRESENCE OF THE JURY.) 14 15 THE COURT: ALL JURORS AND ALTERNATES ARE PRESENT. 16 COUNSEL ARE PRESENT. 17 FURTHER DIRECT. 18 MS. DEAN: YES, YOUR HONOR. ONE MORE SESSION. 19 20 DIRECT EXAMINATION (CONTINUED) 21 BY MS. DEAN: 22 Q WE WERE TALKING ABOUT STUDY AFTER STUDY THAT 23 LOOKED AT LOW DOSES AND FOUND A SIGNIFICANT DISEASE. 24 FIRST OF ALL, ARE THESE ALL THE STUDIES THAT THERE ARE? 25 A NO. 26 Q SECOND, IS THERE DATA ABOUT HOW MUCH ASBESTOS 27 IS PUT IN THE AIR WHEN YOU GRIND A BRAKE OR SAND A BRAKE 28 OR BLOW OUT A BRAKE SO THAT A SCIENTIST LIKE YOURSELF, A	Page 137 1 THE SAME RESEARCH? 2 A I DID. 3 Q DID SHE HAVE A SIGNIFICANT RISK THAT'S BASED 4 ON WELL-ESTABLISHED EPIDEMIOLOGY BECAUSE OF HER USE OF 5 COSMETIC TALCS? 6 A YES. 7 Q NOW, THIS EXAMPLE ISN'T ABOUT A MECHANIC BUT A 8 GARAGE WORKER. THIS GARAGE WORKER STUDIED IN MCDONALD & 9 MCDONALD. NEVER WENT INSIDE A SHOP BUT PUMPED GAS. IS 10 THERE GOING TO BE A VERY DIFFERENT ANSWER TO THE 11 QUESTION ABOUT WHETHER YOU'RE GOING TO SEE AN INCREASED 12 RISK IN THOSE SETBACKS? 13 A YES. 14 Q IF I HAVE A STUDY THAT STARTED WHEN A COUNTRY 15 BANNED ASBESTOS SO THAT THE ONLY EXPOSURES POSSIBLE ARE 16 OF OLD BRAKES AND PEOPLE ARE USING THAT CONTRAPTION 17 WHERE YOU PUT YOUR HANDS ON IT AND THEY'RE USING WET 18 DOWN METHODS, IS THAT INDUSTRIAL HYGIENE DATA ABOUT HOW 19 MUCH ASBESTOS IN THE AIR GOING TO BE VERY DIFFERENT THAN 20 THE EXAMPLE I FIRST GAVE YOU ABOUT SOMEBODY GRINDING? 21 A YES. MUCH LOWER. 22 Q IF YOU THROW A BUNCH OF PEOPLE TOGETHER IN A 23 CATEGORY THAT ARE INHERENTLY VARIABLE, BOTH IN WHAT 24 THEY'RE DOING, HOW OFTEN THEY'RE DOING IT, AND WHETHER 25 THEY'RE USING PROTECTION, ARE YOU GOING TO MUDDY THE 26 ABILITY TO FIND CAUSE AND EFFECT? 27 A YES. 28 Q LASTLY, WHILE WE'RE ON THIS CHART, IN OPENING

Page 138 1 I WANT YOU TO ASSUME THE JURY WAS TOLD THAT IF WE TAKE 2 THE OSHA PEL, THAT EXPOSURE LIMIT OF 0.1, EXTRAPOLATE IT 3 OUT OVER AN ENTIRE LIFETIME, WE GET 4.5 CC YEARS, AND 4 THAT'S IT. DO YOU AGREE? 5 A NO. 6 Q IN TERMS OF ASSESSING WHETHER THAT MAKES 7 SENSE, IS 4.5 HIGHER OR LOWER THAN .1? 8 A MUCH HIGHER. 9 Q .15? 10 A MUCH HIGHER. 11 Q .2? 12 A HIGHER. 13 Q .1? 14 A HIGHER. 15 Q THE IDEA THAT LEVELS DRAMATICALLY LOWER THAN 16 THAT HAVE BEEN PROVEN IN EPIDEMIOLOGICAL STUDIES TO 17 CAUSE DEATH AND DISEASE, SPECIFICALLY MESOTHELIOMA, IS 18 THERE ANY QUESTION ABOUT THAT DATA? 19 A NO. 20 Q BEFORE I CONTINUE ON EPIDEMIOLOGY, THERE'S 21 SOME QUESTIONS I WANT TO ASK YOU. CAN YOU DISASSOCIATE 22 MESOTHELIOMAS FROM ASBESTOS? IF YES, WHAT IS THE CAUSE 23 OF SPONTANEOUS MESOTHELIOMA, OR DO THEY NOT EXIST? 24 A OKAY. SO ASBESTOS CAUSES THE MAJORITY, THE 25 VAST MAJORITY OF MESOTHELIOMAS. THERE ARE SOME OTHER 26 CAUSES OF SIMILAR MINERALS. THERE IS A MINERAL CALLED 27 ERIONITE THAT IS PRIMARILY IN AN AREA IN TURKEY THAT HAS 28 BEEN ASSOCIATED WITH MESOTHELIOMA IN THAT REGION, AND Page 139 1 IT'S VERY SIMILAR TO ASBESTOS. 2 THERE ARE SOME OTHER MINERALS IN SOME PLACES 3 IN OTHER COUNTRIES AND IN THIS COUNTRY THAT ARE ALSO 4 SIMILAR MINERALS THAT SEEM TO HAVE SOME SORT OF EFFECT. 5 THERE USED TO BE A RADIATION THAT WE GAVE CALLED MANTLE 6 RADIATION FOR PEOPLE WHO HAD DISEASES LIKE LYMPHOMA 7 MANY, MANY, MANY YEARS AGO. WE DON'T USE THAT TYPE OF 8 RADIATION TREATMENT. BUT THAT TYPE OF RADIATION 9 TREATMENT DID SEEM TO BE ASSOCIATED WITH AN INCREASED 10 RISK OF MESO, ALTHOUGH THESE WERE ALL JUST CASE REPORTS. 11 THERE'S NO LONG-TERM STUDY ON THAT. 12 AND THERE USED TO BE A SUBSTANCE CALLED 13 THOROTRAST THAT WAS USED 70 YEARS AGO, 80 YEARS AGO, 14 THAT SEEMED TO ALSO HAVE SOME ASSOCIATION WITH 15 MESOTHELIOMA. ALTHOUGH, AGAIN, WE DON'T REALLY KNOW 16 WHAT THE ACTUAL RISK WAS BECAUSE THERE'S JUST NO 17 SIGNIFICANT STUDIES. THESE WERE ALL VERY SMALL IN 18 NUMBERS. 19 NOW, CAN -- IF -- IS IT POSSIBLE THAT THERE IS 20 A SPONTANEOUS, YES. IS IT PROVEN? NO. WE KNOW, FOR 21 EXAMPLE, THAT CHILDREN CAN GET MESOTHELIOMA. BUT THAT 22 MESOTHELIOMA THAT CHILDREN GET IS, FIRST, 23 EXTRAORDINARILY RARE. I MEAN, VERY, VERY FEW CASES IN 24 ALL THE LITERATURE. 25 IT SEEMS TO BE DIFFERENT MESOTHELIOMA, PERHAPS 26 SOMETHING TO DO WITH THE WAY, YOU KNOW, THE BODY WAS -- 27 YOU KNOW, BEFORE THEY'RE BORN. BUT IT'S A MUCH MORE 28 BENIGN COURSE. IT'S MOSTLY PERITONEAL; WHEREAS, IN	Page 140 1 ADULTS IT'S USUALLY IN THE CHEST. AND THE CHILDREN 2 DON'T USUALLY DIE OF IT. THEY CAN BE CURED OF IT. SO 3 IT SEEMS TO ACT DIFFERENTLY TOO. 4 BUT MORE INTERESTINGLY, WE KNOW THAT AT -- 5 EVEN STILLBORNS, WHEN THEY'VE TESTED STILLBORNS, THEY 6 FOUND ASBESTOS FIBERS IN THEIR LUNGS. SO IT IS EVEN 7 STILL POSSIBLE FOR A MOTHER TO INHALE ASBESTOS AND THAT 8 ASBESTOS CAN GET THROUGH THE PLACENTA INTO THE BABY 9 BECAUSE THIS WAS A STILLBORN, IT NEVER BREATHED. SO THE 10 ONLY WAY FOR THAT ASBESTOS TO GET IN TO A STILLBORN WAS 11 THROUGH THE PLACENTA. 12 SO THERE'S STILL POSSIBILITIES FOR EVEN 13 INTRAUTERINE, OR WE KNOW THAT CHILDREN ARE MUCH MORE 14 SENSITIVE TO CARCINOGEN THAN -- BECAUSE THEIR CELLS ARE 15 DIVIDING RAPIDLY. THEY'RE GROWING. THEY'RE SMALL. SO 16 CHILDREN WHO ARE EXPOSED TO ASBESTOS IN CHILDHOOD ARE 17 MUCH MORE SUSCEPTIBLE TO CARCINOGEN. IS IT POSSIBLE 18 THAT THERE'S SOME CASE THAT WE -- YOU KNOW, WAS MAYBE 19 SOME OTHER CAUSE, IT IS, BUT I DON'T -- THERE'S NO PROOF 20 OF THAT. 21 AND FROM WHAT WE UNDERSTAND ABOUT 22 CARCINOGENESIS, YOU REALLY NEED TO HAVE AN EXPOSURE TO 23 SOME SORT OF MUTAGEN, SOMETHING THAT'S CAUSING THESE 24 CELLS. THE NORMAL CELLS FOR THE MESOTHELIAL TISSUE, AS 25 OPPOSED TO SOME OTHER TISSUES IN THE BODY, LIKE -- YOU 26 KNOW, IF YOU -- THE SKIN, FOR EXAMPLE, OR YOUR GI TRACT 27 OR YOUR -- IN YOUR MOUTH, THE CELLS DIVIDE VERY, VERY 28 RAPIDLY. THE MESOTHELIAL CELLS HAVE AN EXTRAORDINARILY Page 141 1 SLOW MITOTIC RATE. 2 THEY DON'T DIVIDE MUCH BECAUSE NOTHING REALLY 3 TOUCHES IT. NOTHING -- YOU KNOW, WHEN YOU EAT, IT 4 DOESN'T -- NOTHING IS GOING THERE. SO IT'S A VERY, VERY 5 MITOTICALLY INERT, DOESN'T -- NOT MUCH IS GOING ON IN 6 THAT LAYER. AND SO YOU REALLY -- IF YOU WERE TO HAVE 7 SOME SORT OF GENETIC CHANGE THAT GOES ON, THERE'S A LOT 8 OF TIME FOR YOUR BODY TO THEN JUST REPAIR THAT CHANGE. 9 AND SO FOR THOSE REASONS, THERE'S REALLY -- 10 ALTHOUGH IT'S IN THEORY POSSIBLE, IT'S NOT PROVEN AND I 11 DON'T THINK AT ALL LIKELY. 12 Q FOR ALL OF THE DIFFERENT PROVEN OR EVEN 13 POSSIBLE REASONS THAT YOU HAVE THE DISEASE MESOTHELIOMA, 14 ARE EACH OF THOSE STILL SOME KIND OF TRIGGERING EVENT 15 FROM THE OUTSIDE THAT IS CAUSING THE DISEASE? 16 A YES. 17 Q OTHER THAN ASBESTOS, IN YOUR REVIEW OF ALL OF 18 RITA CHAPMAN'S MEDICAL INFORMATION, DEPOSITIONS, THE 19 TESTIMONY YOU'VE SEEN, IS THERE ANY TRIGGER OTHER THAN 20 ASBESTOS THAT YOU SAW? 21 A NO. THERE WAS NOT. 22 Q OF ALL OF THE TRIGGERS, IF WE COMBINED 23 EVERYTHING ELSE YOU MENTIONED TOGETHER AND COMPARED IT 24 TO ASBESTOS, WHAT IS THE VAST MAJORITY OF CAUSES OF 25 MESOTHELIOMA IN THIS COUNTRY? 26 A IT'S ASBESTOS. AND AGAIN, SOME OF THESE OTHER 27 THINGS WE'RE NOT EVEN -- THEY'RE NOT EVEN BEING USED 28 ANYMORE, AND SHE NEVER HAD THEM DONE.

Page 142 1 Q OUTSIDE OF THE COURTROOM, ARE YOU AWARE OF ANY 2 SCIENTIST ANYWHERE THAT BELIEVES THAT YOU CAN HAVE A 3 DOCUMENTED EXPOSURE TO ASBESTOS AND CALL A MESOTHELIOMA 4 SPONTANEOUS? 5 MR. SHARP: OBJECTION. FOUNDATION, SPECULATION. 6 THE COURT: SUSTAINED. 7 Q BY MS. DEAN: IN YOUR REVIEW OF THE LITERATURE 8 OVER DECADES, HAVE YOU EVER SEEN A SINGLE CASE OUTSIDE 9 OF THE COURTROOM WHERE SOMEONE NOTES THAT THERE IS A 10 DOCUMENTED HISTORY OF EXPOSURE TO ASBESTOS AND INDICATES 11 THAT IT'S SPONTANEOUS? 12 MR. SHARP: SAME OBJECTION. 13 THE COURT: OVERRULED. 14 THE WITNESS: NO. 15 Q BY MS. DEAN: THE NEXT QUESTION I WANT TO ASK 16 YOU IS THRESHOLD APPLICATION -- I'M SORRY. LET ME TRY 17 THAT AGAIN. 18 IS THRESHOLD APPLICABLE IN PATHOGENESIS A 19 MESOTHELIOMA? 20 A RIGHT. I THINK THAT'S WHAT WE WERE TALKING 21 ABOUT EARLIER. SO THERE IS NO THRESHOLD. SO IN A 22 POPULATION, THE HIGHER THE EXPOSURES, THE MORE PEOPLE 23 YOU'RE GOING TO SEE. BUT ON AN INDIVIDUAL BASIS, MANY, 24 MANY STUDIES, EVEN AT THE LOWEST LEVELS OF EXPOSURES, 25 THERE'S NEVER BEEN ANY SORT OF DEFINED LEVEL THAT YOU 26 HAVE TO GET ABOVE. AND THESE EXPOSURES TO CAUSE MESO 27 CAN BE -- AGAIN, WE'VE TALKED ABOUT HERE IN PUBLISHED 28 LITERATURE ONE DAY, ONE WEEK, ONE MONTH. THEY CAN BE	Page 144 1 SHE NEVER HAD ANY SORT OF BIOPSIES AND 2 CERTAINLY NOT OF THE VOLUMES THAT YOU WOULD TYPICALLY 3 SEE TO EVEN LOOK FOR IT. BUT THERE WAS NO SAMPLING OF 4 HER LUNGS. IT WAS STRICTLY THE SMALL PLEURAL BIOPSIES 5 AND THOSE SMALL LYMPH NODE. AND THE LYMPH NODE ACTUALLY 6 WAS JUST A NEEDLE, SO THAT'S EVEN -- THERE'S REALLY NOT 7 ANY TISSUE THERE AT ALL. 8 Q IS THE LACK OF ASBESTOS IN LYMPH OR PLEURA IN 9 ANY WAY INSTRUCTIVE OR INDICATIVE THAT THERE WASN'T A 10 SIGNIFICANT EXPOSURE? 11 A NO. NONE WHATSOEVER. 12 Q DIAGNOSIS IS PRIMARILY BASED ON A HISTORY 13 WITHOUT HISTOLOGY TO DEMONSTRATE ASBESTOS FIBERS. DO 14 YOU AGREE? 15 A NO. SO YOU GET A CLINICAL SUSPICION THAT 16 SOMEONE HAS MESOTHELIOMA BASED ON -- YOU KNOW, LIKE IN 17 THIS CASE HERE, THEY PRESENT WITH SHORTNESS OF BREATH 18 AND CHEST PAIN. THEY'VE GOT A PLEURAL EFFUSION THAT'S 19 RECURRENT. THEN WE MAKE A DIAGNOSIS BASED ON THE 20 PATHOLOGY. 21 SO WE THEN TAKE A SAMPLE, LOOK UNDER THE 22 MICROSCOPE TO SEE DO THESE CELLS, THESE MESOTHELIAL 23 CELLS, SHOW SIGNS OF CANCER, WHICH IS YOU'RE SEEING -- 24 LOOKING FOR ARE THEY STARTING TO CHANGE. NORMALLY 25 THERE'S A CERTAIN AMOUNT OF -- THE NUCLEUS OF THE CELL 26 LOOKS A CERTAIN WAY. BUT IF YOU START SEEING 27 STRANGENESS TO IT, THE PATHOLOGIST SAYS, YES, THIS IS 28 CANCER. AND THAT'S HOW WE MAKE A DIAGNOSIS OF
Page 143 1 VERY BRIEF AND WHAT ARE CONSIDERED INCONSEQUENTIAL 2 EXPOSURES. 3 Q DOES MESOTHELIOMA ALWAYS START AS ASBESTOSIS, 4 INTERSTITIAL FIBROSIS, CHRONIC BRONCHITIS, ET CETERA? 5 A NO. SO ASBESTOSIS IS A DIFFERENT 6 ASBESTOS-RELATED DISEASE THAN MESOTHELIOMA. SO 7 ASBESTOSIS IS THE FIBROSIS IN THE LUNGS RELATED TO 8 ASBESTOS. MESOTHELIOMA IS A MALIGNANCY, A CANCER, OF 9 THE LINING OF THE LUNG OR THE ABDOMEN, DEPENDING UPON 10 WHERE THE MESOTHELIOMA OCCURS. BUT THESE ARE SEPARATE 11 DISEASES. 12 AND ASBESTOSIS, IF YOU HAVE IT, DOESN'T TURN 13 INTO CANCER. IT SIGNALS AN INCREASED RISK FOR CANCER 14 BECAUSE YOU'VE HAD A TREMENDOUS DOSE OF ASBESTOS TO GET 15 ASBESTOSIS. BUT BENIGN DISEASES LIKE ASBESTOSIS DOES 16 NOT TURN INTO CANCER. 17 AND THEN CHRONIC BRONCHITIS, THAT'S TYPICALLY 18 A DISEASE FROM CIGARETTE SMOKING. CIGARETTE SMOKING HAS 19 NO CAUSAL EFFECT FOR MESOTHELIOMA. 20 Q DID THE BIOPSY OF TISSUE OF RITA CHAPMAN SHOW 21 ASBESTOS FIBERS OR CANCER CELLS ONLY? 22 A RIGHT. THE BIOPSIES THAT HE TOOK OF THE LYMPH 23 NODES AND OF THE PLEURA SHOWED MESOTHELIOMA. THEY 24 LOOKED UNDER THE MICROSCOPE. THEY CAN SEE THAT THIS IS 25 MESOTHELIOMA. THAT'S HOW THEY MAKE -- THAT'S HOW WE 26 MAKE A DIAGNOSIS OF MESOTHELIOMA BASED ON THE TISSUE 27 BIOPSY. AND FIBERS YOU GENERALLY ARE GOING TO BE 28 LOOKING FOR TESTING OF THE LUNG.	Page 145 1 MESOTHELIOMA IN VIRTUALLY EVERY CASE. 2 EVERY ONCE IN A WHILE, YOU MIGHT TRY TO MAKE 3 IT CLINICALLY, BUT THERE'S NO WAY TO BE CONFIRMATORY 4 WITHOUT THE PATHOLOGY. 5 Q AND DID THEY CONFIRM HER DIAGNOSIS WITH 6 PATHOLOGY? 7 A YES. SO SHE NOT ONLY HAD THE PATHOLOGY OF THE 8 FIRST PLEURAL BIOPSY AND THE LYMPH NODE, BUT THEN ALSO 9 LATER ON HAD THE PATHOLOGY CONFIRMED AGAIN BY A SECOND 10 SET OF BIOPSIES OF THE PLEURA. 11 Q HERE WE'VE TALKED TO EXPERTS HIRED BY THE 12 COMPANIES. DR. ATTANOOS, DR. ROGGLI, AND OTHERS. AND 13 THEY, LIKE YOU AND LIKE MAYO CLINIC AND HER TREATERS, 14 ALL BELIEVE THIS IS A MALIGNANT MESOTHELIOMA. 15 DOES THAT SURPRISE YOU? 16 A NO. 17 Q THE LAST QUESTION ON THIS LIST I WANT TO ASK 18 YOU IS, A NEGATIVE RADIOLOGY DOES NOT RULE OUT THE 19 DISEASE, BUT A POSITIVE ONE IS CONFIRMATORY. 20 DO YOU AGREE? 21 A NO. 22 Q CAN YOU EXPLAIN? 23 A YES. 24 Q SO FIRST OFF, IT DEPENDS ON THE RADIOLOGY, 25 BECAUSE, AGAIN, YOU KNOW, IF YOU -- YOU COULD HAVE 26 SOMEONE WHO HAS MESOTHELIOMA AT AN EARLY STAGE AND MAYBE 27 NOT SEE SOMETHING ON CHEST X-RAY. BUT, GENERALLY, YOU 28 SEE SOMETHING ABNORMAL ON THE X-RAY, WHETHER IT BE A CAT

Page 146 1 SCAN OR CHEST X-RAY, AND THAT PROVOKES MORE ATTENTION TO 2 TRY TO FIND OUT WHAT'S GOING ON, GENERALLY LEADING TO 3 TAKING A TISSUE BIOPSY AND HAVING THE PATHOLOGIST LOOK 4 UNDER THE MICROSCOPE AND YOU LOOK AT -- YOU SEE WHAT THE 5 PATHOLOGIST SAYS AND HE GETS WITH THE CLINICIAN AND 6 SAYS, OKAY, WHAT ARE YOU SEEING? AND THAT'S HOW YOU 7 MAKE THE DIAGNOSIS. 8 BUT IT IS -- YOU CAN'T MAKE THE DIAGNOSIS JUST 9 BY LOOKING AT THE X-RAY. IT COULD BE, YOU KNOW, SOME 10 OTHER CANCER, OR IT COULD BE A NONCANCEROUS CONDITION. 11 Q WE HAVE SPENT A LOT OF TIME, I THINK BECAUSE 12 OF STATEMENTS THAT WERE MADE IN OPENING STATEMENTS, AND 13 SO I WANT TO MAKE A REALLY BROAD QUESTION. IS THERE 14 ANYTHING ABOUT RITA CHAPMAN'S TEST OR BODY OR TISSUE OR 15 FLUIDS THAT, BECAUSE WE DIDN'T SEE SOMETHING, SUGGESTS 16 TO YOU, MAN, THIS DOESN'T HAVE ANYTHING TO DO WITH 17 ASBESTOS? 18 A NO. 19 Q AND IF SOMEBODY SUGGESTED THAT WHAT WE KNOW 20 ABOUT HER BODY AND THE LACK OF INFORMATION WE KNOW ABOUT 21 HER BODY MEANT THAT THIS WAS A SPONTANEOUS MESOTHELIOMA, 22 DO YOU AGREE OR DISAGREE? 23 A I STRONGLY DISAGREE. 24 Q OKAY. GOING BACK TO EPIDEMIOLOGY. THE SECOND 25 INDICATION HERE THAT YOU HAD OF WHY WE UNDERSTAND WHY 26 BRAKE WORK CAUSES DISEASE SAYS: INCREASED RISK IN 27 MECHANICS FOR PLEURAL DISEASE AND ASBESTOSIS. A MOMENT 28 AGO WE LOOKED AT DR. ROGGLI'S BOOK. YOU NEED A LOT OF Page 147 1 EXPOSURE FOR A LONG TIME TO GET ASBESTOSIS. 2 DO YOU RECALL THAT? 3 A YES. 4 Q I THINK THIS IS ACTUALLY A VERY SIMILAR THING 5 THAT YOU WERE JUST TALKING ABOUT. ASBESTOSIS DOES NOT 6 MEAN YOU'RE GOING TO TURN INTO CANCER. BUT, MAN, IF YOU 7 GOT IT, YOU'RE AT AN INCREASED RISK. 8 DO YOU RECALL SAYING THAT? 9 A YES. 10 Q ARE THERE PUBLISHED EPIDEMIOLOGIC STUDIES THAT 11 SHOW MECHANICS HAVE ASBESTOSIS AND PLEURAL DISEASE AT A 12 SIGNIFICANT INCREASED RISK? 13 A YES. 14 Q WHAT DOES THAT TELL YOU ABOUT EXPOSURE TO 15 ASBESTOS? 16 A THAT THEY'RE HAVING SIGNIFICANT EXPOSURES TO 17 ASBESTOS. 18 Q AND HOW WELL ESTABLISHED IS IT IN THE MEDICAL 19 AND SCIENTIFIC COMMUNITY FOR DECADES THAT, IF YOU HAVE A 20 SIGNIFICANT EXPOSURE TO ASBESTOS, YOU HAVE A PROBLEM 21 WITH THE DISEASE MESOTHELIOMA? 22 A IT'S A HUNDRED PERCENT ESTABLISHED. AND JUST 23 TO HAMMER HOME A POINT, THE ONLY CAUSE OF ASBESTOSIS IS 24 ASBESTOS. THERE IS NO OTHER CAUSE. IT'S -- EVERY CASE 25 OF ASBESTOSIS IS FROM ASBESTOS. 26 Q SO WE HAVE PUBLISHED LITERATURE SHOWING AN 27 INCREASED RISK FROM MECHANICS FOR DISEASE THAT IS ONLY 28 CAUSED BY ASBESTOS?	Page 148 1 A YES. 2 Q AND IN TERMS OF THIS IDEA THAT YOU NEED MORE 3 EXPOSURE TO GET ASBESTOSIS, WE SAW THAT IN DR. ROGGLI'S 4 BOOK ALREADY. ARE THERE OTHERS THAT HAVE PUBLISHED IT 5 AS WELL? 6 A YES. 7 Q WHAT IS A CASE REPORT? 8 A A CASE REPORT IS A PUBLICATION DESCRIBING 9 MAYBE ONE CASE, MAYBE A NUMBER OF CASES WHERE THEY HAVE 10 A PERSON OR A GROUP OF PEOPLE WITH A CERTAIN DISEASE AND 11 THEY DISCUSS WHAT HAPPENED AND WHAT DISEASE WAS GOING 12 ON, WHAT -- MAYBE WHAT THE WORK HISTORY WAS, ET CETERA. 13 Q WHAT'S A CASE SERIES? 14 A THE CASE SERIES IS SIMILAR, BUT YOU'RE LOOKING 15 AT A LARGER GROUP OF INDIVIDUALS. 16 Q WAS WAGNER'S WORK IN 1960 A CASE SERIES? 17 A YES. 18 Q AND SO THE IDEA THAT YOU CAN HAVE CASE REPORTS 19 OR CASE SERIES IN ORDER TO SHOW CAUSE AND EFFECT WHEN 20 YOU'RE DEALING WITH A DISEASE LIKE MESOTHELIOMA AND A 21 CARCINOGEN LIKE ASBESTOS, HOW WELL ESTABLISHED IS THAT? 22 A VERY. 23 Q ARE YOU FAMILIAR WITH AND DO YOU RELY ON THE 24 EPIDEMIOLOGICAL TEXTBOOK BY CHECKOWAY AND OTHERS? 25 A YES. 26 Q I WANT TO ASK YOU A COUPLE QUESTIONS ABOUT 27 THAT. CAN YOU FIRST JUST READ THE HIGHLIGHTED PORTION. 28 A "CERTAIN CONDITIONS KNOWN AS SENTINEL HEALTH Page 149 1 EVENTS ARE SO CLOSELY ASSOCIATED WITH OCCUPATIONAL 2 EXPOSURES THAT THE OCCURRENCE OF ANY CASE SERVES AS AN 3 INDICATION OF AN OCCUPATIONAL HAZARD. MALIGNANT 4 MESOTHELIOMA, WHICH IS NEARLY ALWAYS ATTRIBUTABLE TO 5 ASBESTOS EXPOSURE, SILICOSIS, AND ADULT LEAD POISONING 6 FIT THIS DESCRIPTION." 7 Q IN TERMS OF APPLYING THIS CONTENT TO BRAKES, 8 ARE THERE CASE REPORTS OF BRAKE MECHANICS OF GETTING THE 9 DISEASE MESOTHELIOMA? 10 A YES. HUNDREDS. 11 Q AND FOR THE JURY TO JUST GET AN IDEA OF HOW 12 MANY FOR HOW MANY DECADES, HAVE YOU CREATED A CHART 13 THAT'S UP HERE? 14 A YES. 15 Q IN 1965 NEWHOUSE AND THOMPSON 1968, GODWIN AND 16 JAGATIC, J-A-G-A-T-I-C, AND IT GOES ON FOR YEARS; 17 CORRECT? 18 A YES. 19 Q IS EVERY TIME A PERSON GETS MESOTHELIOMA 20 RESULT IN A WRITTEN CASE REPORT? 21 A OF COURSE NOT. 22 Q DOES THIS IN ANY WAY REPRESENT HOW MANY 23 HUNDREDS OF THOUSANDS OF MECHANICS HAVE DIED OF 24 MESOTHELIOMA? 25 A RIGHT. THERE WOULD BE -- IT WOULD FOR SURE BE 26 MORE THAN THAT. 27 Q BUT DOES THE FACT THAT WE HAVE THIS MUCH DATA 28 FOR DECADES, ALONG WITH THE INFORMATION WE HAVE ABOUT

Page 150 1 ASBESTOS RELEASE AND EPIDEMIOLOGY, MAKE IT CLEAR IN YOUR 2 MIND CAUSE AND EFFECT? 3 A YES. 4 Q THE STUDIES OF MECHANICS FOR MESOTHELIOMA LACK 5 SENSITIVITY. CAN YOU EXPLAIN WHAT YOU MEAN BY THAT? 6 A YES. SO WHEN YOU'RE DOING A STUDY, AS WE 7 TALKED ABOUT BEFORE, WHEN YOU'VE GOT AN EXPOSED GROUP 8 AND A NON-EXPOSED GROUP, YOU WANT TO BE SURE THAT THE 9 EXPOSED GROUP IS TRULY EXPOSED AND THE NON-EXPOSED GROUP 10 IS TRULY NON-EXPOSED. 11 OR IF YOU ARE COMPARING IT TO SOME OTHER 12 POPULATION, WHAT WE CALL A CONTROL, THAT THAT CONTROL 13 HASN'T -- HAVE EITHER THAT EXPOSURE OR SOME OTHER 14 CONDITION THAT WOULD CHANGE THE EFFECTS OF HOW MUCH 15 YOU'RE COMPARING IT TO, BECAUSE YOU WANT TO MAKE SURE 16 THAT YOU'RE COMPARING A TRUE CASE GROUP TO THE PEOPLE 17 THAT ARE JUST ABSOLUTELY BACKGROUND NO INCREASED 18 EXPOSURES. 19 AND SO IF YOU PICK PEOPLE THAT, FOR EXAMPLE, 20 WERE LISTED AS A GARAGE WORKER, WELL, THERE'S LOTS OF 21 PEOPLE THAT COULD BE WORKING IN A GARAGE THAT DOESN'T 22 HAVE TO DO WITH DOING BRAKE WORK. YOU CAN HAVE A MOTOR 23 VEHICLE MECHANIC WHO IS, YOU KNOW, SPENDING MOST OF HIS 24 TIME WORKING ON TIMING OR BELTS OR CHANGING TIRES OR 25 SOMETHING ELSE. SOME STUDIES, YOU KNOW, THEY HAD 26 THEM -- EVEN SOME OF THE PEOPLE WERE WORKING ON 27 BICYCLES. 28 SO YOU HAVE TO BE SURE THAT, WHEN YOU'RE	Page 152 1 THE COURT: TAKE DOWN THE SLIDE FOR JUST A MOMENT, 2 PLEASE. 3 MR. LANKFORD: HEARSAY. FOUNDATION. 352. 4 THE COURT: LET ME THINK. HOLD ON. 5 SUSTAINED ON FOUNDATION. 6 HAS THIS WITNESS SEEN IT? READ IT? 7 MS. DEAN: LET ME LAY THE FOUNDATION. 8 Q DR. GARABRANT, HAVE YOU REVIEWED -- 9 A DR. HABER. 10 Q I'M SORRY. DR. HABER. HAVE YOU REVIEWED AND 11 CONSIDERED THIS EPA DOCUMENT? 12 A I HAVE. 13 Q IS IT ON YOUR RELIANCE LIST? 14 A IT IS. 15 Q WAS IT ON THE RELIANCE LIST WHEN FORD TALKED 16 TO YOU OVER THE COURSE OF THREE DAYS? 17 A IT WAS. 18 Q IS IT SOMETHING THAT YOU FIND RELIABLE? 19 A IT IS. 20 Q IS IT SOMETHING THAT YOU FIND AUTHORITATIVE? 21 A IT IS. 22 Q OKAY. I WANT TO ASK YOU A FEW QUESTIONS ABOUT 23 IT. 24 YOUR HONOR, IS IT OKAY IF I PROCEED? 25 MR. LANKFORD: SAME OBJECTIONS, YOUR HONOR. IT'S 26 352. IT'S HEARSAY. EVEN IF, AS I SAID BEFORE, THEY TRY 27 TO ARGUE IT'S SOMEHOW A GOVERNMENT PUBLICATION, IT'S 28 STILL HEARSAY. IT CAN'T COME IN FOR THE TRUTH OF THE
Page 151 1 DEALING WITH YOUR EXPOSED GROUP, THAT YOU ARE PICKING 2 PEOPLE THAT ARE THE EXPOSED GROUP AND NOT BEING TOO 3 WATERED DOWN. AND THEN YOU NEED TO BE SURE THAT ON THE 4 CONTROL GROUP THAT YOU ARE NOT PICKING PEOPLE THAT WERE 5 IN OTHER INDUSTRY, FOR EXAMPLE. 6 IF YOU PICK THEM AS ANOTHER INDUSTRY THAT 7 MAYBE HAD ASBESTOS EXPOSURES, WELL, THEN YOUR CONTROL 8 GROUP IS GOING TO HAVE A HIGH RATE OF DISEASE. AND THEN 9 WHEN YOU COMPARE THEM, YOU'RE EITHER GOING TO SAY, OKAY, 10 THERE'S NO DIFFERENCE, OR THERE MIGHT EVEN BE, YOU KNOW, 11 ASBESTOS BEING PROTECTIVE OF CANCER, WHICH IS, YOU KNOW, 12 NOT SCIENTIFICALLY RATIONAL. 13 Q IS THIS IDEA THAT THE META-ANALYSIS STUDIES 14 LACK SENSITIVITY A WIDELY SHARED VIEW IN THE MEDICAL 15 STUDY OUTSIDE OF AUTHORS FROM CHEMRISK AND EXPONENT? 16 A YES. 17 Q I WANT TO NOW SHOW YOU WHAT WE'VE MARKED AND 18 THE COURT HAS JUDICIAL NOTICE OF AS EXHIBIT 3056. HAVE 19 YOU SEEN THIS? 20 A I HAVE. 21 Q I WANT TO ASK YOU A FEW QUESTIONS ABOUT WHAT 22 THE ENVIRONMENTAL PROTECTION AGENCY HAS FOUND WHEN THEY 23 LOOK AT EPIDEMIOLOGIC STUDIES OF AUTOMOTIVE MECHANICS. 24 FIRST OF ALL -- 25 MR. LANKFORD: OBJECTION, YOUR HONOR. I ASK THIS 26 SLIDE BE TAKEN DOWN. 27 THE COURT: LET ME -- 28 MR. LANKFORD: OBJECTION. HEARSAY.	Page 153 1 MATTER ASSERTED OR BE SHOWN TO THE JURY. 2 MS. DEAN: THIS IS EXHIBIT 10 TO THE DOCUMENT YOU 3 TOOK JUDICIAL NOTICE OF ALREADY. 4 THE COURT: OKAY. SO TAKING JUDICIAL NOTICE OF THE 5 EXISTENCE OF THE DOCUMENT IS NOT THE SAME AS TAKING 6 JUDICIAL -- IS NOT ESTABLISHING THE TRUTH OF ITS 7 CONTENTS. AGREED? 8 MS. DEAN: YES, WHICH IS WHY I WANT TO TALK TO THE 9 DOCTOR ABOUT IT, WHO RELIES ON IT AND FINDS IT 10 AUTHORITATIVE AND RELIABLE. 11 THE COURT: ALL RIGHT. 12 MR. ADAMS, GO AHEAD. TELL ME WHAT YOU WANT TO 13 TELL ME. 14 MR. ADAMS: SO... 15 THE COURT: I'LL PERMIT YOU TO... 16 MR. ADAMS: IT'S PRECISELY WHAT IT MEANS, YOUR 17 HONOR, TO TAKE JUDICIAL NOTICE OF A DOCUMENT. IT IS TO 18 FIND THAT IT'S RELIABLE AND TRUTHFUL. AND IF IT 19 WEREN'T, THE COURT COULDN'T TAKE JUDICIAL NOTICE OF IT. 20 THE COURT: YEAH. I DON'T THINK I AGREE WITH THAT. 21 ALL RIGHT. SO I'M GOING TO SUSTAIN THE 22 OBJECTION THAT THIS IS, NOTWITHSTANDING A JUDICIALLY 23 NOTICED DOCUMENT. BASED ON WHAT I THINK IS ABOUT TO 24 HAPPEN WITH THESE PROPOSED SLIDES, I THINK IT'S UNDULY 25 DETAILED CASE-SPECIFIC HEARSAY. SO I'M NOT GOING TO LET 26 YOU DISPLAY THESE SLIDES, BUT YOU CERTAINLY CAN INQUIRE 27 GENERALLY AND IN A NOT TOO DETAILED NONCASE-SPECIFIC 28 HEARSAY FASHION ABOUT IT.

Page 154 1 Q BY MS. DEAN: DR. HABER, ARE THE STUDIES OF 2 MOTOR VEHICLE MECHANICS SUFFICIENTLY SENSITIVE TO DETECT 3 A CANCER EFFECT OF COMMERCIAL CHRYSOTILE ASBESTOS? 4 A NO. 5 Q IS THAT SOMETHING THAT IS OBSERVED AND 6 UNDERSTOOD BY THE ENVIRONMENTAL PROTECTION AGENCY? 7 A YES. 8 Q HAVE YOU SEEN THE 29 STUDIES THAT THE LAWYERS 9 FOR FRICTION DEFENDANTS THAT INDICATE AND SHOW THAT 10 THERE'S NO RISK FOR MESOTHELIOMA AMONG BRAKE WORKERS? 11 A YES. 12 Q I GRABBED ONE OF THEIR SLIDES THAT IDENTIFY 13 ALL 29. HAVE YOU REVIEWED EVERY SINGLE ONE OF THESE? 14 A YES. 15 Q OUTSIDE OF CHEMRISK AND EXPONENT AUTHORS, ARE 16 YOU AWARE OF ANYONE IN THE MEDICAL AND SCIENTIFIC 17 COMMUNITY THAT REVIEWS THESE STUDIES AND SAY, BRAKE 18 WORK, EVEN GRINDING AND SANDING, IS SAFE? 19 MR. LANKFORD: OBJECTION, YOUR HONOR. CALLS FOR 20 HEARSAY. 21 THE COURT: OVERRULED. 22 MR. LANKFORD: FOUNDATION. 352. 23 THE COURT: OVERRULED. 24 YOU CAN ANSWER. 25 THE WITNESS: NO. 26 MS. DEAN: I HAVE TO SPEND TIME, UNFORTUNATELY, 27 JUST GETTING THE FACTS. 28 MR. ADAMS: YOUR HONOR, MAY WE HAVE A SIDEBAR ON	Page 156 1 PAPER FROM 2004 SAID THAT THOSE STUDIES, THE TIER 3, 2 WERE UNRELIABLE. GARABRANT CHANGED THE TERMS TO LESS -- 3 I THINK IT WAS LIKE LESS -- NOT AS GOOD. THE LOWEST 4 QUALITY. 5 Q FOR THE FOUR THAT WERE IN THE EXPONENT PAPER, 6 ARE META-ANALYSIS AS BEING UNRELIABLE, DO YOU AGREE THAT 7 THEY ARE NOT RELIABLE IN TERMS OF FIGURING OUT WHETHER 8 MECHANICS ARE GETTING THE DISEASE MESOTHELIOMA? 9 A I DO. 10 Q AND FIRST JUST TO GET ON THE RIGHT PAGE. 11 THERE'S A LOT LESS THAN 29 STUDIES THAT ARE EVEN BEING 12 TALKED ABOUT; CORRECT? 13 A YES. 14 Q AND IF WE GO TO THE GOODMAN PAPER, JUST SO WE 15 CAN SEE THIS, THEY EXCLUSIVELY TALK ABOUT FOUR STUDIES 16 IN TIER 3 AND DETERMINED THAT THEY'RE UNRELIABLE; RIGHT? 17 A YES. 18 Q SO IN ASSESSING WHETHER GRINDING AN ASBESTOS 19 PRODUCT CAUSES HARM, IS THERE ANYONE ANYWHERE -- I'M 20 INCLUDING CHEMRISK AND EXPONENT IN THIS -- TO SAY THAT 21 THERE'S 29 STUDIES THAT TELL YOU NO? 22 A NO. 23 Q ONE OF THE ISSUES WITH THE STUDY -- 24 THE COURT: CAN YOU HOLD ON JUST A SECOND. HOLD ON 25 JUST A SECOND. 26 MR. ADAMS, SINCE WE KNOW ARE ALL -- MOST OF US 27 ARE DOING TWO THINGS AT ONCE BECAUSE THERE'S SO MUCH 28 GOING ON, TO USE YOUR TIME WELL, IF YOU WISH, TAKE A
Page 155 1 THIS ISSUE OF THE REQUEST FOR JUDICIAL NOTICE THAT WAS 2 GRANTED? 3 THE COURT: NOT NOW. 4 Q BY MS. DEAN: THE JURORS WERE TOLD THAT THERE 5 WERE 29 STUDIES. EVEN IF WE GO TO THE EXPONENT 6 META-ANALYSIS OF GOODMAN AND GARABRANT, WHEN THEY 7 REVIEWED THE LITERATURE AND IDENTIFIED THE STUDIES -- 8 FIRST OF ALL, THE LAST TIME IT WAS DONE IN 2015; RIGHT? 9 A RIGHT. 10 Q SO TO BE FAIR, FOUR OF THESE STUDIES CAME 11 AFTER? 12 A TRUE. 13 Q BUT IF WE LOOKED AT THE 25, WHEN THEY DID THE 14 LITERATURE, DID THEY INCLUDE ALL OF THESE STUDIES THAT 15 THE LAWYERS DO? 16 A NO. 17 Q ARE THERE A BUNCH OF THEM THAT THEY DIDN'T 18 THINK ANSWERED THE QUESTION ABOUT WHETHER MESOTHELIOMA 19 OCCURS WITH BRAKE WORK? 20 A RIGHT. THERE WERE SEVERAL THAT THEY JUST GOT 21 RID OF BECAUSE THEY WEREN'T TO BE CONSIDERED. 22 Q FOR THE ONES THAT THEY DID THINK SHOULD BE 23 CONSIDERED, DID THEY RATE THEM IN SOME WAY? 24 A THEY DID. 25 Q TELL ME ABOUT THAT. 26 A THEY HAD A THREE-TIER. TIER 1, WHICH WAS 27 THEIR BEST. TIER 2, WHICH WAS LOWER DOWN. AND THEN 28 TIER 3, DEPENDING UPON WHICH STUDY. THE FIRST GOODMAN	Page 157 1 LOOK AT MANGINI VERSUS R.J. REYNOLDS TOBACCO COMPANY, 7 2 CAL.4TH 1057 AT PAGE 1063, 1064. AND LOVE VERSUS WOLF, 3 226 CAL.APP.2D 378, 403. 4 MR. LANKFORD: YOUR HONOR, I OBJECT TO THE NEXT 5 SLIDE -- NEXT FEW SLIDES WITH THE EXCEPTION OF THE ONE 6 WITH THE DATA. I'M FINE WITH THE DATA. 7 MR. ADAMS: YOUR HONOR, WE'RE LOOKING AT EVIDENCE 8 CODE 454(A)(2), WHICH SAYS -- WELL, I'LL LET THE PARTIES 9 TAKE A LOOK AND THE COURT. 10 THE COURT: OKAY. ARE YOU OBJECTING TO THE 11 SLIDE -- 12 MR. LANKFORD: NO. I THINK IT'S FAIR TO PUT UP THE 13 DATA. 14 THE COURT: YOU'RE OBJECTING TO GO THE EPA SLIDES? 15 MR. LANKFORD: YES. 16 MS. DEAN: YOUR HONOR, EXPERTS ON THE OTHER SIDE 17 CONSIDER -- 18 THE COURT: RIGHT. THAT'S A 721 ISSUE. 19 OKAY. I'M GOING TO SUSTAIN THE OBJECTION FOR 20 THE SAME REASON. IT IS UNDULY DETAILED, CASE-SPECIFIC 21 HEARSAY. 22 BUT IT DOES NOT MEAN YOU CAN'T INQUIRE ABOUT 23 IT. 24 MS. DEAN: I STILL WANT TO ASK ABOUT THE SLIDE 25 THAT'S UP. 26 Q IS ONE OF THE PROBLEMS WITH THE 27 EPIDEMIOLOGICAL STUDIES ABOUT MECHANICS RELATED TO 28 LATENCY?

Page 158 1 A ABSOLUTELY. 2 Q CAN YOU TELL US ABOUT THAT? 3 A CERTAINLY. SO WITH DISEASE MESOTHELIOMA, IT 4 IS IMPERATIVE THAT YOU HAVE SUFFICIENT LATENCY. FOR 5 EXAMPLE, IF I HAVE A GROUP THAT ARE REALLY HIGHLY 6 EXPOSED INDIVIDUALS AND I STUDY THEM A WEEK LATER, A 7 MONTH LATER, A YEAR LATER, SIX YEARS LATER, SEVEN YEARS 8 LATER, TEN YEARS LATER, I'M NOT GOING TO DETECT AN 9 INCREASED RISK BECAUSE THEY'RE NOT GETTING MESOTHELIOMA. 10 IT TAKES -- YOU KNOW, IN THE MENSEI STUDY, 11 WHICH WAS THE HUGE STUDY OF 4,000 PEOPLE, 50 YEARS WAS 12 THE MEAN. SO YOU'VE GOT HALF THE PEOPLE THAT ARE STILL 13 ABOVE THAT. IN MY STUDY, 48 YEARS WAS THE MEDIAN 14 LATENCY PERIOD. AND MANY OTHER STUDIES SHOW SIMILAR -- 15 30, 40, 50 YEARS OF LATENCY. 16 SO IF YOU DO NOT -- IF YOU STOP YOUR STUDY OR 17 YOU ONLY FOLLOW THEM FOR 20 YEARS -- AND SOME PEOPLE 18 WERE MAYBE ONLY A FEW YEARS OUT OF THAT -- YOU'RE NOT 19 GOING TO DETECT CASES. WE'RE STILL AS IF -- YOU DON'T 20 EVEN -- A LOT OF THESE STUDIES THAT WERE BEING DONE WERE 21 NOT DESIGNED TO LOOK FOR THE MESOTHELIOMA IN BRAKE 22 WORKERS. AND SO A LOT OF THESE STUDIES DON'T HAVE ANY 23 INFORMATION ABOUT LATENCY, SO WE DON'T KNOW. 24 IT COULD HAVE BEEN A DAY. IT COULD HAVE BEEN 25 A MONTH. IT COULD HAVE BEEN TEN YEARS. THERE'S NO 26 INFORMATION AT ALL. SO THERE'S NO WAY FOR YOU TO BE 27 ABLE TO, AS A SCIENTIST, TO GO, OKAY, THERE WAS LONG 28 ENOUGH PERIOD OF TIME FOR ME TO BE ABLE TO SAY THAT, IF	Page 160 1 DOZEN OR MORE OF THEM THAT GIVE THAT EXACT KIND OF 2 INFORMATION WITH FIBER PER CC YEAR DOSES SO THAT 3 SCIENTISTS CAN SAY, YEAH, THAT RELATES TO MY PATIENT, 4 OR, NO, THAT'S VERY DIFFERENT? 5 A YES. 6 Q BUT FOR THE STUDIES THAT THE EXPONENT FOLKS 7 LOOKED AT, THEY DON'T PROVIDE ANY OF THAT DATA; CORRECT? 8 A CORRECT. 9 Q IS THAT PRECISELY ONE OF THE MANY PROBLEMS 10 IDENTIFIED BY THE ENVIRONMENTAL PROTECTION AGENCY? 11 A RIGHT. THAT'S WHAT LACKS -- YOU KNOW, THE 12 ISSUE ABOUT THE SENSITIVITY. IF YOU DON'T KNOW WHAT THE 13 LATENCY PERIOD WAS, IF YOU GOT -- THE FEW THAT MENTIONED 14 WHAT IT WAS AND IT WAS SEVEN YEARS, YOU'RE NOT GOING TO 15 BE SENSITIVE ENOUGH TO PICK UP CASES OF MESO. 16 Q IS WORROWITZ ONE OF THE FEW STUDIES THAT AT 17 LEAST GIVES YOU SOME INFORMATION ABOUT HOW LONG THE 18 WORKERS WERE DOING THE WORK? 19 A RIGHT. THIS ONE GAVE AS FAR AS WORK DURATION 20 BUT NO LATENCY INFORMATION. BUT YES. THIS WAS A 21 DURATION OF EMPLOYMENT OF FOUR YEARS ON AVERAGE. 22 SOMEWHERE BETWEEN ONE AND 8.4 YEARS. SO THERE WAS SOME 23 PEOPLE THAT HAD, YOU KNOW, ONE YEAR. 24 Q AND SO THE AVERAGE DURATION, I THINK, IS, 25 THEY'RE SHOWING US HERE, FOUR YEARS WITH A RANGE OF ONE 26 AND 8.4? 27 A YES. 28 Q HOW LONG WAS GARY CHAPMAN AROUND SANDING AND
Page 159 1 THEY HAD EXPOSURES, THEY HAD RISK OF DISEASE. AND, 2 AGAIN, YOU KNOW, I COULD HAVE SOMEONE WHO HAS TREMENDOUS 3 EXPOSURES. BUT IF I STOP THE STUDY TOO SOON, THEY'RE 4 GOING TO LOOK LIKE THERE'S NOTHING WRONG WITH ASBESTOS. 5 Q AND ONE OF THE FEW THAT ACTUALLY TELLS YOU HOW 6 LONG THE FOLLOW-UP WAS, HOW LONG THEY WATCHED THE PEOPLE 7 TO SEE IF THEY GOT THE DISEASE, WAS THE LATENCY PERIOD 8 UNDER TEN YEARS? 9 A YEAH. IT WAS SEVEN YEARS. 10 Q IS THAT GOING TO TELL YOU WHETHER THE PEOPLE 11 DOING WORK ARE GOING TO GET THE DISEASE MESOTHELIOMA IN 12 THE VAST MAJORITY OF CASES? 13 A NO. 14 Q FOR ANY OF THESE STUDIES, DID THEY HAVE 15 AVAILABLE QUANTITATIVE EXPOSURE RESPONSE DATA FOR CANCER 16 RISK IN RELATION TO ASBESTOS EXPOSURE? 17 A NO. 18 Q DID THEY EVEN HAVE QUALITATIVE ASSESSMENT OF 19 INDIVIDUAL EXPOSURES TO ASBESTOS FROM WORK WITH MOTOR 20 VEHICLE BRAKES OR OTHER AUTOMOTIVE MAINTENANCE AND 21 REPAIR TASK? 22 A NO. THERE WAS NO -- IN ANY OF THESE STUDIES, 23 NONE OF THEM HAD ANY SORT OF QUALITATIVE OR QUANTITATIVE 24 ASSESSMENT OF WHAT THESE PEOPLE TO THE EXTENT THAT THEY 25 WERE EVEN DOING BRAKE WORK BECAUSE A LOT OF THEM WERE 26 LABELED AS GARAGE WORKERS OR OTHER THINGS. BUT THERE 27 WAS NO EXPOSURE OR EXPOSURE RESPONSE DATA. 28 Q ARE THERE STUDIES AND DID YOU SHOW A HALF	Page 161 1 BLOWING OUT BRAKES? 2 A 20-PLUS YEARS. 3 Q IN TERMS OF ONE OF THE FEW STUDIES THAT EVEN 4 ASK THE QUESTION DID YOU EVER DO BRAKE SERVICE, DID MOST 5 OF THEM NEVER TOUCH A BRAKE? 6 A YES. 7 Q IN ALL OF THE STUDIES THAT ARE IN THIS 8 META-ANALYSIS, DO A SINGLE ONE OF THEM CONFIRM EVEN ONCE 9 THAT THE GROUP, WHETHER IT'S A GARAGE WORKER OR A 10 MECHANIC, WHATEVER THEY DEFINE, EVEN ONCE USE COMPRESSED 11 AIR? 12 A I'M SORRY. IF YOU COULD SPEAK INTO THE MIKE. 13 Q IN ALL OF THE STUDIES THAT ARE IN THE 14 META-ANALYSIS BY THE EXPONENT FOLKS, DO THEY EVER SAY IN 15 THE STUDY, YES, THESE WORKERS WERE GRINDING BRAKES? 16 A NO, THEY DO NOT. 17 Q DO THEY MENTION THE TERM "COMPRESSED AIR"? 18 A NO, THEY DO NOT. 19 Q DO YOU KNOW IF THEY EVER SANDED A BRAKE? 20 A WE DO NOT. 21 Q DO YOU KNOW IF THEY WERE DOING ALL OF THE 22 PROTECTIVE MEASURES THAT WERE BEING DISCUSSED IN THAT 23 VIDEO CALLED DON'T BLOW IT? 24 A NO. WE DON'T HAVE ANY INFORMATION. 25 Q DO YOU AGREE WITH THE EPA AND OTHERS THAT, 26 WITHOUT THAT BASIC INFORMATION, MAKING A JUDGMENT CALL 27 FOR AN ACTUAL PATIENT IS NOT POSSIBLE? 28 A YES.

Page 162 1 Q DO YOU AGREE WITH THE IDEA THAT STUDIES BASED 2 SOLELY ON BROAD OCCUPATIONAL GROUPS HAVE MORE LIMITED 3 SENSITIVITY TO DETERMINE RISK ARISING FROM WORK WITH 4 BRAKE PARTS OR OTHER COMPONENTS CONTAINING ASBESTOS AS 5 MANY WORKERS WILL NOT HAVE DONE SUCH WORK? 6 A YES. 7 Q IS THAT WHAT YOU WERE TALKING ABOUT WITH THE 8 BICYCLE MECHANIC? 9 A YES. OR TITLED GARAGE WORKER, FOR EXAMPLE. 10 Q IN TERMS OF ANOTHER LIMITATION, YOU HAD 11 MENTIONED THAT YOU NEED TO MAKE SURE YOU HAVE AN ACTUAL 12 GROUP THAT WAS EXPOSED AND THEN A GOOD COHORT. I WANT 13 TO MAKE SURE I UNDERSTAND THAT. 14 A A GOOD CONTROL. 15 Q DID I SAY SOMETHING DIFFERENT? 16 A YES, YOU DID. 17 Q THANK YOU FOR CORRECTING ME. 18 YOU WERE KIND OF GESTURING WITH YOUR HANDS 19 COMPARING TWO GROUPS. IS THE GOAL TO FIND AN EXPOSED 20 GROUP AND COMPARE THEM TO ANOTHER? 21 A YES. A CONTROL. 22 Q IS THERE A NAME FOR THE SECOND GROUP IN 23 EPIDEMIOLOGICAL PARLANCE? 24 A YES. THE CONTROL. 25 Q OKAY. IF I, INSTEAD OF GETTING DATA ABOUT 26 PEOPLE WORKING ON BRAKES AND HOW THEY DO USE TERMS LIKE 27 A MECHANIC OR EVEN AN AUTO MECHANIC WHERE YOU MIGHT HAVE 28 A BODY SHOP WORKER OR A GARAGE WORKER, IS THE CONCERN Page 163 1 THAT YOU MIGHT HAVE PEOPLE THAT WERE NEVER EXPOSED 2 DUMPED INTO THIS CATEGORY? 3 A YES. 4 Q SO IF I PUT A LINE OF WHAT THE TRUE RISK IS, 5 IF I ACCIDENTALLY PUT IN A BUNCH OF PEOPLE THAT AREN'T 6 EXPOSED, WHAT DOES THAT DO TO THAT LINE? 7 A IT DECREASES IT. 8 Q AND IF THE CONTROL GROUP'S REAL RISK IS REALLY 9 LOW, BECAUSE YOU DON'T SEE MESOTHELIOMA WITHOUT 10 ASBESTOS, BUT I'M PUTTING IN A BUNCH OF PEOPLE THAT HAVE 11 BEEN EXPOSED TO ASBESTOS, WHAT IS THAT GOING TO DO TO 12 THE LINE? 13 A IT'S GOING TO INCREASE IT. 14 Q AND IS ONE OF THE CONCERNS ABOUT THE STUDIES 15 IN THE GOODMAN AND GARABRANT META-ANALYSIS, IS THEY PUT 16 A BUNCH OF PEOPLE THAT WERE EXPOSED TO ASBESTOS IN THE 17 CONTROL GROUP? 18 A YES. 19 Q TELL ME ABOUT THAT. 20 A SO SOME OF THE STUDIES THAT THEY DID HAD 21 PEOPLE IN OTHER INDUSTRIES, FOR EXAMPLE. THEY HAD 22 PEOPLE THAT HAD DISEASES THAT COULD BE ASSOCIATED, LIKE 23 LUNG CANCER. SO THERE WAS INDICATIONS THAT THE CONTROLS 24 WERE NOT GOOD CONTROLS. 25 AND THEN, I GUESS, THE OTHER DIRECTION IS 26 THAT -- WE'VE ALREADY TALKED ABOUT THAT THERE WERE 27 PEOPLE THAT HAD THIS BROAD CATEGORIES BUT DON'T REALLY 28 SAY, HOW MANY OF YOU WERE DOING BRAKE WORK AND, YOU	Page 164 1 KNOW, OR ANY INFORMATION AS FAR AS EXPOSURES TO BRAKE 2 WORK. SO IT DECREASES THE EXPOSED GROUP. 3 Q YOU'VE MENTIONED BEFORE THAT THE BACKGROUND 4 RATE OF HOW MANY MESOTHELIOMAS YOU WOULD SEE JUST IN THE 5 GENERAL POPULATION IS LIKELY LESS THAN ONE OR TWO PER 6 MILLION? 7 A YES. 8 Q IN ONE OF THEIR STUDIES, HOW MANY PEOPLE DID 9 THEY HAVE IN THEIR CONTROL GROUP PER MILLION? 10 A 900. 11 Q IF YOU ELEVATE THE AMOUNT OF EXPOSURE IN THE 12 CONTROLLED GROUP SO MUCH THAT YOU'RE SEEING MORE DEATH 13 AND DISEASE IN THE CONTROL GROUP THAN IN THE EXPOSED 14 GROUP, IS THERE A NAME FOR THAT? 15 A YEAH. PROTECTION. 16 Q IS THAT THE IDEA THAT WORKING WITH ASBESTOS 17 SOMEHOW PROTECTS YOU FROM GETTING CANCER? 18 A RIGHT. WHICH IS NONSENSICAL. 19 Q THE META-ANALYSIS DONE BY THE EXPONENT FOLKS, 20 DO THEY SHOW THAT BRAKE WORK IS PROTECTED? 21 A YES. 22 Q IS PART OF WHAT WAS DONE BY THE ENVIRONMENTAL 23 PROTECTION AGENCY IN EXAMINING THIS GARABRANT 24 META-ANALYSIS SPECIFICALLY LOOKING AT EVERY STUDY, STUDY 25 BY STUDY, TO DISCUSS ITS LIMITATIONS? 26 A YES. 27 Q I WANT TO TALK TO YOU ABOUT THE ONE STUDY THAT 28 MR. WILLIAMS FOR FORD REMEMBERED, THE MCDONALD AND Page 165 1 MCDONALD STUDY. ARE YOU FAMILIAR WITH IT? 2 A I AM. 3 Q OKAY. FIRST OF ALL, DID THEY DO A SECOND 4 STUDY? 5 A YES. 6 Q TELL ME ABOUT THAT. 7 A THEY DID -- WELL, THEY DID A FIRST STUDY, 8 WHICH WAS EARLIER IN 1970, WHERE THEY LOOKED AT 9 SPECIFICALLY BRAKE WORKERS, BRAKE INSTALLERS, AND FOUND 10 AN INCREASED RISK OF MALIGNANT MESOTHELIOMA. 11 Q IS THAT ONE INCLUDED IN THE META-ANALYSIS? 12 A NO. 13 Q AND THE SECOND STUDY WHERE, INSTEAD OF LOOKING 14 AT BRAKE LINING WORKERS, THEY LOOKED AT GARAGE WORKERS? 15 A CORRECT. 16 Q THEY DIDN'T FIND AN INCREASED RISK; RIGHT? 17 A CORRECT. 18 Q IS ONE OF THE CRITICISMS IS WHO THE CONTROLLED 19 GROUP WAS? 20 A YES. 21 Q TELL ME ABOUT THAT. 22 A SO, AGAIN, THE CONTROL GROUP HAD POTENTIAL FOR 23 OTHER OCCUPATIONAL EXPOSURES, SO IT WAS NOT AN UNEXPOSED 24 GROUP. 25 Q WAS THERE AN EFFORT TO ACTUALLY LOOK AT THE 26 DATA IN MCDONALD AND MCDONALD AND COMPARE IT TO A REAL 27 CONTROL GROUP, A GROUP THAT DOESN'T HAVE EXPOSURE TO 28 ASBESTOS, TO SEE IF THERE'S A SIGNIFICANT INCREASE IN

Page 166 1 DISEASE AND DEATH RATE FROM MESOTHELIOMA? 2 A YES. 3 Q WHEN YOU ACTUALLY USE A PROPER CONTROL GROUP, 4 IS THERE AN INCREASED RISK? 5 A YES. 6 Q IS THAT SOMETHING THAT THE ENVIRONMENTAL 7 PROTECTION AGENCY DOCUMENTED? 8 A YES. 9 Q I WANT TO TALK ABOUT ONE OF THE STUDIES THAT 10 CAME OUT AFTER THE META-ANALYSIS. ARE YOU FAMILIAR WITH 11 THIS STUDY OF 138,000-PLUS WORKERS IN RISK OF 12 ASBESTOSIS, MESOTHELIOMA, AND OTHER LUNG DISEASE OR 13 DEATH AMONG MOTOR VEHICLE MECHANICS, A 45-YEAR DANISH 14 COHORT STUDY? 15 A YES. 16 Q OKAY. IS THIS ONE OF THE FEW THAT ACTUALLY 17 HAS A DECENT FOLLOW-UP? 18 A YES. 19 Q FIRST OF ALL, WHAT HAPPENED IN DENMARK IN 20 1986? 21 A THEY BANNED ASBESTOS. 22 Q SECOND, WHAT DID THEY FIND ABOUT ASBESTOSIS IN 23 THIS STUDY? 24 A THEY FOUND AN INCREASED RISK. 25 Q WHY IS THAT IMPORTANT? 26 A BECAUSE ASBESTOSIS IS ONLY CAUSED BY ASBESTOS 27 AND IT IS CAUSED -- IT RESULTS FROM HIGHER EXPOSURES TO 28 ASBESTOS -- FAR HIGHER EXPOSURES TO ASBESTOS THAN HAVE Page 167 1 BEEN SHOWN TO INCREASE YOUR RISK FOR MESOTHELIOMA. 2 Q IN THE GROUP THAT WERE MECHANICS, DID THEY 3 FIND DOZENS AND DOZENS AND DOZENS OF PEOPLE DYING OF 4 MESOTHELIOMA, 47 TO BE SPECIFIC? 5 A RIGHT. 6 Q IS THIS WHERE THEY COMPARED IT TO A GROUP, A 7 CONTROL GROUP, WITH INCREDIBLE NUMBER OF MESOTHELIOMAS? 8 A YES. THE CONTROL GROUP HAD, IF YOU CALCULATE 9 IT OUT, 900 MESOTHELIOMAS PER MILLION. 10 Q I WANT TO JUST MAKE SURE WE HAVE A LIST OF 11 STUDIES THAT YOU FIND RELIABLE AND AUTHORITATIVE THAT 12 HAVE SHOWN AN INCREASED RISK IN MECHANICS THAT AREN'T 13 CONSIDERED IN THE GARABRANT META-ANALYSIS. 14 ARE YOU PREPARED TO TALK ABOUT THAT? 15 A YES. 16 Q I WANT TO BE CLEAR. ROHL SHOWED AN INCREASE 17 RISK? 18 A YES. 19 Q THAT IS A META-ANALYSIS? 20 A IT WAS. THE SECOND -- YES. 21 Q THE SECOND ONE? 22 A YES. 23 Q IS THERE ALSO A STUDY IN GENOA, ITALY, THAT 24 YOU FIND RELIABLE? 25 A YES. 26 Q DID IT FIND AN INCREASED RISK? 27 A YES. 28 Q ARE YOU FAMILIAR WITH THE AUSTRALIAN MESO	Page 168 1 REGISTRY? 2 A YES. 3 Q DID THEY STUDY AUTOMOBILE MECHANICS? 4 A YES. 5 Q WAS THERE AN INCREASED RISK? 6 A YES. 7 Q ARE YOU FAMILIAR WITH THIS STUDY A DECADE OF 8 MALIGNANT MESOTHELIOMA SURVEILLANCE IN KOREA? 9 A YES. 10 Q DID THEY FIND AN INCREASED RISK IN BRAKE 11 WORKERS? 12 A YES. 13 Q ARE YOU FAMILIAR WITH THE DEBONO STUDY, 14 INCIDENCE OF MESOTHELIOMA IN ASBESTOS BY OCCUPATION IN A 15 DIVERSE WORKFORCE? 16 A YES. IN FACT, THAT WAS JUST PUBLISHED LAST 17 YEAR. AND THEY ALSO FOUND AN INCREASED RISK. 18 Q ARE YOU ALSO FAMILIAR WITH PUBLISHED 19 PEER-REVIEWED STUDIES AND BOOKS FROM SCIENTISTS 20 INDICATING THEY DISAGREE WITH THE WORK OF GARABRANT AND 21 EXPONENT? 22 A YES. 23 MR. LANKFORD: YOUR HONOR, I OBJECT TO THE NEXT 24 SLIDE AS HEARSAY. LETTERS TO THE EDITOR. FOUNDATION. 25 352. 26 THE COURT: YOU OBJECT TO TABLE 2? 27 MR. LANKFORD: NO, I DON'T OBJECT TO TABLE 2. BUT 28 I OBJECT ALL THE WAY GOING TO FREEDMAN. AND THERE'S Page 169 1 ALSO THE MICHAELS THERE, WHICH IS SUBJECT TO THE COURT'S 2 RULING, SPECIFICALLY INCLUDING THAT, THE STANDING 3 RULING. 4 MS. DEAN: THERE'S NO RULING ON THE DAVID MICHAELS' 5 ARTICLE. 6 THE COURT: GIVE ME A MINUTE. 7 MR. LANKFORD: I'M FINE WITH THE DATA. IT'S ALL 8 THE ONES WITH THE TEXT AND THEIR EDITORIALS AND LETTERS 9 AND -- 10 THE COURT: I UNDERSTAND. 11 IS THERE MORE FOUNDATION YOU WANT TO LAY ON 12 THIS BEFORE SHOWING -- 13 MS. DEAN: YES. 14 THE COURT: -- WHAT YOU'RE DOING HERE? LET ME FIND 15 OUT WHAT IT IS. GO AHEAD AND ESTABLISH MORE FOUNDATION, 16 IF YOU CAN. 17 Q BY MS. DEAN: ARE YOU FAMILIAR WITH THE 18 PEER-REVIEWED PUBLISHED LETTER TO THE EDITOR FROM KAY 19 TESCHKE CRITICIZING THE GARABRANT META-ANALYSIS? 20 A I AM. 21 Q IS IT CALLED THINKING ABOUT 22 OCCUPATION-RESPONSE AND EXPOSURE-RESPONSE RELATIONSHIPS: 23 VEHICLE MECHANICS, CHRYSOTILE, AND MESOTHELIOMA? 24 A IT IS. 25 Q OKAY. 26 THE COURT: HOLD ON BEFORE YOU SHOW IT. IS THAT 27 THE FOUNDATION OR ARE YOU GOING TO GO TO THE TABLE? 28 MS. DEAN: I'M GOING TO GO TO THE TABLE.

Page 170 1 THE COURT: OKAY. GO AHEAD. 2 Q BY MS. DEAN: IN TERMS OF UNDERSTANDING WHO 3 KAY TESCHKE IS, I'M BACK IN THE GARABRANT PAPER, THE 4 META-ANALYSIS FROM THE EXPONENT PEOPLE. THEY TIERED 5 THEIR STUDIES; RIGHT? 6 A YES. 7 Q IN 2004 WHEN THEY LOOKED AT THE WORLD'S 8 LITERATURE ON THE ISSUE AND THEY GRADED IT, WHO GOT THE 9 BEST GRADE? 10 A KAY TESCHKE. 11 Q THE ACTUAL PEOPLE DOING THE WORK, HAVE THEY 12 COME OUT AND PUBLISHED IN A PEER-REVIEWED CONTEXT THAT 13 SAY WHAT YOU'RE SAYING ABOUT MY PAPER IS NOT SUPPORTED 14 BY SCIENCE? 15 A YES. 16 MR. LANKFORD: OBJECTION, YOUR HONOR. HEARSAY. 17 THE COURT: SUSTAINED. 18 ANSWER STRICKEN. 19 Q BY MS. DEAN: WHAT HAVE YOU SEEN IN THE 20 PEER-REVIEWED PUBLISHED LITERATURE FROM THE ACTUAL 21 AUTHORS OF THE STUDIES ABOUT THE LIMITS OF THE EXPONENT 22 META-ANALYSIS? 23 MR. LANKFORD: SAME OBJECTION, YOUR HONOR. 352. 24 HEARSAY. HE WANTS TO TALK ABOUT DATA POINTS. 25 THE COURT: ABOUT THE LIMITS; THAT'S THE QUESTION? 26 MS. DEAN: YES. 27 THE COURT: SUSTAINED. 28 Q BY MS. DEAN: DO YOU RELY ON THIS PAPER BY KAY	Page 172 1 A THEY DO. 2 Q ARE YOU FAMILIAR IN EPIDEMIOLOGY: OPEN ACCESS 3 OF THE KANAREK AND ANDERSON PAPER MESOTHELIOMA FROM 4 ASBESTOS EXPOSURE IN BRAKE MECHANICS: EPIDEMIOLOGY IN 5 CONTEXT? 6 A YES. 7 Q DO THEY SHARE THE SAME VIEWS THAT YOU TOLD US 8 ABOUT AND THAT ARE OUTLINED IN THE EPA? 9 A YES. 10 Q ARE YOU FAMILIAR BY THE WORK OF DR. MICHAELS 11 IN HOW LITIGATION SHAPES THE SCIENTIFIC LITERATURE: 12 ASBESTOS & DISEASE AMONG AUTOMOBILE MECHANICS? 13 A I AM. 14 Q DO YOU RELY ON HIS WORK? 15 A YES. 16 Q AND IN ADDITION TO HIS PEER-REVIEWED PUBLISHED 17 ARTICLE, DO YOU ALSO REVIEW AND RELY ON HIS TEXTBOOK? 18 A YES. 19 MR. LANKFORD: YOUR HONOR, I'LL OBJECT. THIS IS 20 THE SECOND TIME SHE'S ABOUT TO VIOLATE YOUR ORDER. 21 THE COURT: WELL, I'M SURE COUNSEL IS AWARE OF MY 22 ORDERS. OVERRULED. 23 Q BY MS. DEAN: DO YOU RELY ON HIS TEXTBOOK? 24 A YES. 25 Q DO YOU AGREE WITH HIS CONCERNS AND CRITICISMS 26 OF EXPONENT? 27 A YES. 28 Q WHO IS DAVID MICHAELS?
Page 171 1 TESCHKE? 2 A YES. 3 Q TELL ME WHAT CONCERNS YOU HAVE ABOUT THE 4 META-ANALYSIS AND WHY YOU RELY ON THIS PAPER. 5 A WELL, JUST AS WITH -- WE TALKED ABOUT EARLIER 6 WITH THE EPA, THAT THE TITLE "MOTOR VEHICLE MECHANIC" OR 7 "GARAGE WORKER" OR EVEN "BRAKE REPAIR WORKER" IS NOT A 8 GOOD SURROGATE FOR CHRYSOTILE EXPOSURE. THE ISSUE IS 9 THE EXPOSURE. THAT'S WHAT WE KNOW CAUSES THE DISEASE. 10 AND SO USING THESE TERMS -- ESPECIALLY A LOT 11 OF THESE STUDIES DON'T LOOK AT HOW MUCH BRAKE WORK WAS 12 ACTUALLY BEING DONE. AND EVEN IN THE BRAKE WORKERS, 13 SOME OF THE STUDIES THAT DID, INDICATED AS MUCH AS A 14 THIRD OF THEM -- OF BRAKE WORKERS WEREN'T DOING BRAKE 15 WORK. AND WE KNOW THAT ALL ASBESTOS FIBER TYPES CAUSE 16 MESOTHELIOMA, AND THAT INCLUDES CHRYSOTILE ASBESTOS. 17 Q ARE YOU FAMILIAR WITH THE PAPER IN THE ANNALS 18 OF OCCUPATIONAL HYGIENE WHERE ARE THE RISK -- WHEN ARE 19 RISK ANALYSIS ON JOB TITLE INFORMATIVE? LET ME TRY THAT 20 AGAIN. WHEN ARE RISK ANALYSIS ON JOB TITLES 21 INFORMATIVE? 22 A YES. 23 Q DO YOU RELY ON THAT? 24 A YES. 25 Q DO YOU FIND IT AUTHORITATIVE? 26 A I DO. 27 Q DO THEY ALSO CRITICIZE THE SAME STUDY YOU'VE 28 BEEN TALKING ABOUT?	Page 173 1 THE COURT: WHO? 2 Q BY MS. DEAN: WHO IS DAVID MICHAELS JUST IN 3 TERMS OF HIS SCIENTIFIC BACKGROUND? 4 A HE'S AN EPIDEMIOLOGIST AND USED TO WORK AT 5 OSHA. 6 Q ARE YOU AWARE OF HIS INVOLVEMENT AS A FORMER 7 HEAD OF OSHA? 8 A YES. THAT'S WHAT I SAID. 9 Q IN TERMS OF JUST DESCRIBING FOR THE JURY YOUR 10 OPINIONS THAT ARE SHARED BY DAVID MICHAELS RELATING TO 11 EXPONENT, CAN YOU TELL US ABOUT THAT? 12 MR. LANKFORD: CALLS FOR HEARSAY, YOUR HONOR. 13 THE COURT: AS PHRASED, IT DOES. SUSTAINED. 14 Q BY MS. DEAN: CAN YOU TELL ME YOUR CONCERNS 15 BASED ON WHAT YOU HAVE REVIEWED AND RELIED ON RELATING 16 TO EXPONENT AND CHEMRISK? 17 MR. LANKFORD: YOUR HONOR, FOUNDATION. 352. 18 THE COURT: IS THE QUESTION AS RELATED TO THE 19 PUBLISHED WORK THAT YOU'VE BEEN DESCRIBING WITH THE 20 WITNESS OR MORE GENERALLY? 21 MS. DEAN: IT'S SPECIFICALLY RELATED TO THE 22 PUBLISHED WORK THAT HE'S REVIEWED AND IDENTIFIED AS 23 RELIABLE AND AUTHORITATIVE. THERE'S TWO MORE I HAVEN'T 24 YET IDENTIFIED. 25 THE COURT: FOR THIS CASE; RIGHT? 26 MS. DEAN: YES. 27 THE COURT: OVERRULED. 28 YOU CAN ANSWER THAT QUESTION. DO YOU

Page 174 1 UNDERSTAND THE LIMITATION? 2 THE WITNESS: I THINK SO, YOUR HONOR. 3 THE COURT: WE'RE NOT ASKING YOUR GENERAL OPINION 4 OF THOSE ENTITIES BUT ABOUT THE SCIENTIFIC WORK THAT 5 YOU'VE TOLD THIS JURY ABOUT IN THIS CASE. YOU 6 UNDERSTAND? 7 THE WITNESS: YES. 8 MR. LANKFORD: YOUR HONOR, I ALSO OBJECT ON THE 9 BASIS OF HEARSAY. IT'S NOT SCIENTIFIC DATA. 10 THE COURT: OVERRULED. 11 DO YOU UNDERSTAND WHAT YOU'RE DOING? 12 THE WITNESS: I'M SORRY. 13 THE COURT: LET'S HEAR THE QUESTION, PLEASE. 14 Q BY MS. DEAN: I WANT YOU TO SHARE YOUR 15 CONCERNS AS IT RELATES TO THE SCIENTIFIC WORK DONE BY 16 EXPONENT AND CHEMRISK BASED ON THE ARTICLES AND 17 TEXTBOOKS YOU HAVE REVIEWED AND RELIED ON. 18 THE COURT: AND I'M SORRY. ONE LAST. 19 WE WANT YOUR CONCERNS, NOT ANYBODY ELSE'S. 20 YOURS. UNDERSTOOD? 21 THE WITNESS: YES. 22 THE COURT: OKAY. GO AHEAD. 23 THE WITNESS: YES, SIR. 24 SO MY CONCERN IS THAT THESE PAPERS ARE COMING 25 OUT WITH POSITIONS THAT ARE RAISING DOUBT AS TO DISEASE 26 CAUSED BY VARIOUS SUBSTANCES OR CAUSES INCLUDING 27 ASBESTOS-RELATED DISEASE. 28 Q BY MS. DEAN: IS RAISING DOUBT WHERE DOUBT IS	Page 176 1 WHAT THE ANSWER WOULD HAVE BEEN OR I WONDER WHY THAT 2 LAWYER OBJECTED OR I WONDER WHY JUDGE RIFF DID WHAT HE 3 DID. JUST LEAVE THAT FOR US. YOU CONCENTRATE ON YOUR 4 JOB OF WHICH IT'S A BIG ENOUGH JOB AS IT IS. 5 OKAY. AGAIN, WEEKENDS ALWAYS WORRY US A 6 LITTLE BIT BECAUSE PEOPLE LET THEIR GUARD DOWN. BUT I 7 KNOW I CAN COUNT ON YOU. DO NOT FORM OR EXPRESS ANY 8 OPINIONS. DO NOT DISCUSS THIS CASE. DO NOT DO ANY 9 RESEARCH. PLEASE BE HERE ON TIME MONDAY MORNING. IT 10 REALLY IS MY GOAL TO GET YOU IN HERE AS SOON AS I CAN AT 11 8:30 EVEN THOUGH TODAY THAT WAS TEN AFTER 9:00. 12 THANK YOU SO MUCH. YOU ARE FREE TO GO. 13 COUNSEL STAY, PLEASE. 14 15 (THE FOLLOWING PROCEEDINGS WERE HELD 16 OUTSIDE THE PRESENCE OF THE JURY.) 17 18 THE COURT: OKAY. WE'RE OUTSIDE THE PRESENCE. 19 I ACKNOWLEDGE THE PROBLEM OF TRYING TO GET THE 20 JURY ON -- INTO THE BOX AT 8:30 AND OUT OF HERE AT 1:30 21 WITH TWO SHORT BREAKS AND THEN HAVING TO GIVE OUR STAFF 22 90 MINUTES. AND THEN I HAVE TO DO ALL OF THE WORK THAT 23 THIS DEPARTMENT NORMALLY IS ASSIGNED BETWEEN 3:00 AND 24 4:15 EVERY DAY. YOU DON'T SEE THIS. BUT AT 3:00 25 O'CLOCK WE REENGAGE, AND I HAVE FIVE OR SIX HEARINGS ON 26 COMPLEX MATTERS. AND I KNOW THAT DOESN'T GIVE US A LOT 27 OF TIME FOR OUR TALKING. 28 I'VE BEEN WILLING TO IMPOSE ON STAFF A LITTLE
Page 175 1 VALID A CONCERN FOR YOU AT ALL? 2 A NO. 3 Q IS THERE A CONCERN ABOUT DOUBT BEING RAISED 4 WHEN THERE IS NO DOUBT? 5 A RIGHT. DISEASES THAT EVERYTHING IS -- WE KIND 6 OF ESTABLISHED THE CAUSE. AND IF YOU'RE PERFORMING 7 STUDIES TO -- THAT ARE IN THE -- INHERENT IN THE WAY THE 8 STUDY IS BEING PERFORMED SHOWING, WELL, NO THIS DOESN'T 9 HAVE RISK, THAT I HAVE A PROBLEM WITH. 10 Q FOR THESE TWO -- 11 MR. LANKFORD: YOUR HONOR, I'D ALSO OBJECT TO THE 12 REMAINING SLIDES UP TO THE ONE THAT SAYS "MAIN 13 OPINION" -- 14 THE COURT: WE'RE GOING TO BE BREAKING IN ONE 15 MINUTE. MAYBE WE SHOULD DO IT NOW. 16 MS. DEAN: I CAN GO PAST THEM. 17 THE COURT: I WANT TO STOP AT 1:20. THERE IS A 18 REASON FOR THAT. 19 OKAY. LADIES AND GENTLEMEN. COUPLE THINGS. 20 DON'T COME HERE TOMORROW. OKAY. PLEASE. YOU CAN COME, 21 BUT THE DOOR WILL PROBABLY BE LOCKED. THAT'S NUMBER 22 ONE. 23 NUMBER TWO, REMEMBER I TOLD YOU, PLEASE DON'T 24 CONCERN YOURSELF WITH THE OBJECTIONS AND THE COURT'S 25 RULINGS. AS YOU'RE NOW GETTING MAYBE SOME FLAVOR FOR, 26 THESE ARE REASONABLY TECHNICAL QUESTIONS OF LAW THAT I 27 NEED TO SORT OUT. JUST GO WITH MY RULINGS AND DON'T -- 28 PLEASE DON'T ENGAGE IN YOUR MIND AS TO, GEE, I WONDER	Page 177 1 BIT AFTER 1:30, BUT I REALLY CAN'T DO THAT TOO MUCH. AT 2 SOME POINT I JUST HAVE TO SAY UNCLE. 3 SO WITH RESPECT TO THE DISCUSSION, MR. ADAMS, 4 YOU AND I WERE HAVING CONCERNING THE MEETS AND BOUNDS OF 5 JUDICIAL NOTICE, I'LL LISTEN BRIEFLY TO WHAT YOU HAVE TO 6 SAY, BUT I DO WONDER SOMETIMES WHY PEOPLE WANT THE COURT 7 TO TAKE JUDICIAL NOTICE OF INVESTIGATIVE REPORTS OF 8 AGENCIES SINCE ALL THAT IS BEING NOTICED IS THEIR 9 EXISTENCE AND NOT THE TRUTH OF THE CONTENTS. 10 WITH RESPECT TO EVIDENCE CODE SECTION 454, 11 WHICH I THINK YOU WERE DIRECTING ME TO, THAT RELATES TO 12 MATERIAL THAT THE COURT CAN CONSIDER WHETHER TO TAKE 13 JUDICIAL NOTICE, NOT THE JUDICIALLY NOTICED MATERIAL 14 ITSELF. 15 SO WHAT WOULD YOU LIKE TO SAY, IF ANYTHING? 16 MR. ADAMS: WELL, I WOULD LIKE TO SAY THAT I WILL 17 TAKE A LOOK AT THE CASES. I WAS TRYING TO READ THEM 18 WHILE EVERYTHING WAS GOING ON. IT WAS JUST TOO 19 DISTRACTING. BUT I DO ACTUALLY AGREE THAT THE COURT DID 20 NOT TAKE JUDICIAL NOTICE THAT WHAT IS IN THE FINAL 21 CONCLUSIVE EVALUATION OF THE DEFENDANTS' ENTIRE 22 CAUSATION DEFENSE AND EVERY ARTICLE IN IT AND SAID IT'S 23 FALSE, THE COURT DID NOT TAKE JUDICIAL NOTICE OF THAT. 24 WHAT THE COURT TOOK JUDICIAL NOTICE OF WAS THE 25 EXISTENCE OF THE OFFICIAL ACT. AND THE ONLY PURPOSE OF 26 TAKING JUDICIAL NOTICE IN A CASE IS TO IMPORT FACTS TO A 27 JURY. AND SO WE MOVE FOR JUDICIAL NOTICE ON CERTAIN 28 GOVERNMENT REGULATIONS AND OFFICIAL ACTS, WHICH WERE ALL

Page 178 1 GRANTED. AND I THINK THE COURT'S COMMENT WAS, IT'S SO 2 OBVIOUS. I DIDN'T REALLY EVEN NEED AN OPPOSITION. 3 AND THEN YOU DID GET AN OPPOSITION, AND IT WAS 4 SORT OF A MOTION FOR RECONSIDERATION. AND THE COURT, 5 AGAIN, AFFIRMED ITS ORIGINAL POSITION, THAT IT HAD TAKEN 6 JUDICIAL NOTICE OF THESE DOCUMENTS. 7 THE COURT: YEAH. AND CAN I STOP YOU JUST TO SAY, 8 SO, FOR EXAMPLE, A REGULATION THAT ESTABLISHES A 9 STANDARD OF CARE, I'M WELL AWARE, I CAN TAKE JUDICIAL 10 NOTICE OF THAT AND INCLUDE IT IN THE JURY INSTRUCTION, 11 AND THAT IS A GOOD REASON TO TAKE JUDICIAL NOTICE OF 12 SOMETHING. 13 BUT TAKING JUDICIAL NOTICE OF, FOR EXAMPLE, IN 14 THE MANGINI CASE THAT THE GOVERNMENT CONDUCTED THIS 15 MAJOR INVESTIGATION OF HEALTH RISKS OF CIGARETTE 16 SMOKING, WE CAN TAKE JUDICIAL NOTICE OF THAT, BUT THE 17 FACT THAT THAT REPORT SAYS CIGARETTES CAUSE CANCER WE 18 CAN'T TAKE JUDICIAL NOTICE OF THAT. 19 MR. ADAMS: AND THAT'S NOT WHAT WE'RE ASKING FOR. 20 WE DIDN'T ASK FOR THE COURT TO TELL THE JURY THE FACTS 21 IN THE EPA'S DECEMBER 2021 EVALUATION OF ALL OF THE 22 EPIDEMIOLOGY STUDIES EXCEPT FOR A COUPLE NEW ONES THAT 23 THE JURY WAS TOLD ABOUT IN OPENING STATEMENT AS THE 24 CENTERPIECE OF THEIR DEFENSE. WE DIDN'T ASK THE COURT 25 TO TELL THE JURY THAT THE EPA SAID THAT'S ALL WRONG, 26 WHICH IS WHAT THE EPA SAID. I MEAN, IT'S A DONE DEAL. 27 AND SO THAT -- IT COULDN'T BE ON A MORE CRITICAL ISSUE. 28 WE COULDN'T HAVE BEEN MORE -- SO HERE'S MY POINT.	Page 180 1 FINDING FROM THE EPA THAT I RELIED ON, I CONSIDERED THAT 2 WAS AT MY DEPOSITION, THAT THERE WAS NO MOTION IN LIMINE 3 ON, THAT WAS JUDICIALLY NOTICED TWICE BY THIS COURT, AND 4 SOME KIND OF FACTS ABOUT THAT WOULD HAVE BEEN CONVEYED 5 TO THE JURY. 6 NOW, ON CROSS, THEY WILL BE A HUNDRED PERCENT 7 FOR SURE, GUARANTEED, CONVEYED TO THE JURY BECAUSE IT'S 8 A DIFFERENT STANDARD, AND THEY'RE GOING TO CROSS 9 STRAIGHT ON EPIDEMIOLOGISTS. YOU'RE NOT AN 10 EPIDEMIOLOGIST. YOU'VE NEVER DONE AN EPIDEMIOLOGY 11 STUDY. YOU DON'T KNOW ANYTHING ABOUT EPIDEMIOLOGY. AND 12 HERE'S A BUNCH OF STUDIES THAT SAY THE OPPOSITE OF YOU. 13 SO IT'S GOING TO COME OUT, YOUR HONOR. FOR 14 SURE IT'S GOING TO COME OUT. 15 MS. DEAN: EXCEPT THERE'S NO CROSS. THERE'S NO 16 TIME. YOU PLAN ON SOMETHING. YOU SHOW IT. YOU GET A 17 RULING. YOU HAVE IT SET UP. AND INSTEAD, YOU HAVE TO 18 LISTEN TO OBJECTIONS TO DOCUMENTS, SUCK TIME. 19 THE COURT: OKAY. LET ME ASK YOU SOMETHING. 20 MS. DEAN: AND NOW IT'S NOT DECIDED ON MERITS. 21 IT'S DECIDED ON GAMESMANSHIP. 22 THE COURT: LET'S SAY RATHER THAN TAKING JUDICIAL 23 NOTICE OF THAT DOCUMENT IT HAD ACTUALLY BEEN -- WELL, 24 THAT WON'T WORK. LET ME THINK. 25 I AM OF THE VIEW THAT THE RULES OF HEARSAY 26 CONTINUE TO APPLY TO JUDICIALLY NOTICED DOCUMENTS. IN 27 MY VIEW THE PURPOSE OF JUDICIAL NOTICE IS NOT TO PUT 28 FACTS IN FRONT OF THE JURY. IT IS TO ELIMINATE THE
Page 179 1 THE COURT: WELL, THAT CUTS BOTH WAYS. 2 MR. ADAMS: RIGHT. BUT THE ONLY PURPOSE FOR TAKING 3 JUDICIAL NOTICE OF ANYTHING EVER IS TO IMPORT FACTS TO 4 THE JURY. THERE IS NO OTHER PURPOSE. IT IS THE ONLY 5 PURPOSE. 6 NOW, WHAT THE DEGREE OF THOSE FACTS ARE 7 WHETHER, IT'S JUST THE TITLE, THE FACT THAT IT HAPPENED, 8 THE FACT THAT THE EPA DID SOMETHING, THERE'S NO PURPOSE 9 OTHER THAN TO IMPORT FACTS TO THE JURY IN TAKING 10 JUDICIAL NOTICE OF ANYTHING IN A TRIAL. I THINK WE ALL 11 AGREE ON THAT. 12 AND SO TO HAVE TAKEN JUDICIAL NOTICE, TO 13 DOUBLE-CHECK IT, TO HAVE A MOTION FOR RECONSIDERATION, 14 AND THEN TO STAND UP IN FRONT OF THE JURY AND JUST SHOW 15 THE COVER PAGE -- YOU KNOW, JUST SHOW THE DOCUMENT AND 16 THEN BE SHUT DOWN ABOUT WHAT THE DOCUMENT SAID, NOT HOW 17 OUR EXPERT WOULD BE ABLE TO TALK ABOUT IT, HAVE TO TAKE 18 EVERYTHING DOWN AFTER IT HAD BEEN TAKEN JUDICIAL NOTICE 19 AND TO HAVE NO FACTS ABOUT THE DOCUMENT OR THE ACT OR 20 THE EPA WHATSOEVER CONVEYED TO THE JURY, NONE, WE DON'T 21 THINK WAS CORRECT. WE THINK THAT WAS ERROR. AND IT'S 22 NOT A SMALL DEAL. IT'S THE CENTERPIECE OF THE DEFENSE. 23 THE COURT: SO WHAT WOULD HAVE HAPPENED HAD THERE 24 NOT BEEN AN OBJECTION OR I HAD OVERRULED IT? WHAT WOULD 25 MS. DEAN HAVE DONE, AND WHAT WOULD HAVE THE WITNESS HAVE 26 SAID? 27 MR. ADAMS: WELL, MS. DEAN -- HE WOULD HAVE SAID 28 SOMETHING ABOUT HOW MY OPINIONS ARE CONSISTENT WITH THIS	Page 181 1 EVIDENTIARY PROCEEDINGS RELATIVE TO INDISPUTABLE FACTS. 2 THAT VENICE BEACH IS IN LOS ANGELES COUNTY. THAT RATE 3 TIMES TIME EQUALS DISTANCE. THAT THE EPA CREATED A 4 DOCUMENT IN WHENEVER, 2002. THOSE ARE UNDISPUTABLE 5 FACTS. HAPPY TO TAKE JUDICIAL NOTICE OF THAT. 6 BUT THAT THE EPA CONCLUDES GARABRANT IS FULL 7 OF BALONEY, I CAN'T TAKE JUDICIAL NOTICE OF THAT. IT'S 8 HEARSAY. IT'S JUST AS IF THERE WAS A LETTER TO THE 9 EDITOR THAT DR. GARABRANT IS FULL OF BALONEY IN MY 10 OPINION. SHOW IT TO THE JURY. DO YOU AGREE WITH THAT, 11 DOCTOR? DR. HABER, YES, I DO. THAT'S HOW I HEARD THE 12 OBJECTION. 13 SO AT ANY RATE, I DON'T THINK WHAT I DID 14 RELATIVE TO TAKING JUDICIAL NOTICE UPON REQUEST OF THESE 15 GOVERNMENT DOCUMENTS THAT I EITHER HAVE TO OR MAY TAKE 16 JUDICIAL NOTICE OF IS INCONSISTENT WITH MY SUBSEQUENT 17 RULINGS AS TO THEIR USE. 18 MR. ADAMS: SO IF WE CAN'T SAY ANYTHING ABOUT THE 19 CONTENT, WHAT'S THE PURPOSE OF JUDICIAL NOTICE? I MEAN, 20 MAYBE IT'S A GRAY AREA. BUT JUDICIAL NOTICE IS THE 21 COURT'S RECOGNITION OF THE EXISTENCE OF A MATTER OF LAW 22 OR FACT WITHOUT THE NECESSITY OF FORMAL PROOF. 23 THE COURT: BECAUSE IT'S INDISPUTABLE. 24 MR. ADAMS: THIS IS INDISPUTABLE. 25 THE COURT: WHAT IS INDISPUTABLE? 26 MR. ADAMS: THAT THE EPA LOOKED AT EVERY SINGLE 27 STUDY AND CONCLUDED THEY LACKED -- 28 THE COURT: IT'S ALSO INDISPUTABLE THAT

Page 182 1 DR. MICHAELS THINKS THAT DOUBT IS THEIR PRODUCT. THAT'S 2 INDISPUTABLE. 3 MR. ADAMS: BUT THAT'S AN OFFICIAL GOVERNMENT 4 PUBLICATION. THIS IS. IT'S AN OFFICIAL GOVERNMENT 5 PUBLICATION THAT WAS TAKEN JUDICIAL NOTICE OF. NOW, 6 WE'RE NOT ASKING FOR THE COURT TO INSTRUCT THE JURY ON 7 THE TRUTH OF THIS, WHICH IS WHAT MANGINI SAYS. 8 THE COURT: I THINK YOUR POINT IS THAT RATHER THAN 9 TAKING JUDICIAL NOTICE OF IT, IT COULD HAVE COME IN 10 UNDER THE GOVERNMENT RECORD EXCEPTION OF THE HEARSAY 11 RULE. 12 MR. ADAMS: TRUE. IT'S SIMILAR. 13 THE COURT: BUT IT WASN'T OFFERED IN THAT WAY TO 14 ME, AND I DON'T KNOW HOW I WOULD HAVE RULED ON THAT. 15 MR. ADAMS: BUT THAT'S A WAY MORE DIFFICULT -- I 16 MEAN, THAT'S A DIFFERENT STANDARD. JUDICIAL NOTICE, IN 17 MY MIND, IS WAY MORE FINAL, WAY MORE CONCLUSIVE, THAN 18 MEETING A SIMILAR HEARSAY EXCEPTION. 19 THE COURT: YOU'RE RIGHT. 20 MR. ADAMS: IT'S THE COURT LOOKING AT IT AND 21 SAYING, THERE'S REALLY NOTHING THAT CAN BE DISPUTED HERE 22 SO WE DON'T NEED TO HAVE TIME WASTED ABOUT IT. 23 THE COURT: DO ME A FAVOR. READ MANGINI. READ 24 LOVE VS. WOLF. AND THEN TELL ME HOW MANGINI -- THE RULE 25 OF MANGINI DOES NOT APPLY HERE. 26 MR. ADAMS: I ALREADY KNOW. I SKIMMED IT. 27 THE COURT: OKAY. 28 MR. ADAMS: BECAUSE WE DIDN'T ASK THE COURT TO TELL	Page 184 1 WITH THE COURT THAT TAKING JUDICIAL NOTICE OF THE TRUTH 2 AND INSTRUCTING THE JURY IT MUST ACCEPT THE TRUTH OF THE 3 EPA DOCUMENT, THAT WOULD BE IMPROPER AND I THINK WE 4 AGREE ON THAT. 5 BUT TAKING JUDICIAL NOTICE THAT THIS IS A TRUE 6 AND CORRECT COPY OF AN OFFICIAL GOVERNMENT RECORD AND 7 THEN LETTING US CONVEY SOME FACTS TO THE JURY ABOUT IT 8 IS NOT TAKING JUDICIAL NOTICE AND ORDERING THE JURY TO 9 ACCEPT THE TRUTH. I THINK THAT'S -- I THINK THAT -- I 10 THINK WE ACTUALLY CONNECT ON THIS, AND I JUST 11 MISUNDERSTOOD YOU AND SORT OF YOU MISUNDERSTOOD ME. 12 WE'RE NOT ASKING THAT YOU INSTRUCT THE JURY THEY MUST 13 ACCEPT THE EPA'S RISK ASSESSMENT. 14 THE COURT: SO, AGAIN, I ASK WHAT WOULD HAVE 15 HAPPENED BUT FOR THE OBJECTION? THE -- MS. DEAN WOULD 16 HAVE SAID, THIS IS AN EPA DOCUMENT AND THIS IS WHAT THEY 17 SAID AND DO YOU AGREE, DR. HABER. NO? 18 AND WHAT WOULD YOU HAVE DONE? 19 MS. DEAN: SO THERE'S A LOT OF TECHNICAL 20 TERMINOLOGY IN THERE. WHAT DOES THAT MEAN? HOW DOES 21 THAT WORK? WHAT'S THE IMPLICATION OF THAT? AS OPPOSED 22 TO AWKWARDLY READING IT, SPENDING TIME TO AWKWARDLY READ 23 IT, AND THEN IDENTIFY WHAT'S HAPPENING. A LOT OF WHAT 24 GETS LOST IN BRAKE EPIDEMIOLOGY IS THE COMPLEXITY OF IT. 25 AND YOU CAN DO A LOT WITHOUT EVER VIOLATING NOT JUST FOR 26 THIS JUDICIAL NOTICE DOCUMENT, BUT THE OTHER CONCERNS 27 ABOUT GETTING INTO THE MEAT OF AN ARTICLE AND JUST 28 RECITATING IT VERSUS GIVING THE OPINION ABOUT EDUCATION
Page 183 1 THE JURY: YOU MUST ACCEPT THE FACTS IN THIS DOCUMENT. 2 THAT'S WHAT MANGINI SAYS IS IMPROPER. 3 THE COURT TAKES JUDICIAL NOTICE OF THE 4 DOCUMENTS AND INSTRUCT THE JURY THAT I'VE TAKEN JUDICIAL 5 NOTICE THAT THE EPA CREATED THIS DOCUMENT AND MADE THESE 6 FINDINGS, BUT I HAVEN'T TAKEN JUDICIAL NOTICE OF THE 7 TRUTH OF THE DOCUMENT -- OF THE FINDINGS. THAT'S FOR 8 THE JURY TO DECIDE. BUT THERE'S NO PURPOSE IN TAKING 9 JUDICIAL NOTICE OF A DOCUMENT UNLESS WE CAN CONVEY SOME 10 FACTS TO THE JURY. NO ONE DISAGREES ON THAT. 11 WHY DO WE NEED -- WHY WOULD WE TAKE 12 JUDICIAL -- WHY WOULD ANYONE TAKE JUDICIAL NOTICE OF 13 ANYTHING IF IT WAS JUST THAT THE EPA MADE SOME DOCUMENT 14 IN 2020? THAT'S NOT THE RULE. THE RULE IS THAT IT -- 15 JUDICIAL NOTICE IS TAKEN TO CONVEY SOME FACTS TO THE 16 JURY. NOT TO INSTRUCT THE JURY FROM THE COURT THAT IT 17 MUST ACCEPT THE FACTS AS TRUE. 18 NOW, THAT'S A TYPE OF JUDICIAL NOTICE BUT NOT 19 THE DOCUMENT TYPE. THE DOCUMENT TYPE IS SO THE COURT 20 SAYS, THIS DOCUMENT IS TRUE, AND IT CAN BE SHOWN TO THE 21 JURY AND ARGUMENTS CAN BE MADE FROM IT AND EVIDENCE CAN 22 BE CONVEYED TO THE JURY, NOT THAT THE JURY IS INSTRUCTED 23 IT MUST ACCEPT THESE FACTS. THAT'S WHAT MANGINI HOLDS, 24 I THINK, AND I WILL TAKE A CLOSER LOOK AT IT TONIGHT. 25 THE COURT: OKAY. AND SO WILL I. 26 MR. ADAMS: AND SO WHEN I STOOD UP AND I SAID 27 TAKING JUDICIAL NOTICE IS OF THE TRUTH, I THINK WE HAD A 28 LITTLE BIT OF DISCONNECT THERE BECAUSE I DON'T DISAGREE	Page 185 1 FROM THE KNOWLEDGE AND EXPERTISE OF THE PERSON SITTING 2 ON THE STAND. 3 THE COURT: OKAY. 4 MS. DEAN: AND WE HAD OBJECTIONS TO A SLIDE WHICH 5 IS THE TITLE, CLAIMING THAT GOT TOO FAR IN THE MEAT. 6 THE TITLE. 7 THE COURT: YEAH. I PROBABLY OVERSTEPPED THERE. I 8 SHOULD HAVE LET YOU SHOW THE TITLE. HAVING TAKEN 9 JUDICIAL NOTICE OF THE DOCUMENT, I SHOULD HAVE DONE 10 THAT. AND IF YOU STILL WANT TO DO THAT WITH DR. HABER, 11 I'LL LET YOU DO THAT. 12 ALL RIGHT. DEFENSE, ANYBODY WANT TO COMMENT 13 BRIEFLY ON THIS POINT? 14 MS. CUATTO? 15 MS. CUATTO: EMILY CUATTO FOR FORD. YOUR HONOR HAS 16 ALREADY STATED THE RULE. I THINK YOUR HONOR HAS CITED 17 THE CORRECT CASES. JUST BECAUSE SOMETHING IS JUDICIALLY 18 NOTICEABLE FOR ITS EXISTENCE DOES NOT MAKE IT ADMISSIBLE 19 FOR THE TRUTH BECAUSE IT IS HEARSAY. AND, YES, THE 20 PUBLIC RECORDS EXCEPTION TO THE HEARSAY RULE IS 21 STRINGENT, AND THEY HAVE TO SATISFY IT IF THEY WANT TO 22 GET IN ANY OF THE CONTENT. SO -- 23 THE COURT: IN YOUR VIEW, DOES THE MCDONNELL -- 24 CONTINENTAL AIRLINES RULE THAT I ARTICULATED EARLIER 25 THAT I SAY SURVIVES SANCHEZ, WOULD THAT APPLY TO A 26 JUDICIALLY NOTICED DOCUMENT AS WELL AS A DOCUMENT 27 ADMITTED INTO EVIDENCE, WHICH IS TO SAY THAT AN EXPERT 28 WHO RELIED ON IT MAY RELAY THE GENERAL CONTENT WITHOUT

Page 186 1 TOO MUCH DETAIL? 2 MS. CUATTO: IF IT'S RELIANCE MATERIAL, THEN HE CAN 3 DISCUSS IT IN GENERAL TERMS, IF IT'S VALID RELIANCE 4 MATERIAL AND NOT JUST RECITING SOMEONE ELSE'S OPINION. 5 BUT, YES, YOU STILL CAN'T READ FROM IT. THE HEARSAY 6 RULES STILL APPLY JUST BECAUSE SOMETHING HAS BEEN 7 JUDICIALLY NOTICED IN EXISTENCE. AND IF MR. ADAMS' 8 POSITION IS THE ONLY POINT OF TAKING JUDICIAL NOTICE IS 9 TO ESTABLISH CONCLUSIVELY THE FACTS OF THAT DOCUMENT, 10 THEN JUDICIAL NOTICE SHOULD NOT HAVE BEEN TAKEN, BUT 11 THAT'S NOT WHAT I THINK YOUR HONOR DID. 12 THE COURT: I DON'T THINK THAT'S WHAT HE IS ARGUING 13 EITHER. 14 OKAY. THANK YOU VERY MUCH. 15 NOW, NEXT QUESTION, FOR EXHIBIT 701 AND 703, 16 WHAT ARE WE DOING WITH THAT? IT'S BEEN OFFERED. 17 MR. LANKFORD: I THOUGHT WE AGREED, MS. DEAN, TO GO 18 INTO EVIDENCE, BUT THEN YOU SAID SOMETHING TO ME ABOUT 19 MAYBE YOU GOT IT WRONG IN 701. 20 THE COURT: 701 AND 703. THAT'S THE OFFER. 21 OBJECTION? 22 MR. LANKFORD: NO. WE AGREED WHEN THE WITNESS WAS 23 ON THE STAND THAT IT CAME IN. BUT ALL I'M SAYING 24 MS. DEAN MENTIONED TO ME AFTERWARDS SHE MAY HAVE MESSED 25 UP, SO I'M JUST ASKING HER IF SHE WANTS TO CHANGE HER -- 26 MS. DEAN: ONE IS ADMITTED. ONE IS NOT. WE WOULD 27 LIKE BOTH TO BE -- 28 THE COURT: ALL RIGHT.	Page 188 1 THE COURT: OKAY. SO OTHER THAN 41 AND 74, DOES 2 ANY DEFENDANT HAVE ANY OBJECTION TO THE OFFER OF THOSE 3 EXHIBITS? 4 HEARING NONE -- 5 MR. COGGSHALL: YOUR HONOR, HOLD ON JUST A SECOND. 6 FOR COLOR TECHNIQUES, WILL COGGSHALL. 7 I DON'T BELIEVE THAT PLAINTIFF SPECIFIED THAT 8 AS IT RELATES TO COLOR TECHNIQUES. SO IF SHE'S MAKING 9 AN ALLEGATION THAT SOMEHOW COLOR TECHNIQUES WAS A 10 SUPPLIER TO AVON, I THINK WE WOULD NEED THE OPPORTUNITY 11 TO REVIEW ALL OF THOSE. I DON'T THINK THAT -- 12 THE COURT: WELL, YOU'VE HAD THE OPPORTUNITY. 13 YOU'VE HAD A LAWYER HERE FOR A MONTH. AND THE EXHIBITS 14 HAVE BEEN EXCHANGED, AND THEY'VE BEEN IDENTIFIED ON THE 15 RECORD. SO YOU'VE HAD THE OPPORTUNITY. 16 NOW, IN FAIRNESS TO MS. DUBOIS, SHE DIDN'T 17 HAVE THE EXHIBITS FOR A MONTH. SHE PROBABLY HAD THEM 18 FOR AS LONG AS I HAVE HAD THEM, WHICH IS SINCE THIS 19 MORNING. BUT WHAT -- COUNSEL, WHAT OPPORTUNITY DO YOU 20 NEED THAT SEPARATES YOU FROM EVERYBODY ELSE HERE? 21 MR. COGGSHALL: THIS IS VERY EASY, YOUR HONOR, 22 ACTUALLY. IF MS. DEAN SAYS THERE'S INFORMATION ABOUT 23 COLOR TECHNIQUES IN THE AVON DOCUMENTS, THAT WOULD 24 SIMPLIFY IT. THAT'S THE REASON I DID THE MEET AND 25 CONFER YESTERDAY AND TRY TO FIGURE THIS OUT, SO WE 26 WOULDN'T HAVE TO DEAL WITH THIS ISSUE. 27 DOES THE PLAINTIFF HAVE AN OFFER OF PROOF THAT 28 THERE'S ANYTHING RELATIVE TO COLOR TECHNIQUES IN ANY OF
Page 187 1 MADAM CLERK, EXHIBIT 701 AND 703 ARE ADMITTED. 2 PLEASE MAKE SURE THAT THOSE DOCUMENTS ARE IN 3 THE CLERK'S HANDS BEFORE YOU LEAVE SO WE CAN STICKER 4 THEM. 5 6 (EXHIBITS 701 AND 703 ADMITTED INTO EVIDENCE.) 7 8 THE COURT: NOW, ALL OF THESE OTHER EXHIBITS 9 OFFERED TODAY STARTING WITH 1 AND GOING NONSEQUENTIALLY 10 THROUGH 283, IT WAS REPRESENTED TO ME THEY'RE ALL AVON 11 DOCUMENTS EXCEPT FOR 41 AND 74. 12 MS. DEAN: LET ME BE CLEAR WHAT I MEAN BY AVON 13 DOCUMENTS. I RECEIVED THEM FROM AVON. THEY'RE AVON 14 BATES LABELED DOCUMENTS. THEY ARE NOT JUST BEING 15 OFFERED AGAINST AVON. 16 THE COURT: I UNDERSTAND. OKAY. 17 MR. SLAUGHTER, WHAT IS 41? AND WHY DO YOU 18 OBJECT? 19 MR. SLAUGHTER: AS I UNDERSTAND, 41 IS A LIST OF 20 STUDIES. IT'S HEARSAY. I DON'T KNOW FOR SURE WHO MADE 21 IT. I MAY HAVE BEEN TOLD AT SOME POINT. I DON'T 22 RECALL. BUT IT'S A LIST OF VARIOUS STUDIES. I MEAN, 23 IT'S HEARSAY. IT'S NOT PROPER. 24 THE COURT: WHAT'S 74? 25 MR. SLAUGHTER: 74 IS A PUBLISHED ARTICLE, WHICH I 26 DON'T THINK SHOULD GO BACK -- SHOULDN'T GO INTO 27 EVIDENCE. GO BACK TO THE JURY ROOM. I DON'T HAVE ANY 28 OBJECTION TO HER USE OF IT.	Page 189 1 THE AVON DOCUMENTS? 2 THE COURT: OKAY. I DON'T THINK THAT'S OBLIGATORY 3 ON THE OFFERING PARTY TO DO THAT. SO HERE'S THE BOTTOM 4 LINE. I AM ADMITTING ALL OF THOSE DOCUMENTS EXCEPT 41 5 AND 74, WHICH I WANT TO LOOK AT. I'LL RESERVE RULING ON 6 THAT. I'VE RECITED THEM TO THE CLERK EARLIER. AND I 7 WILL MAKE SURE THE CLERK AND I HAVE A CLEAR 8 UNDERSTANDING OF THEM. PLEASE MAKE SURE THAT THOSE 9 PIECES OF PAPER ARE LEFT WITH THE CLERK SO THAT WE CAN 10 STAMP THEM. OKAY? 11 12 (EXHIBIT NOS. 1-10, 12, 13, 15, 16, 17, 19-22, 13 26-29, 32, 34, 36, 37, 54, 55, 56, 259, 260, 14 261-277, 281 AND 283 WERE ADMITTED INTO 15 EVIDENCE.) 16 17 MS. DEAN: YES, YOUR HONOR. I CAN TELL YOU FOR 41 18 IF THERE'S NOT AN AGREEMENT -- IT'S A SUMMARY 19 DOCUMENT -- WE'RE GOING TO FIND THE UNDERLYING DOCUMENTS 20 TO ADMIT. SO IF THERE IS NO AGREEMENT -- THERE WAS WITH 21 AVON -- THEN IT'S OVER OBJECTION. I THINK THE RULING IS 22 GOING TO BE CLEAR. 23 FOR THE SECOND SO YOU KNOW, IT'S BEING OFFERED 24 FOR NOTICE ONLY. 25 THE COURT: WHAT IS IT? 26 MS. DEAN: IT'S A PEER-REVIEWED PUBLISHED DOCUMENT 27 DISCUSSING ASBESTOS IN ITALIAN TALC DURING THE TIME 28 FRAMES WHEN THERE WAS STILL EXPOSURE IN THIS CASE. SO

Page 190 1 THAT, IF THE COMPANY HAD LOOKED, IT'S PUBLISHED. THIS 2 IS INFORMATION THAT I WILL ESTABLISH WITH THE WITNESS ON 3 THE STAND. 4 THE COURT: I THINK YOU NEED -- GIVEN THE 5 OBJECTION, IT SOUNDS LIKE YOU NEED TO TRY TO LAY THE 6 FOUNDATION TO GET IT IN FOR NOTICE OR FOR WHATEVER OTHER 7 REASON. BUT AT THIS POINT -- SEE, I DON'T KNOW WHAT 8 YOUR FOUNDATION IS OR ISN'T, BECAUSE I DON'T KNOW WHAT 9 THESE ARE. BUT THERE'S AN OBJECTION, SO I THINK THAT 10 ONE WE NEED TO HANDLE SEPARATELY. 11 MS. DEAN: THAT MAKES SENSE TO ME. I HAD GOTTEN 12 THE OBJECTIONS FROM AVON. THEY HAD NONE. I HADN'T 13 HEARD FROM OTHERS. SO I CAN LAY THE FOUNDATION SO WE 14 CAN RULE AT THE TIME, BUT THAT'S WHY I STARTED OFF WITH 15 THEM. THIS IS THE ONLY THING I HEARD -- 16 MR. STRUNK: YOUR HONOR, ONE BRIEF -- VERY BRIEF -- 17 WE'RE TALKING ABOUT THE (INAUDIBLE) STUDY, WHICH IS 18 NUMBER 74. IT'S AN ACTUAL PUBLISHED PEER-REVIEWED 19 STUDY, THAT STUDY ITSELF. THE CONTENTS DON'T GET TO THE 20 JURY. THEY CAN GET IN THROUGH A WITNESS, BUT THE STUDY 21 ITSELF DOESN'T GO BACK. 22 THE COURT: I UNDERSTAND THE WORDS. I UNDERSTAND 23 THE CUSTOM AND PRACTICE. LET ME FIND OUT WHAT IT IS. 24 LET ME LOOK AT IT. LET ME HEAR THE FOUNDATION. 25 OKAY. NOW -- 26 MS. DEAN: IT WOULD BE HELPFUL TO KNOW THE ACTUAL 27 EVIDENTIARY OBJECTION OTHER THAN THE CLAIM THAT WE DON'T 28 DO THAT.	Page 192 1 MS. DEAN: EVERYONE SHOULD KNOW, BOTH FROM 2 STATEMENTS MADE IN REPORTS AND EMAILS. DR. MADIGAN IS 3 COMING FIRST THING IN THE MORNING. DR. LONGO IS 4 SUPPOSED TO GO IMMEDIATELY AFTER HIM, UNLESS I MAKE AN 5 ACCOMMODATION TO AVON THAT REQUIRES US TO PUSH LONGO, 6 WHICH, I THINK, THEY'RE WORKING OUT TO SEE IF THEY LIKE 7 THAT IDEA OR NOT. WE WERE GOING TO TALK ABOUT THAT 8 IMMEDIATELY AFTER COURT. 9 THE COURT: SO IT'S GOING TO BE SOME COLLECTION OF 10 MADIGAN, LONGO, AND HABER, AND ONE WAY OR THE OTHER, IT 11 WILL FILL THE DAY? 12 MS. DEAN: SO WE HAVE MADIGAN STARTING. LONGO 13 WILL -- IF DR. LONGO IS MOVED IN ORDER TO ACCOMMODATE 14 AVON'S SCHEDULE, WE'LL HAVE A VIDEO. TUESDAY IS AVON OR 15 LONGO. WEDNESDAY IS AVON. THURSDAY, IF WE'RE NOT DONE 16 WITH THOSE OTHER THINGS, WILL BE VIDEO. FRIDAY IS 17 DR. HABER. 18 MR. MULARCZYK: SO WHAT WE TRIED TO CONFER WITH THE 19 DEFENDANTS -- SO THE IDEA IS TO PUT THE AVON CORPORATE 20 REPRESENTATIVE ON TUESDAY AND WEDNESDAY TO ACCOMMODATE 21 SCHEDULING. IF THAT'S THE CASE, WE UNDERSTAND THAT 22 DR. LONGO CANNOT COME BACK UNTIL THE 14TH AND 15TH OF 23 NOVEMBER. AND SO THERE WAS SOME CONCERN ON THE DEFENSE 24 SIDE ABOUT HOW LONG THE PLAINTIFFS' CASE MIGHT LAST. 25 THE COURT: LISTEN, I REALLY DON'T WANT TO LEAVE 26 THE PLAINTIFFS' CASE OPEN AND REQUIRE DEFENSE TO START 27 ADDUCING EVIDENCE. IT'S VERY AWKWARD TO DO THAT UNLESS 28 IT'S ABSOLUTELY FREAKEN NECESSARY.
Page 191 1 MR. STRUNK: HEARSAY. FOUNDATION. 721. IS THAT 2 ACCEPTABLE, MS. DEAN? 3 MR. ADAMS: NOTICE. 4 THE COURT: I'M RESERVING ON 41 AND 74. 5 NOW, WHY DO I -- MR. LANKFORD -- AND I SAY 6 THIS WITH LOVE IN MY HEART. WHY DO I HAVE TO BE 7 INVOLVED IN A SCHEDULING DISCUSSION AMONG YOU ALL AS TO 8 WHEN YOU'RE GOING TO GET YOUR EXPERTS LINED UP FOR 9 TRIAL? 10 MR. LANKFORD: I GUESS, YOUR HONOR, I WAS TRYING TO 11 FIGURE OUT WHEN WE'LL BE DONE WITH PLAINTIFF'S CASE SO 12 THAT I CAN START SCHEDULING MY EXPERTS. 13 THE COURT: AND I THINK THAT'S REALLY A GOOD IDEA. 14 AND I THINK WITH A THREE-DAY HIATUS IN THE PROCEEDINGS, 15 I REALLY URGE YOU TO MEET AND CONFER AND SEE, BECAUSE 16 EVERYBODY HAS GOT A COMMON INTEREST IN THAT GOING 17 SMOOTHLY. 18 MR. LANKFORD: THANK YOU. 19 THE COURT: OKAY. ALL RIGHT. 20 MR. SLAUGHTER: YOUR HONOR, ONE SIMPLE THING, I 21 HOPE. IT'S PROBABLY ON ME. I DON'T KNOW WHAT WE'RE 22 DOING MONDAY. 23 THE COURT: THAT WAS MY LAST TOPIC. ARE WE GOING 24 TO CONTINUE WITH DR. HABER? 25 MS. DEAN: NO. 26 THE COURT: WE'RE GOING TO CONTINUE WITH DR. LONGO. 27 MS. DEAN: KIND OF. 28 THE COURT: OKAY. TELL US WHAT WE ARE GOING TO DO.	Page 193 1 MR. MULARCZYK: OUR WORRY IS NOT THAT -- 2 THE COURT: THAT'S A TECHNICAL TERM. 3 MR. MULARCZYK: ONE THAT I UNDERSTAND WELL. SO THE 4 CONCERN IS NOT THAT THE DEFENSE WILL HAVE TO START 5 SOONER AND THE PLAINTIFFS WILL HAVE TO INTERJECT IN THE 6 DEFENSE CASE BUT THAT WE DON'T THINK THAT MS. DEAN'S 7 CASE WILL BE COMPLETED EVEN BY THE 15TH. 8 THE COURT: WELL, I DON'T KNOW. I MEAN, I CAN'T 9 SAY. 10 MR. MULARCZYK: OKAY. 11 THE COURT: AND I GUESS -- I MEAN, I DON'T WANT TO 12 SCRATCH A SCAB, BUT I JUST DON'T KNOW HOW THE PLAINTIFFS 13 HAVE ENOUGH TIME FOR THIS CASE -- FOR THEIR CASE TO NOT 14 BE DONE BY THEN. 15 MS. DEAN: AND I THINK THE COURT SHOULD LOOK AT HOW 16 MUCH TIME IS SPENT LITERALLY JUST ADDRESSING CLAIMS MADE 17 THAT ARE OBJECTIVELY INACCURATE. I MEAN, PART OF WHAT 18 WE ARE DOING HERE IS TRYING TO SYNTHESIZE THE CASE, BUT 19 WE ALSO HAVE TO BE REACTIVE. AND THERE HAS BEEN A REAL 20 ISSUE ON MULTIPLE LEVELS, AND I THINK WE WANT TO CORRECT 21 SOMETHING. 22 IN PART, THERE IS REAL HARM TO HEAR 16 TIMES 23 FROM MULTIPLE PEOPLE THAT PEOPLE DON'T HAVE ANYTHING 24 THAT THEY'RE NOT REQUIRED TO HAVE SO THAT WE'RE NOT 25 FOCUSING YOUR ATTENTION AND OURS, WHICH IS LIMITED AND 26 VALUABLE, AND IT HAPPENS EVERY MORNING. EVERY NIGHT. 27 THE COURT: WELL, JUST REMEMBER THAT I RETAIN THE 28 DISCRETION TO ADD TO THE TIME CLOCK FOR TIME THAT, FOR

Page 194 1 EXAMPLE, PLAINTIFF IS FORCED TO CONSUME THAT I DON'T 2 THINK YOU NEED TO CONSUME. BUT RIGHT NOW THAT'S -- THAT 3 IS NOT A MEANINGFUL AMOUNT OF TIME. I DON'T THINK 4 ANYTHING GOING ON OVER HERE ON THE DEFENSE SIDE HAS 5 CONSUMED TIME ON THE RECORD UNDULY BEFORE THE JURY. I 6 TAKE YOUR POINT THAT YOU THINK IT'S CONSUMING TIME 7 UNDULY OUTSIDE OF COURT. THAT'S A DIFFERENT ISSUE. 8 MS. DEAN: 18 QUESTIONS, THEY'RE IN THE RECORD, 9 ABOUT THE SIGNIFICANCE OF TISSUE, DIGESTIONS, X-RAYS. I 10 DON'T KNOW THE EXACT NUMBER BUT -- 11 THE COURT: ARE YOU TALKING ABOUT THE JUROR 12 QUESTIONS? 13 MS. DEAN: YES. 14 THE COURT: WELL, IT'S UP TO YOU TO ASK THEM OR 15 NOT. YOU'RE NOT OBLIGATED TO ASK THOSE QUESTIONS. 16 MS. DEAN: WHEN DEFENDANTS CREATE JURY CONFUSION 17 AND YOU HAVE SUCH A BEAUTIFUL WRITTEN RECORD OF IT BY A 18 STATEMENT THAT IS OBJECTIVELY FALSE THAT RESULTS IN 19 QUESTION AFTER QUESTION AFTER QUESTION AFTER QUESTION, 20 THE SUGGESTION THAT I CAN JUST IGNORE IT IS NOT A 21 REALISTIC ONE. 22 THE COURT: WELL, IT'S A -- THERE'S MERIT -- 23 THERE'S SOME MERIT TO WHAT YOU SAY, BUT I DO THINK IT'S 24 A FORENSIC DECISION. MAYBE I SHOULD HAVE GONE WITH 25 MR. NORRIS AND NOT PERMIT QUESTIONS TO BE ASKED. I 26 DON'T KNOW ABOUT YOU. IF I WERE TRYING THIS CASE, I'D 27 BE FASCINATED TO KNOW WHAT THESE JURORS WANTS TO KNOW. 28 MS. DEAN: I'M GRATEFUL FOR IT.	Page 196 1 SUPERIOR COURT OF THE STATE OF CALIFORNIA 2 FOR THE COUNTY OF LOS ANGELES 3 DEPARTMENT 7 HON. LAWRENCE P. RIFF, JUDGE 4 5 LAOSD ASBESTOS CASES)JCCP4674 6 RITA-ANN CHAPMAN AND GARY)CASE NO. 22STCV05968 7 CHAPMAN,) 8) 9 PLAINTIFFS,)REPORTER'S CERTIFICATE 10) 11 VS.) 12) 13 AVON PRODUCTS, INC., ET AL.,) 14) 15 DEFENDANTS.) 16 17 I, VERONICA RODRIGUEZ, RPR, CSR 12215, 18 OFFICIAL COURT REPORTER PRO TEMPORE IN AND FOR THE 19 SUPERIOR COURT OF THE STATE OF CALIFORNIA, COUNTY OF LOS 20 ANGELES, DO HEREBY CERTIFY THAT THE FOREGOING 21 TRANSCRIPT, CONSISTING OF PAGES 1 THROUGH 189, 22 INCLUSIVE, COMPRISE A FULL, TRUE AND CORRECT TRANSCRIPT 23 OF THE PROCEEDINGS HELD IN DEPARTMENT 7 ON OCTOBER 27, 24 2022, IN THE MATTER OF THE ABOVE-ENTITLED CAUSE. 25 DATED THIS 28TH DAY OF OCTOBER, 2022. 26 27 28 <i>Veronica Rodriguez</i> VERONICA RODRIGUEZ, RPR CSR NO. 12215
Page 195 1 THE COURT: I WANT TO STOP. I HAVE TO STOP. IF 2 YOU WANT TO COME BACK AT 3:00 O'CLOCK AND FINISH THIS 3 CONVERSATION, I INVITE YOU. BUT IF YOU DON'T WANT TO, I 4 EXCUSE YOU UNTIL 8:15 MONDAY MORNING. 5 6 (WHEREUPON, THESE PROCEEDINGS WERE CONCLUDED.) 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25 26 27 28	

EXHIBIT 5

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF LOS ANGELES

DEPARTMENT 7

HON. LAWRENCE P. RIFF, JUDGE

LAOSD ASBESTOS CASES

) JCCP4674

RITA-ANN CHAPMAN AND GARY
CHAPMAN,

) CASE NO. 22STCV05968

CERTIFIED
ORIGINAL

PLAINTIFFS,

VS.

AVON PRODUCTS, INC., ET AL.,

DEFENDANTS.

REPORTER'S TRANSCRIPT OF DAILY PROCEEDINGS

OCTOBER 27, 2022

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OFFICIAL REPORTER PRO TEMPORE

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E X H I B I T S				BEFORE THE SUBSTANTIVE CROSS-EXAMINATIONS OF LONGO AND			
MARKED				HABER BEGAN, BECAUSE, OF COURSE, DEFENSE COUNSEL COULD			
FOR I.D.				ARGUE, WELL, THEY RELIED ON THE TIME ESTIMATES AND DID A			
RECD'				SHORTER CROSS. SO I SENT AN E-MAIL TO DEFENSE COUNSEL			
IN EVD.				LAST NIGHT, AND WE ARE, FRANKLY, PANICKED ABOUT THE TIME			
183				ESTIMATES.			
183				AND I UNDERSTAND THAT SORT OF MONDAY MORNING			
261 - 9/17/74 MEMORANDUM				QUARTERBACKING OUR SIDE AND NIT-PICKING WHAT WE'VE DONE			
262 - 12/18/87 CORRESPONDENCE				AND SAYING: WELL, YOU COULD HAVE BEEN MORE EFFICIENT			
263 - AVON DOCUMENT				WITH THIS. WE COULD DO THAT ALL DAY. AND SOME OF IT IS			
264 - RAW INGREDIENT SPECIFICATION AND				PROBABLY LEGITIMATE. LIKE, THE COURT HAS TALKED ABOUT			
METHODS REVISION REQUEST - 9/19/89				ASYMMETRIES IN THE CASE. THE FACT THAT WE GET TO CALL			
265 - 7/12/74 MEMORANDUM				THE PLAINTIFFS BY THEIR FIRST NAME AND THE DEFENSE			
266 - 1/11/72 AVON DOCUMENT				DOESN'T, AND THAT'S AN ASYMMETRY, BUT THERE ARE OTHER			
267 - 3/28/72 MEMORANDUM				ASYMMETRIES IN THIS CASE. JUST WITH THE BURDEN THAT WE			
268 - ANALYTICAL LABORATORY				HAVE TO BUILD THIS CASE, WE HAVE TO GO FIRST, THERE ARE			
ALTERNATE SOURCE EVALUATION				MANY MORE OF THEM THAN THERE ARE US, AND WE SIGNED UP			
269 - 1/3/72 MEMORANDUM				FOR IT. I UNDERSTAND. BUT THEY OBJECT TO EVERYTHING WE			
270 - 3/23/72 MEMORANDUM				DO, EVERY DOCUMENT. WE HAVE ENDLESS E-MAILS EVERY NIGHT			
271 - HANDWRITTEN NOTES				ABOUT MEETING AND CONFERRING ON MOTIONS FOR			
272 - TALC MEETING - 8/18/70				RECONSIDERATION OF RULINGS OF THE COURT THAT HAVEN'T			
273 - 6/1/09 CORRESPONDENCE				BEEN FILED, ON LIMITING INSTRUCTIONS TO EVERY PIECE OF			
274 - 8/24/71 MEMORANDUM				EVIDENCE THAT THEY HAVEN'T FILED WITH THE COURT, AND WE			
275 - AVON DOCUMENT				JUST DON'T DO THAT.			
276 - AVON DOCUMENT				SO PERFECT EXAMPLE WAS YESTERDAY WITH BOEING.			
277 - AVON DOCUMENT				WE DIDN'T OBJECT A SINGLE TIME. WE AGREED TO ALL OF			
281 - 10/28/71 MEMORANDUM				THEIR EXHIBITS. EXHIBITS THAT THEY PROBABLY COULD NOT			
283 - 2/1/72 MEMORANDUM				HAVE LAID A FOUNDATION WITH THIS WITNESS BECAUSE HE			
183							

Page 10 1 AND WE JUST NEED MORE TIME TO PUT ON OUR CASE. WE'VE 2 COME THIS FAR. WE'VE DONE EVERYTHING WE CAN TO GET THIS 3 CASE READY. YOU KNOW, I THINK -- WE SIGNED UP FOR IT, 4 BUT THE REALITY OF THIS IS IS THAT MS. DEAN, I THINK, 5 GOES TO BED AT 2:00 A.M. AND GETS UP AT 4:00 A.M. EVERY 6 NIGHT, AND THAT'S BEEN GOING ON FOR WEEKS. IF YOU 7 COMPARE IT TO THE DEFENSE SIDE, I KNOW THEY DON'T HAVE 8 AN EASY JOB, REMEMBER ED SLAUGHTER? HE HASN'T SAID A 9 WORD IN A WEEK AND A HALF. REMEMBER PETER MULARCZYK? 10 HE HASN'T SAID A WORD TO THE JURY IN A WEEK AND A HALF. 11 THEY'RE JUST WORKING EVERY DAY ON THEIR 12 CROSS-EXAMINATIONS OF OUR EXPERTS AND THEIR CASE AND ALL 13 WE'RE DOING IS FRICTION, AND PAUL LANKFORD AND THOSE 14 LAWYERS ARE WORKING. BUT THE OTHER LAWYERS ARE JUST 15 SITTING HERE CRAFTING. MR. SHARP, THEY'RE JUST CRAFTING 16 THEIR CROSS-EXAMINATIONS TO MAKE THEM AS EFFICIENT AND 17 QUICK AS POSSIBLE. THERE ARE ASYMMETRIES HERE. AND SO 18 WHEN THEY GET UP AND THEIR PRESENTATION IS A LITTLE 19 QUICKER AND A LITTLE SMOOTHER THAN OURS, THEY'RE JUST 20 REALITIES OF ASYMMETRIES. THAT'S WHY WE ALMOST ALWAYS 21 GET MORE TIME THAN THE DEFENSE. 22 WE ALSO HAVE THE BURDEN OF PROOF. THEY HAVE 23 SOME BURDENS OF PROOF ON AFFIRMATIVE DEFENSES. YOU KNOW 24 HOW THEY PROVE THEM? FROM OUR EVIDENCE ELICITED FROM 25 OUR EXPERTS ABOUT WHAT WE SAID ABOUT OTHER DEFENDANTS. 26 IT'S EASY. NOT ALL THE THINGS THEY DO ARE EASY, I'M NOT 27 SAYING THAT, BUT CARRYING THEIR BURDEN OF PROOF IS EASY. 28 THEY DO IT WITH OUR EVIDENCE AND OUR EXPERTS. THAT'S	Page 12 1 FORD MOTOR COMPANY. 2 YOUR HONOR, WE'VE ALREADY BEEN GREATLY 3 PREJUDICED BY THE ARGUMENT THAT THIS CASE HAS TO MOVE 4 ALONG DUE TO MRS. CHAPMAN'S HEALTH, AND WE AGREE WITH 5 THAT. WE'RE VERY SYMPATHETIC TO THE SITUATION. THEY 6 USED THIS ARGUMENT ABOUT NEEDING TO MOVE THINGS ALONG TO 7 CUT OFF OUR RIGHT TO FULLY EXAMINE AT DEPOSITION 8 DR. HABER, AND THE COURT AGREED. THEY DID IT TO CUT OFF 9 OUR RIGHT TO FULLY AND EFFECTIVELY TAKE A DEPOSITION OF 10 DR. LONGO, AND THE COURT AGREED AND CUT OUR TIME. WITH 11 RESPECT TO DR. BRODY, WE ALREADY DID WHAT WE DID BASED 12 ON THE COURT'S -- HIS TRIAL TESTIMONY BASED ON THE 13 COURT'S TIME LIMITS IN TERMS OF HOW WE CRAFTED OUR 14 CROSS-EXAMINATION OF HIM. 15 WITH RESPECT TO MR. WILLIAMS, YOU CAN SEE IN 16 THE QUESTIONS FROM THE JURORS. WE CUT DOWN WHAT WE 17 USUALLY DO WITH HIM IN TERMS OF DOCUMENTS. USUALLY I'LL 18 PUT EACH OF THOSE SELIKOFF DOCUMENTS, EACH OF THOSE IN. 19 I HAVE AN OUTLINE, ADMIT THIS, ADMIT THAT. I DID IT. 20 MR. SMELSER AND I TALKED, AND WE SAID, HEY, JUST MENTION 21 IT, AND, YOU KNOW, THE RELATIONSHIP WITH SELIKOFF, MOVE 22 ON. WE DON'T HAVE TO GO DOCUMENT BY DOCUMENT. YOU 23 KNOW, KEEP THE TIME. SO, YOU KNOW, THE SHIP HAS SAILED. 24 THEY ASKED FOR THIS CASE TO BE DONE WITHIN A CERTAIN 25 PERIOD OF TIME OR AT LEAST MOVE QUICKLY. THEY SAID, 26 HEY, DEFENDANTS DON'T HAVE TIME TO OR SHOULDN'T BE GIVEN 27 TIME TO ADEQUATELY EXAMINE DR. HABER, SHOULDN'T BE GIVEN 28 TIME TO ADEQUATELY EXAMINE DR. LONGO, ET CETERA, AND NOW
Page 11 1 HOW THEY CARRY THEIR PROP 51 BURDEN OF PROOF. WE 2 ACTUALLY HAVE TO BUILD SOMETHING. AND IT'S NOT ALWAYS 3 PRETTY AND IT'S NOT EASY AND IT TAKES TIME, AND IT 4 REALLY TAKES A LOT OF TIME WHEN THEY OBJECT TO 5 EVERYTHING WE DO. AND SO WE NEED MORE TIME. 6 THE COURT: SO WHAT'S YOUR REQUEST? 7 MR. ADAMS: OUR REQUEST IS THAT THE 8 HOURS THAT 8 WERE REMOVED WHEN THE TWO DEFENDANTS SETTLED BE 9 REINSTATED. 10 THE COURT: BILATERALLY, ADDING 16 HOURS TO THE 11 CASE? 12 MR. ADAMS: JUST THE ORIGINAL TIME ESTIMATES. SO 13 THE ORIGINAL TIME ESTIMATES, WHEN WE STARTED, WE HAD 14 MORE DEFENDANTS, BUT THE COURT WITHDREW 4 HOURS EACH 15 TIME WE SETTLED WITH TWO DEFENDANTS. I THINK IT WAS 16 FROM THE TOTAL TIME. 17 THE COURT: THAT'S NOT EXACTLY RIGHT, BUT YOU'RE 18 CLOSE. THE ORIGINAL TIME ESTIMATE LIMITATION I SET WAS 19 48 HOUR PER SIDE, 96 HOURS. AND ON OCTOBER 18 I REDUCED 20 IT TO 44 PER SIDE, AND OCTOBER 19 I REDUCED IT TO 40 21 HOURS PER SIDE, AND I SAID WHAT I SAID AT THE TIME, BUT, 22 IN DOING THAT, I HAD IN MIND THAT MORSE TEC, NOXELL AND 23 THE PEP BOYS WERE NO LONGER PARTICIPATING IN THE CASE. 24 ANYWAY. ARE YOU ASKING FOR 8 HOURS ADDITIONAL FOR 25 PLAINTIFF AND NO ADDITIONAL TIME FOR THE DEFENSE? 26 MR. ADAMS: WE ARE, YOUR HONOR. 27 THE COURT: OKAY. DEFENSE WANT TO BE HEARD? 28 MR. LANKFORD: YES, YOUR HONOR. PAUL LANKFORD FOR	Page 13 1 THEY'RE SAYING, OH, WE CAN DELAY THIS TWO, PROBABLY 2 THREE MORE DAYS IF WE'RE TALKING ABOUT 8 HOURS, TRYING 3 TO GET 8 HOURS ON THE RECORD. 4 SO, YOUR HONOR, IT'S TOO LATE AT THIS POINT. 5 IT WILL PREJUDICE THE DEFENDANTS BASED ON WHAT'S ALREADY 6 OCCURRED AND THE DECISIONS WE'VE ALREADY MADE BASED ON 7 THE TIME ESTIMATES OR RATHER THE TIME LIMITS THE COURT 8 GAVE US. THANK YOU. 9 THE COURT: ANY OTHER DEFENDANTS WISH TO BE HEARD? 10 MR. HUIE: YES, YOUR HONOR. JEREMY HUIE FOR 11 HYSTER-YALE. 12 I OPPOSE THE REQUEST FOR EIGHT MORE HOURS 13 BACK, AND I WOULD ASK THAT THE COURT ENFORCE THE CURRENT 14 TIME LIMITS OF 40 HOURS. I THINK THE WAY THAT I'VE 15 BLOCKED IT OUT THAT WOULD PROJECT PLAINTIFF LIKELY 16 RESTING NOVEMBER 9TH OR THEREABOUTS. I THINK EXTENDING 17 IT FURTHER RUNS A SERIOUS RISK THAT DEFENDANTS WILL NOT 18 HAVE A CHANCE TO PUT ON THEIR CASE, WHILE ALLOTING TIME 19 TO JURY DELIBERATIONS AND A POSSIBLE PHASE 2 FOR US TO 20 BE ABLE TO MEET OUR PROMISE OF LETTING THE JURORS GO BY 21 DECEMBER 15. 22 WITH REGARD TO THE TIME LIMITS, I WANTED TO 23 QUICKLY CITE THE CASE OF CALIFORNIA CRANE SCHOOL, INC. 24 VS. NATIONAL COMMITTEE FOR CERTIFICATION OF CRANE 25 OPERATORS 226 CAL.APP.4TH 12. IT'S A 2014 CASE. 26 THE COURT: MR. HUIE, DID YOU NOT HEAR MY SPEECH 27 THE OTHER DAY WHERE I CITED HEAVILY FROM CALIFORNIA 28 CRANE?

Page 14 1 MR. HUIE: I'M SORRY. IT'S BEEN A WHILE, YOUR 2 HONOR. 3 THE COURT: YEAH, I'M WELL AWARE OF CALIFORNIA 4 CRANE, AND MUCH OF MY ORDER IS BASED ON CALIFORNIA 5 CRANE. THIS IS THE NO CAMPING RIGHTS CASE. 6 MR. HUIE: I WILL NOT WASTE THE COURT'S TIME. 7 MR. ADAMS: YOUR HONOR, JUST VERY BRIEFLY. 8 THE COURT: HOLD ON. LET ME HEAR FROM -- ANYBODY 9 ELSE WHO WISHES TO BE HEARD ON THIS POINT? 10 MR. COGGSHALL: YES, GOOD MORNING, YOUR HONOR. 11 WILL COGGSHALL ON BEHALF OF COLOR TECHNIQUES. 12 I WAS ONE OF THE LAWYERS THAT WAS TRYING TO 13 MEET AND CONFER WITH PLAINTIFF AS IT RELATES TO COLOR 14 TECHNIQUES. I ASKED HIM WHICH EXHIBITS ARE GOING TO 15 PRESENTED WITH DR. HABER AS IT RELATES TO COLOR 16 TECHNIQUES. I WAS TOLD ALL THE EXHIBITS THAT THEY 17 IDENTIFIED FOR DR. HABER EVEN THOUGH NONE OF THOSE 18 RELATE TO ANY ISSUE THAT IS SET FORTH IN DR. HABER'S 19 PARAGRAPH 73. YOU'LL RECALL THAT MS. DEAN SAYS: AS IT 20 RELATES TO COLOR TECHNIQUES, IT'S DR. HABER'S PARAGRAPH 21 73 THAT SETS FORTH THE EVIDENCE. 22 THE COURT: YOU ARE ON A DIFFERENT TOPIC. 23 MR. COGGSHALL: IT HAS TO DO WITH THE SAME THING. 24 I'M TRYING TO LIMIT THE AMOUNT OF QUESTIONS THAT I COULD 25 HAVE OF DR. HABER AND THE AMOUNT OF OBJECTIONS THAT I 26 MAY MAKE WHEN HE'S TESTIFYING. SO I'M TRYING TO 27 SIMPLIFY THAT PROCESS AS IT RELATES TO MY CLIENT, AND 28 THE PLAINTIFF IS PUTTING A BAR IN FRONT OF THAT. SO IF Page 15 1 THEY'RE SAYING THAT SOMEHOW THEY'RE TRYING TO STREAMLINE 2 THIS AND THEN THEY ALSO NEED MORE TIME, THEY'RE THE 3 OBSTACLE AS IT RELATES TO COLOR TECHNIQUES. 4 THE COURT: THANK YOU. 5 MR. STRUNK: CHRISTOPHER STRUNK ON BEHALF OF 6 COLGATE-PALMOLIVE. 7 YOUR HONOR, I WILL ECHO WHAT THE OTHER 8 DEFENDANTS HAVE SAID. OF COURSE THIS COURT HAS ALSO 9 MADE VARIOUS STATEMENTS TO THE JURORS AS DEFENDANTS HAVE 10 RESOLVED ABOUT TIME NOT BEING REQUIRED AND WE'RE MOVING 11 FASTER. SO IT WOULD BE, I THINK, A PROBLEM TO GO BACK 12 TO THE JURY AND NOW SAY, WELL, WE WERE WRONG BEFORE. 13 WE'RE GOING TO ADD MORE TIME. THAT'S A BIG CONCERN OF 14 OURS. I'LL ALSO ECHO THE COMMENTS OF MY COLLEAGUE ABOUT 15 EFFICIENCIES. WE OURSELVES ARE IN THE PROCESS OF TRYING 16 TO PREPARE OUR CROSS-EXAMINATIONS. WE'VE BEEN STYMIED. 17 WE HAVE A MOTION SHORTLY BROUGHT BEFORE THE COURT ABOUT 18 WHERE WE'VE BEEN STYMIED IN TERMS OF OUR ABILITY TO GET 19 CERTAIN EXHIBITS THAT WERE ALREADY MARKED IN THE 20 DEPOSITION. SO THAT'S ANOTHER EXAMPLE OF HOW THE DELAY 21 SEEMS TO BE CREATED BY THE PLAINTIFFS ON THIS SIDE. SO 22 WE WOULD SIMPLY, AGAIN, JOIN IN THE COMMENTS OF OTHERS 23 WHERE WE WOULD OPPOSE ANY REQUEST FOR ADDITIONAL TIME. 24 THE COURT: OKAY. LET ME ASK THIS QUESTION. DOES 25 ANY DEFENDANT NOT JOIN IN THE DEFENSE COMMENTS OPPOSING 26 PLAINTIFF'S REQUEST? THAT'S ASKING A DOUBLE NEGATIVE. 27 IS ANYBODY NEUTRAL OR SUPPORTIVE OF THE PLAINTIFF'S 28 PROPOSAL?	Page 16 1 ALL RIGHT. SO YOUR RECORD IS MADE. 2 MR. ADAMS: YOUR HONOR, JUST VERY QUICKLY. THREE 3 RESPONSES. NUMBER 1, IT'S NOT AN EXTENSION OF THE 4 DEADLINES OF THE TRIAL. IT'S A RESET BACK TO THE 5 ORIGINAL DEADLINES SO WE'RE NOT ASKING ANYBODY TO STAY 6 LONGER THAN DECEMBER 15. THAT'S NOT WHAT WE'RE ASKING 7 FOR AT ALL. NUMBER 2, FORD HAS NOT BEEN PREJUDICED IN 8 ANY WAY. THEIR WITNESS LEFT BECAUSE HE HAD A FLIGHT. 9 HE HAD A FLIGHT AND A DEADLINE TO LEAVE. HE WASN'T CUT 10 SHORT. THERE WASN'T ANY OF THAT. HE HAD A FLIGHT. HE 11 HAD TO LEAVE. 12 THERE'S NO SURPRISE HERE TO THE DEFENSE 13 BECAUSE THE COURT SAID AT THE OUTSET THAT THE COURT 14 WOULD ADJUST TIME LIMITS BASED ON HOW THE CASE PROCEEDED 15 AND SO IT WAS ALWAYS SOMEWHAT IN FLUX FROM THE 16 BEGINNING. THIS IS NOT SOME KIND OF BIG SURPRISE. I 17 DON'T THINK THE CROSS OF BRODY WAS CUT SHORT IN ANY WAY. 18 I MEAN, THEY THOROUGHLY CROSS-EXAMINED HIM. IT'S 19 TYPICALLY A QUICK CROSS. IT WAS A RELATIVELY QUICK 20 CROSS IN THIS CASE. AND SO WITH THAT, WE WOULD REQUEST 21 THE 8 HOURS. 22 THE COURT: ALL RIGHT. LET ME COMMENT AND RULE. 23 I'LL COMMENT AND THEN RULE. WHEN I MADE THIS TIME LIMIT 24 ORDER, I PREFACED IT BY SAYING I WAS GOING TO MAKE A 25 SPEECH WHICH I THEN DID. AND I WOULD URGE THE 26 INTERESTED READER OF THIS TRANSCRIPT TO GO BACK TO THOSE 27 COMMENTS BECAUSE WHAT I WAS TRYING TO DO WAS TO EXPLAIN 28 TO ANY PERSON OR ENTITY EVALUATING THE EXERCISE OF MY Page 17 1 DISCRETION WHAT WENT INTO INFORMING MY DISCRETION. 2 WHILE I DIDN'T SAY IT, I THINK -- I'LL SAY IT 3 NOW. WHILE I DIDN'T SAY IT THEN, IT HAS BEEN SAID A 4 DOZEN TIMES PRETRIAL IN THIS CASE, WHICH IS, THIS CASE 5 IS BEING DRIVEN INEXORABLY -- THAT'S THE WRONG WORD. IT 6 HAS BEEN DRIVEN ALMOST INTOLERABLY FAST BILATERALLY, 7 EVERYBODY WOULD AGREE, ON ACCOUNT OF THE REALITY OF 8 MRS. CHAPMAN'S HEALTH CONDITION AND THE LAW AS SET FORTH 9 UNDER CCP 36(D), I BELIEVE IT IS. THERE IS NOT MUCH THE 10 COURT CAN DO ONCE A MOTION FOR PREFERENCE HAS BEEN 11 GRANTED. 12 I'VE ASKED A COUPLE OF TIMES DURING THE 13 PRETRIAL PERIOD, AND AT LEAST ONCE AT TRIAL, I THINK, 14 INFORMALLY WHAT COUNSEL'S UNDERSTANDING OF 15 MRS. CHAPMAN'S SITUATION WAS. IT WAS REPORTED TO ME 16 THAT IT IS INCREASINGLY DIRE. I'VE HAD NO REASON TO 17 QUESTION THAT. NO ONE HAS SAID OTHERWISE; ALTHOUGH I 18 UNDERSTAND THE DEFENSE WOULD NOT BE IN A POSITION TO 19 QUESTION THAT OTHERWISE AND WHAT MR. ADAMS JUST TOLD ME 20 TODAY AS TO WHAT THE EVIDENCE WILL SHOW IS CONSISTENT 21 WITH THAT. WHAT'S MY POINT? MY POINT IS THAT I THINK 22 JUSTICE REQUIRES, TO THE EXTENT IT CAN BE DONE, 23 CONSISTENT WITH THE RIGHTS, ALL THE OTHER COMPETING 24 RIGHTS, THAT THE CHAPMANS GET A JUDGMENT BEFORE 25 MRS. CHAPMAN DIES. AND I DON'T KNOW WHEN THAT'S GOING 26 TO BE, BUT IT MIGHT BE VERY, VERY SOON. 27 SO I AM NOT -- WELL, THIS IS ANOTHER POINT 28 ADDING TO MY THINKING ON THIS. ONE OF THE THINGS I'VE

Page 18 1 TRIED TO DO WITH YOU ALL PRETRIAL IS TO WARN YOU, WHEN I 2 SEE A STORM CLOUD ON THE HORIZON, THAT I SEE A PROBLEM 3 COMING UP AND PLEASE, PLEASE SEE WHAT I SEE WHETHER IT'S 4 THE ADMISSION OF EXHIBITS THROUGH FORMER TESTIMONY OR 5 SOMETHING ELSE, AND I SAW THIS. THAT'S ONE OF THE 6 REASONS I MADE THE SPEECH I MADE. 7 AND WHAT I SAID WAS THAT I WASN'T LAYING DOWN 8 AN IRON CLAD DEADLINE NO MATTER WHAT AND THAT THE COURT 9 WOULD KEEP AN OPEN MIND AND EXTEND TIME IF JUSTICE 10 REQUIRES, BUT DON'T COUNT ON IT. I THINK I SAID THAT AT 11 LEAST TWICE. I AM NOT CRITICAL OF ANY SIDE'S 12 PRESENTATION OF EVIDENCE. YOU ALL ARE VERY GOOD TRIAL 13 LAWYERS AND YOU KNOW HOW TO TRY A CASE. AND HOW YOU 14 CHOOSE TO EMPHASIZE SOME THEMES, SOME STORY ELEMENTS. 15 WHO AM I TO SAY THAT THAT IS A GOOD OR BAD USE OF TIME? 16 I'LL ALSO NOTE THAT I'M AS SCRUPULOUS AS I CAN 17 BE WITH RESPECT TO KEEPING TRACK OF TIME. I DON'T KNOW 18 IF YOU'VE SEEN ME STARE AT THE CLOCK AND TAKING NOTES, 19 BUT NO ONE IS GETTING CHARGED FOR ONE MINUTE FOR TIME 20 NOT ON THE RECORD WITH THE JURY IN THE ROOM. ALL RIGHT. 21 SO IN LIGHT OF ALL THINGS, MR. ADAMS, I'M 22 DENYING YOUR REQUEST. I DON'T THINK THERE IS GOOD CAUSE 23 TO CHANGE MY RULING. AND I DO THINK THAT IT IS SOMEWHAT 24 BAKED IN THE CAKE AT THIS POINT WITH A NUMBER OF 25 WITNESSES HAVING BEEN CALLED AND EXCUSED. SO THE ANSWER 26 IS NO. AND I URGE BOTH SIDES TO KEEP A CLOSE EYE ON THE 27 CLOCK AND ADJUST YOUR PRESENTATIONS ACCORDINGLY. 28 ALL RIGHT. AND, MR. ADAMS, YOU AND YOUR FIRM	Page 20 1 HAD SOME OBJECTIONS TO IT. 2 MS. DEAN: THE FIRST 70 SLIDES THAT I WAS HOPING 3 WE'D GET TO YESTERDAY HAVE BEEN. THEY'RE CURRENTLY 4 ADDING EXHIBIT STICKERS AND EDITING THE REST, BUT THEY 5 WILL HAVE, BY THE TIME WE GET TO 70, THE REST. SOME OF 6 THE STATE OF THE ART MATERIALS ARE IN THE POWERPOINT. 7 SOME OF THEM ARE THE ACTUAL DOCUMENTS ON THIS THING 8 (INDICATING). 9 THE COURT: IN THE BIG PICTURE, IF YOU CAN REDUCE 10 IT TO A COUPLE SENTENCES. CATEGORICALLY, WHAT DO YOU 11 EXPECT HIM TO SAY ABOUT STATE OF THE ART? 12 MS. DEAN: I CAN ANSWER THAT. WHAT HE STATED IN 13 HIS DECLARATION THAT THEY HAVE HAD SINCE THE FILINGS OF 14 MOTIONS FOR SUMMARY JUDGMENT THAT DETAIL GOING BACK 15 ALMOST HUNDRED YEARS, WHAT WAS KNOWN AND KNOWABLE ABOUT 16 HOUSEHOLD EXPOSURES RESULTING IN -- OR EXPOSURES IN THE 17 WORKPLACE GETTING ON THE CLOTHES, RESULTING IN A 18 LAUNDERING HOUSEHOLD EXPOSURE PROBLEM. THOSE WERE 19 IDENTIFIED WITH SPECIFICITY. DURING THE DEPOSITION, 20 BOEING'S LAWYER ASKED FOR THE CITATIONS FOR THOSE. 21 THOSE WERE ATTACHED IN THE DEPOSITION AS AN EXHIBIT TO 22 THE DEPOSITION. SO THEY HAD EXAMPLES. 23 THEY AGREED AN EXAMPLE WAS SUFFICIENT, BUT NOT 24 ENTIRE -- EVERYONE FOR EACH STATEMENT IN HIS 25 DECLARATION. HE IS ALSO GOING TO TALK ABOUT 26 EPIDEMIOLOGY AND STATE OF THE ART AS TO BRAKES WHEN 27 FORD'S LAWYER IN DAY TWO OF THE DEPOSITION ASKED HIM IF 28 HE WAS GOING TO DO SO. HE ANSWERED AND ANSWERED
Page 19 1 SIGNED UP FOR A DIFFICULT TASK. SO DID I. I SIGNED UP 2 FOR A DIFFICULT TASK WHEN I BECAME A JUDGE AND HAD TO 3 PRESIDE OVER VERY DIFFICULT CASES LIKE THIS. THIS IS A 4 HARD DECISION FOR ME. I AM AN OLD JURY TRIAL LAWYER 5 MYSELF, AND I THINK GIVING THE JURY INFORMATION NEEDS -- 6 IS A CRITICAL ELEMENT OF A JURY TRIAL. AND IN DOING 7 WHAT I'M DOING, I SURE HAVE THAT IN MIND. WHATEVER 8 SOLACE THAT HAS. PROBABLY NONE. 9 ALL RIGHT. I WANT TO MOVE ONTO DR. HABER. 10 PENDING IS FORD'S MOTION WITH JOINDER TO LIMIT DR. HABER 11 WITH RESPECT TO OFFERING CAUSATION OPINIONS ON FRICTION 12 PRODUCTS AND STATE OF THE ART TESTIMONY. NOW, LET ME 13 JUST FIND OUT BECAUSE I DIDN'T ASK YESTERDAY. IS THE 14 PLAN -- AND BY THE WAY, DR. HABER IS IN THE ROOM. DOES 15 THAT CAUSE ANYBODY ANY HEARTBURN? I CAN'T -- IT DOESN'T 16 CAUSE ME ANY HEARTBURN, BUT IF SOMEBODY WANTS HIM OUT, 17 I'LL ASK HIM TO EXCUSE HIMSELF. 18 MR. LANKFORD: I THINK IT WOULD BE BETTER IF HE IS 19 NOT HERE, YOUR HONOR. 20 THE COURT: ALL RIGHT. WOULD YOU MIND? 21 DR. HABER IS OUT. QUESTION FOR PLAINTIFF'S 22 SIDE: DO YOU EXPECT TO ELICIT STATE OF THE ART OR 23 NOTICE EVIDENCE FROM DR. HABER? 24 MR. ADAMS: YES, YOUR HONOR. 25 THE COURT: IS THAT IN YOUR POWERPOINT? 26 MR. ADAMS: YES, YOUR HONOR. 27 THE COURT: HAS THE POWERPOINT BEEN DISTRIBUTED? 28 MR. ADAMS: I BELIEVE SO BECAUSE I JUST SAW FORD	Page 21 1 CLEANLY. I'M NOT GETTING INTO INDUSTRY SPECIFIC 2 DOCUMENTS, BUT FOR MEDICINE AND SCIENCE I ABSOLUTELY AM. 3 AND SO HE'S GOING TO DO WHAT HE'S DONE IN EVERY TRIAL, 4 TALK ABOUT MEREWETHER AND PRICE IN 1930 AND HOW THAT WAS 5 THE SEMINAL TIME FOR ASBESTOSIS, TALK ABOUT LUNG CANCER, 6 TALK ABOUT MESOTHELIOMA, TALK ABOUT HOW THAT INCLUDED 7 INFORMATION ABOUT ASBESTOS COMMONLY BEING IN TALC. 8 STATE OF THE ART. 9 THE COURT: ALL RIGHT. I DO WANT TO SAY SOMETHING 10 THAT IS INTERESTING TO ME. I DID READ THIS DEPOSITION 11 OF DR. HABER. IT WAS AN UNUSUAL EXPERT DEPOSITION, IN 12 MY EXPERIENCE, BECAUSE IT REALLY DIDN'T FOCUS ON WHAT 13 OPINIONS THE WITNESS PLANS TO OFFER AT TRIAL. AND I 14 WONDERED IF THAT'S BECAUSE IT WAS UNDERSTOOD FROM THE 15 DECLARATION ATTACHED AS EXHIBIT 6 THAT THOSE ARE THE 16 OPINIONS TO BE OFFERED AT TRIAL AND IT WASN'T NECESSARY 17 FOR THE DEFENSE THEN TO FOLLOW UP SPECIFICALLY BUT TO 18 INSTEAD FOLLOW UP ON WHAT THEY CHOSE TO FOLLOW UP ON. I 19 JUST NOTE THAT FOR WHATEVER IT'S WORTH. 20 ALL RIGHT. ANYTHING ELSE -- YOU'RE ON YOUR 21 FEET. ANYTHING ELSE YOU WANT TO ADD? 22 MR. ADAMS: NO. I GUESS I'LL WAIT TO SEE WHAT FORD 23 HAS TO SAY IN RESPONSE. 24 THE COURT: I WANT TO GIVE YOU A TENTATIVE, WHICH 25 IS TO DENY FORD'S MOTION AND JOINDER, THIS IS IN THE 26 NATURE OF A DISCOVERY ABUSIVE MOTION. THAT THE 27 DESIGNATION WAS INADEQUATE AND THE THEORY OF AN 28 INADEQUATE DESIGNATION IS THAT IT DOESN'T REASONABLY PUT

Page 22 1 THE RECIPIENT ON NOTICE OF THE NATURE AND SCOPE OF THE 2 OPINIONS TO BE OFFERED SO THAT, IN A SUBSEQUENT 3 DEPOSITION, THEY DON'T KNOW TO ASK ABOUT CERTAIN TOPICS. 4 I AM OF THE VIEW THAT AN INADEQUATE 5 DESIGNATION IS CURED BY THE MEETS AND BOUNDS OF A 6 DEPOSITION. AND I'M ALSO OF THE VIEW THAT THE MEETS AND 7 BOUNDS OF A DEPOSITION -- LET ME SAY THAT DIFFERENTLY. 8 PARTIES ARE PUT ON NOTICE OF TOPICS THAT MAY BE OFFERED 9 AT TRIAL BY WAY OF OPINION TESTIMONY VIA EXHIBITS TO 10 DEPOSITIONS. SO I THINK IT REQUIRES A HOLISTIC VIEW OF 11 ALL OF THE FACTS AND CIRCUMSTANCES TO EVALUATE WHETHER 12 THERE'S DISCOVERY ABUSE THAT SHOULD RESULT IN A TRIAL 13 TESTIMONY PRECLUSION. 14 YESTERDAY I WAS WRONG IN SOME OF THE TIMING. 15 I HAD SUGGESTED THAT THERE WAS ABOUT A MONTH PERIOD 16 BETWEEN THE FILING OF THE LATE AUGUST 2022 DECLARATION 17 OF DR. HABER AND THE DEPOSITIONS OF DR. HABER. THAT'S 18 NOT TRUE. THE FIRST SETTING WAS SEPTEMBER 6, THE SECOND 19 SEPTEMBER 12 AND THE THIRD SEPTEMBER 26. SO I HAVE ALL 20 THAT IN MIND. SO THAT'S THE TENTATIVE. 21 MR. LANKFORD, DO YOU WANT TO GET A LAST WORD 22 IN? 23 MR. LANKFORD: YES, YOUR HONOR. FIRST OF ALL, I 24 HAVEN'T SEEN THESE STATE OF THE ART SLIDES. THE SLIDES 25 WE WERE GIVEN, THE LAST SLIDE ENDS ON 74, BRAKE 26 EPIDEMIOLOGY. SUPPOSEDLY THAT'S WHERE THEY'RE GOING TO 27 START GETTING INTO ALL THE AUTOMOTIVE STUFF. I DON'T 28 HAVE IT. I HAVEN'T SEEN IT. SO WHAT I DO KNOW IS THAT	Page 24 1 AND THEN, ULTIMATELY, YOU WOULD, AT THE END OF THE 2 DEPOSITION, ASK A KENNEMUR QUESTION. 3 ONE IMPORTANT THING HERE, THIS IS NOT -- FOR 4 INSTANCE, IF WE GO BACK TO YOUR WORLD, BEFORE YOU TOOK 5 THE BENCH, THIS IS NOT A LIKE A DR. INFANTE (PHONETIC) 6 DEPOSITION, WHERE HE'S BEEN DEPOSED ON FRICTION A 7 MILLION TIMES OR BENZENE A MILLION TIMES. HE HAS BARELY 8 TESTIFIED ABOUT FRICTION. WE HAVE VERY LITTLE PAST 9 TESTIMONY FROM HIM. HE MAINLY TESTIFIES IN TALC CASES. 10 SO HERE WE ARE TRYING TO DO A DEPOSITION WHERE HE'S 11 PRIMARILY, BECAUSE OF THE NUMBER OF DEFENDANTS IN THE 12 CASE AND THE THINGS THEY WERE DEALING WITH, A HUGE 13 PORTION OF THE DEPOSITION IS TAKEN BY TALC. WE'RE HERE 14 AS FRICTION, REALLY KIND OF STARTING ANEW WITH HIM. 15 I THINK THE FIRST TIME WE HAD DEPOSED HIM, 16 FORD HAD DEPOSED HIM, THAT I'M AWARE OF, WAS ONE 17 TRANSCRIPT EARLIER IN THE YEAR IN A CASE. THAT WAS IT. 18 OKAY. SO HERE WE ARE, YOU KNOW, IN A SITUATION WHERE WE 19 DON'T HAVE VOLUMES AND VOLUMES OF PAST TESTIMONY. THEN 20 WHAT DO WE HAVE? THEY GIVE US -- HE IDENTIFIES HE HAS 21 TWO RELIANCE LISTS. ONE IS 645 ITEMS. THE OTHER ONE, 22 FED TO HIM BY PLAINTIFFS, IT APPEARS, IS PROBABLY 23 THOUSANDS MORE. SO WE'RE TALKING OVER A THOUSAND ITEMS, 24 AND WE WERE GIVEN VERY LIMITED TIME TO DEPOSE HIM. ONE 25 COULD SAY THREE DAYS BUT THAT IS, ESSENTIALLY, 26 MISLEADING, BECAUSE, WHEN YOU LOOK AT THE AMOUNT OF TIME 27 THAT WE ACTUALLY HAD EACH DAY, IT WAS VERY SHORT. AND 28 LAST DAY, I THINK, YOU GAVE -- WELL, I KNOW YOU JUST
Page 23 1 THERE ARE CERTAIN DOCUMENTS THEY IDENTIFY THAT THEY'RE 2 GOING TO USE WITH DR. HABER. THE FIRST IS A ARTICLE 3 FROM DR. HUEPER PUBLISHED IN THE LITERATURE. I THINK 4 IT'S IN THE '40S, LATE '30S. I CAN'T RECALL. IT'S NOT 5 ON HIS -- IT WASN'T MENTIONED IN HIS DEPO, AND IT'S NOT 6 IN HIS DECLARATION. SO WE'RE NOT JUST TALKING HERE 7 ABOUT A DISCLOSURE ISSUE. WE'RE TALKING ABOUT A 8 KENNEMUR ISSUE. IF YOU LOOK AT THE TRANSCRIPT, THE LAST 9 PAGE OF VOLUME 3, WE TRIED TO ASK THE KENNEMUR QUESTION, 10 AND THEY SAID NO. THE COURT SAID YOU CAN'T ASK THE 11 KENNEMUR QUESTION. 12 THE COURT: THAT'S NOT EXACTLY RIGHT. WELL, I 13 SHOULDN'T INTERRUPT YOU. KEEP GOING. 14 MR. LANKFORD: SO YOU WILL SEE, IF YOU LOOK AT IT, 15 THAT COLOR TECHNIQUES ASKED A BROAD QUESTION A FEW PAGES 16 BEFORE THE END OF THE DEPOSITION ABOUT ALL OPINIONS AND, 17 ESSENTIALLY, THERE'S A BACK AND FORTH MS. DEAN SAYING: 18 THERE'S A LOT MORE. AND THEN HONEYWELL TRIES TO ASK THE 19 KENNEMUR QUESTION. SHE SAYS NO-GO. JUDGE SAID NO. AND 20 THEN FORD, YOU KNOW, ESSENTIALLY MEET AND CONFERS WITH 21 HER ON THE RECORD. SHE SAYS, YEAH, NO. YOU'RE NOT 22 GOING TO DO THAT EITHER. SO WE WERE PRECLUDED FROM 23 ASKING KENNEMUR QUESTIONS OF THIS WITNESS. 24 AND YOU'RE RIGHT. THE DEPOSITION TOOK 25 PLACE -- AND THE WAY THE DEPOSITION PROCEEDED, BECAUSE 26 OF THE NUMBER OF PARTIES AND CONTINUED THREATS BY 27 MS. DEAN ABOUT HOW MUCH TIME PEOPLE WOULD HAVE, PEOPLE 28 WERE HOPPING AROUND, TRYING TO COVER GAPS IN THINGS.	Page 25 1 GAVE COLOR TECHNIQUES AN HOUR. 2 SO WE'RE GOING INTO THIS DEPOSITION -- WE 3 HAVE -- WE'RE FOLLOWING THE DISCOVERY ACT. A 4 DECLARATION IN SUPPORT OF A SUMMARY JUDGMENT MOTION IN 5 OPPOSITION DOESN'T CUT IT UNDER 2034. YOU HAVE TO MOVE 6 TO AMEND. THAT'S THE LAW. IT DOESN'T SAY IF THE EXPERT 7 HAPPENED TO FILE SOMETHING, IF SOMETHING ELSE WAS FILED 8 IN THE CASE WITH SOME OTHER OPINION FROM THE EXPERT, 9 SUDDENLY THAT'S WITHIN FAIR GAME. NO. THE DISCOVERY 10 ACT SAYS IT HAS TO BE IN THE DISCLOSURE AND IT'S NOT. 11 THE COURT: WAS THE QUESTION ASKED AND/OR THE 12 STATEMENT MADE BY THE PLAINTIFF'S SIDE -- WAS THE 13 QUESTION ASKED OF THE WITNESS WHICH HE ANSWERED AND/OR 14 STATEMENT MADE BY PLAINTIFF'S COUNSEL THAT THE OPINIONS 15 HE INTENDS TO OFFER ARE CONTAINED WITHIN EXHIBIT 6 TO 16 THE DEPOSITION? 17 MR. LANKFORD: NO. THEY KEPT SAYING THERE'S ALL 18 KINDS OF OTHER STUFF. THEY SAID THAT A FEW TIMES. IN 19 FACT, WHEN PEOPLE TRIED TO DO THAT, OKAY, ALL OF YOUR 20 OPINIONS ARE COVERED HERE AND THEN THEY WERE LIKE, WELL, 21 THERE'S A DEC, AND THEN PEOPLE WERE SAYING, OKAY, AND 22 THEN THE DECLARATION, MS. DEAN WAS LIKE NO, THAT'S NOT 23 THE UNIVERSE. THERE COULD BE MORE. AND THERE IS MORE. 24 FIRST TIME IN VOLUME II, PAGE 246 IS THE FIRST TIME SHE 25 SAYS HE'S GOING TO OFFER STATE OF THE ART AS WELL. 26 WE'RE NOW A DAY-AND-A-HALF INTO THE 27 DEPOSITION, THAT SHE THEN TERMINATED NOT TOO LONG AFTER 28 THAT, AND SHE RAISES IT FOR THE FIRST TIME. IN TERMS OF

Page 26 1 OUR QUESTIONING, WE DIDN'T GO INTO STATE OF THE ART. WE 2 ASKED HIM ONE QUESTION THAT DEALT WITH SOMETHING BEYOND 3 THE CURRENT SIGNS, WHICH IS, IN 1975 THE DETERMINATION 4 WAS YOU NEED TO LOOK AT THE EPI. THAT WAS SAID AT NIOSH 5 '75 THAT WAS DISCUSSED WITH MR. WILLIAMS THE OTHER DAY. 6 AND THEN WE SAID: SO LET'S TURN TO THE EPI, AND WE 7 STARTED GOING THROUGH THE EPIDEMIOLOGY WITH HIM AND THEN 8 WE WENT THROUGH SOME OTHER SCIENCE WITH HIM. WE DIDN'T 9 DO THIS GOING BACK TO THE BEGINNING OF TIME AS THEY ARE 10 WITH MEREWETHER AND HUEPER AND ALL THESE OTHER THINGS. 11 WE NEVER HAD AN OPPORTUNITY TO DO THAT BECAUSE SHE 12 UNILATERALLY VIOLATED THE CODE -- 13 THE COURT: OKAY. I GOT THE PICTURE. SO IS THIS 14 YOUR STATE OF THE ART WITNESS? 15 MS. DEAN: YES, YOUR HONOR. 16 THE COURT: TO WHAT EXTENT IS THIS CUMULATIVE OF 17 WHAT DR. BRODY HAS ALREADY SAID? 18 MS. DEAN: NOT AT ALL. DR. BRODY OFFICIALLY IS NOT 19 A STATE OF THE ART WITNESS. HE INDICATES THINGS LIKE: 20 BY THE TIME I STARTED WORKING WITH DR. WAGNER, ALL OF 21 THIS WAS KNOWN. BUT WHEN THEY ASKED HIM WHETHER IN 1960 22 WAGNER WAS THE FIRST TIME IT WAS ESTABLISHED? HE SAID: 23 YOU SHOULD ASK SOMEONE ELSE. THERE ARE SO MANY THINGS 24 STATED BY FORD THAT ARE PLAINLY INACCURATE OR 25 MISLEADING. FIRST, THEY HAVEN'T SEEN THE POWERPOINT. 26 I WILL STATE AGAIN WHAT'S BEEN ON THE RECORD 27 THREE TIMES. THE AGREEMENT THEY ASKED FOR AND AGREED TO 28 IS, BEFORE WE START, WE HANDED IT TO THEM. I'VE GONE	Page 28 1 QUESTIONS. I SAID YOU'VE HAD TWO DAYS. YOU TOLD ME 2 YOU'RE DONE. HE HAS TO -- 3 THE COURT: YOU DON'T HAVE TO REHEARSE ALL THAT 4 BECAUSE I'VE HEARD IT ALL BEFORE AND MADE THE RULING I 5 DID. OVER YOUR OBJECTION, I PERMITTED ADDITIONAL 6 QUESTIONING BY NOXELL. 7 MS. DEAN: WHO ACTUALLY SAID: I HAVE MORE 8 QUESTIONS. WHAT HONEYWELL, MR. UNGARO SAID, IS ANOTHER 9 LAWYER CAME. HE DIDN'T DO IT, AND I WANT TO DO OVER. 10 THEN FORD SAID: ME TOO. THEY'RE NOW TRYING TO REINVENT 11 A RECORD. AGAIN, AN EXAMPLE OF WHAT MR. ADAMS TALKED 12 ABOUT. INSTEAD OF PREPARING TO BE EFFICIENT, I DEALT 13 WITH HOURS READING THIS CASE, LOOKING AT THIS ISSUE, 14 REINVENTING THINGS AND THEY STILL COME HERE AND TELL YOU 15 A FICTION THAT THEY DIDN'T KNOW HE WAS GOING TO TALK 16 ABOUT STATE OF THE ART WHEN THEY ADMIT IN THE MIDDLE OF 17 THE ARGUMENT I FLAGGED IT FOR THEM, BUT THEY DON'T ADMIT 18 THAT FORD'S LAWYER ASKED HIM, AND HE SAID IT AND THAT HE 19 DISCUSSED IT IN THE DECLARATION. 20 THE LAW IS CLEAR. WE SAID HE'S GOING TO TALK 21 ABOUT ASBESTOS AND ASBESTOS DISEASE. IF THAT WAS NOT 22 CLEAR ENOUGH, GIVEN WE JUST HAVE TO GIVE BROAD THINGS, 23 IT COULDN'T HAVE BEEN MADE CLEARER BY THE DECLARATION, 24 BY THEIR QUESTIONS. THEY DIDN'T SAY, MAN, THAT'S A LOT 25 OF HISTORY, ASBESTOS GOING BACK HUNDRED YEARS. WE MIGHT 26 NEED MORE TIME. THEY SAID, AFTER ASKING A HUNDRED PAGES 27 WORTH OF QUESTIONS, I'M DONE. 28 THE COURT: OKAY. ANYTHING FURTHER, MS. DEAN?
Page 27 1 ABOVE AND BEYOND. SECOND, THEY SAID THEY DIDN'T HAVE 2 HUEPER IN THE DECLARATION. LET'S BE VERY CLEAR HOW THIS 3 HAPPENED. THREE TIMES IN THE DECLARATION HE STATES THIS 4 IS LIMITED TO RESPOND TO LEGAL MOTIONS. SO WHILE THEY 5 DISCUSS A SPECIFIC CAUSATION AS TO FORD, CLEARLY AND AT 6 LENGTH IT DOESN'T FOR ALL PARTIES BECAUSE NOT ALL 7 PARTIES FILED A MOTION. 8 SO I DID STATE REPEATEDLY THAT THAT'S NOT 9 GOING TO BE THE ONLY THING. THREE, DID THEY KNOW ABOUT 10 STATE OF THE ART? YES, IN THE DECLARATION. YES, 11 BECAUSE FORD ASKED. YES, BECAUSE I FLAGGED IT. AND 12 AFTER HE CONFIRMED I'M TALKING ABOUT STATE OF THE ART, 13 THEY SAID NOTHING. TO PAINT THE PICTURE THAT I WAS 14 DRAGGING THINGS OUT OR TELLING THEM THEY HAD TO STOP, 15 UNILATERALLY STOP IT, AND WOULDN'T WORK WITH THEM IS A 16 FALSEHOOD. 17 FIRST, ANYTHING YOU WANT, ANY DOCUMENT ON THE 18 LIST, THAT HUEPER ARTICLE HE REFERENCES EXPLICITLY, I 19 WILL GIVE IT TO YOU AND ATTACH IT TO THE RECORD. LET ME 20 KNOW. BOEING TOOK ME UP ON THAT. THAT'S WHY THEY HAVE 21 SIX OF THE HOUSEHOLD EXPOSURES ATTACHED AS EXHIBIT 9 TO 22 THE DEPOSITION. WHAT OCCURRED IS THEY ESTIMATED A TIME. 23 I HAVE ANOTHER HOUR TONIGHT. DO YOU WANT TO TAKE IT? 24 NO. HOW MUCH TIME DO YOU NEED? TWO-AND-A-HALF HOURS. 25 I WANT TO START AT NOON. WE PREFER TO START AT 2:00. 26 OKAY. BUT HE HAS TO BE DONE AT 5:00. THEN THEY GO OVER 27 THEIR TIME ESTIMATES. HE STAYS LATE. FORD SAYS I'M 28 DONE. IT'S ON THE RECORD. NOXELL SAYS: I STILL HAVE	Page 29 1 MS. DEAN: NO, YOUR HONOR. 2 THE COURT: LAST WORDS? 3 MR. LANKFORD: YES, YOUR HONOR, JUST A FEW THINGS 4 QUICKLY FOR THE RECORD. SO FIRST OF ALL, THEIR 5 DISCLOSURE DOES DISCLOSE A DR. ZHANG WHO THEY SAY WILL 6 TESTIFY AS TO STATE OF THE ART. SO THEY IDENTIFIED AN 7 EXPERT AS TO STATE OF THE ART, AND IT WASN'T THIS 8 EXPERT. THREE THINGS THAT WE'RE SPECIFICALLY OBJECTING 9 TO. THEIR DISCLOSURE AS TO HABER DOES NOT HAVE SPECIFIC 10 CAUSATION AS TO FRICTION. IT DOES NOT HAVE STATE OF THE 11 ART, AND FROM WHAT I SAW LAST NIGHT OF THE VARIOUS 12 EXHIBITS -- BY THE WAY, I STILL DON'T HAVE THIS 13 POWERPOINT. I'M NOT SURE -- 14 THE COURT: I'M GOING TO LEAVE IT TO THE TWO OF YOU 15 TO FIGURE OUT WHY THAT IS SINCE I'M HEARING, YES, YOU 16 DO, AND YOU'RE SAYING, NO, YOU DON'T. 17 MR. LANKFORD: I HAVE THE FIRST WHATEVER 50, 70 18 SLIDES WHICH IS JUST HIS BACKGROUND, ET CETERA. I DON'T 19 HAVE WHATEVER THIS STATE OF THE ART OR IF HE'S GOING 20 INTO -- 21 MS. DEAN: I'D LIKE TO SAY FOR THE RECORD AND 22 OBJECTIVELY SHOW THAT THE COURT WAS JUST LIED TO. 23 MR. LANKFORD: WHERE IS IT THEN? 24 THE COURT: TALK TO ME, MR. LANKFORD. 25 MR. LANKFORD: HERE'S ONE COPY, I GUESS. IT 26 ENDS -- 27 THE COURT: HOLD ON A SECOND. YOU ARE MIXING 28 ISSUES HERE.

Page 30 1 MR. LANKFORD: OKAY. 2 THE COURT: THE TOPIC IS WHETHER THERE'S DISCOVERY 3 ABUSE THAT SHOULD RESULT IN PRECLUSION OR LIMITATION OF 4 DR. HABER. 5 MR. LANKFORD: SO LET ME FINISH. SO I DON'T KNOW 6 IF SHE'S GOING INTO INDUSTRIAL HYGIENE AS WELL, BASED ON 7 SOME OF THE STUFF I SAW LAST NIGHT. SO I'M ALSO 8 OBJECTING TO ANY INDUSTRIAL HYGIENE TESTIMONY FROM THIS 9 WITNESS ON THE SAME BASIS, NON-DISCLOSURE AND KENNEMUR. 10 AGAIN, THESE SLIDES DO NOT -- THEY'RE INCOMPLETE. SO 11 I'M -- 70. I'M EXPECTING SHE HAS AT LEAST 70 MORE. I 12 HAVEN'T SEEN THEM. 13 I'M GOING TO OBJECT TO ANY OF THAT TESTIMONY 14 AS WELL AS CUMULATIVE. THEY'VE ALREADY ESTABLISHED, 15 THROUGH OUR OWN WITNESS, MR. WILLIAMS, HERE IS THESE 16 BIBLIOGRAPHIES GOING BACK TO STUDIES FROM THE BEGINNING 17 OF TIME, AND IT'S BEEN ESTABLISHED WITH OTHER WITNESSES 18 AS WELL. I THINK IT'S PRETTY CLEAR TO THIS JURY THAT 19 VERY, VERY EARLY ON THERE WAS A DISCUSSION IN THE 20 LITERATURE ABOUT ASBESTOS, AND THEY HAVE -- YOU KNOW, 21 VARIOUS EVENTS WERE ALSO DISCUSSED WITH THE JURY ABOUT 22 THAT. SO I'M OBJECTING ON THAT GROUND AS WELL. 23 THE COURT: ONE QUESTION FOR YOU. I UNDERSTAND 24 YOUR POINT ABOUT TIME CRUNCH, TIME PRESSURE. SO YOU 25 DON'T HAVE TO MAKE THAT POINT BECAUSE I UNDERSTAND THAT 26 WELL. DO YOU CONTEND THAT DR. HABER, WHEN PRESENTED FOR 27 DEPOSITION, WAS SUFFICIENTLY FAMILIAR WITH THE PENDING 28 ACTION TO SUBMIT TO A MEANINGFUL ORAL DEPOSITION	Page 32 1 THE OPINIONS TO BE OFFERED AND THE BASES THEREFORE. I 2 AGREE WITH THE DEFENSE THAT THE DESIGNATION OF DR. HABER 3 IS QUITE GENERAL AND DOESN'T SAY A THING ABOUT STATE OF 4 THE ART. OKAY? I AGREE WITH YOU. HOWEVER, AS I 5 EARLIER STATED, THAT'S NOT THE END OF THE DISCUSSION. 6 WHAT ACTUALLY HAPPENS IN DEPOSITION, I THINK, IS HIGHLY 7 RELEVANT TO THE QUESTION OF EXPERT DISCOVERY. AND THE 8 RECORD, AS I APPRECIATE IT, PUT THE DEFENSE ON NOTICE 9 THAT THIS GENTLEMAN WAS GOING TO OFFER OPINIONS ON STATE 10 OF THE ART, AND IN THE TIME THAT WAS AVAILABLE AND THE 11 TIME EXTENDED BY THE COURT, THE QUESTIONING OCCURRED ON 12 THE DEFENSE SIDE AS IT OCCURRED. AND I ACKNOWLEDGE THAT 13 THERE CAME A POINT WHEN THE DEFENSE CAME TO THE COURT 14 AND SAID: WE HAVE A SERIOUS PROBLEM. WE NEED RELIEF. 15 I LISTENED CAREFULLY. WE HAD A HEARING, AT LEAST AS 16 LONG AS THIS ONE, PROBABLY LONGER, AND BASED ON WHAT I 17 HEARD, I MADE AN ORDER GRANTING RELIEF. 18 SO THAT'S THE ORDER. 19 MS. CUATTO, WHY ARE YOU ON YOUR FEET? YOU'RE 20 NOT GOING TO TRY TO ARGUE SOMETHING AFTER I'VE RULED, 21 ARE YOU? 22 MS. CUATTO: NO, YOUR HONOR. 23 EMILY CUATTO FOR FORD. I HAVE TWO OBJECTIONS 24 TO THE SLIDES THAT I THINK I NEED BEFORE DR. HABER TAKES 25 THE STAND. 26 THE COURT: ALL RIGHT. 27 MS. CUATTO: FIRST OF ALL, WITH RESPECT TO THE 28 SLIDES WE HAVE AND THE SLIDES, I THINK, WE'RE GOING TO
Page 31 1 CONCERNING THE SPECIFIC TOPICS OF HIS TESTIMONY? 2 MR. LANKFORD: I HAVE NO IDEA, YOUR HONOR, BECAUSE 3 I WAS NEVER GIVEN THE OPPORTUNITY TO ASK THE QUESTION AT 4 THE END: WHAT ARE ALL OF YOUR OPINIONS, ET CETERA. WE 5 COVERED VARIOUS THINGS WHERE WE HAD TO HOP AROUND 6 BECAUSE OF THESE UNILATERALLY IMPOSED TIME LIMITS. SO I 7 DON'T KNOW. WHAT I DO KNOW IS THAT MRS. ADAMS SAID -- 8 THE COURT: MS. DEAN. 9 MR. LANKFORD: I'M SORRY. MS. DEAN SAID SEVERAL 10 TIMES, OH, THAT'S NOT THE UNIVERSE. THAT'S NOT THE 11 UNIVERSE. SO WE WERE NOT ABLE TO EFFECTIVELY KENNEMUR 12 THE WITNESS AND THEN SHE STOPPED THE DEPOSITION. AND 13 I'D LIKE TO LODGE FOR THE RECORD THE THREE VOLUMES OF 14 TESTIMONY. 15 THE COURT: THAT'S FINE. I HAVE THEM, AND I'M NOT 16 SURE EXACTLY WHAT LODGING MEANS IN THIS CIRCUMSTANCE, 17 BUT THEY'RE LODGED. I HAVE THEM RIGHT HERE. 18 MR. LANKFORD: THANK YOU, YOUR HONOR. 19 THE COURT: ALL RIGHT. HERE'S THE RULING. I'M 20 DENYING THE MOTION ON THE BASIS ASSERTED. THE 21 LEGISLATURE, FOR WHATEVER REASON, DRAFTED 2034.260 OF 22 THE CODE OF CIVIL PROCEDURE TO REQUIRE, QUOTE, "A BRIEF 23 NARRATIVE STATEMENT OF THE GENERAL SUBSTANCE OF THE 24 TESTIMONY THAT THE EXPERT IS EXPECTED TO GIVE," END 25 QUOTE. 26 IN DOING THAT, SURELY THEY KNEW THERE WERE 27 WAYS OF MAKING MORE SPECIFIC REQUIREMENTS SUCH AS RULE 28 26 OF THE FEDERAL RULES, REQUIRING A WRITTEN REPORT OF	Page 33 1 SEE, I SEE CALL-OUTS AND PRINTS FROM THE WORLD HEALTH 2 ORGANIZATION 2006. 3 THE COURT: FROM WHAT? 4 MS. CUATTO: THE WORLD HEALTH ORGANIZATION 2006. 5 THE COURT: IS THAT HELSINKI? 6 MS. CUATTO: NO. OSHA -- HILLERDAL ARTICLE: 7 MESOTHELIOMA CASES ASSOCIATED WITH NON-OCCUPATIONAL AND 8 LOW DOSE EXPOSURES. EVIDENCE CODE 802 PERMITS AN EXPERT 9 TO STATE ON DIRECT THE MATTER UPON WHICH THE OPINION IS 10 BASED. THIS MEANS AN EXPERT CAN IDENTIFY THE SOURCES OF 11 MATERIAL UPON WHICH HIS OPINION RELIES AND RELATE THEM 12 TO THE JURY IN GENERAL TERMS, AND THE VEAMATAHAU -- I 13 THINK THAT'S HOW YOU PRONOUNCE IT -- CASE WE DISCUSSED 14 THE OTHER DAY DOES MAKE CLEAR THAT AN EXPERT CAN INCLUDE 15 NON-CASE SPECIFIC FACTS IN THEIR TESTIMONY. 16 I'M NOT AWARE OF ANY AUTHORITY THAT PERMITS 17 COUNSEL TO SIMPLY PUBLISH HEARSAY MATERIAL THAT AN 18 EXPERT PURPORTS TO RELY ON AND READ FROM IT AND NOT ONLY 19 READ FROM IT DURING DR. BRODY'S TESTIMONY, QUESTIONS 20 ASKING TO VALIDATE THE HEARSAY MATERIAL. I'M VERY 21 CONCERNED WE'RE GOING TO SEE THE SAME FOR THE NEXT TWO 22 DAYS FROM DR. HABER. I THINK IT'S IMPROPER. AND I 23 THINK THE WAY THAT THE EXAMINATION SHOULD PROCEED IS 24 THAT, IF THE EXPERT BRINGS IT UP AND THERE IS SOME MINOR 25 POINT OF THE RELIANCE MATERIAL THAT THE EXPERT WANTS TO 26 RECITE, THAT'S ONE THING, BUT TO HAVE COUNSEL PUBLISH 27 HEARSAY SOURCES TO THE JURY THAT ARE NOT IN EVIDENCE, 28 AND, SPECIALLY, THEY'RE NOT COMING INTO EVIDENCE, I

Page 34 1 THINK IS HIGHLY IMPROPER. 2 AND SO -- IF IT DOESN'T HAPPEN, I THINK, THE 3 EXAMINATION WILL GO MORE QUICKLY. BUT I'M PARTICULARLY 4 CONCERNED ABOUT THE SLIDES THAT I HAVE NOT YET SEEN AND 5 WHAT STATE OF THE ART MATERIALS WILL BE IN THERE. ARE 6 WE GOING TO SEE "WELCH: DON'T BLOW IT" PUBLISHED TO THE 7 JURY AND MENTIONED ANYTHING BUT IN GENERAL TERMS? I'M 8 VERY CONCERNED, SPECIALLY ABOUT MATERIALS THAT ARE NOT 9 FACTUAL IN NATURE BUT OPINION BASED. 10 THE COURT: WHY DO YOU SUPPOSE JUSTICE CORRIGAN 11 DIDN'T SAY ANYTHING IN SANCHEZ ON THIS POINT? 12 MS. CUATTO: I DON'T THINK THAT WAS THE ISSUE IN 13 SANCHEZ. THE ISSUE IN SANCHEZ IS CAN EXPERTS RELATE 14 CASE SPECIFIC FACTS? NO. IT WASN'T AN 802 ISSUE THAT 15 WE'RE TALKING ABOUT HERE ABOUT THE EXPERT TALKING ABOUT 16 GENERAL BACKGROUND MATERIAL. THEIR RELIANCE MATERIAL 17 IT'S NOT CASE SPECIFIC. 18 THE COURT: WHAT ABOUT CASE SPECIFIC HEARSAY IS 19 THAT LIMITED TO GENERAL -- 20 MS. CUATTO: CASE SPECIFIC HEARSAY ISN'T 21 ADMISSIBLE. 22 THE COURT: I SUPPOSE ONCE IT'S ADMITTED -- 23 MS. CUATTO: CORRECT. CORRECT. 24 THE COURT: ONCE IT'S ADMITTED, THEN IT'S NOT 25 USABLE. 26 MS. CUATTO: IT'S NOT HEARSAY. AND I THINK -- 27 THE COURT: OKAY. LET ME JUST THINK ABOUT THIS FOR 28 A SECOND.	Page 36 1 AUTHORITY THAT AN INTERNAL DOCUMENT CAN BE OFFERED AS 2 CIRCUMSTANTIAL EVIDENCE OF WHAT WAS KNOWABLE IN THIS 3 SCIENTIFIC COMMUNITY THAT WOULDN'T BE OFFERING THAT FOR 4 THE HEARSAY PURPOSE OF ITS TRUTH BECAUSE IT CAN'T BE 5 CIRCUMSTANTIAL EVIDENCE OF WHAT WAS KNOWABLE UNLESS IT 6 WAS, IN FACT, KNOWABLE IN THE COMMUNITY, AND YOU COULD 7 HAVE ACCESSED THAT INFORMATION FROM ANOTHER SOURCE. 8 SO IF WE START TO SEE -- 9 THE COURT: LET ME ASK YOU. ACCORDING TO YOU THEN, 10 THE ONLY WAY TO PROVE WHAT WAS KNOWN OR KNOWABLE AT A 11 RELEVANT TIME IS THROUGH EXPERT TESTIMONY? 12 MS. CUATTO: YES, IF IT'S A SCIENTIFIC MATTER LIKE 13 IT IS AT ISSUE IN THIS CASE, YES. 14 THE COURT: OKAY. 15 MS. CUATTO: OR THROUGH DOCUMENTS THAT APPLY TO THE 16 PARTICULAR DEFENDANT, BECAUSE THEY WERE THE DOCUMENTS 17 AVAILABLE TO THAT PARTICULAR DEFENDANT. WHAT I DON'T 18 THINK YOU CAN DO IS USE AN INTERNAL DOCUMENT OF AN 19 ORGANIZATION OR COMPANY OR, YOU KNOW, SOME UNIVERSITY 20 PROFESSOR'S FINAL TO SAY THIS WAS KNOWABLE IN THE 21 SCIENTIFIC COMMUNITY IF IT WASN'T PUBLICLY AVAILABLE AND 22 ACCESSIBLE. SO THEY HAVE TO HAVE EITHER ACTUAL NOTICE 23 OR CONSTRUCTIVE NOTICE THROUGH WHAT IS PUBLICLY 24 AVAILABLE; OTHERWISE, IT'S ONLY BEING OFFERED FOR THE 25 HEARSAY PURPOSE, AND IT'S NOT BEING OFFERED FOR 26 NON-HEARSAY PURPOSE. WE'LL SEE WHAT SLIDES COME UP ON 27 THAT, BUT I JUST WANTED TO MAKE SURE I DIDN'T LET THAT 28 GO TOO LONG FROM YESTERDAY WITHOUT MAKING THAT POINT
Page 35 1 WHERE WERE YOU THE OTHER DAY WHEN I ASKED 2 EVERYBODY: AM I WRONG? AND NOBODY SAID A THING? 3 MS. CUATTO: BECAUSE WHAT YOU SAID AT THE TIME, I 4 AGREED WITH. BUT THEN HOW IT PLAYED OUT, I THINK, WENT 5 TOO FAR. SO I THINK UNDER VEAMATAHAU, YES, AN EXPERT 6 CAN DESCRIBE THE BASIS OF THEIR OPINION, AND IF THAT 7 REQUIRES SOME LIMITED RECITATION OF BACKGROUND FACTS, 8 THAT'S OKAY. BUT PUTTING THE HEARSAY AND PUBLISHING IT 9 IN FRONT OF THE JURY, SPECIALLY IN THE CONTEXT OF 10 COUNSEL ASKING THE QUESTION AND IT NOT COMING FROM THE 11 WITNESS, GOES WELL BEYOND WHAT THAT CASE ALLOWS, AND I 12 THINK IS IMPROPER, SPECIALLY WHEN IT'S NOT FACTS; IT'S 13 OPINIONS. 14 THE COURT: OKAY. WHAT'S THE OTHER SLIDE? 15 MS. CUATTO: THOSE ARE THE SLIDES. IT'S 56, 58, 67 16 THROUGH 69. MY NEXT OBJECTION IS ABOUT THE SLIDES THAT 17 WE DON'T HAVE YET ABOUT THE STATE OF THE ART, BUT I 18 DON'T WANT TO GET THE QUESTION WHERE WERE YOU YESTERDAY 19 BECAUSE, WHEN YESTERDAY WE TALKED ABOUT THE ISSUE OF 20 NOTICE, I THINK WE'RE STARTING TO MIX TWO CONCEPTS. 21 THERE'S THE QUESTION OF NOTICE TO A DEFENDANT 22 THAT'S RELEVANT FOR THE NON-HEARSAY PURPOSE OF SHOWING 23 ITS EFFECT ON THE LISTENER. THAT'S A VERY DIFFERENT 24 QUESTION THAN NOTICE IN TERMS OF CONSTRUCTIVE NOTICE OF 25 WHAT IS KNOWABLE. AND ON THAT PARTICULAR QUESTION, 26 THOSE DOCUMENTS ARE NOT BEING OFFERED FOR A NON-HEARSAY 27 PURPOSE. THEY'RE BEING OFFERED FOR THE HEARSAY PURPOSE 28 OF SHOWING WHAT WAS KNOWABLE, AND I'M NOT AWARE OF ANY	Page 37 1 THAT DIDN'T COME UP AS TO FORD YESTERDAY. 2 THE COURT: GIVE ME A SECOND. 3 MS. DEAN, WHY DON'T YOU BRING DR. HABER IN. 4 MS. CUATTO, I DON'T KNOW WHERE THE LINE IS, 5 BUT YOUR POINT TO ME IS WHEREVER THE LINE IS, WHAT 6 PLAINTIFFS PROPOSE TO DO WITH THESE SLIDES IS OVER THE 7 LINE? 8 MS. CUATTO: CORRECT. 9 THE COURT: I UNDERSTAND THAT. AND I HAVE LONG 10 WONDERED WHAT IS LEFT OF THE CASE, THE NAME OF WHICH I 11 CAN'T REMEMBER, BUT IT'S SOMETHING LIKE MCCONNELL VS. 12 CONTINENTAL AIRLINES, WHICH IS A PRE-SANCHEZ CASE, WHICH 13 ALSO DISCUSSES WHAT AN EXPERT MAY RELAY CONCERNING THE 14 FOUNDATION FOR HIS OR HER OPINIONS WHEN IT'S OTHERWISE 15 INADMISSIBLE AND IT TOO SPEAKS OF GENERAL -- SORT OF 16 GENERALLY AND WITHOUT TOO MUCH DETAIL OR SOMETHING IS 17 WHAT I THINK THE COURT OF APPEAL SAID. 18 ALL RIGHT. WELL, I AGREE THERE'S A LINE. AND 19 I DON'T KNOW WHERE IT IS, AND IT'S GOING TO VARY ON A 20 CASE BY CASE BASIS OR A QUESTION BY QUESTION, SLIDE BY 21 SLIDE BASIS. SO THANK YOU. 22 LET'S BRING IN THE JURY, PLEASE. 23 24 (THE FOLLOWING PROCEEDINGS WERE HELD 25 IN THE PRESENCE OF THE JURY:) 26 27 THE COURT: LADIES AND GENTLEMEN, GOOD MORNING. 28 HAVE A SEAT, EVERYBODY. I SEE ALL JURORS AND

Page 38 1 ALTERNATES, COUNSEL ARE PRESENT. WITNESS IS ON THE 2 STAND. 3 AND, LADIES AND GENTLEMEN, I'M SO SORRY TO 4 LEAVE YOU STANDING OUT THERE IN THE HALLWAY. THERE WERE 5 SOME THINGS THAT I HAD TO COVER WITH THE LAWYERS HERE TO 6 MAKE THIS TESTIMONY GO SMOOTHLY. WE ARE STILL ON TRACK. 7 I WANT TO REASSURE YOU THAT WE ARE STILL ABSOLUTELY 8 WITHIN THE TIME FRAME I HAVE TOLD YOU. NOTHING IS 9 SLIPPING. OKAY? 10 SO WITH THAT, DR. HABER, YOU ARE STILL UNDER 11 OATH. 12 DO YOU UNDERSTAND THAT? 13 THE WITNESS: YES, SIR. 14 THE COURT: OKAY. MS. DEAN WOULD YOU LIKE TO 15 PROCEED? 16 MS. DEAN: YES, YOUR HONOR. 17 THE COURT: WHENEVER YOU ARE READY. 18 MS. DEAN: YOUR HONOR, WE WANT TO START OFF BY 19 ADMITTING -- WELL, FIRST WE'VE MARKED FOR IDENTIFICATION 20 EXHIBITS 1 THROUGH 10, 12 THROUGH 13. 21 THE COURT: OKAY. WAIT A SECOND. LOUDER. 22 MS. DEAN: 1 THROUGH 10, 12 THROUGH 13, 15 THROUGH 23 17, 19 THROUGH 22, 26 THROUGH 29, 32, 34, 36 THROUGH 37, 24 41, 54, 56 -- 25 THE COURT: SLOWER. 41. 26 MS. DEAN: 54 THROUGH 56, 74, 259 THROUGH 269, 270, 27 277, 281 AND 283. 28 THE COURT: OKAY. SO I LOST YOU AT 269.	Page 40 1 MS. DEAN: YOUR HONOR, WE'D ALSO SEEK TO ADMIT 701 2 AND 703 INTO EVIDENCE. THERE WERE TWO DOCUMENTS. THESE 3 ARE FORD DEFENSE DOCUMENTS SHOWN TO THE WITNESS 4 YESTERDAY. I THINK THINGS JUST GOT CONFUSED, BUT I 5 DIDN'T GET MY COPY. ONE GOT ADMITTED. ONE DID NOT. I 6 WANT TO MAKE SURE BOTH ARE ADMITTED INTO EVIDENCE. 7 THE COURT: EXHIBIT 701 AND 704, THEY ARE FORD 8 DOCUMENTS, YOU SAID? 9 MS. DEAN: I THOUGHT IT WAS 701 AND 703. 10 THE COURT: OH, OKAY. AND THEY ARE FORD DOCUMENTS, 11 YOU SAY? 12 MS. DEAN: YES. SHOWN TO MR. WILLIAMS BY FORD. 13 MR. LANKFORD: I DON'T HAVE AN OBJECTION, BUT 14 MS. DEAN, ISN'T 701 THE PNEUMOCONIOSIS? 15 MS. DEAN: ONE WAS A LETTER SELIKOFF. ONE IS 16 PNEUMOCONIOSIS. 17 THE COURT: OKAY-- LET ME SAY I NOTE THE OFFER. 18 AND I'LL RESERVE RULING. MR. LANKFORD AND OTHERS, 19 PLEASE INFORM YOURSELF. 20 MR. SLAUGHTER: YOUR HONOR, IF WE COULD BE TOLD 21 WHICH TWO ARE NOT AVON, THAT COULD SAVE A LOT OF TIME. 22 MS. DEAN: 74 AND 41. 23 MR. SLAUGHTER: AND THAT WAS SLAUGHTER. 24 THE COURT: HELP US OUT. TELL US WHO YOU ARE 25 BEFORE YOU SPEAK EVEN THOUGH YOU THINK WE KNOW WHO YOU 26 ARE, WHICH WE PROBABLY DON'T. 27 MS. DEAN: YES, YOUR HONOR. 28 ///
Page 39 1 MS. DEAN: 270 TO 277, 281 AND 283. 2 THE COURT: DO YOU MIND IF I JUST GO OVER THOSE 3 WITH YOU? 4 MS. DEAN: NOT AT ALL. 5 THE COURT: 1, 2, 3, 4, 5, 6, 7, 8, 9. DO I GO TO 6 10? 7 MS. DEAN: YES. 8 THE COURT: 10, 12, 13, 15, 16, 17, 19, 20, 21, 22, 9 26, 27, 28, 29, 32, 34, 36, 37, 41, 54, 55, 56, 74, 259, 10 260, 261, 262, 263, 264, 265, 266, 267, 268, 269, 270, 11 271, 272, 273, 274, 275, 276, 277, 281 AND 283. DID I 12 GET ALL OF THOSE CORRECTLY? 13 MS. DEAN: YES, YOUR HONOR. 14 THE COURT: OKAY. AND I PRESUME THE DEFENDANT IS 15 GOING TO NEED A FEW MINUTES TO LOOK AT THOSE TO 16 DETERMINE WHETHER THERE ARE ANY OBJECTIONS? 17 MR. LANKFORD: YES, YOUR HONOR. 18 THE COURT: OKAY. I'LL RESERVE ON THAT. I NOTE 19 THAT THEY'RE BEING OFFERED. 20 MS. DEAN: YOUR HONOR, I DO KNOW THAT AVON HAS 21 INDICATED NO OBJECTION, AND THESE ARE ALL, BUT TWO, AVON 22 SPECIFIC DOCUMENTS. AND THEN I PROVIDED NOT ONLY THIS 23 LIST BUT THE SUBLIST TO ALL COUNSEL. 24 THE COURT: OKAY. SO WE WILL -- I UNDERSTAND. BUT 25 GO AHEAD AND PROCEED. I'M GOING TO RESERVE RULING UNTIL 26 I GIVE COUNSEL A CHANCE JUST TO MAKE SURE THEY KNOW WHAT 27 WE'RE TALKING ABOUT. 28 ALL RIGHT. GO AHEAD AND PROCEED, PLEASE.	Page 41 1 DIRECT EXAMINATION (CONTINUED) 2 BY MS. DEAN: 3 Q GOOD MORNING, DR. HABER. 4 A GOOD MORNING, MS. DEAN. 5 Q RIGHT BEFORE WE KIND OF BARELY STARTED, WE 6 WERE JUST ORIENTING THE JURY WHO YOU ARE. AND WE WERE 7 LOOKING AT THESE ORGANIZATIONS, AND I THINK YOU WERE 8 TELLING US ABOUT THE MIDDLE ONE THAT SAYS AMERICAN 9 COLLEGE OF OCCUPATIONAL AND ENVIRONMENTAL MEDICINE. 10 CAN YOU TELL US ABOUT THAT? 11 A YES. SO THAT IS AN ORGANIZATION OF PHYSICIANS 12 THAT HAVE EXPERTISE AND EXPERIENCE AND FOCUS THEIR 13 ATTENTION ON DISEASES RELATED TO OCCUPATIONAL AND 14 ENVIRONMENTAL EXPOSURES AND, THEREFORE, RELATED 15 DISEASES. 16 Q IN PART OF YOUR EDUCATION AND TRAINING AND 17 EXPERIENCE AS A DOCTOR, IS UNDERSTANDING NOT ONLY WHAT 18 DISEASE YOUR PATIENTS HAVE, BUT THE CAUSE OF THE DISEASE 19 AN INTEGRAL PART OF YOUR WORK? 20 A YES. VERY OFTEN. 21 Q HAS THAT BEEN THE CASE FOR ASBESTOS-RELATED 22 DISEASES? 23 A SPECIFICALLY, YES. 24 Q IN TERMS OF UNDERSTANDING CAUSE AND EFFECT FOR 25 DISEASE, WHAT ARE SOME AREAS OR DISCIPLINE IN THE 26 SCIENTIFIC COMMUNITY THAT YOU ROUTINELY LOOK AT AND RELY 27 ON? 28 A WELL, YOU WOULD LOOK AT -- PARTICULARLY WITH,

Page 42 1 FOR EXAMPLE, THE DUST DISEASES, YOU'RE LOOKING AT 2 INFORMATION FROM GEOLOGISTS OR FROM TOXICOLOGISTS OR 3 FROM ENVIRONMENTAL HEALTH, INDUSTRIAL HEALTH, INDUSTRIAL 4 HYGIENE, CHEMISTS. THERE'S A VARIETY OF DIFFERENT 5 DISCIPLINES IN SCIENCE, AS WELL AS, OF COURSE, 6 PHYSICIANS AND OTHER SCIENTISTS. 7 Q WE'VE SEEN SOME OF THIS WITH DR. LONGO, BUT WE 8 ONLY GOT PARTIALLY FOR -- THE OTHER SIDE HAS NOT HAD A 9 CHANCE TO TALK TO HIM. BUT IS IT IMPORTANT WHEN YOU'RE 10 EVALUATING WHAT CAUSED YOUR PATIENTS' DISEASES TO 11 UNDERSTAND HOW MUCH ASBESTOS IS IN THE PRODUCT, WHAT 12 TYPES AND HOW MUCH GETS RELEASED IN THE AIR DEPENDING ON 13 THE WORK THAT THEY'RE DOING? 14 A YES, IT IS. 15 Q AND THEN, IN TERMS OF JUST MAKING BROADER 16 DECISIONS ABOUT WHETHER DIFFERENT TYPES OF 17 ASBESTOS-CAUSED DISEASE, IS EPIDEMIOLOGY IMPORTANT? 18 A YES, IT IS. 19 Q IS TOXICOLOGY IMPORTANT? 20 A YES, MA'AM. 21 Q ARE ANIMAL STUDIES IMPORTANT? 22 A YES. 23 Q IS MOLECULAR SCIENCE IMPORTANT? 24 A YES. ABSOLUTELY. 25 Q YOU HAVE TWO OTHER ORGANIZATIONS AT THE BOTTOM 26 HERE. CAN YOU TELL US WHAT THEY ARE AND WHAT YOUR 27 AFFILIATION WITH THOSE ORGANIZATIONS IS? 28 A SURE. THE A.T.S. OR AMERICAN THORACIC SOCIETY	Page 44 1 AND THEN THE SECOND WAS JUST A CASE REPORT OF 2 A PERSON WHO HAD SIMULTANEOUSLY BOTH MALIGNANT 3 MESOTHELIOMA AND A LUNG CANCER. 4 Q IS HAVING BOTH MESOTHELIOMA AND LUNG CANCER 5 REMARKABLY RARE? 6 A EXCEPTIONALLY RARE. 7 Q IF WE GO TO YOUR FIRST PAPER AND WE WANT TO 8 EVALUATE A CLAIM THAT WAS TOLD THE JURY EARLY ON ABOUT 9 WHETHER, BASED ON JUST OBJECTIVE DATA, YOU WOULD EXPECT 10 TO SEE IN A MESOTHELIOMA CAUSED BY ASBESTOS TO HAVE 11 PLEURAL PLAQUES OR ASBESTOSIS, ARE YOU ONE OF MANY THAT 12 HAVE CONTRIBUTED TO SUCH DATA ABOUT THAT? 13 A YES. 14 Q NOW, WE HAVE MET AND TALKED TO DR. BRODY WHO 15 HAS OVER 100 ARTICLES IN THE PEER-REVIEWED PUBLISHED 16 ARENA. DO YOU HAVE ANYTHING LIKE THAT? 17 A NO, MA'AM. 18 Q DO YOU SPEND MOST OF YOUR TIME DAY IN AND DAY 19 OUT WITH PATIENTS? 20 A YES. I DON'T DO THE RESEARCHING, NO. 21 Q HAVE I ASKED YOU TO COME AND HELP US 22 UNDERSTAND WHAT DISEASE RITA CHAPMAN HAS, WHAT CAUSED IT 23 AND HOW LONG IT HAS BEEN KNOWN IN YOUR ARENA, IN THE 24 MEDICAL AND SCIENTIFIC COMMUNITY, ABOUT THAT CAUSE AND 25 EFFECT RELATIONSHIP TODAY? 26 A YES, YOU DID. 27 Q WHEN I ASK YOU THOSE QUESTIONS, CAN I ASK YOU 28 TO GIVE ALL OF YOUR OPINIONS WITHIN A REASONABLE DEGREE
Page 43 1 IS SIMILAR TO THE AMERICAN COLLEGE OF CHEST PHYSICIANS. 2 IT'S A LARGE GROUP OF PHYSICIANS RELATED TO THORAX -- 3 THORACIC IS CHEST -- RELATED TO DISEASES OF THE CHEST. 4 THE A.T.S. PUTS OUT GUIDANCE PAPERS FROM 5 DIAGNOSING ASBESTOS-RELATED DISEASES AND OTHER DISEASES, 6 AS WELL AS PERFORMING PULMONARY FUNCTION TESTING AND 7 OTHER TYPES OF TESTS. SO THEY HAVE A JOURNAL THAT 8 PHYSICIANS LIKE MYSELF WILL READ THAT HAVE ARTICLES, 9 PEER-REVIEWED JOURNALS. 10 AND THEN THE AMERICAN BOARD OF MEDICAL 11 SPECIALTIES IS THE BOARD THAT OVERSEES THE TRAINING AND 12 CERTIFICATION OF PHYSICIANS FROM INTERNAL MEDICINE, 13 PULMONARY, CARDIOLOGY, WHATEVER SPECIALIST THAT YOU'RE 14 SEEING. 15 Q HAVE YOU ALSO PUBLISHED AND CONTRIBUTED TO THE 16 SCIENTIFIC AND MEDICAL PEER-REVIEWED PUBLISHED 17 LITERATURE? 18 A SOMEWHAT. IT'S LIMITED. BUT, YES, I HAVE. 19 Q ARE THESE EXAMPLES OF YOUR PUBLICATIONS? 20 A YES, MA'AM. 21 Q TELL US A LITTLE BIT ABOUT THOSE. 22 A SO ONE WAS A STUDY RELATED TO MALIGNANT 23 MESOTHELIOMA. THIS HAD BEEN A CLINICAL EVALUATION OF 24 238 CASES OF MESOTHELIOMA THAT HAD COME THROUGH THE 25 CLINIC THAT I WAS WORKING AT. AND THIS WAS LOOKING AT 26 WHAT THEIR -- HOW THEY WERE TREATED, WHAT THEIR 27 PROGNOSIS WAS, THEIR SYMPTOMS, ET CETERA. SO IT WAS 28 LOOKING AT MESOTHELIOMA FROM A CLINICAL PERSPECTIVE.	Page 45 1 OF MEDICAL AND SCIENTIFIC CERTAINTY? 2 A I WILL. 3 MS. DEAN: YOUR HONOR, AT THIS TIME WE WOULD LIKE 4 TO OFFER DR. HABER AS AN EXPERT IN INTERNAL MEDICINE AND 5 PULMONOLOGY WITH EDUCATION, TRAINING, AND KNOWLEDGE 6 SPECIFICALLY IN ASBESTOS AND DISEASE. 7 THE COURT: ALL RIGHT. IS THERE ANY OBJECTION TO 8 THE WITNESS'S QUALIFICATIONS? HEARING NONE. THE COURT 9 FINDS THAT DR. HABER POSSESSES AT LEAST THE MINIMUM 10 QUALIFICATIONS TO BE SO QUALIFIED, AND HE IS SO 11 QUALIFIED BY THE COURT. 12 YOU MAY PROCEED. 13 MS. DEAN: THANK YOU, YOUR HONOR. 14 Q THE FIRST THING I WANT TO DO IS JUST GET AN 15 UNDERSTANDING OF WHAT MATERIALS THAT ARE SPECIFIC TO 16 RITA CHAPMAN THAT YOU REVIEWED IN ORDER TO BE ABLE TO 17 TALK TO EVERYBODY TODAY, BUT THIS SLIDE REMINDS ME OF 18 SOMETHING I NEED TO ASK FIRST. 19 AND, YOU KNOW, PAUSING ON THAT, I KNOW YOU 20 HAVE SENT ME CERTAIN THINGS LIKE CT SCANS AND MEDICAL 21 RECORDS THAT YOU THOUGHT WERE IMPORTANT AND A 55-PAGE 22 DECLARATION AND LIST OF ARTICLES THAT YOU THOUGHT WERE 23 IMPORTANT. BUT IN TERMS OF ACTUALLY PREPARING THIS 24 POWERPOINT, WHO DID THE WORK? 25 A IT WAS, I THINK, COLLABORATION. I MEAN, I 26 CERTAINLY -- 27 Q WHO DID THE TYPING? 28 A OH, YOU DID THE TYPING. I DON'T TYPE.

Page 46 1 Q AND SO IF THERE ARE TYPOS, I JUST WANT TO BE 2 REALLY CLEAR, THAT'S ME AND NOT ANYBODY ELSE. 3 IN TERMS OF -- BEFORE WE GET INTO THIS CASE, 4 HAVE YOU TESTIFIED IN OTHER CASES BEFORE? 5 A YES, MA'AM. 6 Q YOU AND I HAVE WORKED TOGETHER SEVERAL TIMES 7 IN THE COURTROOM; CORRECT? 8 A YES. 9 Q WHERE I'VE ASKED YOU TO COME AND REVIEW A 10 PERSON'S WORK HISTORY, ENVIRONMENTAL HISTORY, MEDICAL 11 RECORDS AND HELP US UNDERSTAND WHAT HAPPENED? 12 A YES. 13 Q HAVE YOU ALSO BEEN ASKED BY COMPANIES TO COME 14 AND TESTIFY IN ASBESTOS-RELATED MATTERS? 15 A YES. 16 Q CAN YOU GIVE US AN IDEA ABOUT THE SPLIT 17 BETWEEN WHAT IS THE SIDE THAT BELIEVES THEY WERE HURT 18 FROM ASBESTOS VERSUS THE SIDE THAT BELIEVES -- THAT WERE 19 SUED? 20 A ABOUT HALF OF MY WORK WHEN I'M DOING THE 21 MEDICAL LEGAL ON ASBESTOS IS BETWEEN DEFENDANTS AND HALF 22 WITH PLAINTIFF. 23 Q OKAY. WHEN YOU COME, DO YOU CHARGE FOR YOUR 24 TIME? 25 A I DO. 26 Q CAN YOU GIVE US AN IDEA OF HOW MUCH YOU 27 CHARGE? 28 A THIS WILL BE CHARGED AT \$600 AN HOUR.	Page 48 1 KIND OF HER GENERAL HEALTH BACKGROUND BEFORE SHE GOT 2 THIS DIAGNOSIS? 3 A YES. 4 Q TELL US A LITTLE BIT ABOUT HER MEDICAL 5 HISTORY. 6 A SURE. SO SHE WAS ACTUALLY PRETTY HEALTHY. 7 SHE HAD SOME OSTEOARTHRITIS AND JUST ACHES AND PAINS 8 TYPE OF ARTHRITIS, NOTHING SIGNIFICANT. SHE HAD GERD OR 9 GASTROESOPHAGEAL DISEASE, ACID REFLUX. SHE HAD SOME 10 CATARACTS IN HER EYES AND DYSLIPIDEMIA. THAT'S THE 11 MEDICAL TERM FOR ABNORMAL LIPIDS OR CHOLESTEROL, 12 TRIGLYCERIDES. AND SHE WAS ON MEDICATION TO CONTROL 13 THAT. BUT NO ACTIVE OR CHRONIC LUNG CONDITIONS, HEART 14 CONDITIONS, ANYTHING LIKE THAT. 15 Q WERE ANY OF THESE CONDITIONS IN A STATE WHERE 16 YOU WOULD SAY THEY'RE NOT WELL CONTROLLED? 17 A NO. AND THEY HAD -- SHE HAD HAD EVEN A CHEST 18 X-RAY AND PULMONARY FUNCTION TESTING, WHICH IS A 19 BREATHING TESTING DONE, ABOUT A YEAR TO TWO YEARS BEFORE 20 SHE WAS DIAGNOSED WITH CANCER, AND THEY WERE COMPLETELY 21 NORMAL. 22 Q ONE OF THE THINGS DR. BRODY SAYS WITH 23 MESOTHELIOMA IS THAT IT CAN BE IN YOUR BODY FOR YEARS 24 AND IF NOT DECADES AND YOU DON'T HAVE ANY PROBLEMS, YOU 25 DON'T SEE ANY PROBLEM, AND THEN THE CANCER APPEARS. IS 26 THAT YOUR EXPERIENCE AS A DOCTOR IN THE FIELD ABOUT HOW 27 MESOTHELIOMA WORKS? 28 A YES.
Page 47 1 Q AND IN TERMS OF HOW YOU SPENT YOUR TIME, PART 2 OF WHAT YOU'VE DONE IS REVIEWED MATERIALS. CAN YOU TELL 3 US A LITTLE BIT ABOUT WHAT YOU REVIEWED? 4 A YES. SO I REVIEWED MRS. CHAPMAN'S MEDICAL 5 RECORDS FROM MAYO CLINIC. I LOOKED AT A NUMBER OF HER 6 CHEST X-RAYS AND CT SCANS AND PET SCANS. IT'S A SPECIAL 7 TYPE OF CAT SCAN. I TALKED WITH HER ON THE PHONE. I 8 CALLED HER UP, AND WE HAD A CHAT. AND THEN I'VE LOOKED 9 AT DEPOSITION TESTIMONIES. 10 Q WHAT WAS THE FUNCTION OF THE CHAT? 11 A WELL, AS A PHYSICIAN, I LIKE TO GET 12 INFORMATION DIRECTLY FROM THE PATIENT JUST LIKE IF THEY 13 WERE IN MY OFFICE. 14 Q SO YOU REVIEWED THE DAYS AND DAYS AND DAYS OF 15 SWORN TESTIMONY WHERE THE LAWYERS GOT TO ASK HER 16 QUESTIONS, BUT YOU ALSO THEN FOLLOWED UP YOURSELF? 17 A YES. 18 Q DO YOU AGREE WITH THE DIAGNOSIS OF HER ACTUAL 19 TREATING PHYSICIANS? 20 A I DO. 21 Q WHAT DISEASE DOES SHE HAVE? 22 A MALIGNANT PLEURAL MESOTHELIOMA. 23 Q SHE HAD TO GO HOME FOR DOCTORS' APPOINTMENTS, 24 AND I THINK IN MANY WAYS THAT MAKES THIS EASIER. IN 25 YOUR OPINION AS A DOCTOR, WHAT IS SHE LIKELY GOING TO 26 DIE FROM? 27 A MALIGNANT PLEURAL MESOTHELIOMA. 28 Q DID YOU TAKE TIME AND EFFORT TO UNDERSTAND	Page 49 1 Q CAN YOU TELL US A LITTLE BIT ABOUT HER 2 CLINICAL COURSE? 3 A SURE. SO IN MARCH OF 2021, SHE STARTED 4 EXPERIENCING SOME LEFT-SIDED CHEST PAINS, AND SHE WAS 5 FEELING OUT OF BREATH. AND SHE WENT TO THE DOCTOR. 6 THEY DID A CHEST MRI AND CHEST X-RAY, AND THESE BOTH 7 SHOWED A VERY LARGE WHAT'S CALLED PLEURAL EFFUSION. 8 Q DID YOU PROVIDE THIS TO ME TO HELP KIND OF 9 EXPLAIN WHAT A PLEURAL EFFUSION IS? 10 A YES. 11 Q CAN YOU DO THAT? 12 A YES. SO NORMALLY THE LUNGS ARE LIKE A PILLOW 13 WITH A PILLOWCASE AROUND IT. WE HAVE THIS -- THE LUNGS 14 ARE ENCASED IN WHAT'S CALLED THE PLEURA. AND NORMALLY 15 THE -- THERE'S TWO LININGS OF THE PLEURA, ONE THAT GOES 16 UP AGAINST THE CHEST AND ONE THAT GOES UP AGAINST THE 17 LUNGS. AND THEY'RE NORMALLY TISSUE PAPER THIN AND VERY 18 CLOSE TOGETHER WITH JUST A SMALL AMOUNT OF LUBRICATION 19 SO THAT THEY SLIDE APART. NOT MUCH FLUID AT ALL. 20 BUT IN ABNORMAL CONDITIONS LIKE CANCER, YOU 21 CAN START DEVELOPING FLUID CALLED A PLEURAL EFFUSION 22 BETWEEN THOSE TWO LAYERS, AND IT ACTUALLY STARTS TO 23 COMPRESS AGAINST THE LUNG MAKING IT HARDER AND HARDER 24 FOR THE LUNG TO EXPAND AND CAUSE YOU TO HAVE SHORTNESS 25 OF BREATH. 26 AND SO WHAT WE HAVE PICTORIALLY HERE IS ON 27 THE -- WHAT LOOKS LIKE ON THE LEFT SIDE, WHICH WOULD BE 28 THE PERSON'S RIGHT LUNG, YOU SEE THAT BLUE AREA, THAT

Page 50 1 WOULD BE THE FLUID AS IT STARTS TO PUSH AGAINST THE 2 LUNG. 3 Q MR. ADAMS POINTED OUT I ASKED YOU A QUESTION 4 ABOUT WHETHER ASBESTOS CAN BE IN YOUR BODY FOR YEARS AND 5 IF YOU DON'T SEE IT AND THEN IT SHOWS UP, AND HE SAID I 6 ACCIDENTALLY SAID MESOTHELIOMA COULD BE IN YOUR BODY 7 INSTEAD OF ASBESTOS. 8 DID YOU FOLLOW ME WHEN I ASKED THAT QUESTION? 9 A I DID. 10 Q SORRY ABOUT THAT. 11 IN TERMS OF PLEURAL EFFUSION, DO YOU HAVE AN 12 X-RAY OF RITA CHAPMAN THAT HELPS US UNDERSTAND WHAT SHE 13 WAS GOING THROUGH? 14 A YES. IS THERE A POINTER OR -- CAN I -- 15 Q DO YOU HAVE ONE? 16 A I DO NOT. 17 Q LET ME SEE IF I CAN FIND ONE. 18 THE COURT: MS. DEAN, IF IT'S IMPORTANT, THE 19 WITNESS CAN LEAVE THE WITNESS STAND AND STAND ELSEWHERE 20 TO ILLUSTRATE TESTIMONY. 21 Q BY MS. DEAN: AS WE LOOK AT RITA CHAPMAN'S 22 X-RAY, WOULD THAT BE HELPFUL? 23 A YES, IT WOULD. 24 THE COURT: LET ME ASK THE JURY. WHAT'S BETTER? 25 IF THE WITNESS IS THERE OR THERE (INDICATING)? LOOKS 26 LIKE IT'S A 9/3 VOTE. 27 ALL RIGHT. TELL YOU WHAT, DOCTOR. WOULD YOU 28 MIND GOING OVER THERE?	Page 52 1 BREATHING? 2 A YES. THAT'S A PROCEDURE THAT I DO. 3 Q IS THAT THAT PROCEDURE? 4 A YES. 5 Q TELL US ABOUT IT. 6 A SO THIS IS CALLED A THORACENTESIS. AND THIS 7 IS WHERE I STICK A NEEDLE -- THE DOCTOR WILL STICK A 8 NEEDLE INTO THE PERSON'S CHEST. SO WHAT THEY DO IS HAVE 9 THEM SIT IN THIS POSITION. WE PUT SOME LIDOCAINE IN THE 10 BACK AREA, AND WE STICK A LONG CATHETER. IT'S LIKE AN 11 IV, BUT IT'S ABOUT EIGHT INCHES LONG AND A LITTLE 12 THICKER. AND WE PUT THIS CATHETER INTO THAT CAVITY 13 WHERE THE LIQUID WAS, AND THEN PUT IT -- ATTACH IT TO A 14 VACUUM BOTTLE AND SUCK ALL OR AS MUCH FLUID AS WE CAN 15 GET OUT SAFELY OUT EITHER SAFELY OR FROM A COMFORT 16 STANDPOINT. 17 Q DOES THAT HELP THE PATIENT BREATHE? 18 A YES. SO THEY'LL -- INITIALLY WHEN THE LUNG 19 REEXPANDS, IT'S ACTUALLY QUITE PAINFUL, CAN CAUSE A LOT 20 OF COUGHING AND SYMPTOMS. BUT SHORTLY THERE AFTERWARDS, 21 THEIR BREATHING IS MUCH IMPROVED. 22 Q IS THIS A PROCEDURE THAT RITA CHAPMAN HAS HAD 23 DONE SEVERAL TIMES? 24 A YES. 25 Q TELL US ABOUT THAT. 26 A SO A FEW DAYS LATER AFTER RECOGNIZING SHE HAD 27 THIS PLEURAL EFFUSION, THEY DRAINED THE FLUID 900 CC'S. 28 AND SO JUST TO GIVE YOU AN IDEA, YOU THINK ABOUT
Page 51 1 THE WITNESS: OKAY. 2 THE COURT: SORRY FOR THE FOLKS WHO THINK 3 OTHERWISE. THANK YOU. 4 THE WITNESS: SO THIS IS MRS. CHAPMAN'S X-RAY FROM 5 MARCH 8TH OF 2021 WHEN SHE CAME IN. AND JUST TO ORIENT 6 YOU, THE WAY WE PUT UP A CHEST X-RAY, IT'S AS IF YOU'RE 7 LOOKING AT THE PERSON. SO THIS IS THE RIGHT LUNG, AND 8 THIS IS THE LEFT LUNG. 9 AND NORMALLY, THE LUNG HAS THIS SORT OF 10 DARKISH GRAY APPEARANCE BECAUSE IT'S MOSTLY AIR BUT SOME 11 TISSUE IN THERE. AND YOU SHOULD BE ABLE -- THIS IS THE 12 DIAGRAM RIGHT HERE ON THE RIGHT. 13 ON THE LEFT SIDE, IT LOOKS LIKE IT'S JUST 14 COMPLETELY PAINTED OVER SOLID THERE. YOU CAN'T REALLY 15 SEE ANY OF THAT. IT SHOULD BE SYMMETRICAL JUST LIKE IT 16 IS OVER HERE. AND ALL OF THAT IS THE PLEURAL EFFUSION. 17 IT'S ABOUT HALF -- FILLING UP HALF OF THE LEFT SIDE OF 18 HER CHEST. 19 SO THIS IS ALL PLEURAL EFFUSION, AND THERE'S 20 ALSO SOME THICKENING OF THE PLEURA. NORMALLY IT'S THAT 21 TISSUE PAPER THIN. IN HER CASE IT WAS THICK. 22 Q BY MS. DEAN: DOES MESOTHELIOMA CAUSE PLEURAL 23 EFFUSIONS TO HAPPEN IN THE LUNG? 24 A YES. IT'S ONE OF THE MOST COMMON EFFECTS THAT 25 YOU WILL SEE IN THE PRESENTATION FROM MALIGNANT PLEURAL 26 MESOTHELIOMA IS THE PLEURAL EFFUSION. 27 Q IS THERE A PROCEDURE IN WHICH THE DOCTOR CAN 28 REMOVE THAT FLUID SO THE PERSON CAN HAVE AN EASIER TIME	Page 53 1 MILLILITERS OR CUBIC CENTIMETERS. IT WOULD BE ABOUT 2 THREE OF THESE APPLE JUICE BOTTLES WORTH THAT THEY TOOK 3 OUT, WHICH IS QUITE A LOT. I MEAN, OUR NORMAL BREATH IS 4 ABOUT 500 CC'S. SO THIS WAS TAKING UP ALMOST TWO FULL 5 BREATHS WORTH IN HER CHEST ON HER LEFT SIDE. 6 Q DID YOU HAVE TO GO THROUGH THIS PROCESS MORE 7 THAN ONCE? 8 A YES. 9 Q TELL US ABOUT THAT. 10 A SO LATER ON SHE STARTS -- SHE STARTS GETTING 11 SHORT OF BREATH AGAIN. SHE WENT BACK TO THE DOCTOR. 12 THEY FOUND OUT THAT THE PLEURAL EFFUSION HAD COME BACK, 13 WHICH IS A BAD SIGN. SO THE FIRST TIME THEY DID IT, 14 THEY SENT IT TO SEE WHAT THE CAUSE, BUT THEY COULDN'T 15 FIGURE IT OUT WITH THE FLUID. SOMETIMES THAT HAPPENS IN 16 THE FIRST GO. 17 SO THEY WENT AND DID ANOTHER ONE. THEY, 18 AGAIN, TOOK OUT 900 CC'S. AGAIN, THERE WAS SOME 19 CONCERNING FEATURES WHEN THEY LOOKED AT THE CHEMICAL 20 ANALYSIS OF THE FLUID. BUT WHEN THEY LOOKED AT THE 21 MICROSCOPE, THEY COULDN'T FIND ANY SORT OF CANCER. THEY 22 STILL DIDN'T KNOW WHAT WAS GOING ON WITH HER, BUT THIS 23 WAS A CONCERN BECAUSE IT'S RECURRENT. 24 Q SO WHAT'S THE NEXT STEP? 25 A THE NEXT STEP IS TO DO A BIOPSY. 26 Q CAN YOU TELL US A LITTLE BIT ABOUT THAT? 27 A YES. SO SHE HAD -- IN DECEMBER 7TH SHE GOES 28 TO A LUNG DOCTOR. AND SHE HAD TWO PROCEDURES DONE. ONE

Page 54 1 IS CALLED A BRONCHOSCOPY. THAT'S WHERE I TAKE A LIGHTED 2 SCOPE. IT GOES DOWN THROUGH THE MOUTH, DOWN THROUGH THE 3 VOCAL CORDS INTO THE LUNGS. AND THEN THROUGH THE LUNGS, 4 WE TAKE A BIOPSY OF THE LYMPH NODES USING ULTRASOUND. 5 AND THEN SHE ALSO HAD WHAT'S CALLED A PLEUROSCOPY WITH A 6 PLEURAL BIOPSY. SO THEY BASICALLY USED A SCOPE TO 7 TAKE -- THIS IS THE PLEURA UP HERE (INDICATING). THEY 8 WOULD TAKE A SCOPE TO TAKE THIS BIOPSY. 9 Q TWO QUESTIONS. ARE THESE THE TYPES OF 10 PROCEDURES THAT YOU DO AS A DOCTOR REGULARLY? 11 A YES. ALTHOUGH I DO IT BY A SLIGHTLY DIFFERENT 12 TECHNIQUE, BUT I DO PLEURAL BIOPSIES, BRONCHOSCOPIES. 13 Q AND SECOND, YOU'VE MENTIONED THAT THERE WAS 14 TISSUE FROM THE LYMPH AND THE PLEURA. DID THEY GET 15 ANYTHING FROM THE LUNG? 16 A NO. 17 Q WHAT IS THIS? 18 A SO AFTER SHE HAD THIS PLEURAL FLUID COMING 19 BACK, COMING BACK AND BACK AND BACK, WE DO A PROCEDURE 20 WHERE WE -- AFTER -- NORMALLY WHEN WE DO THE 21 THORACENTESIS, WE JUST PUT THE CATHETER IN, DRAIN IT OUT 22 AND THEN TAKE THE CATHETER OUT. WHEN IT KEEPS COME 23 BEING BACK, YOU CAN'T JUST KEEP DOING THAT. I MEAN, THE 24 PERSON'S -- YOU KNOW, AGAIN, IT'S A LOT DISCOMFORT AND 25 IT'S CAUSED THEM PROBLEMS ALL THE TIME. 26 SO INSTEAD, WE WILL INSERT A CATHETER, AND IT 27 STAYS THERE. AND THE PERSON ACTUALLY GOES HOME WITH 28 THIS SORT OF PLASTIC BOTTLE, AND THEY JUST -- IT HAS A	Page 56 1 (INDICATING), MID CHEST, AND THAT LYMPH NODE ALSO SHOWED 2 MALIGNANT MESOTHELIOMA. SAME TYPE. 3 Q THERE WAS A SUGGESTION, I WANT YOU TO ASSUME, 4 MADE TO THE JURY THAT THEY DIDN'T FIND ANY ASBESTOS IN 5 HER LUNGS. DID THEY TAKE A BIOPSY OF HER LUNGS? 6 A NO. NEVER. THERE'S NEVER BEEN ANY SPECIMEN 7 OF MRS. CHAPMAN'S LUNGS. 8 Q ARE THERE SOMETIMES IN A BIOPSY WHERE YOU CAN 9 FIND ASBESTOS BODIES IN THE LUNG? 10 A THAT'S WHERE YOU GENERALLY SEE THEM. 11 Q WAS THERE ANY LUNG TO LOOK AT WITH RITA 12 CHAPMAN? 13 A NO. 14 Q WHAT'S THIS NEXT SLIDE? 15 A SO AFTER THEY FOUND OUT THAT SHE HAD 16 MESOTHELIOMA, THEY DID WHAT'S CALLED A PET SCAN. PET IS 17 POSITRON EMISSION TOMOGRAPHY. AND IT'S BASICALLY A 18 GLUCOSE MOLECULE THAT'S BEEN RADIOLABELED, AND IT GOES 19 THROUGHOUT -- IT'S INJECTED, AND IT GOES THROUGHOUT THE 20 BODY. AND CANCER CELLS WILL METABOLIZE GLUCOSE MORE 21 RAPIDLY. AND THEN WE DO A PET SCAN, AND WE CAN SEE 22 WHERE IT KIND OF SHOWS UP IN THE BODY. 23 AND ON -- THIS IS THE LEFT SIDE. THIS IS THE 24 RIGHT SIDE HERE. AND ALL OF THE -- THIS REDNESS, THIS 25 IS ALL CONSISTENT WITH ABNORMAL UPTAKE WITHIN THAT -- 26 AROUND THAT LEFT LUNG. AND WHAT'S ALSO CONCERNING 27 HERE -- SO THIS IS NORMALLY ON THE -- ON THE SCAN THE 28 LUNG IS JUST ALL DARK LIKE THIS. YOU DON'T SEE THE
Page 55 1 STOP CLOCK ON IT. AND EVERY DAY THEY JUST OPEN IT UP. 2 IT DRAINS OUT. THEY CLOSE IT UP. AND THEN IT STAYS 3 WITH THEM LIKE IN THEIR POCKET OR ON THEIR WAISTBAND. 4 AND IT JUST STAYS IN THERE CONSTANTLY DRAINING AS THE 5 FLUID REACCUMULATES. 6 Q IS THIS SOMETHING RITA CHAPMAN HAD TO LIVE 7 THROUGH BECAUSE OF HER MESOTHELIOMA? 8 A IT IS. 9 Q AFTER DOING THE BIOPSY OF THE PLEURA, THE LEFT 10 SIDE, WERE THEY ABLE TO FIGURE OUT WHAT WAS GOING ON? 11 A YES. 12 Q DO WE HAVE THE ACTUAL MEDICAL REPORTS FROM THE 13 MAYO CLINIC ABOUT DETERMINING HER DIAGNOSIS? 14 A YES. 15 Q TELL US ABOUT THAT. 16 A SO THIS IS THE PATHOLOGY REPORT, MAYO CLINIC. 17 AND THIS COMES FROM THE LEFT PLEURAL BIOPSY HE TOOK. 18 THE DOCTOR TOOK TWO BIOPSIES WHEN HE DID THAT 19 PLEUROSCOPY. AND BOTH OF THESE SPECIMENS SHOWED DIFFUSE 20 MALIGNANT MESOTHELIOMA, WHICH IS CALLED EPITHELIOID 21 TYPE. THERE'S THREE TYPES OF CELLULAR TYPES. THIS IS 22 THE MOST COMMON TYPE ONE OF MALIGNANT PLEURAL 23 MESOTHELIOMA. 24 Q AND DID THEY ALSO HAVE A REPORT FROM THE OTHER 25 BIOPSY DONE? 26 A YES. SO IN ADDITION TO THE PLEURA, WHICH NOT 27 THE LUNG BUT OUTSIDE THE LUNG, THEY DID A LYMPH NODE ON 28 THE LEFT SIDE. IT'S ABOUT -- OCCURS AROUND HERE	Page 57 1 PLEURA. IT'S JUST ALONG THE EDGE THERE. IT'S PRETTY 2 MUCH INVISIBLE, IT'S SO THIN. 3 IN MS. CHAPMAN'S CASE HERE, THE PLEURA IS SO 4 THICKENED THAT IT'S -- I MEAN, IT'S LIKE THREE INCHES -- 5 TWO, THREE INCHES THICK IN SOME PLACES. SO IT'S VERY, 6 VERY THICKENED. AND THIS SHOWED, IN HER CASE, MALIGNANT 7 PLEURAL MESOTHELIOMA PRETTY MUCH ENCASING THAT ENTIRE 8 LEFT LUNG, BUT SHE DID NOT HAVE ANY EVIDENCE OF CANCERS 9 ANYWHERE ELSE IN THE BODY, JUST THE MESOTHELIOMA. 10 Q I WANTED TO GET THE EXACT QUOTE. THE JURY WAS 11 TOLD SOMETHING LIKE A TISSUE DIGESTION IS REALLY NOT 12 THAT COMPLICATED. IT'S SIMPLE, AND IT PROVIDES VALUABLE 13 INFORMATION. LET ME ASK YOU A FEW QUESTIONS. 14 CAN THE TISSUE OF THE LUNGS OF A HUMAN BE 15 DIGESTED IN A WAY THAT CAN PROVIDE VERY USEFUL 16 INFORMATION FOR DOCTORS? 17 A YES. 18 Q WAS THERE ANY MEDICAL REASON TO SUBMIT RITA 19 CHAPMAN TO A TISSUE DIGESTION? 20 A NO. NONE WHATSOEVER. 21 Q IS IT SIMPLE SPECIFICALLY IN A PERSON WHOSE 22 LUNG LOOKS LIKE THAT? 23 A NO. I COULD EXPLAIN. 24 Q PLEASE DO. 25 A SO AFTER THEY FIGURED OUT, OKAY, SHE'S GOT 26 CANCER, YOU WOULD NEED TO DO A TISSUE DIGESTION. YOU 27 NEED TO TAKE SPECIMENS FROM THE LUNG. THAT'S ANOTHER 28 SURGERY, ANOTHER ANESTHESIA.

Page 58 1 AND WHILE YOU'RE DOING IT, IF YOU'RE GOING TO 2 TAKE IT FROM THE LEFT LUNG, IN HER CASE, YOU WOULD BE 3 VENTILATING DURING ANESTHESIA THE RIGHT LUNG, WHICH IS 4 HER GOOD LUNG, AND TRYING TO GO THROUGH ALL OF THE 5 CANCEROUS TISSUE, WHICH IS A RISK OF SPREADING CANCER. 6 IF YOU'RE GOING THROUGH CANCER WITH SURGICAL 7 INSTRUMENTS, YOU HAVE A RISK OF TISSUE SPREAD OF THAT 8 CANCER. 9 SO IT'S ALREADY JUST RISKY FROM THE CANCER 10 PERSPECTIVE. LET ALONE THAT, ONCE YOU GET INTO THE 11 LUNG, YOU HAVE GOT THIS LUNG THAT'S ALL DISEASED AND ALL 12 CRUSHED DOWN LIKE THAT, AND THERE'S TREMENDOUS RISK OF 13 UNCONTROLLABLE BLEEDING AND INFECTION BECAUSE THE LUNG 14 IS JUST NOT WORKING CORRECTLY. 15 Q WHY NOT THE GOOD LUNG? 16 A WELL, THE GOOD LUNG, TWO REASONS. ONE IS THAT 17 YOU NOW VENTILATE -- YOU PUT A TUBE INTO THE LEFT LUNG 18 TO TRY TO VENTILATE HER DURING THE SURGERY, YOU HAVE GOT 19 A LUNG THAT DOESN'T WORK BECAUSE IT'S ALL ENCASED WITH 20 CANCER, SO YOU HAVE GOT A REAL PROBLEM IF SHE'S -- YOU 21 KNOW, YOU DON'T -- YOU'RE TRYING TO GIVE HER OXYGEN, AND 22 IT'S NOT GETTING INTO THE SYSTEM. 23 AND THEN, IF YOU HAVE WHAT'S CALLED A 24 PNEUMOTHORAX OR SOME SORT OF PROBLEM THERE, COLLAPSED 25 LUNG OR BLEEDING OF THE GOOD LUNG, I MEAN, SHE WOULDN'T 26 MAKE IT OUT THROUGH THE SURGERY. AND THERE'S REALLY -- 27 AGAIN, THERE'S NO REASON TO PUT A WOMAN -- YOU HAVE TO 28 HAVE A MEDICAL INDICATION, AND IT WOULD NOT -- THERE	Page 60 1 A YES. SO HE -- THE SURGEON, DR. DCUNHA -- 2 THAT'S D-C-U-N-H-A -- HE DID THREE DIFFERENT PROCEDURES. 3 ONE WAS CALLED A MEDIASTINOSCOPY WITH A LYMPH NODE 4 BIOPSY. ONE IS CALLED A LAPAROSCOPY. AND ONE IS CALLED 5 A THORACOSCOPY. AND THEN ACTUALLY FIVE -- FOUR 6 PROCEDURES. AND HE ALSO DID ANOTHER BRONCHOSCOPY. 7 Q CAN YOU TELL US ABOUT EACH ONE OF THOSE? 8 A YES. SO THE MEDIASTINOSCOPY IS WHERE THE 9 SURGEON MAKES A SMALL INCISION ABOUT AN INCH RIGHT 10 ACROSS IN THE MIDDLE OF THE CHEST AND INSERTS A SCOPE 11 DOWN THROUGH IN THE MIDDLE AND GOES DOWN. WE HAVE LYMPH 12 NODES IN THE CENTRAL AREA OF THE CHEST. AND HE CAN LOOK 13 WITH A SCOPE, AND THEN HE CAN -- THEY HAVE LITTLE BIOPSY 14 FORCEPS THAT GO THROUGH THE SCOPE. THEY'RE VERY, VERY 15 TINY BIOPSIES. AND HE CAN TAKE BIOPSIES OF THE VARIOUS 16 LYMPH NODES DOWN IN THE CENTRAL AREA, WHAT'S CALLED THE 17 MEDIASTINAL AREA. 18 Q THE NEXT PROCEDURE YOU TALKED ABOUT WAS THE 19 LAPAROSCOPY. CAN YOU TELL US WHAT THAT IS? 20 A YES. SO A LAPAROSCOPE IS WHERE -- PEOPLE MAY 21 HAVE HEARD OF WHERE THEY DO THIS, YOU KNOW, TO TAKE OUT 22 YOUR GALLBLADDER OR YOUR APPENDIX, DO IT WITH A SCOPE. 23 SO THIS IS THE PROCEDURE WHERE THERE IS 24 SEVERAL INCISIONS MADE, SOME FOR INSTRUMENTATION, SOME 25 FOR LIGHTING. AND THE DOCTOR COULD LOOK INSIDE THE 26 ABDOMINAL CAVITY AND SEE IF THERE'S ANY AREAS OF CANCER 27 OR CONCERN. 28 Q HAD THE CANCER SPREAD TO HER PERITONEAL AREA
Page 59 1 WOULD BE NO MEDICAL INDICATION TO DO THAT. 2 Q IF A DOCTOR TOOK THE LAWYER'S SUGGESTION AND 3 DO THIS, QUOTE/UNQUOTE, EASY PROCEDURE, WHAT WOULD YOUR 4 OPINION BE ABOUT THAT DOCTOR? 5 A THAT'S WRONG. 6 Q ARE YOU AWARE OF ANY DOCTOR THAT WOULD DO A 7 TISSUE DIGESTION IN A LIVE PATIENT THAT HAS THIS 8 PROBLEM? 9 A NO. 10 COULD I SIT DOWN AGAIN OR... 11 THE COURT: PLEASE. AS SOON AS YOU CAN AND YOU 12 DON'T NEED TO BE THERE, I PREFER FOR YOU TO BE BACK IN 13 YOUR SEAT. 14 THE WITNESS: YES, YOUR HONOR. 15 THE COURT: THANK YOU. 16 MS. DEAN: SORRY. 17 Q AFTER THEY DETERMINED SHE NOT ONLY HAD 18 MESOTHELIOMA BUT THAT IT WAS ENCASED HER ENTIRE LEFT 19 LUNG, WHAT WAS THE NEXT STEP? 20 A SO THE NEXT STEP WAS TO -- SHE WENT TO AN 21 ONCOLOGIST, CANCER DOCTOR, WHO THEN SENT HER TO A 22 SURGEON TO DECIDE WHETHER OR NOT SHE WOULD BE A 23 CANDIDATE FOR SURGERY. SO THERE'S DIFFERENT OPTIONS ON 24 HOW WE CAN TREAT MESOTHELIOMA. AND SO SHE NEEDS TO BE 25 EVALUATED AND WHAT WE CALL STAGED TO SEE IF SHE COULD BE 26 A SURGICAL CANDIDATE AT SOME POINT. 27 Q CAN YOU TELL US A LITTLE BIT ABOUT THAT 28 STAGING SURGERY AND WHAT IT INVOLVED?	Page 61 1 AT ALL? 2 A IT HAD NOT, FORTUNATELY. 3 Q AND THEN THE NEXT PROCEDURE THAT YOU 4 MENTIONED, CAN YOU TELL US A LITTLE BIT ABOUT THAT? 5 A YES. SO THIS IS CALLED A VIDEO-ASSISTED 6 THORACOSCOPY SURGERY, OR VATS. AND WHAT THIS SURGEON 7 DOES IS PUTS THE PATIENT ON THEIR SIDE, MAKES GENERALLY 8 THREE INCISIONS UNDERNEATH THE ARM AREA THERE. ONE FOR 9 LIGHTING. ONE FOR INSTRUMENTATION. AND ANOTHER ONE FOR 10 SPECIMENS AND OTHER INSTRUMENTATION. AND BASICALLY, 11 THEY'RE ABLE TO DRAIN THE FLUID OUT WHEN THEY -- SO IF 12 THERE'S MORE PLEURAL FLUID IN THERE, THEY CAN DRAIN THAT 13 FLUID OUT. AND THEN THEY CAN TAKE BIOPSIES OF THE 14 PLEURA TO SEE -- TO BE CONFIRMING THE DIAGNOSIS. 15 Q SO WE HAVE ANOTHER SERIES OF BIOPSIES 16 INVOLVING THE LUNG AND THE PLEURA STILL AT THIS TIME? 17 A YES. 18 Q DO THEY HAVE ANY TISSUE OF THE LUNG? 19 A NO. NONE WAS EVER TAKEN OF THE LUNG. 20 Q OKAY. 21 A NO NEED TO. 22 Q DID RITA CHAPMAN HAVE PLEURAL PLAQUES? 23 A AS FAR AS WE KNOW, NO. SHE HAD TREMENDOUS 24 PLEURAL THICKENING ON THAT SIDE. YOU WOULDN'T BE ABLE 25 TO SEE IF THERE WAS A BENIGN PLAQUE. BUT ON X-RAY OR 26 CAT SCAN, I DID NOT SEE ANY PLEURAL PLAQUE. 27 Q DID SHE HAVE ASBESTOSIS? 28 A SHE DID NOT. AS FAR AS -- FROM A RADIOGRAPHIC

Page 62 1 STANDPOINT, DID NOT SEE EVIDENCE. 2 Q GIVEN THERE WAS NO LUNG TISSUE AND NO DOCTOR 3 WOULD EVER DO A TISSUE DIGESTION IN HER STATE AND GIVEN 4 THAT SHE DIDN'T HAVE PLEURAL PLAQUES OR ASBESTOSIS, DO 5 YOU THINK YOU'RE JUST STUCK IN TERMS OF FIGURING OUT 6 WHAT CAUSED HER DISEASE? 7 A NO. 8 Q IS IT WELL ESTABLISHED IN MEDICINE AND SCIENCE 9 THAT MESOTHELIOMA CAN BE ATTRIBUTED -- IN OTHER WORDS, 10 YOU CAN FIGURE OUT THE CAUSE -- IF THERE'S A HISTORY OF 11 EXPOSURE TO ASBESTOS? 12 A YES. THAT'S THE MOST COMMON WAY. 13 Q THE NEXT THING IS DISCUSSED WHEN THEY'RE DOING 14 THIS EXPLORATORY SURGERY IS A TALC PLEURODESIS. WHAT IS 15 THAT? 16 A SO WHEN THE SURGEON DID THIS VATS PROCEDURE 17 AND DRAINED THE FLUID OUT, HE SAW THAT MRS. CHAPMAN'S 18 LUNG CAME BACK UP AGAIN. SOMETIMES WITH CANCER, EVEN IF 19 YOU DRAIN THE FLUID OUT, THE LUNG DOESN'T REEXPAND 20 ANYMORE. IT'S BASICALLY GONE. IN HER CASE IT DID GO 21 UP. SO THE SURGEON MADE A DECISION TO PUT -- DO A 22 PROCEDURE CALLED A TALC PLEURODESIS. WE CAN DO THIS 23 PLEURODESIS WITH SEVERAL DIFFERENT TYPES OF SUBSTANCES. 24 TALC BEING ONE OF THEM. IT'S VERY IRRITATING TO THE 25 SURFACE. 26 AND THE PLEURODESIS CAUSES AN INFLAMMATION ON 27 THE SURFACE SO THAT IT CAUSES SCAR TISSUE TO DEVELOP SO 28 THOSE TWO LAYERS BETWEEN WHAT'S CALLED THE VISCERAL	Page 64 1 DO A TALC PLEURODESIS? 2 A YES. 3 Q WHAT IS THAT? 4 A SOMETIMES THEY'LL DO THAT WITH SOMEONE WHO HAS 5 WHAT'S CALLED A RECURRENT PNEUMOTHORAX OR COLLAPSE OF 6 THE LUNG. 7 Q IS THERE INFORMATION THAT YOU AND DOCTORS IN 8 YOUR FIELD RELY ON SPECIFICALLY INDICATING THAT YOU 9 SHOULDN'T DO THIS IN NON-TERMINAL SITUATIONS SUCH AS THE 10 PNEUMOTHORAX? 11 A YES. AND THAT'S -- I AGREE. 12 Q OKAY. IS THIS THE ARTICLE THAT DISCUSSES IT 13 THAT YOU'RE AWARE? 14 A YES. THAT'S ONE. 15 Q IS THIS FROM THE AMERICAN JOURNAL OF 16 RESPIRATORY AND CRITICAL CARE MEDICINE FROM 2001, "TALC 17 SHOULD NOT BE USED FOR PLEURODESIS IN PATIENTS WITH 18 NONMALIGNANT PLEURAL EFFUSIONS"? I DON'T MEAN TO BE 19 INSENSITIVE. BUT IF YOU ARE DYING WITH CANCER, 20 LONG-TERM CONCERNS OF TALC JUST DON'T MATTER; RIGHT? 21 A CORRECT. 22 Q THE AUTHOR SAYING HERE IS SAYING, THOUGH, IF 23 YOU HAVE REPEAT -- PNEUMOTHORAX IS LUNG COLLAPSING; 24 RIGHT? 25 A YES. 26 Q YOU SHOULDN'T BE USING TALC. 27 A RIGHT. 28 Q WHY IS THAT?
Page 63 1 PLEURA AND PARIETAL PLEURA STICK TOGETHER AND SO THERE'S 2 NO ROOM -- THERE'S NO WAY FOR THE FLUID TO START 3 COLLECTING BETWEEN -- THOSE TWO OF THEM BECAUSE THEY'RE 4 BASICALLY FUSING THOSE TWO LAYERS. 5 SO YOU MIGHT GET A SMALL EFFUSION IN BETWEEN 6 SOME AREAS WHERE IT DIDN'T COMPLETELY FUSE, BUT YOU'RE 7 NOT GOING TO GET THAT HUGE COLLECTION LIKE SHE HAD, YOU 8 KNOW, OVER 1700 CC'S BY THE TIME SHE HAD HER THIRD 9 THORACENTESIS. 10 Q THE JURY WAS TOLD THE REASON TALC WAS USED IN 11 THIS PROCEDURE IS TO BE A LUBRICANT IN OPENING 12 STATEMENTS. IS THAT TRUE? 13 A NO. NO. IT'S NOT A LUBRICANT. YOU'RE TRYING 14 TO FUSE THE LAYERS. 15 Q WHEN TALC IS PUT INTO THE BODY, WHAT YOU'RE 16 TELLING US IS THAT MEDICINE AND SCIENCE KNOW IS THAT 17 IT'S IRRITATING, CAUSES INFLAMMATION, AND RESULTS IN 18 SCAR TISSUE? 19 A YES. 20 Q FOR THIS PURPOSE, USING TALC PLEURODESIS TO 21 HOPEFULLY MAKE IT WHERE THESE PLEURAL EFFUSIONS STOP IN 22 A PERSON THAT HAS A TERMINAL CANCER, DO YOU HAVE TO BE 23 CONCERNED WITH LONG-TERM RISKS IN A PERSON THAT HAS 24 MESOTHELIOMA? 25 A NO, YOU DON'T. 26 Q OTHER THAN HAVING THIS PROCEDURE FOR PEOPLE 27 THAT HAVE PLEURAL EFFUSIONS ASSOCIATED WITH CANCER 28 CONCERNS, IS THERE ANY OTHER REASON THAT A DOCTOR MIGHT	Page 65 1 A WELL, BECAUSE THERE ARE POTENTIAL HEALTH 2 CONCERNS, NOT ONLY -- YOU KNOW, I HAVE SEEN IN MY OWN 3 PATIENTS WHERE THEY'VE DEVELOPED EVEN PLEURAL PLAQUING. 4 IT CAN CAUSE WHAT'S CALLED ADULT RESPIRATORY DISTRESS 5 SYNDROME, OR A.R.D.S., WHICH CAN BE A LIFE-THREATENING 6 RESPIRATORY CONDITION. AND THEN, YOU KNOW, IF THE TALC 7 HAS CONTAMINATION WITH ASBESTOS, THEN THERE'S RISK OF 8 30, 40, 50, 60 YEARS LATER OF DEVELOPING MALIGNANCY. 9 Q IF THAT WANTED TO BE TESTED, WE WANTED TO SEE 10 IF PEOPLE THAT WERE GETTING THIS PROCEDURE USING TALC 11 THAT LIVE LONG ENOUGH, IS THERE A GROUP LARGE ENOUGH TO 12 EVEN DO THAT TEST THAT HAS ENOUGH POWER TO HAVE MEANING? 13 A NO. 14 Q IN TERMS OF DOSE, WE'VE HEARD THE CONCEPT 15 "DOSE MAKES THE POISON." ARE YOU FAMILIAR WITH THE 16 AMOUNT OF TALC THAT WAS PUT IN RITA CHAPMAN'S BODY? 17 A YES. 18 Q WHAT IS THAT? 19 A I THINK IT WAS -- I THINK HE DID FOUR OR FIVE 20 GRAMS. 21 Q HOW DOES THAT COMPARE TO TALC USE WHEN YOU'RE 22 PUTTING A DUSTY PRODUCT ON YOUR BODY OR FACE? IT'S A 23 COSMETIC PRODUCT. 24 A RIGHT. IT'S LESS. 25 Q ONE DIAPER CHANGE, CAN YOU GIVE ME AN IDEA OF 26 HOW THAT COMPARES TO THE AMOUNT OF TALC USED IN THIS 27 PROCEDURE PUT ON THE PLEURA? 28 A ABOUT EQUAL TO ONE DIAPER CHANGE.

Page 66 1 Q HAVE YOU EVER SEEN ANY INDICATION THAT THE 2 SAME TYPE OF TALC, STERILE TALC USED FOR A PLEURODESIS 3 CAME FROM THE SAME SOURCES AS CASHMERE BOUQUET, AVON OR 4 COLOR TECHNIQUES? 5 A NO. 6 Q AFTER DOING THIS EXPLORATORY SURGERY AND 7 GETTING A SECOND SET OF BIOPSIES, DID THE DOCTORS 8 FURTHER CONFIRM WHAT'S HAPPENING TO RITA CHAPMAN? 9 A YES. SO THE LYMPH NODES THIS TIME WERE 10 NEGATIVE. HE DID NOT SEE ANYTHING IN THE ABDOMEN, THE 11 PERITONEUM, BUT THE LEFT PLEURAL BIOPSY, AGAIN, SHOWED 12 AND CONFIRMED MALIGNANT MESOTHELIOMA. AND, 13 UNFORTUNATELY, BECAUSE OF THE EXTENT OF THE CANCER THAT 14 THE SURGEON SAW, SHE WAS NOT FELT TO BE A CANDIDATE FOR 15 AN EXTENSIVE SURGERY. SO THAT WAS OFF THE TABLE. 16 Q THE JURY HASN'T HAD A CHANCE TO MEET RITA 17 CHAPMAN YET AND TALK ABOUT ALL THE WAYS HER LIFE CHANGED 18 ON THAT DAY. BUT THERE ARE CONTAIN THINGS THAT YOU KNOW 19 ABOUT IN HER MEDICAL RECORDS DIRECTLY BECAUSE SHE HAS 20 THIS CANCER; CORRECT? 21 A YES. 22 Q EXPLAIN WHAT THIS IS. 23 A SO SHORTLY AFTER THEY DID THE SECOND SURGERY, 24 THE STAGING SURGERY, THEY WERE GETTING READY TO START 25 LOOKING AT PUTTING HER ON SOME CHEMOTHERAPY OR 26 IMMUNOTHERAPY. SHE STARTED EXPERIENCING SOME CHEST 27 PAINS AND TREMENDOUS SHORTNESS OF BREATH. AND WHAT SHE 28 FOUND -- WHAT THEY FOUND IS SHE HAD WHAT'S CALLED	Page 68 1 PRETTY MUCH A LOT OF DIFFERENT CELLS. THE IMMUNOTHERAPY 2 IS MORE -- SEEMS TO BE A MORE EFFECTIVE TOOL. 3 Q HOW LONG HAS SHE BEEN UNDERGOING 4 IMMUNOTHERAPY? 5 A SO THEY STARTED WITH TWO TYPES OF 6 IMMUNOTHERAPY -- ONE EVERY TWO WEEKS, ONE EVERY SIX 7 WEEKS -- STARTING IN FEBRUARY OF THIS YEAR. AND THEN 8 THEY HAD TO STOP IT ABOUT TWO OR THREE WEEKS AGO BECAUSE 9 SHE STARTED DEVELOPING SOME COMPLICATIONS OF 10 IMMUNOTHERAPY WITH ULCERATIONS AND SORES IN HER MOUTH. 11 AND SHE'S ACTUALLY BACK NOW BEING EVALUATED TO SEE -- 12 THEY'RE GOING TO HOPEFULLY TRY TO REINTRODUCE THE 13 IMMUNOTHERAPY NEXT WEEK. AND AT THAT TIME WHEN THEY 14 TALKED TO HER -- THIS WAS IN FEBRUARY OF THIS YEAR -- 15 THEY SAID THAT THEY GAVE HER AN 18-MONTH SURVIVAL 16 EXPECTATION. 17 Q I MEAN, IT SEEMS SMALL, BUT SHE HAS A SORE 18 RIGHT HERE ON HER LIP. AND SHE'S JUST SUPER 19 SELF-CONSCIOUS ABOUT IT BECAUSE IT'S RIGHT THERE. IS 20 THAT BECAUSE OF HER TREATMENT? 21 A YES. 22 Q AND THIS NEWS THAT YOU JUST TALKED ABOUT, 23 ABOUT HEARING THAT THE IMMUNOTHERAPY IS NOT BEING AS 24 RESPONSIVE AND CHEMO IS WHAT'S COMING UP NEXT, IS THERE 25 ANY NEXT AFTER CHEMO FAILS? 26 A RIGHT. SO I THINK, YOU KNOW, THE HOPE IS TO 27 MAYBE REINTRODUCE IMMUNOTHERAPY, BUT THE OTHER OPTION IS 28 GOING TO BE CHEMOTHERAPY. AND THEN AFTER THAT, NO, IT'S
Page 67 1 PERICARDIAL EFFUSION WITH TAMPONADE. 2 AND NORMALLY THE PERICARDIUM IS A SAC AROUND 3 THE HEART JUST LIKE THE PLEURA IS A SAC AROUND THE 4 LUNGS. AND SHE STARTED DEVELOPING FLUID BETWEEN THAT 5 SAC IN THE HEART AND THE HEART. AND SO IT STARTS -- IT 6 WEARS THE LUNGS ON ONE SIDE. IT CAN COMPRESS. WE CAN 7 STILL PRETTY -- YOU KNOW, WE CAN STILL SURVIVE WITH ONE 8 LUNG. YOU CAN'T SURVIVE WITHOUT A HEART. 9 AND SO IT WAS COMPRESSING AND COMPRESSING AND 10 COMPRESSING THAT HEART BECAUSE THERE'S NOWHERE -- THE 11 HEART, UNLIKE THE LUNG, DOESN'T HAVE A LOT OF AIR IN IT. 12 IT'S A SOLID ORGAN. IT STARTED BEING COMPRESSED, AND IT 13 COULDN'T PUMP. AND SO SHE PRESENTED TO THE EMERGENCY 14 ROOM. THIS IS AN ABSOLUTE MEDICAL EMERGENCY. AND SHE 15 HAD TO HAVE WHAT'S CALLED A PERICARDIOCENTESIS AND A 16 PERICARDIAL DRAIN. 17 AND SO WHAT THEY'LL DO IS THEY STICK NEEDLES 18 DIRECTLY THROUGH THE CHEST INTO THE HEART CAVITY TO DRAW 19 FLUID OUT. AND THEN JUST LIKE THAT THORACENTESIS 20 WHERE -- A PROCEDURE LIKE I DO WHERE WE PUT IT INTO THE 21 PLEURA, THEY PUT A DRAIN INTO THE HEART TO KEEP THAT 22 FLUID OUT AND TO SAVE HER LIFE AT THAT POINT. 23 Q YOU MENTIONED THAT SHE STARTED -- BEFORE SHE 24 HAD THIS EMERGENCY, HAD VARIOUS TYPES OF TREATMENT. 25 WHAT IS IMMUNOTHERAPY IN THE BROADEST SENSE? 26 A THESE ARE THERAPIES -- NEW THERAPIES THAT WORK 27 WITH TRYING TO KEEP THE CANCER IN CHECK RATHER THAN SOME 28 OF THE CHEMOTHERAPIES WHICH IS MEANT TO SORT OF KILL	Page 69 1 GENERALLY GOING TO BE SYMPTOMATIC, WHAT WE CALL 2 PALLIATIVE CARE: PAIN MEDICATION, SYMPTOMATIC RELIEF 3 FOR ANXIETY, THINGS LIKE THAT, OXYGEN. 4 Q IN TERMS OF SOME OF THE ACTUAL THINGS THAT 5 SHE'S ALREADY LIVING WITH AND DEALING WITH, DID YOU 6 IDENTIFY SOME OF THE SYMPTOMS THAT ARE DISCUSSED IN HER 7 MEDICAL RECORDS? 8 A I DID. 9 Q CAN YOU TELL US ABOUT THOSE? 10 A SO, YOU KNOW, SHE'S -- THE SHORTNESS OF 11 BREATH. SHE'S CONSTANTLY HAVING THIS LEFT-SIDED CHEST 12 PAIN AND PRESSURE. SHE FEELS VERY FATIGUED AND SHE'S 13 HAVING WEAKNESS. SHE'S LOST HER APPETITE, AND SHE IS 14 LOSING WEIGHT, WHICH IS, UNFORTUNATELY, VERY COMMON BUT 15 OMINOUS SIGN IN A CANCER PATIENT. 16 SHE'S HAVING CHRONIC COUGH BECAUSE THE LUNG IS 17 BEING FOOLED. IT THINKS THAT THERE'S MAYBE JUST 18 SOMETHING IN IT, BUT IT'S JUST BEING COMPRESSED. AND SO 19 IT SENDS A SIGNAL TO THE BRAIN TO COUGH. AND SO 20 THERE'S -- HAVING TO COUGH A LOT. BUT THERE'S NOTHING 21 TO COME UP. SHE FEELS BLOATING. SHE'S STILL 22 EXPERIENCING SOME PALPITATIONS PROBABLY BECAUSE SHE'S 23 GOT THIS INVOLVEMENT SURROUNDING THE HEART. SHE HAS 24 DIZZINESS. SHE'S GOT ANXIETY. 25 HOARSENESS. YOU'D WONDER WHY WOULD SHE HAVE 26 THAT. BUT WHEN THEY DID THE SECOND SURGERY, THE SURGEON 27 DID THE PROCEDURES TO SEE WHERE -- YOU KNOW, WHERE THE 28 CANCER HAD SPREAD TO. ANY TIME YOU GO UNDER GENERAL

Page 70 1 ANESTHESIA, THEY HAVE TO PUT AN ENDOTRACHEAL TUBE, WHICH 2 IS A TUBE INTO THE LUNG TO BREATHE. IT DAMAGED HER 3 VOCAL CORD DOING THE PROCEDURE. SO SHE HAS THIS 4 HOARSENESS, AND NOW SHE'S DEVELOPED THESE MOUTH SORES. 5 Q DID YOU REVIEW, AT LEAST AS OF TWO WEEKS AGO, 6 HER MEDICAL BILLS? 7 A I DID. 8 Q AND DID YOU REVIEW THEM IN ORDER TO ASCERTAIN, 9 NOT WHAT WAS BILLED, BUT WAS ACTUALLY INCURRED ON BEHALF 10 OF RITA CHAPMAN? 11 A I DID. 12 Q AND DID YOU LOOK THROUGH THEM TO IDENTIFY 13 THOSE THAT WERE REASONABLE AND NECESSARY BECAUSE OF HER 14 CARE, DIAGNOSIS AND TREATMENT OF MESOTHELIOMA? 15 A I DID. 16 Q SO, FOR INSTANCE, IF SHE CAME IN FOR A ROUTINE 17 BREAST EXAM OR TO TAKE CARE OF HER EYES, WERE YOU 18 INCLUDING THAT? 19 A NO. I TOOK THOSE OUT. 20 Q ARE YOU PREPARED TO GIVE US A NUMBER OF HER 21 REASONABLE AND NECESSARY MEDICAL BILLS BECAUSE OF THIS 22 CANCER, MESOTHELIOMA? 23 A YES. 24 Q AS OF TWO WEEKS AGO. AND I'LL WRITE "PAST" ON 25 HERE JUST SO THAT'S CLEAR. 26 A \$318,191.27. 27 Q AND THEN I WANT TO ASK YOU ABOUT HER FUTURE. 28 AND BEFORE I ASK YOU ABOUT THE AMOUNT ON THAT, I WANT TO	Page 72 1 THERE. AND THEN IT WILL ACTUALLY GET INTO THE MUSCLES 2 BETWEEN THE RIBS AND CAN GET INTO THE NERVES. AND THEN, 3 YOU KNOW, YOU CAN HAVE -- START HAVING CONSTANT AND 4 SEVERE PAIN FROM NERVE INVOLVEMENT. 5 Q IS THERE EXTRAORDINARY DIFFICULTY WITH 6 END-STAGE MESOTHELIOMA IN JUST CONTROLLING THE PAIN? 7 A YES. 8 Q HAVE YOU HEARD OF PROCEDURES TO USE RADIATION, 9 NOT TO SLOW DOWN THE CANCER, BUT TO KILL THE NERVES TO 10 HELP MANAGE PAIN? 11 A YES. SOMETIMES WE WILL USE SOME RADIATION 12 TREATMENT TO HELP FOR PALLIATIVE PURPOSES. 13 Q ARE THE PAIN MEDICATIONS THAT ARE INVOLVED, 14 THINGS LIKE FENTANYL, NARCOTICS AND MORPHINE, THINGS OF 15 THAT NATURE? 16 A YES. OPIOIDS WE WILL TYPICALLY GO TO. AND 17 THERE'S, OBVIOUSLY, A LOT OF SIDE EFFECTS: 18 CONSTIPATION, CONFUSION, DIZZINESS, OTHER THINGS. 19 Q JUST FROM A PRACTICAL MATTER, WHEN YOU START 20 HAVING TO LIVE WITH THAT KIND OF PAIN AND HAVING PAIN 21 MEDICATION, DOES IT AFFECT YOUR ABILITY TO READ? 22 A YES. 23 Q WATCH TV? 24 A YES. 25 Q HOLD A CONVERSATION? 26 A YES. 27 Q DRIVE? 28 A YES. FOR SURE DRIVING. YOU CAN'T.
Page 71 1 RETURN TO THE POWERPOINT FOR A MOMENT. 2 WHAT ARE WE LOOKING AT? 3 A SO THIS IS -- WOULD BE A GROSS PICTURE, 4 ANATOMICAL PICTURE. THE ONE ON THE LEFT SIDE IS THE 5 NORMAL APPEARANCE OF A LUNG. THE ONE ON THE RIGHT SIDE 6 SHOWS HOW THE LUNG IS BASICALLY -- ALL THAT -- THE WHITE 7 AREA SURROUNDING THE RED IS ALL THAT THICKENED PLEURA, 8 AND THIS IS MALIGNANT MESOTHELIOMA. 9 Q WHAT'S THIS (INDICATING)? 10 A THAT'S THE HEART. 11 Q AND WHAT ORGAN IS THIS? SORRY. 12 A THAT'S THE LUNG THERE. 13 Q OKAY. WHEN A PERSON HAS MESOTHELIOMA AND IT 14 STARTS ENCASING THE LUNG, WE'VE ALREADY HEARD ABOUT HOW 15 THAT MAKES IT MORE AND MORE DIFFICULT TO BREATHE. IS 16 THAT PROGRESSIVE? 17 A YES. 18 Q WHAT DOES THAT MEAN? 19 A IT MEANS IT'S -- IT GETS WORSE. SO THE 20 MESOTHELIOMA NOT ONLY CAUSES THIS THICKNESS. IT 21 CONTINUALLY -- IT PROGRESSES. IT GETS LITTLE FINGER 22 POINTS AS IT GETS INTERTWINED THROUGHOUT THE TISSUES. 23 IT STARTS TO INVADGE INTO OTHER SURROUNDING TISSUES LIKE 24 THE CHEST WALL, FOR EXAMPLE. 25 Q THAT WAS THE NEXT THING I WAS GOING TO ASK 26 YOU. WHEN THIS TISSUE STARTS HITTING YOUR CHEST WALL, 27 WHAT IS OUR CHEST WALL LINED WITH? 28 A IT'S -- AGAIN, THIS IS PART OF THAT PLEURA	Page 73 1 Q YOU MENTIONED THAT SHE HAS PROBABLY 18 MONTHS 2 OF DEALING WITH THIS CANCER. WHEN YOU THINK ABOUT HOW 3 MUCH SHE'S ALREADY INCURRED IN COSTS, HOW MANY MONTHS OF 4 TREATMENT APPROXIMATELY HAS SHE HAD? 5 A ABOUT EIGHT. 6 Q IN HER FUTURE ARE WE HOPING THAT THERE ARE 7 GOING TO AT LEAST BE SOME MORE TREATMENTS WITH 8 IMMUNOTHERAPY? 9 IN TERMS OF HER FUTURE CARE, IS THERE HOPE 10 THAT SHE'S GOING TO HAVE TO INCUR MORE COSTS AND AT 11 LEAST HAVE SOME MORE IMMUNOTHERAPY? 12 A YES. 13 Q AFTER THAT, IS CHEMOTHERAPY LIKELY IN HER 14 FUTURE? 15 A YES. 16 Q DO YOU HAVE THE UNDERSTANDING OF THE ROUTINE 17 COST OF CHEMOTHERAPY AND IMMUNOTHERAPY? 18 A YES. 19 Q WITH THIS DISEASE IS HOSPICE CARE OFTEN 20 NEEDED? 21 A YES. 22 Q HAVE YOU CONSIDERED HER FUTURE TO GIVE US AN 23 ESTIMATE OF WHAT IS THE LIKELY RANGE OF FUTURE BILLS FOR 24 HER AND HER FAMILY? 25 A YES. 26 Q CAN YOU GIVE ME THAT ESTIMATE? 27 A I'M SORRY. I DIDN'T HEAR THAT QUESTION. 28 Q IT MEANS I CLEARLY NEED TO SPEAK UP.

Page 74 1 I JUST ASKED IF YOU WOULD GIVE ME THAT 2 ESTIMATE. 3 A YES. SO NORMALLY IT DEPENDS -- IT'S A RANGE. 4 IT DEPENDS ON WHAT -- THE LIKELIHOODS OF 5 HOSPITALIZATIONS, OF OTHER TREATMENTS AND THE TIME 6 COURSE, HOW LONG HAS ALREADY SURPASSED. NORMALLY I 7 WOULD BE AT SOMEWHERE BETWEEN TWO AND FIVE TIMES WHAT 8 SHE HAS HAD. 9 I THINK IN HER CASE, IT'S MORE FAIRLY TWO TO 10 THREE TIMES THE COST THAT SHE'S HAD. SO THAT WOULD BE 11 AT TWO TIMES, \$636,382.54, GOING UP TO \$954,573.81. 12 Q OKAY. VERY BROADLY SPEAKING, IF WE GO BACK TO 13 THE POWERPOINT, WHAT ARE YOUR OPINIONS ABOUT HER MEDICAL 14 PROGNOSIS? 15 A SO BASICALLY, HER OTHER MEDICAL CONDITIONS 16 THAT SHE HAD -- THE CHOLESTEROL ISSUES, THE ACID 17 REFLUX -- THEY'RE NOT LIFE THREATENING. SHE'S STILL 18 HAVING TREMENDOUS SUFFERING AND PAIN FROM THIS CANCER. 19 AND THAT, UNFORTUNATELY, THE COURSE OF MALIGNANT 20 MESOTHELIOMA IS A PROGRESSIVE CANCER, AND THIS WILL 21 CONTINUE TO PROGRESS. YOU KNOW, WE TRY TO SLOW THINGS 22 DOWN. THIS IS NOT A CURABLE CANCER, AND IT WILL END UP 23 CAUSING HER DEATH, UNFORTUNATELY. 24 Q IN TERMS OF TRYING TO UNDERSTAND WHY THIS 25 HAPPENED, HAVE YOU REVIEWED INFORMATION AND TAKEN 26 FIRSTHAND EFFORTS TO UNDERSTAND RITA CHAPMAN'S HISTORY? 27 A YES. 28 Q HAVE YOU REVIEWED NOT JUST HER TESTIMONY, BUT	Page 76 1 MATERIALS. 2 Q THE JURY HAS HEARD THAT THERE WERE MORE THAN 3 SIX PEOPLE INVOLVED IN THIS CASE, AND I HAD MEANT TO 4 TALK ABOUT THAT IN OPENING AND RAN OUT OF TIME. BUT I 5 WANT TO BE REALLY CLEAR. THE SIX ENTITIES THAT ARE 6 STILL HERE ARE NOT THE ONLY ONES THAT CONTRIBUTED TO THE 7 CAUSE OF HER DISEASE. 8 DO YOU AGREE WITH THAT? 9 A I DO. 10 Q DID JOHNSON & JOHNSON HAVE A SIGNIFICANT ROLE 11 IN WHY SHE'S SICK? 12 A YES, THEY DID. 13 Q DID REVLEN HAVE A SIGNIFICANT ROLE IN WHY SHE 14 HAS THIS CANCER? 15 A YES. 16 Q DID BENDIX, THE COMPANY THAT SUPPLIED THE 17 BRAKES THAT WERE USED IN FORD'S CARS, SIGNIFICANTLY 18 CONTRIBUTE AS TO WHY SHE HAS THIS DISEASE? 19 A YES. 20 Q AND WHILE I'M GOING TO FOCUS TODAY -- I THINK 21 FOR OBVIOUS REASONS BECAUSE WE HAVE THE BURDEN OF PROOF 22 ON THOSE THAT ARE IN THIS ROOM, I WANT TO BE REALLY 23 CLEAR, THERE ARE OTHER PEOPLE THAT WERE PART OF THE 24 PROBLEM? 25 A YES. 26 Q OKAY. IN TERMS OF UNDERSTANDING THE 27 CIRCUMSTANCES IN WHICH IT MAKES SENSE FOR A DOCTOR TO 28 SAY THIS CANCER, MESOTHELIOMA, IS RELATED TO ASBESTOS,
Page 75 1 THAT OF HER HUSBAND'S, GARY CHAPMAN? 2 A YES. 3 Q AND HIS FRIEND THAT WORKED WITH HIM ON CARS, 4 HAVE YOU REVIEWED THAT AS WELL? 5 A YES. MR. BAKER. 6 Q AND A GENTLEMAN THAT WORKED WITH HIM AT THE 7 TIME THAT HE WAS WORKING WITH HYSTER, DID YOU REVIEW 8 THAT AS WELL? 9 A I DID. 10 Q WHY IS SHE SICK? WHY DOES SHE HAVE THIS 11 CANCER? 12 A SHE HAD EXPOSURES FROM SEVERAL DIFFERENT 13 SOURCES OF ASBESTOS. 14 Q CAN YOU TELL US ABOUT THAT? 15 A SURE. SO SHE USED OVER MANY YEARS VARIOUS 16 COSMETIC OR TALC FOR COSMETIC PURPOSES, VARIOUS 17 PRODUCTS, STARTING FROM -- AT A YOUNG AGE, LIKE EIGHT 18 YEARS OLD. 19 AND SHE HAD -- HER HUSBAND WORKED IN THE PARTS 20 DEPARTMENT AND WAS GETTING REPEATEDLY EXPOSED TO DUST 21 FROM MECHANICS WHO WERE WORKING ON CARS, ON TRUCKS, ON 22 OTHER EQUIPMENT, WORKING WITH VARIOUS FRICTION PRODUCTS 23 IN WHICH HE GOT ASBESTOS ONTO HIS CLOTHING, BROUGHT INTO 24 THEIR HOME, AND THEN EVERY WEEK SHE WAS SHAKING OUT HIS 25 CLOTHING AND DOING HIS LAUNDRY. 26 AND THERE'S ALSO -- SHE HAD SOME OTHER 27 EXPOSURES TO SOME WORK WHERE THEY WERE DOING ON THEIR -- 28 SOME WORK WITH -- ON THEIR HOME WITH SOME JOINT COMPOUND	Page 77 1 ARE THERE SOME BROAD OPINIONS YOU CAN SHARE THAT WILL 2 HELP ORIENT THE JURY ON HOW YOU FIGURE THAT OUT? 3 A YES. 4 Q TELL US ABOUT THAT. 5 A SO THERE ARE SIX TYPES OF CANCER -- FIBER 6 TYPES AND ALL OF THE FIBER TYPES -- DOESN'T MATTER WHERE 7 THE FIBER COMES FROM -- ALL SIX OF THOSE FIBER TYPES ARE 8 CAPABLE OF CAUSING MALIGNANT MESOTHELIOMA. AND 9 CERTAINLY, IF YOU HAVE THEM IN COMBINATION, EVEN MORE 10 SO. THAT IT'S WELL ACCEPTED IN THE SCIENTIFIC COMMUNITY 11 THAT THERE IS NO ACCEPTED THRESHOLD BELOW WHICH THERE'S 12 NO RISK. 13 SO YOU CAN'T SAY, OKAY, WELL, AS LONG AS I'M 14 HERE, YOU'RE GOOD. THERE IS NO ACCEPTED LEVEL FOR THAT. 15 AND EVERY STUDY WHERE THEY'VE LOOKED AT LOWER AND LOWER 16 DOSES, THEY'RE STILL FINDING RISK. AND, UNFORTUNATELY, 17 AS I SAID, IT IS A FATAL AND INCURABLE CANCER. 18 Q IN TERMS OF FIGURING OUT WHETHER A PARTICULAR 19 EXPOSURE THAT A PERSON HAS MATTERS, IS ONE OF THE FIRST 20 THINGS YOU GOT TO KNOW IS IF THE EXPOSURE INVOLVED 21 ASBESTOS? 22 A YES. 23 Q ARE THERE DIFFERENT POTENCIES -- WE ALREADY 24 HEARD ABOUT THIS A LITTLE BIT -- BUT INVOLVED WITH 25 DIFFERENT FIBER TYPES? 26 A YES. 27 Q IS IT IMPORTANT TO KNOW DOSE? HOW MUCH 28 EXPOSURE A PERSON IS GETTING?

Page 78 1 A YES. WHETHER IT'S A -- SOMETIMES WE HAVE IT 2 WHERE YOU GOT A RANGE OR A NUMBER. SOMETIMES WE GET A 3 DOSE JUST BY -- BASED ON WHAT WE CALL A QUALITATIVE, BUT 4 YOU HAVE TO HAVE SOME SORT OF ASSESSMENT OF HOW MUCH THE 5 PERSON BREATHED IN. 6 Q IN TERMS OF JUST TRYING TO FIGURE THAT OUT FOR 7 ANY PARTICULAR PRODUCT, FOR SOME PRODUCTS ARE THEY 8 PUBLISHED IN PEER-REVIEWED LITERATURES, BRAKES HAVE 50 9 PERCENT ASBESTOS AS AN EXAMPLE? 10 A YES. 11 Q ARE THERE OTHER THINGS WHERE IT WASN'T 12 INTENTIONALLY ADDED, BUT THERE'S SCIENTIFIC AND MEDICAL 13 LITERATURE SAYING, THIS TALC HAS IMPURITIES AND THIS 14 PRODUCT HAS IMPURITIES THAT INVOLVED ASBESTOS? 15 A YES. 16 Q AND SO WHEN YOU MENTIONED EARLIER THAT YOU 17 LOOK AT DATA FROM INDUSTRIAL HYGIENISTS AND GEOLOGISTS 18 AND SCIENTISTS AND TOXICOLOGISTS, IS THAT IMPORTANT TO 19 YOU AND OTHERS IN YOUR FIELD TO MAKE INTELLIGENT 20 DECISIONS ABOUT ASBESTOS DISEASE CAUSATION? 21 A IT IS. 22 Q IN A SITUATION WHERE YOU GET TESTING ABOUT 23 ASBESTOS IN A PRODUCT, IS KNOWING THE LIMITS OF THE TEST 24 IMPORTANT TO YOU AS A DOCTOR? 25 A ABSOLUTELY. 26 Q I WANT TO BE VERY CLEAR, BECAUSE WE MET 27 DR. LONGO WHO DOES TESTING. HE SITS BEHIND THIS GIANT 28 MICROSCOPE AND ACTUALLY DOES THE TESTING. HE PUTS ON	Page 80 1 MS. CUATTO, I THINK YOU'RE RIGHT ABOUT 2 SOMETHING, AND I WANT TO COMMENT. 3 THE CASE I HAVE IN MIND IS CONTINENTAL 4 AIRLINES, INCORPORATED VS. MCDONNELL DOUGLAS 5 CORPORATION, A 1989 CASE, 216 CAL.APP.3D 388. AND THE 6 DISCUSSION IN QUESTION IS AT PAGE 414. 7 IT DOES NOT STATE NEW LAW. IT SUMMARIZES SOME 8 PREEXISTING LAW, INCLUDING PEOPLE VS. COLEMAN, 9 CALIFORNIA SUPREME COURT, CASE 1985, 38 CAL.3D 69 AT 92. 10 GRIMSHAW VS. FORD MOTOR COMPANY, (1981), 19 CAL.APP.3D 11 757 AT 788 TO 789. AND BASICALLY QUOTING FROM GRIMSHAW, 12 THE CONTINENTAL AIRLINES CASE, SITES WITH APPROVAL, 13 "WHILE AN EXPERT MAY STATE ON DIRECT EXAMINATION THE 14 MATTERS ON WHICH HE RELIED IN FORMING HIS OPINION, HE 15 MAY NOT TESTIFY AS TO THE DETAILS OF SUCH MATTERS IF 16 THEY ARE OTHERWISE INADMISSIBLE." 17 HERE IS WHERE IT GETS TRICKY, THOUGH. THAT'S 18 ME, NOT FROM THE OPINION. GOING ON, QUOTE, "THE RULE 19 RESTS ON THE RATIONALE THAT, WHILE AN EXPERT MAY GIVE 20 REASONS ON DIRECT EXAMINATION FOR HIS OPINIONS, THE 21 MATTERS HE CONSIDERED IN FORMING THEM HE MAY NOT, UNDER 22 THE GUISE OF REASONS, BRING IN BEFORE THE JURY" -- I 23 MUST HAVE DONE THAT WRONG. START AGAIN. 24 "THE RULE RESTS ON THE RATIONALE THAT, WHILE 25 AN EXPERT MAY GIVE REASONS ON DIRECT EXAMINATION FOR HIS 26 OPINIONS, INCLUDING THE MATTERS HE CONSIDERED IN FORMING 27 THEM, HE MAY NOT, UNDER THE GUISE OF REASONS, BRING 28 BEFORE THE JURY INCOMPETENT HEARSAY EVIDENCE.
Page 79 1 THE AIR MEASURER THING AND MEASURES THE AMOUNT OF FIBERS 2 IN THE AIR. IS THAT YOUR JOB? 3 A IT IS NOT. 4 Q IF SOMEONE SAID, I WANT YOU TO LOOK AT THIS 5 FIBER AND TELL ME IF THAT'S A BUNDLE OR A FIBER, IS THAT 6 WHAT YOU DO DAY IN AND DAY OUT? 7 A NO, IT IS NOT. 8 Q IF SOMEONE SAID, I WANT YOU TO LOOK AT THIS 9 E.D.S., WHICH TELLS US THE CHEMISTRY, SO WE CAN KNOW IF 10 THAT'S TALC OR CHRYSOTILE OR ANTHOPHYLLITE, IS THAT YOUR 11 JOB? 12 A NO, IT IS NOT. 13 THE COURT: MS. DEAN, LET US STOP FOR THE MOMENT. 14 I WANT TO GIVE THE JURY A BREAK. NORMALLY TEN MINUTES. 15 I WANT YOU TO TAKE 15 TODAY BECAUSE I NEED TO JUST 16 FINISH UP ONE PIECE OF WORK WITH THE LAWYERS. IT WILL 17 TAKE ME FIVE MINUTES. 18 SO AS ALWAYS, LEAVE YOUR NOTEBOOKS. PLEASE DO 19 NOT FORM OR EXPRESS ANY OPINIONS AND COME BACK IN ABOUT 20 12, 13, OR 14 MINUTES. 21 COUNSEL, PLEASE REMAIN. 22 23 (THE FOLLOWING PROCEEDINGS WERE HELD 24 OUTSIDE THE PRESENCE OF THE JURY.) 25 26 THE COURT: MISS CUATTO, COME ON BACK HERE PLEASE 27 IF YOU'RE STILL IN THE COURTROOM. THERE YOU ARE. 28 WE'RE OUTSIDE THE PRESENCE.	Page 81 1 ORDINARILY, THE USE OF A LIMITING INSTRUCTION THAT 2 MATTERS ON WHICH AN EXPERT BASED HIS OPINION ARE 3 ADMITTED ONLY TO SHOW THE BASIS OF THE OPINION AND NOT 4 FOR THE TRUTH OF THE MATTER CURES ANY HEARSAY PROBLEM 5 INVOLVED, BUT IN AGGRAVATED SITUATIONS WHERE HEARSAY 6 EVIDENCE IS RECITED IN DETAIL, A LIMITING INSTRUCTION 7 MAY NOT REMEDY THE PROBLEM," END QUOTE. 8 THE REASON IT GETS TRICKY IS THAT COLEMAN AND 9 GRIMSHAW WERE OVERRULED BY SANCHEZ ON THAT POINT TO THE 10 EXTENT THEY'RE SUGGESTING THAT AN EXPERT'S -- MAY -- 11 THAT THIS KIND OF EVIDENCE COMES IN TO SHOW THE BASIS OF 12 OPINION AND IS NOT BEING OFFERED FOR THE TRUTH. 13 NOW, THAT SAID, I'M OF THE VIEW THAT PEOPLE 14 VS. SANCHEZ DID NOT WHOLESAL REPEAL THE LAW OF HEARSAY. 15 AND I AM OF THE VIEW THAT THE BASIC RULE EXPRESSED IN 16 CONTINENTAL AIRLINES ABOUT EXPERTS CITING INADMISSIBLE 17 HEARSAY IN UNDUE DETAIL ON DIRECT REMAINS IMPROPER. 18 THE QUESTION, AS I SAID BEFORE, IS WHERE IS 19 THE LINE. I FIND FASCINATING THAT THE FEDERAL RULES OF 20 EVIDENCE IN DEALING WITH THIS PROBLEM, AND RULE 703 21 STATES IN A LAST SENTENCE: DESCRIBE -- WELL, THE 22 SUBJECT MATTER OF THE RULE IS, "INFORMATION OF THE TYPE 23 ON WHICH AN EXPERT MAY RELY" AND THE SENTENCE IN 24 QUESTION READS, QUOTE, "BUT IF THE FACTS OR DATA WOULD 25 OTHERWISE BE INADMISSIBLE, THE PROPONENT OF THE OPINION 26 MAY DISCLOSE THEM TO THE JURY ONLY IF THEIR PROBATIVE 27 VALUE IN HELPING THE JURY EVALUATE THE OPINION 28 SUBSTANTIALLY OUTWEIGHS THEIR PREJUDICIAL EFFECT," WHICH

Page 82 1 PUTS IT RIGHT BACK IN THE JUDGE'S LAP, AS I DO THINK IS 2 THE STATE OF THE LAW HERE. 3 SO TO THE EXTENT I EARLIER RULED THAT ANYTHING 4 AN EXPERT RELIED UPON IN FORMING AN OPINION WHICH IS 5 NONCASE-SPECIFIC HEARSAY MAY BE DISPLAYED TO THE JURY, 6 I'M RETRACTING THAT. AND I WILL BE, UPON APPROPRIATE 7 OBJECTION, EMPLOYING THE RULE, AS I UNDERSTAND IT, THAT 8 CONTINUES TO EXIST AFTER CONTINENTAL AIRLINE -- UNDER 9 THE CONTINENTAL AIRLINES CASE. ALL RIGHT? 10 MS. CUATTO: THANK YOU. 11 THE COURT: ANYBODY WANT TO SAY ANYTHING ABOUT 12 THAT? 13 MS. DEAN: JUST A COUPLE THINGS. FIRST, THE ACTUAL 14 SPECIFIC OBJECTIONS LODGED ARE TO GOVERNMENT REGULATIONS 15 IN THE FEDERAL REGISTER. AND SO GIVEN THAT THIS IS 16 JUST -- I WASN'T GOING TO SEEK JUDICIAL NOTICE. BUT THE 17 EPA 1986 RISK ASSESSMENT AND THE 1994 FEDERAL 18 REGULATIONS FROM THE OSHA WEBSITE ARE THE FIRST TWO 19 THINGS WHICH, IF THEY'RE JUDICIAL NOTICE, THE LAW AS AN 20 EXCLUSIONARY RULE OF EVIDENCE DOES NOT APPLY. 21 THE SECOND POINT I WOULD MAKE, WHICH IS NOT 22 BEFORE YOU, BUT BEFORE WE HAD -- THE JURY CAME IN, FORD 23 TALKED FOR A WHILE AND THERE WAS NO RESPONSE, ABOUT A 24 FUNDAMENTAL MISUNDERSTANDING OF WHAT HEARSAY IS. THEY 25 INDICATED IF SOMETHING GOES TO KNOWLEDGE, WHAT IS KNOWN 26 OR KNOWABLE, THAT THAT IS NOT NOTICE. THAT IS THE 27 DEFINITION OF NOTICE. THAT IS WHAT THE CASE LAW IN 28 CALIFORNIA SAYS. THAT IS WHAT THE FEDERAL LAW SAYS.	Page 84 1 AND PUT THE EXHIBIT STICKERS ON THE REST. AND BEFORE I 2 EVER GET TO THEM, I PROMISE YOU I'LL GIVE YOU A COPY. I 3 HAVE IN MY HAND SAID COPY. I'VE HONORED THE AGREEMENT. 4 THIS IS THE FIFTH TIME THAT FORD PRETENDS LIKE THERE'S A 5 PROBLEM WHEN THERE IS NONE WHEN TIME DESPERATELY 6 MATTERS. 7 MR. COGGSHALL: WILL COGGSHALL FOR COLOR 8 TECHNIQUES. DR. HABER IS NOT A FACT WITNESS. THERE'S 9 BEEN NO EVIDENCE IN THIS CASE AS TO WHAT COLOR 10 TECHNIQUES SUPPLIED TO ANY PRODUCT, AND, THEREFORE, HE 11 WON'T BE ABLE TO GIVE OPINION TESTIMONY AS TO COLOR 12 TECHNIQUES. I ANTICIPATE MS. DEAN IS GOING TO DO WHAT 13 SHE TRIED TO DO THERE, WHICH WAS TO IMPLICATE COLOR 14 TECHNIQUES AS BEING A CAUSE OF MS. CHAPMAN'S 15 MESOTHELIOMA. AND THAT LACKS FOUNDATION, AND I'M GOING 16 TO OBJECT TO THAT. 17 THE COURT: ALL RIGHT. WELL -- 18 MR. COGGSHALL: I JUST WANT TO GIVE YOU THE CONTEXT 19 OF WHY I'M GOING TO OBJECT TO THAT, BECAUSE THERE'S BEEN 20 NO FOUNDATION LAID AS TO COLOR TECHNIQUES AT ALL. 21 THE COURT: OKAY. I WILL WAIT TO SEE WHAT THE 22 QUESTION IS. I WANT TO GIVE EVERYBODY, INCLUDING OUR 23 REPORTER, A BREAK. COME BACK SOON. PLEASE. 24 25 (RECESS.) 26 27 THE COURT: WE HAVE ALL OF OUR JURORS AND 28 ALTERNATES. I THINK SHE'LL BE HERE PROMPTLY.
Page 83 1 SO IF I HAVE A ARTICLE FROM, I DON'T KNOW, 2 1999 BEFORE THE LAST DATE OF EXPOSURE FOR HYSTER, 3 THERE'S TWO DIFFERENT WAYS IT COULD BE ADMITTED. ONE IS 4 FOR TRUTH; ONE IS FOR NOTICE, AND THEN IT COULD BE A 5 RELIANCE. MANY OF THESE DOCUMENTS ARE FOR NOTICE, AND 6 FORD'S -- THE COMMENTS TO RULE 1200 GIVE THE EXAMPLE OF 7 THINGS THAT YOU CAN SHOW SOMEONE KNEW INDEPENDENT OF 8 WHETHER THEY'RE TRUE. 9 THE COURT: OKAY. I UNDERSTAND. I WANT TO GIVE 10 EVERYBODY THEIR BREAK. I JUST WANTED TO MAKE THE 11 STATEMENT I MADE. 12 MS. DEAN: I HAVE A POWERPOINT THAT WAS CREATED 13 BASED ON THE COURT RULING THAT I'M ABOUT TO START ON. 14 THE COURT: I KNOW. I WANT TO SEE YOUR POWERPOINT. 15 DO YOU HAVE A SET FOR ME SO I CAN FOLLOW ALONG IN HARD 16 COPY? 17 MS. DEAN: YES. 18 THE COURT: LET ME HAVE THAT. 19 AND, COUNSEL, IF COUNSEL NEEDS TO FLAG A SLIDE 20 COMING UP, LET ME KNOW BEFORE IT'S DISPLAYED. 21 MR. LANKFORD: WE CAN'T DO THAT WITHOUT A COPY, 22 THOUGH, YOUR HONOR. PAUL LANKFORD FOR FORD. 23 THE COURT: HOW DO YOU NOT HAVE A COPY? 24 MS. DEAN: FORD PRETENDS LIKE THIS IS MYSTERIOUS. 25 THE AGREEMENT WAS, BEFORE I DISPLAYED THINGS, I WOULD 26 PROVIDE IT. I HAVE HONORED THAT AGREEMENT. THEY HAVE 27 NOT ONLY THE SLIDES BUT 50 BEFORE I GOT THERE. I 28 E-MAILED THEM AND TOLD THEM I'M HAVING SOMEONE PROOFREAD	Page 85 1 MS. DEAN: I'M SO SORRY. 2 THE COURT: THAT'S ALL RIGHT. I EXPLAINED THAT I 3 LET YOU SLIP OUT FOR A MOMENT. 4 OKAY. EVERYBODY IS HERE WHO NEEDS TO BE HERE 5 AND YOU MAY PROCEED. 6 7 DIRECT EXAMINATION (CONTINUED) 8 BY MS. DEAN: 9 Q WHEN WE WERE ON A BREAK, WE RECEIVED SOME 10 QUESTIONS. I WANT TO JUST TACKLE THEM. 11 FOR RITA CHAPMAN, WAS A TISSUE DIGESTION DONE? 12 A NO. 13 Q AS A MEDICAL DOCTOR, WOULD IT MAKE ANY SENSE 14 TO PUT RITA CHAPMAN THROUGH A TISSUE DIGESTION? 15 A NO. 16 Q IS THERE ANY MEDICAL REASON TO DO A TISSUE 17 DIGESTION FOR A PERSON THAT HAS MESOTHELIOMA BEFORE THEY 18 PASS AWAY? 19 A NO. 20 Q THIS JUROR -- JUROR NUMBER 7 -- 21 THE COURT: JUST ASK THE QUESTION, PLEASE. 22 MS. DEAN: -- IS GOING TO MAKE ME -- 23 THE COURT: JUST ASK THE QUESTION. 24 MS. DEAN: CAN WE PUT UP ON THE SCREEN SO I DON'T 25 HAVE TO MISPRONOUNCE THE WORD. THIS WAS THE FIRST OF 26 THE THREE PROCEDURES BEFORE THE TALC PLEURODESIS. 27 MR. SHARP: I APOLOGIZE. I NEED TO OBJECT. THIS 28 IS NOT PROPER.

Page 86 1 THE COURT: RATHER THAN SHOWING IT, JUST FORMULATE 2 A QUESTION BASED ON THE JUROR'S QUESTION, IF YOU WISH, 3 OR WHATEVER OTHER QUESTION YOU WISH TO ASK. 4 Q MS. DEAN: IN 2022, WHEN YOU DESCRIBED THE 5 FIRST PROCEDURE, HOW DO YOU PRONOUNCE THAT? 6 A MEDIASTINOSCOPY. 7 Q WHEN THAT WAS PERFORMED FOR MS. CHAPMAN AND 8 THEY TOOK A BIOPSY, COULD THAT SAMPLE TISSUE HAVE BEEN 9 TESTED FOR ASBESTOS FIBERS? 10 A NO. IT'S LYMPH NODES OUTSIDE OF THE CHEST, 11 OUTSIDE OF THE LUNGS. 12 Q CAN THAT BE USED TO PROVE OR SHOW THE PRESENCE 13 OF ASBESTOS FIBERS? 14 A NO. THAT'S NOT USUALLY WHERE YOU'RE -- YOU 15 WANT TO TAKE TISSUE FROM THE LUNGS. 16 Q OKAY. WHAT IS THE CAUSE OF WATER ACCUMULATION 17 AROUND THE HEART? IS IT RELATED TO ASBESTOS? 18 A IN THIS CASE, YES. THEY DID THE CYTOLOGY 19 WHICH IS LOOKING UNDER THE MICROSCOPE, AND THE CELLS 20 WERE SUSPICIOUS TO THE PATHOLOGISTS FOR THE SAME 21 MALIGNANT MESOTHELIOMA, AND, CLINICALLY, IT FITS BECAUSE 22 THIS IS ONE OF THE -- YOU KNOW, SHE ALREADY HAD THE 23 PLEURAL EFFUSION -- IT FITS THAT IT WAS GOING TO BE FROM 24 THE CANCER. 25 Q DO YOU OR HER TREATERS OR ANYONE, TO YOUR 26 KNOWLEDGE, BELIEVE THAT THAT ACCUMULATION IN THE HEART 27 AND IN THE LUNGS HAD ANYTHING TO DO WITH ANYTHING OTHER 28 THAN HER CANCER?	Page 88 1 ABOUT BRAKES. ARE YOU FAMILIAR WITH THAT PAPER? 2 A I AM. 3 Q HAVE YOU ALSO REVIEWED THE WORK BY THE MOUNT 4 SINAI GROUP -- 5 A I HAVE. 6 Q -- ON THAT ISSUE? AND ARE YOU PREPARED TO 7 TELL US YOUR OPINION ABOUT WHETHER BRAKE EXPOSURES ARE 8 RENDERED UNDANGEROUS BECAUSE THERE'S NOT ASBESTOS IN 9 THEM DUE TO HEAT? 10 A I AM. 11 Q TELL ME ABOUT THAT. 12 A FIRST OFF, YOU KNOW, AS FAR AS THINGS LIKE 13 GRINDING OR SANDING, I MEAN, THIS IS 30 TO 60 PERCENT 14 ASBESTOS PRODUCT. THE HEAT THAT IS PERHAPS USED IN 15 MAKING -- MOLDING THE BRAKE. THERE'S STILL A LOT OF 16 ASBESTOS IN THE PRODUCT. AS FAR AS BLOWOUT IS 17 CONCERNED, THE BRAKEWARE DEBRIS, YES, THERE ARE SOME 18 STUDIES THAT HAVE LESS THAN 1 PERCENT BUT THERE'S ALSO 19 STUDIES THAT ARE 10, 15, EVEN, YOU KNOW, 30 PERCENT 20 ASBESTOS STILL PRESENT IN THE BRAKEWARE. 21 Q AND AS BETTER TECHNIQUES WERE USED TO EVALUATE 22 WHAT WAS IN THE BRAKEWARE, WHEN YOU'RE TALKING ABOUT THE 23 COMPRESSED AIR, DID THEY FIND MORE AND MORE ASBESTOS? 24 A YES. 25 Q WE HAVE HEARD A LOT ABOUT FIBER RELEASE 26 STUDIES. MR. ADAMS, I THINK WAS TEASING ME A LITTLE BIT 27 ABOUT TALKING TOO MUCH ABOUT FIBERS PER CC. BUT ARE 28 THOSE THE TYPE OF STUDIES YOU REVIEWED IN ORDER TO
Page 87 1 A NO. IT WAS FROM THE MESOTHELIOMA. 2 Q THE FORD WITNESS IMPLIED FORD GAVE A GRANT TO 3 DR. SELIKOFF TO STUDY AIR POLLUTION, BUT HE DECIDED TO 4 STUDY BRAKE WORK. DO YOU KNOW ABOUT THE FINANCING 5 BEHIND THE SCENES OF DR. SELIKOFF'S WORK BY FORD, OTHER 6 THAN WHAT YOU HEARD IN THE COURTROOM AND THE JURY DID? 7 A I DO NOT. 8 Q OKAY. MR. WILLIAMS FROM FORD MENTIONED 9 SOMETHING ALONG THE LINES THAT HEAT APPLIED IN BRAKES 10 COULD RENDER THE ASBESTOS FIBERS INEFFECTIVE. WILL 11 ANYONE BE ABLE TO CONFIRM OR DENY THIS? IS THIS 12 SOMETHING YOU HAVE REVIEWED THE MEDICAL AND SCIENTIFIC 13 LITERATURE ON SPECIFICALLY? 14 A YES. 15 Q DOES HEAT RENDER BRAKES, AS IT RELATES TO 16 ASBESTOS FIBERS, UNHARMFUL? 17 MR. LANKFORD: OBJECTION, YOUR HONOR. FOUNDATION. 18 THE COURT: SUSTAINED ON FOUNDATION. 19 Q BY MS. DEAN: AS A MEDICAL DOCTOR, IS KNOWING 20 WHETHER YOU HAVE ASBESTOS OR SOMETHING ELSE IN A 21 MATERIAL AN IMPORTANT THING TO KNOW IN ORDER TO EVALUATE 22 CAUSATION? 23 A YES. 24 Q ARE THERE DOCUMENTS IN PEER REVIEWED PUBLISHED 25 LITERATURE AND MEDICAL JOURNALS DISCUSSING THIS EXACT 26 ISSUE? 27 A YES. 28 Q THE JURY HAS SEEN ONE BY DR. LEMON FROM 2004	Page 89 1 ASSESS AN EXPOSURE AND ITS RELATIONSHIP TO DISEASE? 2 A YES, IT IS. 3 Q WHEN THEY'RE DETERMINING HOW MANY FIBERS GET 4 INTO THE AIR, ARE THEY INCLUDING FORSTERITE? 5 A NO. 6 Q SO WHEN WE HEAR THAT GRINDING A BRAKE RESULTS 7 IN 30 FIBERS PER CC, ARE THEY INCLUDING ANYTHING OTHER 8 THAN ASBESTOS? 9 A NO. 10 Q NOT JUST IN THE STUDIES THAT I THOUGHT OF TO 11 ASK YOU ABOUT, IN ANY STUDY ANYWHERE THAT YOU HAVE EVER 12 SEEN IN THE SCIENTIFIC COMMUNITY, DOES ANYONE CONFIRM 13 THE SUGGESTION THAT GRINDING OR SANDING BRAKES DOESN'T 14 INVOLVE ASBESTOS BECAUSE OF HEAT? 15 A NO. I'VE NOT SEEN THAT. 16 Q OKAY. WE WERE TALKING ABOUT -- BEFORE WE 17 INTERRUPTED -- HOW THE LIMITATIONS OF TESTING IS 18 IMPORTANT, AND I WAS ASKING YOU WHETHER YOU WERE LIKE 19 DR. LONGO AND SAT BEHIND THE MICROSCOPE. IS IT 20 IMPORTANT, EVEN IF YOU'RE NOT THE PERSON DOING THE 21 TESTING, TO UNDERSTAND ITS STRENGTHS AND ITS WEAKNESSES? 22 A OF COURSE. 23 Q IS THAT SOMETHING IN YOUR MEDICAL PRACTICE 24 DAILY THAT YOU HAVE TO DO? 25 A IT IS. 26 Q CAN YOU GIVE ME AN EXAMPLE? 27 A SURE. SO FOR EXAMPLE, AS A PULMONOLOGIST, 28 I'LL GET A PATIENT WHO COMES IN AND WE PERHAPS ARE GOING

Page 90 1 TO DO A CHEST X-RAY WHICH HAS A LOWER LIMIT OF DETECTION 2 FOR CANCER THAN A CAT SCAN. WELL, YEARS AGO, WE USED TO 3 SCREEN. WE TESTED. WE RAN TESTS TO SEE WHETHER 4 SCREENING FOR LUNG CANCER -- FOR CHEST X-RAY WAS GOING 5 TO SAVE LIVES, AND AFTER A LONG, LONG STUDY, IT DIDN'T, 6 BECAUSE BY THE TIME THE CANCER WAS DETECTABLE ON CHEST 7 X-RAY, IT WAS ALREADY TOO LATE. SO THEN WE REDID THE 8 STUDY AGAIN WITH CAT SCAN AND NOW WE DO SCREENING CAT 9 SCANS FOR PEOPLE WHO HAVE HAD A CERTAIN AMOUNT OF 10 SMOKING HISTORY. 11 AND WHEN A PATIENT COMES TO ME AND SAYS YOU 12 KNOW -- WE DO A CHEST X-RAY, AND THEY SAY, WELL, THERE'S 13 NO CANCER AND I GO, YOU'RE RIGHT. I DON'T SEE A CANCER 14 ON THE CHEST X-RAY BUT YOU HAVE TO UNDERSTAND THAT THE 15 CANCER HAS TO BE REALLY BIG ON A CHEST X-RAY FOR US TO 16 SEE IT; AND SO NO, WE CAN'T SAY THAT YOU DON'T HAVE ONE, 17 BECAUSE THE LIMIT OF DETECTION. ON THE CAT SCAN, MUCH, 18 MUCH BETTER, LIKE, THE TEM IS MUCH BETTER. BUT EVEN THE 19 CAT SCAN -- IF THE PERSON HAS A CAT SCAN, WE DO A 20 SCREENING CAT SCAN AND WE DON'T SEE ANYTHING, AND SAYS 21 TO ME, AM I CANCER FREE? NO. I CAN'T SAY THAT YOU ARE. 22 I CAN SAY THAT, YOU KNOW, IF THERE'S A CANCER THERE, 23 IT'S GOING TO HAVE TO BE VERY, VERY SMALL, THAT IT'S 24 BELOW OUR LIMIT OF DETECTION, ABOUT A MILLIMETER OR TWO 25 MILLIMETERS. BUT WE STILL HAVE TO CONTINUE TO MONITOR 26 YOU BECAUSE I CAN'T SAY THAT YOU'RE, YOU KNOW, YOU'RE 27 GOOD AND CLEAR. AND THAT'S SOMETHING FOR ME EVERY DAY. 28 Q FOR TRADITIONAL PRODUCTS AND WHAT I MEAN BY	Page 92 1 ABLE TO SAY, HOW DO I MAKE SENSE OF THIS? 2 Q NOW, I WANT TO MAKE THAT A LITTLE BIT MORE 3 CONCRETE. I'M KIND OF JUMPING AHEAD IN MY OUTLINE. BUT 4 ARE SHORTER FIBERS THAT ARE MISSED BY PCM OR THINNER 5 FIBERS THAT ARE ALSO MISSED BY PCM IMPORTANT TO 6 UNDERSTANDING WHY A PERSON GETS MESOTHELIOMA? 7 A YES. THESE FIBERS ARE A HEALTH CONCERN, 8 ABSOLUTELY. 9 Q SO IF YOU HAVE ONE TEST THAT GIVES YOU FIBERS 10 AND SHOWS A LOT OF ASBESTOS, BUT A SECOND TEST WITH A 11 BETTER METHOD THAT SHOWS YOU EVERYTHING YOU NEED TO SEE, 12 WOULD YOU KEEP THE LIMITS OF THOSE TESTS IN MIND? 13 A YES. 14 Q SAME KIND OF QUESTIONS WITH TALC. IF YOU HAVE 15 A TEST THAT LOOKS AT IT AND HAS A VERY POOR LIMIT OF 16 DETECTION AND ONE THAT HAS VERY WEAK, WOULD YOU -- VERY 17 STRONG, SORRY, WOULD YOU CONSIDER THAT IN YOUR REVIEW OF 18 INFORMATION? 19 A YES. 20 Q AND IS THAT TYPE OF THING SOMETHING THAT 21 DOCTORS LIKE YOURSELF ROUTINELY DO IN EVALUATING HEALTH 22 ISSUES? 23 A YES. YOU HAVE TO -- ANY TEST -- JUST LIKE YOU 24 KNOW WHEN WE -- EVERYONE GETS COVID TESTS NOWADAYS. YOU 25 HAVE TO UNDERSTAND THERE'S FALSE POSITIVES. THERE'S 26 LOTS OF FALSE NEGATIVES SO YOU HAVE TO UNDERSTAND THE 27 LIMITS OF THE DETECTION OF THE TEST. 28 Q WE HEARD A LOT ABOUT THIS, BUT WE'RE GOING TO
Page 91 1 THAT, IS PRODUCTS WHERE A COMPANY MAKES THE DECISION TO 2 PUT ASBESTOS IN IT INTENTIONALLY. HAVE YOU BEEN ASKED 3 FOR YEARS, BOTH IN THE COURTROOM BY DEFENDANTS AND 4 PLAINTIFFS AND WITH YOUR OWN PATIENTS, TO CONSIDER 5 EXPOSURES THAT PEOPLE HAVE AND WHETHER THE ASBESTOS 6 CAUSED THE DISEASE? 7 A YES. 8 Q OKAY. AND WHEN YOU'RE LOOKING AT SOMETHING 9 LIKE A BRAKE, IS IT IMPORTANT TO UNDERSTAND, WHEN YOU 10 LOOK AT THE TESTS, WHAT TOOL WAS USED TO DO THE TEST? 11 A OF COURSE. 12 Q THE JURY HAS ALREADY HEARD THAT OSHA SUGGESTED 13 DOING TESTING BY PCM, WHICH DOESN'T FIND SHORTER FIBERS 14 OR THINNER FIBERS. IF YOU GET A TEST, AND IT SAYS I 15 HAVE FOUND 10 FIBERS PER CC OF ASBESTOS BY PCM, IS IT 16 IMPORTANT FOR YOU -- OR DO YOU CONSIDER THE LIMITS OF 17 THAT RESULT? 18 A SURE. AND YOU KNOW, BY THE SAME TOKEN, I 19 DON'T DO THE CHEST X-RAYS OF THE CAT SCAN MYSELF BUT I 20 HAVE TO UNDERSTAND THE LIMITS. I DON'T DO THESE OTHER 21 TESTS, BUT, YES, YOU HAVE TO UNDERSTAND, OKAY, WHAT IS 22 THE STRENGTH? WHAT IS THE WEAKNESS? SOME TESTS CAN SEE 23 CERTAIN FIBERS AND THEY CAN'T SEE OTHER FIBERS. MAYBE 24 THEY'RE TOO THIN. SOME MAY NEED TO BE A CERTAIN LENGTH 25 OR A CERTAIN WIDTH. SOME ARE MUCH MORE MAGNIFIED. SO 26 THEY ALL HAVE CERTAIN ADVANTAGES AND SOME DISADVANTAGES. 27 YOU HAVE TO UNDERSTAND THAT, IN ORDER TO -- WHEN YOU 28 LOOK AT A RESULT, JUST LIKE I WOULD WITH A PATIENT, BE	Page 93 1 HEAR FROM SOME GEOLOGISTS, WHICH IS WHY I'M GOING TO 2 TAKE SOME TIME NOW. FROM A MEDICAL DOCTOR'S 3 PERSPECTIVE, AS A PERSON WHO EVALUATES THE HEALTH OF 4 PATIENTS. WHAT IS ASBESTOS? 5 A ASBESTOS IS A NATURAL MINERAL THAT IS ONE OF 6 SIX CHEMICAL MAKEUP IN A FIBROUS FORM. 7 Q IF YOU HAVE ONE OF THOSE SIX AND IT'S IN THE 8 RIGHT FIBER FORM OR MORPHOLOGY, HAS THAT BEEN STUDIED 9 REPEATEDLY THROUGH LITERATURE TO HAVE AN EFFECT ON THE 10 HUMAN BODY THAT'S NEGATIVE? 11 A YES. 12 Q WE'VE HEARD THAT CHRYSOTILE WAS THE VAST 13 MAJORITY OF ASBESTOS USED. IF AMOSITE AND CROCIDOLITE 14 WERE THE OTHER FIVE PERCENT, DO YOU AGREE WITH THOSE 15 BROAD NUMBERS? 16 A YES. 17 Q ARE THERE OTHER FIBER TYPES THAT REALLY 18 WEREN'T USED COMMERCIALY? 19 A YES. 20 Q WHAT ARE THOSE? 21 A ANTHOPHYLLITE AND TREMOLITE AND ACTINOLITE. 22 Q GIVEN THAT THEY AREN'T USED, WHEN PEOPLE ARE 23 DOING STUDIES TO FIGURE OUT WHAT IS IN THE AMBIENT AIR? 24 AND THE JURY HAS HEARD ABOUT THAT. WHAT TYPE OF 25 ASBESTOS IS BEING FOUND? 26 A IT'S PRIMARILY CHRYSOTILE ASBESTOS. 27 Q WHEN YOU LOOK INTO THE TISSUE OF SOMEONE THAT 28 HAS PASSED AWAY AND COUNT WHAT'S THERE, WHAT TYPE OF

Page 94 1 ASBESTOS IS TYPICALLY FOUND? 2 A THE SAME. 3 Q ARE THERE STUDIES THAT LOOK AT PEOPLE WHO HAVE 4 A DOCUMENTED HISTORY TO COSMETIC TALC THAT LOOKS AT 5 TISSUE AND SEES WHAT'S THERE? 6 A YES. 7 Q ARE THESE COMMERCIAL TYPES THAT WEREN'T USED 8 FOR ANY PURPOSE MARKERS OF EXPOSURE? 9 A YES. 10 Q WE'VE HEARD A LOT ABOUT THIS. I JUST WANT TO 11 CONFIRM FROM A MEDICAL DOCTOR. FOR EACH OF THESE 12 DISEASES -- ASBESTOSIS, PLEURAL DISEASE, LUNG CANCER, 13 MALIGNANT MESOTHELIOMA AND OTHER CANCERS -- DO ALL OF 14 THE SIX FIBER TYPES OF ASBESTOS CAUSE THESE DISEASES? 15 A YES. 16 Q DR. BRODY CAME AND TALKED ABOUT GENETICS AND 17 MUTATION FOR A LONG TIME. IF SOMEONE SUGGESTED THAT IT 18 NEEDS -- YOU NEED TO FIND THE ONE SPECIFIC FIBER THAT 19 CAUSED THE DISEASE, IS THERE A FUNDAMENTAL 20 MISUNDERSTANDING ABOUT HOW CANCER IS CAUSED AS IT 21 RELATES TO ASBESTOS? 22 A YES. 23 Q IS ASBESTOS-RELATED MESOTHELIOMA A CUMULATIVE 24 DOSE DISEASE? 25 A YES. 26 Q WHAT DOES THAT MEAN? 27 A IN OTHER WORDS, THE HIGHER THE DOSE, THE 28 HIGHER THE RISK IN A GENERAL POPULATION. SO IT'S NOT --	Page 96 1 .00002 PERCENT THAT THEY DETERMINED THAT WAS 2 ADULTERATED, DANGEROUS AND POISONOUS. YOU HAVE FROM THE 3 PUBLISHED JOURNAL OF AMERICAN OF INDUSTRIAL MEDICINE 4 SHOWING THAT AT LESS THAN .01 PERCENT THAT YOU CAN HAVE 5 300 BILLION ASBESTOS FIBERS, GREATER THAN FIVE MICRONS 6 THEN YOU'RE TALKING ABOUT 90 TRILLION IF YOU'RE LOOKING 7 AT ALL FIBERS. IT'S A HUGE AMOUNT OF FIBERS. IT'S HARD 8 TO UNDERSTAND WHEN YOU START GETTING INTO BILLION AND 9 TRILLIONS BUT VERY, VERY HIGH NUMBER. AND THEN THE EPA 10 SAID THAT VERY LOW EXPOSURES CAN RESULT IN CANCERS. 11 THEY UNDERSTAND THAT ASBESTOS LINGERS IN THE AIR AND 12 THAT THIS RISK IS NOT ONLY TO THE MECHANIC BUT THE 13 PEOPLE THAT ARE AROUND. 14 Q I WANT TO FOLLOW UP ON A FEW THINGS. FIRST, 15 THIS REALLY LOW PERCENTAGE SHOWN UP HERE WITH A LOT OF 16 ZEROS AND A TWO, IS THAT THE SAME THING AS THE FIBER PER 17 CC NUMBERS? 18 A NO. 19 Q I WANT TO BE CLEAR ABOUT THIS. ARE THERE 20 PUBLISHED PAPERS, INTERNAL STUDIES BY COMPANIES, FDA 21 DATA TALKING ABOUT HOW MUCH ASBESTOS GETS INTO THE AIR 22 EVEN WHEN A PRODUCT HAS LESS THAN ONE PERCENT? 23 A YES. 24 Q AND FOR COSMETIC TALC, WHAT RANGES ARE YOU 25 SEEING, IF WE'RE NOT GOING TO KNOW WEIGHT, THE ACTUAL 26 FIBER THAT'S IN THE AIR OF THE PERSON WHO'S BREATHING. 27 IS THERE A RANGE? 28 A YES.
Page 95 1 YOU CAN HAVE PEOPLE -- YOU DON'T HAVE TO HAVE A HIGH 2 DOSE, BUT THE HIGHER THE DOSE OF A POPULATION OR GROUP 3 THAT YOU'RE STUDYING, THE MORE CASES YOU WILL SEE. BUT 4 THERE'S INDIVIDUAL'S SUSCEPTIBILITY SO PEOPLE CAN STILL 5 HAVE -- AS WE SAID, THERE'S NO LIMIT BELOW WHICH WE 6 DON'T KNOW YET. THERE'S NO RISK. BUT THE MORE THE 7 DOSE, THE HIGHER THE RISK. 8 Q WHY DO YOU HAVE A GLASS OF WATER TIPPING OVER 9 IN THIS PICTURE? 10 A SO IT'S KIND OF A PICTORIAL TO UNDERSTAND THIS 11 CONCEPT THAT, YOU KNOW, AS THE DOSE IS ADDED, YOU CAN'T 12 REALLY TELL WHAT PART OF THAT, AS YOU'RE POURING THE 13 WATER IN, WHICH PART MADE IT OVERFLOW. IT ALL DID. 14 EVERYTHING THAT WENT IN EVENTUALLY FILLED UP THE GLASS 15 TO OVERFLOW. 16 Q AND IN TERMS OF SCIENCE, DOES IT MAKE ANY 17 SENSE TO SAY IT WAS THE FIRST DROP OR THE FIRST THIRD, 18 MIDDLE THIRD OR THE LAST DROP THAT IS SIGNIFICANT OR DO 19 YOU NEED TO LOOK AT ALL OF THEM? 20 A YOU HAVE TO LOOK AT THE WHOLE CUMULATIVE DOSE. 21 Q WE'VE HEARD A LOT ABOUT HOW LIGHT ASBESTOS IS. 22 CAN YOU TELL US A LITTLE BIT ABOUT YOUR OPINIONS ABOUT 23 HOW DANGEROUS ASBESTOS CAN BE EVEN AT VERY LIGHT 24 WEIGHTS? 25 A SO ASBESTOS IS EXTRAORDINARILY LIGHT AND SO 26 EVEN A VERY, VERY SMALL PERCENTAGE BY WEIGHT CAN CARRY 27 BILLIONS EVEN TRILLIONS OF FIBERS IN JUST THE SMALLEST 28 VOLUME OR WEIGHT. AND SO YOU'VE GOT FDA SHOWING THAT AT	Page 97 1 Q WHAT IS THAT? 2 A THAT RANGE DEPENDS UPON THE SOURCE OF THE TALC 3 BECAUSE SOME HAS MORE, SOME HAS LESS ASBESTOS IN IT. 4 BUT OF THE TESTS THAT I'VE SEEN, THE RANGE IS SOMEWHERE 5 AROUND BETWEEN .1 TO 4 FIBERS PER CC. 6 Q WHEN YOU KNOW THAT THIS REALLY SMALL 7 PERCENTAGE BY WEIGHT, NOT BY WHAT'S IN THE AIR, IS 8 ADULTERATED AND THAT THAT'S STATED BY THE FDA, IS THAT 9 AN OFFICIAL FDA STATEMENT ON THEIR WEBSITE? 10 A IT IS. 11 Q IS THAT BURIED IN A DOCUMENT THAT YOU CAN ONLY 12 GET FROM A FOIA, FREEDOM OF INFORMATION ACT, REQUEST 13 FROM 30 YEARS AGO? 14 A NO. 15 Q THE JURY WAS TOLD THAT THE FDA BELIEVES THAT 16 0.1 PERCENT -- WE'RE BACK TO WEIGHT -- IS SAFE. IS THAT 17 ACCURATE BASED ON THE DATA THAT'S ON THE FDA WEBSITE 18 FROM THE OFFICIAL FDA STATEMENT? 19 A NO. 20 Q AND THEN, I THINK, THIS JUST MIGHT BE AN 21 EXAMPLE OF WHAT WE WERE TALKING ABOUT EARLIER. THE TYPE 22 OF TOOL USED TO DO THE TESTING, WHETHER YOU USE PCM THAT 23 ONLY SHOWS FIVE MICRONS OR THAT TRANSMISSION ELECTRON 24 THAT SHOWS SHORTER, MAKES A HUGE DIFFERENCE ON WHAT YOU, 25 AS THE DOCTOR, CAN SEE? 26 A YES. 27 Q AND IS THAT THE TYPE OF THING YOU WOULD WANT 28 TO KEEP IN MIND WHEN MAKING HEALTH DECISIONS?

Page 98 1 A YES. 2 Q IN TERMS OF UNDERSTANDING HOW MUCH DOSE, HAVE 3 YOU HEARD THE IDEA THAT DOSE MAKES THE POISON? 4 A YES. 5 Q WE'RE GOING TO KIND OF GET TO THE HISTORY OF 6 WHAT WAS KNOWN ABOUT ASBESTOS AND ASBESTOS DISEASE IN A 7 MOMENT. BUT BROADLY SPEAKING, WHEN PEOPLE WERE WORRIED 8 ABOUT THE SCARRING, THE ASBESTOSIS, WHAT KIND OF DOSES 9 WERE ASSOCIATED WITH THAT? 10 A MUCH HIGHER DOSES. 11 Q WHEN MESOTHELIOMA FIRST BECAME KNOWN, WAS IT A 12 GAME CHANGER BECAUSE OF ISSUES WITH DOSE? 13 A YES. 14 Q HELP US UNDERSTAND. 15 A SO THE EARLIEST STUDIES WHEN THEY'RE LOOKING 16 AT ASBESTOSIS, THE AMOUNTS OF ASBESTOS THAT THESE 17 WORKERS WERE BEING EXPOSED TO WERE MUCH HIGHER. NOW 18 THAT WE'VE BEEN IDENTIFYING MESOTHELIOMA, THE STUDY 19 AFTER STUDY AFTER STUDY SHOWING LOWER AND LOWER DOSES, 20 ORDERS OF MAGNITUDE BELOW THE DOSE THAT ONE CC EVEN AT 21 THE LOWEST END TO BE CAPABLE OF CAUSING ASBESTOSIS. 22 Q WAS THERE EXTENSIVE EFFORT, NOT JUST IN THE 23 U.S., BUT THROUGHOUT THE WORLD TO TRY TO FIGURE OUT A 24 WAY TO USE ASBESTOS? THAT IF YOU -- IN OTHER WORDS, IF 25 WE CAN JUST KEEP IT AT THIS LEVEL OR THIS LEVEL, PEOPLE 26 WOULDN'T GET SICK? ARE YOU AWARE OF THAT EFFORT. SORRY 27 IT'S AN AWKWARD QUESTION. 28 A YES.	Page 100 1 A YES. SO MANY STUDIES AND SCIENTISTS HAVE 2 PUBLISHED SHOWING THAT THERE IS NO RISK -- THERE'S NO 3 LEVEL THRESHOLD BELOW WHICH YOU DON'T HAVE A RISK. THAT 4 THERE ARE MANY, MANY STUDIES SHOWING THAT VERY, VERY 5 MINIMAL, BRIEF, INTERMITTENT -- EVEN SOME CASE REPORTS 6 ONE DAY, ONE WEEK, ONE MONTH TYPE OF EXPOSURE -- SO IT 7 CAN BE VERY LIMITED IN TIME FRAME -- WERE CAPABLE OF 8 CAUSING MESOTHELIOMA. 9 Q THROUGHOUT THIS PRESENTATION, YOU HAVE PUT 10 THESE FOOTNOTES AND CITATIONS. CAN I ASK YOU, WHEN 11 YOU'VE CITED TO SOMETHING OR REFERENCED SOMETHING IN 12 THIS POWERPOINT WE TALKED TO THE JURY, ARE THOSE THINGS 13 YOU HAVE REVIEWED, CONSIDERED, RELIED ON AND FOUND TO BE 14 AUTHORITATIVE? 15 A YES. 16 MR. LANKFORD: I'M GOING TO OBJECT, YOUR HONOR, AS 17 HEARSAY, FOUNDATION, 352, AND I STILL DON'T HAVE THE 18 SLIDES. 19 THE COURT: TO THE NEXT SLIDE? 20 MR. LANKFORD: THIS ONE EVEN. I DON'T HAVE THIS. 21 I DON'T HAVE ANY. 22 MS. DEAN: YOU DON'T HAVE THIS SLIDE? I GAVE IT TO 23 YOU YESTERDAY. MIDDAY YESTERDAY. 24 MR. LANKFORD: WE CAN MOVE ON, YOUR HONOR. 25 THE COURT: OKAY. YOUR OBJECTION TO THE SLIDE 26 PRESENTLY DISPLAYED: ASBESTOS AND MESOTHELIOMA IS 27 OVERRULED. 28 MR. LANKFORD: I WITHDRAW THE OBJECTION. YOU CAN
Page 99 1 Q WAS ASBESTOS USEFUL IF IT DIDN'T CAUSE HARM TO 2 THE LUNGS? 3 A YES. I MEAN, HE ACTUALLY CALLED IT THE MAGIC 4 MINERAL, BUT YES. 5 Q AFTER DECADES OF EFFORTS TO TRY TO FIGURE OUT 6 IF THERE'S A LEVEL THAT, IF YOU JUST KEEP IT HERE, 7 SIGNIFICANT PEOPLE WON'T GET SICK. HAVE THEY BEEN ABLE 8 TO FIND THAT LEVEL AS IT RELATES TO THE DISEASE THAT 9 RITA CHAPMAN HAS, MALIGNANT MESOTHELIOMA. 10 A NO. 11 Q IN TERMS OF UNDERSTANDING HOW YOU 12 UNDERSTAND -- OR HOW YOU'VE GOTTEN TO THAT, CAN YOU TELL 13 US A LITTLE BIT ABOUT THIS SLIDE? 14 A YES. AND THIS IS PUBLISHED IN MEDICAL 15 JOURNALS AND IT'S WIDELY UNDERSTOOD THAT ASBESTOS CAUSES 16 MOST OF THE MESOTHELIOMAS IN THE UNITED STATES. AND 17 THAT IT'S CALLED WHAT WE CALL A SENTINEL CANCER. IN 18 OTHER WORDS, WHEN YOU HAVE SOMEONE WHO HAS MESOTHELIOMA, 19 WE'RE TAUGHT IN MEDICAL SCHOOL, THINK ABOUT ASBESTOS. 20 AND IF YOU HAVE SOMEONE WHO HAS EXPOSURE TO ASBESTOS, 21 RISK FOR MESOTHELIOMA. THOSE TWO ARE EXTREMELY TIGHTLY 22 LINKED. 23 Q IN TERMS OF THIS IDEA THAT YOU JUST EXPLAINED, 24 THERE'S NOT A THRESHOLD OR A DOSE THAT HAS BEEN FOUND TO 25 BE OKAY. AND WHAT I MEAN BY OKAY IS NOT HAVE A 26 SIGNIFICANT INCREASE FOR THE DEVELOPMENT OF DEATH AND 27 DISEASE SPECIFICALLY, THE DISEASE MESOTHELIOMA. CAN YOU 28 TELL US A LITTLE BIT MORE ABOUT THAT?	Page 101 1 GO AHEAD. 2 THE COURT: OKAY. GO AHEAD. 3 Q BY MS. DEAN? WHAT IS THE WORLD HEALTH 4 ORGANIZATION? 5 A THAT IS AN ORGANIZATION THAT DEALS WITH HEALTH 6 ISSUES ACROSS THE WORLD. MOST PEOPLE EVEN -- THEY WERE 7 INVOLVED WITH ALL THE COVID, THEIR RELATIONSHIP WITH THE 8 I.L.O., WHICH IS THE INTERNATIONAL LABOR ORGANIZATION, 9 WHICH DOES THE READING WHICH I TOLD YOU ABOUT EARLIER. 10 Q HAVE THEY DONE AN EVALUATION OF THE WORLD 11 LITERATURE OF ASBESTOS DISEASE TO EVALUATE THE ISSUE 12 ABOUT WHEN AND UNDER WHAT CIRCUMSTANCES YOU'RE SEEING 13 MESOTHELIOMA AS IT RELATES TO EXPOSURES TO ASBESTOS? 14 A YES. 15 MR. LANKFORD: YOUR HONOR, I WILL OBJECT TO THE 16 NEXT SLIDE. AGAIN, HEARSAY, FOUNDATION. 352. 17 THE COURT: HOLD ON. LET ME FIND OUT. DO YOU PLAN 18 TO DISPLAY 55? 19 MS. DEAN: I DO. 20 THE COURT: I'M SUSTAINING THE OBJECTION. IT'S 21 UNDULY DETAILED AS TO NON-CASE SPECIFIC HEARSAY. BUT 22 YOU CAN INQUIRE MORE GENERALLY. 23 Q BY MS. DEAN: DID THE WORLD HEALTH 24 ORGANIZATION LOOK AT BRIEF, SHORT EXPOSURES AND FIND 25 THAT THERE WAS STILL MESOTHELIOMA? 26 A RISK, YES. 27 Q TELL US ABOUT THAT. 28 A AGAIN, THEY LOOKED AT IT THAT THERE'S NO

Page 102 1 THRESHOLD AND THAT, WHEN THEY LOOKED AT THE STUDIES, 2 THEY STILL FOUND INCREASED RISK IN POPULATIONS THAT WERE 3 EXPOSED TO VERY LOW DOSES AND BRIEF EXPOSURES WERE STILL 4 CAPABLE OF INDUCING RISK. 5 Q HAS THE WORLD HEALTH ORGANIZATION MADE A 6 DETERMINATION WHETHER THERE IS NO SAFE LEVEL OF EXPOSURE 7 TO ASBESTOS AS IT RELATES SPECIFICALLY TO THE DISEASE 8 THAT RITA CHAPMAN HAS, MALIGNANT MESOTHELIOMA? 9 A YES. 10 Q HAS THE EPA? 11 A YES. 12 Q HAS THE AMERICAN CANCER SOCIETY? 13 A YES. 14 Q HAS THE NATIONAL CANCER -- HELP ME OUT. 15 A INSTITUTE. 16 Q HAS THE NATIONAL CANCER INSTITUTE LOOKED AT 17 THIS? 18 A YES. 19 Q OSHA? 20 A YES. 21 Q NIOSH? 22 A YES. 23 Q THE INTERNATIONAL AGENCY FOR RESEARCH ON 24 CANCER? 25 A YES, IARC. 26 Q ARE THEY ALL ON THE SAME PAGE? 27 A YES. 28 Q IS THERE SOME HEALTH ORGANIZATION OR GROUP	Page 104 1 AGAINST MALIGNANCY. 2 Q IN TERMS OF HOW THEY DESCRIBE THAT RISK, 3 WHETHER IT'S A SMALL RISK, A LITTLE RISK -- WHAT'S THE 4 TERMINOLOGY USED BY OSHA? 5 A I ACTUALLY DON'T RECALL THE TERMINOLOGY. 6 MR. LANKFORD: YOUR HONOR, I'LL OBJECT TO THE NEXT 7 SLIDE 58 AGAIN. HEARSAY. FOUNDATION. 8 THE COURT: I THINK WE'RE ON 57. ARE YOU GOING TO 9 SHOW 57? 10 MS. DEAN: I'M CURRENTLY ON 57. THE NEXT SLIDES 11 ARE FROM THE FEDERAL REGISTER FROM THE UNITED STATES 12 GOVERNMENT, AND I WILL NOT ONLY LAY A FOUNDATION, BUT WE 13 REQUEST JUDICIAL NOTICE. 14 THE COURT: OKAY. SO MY NUMBERING AND YOUR 15 NUMBERING MAY BE DIFFERENT. ARE YOU REFERRING TO THE 16 SLIDE, TABLE SIX, MR. LANKFORD? 17 MR. LANKFORD: WELL, ONE SET I HAVE DOESN'T HAVE 18 ANY NUMBERS. THE ONE FROM YESTERDAY IF IT'S THE SAME -- 19 NO, IT'S THE ONE BEFORE THAT. I'M FINE WITH THE TABLE. 20 IT'S THE ONE BEFORE THAT WHICH IS FROM YESTERDAY. IT'S 21 58. THE ONE I HAVE TODAY DOESN'T HAVE NUMBERS. SO IT'S 22 THE ONE THAT HAS A LOT OF TEXT ON IT. 23 MS. DEAN: FROM THE OSHA WEBSITE AND THE FEDERAL 24 REGISTER. 25 THE COURT: HOLD ON. 26 OVERRULED. YOU CAN USE IT. 27 MS. DEAN: WE'RE NOT QUITE THERE YET SO I WANT TO 28 FINISH WITH THIS SLIDE.
Page 103 1 THAT I'VE MAYBE FORGOTTEN ABOUT, THAT HAS EVALUATED THE 2 ISSUE ABOUT ASBESTOS AND THE DISEASE MESOTHELIOMA AND 3 REACHED A DIFFERENT CONCLUSION OTHER THAN AFTER MUCH 4 RESEARCH THERE'S NOT A SAFE LEVEL OF EXPOSURE TO 5 ASBESTOS? 6 A NO. I'M NOT AWARE OF THAT. 7 Q I WANT TO TALK TO YOU FOR A MINUTE ABOUT OSHA. 8 BEFORE I ASK YOU ABOUT THIS, IT WAS REPRESENTED TO THE 9 JURY FROM THE GET-GO -- I'LL REPRESENT TO YOU -- I'LL 10 ASK YOU TO ASSUME THAT OSHA LEVELS ARE SAFE. THAT, IF 11 YOU TOOK THE LEVEL THAT OSHA HAS NOW AND YOU ASSUME THAT 12 SOMEBODY THROUGH THEIR ENTIRE WORKING LIFE WAS EXPOSED 13 TO THAT LEVEL, THAT OSHA HAS GIVEN THAT A BILL OF HEALTH 14 AS BEING OKAY. IS THAT TRUE OR UNTRUE? 15 A UNTRUE. 16 Q OKAY. TELL US A LITTLE BIT ABOUT WHAT OSHA IS 17 AND WHAT REGULATORY STANDARDS EXIST NOW? 18 A SO OSHA, OCCUPATIONAL SAFETY HEALTH 19 ADMINISTRATION, THEY SET LEVELS FOR EXPOSURES IN THE 20 WORKPLACE AND RULES AND THE CURRENT LEVEL AS FAR AS WHAT 21 THEY CALL A TIME-WEIGHTED AVERAGE, AN AVERAGE OVER THE 22 EIGHT-HOUR WORKDAY, .1 FIBER PER CC. AND THAT WAS 23 INTENDED TO PRIMARILY DECREASE THE NONMALIGNANT 24 PRIMARILY ASBESTOSIS, BUT THEY RECOGNIZED THAT, EVEN AT 25 THAT LEVEL, THEY WOULD HAVE WANTED TO, YOU KNOW, 26 COMPLETELY, YOU KNOW, SAY NOT ALLOW, BUT AT THIS LEVEL 27 THEY RECOGNIZE THAT THERE'S STILL RISK FOR MALIGNANCY 28 AND THAT THAT LEVEL DROPPING TO .1 WAS NOT PROTECTIVE	Page 105 1 Q HAS THE EPA AND OSHA DONE A RISK ASSESSMENT IN 2 ORDER TO GIVE SCIENTISTS LIKE YOURSELF AND OTHERS AN 3 IDEA OF HOW MUCH RISK IS ASSOCIATED AT VARIOUS EXPOSURE 4 LEVELS? 5 A YES. 6 Q ARE YOU FAMILIAR WITH THAT RISK ASSESSMENT? 7 A YES. 8 Q WE'RE GOING TO LOOK AT IT IN A MOMENT. BUT IF 9 A PERSON WAS EXPOSED AT THIS CURRENT LEVEL .1, NOT FOR 10 THEIR WHOLE LIFE, BUT FOR ONE YEAR, AND WE ALLOWED EVERY 11 ONE IN AMERICA TO BE EXPOSED AT THAT LEVEL, DO THEY GIVE 12 AN ESTIMATE OF HOW MANY PEOPLE WOULD DIE OF 13 MESOTHELIOMA, JUST THIS CANCER? 14 A YES. 15 Q WHAT'S THAT ESTIMATE? 16 A IF EVERYONE WAS EXPOSED TO THAT LEVEL, IT 17 WOULD BE OVER 22,000 PEOPLE WOULD DIE OF MESOTHELIOMA. 18 Q DOCTOR, IS THAT SAFE? 19 A NO. 20 Q ARE THERE PUBLISHED ESTIMATES IN MEDICAL AND 21 SCIENTIFIC JOURNALS AND BY THE WORLD HEALTH ORGANIZATION 22 ABOUT HOW MANY PEOPLE, BECAUSE OF ASBESTOS, WORLDWIDE 23 DEVELOPED THE DISEASE MESOTHELIOMA? 24 A YES. 25 Q TELL ME ABOUT THAT. 26 A WELL, THERE ARE THOUSANDS EVERY DAY -- 3,000 27 APPROXIMATELY IN THE UNITED STATES ALONE EVERY YEAR. 28 Q I WANT TO NOW TURN TO THE CURRENT OSHA WEBSITE

Page 106 1 AND REGULATIONS AND ASK YOU ABOUT THAT. 2 THE COURT: BEFORE YOU DO, CAN I ASK YOU ONE 3 QUESTION? DO YOU ANTICIPATE USING THAT UNDER EVIDENCE 4 CODE 721 LATER IN THE TRIAL? 5 MS. DEAN: THE PRIOR SLIDE? 6 THE COURT: THIS ONE. 7 MS. DEAN: OH, YES, I DO. 8 THE COURT: OKAY. THANK YOU. YOU CAN PROCEED. 9 Q BY MS. DEAN: ARE YOU FAMILIAR WITH THIS OSHA 10 REGULATION? 11 A YES. 12 Q I JUST WANT TO ASK YOU A COUPLE THINGS. WE 13 HEARD ABOUT 1972 AND HOW IT STARTED OFF AT 10 FIBERS FOR 14 THE CEILING AND FIVE FOR TIME-WEIGHTED AVERAGE. DID 15 THAT MARCH DOWN OVER YEARS? 16 A YES. 17 Q BEFORE OUR CURRENT STANDARDS, THEY'RE 18 DISCUSSING A CHANGE FROM .2 TO .1. I WANT TO ASK YOU 19 SOME QUESTIONS ABOUT THAT. OSHA'S RISK ASSESSMENTS ALSO 20 SHOW THAT REDUCING EXPOSURES TO 0.1 FIBERS PER CC WOULD 21 FURTHER REDUCE BUT NOT ELIMINATE SIGNIFICANT RISK. 22 DO YOU AGREE WITH THAT? 23 A YES. 24 Q OSHA'S CURRENT PERMISSIBLE EXPOSURE LIMITS, 25 PEL, FOR ASBESTOS OF 0.2 FIBERS PER CUBIC CENTIMETER 26 FIBERS PER CC DOES NOT ELIMINATE ALL SIGNIFICANT RISK TO 27 WORKERS. 28 FIRST OF ALL, IS THERE A SECTION WHERE THEY	Page 108 1 Q IN TERMS OF TRYING TO, FOR A PARTICULAR 2 PATIENT, DETERMINE WHAT WAS THE CAUSE OF THEIR DISEASE, 3 ARE THERE PUBLISHED DOCUMENTS THAT GIVE GUIDANCE THAT 4 YOU RELY ON AND BELIEVE IN? 5 A YES. 6 Q CAN YOU TELL THE JURY ABOUT THOSE? 7 A YES. AND I THINK I KIND OF ALLUDED TO THIS 8 THAT THERE ARE MANY STUDIES OUT THERE SHOWING THAT AN 9 EXPOSURE, EVEN JUST A BRIEF -- WHAT THEY CALL IN SOME 10 PAPERS -- A SLIGHT EXPOSURE OF A DAY, WEEK, MONTH, 11 THEY'VE ALL BEEN SHOWN TO BE ABLE TO CAUSE MESOTHELIOMA. 12 Q I'M NOT GOING TO ASK THIS EVERY TIME, BUT, 13 AGAIN, WHEN YOU CITE TO STUDIES, THESE ARE STUDIES YOU 14 HAVE RELIED ON, CONSIDERED AND BELIEVE ARE 15 AUTHORITATIVE. 16 A YES. 17 Q IF I EVER SKIP AHEAD, I'M JUST TRYING TO MESH 18 TIME. SORRY. 19 THE JURY HAS HEARD FROM DR. BRODY THAT 20 DIFFERENT TYPES OF CANCER HAS CAUSES, BEHAVE VERY 21 DIFFERENTLY, GROW AT DIFFERENT RATES, RESPOND TO 22 TREATMENTS DIFFERENTLY. HE DIDN'T TALK ABOUT THE 5TH 23 ONE. SO LET ME ASK YOU ON THE FIRST FOUR, DO YOU AGREE? 24 A YES. 25 Q DO THEY ALSO HAVE A DIFFERENT PROGNOSIS? 26 A YES. 27 Q WHAT DOES THAT MEAN? 28 A PROGNOSIS IS YOUR CHANCE OF SURVIVAL. SOME
Page 107 1 TALK ABOUT LEGISLATIVE HISTORY WHEN THEY CHANGE FROM .2 2 TO .1 IN 1994? 3 A YES. 4 Q JUST TO GIVE THAT A LITTLE BIT OF CONTEXT. 5 EVEN WITH THIS CHANGE GOING DOWN FROM .2 TO .1, DOES A 6 SIGNIFICANT RISK REMAIN IN TERMS OF THE DISEASE THAT 7 RITA CHAPMAN HAS? 8 A YES. 9 Q AND THEN THE ACTUAL RISK ASSESSMENT THAT WAS 10 DONE IN 1986, IS THAT WHAT WE'RE LOOKING? 11 A YES. 12 Q I WANT TO TRY TO DIGEST THIS. FIRST OF ALL, 13 IF WE LOOK RIGHT HERE WHAT IS CIRCLED, WE'RE LOOKING AT 14 MESOTHELIOMAS; CORRECT? 15 A YES. 16 Q FOR THE ONE THAT I'VE CIRCLED, WHAT'S THE 17 ASSUMPTION ABOUT THE AMOUNT OF EXPOSURE IN THAT PART OF 18 THE TABLE? 19 A .1 FIBER PER CC FOR ONE YEAR. 20 Q SO IT'S ONE YEAR OF EXPOSURE. AND WHEN 21 THEY'RE SAYING 6.9, WHAT DOES THAT MEAN? 22 A THAT MEANS THERE WOULD BE AN EXCESS. SO MORE 23 CASES, 6.9 PER HUNDRED THOUSAND. 24 Q AND IF YOU EXTRAPOLATED APPROXIMATELY SEVEN 25 MESOTHELIOMA DEATHS OUT OF EVERY HUNDRED THOUSAND, JUST 26 AT .1 PER YEAR, IS THAT HOW YOU GOT THAT NUMBER OF OVER 27 20,000 DEATHS? 28 A YES.	Page 109 1 CANCERS CAN BE VERY INDOLENT, SLOW GROWING. YOU'RE NOT 2 LIKELY TO DIE FROM IT. SOME CANCERS LIKE MESOTHELIOMA, 3 VERY RAPIDLY GROWING. UNIFORMLY FATAL. 4 Q THERE'S A SUGGESTION THAT, IF YOU DON'T HAVE 5 SCARRING IN THE LUNGS OR IN THE PLEURA, THAT YOU CAN'T 6 DETERMINE THAT A PERSON'S MESOTHELIOMA IS ASBESTOS 7 RELATED. DO YOU AGREE? 8 A NO. 9 Q IN TERMS OF HOW WIDELY THAT'S UNDERSTOOD, THE 10 JURY HAS ALREADY HEARD ABOUT THE HELSINKI CRITERIA. IS 11 THAT SOMETHING YOU AGREE WITH? 12 A YES. 13 Q ARE THERE OTHER STUDIES, IN ADDITION TO THE 14 STUDY YOU PUBLISHED AND PUT IN THE PEER REVIEWED 15 LITERATURE THAT LOOK AT HOW MANY PEOPLE HAVE WHAT ARE 16 CONCLUDED BY THE AUTHORS TO BE ASBESTOS-RELATED 17 MESOTHELIOMAS AFTER TALKING TO THE PATIENTS? 18 A YES. 19 Q BUT DON'T HAVE PLEURAL PLAQUES? 20 A YES. 21 Q CAN YOU TELL US ABOUT A COUPLE OF THOSE 22 STUDIES? 23 A SURE. SO THIS IS PUBLISHED OCCUPATIONAL 24 ENVIRONMENTAL MEDICINE JOURNAL. HUGE STUDY. OVER 4,000 25 PEOPLE WITH MESOTHELIOMA. THEY FOUND THAT ONLY 8 26 PERCENT OF WOMEN, 13.8 PERCENT OF MEN HAD PLEURAL 27 PLAQUES. JUST ABOUT TWO WEEKS AGO, ANOTHER STUDY WAS 28 JUST PUBLISHED OUT OF ITALY, ABOUT ALMOST 600

Page 110 1 MESOTHELIOMA CASES. AGAIN, IT WAS AROUND 13, 14 PERCENT 2 OF THE PATIENTS HAD EVIDENCE OF PLEURAL PLAQUES. 3 Q EVEN THOUGH THE VAST MAJORITY OF THE PATIENTS 4 DIDN'T HAVE THESE MARKERS -- PLEURAL PLAQUES OR 5 ASBESTOSIS -- DID THE AUTHORS CONCLUDE THAT THE MAJORITY 6 OF THEM HAD ASBESTOS-RELATED MESOTHELIOMA? 7 A YES. 8 Q IS THAT TWO STUDIES GOING OUT ON A LIMB OR IS 9 THAT THE CONSENSUS OR HOW WELL ESTABLISHED IS THAT? 10 A I THINK IT'S PRETTY WELL ESTABLISHED THAT YOU 11 DON'T NEED TO HAVE A MARKER. CERTAINLY, YOU KNOW, 12 ASBESTOSIS IS ASSOCIATED WITH MUCH HIGHER DOSES AND THE 13 SAME STUDIES THAT, LIKE MENSEI HERE, THE NUMBER OF CASES 14 THEY HAD WITH ASBESTOSIS IS EXTRAORDINARILY SMALL. BUT 15 WITH PLEURAL DISEASE IT RUNS THE GAMUT. IT DEPENDS ON 16 WHAT THE EXPOSURE WAS AND OTHER FACTORS. SOME STUDIES 17 MAY HAVE HIGHER, BUT CERTAINLY LARGE STUDIES LIKE THIS 18 SHOW YOU DO NOT HAVE TO HAVE A MARKER LIKE PLEURAL 19 PLAQUES AND HELSINKI SAYS YOU DO NOT. 20 Q WHETHER THE AMOUNT OF PLEURAL PLAQUES FOUND IS 21 13 PERCENT OR 16 PERCENT OR 40 PERCENT, IN YOUR FIELD, 22 IN THE MEDICAL COMMUNITY, ARE THEY FINDING MANY PEOPLE 23 WITHOUT THOSE MARKERS INDICATING THEY HAVE AN 24 ASBESTOS-RELATED MESO AND PUBLISHING THAT IN THE 25 SCIENTIFIC COMMUNITY? 26 A YES. 27 Q WE HAVE TALKED ABOUT -- ACTUALLY, LET ME PAUSE 28 HERE. IN FIGURING OUT WHETHER ASBESTOS CAUSES DISEASE,	Page 112 1 A WELL, THERE'S NEVER -- THERE'S NO -- THERE'S 2 STILL A HEALTH RISK FOR THESE SHORT FIBERS. I MEAN, 3 IT'S GAMUT. PEOPLE DON'T JUST HAVE -- THERE'S ALL KIND 4 OF DIFFERENT FIBER LENGTHS THAT NO ONE JUST HAS ONE 5 FIBER LENGTH. THERE'S GOING TO BE A VARIOUS LENGTHS 6 THAT PEOPLE ARE GOING TO INHALE AND THAT ARE GOING TO 7 GET RETAINED AND BROUGHT DOWN INTO THE MESOTHELIAL 8 TISSUE. BUT THERE'S NO EVIDENCE TO SAY THAT THESE 9 SHORTER FIBERS ARE HARMLESS. IN FACT, I THINK TO THE 10 CONTRARY THAT THE EVIDENCE SHOWS THAT THEY ARE 11 DANGEROUS. NOT AS DANGEROUS AS THE LONGER FIBERS 12 PERHAPS, BUT DANGEROUS. 13 Q AND THAT'S WHAT I WAS GOING TO ASK YOU. ARE 14 THE LONGER ONES ASSOCIATED WITH A GREATER CARCINOGENIC 15 POTENTIAL? 16 A THEY SEEM TO BE. 17 Q DO THE SHORTER ONES PREFERENTIALLY GET TO THE 18 TARGET CELL FOR THE TYPE OF CANCER RITA CHAPMAN HAS? 19 A YES, THEY DO. 20 Q I WANT TO ASK ABOUT BACKGROUND. THE JURY HAS 21 HEARD QUITE A BIT THAT THERE'S AN AMBIENT LEVEL. FIRST 22 OF ALL, CAN YOU DEFINE WHEN YOU USE THAT TERM, BASED ON 23 THE MEDICAL AND SCIENTIFIC LITERATURE, WHAT LEVELS YOU 24 MEAN? 25 A YOU'RE TALKING ABOUT AMBIENT LEVEL OF 26 ASBESTOS? 27 Q YES. 28 A SO THE ATSDR WHICH IS THE AGENCY FOR TOXIC
Page 111 1 ARE THE SHORTER FIBERS -- AND THE JURY HAS HEARD THAT'S 2 UNDER 5 MICRONS -- PART OF HOW A CANCER IS CAUSED, 3 SPECIFICALLY MESOTHELIOMA? 4 A YES. 5 Q ARE THERE REPEATED STUDIES LOOKING AT THIS 6 ISSUE? 7 A YES. 8 Q CAN YOU TELL US ABOUT THOSE? 9 A SURE. I MEAN, THERE ARE STUDIES THAT HAVE 10 LOOKED AT THE ASBESTOS IN THE AUTOPSY AND HAVE SEEN THAT 11 WITH MESOTHELIOMA THAT THERE IS -- THERE ARE SHORT 12 FIBERS IN THE AREA OF THE CANCER. 13 Q ARE YOU FAMILIAR WITH THE WORK OF DR. DODSON? 14 A YES. 15 Q WHAT ABOUT SUZUKI AND YUEN? 16 A YES. 17 Q ARE THERE ANY OTHERS THAT YOU CAN THINK OF? 18 A KOHYAMA, I THINK. 19 Q THANK YOU FOR MAKING ME -- I'M GLAD I DIDN'T 20 HAVE TO SAY IT. ARE THOSE JUST EXAMPLES OF PUBLISHED 21 PAPERS THAT DISCUSS THE ISSUE ABOUT WHETHER SHORTER 22 FIBERS CAUSE CANCER? 23 A WELL, THEY'RE SHOWING THAT YOU MIGHT -- WHEN 24 YOU LOOK IN THE LUNG, YOU MIGHT SEE CERTAIN FIBERS, BUT 25 THAT, WHEN YOU LOOK IN THE PLEURA WHERE THE CANCER IS, 26 THAT'S WHERE YOU CAN SEE THESE SHORT FIBERS THERE. 27 Q AND THE SIGNIFICANCE OF THAT TO YOU, AS A 28 DOCTOR, IS WHAT?	Page 113 1 DISEASES AND THEY HAVE LOOKED AT THE LEVELS IN URBAN AND 2 IN RURAL AREAS, BUILDINGS. THERE'S ALSO BEEN STUDIES BY 3 EPA AND OTHER SCIENTISTS AND THE BACKGROUND THAT 4 GENERALLY -- AND THIS WAS FROM DATA FROM A NUMBER OF 5 YEARS AGO -- WAS AT .00005 FIBERS PER CC. SOME SAY 6 THREE. THERE'S SOME RANGES IN THERE AND THEN THIS IS 7 MOSTLY SHORT FIBER, LESS THAN 1 MICRON LONG CHRYSOTILE 8 ASBESTOS. 9 Q WHEN WE'VE TALKED ABOUT SHORT FIBER IN THE 10 PAST, WE'VE BEEN TALKING ABOUT LESS THAN FIVE MICRONS. 11 HERE YOU'RE SAYING THESE ARE FIVE TIMES SHORTER ON 12 AVERAGE? 13 A YES. 14 Q OKAY. YOU SAID THAT THIS IS OLD DATA. HAS 15 THE AMOUNT OF ASBESTOS USED IN THIS COUNTRY RADICALLY 16 DECLINED? 17 A YES. 18 Q THE JURY HAS HEARD THE SUM, BUT IN MOST 19 COUNTRIES, OVER 70, ASBESTOS IS BANNED. IT CAN'T BE 20 USED; RIGHT? 21 A YES. 22 Q IN THE UNITED STATES, FOR MOST PURPOSES IS IT 23 FUNCTIONALLY BANNED BECAUSE OF THE REGULATIONS? 24 A YES. 25 Q IF SOMEONE WERE TO SUGGEST THAT BACKGROUND 26 RATES FROM THE '60S OR THE '70S HAVE ANYTHING TO DO WITH 27 WHAT WE'RE BREATHING IN THE AIR TODAY, DO YOU AGREE WITH 28 THAT?

Page 114 1 A NO. 2 Q I WANT TO COME BACK TO THAT IN A MOMENT, BUT 3 THERE'S A WHOLE DIFFERENT TYPE OF BACKGROUND RATE WE 4 HAVEN'T TALKED ABOUT THAT I WANT TO SPEAK WITH YOU A 5 LITTLE BIT. ARE YOU FAMILIAR WITH THE CONCEPT THAT, FOR 6 THE CANCER MESOTHELIOMA, THERE IS A BACKGROUND RATE, A 7 RATE OF MESOTHELIOMAS THAT OCCUR PER MILLION PEOPLE THAT 8 DON'T APPEAR TO BE CONNECTED TO ANY EXPOSURE? 9 A RIGHT, WELL, IT IS -- IT IS A BACKGROUND RATE 10 IN THE GENERAL POPULATION. SO YOU'RE NOT LOOKING AT IT 11 FROM, LIKE, A WORK PERSPECTIVE WHERE YOU KNOW SOMEONE IS 12 WORKING WITH ASBESTOS PRODUCT, FOR EXAMPLE. THAT 13 DOESN'T MEAN THAT THOSE PEOPLE DIDN'T HAVE SOME 14 EXPOSURES TO ASBESTOS. MAYBE THEY DIDN'T WORK WITH 15 ASBESTOS, BUT MAYBE IT WAS A SPOUSE. MAYBE THERE WAS 16 SOME OTHER EXPOSURES THAT WERE NOT RECOGNIZED BUT THIS 17 WAS IN -- AS A GENERAL POPULATION THAT THERE IS A RATE 18 OF ABOUT ONE TO TWO ESTIMATED -- ONE TO TWO PER MILLION 19 PER YEAR AS THIS GENERAL POPULATION MADE -- AGAIN, SOME 20 STUDIES TALK ABOUT PROBABLY EVEN LESS. 21 Q HAS THIS IDEA OF ONE OR TWO PER MILLION PER 22 YEAR BEEN REJECTED BY SOME OF THE SCIENTIFIC LITERATURE 23 AS BEING TOO HIGH? 24 A NO. 25 Q HAVE YOU SEEN INFORMATION THAT SUGGESTS THAT 26 THE RATE IS MUCH LOWER GOING ALL THE WAY BACK TO THE 27 1990? 28 A RIGHT. SO YOU KNOW, HILLERDAL IN THE LATE	Page 116 1 COUNTRY, AFTER A LAG PERIOD, THAT'S WHEN WE START SEEING 2 MESOTHELIOMA AND THE RATE INCREASING. 3 Q ARE THERE PEER REVIEWED PUBLISHED LITERATURES 4 FROM MEDICAL INSTITUTIONS LIKE MASS GENERAL THAT HAVE 5 ACTUALLY ANALYZED THIS TO SEE WHAT THEY CAN FIND? 6 A YES. 7 Q CAN YOU TELL US A LITTLE BIT ABOUT THAT? 8 A YES. SO THE STUDY BY DR. EUGENE MARK AND OUT 9 OF MASS GENERAL, AND THEY WENT BACK HUNDRED YEARS AT 10 MASS GENERAL. SO THE AUTOPSY WAS THE WAY FOR MANY, MANY 11 YEARS. THAT'S WHERE WE LEARNED MEDICINE WAS STUDYING 12 THE BODY AT AUTOPSY. AND SO IT'S LESS SO NOWADAYS. 13 WE'RE BECOMING MORE SOPHISTICATED. BUT BACK THEN, 14 PEOPLE GOT AUTOPSIES AND THEY WENT BACK AND LOOKED AT 15 HUNDRED YEARS AND THERE WAS NO CASE OF MESOTHELIOMA 16 UNTIL AFTER USE OF ASBESTOS IN THIS COUNTRY. 17 Q BY THE WAY, THAT ARTICLE FROM DR. HILLERDAL 18 THAT YOU MENTIONED, IS THAT MESOTHELIOMA CASES 19 ASSOCIATED WITH NON-OCCUPATIONAL AND LOW DOSE EXPOSURES? 20 A YES. THAT'S THE ARTICLE. 21 Q DO YOU BELIEVE THAT THAT IS RELIABLE AND 22 AUTHORITATIVE? 23 A YES, I DO. 24 Q THE IDEA THAT THERE IS NO EVIDENCE OF A 25 THRESHOLD LEVEL AT WHICH THERE IS NO RISK FOR 26 MESOTHELIOMA, IS THIS ONE OF THE MANY ARTICLES THAT 27 DISCUSS THAT ISSUE? 28 A YES.
Page 115 1 '90S TALKED ABOUT THAT STUDIES FROM MCDONALD AND OTHERS 2 HAD LOOKED AT ABOUT ONE TO TWO PER MILLION. HE EVEN 3 SAID THAT IT COULD BE LOWER, AND I AGREE WITH THAT. 4 Q WHY IS THAT? 5 A WELL, BECAUSE YOU'RE HAVING LESS BACKGROUND 6 USE OF ASBESTOS PRODUCTS. SO AGAIN, YOU KNOW, IT 7 DOESN'T MEAN THAT THE PEOPLE IN THE BACKGROUND HAD NO 8 EXPOSURE. IT'S JUST NOT A KNOWN EXPOSURE GROUP, BUT 9 THERE'S GOING TO BE SOME PEOPLE PERHAPS THAT HAD 10 EXPOSURES FROM SOME UNRECOGNIZED SOURCE AND OVERTIME 11 SINCE THE '80S, YOU KNOW, SINCE REALLY OSHA, BUT 12 CERTAINLY MARCHING ON NOW, WE'RE IN 2022, THEN THE 13 LEVELS IN THE BACKGROUND ARE BECAUSE PEOPLE ARE WORKING 14 LESS AND LESS. IT'S FUNCTIONALLY BANNED. 15 Q LET ME ASK ABOUT SOME SPECIFIC IDEAS. IS THE 16 EXISTENCE OF MESOTHELIOMA IN THE MEDICAL COMMUNITY 17 DIRECTLY RELATED TO WHEN ASBESTOS WAS HIGHLY BEING USED 18 IN OUR COUNTRY'S HISTORY? SORRY FOR THE AWKWARDNESS OF 19 THE QUESTION. DO YOU KNOW WHAT I MEAN? 20 A I'M SORRY. IF YOU COULD ACTUALLY TRY THAT 21 AGAIN? 22 Q IS THERE A PATTERN BETWEEN WHEN ASBESTOS FIRST 23 STARTED BEING USED IN THE INDUSTRIAL REVOLUTION AND WHEN 24 WE STARTED SEEING THE DISEASE MESOTHELIOMA? 25 A YES. 26 Q CAN YOU TELL US ABOUT THAT? 27 A YES. SO WITH A LAG PERIOD BECAUSE OF THE 28 LATENCY, BUT AS THE USE OF ASBESTOS INCREASED IN OUR	Page 117 1 Q IN TERMS OF THE BACKGROUND LEVEL, I WANT TO 2 ASK YOU ABOUT THE IDEA THAT THERE WAS A ASSUMPTION BY 3 MCDONALD. YOU MENTIONED THAT AUTHOR. WHO IS THAT? 4 A HE'S A CANADIAN SCIENTIST THAT WORKS OUT OF 5 QUEBEC, BUT THEY DID PUBLISH -- THERE WERE TWO OF THEM 6 THAT DID PUBLICATIONS REGARDING ASBESTOS. 7 Q IS THAT THE SAME MCDONALD THAT WROTE THE 8 EPIDEMIOLOGY STUDY? THE ONE STUDY THAT MR. WILLIAMS 9 COULD NOT RECALL YESTERDAY. DO YOU RECALL THAT? 10 A YES, THAT IS. 11 Q I WANT TO ASK YOU, WHEN HILLERDAL LOOKS AT HIS 12 WORK AND INDICATES THAT THERE IS NOT A NATURAL LEVEL OR 13 PROOF OF A NATURAL LEVEL OF ASBESTOS, IT'S PROBABLY MUCH 14 LOWER THAN ONE TO 2,000,000 PER YEAR, DO YOU AGREE OR 15 DISAGREE? 16 A I AGREE. 17 Q IS THIS IDEA OF A BACKGROUND RATE TIED TO THE 18 CONCEPT OF WHETHER CANCERS CAN BE SPONTANEOUS? 19 A WELL, IT MIGHT HAVE SOME -- SOME PEOPLE MIGHT 20 USE IT AS SAYING THAT, WELL, THAT MEANS THAT IT CAN 21 OCCUR SPONTANEOUSLY, BUT I DON'T THINK THAT THAT -- AND 22 EVEN DR. HILLERDAL SAYS THAT HAS NOT BEEN PROVEN. 23 Q THAT'S WHAT I WAS GETTING TO. IS THERE 24 PUBLISHED LITERATURE THAT INDICATE THAT, WHEN YOU LOOK 25 AT THE PATTERNS OF DISEASE IN THIS COUNTRY AND ITS 26 RELATIONSHIP TO ASBESTOS, THAT THERE IS NOT A GOOD BASIS 27 FOR THIS IDEA THAT IT'S SPONTANEOUS? 28 A RIGHT. AND JUST AS RECENTLY AS JUST A FEW

Page 118 1 YEARS AGO, BETTI PUBLISHED AGAIN THAT THERE'S NO PROOF 2 THAT WITHOUT EXPOSURE TO MUTAGEN, SOME SORT OF 3 CARCINOGEN, YOU'RE NOT -- YOU'RE NOT -- THERE'S NO PROOF 4 THAT YOU'RE GOING TO BE GETTING A SPONTANEOUS 5 MESOTHELIOMA. 6 Q AT LEAST FOR SOME PERIODS OF OUR HISTORY, WERE 7 MOST PEOPLE, IF NOT ALL PEOPLE, GETTING EXPOSURE TO 8 ASBESTOS JUST LIVING AND BREATHING AFTER THERE WAS SO 9 MUCH ASBESTOS USED IN THIS COUNTRY? 10 A YES. 11 Q ONE OF THE THINGS THAT DR. HILLERDAL TALKS 12 ABOUT IS PROVING WHETHER THAT BACKGROUND RATE WE ALL 13 HAVE IS DANGEROUS OR NOT IS IMPOSSIBLE BECAUSE THERE'S 14 NOT A GROUP OF UNEXPOSED PEOPLE TO COMPARE? 15 A CORRECT. 16 Q DO YOU AGREE WITH THAT? 17 A YES, I DO. 18 Q ONCE WE -- BEYOND THE LEVEL THAT ALL OF US 19 HAVE, EVERY TIME THEY HAVE STUDIED EXPOSURES ABOVE THAT 20 LEVEL AND DISEASE INCIDENCES, HAVE THEY FOUND A 21 SIGNIFICANT RISK? 22 A YES. 23 Q AND JUST FOR REFERENCE, IS THIS THE PAPER YOU 24 WERE TALKING ABOUT WITH GUNNAR? 25 A YES. 26 Q CAN YOU EXPLAIN THIS GRAPH AND WHY YOU PUT IT 27 IN HERE? 28 A SURE. IN THE BLUE YOU HAVE SOME -- ASSUME	Page 120 1 SAY ONE FIBER PER CC, IF YOU WORKED WITH ONE FIBER PER 2 CC FOR ONE YEAR, WE CALL THAT A ONE FIBER YEAR. IF 3 YOU'RE TALKING ABOUT SOMEONE WHO'S -- YOU'RE DOING IT 4 NOT FROM WORKING, BUT FROM JUST HAVING THAT EXPOSURE 5 EVERY DAY IN THE BACKGROUND, BECAUSE WE WORK FOR ONLY 6 2000 HOURS A YEAR, BUT WE LIVE AND BREATHE FOR LONGER, 7 YOU ACTUALLY END UP MULTIPLYING THAT BY A CERTAIN FACTOR 8 TO COME UP WITH HOW THAT FIBER YEAR WOULD RELATE TO 9 SOMEONE WHO'S GETTING IT IN THE SO-CALLED BACKGROUND. 10 Q SO I WANT YOU TO ASSUME THAT WHAT HAPPENS IS 11 SOMEONE TAKES A BACKGROUND. THEY DON'T TAKE THE NUMBER 12 THAT THE ATSDR OR EPA OR SCIENTISTS USE AS AN AVERAGE. 13 THEY TAKE A HIGH NUMBER. SO NOT 00005. SOMETHING MUCH 14 HIGHER. THEY ASSUME YOU'RE AT THAT HIGH LEVEL FOR 70 15 YEARS. THEY THEN GIVE A FIBER PER CC YEAR AND THEN THEY 16 TAKE AN EXPOSURE, NOT TO AN ENTIRE CLASS, BUT AN 17 EXPOSURE TO A PARTICULAR COMPANY, LET'S SAY OVER A YEAR. 18 AVERAGE THAT OUT OVER 70 YEARS AND SAY THAT'S LESS THAN 19 BACKGROUND, IT MUST BE SAFE. DO YOU AGREE WITH THAT 20 KIND OF APPROACH? 21 MR. SHARP: OBJECTION. FOUNDATION. INCOMPLETE 22 HYPOTHETICAL. RELEVANCE. 23 THE COURT: OVERRULED. YOU MAY ANSWER. 24 THE WITNESS: NO. 25 MS. DEAN: YOUR HONOR, IF THEY'RE GOING TO 26 STIPULATE THEY'RE NOT DOING THIS -- 27 THE COURT: JUST ASK QUESTIONS, PLEASE. 28 Q BY MS. DEAN: ONE OF THE QUESTIONS THAT A
Page 119 1 SOME SORT OF DISEASE AND YOU HAVE A CERTAIN NUMBER OF 2 CASES IN THE BACKGROUND REPRESENTING THE BLUE AND IF YOU 3 HAVE SOMEONE WHO HAS THREE DIFFERENT EXPOSURE SOURCES. 4 OKAY? AND ALL THESE EXPOSURES SOURCES ARE CAPABLE OF 5 PRODUCING THE DISEASE, IF YOU WERE TO JUST LOOK AT EACH 6 ONE INDIVIDUALLY, YOU'RE NOT DOING WHAT WE CALL THE 7 CUMULATIVE DOSE. IF YOU JUST LOOK AT, YOU KNOW, JUST 8 LOOK AT THIS SOURCE BY ITSELF COMPARED TO BACKGROUND, 9 MAYBE YOU DON'T SEE A SIGNIFICANT DIFFERENCE OR CLOSE. 10 MAYBE THE SECOND EXPOSURE. AGAIN, NOT MUCH DIFFERENCE. 11 THIRD EXPOSURE DOSE. BUT IF YOU WERE TO DO A CUMULATIVE 12 DOSE, THEN YOU SEE THAT, YES, WHEN YOU GET ALL OF THESE 13 EXPOSURES AS A CUMULATIVE DOSE, WHICH IS THE WAY THAT 14 MESOTHELIOMA WORKS, AND COMPARE IT TO THE BACKGROUND YOU 15 SEE THAT THERE'S A RISK. 16 Q ARE THE EXPOSURES THAT INDIVIDUAL PATIENTS 17 THAT YOU DEAL WITH THAT THEY HAVE ON YOUR REPORT, 18 EXPOSURES THAT ARE GOING TO BE ADDED TO THE BACKGROUND 19 LEVEL THAT ALL OF US MIGHT HAVE? 20 A YES. 21 Q IF SOMEONE SAID, LOOK, I'M GOING TO TAKE THIS 22 BACKGROUND RATE FROM THE '60S AND '70S. I'M GOING TO 23 ASSUME THAT'S TRUE FOR THE ENTIRE 70 YEAR LIFETIME OF A 24 PERSON. I'M GOING TO EXTRAPOLATE THAT OUT TO A BIG 25 NUMBER OF FIBER PER CC YEARS, AND I'M GOING TO PAUSE -- 26 WHAT ARE FIBER PER CC YEARS? 27 A SO THIS IS A UNIT THAT WE USE WHICH, 28 BASICALLY, ASSUMES THAT AT A PARTICULAR EXPOSURE, LET'S	Page 121 1 JUROR ASKED LAST WEEK, I THINK, WAS TO DR. BRODY ASKING 2 WHETHER HE WAS GOING TO BE THERE TO TALK ABOUT BRAKE 3 EPIDEMIOLOGY AND WHAT IT MEANS AND HE WASN'T. ARE YOU 4 SOMEONE THAT HAS STUDIED THIS LITERATURE, UNDERSTANDS IT 5 AS A MEDICAL DOCTOR AND PREPARED TO DISCUSS IT? 6 A YES. 7 Q OKAY. I GOT THIS SLIDE ACTUALLY FROM ONE OF 8 THE COMPANY'S EXPERTS. SO I STOLE IT. BUT I WANTED TO 9 USE IT JUST AS A BASELINE TO EXPLAIN WHAT IS 10 EPIDEMIOLOGY? 11 A BASICALLY, IT IS THE STUDY OF DISEASE IN A 12 GROUP OF POPULATION. 13 Q WHAT'S THE GOAL? WHY DO YOU LOOK AT STUDIES 14 OF POPULATIONS TO TRY TO UNDERSTAND CAUSE AND EFFECT? 15 A WELL, IN AN IDEAL SITUATION YOU WANT TO HAVE A 16 GROUP THAT IS EXPOSED TO SOME SUBSTANCE AND COMPARE IT 17 TO A GROUP THAT HAS HAD NO EXPOSURE TO THAT SUBSTANCE. 18 THEN YOU LOOK TO SEE, DEPENDING ON WHAT THE DISEASE IS, 19 YOU MIGHT HAVE TO WAIT A LONG TIME, BUT YOU WANT TO LOOK 20 TO SEE IS THERE A DIFFERENCE BETWEEN THOSE GROUPS AND 21 THAT CAN GIVE US AN IDEA TO SAY, WELL, THIS SUBSTANCE 22 SEEMS TO BE ASSOCIATED WITH THIS DISEASE AND THEN WE CAN 23 MAKE INFORMED DECISIONS ABOUT HOW TO PROTECT PEOPLE FROM 24 THAT DISEASE BY NOT GETTING THAT EXPOSURE. 25 Q THE EXAMPLE IN THIS SLIDE TALKS ABOUT AN 26 EXPOSED GROUP OF COFFEE DRINKERS VERSUS PEOPLE THAT 27 DON'T DRINK COFFEE COMPARING IT TO SEE IF THERE'S A 28 DIFFERENCE IN THE AMOUNT OF DISEASE. DO YOU SEE THAT?

Page 122 1 A YES. 2 Q IF INSTEAD OF ASKING THE DIRECT QUESTION, DO 3 YOU DRINK COFFEE? THE STUDY ASKED THE QUESTION, DO YOU 4 GO TO STARBUCKS AND THAT'S THE EXPOSED GROUP. DO YOU 5 HAVE A PROBLEM IF YOU INCLUDE A BUNCH OF PEOPLE IN THAT 6 GROUP THAT DON'T DRINK COFFEE BUT LIKE TEA OR EGG 7 WHITES? 8 A RIGHT. ABSOLUTELY. I MEAN, THERE ARE PEOPLE 9 THAT GO TO STARBUCKS THAT DON'T DRINK COFFEE OR JUST 10 GOING IN THERE TO GET SOMETHING ELSE -- DANISHES OR 11 WHATEVER. AND YOU KNOW, ON THE OTHER HAND, YOU'RE NOT 12 GOING TO CAPTURE EVERYONE THAT IS A COFFEE DRINKER 13 BECAUSE PEOPLE MAY DRINK COFFEE AT HOME OR DRINK COFFEE 14 AT SOME OTHER COFFEE SPOT. AND EVEN JUST ASKING THEM, 15 ARE YOU A COFFEE DRINKER, WELL, SOMEONE MIGHT BE -- 16 MAYBE THEY JUST STARTED DRINKING COFFEE. THE VERY FIRST 17 TIME. I'VE HAD -- AND THEY CALL THEMSELVES THE COFFEE 18 DRINKER. EVEN JUST ASKING SPECIFICALLY YOU'RE A COFFEE 19 DRINKER MIGHT STILL NOT BE GOOD ENOUGH TO CAPTURE 20 BECAUSE, IF EVERYBODY YOU JUST GOT, JUST STARTED 21 DRINKING AND THEN YOU START YOUR STUDY MAYBE YOU WON'T 22 NOTICE SOMETHING AND YOU MAY NEED TO ASK A MORE DETAILED 23 QUESTION ABOUT COFFEE DRINKING. 24 Q IF YOU'RE INCLUDING PEOPLE IN THE GROUP THAT 25 ARE SUPPOSED TO BE EXPOSED THAT ARE NOT, DOES THAT LOOK 26 TO DILUTE THE RESULTS? 27 A YES. IT WILL TEND TO PUSH THE RESULTS TO WHAT 28 WE CALL NULL, WHICH BASICALLY MEANS THAT YOU -- IF YOU	Page 124 1 A NO. 2 Q DOES THAT MEAN -- WE ARE THE PARTY THAT HAS 3 THE BURDEN OF PROOF? DOES THAT MEAN WE JUST CAN'T 4 FIGURE THIS OUT, WHETHER GRINDING OF ASBESTOS PRODUCT 5 DAY IN AND DAY OUT CAUSES DISEASE? 6 A NO. 7 Q I WANT TO TALK ABOUT THAT A LITTLE BIT. I 8 ACTUALLY WANT TO START WITH DR. WAGNER. WE HEARD ABOUT 9 DR. WAGNER SPELLED LIKE "WAGNER" FROM DR. BRODY. DO YOU 10 KNOW ABOUT HIS PAPER? 11 A YES. 12 Q THERE'S MORE THAN ONE BUT IS THERE A PAPER? 13 A YES. 14 Q THAT EVERYBODY KNOWS? 15 A YES. HIS 1960 PAPER. 16 Q WHICH ONE IS IT? 17 A 1960 SEMINAL PAPER. 18 Q WHY IS THAT A SEMINAL PAPER? 19 A WELL, THIS IS THE PAPER THAT BASICALLY WE'RE 20 TAUGHT IN MEDICAL SCHOOL AND IT'S EVERY TEXT BOOK -- 21 THIS IS WHEN, YOU KNOW, WE HAD HAD -- THAT WE DECIDED 22 THIS IS NOW -- IT IS KNOWN THAT ASBESTOS CAUSES 23 MESOTHELIOMA. THERE HAVE BEEN SOME CASES BEFOREHAND 24 OVER THE 20 YEARS BEFORE THAT OR SO, BUT IT IS SAID THAT 25 THIS WAS THE SEMINAL PAPER. THIS IS THE ONE THAT SAID, 26 YES. IT'S ESTABLISHED. AND IT'S WHAT THEY TEACH US IN 27 MEDICAL SCHOOL. 28 Q NOW, WAS THAT AN EPIDEMIOLOGICAL STUDY WITH A
Page 123 1 DON'T HAVE PEOPLE THAT -- IN YOUR TREATMENT, IN YOUR 2 EXPOSED GROUP THAT AREN'T EXPOSED, YOU'RE GOING TO HAVE 3 FEWER OF WHATEVER IT IS THAT YOU'RE TRYING TO DETECT. 4 Q AND YOU STARTED MENTIONING THIS, BUT IF THE 5 NON-EXPOSED GROUP OR NON-STARBUCKS DRINKERS THAT LOVE 6 DUNKIN DONUTS OR KEURIG AT HOME, WHAT IS THE EFFECT OF 7 INCLUDING PEOPLE THAT ARE EXPOSED OVER HERE IN TERMS OF 8 THE RELIABILITY OF THE RESULTS OF THE STUDY? 9 A RIGHT. SO IF YOU HAVE NON-EXPOSED IN THE 10 EXPOSED GROUP, IT DECREASES HOW MANY CASES YOU'RE GOING 11 TO SEE. IF YOU HAVE EXPOSED IN THE NON-EXPOSED, YOU'RE 12 GOING TO INCREASE THE AMOUNT. AND SO YOU COULD GO FROM 13 HERE TO HERE WHERE IT'S EVEN. YOU COULD EVEN DO A TOO 14 MUCH WHERE YOU'VE GOT SO MANY PEOPLE THAT ARE NOT BEING 15 EXPOSED PUSHING IT DOWN HERE, AND YOU'RE GETTING SO MANY 16 PEOPLE IN THE NON-EXPOSED WHO ARE EXPOSED THAT YOU CAN 17 ACTUALLY THINK THAT DRINKING COFFEE PROTECTS YOU OR 18 WHATEVER -- WHATEVER THE EXPOSURE IS BUT ACTUALLY KEEPS 19 YOU FROM GETTING SOME SORT OF DISEASE OR CONDITION. 20 Q CAN EPIDEMIOLOGY BE A POWERFUL TOOL TO HELP US 21 UNDERSTAND WHY PEOPLE GET SICK? 22 A YES. 23 Q CAN IT SOMETIMES BE AN INEFFECTIVE TOOL 24 BECAUSE OF THE NATURE OF THE DISEASE OR THE EXPOSURE? 25 A YES. 26 Q AS IT RELATES TO BRAKE MECHANICS, HAS 27 EPIDEMIOLOGY BEEN AN EFFECTIVE TOOL FOR DETERMINING RISK 28 OVERALL?	Page 125 1 CASE IN CONTROL, COMPARING, DOUBLING OF RISK BETWEEN TWO 2 GROUPS? 3 A NO. IT WAS JUST A CASE SERIES OF 33 PEOPLE 4 WITH MESOTHELIOMA. 5 Q I'LL REPRESENT TO YOU A LAWYER -- NOT A 6 MEDICAL PERSON BUT A LAWYER -- SUGGESTED THAT, WITHOUT 7 THAT, WE REALLY DIDN'T KNOW. IT WASN'T THE SEMINAL 8 PAPER BY 1960 THAT ASBESTOS WAS THE CAUSE OF 9 MESOTHELIOMA. CAN YOU ASSUME THAT FOR ME? 10 A OKAY. I WILL. 11 Q DO YOU AGREE IN ANY WAY? 12 A I DO NOT. THAT'S NOT WHAT THEY -- THAT'S NOT 13 HOW WE'RE TAUGHT IN MEDICAL SCHOOL. 14 Q ARE YOU FAMILIAR WITH DR. SELIKOFF'S TEXTBOOK? 15 A ROGGLI? 16 Q SORRY, WE TALK ABOUT SELIKOFF A LOT. THAT'S 17 THIS ONE? 18 A YES. 19 Q ARE YOU FAMILIAR WITH DR. ROGGLI'S TEXTBOOK? 20 A YES. 21 Q ARE YOU AWARE HE'S AN EXPERT HIRED BY THE 22 COMPANY IN THIS CASE OR AT LEAST SOME OF THEM? 23 A YES. 24 Q IS THIS A TEXTBOOK YOU HAVE REVIEWED AND 25 RELIED ON? 26 A YES. 27 Q I WANT TO SHOW YOU THE SECTION ON MESOTHELIOMA 28 AND ASK YOU SOME QUESTIONS. SAME THING?

Page 126 1 A YES. 2 Q HE HAS AN ENTIRE CHAPTER THAT'S HE'S 3 DISCUSSING MESOTHELIOMA WHERE HE IS ONE OF THE AUTHORS; 4 CORRECT? 5 A YES. 6 Q AND TALKING ABOUT MESOTHELIOMA, ONE OF THE 7 FIRST THINGS I HIGHLIGHTED IS ITS RARITY COMBINED WITH 8 ITS STRONG ASSOCIATION WITH ASBESTOS EXPOSURE MAKE IT A 9 SIGNAL MALIGNANCY THAT IS AN EPIDEMIOLOGIC MARKER FOR 10 EXPOSURE TO ASBESTOS. 11 FIRST OF ALL, DO YOU AGREE? 12 A YES. A SIGNAL OR SENTINEL. THAT'S EXACTLY 13 WHAT IT IS. 14 Q WHAT DOES THAT MEAN? 15 A THAT MEANS THAT, WHEN YOU SEE MESO, YOU KNOW 16 THAT YOU'VE GOT TO LOOK FOR ASBESTOS EXPOSURE, AND IF 17 YOU'VE GOT ASBESTOS EXPOSURE, YOU ARE AT RISK FOR 18 MESOTHELIOMA. 19 Q IN TALKING ABOUT THE HISTORY OF WHEN WE KNEW 20 ABOUT MESOTHELIOMA. THERE WERE REPORTS ABOUT PLEURAL 21 MALIGNANCY WELL BEFORE WAGNER'S WORK. IS PLEURAL 22 MALIGNANCY ANOTHER WORD FOR MESOTHELIOMA? 23 A YES. 24 Q SO THEY GO THROUGH THESE REPORTS FROM 1933, 25 1943, 1947, THE 1940S, '50S AND WE GET DOWN TO HERE. 26 ANY REMAINING DOUBT CONCERNING THE ASSOCIATION BETWEEN 27 ASBESTOS EXPOSURE WAS DISPELLED BY WAGNER IN 1960. DO 28 YOU SEE THAT?	Page 128 1 Q DIFFERENT STORY. IT OCCURS IN PEOPLE THAT 2 HAVE LARGE AMOUNTS OF ASBESTOS OVER LONG PERIODS OF 3 TIME; RIGHT? 4 A YES. 5 Q MESOTHELIOMA WAS A GAME CHANGER; FAIR? 6 A YES. 7 Q ARE YOU FAMILIAR WITH THIS STUDY AND THE 8 FOLLOW-UP STUDY DONE ON -- I'LL READ IT -- MESOTHELIOMA 9 AND LUNG CANCER AMONG MOTOR VEHICLE MECHANICS, A 10 META-ANALYSIS BY GOODMAN AND OTHERS IN 2004 AND THEN THE 11 FOLLOW UP BY GARABRANT IN 2015? 12 A YES. 13 Q YOU'RE FAMILIAR WITH BOTH THOSE PAPERS? 14 A YES. 15 Q FIRST OF ALL, THE VAST MAJORITY OF THE AUTHORS 16 ON THIS PAPER CAME FROM WHAT GROUP? 17 A EXPONENT. 18 Q WE HEARD FROM THE JURY THIS WAS A GROUP THAT 19 WAS PAID JUST BY FORD OVER \$22 MILLION. WERE YOU IN THE 20 COURTROOM WHEN WE HEARD THAT? 21 A YES. 22 Q IN TERMS OF THE SPECIFIC PAPER, THEY TALK 23 ABOUT HOW IT WASN'T JUST PAID FOR PRIMARILY BY FORD, BUT 24 OTHER PEOPLE HAVE ADDED MORE MONEY ON TOP OF THAT \$22 25 MILLION THAT WENT TO EXPONENT. HERE, CHRYSLER AND 26 GENERAL MOTORS; CORRECT? 27 A YES. 28 Q FIRST, IS IT A GOOD THING FOR PEOPLE --
Page 127 1 A I DO. 2 Q DO YOU AGREE? 3 A I DO. 4 Q THIS CONCEPT THAT YOU HAVE TO HAVE AN 5 EPIDEMIOLOGY GIVEN THE RARITY OF THE DISEASE AND THE 6 STRONG ASSOCIATION WITH ASBESTOS IS REJECTED IN MANY 7 PUBLISHED TEXTBOOKS; CORRECT? 8 A YES. 9 Q ON A SIMILAR ISSUE. HE GOES ON TO SAY A 10 THRESHOLD LEVEL OF EXPOSURE BELOW WHICH MESOTHELIOMA 11 WILL NOT OCCUR HAS NOT YET BEEN IDENTIFIED. DO YOU SEE 12 THAT? 13 A I DO. 14 Q DO YOU AGREE? 15 A I DO. 16 Q NOW, WE HEARD SOME SUGGESTIONS YESTERDAY FROM 17 SOMEONE WHO HAS A BACKGROUND IN HEALTH AND SCIENCE THAT 18 YOU ACTUALLY NEED HIGH LEVELS OF EXPOSURE FOR LONG 19 PERIODS OF TIME. IS THAT TRUE FOR SOME ASBESTOS 20 DISEASES? 21 A THAT YOU NEED A HIGHER LEVEL? 22 Q YES. 23 A YES. 24 Q IS THAT THE CASE FOR MESOTHELIOMA? 25 A NO. 26 Q HE HAS A CHAPTER IN HIS BOOK ON ASBESTOSIS; 27 CORRECT? 28 A YES.	Page 129 1 COMPANIES TO DONATE MONEY TO RESEARCH? IS THAT A GOOD 2 THING? 3 A ABSOLUTELY. 4 Q IS IT A GOOD THING TO DISCLOSE WHEN YOU DO 5 THAT? 6 A YES. 7 Q IN TERMS OF THE TIME FRAME OF WHEN MONEY WAS 8 INVESTED, WAS THIS BEFORE OR AFTER THEY WERE SELLING 9 ASBESTOS PRODUCTS THROUGHOUT THE WORLD? 10 A AFTER. 11 Q IN TERMS OF UNDERSTANDING YOUR OPINION -- LET 12 ME BACKUP. THE OVERALL PREMISES OF THESE META-ANALYSES 13 IS THAT BRAKE MECHANICS DON'T HAVE AN INCREASED RISK FOR 14 DISEASE; CORRECT? 15 A YES. 16 Q HAVE YOU REVIEWED BOTH OF THE PAPERS AND 17 STUDIED THEM? 18 A YES. 19 Q IN TERMS OF UNDERSTANDING YOUR OPINION ABOUT 20 HOW WE UNDERSTAND THAT BRAKE MECHANIC WORK RESULTS IN 21 MESOTHELIOMA, HAVE YOU IDENTIFIED MULTIPLE WAYS THAT 22 YOU'VE APPROACHED THAT ISSUE? 23 A YES. 24 Q I WANT TO GO THROUGH EACH, HOPEFULLY, QUICKLY. 25 YOU HAVE FIRST THAT THE LEVEL OF ASBESTOS EXPOSURE FROM 26 BRAKE WORK IS REPEATEDLY SHOWN TO CAUSE DEATH AND 27 DISEASE. IS THIS THE TEXTBOOK THAT YOU WERE ALSO 28 FAMILIAR WITH THAT YOU HAVE RELIED ON?

Page 130 1 A YES. 2 Q I WANT TO JUST SHOW A SMALL PORTION OF THIS TO 3 ASK YOU SOME QUESTIONS. IS THERE A SECTION DEDICATED TO 4 EPIDEMIOLOGY? 5 A YES. 6 Q ARE YOU ABLE TO READ THAT? 7 A YES. 8 Q DO YOU MIND? 9 A NO, NOT AT ALL. (READING): SPECIFIC 10 OCCUPATIONS HAVE BEEN IDENTIFIED AND SOME STUDIED TO 11 BETTER DEFINE THEIR RISK OF ASBESTOS RELATED DISEASES. 12 SPECIFIC OCCUPATIONS DO NOT NEED TO BE STUDIED NOR DO 13 EPIDEMIOLOGICAL STUDIES NEED TO BE PERFORMED TO SHOW 14 RISK OF DISEASE BEFORE PREVENTION ACTIONS ARE TAKEN OR 15 CAUSAL CONNECTIONS CONCLUDED. ASBESTOS-RELATED DISEASES 16 DO NOT OCCUR IN JUST THOSE OCCUPATIONS THAT HAVE BEEN 17 STUDIED AND TO CONCLUDE SUCH, UNTIL STUDIES OF EACH AND 18 EVERY OCCUPATION OR JOB CATEGORIES ARE CONDUCTED OR FROM 19 WHICH CASES ARE REPORTED IS TO IGNORE THE ESTABLISHED 20 FACT THAT IT IS EXPOSURE TO ASBESTOS NOT THE OCCUPATION 21 OR THE SPECIFIC JOB THAT IS RESPONSIBLE FOR 22 ASBESTOS-RELATED DISEASES. 23 Q FIRST OF ALL, YOU AGREE WITH THAT? 24 A HUNDRED PERCENT. 25 Q SECOND, WITH THE MANY DIFFERENT GROUPS AND 26 JOBS THAT HAVE BEEN EXPOSED TO ASBESTOS OVERTIME, IS 27 EPIDEMIOLOGY A REASONABLE, IN TERMS OF EXPENSE AND 28 RESOURCES, METHOD TO EVALUATE EACH DIFFERENT POSSIBLE	Page 132 1 EVEN AT THE LOWEST EXPOSURE RANGES WELL BELOW ONE FIBER 2 YEAR THERE'S MORE THAN A DOUBLING OF THE RISK. SOME 3 MUCH HIGHER THAN A DOUBLING OF THE RISK FOR 4 MESOTHELIOMA. 5 Q SO I WANT TO MAKE SURE I UNDERSTAND THIS 6 CATEGORY CALLED DOSE. DID THEY JUST LOOK AT THIS DOSE 7 OR DID THEY LOOK AT A VARIETY OF DIFFERENT DOSES IN 8 THESE STUDIES? 9 A RIGHT. IT WAS A RANGE OF DOSES. AND EVEN THE 10 LOWEST, LIKE, FOR EXAMPLE, THE FIRST ONE HERE EVEN BELOW 11 .1 FIBER YEAR HAD A FOURFOLD INCREASE. 12 Q IF PEOPLE BEING EXPOSED AT .1 FIBER PER CC 13 YEARS OR LESS ARE GETTING FOUR TIMES MORE MESOTHELIOMA, 14 IS THAT SIGNIFICANT IN SHOWING A CAUSE AND EFFECT 15 RELATIONSHIP IN EPIDEMIOLOGY? 16 A YES. 17 Q SOME OF THESE SHOW EVEN GREATER RISKS. AND 18 LET ME BACKUP. ARE SOME OF THESE STUDIES LIKE 19 RODELSPERGER AND IWATSUBO POPULATIONS STUDIES IN 20 DIFFERENT COUNTRIES? 21 A YES, DIFFERENT COUNTRIES AROUND THE WORLD. 22 THE COURT: MS. DEAN, LET'S TAKE A 15 MINUTE BREAK. 23 IT'S HIGH NOON. 24 FOLKS ON THE JURY, LEAVE YOUR NOTEBOOKS. 25 PLEASE ENJOY YOUR LONG 15-MINUTE BREAK. 26 COUNSEL, REMAIN FOR JUST A MOMENT, PLEASE. 27 /// 28 ///
Page 131 1 SCENARIO? 2 A NO. 3 Q ARE DENTISTS A GROUP THAT ARE FOUND TO HAVE A 4 DOUBLING OF THE RISK OF MESOTHELIOMA? 5 A NEVER SEEN SUCH A STUDY, NO. 6 Q ARE THERE CASE REPORTS THAT INDICATE THAT NOT 7 MANY, BUT SOME RIP ASBESTOS TAPE AND WORK WITH ASBESTOS 8 MOLDS IN CREATING DENTURES THAT DEVELOP MESOTHELIOMA? 9 A YES. 10 Q TO SUGGEST, BECAUSE WE DON'T HAVE A POPULATION 11 STUDY OF DENTISTS, THAT THERE ISN'T A CAUSE AND EFFECT; 12 IS THAT LEGITIMATE? 13 A NO. 14 Q IN TERMS OF, THOUGH, ARE WE STUCK? ARE THERE 15 OTHER WAYS TO USE EPIDEMIOLOGY, THIS EXACT TOOL, TO 16 VERIFY FOR A VARIETY OF DIFFERENT OCCUPATIONS AND 17 EXPOSURES WHETHER EPIDEMIOLOGY PROVES, NOT JUST 18 CORRELATION, SHOWS CAUSATION BETWEEN EXPOSURE AND THE 19 DISEASE MESOTHELIOMA? 20 A YES. 21 Q OKAY. I WANT TO TALK ABOUT THAT. WHAT IS 22 THIS CHART THAT YOU'VE MADE? 23 A SO THIS IS A NUMBER OF STUDIES THAT HAVE 24 LOOKED AT POPULATIONS FROM VARIOUS PLACES ACROSS THE 25 WORLD THAT DEVELOPED MESOTHELIOMA AND WHERE THEY LOOKED 26 AT EXPOSURE RANGES AND EVEN AT THE LOWEST OF EXPOSURE 27 RANGES. THESE ARE PUBLICATIONS FROM THE 1990S TO 28 THROUGH HERE AT LEAST 2018. THEY'RE ALL SHOWING THAT	Page 133 1 (THE FOLLOWING PROCEEDINGS WERE HELD 2 OUTSIDE THE PRESENCE OF THE JURY.) 3 4 THE COURT: A JUROR HAS A QUESTION AND WAS OFFERING 5 IT TO COUNSEL. 6 ALL RIGHT. HAVE A SEAT FOLKS. 7 ALL I WANT TO KNOW IS, DEFENSE, WHEN WILL YOU 8 BE ABLE TO TELL ME YOUR POSITION ON THIS RATHER LARGE 9 OFFER OF EXHIBITS? I'M NOT ASKING YOU FOR YOUR -- I 10 DON'T WANT -- IF THE ANSWER IS NO OBJECTION, THAT'S 11 FINE. IF IT'S MORE THAN THAT, THEN I WANT TO KNOW WHEN 12 WILL YOU BE PREPARED TO TELL ME THAT. 13 MR. SLAUGHTER: MONDAY, YOUR HONOR? 14 MR. LANKFORD: WELL, I THINK SOME OF THEM ARE GOING 15 TO COME UP TODAY THAT I HAVE OBJECTIONS TO. 16 MS. DEAN: YOUR HONOR, THESE WERE EXCHANGED -- 17 MR. SHARP: IF THE COURT IS INQUIRING AS TO THE 18 EXHIBITS THAT HAVE BEEN OFFERED BY MS. DEAN FOR 19 ADMISSION -- 20 THE COURT: YEAH. 21 MR. SHARP: -- EXCEPT FOR TWO, AVON, AND WE 22 STIPULATE TO THE ADMISSION. THE OTHER TWO, I AGREE, BUT 23 I CAN'T SPEAK FOR ANYONE ELSE. 24 MS. DEAN: ALL OF THESE WERE PROVIDED NOT JUST IN 25 48 HOURS IN ADVANCE, I THINK 60. THEY'VE KNOWN ABOUT 26 IT. CONTEMPORANEOUS OBJECTIONS ARE REASONABLE. THIS IS 27 NOT NEW. THEY'VE HAD THEM. I DID WHAT YOU ASKED AND 28 MORE.

Page 134 1 THE COURT: OKAY. 2 MR. SLAUGHTER: I CAN DO BETTER. 3 THE COURT: WHAT'S THAT? 4 MR. SLAUGHTER: YOUR HONOR, I DON'T HAVE ANY 5 OBJECTION TO THE AVON DOCUMENTS. THAT LEAVES ME WITH 6 ONLY 2, 74 AND 41. I DO HAVE OBJECTIONS TO THOSE. I 7 THINK ONE OF THEM IS AN ARTICLE THAT SHOULD NOT GO INTO 8 EVIDENCE. IT'S HEARSAY AND THE OTHER IS A CHART THAT I 9 BELIEVE THE ATTORNEYS GENERATED WHICH IS ALSO HEARSAY. 10 THE COURT: I'M GOING TO TAKE THIS UP AT 1:20 WITH 11 YOU ALL TODAY. IF YOU'RE GOING TO BE USING ANY OF THEM 12 BETWEEN NOW AND THEN, I'LL TAKE IT UP AS YOU GET -- AS 13 YOU HIT THEM. OKAY? 14 MS. DEAN: I DON'T THINK THE TWO THAT WERE 15 IDENTIFIED BY MR. SLAUGHTER MAY COME UP BY 1:20. THE 16 REST, I'M HOPING WILL. 17 MR. LANKFORD: YOUR HONOR, I WAS ALSO HOPING AT THE 18 END OF THE DAY WE COULD TALK SCHEDULE A LITTLE SO WE -- 19 WE HAVE TO PLAN OUR EXPERTS, AND WE'RE RUNNING OUT OF 20 TIME. 21 THE COURT: WELL, WE CAN DO THAT. BUT JUST BARE IN 22 MIND, I'VE GOT TO GIVE THE STAFF 90 MINUTES STARTING AT 23 1:30. I'M HAPPY TO HAVE YOU BACK AT 3:00 O'CLOCK TO 24 DISCUSS SCHEDULING IF THAT'S WHAT YOU WANT TO DO. BUT 25 IT'S A PUSH PULL; RIGHT? WE ARE ALREADY IN A CUSTOM 26 AND PRACTICE OF KEEPING -- OF RUNNING OVER TO ABOUT 27 1:45. 28 MR. LANKFORD: IF WE COULD BREAK A LITTLE EARLY AND	Page 136 1 DOCTOR LIKE YOURSELF CAN CONSIDER THAT, CONSIDER THE 2 FREQUENCY AND REGULARITY OF THAT WORK AND DETERMINE AN 3 ESTIMATE FOR LIFETIME DOSE AND SEE THAT EXPOSURE FOR 4 THAT MECHANIC CLEARLY CREATED A SIGNIFICANT INCREASED 5 RISK FOR DISEASE? 6 A YES. 7 Q AND IF WE'RE TALKING ABOUT MECHANICS WHO DID 8 WORK WITH THOSE THREE EXAMPLES I GAVE YOU -- GRINDING, 9 BLOWING OUT, AND SANDING WITHOUT PROTECTION -- IS THERE 10 ANY QUESTION THEY'RE GOING TO GET IN THESE RANGES -- 11 A NO. 12 Q -- IF THEY'RE DOING THIS WORK ROUTINELY? 13 A NO. 14 Q SPECIFICALLY, NOT TALKING ABOUT MECHANICS AND 15 MECHANIC EPIDEMIOLOGY, BUT THIS CASE, HAVE YOU 16 CONSIDERED AND STUDIED RITA CHAPMAN'S EXPOSURES FROM 17 DOING LAUNDRY OF HER HUSBAND AFTER WORKING AROUND 18 BRAKES? 19 A YES. 20 Q HAVE YOU CONSIDERED THE FREQUENCY AND 21 REGULARITY OF THAT WORK, THE INTENSITY OF THE DATA ABOUT 22 EXPOSURES TO DETERMINE IF SHE HAD A SIGNIFICANT RISK FOR 23 THE DEVELOPMENT OF DISEASE BASED ON DECADES OF 24 EPIDEMIOLOGICAL STUDIES? 25 A YES. 26 Q DOES SHE? 27 A YES. 28 Q SAME QUESTION FOR COSMETIC TALC. DID YOU DO
Page 135 1 TALK ABOUT IT, THAT WOULD BE GREAT. IF WE HAVE TO PUSH 2 IT OFF -- 3 THE COURT: ARE YOU GOING TO COMPLETE YOUR DIRECT 4 OF DR. HABER TODAY? 5 MS. DEAN: PROBABLY NOT. THE CHANGE IN HOW THIS 6 WAS PRESENTED IS ALSO CREATING TIME DELAYS. 7 THE COURT: OKAY. ALL RIGHT. TAKE 15. SEE YOU 8 SOON. 9 10 (RECESS.) 11 12 (THE FOLLOWING PROCEEDINGS WERE HELD 13 IN THE PRESENCE OF THE JURY.) 14 15 THE COURT: ALL JURORS AND ALTERNATES ARE PRESENT. 16 COUNSEL ARE PRESENT. 17 FURTHER DIRECT. 18 MS. DEAN: YES, YOUR HONOR. ONE MORE SESSION. 19 20 DIRECT EXAMINATION (CONTINUED) 21 BY MS. DEAN: 22 Q WE WERE TALKING ABOUT STUDY AFTER STUDY THAT 23 LOOKED AT LOW DOSES AND FOUND A SIGNIFICANT DISEASE. 24 FIRST OF ALL, ARE THESE ALL THE STUDIES THAT THERE ARE? 25 A NO. 26 Q SECOND, IS THERE DATA ABOUT HOW MUCH ASBESTOS 27 IS PUT IN THE AIR WHEN YOU GRIND A BRAKE OR SAND A BRAKE 28 OR BLOW OUT A BRAKE SO THAT A SCIENTIST LIKE YOURSELF, A	Page 137 1 THE SAME RESEARCH? 2 A I DID. 3 Q DID SHE HAVE A SIGNIFICANT RISK THAT'S BASED 4 ON WELL-ESTABLISHED EPIDEMIOLOGY BECAUSE OF HER USE OF 5 COSMETIC TALCS? 6 A YES. 7 Q NOW, THIS EXAMPLE ISN'T ABOUT A MECHANIC BUT A 8 GARAGE WORKER. THIS GARAGE WORKER STUDIED IN MCDONALD & 9 MCDONALD. NEVER WENT INSIDE A SHOP BUT PUMPED GAS. IS 10 THERE GOING TO BE A VERY DIFFERENT ANSWER TO THE 11 QUESTION ABOUT WHETHER YOU'RE GOING TO SEE AN INCREASED 12 RISK IN THOSE SETBACKS? 13 A YES. 14 Q IF I HAVE A STUDY THAT STARTED WHEN A COUNTRY 15 BANNED ASBESTOS SO THAT THE ONLY EXPOSURES POSSIBLE ARE 16 OF OLD BRAKES AND PEOPLE ARE USING THAT CONTRAPTION 17 WHERE YOU PUT YOUR HANDS ON IT AND THEY'RE USING WET 18 DOWN METHODS, IS THAT INDUSTRIAL HYGIENE DATA ABOUT HOW 19 MUCH ASBESTOS IN THE AIR GOING TO BE VERY DIFFERENT THAN 20 THE EXAMPLE I FIRST GAVE YOU ABOUT SOMEBODY GRINDING? 21 A YES. MUCH LOWER. 22 Q IF YOU THROW A BUNCH OF PEOPLE TOGETHER IN A 23 CATEGORY THAT ARE INHERENTLY VARIABLE, BOTH IN WHAT 24 THEY'RE DOING, HOW OFTEN THEY'RE DOING IT, AND WHETHER 25 THEY'RE USING PROTECTION, ARE YOU GOING TO MUDDY THE 26 ABILITY TO FIND CAUSE AND EFFECT? 27 A YES. 28 Q LASTLY, WHILE WE'RE ON THIS CHART, IN OPENING

Page 138 1 I WANT YOU TO ASSUME THE JURY WAS TOLD THAT IF WE TAKE 2 THE OSHA PEL, THAT EXPOSURE LIMIT OF 0.1, EXTRAPOLATE IT 3 OUT OVER AN ENTIRE LIFETIME, WE GET 4.5 CC YEARS, AND 4 THAT'S IT. DO YOU AGREE? 5 A NO. 6 Q IN TERMS OF ASSESSING WHETHER THAT MAKES 7 SENSE, IS 4.5 HIGHER OR LOWER THAN .1? 8 A MUCH HIGHER. 9 Q .15? 10 A MUCH HIGHER. 11 Q .2? 12 A HIGHER. 13 Q .1? 14 A HIGHER. 15 Q THE IDEA THAT LEVELS DRAMATICALLY LOWER THAN 16 THAT HAVE BEEN PROVEN IN EPIDEMIOLOGICAL STUDIES TO 17 CAUSE DEATH AND DISEASE, SPECIFICALLY MESOTHELIOMA, IS 18 THERE ANY QUESTION ABOUT THAT DATA? 19 A NO. 20 Q BEFORE I CONTINUE ON EPIDEMIOLOGY, THERE'S 21 SOME QUESTIONS I WANT TO ASK YOU. CAN YOU DISASSOCIATE 22 MESOTHELIOMAS FROM ASBESTOS? IF YES, WHAT IS THE CAUSE 23 OF SPONTANEOUS MESOTHELIOMA, OR DO THEY NOT EXIST? 24 A OKAY. SO ASBESTOS CAUSES THE MAJORITY, THE 25 VAST MAJORITY OF MESOTHELIOMAS. THERE ARE SOME OTHER 26 CAUSES OF SIMILAR MINERALS. THERE IS A MINERAL CALLED 27 ERIONITE THAT IS PRIMARILY IN AN AREA IN TURKEY THAT HAS 28 BEEN ASSOCIATED WITH MESOTHELIOMA IN THAT REGION, AND Page 139 1 IT'S VERY SIMILAR TO ASBESTOS. 2 THERE ARE SOME OTHER MINERALS IN SOME PLACES 3 IN OTHER COUNTRIES AND IN THIS COUNTRY THAT ARE ALSO 4 SIMILAR MINERALS THAT SEEM TO HAVE SOME SORT OF EFFECT. 5 THERE USED TO BE A RADIATION THAT WE GAVE CALLED MANTLE 6 RADIATION FOR PEOPLE WHO HAD DISEASES LIKE LYMPHOMA 7 MANY, MANY, MANY YEARS AGO. WE DON'T USE THAT TYPE OF 8 RADIATION TREATMENT. BUT THAT TYPE OF RADIATION 9 TREATMENT DID SEEM TO BE ASSOCIATED WITH AN INCREASED 10 RISK OF MESO, ALTHOUGH THESE WERE ALL JUST CASE REPORTS. 11 THERE'S NO LONG-TERM STUDY ON THAT. 12 AND THERE USED TO BE A SUBSTANCE CALLED 13 THOROTRAST THAT WAS USED 70 YEARS AGO, 80 YEARS AGO, 14 THAT SEEMED TO ALSO HAVE SOME ASSOCIATION WITH 15 MESOTHELIOMA. ALTHOUGH, AGAIN, WE DON'T REALLY KNOW 16 WHAT THE ACTUAL RISK WAS BECAUSE THERE'S JUST NO 17 SIGNIFICANT STUDIES. THESE WERE ALL VERY SMALL IN 18 NUMBERS. 19 NOW, CAN -- IF -- IS IT POSSIBLE THAT THERE IS 20 A SPONTANEOUS, YES. IS IT PROVEN? NO. WE KNOW, FOR 21 EXAMPLE, THAT CHILDREN CAN GET MESOTHELIOMA. BUT THAT 22 MESOTHELIOMA THAT CHILDREN GET IS, FIRST, 23 EXTRAORDINARILY RARE. I MEAN, VERY, VERY FEW CASES IN 24 ALL THE LITERATURE. 25 IT SEEMS TO BE DIFFERENT MESOTHELIOMA, PERHAPS 26 SOMETHING TO DO WITH THE WAY, YOU KNOW, THE BODY WAS -- 27 YOU KNOW, BEFORE THEY'RE BORN. BUT IT'S A MUCH MORE 28 BENIGN COURSE. IT'S MOSTLY PERITONEAL; WHEREAS, IN	Page 140 1 ADULTS IT'S USUALLY IN THE CHEST. AND THE CHILDREN 2 DON'T USUALLY DIE OF IT. THEY CAN BE CURED OF IT. SO 3 IT SEEMS TO ACT DIFFERENTLY TOO. 4 BUT MORE INTERESTINGLY, WE KNOW THAT AT -- 5 EVEN STILLBORNS, WHEN THEY'VE TESTED STILLBORNS, THEY 6 FOUND ASBESTOS FIBERS IN THEIR LUNGS. SO IT IS EVEN 7 STILL POSSIBLE FOR A MOTHER TO INHALE ASBESTOS AND THAT 8 ASBESTOS CAN GET THROUGH THE PLACENTA INTO THE BABY 9 BECAUSE THIS WAS A STILLBORN, IT NEVER BREATHED. SO THE 10 ONLY WAY FOR THAT ASBESTOS TO GET IN TO A STILLBORN WAS 11 THROUGH THE PLACENTA. 12 SO THERE'S STILL POSSIBILITIES FOR EVEN 13 INTRAUTERINE, OR WE KNOW THAT CHILDREN ARE MUCH MORE 14 SENSITIVE TO CARCINOGEN THAN -- BECAUSE THEIR CELLS ARE 15 DIVIDING RAPIDLY. THEY'RE GROWING. THEY'RE SMALL. SO 16 CHILDREN WHO ARE EXPOSED TO ASBESTOS IN CHILDHOOD ARE 17 MUCH MORE SUSCEPTIBLE TO CARCINOGEN. IS IT POSSIBLE 18 THAT THERE'S SOME CASE THAT WE -- YOU KNOW, WAS MAYBE 19 SOME OTHER CAUSE, IT IS, BUT I DON'T -- THERE'S NO PROOF 20 OF THAT. 21 AND FROM WHAT WE UNDERSTAND ABOUT 22 CARCINOGENESIS, YOU REALLY NEED TO HAVE AN EXPOSURE TO 23 SOME SORT OF MUTAGEN, SOMETHING THAT'S CAUSING THESE 24 CELLS. THE NORMAL CELLS FOR THE MESOTHELIAL TISSUE, AS 25 OPPOSED TO SOME OTHER TISSUES IN THE BODY, LIKE -- YOU 26 KNOW, IF YOU -- THE SKIN, FOR EXAMPLE, OR YOUR GI TRACT 27 OR YOUR -- IN YOUR MOUTH, THE CELLS DIVIDE VERY, VERY 28 RAPIDLY. THE MESOTHELIAL CELLS HAVE AN EXTRAORDINARILY Page 141 1 SLOW MITOTIC RATE. 2 THEY DON'T DIVIDE MUCH BECAUSE NOTHING REALLY 3 TOUCHES IT. NOTHING -- YOU KNOW, WHEN YOU EAT, IT 4 DOESN'T -- NOTHING IS GOING THERE. SO IT'S A VERY, VERY 5 MITOTICALLY INERT, DOESN'T -- NOT MUCH IS GOING ON IN 6 THAT LAYER. AND SO YOU REALLY -- IF YOU WERE TO HAVE 7 SOME SORT OF GENETIC CHANGE THAT GOES ON, THERE'S A LOT 8 OF TIME FOR YOUR BODY TO THEN JUST REPAIR THAT CHANGE. 9 AND SO FOR THOSE REASONS, THERE'S REALLY -- 10 ALTHOUGH IT'S IN THEORY POSSIBLE, IT'S NOT PROVEN AND I 11 DON'T THINK AT ALL LIKELY. 12 Q FOR ALL OF THE DIFFERENT PROVEN OR EVEN 13 POSSIBLE REASONS THAT YOU HAVE THE DISEASE MESOTHELIOMA, 14 ARE EACH OF THOSE STILL SOME KIND OF TRIGGERING EVENT 15 FROM THE OUTSIDE THAT IS CAUSING THE DISEASE? 16 A YES. 17 Q OTHER THAN ASBESTOS, IN YOUR REVIEW OF ALL OF 18 RITA CHAPMAN'S MEDICAL INFORMATION, DEPOSITIONS, THE 19 TESTIMONY YOU'VE SEEN, IS THERE ANY TRIGGER OTHER THAN 20 ASBESTOS THAT YOU SAW? 21 A NO. THERE WAS NOT. 22 Q OF ALL OF THE TRIGGERS, IF WE COMBINED 23 EVERYTHING ELSE YOU MENTIONED TOGETHER AND COMPARED IT 24 TO ASBESTOS, WHAT IS THE VAST MAJORITY OF CAUSES OF 25 MESOTHELIOMA IN THIS COUNTRY? 26 A IT'S ASBESTOS. AND AGAIN, SOME OF THESE OTHER 27 THINGS WE'RE NOT EVEN -- THEY'RE NOT EVEN BEING USED 28 ANYMORE, AND SHE NEVER HAD THEM DONE.

Page 142 1 Q OUTSIDE OF THE COURTROOM, ARE YOU AWARE OF ANY 2 SCIENTIST ANYWHERE THAT BELIEVES THAT YOU CAN HAVE A 3 DOCUMENTED EXPOSURE TO ASBESTOS AND CALL A MESOTHELIOMA 4 SPONTANEOUS? 5 MR. SHARP: OBJECTION. FOUNDATION, SPECULATION. 6 THE COURT: SUSTAINED. 7 Q BY MS. DEAN: IN YOUR REVIEW OF THE LITERATURE 8 OVER DECADES, HAVE YOU EVER SEEN A SINGLE CASE OUTSIDE 9 OF THE COURTROOM WHERE SOMEONE NOTES THAT THERE IS A 10 DOCUMENTED HISTORY OF EXPOSURE TO ASBESTOS AND INDICATES 11 THAT IT'S SPONTANEOUS? 12 MR. SHARP: SAME OBJECTION. 13 THE COURT: OVERRULED. 14 THE WITNESS: NO. 15 Q BY MS. DEAN: THE NEXT QUESTION I WANT TO ASK 16 YOU IS THRESHOLD APPLICATION -- I'M SORRY. LET ME TRY 17 THAT AGAIN. 18 IS THRESHOLD APPLICABLE IN PATHOGENESIS A 19 MESOTHELIOMA? 20 A RIGHT. I THINK THAT'S WHAT WE WERE TALKING 21 ABOUT EARLIER. SO THERE IS NO THRESHOLD. SO IN A 22 POPULATION, THE HIGHER THE EXPOSURES, THE MORE PEOPLE 23 YOU'RE GOING TO SEE. BUT ON AN INDIVIDUAL BASIS, MANY, 24 MANY STUDIES, EVEN AT THE LOWEST LEVELS OF EXPOSURES, 25 THERE'S NEVER BEEN ANY SORT OF DEFINED LEVEL THAT YOU 26 HAVE TO GET ABOVE. AND THESE EXPOSURES TO CAUSE MESO 27 CAN BE -- AGAIN, WE'VE TALKED ABOUT HERE IN PUBLISHED 28 LITERATURE ONE DAY, ONE WEEK, ONE MONTH. THEY CAN BE	Page 144 1 SHE NEVER HAD ANY SORT OF BIOPSIES AND 2 CERTAINLY NOT OF THE VOLUMES THAT YOU WOULD TYPICALLY 3 SEE TO EVEN LOOK FOR IT. BUT THERE WAS NO SAMPLING OF 4 HER LUNGS. IT WAS STRICTLY THE SMALL PLEURAL BIOPSIES 5 AND THOSE SMALL LYMPH NODE. AND THE LYMPH NODE ACTUALLY 6 WAS JUST A NEEDLE, SO THAT'S EVEN -- THERE'S REALLY NOT 7 ANY TISSUE THERE AT ALL. 8 Q IS THE LACK OF ASBESTOS IN LYMPH OR PLEURA IN 9 ANY WAY INSTRUCTIVE OR INDICATIVE THAT THERE WASN'T A 10 SIGNIFICANT EXPOSURE? 11 A NO. NONE WHATSOEVER. 12 Q DIAGNOSIS IS PRIMARILY BASED ON A HISTORY 13 WITHOUT HISTOLOGY TO DEMONSTRATE ASBESTOS FIBERS. DO 14 YOU AGREE? 15 A NO. SO YOU GET A CLINICAL SUSPICION THAT 16 SOMEONE HAS MESOTHELIOMA BASED ON -- YOU KNOW, LIKE IN 17 THIS CASE HERE, THEY PRESENT WITH SHORTNESS OF BREATH 18 AND CHEST PAIN. THEY'VE GOT A PLEURAL EFFUSION THAT'S 19 RECURRENT. THEN WE MAKE A DIAGNOSIS BASED ON THE 20 PATHOLOGY. 21 SO WE THEN TAKE A SAMPLE, LOOK UNDER THE 22 MICROSCOPE TO SEE DO THESE CELLS, THESE MESOTHELIAL 23 CELLS, SHOW SIGNS OF CANCER, WHICH IS YOU'RE SEEING -- 24 LOOKING FOR ARE THEY STARTING TO CHANGE. NORMALLY 25 THERE'S A CERTAIN AMOUNT OF -- THE NUCLEUS OF THE CELL 26 LOOKS A CERTAIN WAY. BUT IF YOU START SEEING 27 STRANGENESS TO IT, THE PATHOLOGIST SAYS, YES, THIS IS 28 CANCER. AND THAT'S HOW WE MAKE A DIAGNOSIS OF
Page 143 1 VERY BRIEF AND WHAT ARE CONSIDERED INCONSEQUENTIAL 2 EXPOSURES. 3 Q DOES MESOTHELIOMA ALWAYS START AS ASBESTOSIS, 4 INTERSTITIAL FIBROSIS, CHRONIC BRONCHITIS, ET CETERA? 5 A NO. SO ASBESTOSIS IS A DIFFERENT 6 ASBESTOS-RELATED DISEASE THAN MESOTHELIOMA. SO 7 ASBESTOSIS IS THE FIBROSIS IN THE LUNGS RELATED TO 8 ASBESTOS. MESOTHELIOMA IS A MALIGNANCY, A CANCER, OF 9 THE LINING OF THE LUNG OR THE ABDOMEN, DEPENDING UPON 10 WHERE THE MESOTHELIOMA OCCURS. BUT THESE ARE SEPARATE 11 DISEASES. 12 AND ASBESTOSIS, IF YOU HAVE IT, DOESN'T TURN 13 INTO CANCER. IT SIGNALS AN INCREASED RISK FOR CANCER 14 BECAUSE YOU'VE HAD A TREMENDOUS DOSE OF ASBESTOS TO GET 15 ASBESTOSIS. BUT BENIGN DISEASES LIKE ASBESTOSIS DOES 16 NOT TURN INTO CANCER. 17 AND THEN CHRONIC BRONCHITIS, THAT'S TYPICALLY 18 A DISEASE FROM CIGARETTE SMOKING. CIGARETTE SMOKING HAS 19 NO CAUSAL EFFECT FOR MESOTHELIOMA. 20 Q DID THE BIOPSY OF TISSUE OF RITA CHAPMAN SHOW 21 ASBESTOS FIBERS OR CANCER CELLS ONLY? 22 A RIGHT. THE BIOPSIES THAT HE TOOK OF THE LYMPH 23 NODES AND OF THE PLEURA SHOWED MESOTHELIOMA. THEY 24 LOOKED UNDER THE MICROSCOPE. THEY CAN SEE THAT THIS IS 25 MESOTHELIOMA. THAT'S HOW THEY MAKE -- THAT'S HOW WE 26 MAKE A DIAGNOSIS OF MESOTHELIOMA BASED ON THE TISSUE 27 BIOPSY. AND FIBERS YOU GENERALLY ARE GOING TO BE 28 LOOKING FOR TESTING OF THE LUNG.	Page 145 1 MESOTHELIOMA IN VIRTUALLY EVERY CASE. 2 EVERY ONCE IN A WHILE, YOU MIGHT TRY TO MAKE 3 IT CLINICALLY, BUT THERE'S NO WAY TO BE CONFIRMATORY 4 WITHOUT THE PATHOLOGY. 5 Q AND DID THEY CONFIRM HER DIAGNOSIS WITH 6 PATHOLOGY? 7 A YES. SO SHE NOT ONLY HAD THE PATHOLOGY OF THE 8 FIRST PLEURAL BIOPSY AND THE LYMPH NODE, BUT THEN ALSO 9 LATER ON HAD THE PATHOLOGY CONFIRMED AGAIN BY A SECOND 10 SET OF BIOPSIES OF THE PLEURA. 11 Q HERE WE'VE TALKED TO EXPERTS HIRED BY THE 12 COMPANIES. DR. ATTANOOS, DR. ROGGLI, AND OTHERS. AND 13 THEY, LIKE YOU AND LIKE MAYO CLINIC AND HER TREATERS, 14 ALL BELIEVE THIS IS A MALIGNANT MESOTHELIOMA. 15 DOES THAT SURPRISE YOU? 16 A NO. 17 Q THE LAST QUESTION ON THIS LIST I WANT TO ASK 18 YOU IS, A NEGATIVE RADIOLOGY DOES NOT RULE OUT THE 19 DISEASE, BUT A POSITIVE ONE IS CONFIRMATORY. 20 DO YOU AGREE? 21 A NO. 22 Q CAN YOU EXPLAIN? 23 A YES. 24 Q SO FIRST OFF, IT DEPENDS ON THE RADIOLOGY, 25 BECAUSE, AGAIN, YOU KNOW, IF YOU -- YOU COULD HAVE 26 SOMEONE WHO HAS MESOTHELIOMA AT AN EARLY STAGE AND MAYBE 27 NOT SEE SOMETHING ON CHEST X-RAY. BUT, GENERALLY, YOU 28 SEE SOMETHING ABNORMAL ON THE X-RAY, WHETHER IT BE A CAT

Page 146 1 SCAN OR CHEST X-RAY, AND THAT PROVOKES MORE ATTENTION TO 2 TRY TO FIND OUT WHAT'S GOING ON, GENERALLY LEADING TO 3 TAKING A TISSUE BIOPSY AND HAVING THE PATHOLOGIST LOOK 4 UNDER THE MICROSCOPE AND YOU LOOK AT -- YOU SEE WHAT THE 5 PATHOLOGIST SAYS AND HE GETS WITH THE CLINICIAN AND 6 SAYS, OKAY, WHAT ARE YOU SEEING? AND THAT'S HOW YOU 7 MAKE THE DIAGNOSIS. 8 BUT IT IS -- YOU CAN'T MAKE THE DIAGNOSIS JUST 9 BY LOOKING AT THE X-RAY. IT COULD BE, YOU KNOW, SOME 10 OTHER CANCER, OR IT COULD BE A NONCANCEROUS CONDITION. 11 Q WE HAVE SPENT A LOT OF TIME, I THINK BECAUSE 12 OF STATEMENTS THAT WERE MADE IN OPENING STATEMENTS, AND 13 SO I WANT TO MAKE A REALLY BROAD QUESTION. IS THERE 14 ANYTHING ABOUT RITA CHAPMAN'S TEST OR BODY OR TISSUE OR 15 FLUIDS THAT, BECAUSE WE DIDN'T SEE SOMETHING, SUGGESTS 16 TO YOU, MAN, THIS DOESN'T HAVE ANYTHING TO DO WITH 17 ASBESTOS? 18 A NO. 19 Q AND IF SOMEBODY SUGGESTED THAT WHAT WE KNOW 20 ABOUT HER BODY AND THE LACK OF INFORMATION WE KNOW ABOUT 21 HER BODY MEANT THAT THIS WAS A SPONTANEOUS MESOTHELIOMA, 22 DO YOU AGREE OR DISAGREE? 23 A I STRONGLY DISAGREE. 24 Q OKAY. GOING BACK TO EPIDEMIOLOGY. THE SECOND 25 INDICATION HERE THAT YOU HAD OF WHY WE UNDERSTAND WHY 26 BRAKE WORK CAUSES DISEASE SAYS: INCREASED RISK IN 27 MECHANICS FOR PLEURAL DISEASE AND ASBESTOSIS. A MOMENT 28 AGO WE LOOKED AT DR. ROGGLI'S BOOK. YOU NEED A LOT OF Page 147 1 EXPOSURE FOR A LONG TIME TO GET ASBESTOSIS. 2 DO YOU RECALL THAT? 3 A YES. 4 Q I THINK THIS IS ACTUALLY A VERY SIMILAR THING 5 THAT YOU WERE JUST TALKING ABOUT. ASBESTOSIS DOES NOT 6 MEAN YOU'RE GOING TO TURN INTO CANCER. BUT, MAN, IF YOU 7 GOT IT, YOU'RE AT AN INCREASED RISK. 8 DO YOU RECALL SAYING THAT? 9 A YES. 10 Q ARE THERE PUBLISHED EPIDEMIOLOGIC STUDIES THAT 11 SHOW MECHANICS HAVE ASBESTOSIS AND PLEURAL DISEASE AT A 12 SIGNIFICANT INCREASED RISK? 13 A YES. 14 Q WHAT DOES THAT TELL YOU ABOUT EXPOSURE TO 15 ASBESTOS? 16 A THAT THEY'RE HAVING SIGNIFICANT EXPOSURES TO 17 ASBESTOS. 18 Q AND HOW WELL ESTABLISHED IS IT IN THE MEDICAL 19 AND SCIENTIFIC COMMUNITY FOR DECADES THAT, IF YOU HAVE A 20 SIGNIFICANT EXPOSURE TO ASBESTOS, YOU HAVE A PROBLEM 21 WITH THE DISEASE MESOTHELIOMA? 22 A IT'S A HUNDRED PERCENT ESTABLISHED. AND JUST 23 TO HAMMER HOME A POINT, THE ONLY CAUSE OF ASBESTOSIS IS 24 ASBESTOS. THERE IS NO OTHER CAUSE. IT'S -- EVERY CASE 25 OF ASBESTOSIS IS FROM ASBESTOS. 26 Q SO WE HAVE PUBLISHED LITERATURE SHOWING AN 27 INCREASED RISK FROM MECHANICS FOR DISEASE THAT IS ONLY 28 CAUSED BY ASBESTOS?	Page 148 1 A YES. 2 Q AND IN TERMS OF THIS IDEA THAT YOU NEED MORE 3 EXPOSURE TO GET ASBESTOSIS, WE SAW THAT IN DR. ROGGLI'S 4 BOOK ALREADY. ARE THERE OTHERS THAT HAVE PUBLISHED IT 5 AS WELL? 6 A YES. 7 Q WHAT IS A CASE REPORT? 8 A A CASE REPORT IS A PUBLICATION DESCRIBING 9 MAYBE ONE CASE, MAYBE A NUMBER OF CASES WHERE THEY HAVE 10 A PERSON OR A GROUP OF PEOPLE WITH A CERTAIN DISEASE AND 11 THEY DISCUSS WHAT HAPPENED AND WHAT DISEASE WAS GOING 12 ON, WHAT -- MAYBE WHAT THE WORK HISTORY WAS, ET CETERA. 13 Q WHAT'S A CASE SERIES? 14 A THE CASE SERIES IS SIMILAR, BUT YOU'RE LOOKING 15 AT A LARGER GROUP OF INDIVIDUALS. 16 Q WAS WAGNER'S WORK IN 1960 A CASE SERIES? 17 A YES. 18 Q AND SO THE IDEA THAT YOU CAN HAVE CASE REPORTS 19 OR CASE SERIES IN ORDER TO SHOW CAUSE AND EFFECT WHEN 20 YOU'RE DEALING WITH A DISEASE LIKE MESOTHELIOMA AND A 21 CARCINOGEN LIKE ASBESTOS, HOW WELL ESTABLISHED IS THAT? 22 A VERY. 23 Q ARE YOU FAMILIAR WITH AND DO YOU RELY ON THE 24 EPIDEMIOLOGICAL TEXTBOOK BY CHECKOWAY AND OTHERS? 25 A YES. 26 Q I WANT TO ASK YOU A COUPLE QUESTIONS ABOUT 27 THAT. CAN YOU FIRST JUST READ THE HIGHLIGHTED PORTION. 28 A "CERTAIN CONDITIONS KNOWN AS SENTINEL HEALTH Page 149 1 EVENTS ARE SO CLOSELY ASSOCIATED WITH OCCUPATIONAL 2 EXPOSURES THAT THE OCCURRENCE OF ANY CASE SERVES AS AN 3 INDICATION OF AN OCCUPATIONAL HAZARD. MALIGNANT 4 MESOTHELIOMA, WHICH IS NEARLY ALWAYS ATTRIBUTABLE TO 5 ASBESTOS EXPOSURE, SILICOSIS, AND ADULT LEAD POISONING 6 FIT THIS DESCRIPTION." 7 Q IN TERMS OF APPLYING THIS CONTENT TO BRAKES, 8 ARE THERE CASE REPORTS OF BRAKE MECHANICS OF GETTING THE 9 DISEASE MESOTHELIOMA? 10 A YES. HUNDREDS. 11 Q AND FOR THE JURY TO JUST GET AN IDEA OF HOW 12 MANY FOR HOW MANY DECADES, HAVE YOU CREATED A CHART 13 THAT'S UP HERE? 14 A YES. 15 Q IN 1965 NEWHOUSE AND THOMPSON 1968, GODWIN AND 16 JAGATIC, J-A-G-A-T-I-C, AND IT GOES ON FOR YEARS; 17 CORRECT? 18 A YES. 19 Q IS EVERY TIME A PERSON GETS MESOTHELIOMA 20 RESULT IN A WRITTEN CASE REPORT? 21 A OF COURSE NOT. 22 Q DOES THIS IN ANY WAY REPRESENT HOW MANY 23 HUNDREDS OF THOUSANDS OF MECHANICS HAVE DIED OF 24 MESOTHELIOMA? 25 A RIGHT. THERE WOULD BE -- IT WOULD FOR SURE BE 26 MORE THAN THAT. 27 Q BUT DOES THE FACT THAT WE HAVE THIS MUCH DATA 28 FOR DECADES, ALONG WITH THE INFORMATION WE HAVE ABOUT

Page 150 1 ASBESTOS RELEASE AND EPIDEMIOLOGY, MAKE IT CLEAR IN YOUR 2 MIND CAUSE AND EFFECT? 3 A YES. 4 Q THE STUDIES OF MECHANICS FOR MESOTHELIOMA LACK 5 SENSITIVITY. CAN YOU EXPLAIN WHAT YOU MEAN BY THAT? 6 A YES. SO WHEN YOU'RE DOING A STUDY, AS WE 7 TALKED ABOUT BEFORE, WHEN YOU'VE GOT AN EXPOSED GROUP 8 AND A NON-EXPOSED GROUP, YOU WANT TO BE SURE THAT THE 9 EXPOSED GROUP IS TRULY EXPOSED AND THE NON-EXPOSED GROUP 10 IS TRULY NON-EXPOSED. 11 OR IF YOU ARE COMPARING IT TO SOME OTHER 12 POPULATION, WHAT WE CALL A CONTROL, THAT THAT CONTROL 13 HASN'T -- HAVE EITHER THAT EXPOSURE OR SOME OTHER 14 CONDITION THAT WOULD CHANGE THE EFFECTS OF HOW MUCH 15 YOU'RE COMPARING IT TO, BECAUSE YOU WANT TO MAKE SURE 16 THAT YOU'RE COMPARING A TRUE CASE GROUP TO THE PEOPLE 17 THAT ARE JUST ABSOLUTELY BACKGROUND NO INCREASED 18 EXPOSURES. 19 AND SO IF YOU PICK PEOPLE THAT, FOR EXAMPLE, 20 WERE LISTED AS A GARAGE WORKER, WELL, THERE'S LOTS OF 21 PEOPLE THAT COULD BE WORKING IN A GARAGE THAT DOESN'T 22 HAVE TO DO WITH DOING BRAKE WORK. YOU CAN HAVE A MOTOR 23 VEHICLE MECHANIC WHO IS, YOU KNOW, SPENDING MOST OF HIS 24 TIME WORKING ON TIMING OR BELTS OR CHANGING TIRES OR 25 SOMETHING ELSE. SOME STUDIES, YOU KNOW, THEY HAD 26 THEM -- EVEN SOME OF THE PEOPLE WERE WORKING ON 27 BICYCLES. 28 SO YOU HAVE TO BE SURE THAT, WHEN YOU'RE	Page 152 1 THE COURT: TAKE DOWN THE SLIDE FOR JUST A MOMENT, 2 PLEASE. 3 MR. LANKFORD: HEARSAY. FOUNDATION. 352. 4 THE COURT: LET ME THINK. HOLD ON. 5 SUSTAINED ON FOUNDATION. 6 HAS THIS WITNESS SEEN IT? READ IT? 7 MS. DEAN: LET ME LAY THE FOUNDATION. 8 Q DR. GARABRANT, HAVE YOU REVIEWED -- 9 A DR. HABER. 10 Q I'M SORRY. DR. HABER. HAVE YOU REVIEWED AND 11 CONSIDERED THIS EPA DOCUMENT? 12 A I HAVE. 13 Q IS IT ON YOUR RELIANCE LIST? 14 A IT IS. 15 Q WAS IT ON THE RELIANCE LIST WHEN FORD TALKED 16 TO YOU OVER THE COURSE OF THREE DAYS? 17 A IT WAS. 18 Q IS IT SOMETHING THAT YOU FIND RELIABLE? 19 A IT IS. 20 Q IS IT SOMETHING THAT YOU FIND AUTHORITATIVE? 21 A IT IS. 22 Q OKAY. I WANT TO ASK YOU A FEW QUESTIONS ABOUT 23 IT. 24 YOUR HONOR, IS IT OKAY IF I PROCEED? 25 MR. LANKFORD: SAME OBJECTIONS, YOUR HONOR. IT'S 26 352. IT'S HEARSAY. EVEN IF, AS I SAID BEFORE, THEY TRY 27 TO ARGUE IT'S SOMEHOW A GOVERNMENT PUBLICATION, IT'S 28 STILL HEARSAY. IT CAN'T COME IN FOR THE TRUTH OF THE
Page 151 1 DEALING WITH YOUR EXPOSED GROUP, THAT YOU ARE PICKING 2 PEOPLE THAT ARE THE EXPOSED GROUP AND NOT BEING TOO 3 WATERED DOWN. AND THEN YOU NEED TO BE SURE THAT ON THE 4 CONTROL GROUP THAT YOU ARE NOT PICKING PEOPLE THAT WERE 5 IN OTHER INDUSTRY, FOR EXAMPLE. 6 IF YOU PICK THEM AS ANOTHER INDUSTRY THAT 7 MAYBE HAD ASBESTOS EXPOSURES, WELL, THEN YOUR CONTROL 8 GROUP IS GOING TO HAVE A HIGH RATE OF DISEASE. AND THEN 9 WHEN YOU COMPARE THEM, YOU'RE EITHER GOING TO SAY, OKAY, 10 THERE'S NO DIFFERENCE, OR THERE MIGHT EVEN BE, YOU KNOW, 11 ASBESTOS BEING PROTECTIVE OF CANCER, WHICH IS, YOU KNOW, 12 NOT SCIENTIFICALLY RATIONAL. 13 Q IS THIS IDEA THAT THE META-ANALYSIS STUDIES 14 LACK SENSITIVITY A WIDELY SHARED VIEW IN THE MEDICAL 15 STUDY OUTSIDE OF AUTHORS FROM CHEMRISK AND EXPONENT? 16 A YES. 17 Q I WANT TO NOW SHOW YOU WHAT WE'VE MARKED AND 18 THE COURT HAS JUDICIAL NOTICE OF AS EXHIBIT 3056. HAVE 19 YOU SEEN THIS? 20 A I HAVE. 21 Q I WANT TO ASK YOU A FEW QUESTIONS ABOUT WHAT 22 THE ENVIRONMENTAL PROTECTION AGENCY HAS FOUND WHEN THEY 23 LOOK AT EPIDEMIOLOGIC STUDIES OF AUTOMOTIVE MECHANICS. 24 FIRST OF ALL -- 25 MR. LANKFORD: OBJECTION, YOUR HONOR. I ASK THIS 26 SLIDE BE TAKEN DOWN. 27 THE COURT: LET ME -- 28 MR. LANKFORD: OBJECTION. HEARSAY.	Page 153 1 MATTER ASSERTED OR BE SHOWN TO THE JURY. 2 MS. DEAN: THIS IS EXHIBIT 10 TO THE DOCUMENT YOU 3 TOOK JUDICIAL NOTICE OF ALREADY. 4 THE COURT: OKAY. SO TAKING JUDICIAL NOTICE OF THE 5 EXISTENCE OF THE DOCUMENT IS NOT THE SAME AS TAKING 6 JUDICIAL -- IS NOT ESTABLISHING THE TRUTH OF ITS 7 CONTENTS. AGREED? 8 MS. DEAN: YES, WHICH IS WHY I WANT TO TALK TO THE 9 DOCTOR ABOUT IT, WHO RELIES ON IT AND FINDS IT 10 AUTHORITATIVE AND RELIABLE. 11 THE COURT: ALL RIGHT. 12 MR. ADAMS, GO AHEAD. TELL ME WHAT YOU WANT TO 13 TELL ME. 14 MR. ADAMS: SO... 15 THE COURT: I'LL PERMIT YOU TO... 16 MR. ADAMS: IT'S PRECISELY WHAT IT MEANS, YOUR 17 HONOR, TO TAKE JUDICIAL NOTICE OF A DOCUMENT. IT IS TO 18 FIND THAT IT'S RELIABLE AND TRUTHFUL. AND IF IT 19 WEREN'T, THE COURT COULDN'T TAKE JUDICIAL NOTICE OF IT. 20 THE COURT: YEAH. I DON'T THINK I AGREE WITH THAT. 21 ALL RIGHT. SO I'M GOING TO SUSTAIN THE 22 OBJECTION THAT THIS IS, NOTWITHSTANDING A JUDICIALLY 23 NOTICED DOCUMENT. BASED ON WHAT I THINK IS ABOUT TO 24 HAPPEN WITH THESE PROPOSED SLIDES, I THINK IT'S UNDULY 25 DETAILED CASE-SPECIFIC HEARSAY. SO I'M NOT GOING TO LET 26 YOU DISPLAY THESE SLIDES, BUT YOU CERTAINLY CAN INQUIRE 27 GENERALLY AND IN A NOT TOO DETAILED NONCASE-SPECIFIC 28 HEARSAY FASHION ABOUT IT.

Page 154 1 Q BY MS. DEAN: DR. HABER, ARE THE STUDIES OF 2 MOTOR VEHICLE MECHANICS SUFFICIENTLY SENSITIVE TO DETECT 3 A CANCER EFFECT OF COMMERCIAL CHRYSOTILE ASBESTOS? 4 A NO. 5 Q IS THAT SOMETHING THAT IS OBSERVED AND 6 UNDERSTOOD BY THE ENVIRONMENTAL PROTECTION AGENCY? 7 A YES. 8 Q HAVE YOU SEEN THE 29 STUDIES THAT THE LAWYERS 9 FOR FRICTION DEFENDANTS THAT INDICATE AND SHOW THAT 10 THERE'S NO RISK FOR MESOTHELIOMA AMONG BRAKE WORKERS? 11 A YES. 12 Q I GRABBED ONE OF THEIR SLIDES THAT IDENTIFY 13 ALL 29. HAVE YOU REVIEWED EVERY SINGLE ONE OF THESE? 14 A YES. 15 Q OUTSIDE OF CHEMRISK AND EXPONENT AUTHORS, ARE 16 YOU AWARE OF ANYONE IN THE MEDICAL AND SCIENTIFIC 17 COMMUNITY THAT REVIEWS THESE STUDIES AND SAY, BRAKE 18 WORK, EVEN GRINDING AND SANDING, IS SAFE? 19 MR. LANKFORD: OBJECTION, YOUR HONOR. CALLS FOR 20 HEARSAY. 21 THE COURT: OVERRULED. 22 MR. LANKFORD: FOUNDATION. 352. 23 THE COURT: OVERRULED. 24 YOU CAN ANSWER. 25 THE WITNESS: NO. 26 MS. DEAN: I HAVE TO SPEND TIME, UNFORTUNATELY, 27 JUST GETTING THE FACTS. 28 MR. ADAMS: YOUR HONOR, MAY WE HAVE A SIDEBAR ON	Page 156 1 PAPER FROM 2004 SAID THAT THOSE STUDIES, THE TIER 3, 2 WERE UNRELIABLE. GARABRANT CHANGED THE TERMS TO LESS -- 3 I THINK IT WAS LIKE LESS -- NOT AS GOOD. THE LOWEST 4 QUALITY. 5 Q FOR THE FOUR THAT WERE IN THE EXPONENT PAPER, 6 ARE META-ANALYSIS AS BEING UNRELIABLE, DO YOU AGREE THAT 7 THEY ARE NOT RELIABLE IN TERMS OF FIGURING OUT WHETHER 8 MECHANICS ARE GETTING THE DISEASE MESOTHELIOMA? 9 A I DO. 10 Q AND FIRST JUST TO GET ON THE RIGHT PAGE. 11 THERE'S A LOT LESS THAN 29 STUDIES THAT ARE EVEN BEING 12 TALKED ABOUT; CORRECT? 13 A YES. 14 Q AND IF WE GO TO THE GOODMAN PAPER, JUST SO WE 15 CAN SEE THIS, THEY EXCLUSIVELY TALK ABOUT FOUR STUDIES 16 IN TIER 3 AND DETERMINED THAT THEY'RE UNRELIABLE; RIGHT? 17 A YES. 18 Q SO IN ASSESSING WHETHER GRINDING AN ASBESTOS 19 PRODUCT CAUSES HARM, IS THERE ANYONE ANYWHERE -- I'M 20 INCLUDING CHEMRISK AND EXPONENT IN THIS -- TO SAY THAT 21 THERE'S 29 STUDIES THAT TELL YOU NO? 22 A NO. 23 Q ONE OF THE ISSUES WITH THE STUDY -- 24 THE COURT: CAN YOU HOLD ON JUST A SECOND. HOLD ON 25 JUST A SECOND. 26 MR. ADAMS, SINCE WE KNOW ARE ALL -- MOST OF US 27 ARE DOING TWO THINGS AT ONCE BECAUSE THERE'S SO MUCH 28 GOING ON, TO USE YOUR TIME WELL, IF YOU WISH, TAKE A
Page 155 1 THIS ISSUE OF THE REQUEST FOR JUDICIAL NOTICE THAT WAS 2 GRANTED? 3 THE COURT: NOT NOW. 4 Q BY MS. DEAN: THE JURORS WERE TOLD THAT THERE 5 WERE 29 STUDIES. EVEN IF WE GO TO THE EXPONENT 6 META-ANALYSIS OF GOODMAN AND GARABRANT, WHEN THEY 7 REVIEWED THE LITERATURE AND IDENTIFIED THE STUDIES -- 8 FIRST OF ALL, THE LAST TIME IT WAS DONE IN 2015; RIGHT? 9 A RIGHT. 10 Q SO TO BE FAIR, FOUR OF THESE STUDIES CAME 11 AFTER? 12 A TRUE. 13 Q BUT IF WE LOOKED AT THE 25, WHEN THEY DID THE 14 LITERATURE, DID THEY INCLUDE ALL OF THESE STUDIES THAT 15 THE LAWYERS DO? 16 A NO. 17 Q ARE THERE A BUNCH OF THEM THAT THEY DIDN'T 18 THINK ANSWERED THE QUESTION ABOUT WHETHER MESOTHELIOMA 19 OCCURS WITH BRAKE WORK? 20 A RIGHT. THERE WERE SEVERAL THAT THEY JUST GOT 21 RID OF BECAUSE THEY WEREN'T TO BE CONSIDERED. 22 Q FOR THE ONES THAT THEY DID THINK SHOULD BE 23 CONSIDERED, DID THEY RATE THEM IN SOME WAY? 24 A THEY DID. 25 Q TELL ME ABOUT THAT. 26 A THEY HAD A THREE-TIER. TIER 1, WHICH WAS 27 THEIR BEST. TIER 2, WHICH WAS LOWER DOWN. AND THEN 28 TIER 3, DEPENDING UPON WHICH STUDY. THE FIRST GOODMAN	Page 157 1 LOOK AT MANGINI VERSUS R.J. REYNOLDS TOBACCO COMPANY, 7 2 CAL.4TH 1057 AT PAGE 1063, 1064. AND LOVE VERSUS WOLF, 3 226 CAL.APP.2D 378, 403. 4 MR. LANKFORD: YOUR HONOR, I OBJECT TO THE NEXT 5 SLIDE -- NEXT FEW SLIDES WITH THE EXCEPTION OF THE ONE 6 WITH THE DATA. I'M FINE WITH THE DATA. 7 MR. ADAMS: YOUR HONOR, WE'RE LOOKING AT EVIDENCE 8 CODE 454(A)(2), WHICH SAYS -- WELL, I'LL LET THE PARTIES 9 TAKE A LOOK AND THE COURT. 10 THE COURT: OKAY. ARE YOU OBJECTING TO THE 11 SLIDE -- 12 MR. LANKFORD: NO. I THINK IT'S FAIR TO PUT UP THE 13 DATA. 14 THE COURT: YOU'RE OBJECTING TO GO THE EPA SLIDES? 15 MR. LANKFORD: YES. 16 MS. DEAN: YOUR HONOR, EXPERTS ON THE OTHER SIDE 17 CONSIDER -- 18 THE COURT: RIGHT. THAT'S A 721 ISSUE. 19 OKAY. I'M GOING TO SUSTAIN THE OBJECTION FOR 20 THE SAME REASON. IT IS UNDULY DETAILED, CASE-SPECIFIC 21 HEARSAY. 22 BUT IT DOES NOT MEAN YOU CAN'T INQUIRE ABOUT 23 IT. 24 MS. DEAN: I STILL WANT TO ASK ABOUT THE SLIDE 25 THAT'S UP. 26 Q IS ONE OF THE PROBLEMS WITH THE 27 EPIDEMIOLOGICAL STUDIES ABOUT MECHANICS RELATED TO 28 LATENCY?

Page 158 1 A ABSOLUTELY. 2 Q CAN YOU TELL US ABOUT THAT? 3 A CERTAINLY. SO WITH DISEASE MESOTHELIOMA, IT 4 IS IMPERATIVE THAT YOU HAVE SUFFICIENT LATENCY. FOR 5 EXAMPLE, IF I HAVE A GROUP THAT ARE REALLY HIGHLY 6 EXPOSED INDIVIDUALS AND I STUDY THEM A WEEK LATER, A 7 MONTH LATER, A YEAR LATER, SIX YEARS LATER, SEVEN YEARS 8 LATER, TEN YEARS LATER, I'M NOT GOING TO DETECT AN 9 INCREASED RISK BECAUSE THEY'RE NOT GETTING MESOTHELIOMA. 10 IT TAKES -- YOU KNOW, IN THE MENSEI STUDY, 11 WHICH WAS THE HUGE STUDY OF 4,000 PEOPLE, 50 YEARS WAS 12 THE MEAN. SO YOU'VE GOT HALF THE PEOPLE THAT ARE STILL 13 ABOVE THAT. IN MY STUDY, 48 YEARS WAS THE MEDIAN 14 LATENCY PERIOD. AND MANY OTHER STUDIES SHOW SIMILAR -- 15 30, 40, 50 YEARS OF LATENCY. 16 SO IF YOU DO NOT -- IF YOU STOP YOUR STUDY OR 17 YOU ONLY FOLLOW THEM FOR 20 YEARS -- AND SOME PEOPLE 18 WERE MAYBE ONLY A FEW YEARS OUT OF THAT -- YOU'RE NOT 19 GOING TO DETECT CASES. WE'RE STILL AS IF -- YOU DON'T 20 EVEN -- A LOT OF THESE STUDIES THAT WERE BEING DONE WERE 21 NOT DESIGNED TO LOOK FOR THE MESOTHELIOMA IN BRAKE 22 WORKERS. AND SO A LOT OF THESE STUDIES DON'T HAVE ANY 23 INFORMATION ABOUT LATENCY, SO WE DON'T KNOW. 24 IT COULD HAVE BEEN A DAY. IT COULD HAVE BEEN 25 A MONTH. IT COULD HAVE BEEN TEN YEARS. THERE'S NO 26 INFORMATION AT ALL. SO THERE'S NO WAY FOR YOU TO BE 27 ABLE TO, AS A SCIENTIST, TO GO, OKAY, THERE WAS LONG 28 ENOUGH PERIOD OF TIME FOR ME TO BE ABLE TO SAY THAT, IF	Page 160 1 DOZEN OR MORE OF THEM THAT GIVE THAT EXACT KIND OF 2 INFORMATION WITH FIBER PER CC YEAR DOSES SO THAT 3 SCIENTISTS CAN SAY, YEAH, THAT RELATES TO MY PATIENT, 4 OR, NO, THAT'S VERY DIFFERENT? 5 A YES. 6 Q BUT FOR THE STUDIES THAT THE EXPONENT FOLKS 7 LOOKED AT, THEY DON'T PROVIDE ANY OF THAT DATA; CORRECT? 8 A CORRECT. 9 Q IS THAT PRECISELY ONE OF THE MANY PROBLEMS 10 IDENTIFIED BY THE ENVIRONMENTAL PROTECTION AGENCY? 11 A RIGHT. THAT'S WHAT LACKS -- YOU KNOW, THE 12 ISSUE ABOUT THE SENSITIVITY. IF YOU DON'T KNOW WHAT THE 13 LATENCY PERIOD WAS, IF YOU GOT -- THE FEW THAT MENTIONED 14 WHAT IT WAS AND IT WAS SEVEN YEARS, YOU'RE NOT GOING TO 15 BE SENSITIVE ENOUGH TO PICK UP CASES OF MESO. 16 Q IS WITKOWITZ ONE OF THE FEW STUDIES THAT AT 17 LEAST GIVES YOU SOME INFORMATION ABOUT HOW LONG THE 18 WORKERS WERE DOING THE WORK? 19 A RIGHT. THIS ONE GAVE AS FAR AS WORK DURATION 20 BUT NO LATENCY INFORMATION. BUT YES. THIS WAS A 21 DURATION OF EMPLOYMENT OF FOUR YEARS ON AVERAGE. 22 SOMEWHERE BETWEEN ONE AND 8.4 YEARS. SO THERE WAS SOME 23 PEOPLE THAT HAD, YOU KNOW, ONE YEAR. 24 Q AND SO THE AVERAGE DURATION, I THINK, IS, 25 THEY'RE SHOWING US HERE, FOUR YEARS WITH A RANGE OF ONE 26 AND 8.4? 27 A YES. 28 Q HOW LONG WAS GARY CHAPMAN AROUND SANDING AND
Page 159 1 THEY HAD EXPOSURES, THEY HAD RISK OF DISEASE. AND, 2 AGAIN, YOU KNOW, I COULD HAVE SOMEONE WHO HAS TREMENDOUS 3 EXPOSURES. BUT IF I STOP THE STUDY TOO SOON, THEY'RE 4 GOING TO LOOK LIKE THERE'S NOTHING WRONG WITH ASBESTOS. 5 Q AND ONE OF THE FEW THAT ACTUALLY TELLS YOU HOW 6 LONG THE FOLLOW-UP WAS, HOW LONG THEY WATCHED THE PEOPLE 7 TO SEE IF THEY GOT THE DISEASE, WAS THE LATENCY PERIOD 8 UNDER TEN YEARS? 9 A YEAH. IT WAS SEVEN YEARS. 10 Q IS THAT GOING TO TELL YOU WHETHER THE PEOPLE 11 DOING WORK ARE GOING TO GET THE DISEASE MESOTHELIOMA IN 12 THE VAST MAJORITY OF CASES? 13 A NO. 14 Q FOR ANY OF THESE STUDIES, DID THEY HAVE 15 AVAILABLE QUANTITATIVE EXPOSURE RESPONSE DATA FOR CANCER 16 RISK IN RELATION TO ASBESTOS EXPOSURE? 17 A NO. 18 Q DID THEY EVEN HAVE QUALITATIVE ASSESSMENT OF 19 INDIVIDUAL EXPOSURES TO ASBESTOS FROM WORK WITH MOTOR 20 VEHICLE BRAKES OR OTHER AUTOMOTIVE MAINTENANCE AND 21 REPAIR TASK? 22 A NO. THERE WAS NO -- IN ANY OF THESE STUDIES, 23 NONE OF THEM HAD ANY SORT OF QUALITATIVE OR QUANTITATIVE 24 ASSESSMENT OF WHAT THESE PEOPLE TO THE EXTENT THAT THEY 25 WERE EVEN DOING BRAKE WORK BECAUSE A LOT OF THEM WERE 26 LABELED AS GARAGE WORKERS OR OTHER THINGS. BUT THERE 27 WAS NO EXPOSURE OR EXPOSURE RESPONSE DATA. 28 Q ARE THERE STUDIES AND DID YOU SHOW A HALF	Page 161 1 BLOWING OUT BRAKES? 2 A 20-PLUS YEARS. 3 Q IN TERMS OF ONE OF THE FEW STUDIES THAT EVEN 4 ASK THE QUESTION DID YOU EVER DO BRAKE SERVICE, DID MOST 5 OF THEM NEVER TOUCH A BRAKE? 6 A YES. 7 Q IN ALL OF THE STUDIES THAT ARE IN THIS 8 META-ANALYSIS, DO A SINGLE ONE OF THEM CONFIRM EVEN ONCE 9 THAT THE GROUP, WHETHER IT'S A GARAGE WORKER OR A 10 MECHANIC, WHATEVER THEY DEFINE, EVEN ONCE USE COMPRESSED 11 AIR? 12 A I'M SORRY. IF YOU COULD SPEAK INTO THE MIKE. 13 Q IN ALL OF THE STUDIES THAT ARE IN THE 14 META-ANALYSIS BY THE EXPONENT FOLKS, DO THEY EVER SAY IN 15 THE STUDY, YES, THESE WORKERS WERE GRINDING BRAKES? 16 A NO, THEY DO NOT. 17 Q DO THEY MENTION THE TERM "COMPRESSED AIR"? 18 A NO, THEY DO NOT. 19 Q DO YOU KNOW IF THEY EVER SANDED A BRAKE? 20 A WE DO NOT. 21 Q DO YOU KNOW IF THEY WERE DOING ALL OF THE 22 PROTECTIVE MEASURES THAT WERE BEING DISCUSSED IN THAT 23 VIDEO CALLED DON'T BLOW IT? 24 A NO. WE DON'T HAVE ANY INFORMATION. 25 Q DO YOU AGREE WITH THE EPA AND OTHERS THAT, 26 WITHOUT THAT BASIC INFORMATION, MAKING A JUDGMENT CALL 27 FOR AN ACTUAL PATIENT IS NOT POSSIBLE? 28 A YES.

Page 162 1 Q DO YOU AGREE WITH THE IDEA THAT STUDIES BASED 2 SOLELY ON BROAD OCCUPATIONAL GROUPS HAVE MORE LIMITED 3 SENSITIVITY TO DETERMINE RISK ARISING FROM WORK WITH 4 BRAKE PARTS OR OTHER COMPONENTS CONTAINING ASBESTOS AS 5 MANY WORKERS WILL NOT HAVE DONE SUCH WORK? 6 A YES. 7 Q IS THAT WHAT YOU WERE TALKING ABOUT WITH THE 8 BICYCLE MECHANIC? 9 A YES. OR TITLED GARAGE WORKER, FOR EXAMPLE. 10 Q IN TERMS OF ANOTHER LIMITATION, YOU HAD 11 MENTIONED THAT YOU NEED TO MAKE SURE YOU HAVE AN ACTUAL 12 GROUP THAT WAS EXPOSED AND THEN A GOOD COHORT. I WANT 13 TO MAKE SURE I UNDERSTAND THAT. 14 A A GOOD CONTROL. 15 Q DID I SAY SOMETHING DIFFERENT? 16 A YES, YOU DID. 17 Q THANK YOU FOR CORRECTING ME. 18 YOU WERE KIND OF GESTURING WITH YOUR HANDS 19 COMPARING TWO GROUPS. IS THE GOAL TO FIND AN EXPOSED 20 GROUP AND COMPARE THEM TO ANOTHER? 21 A YES. A CONTROL. 22 Q IS THERE A NAME FOR THE SECOND GROUP IN 23 EPIDEMIOLOGICAL PARLANCE? 24 A YES. THE CONTROL. 25 Q OKAY. IF I, INSTEAD OF GETTING DATA ABOUT 26 PEOPLE WORKING ON BRAKES AND HOW THEY DO USE TERMS LIKE 27 A MECHANIC OR EVEN AN AUTO MECHANIC WHERE YOU MIGHT HAVE 28 A BODY SHOP WORKER OR A GARAGE WORKER, IS THE CONCERN Page 163 1 THAT YOU MIGHT HAVE PEOPLE THAT WERE NEVER EXPOSED 2 DUMPED INTO THIS CATEGORY? 3 A YES. 4 Q SO IF I PUT A LINE OF WHAT THE TRUE RISK IS, 5 IF I ACCIDENTALLY PUT IN A BUNCH OF PEOPLE THAT AREN'T 6 EXPOSED, WHAT DOES THAT DO TO THAT LINE? 7 A IT DECREASES IT. 8 Q AND IF THE CONTROL GROUP'S REAL RISK IS REALLY 9 LOW, BECAUSE YOU DON'T SEE MESOTHELIOMA WITHOUT 10 ASBESTOS, BUT I'M PUTTING IN A BUNCH OF PEOPLE THAT HAVE 11 BEEN EXPOSED TO ASBESTOS, WHAT IS THAT GOING TO DO TO 12 THE LINE? 13 A IT'S GOING TO INCREASE IT. 14 Q AND IS ONE OF THE CONCERNS ABOUT THE STUDIES 15 IN THE GOODMAN AND GARABRANT META-ANALYSIS, IS THEY PUT 16 A BUNCH OF PEOPLE THAT WERE EXPOSED TO ASBESTOS IN THE 17 CONTROL GROUP? 18 A YES. 19 Q TELL ME ABOUT THAT. 20 A SO SOME OF THE STUDIES THAT THEY DID HAD 21 PEOPLE IN OTHER INDUSTRIES, FOR EXAMPLE. THEY HAD 22 PEOPLE THAT HAD DISEASES THAT COULD BE ASSOCIATED, LIKE 23 LUNG CANCER. SO THERE WAS INDICATIONS THAT THE CONTROLS 24 WERE NOT GOOD CONTROLS. 25 AND THEN, I GUESS, THE OTHER DIRECTION IS 26 THAT -- WE'VE ALREADY TALKED ABOUT THAT THERE WERE 27 PEOPLE THAT HAD THIS BROAD CATEGORIES BUT DON'T REALLY 28 SAY, HOW MANY OF YOU WERE DOING BRAKE WORK AND, YOU	Page 164 1 KNOW, OR ANY INFORMATION AS FAR AS EXPOSURES TO BRAKE 2 WORK. SO IT DECREASES THE EXPOSED GROUP. 3 Q YOU'VE MENTIONED BEFORE THAT THE BACKGROUND 4 RATE OF HOW MANY MESOTHELIOMAS YOU WOULD SEE JUST IN THE 5 GENERAL POPULATION IS LIKELY LESS THAN ONE OR TWO PER 6 MILLION? 7 A YES. 8 Q IN ONE OF THEIR STUDIES, HOW MANY PEOPLE DID 9 THEY HAVE IN THEIR CONTROL GROUP PER MILLION? 10 A 900. 11 Q IF YOU ELEVATE THE AMOUNT OF EXPOSURE IN THE 12 CONTROLLED GROUP SO MUCH THAT YOU'RE SEEING MORE DEATH 13 AND DISEASE IN THE CONTROL GROUP THAN IN THE EXPOSED 14 GROUP, IS THERE A NAME FOR THAT? 15 A YEAH. PROTECTION. 16 Q IS THAT THE IDEA THAT WORKING WITH ASBESTOS 17 SOMEHOW PROTECTS YOU FROM GETTING CANCER? 18 A RIGHT. WHICH IS NONSENSICAL. 19 Q THE META-ANALYSIS DONE BY THE EXPONENT FOLKS, 20 DO THEY SHOW THAT BRAKE WORK IS PROTECTED? 21 A YES. 22 Q IS PART OF WHAT WAS DONE BY THE ENVIRONMENTAL 23 PROTECTION AGENCY IN EXAMINING THIS GARABRANT 24 META-ANALYSIS SPECIFICALLY LOOKING AT EVERY STUDY, STUDY 25 BY STUDY, TO DISCUSS ITS LIMITATIONS? 26 A YES. 27 Q I WANT TO TALK TO YOU ABOUT THE ONE STUDY THAT 28 MR. WILLIAMS FOR FORD REMEMBERED, THE MCDONALD AND Page 165 1 MCDONALD STUDY. ARE YOU FAMILIAR WITH IT? 2 A I AM. 3 Q OKAY. FIRST OF ALL, DID THEY DO A SECOND 4 STUDY? 5 A YES. 6 Q TELL ME ABOUT THAT. 7 A THEY DID -- WELL, THEY DID A FIRST STUDY, 8 WHICH WAS EARLIER IN 1970, WHERE THEY LOOKED AT 9 SPECIFICALLY BRAKE WORKERS, BRAKE INSTALLERS, AND FOUND 10 AN INCREASED RISK OF MALIGNANT MESOTHELIOMA. 11 Q IS THAT ONE INCLUDED IN THE META-ANALYSIS? 12 A NO. 13 Q AND THE SECOND STUDY WHERE, INSTEAD OF LOOKING 14 AT BRAKE LINING WORKERS, THEY LOOKED AT GARAGE WORKERS? 15 A CORRECT. 16 Q THEY DIDN'T FIND AN INCREASED RISK; RIGHT? 17 A CORRECT. 18 Q IS ONE OF THE CRITICISMS IS WHO THE CONTROLLED 19 GROUP WAS? 20 A YES. 21 Q TELL ME ABOUT THAT. 22 A SO, AGAIN, THE CONTROL GROUP HAD POTENTIAL FOR 23 OTHER OCCUPATIONAL EXPOSURES, SO IT WAS NOT AN UNEXPOSED 24 GROUP. 25 Q WAS THERE AN EFFORT TO ACTUALLY LOOK AT THE 26 DATA IN MCDONALD AND MCDONALD AND COMPARE IT TO A REAL 27 CONTROL GROUP, A GROUP THAT DOESN'T HAVE EXPOSURE TO 28 ASBESTOS, TO SEE IF THERE'S A SIGNIFICANT INCREASE IN

Page 166 1 DISEASE AND DEATH RATE FROM MESOTHELIOMA? 2 A YES. 3 Q WHEN YOU ACTUALLY USE A PROPER CONTROL GROUP, 4 IS THERE AN INCREASED RISK? 5 A YES. 6 Q IS THAT SOMETHING THAT THE ENVIRONMENTAL 7 PROTECTION AGENCY DOCUMENTED? 8 A YES. 9 Q I WANT TO TALK ABOUT ONE OF THE STUDIES THAT 10 CAME OUT AFTER THE META-ANALYSIS. ARE YOU FAMILIAR WITH 11 THIS STUDY OF 138,000-PLUS WORKERS IN RISK OF 12 ASBESTOSIS, MESOTHELIOMA, AND OTHER LUNG DISEASE OR 13 DEATH AMONG MOTOR VEHICLE MECHANICS, A 45-YEAR DANISH 14 COHORT STUDY? 15 A YES. 16 Q OKAY. IS THIS ONE OF THE FEW THAT ACTUALLY 17 HAS A DECENT FOLLOW-UP? 18 A YES. 19 Q FIRST OF ALL, WHAT HAPPENED IN DENMARK IN 20 1986? 21 A THEY BANNED ASBESTOS. 22 Q SECOND, WHAT DID THEY FIND ABOUT ASBESTOSIS IN 23 THIS STUDY? 24 A THEY FOUND AN INCREASED RISK. 25 Q WHY IS THAT IMPORTANT? 26 A BECAUSE ASBESTOSIS IS ONLY CAUSED BY ASBESTOS 27 AND IT IS CAUSED -- IT RESULTS FROM HIGHER EXPOSURES TO 28 ASBESTOS -- FAR HIGHER EXPOSURES TO ASBESTOS THAN HAVE	Page 168 1 REGISTRY? 2 A YES. 3 Q DID THEY STUDY AUTOMOBILE MECHANICS? 4 A YES. 5 Q WAS THERE AN INCREASED RISK? 6 A YES. 7 Q ARE YOU FAMILIAR WITH THIS STUDY A DECADE OF 8 MALIGNANT MESOTHELIOMA SURVEILLANCE IN KOREA? 9 A YES. 10 Q DID THEY FIND AN INCREASED RISK IN BRAKE 11 WORKERS? 12 A YES. 13 Q ARE YOU FAMILIAR WITH THE DEBONO STUDY, 14 INCIDENCE OF MESOTHELIOMA IN ASBESTOS BY OCCUPATION IN A 15 DIVERSE WORKFORCE? 16 A YES. IN FACT, THAT WAS JUST PUBLISHED LAST 17 YEAR. AND THEY ALSO FOUND AN INCREASED RISK. 18 Q ARE YOU ALSO FAMILIAR WITH PUBLISHED 19 PEER-REVIEWED STUDIES AND BOOKS FROM SCIENTISTS 20 INDICATING THEY DISAGREE WITH THE WORK OF GARABRANT AND 21 EXPONENT? 22 A YES. 23 MR. LANKFORD: YOUR HONOR, I OBJECT TO THE NEXT 24 SLIDE AS HEARSAY. LETTERS TO THE EDITOR. FOUNDATION. 25 352. 26 THE COURT: YOU OBJECT TO TABLE 2? 27 MR. LANKFORD: NO, I DON'T OBJECT TO TABLE 2. BUT 28 I OBJECT ALL THE WAY GOING TO FREEDMAN. AND THERE'S
Page 167 1 BEEN SHOWN TO INCREASE YOUR RISK FOR MESOTHELIOMA. 2 Q IN THE GROUP THAT WERE MECHANICS, DID THEY 3 FIND DOZENS AND DOZENS AND DOZENS OF PEOPLE DYING OF 4 MESOTHELIOMA, 47 TO BE SPECIFIC? 5 A RIGHT. 6 Q IS THIS WHERE THEY COMPARED IT TO A GROUP, A 7 CONTROL GROUP, WITH INCREDIBLE NUMBER OF MESOTHELIOMAS? 8 A YES. THE CONTROL GROUP HAD, IF YOU CALCULATE 9 IT OUT, 900 MESOTHELIOMAS PER MILLION. 10 Q I WANT TO JUST MAKE SURE WE HAVE A LIST OF 11 STUDIES THAT YOU FIND RELIABLE AND AUTHORITATIVE THAT 12 HAVE SHOWN AN INCREASED RISK IN MECHANICS THAT AREN'T 13 CONSIDERED IN THE GARABRANT META-ANALYSIS. 14 ARE YOU PREPARED TO TALK ABOUT THAT? 15 A YES. 16 Q I WANT TO BE CLEAR. ROHL SHOWED AN INCREASE 17 RISK? 18 A YES. 19 Q THAT IS A META-ANALYSIS? 20 A IT WAS. THE SECOND -- YES. 21 Q THE SECOND ONE? 22 A YES. 23 Q IS THERE ALSO A STUDY IN GENOA, ITALY, THAT 24 YOU FIND RELIABLE? 25 A YES. 26 Q DID IT FIND AN INCREASED RISK? 27 A YES. 28 Q ARE YOU FAMILIAR WITH THE AUSTRALIAN MESO	Page 169 1 ALSO THE MICHAELS THERE, WHICH IS SUBJECT TO THE COURT'S 2 RULING, SPECIFICALLY INCLUDING THAT, THE STANDING 3 RULING. 4 MS. DEAN: THERE'S NO RULING ON THE DAVID MICHAELS' 5 ARTICLE. 6 THE COURT: GIVE ME A MINUTE. 7 MR. LANKFORD: I'M FINE WITH THE DATA. IT'S ALL 8 THE ONES WITH THE TEXT AND THEIR EDITORIALS AND LETTERS 9 AND -- 10 THE COURT: I UNDERSTAND. 11 IS THERE MORE FOUNDATION YOU WANT TO LAY ON 12 THIS BEFORE SHOWING -- 13 MS. DEAN: YES. 14 THE COURT: -- WHAT YOU'RE DOING HERE? LET ME FIND 15 OUT WHAT IT IS. GO AHEAD AND ESTABLISH MORE FOUNDATION, 16 IF YOU CAN. 17 Q BY MS. DEAN: ARE YOU FAMILIAR WITH THE 18 PEER-REVIEWED PUBLISHED LETTER TO THE EDITOR FROM KAY 19 TESCHKE CRITICIZING THE GARABRANT META-ANALYSIS? 20 A I AM. 21 Q IS IT CALLED THINKING ABOUT 22 OCCUPATION-RESPONSE AND EXPOSURE-RESPONSE RELATIONSHIPS: 23 VEHICLE MECHANICS, CHRYSOTILE, AND MESOTHELIOMA? 24 A IT IS. 25 Q OKAY. 26 THE COURT: HOLD ON BEFORE YOU SHOW IT. IS THAT 27 THE FOUNDATION OR ARE YOU GOING TO GO TO THE TABLE? 28 MS. DEAN: I'M GOING TO GO TO THE TABLE.

Page 170 1 THE COURT: OKAY. GO AHEAD. 2 Q BY MS. DEAN: IN TERMS OF UNDERSTANDING WHO 3 KAY TESCHKE IS, I'M BACK IN THE GARABRANT PAPER, THE 4 META-ANALYSIS FROM THE EXPONENT PEOPLE. THEY TIERED 5 THEIR STUDIES; RIGHT? 6 A YES. 7 Q IN 2004 WHEN THEY LOOKED AT THE WORLD'S 8 LITERATURE ON THE ISSUE AND THEY GRADED IT, WHO GOT THE 9 BEST GRADE? 10 A KAY TESCHKE. 11 Q THE ACTUAL PEOPLE DOING THE WORK, HAVE THEY 12 COME OUT AND PUBLISHED IN A PEER-REVIEWED CONTEXT THAT 13 SAY WHAT YOU'RE SAYING ABOUT MY PAPER IS NOT SUPPORTED 14 BY SCIENCE? 15 A YES. 16 MR. LANKFORD: OBJECTION, YOUR HONOR. HEARSAY. 17 THE COURT: SUSTAINED. 18 ANSWER STRICKEN. 19 Q BY MS. DEAN: WHAT HAVE YOU SEEN IN THE 20 PEER-REVIEWED PUBLISHED LITERATURE FROM THE ACTUAL 21 AUTHORS OF THE STUDIES ABOUT THE LIMITS OF THE EXPONENT 22 META-ANALYSIS? 23 MR. LANKFORD: SAME OBJECTION, YOUR HONOR. 352. 24 HEARSAY. HE WANTS TO TALK ABOUT DATA POINTS. 25 THE COURT: ABOUT THE LIMITS; THAT'S THE QUESTION? 26 MS. DEAN: YES. 27 THE COURT: SUSTAINED. 28 Q BY MS. DEAN: DO YOU RELY ON THIS PAPER BY KAY	Page 172 1 A THEY DO. 2 Q ARE YOU FAMILIAR IN EPIDEMIOLOGY: OPEN ACCESS 3 OF THE KANAREK AND ANDERSON PAPER MESOTHELIOMA FROM 4 ASBESTOS EXPOSURE IN BRAKE MECHANICS: EPIDEMIOLOGY IN 5 CONTEXT? 6 A YES. 7 Q DO THEY SHARE THE SAME VIEWS THAT YOU TOLD US 8 ABOUT AND THAT ARE OUTLINED IN THE EPA? 9 A YES. 10 Q ARE YOU FAMILIAR BY THE WORK OF DR. MICHAELS 11 IN HOW LITIGATION SHAPES THE SCIENTIFIC LITERATURE: 12 ASBESTOS & DISEASE AMONG AUTOMOBILE MECHANICS? 13 A I AM. 14 Q DO YOU RELY ON HIS WORK? 15 A YES. 16 Q AND IN ADDITION TO HIS PEER-REVIEWED PUBLISHED 17 ARTICLE, DO YOU ALSO REVIEW AND RELY ON HIS TEXTBOOK? 18 A YES. 19 MR. LANKFORD: YOUR HONOR, I'LL OBJECT. THIS IS 20 THE SECOND TIME SHE'S ABOUT TO VIOLATE YOUR ORDER. 21 THE COURT: WELL, I'M SURE COUNSEL IS AWARE OF MY 22 ORDERS. OVERRULED. 23 Q BY MS. DEAN: DO YOU RELY ON HIS TEXTBOOK? 24 A YES. 25 Q DO YOU AGREE WITH HIS CONCERNS AND CRITICISMS 26 OF EXPONENT? 27 A YES. 28 Q WHO IS DAVID MICHAELS?
Page 171 1 TESCHKE? 2 A YES. 3 Q TELL ME WHAT CONCERNS YOU HAVE ABOUT THE 4 META-ANALYSIS AND WHY YOU RELY ON THIS PAPER. 5 A WELL, JUST AS WITH -- WE TALKED ABOUT EARLIER 6 WITH THE EPA, THAT THE TITLE "MOTOR VEHICLE MECHANIC" OR 7 "GARAGE WORKER" OR EVEN "BRAKE REPAIR WORKER" IS NOT A 8 GOOD SURROGATE FOR CHRYSOTILE EXPOSURE. THE ISSUE IS 9 THE EXPOSURE. THAT'S WHAT WE KNOW CAUSES THE DISEASE. 10 AND SO USING THESE TERMS -- ESPECIALLY A LOT 11 OF THESE STUDIES DON'T LOOK AT HOW MUCH BRAKE WORK WAS 12 ACTUALLY BEING DONE. AND EVEN IN THE BRAKE WORKERS, 13 SOME OF THE STUDIES THAT DID, INDICATED AS MUCH AS A 14 THIRD OF THEM -- OF BRAKE WORKERS WEREN'T DOING BRAKE 15 WORK. AND WE KNOW THAT ALL ASBESTOS FIBER TYPES CAUSE 16 MESOTHELIOMA, AND THAT INCLUDES CHRYSOTILE ASBESTOS. 17 Q ARE YOU FAMILIAR WITH THE PAPER IN THE ANNALS 18 OF OCCUPATIONAL HYGIENE WHERE ARE THE RISK -- WHEN ARE 19 RISK ANALYSIS ON JOB TITLE INFORMATIVE? LET ME TRY THAT 20 AGAIN. WHEN ARE RISK ANALYSIS ON JOB TITLES 21 INFORMATIVE? 22 A YES. 23 Q DO YOU RELY ON THAT? 24 A YES. 25 Q DO YOU FIND IT AUTHORITATIVE? 26 A I DO. 27 Q DO THEY ALSO CRITICIZE THE SAME STUDY YOU'VE 28 BEEN TALKING ABOUT?	Page 173 1 THE COURT: WHO? 2 Q BY MS. DEAN: WHO IS DAVID MICHAELS JUST IN 3 TERMS OF HIS SCIENTIFIC BACKGROUND? 4 A HE'S AN EPIDEMIOLOGIST AND USED TO WORK AT 5 OSHA. 6 Q ARE YOU AWARE OF HIS INVOLVEMENT AS A FORMER 7 HEAD OF OSHA? 8 A YES. THAT'S WHAT I SAID. 9 Q IN TERMS OF JUST DESCRIBING FOR THE JURY YOUR 10 OPINIONS THAT ARE SHARED BY DAVID MICHAELS RELATING TO 11 EXPONENT, CAN YOU TELL US ABOUT THAT? 12 MR. LANKFORD: CALLS FOR HEARSAY, YOUR HONOR. 13 THE COURT: AS PHRASED, IT DOES. SUSTAINED. 14 Q BY MS. DEAN: CAN YOU TELL ME YOUR CONCERNS 15 BASED ON WHAT YOU HAVE REVIEWED AND RELIED ON RELATING 16 TO EXPONENT AND CHEMRISK? 17 MR. LANKFORD: YOUR HONOR, FOUNDATION. 352. 18 THE COURT: IS THE QUESTION AS RELATED TO THE 19 PUBLISHED WORK THAT YOU'VE BEEN DESCRIBING WITH THE 20 WITNESS OR MORE GENERALLY? 21 MS. DEAN: IT'S SPECIFICALLY RELATED TO THE 22 PUBLISHED WORK THAT HE'S REVIEWED AND IDENTIFIED AS 23 RELIABLE AND AUTHORITATIVE. THERE'S TWO MORE I HAVEN'T 24 YET IDENTIFIED. 25 THE COURT: FOR THIS CASE; RIGHT? 26 MS. DEAN: YES. 27 THE COURT: OVERRULED. 28 YOU CAN ANSWER THAT QUESTION. DO YOU

Page 174 1 UNDERSTAND THE LIMITATION? 2 THE WITNESS: I THINK SO, YOUR HONOR. 3 THE COURT: WE'RE NOT ASKING YOUR GENERAL OPINION 4 OF THOSE ENTITIES BUT ABOUT THE SCIENTIFIC WORK THAT 5 YOU'VE TOLD THIS JURY ABOUT IN THIS CASE. YOU 6 UNDERSTAND? 7 THE WITNESS: YES. 8 MR. LANKFORD: YOUR HONOR, I ALSO OBJECT ON THE 9 BASIS OF HEARSAY. IT'S NOT SCIENTIFIC DATA. 10 THE COURT: OVERRULED. 11 DO YOU UNDERSTAND WHAT YOU'RE DOING? 12 THE WITNESS: I'M SORRY. 13 THE COURT: LET'S HEAR THE QUESTION, PLEASE. 14 Q BY MS. DEAN: I WANT YOU TO SHARE YOUR 15 CONCERNS AS IT RELATES TO THE SCIENTIFIC WORK DONE BY 16 EXPONENT AND CHEMRISK BASED ON THE ARTICLES AND 17 TEXTBOOKS YOU HAVE REVIEWED AND RELIED ON. 18 THE COURT: AND I'M SORRY. ONE LAST. 19 WE WANT YOUR CONCERNS, NOT ANYBODY ELSE'S. 20 YOURS. UNDERSTOOD? 21 THE WITNESS: YES. 22 THE COURT: OKAY. GO AHEAD. 23 THE WITNESS: YES, SIR. 24 SO MY CONCERN IS THAT THESE PAPERS ARE COMING 25 OUT WITH POSITIONS THAT ARE RAISING DOUBT AS TO DISEASE 26 CAUSED BY VARIOUS SUBSTANCES OR CAUSES INCLUDING 27 ASBESTOS-RELATED DISEASE. 28 Q BY MS. DEAN: IS RAISING DOUBT WHERE DOUBT IS	Page 176 1 WHAT THE ANSWER WOULD HAVE BEEN OR I WONDER WHY THAT 2 LAWYER OBJECTED OR I WONDER WHY JUDGE RIFF DID WHAT HE 3 DID. JUST LEAVE THAT FOR US. YOU CONCENTRATE ON YOUR 4 JOB OF WHICH IT'S A BIG ENOUGH JOB AS IT IS. 5 OKAY. AGAIN, WEEKENDS ALWAYS WORRY US A 6 LITTLE BIT BECAUSE PEOPLE LET THEIR GUARD DOWN. BUT I 7 KNOW I CAN COUNT ON YOU. DO NOT FORM OR EXPRESS ANY 8 OPINIONS. DO NOT DISCUSS THIS CASE. DO NOT DO ANY 9 RESEARCH. PLEASE BE HERE ON TIME MONDAY MORNING. IT 10 REALLY IS MY GOAL TO GET YOU IN HERE AS SOON AS I CAN AT 11 8:30 EVEN THOUGH TODAY THAT WAS TEN AFTER 9:00. 12 THANK YOU SO MUCH. YOU ARE FREE TO GO. 13 COUNSEL STAY, PLEASE. 14 15 (THE FOLLOWING PROCEEDINGS WERE HELD 16 OUTSIDE THE PRESENCE OF THE JURY.) 17 18 THE COURT: OKAY. WE'RE OUTSIDE THE PRESENCE. 19 I ACKNOWLEDGE THE PROBLEM OF TRYING TO GET THE 20 JURY ON -- INTO THE BOX AT 8:30 AND OUT OF HERE AT 1:30 21 WITH TWO SHORT BREAKS AND THEN HAVING TO GIVE OUR STAFF 22 90 MINUTES. AND THEN I HAVE TO DO ALL OF THE WORK THAT 23 THIS DEPARTMENT NORMALLY IS ASSIGNED BETWEEN 3:00 AND 24 4:15 EVERY DAY. YOU DON'T SEE THIS. BUT AT 3:00 25 O'CLOCK WE REENGAGE, AND I HAVE FIVE OR SIX HEARINGS ON 26 COMPLEX MATTERS. AND I KNOW THAT DOESN'T GIVE US A LOT 27 OF TIME FOR OUR TALKING. 28 I'VE BEEN WILLING TO IMPOSE ON STAFF A LITTLE
Page 175 1 VALID A CONCERN FOR YOU AT ALL? 2 A NO. 3 Q IS THERE A CONCERN ABOUT DOUBT BEING RAISED 4 WHEN THERE IS NO DOUBT? 5 A RIGHT. DISEASES THAT EVERYTHING IS -- WE KIND 6 OF ESTABLISHED THE CAUSE. AND IF YOU'RE PERFORMING 7 STUDIES TO -- THAT ARE IN THE -- INHERENT IN THE WAY THE 8 STUDY IS BEING PERFORMED SHOWING, WELL, NO THIS DOESN'T 9 HAVE RISK, THAT I HAVE A PROBLEM WITH. 10 Q FOR THESE TWO -- 11 MR. LANKFORD: YOUR HONOR, I'D ALSO OBJECT TO THE 12 REMAINING SLIDES UP TO THE ONE THAT SAYS "MAIN 13 OPINION" -- 14 THE COURT: WE'RE GOING TO BE BREAKING IN ONE 15 MINUTE. MAYBE WE SHOULD DO IT NOW. 16 MS. DEAN: I CAN GO PAST THEM. 17 THE COURT: I WANT TO STOP AT 1:20. THERE IS A 18 REASON FOR THAT. 19 OKAY. LADIES AND GENTLEMEN. COUPLE THINGS. 20 DON'T COME HERE TOMORROW. OKAY. PLEASE. YOU CAN COME, 21 BUT THE DOOR WILL PROBABLY BE LOCKED. THAT'S NUMBER 22 ONE. 23 NUMBER TWO, REMEMBER I TOLD YOU, PLEASE DON'T 24 CONCERN YOURSELF WITH THE OBJECTIONS AND THE COURT'S 25 RULINGS. AS YOU'RE NOW GETTING MAYBE SOME FLAVOR FOR, 26 THESE ARE REASONABLY TECHNICAL QUESTIONS OF LAW THAT I 27 NEED TO SORT OUT. JUST GO WITH MY RULINGS AND DON'T -- 28 PLEASE DON'T ENGAGE IN YOUR MIND AS TO, GEE, I WONDER	Page 177 1 BIT AFTER 1:30, BUT I REALLY CAN'T DO THAT TOO MUCH. AT 2 SOME POINT I JUST HAVE TO SAY UNCLE. 3 SO WITH RESPECT TO THE DISCUSSION, MR. ADAMS, 4 YOU AND I WERE HAVING CONCERNING THE MEETS AND BOUNDS OF 5 JUDICIAL NOTICE, I'LL LISTEN BRIEFLY TO WHAT YOU HAVE TO 6 SAY, BUT I DO WONDER SOMETIMES WHY PEOPLE WANT THE COURT 7 TO TAKE JUDICIAL NOTICE OF INVESTIGATIVE REPORTS OF 8 AGENCIES SINCE ALL THAT IS BEING NOTICED IS THEIR 9 EXISTENCE AND NOT THE TRUTH OF THE CONTENTS. 10 WITH RESPECT TO EVIDENCE CODE SECTION 454, 11 WHICH I THINK YOU WERE DIRECTING ME TO, THAT RELATES TO 12 MATERIAL THAT THE COURT CAN CONSIDER WHETHER TO TAKE 13 JUDICIAL NOTICE, NOT THE JUDICIALLY NOTICED MATERIAL 14 ITSELF. 15 SO WHAT WOULD YOU LIKE TO SAY, IF ANYTHING? 16 MR. ADAMS: WELL, I WOULD LIKE TO SAY THAT I WILL 17 TAKE A LOOK AT THE CASES. I WAS TRYING TO READ THEM 18 WHILE EVERYTHING WAS GOING ON. IT WAS JUST TOO 19 DISTRACTING. BUT I DO ACTUALLY AGREE THAT THE COURT DID 20 NOT TAKE JUDICIAL NOTICE THAT WHAT IS IN THE FINAL 21 CONCLUSIVE EVALUATION OF THE DEFENDANTS' ENTIRE 22 CAUSATION DEFENSE AND EVERY ARTICLE IN IT AND SAID IT'S 23 FALSE, THE COURT DID NOT TAKE JUDICIAL NOTICE OF THAT. 24 WHAT THE COURT TOOK JUDICIAL NOTICE OF WAS THE 25 EXISTENCE OF THE OFFICIAL ACT. AND THE ONLY PURPOSE OF 26 TAKING JUDICIAL NOTICE IN A CASE IS TO IMPORT FACTS TO A 27 JURY. AND SO WE MOVE FOR JUDICIAL NOTICE ON CERTAIN 28 GOVERNMENT REGULATIONS AND OFFICIAL ACTS, WHICH WERE ALL

Page 178 1 GRANTED. AND I THINK THE COURT'S COMMENT WAS, IT'S SO 2 OBVIOUS. I DIDN'T REALLY EVEN NEED AN OPPOSITION. 3 AND THEN YOU DID GET AN OPPOSITION, AND IT WAS 4 SORT OF A MOTION FOR RECONSIDERATION. AND THE COURT, 5 AGAIN, AFFIRMED ITS ORIGINAL POSITION, THAT IT HAD TAKEN 6 JUDICIAL NOTICE OF THESE DOCUMENTS. 7 THE COURT: YEAH. AND CAN I STOP YOU JUST TO SAY, 8 SO, FOR EXAMPLE, A REGULATION THAT ESTABLISHES A 9 STANDARD OF CARE, I'M WELL AWARE, I CAN TAKE JUDICIAL 10 NOTICE OF THAT AND INCLUDE IT IN THE JURY INSTRUCTION, 11 AND THAT IS A GOOD REASON TO TAKE JUDICIAL NOTICE OF 12 SOMETHING. 13 BUT TAKING JUDICIAL NOTICE OF, FOR EXAMPLE, IN 14 THE MANGINI CASE THAT THE GOVERNMENT CONDUCTED THIS 15 MAJOR INVESTIGATION OF HEALTH RISKS OF CIGARETTE 16 SMOKING, WE CAN TAKE JUDICIAL NOTICE OF THAT, BUT THE 17 FACT THAT THAT REPORT SAYS CIGARETTES CAUSE CANCER WE 18 CAN'T TAKE JUDICIAL NOTICE OF THAT. 19 MR. ADAMS: AND THAT'S NOT WHAT WE'RE ASKING FOR. 20 WE DIDN'T ASK FOR THE COURT TO TELL THE JURY THE FACTS 21 IN THE EPA'S DECEMBER 2021 EVALUATION OF ALL OF THE 22 EPIDEMIOLOGY STUDIES EXCEPT FOR A COUPLE NEW ONES THAT 23 THE JURY WAS TOLD ABOUT IN OPENING STATEMENT AS THE 24 CENTERPIECE OF THEIR DEFENSE. WE DIDN'T ASK THE COURT 25 TO TELL THE JURY THAT THE EPA SAID THAT'S ALL WRONG, 26 WHICH IS WHAT THE EPA SAID. I MEAN, IT'S A DONE DEAL. 27 AND SO THAT -- IT COULDN'T BE ON A MORE CRITICAL ISSUE. 28 WE COULDN'T HAVE BEEN MORE -- SO HERE'S MY POINT.	Page 180 1 FINDING FROM THE EPA THAT I RELIED ON, I CONSIDERED THAT 2 WAS AT MY DEPOSITION, THAT THERE WAS NO MOTION IN LIMINE 3 ON, THAT WAS JUDICIALLY NOTICED TWICE BY THIS COURT, AND 4 SOME KIND OF FACTS ABOUT THAT WOULD HAVE BEEN CONVEYED 5 TO THE JURY. 6 NOW, ON CROSS, THEY WILL BE A HUNDRED PERCENT 7 FOR SURE, GUARANTEED, CONVEYED TO THE JURY BECAUSE IT'S 8 A DIFFERENT STANDARD, AND THEY'RE GOING TO CROSS 9 STRAIGHT ON EPIDEMIOLOGISTS. YOU'RE NOT AN 10 EPIDEMIOLOGIST. YOU'VE NEVER DONE AN EPIDEMIOLOGY 11 STUDY. YOU DON'T KNOW ANYTHING ABOUT EPIDEMIOLOGY. AND 12 HERE'S A BUNCH OF STUDIES THAT SAY THE OPPOSITE OF YOU. 13 SO IT'S GOING TO COME OUT, YOUR HONOR. FOR 14 SURE IT'S GOING TO COME OUT. 15 MS. DEAN: EXCEPT THERE'S NO CROSS. THERE'S NO 16 TIME. YOU PLAN ON SOMETHING. YOU SHOW IT. YOU GET A 17 RULING. YOU HAVE IT SET UP. AND INSTEAD, YOU HAVE TO 18 LISTEN TO OBJECTIONS TO DOCUMENTS, SUCK TIME. 19 THE COURT: OKAY. LET ME ASK YOU SOMETHING. 20 MS. DEAN: AND NOW IT'S NOT DECIDED ON MERITS. 21 IT'S DECIDED ON GAMESMANSHIP. 22 THE COURT: LET'S SAY RATHER THAN TAKING JUDICIAL 23 NOTICE OF THAT DOCUMENT IT HAD ACTUALLY BEEN -- WELL, 24 THAT WON'T WORK. LET ME THINK. 25 I AM OF THE VIEW THAT THE RULES OF HEARSAY 26 CONTINUE TO APPLY TO JUDICIALLY NOTICED DOCUMENTS. IN 27 MY VIEW THE PURPOSE OF JUDICIAL NOTICE IS NOT TO PUT 28 FACTS IN FRONT OF THE JURY. IT IS TO ELIMINATE THE
Page 179 1 THE COURT: WELL, THAT CUTS BOTH WAYS. 2 MR. ADAMS: RIGHT. BUT THE ONLY PURPOSE FOR TAKING 3 JUDICIAL NOTICE OF ANYTHING EVER IS TO IMPORT FACTS TO 4 THE JURY. THERE IS NO OTHER PURPOSE. IT IS THE ONLY 5 PURPOSE. 6 NOW, WHAT THE DEGREE OF THOSE FACTS ARE 7 WHETHER, IT'S JUST THE TITLE, THE FACT THAT IT HAPPENED, 8 THE FACT THAT THE EPA DID SOMETHING, THERE'S NO PURPOSE 9 OTHER THAN TO IMPORT FACTS TO THE JURY IN TAKING 10 JUDICIAL NOTICE OF ANYTHING IN A TRIAL. I THINK WE ALL 11 AGREE ON THAT. 12 AND SO TO HAVE TAKEN JUDICIAL NOTICE, TO 13 DOUBLE-CHECK IT, TO HAVE A MOTION FOR RECONSIDERATION, 14 AND THEN TO STAND UP IN FRONT OF THE JURY AND JUST SHOW 15 THE COVER PAGE -- YOU KNOW, JUST SHOW THE DOCUMENT AND 16 THEN BE SHUT DOWN ABOUT WHAT THE DOCUMENT SAID, NOT HOW 17 OUR EXPERT WOULD BE ABLE TO TALK ABOUT IT, HAVE TO TAKE 18 EVERYTHING DOWN AFTER IT HAD BEEN TAKEN JUDICIAL NOTICE 19 AND TO HAVE NO FACTS ABOUT THE DOCUMENT OR THE ACT OR 20 THE EPA WHATSOEVER CONVEYED TO THE JURY, NONE, WE DON'T 21 THINK WAS CORRECT. WE THINK THAT WAS ERROR. AND IT'S 22 NOT A SMALL DEAL. IT'S THE CENTERPIECE OF THE DEFENSE. 23 THE COURT: SO WHAT WOULD HAVE HAPPENED HAD THERE 24 NOT BEEN AN OBJECTION OR I HAD OVERRULED IT? WHAT WOULD 25 MS. DEAN HAVE DONE, AND WHAT WOULD HAVE THE WITNESS HAVE 26 SAID? 27 MR. ADAMS: WELL, MS. DEAN -- HE WOULD HAVE SAID 28 SOMETHING ABOUT HOW MY OPINIONS ARE CONSISTENT WITH THIS	Page 181 1 EVIDENTIARY PROCEEDINGS RELATIVE TO INDISPUTABLE FACTS. 2 THAT VENICE BEACH IS IN LOS ANGELES COUNTY. THAT RATE 3 TIMES TIME EQUALS DISTANCE. THAT THE EPA CREATED A 4 DOCUMENT IN WHENEVER, 2002. THOSE ARE UNDISPUTABLE 5 FACTS. HAPPY TO TAKE JUDICIAL NOTICE OF THAT. 6 BUT THAT THE EPA CONCLUDES GARABRANT IS FULL 7 OF BALONEY, I CAN'T TAKE JUDICIAL NOTICE OF THAT. IT'S 8 HEARSAY. IT'S JUST AS IF THERE WAS A LETTER TO THE 9 EDITOR THAT DR. GARABRANT IS FULL OF BALONEY IN MY 10 OPINION. SHOW IT TO THE JURY. DO YOU AGREE WITH THAT, 11 DOCTOR? DR. HABER, YES, I DO. THAT'S HOW I HEARD THE 12 OBJECTION. 13 SO AT ANY RATE, I DON'T THINK WHAT I DID 14 RELATIVE TO TAKING JUDICIAL NOTICE UPON REQUEST OF THESE 15 GOVERNMENT DOCUMENTS THAT I EITHER HAVE TO OR MAY TAKE 16 JUDICIAL NOTICE OF IS INCONSISTENT WITH MY SUBSEQUENT 17 RULINGS AS TO THEIR USE. 18 MR. ADAMS: SO IF WE CAN'T SAY ANYTHING ABOUT THE 19 CONTENT, WHAT'S THE PURPOSE OF JUDICIAL NOTICE? I MEAN, 20 MAYBE IT'S A GRAY AREA. BUT JUDICIAL NOTICE IS THE 21 COURT'S RECOGNITION OF THE EXISTENCE OF A MATTER OF LAW 22 OR FACT WITHOUT THE NECESSITY OF FORMAL PROOF. 23 THE COURT: BECAUSE IT'S INDISPUTABLE. 24 MR. ADAMS: THIS IS INDISPUTABLE. 25 THE COURT: WHAT IS INDISPUTABLE? 26 MR. ADAMS: THAT THE EPA LOOKED AT EVERY SINGLE 27 STUDY AND CONCLUDED THEY LACKED -- 28 THE COURT: IT'S ALSO INDISPUTABLE THAT

Page 182 1 DR. MICHAELS THINKS THAT DOUBT IS THEIR PRODUCT. THAT'S 2 INDISPUTABLE. 3 MR. ADAMS: BUT THAT'S AN OFFICIAL GOVERNMENT 4 PUBLICATION. THIS IS. IT'S AN OFFICIAL GOVERNMENT 5 PUBLICATION THAT WAS TAKEN JUDICIAL NOTICE OF. NOW, 6 WE'RE NOT ASKING FOR THE COURT TO INSTRUCT THE JURY ON 7 THE TRUTH OF THIS, WHICH IS WHAT MANGINI SAYS. 8 THE COURT: I THINK YOUR POINT IS THAT RATHER THAN 9 TAKING JUDICIAL NOTICE OF IT, IT COULD HAVE COME IN 10 UNDER THE GOVERNMENT RECORD EXCEPTION OF THE HEARSAY 11 RULE. 12 MR. ADAMS: TRUE. IT'S SIMILAR. 13 THE COURT: BUT IT WASN'T OFFERED IN THAT WAY TO 14 ME, AND I DON'T KNOW HOW I WOULD HAVE RULED ON THAT. 15 MR. ADAMS: BUT THAT'S A WAY MORE DIFFICULT -- I 16 MEAN, THAT'S A DIFFERENT STANDARD. JUDICIAL NOTICE, IN 17 MY MIND, IS WAY MORE FINAL, WAY MORE CONCLUSIVE, THAN 18 MEETING A SIMILAR HEARSAY EXCEPTION. 19 THE COURT: YOU'RE RIGHT. 20 MR. ADAMS: IT'S THE COURT LOOKING AT IT AND 21 SAYING, THERE'S REALLY NOTHING THAT CAN BE DISPUTED HERE 22 SO WE DON'T NEED TO HAVE TIME WASTED ABOUT IT. 23 THE COURT: DO ME A FAVOR. READ MANGINI. READ 24 LOVE VS. WOLF. AND THEN TELL ME HOW MANGINI -- THE RULE 25 OF MANGINI DOES NOT APPLY HERE. 26 MR. ADAMS: I ALREADY KNOW. I SKIMMED IT. 27 THE COURT: OKAY. 28 MR. ADAMS: BECAUSE WE DIDN'T ASK THE COURT TO TELL	Page 184 1 WITH THE COURT THAT TAKING JUDICIAL NOTICE OF THE TRUTH 2 AND INSTRUCTING THE JURY IT MUST ACCEPT THE TRUTH OF THE 3 EPA DOCUMENT, THAT WOULD BE IMPROPER AND I THINK WE 4 AGREE ON THAT. 5 BUT TAKING JUDICIAL NOTICE THAT THIS IS A TRUE 6 AND CORRECT COPY OF AN OFFICIAL GOVERNMENT RECORD AND 7 THEN LETTING US CONVEY SOME FACTS TO THE JURY ABOUT IT 8 IS NOT TAKING JUDICIAL NOTICE AND ORDERING THE JURY TO 9 ACCEPT THE TRUTH. I THINK THAT'S -- I THINK THAT -- I 10 THINK WE ACTUALLY CONNECT ON THIS, AND I JUST 11 MISUNDERSTOOD YOU AND SORT OF YOU MISUNDERSTOOD ME. 12 WE'RE NOT ASKING THAT YOU INSTRUCT THE JURY THEY MUST 13 ACCEPT THE EPA'S RISK ASSESSMENT. 14 THE COURT: SO, AGAIN, I ASK WHAT WOULD HAVE 15 HAPPENED BUT FOR THE OBJECTION? THE -- MS. DEAN WOULD 16 HAVE SAID, THIS IS AN EPA DOCUMENT AND THIS IS WHAT THEY 17 SAID AND DO YOU AGREE, DR. HABER. NO? 18 AND WHAT WOULD YOU HAVE DONE? 19 MS. DEAN: SO THERE'S A LOT OF TECHNICAL 20 TERMINOLOGY IN THERE. WHAT DOES THAT MEAN? HOW DOES 21 THAT WORK? WHAT'S THE IMPLICATION OF THAT? AS OPPOSED 22 TO AWKWARDLY READING IT, SPENDING TIME TO AWKWARDLY READ 23 IT, AND THEN IDENTIFY WHAT'S HAPPENING. A LOT OF WHAT 24 GETS LOST IN BRAKE EPIDEMIOLOGY IS THE COMPLEXITY OF IT. 25 AND YOU CAN DO A LOT WITHOUT EVER VIOLATING NOT JUST FOR 26 THIS JUDICIAL NOTICE DOCUMENT, BUT THE OTHER CONCERNS 27 ABOUT GETTING INTO THE MEAT OF AN ARTICLE AND JUST 28 RECITATING IT VERSUS GIVING THE OPINION ABOUT EDUCATION
Page 183 1 THE JURY: YOU MUST ACCEPT THE FACTS IN THIS DOCUMENT. 2 THAT'S WHAT MANGINI SAYS IS IMPROPER. 3 THE COURT TAKES JUDICIAL NOTICE OF THE 4 DOCUMENTS AND INSTRUCT THE JURY THAT I'VE TAKEN JUDICIAL 5 NOTICE THAT THE EPA CREATED THIS DOCUMENT AND MADE THESE 6 FINDINGS, BUT I HAVEN'T TAKEN JUDICIAL NOTICE OF THE 7 TRUTH OF THE DOCUMENT -- OF THE FINDINGS. THAT'S FOR 8 THE JURY TO DECIDE. BUT THERE'S NO PURPOSE IN TAKING 9 JUDICIAL NOTICE OF A DOCUMENT UNLESS WE CAN CONVEY SOME 10 FACTS TO THE JURY. NO ONE DISAGREES ON THAT. 11 WHY DO WE NEED -- WHY WOULD WE TAKE 12 JUDICIAL -- WHY WOULD ANYONE TAKE JUDICIAL NOTICE OF 13 ANYTHING IF IT WAS JUST THAT THE EPA MADE SOME DOCUMENT 14 IN 2020? THAT'S NOT THE RULE. THE RULE IS THAT IT -- 15 JUDICIAL NOTICE IS TAKEN TO CONVEY SOME FACTS TO THE 16 JURY. NOT TO INSTRUCT THE JURY FROM THE COURT THAT IT 17 MUST ACCEPT THE FACTS AS TRUE. 18 NOW, THAT'S A TYPE OF JUDICIAL NOTICE BUT NOT 19 THE DOCUMENT TYPE. THE DOCUMENT TYPE IS SO THE COURT 20 SAYS, THIS DOCUMENT IS TRUE, AND IT CAN BE SHOWN TO THE 21 JURY AND ARGUMENTS CAN BE MADE FROM IT AND EVIDENCE CAN 22 BE CONVEYED TO THE JURY, NOT THAT THE JURY IS INSTRUCTED 23 IT MUST ACCEPT THESE FACTS. THAT'S WHAT MANGINI HOLDS, 24 I THINK, AND I WILL TAKE A CLOSER LOOK AT IT TONIGHT. 25 THE COURT: OKAY. AND SO WILL I. 26 MR. ADAMS: AND SO WHEN I STOOD UP AND I SAID 27 TAKING JUDICIAL NOTICE IS OF THE TRUTH, I THINK WE HAD A 28 LITTLE BIT OF DISCONNECT THERE BECAUSE I DON'T DISAGREE	Page 185 1 FROM THE KNOWLEDGE AND EXPERTISE OF THE PERSON SITTING 2 ON THE STAND. 3 THE COURT: OKAY. 4 MS. DEAN: AND WE HAD OBJECTIONS TO A SLIDE WHICH 5 IS THE TITLE, CLAIMING THAT GOT TOO FAR IN THE MEAT. 6 THE TITLE. 7 THE COURT: YEAH. I PROBABLY OVERSTEPPED THERE. I 8 SHOULD HAVE LET YOU SHOW THE TITLE. HAVING TAKEN 9 JUDICIAL NOTICE OF THE DOCUMENT, I SHOULD HAVE DONE 10 THAT. AND IF YOU STILL WANT TO DO THAT WITH DR. HABER, 11 I'LL LET YOU DO THAT. 12 ALL RIGHT. DEFENSE, ANYBODY WANT TO COMMENT 13 BRIEFLY ON THIS POINT? 14 MS. CUATTO? 15 MS. CUATTO: EMILY CUATTO FOR FORD. YOUR HONOR HAS 16 ALREADY STATED THE RULE. I THINK YOUR HONOR HAS CITED 17 THE CORRECT CASES. JUST BECAUSE SOMETHING IS JUDICIALLY 18 NOTICEABLE FOR ITS EXISTENCE DOES NOT MAKE IT ADMISSIBLE 19 FOR THE TRUTH BECAUSE IT IS HEARSAY. AND, YES, THE 20 PUBLIC RECORDS EXCEPTION TO THE HEARSAY RULE IS 21 STRINGENT, AND THEY HAVE TO SATISFY IT IF THEY WANT TO 22 GET IN ANY OF THE CONTENT. SO -- 23 THE COURT: IN YOUR VIEW, DOES THE MCDONNELL -- 24 CONTINENTAL AIRLINES RULE THAT I ARTICULATED EARLIER 25 THAT I SAY SURVIVES SANCHEZ, WOULD THAT APPLY TO A 26 JUDICIALLY NOTICED DOCUMENT AS WELL AS A DOCUMENT 27 ADMITTED INTO EVIDENCE, WHICH IS TO SAY THAT AN EXPERT 28 WHO RELIED ON IT MAY RELAY THE GENERAL CONTENT WITHOUT

Page 186 1 TOO MUCH DETAIL? 2 MS. CUATTO: IF IT'S RELIANCE MATERIAL, THEN HE CAN 3 DISCUSS IT IN GENERAL TERMS, IF IT'S VALID RELIANCE 4 MATERIAL AND NOT JUST RECITING SOMEONE ELSE'S OPINION. 5 BUT, YES, YOU STILL CAN'T READ FROM IT. THE HEARSAY 6 RULES STILL APPLY JUST BECAUSE SOMETHING HAS BEEN 7 JUDICIALLY NOTICED IN EXISTENCE. AND IF MR. ADAMS' 8 POSITION IS THE ONLY POINT OF TAKING JUDICIAL NOTICE IS 9 TO ESTABLISH CONCLUSIVELY THE FACTS OF THAT DOCUMENT, 10 THEN JUDICIAL NOTICE SHOULD NOT HAVE BEEN TAKEN, BUT 11 THAT'S NOT WHAT I THINK YOUR HONOR DID. 12 THE COURT: I DON'T THINK THAT'S WHAT HE IS ARGUING 13 EITHER. 14 OKAY. THANK YOU VERY MUCH. 15 NOW, NEXT QUESTION, FOR EXHIBIT 701 AND 703, 16 WHAT ARE WE DOING WITH THAT? IT'S BEEN OFFERED. 17 MR. LANKFORD: I THOUGHT WE AGREED, MS. DEAN, TO GO 18 INTO EVIDENCE, BUT THEN YOU SAID SOMETHING TO ME ABOUT 19 MAYBE YOU GOT IT WRONG IN 701. 20 THE COURT: 701 AND 703. THAT'S THE OFFER. 21 OBJECTION? 22 MR. LANKFORD: NO. WE AGREED WHEN THE WITNESS WAS 23 ON THE STAND THAT IT CAME IN. BUT ALL I'M SAYING 24 MS. DEAN MENTIONED TO ME AFTERWARDS SHE MAY HAVE MESSED 25 UP, SO I'M JUST ASKING HER IF SHE WANTS TO CHANGE HER -- 26 MS. DEAN: ONE IS ADMITTED. ONE IS NOT. WE WOULD 27 LIKE BOTH TO BE -- 28 THE COURT: ALL RIGHT.	Page 188 1 THE COURT: OKAY. SO OTHER THAN 41 AND 74, DOES 2 ANY DEFENDANT HAVE ANY OBJECTION TO THE OFFER OF THOSE 3 EXHIBITS? 4 HEARING NONE -- 5 MR. COGGSHALL: YOUR HONOR, HOLD ON JUST A SECOND. 6 FOR COLOR TECHNIQUES, WILL COGGSHALL. 7 I DON'T BELIEVE THAT PLAINTIFF SPECIFIED THAT 8 AS IT RELATES TO COLOR TECHNIQUES. SO IF SHE'S MAKING 9 AN ALLEGATION THAT SOMEHOW COLOR TECHNIQUES WAS A 10 SUPPLIER TO AVON, I THINK WE WOULD NEED THE OPPORTUNITY 11 TO REVIEW ALL OF THOSE. I DON'T THINK THAT -- 12 THE COURT: WELL, YOU'VE HAD THE OPPORTUNITY. 13 YOU'VE HAD A LAWYER HERE FOR A MONTH. AND THE EXHIBITS 14 HAVE BEEN EXCHANGED, AND THEY'VE BEEN IDENTIFIED ON THE 15 RECORD. SO YOU'VE HAD THE OPPORTUNITY. 16 NOW, IN FAIRNESS TO MS. DUBOIS, SHE DIDN'T 17 HAVE THE EXHIBITS FOR A MONTH. SHE PROBABLY HAD THEM 18 FOR AS LONG AS I HAVE HAD THEM, WHICH IS SINCE THIS 19 MORNING. BUT WHAT -- COUNSEL, WHAT OPPORTUNITY DO YOU 20 NEED THAT SEPARATES YOU FROM EVERYBODY ELSE HERE? 21 MR. COGGSHALL: THIS IS VERY EASY, YOUR HONOR, 22 ACTUALLY. IF MS. DEAN SAYS THERE'S INFORMATION ABOUT 23 COLOR TECHNIQUES IN THE AVON DOCUMENTS, THAT WOULD 24 SIMPLIFY IT. THAT'S THE REASON I DID THE MEET AND 25 CONFER YESTERDAY AND TRY TO FIGURE THIS OUT, SO WE 26 WOULDN'T HAVE TO DEAL WITH THIS ISSUE. 27 DOES THE PLAINTIFF HAVE AN OFFER OF PROOF THAT 28 THERE'S ANYTHING RELATIVE TO COLOR TECHNIQUES IN ANY OF
Page 187 1 MADAM CLERK, EXHIBIT 701 AND 703 ARE ADMITTED. 2 PLEASE MAKE SURE THAT THOSE DOCUMENTS ARE IN 3 THE CLERK'S HANDS BEFORE YOU LEAVE SO WE CAN STICKER 4 THEM. 5 6 (EXHIBITS 701 AND 703 ADMITTED INTO EVIDENCE.) 7 8 THE COURT: NOW, ALL OF THESE OTHER EXHIBITS 9 OFFERED TODAY STARTING WITH 1 AND GOING NONSEQUENTIALLY 10 THROUGH 283, IT WAS REPRESENTED TO ME THEY'RE ALL AVON 11 DOCUMENTS EXCEPT FOR 41 AND 74. 12 MS. DEAN: LET ME BE CLEAR WHAT I MEAN BY AVON 13 DOCUMENTS. I RECEIVED THEM FROM AVON. THEY'RE AVON 14 BATES LABELED DOCUMENTS. THEY ARE NOT JUST BEING 15 OFFERED AGAINST AVON. 16 THE COURT: I UNDERSTAND. OKAY. 17 MR. SLAUGHTER, WHAT IS 41? AND WHY DO YOU 18 OBJECT? 19 MR. SLAUGHTER: AS I UNDERSTAND, 41 IS A LIST OF 20 STUDIES. IT'S HEARSAY. I DON'T KNOW FOR SURE WHO MADE 21 IT. I MAY HAVE BEEN TOLD AT SOME POINT. I DON'T 22 RECALL. BUT IT'S A LIST OF VARIOUS STUDIES. I MEAN, 23 IT'S HEARSAY. IT'S NOT PROPER. 24 THE COURT: WHAT'S 74? 25 MR. SLAUGHTER: 74 IS A PUBLISHED ARTICLE, WHICH I 26 DON'T THINK SHOULD GO BACK -- SHOULDN'T GO INTO 27 EVIDENCE. GO BACK TO THE JURY ROOM. I DON'T HAVE ANY 28 OBJECTION TO HER USE OF IT.	Page 189 1 THE AVON DOCUMENTS? 2 THE COURT: OKAY. I DON'T THINK THAT'S OBLIGATORY 3 ON THE OFFERING PARTY TO DO THAT. SO HERE'S THE BOTTOM 4 LINE. I AM ADMITTING ALL OF THOSE DOCUMENTS EXCEPT 41 5 AND 74, WHICH I WANT TO LOOK AT. I'LL RESERVE RULING ON 6 THAT. I'VE RECITED THEM TO THE CLERK EARLIER. AND I 7 WILL MAKE SURE THE CLERK AND I HAVE A CLEAR 8 UNDERSTANDING OF THEM. PLEASE MAKE SURE THAT THOSE 9 PIECES OF PAPER ARE LEFT WITH THE CLERK SO THAT WE CAN 10 STAMP THEM. OKAY? 11 12 (EXHIBIT NOS. 1-10, 12, 13, 15, 16, 17, 19-22, 13 26-29, 32, 34, 36, 37, 54, 55, 56, 259, 260, 14 261-277, 281 AND 283 WERE ADMITTED INTO 15 EVIDENCE.) 16 17 MS. DEAN: YES, YOUR HONOR. I CAN TELL YOU FOR 41 18 IF THERE'S NOT AN AGREEMENT -- IT'S A SUMMARY 19 DOCUMENT -- WE'RE GOING TO FIND THE UNDERLYING DOCUMENTS 20 TO ADMIT. SO IF THERE IS NO AGREEMENT -- THERE WAS WITH 21 AVON -- THEN IT'S OVER OBJECTION. I THINK THE RULING IS 22 GOING TO BE CLEAR. 23 FOR THE SECOND SO YOU KNOW, IT'S BEING OFFERED 24 FOR NOTICE ONLY. 25 THE COURT: WHAT IS IT? 26 MS. DEAN: IT'S A PEER-REVIEWED PUBLISHED DOCUMENT 27 DISCUSSING ASBESTOS IN ITALIAN TALC DURING THE TIME 28 FRAMES WHEN THERE WAS STILL EXPOSURE IN THIS CASE. SO

Page 190 1 THAT, IF THE COMPANY HAD LOOKED, IT'S PUBLISHED. THIS 2 IS INFORMATION THAT I WILL ESTABLISH WITH THE WITNESS ON 3 THE STAND. 4 THE COURT: I THINK YOU NEED -- GIVEN THE 5 OBJECTION, IT SOUNDS LIKE YOU NEED TO TRY TO LAY THE 6 FOUNDATION TO GET IT IN FOR NOTICE OR FOR WHATEVER OTHER 7 REASON. BUT AT THIS POINT -- SEE, I DON'T KNOW WHAT 8 YOUR FOUNDATION IS OR ISN'T, BECAUSE I DON'T KNOW WHAT 9 THESE ARE. BUT THERE'S AN OBJECTION, SO I THINK THAT 10 ONE WE NEED TO HANDLE SEPARATELY. 11 MS. DEAN: THAT MAKES SENSE TO ME. I HAD GOTTEN 12 THE OBJECTIONS FROM AVON. THEY HAD NONE. I HADN'T 13 HEARD FROM OTHERS. SO I CAN LAY THE FOUNDATION SO WE 14 CAN RULE AT THE TIME, BUT THAT'S WHY I STARTED OFF WITH 15 THEM. THIS IS THE ONLY THING I HEARD -- 16 MR. STRUNK: YOUR HONOR, ONE BRIEF -- VERY BRIEF -- 17 WE'RE TALKING ABOUT THE (INAUDIBLE) STUDY, WHICH IS 18 NUMBER 74. IT'S AN ACTUAL PUBLISHED PEER-REVIEWED 19 STUDY, THAT STUDY ITSELF. THE CONTENTS DON'T GET TO THE 20 JURY. THEY CAN GET IN THROUGH A WITNESS, BUT THE STUDY 21 ITSELF DOESN'T GO BACK. 22 THE COURT: I UNDERSTAND THE WORDS. I UNDERSTAND 23 THE CUSTOM AND PRACTICE. LET ME FIND OUT WHAT IT IS. 24 LET ME LOOK AT IT. LET ME HEAR THE FOUNDATION. 25 OKAY. NOW -- 26 MS. DEAN: IT WOULD BE HELPFUL TO KNOW THE ACTUAL 27 EVIDENTIARY OBJECTION OTHER THAN THE CLAIM THAT WE DON'T 28 DO THAT.	Page 192 1 MS. DEAN: EVERYONE SHOULD KNOW, BOTH FROM 2 STATEMENTS MADE IN REPORTS AND EMAILS. DR. MADIGAN IS 3 COMING FIRST THING IN THE MORNING. DR. LONGO IS 4 SUPPOSED TO GO IMMEDIATELY AFTER HIM, UNLESS I MAKE AN 5 ACCOMMODATION TO AVON THAT REQUIRES US TO PUSH LONGO, 6 WHICH, I THINK, THEY'RE WORKING OUT TO SEE IF THEY LIKE 7 THAT IDEA OR NOT. WE WERE GOING TO TALK ABOUT THAT 8 IMMEDIATELY AFTER COURT. 9 THE COURT: SO IT'S GOING TO BE SOME COLLECTION OF 10 MADIGAN, LONGO, AND HABER, AND ONE WAY OR THE OTHER, IT 11 WILL FILL THE DAY? 12 MS. DEAN: SO WE HAVE MADIGAN STARTING. LONGO 13 WILL -- IF DR. LONGO IS MOVED IN ORDER TO ACCOMMODATE 14 AVON'S SCHEDULE, WE'LL HAVE A VIDEO. TUESDAY IS AVON OR 15 LONGO. WEDNESDAY IS AVON. THURSDAY, IF WE'RE NOT DONE 16 WITH THOSE OTHER THINGS, WILL BE VIDEO. FRIDAY IS 17 DR. HABER. 18 MR. MULARCZYK: SO WHAT WE TRIED TO CONFER WITH THE 19 DEFENDANTS -- SO THE IDEA IS TO PUT THE AVON CORPORATE 20 REPRESENTATIVE ON TUESDAY AND WEDNESDAY TO ACCOMMODATE 21 SCHEDULING. IF THAT'S THE CASE, WE UNDERSTAND THAT 22 DR. LONGO CANNOT COME BACK UNTIL THE 14TH AND 15TH OF 23 NOVEMBER. AND SO THERE WAS SOME CONCERN ON THE DEFENSE 24 SIDE ABOUT HOW LONG THE PLAINTIFFS' CASE MIGHT LAST. 25 THE COURT: LISTEN, I REALLY DON'T WANT TO LEAVE 26 THE PLAINTIFFS' CASE OPEN AND REQUIRE DEFENSE TO START 27 ADDUCING EVIDENCE. IT'S VERY AWKWARD TO DO THAT UNLESS 28 IT'S ABSOLUTELY FREAKEN NECESSARY.
Page 191 1 MR. STRUNK: HEARSAY. FOUNDATION. 721. IS THAT 2 ACCEPTABLE, MS. DEAN? 3 MR. ADAMS: NOTICE. 4 THE COURT: I'M RESERVING ON 41 AND 74. 5 NOW, WHY DO I -- MR. LANKFORD -- AND I SAY 6 THIS WITH LOVE IN MY HEART. WHY DO I HAVE TO BE 7 INVOLVED IN A SCHEDULING DISCUSSION AMONG YOU ALL AS TO 8 WHEN YOU'RE GOING TO GET YOUR EXPERTS LINED UP FOR 9 TRIAL? 10 MR. LANKFORD: I GUESS, YOUR HONOR, I WAS TRYING TO 11 FIGURE OUT WHEN WE'LL BE DONE WITH PLAINTIFF'S CASE SO 12 THAT I CAN START SCHEDULING MY EXPERTS. 13 THE COURT: AND I THINK THAT'S REALLY A GOOD IDEA. 14 AND I THINK WITH A THREE-DAY HIATUS IN THE PROCEEDINGS, 15 I REALLY URGE YOU TO MEET AND CONFER AND SEE, BECAUSE 16 EVERYBODY HAS GOT A COMMON INTEREST IN THAT GOING 17 SMOOTHLY. 18 MR. LANKFORD: THANK YOU. 19 THE COURT: OKAY. ALL RIGHT. 20 MR. SLAUGHTER: YOUR HONOR, ONE SIMPLE THING, I 21 HOPE. IT'S PROBABLY ON ME. I DON'T KNOW WHAT WE'RE 22 DOING MONDAY. 23 THE COURT: THAT WAS MY LAST TOPIC. ARE WE GOING 24 TO CONTINUE WITH DR. HABER? 25 MS. DEAN: NO. 26 THE COURT: WE'RE GOING TO CONTINUE WITH DR. LONGO. 27 MS. DEAN: KIND OF. 28 THE COURT: OKAY. TELL US WHAT WE ARE GOING TO DO.	Page 193 1 MR. MULARCZYK: OUR WORRY IS NOT THAT -- 2 THE COURT: THAT'S A TECHNICAL TERM. 3 MR. MULARCZYK: ONE THAT I UNDERSTAND WELL. SO THE 4 CONCERN IS NOT THAT THE DEFENSE WILL HAVE TO START 5 SOONER AND THE PLAINTIFFS WILL HAVE TO INTERJECT IN THE 6 DEFENSE CASE BUT THAT WE DON'T THINK THAT MS. DEAN'S 7 CASE WILL BE COMPLETED EVEN BY THE 15TH. 8 THE COURT: WELL, I DON'T KNOW. I MEAN, I CAN'T 9 SAY. 10 MR. MULARCZYK: OKAY. 11 THE COURT: AND I GUESS -- I MEAN, I DON'T WANT TO 12 SCRATCH A SCAB, BUT I JUST DON'T KNOW HOW THE PLAINTIFFS 13 HAVE ENOUGH TIME FOR THIS CASE -- FOR THEIR CASE TO NOT 14 BE DONE BY THEN. 15 MS. DEAN: AND I THINK THE COURT SHOULD LOOK AT HOW 16 MUCH TIME IS SPENT LITERALLY JUST ADDRESSING CLAIMS MADE 17 THAT ARE OBJECTIVELY INACCURATE. I MEAN, PART OF WHAT 18 WE ARE DOING HERE IS TRYING TO SYNTHESIZE THE CASE, BUT 19 WE ALSO HAVE TO BE REACTIVE. AND THERE HAS BEEN A REAL 20 ISSUE ON MULTIPLE LEVELS, AND I THINK WE WANT TO CORRECT 21 SOMETHING. 22 IN PART, THERE IS REAL HARM TO HEAR 16 TIMES 23 FROM MULTIPLE PEOPLE THAT PEOPLE DON'T HAVE ANYTHING 24 THAT THEY'RE NOT REQUIRED TO HAVE SO THAT WE'RE NOT 25 FOCUSING YOUR ATTENTION AND OURS, WHICH IS LIMITED AND 26 VALUABLE, AND IT HAPPENS EVERY MORNING. EVERY NIGHT. 27 THE COURT: WELL, JUST REMEMBER THAT I RETAIN THE 28 DISCRETION TO ADD TO THE TIME CLOCK FOR TIME THAT, FOR

Page 194 1 EXAMPLE, PLAINTIFF IS FORCED TO CONSUME THAT I DON'T 2 THINK YOU NEED TO CONSUME. BUT RIGHT NOW THAT'S -- THAT 3 IS NOT A MEANINGFUL AMOUNT OF TIME. I DON'T THINK 4 ANYTHING GOING ON OVER HERE ON THE DEFENSE SIDE HAS 5 CONSUMED TIME ON THE RECORD UNDULY BEFORE THE JURY. I 6 TAKE YOUR POINT THAT YOU THINK IT'S CONSUMING TIME 7 UNDULY OUTSIDE OF COURT. THAT'S A DIFFERENT ISSUE. 8 MS. DEAN: 18 QUESTIONS, THEY'RE IN THE RECORD, 9 ABOUT THE SIGNIFICANCE OF TISSUE, DIGESTIONS, X-RAYS. I 10 DON'T KNOW THE EXACT NUMBER BUT -- 11 THE COURT: ARE YOU TALKING ABOUT THE JUROR 12 QUESTIONS? 13 MS. DEAN: YES. 14 THE COURT: WELL, IT'S UP TO YOU TO ASK THEM OR 15 NOT. YOU'RE NOT OBLIGATED TO ASK THOSE QUESTIONS. 16 MS. DEAN: WHEN DEFENDANTS CREATE JURY CONFUSION 17 AND YOU HAVE SUCH A BEAUTIFUL WRITTEN RECORD OF IT BY A 18 STATEMENT THAT IS OBJECTIVELY FALSE THAT RESULTS IN 19 QUESTION AFTER QUESTION AFTER QUESTION AFTER QUESTION, 20 THE SUGGESTION THAT I CAN JUST IGNORE IT IS NOT A 21 REALISTIC ONE. 22 THE COURT: WELL, IT'S A -- THERE'S MERIT -- 23 THERE'S SOME MERIT TO WHAT YOU SAY, BUT I DO THINK IT'S 24 A FORENSIC DECISION. MAYBE I SHOULD HAVE GONE WITH 25 MR. NORRIS AND NOT PERMIT QUESTIONS TO BE ASKED. I 26 DON'T KNOW ABOUT YOU. IF I WERE TRYING THIS CASE, I'D 27 BE FASCINATED TO KNOW WHAT THESE JURORS WANTS TO KNOW. 28 MS. DEAN: I'M GRATEFUL FOR IT.	Page 196 1 SUPERIOR COURT OF THE STATE OF CALIFORNIA 2 FOR THE COUNTY OF LOS ANGELES 3 DEPARTMENT 7 HON. LAWRENCE P. RIFF, JUDGE 4 5 LAOSD ASBESTOS CASES)JCCP4674 6 RITA-ANN CHAPMAN AND GARY)CASE NO. 22STCV05968 7 CHAPMAN,) 8) 9 PLAINTIFFS,)REPORTER'S CERTIFICATE 10) 11 VS.) 12) 13 AVON PRODUCTS, INC., ET AL.,) 14) 15 DEFENDANTS.) 16 17 I, VERONICA RODRIGUEZ, RPR, CSR 12215, 18 OFFICIAL COURT REPORTER PRO TEMPORE IN AND FOR THE 19 SUPERIOR COURT OF THE STATE OF CALIFORNIA, COUNTY OF LOS 20 ANGELES, DO HEREBY CERTIFY THAT THE FOREGOING 21 TRANSCRIPT, CONSISTING OF PAGES 1 THROUGH 189, 22 INCLUSIVE, COMPRISE A FULL, TRUE AND CORRECT TRANSCRIPT 23 OF THE PROCEEDINGS HELD IN DEPARTMENT 7 ON OCTOBER 27, 24 2022, IN THE MATTER OF THE ABOVE-ENTITLED CAUSE. 25 DATED THIS 28TH DAY OF OCTOBER, 2022. 26 27 28 <i>Veronica Rodriguez</i> VERONICA RODRIGUEZ, RPR CSR NO. 12215
Page 195 1 THE COURT: I WANT TO STOP. I HAVE TO STOP. IF 2 YOU WANT TO COME BACK AT 3:00 O'CLOCK AND FINISH THIS 3 CONVERSATION, I INVITE YOU. BUT IF YOU DON'T WANT TO, I 4 EXCUSE YOU UNTIL 8:15 MONDAY MORNING. 5 6 (WHEREUPON, THESE PROCEEDINGS WERE CONCLUDED.) 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25 26 27 28	

EXHIBIT 7



COURT REPORTING

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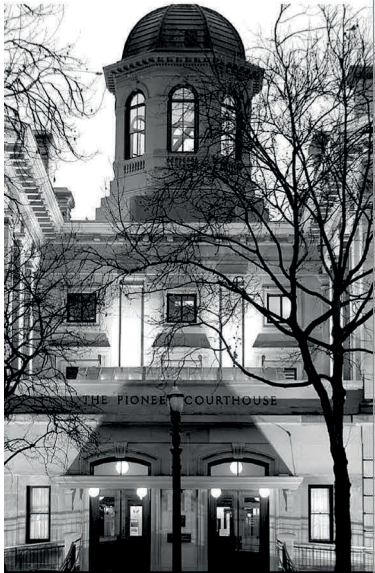
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IN THE CIRCUIT COURT OF THE STATE OF OREGON
FOR THE COUNTY OF MULTNOMAH

ELAINE CHATFIELD, as
Personal Representative
of the ESTATE OF
ELSIE LOUISE GRAHAM,

Plaintiff,

vs.

CASE NO. 21CV40522

AVON PRODUCTS, INC., et al.

Defendants.

VERBATIM TRANSCRIPT OF PROCEEDINGS

TRIAL - DAY 8

HELD ON
MONDAY, FEBRUARY 6, 2023
9:02 A.M.

BEFORE
THE HONORABLE SHELLEY RUSSELL
CIRCUIT COURT JUDGE

MULTNOMAH COUNTY COURTHOUSE, 15TH FLOOR
1200 SOUTHWEST FIRST AVENUE
PORTLAND, OREGON 97204

RoA_07530

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1542		1544	
1	APPEARANCES	1	EXHIBITS
2		2	DEFENDANT'S EXHIBITS: RETAINED BY COUNSEL
3	For the Plaintiff:	3	No. Description Admitted
4	Jessica Dean, Esquire	4	D3 AVON RAW INGREDIENT CODES 1802
5	Jordan Blumenfeld-James, Esquire	5	D3 (was marked as 8024) 1802
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13		13	
14	For the Defendant, Whittaker, Clark &	14	
15	Daniels, Inc.:	15	
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25		25	

1543		1545	
1	INDEX OF EXAMINATION	1	VERBATIM TRANSCRIPT OF PROCEEDINGS
2	Page	2	TRIAL - DAY 8
3	PLAINTIFF'S WITNESSES	3	HELD ON
4	STEVEN HABER, M.D.	4	MONDAY, FEBRUARY 6, 2023
5	Direct Examination by Ms. Dean 1546	5	9:02 A.M.
6	Cross-Examination by Mr. Cook 1754	6	BEFORE
7		7	THE HONORABLE SHELLEY RUSSELL
8		8	CIRCUIT COURT JUDGE
9		9	
10		10	(Jury enters.)
11		11	THE COURT: Good morning. We are back on
12		12	the record. This is day 11 in the trial in the
13		13	State of Graham versus Whittaker, Clark & Daniel.
14		14	How is everybody doing this morning? Good,
15		15	all rested, and ready go? Back at it. Okay. We're
16		16	going to be continuing with plaintiff's case this
17		17	morning. I do have his little scheduling matter.
18		18	We're going to take a slightly longer lunch today
19		19	because of a commitment that I have over the lunch
20		20	hour that I will have to get to and get back from.
21		21	So we're going to break at 11:30 or shortly
22		22	thereafter this morning. We will still take our
23		23	mid-morning break, but we'll make it about a 10-
24		24	minute break today instead of 15. And with that,
25		25	please, remember to turn off your cellphones and

1546 1 play close attention. 2 And Ms. Dean, call your next witness. 3 MS. DEAN: Your Honor, we would like to 4 call Dr. Haber to the stand. 5 STEVEN HABER, MD, having been duly sworn, was 6 examined and testified as follows: 7 THE CLERK: For the record, please, state 8 your name and spell your last name. 9 THE WITNESS: Dr. Steven Haber, H-A-B-E-R. 10 THE CLERK: Thank you. 11 THE COURT: You may have a seat. Get 12 right up close to that microphone so that we can 13 hear you. Go ahead. 14 DIRECT EXAMINATION 15 BY MS. DEAN: 16 Q Good morning. I hope everyone had a good 17 with weekend. Can you hear me okay? 18 Okay. So are we going to prepare to talk 19 about geology and regional metamorphism for six 20 hours? 21 A No, definitely not. 22 Q Okay. I know there's things going on with 23 your wife's health and everybody has been very kind 24 to accommodate you and take a break on geology so 25 that we could talk to you at least today live. And	1548 1 what you're board certified in, can you tell the 2 jury a little about that? 3 A Yes. So I'm board certified in internal 4 medicine, which is diseases of adults, and I'm board 5 certified in pulmonary diseases, which are diseases 6 related to the lungs and chest. 7 Q And just briefly, in terms of being a 8 board certified physician, is that a lengthy and 9 difficult process? 10 A Yes. So you have to undergo training, 11 which is usually in the matter of two or three years 12 for each of these disciplines, and then you are 13 recommended. If you successfully pass the training, 14 then the people that are overseeing the training 15 will recommend you to sit for an examination, and 16 then you have to pass the examination in order to be 17 board certified. 18 Q And how long have you been board 19 certified? 20 A For over 30 years. 21 Q I've put up part of your resume. 22 Can you give the jury a little bit of an 23 understanding of your educational background? 24 A Sure. After college, I did an one-year 25 internship in internal medicine from '86 to '87.
1547 1 I know you're going to come back by Zoom if we need 2 you tomorrow. But are you a medical doctor? 3 A I am. 4 Q You've got a lot of letters after your 5 name. What do those mean? 6 A So M.D., medical doctor. I'm a fellow of 7 the American College of Physicians, which is a group 8 of physicians that deal with internal medicine or 9 diseases of normal adults and high blood pressure, 10 diabetes, etcetera. I'm also a fellow of the 11 American College of Chest Physicians, which is a 12 group of physicians dedicating their careers to 13 diseases related to the chest. So this would be 14 heart doctors, pulmonologists, or lung doctors like 15 myself, radiologists, heart surgeons, doctors like 16 that. And in both of those organizations I hold a 17 fellowship, which is showing my expertise in those 18 fields. 19 Q And then there's this logo with the name 20 Respiratory Medicine Consultants, what is that? 21 A That is the practice that I practice in. 22 So I'm the active pulmonary and internal medicine 23 physician, and I have an office practice as well as 24 hospital practice in Houston, Texas. 25 Q In terms of what your specialties are and	1549 1 Following that, I did a residency in internal 2 medicine where you're basically living in the 3 hospital almost 24/7 for another two years. And 4 then following that, I did two years of additional 5 training specializing in pulmonary diseases. And 6 then since 1991, so over 30 years I've done it -- 7 been out of private practice. 8 Q Okay. In terms of your board 9 certifications, we already talked about that a 10 little bit. But it also talks about you being a 11 diplomat in these different organizations. 12 Can you tell us a little bit about that? 13 A Yeah. So the diplomat is someone who has 14 achieved the certification showing that they've had 15 successfully had the training, and then they passed 16 the examinations, plus whatever continued 17 educational requirements that we have. 18 Q Okay. And then this is something we 19 haven't talked about at all. One of the 20 certifications that you repeatedly have here is a 21 NIOSI "B" Reader. 22 What is that? 23 A So NIOSH and the World Health Organization 24 got together and put together what's called a B 25 Reader program. B stands for black lung. It

1582 1 mean, to the extent that there's some release, you - 2 - it's not been shown to be by itself an issue. 3 Q Okay. What else in her social history was 4 important to you? 5 A Well, I looked to see, you know, where she 6 was born and where she grew up. She was married. 7 She had five children and she was raising -- 8 Q In a decade? 9 A In one decade, yes. 10 Q Sorry. 11 A And so she was raising children, and she 12 was in her home that there was no basement. She 13 never went up into the attic. So even to the extent 14 that she had vermiculite or some insulation, even if 15 the vermiculite was asbestos-containing, she had no 16 avenue to -- for exposure. She didn't go up there. 17 I asked if she had ever been to Libby. 18 Libby, Montana is where the -- particularly, the 19 vermiculite that contains trace amounts of asbestos 20 or asbestiform minerals. She had never been there. 21 She had never been to Mexico. Never been overseas. 22 There's places in Turkey, for example, that can have 23 certain types of minerals called erionite that can 24 be associated with asbestos, and she had never been 25 there.	1584 1 that Avon stopped using talcum powder in their body 2 powder in 20 -- in 2002. 3 Have you also looked at any company 4 documents in order to orient yourself to Avon and 5 their suppliers and issues of that nature? 6 A Yes. 7 Q Okay. Before we go there, in terms of 8 what was the most important reason that she 9 developed this disease, have you reached an opinion 10 on that? 11 A Yes. 12 Q And what is that? 13 A That it was her use of these talcum 14 powder, cosmetic powder products. 15 Q In terms of important factors and you 16 reaching that conclusion, have you identified at 17 least some of them? 18 A Yes. 19 Q Tell us about that. 20 A So long duration. So this was something 21 that she did for decades upon decades upon decades 22 upon decades. This was repeated every time she 23 showered or bathed. So this was not just a one-and- 24 done. This was something that she regularly did. 25 This was an indoor situations as opposed to outdoor.
1583 1 Q Did you ever consider -- 2 A I mean associated with mesothelioma. I'm 3 sorry, I misspoke. 4 Q Did you say associated with vermiculite? 5 A I think I said associated with asbestos. 6 I meant area associated with mesothelioma. 7 Q Got it. What else did you learn about her 8 social history? 9 A So I talked with her about her use of 10 cosmetic talcum powder products. I found that she 11 was using Avon or Cashmere Bouquet body powders 12 after showering or bathing from the early 1950's 13 through 2017. She would use puff application at 14 times. She would be applying the talcum powder all 15 over her body. She used the Avon, that Avon I knew 16 that had used talcum until 2002. And that she had 17 stopped using Cashmere Bouquet in the 90's. And 18 then her children -- she did diapering on them 19 pretty much -- she was diapering for an entire 20 decade and then a few years after that. I mean, 21 from the early 50's, 1950's through the early 22 1960's. 23 Q In terms of the things you looked at, we 24 talked about speaking to Elsie Graham and looking at 25 her deposition, but there are also -- you noted here	1585 1 So -- and oftentimes in confined spaces, including 2 even when she was -- they would go out, her and her 3 husband did RV-ing for many, many years, and she was 4 doing it in the RV bathroom, which was really, 5 really a confined space. 6 The issue of what's called re-entrainment, 7 so when you have a powder product and you like -- or 8 have asbestos and you get it in your home, it maybe 9 settled onto a carpet or it might settle onto a 10 surface, it might settle onto your clothing, but it 11 can -- once it settles, then if you -- if you touch 12 it or if you sit on the sofa again or if you brush 13 or walk by, the asbestos fibers can get airborne 14 again and they can stay airborne for hours, if not 15 days. And then this, again, transfer breathing the 16 asbestos in, and then it can settle, and it can 17 constantly re-entrain. I mean, they've shown that 18 once it gets into the home, it's virtually 19 impossible to eradicate from the home. 20 Q And one explain is even if somebody thinks 21 that they're cleaning up, they're sweeping, they use 22 a vacuum cleaner, unless they have some kind of 23 sophisticated HEPA filter vacuum cleaner, are they 24 just making the problem worse? 25 A Yes. In fact, the fibers actually just --

1598 1 very long time? 2 A Yes, it is. 3 Q Can you give us an idea of how long? 4 A Decades upon decades. 5 Q Okay. In terms of our understanding of 6 what makes some of us more susceptible than others, 7 is that a huge source of research now? 8 A Yes. 9 Q And even though we're becoming more mature 10 and sophisticated in understanding the why, the 11 reality of if you expose people to asbestos, a group 12 of them are going to get sick has been long known 13 now. Fair? 14 A Yes. Correct. 15 Q Sorry. Again, that was a little awkward. 16 But in understanding the specifics of why 17 some people are susceptible, what is BAP-1? 18 A So BAP-1 is a tumor suppressor gene. And 19 so this is something that we all have and it 20 normally kind of keeps things in check, suppresses 21 having any problems. There are -- you can have this 22 BAP-1 where it's in the tumor where it actually 23 happened, you get a mutation in the BAP-1 because of 24 like a carcinogen, in fact, like asbestos. And, in 25 fact, we use that mutation in the tumor cells as a	1600 1 but the one that's they find because of a cancer 2 causing or a change in the tumor, is there a name 3 for the second one? 4 A Yes. It's called somatic. 5 Q Okay. And in terms of, not the one that's 6 associated with with the tumor, but the one in the 7 blood, even for folks that have germline BAP-1, does 8 the medical literature indicate that you still need 9 a trigger, an exposure to asbestos in order to get 10 the disease, mesothelioma? 11 A Yes. 12 Q And then you said that there's some 13 cancers associated with this. 14 Are there -- if a person has this in their 15 bloodline, it's their whole family, do you expect to 16 see certain types of cancer in the familial line? 17 A Yes. Not only certain types, but you 18 expect to see the person who -- if you had this, if 19 you were born with this BAP-1, you will have 20 multiple cancers throughout your life. You won't 21 just have your first cancer at age 88. And 22 multiple, multiple people in your family because 23 this is something that's inherited. It's what's 24 called autosomal dominant. It passes from father to 25 son or father to daughter, mother to son, mother to
1599 1 helpful guide to see whether or not we're dealing 2 with mesothelioma. 3 But you can also have -- there's a very 4 small number of families around the world that are 5 born with what's called germline BAP-1. That is 6 every gene in their body, this was one of the 7 parents gave them a mutation, and they are born with 8 it. If you have both parents give you this BAP-1, 9 you would not survive into childhood. You would 10 become -- it would be a stillborn. 11 But if you have one of those copies that's 12 defective, you have this germline BAP-1 and you are 13 predisposed to getting certain types of cancers, not 14 all cancers, but certain ones, including malignant 15 mesothelioma. And that -- those people though, they 16 studied both in these families that have this 17 familial germline bloodborne BAP-1, as well as 18 there's actual animal models that they've got that 19 is -- that is similar that they would use when they 20 have a BAP-1, and those people are still exposed or 21 were sensitive, in fact, they are super sensitive, 22 very susceptible to the asbestos in causing 23 malignant mesothelioma. 24 Q So a couple of things. If you have, not 25 the germline in your blood that came from a parent,	1601 1 daughter. Very, you know, it's just one copy. 2 But the cancers you see are malignant 3 mesothelioma, renal cell carcinoma, which is kidney 4 cancer, ophthalmic cancer, which is cancers of the 5 eye, and malignant melanoma, which is the bad skin 6 cancer. Those are the main ones that we see. And if 7 you start seeing somebody who has had three or four 8 melanomas, and a cancer in their eye, and a kidney 9 cancer, and you know, they have got multiple 10 relatives that all have these same -- what they've 11 studied is virtually, I mean, they will have 12 multiple generations who are just -- there's just 13 one after another and another all have multiple 14 cancers. 15 Q Was there any indication at all in her 16 medical history or her family history that made you 17 believe that they had germline or familial BAP-1 18 issues? 19 A None whatsoever. Not only was this her 20 first cancer, but there was no family history at all 21 of any cancer that would be consistent with BAP-1. 22 Q Okay. Did they find that she did have 23 somatic BAP-1 when they looked and analyzed the 24 tissue? 25 A Yes.

1614 1 A Yes. 2 Q To give the jury an idea of how dangerous 3 that is, is if we just had the whole population of 4 the United States exposed just for one year to 0.1 5 fibers per cc, because this only tells us for 6 100,000, can you give us an idea of how many people 7 die of this disease? 8 A Tens of thousands. 9 Q So if anyone came in and suggested that 10 that level was determined to be safe by OSHA, is 11 that true? 12 A It is not. 13 Q Outside of their risk analysis for 14 scientists and doctors like yourself, have they 15 indicated in the federal register and on their 16 website that it is not safe? 17 A Yes. That it will not eliminate and you 18 will still have significant risk. 19 Q And in just in terms of what we have here, 20 is this from OSHA directly? 21 A Yes, it is. 22 Q Has the World Health Organization also 23 looked at this issue? 24 A They have. 25 Q Do you mind reading the quote that you	1616 1 working with asbestos, even at these low levels, 2 what are some of the things that OSHA requires? 3 A I mean, the whole white suits, covers, 4 gloves, booties, masks, hair, hood. 5 Q I mean -- I -- 6 A It's like a spaceman. 7 Q Like moon suits? 8 A Yes. 9 Q Okay. You gave some examples, but in 10 terms of actually giving some context to how slight 11 or little has been evaluated in the scientific 12 literature, did you put some examples up here for 13 us? 14 A Yes. 15 Q Only days and weeks, slight exposure, 16 short have been related to causing the disease that 17 Elsie Graham died from? 18 A Yes. There's even reports of one day's 19 worth of exposure. 20 Q Has the Consumer Products Safety 21 Commission evaluated this issue? 22 A Yes. 23 Q Tell us about that. 24 A So they looked at joint compound, which is 25 a powdered substance used in the home, contained
1615 1 highlighted up there? 2 A "Bearing in mind that there is no evidence 3 for a threshold for carcinogenic effect of asbestos 4 as the cancer-causing effect, and that increased 5 cancer risks have been observed in populations 6 exposed to very low levels," with citations, "the 7 most efficient way to eliminate asbestos-related 8 disease is to stop using all types of asbestos." 9 Q In over 75 industrial countries throughout 10 the world, is that exactly what happened? 11 A Yes. 12 Q In other words, no asbestos of any kind 13 could go over the borders? 14 A Correct. 15 Q In the United States, given the exposure 16 levels and all of the different safety protocols you 17 have to use if you want to use asbestos, is it 18 functional again? 19 A Yes. 20 Q We haven't talked about them. We've heard 21 a little bit about AHERA and having to wear a 22 duel... what is it called? 23 A Respirator. 24 Q Respirator with HEPA filter. But in terms 25 of just what you look like when you're going to be	1617 1 asbestos, and they found that just using it four 2 times, a consumer using it four times in a year was 3 unreasonably dangerous. 4 Q And in terms of the significance of not a 5 workplace, but your home, was that significant? 6 A Yes. I mean, if you're -- in the 7 workplace there may be protective measures that are 8 being undertaken to isolate or to wet or to prevent 9 the exposures, wearing masks and other suits. In 10 the home, it's particularly a problem because once 11 it gets in the home, it's in the home and people may 12 not even understand that there's asbestos that's now 13 in their home and they are breathing as long as they 14 are living there. 15 MR. COOK: If I may, sorry to interrupt, 16 but for the last slide, if we can just identify it 17 for the record beyond the white document. 18 Q (BY MS. DEAN) Oh, you've read the 19 Consumer Products Safety Commission ban of joint 20 compound from 1978? 21 A Yes. 22 Q Sure. 23 MR. COOK: Thank you. 24 Q (BY MS. DEAN) Has the FDA also considered 25 the issue about mesothelioma being triggered from

1618 1 small exposures? 2 A Yes. 3 Q This is a little difficult to read with 4 the background here, but can you go through some of 5 the information from the FDA? 6 A Yes. So mesothelial tumor mesothelioma is 7 very rare in people that are not exposed to 8 asbestos, that its discovery in a patient is 9 considered diagnostic. The amount asbestos fibers 10 dispersed by the use of talc with more than trace 11 amounts of asbestos exceed the standards promulgated 12 for occupational exposure. 13 Q Can I stop you. What does that mean, it's 14 considered diagnostic? I don't understand what that 15 means. 16 A So if you've got someone who has got these 17 -- you've got mesothelioma, it is virtually 18 diagnostic that you're going to have a prior 19 asbestos exposure. Again, it's that signal. 20 Q And then for the second point that you 21 raised, how many -- how long has it been understood 22 by the FDA that if you have even trace amounts of 23 asbestos in a powder product, like a cosmetic talc, 24 that you're going to be violating OSHA standards, 25 how long did that go back?	1620 1 not sure. 2 MR. COOK: Thank you. 3 Q (BY MS. DEAN) We already talked about 4 this. In terms of this, I only want to spend a 5 moment because we've heard from Dr. Brody that all 6 of the different fiber types of asbestos cause 7 asbestosis, pleural disease, lung cancer, malignant 8 mesothelioma, and other cancers. 9 As a medical doctor, do you agree? 10 A I do. 11 Q And we've heard there's six types of 12 regulated asbestos. Are all of those associated 13 with all of these diseases? 14 A Yes, they are. 15 Q Do you have to have one disease, in other 16 words, do you need to see asbestosis in the body or 17 pleural plaques in the body in order to get another 18 like cancer? 19 A No. You can have none of the above and 20 get cancer. You can have just pleural plaquing and 21 not get cancer. You can have asbestosis and not get 22 lung cancer or lung cancer and not get asbestosis. 23 So these are all what we consider dose dependent. 24 So the higher the dose, the higher your risks of 25 various diseases. But no, you can have -- you don't
1619 1 A 70's. 2 Q And part of the reason I referenced that 3 is the standards in the 1970's were much higher than 4 they are today, right? 5 A Yes. 6 Q Okay. And so when the FDA is putting out, 7 "Look, cosmetic talc even having trace amounts of 8 asbestos violates these really high industrial 9 occupational levels," is that a big deal? 10 A Yes. It was 50 times higher than the 11 current. 12 Q All right. And then I interrupted you 13 before you got to the last one. I'm sorry. 14 A Well, that, and I think we've mentioned 15 this here that you can have very brief exposures to 16 asbestos and develop disease from that exposure. 17 MR. COOK: Hey, I'm sorry to interrupt 18 again, but that document says, "FD," on the left and 19 it has a 2072 date for NIOSH on the bottom. If we 20 can just identify for the record what the actual 21 underlying document is. 22 MS. DEAN: It says, "July 19th," and I 23 suspect it should say 1972, not -- 24 MR. COOK: For NIOSH. 25 MS. DEAN: And NIOSH. Beyond that, I'm	1621 1 have to have one to get another, and they don't turn 2 into something else. So asbestosis doesn't turn into 3 something else. 4 Q Okay. In terms of the significance, 5 though, of having particularly pleural plaques, I 6 want to talk about these two documents. 7 Now, just so you know, the jury's heard 8 about the Helsinki criteria or the consensus report. 9 They've heard from Dr. Brody that there was one in 10 1997 and a later one here in 2014. Are you familiar 11 with this document? * 12 A Yes. 13 Q Just I want to give some context of the 14 significance of this document in the medical and 15 scientific community. Are we looking at the 1997 16 report? 17 A Yes. 18 Q Just in terms of what effort was taken, do 19 you mind reading the highlighted portion? 20 A The group was a multi-disciplinary 21 gathering of pathologists, radiologist, occupational 22 and pulmonary physicians, epidemiologists, 23 toxicologists, industrial hygienists, and clinical 24 and laboratory scientists specializing in tissue 25 fiber analysis. And collectively the group has

1634 1 reading just the highlighted part of his discussion? 2 A "Any asbestos fibre found in a lung must 3 have been inhaled. As far as is known, no truly 4 unexposed group can be found in the world. There's 5 no proof of a threshold value - that is, a minimal 6 lower limit below which asbestos fibres cannot cause 7 the tumour - and thus, it is possible that even such 8 low exposure can cause mesothelioma (even if the 9 risk is extremely low). The only way to prove such a 10 hypothesis would be to compare the incidence of 11 mesothelioma in a group with such background 12 exposure with the incidence in a truly non-exposed 13 group. This is not possible, as no such group can 14 be found." 15 Q Just to untangle that a little bit, in 16 order to test the theory about whether pollution, 17 just what's in the background air in Portland or in 18 Houston or in some city, causes disease, is one way 19 to do that to find another group that hasn't been 20 and see what the differences are? 21 A Correct. 22 Q And is the point that Dr. Hillerdal is 23 making is you can't do that because asbestos is so - 24 - was so -- was everywhere? 25 A Right. I mean, there are -- although,	1636 1 significant increased rates of the disease 2 mesothelioma? 3 A Yes. In virtually every single study or 4 every single exposure scenario. 5 Q Okay. In order to give some context of 6 what that asbestos in the air is, we're now using 7 the same term background, but not to talk about 8 instance of mesothelioma but background for ambient 9 air. I hate that they are the same term, but I'm 10 kind of shifting to how much asbestos is in the 11 background or ambient air in urban and in rural 12 populations, and that's been studied, right? 13 A Yes. 14 Q Can you tell us a little about what the 15 data shows? 16 A Yes. So these are data from going back 17 even, like, 30 years ago. Again, it's dropping as 18 our use of asbestos has decreased. But in the 19 ambient -- in the urban environment -- and rural is 20 about 10 times lower, so you can have it at a zero. 21 But it is almost all chrysotile asbestos. The 22 ambient was considered to be 0.00003 fibers per cc 23 and 98 percent of that was chrysotile asbestos. And 24 of the chrysotile, the vast majority of it, 85 25 percent of it, was less than one micron in length.
1635 1 recently, there was a study of Houston actually 2 showing that they didn't really detect much, but 3 this is very modern, but you know, this is 20 some- 4 odd years ago. Every society still had asbestos 5 exposure. And not only would you have to find some 6 group that had never for their entire life been 7 exposed, but because of the rarity of this disease, 8 you would have to have millions in both groups, 9 which, I mean, and then you have to follow them for 10 40 years or 50 years. So it's just -- you can't do 11 that study. 12 Q So one thing that Dr. Brody told everyone 13 from the get-go is there's no way to say that the 14 background levels, and he defined that, that that 15 was associated with disease. And is this kind of 16 explaining why that can't be tackled? 17 A Yes. Because basically, you would be 18 comparing a background to a background, so you -- 19 the two groups would be the same because we don't 20 have a group that has never -- has lived in a bubble 21 their entire lives. 22 Q And study after study, and country after 23 country, for decades, when they've evaluated 24 exposures that are in excess of this background 25 level we all have to live with, did they find	1637 1 So it's very short chrysotile asbestos in the 2 ambient urban, and add another zero, rural. 3 Q The jury has seen a lot of data about what 4 is being found in cosmetic talc, that the -- 5 particularly the talc sources in North Carolina and 6 Italy and Canada involve amphiboles, and that they 7 are only looking at things that are longer and have 8 aspect ratios to five to one. 9 With that in mind, if you're going to 10 compare someone's exposure from a particular product 11 to background, it's important that you're at least 12 looking at the same things? 13 A Correct. 14 Q I'll represent to you that there's going 15 to be an expert coming soon that compares her 16 calculation of Ms. Graham's exposures to background. 17 And when she considers her exposures to talc, she 18 only will consider if it's five microns longer, but 19 then she compares it to background. 20 Given what we know about background data, 21 is that comparing apples-to-apples? 22 A No. 23 Q While we talk about that, we've heard that 24 a lot of times a lot of the data from OSHA looked at 25 five microns and longer because that was the limit

1658 1 documents? 2 A Yes. 3 Q Okay. What I want to do is then go 4 through those documents. But before we do, for 5 years when you were treating patients and taking 6 care of them, you yourself didn't ask about cosmetic 7 talc, did you? 8 A I did not. 9 Q Is information about asbestos being in 10 products something that you as a doctor rely on in 11 order to give medical health advice? 12 A Yes. 13 Q Is understanding what happened in the 70's 14 important to understanding why things have changed 15 so much in the last four or five years? 16 A Yes, it is. 17 Q Okay. I think this is where -- 18 THE COURT: Yeah, we're going to have to - 19 - Okay. Members of the jury, we're going to take 20 our lunch break. I would like you to be back by 21 1:15, excuse me, so that we can get started. As 22 close to 1:15 as possible. All right. 23 Again, please, do not discuss the case. 24 Please, do not do any research on your own while 25 you're at lunch. I will see you back at 1:15.	1660 1 11th, 1972? 2 A Yes. 3 Q I've highlighted on there just that it 4 involved the FDA and members of industry, including 5 the CTFA and folks at Whittaker, Clark & Daniels. 6 Can you see that? 7 A Yes. 8 Q And just in terms of orienting everyone, 9 did Johnson & Johnson explicitly indicate, "All of 10 our analytical data on this testing we're going to 11 give"? 12 A Yes, in the very near future. 13 Q Looking at what actually happened, one 14 more step I want to take before we do that is just 15 to also orient kind of the resources for the FDA as 16 it relates to cosmetic talc. 17 You've put up a picture of the U.S. Can 18 you display why and what this is about? 19 A Yes. So there were eight scientists that 20 were part of the FDA that were looking at -- that 21 was their area for the cosmetic talc. There was 22 250,000 products, and they had one percent of the 23 FDA's budget. 24 Q Was there repeated indication in the '70s 25 that the FDA was overwhelmed and underfunded?
1659 1 (Jury exits.) 2 THE COURT: We'll be continuing with your 3 testimony after lunch. Again, I will do my best to 4 be back here by 1:15 as well so that we can all get 5 started again. 6 (Recess taken from 11:31 a.m. to 1:23 7 p.m.) 8 (Jury enters.) 9 THE COURT: Please be seated. Ms. Dean? 10 MS. DEAN: Thank you, Your Honor. I hope 11 everyone had a good lunch. 12 Q We're going back to the 70's. 13 A Okay. 14 Q Okay. Just to get context before we get 15 into the specifics that relate to asbestos, can you 16 give the jury a little bit of orientation about the 17 FDA as it relates to cosmetics? 18 A Sure. So they had no pre-market approval, 19 so they didn't get any say in what went on before it 20 went onto the market. There was no requirement for 21 any testing to be shared, although industry did make 22 promises to share testing results. 23 Q And just in terms of letting the jury see 24 some of the things that you've seen, have you 25 reviewed and relied on this document from August	1661 1 A Yes. 2 Q The jury has already heard about this 3 document that Dr. Lewin was hired by the FDA. He 4 did testing on 100-plus production using XRD and 5 found results. Have you seen those? 6 A Yes, I have. 7 Q What the jury hasn't seen was the follow- 8 up. Were there various companies who went to Dr. 9 Lewin, obtained the samples that he looked at, and 10 tested it themselves? 11 A Yes, they tested the Lewin samples. 12 Q The jury's heard about Bates labels. What 13 do the labels at the end indicate at the bottom for 14 this Exhibit 3210? 15 A That this was a Johnson & Johnson 16 document. 17 Q Did they get Lewin samples and find the 18 presence of asbestos? 19 A Yes, tremolite asbestos. 20 Q Okay. We're going to come back to this 21 document, not explicitly, but what it found in terms 22 of all the different fibers they found in the 23 product, how many of them were asbestos versus talc? 24 A One-third. 25 Q And did they find traces of tremolite over

1662 1 and over and over again? 2 A Yes. 3 Q Were there additional confirmations of 4 asbestos in the Lewin samples that you found? 5 A Yes. 6 Q What are we looking at here in what I 7 marked as Exhibit 3475? 8 A This is looking at Thomas Hutchinson, who 9 is from the University of Minnesota, and he was 10 analyzing the Lewin samples. 11 Q Okay. And you've already told us a little 12 bit about who he is. Did he use XRD on both of the 13 samples and find chrysotile? 14 A Yes, he did. 15 Q Did he preserve those findings so we could 16 all look at them? 17 A Yes. 18 Q Did he also create a report of his 19 findings? 20 A He did. 21 Q Did he take photomicrographs of the 22 asbestos he found in the Lewin samples? 23 A He did. 24 Q Were there others that also confirmed that 25 Dr. Lewin and what he was finding, the presence of	1664 1 A No. 2 Q What happened to that report? 3 A Deep-six it. 4 THE REPORTER: I'm sorry, I didn't hear 5 the answer. 6 A Deep-six it. Do not use this report. 7 THE REPORTER: Thank you. 8 Q (BY MS. DEAN) Were there additional 9 confirmation about asbestos in the Lewin samples? 10 A Yes. 11 Q Have you seen this Avon document with the 12 same scientists at McCrone? 13 A Yes. 14 Q The jury has seen the second page where 15 they found 1 to 1.5 percent asbestiform tremolite. 16 But to be clear, were they testing the FDA samples? 17 A This was the Lewin. 18 Q Yeah. 19 A Yes. 20 Q Have you reviewed peer-reviewed scientific 21 literature that's come out recently about concerns 22 about testing that were not put forth in the 1970s? 23 A Yes. 24 Q The jury has heard about the paper by Dr. 25 Bird and others. Have you reviewed that paper?
1663 1 asbestos in a body powder, was accurate? 2 A Yes. 3 Q What is this, that I've marked as 3270? 4 A This is from Ian Stewart at McCrone labs. 5 Q The jury has already heard a lot about 6 McCrone, but do we know that he also reviewed Lewin 7 samples from the FDA? 8 A Yes, these are Lewin samples that he 9 tested. 10 Q And specifically, just because we see the 11 numbers again, I want to ask you, are there results 12 for what they found in 108T and 109T? 13 A Yes. 14 Q And what did they find? 15 A Asbestos. 16 Q And we've heard this from different folks, 17 but when they're talking about half a percent of 18 asbestos or .2 to .3 percent by weight, what are we 19 talking about in a single gram? 20 A Billions of fibers. 21 Q We're also going to connect these dots in 22 a moment, but the FDA was told by industry that the 23 worst-case scenario for cosmetic talc is .1 percent. 24 Based on the actual data that was in industry files, 25 is that true?	1665 1 A I have. 2 Q Do they call out WCD and Colgate and many 3 others in withholding tests from the FDA? 4 A Yes. 5 Q More broadly, for any of the tests that I 6 just showed you where people were indicating that 7 they confirmed asbestos in the Lewin samples that 8 Lewin tested for the FDA, was there any indication 9 that any of that information was shared with the FDA 10 as promised? 11 A No. 12 Q At the same time, was there repeated 13 onslaught of attacking Dr. Lewin and his credibility 14 and his results? 15 A Yes. 16 Q How did you get this information? 17 A Well, in 2017 Johnson & Johnson made these 18 documents available, and they went back -- all the 19 way back to the 1940s. 20 Q First of, just starting off with the 21 information that Johnson & Johnson was compelled to 22 provide in 2017, how many tests are we talking? 23 A Hundreds. 24 Q Since then, have you been able to review 25 testing information that we've gotten others,

1666 1 including Whittaker, Clark & Daniels, Cashmere 2 Bouquet, Avon, Pfizer, and others? 3 A Yes. 4 Q How many tests are we talking that have 5 come to light in the last few years that had earlier 6 been behind closed doors? 7 A Thousands. 8 Q And have you analyzed all of that testing? 9 A I have. 10 Q As a result of this information, has there 11 been a huge attention paid to this in the scientific 12 literature in the last four years? 13 A Yes. 14 Q Has there been regulatory attention? 15 A Yes. 16 Q The jury has already heard about the white 17 paper or the interworking group. Is that something 18 you're familiar with? 19 A It is. 20 Q And we've mentioned several times that it 21 was eight organizations that came together and had 22 subject matter experts. Have you reviewed the full 23 document? 24 A I have. 25 MS. DEAN: Ryan, do you mind switching?	1668 1 Q Were some of the tests not only held back 2 but actually altered when they were submitted to the 3 FDA? 4 A Yes. 5 Q Actually, before that, were the negative 6 tests, the stacks and stacks of XRD testing, for 7 instance, that didn't show anything, were those 8 provided to the FDA? 9 A Yes, they showed negative but held back 10 the more powerful TEM testing that was showing 11 positive. 12 Q Are you familiar with this report from 13 June 22nd, 1973? 14 A Yes. 15 Q And this is Exhibit 3182. It's part of 16 that report. Did Johnson & Johnson submit to our 17 federal government, the FDA, a report that cited to 18 Dr. Hutchinson's work? 19 A Yes, they did. 20 Q What's going on here? 21 A So they're basically saying that the 22 negative results looking at scanning microscopes and 23 XRD, but the ellipses, the dossier was -- the 24 sentence was removed about how TEM testing was 25 positive.
1667 1 Q (BY MS. DEAN) Just for a moment, I'll 2 represent to you that a lawyer for Whittaker, Clark 3 & Daniels suggested to Dr. Rigler, the testing 4 expert from Atlanta, that these were just a bunch of 5 plaintiffs' experts and he didn't know that. 6 Have you looked at the index of who were 7 the subject matter experts? 8 MR. COOK: Objection, argumentative, 9 misstates the question previously. 10 MS. DEAN: We have a transcript. 11 THE COURT: Overruled. 12 A Yes, I have. 13 Q (BY MS. DEAN) Are each 38 members from 14 the various different government organization 15 listed, along with their title? 16 A Yes. 17 Q You considered this whole list? 18 A I did. 19 Q And you are somebody who spends half their 20 time, at least, in the medical legal context being 21 hired by defendants and half by the plaintiff. Is 22 there a single name on here that you associate with 23 somebody in this litigation? 24 A No. I didn't recognize anyone on either 25 side.	1669 1 Q So not only do they not provide the 2 photomicrographs and the proof of chrysotile in baby 3 powder, but they -- they took that out, but they 4 then suggested that he didn't find anything by 5 citing to his tests using weaker microscopes? 6 A Correct. 7 Q And, again, to orient to the jury, is this 8 Dr. Hutchinson's testing? 9 A Yes. 10 Q In terms of where the FDA is now, have you 11 reviewed and relied on this pronouncement from the 12 FDA? 13 A Yes. 14 Q Do you mind reading it, so we're all on 15 the same page? 16 A "These findings serve as an important 17 reminder that under our current authority the FDA 18 has only limited tools to ensure the safety of 19 cosmetic products. We are dependent on 20 manufacturers to take steps to ensure the safety of 21 their products and we are calling on manufacturers 22 to improve their oversight for risks such as those 23 we are identifying today. Under the current 24 regulatory framework, cosmetic manufacturers and 25 retailers bear critical responsibilities in ensuring

1670 1 the safety of their products." 2 Q Whether we're talking about this 2019 3 pronouncement or going back decades to 1970s, did 4 the FDA rely on manufacturers to be straight about 5 what they were selling? 6 A Yes. 7 Q Do you, as a doctor, rely on people being 8 straightforward about the contents of the products 9 that they're selling in order to give medical 10 advice? 11 A Yes. That's necessary to -- to have an 12 understanding of the exposure. 13 Q We're going to get into the specifics, but 14 did this industry influence and effect animal 15 testing in order to make it less transparent? 16 MR. COOK: Objection, vague and overbroad, 17 argumentative. 18 THE COURT: What was the question? 19 MS. DEAN: That this industry influenced 20 animal testing so it was less transparent. And I 21 can add on animal testing related to talc. 22 THE COURT: Sustained. 23 Q (BY MS. DEAN) Let me clarify. The jury 24 has heard about animal testing related to cosmetic 25 talc. Have you reviewed it?	1672 1 MS. DEAN: Sure. 2 Q (BY MS. DEAN) Have you seen industry, 3 specifically, Metropolitan Talc and Johnson & 4 Johnson's involvement in the Italian miner and 5 miller studies? 6 A Yes. 7 Q And so in addition to testing, whether we 8 look at testing or animal studies or epidemiology, 9 was industry having a hand in what was going out to 10 the public in the '70s and '80s? 11 MR. COOK: Objection, leading, 12 argumentative. 13 THE COURT: Overruled. 14 A Yes. 15 Q (BY MS. DEAN) Okay. I want to digest a 16 little bit of it. The last the jury had heard a lot 17 about already, but you've just told us you reviewed 18 those tests. The thing that we haven't talked about 19 was this first thing. 20 Was the FDA explicitly informed by the 21 CTFA -- and the jury has heard what that is -- that 22 this animal testing was extensive? 23 A Yes. 24 Q Have you reviewed the two animal tests 25 that they referenced?
1671 1 A I have. 2 Q Has industry effected that testing? 3 MR. COOK: Same objection, Your Honor. 4 THE COURT: Sustained. 5 MS. DEAN: Let me lay a foundation. 6 Q (BY MS. DEAN) Have you reviewed the 7 testing? 8 A I have. 9 Q Have you reviewed the industry documents? 10 A I have. 11 Q The jury has heard and seen documents that 12 they prescreened a lot, scrutinized it, looked at it 13 for months, found it to be extremely clean after 14 five lots, that actinolite and anthophyllite had got 15 in. Have you seen the same documents? 16 A Yes. 17 Q Does that concern you, as a medical 18 doctor? 19 A Yes. 20 Q Have you also seen their influence over 21 the Italian and Vermont studies? 22 A Yes. 23 MR. COOK: Objection, Your Honor, vague as 24 to "they." 25 THE COURT: Can you rephrase?	1673 1 A Yes. 2 Q You note here that there were two that 3 were very limited. Can you explain why you believe 4 that? 5 A Yes. So they -- the two studies, one on 6 rats, one on hamsters, and the rat study was done by 7 Wagner, but the methodology that was used did not 8 follow the animals as long as he had followed them 9 in prior studies of asbestos in rats to determine 10 that they would get mesothelioma. 11 There was also a significant number of the 12 animals that were sacrificed right away so there was 13 no time at all. And so -- and the doses were 14 different. So there was a lot of -- in the 15 methodology part of the rat studies that didn't 16 correlate with a high likelihood of getting -- 17 finding mesothelioma in those rats. 18 And on the hamster study, this was not 19 only a prescreened lot, but the doses that were used 20 were very low. The latency was limited. They 21 actually used different doses and some of them were 22 extremely low dosages as well. So the testing was 23 quite limited and it was just the two studies. 24 Q So even if you didn't have concerns about 25 prescreened lots or making sure that they kind of

1690 1 and effect, would you agree with that? 2 A No. 3 Q Is there epidemiological data that takes 4 the toxin, the different types of asbestos, and 5 evaluates it at different doses so that we know 6 which levels you have a significant increased risk? 7 A Yes. 8 Q Once you have that, is there another 9 discipline called industrial hygiene that tells you 10 what exposures you get from doing specific types of 11 work? 12 A Yes. 13 Q If I want to know when I am grinding a 70 14 percent asbestos brake how much asbestos is released 15 in the air, are there studies? 16 A Yes. 17 Q If I want to know how much asbestos is 18 released when you're wire brushing off a stuck-on 19 gasket, can I get a study? 20 A Yes. 21 Q Are there studies on how much asbestos is 22 released in the air when you put powder on your 23 body? 24 A Yes. 25 Q Or below your waist?	1692 1 cause disease? 2 A Yes. 3 Q I took your chart and just divided it in 4 two in the hopes that that was easier to see. First 5 of all, the first column, are you just identifying 6 the peer-reviewed published literature? 7 A Yes. This would be the authors of the 8 study. 9 Q Did the authors have different categories 10 of exposures, some that were low, medium, and high? 11 A Yes, they had various ranges of exposures. 12 And these are exposures on the low end demonstrating 13 still increased risk of mesothelioma. 14 Q And that's what I'm hoping you can help us 15 understand, is you have on the very end "OR" and 16 numbers, what those mean and how that led you to 17 conclude that the amounts listed here you have an 18 increased risk? 19 A So for example, on the Lacourt study, at 20 less than 0.1 fiber years, this was roughly a 21 fourfold increased risk for mesothelioma. For the 22 Rodelsperger, it was less than .15 fiber years, 23 almost an eightfold risk of mesothelioma. The 24 Offermans was at .2 fiber years, and there was a 25 little over two and a half-fold. Ferrante, between
1691 1 A Yes. 2 Q Can you take that data, consider it with 3 the actual experience of a person, how often they 4 used it, for how long, and compare it to established 5 epidemiology? 6 A Yes. 7 Q The idea that we do not have 8 epidemiological evidence to determine whether Ms. 9 Graham's exposures were harmful, do you agree with 10 that in any way? 11 A No. 12 Q Okay. To go through the epidemiology, I 13 want to go through these four topics, starting off 14 with just levels of asbestos exposure from talc and 15 if that has been repeatedly shown based on 16 epidemiological data to cause death and disease, 17 then I want to talk about case reports, groups that 18 have used talc and what's been found, and finally 19 look at the miner and miller studies. 20 Are you prepared to talk about each of 21 those? 22 A Yes. 23 Q Okay. This is a lot of information. But 24 did you prepare a chart of different epidemiological 25 studies looking at asbestos and their ability to	1693 1 .1 and .99, so less than one fiber year, about a 2 4.4-fold risk. The Rolland paper, less than 0.07 3 fiber years, 2.8 risk. The Jiang study out of 4 China, less than .5 fiber years, 28 risk. And then 5 the EPA did a risk analysis at 0.01 fiber years, and 6 it was a twofold risk. 7 Q And so we've heard -- well, earlier today 8 with you and with others that, man, there was 9 repeated effort throughout the world to find out if 10 there simply was a level that we could reach that 11 people wouldn't have a significant increased risk 12 and that they couldn't find it. 13 Is this showing actual data points on that 14 concept? 15 A Yes. 16 Q Okay. Did you then take the 17 epidemiological data about what levels are being 18 shown to have a significant increased risk and 19 consider what exposures a person would have when 20 they are using cosmetic talc? 21 A I did. 22 Q The jury has already seen this paper. 23 Have you reviewed and relied on the work done by 24 Steffen? 25 A Yes.

1810 1 documents can be relied on, but this witness 2 exclusively indicated he had not. 3 And so I think on the hearsay level this 4 was a black and white issue. But there's also 5 layers of concern under 403, the relevance is 6 attenuated. The fact that someone believed or a 7 lawyer even believed that a client was exposed 8 doesn't mean an occupational medicine doctor with 9 training was somehow inaccurate in her statement 10 that she was not. 11 And then there's all of this extra layers 12 of bringing in what the Industrial Board and the 13 North Carolina law permits, why the claim was 14 denied, which is undue confusion of time and 15 prejudice. One of the things explicitly noted by 16 counsel that he wanted to state is that her lawyer 17 allowed her to file this. What a lawyer in North 18 Carolina did in a different matter is truly 19 problematic. 20 The last thing I'll note is Dr. Haber 21 indicated that by now there are literally hundreds 22 or well over 275 case series reports. The idea that 23 whatever relevance this has is significant given the 24 number of other cases I think is undermined by the 25 number of other cases.	1812 1 MR. COOK: Weird echo? 2 THE COURT: -- resonant, weird echo. Is 3 there a microphone on the Elmo? 4 MR. COOK: Is there? 5 THE COURT: Is there a way to turn it off? 6 MR. COOK: Apparent there is. 7 THE COURT: Okay. Yeah, if we can figure 8 that out. All right. Anything else we need to put 9 on the record? 10 MS. DEAN: Whittaker, Clark & Daniels 11 filed an answer and we filed a motion to strike -- 12 THE COURT: I saw that. 13 MS. DEAN: -- on their affirmative 14 defenses. I don't think that needs to be heard at 15 this time, but I want to make the Court aware that 16 that's out there. 17 THE COURT: I think all of those issues 18 probably get ironed out depending on what jury 19 instructions we give, so -- and the jury will not be 20 seeing the Complaint and the Answer. That's my 21 understanding. 22 MS. DEAN: Then we got in to WCD what we 23 think is an accurate depiction of where we are with 24 jury instructions. We're just waiting to hear back 25 and have that for you.
1811 1 MR. COOK: And if I could just very 2 briefly in response to that note, you know, Ms. Dean 3 has raised a number of those. Thirty-three of those 4 come from the Moline 2020 case series. There are 5 additional ones that Dr. Moline has raised. And 6 then Dr. Emory, there are similar concerns with 7 respect to Dr. Emory's publication that there are 8 with Dr. Moline's, that there are individuals 9 included in those studies that had exposures to 10 asbestos which are not identified in the study, and 11 the authors are claiming that it's only exposure to 12 cosmetic talc. 13 We think the examination with respect to 14 Bell, what we have is one individual that we've been 15 able to find out their name and what their -- what 16 their testimony was under, and we found 100 percent 17 of those individuals had sworn to an alternative 18 exposure to asbestos. And we think that's something 19 that's relevant, highly relevant, and should be 20 considered by the jury. Thank you. 21 THE COURT: And the objection is still 22 sustained. Mr. Cook, any time you walk over by your 23 Elmo -- 24 MR. COOK: Yes. 25 THE COURT: -- we get this really --	1813 1 THE COURT: Great. All right. So with 2 that, have a good night and see you early tomorrow. 3 (Proceedings adjourned at 4:49 p.m.) 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25

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CERTIFICATE

I, Margaret R. Golden, do hereby certify that I reported all proceedings adduced in the foregoing matter and that the foregoing transcript pages constitutes a full, true, and accurate record of said proceedings to the best of my ability.

I further certify that I am neither related to counsel or any part to the proceedings nor have any interest in the outcome of the proceedings.

IN WITNESS HEREOF, I have hereunto set my hand this 20th day of February, 2023.

/S/ Margaret R. Golden
Georgia License No. 5409-06355-5897-1392

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EXHIBIT 8

Civil District Court for the Parish of Orleans
STATE OF LOUISIANA

No: 2020 - 02718

Division/Section: A-16

ROY, LYNNE L.

versus

COLGATE-PALMOLIVE COMPANY ET AL

Date Case Filed: 3/19/2020

NOTICE OF SIGNING OF JUDGMENT

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In accordance with Article 1913 C.C.P., you are hereby notified that Judgment
in the above entitled and numbered cause was signed on May 4, 2023

New Orleans, Louisiana
May 5, 2023

Mailed May 8, 2023

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Ma *cl*

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CIVIL DISTRICT COURT FOR THE PARISH OF ORLEANS

STATE OF LOUISIANA

NO. 2020-02718

DIVISION "A-16"

LYNNE ROY

V.

COLGATE-PALMOLIVE COMPANY, ET AL.

FILED: _____

DEPUTY CLERK

JUDGMENT

This matter came before the Court on the 10th day of November, 2022, pursuant to:

Defendant Chanel, Inc.'s *Daubert Motion to Preclude or Limit Testimony from Non-testifying Experts, Dr. William Longo and Steven Compton, Daubert Motion to Preclude or Limit Testimony from Plaintiffs' Expert Mark Bailey, Daubert Motion to Preclude or Limit Testimony from Plaintiffs' Testing Expert Mark W. Rigler, and Daubert Motion to Preclude or Limit Testimony from Plaintiffs' Expert Dr. Madigan;*

Defendant Colgate-Palmolive Co.'s *Motion in Limine to Preclude or Limit Testimony from Plaintiffs' Testing Expert Dr. Mark Rigler, Motion in Limine to Preclude or Limit Testimony of Dr. David Madigan, and Motion in Limine to Preclude Plaintiffs' Expert Dr. Steven Haber's Unreliable and Unsupported Opinions on Behalf of Defendant Colgate-Palmolive Company;*

Defendant Whittaker, Clark & Daniels, Inc.'s *Daubert Motion to Exclude the Opinions and Testimony of Mark Bailey, Motion in Limine and Daubert Motion to Exclude the Opinions and Testimony of Mark Rigler, Motion in Limine and Daubert Motion to Exclude the Opinions and Testimony of Dr. Steven Haber, and Motion in Limine to Exclude "Any Exposure" Testimony and Opinions;*

Defendant Kaiser Gypsum Company, Inc.'s *Motion in Limine to Preclude Testimony of R. Mark Bailey in Accordance with Daubert and Foret, Motion in Limine to Preclude Testimony of Dr. Marty S. Kanarek in Accordance with Daubert and Foret, and Motion in Limine to*

Preclude Plaintiffs' Expert Witnesses from Asserting "Every Exposure" Theory of Causation;
and

Plaintiffs Melissa Lynne Roy Kaiser and Melanie C. Roy's

After hearing oral argument, the Court took the matter under advisement and ordered the parties to submit supplemental briefing. Subsequent to this, Plaintiffs and Defendants Chanel, Inc. and Colgate-Palmolive Co. settled their claims.

PRESENT: Mark Buha (*pro hac vice*) and Matthew Clark (Bar Roll #) o/b/o Plaintiffs, Melissa Lynne Roy Kaiser and Melanie C. Roy;
John Balhoff (Bar Roll #24288) o/b/o Defendant, Colgate-Palmolive Company;
Richard Crump (Bar Roll #30460) o/b/o Defendant, Whittaker, Clark & Daniels;
Rebecca Zotti (Bar Roll #33446) o/b/o Defendant, Kaiser Gypsum Company, Inc.; and
Meghan Senter (Bar Roll # 34088) o/b/o Defendant, Chanel, Inc.

After considering the pleadings, the testimony and the evidence presented, and the applicable law, the Court renders the following Judgment:

IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that Defendant Chanel, Inc.'s *Daubert Motion to Preclude or Limit Testimony from Non-testifying Experts, Dr. William Longo and Steven Compton* is DENIED.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that Defendant Chanel, Inc.'s *Daubert Motion to Preclude or Limit Testimony from Plaintiffs' Expert Mark Bailey* is DENIED.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that Defendant Chanel, Inc.'s, *Daubert Motion to Preclude or Limit Testimony from Plaintiffs' Testing Expert Mark W. Rigler* is DENIED.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that Defendant Chanel, Inc.'s *Daubert Motion to Preclude or Limit Testimony from Plaintiffs' Expert Dr. Madigan* is DENIED.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that Defendant

Colgate-Palmolive Co.'s, *Motion in Limine to Preclude or Limit Testimony from Plaintiffs' Testing Expert Dr. Mark Rigler* is DENIED.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that Defendant Colgate-Palmolive Co.'s, *Motion in Limine to Preclude or Limit Testimony of Dr. David Madigan* is DENIED.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that Defendant Colgate-Palmolive Co.'s, *Motion in Limine to Preclude Plaintiffs' Expert Dr. Steven Haber's Unreliable and Unsupported Opinions on Behalf of Defendant Colgate-Palmolive Company* is GRANTED IN PART AND DENIED IN PART. Dr. Haber is precluded from offering independent opinions as to the contamination of a talcum powder product. Dr. Haber is not precluded from offering opinions as to causation.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that Defendant Whittaker, Clark & Daniels, Inc.'s *Daubert Motion to Exclude the Opinions and Testimony of Mark Bailey* is DENIED.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that Defendant Whittaker, Clark & Daniels, Inc.'s, *Motion in Limine and Daubert Motion to Exclude the Opinions and Testimony of Mark Rigler* is DENIED.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that Defendant Whittaker, Clark & Daniels, Inc.'s *Motion in Limine and Daubert Motion to Exclude the Opinions and Testimony of Dr. Steven Haber* is GRANTED IN PART AND DENIED IN PART. Dr. Haber is precluded from offering independent opinions as to the contamination of a talcum powder product. Dr. Haber is not precluded from offering opinions as to causation.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that Defendant Whittaker, Clark & Daniels, Inc.'s *Motion in Limine to Exclude "Any Exposure" Testimony and Opinions* is DENIED IN PART AND GRANTED IN PART. The motion is granted with respect to Dr. Kanarek and Dr. Brody. The motion is denied with respect to Dr. Haber.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that Defendant Kaiser Gypsum's, *Motion in Limine to Preclude Testimony of Mark Bailey* is GRANTED.

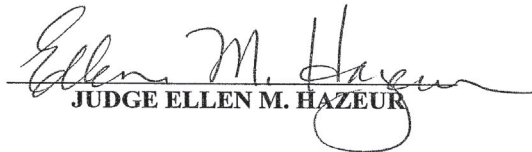
IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that Defendant Kaiser

Gypsum Company, Inc.'s *Motion in Limine to Preclude Testimony of Dr. Marty S. Kanarek in Accordance with Daubert and Foret* is DENIED.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that Defendant Kaiser Gypsum Company, Inc.'s *Motion in Limine to Preclude Plaintiffs' Expert Witnesses from Asserting "Every Exposure" Theory of Causation* is GRANTED IN PART AND DENIED IN PART. The motion is granted with respect to Dr. Kanarek and Dr. Brody. The motion is denied with respect to Dr. Haber.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that Plaintiffs, Melissa Lynne Roy Kaiser and Melanie C. Roy's *Motion to Exclude Reference to and Reliance Upon an Alleged No Observed Adverse Effect Level (NOAEL) for Exposure to Chrysotile Asbestos and Mesothelioma* is DENIED.

JUDGMENT READ, RENDERED, AND SIGNED this 4th day of May, 2023, in New Orleans, Louisiana.


JUDGE ELLEN M. HAZEUR

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PARISH OF ORLEANS, STATE OF LA

EXHIBIT 9

Civil District Court for the Parish of Orleans
STATE OF LOUISIANA

No: 2020 - 02718

Division/Section: A-16

ROY, LYNNE L.

versus

COLGATE-PALMOLIVE COMPANY ET AL

Date Case Filed: 3/19/2020

NOTICE OF SIGNING OF JUDGMENT

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In accordance with Article 1913 C.C.P., you are hereby notified that Judgment
in the above entitled and numbered cause was signed on May 4, 2023

New Orleans, Louisiana

May 5, 2023

Mailed May 8, 2023



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CIVIL DISTRICT COURT FOR THE PARISH OF ORLEANS

STATE OF LOUISIANA

NO. 2020-2718

DIVISION "A-16"

LYNNE L. ROY

V.

COLGATE-PALMOLIVE COMPANY, et al.

FILED: _____

DEPUTY CLERK

REASONS FOR JUDGMENT

FACTUAL BACKGROUND

The facts of the case subject to this litigation have been well-established and briefed throughout the course of the proceedings and are, mostly, undisputed. Thus, they are not restated here, but relevant factual information is included with corresponding legal analysis *infra*.

LAW AND ANALYSIS

The admission of expert testimony is governed by Louisiana Code of Evidence Article 702, which provides, in pertinent part, that:

- A. A witness who is qualified as an expert by knowledge, skill, experience, training, or education may testify in the form of an opinion or otherwise if:
1. The expert's scientific, technical, or other specialized knowledge will help the trier of fact to understand the evidence or to determine a fact in issue;
 2. The testimony is based on sufficient facts or data;
 3. The testimony is the product of reliable principles and methods; and
 4. The expert has reliably applied the principle and methods to the facts of the case.

The threshold inquiry in determining whether an individual may offer expert testimony under Article 702, is whether the individual has the requisite qualifications. Once an expert is deemed qualified to offer an opinion, the Court must assess whether the opinions are reliable and relevant. Article 702 is identical to Federal Rule of Evidence 702, and Louisiana jurisprudence generally follows federal interpretation. Clement v. Griffin, 91-1664 (La. App. 4 Cir. 3/3/94),

634 So. 2d 412, 426. The party demanding a Daubert hearing on an expert's qualifications or reliability must set forth sufficient allegations showing the necessity of these determinations by the Court. La. Code of Civ. Proc. Art. 1425(F)(1).

DISCUSSION

PLAINTIFFS' EXPERTS

Dr. Steven Compton and Dr. William Longo

Chanel filed its *Daubert Motion to Preclude or Limit Testimony from Non-Testifying Experts, Dr. William Longo and Dr. Steven Compton*, in which Whittaker, Clark & Daniels joined. Defendants argue that the testing by Drs. Longo and Compton is inadmissible hearsay and therefore should be excluded. Defendants are correct that an expert cannot simply be a mouthpiece for a non-testifying expert. However, whether an expert is simply parroting the opinions of a third-party is best addressed via a motion on that particular expert. Defendants do not argue that Dr. Compton does not have the qualifications to come to his conclusions; that his conclusions are based on insufficient facts or data; that his methodology is unreliable; or that he did not reliably apply the principle and methods to the facts of this case. Therefore, no Daubert analysis is necessary with respect to Dr. Compton.

While Dr. Compton's report may be hearsay, the Court sees no reason to outright exclude reference to the report. Under Code of Evidence Article 703, an expert may rely on inadmissible hearsay in forming his or her opinion if that is the type of data that is reasonably relied upon by experts in that field. La C. E. Art. 703. If Defendants believe that certain experts are acting as mouthpieces for Dr. Compton, that concern is best addressed via a motion for that expert. Accordingly, the motion is denied with respect to Dr. Compton.

Defendants challenge Dr. Longo's testing on the grounds that it is inadmissible hearsay. Once again, while the report may be hearsay, an expert can rely upon inadmissible hearsay in forming his or her opinion if that is the type of data that is reasonably relied upon by experts in that field. Therefore, the Court does not find this to be grounds to exclude Dr. Longo's report.

Defendants also challenge Dr. Longo's testing on the grounds that Dr. Longo's underlying methodologies are unreliable. Defendants contend that the "modified CSM" method that Dr. Longo utilized to identify asbestos in talc differs from the methods he has previously

utilized for asbestos analysis.

Plaintiff contends that Dr. Longo utilized both the Blount method and the modified CSM preparation technique to analyze the Chanel products at issue due to the different talc sources involved. Plaintiff argues that the heavy liquid separation preparation technique and methodology utilized by MAS is generally accepted and reliable, and Defendants' experts have also utilized the technique to identify asbestos in talc. Plaintiffs also argue that the modified CSM technique is a preparation technique that follows the International Organization of Standards ("ISO") 22262-1.

The Court notes that this is not a true *Daubert* motion. Article 702 governs the admissibility of expert opinion. Dr. Longo is not a testifying expert and will not be offering any opinions at trial. Any issues that Plaintiffs have with expert opinions that rely upon Dr. Longo's testing should be raised in a motion on that expert. For this reason alone, the *Daubert* motion should be denied. However, since Defendants have filed motions for each individual Plaintiff expert, the Court will address the reliability of Dr. Longo's testing.

The pertinent factors to consider with respect to reliability include: (1) the "testability of the scientific theory or technique; (2) whether the theory or technique has been subjected to peer review and publication; (3) the known or potential rate of error; and (4) whether the methodology is generally accepted in the scientific community. *State v. Hampton*, 2015-1222 (La. App. 4. Cir. 12/23/15); 183 So. 3d. 769, 776. However, *Daubert* does not require adherence to each factor. *Arceneaux v. Shaw Group, Inc.*, 2012-0135 (La. App. 1 Cir 9/24/12); 103 So. 3d 1086, 1091.

Having considered the parties' arguments and the evidence submitted, the Court finds that Plaintiffs' have met their burden of demonstrating that Dr. Longo's methodology is reliable for the purpose of admission under *Daubert*. According to Dr. Longo, he utilized the Blount method for heavy liquid separation to test for amphibole asbestos in the Chanel body powder containers and the first 58 Cashmere Bouquet samples that were tested.

According to his declaration, Dr. Longo followed the three-step transmission electron microscopy ("TEM") method. This method is scientifically accepted to analyze a material to determine whether it contains asbestos. Defendants don't challenge the reliability of this method.

This methodology is generally accepted in the scientific community and is recommended by the EPA's Asbestos Hazard Emergency Response Act.

Dr. Longo also stated that he followed the ISO-22262-1 and 2 for polarized light microscopy ("PLM") and transmission electron microscopy ("TEM") to analyze the samples for chrysotile asbestos. ISO 22262-1 and 22262-2 are internationally recognized and accepted standards in microscopy and asbestos analysis. Dr. Longo asserted that the modified CSM approach is not a method but rather a preparation technique that is suggested for use when analyzing talc samples, and was also the technique he used when performing the ISO 22262-1.

Dr. Longo testified that while the CSM technique has not been peer reviewed with respect to chrysotile, it has been published in peer reviewed literature as a method to look for asbestos in cosmetic talc. He also established that the ISO 2262-1 and 22262-2 are generally accepted as asbestos testing methods within the scientific community, and that no specific preparation technique is required for these methods. Considering this, the Court finds his testing to be reliable.

Accordingly, the motion is denied with respect to Dr. Longo.

Dr. Mark Rigler

Chanel, Colgate, and Whittaker, Clark & Daniels challenge Plaintiffs' expert Dr. Mark Rigler in Chanel's *Daubert Motion to Preclude or Limit Testimony from Plaintiffs' Testing Expert Mark W. Rigler, Ph.D.*, Colgate's *Motion in Limine to Preclude or Limit Testimony from Plaintiffs' Testing Expert Dr. Mark Rigler*, and Whittaker, Clark & Daniel's *Motion in Limine and Daubert Motion to Exclude the Opinions and Testimony of Mark Rigler*.

Dr. Rigler offers opinions on the composition of the talc products used by Ms. Roy and whether her use of such products caused asbestos exposure. As a threshold issue, the Court finds him to be qualified to offer those opinions. Dr. Rigler has a Bachelors of Science in biology and a Ph.D. in microbiology. For nearly 30 years he was employed by Material Analytical Services ("MAS"), an independent testing and consulting laboratory. He has authored numerous papers on the subjects of asbestos analysis, cellular ultrastructure, chemical exposures, particle analysis and exposures, standards setting, and electron microscopy. He also has training and experience in industrial hygiene methodologies. Considering all of this, the Court finds him to be qualified to

offer opinions on the composition of the talc products at issue in this case and Ms. Roy's potential asbestos exposure as a result of use of those products.

Defendants argues that Dr. Rigler's opinion should be excluded because it is based upon the testing performed by Dr. Longo. Defendants argue that this inadmissible hearsay and that Dr. Longo's testing is unreliable. Defendants also argues that Dr. Rigler's testing opinion should be excluded because Plaintiff cannot establish a chain of custody for the containers tested by MAS and he did not personally test any of the talc in these containers. Finally, Defendants argues that Dr. Rigler's extrapolation and exposure opinions should be excluded because he has no scientific basis for those opinions. Specifically, Defendants argues that Dr. Rigler has no foundation to offer any opinion that Ms. Roy would have had substantial or significant exposures to asbestos from the product containers she personally used.

Plaintiff argues that geologists, mineralogist, and microscopists routinely rely on the type of information that Dr. Rigler relied on without separately verifying every single data point. Plaintiff also argues that Chanel and Whittaker, Clark & Daniels' expert, Mr. Alan Segrave, relies upon testing of talc from the mine, milled talc, and finished products just like Dr. Rigler does.

The Court finds Colgate's, Chanel's, and Whittaker Clark Daniel's argument as to chain of custody to be without merit. A perfect chain of custody is not a prerequisite to admission. Gaps in the chain of custody go to the weight of the evidence, not the admissibility. State v. Ferguson, 2009-1422 (La. App. 4 Cir. 12/15/10); 54 So. 3d 152, 170; See also Vox Marketing Group, LLC v. Prodigy Promos L.C., 521 F. Supp. 3d 1135, 1147.

Defendants' arguments that Dr. Rigler's opinions are unreliable because he did not personally conduct any of the testing are also without merit. Experts are not required to prepare all the documents that support their opinion as long as the information is of the type reasonably relied upon by experts in his field. The jurisprudence is clear that an expert may rely on data that he did not personally collect. *Rondout Valley Cent. School Dist. V. Coneco Corp.*, 321 F. Supp. 2d 469, 479 (N.D.N.Y. 2004).

Having considered the parties' arguments and the evidence submitted, the Court finds that Dr. Rigler is not acting as a mouthpiece for the testing results of Dr. Longo. Dr. Longo's

testing was not the only information Dr. Rigler relied upon to form his opinions. Dr. Rigler reviewed testing done by multiple sources to come to his conclusion that the Chanel, Colgate, and Coty products at issue in this case contained talc contaminated with asbestos. Any issues that Defendants have with Dr. Rigler's opinions can be addressed through cross-examination.

Accordingly, the motions are denied.

Dr. Steven Haber

Colgate and Whittaker, Clark & Daniels challenge Plaintiffs' expert, Dr. Steven Haber in Colgate's *Motion in Limine to Preclude Plaintiffs' Expert Dr. Steven Haber's Unreliable and Unsupported Opinions on Behalf of Defendant Colgate-Palmolive Company*, Whittaker, Clark & Daniel's *Motion in Limine and Daubert Motion to Exclude the Opinions and Testimony of Dr. Steven Haber* and *Motion in Limine to Exclude "Any Exposure" Testimony and Opinions*, and Kaiser Gypsum's *Motion in Limine to Preclude Plaintiffs' Expert Witnesses from Asserting "Every Exposure" Theory of Causation*.

Plaintiff has offered Dr. Steven Haber as an expert pulmonologist to opine on the issues of both general causation and specific causation. Dr. Haber is a licensed physician and is Board Certified in Internal Medicine with a subspecialty of Pulmonary Diseases. He has published peer reviewed articles on malignant mesothelioma. He also has experience managing and diagnosing patients with a number of occupational pulmonary diseases, including malignant mesothelioma.

Defendants Colgate and Whittaker, Clark & Daniels challenge Dr. Haber's qualifications to opine that any of the products at issue were contaminated with asbestos. Colgate first argues that Dr. Haber is not qualified to opine that Colgate's Cashmere Bouquet was contaminated with asbestos. Whittaker, Clark & Daniels argues that Dr. Haber is not qualified to opine regarding asbestos contamination detected in talcum powder products. Defendants also argue that Dr. Haber is not a geologist or materials scientist and that Dr. Haber admitted that the geological and mineralogical opinions are outside of the areas of his expertise. Whittaker, Clark & Daniels also argues that Dr. Haber's medical causation opinions lack necessary factual knowledge and are based upon insufficient reports from other experts.

Finally, Defendants' argue that Dr. Haber's opinion that each and every exposure to asbestos or cumulative exposures above background levels was a cause of Ms. Roy's

mesothelioma should be excluded as it has no basis in science.

The Court finds that Dr. Haber is not qualified to offer any independent opinions as to the purported contamination of a talcum powder product. Dr. Haber has no education, qualifications, or experience in testing and analyzing the content of talc for contamination of asbestos. It would be inappropriate to allow him to opine beyond his qualifications.

However, the Court finds Dr. Haber's medical causation opinions to be based upon sufficient facts and to be reliable. Therefore, the Court will not preclude Dr. Haber from opining that the use of Cashmere Bouquet, Chanel, and Coty talcum powder contaminated with asbestos was a substantial contributing cause of Ms. Roy's mesothelioma. Plaintiffs have produced evidence that Ms. Roy used Cashmere Bouquet and Chanel on about 90% of days from 1958 to 2000. They have also produced evidence that Ms. Roy used Coty Airspun loose face powder almost daily from 1958 to 2013. They have produced evidence that Whittaker, Clark, & Daniels was the exclusive supplier from at least the 1970s to the 1980s. There is also evidence that the talc used in the production of these products came from certain mines in Italy, Montana, and North Carolina. As has been discussed *supra*, the Court finds Dr. Longo's report to be reliable.

As a general rule, the factual basis for an expert's opinion goes to the credibility of the testimony, not its admissibility. In light of the facts presented, the Court finds that there is a sufficient factual basis for Dr. Haber's medical causation opinions. While Defendants argue that there is no direct evidence that the actual products Ms. Roy used contained asbestos, the Court finds that the absence of testing of the exact containers Ms. Roy used is not grounds to reject circumstantial evidence that those containers were contaminated with asbestos.

Finally, with respect to Kaiser Gypsum's and Whittaker, Clark & Daniels' arguments as to "every exposure" theory, the Court finds Dr. Haber's opinions to be reliable. Defendants take issue with the fact that Dr. Haber offers qualitative opinions rather than quantitative opinions regarding the extent of exposure. However, a plaintiff can meet his or her burden of proving causation through either a quantitative or qualitative assessment of asbestos exposure. Robertson v. Dough Ashy Bldg. Materials, Inc., 2014-0141 (La. App. 1 Cir. 12/23/14); 168 So. 3d 556, 578. Based on the evidence that was presented, it appears that Dr. Haber evaluated Ms. Roy's exposures based on their frequency, proximity, and intensity. This analysis is sufficient.

Accordingly, these motions are denied with respect to Dr. Haber.

R. Mark Bailey

Chanel, Whittaker, Clark & Daniels, and Kaiser Gypsum challenge Plaintiffs' expert, Mr. Mark Bailey, in Chanel's *Daubert Motion to Preclude or Limit Testimony from Plaintiffs' Expert Mark Bailey*, Whittaker, Clark & Daniels' *Daubert Motion to Exclude the Opinions and Testimony of Mark Bailey*, and Kaiser Gypsum's *Motion in Limine to Preclude Testimony of R. Mark Bailey in Accordance with Daubert and Foret*.

Chanel argues that Mr. Bailey's opinions should be excluded because they rest upon inadmissible hearsay from non-testifying experts and his opinions rely upon cherry-picked materials and purported testing results from the general geological location that was used in Chanel's No.5 after bath product.

Whittaker, Clark & Daniels argues that Mr. Bailey's opinions should be excluded because he cannot verify chain of custody, he has not personally tested any product used by Ms. Roy, he has no knowledge of whether the products used by Ms. Roy contained asbestos, and his extrapolation of the results of Dr. Longo's samples is speculation.

Kaiser Gypsum argues that Mr. Bailey's opinion regarding the presence of talc contained in the Kaiser Gypsum joint compound is speculative and unreliable because there is no evidence to establish which specific joint compound product is at issue. Kaiser Gypsum also argues that Mr. Bailey's opinions are unreliable because they are based upon assumptions he makes about the samples that were tested by Pfizer.

The Court finds that Mr. Bailey's opinions as to Chanel and Whittaker, Clark & Daniels are based upon sufficient facts and are not speculative. As a general rule, the factual basis for an expert's opinion goes to the credibility of the testimony, not its admissibility. His reliance materials cite a plethora of documents that he reviewed to form his opinions. It does not appear to this Court that he cherry picked information. His materials reflect that he reviewed and relied upon positive tests and non-detects. The amount of weight he assigned to the various tests is an issue that relates to the credibility of his testimony. Likewise, as discussed *supra*, issues regarding chain of custody go to weight, not admissibility.

However, the motion is granted with respect to Kaiser Gypsum. The factual basis for an

expert's opinion determines the reliability of the testimony. An unsupported opinion can offer no assistance to the factfinder. The Court finds that the record has established that any opinion Mr. Bailey would give as to Kaiser Gypsum's products would not be based on sufficient facts. Mr. Bailey has not reviewed any testing on Kaiser Gypsum joint compound. He also did not review any Kaiser Gypsum documents, testimony, or written discovery. He also admitted that he did not do any testing of Kaiser Gypsum joint compound. His expert report also fails to offer any opinions as to Kaiser Gypsum at all. Plaintiffs have failed to demonstrate that any opinion Mr. Bailey would offer as to Kaiser Gypsum would be based upon any facts and that would be the product of reliable techniques. Accordingly, the motion must be granted with respect to Kaiser Gypsum.

Dr. David Madigan

Chanel and Colgate seek to exclude Plaintiffs' statistical expert, Dr. David Madigan, in Chanel's *Daubert Motion to Preclude or Limit Testimony from Plaintiffs' Expert Dr. Madigan* and Colgate's *Motion in Limine to Preclude or Limit Testimony from Plaintiffs' Statistical Expert Dr. David Madigan*. Whittaker, Clark & Daniels joined these motions.

Dr. David Madigan is a biostatistician with over thirty years of experience researching, publishing, teaching, and consulting in the fields of statistics, biostatistics, epidemiology, and pharmacovigilance. He has served as a statistics professor at various universities since 2001. He has also published more than 200 technical papers. Considering this, the Court finds him to be qualified to offer his statistical and extrapolation opinions in this matter.

Chanel argues that Plaintiffs' statistician expert, Dr. David Madigan, should be precluded from testifying regarding his probability analyses of the likelihood that Lynne Roy used asbestos-contaminated Chanel No. 5 after bath powder. First, Chanel argues that Dr. Madigan's calculations are premised entirely on inadmissible hearsay from Dr. Longo. Second, Chanel argues that Dr. Madigan's opinions are based on improper assumptions that Dr. Longo's findings are representative as to the entire population of products.

Colgate argues that Dr. Madigan's extrapolation opinions should be precluded because his opinions are premised upon false assumptions, he used a "convenience sample" rather than a "probability opinion." Colgate also argues that Dr. Madigan is not qualified to offer any opinion

regarding any mesothelioma epidemiological studies referred to by Plaintiffs' experts or to critique the epidemiological studies relied upon by Colgate's experts. Colgate also argues that Dr. Madigan's post-study statistical "power" calculations are improper and fail to follow the appropriate methodology. Colgate argues that it is generally accepted that post-study power calculations are improper. A survey of American Statistical Association members identified post-study power calculations as an "inappropriate" practice.

The Court finds, however, that Dr. Madigan's remaining opinions are reliable. The reports that Dr. Madigan relies upon are the type that experts in his field reasonably rely upon. Dr. Madigan offered an explanation as to why the representativeness of the MAS study is not an issue. Dr. Madigan stated that while simple random samples are ideal, they are uncommon in practice. Therefore, a representative sample – one drawn without bias – is appropriate. Dr. Madigan opined bias was not an issue with this sample because the samples covered a broad swath of years, the sample includes talc from the different sources each product used, and there is no rational basis to believe that the sources of the tested samples were preferentially asbestos-containing. Considering this, the Court finds Dr. Madigan's opinions to be reliable. Defendants' criticisms of Dr. Madigan's opinions can be addressed through cross examination.

With respect to Dr. Madigan's post-study power calculations, the Court finds that they are reliable as well. Defendants cited to several articles that suggest that the statistical power analysis is inappropriate to interpret post-study experiment results. It is clear to the Court, however, that this is a debate within the field that does not appear to have a definitive answer. In fact, in Colgate's exhibit 24, the authors acknowledge that post-study power calculations are largely the norm. As post-study power calculations are accepted by the statistical community, and the only issue raised with Dr. Madigan's calculations is that they were done post-study, the Court finds those calculations to be reliable. Accordingly, the motions denied with respect to Dr. Madigan.

Dr. Marty Kanarek

In its *Motion in Limine to Preclude Testimony of Dr. Marty S. Kanarek in Accordance with Daubert and Foret*, and *Motion in Limine to Preclude Plaintiffs' Expert Witnesses from Asserting "Every Exposure" Theory of Causation*, Kaiser Gypsum seeks to exclude Dr. Marty

Kanarek on the grounds that his testimony is speculative and his methodology is unreliable. Likewise, Whittaker, Clark & Daniels seeks to preclude Dr. Kanarek in its *Motion in Limine to Exclude "Any Exposure" Testimony and Opinions*.

Kaiser Gypsum argues that Dr. Kanarek's general causation opinions regarding the likelihood of drywall work to cause mesothelioma are speculative and unreliable because he does not have a sufficient factual basis to form an opinion. Kaiser Gypsum argues that Dr. Kanarek has no knowledge of how many times Ms. Roy was around her husband when he used the joint compound, how many applications of joint compound were used or how much time Ms. Roy spent cleaning up after the drywall work. Kaiser Gypsum also argues that Dr. Kanarek's opinions are based on factually dissimilar epidemiological studies.

Plaintiffs argue that the testimony of Melissa Kaiser establishes that Ms. Roy was exposed to a Kaiser Gypsum joint compound, and Kaiser Gypsum has admitted that its joint compound products contained chrysotile asbestos until 1975. Plaintiffs also argue that the scientific papers discussing the levels of asbestos exposure that results for the use of joint compound are the types of literature that epidemiologists and other experts routinely rely upon. Finally, Plaintiffs argue that Dr. Kanarek is not offering a specific causation opinion as to Ms. Roy.

The Court finds Dr. Kanarek's opinions are not speculative or unreliable. Dr. Kanarek offers general causation opinions on the likelihood of drywall work and joint compound to cause mesothelioma. The record has established that Ms. Roy was exposed to joint compound in 1973 and Kaiser Gypsum joint compound contained chrysotile asbestos until 1975. He cites numerous articles to support his opinion that people have developed mesothelioma from exposure to asbestos in joint compound. As Dr. Kanarek is not offering a specific causation opinion as to Ms. Roy, the Court finds that his opinions are based on sufficient facts and are not unreliable. Any criticism of the value he assigned to certain studies can be addressed during cross examination. Accordingly, Kaiser Gypsum's *Motion in Limine to Preclude Testimony of Dr. Marty S. Kanarek in Accordance with Daubert and Foret* is denied.

With respect to Kaiser Gypsum's *Motion in Limine to Preclude Plaintiffs' Expert Witnesses from Asserting "Every Exposure" Theory of Causation* and Whittaker, Clark &

Daniels' *Motion in Limine to Exclude "Any Exposure" Testimony and Opinions*, the motions are granted as they relate to Dr. Kanarek's opinion as they relate to the "each and every exposure" or "cumulative exposure" theories.

Dr. Kanarek's report states in pertinent part:

"Mesothelioma incidence is proportional to cumulative asbestos exposure. Intensity and duration of asbestos exposure are determinant of mesothelioma risk. There is no "safe" level of exposure to asbestos of any type and that "...an occupational history of brief or low-level exposure should be considered sufficient for mesothelioma to be designated occupationally related to asbestos exposure."

The Court finds that this portion of Dr. Kanarek's opinion falls within the theory that any or every exposure to asbestos should be considered a cause of the injury. The "each and every exposure" theory is not based on scientifically reliable principles and methods. See Yates v. Ford Motor Co., 113 F. Supp. 3d 841 (E.D.N.C. 2015); Krik v. Crane Co., 76 F. Supp. 3d 747, 752 (N.D. Ill. 2014).

The majority of Dr. Kanarek's report focuses on the risk factors for mesothelioma, and the presence of asbestos in talc. Defendants do not object to these opinions. Therefore, the Court will not limit Dr. Kanarek's other opinions. Accordingly, the motions are granted as they relate to the "each and every exposure" theory.

Dr. Arnold Brody

In their *Motion in Limine to Exclude "Any Exposure" Testimony and Opinions* and *Motion in Limine to Preclude Plaintiffs' Expert Witnesses from Asserting "Every Exposure" Theory of Causation*, Whittaker, Clark & Daniels and Kaiser Gypsum seek to preclude Plaintiffs' causation expert, Dr. Arnold Brody, from asserting opinions that each and every exposure to asbestos or cumulative exposures above background levels was a cause of Lynne Roy's mesothelioma. In response, Plaintiff argues that Dr. Brody is not being offered to assert any specific causation opinions as to Ms. Roy.

Dr. Brody's report states in pertinent part:

"Once a person develops an asbestos-related cancer, it is not possible to exclude any of the person's above background exposures to asbestos from the causal chain. When using the term "background," I am not referring to measurements taken when activity associated with asbestos is known to be ongoing like building demolition or in the environment outside the gates of a shipyard. I am also not referring to environmental measurements

taken near outcroppings of naturally occurring asbestos. Instead, when I use the term "background," I am referring to the average or mean level of asbestos found in the ambient air in rural areas and urban centers when no asbestos exposure event is known to be happening, a level that ranges from 0.0001 to 0.00000001 f/cc. Each significant exposure to asbestos that an individual with mesothelioma experienced in excess of that background level contributes to the development of the disease."

The Court agrees that the "each and every exposure" theory is not based on scientifically reliable principles and methods. See Yates v. Ford Motor Co., 113 F. Supp. 3d 841 (E.D.N.C. 2015); Krik v. Crane Co., 76 F. Supp. 3d 747, 752 (N.D. Ill. 2014) Dr. Brody offers no explanation or definition of what he considers a significant exposure. The addition of the word "significant" does not distinguish his theory from "each and every exposure" theories. Plaintiffs have failed to demonstrate that Dr. Brody's opinion is the product of reliable techniques. In fact, Plaintiffs' opposition failed to address Dr. Brody's methodology or opinions at all.

The majority of Dr. Brody's report focuses on how asbestos affects the body on a cellular level. Defendants do not object to these opinions. Therefore, the Court will not limit Dr. Brody's other opinions. Accordingly, the motions are granted as they relate to the "each and every exposure" theory.

DEFENDANTS' EXPERTS

In their *Motion to Exclude Reference to and Reliance Upon an Alleged No Observed Adverse Effect Level (NOAEL) for Exposure to Chrysotile Asbestos and Mesothelioma*, Plaintiffs argue that defense experts Drs. Jennifer Pierce, Kenneth Mundt, and Gregory Diette should be precluded from testifying about, relying upon, or referring in any way to *Pierce 2008*, *Pierce 2016* or to a "no observed adverse effects" limit for chrysotile and mesothelioma. Plaintiffs argue that the Pierce Papers are flawed because there were limitations on the exposure data. Plaintiffs also argue that the NOAELA calculations in the Pierce Papers are moot because of the calculations in a more recent study that found increased risk at levels below those discussed in the Pierce Papers.

Chanel, Colgate, and Kaiser argue that Plaintiffs arguments go to the weight and credibility of the expert's opinions rather than the admissibility. The Court agrees. There is a crucial difference between questioning the methodology employed by an expert witness and questioning the application of that methodology or the ultimate conclusions derived from that

application. The Court may not decide what expert evidence the jury should hear based on its own credibility determinations and resulting resolution of the disagreements between experts. Plaintiffs do not take issue with the actual methodology employed, but rather what they perceive as factual limitations and inconsistencies. This is an issue of credibility that can be addressed during cross examination. Accordingly, the motion is denied.

SUMMARY JUDGMENT

Whittaker, Clark & Daniels

Whittaker, Clark & Daniels filed its *Motion for Summary Judgment* arguing that Plaintiffs cannot establish a cause of action against it because they have failed to show that Ms. Roy was exposed to asbestos from any product containing Whittaker, Clark & Daniels supplied talc. Defendant also argues that even if there was a trace level of asbestiform in products containing talc supplied by WCD, Ms. Roy's exposure would have been well below the cumulative asbestos exposure permitted by the federal government, below that associated with ambient air, and too low to increase her risk of asbestos-related disease.

The Court first addresses the numerous objections to Plaintiffs' exhibits.

Whittaker, Clark & Daniels objects to exhibits 19, 20, and 29 on the grounds that these discovery responses are not verified. The objection is sustained. None of these responses include a verification. Louisiana Code of Civil Procedure Article 966(A)(4) authorizes "answers to interrogatories" as one of the documents that may be filed in support of or in opposition to a motion for summary judgment. Comment (c) to 2015 revision of Article 966(A)(4) states that: "Article 1458 requires that interrogatories be answered under oath, and only answers that are made under oath may be filed in support of or in opposition to a motion for summary judgment."

Whittaker, Clark & Daniels objects to exhibits 55 and 91 as irrelevant to the present matter. The objection is overruled. The interrogatories relate to the Coty product at issue and the relevant time period at issue in this litigation.

Whittaker, Clark & Daniels objects to exhibits 42, 44, 45, 46, 47, 48, 73, 80, 84, 85, and 86 as improper summary judgment evidence and lack of personal knowledge. Exhibits filed as unsworn and unauthenticated attachments to an opposition to a motion for summary judgment are not permissible supporting documents. However, if those exhibits are attached to and

authenticated by an affidavit or deposition offered in support or opposition to the motion, the exhibits may be considered under La. CCP. Art 966 A(2) and D(2). The objection is overruled with respect to exhibits 47, 48, and 80. These exhibits were attached to and authenticated in depositions that were attached to the opposition to the summary judgment. The objection is sustained with respect to exhibits 42, 44, 45, 46, 73, 84, 85, and 86, as these exhibits were not attached to and authenticated by affidavit or deposition.

Whittaker, Clark & Daniels objects to exhibits 5, 11, 13, 40, 41, 52, 53, 76, 77, 81, and 89 on the grounds that these are depositions and affidavits in other proceedings and not appropriate for use in a summary judgment. Defendant also argues that it did not have an opportunity to cross-examine the witness in the context of Ms. Roy's case. The objection is overruled. The cases Whittaker, Clark & Daniels cite to in support of their position apply a version of Article 966 that is no longer in effect. The article was amended to remove the "on file" requirement. There is no jurisprudence to suggest that collateral depositions are inappropriate on summary judgment under the amended article.

Whittaker, Clark & Daniels objects to exhibits 31, 32, and 68 on the grounds that these experts were not designated in this case and do not offer opinions specific to these Plaintiffs. The objection is overruled. This exhibit was authenticated and attached to depositions submitted in opposition to the motion.

Whittaker, Clark & Daniels objects to exhibits 18, 21, 22, 23, 24, 39, 65, 67, 78, 79, 83, 104, and 105 as improper summary judgment evidence. The objection is overruled with respect to exhibits 22, 24, 78, and 83. These exhibits was authenticated in and attached to timely attached depositions. The objections are sustained with respect exhibits 18, 21, 23, 39, 65, 67, 79, 104, and 105. Plaintiffs attach various academic and scientific publications to their opposition. However, these publications were not attached to an affidavit or deposition authenticating them, and thus are not competent summary judgment evidence.

Whittaker, Clark & Daniels objects to exhibits 10, 25, 26, 27, 28, 30, 34, 35, 36, 37, 38, 43, 49, 50, 62, 63, 64, 66, 90, 92, 93, 94, 96, 97, 99, 100, 101, 102, 106, 107, 108, 109, and 110 as inappropriate summary judgment evidence under Article 966(A)(4). The objection is sustained with respect to exhibits 10, 25, 26, 27, 28, 34, 35, 36, 37, 43, 49, 50, 62, 63, 64, 66, 90, 99, 100,

101, 102, and 110. These exhibits were not attached to timely attached affidavits or depositions. The objection is overruled with respect to exhibits 30, 38, 66, 92, 93, 94, 96, 97, 106, 107, 108, and 109. These exhibits were attached to and authenticated in timely attached depositions.

Having reviewed everything before the Court, including the properly admitted evidence, the Court finds that genuine issues of material fact exist to preclude summary judgment. The testimony of Brian Kolman established that Whittaker, Clark & Daniels was the exclusive talc supplier for Coty from 1972 to 1986. The testimony of Melissa Kaiser established that Ms. Roy used Coty Airspun Loose Face Powder daily from 1975 to the 2000s. Ms. Roy also testified that she used Chanel No. 5 Bath Powder on 90% of days from 1958 to 2000. Chanel admitted that that product contained Italian talc from 1924 to 2000. Whittaker, Clark & Daniels was the only supplier listed between 1975 and 1979.

Plaintiffs' expert, Dr. Rigler opined that Ms. Roy was exposed to asbestos from talc in the Coty and Chanel powders. Dr. Haber opined that Ms. Roy's frequent and regular use of products containing talc supplied by Whittaker, Clark & Daniels throughout the 1970s was a substantial factor in her development of mesothelioma. The Court finds this to be sufficient to establish a genuine issue of material fact as to whether Ms. Roy was exposed to asbestos through talc attributable to Whittaker, Clark, & Daniels and whether that exposure was a substantial factor in the asbestos of her mesothelioma. Accordingly, Whittaker, Clark & Daniels' motion for summary judgment is denied.

Chanel

Defendant Chanel filed its *Motion for Summary Judgment*, in which Defendant Whittaker, Clark & Daniels joined. Chanel argues that Plaintiffs cannot show that any container of Chanel No. 5 after bath powder that Ms. Lynne Roy used actually contained asbestos. Chanel also argues that Plaintiffs cannot prove that Chanel cosmetic talcum powder was a substantial factor in causing Ms. Roy's illness.

Plaintiffs argue that Ms. Roy used Chanel No. 5 Bath Powder from 1958 to 2000. The bath powder contained Italian talc from 1924 to 2000. Plaintiffs contend that their experts have established that the mines the talc for Chanel No. 5 was sourced from contained asbestos, that asbestos was present in the bottles of Chanel No. 5 Bath Powder that was tested, that there was

more than a mere possibility that the bottles of Chanel No. 5 Bath Powder Ms. Roy used were also contaminated with asbestos, and that Ms. Roy's exposure to asbestos through Chanel No. 5 Bath Powder was a substantial factor in causing her mesothelioma.

The Court first addresses the numerous objections to Plaintiffs' exhibits.

Chanel objects to exhibits 1, 10, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 34, 35, 36, 39, 44, 45, 46, 47, 66, 67, 68, 71, 72, 73, 76, 77, 78, 80, 81, 83, 84, 85, and 86 as improper summary judgment evidence under Code of Civil Procedure Article 966(A)(4). The objections are sustained with respect to exhibits 1, 10, 18, 19, 20, 21, 23, 25, 26, 27, 28, 29, 31, 32, 34, 35, 36, 39, 44, 45, 46, 67, 68, 71, 72, 73, 77, 84, 85, and 86. These exhibits are not the type of exhibits allowed by Article 966(A)(4) and were not attached to or authenticated in a deposition or affidavit submitted with Plaintiffs' opposition. The objections are overruled with respect to exhibits 13, 14, 15, 16, 17, 22, 24, 30, 47, 66, 76, 78, 80, 81, and 83. These exhibits were authenticated in and attached to a deposition submitted with Plaintiffs' opposition.

Chanel objects to exhibits 2, 7, 37, 38, 40, 41, 43, 48, 49, 50, 52, 54, 55, 62, 63, 64, 65, and 79 as vague and improper summary judgment evidence. The Court does not find any of the exhibits to be vague. However, the objection as to improper summary judgment evidence is sustained with respect to exhibits 2, 37, 41, 43, 49, 50, 52, 55, 62, 63, 64, 65 and 79. The objection is overruled with respect to exhibits 7, 38, 40, 48, and 54. These exhibits were attached to and authenticated in timely attached depositions.

Having reviewed everything before the Court, including the properly admitted evidence, the Court finds that genuine issues of material fact exist to preclude summary judgment. The testimony of Melissa Kaiser established that Ms. Roy used Chanel No. 5 from 1975 to the 1990s. Chanel admitted through its corporate representative that that product contained Italian talc from 1924 to 2000.

Plaintiffs' expert, Dr. Rigler opined that Ms. Roy was exposed to asbestos from talc in Chanel No. 5. He also opined that that Ms. Dr. Haber opined that Ms. Roy's frequent and regular use of Chanel No. 5 was a substantial factor in her development of mesothelioma. The Court finds this to be sufficient to establish a genuine issue of material fact as to whether Ms. Roy was

exposed to asbestos through talc attributable to Chanel and whether that exposure was a substantial factor in the asbestos of her mesothelioma. Accordingly, Chanel's motion for summary judgment is denied.

Colgate

Defendant Colgate filed its *Motion for Summary Judgment*, in which Defendant Whittaker, Clark & Daniels joined. Colgate argued that Plaintiffs cannot show that Ms. Roy's use of Cashmere Bouquet cosmetic talcum powder was a substantial factor in causing her injuries. Colgate argues that because there is no direct evidence that any of the containers of Cashmere Bouquet that Ms. Roy personally used was tainted with asbestos, Plaintiffs cannot establish that Ms. Roy was exposed to asbestos via Cashmere Bouquet.

The Court first addresses the numerous objections to Plaintiffs' exhibits.

Colgate objects to exhibits 18, 21, 22, 23, 24, 25, 26, 27, 28, 30, 31, 34, 35, 36, 37, 38, 39, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, 57, 58, 59, 60, 61, 62, 63, 64, 65, 66, 67, 68, 78, and 83 on the grounds that they are improper summary judgment evidence.

The objection is sustained with respect to exhibits 18, 21, 23, 25, 26, 27, 28, 31, 34, 35, 36, 37, 38, 39, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, 57, 58, 59, 60, 61, 62, 63, 64, 65, 67, and 68. The objection is overruled with respect to exhibits 22, 24, 30, 66, 78, and 83. These exhibits were authenticated in and attached to a deposition submitted with Plaintiffs' opposition.

Having reviewed everything before the Court, including the properly admitted evidence, the Court finds that genuine issues of material fact exist to preclude summary judgment. Ms. Roy testified that she used Cashmere Bouquet about 90% of days from 1958 to 2000. Melissa Kaiser also testified that she recalled her mother using Cashmere Bouquet from 1972 to the late 1990s. Colgate admitted that Cashmere Bouquet contained talc exclusively from Val Chisone, Italy until 1968. Following that year, Cashmere Bouquet contained talc from North Carolina and Montana.

Plaintiffs provided evidence that the talc from the mines in Italy, North Carolina, and Montana were contaminated with asbestos. Dr. Rigler opined that Ms. Roy was repeatedly exposed to significant concentrations of asbestos from using Cashmere Bouquet. Dr. Haber opined that Ms. Roy's frequent and regular use of Cashmere Bouquet was a substantial factor in her development of mesothelioma. The Court finds this to be sufficient to establish a genuine

issue of material fact as to whether Ms. Roy was exposed to asbestos through talc attributable to Colgate and whether that exposure was a substantial factor in the asbestos of her mesothelioma. Accordingly, Colgate's motion for summary judgment is denied.

REASONS FOR JUDGMENT READ, RENDERED, AND SIGNED this 4th day of May, 2023, in New Orleans, Louisiana.


JUDGE ELLEN M. HAZEUR

A TRUE COPY


DEPUTY CLERK - MINUTE CLERK
CLERK OF CIVIL DISTRICT COURT
PARISH OF ORLEANS, STATE OF LA.

EXHIBIT 10



**Transcript of Proceedings had in
Stephanie Salcedo v. Avon Products, Inc.; et al.**

TRIAL

Taken On: March 25, 2024

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Page 1

IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
COUNTY DEPARTMENT, LAW DIVISION

STEPHANIE SALCEDO,	)	
Individually and as	)	
Administrator of the	)	
Estate of THERESA M.	)	
GARCIA, Deceased,	)	
	)	
	)	
Plaintiff,	)	
	)	
v.	)	No. 20 L 4505
	)	
AVON PRODUCTS, INC.,	)	
et al.,	)	
	)	
Defendants.	)	
	)	

REPORT OF PROCEEDINGS at the trial of
the above-entitled cause before the Honorable
Patrick J. Sherlock, Judge of the said Court, at
Richard J. Daley Center, 50 West Washington
Street, Room 2007, Chicago, Illinois, commencing
at 10:19 a.m. on the 25th day of March, 2024.

Reported by:

Deborah Habian, CSR, CRR, RMR

License No. 084-02432

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12 Ms. Lucy Savorgnan, Johnson & Bell

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11 MARKED ADMITTED

12 Plaintiff's Exhibit 1 101

13 Plaintiff's Exhibit 8 177

14 Plaintiff's Exhibit 26 63

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Stephanie Salcedo v. Avon Products, Inc.; et al.
Proceedings had on 3/25/2024 - TRIAL

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1 (Whereupon, the following sidebar 2 proceedings were had out of the 3 presence of the jury commencing 4 at 10:19 a.m.) 5 THE COURT: All right. First off, we 6 received a note -- here you go, 7 Mr. Adams -- from Barbara Field. She has severe 8 bladder pain and other issues that require her 9 to be now off of our jury. So she's excused. 10 And the defense has a motion. 11 MS. PEPKE: We do, your Honor. Good 12 morning. The defense is moving for a mistrial. 13 We filed the motion last night. I want to 14 emphasize that we do not take this lightly, and 15 the arguments and allegations that we've made, 16 we do not take lightly. 17 Plaintiff violated Illinois Supreme 18 Court Rule 213(f) and (i) by failing to timely 19 supplement Dr. Bailey's expert disclosures with 20 information that he had in fact completed 21 testing of Johnson's baby powder and 22 was -- allegedly was no longer under a 23 confidentiality agreement, and, quote, he would 24 be happy to discuss that with the jury if	1 absolutely required. 2 Here we have the same fact pattern in 3 every deposition conducted not just in this case 4 but before, in fact, one on January 11th, 2024, 5 so just a couple months ago. 6 Mr. Bailey said that he was under a 7 confidentiality order, could not disclose 8 anything. In fact, in several depositions he 9 waffled back and forth whether he'd even 10 conducted testing. 11 Defendants relied on that deposition 12 testimony as well as the deposition testimony in 13 this case in Garcia conducted on 11-30-2023. 14 Defendants relied on that in opening. In fact, 15 it was a central part of the opening. There was 16 a slide on it which is, I believe, Exhibit F 17 where we marked it up and intended to circle 18 back around using that slide in closing. It was 19 addressed in the text of the opening. 20 The cross-examination was designed 21 around that lack of testing, personal testing. 22 We, in fact, labeled him "the testing guy" in 23 opening that hadn't tested or couldn't reveal 24 the test to the jury.
Page 7	Page 9
1 defendants only asked. 2 We actually, your Honor, believe the 3 issue is completely controlled by the Copeland 4 case out of the First District, 316 Illinois 5 App. 3d 932, year 2000. 6 As that Court found, your Honor -- and 7 the facts are remarkably similar, surprisingly 8 so, actually, where an expert discloses new 9 testing on the stand for the first time. Even 10 in cross-examination, that is grounds for a 11 mistrial, particularly when it is of a 12 significant issue as it was in this case. 13 There the expert had testified at his 14 deposition that he had not personally conducted 15 testing on his theory of plaintiff's case, how 16 she was injured. On cross-examination, relying 17 on that deposition testimony, defendant asked 18 him about it, and the expert disclosed for the 19 first time that he had in fact conducted 20 testing. 21 The trial court there denied the 22 mistrial; instead, struck the testimony. On 23 appeal, the First District vacated the jury 24 verdict, finding that in fact mistrial was	1 So this is a significant impact to not 2 only our ability to prepare for 3 cross-examination, the execution of the 4 examination, the theory of the defense in the 5 case, and it was set up in opening, and now our 6 credibility has been significantly impaired. 7 Under Copeland, the mistrial factors 8 all support a mistrial in this case. The 9 strength and importance of the evidence is 10 apparent by the fact that we relied on an 11 opening designed to cross around it. It has 12 gutted our theme. 13 The wilfulness is also addressed in the 14 motion. I don't necessarily want to discuss 15 that in open court except to note that it is 16 apparent that there is a course of conduct and 17 pattern of doing similar things. I'll reference 18 particularly to Exhibit I in the Henry case and 19 Exhibit L in the Hernandez-Cueva case. 20 MR. ADAMS: Hernandez-Cueva, that was 21 his name. 22 MS. PEPKE: Thank you. 23 That there is a pattern of doing just 24 this, of developing testimony in response and

6 (Pages 6 to 9)

Stephanie Salcedo v. Avon Products, Inc.; et al.
Proceedings had on 3/25/2024 - TRIAL

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1 He's trying to not just say: I've seen a bunch 2 of tests that say asbestos is in talc, and if it 3 is, here are my health-related opinions -- that 4 would be okay. But instead what he wants to do 5 is spend 80 percent of his time with the jury 6 talking about this document that was given to 7 Johnson & Johnson from this lab showed this 8 amount of tremolite, this one said this amount 9 of chrysotile. And I cannot cross-examine him 10 on those issues because he's not an expert on 11 that. 12 Let them try to get these documents in 13 with their testing expert who knows what XRD is, 14 who has used TEM, who can say, here's a document 15 where it was found, and I can have a fulsome 16 cross-examination. 17 This expert is not the correct one. He 18 cannot be the person who's going to run all 19 these documents through and put them up there 20 with the jury without any expertise. 21 Your Honor's already ruled that. We 22 are repeating ourselves. 23 THE COURT: Well, your chart says right 24 here: "Motion to Exclude after it was	1 looks at an interworking group where they talk 2 about how percent averages are not as helpful 3 than quantifying the amount because of the 4 potential health hazards. 5 The question I asked from him is: What 6 is more helpful from you as a doctor in terms of 7 getting to assess health hazards? A similar 8 example. 9 THE COURT: Hang on. 10 MS. DEAN: Okay. 11 THE COURT: Is he going to testify that 12 it is his opinion that her mesothelioma was 13 caused by the inhalation of Johnson's baby 14 powder? 15 MS. DEAN: Absolutely. 16 THE COURT: All right, the objections 17 are reserved for the time being. 18 MS. DEAN: Your Honor, the last thing 19 we have to do on the record is what we've been 20 trying to do for a week is just admit a bunch of 21 exhibits. 22 THE COURT: Let's do that over the 23 lunch. 24 MS. DIWAN: Your Honor, I think there's
Page 55	Page 57
1 introduced to J&J Corporate, Doc Subject to 2 Objections at Trial." 3 It's denied. 4 MS. BUENO: Yes, and you gave us the 5 opportunity to object. 6 THE COURT: At trial. 7 MS. BUENO: But I'm looking at the 8 first order, that you granted the fact that he 9 is unqualified to opine that Johnson's baby 10 powder was contaminated with asbestos. 11 THE COURT: He's going to testify -- 12 what's his primary opinion? 13 MS. DEAN: That Theresa Garcia has 14 mesothelioma caused from her cumulative dosed 15 exposure which includes exposures to Johnson & 16 Johnson, Jean Nat , and Avon. It's specific 17 causation. 18 And to look at that, he looks at 19 frequency, regularity, proximity, intensity. 20 Intensity has to do with the presence amount and 21 type of asbestos and how much is released in the 22 air. 23 And I couldn't think of a better 24 example than the one they start off with. He	1 one other issue. We wanted to renew our motion 2 we made before as to the Decades of Evidence 3 chart. 4 I think plaintiff seek to admit this as 5 a Rule 1006 summary. We think it's ripe with 6 argument. It also contains exhibits that 7 your Honor has already excluded from evidence, 8 including Alice Blount's learned treatise which 9 is on here twice, as well as an entire last page 10 of litigation reports from experts who are not 11 appearing in this case. 12 We do not think this document should be 13 admitted in evidence. We don't think it's a 14 proper demonstrative. So we'll object to 15 Plaintiff's Exhibit 63. 16 THE COURT: We'll address that when we 17 get to it. 18 (Whereupon, the following proceedings 19 were had in open court.) 20 (Enter the jury.) 21 (Brief pause in proceedings.) 22 THE COURT: Let me address for a moment 23 the empty chair. Miss Field is not with us, nor 24 will she be with us. She went to the doctor

18 (Pages 54 to 57)

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1 over the weekend, it appears, and because of 2 some personal health issues, she will not be 3 able to continue with the jury. So that 4 explains why A, she is not here; and B, why we 5 are continuing without her. 6 We've got a new witness on the stand. 7 Miss Dean, will you call your next 8 witness? 9 MS. DEAN: Yes, your Honor, Dr. Steven 10 Haber. 11 THE COURT: Dr. Haber, if you would 12 come up here, we'll get you sworn in. 13 THE WITNESS: (Complying.) 14 THE COURT: Raise your right hand, if 15 you would. 16 (Oath administered to the witness at 17 11:24 a.m.) 18 THE WITNESS: I do. 19 THE COURT: Thank you. Go ahead and 20 have a seat. 21 THE WITNESS: Thank you. 22 THE COURT: Ms. Dean, whenever you're 23 ready, you can begin. 24 MS. DEAN: Your Honor, I have a copy	1 American College of Physicians. To obtain a 2 Fellowship means that you have demonstrated 3 experience and expertise. 4 And the American College of Physicians 5 is a group of physicians that -- across North 6 America that deal with diseases of internal 7 medicine, heart disease, lung disease, diabetes, 8 high blood pressure, et cetera. 9 And then I'm also a Fellow of the 10 American College of Chest Physicians, who are 11 physicians that have dedicated their lives to 12 diseases related of the chest. So it's going to 13 be lung doctors like myself, heart doctors, 14 chest surgeons maybe some radiologists, but 15 doctors that have focused their attention in the 16 field on diseases related to the chest. 17 Q. How long have you been a medical doctor 18 who is focused on the field of diseases related 19 to the chest? 20 A. Over 30 years. 21 Q. In terms of your different specialties, 22 can you tell the jury a little about them? 23 A. Yes. So internal medicine is what 24 you'd call a clinician. That is somebody who is
Page 59	Page 61
1 for you just of the underlying documents you 2 asked for us to have for each witness. 3 THE COURT: Thank you. 4 MS. DEAN: Good morning, everyone. 5 6 STEVEN HABER, M.D., 7 called as a witness herein by the Plaintiff, 8 having been first duly sworn, was examined and 9 testified as follows: 10 DIRECT EXAMINATION 11 BY MS. DEAN: 12 Q. Good morning, Dr. Haber. 13 A. Good morning, Ms. Dean. 14 Q. Can you hear me okay? 15 A. I can. 16 Q. There's no mic for you. But it's a 17 relatively small courthouse. If you could speak 18 up, that would be awesome. 19 A. I will. 20 Q. Are you a medical doctor? 21 A. I am. 22 Q. After the M.D., what are all those 23 other letters? 24 A. FACP stands for the Fellow of the	1 taking care of medical problems of adults from 2 all of the medical problems that a patient might 3 have. 4 And then I'm also specialized in 5 pulmonary diseases and also occupational 6 pulmonary diseases. So those are diseases 7 related to the lungs. That's what pulmonary -- 8 and then I'm Board-Certified, which means that 9 I've taken examinations and passed exam -- after 10 successfully completing training and then you 11 can sit for the examination and become 12 Board-Certified. And I'm Board-Certified in 13 internal medicine and pulmonary diseases. 14 Q. The jury has already heard from 15 Dr. Brody who discussed a whole an array of 16 diseases caused by asbestos. 17 I want to ask you, have you been the 18 doctor who takes care of, treats, diagnoses 19 patients that have asbestos-related diseases? 20 A. Yes. 21 Q. Can you give the jury an idea over the 22 decades of how many people that have come to you 23 for care for a disease caused by asbestos? 24 A. Oh, I mean, hundreds and hundreds of

19 (Pages 58 to 61)

Page 62 1 patients with a variety of asbestos-related 2 diseases, from asbestosis which is the scarring 3 of the lung, to cancers related to asbestos that 4 affect the chest or the lungs or the other parts 5 of the body. 6 Q. Where do you live in the world? I 7 didn't ask you that at the beginning. Sorry. 8 A. I live in Houston, Texas. 9 Q. Is there a huge focus on the study of 10 health disease related to the lung in Houston? 11 A. Yes. 12 Q. Even if we look at the rare cancer 13 mesothelioma, can you give the jury how many 14 times, having nothing to do with courtrooms like 15 this, you have personally been a doctor caring 16 for and treating a person with the rare disease 17 mesothelioma? 18 A. It's been about one or two a year, so 19 dozens over my career. 20 Q. Are there doctors who spend their 21 entire career in internal medicine and never 22 have a patient with mesothelioma? 23 A. Sure. Because this is going -- 24 typically it's going to be a disease where for	Page 64 1 following that, I went to Houston and did my 2 medical school training at University of Texas 3 Health Science Center in Houston. 4 So there was a VA hospital, a 5 Methodist -- a private hospital as well as the 6 community hospital, which was Ben Taub Hospital. 7 And then following that, I did an 8 internship, one-year internship of internal 9 medicine, followed by two years of residency 10 internal medicine, and then an additional two 11 years of specialty training related to diseases 12 of the lung. 13 Q. Are you Board-Certified? 14 A. I am. 15 Q. Is that a complicated intense process? 16 A. It is. And it's changed over the 17 years. The current process is more of an 18 everyday sort of process of ongoing education, 19 but up until recently, every ten years doctors 20 would have to redo the test. But you have to 21 take a -- you have to complete your training and 22 then be recommended to sit for the examination 23 to begin with. 24 Q. For decades after becoming a
Page 63 1 most of the cases are pleural. They're going to 2 be related to the lungs. And so they're going 3 to be sent to a specialist to be seen and 4 diagnosed and cared for and not by a family 5 physician or just a general doctor. 6 Q. I'm handing you a copy of your resum 7 or Curriculum Vitae. I have marked this as 8 Exhibit 26. Does this summarize your 9 qualifications? 10 A. It does. 11 MS. DEAN: Your Honor, we seek to admit 12 Exhibit 26. 13 THE COURT: Any objection? 14 MS. BUENO: No objection, your Honor. 15 THE COURT: It will be allowed into 16 evidence. 17 (Plaintiff's Exhibit 26 for ID 18 was admitted into Evidence.) 19 BY MS. DEAN: 20 Q. Just a broader look, can you let us 21 know a little bit about your educational 22 background? 23 A. Sure. I did my undergrad at the 24 University of Texas in Austin. And then	Page 65 1 Board-Certified pulmonologist and internist, did 2 you have a consulting business where you were 3 treating patients again that have nothing to do 4 with litigation? 5 A. Yes. 6 Q. Who else worked there and what's her 7 background? 8 A. Okay. Well, initially, actually, I was 9 with a different doctor, but for the past, oh, 10 fifteen years or so, I've been working with my 11 wife. She's a pathologist and laboratory 12 doctor. 13 And so she's been the boss at home and 14 the boss at the office and it's wonderful. But 15 she's an amazing woman. And so she's been 16 running my office, and I've been in private 17 practice, solo private practice for over 18 15 years of my 30 years. 19 Q. One thing in your resum that I want to 20 give the jury a little bit of concept for 21 because I hadn't heard of it until I started 22 doing this, it's this idea of a NIOSH B Reader. 23 It shows that you're certified in that over and 24 over again for decades. What is that?

Page 70 1 the lungs and the chest. 2 And in addition, I am a member of the 3 American College of Occupational and 4 Environmental Medicine, and those are doctors 5 who may be public health, may be radiology, may 6 be surgery, different fields not just to lungs 7 but are dealing with patients related to 8 diseases related to occupational exposures or 9 environmental exposures. 10 Q. As a medical doctor, even if we're just 11 looking at the part of your job that involves 12 figuring out what's wrong with a patient, is 13 understanding what they've been exposed to in 14 life often related to determining diagnosis? 15 A. Yes. 16 Q. As a medical doctor, is it typical 17 whether you're talking about textbooks, classes 18 or treatment to understand the history of 19 knowledge about a disease? 20 A. Yes. In fact, when you read an 21 article, it's so common -- or in a textbook 22 chapter, it's almost always the first paragraph 23 or two is, okay, here's where we started. This 24 is kind of how things have evolved. And so even	Page 72 1 A. Yes. 2 Q. Okay, we'll get into the specific 3 factors more, but is that something you've done 4 for decades in and out of courtrooms? 5 A. Yes. 6 Q. Have you published in the peer-reviewed 7 literature? And the jury has heard a little bit 8 about that process, and so I'm going to straight 9 to have you published. 10 A. Yes, I've mostly been a clinician, but 11 I have had some publications, yes. 12 Q. Are these the publications on your 13 resum dealing with the disease mesothelioma or 14 dealing with asbestos? 15 A. Yes. 16 Q. Okay. Now we've heard from Dr. Brody 17 who was an academic researcher who's published 18 over a hundred times throughout his life. That 19 was his career. It wasn't seeing patients. 20 While you have published, has the vast 21 majority of your work been treating and taking 22 care of people? 23 A. Correct, yes. 24 Q. There's this idea about you being on an
Page 71 1 up-to-date articles are constantly looking back 2 to say, okay, you know, this is what was 3 thought, this is kind of how we've marched 4 through, and this is why we're here now. And so 5 you do get a historical perspective very often. 6 Q. As a medical doctor, is part of what 7 you have studied and evaluated as what was known 8 about the dangers of asbestos, not limited to 9 but specifically asbestos and talc throughout 10 time? 11 A. Yes. 12 Q. And then in order to evaluate 13 particularly the disease mesothelioma -- and let 14 me stop for a moment. 15 Have you looked at Theresa Garcia's 16 medical records? 17 A. I have. 18 Q. We're going to go into it in a little 19 more detail in a little bit, but what disease 20 took her life? 21 A. Malignant pleural mesothelioma. 22 Q. And in order to evaluate what causes 23 that disease, do you need to have an 24 understanding of what they're exposed to?	Page 73 1 island. And so I want to spend a moment here. 2 When you're asked to give opinions 3 about what causes someone harm, are you 4 routinely hired by people on both sides, the 5 group that believes they were harmed by 6 something and the group that said, we didn't do 7 it? 8 A. Yes. In fact, it's been about -- and 9 it's maintained that way -- about 50/50. So I'm 10 sometimes asked by a plaintiff's attorney even 11 before a lawsuit, and I may tell them, no, I 12 don't think you even have -- there is not a harm 13 here. And sometimes I may see a -- someone for 14 a defendant and tell, them yeah, I think there 15 is harm here and maybe this isn't one for you 16 guys to fight about it. And -- but I will give 17 my appraisal and opinion, and I do that and have 18 done that both in asbestos as well as silica and 19 other inhalation injuries for 20 years now. 20 Q. I want to make sure this doesn't get 21 lost. It's not just that you've done it for 22 both sides. How evenly split is it that one 23 side wants you to come and explain issues to the 24 Court versus the other?

Page 86 1 A. Yes, ma'am. It's been a mailbox. And 2 again, that's not where -- I've in practice at a 3 different office, but that's the mailing 4 address. 5 Q. And the office that you say you've 6 practiced at, that you can find on a website, is 7 on Blalock Road, correct? 8 A. That was the office, yes, ma'am. 9 MS. DEAN: Your Honor, I think cross is 10 wide open, but if this isn't about 11 qualifications, we'd like to finish our exam. 12 MS. BUENO: Your Honor, what this is 13 about is the witness testified that he's been in 14 solo practice for fifteen years, and that is not 15 true. 16 BY MS. BUENO: 17 Q. You are not currently a practicing 18 doctor, are you? 19 MS. DEAN: So my objection is the same. 20 If they want to talk about when and why he 21 reduced his patient load, that doesn't go to 22 qualifications. That's cross-examination and 23 needs to wait until cross-examination. 24 THE COURT: I agree. Go on.	Page 88 1 A. Those are people that may work with 2 industry or they may take samples. They look at 3 air sampling. They may give information as far 4 as trying to keep people -- workers from having 5 exposures, that sort of thing. They're not 6 medical doctors. 7 Q. Have you ever been the person that 8 grabs a dosimeter, goes out to a site and makes 9 those measurements? 10 A. No. 11 Q. Have you ever been the person that 12 grabs a microscope, whichever kind, and analyzes 13 it under a microscope? 14 A. No. 15 Q. Are those types of results routinely 16 referenced in medical texts for doctors like 17 yourself to evaluate? 18 A. Yes. 19 Q. Are you familiar with this book by 20 Dr. Roggli? 21 A. I am. 22 Q. Does he provide exposure levels and 23 amounts both from analyzing a bulk sample and 24 analyzing the air repeatedly in his medical
Page 87 1 MS. BUENO: Your Honor, at this time I 2 would like to renew my objections to Dr. Haber 3 coming to the courtroom and speaking of things 4 that were at issue in Motion in Limine 19, and I 5 will specifically ask your Honor to exclude him 6 from talking about any testing documents or 7 documents about whether or not Johnson's baby 8 powder is contaminated with asbestos because 9 that is outside this witness's qualifications. 10 THE COURT: All right. The Court's 11 ruled on these issues. 12 Ms. Dean, why don't you begin your 13 examination. 14 MS. DEAN: Yes, your Honor. 15 CONTINUING DIRECT EXAMINATION 16 BY MS. DEAN: 17 Q. Dr. Haber, I want to digest some of 18 that and then I want to get back to Ms. Garcia, 19 okay? 20 A. Yes, ma'am. 21 Q. First of all, what is an industrial 22 hygienist? You were asked whether you were one 23 of those. 24	Page 89 1 textbook? 2 A. Yes. 3 Q. Are you familiar with the work of 4 Dodson and Hammar? 5 A. I am. 6 Q. Do they give exposures assessments, how 7 much asbestos is in a product by percentage and 8 how much it gets into the air, fiber release, 9 for all sorts of things, gaskets, insulations, 10 brakes, everything? 11 A. Yes, ma'am. 12 Q. Is that typical for occupational and 13 environmental lung doctors to review and rely 14 on? 15 A. Absolutely. 16 Q. Does it surprise you in any way, shape 17 or form that before we ever got in this 18 courtroom, that experts hired by Johnson & 19 Johnson's lawyers that have medical background 20 have done the exact same thing, rely on 21 industrial hygienists and material scientists? 22 A. No, because that's just part 23 of -- articles and textbooks, they all will have 24 the same discussions.

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Page 90 1 Q. In terms of how and why you look at 2 that, in order to figure out why a person gets 3 sick, is it first important to know what their 4 life experiences are? 5 A. Yes. 6 Q. You weren't there right with your 7 patients. They're coming in once they are sick, 8 correct? 9 A. Yes. 10 Q. Is it also important to look at the 11 data and facts and information, particularly 12 with asbestos-related diseases that tell you the 13 amount, fiber type, and presence of asbestos? 14 MS. BUENO: Objection, leading. 15 THE COURT: Sustained. 16 BY MS. DEAN: 17 Q. Is intensity a factor that you consider 18 in evaluating causation? 19 A. Yes. 20 Q. What does that mean? 21 A. When you're looking at causation, 22 whether it be asbestos or something else, you 23 need to know how intense was the exposure? What 24 was the exposure like? What was the exposure	Page 92 1 because there's a limit of detection for that 2 CAT scan, and I have to tell them there may be a 3 spot in there that's too small for us to detect 4 with the ability of this CAT scan. And so with 5 any test, you have to understand if it's a 6 negative test, could this be a false negative? 7 Q. Particularly when looking at 8 asbestos -- and I want to make this even before 9 you ever started looking at cosmetic talc -- is 10 understanding how much asbestos is present 11 important? 12 A. Yes. 13 Q. And is understanding what ranges of 14 asbestos can be seen given the type of tests 15 done something you've routinely relied on for 16 decades? 17 A. Yes. 18 Q. I know you said you focused a lot on 19 occupational health. The jury has heard a 20 little bit about OSHA. Do they describe in 21 Federal Register documents how testing should be 22 done? 23 A. Yes. 24 Q. If you use that testing, are you going
Page 91 1 to? When you're dealing with asbestos, what 2 sort of asbestos because there are six different 3 fiber types. 4 So you have to have an understanding of 5 where the exposure was, how often it was, how 6 long ago because these are diseases that have a 7 long latency. I'm not sure if the jury has 8 heard that term, but there's a long period of 9 time before -- after the exposures, so you need 10 to have all this information. 11 Q. When you and others in your field, in 12 textbooks, the folks on the other side, evaluate 13 testing, is it important to critically consider 14 the limits and sensitivity of the testing? 15 A. Yes. I mean, and it's not just related 16 to just this issue. So as a doctor, I will -- 17 we look for lung cancer, and I will order a CAT 18 scan. I need to understand -- I don't do the 19 CAT scan -- and I read them, but I don't do 20 them. I need to know what are the strengths and 21 the weaknesses, because if I don't -- if I have 22 a patient and I say, I don't see any nodules or 23 spots and they ask me, well, does that mean I'm 24 cancer free, I have to be able to tell them no,	Page 93 1 to learn about short fibers and thin fibers 2 asbestos? 3 A. Yes. 4 Q. Is that going to be limited given the 5 limit of the test? 6 A. Of course. 7 Q. Are there published peer-reviewed 8 literatures in your circles, the medical 9 community, that even though those tests don't 10 see the shorter fibers, they cause death and 11 disease? 12 A. Yes. And there are many studies that 13 show that you can have -- you know, it isn't 14 magically if you get a fiber that's just 15 slightly below 5 microns in length that suddenly 16 it doesn't damage you. And there are certainly 17 plenty of studies showing that in mesothelial 18 tissue, for example, the majority of the 19 tissues, the asbestos fibers are short fibers. 20 Q. Are you familiar with a paper by 21 Suzuki, papers by Dodson, and papers by 22 others -- 23 A. Yes. 24 Q. -- looking at short fibers?

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1 A. I am. 2 Q. In the medical scientific peer-reviewed 3 literature, is it discussed routinely that the 4 testing method often used for occupational 5 exposures missed really important fibers? 6 MS. BUENO: Objection; leading, 7 your Honor. 8 THE COURT: Sustained. 9 BY MS. DEAN: 10 Q. In those scientific papers, do they 11 discuss the limits of testing and why? 12 A. Yes, ma'am. 13 Q. Tell me a little bit about why. 14 A. So the testing that was used had a 15 limit of detection that would not pick up 16 shorter fibers or very thin fibers, and so you 17 have to have an understanding of what the test 18 method was. 19 Q. You were asked a little bit about 20 corporate documents and you gave the example of 21 MSDS on a sheet. I was going to ask what that is, 22 but I want to -- now that we know that's a 23 Material Safety Data Sheet, what kind of 24 information is that corporate document used for	1 to, you know, maybe a more complex case or, you 2 know, something in the medical legal area. 3 Q. Is one of the things in order to 4 evaluate a person's exposure involving talc 5 that's important to know is where the talc came 6 from? 7 A. Yes, ma'am. 8 Q. Is that often information that's 9 publicly available? 10 A. No, ma'am. 11 Q. Is that information that you've tried 12 to learn? 13 A. Yes, ma'am. 14 Q. One of the things that was asked to you 15 about whether the documents in your list came 16 from plaintiff's lawyers are from Johnson & 17 Johnson. 18 Do you recall that? 19 A. Yes. 20 Q. And you didn't remember if there was 21 200, but you were asked those questions. 22 Do you recall that? 23 A. Yes. 24 Q. The vast majority of the documents we
Page 95	Page 97
1 by doctors like yourself? Like, why would you 2 want that? 3 A. So when these MSDS sheets, they are at 4 the work site, and so if someone -- if there is 5 some release or something like that, it tells 6 you what the material was, you know, is it -- 7 what parts of the body it can be damage to, is 8 it respirable? Is it not respirable? Is it 9 poisonous? Is it deadly? You know, what -- if 10 there may be some things about antidotes or, you 11 know, if it's a gas, you may talk about all 12 kinds of physical characteristics of it. 13 So it gives you a whole host of 14 information, but certainly a great deal about 15 exposure, whether it's through the skin or 16 ingestion or if you get it splashed in your eyes 17 or you're inhaling it. 18 Q. Are discovery responses from companies 19 often helpful to figure out just basic facts 20 about the product that was at issue? 21 A. Yes. 22 Q. Are those things routinely reviewed and 23 relied on by doctors in your field? 24 A. I think so. Certainly I think related	1 have provided you, are they labeled at the 2 bottom in some way? 3 A. Yes, they are. They have Bates stamps 4 on a great number of them. 5 Q. Where does that tell you in terms of 6 the actual origin of the material, where it came 7 from? 8 A. Johnson & Johnson. 9 Q. We're going to talk about this more, 10 but since it was brought up, I want the jury to 11 get an idea of whether you only looked at 12 information that we gave you and ignored other 13 things or whether you broadly looked at 14 information, okay? 15 Have you looked at information about 16 the presence of asbestos in talc used in 17 Johnson's baby powder? 18 A. I have. 19 Q. Can you give the jury an idea of the 20 summary information you looked at, the 21 underlying information and how you considered, 22 if at all, Johnson & Johnson's powders? 23 A. So I've looked at many, many documents 24 showing the -- demonstrating the presence of

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Page 98 1 asbestos fibers, the testing from going back to 2 the 1940s, going -- spanning decades and from 3 Johnson & Johnson as well as other laboratories 4 and from different source mines. 5 And in addition, so this was organized 6 in the chart and given to Johnson & Johnson, and 7 they were asked some questions about what their 8 responses were. And I've looked at their 9 responses to each of those questions. 10 Is it a -- what the mineral was, was it 11 fibers, was this an asbestos, was this related 12 to Johnson & Johnson and, you know, who can we 13 talk to to get more information about your 14 answers. 15 And so I looked at all of their answers 16 and determined, okay -- I saw that. And then in 17 addition, they prepared their own chart, and 18 I've looked at their testing. So I've looked at 19 literally thousands of tests. 20 Q. Is understanding what fiber type of 21 asbestos is being reported in a product relevant 22 to a causation evaluation? 23 A. Yes. 24 Q. We haven't talked about this, but do	Page 100 1 what the nature of the exposure is, of course. 2 Q. At the heart of this, is the reason 3 that you evaluate this information, first, is it 4 limited just to Johnson & Johnson, or did you do 5 it for all the potential exposures that you were 6 able to figure out for Theresa Garcia? 7 A. All of them. 8 Q. And is that not only something 9 routinely done in your field but necessary in 10 order to figure out what caused her death and 11 disease? 12 A. Yes, it's necessary. 13 Q. Okay. I want to get back to just -- I 14 kind of jumped ahead a little there, but 15 understanding what happened to Theresa and what 16 she went through, is that something that you 17 have looked at? 18 A. Yes. 19 Q. Now, were you ever the doctor that got 20 to treat and meet Theresa Garcia? 21 A. I did not. 22 Q. Did you study her medical records? 23 A. I did. 24 MS. DEAN: One of the first things I
Page 99 1 the different -- they heard chrysotile versus 2 five amphiboles. That we've talked about a lot. 3 But do some of them have more potency 4 in terms of the ability to cause the disease, 5 specifically mesothelioma among others? 6 A. Yes. 7 Q. As a result of that, is it important 8 for you and other doctors who are evaluating the 9 causation to understand the type of asbestos 10 indicated? 11 A. Yes. 12 Q. Another thing, is the amount of 13 asbestos in the product something that you 14 routinely would rely on in order to evaluate 15 cause and effect for a person who has 16 mesothelioma? 17 A. Sure. So you -- if you've got a 18 product that you're manipulating somehow and 19 it's a hundred percent asbestos and it's 20 producing a dust cloud, that's going to be more 21 concerning than if something had a lower 22 percentage, but it's still concerning. 23 But so you have to have an idea of how 24 much of the product contains asbestos and then	Page 101 1 want to do is, your Honor, we provided Johnson & 2 Johnson with a compilation of medical records 3 that we've marked as Exhibit 1. We seek to 4 admit those into evidence. 5 THE COURT: You said Exhibit 1? 6 MS. DEAN: Yes, your Honor. 7 MS. BUENO: Your Honor, no objections. 8 The parties have reached a stipulation about 9 authenticity of medical records. So we're not 10 objecting to these or any other medical records 11 throughout the course of trial. 12 THE COURT: Thank you, Counsel. 13 Exhibit 1 will be admitted in evidence. 14 (Plaintiff's Exhibit 1 for ID 15 was admitted into Evidence.) 16 BY MS. DEAN: 17 Q. In addition to reviewing her medical 18 records, did you have a chance to learn a little 19 bit about her life through testimony that people 20 gave under oath? 21 A. Yes. 22 Q. I want to start with the medical. 23 Can you tell us a little bit about how 24 you went about evaluating that?

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Page 178 1 BY MS. DEAN: 2 Q. How young was she when she died? 3 A. 53. 4 Q. Is there any question about what caused 5 her death? 6 A. None. 7 Q. What are we looking at here? 8 A. So this is a CAT scan image from the 9 American Thoracic Society, and what asbestos can 10 also do is what's called -- there are other 11 diseases of the lung. One is called asbestosis, 12 which is the scarring of the lung tissue. 13 But you can also have what are called 14 pleural plaques, which are little thickenings. 15 They're localized thickenings on the pleura and 16 they look like this. 17 After some period of time, sometimes 18 these can become calcified, and they become more 19 apparent because they're a little whiter. But 20 these are noncalcified plaques, and normally the 21 pleura should just be smooth. 22 But you see it's just bumps there, that 23 little raised area there. And the same thing, 24 these are -- and so this is from the American	Page 180 1 A. Yes. 2 Q. Tell us a little bit about that. 3 A. So pleural plaques are an indicator 4 from prior asbestos exposure. 5 Now, there are other things that can 6 cause pleural plaques, and there's diseases like 7 tuberculosis, if you had bad trauma and you 8 were, you know, injured severely. There are 9 some certain connective tissue diseases that 10 can, for example, cause that. You know, if you 11 had a certain type of pneumonia. 12 But the pleural plaques that we see 13 from asbestos, also depending upon the location, 14 they can be on the chest wall, but they can also 15 be on the diaphragm. 16 And on the diaphragm is lot more likely 17 to be from asbestos than these other causes 18 because you don't usually get -- when you get 19 hit by car, you're not going -- you get a chest 20 wall trauma. You're not getting it on your 21 diaphragm. 22 And certainly if you have bilateral 23 diaphragmatic, then that's certainly a concern 24 for that being asbestos related. But when we
Page 179 1 Thoracic Society. This is from the -- there's a 2 publication that came out in 2004 on the 3 diagnosis and management of asbestos-related 4 disease. And this is an image from that 5 publication. 6 Q. From the patient's perspective, do 7 pleural plaques cause death? Are you frequently 8 in pain? 9 A. No. No, most of the time they -- and, 10 you know, something like this may not even be 11 appreciated without careful examination because 12 it can -- these plaques can be subtle. 13 And if there's other issues going on, 14 many times radiologists won't even comment on 15 it. But most of the time something like this 16 would -- we say that you die with them, not from 17 them. But they're just markers that there was a 18 little growth on the -- it's like a little, 19 wart, but there of no significance generally 20 unless they become extensive. 21 Q. Are the presence of pleural plaques 22 noted in the medical literature and in your 23 experience to be significant to past asbestos 24 exposure?	Page 181 1 see this on X-ray and as a B reader, I'm looking 2 at X-rays, we look for pleural plaques. 3 And then the diagnosis that is 4 basically made is if you see those and there's 5 not another more likely cause, then that's 6 how -- that's how ATS says you diagnose the 7 asbestos related. 8 Q. And what is ATS again? 9 A. The American Thoracic Society. 10 Q. Were you able to look at Theresa 11 Garcia's CAT scans? 12 A. Yes. 13 Q. What are we looking at here? 14 A. So these are images -- and I saw the 15 same thing in 2016, but this is the left 16 diaphragm. And she's got this little bump on 17 the diaphragm. And this is consistent with a 18 pleural plaque on that -- on the diaphragm. And 19 she had them on both diaphragms, but this is the 20 image on the left side. 21 Q. Was there anything in her medical 22 records that suggest that those other things 23 that can cause pleural plaque? 24 A. None.

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1 Q. Trauma to the chest wall, anything like 2 that? 3 A. There was no other reason in the 4 medical records. 5 Q. So in addition to mesothelioma, she had 6 this plaquing? 7 A. Yes. 8 Q. Do both of these suggest prior asbestos 9 exposure? 10 A. Yes. 11 Q. You mentioned a moment ago that 12 plaquing can be caused from a variety of things? 13 A. (Nodding.) 14 Q. Are there certain cancers that are so 15 associated with one cause that they're called 16 sentinel or signal diseases? 17 A. Yes, and mesothelioma is one of those. 18 So we're taught in medical school that if you 19 see mesothelioma, think asbestos. And if you 20 know that you have an asbestos exposure, be 21 concerned about development of mesothelioma. 22 Q. And so the disease itself signals the 23 cause. Is that the idea? 24 A. Yes.	1 but I think this is as a good time as any. 2 Are these extensive, long, hour-long, 3 week-long interviews of a person's life history? 4 A. No. No. You know, many, many times 5 it's -- I mean, sometimes it's just asking the 6 person: Were you ever exposed to asbestos? And 7 they may not even know it. Or did you ever work 8 at a shipyard? Because maybe the doctor -- 9 that's where they assume all the asbestos 10 exposure was. So sometimes it's just a very, 11 very brief conversation. 12 Q. But the idea of what's being noted are 13 potential concerns for why that person's in the 14 doctor's office? 15 A. Yes. 16 Q. Okay. If a person has this disease 17 mesothelioma that Theresa Garcia had and they 18 don't have this plaquing that she has, is that 19 still a signal for past asbestos exposure? 20 A. Yes. Because in fact, several large 21 studies looking at mesothelioma found that it 22 was about 15 -- 10 to 15 percent of cases had -- 23 of mesothelioma cases had the pleural plaques. 24 So the majority of the cases in large series --
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1 Q. How well established is it in the 2 medical community that mesothelioma signals a 3 past asbestos exposure? 4 A. Oh, this is -- it's well established. 5 This is something that's taught in medical 6 school. It's in all the textbooks. I mean, 7 this is many, many publications on this. It's 8 well described by many, many experts as being a 9 signal type of tumor. 10 Q. In terms of medical charts that you've 11 dealt with and contributed to for decades in 12 your career, is one of the first things you do 13 after this person has this cancer is take a 14 social history that mark things that might be 15 potentially related to that? 16 A. I do. 17 Q. Is that standard? 18 A. Yes. Now, unfortunately, I mean, 19 sometimes the doctors can -- will initially 20 focus mostly on the treatment, but it is very, 21 very common when you are dealing with -- if you 22 got mesothelioma to try to find out where the 23 person was exposed to asbestos. 24 Q. And I was going to get to this later,	1 now there may be some series that it's more 2 common, but in several large series of cases, 3 the minority had pleural plaques. 4 So you can't -- the absence of pleural 5 plaquing tells you nothing about the cause. So 6 you can't say: I don't see any plaques. 7 Therefore, this wasn't an asbestos-related 8 mesothelioma. That's not legitimate. 9 Q. But when you as a doctor see in a 10 person that has mesothelioma pleural plaquing 11 and nothing else in the records that would cause 12 it, is this a second indication that a person 13 had an exposure history to asbestos? 14 A. Yes. I think this is -- again, it's 15 consistent with an exposure history. 16 Q. In terms of understanding how much 17 Theresa lost, are there life tables that tell 18 you for an average person in a particular sex 19 and race, how long all comers typically live? 20 A. Yes. 21 Q. Tell us a little bit about that and 22 what that meant for Theresa Garcia. 23 A. Sure. This is from The National Vital 24 Statistics, which is through the CDC, Centers

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1 A. No, and it's not practicable. You 2 can't sit there and start having a study of 3 every single product. 4 So there's certainly broad brushes, and 5 we've seen -- we have a lot of data. I mean, 6 there's been a lot of studies on asbestos, but 7 no, there's no reason to need to have to have a 8 study for every single little potential way of 9 someone to get exposed, because it's the 10 asbestos that causes the disease. And if you 11 have a situation where you're getting airborne 12 respirable asbestos, there's health concern. 13 Q. Is asbestos in cosmetic talc one of 14 those things where we just don't have the data, 15 or has it recently been tested? 16 A. No. We have recent data, yes. 17 Q. Is there data specifically in 18 peer-reviewed published literature about how 19 much asbestos gets into the air when you use 20 cosmetic talc? 21 A. Yes. 22 Q. Is there data in peer-reviewed 23 published literature talking about Johnson's 24 baby powder and how much asbestos gets into the	1 mesothelioma? 2 A. Yes. In 2020 they came out and said 3 that over the course of doing repeated brake 4 jobs, that the equivalent of 20 brake jobs was 5 considered to be an unreasonable risk with 6 health. 7 Q. If somebody doesn't do something 20 8 times, hundreds, thousands, tens of thousands of 9 times involving a product that releases the same 10 amount of asbestos, is there any question in 11 your mind as a medical doctor that that is 12 significant? 13 A. No. 14 Q. And to put that more directly, if you 15 have the disease that Theresa Garcia died from 16 and you used a product that contained asbestos 17 in the same levels that's been measured in 18 brakes, not 20 times but over 20,000 times, any 19 question that that's a significant contributing 20 factor to the development of the disease? 21 A. None. 22 Q. In terms of evaluating from a health 23 perspective the potential for harm, is the 24 weight percentage -- there's no percent of this,
Page 199	Page 201
1 air? 2 A. Yes. 3 Q. Is there literature in Johnson & 4 Johnson's own files that discuss about how much 5 asbestos gets into the air? 6 A. Yes. 7 Q. Was that information known to you at 8 the time that it was created? 9 A. No. 10 Q. When did it first become available? 11 A. It first became available around 2017. 12 Q. Are there data points both in reports, 13 in companies' files, and in published papers 14 that specifically shows how much asbestos gets 15 in the air with cosmetic talc sourced from 16 Italy? 17 A. Yes. 18 Q. Are the levels being reported 19 repeatedly when you use cosmetic talc in the 20 same range of other products including brakes? 21 A. Yes. 22 Q. Has the EPA more recently assessed how 23 dangerous work with brakes are in terms of the 24 ability to create a risk of disease,	1 there's half percent in this, 10 percent in this 2 more helpful or actually knowing how many fibers 3 and structures of asbestos exist? 4 A. The structure is per gram. So asbestos 5 is extraordinarily light. So the percentage 6 doesn't really tell you anything because it 7 depends on percentage of -- you know, something 8 could be very, very heavy. You could have 9 50 percent asbestos, but if the rest of it is so 10 heavy by weight, it doesn't tell you. So you 11 need to look at structures per gram. 12 Q. In terms of how accepted that is in the 13 scientific community when you're considering 14 health issues, has that been considered and 15 evaluated? 16 A. Yes. 17 Q. We've seen the front cover of this 18 White Paper from the interworking group on 19 asbestos in cosmetic products from December of 20 2021, but we really haven't talked about what it 21 is. 22 First of all, is this something that 23 you've reviewed and find reliable and important? 24 A. Yes.

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1 Q. Did they specifically indicate in 2 written official FDA statements that exposures 3 well below .1 are unsafe? 4 A. Yes. 5 Q. Have they specifically indicated in 6 levels much lower than 0.1 that they should not 7 be used and warned? 8 A. Yes. 9 Q. Have they done this repeatedly? 10 A. Yes. 11 Q. We saw in that interworking agency 12 group of 38 subject matter experts that the FDA 13 also indicated any talc with asbestos is 14 adulterated. 15 Do you remember that a few minutes ago? 16 A. Yes. 17 Q. Does adulterated have a defined 18 meaning? 19 A. Yes, it means that it is dangerous 20 with -- to health with normal use. 21 Q. Was Theresa Garcia's use as you saw 22 described by her family members from her 23 sisters, to her children, from her mom normal? 24 A. Yes.	1 health effects of carcinogen, particularly 2 related to babies or children in the home. 3 Q. I'll represent to you the jury heard 4 from Dr. Brody that it is when our cells divide 5 that we're more vulnerable for things to go 6 wrong. Have you seen that published in the 7 medical literature? 8 A. Yes. 9 Q. Is there greater cellular division for 10 children -- or for babies and people going 11 through adolescence? 12 A. Yes. 13 Q. Have you seen calculations made by 14 Johnson & Johnson to various people suggesting 15 that asbestos can be used safely in baby powder? 16 A. Yes. 17 Q. We've talked a lot about the FDA what 18 is the NTP? 19 A. The National Toxicology Program. 20 Q. Have you reviewed all of their 21 calculations? 22 A. I have. 23 Q. Are they accurate? Do they even 24 accurately mathematically, when we talked about
Page 235	Page 237
1 Q. The FDA's position that 0.1 percent is 2 not a health hazard in a FOIA request document 3 from 1986, is that unchanged as of today? 4 A. No. 5 Q. And that -- the idea that that is an 6 official position as opposed to what was in the 7 Citizens Petition -- that is a really horrible 8 question. Let me try it again. I'm sorry, 9 guys. 10 The idea that levels well under 0.1 are 11 warned against unsafe, poisonous and 12 adulterated, is that an official position of the 13 FDA? 14 A. Yes, it is. 15 Q. And talking about concerns in the home, 16 is there peer-reviewed published literature 17 talking about increased risk when you're exposed 18 to certain times in your life? 19 A. Yes. 20 Q. What are those times? 21 A. Carcinogens, when you as a baby, or as 22 a child, or as an adolescent, your cells are 23 more rapidly growing, things are changing. 24 You're also smaller. And so there's concern for	1 the respiration rate, evaluate the risk? 2 A. No. 3 Q. In doing that, is there often 4 comparison to occupational exposures? 5 A. Yes, I've seen that. 6 Q. I want to back up a little bit to 7 understand that. 8 For many years did OSHA set specific 9 levels and mandate the company stay within those 10 levels? 11 A. Yes, they did. 12 Q. Okay. What were those called? 13 A. They are called PEL or permissible 14 exposure limit. 15 MS. BUENO: Your Honor, this is 16 Plaintiff's Motion in Limine No. 11 which you 17 granted. We are not opposed to the witness 18 talking about it, but this is now opening the 19 door to that discussion. 20 MS. DEAN: We don't agree, your Honor, 21 but we can take that up at a later time. I'll 22 take that risk, I guess is what I'm saying. 23 THE COURT: Go on. 24 BY MS. DEAN:

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Page 286 1 opportunity to gain that information? 2 A. Yes. 3 Q. In every case that you're involved in, 4 is there first a period of time to gather the 5 facts and then a period of time to have experts 6 talk about those facts? 7 A. Sure. 8 Q. In every one of the depositions that 9 are on this screen, did you have an opportunity 10 to review those before you gave a report? 11 A. Yes. 12 Q. Are there also deadlines in the case 13 that guide when the reports are due? 14 A. Yes. 15 Q. Between 2020 and 2021, what also 16 happened in those years? 17 A. I'm sure everyone remembers that -- 18 although we're not necessarily over it -- COVID. 19 Q. Did that create substantial delays that 20 have nothing to do with the desperate search to 21 find an expert but with the realities of the 22 world? 23 MS. BUENO: Objection. 24 THE REPORTER: I didn't even hear your	Page 288 1 your Honor. 2 MS. DEAN: Did you download the new one 3 that I gave you? 4 Can I have one moment your Honor? We 5 just had a miscommunication. 6 (Brief pause in proceedings.) 7 MS. DEAN: They're organizing and 8 taking things out, and I think we just pulled up 9 the wrong one. Thank you for bearing with me. 10 BY MS. DEAN: 11 Q. One of the things that Mr. Buha 12 mentioned to me is that we talked about all of 13 these epidemiological studies and I think it was 14 clear on the screen but we never referenced what 15 they said, so -- it's part of the record. So 16 one of the first things I want to do is go back 17 to those nine or ten low-dose studies, okay? 18 While we're waiting for that to come up 19 first, if we want to go to what's called the 20 gold standard for evaluation for evaluating what 21 causes death and disease, is there not one but 22 over a half dozen different standards in the 23 universe of epidemiology that support the 24 cosmetic talc use like the use of Theresa Garcia
Page 287 1 question. I apologize. 2 BY MS. DEAN: 3 Q. Were there functional and normal 4 realities and also some extraordinary events 5 with the pandemic that related to timing that 6 had nothing to do with the desperate attempt to 7 find an expert? 8 MS. BUENO: Objection. 9 THE COURT: Sustained. 10 Why don't we take a break for a few 11 minutes. Let's take until 4:10. 12 (Exit the jury.) 13 (Recess taken from 4:00 p.m. 14 to 4:12 p.m.). 15 (Enter the jury.) 16 THE COURT: You may be seated. 17 Ms. Dean. 18 BY MS. DEAN: 19 Q. Dr. Haber, we're in the last hour of 20 the day. 21 MS. DEAN: Thank you for -- everyone 22 for putting up with me. 23 On the break, a couple of things -- 24 MS. BUENO: Objection to that slide,	Page 289 1 causes a significant increase for the risk of 2 mesothelioma? 3 A. Yes. 4 Q. And the studies you reference that show 5 that conclusion over and over again include 6 Court that had less than 0.15 over cc years, 7 R delberger at less than 0.15, Offermans at 8 0.2, Ferrante at .1 to 0.99, Rowland at less 9 than 0.07, Jiang at less than 0.5, and the EPA 10 at .01, correct? 11 A. Yes. 12 Q. And were all of these measured in fiber 13 per cc years? 14 A. Yes. 15 Q. So is there any question as a medical 16 doctor that has been treating and assessing 17 patients for years that epidemiology supports 18 cosmetic talc as a source of significant risk 19 for the development of the disease mesothelioma? 20 A. Right, there's no doubt. 21 Q. Okay. Another thing that I was just 22 told I might want to back up on is this idea of 23 talc use and the fingerprint. So I want to 24 return to that just for a few minutes. In terms

Page 318	Page 320
1 asbestos at no levels can be used in their 2 country; they are entirely banned? 3 A. Yes. 4 Q. Does that relate to how dangerous 5 asbestos is, at least in part, in causing the 6 disease mesothelioma? 7 A. Yes. 8 Q. Is the biopersistence of asbestos part 9 of the reason why it's so dangerous? 10 A. Yes. 11 Q. Explain that for us, if you would. 12 A. So biopersistence means how long it 13 stays in your body. So unlike some things, if 14 you inhale it and then you exhale it or if 15 you -- you know, you drink some caffeine and the 16 caffeine works its magic and then it's gone, you 17 need another cup, okay? With asbestos, it gets 18 inside of your body and it stays there for years 19 and years and years and years. 20 And so this was a very interesting 21 study where they took people that had had 22 asbestos levels taken at Point A because of some 23 sort of surgery on their lungs, and then years 24 later, the same people then had either an	1 Q. Is the idea that if you have multiple 2 exposures, whether it's through the same thing 3 or a variety of different things, that all of 4 them accumulate to be significant in the dose 5 part of the medical literature? 6 A. Yes. 7 Q. You sent me this demonstrative. 8 Just tell us why. 9 A. So basically, if you were to -- each, 10 you know, water drop is an exposure and you're 11 filling up that cup. When the cup overflows, 12 that's where you get the disease. 13 And so this is a concept not just with 14 asbestos, but there's other diseases that are 15 dose responsive that the more you have of an 16 exposure, the -- it's continually filling up 17 your cup until you have enough that you have 18 developed disease. 19 Q. Is this a very well understood concept 20 with a variety of carcinogens? 21 A. Yes. 22 Q. Can you have pollution, for example, in 23 a river, a lake from a variety of plants, and 24 say, look, it was the accumulation of all these
Page 319	Page 321
1 autopsy or some other surgery, but they got 2 resampled. 3 So they're not comparing apples to 4 oranges. They're comparing apples-to-apples. 5 And they could see that these asbestos fibers in 6 these individuals stayed in there. And they 7 stayed in there for a long, long time. 8 Q. Is that really important to 9 understanding why this tissue digestion tells us 10 so much -- 11 A. Yes. 12 Q. -- that you can look in the lung and 13 see these fibers from years ago? 14 A. Yes. 15 Q. Is talc also biopersistent if it's 16 fibrous talc? 17 A. Yes. 18 Q. Is that the reason why they're able to 19 count the talc in asbestos in the lungs? 20 A. Yes. 21 Q. The jury has heard a little bit about 22 cumulative dose, but is asbestos a cumulative 23 dose disease? 24 A. Yes.	1 different groups that created whatever problems 2 may exist? 3 A. Right. And when you're putting these 4 doses in -- so if I had an insulator working 5 with asbestos but he's also getting exposed from 6 other asbestos activities, it's not like those 7 don't count. I mean, it's all the asbestos all 8 accumulates and contributes to the cause. 9 Q. Did Theresa Garcia have more than one 10 product accumulate to cause her disease? 11 A. Yes. 12 Q. Okay. And part of what I suspect we're 13 going to start with tomorrow is figuring out 14 which ones were significant. 15 But the idea that you can have multiple 16 exposures resulting and adding to the risk is 17 fairly routine? 18 A. Yes. And again, you know, having an 19 alternative or an additional -- not 20 alternative -- an additional exposure doesn't 21 somehow subtract the exposure that you already 22 have. So if you've been filling up that cup and 23 you add some more to it, it doesn't subtract. 24 It adds.

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Stephanie Salcedo v. Avon Products, Inc.; et al.
Proceedings had on 3/25/2024 - TRIAL

ELECTRONICALLY FILED - 2024 Jul 24 3:38 PM - RICHLAND - COMMON PLEAS - CASE#2023CP4004072

Page 342 1 is a disputed issue. 2 If it wasn't a disputed issue, 3 your Honor, I agree, we wouldn't need it. But 4 it's a highly disputed issue. 5 THE COURT: I'll allow the key. Two is 6 not cumulative. More than two would maybe start 7 to get cumulative and we can talk about that if 8 and when it becomes an issue. 9 MS. DIWAN: Okay. 10 (Plaintiff's Exhibit 4671 for 11 ID was admitted into 12 Evidence.) 13 MS. BUENO: Your Honor, one issue on 14 scheduling. I'm happy to report that we've had 15 some discussions about timing of trial. 16 Ms. Dean tells me that her best guess is she 17 will close plaintiff's case on April 9th or 18 10th, which would be Tuesday or Wednesday the 19 week after next. 20 And so we are going to plan to have our 21 witnesses available and ready to go on the 10th, 22 and we'll keep your Honor posted as we move 23 forward. 24 THE COURT: How long do you think your	Page 344 1 want the rulings on this? She just handed this 2 to me. I can already see stuff missing. I can 3 get you something final in the morning, if 4 that's okay. 5 THE COURT: Fair enough. 6 MS. DIWAN: Sorry. What did you say? 7 MS. DEAN: You just handed this to me 8 and you expect me to -- 9 MS. DIWAN: These are our responses to 10 your objections. So I included it in the 11 report, and then these exhibits are the exhibits 12 for our response. They're not the full exhibits 13 for the deposition. 14 THE COURT: Off the record. 15 16 (Whereupon, the above proceedings were 17 adjourned at 5:14 p.m. to be 18 reconvened on Tuesday, March 26th, 19 2024 at 9:45 a.m.) 20 21 22 23 24
Page 343 1 case will take? 2 MS. BUENO: If we actually start on the 3 10th, I think we could probably do five days. 4 If it goes into the 11th -- I mean, five days. 5 So if we have the 11th, 12th, we may run into 6 Wednesday of the following week. 7 THE COURT: Okay. 8 MS. BUENO: I'd love to get done 9 earlier, but if they're not going to finish 10 until the 10th, that's going to push us to 11 there. 12 And we'll keep your Honor posted on 13 what we think about timing. Obviously, we'll 14 have some motion practice after plaintiffs rest, 15 and then need to do a charge conference in 16 advance of closing. So we'll have to think 17 through the timing on this. 18 THE COURT: Yeah. Okay, thanks. 19 MS. BUENO: Thank you. 20 MS. DIWAN: I have these that we talked 21 about on Friday. These are our finals for an 22 EMAN2 exchange. 23 Did you submit our objections or no? 24 MS. DEAN: Your Honor, do you really	

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REPORTER CERTIFICATE

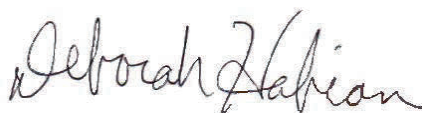
I, Deborah Habian, a Certified
Shorthand Reporter within and for the State of
Illinois, do hereby certify:

That the foregoing report of
proceedings was reported stenographically by me,
was thereafter reduced to printed transcript by
me, and constitutes a true record of the
testimony given and the proceedings had;

That the said report of proceedings was
taken before me at the time and place specified;

That I am not a relative or employee of
attorney or counsel, nor a relative or employee
of such attorney or counsel for any of the
parties hereto, nor interested directly or
indirectly in the outcome of this action.

IN WITNESS WHEREOF, I do hereunto set
my hand this 26th day of March, 2024.



DEBORAH HABIAN, CSR, RMR, CRR, CLR
IL CSR NO. 084-02432
MO CCR NO. 1409

EXHIBIT 11

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF LOS ANGELES

Coordinated Proceeding) JCCP No. 4674
Special Title (Rule 3.550))

LAOSD ASBESTOS CASES)

Certified Transcript

MAE K. MOORE,

) Case No. 21STCV05513

Plaintiff,

vs.

JOHNSON & JOHNSON, et al.,) (Pages 1-253)

Defendants.

) Vol. I

VIDEOTAPED REMOTE DEPOSITION OF STEVEN HABER, M.D.

MONDAY, NOVEMBER 15, 2021

Reported By: SANDRA DUBIN,
CA CSR No. 5535

Page 2	Page 4
1 SUPERIOR COURT OF THE STATE OF CALIFORNIA 2 FOR THE COUNTY OF LOS ANGELES 3 4 Coordinated Proceeding) JCCP No. 4674 5 Special Title (Rule 3.550)) 6) 7 LAOSD ASBESTOS CASES) 8) 9 MAE K. MOORE,) 10) Case No. 21STCV05513 11) 12 Plaintiff,) 13) 14 vs.) 15) 16 JOHNSON & JOHNSON, et al.,) 17) 18 Defendants.) 19) 20) 21) 22) 23) 24) 25) 26 27 28 29 30 31 32 33 34 35 36 37 38 39 40 41 42 43 44 45 46 47 48 49 50 51 52 53 54 55 56 57 58 59 60 61 62 63 64 65 66 67 68 69 70 71 72 73 74 75 76 77 78 79 80 81 82 83 84 85 86 87 88 89 90 91 92 93 94 95 96 97 98 99 100 101 102 103 104 105 106 107 108 109 110 111 112 113 114 115 116 117 118 119 120 121 122 123 124 125 126 127 128 129 130 131 132 133 134 135 136 137 138 139 140 141 142 143 144 145 146 147 148 149 150 151 152 153 154 155 156 157 158 159 160 161 162 163 164 165 166 167 168 169 170 171 172 173 174 175 176 177 178 179 180 181 182 183 184 185 186 187 188 189 190 191 192 193 194 195 196 197 198 199 200 201 202 203 204 205 206 207 208 209 210 211 212 213 214 215 216 217 218 219 220 221 222 223 224 225 226 227 228 229 230 231 232 233 234 235 236 237 238 239 240 241 242 243 244 245 246 247 248 249 250 251 252 253 254 255 256 257 258 259 260 261 262 263 264 265 266 267 268 269 270 271 272 273 274 275 276 277 278 279 280 281 282 283 284 285 286 287 288 289 290 291 292 293 294 295 296 297 298 299 300 301 302 303 304 305 306 307 308 309 310 311 312 313 314 315 316 317 318 319 320 321 322 323 324 325 326 327 328 329 330 331 332 333 334 335 336 337 338 339 340 341 342 343 344 345 346 347 348 349 350 351 352 353 354 355 356 357 358 359 360 361 362 363 364 365 366 367 368 369 370 371 372 373 374 375 376 377 378 379 380 381 382 383 384 385 386 387 388 389 390 391 392 393 394 395 396 397 398 399 400 401 402 403 404 405 406 407 408 409 410 411 412 413 414 415 416 417 418 419 420 421 422 423 424 425 426 427 428 429 430 431 432 433 434 435 436 437 438 439 440 441 442 443 444 445 446 447 448 449 450 451 452 453 454 455 456 457 458 459 460 461 462 463 464 465 466 467 468 469 470 471 472 473 474 475 476 477 478 479 480 481 482 483 484 485 486 487 488 489 490 491 492 493 494 495 496 497 498 499 500 501 502 503 504 505 506 507 508 509 510 511 512 513 514 515 516 517 518 519 520 521 522 523 524 525 526 527 528 529 530 531 532 533 534 535 536 537 538 539 540 541 542 543 544 545 546 547 548 549 550 551 552 553 554 555 556 557 558 559 560 561 562 563 564 565 566 567 568 569 570 571 572 573 574 575 576 577 578 579 580 581 582 583 584 585 586 587 588 589 590 591 592 593 594 595 596 597 598 599 600 601 602 603 604 605 606 607 608 609 610 611 612 613 614 615 616 617 618 619 620 621 622 623 624 625 626 627 628 629 630 631 632 633 634 635 636 637 638 639 640 641 642 643 644 645 646 647 648 649 650 651 652 653 654 655 656 657 658 659 660 661 662 663 664 665 666 667 668 669 670 671 672 673 674 675 676 677 678 679 680 681 682 683 684 685 686 687 688 689 690 691 692 693 694 695 696 697 698 699 700 701 702 703 704 705 706 707 708 709 710 711 712 713 714 715 716 717 718 719 720 721 722 723 724 725 726 727 728 729 730 731 732 733 734 735 736 737 738 739 740 741 742 743 744 745 746 747 748 749 750 751 752 753 754 755 756 757 758 759 760 761 762 763 764 765 766 767 768 769 770 771 772 773 774 775 776 777 778 779 780 781 782 783 784 785 786 787 788 789 790 791 792 793 794 795 796 797 798 799 800 801 802 803 804 805 806 807 808 809 810 811 812 813 814 815 816 817 818 819 820 821 822 823 824 825 826 827 828 829 830 831 832 833 834 835 836 837 838 839 840 841 842 843 844 845 846 847 848 849 850 851 852 853 854 855 856 857 858 859 860 861 862 863 864 865 866 867 868 869 870 871 872 873 874 875 876 877 878 879 880 881 882 883 884 885 886 887 888 889 890 891 892 893 894 895 896 897 898 899 900 901 902 903 904 905 906 907 908 909 910 911 912 913 914 915 916 917 918 919 920 921 922 923 924 925 926 927 928 929 930 931 932 933 934 935 936 937 938 939 940 941 942 943 944 945 946 947 948 949 950 951 952 953 954 955 956 957 958 959 960 961 962 963 964 965 966 967 968 969 970 971 972 973 974 975 976 977 978 979 980 981 982 983 984 985 986 987 988 989 990 991 992 993 994 995 996 997 998 999 1000	1 APPEARANCES: (Continued) 2 3 For Defendant AVON PRODUCTS: 4 FOLEY & MANSFIELD 5 BY: KEITH M. AMEELE, ESQ. 6 AND ERIKA MUSE, ESQ. 7 181 West Huntington Drive 8 Suite 210 9 Monrovia, California 91016 10 (213) 283-2100 11 kameele@foleymansfield.com 12 (Appearing via Zoom) 13 14 For Defendant COLGATE PALMOLIVE: 15 GORDON REES SCULLY MANSUKHANI, LLP 16 BY: EDWARD SLAUGHTER, ESQ. 17 2200 Ross Avenue 18 Suite 3700 19 Dallas, Texas 75201 20 (214) 231-4678 21 eslaughter@grsm.com 22 (Appearing via Zoom) 23 24 25 26 27 28 29 30 31 32 33 34 35 36 37 38 39 40 41 42 43 44 45 46 47 48 49 50 51 52 53 54 55 56 57 58 59 60 61 62 63 64 65 66 67 68 69 70 71 72 73 74 75 76 77 78 79 80 81 82 83 84 85 86 87 88 89 90 91 92 93 94 95 96 97 98 99 100 101 102 103 104 105 106 107 108 109 110 111 112 113 114 115 116 117 118 119 120 121 122 123 124 125 126 127 128 129 130 131 132 133 134 135 136 137 138 139 140 141 142 143 144 145 146 147 148 149 150 151 152 153 154 155 156 157 158 159 160 161 162 163 164 165 166 167 168 169 170 171 172 173 174 175 176 177 178 179 180 181 182 183 184 185 186 187 188 189 190 191 192 193 194 195 196 197 198 199 200 201 202 203 204 205 206 207 208 209 210 211 212 213 214 215 216 217 218 219 220 221 222 223 224 225 226 227 228 229 230 231 232 233 234 235 236 237 238 239 240 241 242 243 244 245 246 247 248 249 250 251 252 253 254 255 256 257 258 259 260 261 262 263 264 265 266 267 268 269 270 271 272 273 274 275 276 277 278 279 280 281 282 283 284 285 286 287 288 289 290 291 292 293 294 295 296 297 298 299 300 301 302 303 304 305 306 307 308 309 310 311 312 313 314 315 316 317 318 319 320 321 322 323 324 325 326 327 328 329 330 331 332 333 334 335 336 337 338 339 340 341 342 343 344 345 346 347 348 349 350 351 352 353 354 355 356 357 358 359 360 361 362 363 364 365 366 367 368 369 370 371 372 373 374 375 376 377 378 379 380 381 382 383 384 385 386 387 388 389 390 391 392 393 394 395 396 397 398 399 400 401 402 403 404 405 406 407 408 409 410 411 412 413 414 415 416 417 418 419 420 421 422 423 424 425 426 427 428 429 430 431 432 433 434 435 436 437 438 439 440 441 442 443 444 445 446 447 448 449 450 451 452 453 454 455 456 457 458 459 460 461 462 463 464 465 466 467 468 469 470 471 472 473 474 475 476 477 478 479 480 481 482 483 484 485 486 487 488 489 490 491 492 493 494 495 496 497 498 <

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I N D E X

DEPONENTEXAMINATIONPAGE

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BY MR. MASSENBURG174

INFORMATION TO BE SUPPLIED

NONE

QUESTIONS INSTRUCTED NOT TO ANSWER

NONE

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LOS ANGELES, CALIFORNIA

MONDAY, NOVEMBER 15, 2021

11:02 A.M.

-oOo-

THE VIDEOGRAPHER: Good morning. We are on the

record. Today's date is November 15th, 2021. The time

is 11:02 a.m.

This is the video recorded deposition of

Dr. Steven Haber in the matter of Mae K. Moore versus

Johnson & Johnson, et al. This is in the Superior Court

of the State of California for the county of

Los Angeles. Case number JCCP 4674.

This deposition is taking place via web video

conference with all participants attending remotely.

The videographer is Kevin Crowley representing

iDepo Reporters.

The reporter today is Sandy Dubin.

Please note that the appearances will be noted

on the stenographic record.

You may swear in the witness, Sandy.

STEVEN HABER, M.D.,

called as a witness by and on behalf of the Defendants,

and having been first duly sworn by the Court Reporter,

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was examined and testified as follows:

EXAMINATION

BY MR. AMEELE:

Q Good afternoon, Dr. Haber. My name is

Keith Ameele. I represent Avon.

How are you today?

A I am good.

MS. DEAN: Before you start, I have a couple of

things to put on the record.

I'm sorry, Dr. Haber. I didn't mean to

interrupt.

THE WITNESS: Okay. I was going to say maybe it's

my Zoom here, but I am not seeing who is talking.

MR. AMEELE: I am not sure. When I speak up, you

don't see my video in front of you?

THE WITNESS: No.

MS. DEAN: If you put "gallery," you will have more

folks that you will see as opposed to maybe just the

first three. Then you can pin whoever is talking, if

you want to. Does that make sense?

THE WITNESS: Okay. I see speaker --

THE VIDEOGRAPHER: Doctor, there is a view button.

Set it to gallery view.

THE WITNESS: Okay. Then if I want to see who is

Page 10 1 talking, what do I do? 2 MR. AMEELE: Basically, the person who is talking 3 will show that person's video. 4 Do you see me now? 5 THE WITNESS: Yes, I do. You are on the screen. 6 MR. AMEELE: Okay. Ms. Dean, you had a couple 7 statements before we get started? 8 MS. DEAN: Yeah. So first of all, we have 9 objections that have been provided to the deposition 10 request. 11 We also object to videotaping the deposition 12 as proper notice and protocol were not provided. So any 13 use of this videotape, we would object to. 14 Second, I just wanted to note for -- just an 15 effort to make this a little bit easier that when I 16 object -- I am plaintiff's counsel -- if there is an 17 objection by any defendant I will agree that it's good 18 for all that are present at the deposition so that 19 people don't have to identify themselves unless they 20 want to opt out. 21 I think other than that, I don't have anything 22 else. 23 MR. AMEELE: Thank you, Ms. Dean. 24 BY MR. AMEELE: 25 Q Dr. Haber, are you able to hear me okay?	Page 12 1 Q Where is that located, Doctor? 2 A In Houston, Texas. 3 Q Okay. Is anyone in your office with you? 4 A Not in my -- I am in my private office, but 5 there are -- there is staff in the main office outside 6 my room. 7 Q Understood. 8 Do you have your case file with you in your 9 case so far? 10 MS. DEAN: Objection; form. 11 THE WITNESS: I guess it just depends what you mean 12 by "case file." 13 BY MR. AMEELE: 14 Q Sure. 15 A I do have access to a number of materials 16 either handy or there is some things like the medical 17 records which I don't have necessarily quick access to 18 or the X-rays quick access to. 19 Q So my question was inartful. I apologize. 20 You have the materials that you use to prepare 21 your declaration in this case and any other opinions you 22 intend to offer. And they are with you in your office, 23 perhaps with the exception of medical records or X-rays; 24 is that -- is that true? 25 MS. DEAN: Objection to form. Objection. Overly
Page 11 1 A Yes, sir. 2 Q And you are able to see me as well? 3 A Yeah. I guess on this view it's a small -- I 4 have a lot of people on this gallery view. 5 Q It might be better for you that way if I am 6 smaller. 7 If you need a break at all during the 8 deposition, you will let me know. The only thing I ask 9 is that if I have a question outstanding, you answer 10 that question before we take the break. Does that make 11 sense? 12 A It does. 13 Q Okay. And you have had your deposition taken 14 numerous times so we can dispense with the usual 15 admonitions; correct, Doctor? 16 A Yes. 17 Q Doctor, you and I have visited briefly in a 18 case in the mid west, but I have not had the occasion to 19 take your deposition in California before. 20 To your knowledge, have you been deposed in a 21 case where cosmetic talc was an issue in California? 22 A I am not sure. I don't think so. 23 Q Okay. As I am taking your deposition today 24 are you in your office? 25 A I am.	Page 13 1 broad. 2 THE WITNESS: Well, the -- there are a number of 3 the citations in exhibits that, you know, I probably 4 have somewhere in my office but I don't have quick 5 access to. 6 BY MR. AMEELE: 7 Q And you are talking about the citations to 8 Exhibit B and C to your declaration? 9 A And the citations within the declaration, 10 itself. And again what I said earlier here as far as 11 the X-rays and medical records, they are electronic 12 somewhere here. But I don't have -- I don't have ready 13 access to it. 14 Q Okay. So to make sure I understand, those 15 materials may be with you on your computer somewhere, 16 but they are not immediately accessible to you right 17 now; is that fair? 18 A Yes. 19 MS. DEAN: Object to the form. 20 BY MR. AMEELE: 21 Q What brings us here today is the Mae Moore 22 matter. Are you prepared to give us all of your 23 opinions today as they relate to the Mae Moore matter 24 and my client, Avon? 25 A Well, I guess it just depends on what I am

Page 14 1 asked, but yeah, I am sure prepared to do that. 2 Q Okay. Let me take a step back. You have 3 opinions as they relate to the Mae Moore matter today; 4 correct? 5 A Yes. 6 Q And you are prepared to offer them? 7 A I am. 8 Q Okay. Do you have your declaration with you 9 handy, Doctor? 10 A I do. 11 Q Okay. What I would ask is that you keep that 12 with you because we'll visit on that quite a bit this 13 afternoon; okay? 14 A Okay. 15 Q You do not have a report in this case; is that 16 correct? 17 A I am sorry? I do not -- 18 Q You do not have the report -- a report, 19 R-E-P-O-R-T? 20 A Other than this declaration, no. 21 Q Okay. Have you seen your Deposition Notice 22 before today? 23 A No. 24 Q Okay. I'm going to attach your Deposition 25 Notice as <u>Exhibit 1</u> and I will provide that to the	Page 16 1 Q Okay. Did you take notes with respect to your 2 visit with her? 3 A I did at the time. And then I converted those 4 to what is contained within my declaration. 5 Q Were the notes handwritten, Doctor? 6 A Yes. 7 Q Where are they now? 8 A I don't retain them once I -- once I put them 9 onto electronic format. 10 Q Why not? 11 A Because I would just be stuck with papers all 12 over the place. And that's just the -- that's the way I 13 have taken care of patients for 30 years -- or probably 14 not quite 30 since we haven't had electronic records 15 that long. 16 But at least 20 years. When I take notes I 17 immediately convert them to electronic format because I 18 usually can't read my handwriting shortly after I have 19 written it down. 20 Q You disposed of your notes; is that correct, 21 Doctor? 22 A I do. 23 Q Okay. The declaration that we have marked as 24 <u>Exhibit 2</u> do you type that declaration yourself, 25 Doctor?
Page 15 1 court reporter. 2 (Whereupon, Defendants' <u>Exhibit 1</u> 3 was marked for identification by 4 the court reporter and attached 5 herein after the deposition.) 6 BY MR. AMEELE: 7 Q <u>Exhibit 2</u> will be the 26-page declaration with 8 exhibits that you executed, Dr. Haber, in opposition to 9 Defendants' Motion for Summary Judgment, or in the 10 alternative, Summary Adjudication executed by you on 11 November 5th, 2021 in Houston, Texas. 12 (Whereupon, Defendants' <u>Exhibit 2</u> 13 was marked for identification by 14 the court reporter and attached 15 herein after the deposition.) 16 BY MR. AMEELE: 17 Q You have that with you; right, Doctor? 18 A I do. 19 Q Okay. I also understand that you had occasion 20 to visit with Ms. Mae Moore; correct? 21 A Yes. 22 Q Did you take -- 23 A I -- 24 Q I am sorry? 25 A By telephone. It wasn't in person.	Page 17 1 A There was -- most of it was -- was typed by 2 myself. The -- I don't know what you call it -- like 3 the heading and all of that was prepared for me by the 4 Dean Omar Branham firm. But the vast bulk of -- they 5 did assist with some of the formatting of the citations. 6 The vast majority of the rest of it was -- was 7 typed by me. Well, it was dictated by me into a typing 8 program because I am not a very good typer either. But 9 some of it was typed by hunt and peck technique. 10 Q Okay. Let's take a step back. 11 Other than the lawyer language contained 12 within the declaration and the formatting, you either 13 typed or dictated the majority of your declaration which 14 we have identified as <u>Exhibit 2</u> is that correct? 15 A Right. Again with the exception of like I 16 said the -- the citations of the exhibits. 17 Q Yeah. I'm going to get to that. Sorry. I'm 18 going to get to that part. 19 So the citations themselves were typed by 20 somebody at the Dean Omar Law Firm; correct? 21 A Yes. 22 Q Okay. Who supplied you with the 1,800 or so 23 pages of exhibits that you attached to your declaration? 24 MS. DEAN: Objection; form. Compound. Overly 25 broad.

Page 18 1 THE WITNESS: Well, Exhibit C is my own. So no one 2 provided that. 3 Exhibit B and the exhibits that are listed 4 within the declaration have, over time, been provided to 5 me, I believe, mainly by then the attorneys at Dean Omar 6 Branham. 7 BY MR. AMEELE: 8 Q Okay. Other than Exhibit B and C, which I 9 have seen before from the previous case, at least an 10 iteration of that, and your C.V., I am talking about the 11 actual exhibits themselves that were attached to your 12 declaration. 13 Do you know what I am referring to? 14 A Right. That's what -- I just finished -- I 15 thought I just answered. 16 Q Perhaps I misunderstood. 17 So the exhibit, themselves, those were 18 provided to you by the Jessica Dean Law Firm; is that 19 fair? 20 MS. DEAN: Objection; form. Overly broad. Asked 21 and answered -- 22 THE WITNESS: I believe that that -- I believe that 23 there are still some within those exhibits that are 24 within the declaration, may also be from my own. But I 25 think the majority of them were provided to me by the	Page 20 1 Yes. 2 Q Okay. Right now I am asking the question 3 specific to meetings with Ms. Dean on your declaration. 4 When did those take place? 5 MS. DEAN: Objection. Misstates testimony. 6 Suggesting that there was a specific meeting for the 7 declaration. 8 MR. AMEELE: Just legal objections, please, ma'am. 9 BY MR. AMEELE: 10 Q Go ahead, Doctor. 11 MS. DEAN: This was a legal objection. Suggesting 12 otherwise I disagree with. 13 MR. AMEELE: No speaking objections. 14 BY MR. AMEELE: 15 Q Please go ahead, Doctor. 16 MS. DEAN: In California you are required to give 17 the basis of the objection. Please familiarize yourself 18 with the rules. 19 If you are going to try to educate me on them, 20 I will correct you. 21 BY MR. AMEELE: 22 Q Okay, Doctor. Go ahead, please. 23 A What I -- as I have said previously is that I 24 had had a number of conversations with Ms. Dean. And I 25 don't believe any of them necessarily were specific to
Page 19 1 Dean Omar Branham Law Firm. 2 BY MR. AMEELE: 3 Q Okay. The declaration was produced to 4 defendants on November 5th, 2021. On or about 5 November 5th did anyone else see your declaration? 6 A I am trying to remember. I am not sure if -- 7 if -- if Ms. Dean may have -- if Ms. Dean had seen -- 8 seen it before I executed it. I don't remember. 9 Q You are not sure if Ms. Dean, or anyone else 10 from her law firm, saw your declaration before you 11 executed it? 12 A Well, I don't know about anyone else. But I 13 am just saying that I believe she may have seen it 14 before I executed it, but I am not 100 percent certain 15 on that. 16 Q When do you believe she saw it? 17 A It would have been right around the time when 18 it was executed. Either that day or the day before. 19 Q Did you have a telephone call or video 20 conference with Ms. Dean, or anyone else, while you were 21 drafting the declaration? 22 A I -- I have had a number of phone calls or 23 video chats with Ms. Dean regarding the Mae Moore case. 24 I would suspect that there probably was at least some 25 conversation during the time that I was preparing this.	Page 21 1 drafting this. But they certainly took place -- at 2 least a few took place during the time that I was 3 drafting this. 4 Q Okay. During the time that you were drafting 5 the declaration do you recall any conversations with 6 Ms. Dean about the substance of the declaration? 7 A Generalities, yes. 8 Q What type of generalities? 9 A Well, things like -- I hate to do this, but I 10 need for you to -- to do this, prepare this declaration, 11 that -- that their firm would, you know, kind of give 12 the heading -- or whatever you call it. And you know, 13 help with the formatting of the exhibits. 14 The general format was -- was more -- I think 15 it was -- there was a discussion but it was my 16 suggestion to kind of keep the format in the way I have 17 done previous reports. The kinds of -- the general 18 issues that she wanted me to discuss, make sure that, 19 you know -- as far as my history I took, the medical 20 record review, you know, opinions that it was related 21 to, I guess, the four companies that were at issue in 22 this declaration. 23 I think that she was going to be sending me 24 some of the declarations of other experts as they -- as 25 they became available. That's -- that's basically it.

Page 22 1 Q Did anybody see any drafts of your 2 declaration, before you finished it, on November 5th? 3 Let me make sure my question is clear. Did 4 you ever draft your declaration and then send it to 5 somebody to look at and then make edits afterwards? 6 A No. 7 Q Do you know if anybody else made edits to your 8 declaration? 9 A I am sorry. Anyone else did what? 10 Q Did anyone else make edits to your declaration 11 besides you? 12 A Well, I had one of my office staff -- well, 13 part of it didn't have time to read over for spelling 14 and grammar. And I think -- you know, I have tried to 15 do my best to look for errors. But I am not aware of 16 anyone else. 17 Q Okay. How many hours did it take for you to 18 draft this declaration? 19 A I don't know. Probably three to five hours. 20 Q That's total, Doctor? 21 A I think so. I mean it's hard for me to -- I 22 don't have the exact numbers on it. But I think that's 23 probably around correct. I could be off a little bit. 24 Q Okay. Understood. 25 You mentioned somebody in your office had	Page 24 1 sometimes I might have her to spellcheck or just to be 2 sure that I haven't made some sort of grammatical error. 3 But, otherwise, it's -- I do all of the work 4 myself. 5 Q Okay. The Mae Moore matter, did your wife, 6 Dr. Leslie Haber, assist you at all? 7 A Well, she would have logged in the X-rays and 8 put them in my Diacom system for me to review and let me 9 know that they are there. She would have gotten the 10 medical records in and, you know, logged them in and let 11 me know that they are there. 12 If we get other materials as they came -- so 13 other declarations or other reports or whatever it is -- 14 then she would log those in and let me know that they 15 are there. I am sure she probably helped arrange the 16 time for me to have a conference with -- with Ms. Moore. 17 That would be probably -- that's about all I can imagine 18 she would have done. 19 Q Okay. Did Dr. Leslie Haber review any of the 20 medical records or assist you with your declaration at 21 all? 22 A No. Other than again, I think there was -- I 23 asked her to review for grammatical. But she didn't 24 have time to do that. So there was very little that she 25 got to read. Only a few pages.
Page 23 1 assisted you with spell checking and editing the 2 document; is that correct? 3 A Well, part of it. Didn't have much time. 4 Q That's somebody who is in your doctor's 5 office? 6 A Yes. 7 Q Okay. Do you have any other support staff, 8 besides the individual who supported you with respect to 9 this declaration? 10 A Define support staff, sir. 11 Q Anybody who assists you when you were working 12 up a case. Somebody who looks at medical records, 13 somebody who formats documents, somebody who does intake 14 or works with plaintiff's counsel. Does that make it 15 any clearer? 16 A Well, so you are just limiting it to 17 plaintiffs or -- because I do work for defendants as 18 well. 19 But, no. Generally on the medical/legal 20 side -- that's why I was asking about support staff. I 21 mean I have other staff help me when I am dealing with 22 patients. But generally when I am doing work for -- in 23 the medical/legal, you know, there are -- there is 24 generally my wife, Dr. Leslie Haber, who will log in 25 X-rays or records or that sort of thing. And again,	Page 25 1 Q So she began the review but she didn't 2 actually provide you with her comments because she had 3 other things to do; correct? 4 A No. I needed to -- there was a time limit of 5 trying to get this declaration on time and I just ran 6 out of time. 7 Q Okay. That's when somebody in your office 8 took over; is that fair? 9 A No. What I am saying is that there was not 10 enough time to have somebody start reading it by the 11 time I finished it. And so I did not get someone else 12 to re-review -- after I had already looked for 13 grammatical and spelling errors, there wasn't enough 14 time in order to get it filed on time. 15 Q Okay. So the final version of it -- the final 16 draft was you and all you; right? 17 A With the exception that if there was -- if 18 there was any spelling mistakes, or grammar, or comma, 19 or something like that, but nothing -- absolutely 20 nothing of substance would have been changed by my wife. 21 She never would do that. 22 Q Okay. As you are preparing your declaration, 23 do you also take handwritten notes at all? 24 A No. 25 Q Okay. Tell me about the process where you

Page 26 1 create your declaration. Do you -- you mentioned 2 earlier that you incorporated some prior versions of 3 other reports that you have done. This is a big 4 question but I am hoping we can sort of move things 5 along. 6 Tell me about the process by which you draft 7 your declaration? 8 A Well, I have never done one before. So this 9 is the only one I have ever drafted. But in this 10 particular case, you know, a lot of the -- a lot of what 11 was in there I had taken from previous reports regarding 12 cases similar to Ms. Moore's. Discussions of asbestos 13 and talc. For example, there may be from other -- taken 14 also from other cases related to mesothelioma or to 15 asbestos-related disease. 16 Those would have been put into the declaration 17 and then edited as I saw fit. The section on -- from 18 her past medical history would have been -- as I go 19 through her medical records, then I type, okay, this is 20 what happened and this is what happened, and then 21 change -- you know, there is no drafting. It's in the 22 computer. You just make changes as you go along until 23 you -- it -- it's got the material, the information that 24 I want. 25 The same thing with the social history,	Page 28 1 herein after the deposition.) 2 BY MR. AMEELE: 3 Q Exhibit 4 is what has been attached to -- 4 well, let me take that back. 5 Exhibit 4 has been provided a few different 6 versions. I'm going to see if I can attach the correct 7 one here that you want to testify with respect to. This 8 appears to be what you labeled Exhibit B and currently 9 contains 508 documents. 10 Do you know the document I am speaking of, 11 Dr. Haber? 12 A Yes. 13 Q Okay. We are going to mark that as Exhibit 4 14 (Whereupon, Defendants' Exhibit 4 15 was marked for identification by 16 the court reporter and attached 17 herein after the deposition.) 18 BY MR. AMEELE: 19 Q What do you call this document? 20 A Exhibit B. 21 Q Understood. 22 Can we think of something else to call it that 23 would refer to the topic that is contained within it? 24 Are these company-specific documents? 25 A Well, you asked me two questions. Which one
Page 27 1 occupational history and exposure history. 2 Q Okay. So if I understand, you're typing it as 3 you are reviewing materials; correct? 4 A Well, part of that is typing it as I am 5 reviewing materials. Again, that would be, like, for 6 the past medical history. Although a lot of that 7 medical history is also from the information that I got 8 directly from Ms. Moore. But it would be a combination 9 of that for the past medical history. 10 Q Okay. What is the other part? 11 A Well, again, I already said, for example, you 12 know, the section on discussion where I am -- 13 definitions on asbestos and disease, on epidemiology, on 14 animal studies, these are from -- taken from other 15 reports that I have issued in the past or from other 16 information that I have used in the past, then placed 17 into this report and then organized and edited as I saw 18 fit. 19 Q Okay. The C.V. that I have for you is dated 20 April 2021. Is that the most current C.V.? 21 A I believe so. 22 Q Okay. We will mark your C.V. as Exhibit 3 23 (Whereupon, Defendants' Exhibit 3 24 was marked for identification by 25 the court reporter and attached	Page 29 1 do you want me to answer? 2 Q Let's try it this way. You have an exhibit 3 that contains peer-reviewed published literature which I 4 understand to be Exhibit C. 5 Exhibit B looks like they are company-specific 6 documents. Tell me what Exhibit B is and how it's 7 categorized. 8 A I have always called it Exhibit B. 9 Q What does Exhibit B consist of? 10 A Exhibit B would be other documents and 11 materials that I have reviewed that -- in part are from 12 companies, or non-published literature, or other 13 testings from various sources pertaining to talc and 14 testing of talc and other issues related to talc that I 15 have reviewed over the years. 16 MS. DEAN: Objection. Overly broad. Sorry. 17 BY MR. AMEELE: 18 Q Okay. I understand. 19 So Exhibit 4 are non-published materials with 20 respect to talc. Does this make sense? 21 A Well, I am not sure that's 100 percent correct 22 that I said -- that they are all -- I mean things might 23 be published. I am not sure necessarily that it's 24 100 percent non-published. I guess it all depends on 25 what you mean by published.

Page 30 1 But as far as in journals, I think most of 2 these have not been, but there may be some that are in 3 there. 4 Q Okay. Let's try this again. Exhibit 4 5 contains 508 citations with respect to talc, the 6 majority of which may be unpublished but some of which 7 may be. Is that fair? 8 A Okay. Yes. 9 Q Okay. At one point this list November 5th, 10 2021 had 488 -- 489 references that were attached to 11 your declaration. Do you recall that? 12 A Yes. 13 Q Okay. And then on November 10th I was 14 provided another exhibit which had 520 documents. Do 15 you recall that list? 16 A No. I just recall the 508. 17 Q And -- correct. Now I have another one that 18 is 508. 19 Let me ask you this. How did Exhibit 4 go 20 from 489 to 520 references, if you know? 21 A I don't know. I don't recall seeing one that 22 said 520. I just recall 508. 23 Q Okay. How did it go to -- how did it wind up 24 at 508 documents from 489? 25 A Because there were additional documents that	Page 32 1 Mae Moore case. 2 So that's about the best guess that I can tell 3 you is there may be some additional phone calls that we 4 have had. 5 Q But -- thank you. 6 Right now I am asking specific to the 7 Mae Moore matter. 8 A That's my best guess. 9 Q Okay. And what is the total amount of time of 10 these dozen or so video calls or video conferences or 11 telephone calls? 12 MS. DEAN: Objection. Misstates his testimony he 13 gave twice. 14 BY MR. AMEELE: 15 Q Go ahead, Doctor. 16 A Could you -- can you give me the question 17 again? I want to make sure I am answering -- 18 Q Sure. 19 A -- the right question. 20 Q How much time have you spent on the phone or 21 in video conferences related to this case with the Dean 22 Law Firm? 23 A I don't know the answer to that then. 24 Q You don't have an estimate? 25 A I do not have one.
Page 31 1 over those, I guess, few days that got added to the 2 list. 3 Q Did you add them to the list or did somebody 4 provide them to you? 5 MS. DEAN: Asked and answered. 6 THE WITNESS: Dean Omar Branham Law Firm provided 7 the additional documents for my review. 8 BY MR. AMEELE: 9 Q How many total conversations have you had had, 10 or video conferences, with the Dean Omar Law Firm on 11 this case? 12 A You are talking about just specific to the 13 Mae Moore case, and you said video and/or telephone? 14 Q Yes, sir. 15 A Probably under a dozen. I don't know. 16 Q What is your best estimate, Doctor? 17 A Under a dozen, but I don't know. It's more of 18 a guess. 19 Q Okay. So you are not sure whether it's more 20 or less than a dozen? 21 A Well, I recall about two or three videos. I 22 can't tell you if -- you know, I have had -- I have had 23 brief phone calls with -- with Ms. Dean. I don't 24 necessarily know that every time that I have talked with 25 her it's necessarily about the Dean -- about the	Page 33 1 Q Do you keep notes at all during these video 2 conferences or telephone calls? 3 A Generally not. 4 Q Did you in this case, the Mae Moore matter? 5 A No. 6 Q Okay. When was the first video conference? 7 A Well, I don't -- in -- in regard to this case, 8 I don't know. I mean I had -- again, I have had video 9 conferences with Ms. Dean about other subject matters. 10 So I can't tell you that it was necessarily related to 11 the Mae Moore case. So I just don't know when the first 12 one was. 13 Q Do the video conferences go on your calendar 14 when they are set? 15 A Sometimes they do; sometimes they don't. But 16 it doesn't tell me what the subject matter is. 17 Q Do you recall the dates of any of the two or 18 three video conferences where you met with Ms. Dean? 19 A I know I had a video conference yesterday. 20 Q Okay. Let's work backwards and let me -- 21 maybe you can -- let me see if I can understand this. 22 You don't recall the date of the first video conference; 23 right? 24 A Related specifically to the Mae Moore case, 25 no.

Page 34 1 Q Yes, sir. Just the Mae Moore case. 2 I'm sorry. I didn't mean to step over you. 3 Go ahead. My apologies. 4 A Related to the Mae Moore, no, I don't, sir. 5 Q What was discussed in the first video 6 conference? 7 A I have no idea, sir. 8 Q None at all? 9 A No. I mean that may have been two or three 10 years ago. 11 Q Okay. What about the second video conference, 12 when was that? 13 A Again, I have no recollection. I mean I have 14 had -- I have had a large number of video conferences 15 with Ms. Dean over the years. 16 MS. DEAN: Objection. Let me just objection, vague 17 and confusing if you are talking about the Moore case or 18 ever with our firm. 19 BY MR. AMEELE: 20 Q The questions are specific to Mae Moore. I 21 think I made that clear. 22 On the second video -- 23 A You didn't, sir. That's why I was answering 24 the way I was. 25 Q My questions are just with respect to the	Page 36 1 with -- with issues about talc. 2 Q Okay. Let's talk first about the portion of 3 the video conference yesterday that was related to the 4 Mae Moore case. What did you discuss? 5 A That the deposition did get moved ahead an 6 hour. That -- who some of the people were that might be 7 doing questioning today. I think we may have briefly 8 spoken about some of the other expert declarations. 9 That's about all I can remember. 10 Q How long did the conversation last, Doctor? 11 A Which conversation? 12 Q The third video conference with respect to 13 Ms. Mae Moore? 14 MS. DEAN: Objection; form. Misstates testimony. 15 Vague and ambiguous about the Moore section or total, 16 given the previous answers -- I mean questions. 17 THE WITNESS: Again, so if we are speaking about 18 the video conference I had yesterday, I don't know how 19 long it was specific to Ms. Moore. But it was not 20 very -- that portion was not very long. Most of it was 21 dealing with other issues. 22 BY MR. AMEELE: 23 Q How long was the video conference total? 24 A I believe around three hours, something like 25 that.
Page 35 1 Mae Moore case. 2 A Okay. 3 Q You don't recall -- 4 Let me finish my question, please, Doctor. 5 Thank you. 6 On the Mae Moore case do you recall the first 7 video conference with Ms. Dean or anybody from her law 8 firm? 9 A No. 10 Q Okay. On the Mae -- on the Mae Moore case do 11 you recall the second video conference? 12 A No. 13 Q Do you recall any portion of that video 14 conference at all? 15 A No. 16 Q Okay. You don't know the date either; 17 correct? 18 A The only one I recall was yesterday. No. 19 Q Okay. 20 A No. What day is today? Monday. Yeah. 21 Sunday. 22 Q Okay. You had a video conference yesterday on 23 the Mae Moore case; correct? 24 A Well, actually it was a little bit on the 25 Mae Moore case. A lot of it was more just general deal	Page 37 1 Q What expert declarations -- you referenced 2 expert declarations that were discussed. Which ones 3 were you discussing? 4 A Well, I am not sure it was necessarily so much 5 discussing, but she was asking if I had had the 6 opportunity to review the declarations of the experts 7 that have given declarations in this case; specifically 8 the Burke, Segrave, Marsh, Sahmel and Sanchez and 9 Rigler. 10 Q And had you reviewed all of those 11 declarations, Doctor? 12 A As much as I -- as much as I could. 13 Q Did you review them prior to executing your 14 declaration? 15 MS. DEAN: Objection to form. 16 THE WITNESS: To the extent that they were executed 17 before my declaration and were provided to me, I did. 18 I think I listed the -- in my declaration I 19 believe I did list the ones that I had reviewed. Yes. 20 So it looks like they did have them all, I believe. 21 Also Christy Barlow -- I guess I did not put 22 that one down there. I had -- and Lisa Gallow as well. 23 BY MR. AMEELE: 24 Q What are you looking at now, Doctor, while 25 discussing this issue?

Page 38 1 A I am looking at my declaration. 2 Q Okay. What was discussed for the -- on talc 3 generally for the other two-and-a-half hours or so of 4 this video conference? 5 A Um, I don't recall, specifically. A variety 6 of subjects on testing, testing techniques, on -- on 7 various sources of -- of talc. Of -- that's about -- 8 that's about the things that I can recall. 9 I guess there is -- the other thing that we 10 discussed yesterday, I guess it's somewhat related to 11 the Mae Moore case slightly here, was I asked if it was 12 okay for me to prepare any sort of -- or I was preparing 13 some notes and how to handle, as far as providing those 14 notes to you guys on the sources from various mines and 15 various testing, which I believe was about four pages or 16 so. 17 Q This -- 18 A I finished this morning. 19 Q Sorry. These are the notes that we were 20 provided at 10:00 a.m. this morning, Doctor? 21 A Yes. That was shortly after I finished making 22 them. 23 Q Okay. What I understand -- this conversation 24 was yesterday; correct, sir? 25 A Yes.	Page 40 1 defendants but there may be -- it may be with regards to 2 testing of other -- like I believe, we did discuss 3 testing in the past by MAS and Longo. We, I believe, 4 discussed Gordon's paper. And perhaps other published 5 papers dealing with this issue and testing that has been 6 done by various other entities, whether they were -- you 7 know, at the behest of a company or, you know, whatever 8 they were doing tests for. 9 Q Were you done? I am sorry. 10 A I am now. 11 Q Okay. What MAS testing was discussed 12 yesterday? 13 A I don't recall specifically which one. 14 Q You don't recall any of the ones discussed? 15 A Not specifically, no. 16 Q What about generally? 17 A Generally, perhaps California. Generally, 18 perhaps Jean Nate. Perhaps, generally Vermont. Italy. 19 Cashmere Bouquet. 20 Q And I am sorry. My apologies. Sometimes I am 21 unable to tell if you are done with your answer. That's 22 my fault. 23 A I am thinking Estee Lauder, I think. There 24 may have been others as well that we discussed. I don't 25 recall.
Page 39 1 Q Okay. You listed for me that the discussion 2 included testing, testing technique and sources of talc; 3 is that fair? 4 A Those are some of the things that we discussed 5 that I recall. 6 Q What else? 7 A I don't recall specifically. Something might 8 jog my memory but right now I don't -- yesterday was a 9 blur. I had a lot of busy things going on yesterday. 10 Q What was discussed with respect to taking them 11 in order of testing? 12 A Again, you know, we have talked about issues 13 of whether it's specific to a specific mine or testing 14 that was done by a specific entity or testing a certain, 15 you know, time period. I don't -- I don't particularly 16 recall. 17 Q Did you take notes at all during this 18 three-hour video conference? 19 MS. DEAN: Objection. Asked and answered. 20 THE WITNESS: No. 21 BY MR. AMEELE: 22 Q Okay. So was the testing topic specific to 23 defendants or testing generally? Testing protocols? I 24 am trying to understand what was discussed. 25 A Well, it may be testing not necessarily to	Page 41 1 Q Okay. Do you recall MAS testing yesterday 2 with respect to Avon? 3 A Not specifically, no. 4 Q Okay. What was the California MAS testing 5 that you were discussing yesterday? 6 MS. DEAN: Objection; form. Vague and confusing. 7 THE WITNESS: I believe that had to do with -- 8 actually, did I say California? 9 BY MR. AMEELE: 10 Q Yes, sir. 11 A Then maybe I misspoke. 12 Q Okay. 13 A Yeah. I don't think MAS. 14 Q Did you discuss California testing at all 15 yesterday, irrespective of the entity? You may answer 16 otherwise. 17 A Yeah. I believe so. 18 Q And what California testing were you 19 discussing? 20 MS. DEAN: Objection; form. 21 THE WITNESS: Whose? 22 BY MR. AMEELE: 23 Q Sure. Any of the details. Yeah. 24 A I think Pooley. 25 Q Okay.

Page 42 1 A I don't recall who else. 2 Q Pooley and no others as you sit here today; 3 correct -- that you can recall? 4 MS. DEAN: Objection as to form. 5 THE WITNESS: That I can recall from our 6 conversation, that's correct. 7 BY MR. AMEELE: 8 Q Okay. And what about Vermont and Italy, what 9 was discussed with respect to MAS testing yesterday? 10 MS. DEAN: Objection. Vague and confusing. 11 THE WITNESS: I don't recall. 12 BY MR. AMEELE: 13 Q You don't recall any of the details of that 14 conversation yesterday on Vermont or Italy MAS testing; 15 is that correct? 16 MS. DEAN: Same objection. 17 THE WITNESS: Again, I don't know to the extent 18 that, A, it was an actual conversation regarding MAS' 19 testing or it was just a, you know, here is some of 20 the -- you know, that we are in more generalities about, 21 you know -- well, you know, testing by various entities 22 but not really necessarily getting into any detail of 23 those. Because I have seen them in the past. So I 24 really can't tell you to the extent that -- that there 25 was anything new.	Page 44 1 subject of the Gordon paper. 2 Q You make a good point. I apologize. 3 So on the video conference was just you and 4 Ms. Dean yesterday; correct? 5 A Yes. 6 Q Okay. With respect to the MAA (sic) 7 testing -- MAS testing who brought that up, you or 8 Ms. Dean? 9 A Again, I don't recall. 10 Q You don't recall that from yesterday? 11 A No, I don't, sir. 12 Q Okay. And you don't recall whether you or 13 Ms. Dean brought up the topic of Dr. Gordon's paper from 14 yesterday either; right? 15 A Right. I don't remember who broached the 16 subject. It's kind of really an unimportant issue for 17 me to recall. 18 Q Sure. 19 You said other published papers. What other 20 published papers were discussed yesterday? 21 A Well, I seem to recall I brought up the 22 subject of the Paoletti article. I believe I probably 23 brought up Steffen's article. I believe I brought up 24 other -- I think I brought up Mattenklott. Finkelstein. 25 There may have been others too that I am
Page 43 1 And in fact most of it was not new. But, you 2 know, this is -- this is stuff that I have seen many 3 times in the past on Vermont in particular. 4 BY MR. AMEELE: 5 Q What I am trying to understand is, why was it 6 necessary to have a three-hour meeting yesterday? I am 7 trying to understand what the details were that was 8 discussed. So let me start with the next item here. 9 You mentioned the Gordon paper. What was discussed with 10 respect to the Gordon paper? 11 A From what I recall, you know, the issues of, I 12 think, a subsequent -- I am not sure what the term was, 13 but that information as to the timing of the sources of 14 the samples that were tested. So that how it correlated 15 to the source mine is my recollection. 16 Q Okay. Why was it important to discuss that 17 yesterday? 18 A I don't know it was necessarily important to 19 discuss it yesterday but that just happened to be one of 20 the things we discussed. 21 Q Did you bring it up or did Ms. Dean or someone 22 on her -- from her firm bring it up on the call 23 yesterday? 24 A There was no one else on the call besides 25 Ms. Dean and I. And I don't recall who brought up the	Page 45 1 not -- not remembering. 2 Q Was the Steffen paper the 2020 paper on 3 ovarian cancer? 4 MS. DEAN: Objection; form. Misstates the content 5 of the paper. 6 THE WITNESS: The -- one portion of that paper is 7 regard to ovarian cancer, but there are other -- other 8 things discussed within that paper. But I believe that 9 is the one that in part does discuss ovarian cancer. 10 BY MR. AMEELE: 11 Q What did you bring up about the Steffen paper 12 yesterday in your conversation? 13 A I think we -- it was dealing with Johnson & 14 Johnson. I think it was perhaps dealing with exposure 15 levels of use of Johnson & Johnson. 16 Q Okay. What about the Finkelstein papers? Are 17 you referring to actual published works by him or 18 letters to the editor? Can you narrow that down for me? 19 A I think it was a letter to the editor. I 20 don't recall the publication date. 21 Q Which letter to the editor? 22 A I guess that had to do with another paper I 23 had brought up. I guess that was the Burnes paper. 24 Q Okay. I understand. 25 So you are talking about Dr. Finkelstein's

Page 46 1 letter to the editor with respect to the Burnes paper 2 from 2019? 3 A If you say so. It was a year or two ago is my 4 recollection. 5 Q What was discussed regarding Dr. Finkelstein's 6 letter to the editor on that paper? 7 A Um, I think I brought up the issue that he had 8 done some, I guess, recalculating based on the data, 9 dealing with adult powdering and exposures. 10 Q Okay. Are your criticisms of the Burnes paper 11 contained within your declaration or do you have 12 additional criticisms? 13 MS. DEAN: Objection; form. 14 THE WITNESS: I don't recall doing any criticisms 15 on the Burnes paper in my declaration. 16 BY MR. AMEELE: 17 Q Okay. We'll get to that paper a little bit 18 later on. 19 You also said you discussed testing 20 techniques. What was discussed with respect to testing 21 techniques? 22 A Oh, I don't know. You know, I think we did, 23 you know, talking about TEM, talking about XRD, talking 24 about other -- other modalities just in general. I 25 don't recall specifically.	Page 48 1 BY MR. AMEELE: 2 Q It sounds as though you and Ms. Dean have 3 talked quite a bit the last few years. Is that fair? 4 A If -- if not more than that, but yes, over -- 5 over -- I mean it's not like we are talking every week. 6 She is a busy attorney and I am a busy doctor. But we 7 have spoken a number of times over the past several 8 years. That's true. 9 Q How many times have you spoken with Ms. Dean 10 with respect to cosmetic talc cases or issues? 11 A Oh, I couldn't begin to hazard a guess. 12 Q 100? 200? Any estimate? 13 A I am not going to give you any estimate. That 14 would be a pure guess and I don't want to be guessing. 15 Q You have no idea; correct? 16 A I do not. 17 Q How many times have you met in person? 18 MS. DEAN: Objection. Vague and ambiguous. Are 19 you including trials? 20 THE WITNESS: I was going to ask you that. We met 21 in person when I was at a trial in May. 22 BY MR. AMEELE: 23 Q Okay. You had a trial in Washington; is that 24 correct? 25 A Well, I don't know where it was but it was --
Page 47 1 Q Why was that important? 2 A I am not sure. 3 Q Did you bring up that topic, testing 4 techniques? Or was that one from Ms. Dean? 5 A I don't recall. We have talked lots and lots 6 over the years on testing techniques and methodologies. 7 Methodology is very important to me. So we certainly 8 talked a lot over the years on -- on the various testing 9 that is performed and, you know, on various talc 10 products. 11 Q You said methodology is very important to you? 12 A As a scientist it is. Yes. When I am reading 13 a paper, I always -- first thing I look at is -- well, 14 not necessarily the first thing, but the earlier things 15 I look at it is methodology. 16 Q Why is it important to you? 17 MS. DEAN: Objection. Overly broad. Vague. 18 THE WITNESS: Depends on what the subject matter 19 is. It might be important related to whether -- how to 20 interpret the result section. 21 You know, just like when I am ordering a test 22 I need to kind of know how to interpret the test with 23 respects to the strengths and weaknesses when I am 24 talking with my patient. 25 ///	Page 49 1 it was a Zoom trial. 2 Q Okay. Outside of trial how many times have 3 you met with respect to cosmetic talc issues? 4 MS. DEAN: Objection; form. 5 THE WITNESS: I am not -- I am not sure. I 6 don't -- I don't know how many times. 7 BY MR. AMEELE: 8 Q Any estimate? 9 A Maybe a dozen or two. 10 Q Okay. How many in-person meetings have you 11 had with respect to cosmetic talc not related to a 12 trial? 13 MS. DEAN: Objection; form. Overly broad. 14 THE WITNESS: Some portion of that number. I don't 15 know. 16 BY MR. AMEELE: 17 Q How long did those meetings last, total, if 18 you know? 19 A I don't. 20 Q Did you take any notes during those meetings? 21 A No. 22 Q None at all? 23 A No. I usually like listening. 24 Q Okay. When was the -- who was the first 25 attorney who contacted you with respect to cosmetic talc

Page 50 1 litigation? 2 A I am not sure. 3 Q You don't know the name of the person? 4 A That was -- that would have been, like, three 5 years ago or so. Maybe even longer. I don't recall. 6 Q Were there other attorneys present in any of 7 the in-person meetings that you had with respect to 8 cosmetic talc besides Ms. Dean? 9 MS. DEAN: Objection; form. Overly broad. 10 THE WITNESS: Ever? 11 BY MR. AMEELE: 12 Q Yeah. Excluding trials. 13 A I think so, yes. 14 Q Who? 15 A I believe Chris Panatier was once. 16 Q Besides -- I am sorry. I didn't mean to cut 17 you off. Go ahead. 18 A I believe Mark Buha. There may be other 19 people from the Dean Omar Branham firm that I am not 20 recalling right now. 21 Q Okay. Were you done with your answer? 22 A Yes. 23 Q Besides Mr. Panatier do you recall anybody 24 else from any other law firms? 25 A No.	Page 52 1 A Yes. 2 Q Okay. Contained in your declaration there are 3 several paragraphs on talc sources. Do you recall that? 4 A Yes. 5 Q Okay. And the conversation that you had 6 yesterday, was there any new information other than what 7 is contained in your declaration on those talc sources? 8 MS. DEAN: Objection to form. Overly broad. 9 THE WITNESS: Um, yeah. I don't recall if he -- 10 it's possible. 11 Um -- you know, may have been. There may have 12 been some new information. I don't recall. 13 BY MR. AMEELE: 14 Q You don't recall one way or the other? 15 A I don't. It really was not going to be 16 something dramatically important to my opinions so, no, 17 I don't recall. 18 Q Exhibit 4 which is the 508 largely 19 non-published items on talc, do you have that with you, 20 Doctor? 21 A I do not. 22 Q You know the documents I am referring to; 23 correct? 24 A I do. 25 Q If at any time you want me to share it with
Page 51 1 Q Okay. You also stated you discussed sources 2 of talc. Could you tell me what that was? I am 3 referring to your video conference from yesterday. 4 A I think it was kind of going over what I had 5 put in my declaration and what is within my notes here, 6 kind of just making sure that -- that I was up-to-date 7 and correct. But just generally issues of timing of 8 various sources. I believe -- I believe that's about 9 all I can -- I am not sure I can get any more specific 10 than that. 11 Q Okay. This was respect to the opinions you 12 provided in your declaration; is that fair? 13 MS. DEAN: Objection; form. 14 THE WITNESS: I don't know what you mean by that. 15 BY MR. AMEELE: 16 Q Sure. 17 You discussed talc sources and have several 18 opinions on them contained in your declaration. Was 19 this a conversation that you had with respect to your 20 opinions in your declaration or was this different than 21 that? 22 A I guess I don't understand what you mean by 23 "different than that." 24 Q Okay. You have a declaration in this case. 25 We have marked it as an exhibit; correct?	Page 53 1 you on the screen as I am asking questions, let me know. 2 Okay? 3 A Okay. 4 Q When did you start keeping this list that we 5 have labeled as Exhibit 4? 6 MS. DEAN: Objection; form. Vague and ambiguous. 7 THE WITNESS: I guess I am not -- Exhibit -- 8 Exhibit B would have been generated at -- when I was 9 making this declaration. So sometime just before the 10 declaration was when it was put together. 11 BY MR. AMEELE: 12 Q Okay. Let me see if I can try this a little 13 bit differently. My understanding -- from chatting with 14 you in the past -- is you typically have an Exhibit B 15 that is attached to your reports. 16 Do you recall that? 17 A I have had other reports that have had an 18 Exhibit B attached to them. 19 Q Okay. That Exhibit B, what we have identified 20 as Exhibit 4 here in prior cases, appears to be roughly 21 similar, is largely non-published items on talc. What I 22 am asking you is when you first began keeping this list? 23 A I don't know. 24 Q Was it sometime after you began being retained 25 in cosmetic talc cases?

Page 54 1 A Yes. 2 Q Okay. That's within the last three years? 3 A Yes. 4 Q Okay. The list that I am looking at, the most 5 current version is 508 items. Is this -- are these the 6 company-specific documents and non-published materials 7 that you intend on relying on at the time of trial? 8 A Yes. 9 MS. DEAN: Objection to form. 10 BY MR. AMEELE: 11 Q I can tell, from looking at this list, what 12 documents are specific to Avon from their titles. What 13 I am trying to determine, from looking at this list, 14 what we have labeled as Exhibit 4 is what other items 15 in here do you intend to rely on in support of your 16 opinions against Avon? 17 MS. DEAN: Objection; form. Overly broad. 18 THE WITNESS: Well, one thing that -- for example, 19 that is kind of a -- let me just give you an overview of 20 how I take this information, but in addition to looking, 21 if I have got information directly related to a 22 particular company -- 23 BY MR. AMEELE: 24 Q Yes? 25 A -- like Avon, the other thing that I will look	Page 56 1 Italian or 1615 is Italian, for example. 2 And then I can go and say, okay, let's go back 3 to either testing on that specific 0747 or testing on -- 4 from Italian with that example or whether it was Supreme 5 325 and looking at the Grantham, for example. 6 So I have to -- those are kind of the three 7 ways that I will use those -- those data that are in 8 Exhibit B or -- which is now Exhibit 4 -- to help me to 9 try to determine if a specific company's product, either 10 by -- directly in their product or again the source 11 contained asbestos or what the testing showed. 12 MS. DEAN: Keith, if you are at a decent breaking 13 point, we have been going over an hour. And I 14 understand FSC is also completed. And I am kind of 15 anxious to call my office to find out what happened. 16 Is there any way we can take a ten or 17 15-minute break? 18 MR. AMEELE: Yeah. I don't mind. I was hoping to 19 get through this topic, at least. But if you would like 20 to take a break now, I can do that. 21 MS. DEAN: I don't want to micro-manage it. And so 22 if there is -- if you are in a groove, I don't want to 23 mess it up. 24 MR. AMEELE: Sure. Let me see if I can wrap up 25 this topic and move this along, if you don't mind.
Page 55 1 to is, okay, you know, what information that is in there 2 that gives me -- tells me where Avon sourced its talc 3 from. So you know, is it in the '60s? Is it in the 4 '70s? '80s? Whatever the time period was which I again 5 kind of have as an approximation for Avon in my notes 6 that were provided to you. But I will look to those. 7 And so for example, if I see that talc is from 8 California in the Grantham mine, then I will look to 9 testing by other laboratories or other companies or 10 other entities on Grantham talc. 11 If I see that it's from Italy, or if it's from 12 North Carolina, whatever the source is, I will then look 13 to testing that was done on -- from that source -- 14 whether or not it was from -- for that particular 15 company or for someone else. 16 I will also -- you know, I found that a lot of 17 companies use various codes for their talc. And so I 18 will go to the company documents to try to sort that 19 out. 20 I have also seen the information from -- from 21 Rigler which also, you know, did the same sort of thing 22 in his exhibits where he is helping to determine which 23 code and everyone seems to have their own codes -- which 24 code goes to which product. And so that takes these 25 company documents to figure out, okay, well, 0747 is	Page 57 1 BY MR. AMEELE: 2 Q What I am trying to determine from Exhibit 4 3 what you have previously labeled as Exhibit 5 is how 4 it's organized; right? 5 A Exhibit B. 6 Q Yes. 7 And I can determine certainly what the Avon 8 documents are by their title and I can appreciate what 9 you told me about talc sources. What I am trying to 10 determine is if it's categorized in any one -- in any 11 way. So you can determine what the documents are that 12 you are relying on as to Avon as opposed to some other 13 defendant in toto. 14 Does my -- does my question make sense? 15 MS. DEAN: Object to the extent, asked and 16 answered. 17 THE WITNESS: It's not any more organized than -- 18 than it is right there. It's not -- that is -- that is 19 how -- that -- I don't think it would be organized any 20 differently for you to be able to sort out other than 21 the way I just finished describing how I used the 22 information. 23 BY MR. AMEELE: 24 Q So what I am trying to determine -- I 25 appreciate your answer -- is which of the 508 references

Page 58 1 you are relying on as to Avon? What is the best way for 2 me to determine that? 3 MS. DEAN: Objection to the extent, asked and 4 answered. 5 THE WITNESS: Well, it would be to the extent that 6 there is -- either it's specific to an Avon document -- 7 BY MR. AMEELE: 8 Q Okay. 9 A -- or testing that was -- you know, for -- 10 done for Avon -- you know, for Avon talc or an Avon 11 product. It would be the documents that relate to the 12 codes that Avon called its various talc products. 13 Q Okay. 14 A Um, it would be documents that allowed me to 15 determine the source of those codes. It would be the 16 supplier -- or documents relating to the supplier of the 17 talc. It would be documents related to the source 18 mines. 19 So for example, if I knew that it was, you 20 know, during this period of time it was in Italy or if 21 it was in North Carolina, it was Montana, it was 22 Vermont, California, whatever the source mine is, then 23 it would be documents related to other testing specific 24 to those source mines. 25 Q And that could be anywhere from 1 to 508;	Page 60 1 reporter? 2 THE COURT REPORTER: Yes. 3 (Whereupon, Defendants' Exhibit 5 4 was marked for identification by 5 the court reporter and attached 6 herein after the deposition.) 7 BY MR. AMEELE: 8 Q Okay. Doctor, is what you have attached as 9 Exhibit C and we have labeled as Exhibit 5 is this the 10 peer-reviewed published literature you intend to rely 11 upon for your opinions in this matter? 12 MS. DEAN: Objection. Overly broad. 13 THE WITNESS: It's -- there may be things that I am 14 asked that are not on there but certainly there is -- 15 there are -- that's a fairly inclusive -- when it comes 16 to issues regarding asbestos and talc, carcinogenesis. 17 But there may be other documents that I didn't 18 anticipate someone asking me about that are not included 19 on that list. 20 BY MR. AMEELE: 21 Q Okay. What I am trying to do is my best to 22 prevent surprises at the time of trial here. So the 23 first thing I am trying to determine is, as we sit here 24 today, is this the peer-reviewed published literature 25 upon which you intend on relying for your opinions at
Page 59 1 correct? 2 A Yes. 3 Q Okay. Let's take a break for ten or 15 4 minutes. Then we will go back on the record. 5 Thank you, Dr. Haber. 6 THE VIDEOGRAPHER: We are off the record. The time 7 is 12:13 p.m. 8 (Whereupon, a recess was taken 9 from 12:13 p.m. until 12:29 p.m.) 10 THE VIDEOGRAPHER: Excuse me. We are back on the 11 record. The time is 12:29 p.m. 12 BY MR. AMEELE: 13 Q Doctor, we are back from a break. Are you 14 ready to keep going? 15 A I am, sir. 16 Q Okay. Thank you. 17 Attached to your declaration was Exhibit C. 18 Do you have that with you, Doctor? 19 A I believe I can pull it up if need be. 20 Q Okay. If you need me to share it with you on 21 the screen you will let me know; okay? 22 A Okay. 23 Q We will attach that as Exhibit -- 24 MS. DEAN: 5. 25 MR. AMEELE: -- 5. Is that fair, madam court	Page 61 1 the time of trial? 2 MS. DEAN: Objection. Asked and answered. 3 THE WITNESS: So, that is certainly a list of 4 documents that I intend to rely upon. But again, I 5 don't think that -- that that list is so inclusive 6 that -- that, A, there might be new literature as it 7 comes out. There is new literature that gets added to 8 that list all the time. 9 And B, there are issues that I may be asked to 10 opine upon that are not within what is cited in there. 11 For example, you know, if I am asked to talk about life 12 expectancy, for example, there may be citations that -- 13 that those -- those citations are mainly to deal with 14 talc and asbestos and carcinogenesis, for example. 15 BY MR. AMEELE: 16 Q Is this list, Exhibit 5 current as of today? 17 MS. DEAN: Objection; form. 18 THE WITNESS: Well, it's current as of when it was 19 produced, whether it was today or I think -- I am not 20 sure if it was today or yesterday or a few days ago. 21 But it's -- that list is -- is current as far as the 22 exhibit was produced. 23 BY MR. AMEELE: 24 Q Okay. Then -- yes, ma'am. 25 MS. DEAN: Can you clarify just -- we sent -- there

Page 62 1 was an Exhibit C to the declaration and then an updated 2 one. Can you confirm what you will be attaching as 3 Exhibit 5? 4 MR. AMEELE: What I will be attaching as 5 is the 5 one that I believe you said, Ms. Dean, as part of a 6 share file on November 11th. And that looked to be 7 updated from what was attached to the declaration. 8 MS. DEAN: Okay. That makes sense. Thank you. 9 BY MR. AMEELE: 10 Q Okay. Doctor, let me say this. If you make 11 any changes to the list or you intend on relying on any 12 other documents, you will let us know, through Ms. Dean, 13 so we can have a chat; okay? 14 A I don't know what I am saying "okay" to, sir. 15 Q Okay. I am trying to get your opinions at the 16 time of trial. You understand that; correct? 17 A I do. 18 Q Okay. And part of my quest in doing so is to 19 determine the peer-reviewed published literature upon 20 which you rely for your opinions. Do you understand 21 that? 22 A I do. But I don't know what questions you are 23 going to be asking me. 24 Q Understood. So what I am trying to determine 25 is, barring hypotheticals or questions that may be about	Page 64 1 this case? 2 MS. DEAN: Objection; form. Overly broad. Vague, 3 confusing. 4 THE WITNESS: It depends on the issue. Again, 5 there may be some articles in there that are there 6 strictly for historical purposes or state-of-the-art. 7 There may be -- there may be articles that, you know, in 8 the past we didn't know. You know, asbestos did 9 something or there is new information as it comes out. 10 So there might be articles that have information that is 11 partly correct, partly non-correct. 12 So I don't think I can tell you on every 13 single article which issues that are 100 percent correct 14 and reliable as of today. 15 BY MR. AMEELE: 16 Q Do you number the references on this list? 17 A I don't. 18 Q Why not? 19 A Because it's alphabetical. 20 Q Okay. So as you sit here today, can you tell 21 me which of these articles -- I can't tell how many -- 22 you intend on relying upon at the time of trial with 23 respect to your opinions on cosmetic talc? 24 MS. DEAN: Objection; form. Overbroad. Vague. 25 THE WITNESS: I don't know how to tell you the
Page 63 1 life expectancy, is Exhibit 4 what you have labeled as 2 Exhibit C previously, the literature on cosmetic talc 3 and asbestos that you intend on relying upon at the time 4 of trial to support your opinions? 5 MS. DEAN: Form. I think you meant Exhibit 5 6 BY MR. AMEELE: 7 Q Sorry. Exhibit 5 8 Go ahead. 9 A Again, to the extent that there may be issues 10 that I did not include -- so I can't say that that's 11 100 percent inclusive, but I will certainly am -- 12 either -- and again, also the other issue is that that 13 list is a reference list, not a reliance list. So there 14 are -- there are articles on there that I reference that 15 may be there for historical purposes, there may be 16 articles in there that some issues are correct, some 17 issues are incorrect. So I am not necessarily relying 18 on 100 percent of the articles in there. 19 Some information has been supplanted as -- as 20 science has evolved. But -- again, there may be -- I 21 can't -- I don't know what questions I'm going to be 22 asked. But I try to put forth a list related to the 23 issues that I think are relevant to this case in that 24 list. If that makes sense. 25 Q Which articles do you intend on relying on for	Page 65 1 answer to my question. 2 BY MR. AMEELE: 3 Q Okay. Why don't -- in your declaration why 4 don't you place citations next to your declarative 5 statement for published literature? 6 MS. DEAN: Objection; form. References a 26-page 7 document. Misstates reality. 8 THE WITNESS: I guess I am not sure what you are 9 asking. I did give you and we were just talking about 10 Exhibit 5 That was attached to this. So I did list a 11 lot of -- all of these references. 12 BY MR. AMEELE: 13 Q You listed all of these references in your 14 declaration? 15 A Yes. The declaration -- well, there was an 16 earlier version, I guess, of it. But that Exhibit C was 17 attached to the declaration. 18 Q Okay. Here is the challenge I am having. The 19 publications aren't numbered and the citations are 20 largely overwhelmingly not created -- not listed in your 21 declaration next to the declarative statements. 22 So for example, paragraph 28, page 12, can I 23 invite your attention to that paragraph of the 24 declaration? 25 A Hold on a second.

Page 66 1 Q Thank you. Let me know when you are there. 2 A Page 12, you said? 3 Q Yes. Paragraph 28. 4 A Okay. 5 Q It states: 6 "In studies of over 100 cases." 7 Do you see where I am at, Doctor? 8 A Yes. 9 Q "In studies of over 100 cases of 10 malignant mesothelioma with no 11 known asbestos exposures, other 12 than through repeated exposures 13 to cosmetic talcum powder, all of 14 the examined tissues revealed 15 anthophyllite, tremolite and/or 16 chrysotile asbestos." 17 Did I read that correctly? 18 A Yes. 19 Q Where is the citation? 20 MS. DEAN: Let me just state that a predicate 21 before this was a discussion about whether things were 22 numbered or cited. 23 A declaration does not require that. A report 24 is not required. A reference list is not required. A 25 reliance list is not required.	Page 68 1 Q Do you typically do that when you type -- I am 2 sorry -- when you author a peer-reviewed published 3 literature, do you place the citation next to the 4 declarative statement? 5 MS. DEAN: Objection. Vague and confusing about a 6 declaration versus peer-reviewed published literature. 7 MR. AMEELE: Just legal objections, please. 8 Go ahead, Doctor. 9 MS. DEAN: Compound. 10 THE WITNESS: I don't understand what you are 11 saying. 12 This is not -- this is not a peer-reviewed 13 published paper. And so I did attach all of the 14 references. This is the same sort of information that I 15 have provided in other reports to -- to you and other -- 16 other attorneys in the exact same type of circumstances. 17 So that's not something new that I have not been asked 18 about or had the opportunity to be asked about before 19 either. 20 MS. DEAN: For my own -- I want to note "dinosaur" 21 Avon, Counsel, Sanchez. No. No. No. No. Better. 22 Segrave. 23 BY MR. AMEELE: 24 Q I have no idea. Okay. 25 Doctor --
Page 67 1 We have provided above and beyond all of the 2 requirements and a suggestion to this expert that we 3 haven't is something I need to address. 4 BY MR. AMEELE: 5 Q Do you have my question in mind, Doctor? 6 A You asked "where is it"? 7 Q What is the citation that supports that 8 statement? 9 A Well, that would be the Moline paper and 10 the -- I am having a senior moment here. 11 Q Take your time. 12 A I am trying to remember. I don't recall the 13 other author. Yeah. 14 Q Okay. Moving on to that same paragraph, you 15 state: 16 "Other researchers." 17 Do you see that? 18 A The Emory paper. I'm sorry. 19 Q You combined the Emory and the Moline paper 20 for 100 cases; is that right? 21 A Right. As per that statement, yes. 22 Q And why don't you place the citation next to 23 that statement? 24 A I didn't realize there was any requirement for 25 me to do so.	Page 69 1 MS. DEAN: That might help you -- 2 BY MR. AMEELE: 3 Q Good. 4 Doctor, you don't provide the citations in the 5 reports when you do them either; right -- after -- after 6 the statement you make? 7 MS. DEAN: Objection. Overly broad. Vague as to 8 what reports. 9 BY MR. AMEELE: 10 Q Bryant or Garcia. 11 A So could you rephrase your question to know 12 what I am -- what I am asking -- or what I am being 13 asked. 14 Q Sure. 15 In your reports do you provide the end note or 16 footnote next to the declarative statement? 17 MS. DEAN: Same objections. 18 THE WITNESS: I don't know what you mean, A, by 19 declarative statement, and B, there are times when I do 20 and, I guess, times when I don't. I don't -- I have 21 never -- no one has ever said that I have to do 22 something. 23 BY MR. AMEELE: 24 Q How do you decide when to and when not to? 25 MS. DEAN: Objection; form. Overly broad.

Page 70 1 Compound. Vague as to time. 2 THE WITNESS: I guess it just depends on how I feel 3 at the time. I really -- like I said, I never had 4 anyone say that you have to do it one way or -- or 5 another. I have certainly done it both. I have done it 6 where I put citations. I have done it where I have not 7 put citations. And I have done reports where I have put 8 all of the citations at the end of a report, as I did in 9 this case. 10 BY MR. AMEELE: 11 Q You go on in paragraph 28 to say: 12 "Other researchers have reported 13 mesothelioma cases in women who 14 had intensively used talcum 15 products including some with no 16 other known sources of asbestos 17 exposure." 18 What is the citation for that? 19 MS. DEAN: Objection; form. 20 THE WITNESS: Well, I don't recall if that was 21 even -- I don't recall specifically -- there are other 22 studies that have looked at this issue where they have 23 looked at mesothelioma cases. I don't recall 24 specifically which other ones I am referring to in that 25 particular sentence.	Page 72 1 A I can't recall any others off the top of my 2 head. 3 Q Marinaccio and Dr. Roggli is what you 4 mentioned; right? 5 A Those are two that have discussed cases -- 6 researchers that have reported on mesothelioma cases 7 including ones with no known sources of asbestos 8 exposure and whether they either -- in the case of 9 Dr. Roggli where they found evidence of asbestos, 10 non-commercial asbestos and talc or we're talking 11 about -- and I believe Marinaccio talking about -- 12 specific to women using the talcum powder products. 13 Q Okay. You go on to say: 14 "An investigation of asbestos 15 bodies in the general population 16 found a high percentage of 17 anthophyllite and tremolite cores 18 in women but none in male blue 19 collar workers suggesting 20 cosmetic talc as the source." 21 What is your citation for that? 22 A I believe that was from either Roggli or 23 Churg. 24 Q What is the title of that article? 25 A I don't recall.
Page 71 1 BY MR. AMEELE: 2 Q Okay. You don't recall those studies as you 3 sit here right now, Doctor? 4 A I didn't -- this says "other researchers." I 5 don't recall which other researchers have discussed 6 this. I think Marinaccio, for example. I think, off 7 the top of my head -- I think even Dr. Roggli, at one 8 point, was talking about mesothelioma in people that had 9 no asbestos exposures that were known. 10 So those are two off the top of my head, but I 11 am sure there were others. 12 Q What are the studies that other researchers 13 have looked at with women who have had intensively used 14 talcum products with no -- with no known other sources 15 of asbestos exposure? That is what I am interested in. 16 And the -- 17 MS. DEAN: Same objection. 18 Sorry. Same objection. And to the extent 19 it's asked and answered, I will add that as well. 20 THE WITNESS: I can't answer any more clearly than 21 I think I already did. 22 BY MR. AMEELE: 23 Q As you said -- 24 I am sorry. I didn't mean to cut you off. My 25 apologies.	Page 73 1 Q Do you know if it was an article or a letter 2 to the editor? How do I determine what the Roggli/Churg 3 article is? 4 A No. I am not saying it's a Roggli/Churg 5 article. I am saying that it's -- those are two 6 different authors. 7 Q I understand that. Dr. Roggli and Dr. Churg. 8 So what is the article? 9 MS. DEAN: Objection; form. 10 THE WITNESS: You may be not understanding what I 11 am saying, sir. I am not -- you are saying it's a 12 singular. I am -- I am not. 13 BY MR. AMEELE: 14 Q Okay. So Dr. Roggli or Dr. Churg. What is 15 the articles? What are the articles? 16 A I -- 17 MS. DEAN: Objection to form. 18 You can answer. 19 THE WITNESS: I just finished saying that I don't 20 recall the name of the title. 21 BY MR. AMEELE: 22 Q When was the -- referring to your publication 23 list, what you previously called it Exhibit C, you have 24 that with you; right? 25 A I can pull it up if you need it.

Page 74 1 Q Okay. Thanks. 2 When did you start keeping that list as it 3 relates to cosmetic talc cases? 4 MS. DEAN: Objection; form. Assumes evidence. 5 Assumes facts, I mean. 6 THE WITNESS: Well, I have been keeping a list 7 of -- of articles for a long time. Long before I was 8 doing -- and I was doing work with asbestos and with 9 carcinogenesis long before I was doing any work with 10 talc. So the list far antedates work on talc. 11 BY MR. AMEELE: 12 Q Okay. Perhaps my question wasn't artful. 13 What I am focused on is when you started 14 keeping a list as it pertains to cosmetic talc 15 publications. When was that? 16 A Well, I have been keeping up with the 17 literature for a long time -- again long before I was 18 doing anything with -- related to talc. 19 MS. DEAN: I want to briefly state on the record 20 that I sent an E-mail to all counsel indicating that if 21 they wanted any peer-reviewed published literature or 22 had any questions I would be happy to work with them, 23 but we weren't going to provide the entire list. 24 If anyone would have contacted me -- and no 25 one did -- and said, hey, I would love to know the	Page 76 1 year. 2 BY MR. AMEELE: 3 Q Okay. When you first began testifying did 4 you -- prior to that, did you have to sit down and read 5 the literature pertaining to cosmetic talc? 6 A I am sorry. Before I did -- 7 Q Before you testified the first time on a case 8 involving cosmetic talc, did you make an effort to sit 9 down and review the peer-reviewed published literature? 10 A I have -- 11 MS. DEAN: Objection. Vague and ambiguous as to 12 "peer-reviewed published literature." 13 THE WITNESS: I am not -- I was going to say I am 14 not sure what you mean by that. But I have continually, 15 over my practice, reviewed the published literature 16 including -- on issues on talc. So those -- my review 17 has been a continual process. 18 BY MR. AMEELE: 19 Q Okay. So since you have been a doctor you 20 have been reviewing peer-reviewed published literature 21 on cosmetic talc; is that fair? 22 MS. DEAN: Objection. Vague and ambiguous. 23 THE WITNESS: It depends on what the issue is. But 24 there may be things that date back to that or even to 25 medical school, for that matter, that had to do with
Page 75 1 citations for paragraph 28, so that they could 2 meaningfully talk about something that everyone here 3 knows about -- the notion that you don't know it's Churg 4 and Warnach from 1981 or Roggli '89 or Roggli 2002, I 5 don't buy. 6 But if that were true for some reason, I would 7 be happy to give them to you and have them ready before 8 this deposition and organized -- for that example or any 9 other that you, if you actually have an interest that 10 you have. 11 If the interest is just to string out this 12 deposition and take time, then I guess that's not 13 helpful. 14 MR. AMEELE: I -- I really resent those comments. 15 But I don't have the time to address them. I am trying 16 to get through a deposition. 17 Thank you. 18 MS. DEAN: The offer remains open. I would pull 19 and find things if that's helpful to anyone at any time. 20 BY MR. AMEELE: 21 Q Doctor, when did you first begin testifying in 22 cases involving cosmetic talc? 23 MS. DEAN: Objection. Asked and answered. 24 THE WITNESS: I believe last year or this year. I 25 think it -- I am not sure if it was in 2020 or just this	Page 77 1 talc or with testing or with other things that are 2 pertinent or, you know, related to diseases of asbestos 3 or related to diseases from exposure to talc. 4 So sure, that has been an ongoing process for 5 a long time. 6 BY MR. AMEELE: 7 Q Before your first deposition in a case related 8 to cosmetic talc, did you have to set aside time to 9 refresh yourself on the peer-reviewed published 10 literature on cosmetic talc? 11 MS. DEAN: Objection. Overly broad. Vague and 12 ambiguous. 13 THE WITNESS: I don't know what you mean by set 14 aside some time. But I am constantly reading and 15 rereading. So I take the time that I can to review. 16 BY MR. AMEELE: 17 Q Are you looking at something on your screen 18 now? 19 A I was just going over my -- I have got my 20 declaration in front of me. 21 Q Oh. What parts are you looking at? 22 A I was still reading through -- I am sorry -- 23 that paragraph 28 that we were just talking about. 24 Q Got it. 25 ///

Page 78 1 (Whereupon, Defendants' Exhibit 6 2 was marked for identification by 3 the court reporter and attached 4 herein after the deposition.) 5 BY MR. AMEELE: 6 Q Exhibit 6 is going to be the notes that I was 7 provided this morning before your deposition entitled 8 "source mines/supplier." 9 Do you know what I am speaking of, Doctor? 10 A Yes. 11 Q Okay. Are these your typed notes? 12 A Yes. 13 Q When did you type them? 14 A I finished it this morning. 15 Q Okay. What am I looking at here? What is the 16 goal of these notes? 17 A Well, it's just to help organize for me 18 because there is a lot of data on all of these different 19 types of -- well, there are two issues that are on this. 20 We have issues with regard to when a particular company 21 used a particular source mine as far as I have been able 22 to determine. 23 Q Okay. 24 A As well as with regard to item No. 10 would be 25 the -- with regard to supplying of talcs to various	Page 80 1 this product during these years, that we are dealing -- 2 you know, I can -- I can make conclusions as to what the 3 source was and then go to the source as to what sort of 4 information do I have as far as testing. 5 Q Did -- did you decide to undertake this 6 project or were you asked? 7 A I decided. 8 Q Okay. That came out of the conversation in 9 the video conference yesterday? 10 MS. DEAN: Objection. 11 THE WITNESS: Well, I asked if she had any 12 objections to me doing that and she thought it was a 13 good idea. She being Ms. Dean. 14 BY MR. AMEELE: 15 Q Understood. 16 I invite your attention to paragraphs 6 17 through 8 of your declaration. You will let me know 18 when you are there, Doctor? 19 A Okay. I am there. 20 Q Okay. What I am trying to see here is if we 21 can short-circuit this a little bit. Do paragraph 6 22 through 8 compromise -- comprise -- excuse me -- the 23 case-specific materials that you were sent and reviewed 24 in this case? 25 MS. DEAN: Objection; form.
Page 79 1 entities. 2 And then it talks about testing. And so these 3 are examples of some of the entities that I have seen 4 regarding the testing of talcs from the various sources. 5 Italian, Vermont. So these are just locale-based 6 testing. 7 Then it moves on to testing specific to -- 8 specific company entity. 9 Q When did you decide to undertake this project 10 with the notes? 11 A Sunday. 12 Q Why? 13 A To help just keep it in my mind so that I 14 don't have to try to have this all committed to memory 15 so it just helps me in organizing it. And I think 16 moving forward it just -- it helps for me to evaluate. 17 So an example, again, as I talked about 18 earlier one of the issues that I see is that, you know, 19 we have got different companies using the same source 20 mine. For example, in Italy in the Val Chisone region 21 and, you know, the Montana mine. 22 So if I am -- if I have got information as to, 23 okay, well, this company was using talc from a certain 24 locale during a certain time period, then if I know that 25 certain time period then I can say, well, Ms. Moore used	Page 81 1 THE WITNESS: Well, I am not sure, when you are 2 saying case-specific because, for example, if we were -- 3 you know, we just talked about Exhibit 5 and 4 and now 4 6. You know, the information on that here to me is, in 5 part, specific to my opinions in this case. So -- 6 BY MR. AMEELE: 7 Q Let me ask -- I am sorry. You can finish if 8 you like. My apologies. 9 A I am trying -- even, actually it does list -- 10 Exhibit B is listed there. So -- but I think 11 Exhibit C -- I am not sure it was listed there or 12 somewhere else. 13 Q Okay. Setting aside Exhibit B what we 14 purposefully identified as Exhibit 4 what I am trying 15 to determine is the case-specific materials that you 16 reviewed in this case, setting aside Exhibit B. So are 17 the case-specific materials that you reviewed contained 18 within paragraph 6 through 8? 19 MS. DEAN: Objection; form. Just vague as to what 20 you mean as to "case-specific." 21 I can make a statement on the record to help, 22 but only if you want it. 23 MR. AMEELE: Well, let's see what his answer is 24 first. Then we can go from there. Thank you. 25 MS. DEAN: Okay.

Page 82 1 THE WITNESS: I am -- I am having a hard time 2 understanding when you are saying case-specific. But if 3 by that you mean that there are -- that have documents 4 that have Ms. Moore's name on it, then I believe that 5 that is -- that that is correct. You said -- you said 6 6 through which paragraph? 7 BY MR. AMEELE: 8 Q 8. 9 A Okay. Well, except it would be 6 through 9. 10 Q Paragraph 9 is your interview with Ms. Moore? 11 A Yes. That would obviously be case-pecific. 12 Q Okay. That was the interview where you have 13 the notes but you don't have them any more; right? 14 A No. They are contained within my -- the next 15 number of paragraphs discussing her medical, social, 16 occupational history. 17 Q The handwritten notes aren't around anymore; 18 right? 19 MS. DEAN: Objection. Asked and answered. 20 THE WITNESS: Again, once I have converted my notes 21 to electronic I do not retain handwritten notes. It's 22 pointless to do so. 23 BY MR. AMEELE: 24 Q When you threw them away, did you wonder if 25 the attorneys might want to read them, the notes -- the	Page 84 1 Q The declaration of Alan Segrave? 2 A Yes. 3 Q The declaration of Mr. Rigler? 4 A Yes. 5 Q Okay. When you were reviewing all of these 6 depositions did you make any writings or notations? 7 A There are others there that you didn't list 8 but -- but the answer to your question is no. 9 Q Okay. You didn't make any highlights at all 10 on the depositions? 11 A No, I don't do that. 12 Q No highlights in the declarations? 13 A Correct. 14 Q Okay. I left out Dr. Sanchez. You reviewed 15 that declaration as well? 16 A I thought you also left out Christy Barlow 17 and -- 18 Q I don't know. But if not, then I -- if I did, 19 I apologize. 20 Did you review Dr. Barlow and Dr. Sanchez' 21 declaration? 22 A I did and I think also you may have missed 23 Dr. Sahmel's. 24 Q I just got that one. 25 A Okay.
Page 83 1 handwritten ones? 2 MS. DEAN: Objection. Calls for speculation. 3 THE WITNESS: I would have no idea. I have never 4 had anyone ask to do that, because I put everything that 5 I have on writing and I wouldn't be able to read it and 6 interpret it, anyways. 7 BY MR. AMEELE: 8 Q Okay. Let's do it this way. You reviewed all 9 of Ms. Mae Moore's depositions; correct? 10 A I did. 11 Q And you reviewed the deposition of 12 Ms. Catherine Pratt? 13 A The depositions, yes. 14 Q The deposition of Ms. Joy Moore? 15 A Yes. 16 Q Okay. The declarations of Dr. Sanchez; 17 correct? 18 A Yes. 19 Q The declaration of Dr. Burke? 20 A Yes. 21 Q The declaration of Dr. Marsh? 22 A Yes. 23 Q The declarations of Doctors -- excuse me -- of 24 Lisa Gallow? 25 A Yes.	Page 85 1 Q So on paragraph 6, this is the totality of 2 depositions and declarations that you reviewed in this 3 case? 4 A Yes. 5 Q Okay. Page 7 is Ms. Mae Moore's medical 6 records. 7 Does that constitute the totality of medical 8 records you reviewed in this case? 9 A Paragraph 7? 10 Q Yes, sir. 11 A You said "page." 12 Yes. This would be the -- all of the medical 13 records of Ms. Moore that I reviewed. 14 Q Okay. And paragraph 8 was the radiology 15 materials pertaining to Ms. Mae Moore. Is that the 16 totality of radiology materials you reviewed in this 17 case? 18 A Yes. 19 Q Okay. Have you reviewed any other radiology 20 records, medical records, declarations, or depositions 21 as they pertain to the Mae Moore matter? 22 MS. DEAN: Objection to the extent it's compound 23 and vague and ambiguous, if you are including billing 24 records or just the actual medical notes. 25 ///

Page 86 1 BY MR. AMEELE: 2 Q Go ahead, Doc. 3 A Yeah. I guess -- there would have been -- in 4 addition to the medical records, there were billing 5 records along with the medical records. They are all 6 part of the medical records from my perspective. But, 7 yes. 8 Q Might as well. So let's try this again. Are 9 these the paragraph 6 through 8, the totality of 10 depositions, declarations, medical records, medical 11 billing and radiology material you reviewed pertaining 12 to this Mae Moore in this case? 13 A Specific to Ms. Moore, yes. 14 Q Okay. Did you also read any materials that 15 you did not receive? 16 A I am sorry? 17 Q Did you ask for any materials in this case 18 you did not receive? 19 MS. DEAN: Objection to form. Overly broad. 20 THE WITNESS: Well, in -- within Exhibit 5 -- 4 -- 21 excuse me -- my Exhibit B, I have asked for benchmark 22 data. And to the extent that those are still -- there 23 is benchmark data of a number of tests from a number of 24 sources that -- that I have not yet been ever provided. 25 That would be including this -- pertaining to this	Page 88 1 I think I only had limited information on 2 White Shoulders. So I have been asking for and not yet 3 received information pertinent to those particular 4 entities. 5 BY MR. AMEELE: 6 Q Anything else that you have asked for that you 7 have not received? 8 A I can't think of anything else offhand right 9 now. 10 Q What is your hourly rate? 11 A For what? 12 Q For reviewing records, testifying, deposition? 13 A For reviewing medical records it's \$500 an 14 hour. Time at deposition or trial is at \$600 an hour. 15 Q Is travel time separate or included in that? 16 Do you bill for that? 17 A No. Just reimbursement. 18 Q Okay. How much have you billed in this case 19 so far? 20 A I think about \$3,500. 21 Q Have you actually sent out a bill? 22 A I believe so. 23 Q Okay. We will attach -- is it one bill or two 24 you sent out or more than that? 25 A I don't know.
Page 87 1 particular case. 2 BY MR. AMEELE: 3 Q Why did you want to look at the benchmark 4 data? Are you talking about the benchmark data in 5 relation to the MAS studies? Let's start there. 6 A No. I was talking about the benchmark data 7 from testing from Johnson & Johnson, from Avon, from -- 8 Q Okay. 9 A -- from, you know, whoever was doing the 10 testing, McCrone, whatever the lab or whoever was doing 11 the testing. I always want to make sure that I see -- 12 because depending on what methodology was being used, I 13 want to -- to know for myself what the underlying data 14 showed. 15 Q Other than the benchmark data did you ask for 16 any other materials in this case that you did not 17 receive? 18 MS. DEAN: Objection as to time. 19 THE WITNESS: I have not yet received, to the 20 extent that they have been provided by Avon, the 21 formulations for all of the Avon products. I have -- I 22 think there is information on -- I think it's Jean Nate 23 that have -- have some -- some limited information. But 24 to the extent that -- and Charlie, I have been asking 25 for that. I don't really have information on Charlie.	Page 89 1 Q Okay. I will ask we attach your bills as 2 Exhibit 7 3 (Whereupon, Defendants' Exhibit 7 4 was marked for identification by 5 the court reporter and attached 6 herein after the deposition.) 7 BY MR. AMEELE: 8 Q Do you communicate with Ms. Dean's firm via 9 E-mail? 10 A I generally don't. I might get an E-mail 11 with -- from Ms. Dean with a -- with a Zoom link or some 12 sort of link to how to -- how to log on. But generally 13 I -- I don't. 14 I might send her an article. I have done that 15 in the past if I find an article that I think is 16 interesting that I think she might -- she might like. 17 And I know that sometimes their law firm has sometimes 18 sent me, "hey, look at this new article that just came 19 out. I thought you might like to read it." 20 Q Which ones have you sent her that you think 21 she might like? 22 MS. DEAN: Objection; form. Overly broad. 23 THE WITNESS: Oh, I -- I mean I -- I am not sure I 24 can go back and start thinking about that here. It 25 might be from an article from way in the past that I

Page 90 1 just, you know, came across. It might be some -- some 2 article that just got published and whether she -- or 3 her firm had it or not, I don't know. But just on 4 various subjects. 5 BY MR. AMEELE: 6 Q Any specific to the Mae Moore case? Have you 7 found any peer-reviewed published articles that you have 8 sent Ms. Dean that you thought she might like? 9 A No. I don't think so. 10 Q When was the last time you sent her an article 11 that you thought she might like? 12 MS. DEAN: Objection to form. Misstates testimony. 13 THE WITNESS: I don't know if I said anything about 14 what she might like. But whether she -- whether the 15 article might be of interest or not. But I don't recall 16 when the last time was. It's not like this is something 17 that happened every day. 18 BY MR. AMEELE: 19 Q Okay. We will attach the E-mails -- 20 communications as Exhibit 8 now. Madam court reporter, 21 am I on Exhibit 8? I apologize. 22 Ms. Dean says I am. Thank you. 23 MS. DEAN: And to the extent that you are asking 24 E-mails related to Mae Moore, we don't have an 25 objection. If you are asking the doctor to look for all	Page 92 1 A Yes, I believe so. 2 Q That was a five-dollar lawyer question. Let 3 me ask it a different way. 4 You testified once in the cosmetic talc case; 5 correct -- at trial? 6 A I believe that is true. 7 Q Have you ever testified in a cosmetic talc 8 trial in California? 9 A Not that I am aware of. 10 MS. DEAN: Objection. Asked and answered. 11 BY MR. AMEELE: 12 Q When you testified then in Washington -- I am 13 sorry. I don't know the name of the case. Do you 14 recall it? 15 A Hirschberg. 16 Q Hirschberg. 17 Did you use a PowerPoint? 18 A Well, I -- I believe Ms. Dean had some slides. 19 I didn't use any slides of my own, if that's what you 20 are asking. 21 Q That's a fair point. 22 So did you draft the PowerPoint yourself for 23 use at trial in Hirschberg? 24 A I did not. 25 Q Okay. Did you use any demonstratives at the
Page 91 1 E-mail communications with our firm, we do. The request 2 is unclear to me at least. 3 (Whereupon, Defendants' Exhibit 8 4 was marked for identification by 5 the court reporter and attached 6 herein after the deposition.) 7 MR. AMEELE: As it stands right now, I am asking 8 for the communication related to the Mae Moore case. 9 MS. DEAN: Okay. Thanks. 10 BY MR. AMEELE: 11 Q Thank you. 12 Did you keep a list of depositions and trial 13 testimony, Doctor? 14 A I have -- I have a list going back for four 15 years. 16 Q Okay. Let's attach that as Exhibit 9 17 (Whereupon, Defendants' Exhibit 9 18 was marked for identification by 19 the court reporter and attached 20 herein after the deposition.) 21 BY MR. AMEELE: 22 Q Is the totality of cases you have testified 23 on -- I am sorry -- testified in at the time of trial 24 related to cosmetic talc, that case in Washington where 25 you appeared remotely?	Page 93 1 time of trial in Hirschberg? Do you know what I mean by 2 that? 3 A No. 4 Q So some experts use an anatomical dummy or a 5 microscope or something that helps them explain their 6 points to the jury. Does that make my question clear? 7 A No. 8 Q Okay. Did you use anything to assist you in 9 your testimony at the time of trial on Hirschberg, other 10 than the slides Ms. Dean presented you with? 11 A Well, my voice. I mean -- and my brain. But, 12 no. I was just asked questions and answered them. To 13 the extent that I think both the -- Ms. Dean, as well as 14 the defense attorney, had put slides up at various times 15 during questioning of me. 16 Q I assume you used your voice, Doctor. Thank 17 you. 18 So you didn't draft any of the slides 19 yourself? 20 A I did not. 21 Q Okay. Have you prepared any PowerPoints for 22 use in this case? 23 A I have not. 24 Q Do you plan on using any demonstratives at the 25 time of trial?

Page 94 1 MS. DEAN: Objection; form. Vague and ambiguous. 2 THE WITNESS: Again, I am not sure what -- how -- 3 what that means as opposed to a PowerPoint. But -- 4 BY MR. AMEELE: 5 Q Any aides to assist you in making points at 6 time of trial, besides your voice and your brain? 7 MS. DEAN: Same objection. 8 THE WITNESS: Again -- 9 MS. DEAN: Calls for speculation. 10 THE WITNESS: Other than -- how that relates or 11 excludes information that is prepared by Ms. Dean or put 12 up on the -- some sort of demonstrative by Ms. Dean, I 13 don't have any plans at this point. I have not been 14 asked to prepare any demonstratives. 15 BY MR. AMEELE: 16 Q You previously testified in silica litigation; 17 is that correct? 18 A I have. 19 Q When did you start doing that? 20 A 2002 or 3. So almost 20 years ago. 21 Q Can you estimate how many silica cases you 22 testified in total? 23 A No. There is quite a few. 24 Q More than 100? 25 A Oh, I don't -- I can't say it's impossible but	Page 96 1 Q In terms -- you testified in asbestos cases 2 that didn't pertain to talc; correct? 3 A Yes. I still do that. 4 Q How many cases do you think you have testified 5 in total at deposition or trial where talc was not an 6 issue in asbestos cases? 7 MS. DEAN: Objection; form. Vague and ambiguous. 8 THE WITNESS: I do not know the answer to that. 9 BY MR. AMEELE: 10 Q More or less than 100? 11 A I would be guessing less than what I had done 12 with the silica. But I don't know. 13 Q When did you begin testifying in asbestos 14 matters where cosmetic talc was not an issue? 15 A Around 2002, 2003. 16 Q Besides silica, talc and asbestos, are there 17 any other chemicals or substances that I am missing that 18 you have testified in as an expert? 19 A Yes. 20 Q What? 21 A As far as substances, chlorine gas, ammonia, 22 carbon monoxide, cyanide, alumina, coal, beryllium. 23 There are probably others I am neglecting. 24 I think there has been smoke inhalation as 25 well.
Page 95 1 I just -- I have no idea. 2 Q You don't keep track of that? 3 A You are talking about trial or just any 4 deposition? 5 Q Both. 6 A Yeah -- I mean to the extent that even though 7 if something goes to trial, then that counts as two. So 8 it might be half as many cases. I don't know if there 9 is, you know, 50 to 100. Maybe less. Maybe more. I 10 don't know. 11 Q Fifty to 100, maybe less, maybe more. That's 12 your best estimate for total testimony in silica cases? 13 MS. DEAN: Objection. Asked and answered. 14 THE WITNESS: Correct. 15 Although, I really -- I think it would be just 16 too much of a guess for me to go back and try to 17 remember anything more specific. 18 BY MR. AMEELE: 19 Q Because there was too many cases? I am trying 20 to understand why. 21 A No. I mean in the past, you know, four years 22 it's probably been under half a dozen. But going 23 back -- you know, if I start going back to 2002, no, I 24 can't -- I can't even remember -- there is no way for me 25 to remember specifics that far back.	Page 97 1 Q Irrespective of the substances -- 2 A I guess -- the other thing would be -- well, 3 tobacco. 4 Q Irrespective of the substance or chemical do 5 you have a way to estimate what percentage of your 6 expert work has been done on behalf of plaintiffs versus 7 defendants? 8 A I'm sorry. Irrespective of -- 9 Q The chemical, or substance, or material, can 10 you estimate for me what percentage of your expert work 11 has been on behalf of plaintiffs versus defendants? 12 A Yeah, overall, it's been -- it's pretty much 13 50-50. 14 Q What asbestos defendants have you testified on 15 behalf of? 16 A Well, I can't tell you necessarily the 17 defendants but I can -- I know the law firms. Some of 18 them I know the defendants. 19 Q Well, let's do it this way. What are some of 20 the products of the companies that you have been 21 retained by on asbestos cases where you have testified 22 on behalf of defendants? 23 A I guess I am -- I mean -- you mean asbestos 24 and silica? 25 Q So let's focus on asbestos cases you have been

Page 98 1 retained by defendants in asbestos cases in the past; 2 correct? 3 A Yes. 4 Q Okay. What defendants have retained you? 5 A Well, that's what I am saying here. I am 6 trying to remember. I know some of the law firms. I 7 don't remember necessarily who -- who that they 8 represented. 9 But, I remember offhand here Alcoa. Um, 10 Lockheed Martin. Celanese. Glencore. BNSF Railroad. 11 Union Pacific Railroad. Harris. Heidelberg. Alcoa. 12 Q For the -- I am sorry. Are you done? 13 A I am just scratching my brain here. That's -- 14 Oh, W.R. Grace. And there are some -- just, 15 like I said, I remember the law firms. I just don't 16 recall the -- 17 Q I am sorry. My apologies. 18 A I don't remember who all that they were 19 representing. 20 Q What was the product at issue for any cases 21 that you were retained on on behalf of W.R. Grace? 22 A I guess the product would be the W.R. -- it 23 was the -- it was the vermiculite in Libby. I was 24 involved in both the criminal and the bankruptcy. 25 Q Okay. So you weren't retained by W.R. Grace	Page 100 1 THE WITNESS: I don't recall specifically. But 2 if -- if vermiculite contains asbestos, then there is 3 risk of asbestos-related disease. 4 BY MR. AMEELE: 5 Q Do you recall in cases where you were retained 6 on behalf of Alcoa, were those premises cases? Do you 7 know what I mean by that? 8 A No. 9 Q Okay. Were you testifying with respect to 10 Alcoa products that were manufactured and potentially at 11 issue or was the issue certain activities or issues that 12 took place at their premises or both? 13 A I think both. 14 Q Okay. Do you recall what the products were? 15 A No. 16 Q What about the premises, do you recall what 17 the allegations were? 18 A That had to do with alleged environmental 19 contamination. 20 Q Was asbestos at issue as part of the 21 environmental contamination? 22 A I believe so. 23 Q Do you recall what your opinion was in that 24 case with respect to the asbestos contamination? 25 A No.
Page 99 1 in a civil case where vermiculite was at issue? 2 A Well, I have been retained by other attorneys 3 with regard to -- as with regard to vermiculite being an 4 issue. But for the W.R. Grace it was -- it was strictly 5 related to -- it was not to a specific -- well, there 6 were multiple defendants, but not to necessarily a 7 singular specific defendant -- or plaintiff I mean. 8 Q Have you been retained by any defendant where 9 vermiculite was the product at issue? 10 A Yes. 11 Q Or substance. Okay. 12 What defendant was that? 13 A Well, it was with -- well, Nicastro was one of 14 the law firms. I don't recall who all their defendant 15 was. 16 There was a -- there was a -- an insurance 17 company. I think, Liberty or something, that was -- 18 that is an insurer that was a defendant. 19 Q Do you recall -- I am sorry. 20 A I think the railroad was a defendant. 21 Q Do you recall whether you testified that 22 vermiculite increases the risk of development of 23 asbestos-related diseases in any of the cases you have 24 been retained on on behalf of defendants? 25 MS. DEAN: Objection; form. Vague.	Page 101 1 Q Have you ever been excluded as an expert 2 before for any reason? 3 A Not that I am aware of. 4 Q Have you ever testified before Congress or 5 before any congressional committees? 6 A No. 7 Q Okay. What I am trying to understand now -- 8 let's shift topics, if that's okay. I would like to get 9 to the opinions you intend to offer at the time of trial 10 in this case. 11 I have your declaration here. So -- which we 12 have marked as Exhibit 2 Does your declaration 13 constitute the opinions you intend on offering at the 14 time of trial in this case? 15 MS. DEAN: Objection; form. Vague and ambiguous. 16 We are going to ask questions as described in our 17 disclosures. 18 THE WITNESS: No. I -- I -- there was certainly 19 going to be opinions that are outside the four corners 20 of that declaration. 21 BY MR. AMEELE: 22 Q Okay. What are those opinions? 23 A There will be issues regarding that I didn't 24 discuss. For example, opinions on Johnson & Johnson. 25 State-of-the-art opinions. Opinions regarding life

Page 102 1 expectancy. Additional -- you know, there may be 2 additional citations, opinions regarding any of the 3 other experts. Opinions regarding testing that was 4 performed on -- on -- the materials. There may be 5 others too. Depends on what was in my -- in my -- what 6 I am asked. 7 Q Okay. Today is my opportunity to get the 8 opinions that you intend on offering at the time of 9 trial, Doctor. You understand that; right? 10 A Uh-huh. 11 MS. DEAN: Asked and answered. 12 BY MR. AMEELE: 13 Q So are your opinions contained in part in your 14 declaration which we have marked as Exhibit 2? 15 MS. DEAN: Objection. 16 THE WITNESS: Yes. 17 BY MR. AMEELE: 18 Q Okay. Then you listed several other opinions 19 that you may offer at the time of trial. There was at 20 least six that I have there. So I need to know all of 21 the opinions that you intend to offer at the time of 22 trial. 23 So let's start first by going through your 24 list. The first was opinions with respect to J & J. 25 What are those opinions?	Page 104 1 Benjamin Adams in Support of Plaintiff's Designation of 2 Expert Witnesses. 3 BY MR. AMEELE: 4 Q Okay. Doctor, can you see what is in front of 5 you -- on the screen? 6 A Part of it. 7 Q Okay. Does that make it better or worse? 8 A A little better but I am still missing part of 9 the right-hand side. 10 Q How about now? 11 MS. DEAN: I can't read that. 12 THE WITNESS: Yeah. It looks like I see the whole 13 thing here. I wasn't sure if there is something -- if 14 it's being cut off. I think -- I think that's got -- 15 BY MR. AMEELE: 16 Q Okay. Have you seen this before today, the 17 portion of your designation? 18 A I have. 19 Q It says: 20 "Dr. Haber may testify about the 21 diagnosis of asbestos-related 22 mesothelioma." 23 What are your opinions about the diagnosis of 24 asbestos-related mesothelioma? 25 MS. DEAN: Object to form.
Page 103 1 MS. DEAN: Well, I will note again that we provided 2 disclosures and asked questions on all subjects covered 3 in those disclosures. 4 BY MR. AMEELE: 5 Q We can do it that way. Let's attach as 6 Exhibit 7 your expert witness designation and 7 disclosure, Doctor. Have you seen that before? 8 MS. DEAN: Sorry to interrupt. But you already 9 have an Exhibit 7 I think you are at 10. 10 MR. AMEELE: Thank you. 11 (Whereupon, Defendants' Exhibit 10 12 was marked for identification by 13 the court reporter and attached 14 herein after the deposition.) 15 BY MR. AMEELE: 16 Q Do you have your designation, Doctor? 17 A Not with me. 18 MS. DEAN: We have two Exhibit 7s. I will object 19 as to vague and confusing. 20 BY MR. AMEELE: 21 Q Okay. We have marked as Exhibit 10 your 22 declaration. And I am going to share that with you. 23 MS. DEAN: Counsel, you noted you marked as 24 Exhibit 10 his declaration. 25 MR. AMEELE: My apologies. The declaration of	Page 105 1 THE WITNESS: With regard to what? 2 BY MR. AMEELE: 3 Q Well, I don't know, Doctor. That's the 4 problem. I have your declaration and you have opinions 5 that are not contained within your declaration. I am 6 told that you may be testifying about things that are 7 contained within the expert witness designation. So I 8 am trying to learn all of your opinions. 9 The only way I can think of to do this right 10 now is to go line by line and make sure I get the 11 totality of those opinions. 12 So starting at line 1 can you tell me what 13 opinions you intend to offer at the time of trial about 14 the diagnosis of asbestos-related mesothelioma? 15 MS. DEAN: I will object to the speech and to the 16 notion that this isn't something that is well 17 understood. 18 THE WITNESS: Again, I guess it would depend on 19 what question you are asking me. You are asking such a 20 broad question. But I -- fine. 21 Mesothelioma is a disease caused primarily by 22 asbestos exposure. It is a malignancy that typically 23 involves the pleura but can also involve peritoneum, 24 vaginal tunacalis and the other organs. 25 It is generally rapidly progressive with life

Page 106 1 expectancies, depending on the cell type, of six months 2 to a year. That there are three generally -- general 3 categories of mesothelioma from a pathological 4 standpoint: Epithelioid, sarcomatoid and biphasic. 5 That the treatment of mesothelioma is either related to 6 chemotherapy, immunotherapy, surgery, radiation therapy, 7 or sometimes no therapy at all. 8 The actual presentation of it for pleural 9 mesothelioma generally presents with shortness of 10 breath, chest pain, cough, weight loss, often involves 11 presentation with the pleural effusion. The 12 psychological diagnosis can be difficult. So it often 13 ends up requiring a biopsy. The diagnosis is made by 14 the combination of clinical and pathological and 15 radiological evidence. 16 The cancer is almost uniformly fatal. It 17 is -- it's what we call a signal cancer in that when you 18 see mesothelioma there has generally been a history of 19 asbestos exposure. And if you have a history of 20 asbestos exposure, you are taught basically, from 21 medical school and on, that there is increased risk of 22 mesothelioma. 23 I think that -- maybe I am misremembering 24 something or forgetting something. But I think that 25 covers about mesothelioma in general.	Page 108 1 including asbestosis, lung cancer, pleural plaques, what 2 are those entities, in addition to mesothelioma? How 3 asbestos is inhaled and how -- or gets into the body, 4 how it's retained. Different fiber types. Again, I am 5 sure there is other issues -- if I am asked a specific 6 question about, I will be happy to discuss. 7 MS. DEAN: And -- sorry. It's been noted on this 8 record he has been testifying in asbestos matters -- I 9 think he said since -- 2000 to 2003. So I don't believe 10 anyone is unaware of the scope or nature of those 11 opinions. 12 And we can assist with providing prior 13 transcripts if that's helpful to the extent that again 14 people feel like they are not entirely prepared to 15 understand the scope of those opinions. 16 BY MR. AMEELE: 17 Q Let's move to sentence No. 3: 18 "Additionally, he may testify 19 that plaintiff's asbestos-related 20 disease was caused by her 21 exposure --" 22 Wait. I am sorry. I made a mistake. let's 23 back up. 24 The third sentence was: 25 "He may also testify as to their
Page 107 1 BY MR. AMEELE: 2 Q Okay. And this pertained to the first 3 sentence that we just read together; is that correct? 4 A Right. 5 Q Okay. Any other opinions with respect to that 6 first sentence before we move on? 7 A I am sure there are, but I can't think of 8 anything right now. 9 Q Okay. As you sit here right now, you are not 10 prepared to discuss others; correct -- related to the 11 first sentence? 12 A I would be happy to discuss things that if I 13 am asked a specific question about. But to go off and 14 try to give a lecture on mesothelioma, no. I am not 15 prepared to do that, as we sit here right now. 16 Q Okay. What are your opinions with respect to 17 the second sentence: 18 "He may testify concerning 19 asbestos, the effects of asbestos 20 on the body and any other topics 21 related thereto"? 22 MS. DEAN: Same objections. Overly broad. 23 THE WITNESS: Again, I think that -- I will -- I 24 may testify about asbestos, what is asbestos, how does 25 it affect the body, what diseases asbestos causes,	Page 109 1 review of recent medical 2 information pertaining to 3 plaintiff." 4 Is the testimony you have regarding your 5 medical review of the plaintiff contained within your 6 declaration or do you have additional opinions to offer? 7 MS. DEAN: Objection. 8 THE WITNESS: I am sorry. I didn't understand your 9 question. 10 BY MR. AMEELE: 11 Q Sure. 12 I can see from your declaration that you have 13 quite a bit of detail with respect to Ms. Mae Moore and 14 her medical condition; is that fair? 15 A Yes. 16 Q Okay. 17 A Somewhat. 18 Q Is this -- 19 A -- not detailed -- but there is certainly a 20 summary of what happened to her from a medical 21 perspective in there. 22 Q Okay. What additional information do you 23 intend offering at the time of trial related to what we 24 just read in sentence 3? 25 MS. DEAN: Objection as to form.

Page 110 1 THE WITNESS: Again, I think I have just -- I have 2 highlighted the findings of what happened to her in 3 paragraph 10. But there may be, you know, more detail 4 that is just not contained within paragraph 10. 5 BY MR. AMEELE: 6 Q Okay. What detail is that? 7 MS. DEAN: Objection; form. 8 THE WITNESS: With regard -- which they -- I mean 9 this goes from initial presentation to November 19th to 10 December 22 to -- then it jumps around and goes to -- I 11 mean -- it also is only including up to July. So to the 12 extent that there may even be updated medical records, 13 the findings on her radiology, the findings from her -- 14 from her pathology. 15 BY MR. AMEELE: 16 Q What are the opinions you intend to offer at 17 the time of trial with respect to sentence -- excuse 18 me -- sentence 3 of your designation to the extent they 19 are not contained within your declaration? 20 MS. DEAN: Let me object to the extent it's asked 21 and answered. Vague and ambiguous. 22 And also ask that after that question -- since 23 we have been going for about an hour and 20 minutes -- 24 we take a break. 25 MR. AMEELE: Sure.	Page 112 1 talcum powder products." 2 Could you please provide your opinions on that 3 to the extent that they are not contained in your 4 declaration? 5 MS. DEAN: Objection. Overly broad. Compound. 6 THE WITNESS: Again, you know, I already -- I think 7 discussed this here that, first off, the declaration had 8 only to do with the Avon Cashmere Bouquet -- and I am 9 blanking on the other. Anyway, the four companies, but 10 did not include companies such as Estee Lauder, 11 Johnson & Johnson, White Shoulders. 12 So that there are more defendants in this case 13 than what are reflected in what I was asked to prepare 14 the declaration on just those four entities. 15 With regard to Johnson & Johnson, you know, I 16 have reviewed thousands and thousands of pages of 17 documents from Johnson & Johnson and others. I have 18 seen charts from Johnson & Johnson as well as charts 19 from the plaintiff. I have seen back and forth 20 descriptions of those -- the charts and the meanings and 21 the understandings of the testing. 22 And I have, more specifically in addition to 23 issuing a report, I testified for three solid days in 24 Hirschberg just months ago in May with, I think, very 25 extensive questioning and opinions regarding
Page 111 1 THE WITNESS: That it would be based on anything 2 that I found within the medical records that were 3 completely listed under paragraph 6 and -- sorry -- 7 4 and 8. 5 BY MR. AMEELE: 6 Q Are you prepared to offer us any of those 7 additional opinions today as we sit here? 8 A If you ask me a specific question I will be 9 happy to -- 10 Q Okay, Doctor. Let's take a break. 11 THE VIDEOGRAPHER: Off the record. The time is 12 1:40 p.m. 13 (Whereupon, a recess was taken 14 from 1:40 p.m. until 1:55 p.m.) 15 THE VIDEOGRAPHER: We are back on the record. The 16 time is 1:55 p.m. 17 BY MR. AMEELE: 18 Q Doctor, we are on Exhibit 4 on your 19 designation. I am trying to determine what your 20 opinions are related to that. It states: 21 "Additionally, he may testify 22 that plaintiff's asbestos-related 23 disease was caused by her 24 exposure to asbestos from the 25 defendant's asbestos-containing	Page 113 1 asbestos-related diseases, mesothelioma, epidemiology, 2 carcinogenesis, talc, sources of talc, testing of talc. 3 These are all things that I touched on in my 4 declaration, but certainly with regard to Johnson & 5 Johnson, had a lot more information that I had reviewed 6 and had specific opinions about. 7 And the same goes, you know, to -- to 8 Estee Lauder and other companies that were not 9 specifically cited in the declaration but certainly were 10 discussed at length in Ms. Moore's deposition 11 testimonies, or her family's testimonies with regards to 12 her exposures. 13 Again, I have referenced the Exhibit C -- 14 Exhibit 6 which kind of summarizes the sources and the 15 testing of these various other entities. And then, you 16 know, I don't know what you are going to -- you know, 17 particularly find important. You know, I think someone 18 can get a clear understanding of what my opinions are 19 from the declaration from my prior testimony including 20 Hirschberg. 21 Otherwise, you know, I just -- I don't know 22 without maybe a more specific question in mind what is 23 not covered in those -- in the opinions that I have 24 already given and/or are already in the declaration or 25 in prior testimony.

Page 114 1 BY MR. AMEELE: 2 Q I don't know because I don't have that 3 testimony. So I am here to get your opinions in the 4 Moore case. 5 MS. DEAN: Avon is in that case. If they don't 6 have that testimony, I find that surprising. But I will 7 reiterate the request I made weeks before this 8 deposition to provide information if it's helpful. 9 MR. AMEELE: Thank you. 10 BY MR. AMEELE: 11 Q The next sentence is: 12 "He may testify as to the 13 hazardous nature of asbestos or 14 asbestos-containing products and 15 as a result that such asbestos or 16 asbestos-containing products are 17 reasonably dangerous." 18 Could you tell us what your opinions are to the 19 extent they are not contained within your declaration on 20 that topic? 21 MS. DEAN: Same objections. Overly broad. Largely 22 explored for years in prior transcripts. 23 MR. AMEELE: Just legal objections, please. 24 Q Go ahead, Doctor. 25 MS. DEAN: Every time you say that I'm going to	Page 116 1 "He may also testify concerning 2 the role of plaintiff's 3 asbestos-related disease in 4 causing or precipitating 5 plaintiff's illnesses and/or 6 resulting death." 7 What are your opinions on that topic to the 8 extent they are not contained within your declaration, 9 Doctor? 10 MS. DEAN: Same objections. 11 THE WITNESS: Well, again the declaration was not 12 intended to discuss all defendants' products. Just the 13 four that were part of the Motion for Summary Judgment. 14 And so that there is additional exposures that 15 she had, it is my opinion that -- and it is stated in 16 the declaration as far as those four, but that asbestos, 17 when inhaled in the body, led to Ms. Moore developing 18 that malignant pleural mesothelioma. And it has not yet 19 resulted in her death, but, her -- it will result in her 20 death. 21 BY MR. AMEELE: 22 Q Okay. 23 A I am sorry. Just the other thing -- I did 24 discuss this but -- she has had significant suffering 25 and pain as a result of the mesothelioma.
Page 115 1 note that that is an appropriate legal objection in 2 California and suggesting to my co-workers and to this 3 doctor, otherwise, will be responded to if you decide to 4 make that comment. 5 BY MR. AMEELE: 6 Q Okay. Thank you. 7 Go ahead, Doctor. 8 A Well, I think the medical science is replete 9 with evidence of the hazardous nature of asbestos. I 10 can't -- I think it's pretty clear from my declaration 11 and I think it's pretty clear from my prior testimony 12 from the past almost 20 years -- and apparently you also 13 have seen prior reports of mine on this issue. So I 14 think it's pretty clear that what my opinions are 15 regarding the hazardous nature of asbestos or products 16 that contain asbestos because they -- to the extent that 17 they are released and inhaled or brought into the 18 body -- and that there are alternatives to asbestos, so 19 there is -- there is -- there is no reason to -- to use 20 asbestos in a product. Certainly not in a product that 21 is brought into the home in a powdered form. 22 I think that answers my opinions on that 23 sentence. 24 Q Okay. Thank you. 25 The next one is:	Page 117 1 Q Yeah. Understood. 2 This was discussed in some detail in your 3 declaration. I am just trying to determine if you have 4 any other opinions based on your declaration on that 5 topic? 6 MS. DEAN: Same objections. 7 BY MR. AMEELE: 8 Q Anything else on that topic, Doctor, before we 9 move on? 10 MS. DEAN: Same objections. 11 BY MR. AMEELE: 12 Q I think the next sentence is pretty pertinent 13 to what you just discussed. 14 A It is. 15 Q Okay. Any further opinions on the next 16 sentence which states that: 17 "Mrs. Moore will die of her 18 asbestos-related mesothelioma"? 19 A Yes. And this kind of just brings me to 20 another point that as far as not -- you know, having -- 21 having everything included in the declaration. So it's 22 my understanding that defendants have brought in a 23 cardiologist who's stating that Ms. Moore's carotid 24 disease was going to have a significant medical impact 25 on her life expectancy.

Page 118 1 I would certainly -- you know, that's not 2 something that I was aware of prior to the declaration. 3 That would be certainly something related to my opinions 4 regarding her death as well. 5 Q What is your opinion on that, Doctor? 6 A That the mesothelioma -- that her life 7 expectancy was not being foreshorten because of her 8 carotid disease which would be asymptomatic and stable 9 for over ten years. But that it -- it is going to 10 result in her death and that her life expectancy -- 11 residual life span is going to be dramatically reduced. 12 Q Okay. Anything else on that topic, Doctor? 13 MS. DEAN: Objection. Again, asks for speculation. 14 You know he has his medical records and can discuss 15 them. 16 BY MR. AMEELE: 17 Q Go ahead, Doctor. 18 MS. DEAN: You know that your person is going to 19 say something and when I ask him about it, it's your 20 opportunity to do so. 21 BY MR. AMEELE: 22 Q Do you have the question in mind, Doctor? 23 A Yeah. To the extent that there is additional 24 information from within the medical records and/or what 25 any medical records that -- updated medical records, I	Page 120 1 MS. DEAN: Objection; form. 2 THE WITNESS: Well, you cited two reports of mine 3 that you have seen. I am sure that those at least 4 touched on that information. 5 But I, again, have given three days of 6 testimony specific to this -- to Johnson & Johnson and 7 talc-related mesothelioma. But I have also given 8 testimony, which you have asked me about, with regard to 9 other individuals suffering from asbestos-related 10 diseases. Then again my review of the medical record 11 which has been listed within my declaration. 12 MS. DEAN: By way of example, I often ask how 13 narcotics given for mesothelioma affect the person. 14 That's not in the declaration. I don't think anybody 15 disputes it. It definitely is in the disclosure. I 16 don't think that this is a mystery. 17 I understand wanting to understand what a 18 witness is going to say. But articulating every pain 19 effect of meso, as if that is an issue that is not well 20 understood, seems like a not useful time of this 21 deposition. 22 MR. AMEELE: Thank you. Are you done? 23 MS. DEAN: I am -- 24 MR. AMEELE: Thanks. 25 MS. DEAN: -- hoping --
Page 119 1 would certainly be discussing my opinions of that as 2 well. 3 Q Okay. If those are updated, then counsel will 4 let us know and I can ask more questions. 5 The next sentence, I think, speaks in large 6 part to what was discussed in your declaration and our 7 previous questions and answers about the effects of 8 asbestos-related disease on the body and the pain and 9 suffering of the plaintiff including her mental state. 10 To the extent those opinions are not contained 11 within your declaration, Doctor, do you have any 12 additional information to provide? 13 MS. DEAN: Objection. Overly broad. Asking for 14 information well known not in dispute and has been 15 explored by this witness for over 20 years. 16 THE WITNESS: Yeah. I -- as far as -- I certainly 17 did discuss this in the declaration. I have also given 18 testimony with regard to this issue numerous times. I 19 have issued reports that -- including ones that you have 20 seen regarding this issue. So certainly, yes, I will be 21 discussing specifically to Ms. Moore regarding this 22 issue. 23 BY MR. AMEELE: 24 Q What reports do you think properly capture 25 those -- that information that you have authored?	Page 121 1 BY MR. AMEELE: 2 Q The next sentence is: 3 "He may testify concerning the 4 reasonable and necessary medical 5 expenses the plaintiff has 6 incurred as a result of her 7 asbestos-related disease." 8 What are your opinions on that topic, Doctor. 9 MS. DEAN: Same objections. 10 THE WITNESS: That -- I am not sure what you mean 11 by what are my opinions. That they -- 12 BY MR. AMEELE: 13 Q You don't know what that means? 14 A Well -- 15 MS. DEAN: Dinosaur. 16 THE WITNESS: I will testify that she had medical 17 expenses and I will testify to the extent that those 18 medical expenses were reasonable and medically 19 necessary. That would be what my opinions on that -- 20 related to that sentence is concerned. 21 And going back, I guess, on the sentence 22 before I would, yes, add things like complications of 23 medical therapy would be another issue for pain and 24 suffering. 25 ///

Page 122 1 BY MR. AMEELE: 2 Q What are the reasonable and necessary medical 3 expenses that have been incurred to date? 4 A I don't have them in front of me. I can't 5 tell you what the total is. 6 Q Do you have an estimate? 7 A I do not. 8 Q Do you have your declaration with you, Doctor? 9 A I am sorry? 10 Q Your declaration, do you still have that with 11 you? 12 A Yes. 13 Q Do you mind putting that in front of you? 14 A It's in front of me. 15 Q Thank you. 16 Could I invite your attention to page 4 of 17 your declaration? 18 A Hold on. I am resizing the screen here a 19 little bit here. Okay. 20 Q At lines 10 to 11, do you see the sentence 21 starting with: 22 "During my deposition"? 23 A No. 24 Q Okay. I am on paragraph 4, page 3. 25 A I am sorry. You said page 4.	Page 124 1 her mesothelioma." 2 Q Okay. That's your specific causation opinion 3 as to Avon; correct? 4 MS. DEAN: Objection; form to the extent asked and 5 answered. Overly broad. 6 THE WITNESS: That's a summary of the -- but it 7 does discuss, at least in paragraph 16 at least 11 8 specific products and then as well as indicating that 9 testimony that there were -- there were additional 10 products during -- used during those years. But the 11 products to which she was exposed during those years 12 were significant contributing factors to her overall 13 asbestos dose and cause of her meso. 14 BY MR. AMEELE: 15 Q Okay. That is your specific causation opinion 16 as to Avon; correct, Doctor? 17 MS. DEAN: Same objection. 18 THE WITNESS: That Ms. Moore's mesothelioma was in 19 part caused by exposures to the products from Avon, yes. 20 BY MR. AMEELE: 21 Q Okay. On page -- on page 3 in paragraph 4, at 22 lines 11 to 12 you state: 23 "I understand that I may provide 24 testimony." 25 Do you see where I am at, Doctor?
Page 123 1 Q If I did, I apologize. My mistake. Page 3, 2 paragraph 4. My apologies. 3 A Okay. 4 Q It states on lines 10 to 11: 5 "During my deposition." 6 Do you see that part? 7 A I see that sentence starting with that. 8 Q Okay. 9 "During my deposition and/or at 10 trial I expect I will be giving 11 specific causation opinions as to 12 each defendants' products." 13 A "Each named defendants' products." 14 Q Yes. Could you give me those opinions as to 15 Avon. 16 A That Ms. Moore's use of an exposure to her -- 17 the Avon products were -- and I think I specifically 18 said this -- let me just -- I am trying to find it in my 19 declaration here. It would be -- yeah. It's paragraph 20 22. But: 21 "That her use of the Avon 22 talcum -- cosmetic talc products 23 was a significant and substantial 24 exposure so a substantial 25 contributing factor in causing	Page 125 1 A I do. 2 Q Okay. 3 "I may provide testimony based on 4 hypothetical questions including 5 hypothetical information about 6 talc source and their 7 concentration of asbestos in some 8 talc products." 9 Did I read that correctly? 10 A I think you did. 11 Q Okay. What hypothetical questions have you 12 been presented with so far, if any? 13 A In this case, none. 14 Q Okay. And what hypothetical questions do you 15 anticipate receiving with respect to talc source or 16 concentration of asbestos in talc products? 17 MS. DEAN: Objection. Asks for speculation. 18 THE WITNESS: I would have no idea. 19 BY MR. AMEELE: 20 Q Okay. Let's look at page -- paragraph -- 21 excuse me -- let's look at page 11, paragraph 26, if you 22 don't mind. Let me know when you are there, Doctor. 23 A Okay. 24 Q Okay. I think you just answered some of these 25 questions for me. I am looking at line approximately 8

Page 126 1 to 11 where you describe the formulas of the 11 talc 2 products you believe to be at issue. 3 Do you see where I am at? 4 MS. DEAN: Objection; form. Absolutely misstates 5 and distorts the testimony. 6 THE WITNESS: I don't -- if your question is do I 7 see that line, I do. I don't agree with the premise you 8 started this with, though. But I do see the line. 9 BY MR. AMEELE: 10 Q Right. I understand from previous parts in 11 your declaration you believe that Ms. Moore may have 12 used 167 Avon body talc products; right? 13 A I didn't give a specific number. I just said 14 that she testified to having used all of them over those 15 years -- and I am not necessarily saying that -- what 16 the exact number was that she actually used or were 17 available during those time periods. I am just saying 18 that there was testimony that there was more than just 19 the 11 that were named. 20 Q Okay. What were the additional ones besides 21 the 11? 22 A That's what I just finished telling you. 23 Q You don't know the other ones; right? 24 MS. DEAN: Let me note for the record we have asked 25 Avon for a list, asked repeatedly, asked on the record	Page 128 1 believe to be the source mines. 2 Do you see where I am at there at lines 10 and 3 11? 4 A I -- I see -- I am not sure -- what is your 5 question? 6 Q Do you see the source mines you have listed in 7 paragraph 26 as to Avon? 8 A Yes. 9 Q Okay. You list several there including 10 California. What region of California are you referring 11 to? 12 A Well, in the -- that would be desert talc or 13 the Grantham mine is my understanding. 14 Q Where is that located? 15 A Where is California? 16 Q Where is the Grantham mine located in 17 California? 18 A Specifically? You mean longitude and 19 latitude? I have no idea, sir. 20 Q I was asking for a city or county, yeah. 21 A I don't -- I don't know the answer to that. 22 Q Okay. 23 A It's not a medical issue. 24 Q What -- how does talc form geologically in 25 Talc City, California? Do you know?
Page 127 1 for them on November 3rd. And to date we still have not 2 received said list. 3 BY MR. AMEELE: 4 Q Do you know what the Avon talc products are 5 that she used besides the 11 at issue, Doctor? 6 A I have not been provided by -- 7 MS. DEAN: Wait a moment. 8 I object to the notation -- notion that the 11 9 at issue is accurate. The court has explicitly 10 indicated that it's not every time a suggestion is made 11 that it is. I will correct the record. 12 BY MR. AMEELE: 13 Q Great. 14 Okay, Doctor. You have the question. Go 15 ahead. 16 A No, I don't. Could you say it again, please. 17 Q What are the 11 -- what are the Avon talcum 18 powder products that Mrs. Moore used besides the 11 that 19 are listed in the depositions of her and her daughters? 20 MS. DEAN: Objection. Vague and confusing. 21 THE WITNESS: I do not know the specific other 22 products. 23 BY MR. AMEELE: 24 Q Okay. For the 11 that are listed here on 25 paragraph 26 you list a series of sources what you	Page 129 1 MS. DEAN: Objection; form. Overly broad. Vague 2 and ambiguous as to what part you are asking about. 3 THE WITNESS: I don't recall. 4 BY MR. AMEELE: 5 Q Do you know where Talc City is in California? 6 A No. 7 Q Okay. Can you tell what the difference is 8 between how talc forms in Talc City as compared to 9 Death Valley? 10 A No. 11 Q Okay. Can you state, to a reasonable degree 12 of scientific certainty, where you believe in California 13 Avon sourced its talc from? 14 A I am sorry. 15 MS. DEAN: Objection to form, to the extent it's 16 been asked and answered both as to Grantham and not 17 otherwise knowing in California. 18 To the extent you are asking something new, 19 vague and ambiguous. 20 BY MR. AMEELE: 21 Q Go ahead, Doctor. 22 A I didn't hear your question. 23 Q Could you state, to a reasonable degree of 24 scientific certainty, where you believe in California 25 Avon sourced its talc from?

Page 130 1 MS. DEAN: Asked and answered. To the extent you 2 are asking something else, it's vague and ambiguous. 3 THE WITNESS: I have seen evidence from Grantham 4 mine. 5 BY MR. AMEELE: 6 Q Okay. And you don't know where that's 7 located; correct? 8 MS. DEAN: Asked and answered. 9 THE WITNESS: Specifically longitude, latitude, 10 where, what city it's nearest, no, sir. 11 BY MR. AMEELE: 12 Q Okay. Are those hydrothermal deposits in 13 California or are they formed by some other method? 14 A I don't recall. 15 Q What peer-reviewed published literature are 16 you aware of that states that mines in Brazil are 17 contaminated with asbestos? 18 MS. DEAN: Objection; form. Vague and ambiguous. 19 Compound. 20 THE WITNESS: Did you say Brazil? 21 BY MR. AMEELE: 22 Q Yes, sir. 23 A I am not sure I have been given information 24 about Brazil. So I can't tell you that. 25 Q Okay. What peer-reviewed published literature	Page 132 1 literature are you aware of that states that cosmetic 2 talc mines in Ontario, Canada are contaminated with 3 asbestos? 4 MS. DEAN: Objection; form. 5 THE WITNESS: I am not aware of any peer-reviewed 6 studies. I am aware of a number of laboratories that 7 have tested including from the FDA. But as far as being 8 in some sort of peer-reviewed journal, I am not aware. 9 BY MR. AMEELE: 10 Q What about published literature that states 11 that cosmetic talc mines in Talc City, California are 12 contaminated with asbestos? 13 MS. DEAN: Same objections. And adding vague and 14 ambiguous. 15 THE WITNESS: As far as California is concerned, I 16 am not sure if this is Talc City specific or just from 17 that region. But I have seen reports from MVA. I have 18 seen reports from Pooley, Bailey, United Sierra. 19 BY MR. AMEELE: 20 Q Understood. I am asking about published 21 literature, Doctor. 22 A Well, I don't -- they publish their findings. 23 They are -- they are discoverable. They have been 24 published. They are not published in a journal. I am 25 not -- most of the testing, in my experience of having
Page 131 1 are you aware of that states that mines in Spain are 2 contaminated with asbestos? 3 A I don't have any information on Spain, either. 4 Q What peer-reviewed published literature are 5 you aware of that states that cosmetic talc mines in 6 China are contaminated with asbestos? 7 MS. DEAN: Objection; form. Vague and ambiguous as 8 to which mine in China. 9 I just received a text that means I need to 10 take a break. I apologize. A good close friend's 11 brother just died. I won't take up -- I do need to go. 12 MR. AMEELE: Take your time. 13 MS. DEAN: That's okay. I am sorry to interrupt. 14 THE COURT REPORTER: Off the record? 15 MS. DEAN: Is that okay? 16 THE COURT REPORTER: Yeah. I'm telling the 17 videographer. 18 THE VIDEOGRAPHER: We are off the record. The time 19 is 2:22 p.m. 20 (Whereupon, a recess was taken 21 from 2:22 p.m. until 2:35 p.m.) 22 THE VIDEOGRAPHER: We are back on the record. The 23 time is 2:35 p.m. 24 BY MR. AMEELE: 25 Q Doctor, what peer-reviewed published	Page 133 1 looked at the testings of most of the tests by cosmetic 2 companies or on behalf of cosmetic companies are not 3 being published in peer-reviewed journals. In fact most 4 of them are being kept in their own -- in their own 5 private documents. 6 MR. AMEELE: I will respectfully move to strike as 7 non-responsive. 8 BY MR. AMEELE: 9 Q My question is: What peer-reviewed published 10 literature are you aware of that states that cosmetic 11 talc mines in Talc City, California are contaminated 12 with asbestos? 13 MS. DEAN: Same objections. 14 THE WITNESS: I am unaware of peer-reviewed 15 published literature because in my opinion the studies 16 on California from that region are being published, but 17 not published in peer-reviewed journals. 18 BY MR. AMEELE: 19 Q They are published but unpublished; is that 20 what you are saying? 21 A No. They are published, but not in 22 peer-reviewed journals. 23 Q Just reports that don't get publically 24 published? Is that your testimony? 25 MS. DEAN: Objection.

Page 134 1 THE WITNESS: Well, they -- to the extent that they 2 are in the public domain right now, I have seen them and 3 I am in the public. So, they are published. They 4 are -- they have -- a lot of the testing has become 5 available that was maybe done from times past but is now 6 available. 7 BY MR. AMEELE: 8 Q Do those studies undergo the peer review 9 process? 10 MS. DEAN: Objection; form. Overly broad. 11 Compound. 12 THE WITNESS: From my reading of the studies that 13 these are done by scientists using published 14 methodologies. But again, my experience is that a 15 laboratory is not going to have -- submit their studies 16 to some other laboratory to check them. 17 That's not been my experience in reading most 18 of the data that I have seen from talc companies. 19 That's not been how they have approached testing of 20 their product. 21 BY MR. AMEELE: 22 Q What articles are you aware of, with respect 23 to Talc City, California that have undergone the 24 peer-reviewed and publication process that stand for the 25 proposition that the talc there is contaminated with	Page 136 1 regards to the presence of asbestos. 2 Q Okay. Were you aware that one of the products 3 tested there was Avon? 4 A I don't know if I remember that or not. 5 Q Were you aware that as a result of Langer's 6 testing in the 1976 article they did not find asbestos? 7 A I don't recall. And I don't know -- again, I 8 am not sure if I knew what specific products he was 9 referencing. 10 Q You list the Pierce paper from 2017 in your 11 references. Do you rely on that article? 12 MS. DEAN: Objection; form. Vague and ambiguous. 13 THE WITNESS: Do I rely on it? No. 14 BY MR. AMEELE: 15 Q Is it -- 16 A It is referenced. 17 Q Why don't you rely on it? 18 A Because it -- I maybe need to -- to refresh my 19 memory, but it seems to me that there was some issues 20 with, perhaps, conflict of interest, but I would have to 21 go back and look at that article to be specific. 22 Q Do you rely on the Gordon Fitzgerald paper 23 from 2014 for your opinions? 24 MS. DEAN: Same objections. 25 THE WITNESS: No. I think there are -- as with a
Page 135 1 asbestos? 2 MS. DEAN: Objection; form. Overly broad. 3 THE WITNESS: I can't cite for you any such 4 document. 5 BY MR. AMEELE: 6 Q Okay. Are you aware of any published 7 peer-reviewed papers that have found asbestos in any 8 Avon cosmetic talcum powder products? 9 A Again, I have seen reports from various 10 entities, but -- including testing done on behalf of 11 Avon, but not that any of these have been submitted to 12 some sort of journal for peer review and publication in 13 a journal. 14 Q Do you rely on the Rohl-Langer 1976 article 15 with respect to consumer talcum powder products? 16 MS. DEAN: Objection; form. Overly broad. 17 THE WITNESS: With regard to what in specific? 18 BY MR. AMEELE: 19 Q Do you rely on the article of Rohl-Langer 1976 20 Consumer Talcums and Powders, Mineral and Chemical 21 Characterization for any of your opinions in this case? 22 A Well, I think that, you know, that Langer may 23 have -- I believe this is the one that, you know, he may 24 have -- he may have over estimated the degree, but I 25 think that the evidence shows that he wasn't wrong with	Page 137 1 lot of articles there are, you know, I don't think -- 2 there is very few articles that I 100 percent have 3 everything that is perfect. We didn't know perfect 4 study. So there is going to be issues with just about 5 any study. 6 But again, I think there are -- there are -- 7 there are findings on the -- in the Gordon paper that, 8 yes, I do rely on. 9 BY MR. AMEELE: 10 Q Do you think there is any conflicts of 11 interest in that paper? 12 A I am not aware of any. 13 Q Have you ever read the letters to the editor 14 with respect to that article? 15 A I probably have. I don't recall. 16 Q Do you have any opinions with respect to 17 those? 18 MS. DEAN: Objection; form. 19 THE WITNESS: I don't -- I would have to look back 20 and see what those letters to the editor said. 21 BY MR. AMEELE: 22 Q You mentioned that no article is perfect. 23 What do you find imperfect about Moline's case study of 24 cosmetic talcum powder? 25 MS. DEAN: Objection. Overly broad.

Page 138 1 THE WITNESS: I don't know. I can't tell you right 2 now. 3 BY MR. AMEELE: 4 Q You don't have any -- 5 I am sorry. Go ahead. 6 A Off the top of my head, I can't tell you that. 7 And again, I don't know if there was something -- you 8 know, what the issues are. But again there is always 9 ways to improve a study. 10 Q What do you think some of those ways might be 11 in the Moline article? 12 A I couldn't begin to start listing them off the 13 top of my head. 14 Q You site the Moline article and the Emory 15 article for your 100 cases in your declaration; right? 16 MS. DEAN: Objection. Asked and answered. 17 THE WITNESS: Yes. I did include that for that -- 18 for that sentence. 19 BY MR. AMEELE: 20 Q Okay. What do you feel are some of the 21 limitations of Moline's article in paragraph 28? 22 MS. DEAN: Objection. Vague and confusing. Overly 23 broad. 24 THE WITNESS: I guess I am not sure I am 25 understanding. I cited it saying that these were cases	Page 140 1 I think that provides very -- I mean it's very 2 informative. 3 Q What study have you made of the control group 4 that was utilized in Moline's article? 5 MS. DEAN: Objection; form. Vague. 6 THE WITNESS: The control group for what particular 7 purpose? 8 BY MR. AMEELE: 9 Q The tissue digestion? 10 MS. DEAN: Same objection. 11 THE WITNESS: I don't recall what the control group 12 was. 13 BY MR. AMEELE: 14 Q What do you feel are the limitations of using 15 case reports to establish causation? 16 MS. DEAN: Objection. Overly broad. Compound. 17 Vague as to what disease. 18 THE WITNESS: Well, you know, in diseases like 19 mesothelioma that are extraordinarily rare, actually 20 case reports can be incredibly informative. 21 And in fact they teach us in medical school 22 that it was Wagner's paper in 1960 with regard to 23 mesothelioma that was a case -- a series of 33 people. 24 And that was the -- the case series that we are taught 25 was the one that established that mesothelioma and
Page 139 1 that had no known asbestos exposures except through 2 cosmetic talc, that I think the tissue examination found 3 the types of asbestos that is not -- the type of 4 asbestos that you see from commercial use. And are -- 5 as a fingerprint for the types of exposure that you see 6 with cosmetic talc. 7 I think that was a very -- both of them were 8 very interesting studies. 9 BY MR. AMEELE: 10 Q Why did you combine Moline with Emory for 100 11 cases? 12 A Because they both basically -- as far as that 13 issue were concerned were -- it seems silly to say there 14 is one study of 33 and one study of whatever the other 15 number is, rather than just say there are studies with 16 over 100. 17 They both had basically the same concept that 18 these were people with -- that had mesothelioma with no 19 other exposures to asbestos, were found to have the 20 types of asbestos that is associated with talc in 21 their -- and that same asbestos talc is the same asbestos 22 that we find is associated with talc in the ore. So we 23 have got a correlation between the ore, a correlation 24 between what is found in the product and now a 25 correlation to what is found in the human body.	Page 141 1 asbestos are linked. So you know, I think there 2 certainly is a place for case series, particularly in 3 rare diseases like mesothelioma. 4 BY MR. AMEELE: 5 Q Is there a place for epidemiology for rare 6 diseases like mesothelioma when it comes to cosmetic 7 talc? 8 A I'm sorry. You mumbled, sir. I couldn't 9 hear. 10 Q Is there a place for epidemiology in studying 11 diseases like mesothelioma when it comes to cosmetic 12 talc? 13 A Well, I am not exactly sure what you are 14 asking because a case series as an epidemiological 15 study. It just happens to be a case series. 16 Q So let's look at page 18 of your declaration. 17 Could I invite your attention there? 18 A Okay. 19 Q Is paragraph 48 -- is that what appears to be 20 your comments on the limitations of epidemiology in 21 cosmetic talc; is that fair? 22 MS. DEAN: Objection; form. 23 THE WITNESS: It is some comments about some of the 24 limitations of -- depending upon the study in particular 25 this was referencing when you are looking at studies of

Page 142 1 the miners and millers, for example. But also other 2 studies where you are looking at a population. And if 3 you have too small of a sample size and insufficient 4 follow-up, there is issues. 5 The other issues that I have talked about here 6 as far as, you know, the exposure history with whenever 7 you are doing studies on mesothelioma are frequently 8 either have confirmation biases or they are relying on 9 secondhand or thirdhand information. They may be just 10 relying on death certificates so that there is really no 11 way to know what an exposure was other than what was 12 listed as usual occupation or industry. 13 So there is -- there is definitely some 14 issues. And then the coding issue, the fact that until 15 we got ICD 10 we didn't have a code for mesothelioma. 16 So I think those summarize the big issues when 17 it comes to epidemiology. You know, obviously it 18 depends on the study and on the -- and on the 19 population. 20 BY MR. AMEELE: 21 Q Are any of the limitations that you just 22 listed for me limitations that you find were present in 23 the Moline and Emory papers? Specifically, sample size? 24 A Well, the -- that's -- again, so the sample 25 size issue is not for when you have got a case series or	Page 144 1 Sorry, Dr. Haber. 2 THE WITNESS: Well, first off I was going to say, 3 you know, it, A, depends upon what location you are 4 talking about because not all -- not all mines are going 5 to be the same. They are not all formed the same and 6 they are not all going to be the same. So you can't 7 lump in mines that are not relevant to the discussion 8 here at this case. 9 Secondly, you know, for example, Vermont, 10 the -- you know, it was around 400 and change that was 11 studied in the -- in the Sullivan cohort and then later 12 followed up, I believe, by Fordyce. But he only added a 13 few extra cases, 30 or 40. 14 And so I -- to the pertinent studies related 15 to Italy that I have seen, the pertinent studies related 16 to Vermont that I have seen, we are not talking 17 thousands of people. 18 BY MR. AMEELE: 19 Q How many are -- 20 A In individual studies, they are not -- again, 21 Vermont was 400 and change. 22 Q How many people are we talking about for the 23 studies that you feel are pertinent? 24 A Again, I haven't tallied them up but on an 25 individual study I just gave you an example was not
Page 143 1 you are doing -- you are looking at a group of people 2 and saying, okay, these people do not have asbestos -- 3 exposures outside of talc and that when we look at the 4 tissues we find the same asbestos that is in the talc 5 mine and in the talc product. 6 But if you are going to look at a study to try 7 to determine relative risk or an SMR or whatever -- if 8 you are trying to do statistical analysis, then you get 9 a problem when it comes to mesothelioma because if you 10 have a small sample size then you -- even if there was a 11 significant risk of mesothelioma, you may just have too 12 small of a sample to be able to -- to pick it up and 13 your power -- when you are dealing with a rare disease 14 like mesothelioma, the power to make statistical 15 analysis is extraordinarily dependent upon the sample 16 size. If you have such a small sample size, your power 17 to detect is incredibly low. 18 Q How many thousands of miners and millers have 19 been studied in the cosmetic talc epidemiology for 20 mesothelioma? 21 MS. DEAN: Objection. Misstates facts in the 22 question. 23 THE WITNESS: Well, for example, in the -- 24 MS. DEAN: Sorry. Unclear if he is -- how you 25 define cosmetic talc. Overly broad in scope.	Page 145 1 thousands. It was 400-something which was an extremely 2 small number. 3 Again, it's -- you -- I have not seen -- I 4 have seen, you know, Vermont. And I have seen Italy. 5 But I have not seen -- you know, on the other mines that 6 are pertinent to this case, I have not seen any others. 7 So as far as this case is concerned would only be those 8 that are related to Italy and Vermont. 9 Q How many manpower years have been studied to 10 date in the Italian studies? 11 MS. DEAN: Objection; form. 12 THE WITNESS: That, I don't recall. But I do know 13 that the -- if you actually looked at what the latency 14 is, in a lot of these cases here they had an average 15 latency that was still on the very low side for 16 malignant mesothelioma. So you can follow -- 17 BY MR. AMEELE: 18 Q So. Okay -- 19 A Let me finish my sentence. 20 Q My apologies. 21 A You can follow people for -- for an extended 22 period of time but it doesn't necessarily mean that you 23 are going to capture -- no matter what that number is -- 24 capture a sufficient latency. 25 Q Have you read the follow-up by Ciocan,

Page 146 1 C-I-O-C-A-N? 2 A Yes. 3 Q So how many years have the miners and millers 4 of Italy been studied for to date? 5 MS. DEAN: Objection; form. Asked and answered. 6 THE WITNESS: I don't recall the specific number of 7 years. Again the studies are what they are. I don't 8 recall the specific years. 9 BY MR. AMEELE: 10 Q Do you recall in Rubino and Coggiola and Piro 11 that the miners and millers were developing dust 12 diseases like pneumoconiosis? 13 A Silicosis. 14 Q Do you recall pneumoconiosis as well? 15 A Silicosis. 16 Q And why is it that it's possible for them to 17 get those high dust diseases but if that talc mine is 18 contaminated with asbestos, there is not a high 19 percentage of folks passing from mesothelioma? 20 A Well, if you -- 21 MS. DEAN: Sorry. Let me just object to the extent 22 that it presumes information. 23 Sorry, Dr. Haber. 24 THE WITNESS: No problem. 25 So first off, you know, I think that there is	Page 148 1 actually was -- looked more like silica exposure which 2 is, you know, a different entity. 3 BY MR. AMEELE: 4 Q You believe then Rubino and Coggiola, that the 5 miners and millers were using respirators? 6 MS. DEAN: Objection; form. Compound. 7 THE WITNESS: No -- 8 MS. DEAN: Vague. 9 THE WITNESS: I -- I believe that at some point 10 that they -- in the Italian paper that they talked about 11 after it was either mid-50s or late-50s they started 12 instituting industrial hygiene measures including 13 wetting techniques and other techniques that 14 significantly reduced their measured dust exposures. A 15 huge reduction is my recollection. 16 I don't recall if they also said about 17 respirators or -- if it was both or one or the other. 18 BY MR. AMEELE: 19 Q Wasn't Rubino and Coggiola published after the 20 mid-50s? 21 A Well, they had people that -- that were in the 22 original -- if I am remembering correctly -- maybe I am 23 misremembering which study it is. But I believe even 24 on -- on both the Vermont and the Italian studies that 25 as -- that as time went on there was institutions of
Page 147 1 evidence that, for example, in Vermont that they do get 2 an increased risk of malignant mesothelioma. 3 Secondly, you know, when you are dealing with 4 these miners and millers, the studies show that, you 5 know, I think this was -- you know, out of the Italian 6 one in particular that after 1955 they showed that 7 their -- that they instituted a number of industrial 8 hygiene wetting procedures, wearing respirators, 9 et cetera, such that they had an 80 to 100-fold decrease 10 in the amount of dust that -- that the miners and 11 millers -- well, even then the miners and millers are 12 not even comparable. But they still had a significant 13 reduction in exposures. 14 Then there is data showing that end users of 15 asbestos, when compared to asbestos mines, have an 16 increased risk of disease because probably for the 17 same -- same reason as No. 1 is that the miner has 18 industrial hygiene that an end user -- you know, someone 19 who is using talc is not wearing a respirator, is not 20 using -- is not wetting it down, they don't have 21 ventilation systems. And they are using a powdered 22 product in an indoor situation. 23 So you know, you can't say just because a -- 24 you know, what a miner and miller exposures are like. 25 Again, you know, the type of dust that they were getting	Page 149 1 protective measures. So the people that may have 2 started in the study earlier on had different exposures 3 than people who had exposures later. 4 Q Do you recall Rubino measuring total dust 5 concentrations of talc to the miners and millers and 6 stating the levels? 7 A Well, like I said, unless I am -- maybe if I 8 can take a -- take a second to refresh my memory -- 9 because I am trying to do this off the top of my head. 10 You know, no one said that you were going to be 11 questioning me on that particular study. 12 My recollection is that, yes, there were 13 levels that were being taken and shown how later on with 14 time that those levels significantly reduced. 15 Q You consider the levels that were in Rubino to 16 be high? 17 MS. DEAN: Objection. Vague as to levels of what. 18 THE WITNESS: I don't know what you mean by levels. 19 I am not sure what high is. I am not sure which 20 specific number we are dealing with. I am trying to 21 remember if I am even remembering whether it's the 22 Vermont or the Italian study that I am remembering off 23 the top of my head since you haven't shown me the paper. 24 BY MR. AMEELE: 25 Q You have Rubino with you?

Page 150 1 A I could pull it up. I don't have it with me 2 in front of me. 3 Q Okay. What is the finished product testing 4 that you are relying on for your opinions as to Avon? 5 MS. DEAN: Objection; form. Compound. Overly 6 broad. 7 BY MR. AMEELE: 8 Q I think I can see from your declaration at 9 page 11 you talk about Night Magic. I want to know if 10 there is any other finished product testing that you are 11 talking about -- 12 MS. DEAN: Same objection. 13 BY MR. AMEELE: 14 Q -- at the time of trial. 15 MS. DEAN: Same objection, although a different 16 question. 17 THE WITNESS: I am aware of the MAS testing. As 18 far as -- your question was finished product testing of 19 Avon? 20 BY MR. AMEELE: 21 Q Correct. Yeah. So I see you have the 22 Night Magic study. I just need to know if there are any 23 others that you intend to rely upon? 24 MS. DEAN: Objection; form. Vague as to which 25 product. There is products over 30 years, multiple	Page 152 1 Q What are you relying on? 2 A To the extent that Lewin was doing testing 3 on -- either on an Avon product or an Avon talc source, 4 that would be the testing whether it was -- whether he 5 found asbestos or not. I mean I would be relying on 6 his -- on the Lewin results. 7 Q Okay. Whether he found asbestos or not; 8 right? 9 A Right. I would be relying on the Lewin 10 testing results. 11 Q Okay. Then for McCrone, these are the McCrone 12 studies of -- I am sorry -- the McCrone test of Avon 13 products; correct? 14 A Well, I recall seeing the number of tests by 15 McCrone on Avon products over spanning a number of years 16 finding asbestos in a number of their sources of talc. 17 Q Okay. The McCrone documents you are relying 18 on, are they listed in your declaration? 19 A They are because they are listed in B. 20 Q Okay. For Dr. Ypma in Colombia what documents 21 are you relying on as to Avon? 22 A The same thing. So Colombia also did testing 23 for Avon. And those tests are listed in -- in the 24 declaration and in Exhibit 4 25 Q Understood.
Page 151 1 mines. Overly broad. 2 THE WITNESS: I know that and I have listed this 3 under 11 in Exhibit 6 that, you know, there was testing 4 by McCrone, by Ypma in Colombia, by Avon or for Avon. 5 And by Lewin. I don't recall if that was to a specific 6 product or it was -- if it was an ingredient in their 7 final product. I don't recall that. 8 BY MR. AMEELE: 9 Q Okay. Let's look at, you said No. 11 on 10 Exhibit 6? 11 A Yes. 12 Q Okay. You have -- are you there? 13 A Yes. 14 Q Okay. Under A you have MAS. I am trying to 15 determine for MAS if you were relying on anything else 16 besides Night Magic as to Avon as far as finished 17 product testing? 18 A No. 19 Q As to Lewin are you relying on the '72 study? 20 A I don't recall which Lewin testing that was. 21 Q Well, how do I find that out if you are 22 relying on it? 23 A I don't know what you mean. 24 Q You are relying on Lewin for Avon? 25 A Wait --	Page 153 1 And for Avon, which you have listed as E, you 2 are relying on Avon internal documentation? 3 A Yes. 4 Q Okay. Can I invite your attention to 5 paragraph 54 of your declaration. 6 A And while I am turning there -- I am sorry. I 7 should have also said that, yeah, it was not just 8 Exhibit B but also listed within the declaration. 9 Q Yes, sir. I understood that. Thank you. 10 A Yes. Okay. 11 I am there. 54. 12 Q Okay. 54 says: 13 "The talc from Ontario has a lot 14 in common (geologically and 15 mineralogically) with Italian 16 talc." 17 Did I read that right? 18 A Yes. 19 Q Okay. How is the talc in Ontario, Canada 20 formed? By what method? 21 MS. DEAN: Objection; form. Overly broad. 22 THE WITNESS: My recollection, it was contact 23 metamorphism. But I believe this information I got was 24 actually from -- as far as the commonality was from 25 documents by Johnson & Johnson and Johnson & Johnson's

Page 154 1 mineralogists and geologists. 2 BY MR. AMEELE: 3 Q Okay. What documents are those? 4 A They would be listed in Exhibit 4 5 Q I know -- there is 508 citations. I am trying 6 to figure out which ones. So are -- the citation that 7 supports that statement is it contained within the 8 declaration itself? 9 MS. DEAN: Objection; form. 10 BY MR. AMEELE: 11 Q Or what of the 508 documents is the one that 12 supports that statement? 13 A I don't recall, but I do recall that this was 14 from Johnson & Johnson discussing the talc from Ontario. 15 Q Okay. And how was the talc formed -- how was 16 the Italian talc formed? 17 MS. DEAN: Objection; form. Overly broad. And to 18 some extent asked and answered. 19 THE WITNESS: Right. I believe again it's -- I 20 think it was called contact metamorphism or something 21 like that. I am not a geologist. 22 BY MR. AMEELE: 23 Q Understood. 24 A The formation of that is not so much of an 25 issue for me. It's more of an issue for the geologist.	Page 156 1 you about anything more specific. 2 Q Right. I understand the Johnson & Johnson 3 answer. My understanding is that what you are referring 4 to -- if I have guessed right -- is unpublished. I am 5 asking about peer-reviewed published literature on that 6 topic. As you sit here today you can't identify any; is 7 that correct? 8 A No. I didn't -- A, I didn't say it was 9 published or not published. I said that the information 10 is my recollection came from Johnson & Johnson. 11 If they gave a source from there to the 12 geologists or mineralogists, then that source would be 13 there. I am not saying where that information -- that 14 they got that information from. I am just saying that's 15 how I got the information. 16 Q Okay. As you sit here today, you don't know 17 which of the 508 references it was; right? 18 MS. DEAN: Objection; form. 19 THE WITNESS: It's one of them. 20 BY MR. AMEELE: 21 Q One of them. Okay. 22 Moving to paragraph 56. 23 A Uh-huh. 24 Q You say in the last sentence: 25 "Additionally, Dr. Blount found
Page 155 1 I am more concerned about the health effects 2 of asbestos. 3 Q Understood. I am just reading the sentence 4 here and then I am trying to get to the bottom of it. 5 So, I -- 6 A I am trying to -- 7 Q Okay. So the -- is there any published 8 material you are aware of -- peer-reviewed published 9 material -- that discusses that the talc from Ontario 10 forms geologically and mineralogically similarly to 11 Italian talc? 12 MS. DEAN: Objection to the extent that it's asked 13 and answered and identified. 14 THE WITNESS: Right. Again, the -- my recollection 15 is from the geologists, mineralogists from Johnson & 16 Johnson. As far as where they -- you know, where they 17 published that information, I don't recall. 18 BY MR. AMEELE: 19 Q Is there any peer-reviewed published 20 literature where it discusses this topic? 21 A I don't recall if Van Gosen, for example, or 22 others might have, but I don't have. 23 Q As you sit here today you don't know; is that 24 correct? 25 A Other than what I have just said, I can't tell	Page 157 1 regulated asbestos fibers in 2 North Carolina talc." 3 Do you see where that is? 4 A Yes. 5 Q What is the document or paper that you were 6 citing to there? 7 A That would be the Blount '90 or '91. I forget 8 the exact year. 9 Q Okay. Then the 1991 paper you believe that 10 Dr. Blount found regulated asbestos fibers in 11 North Carolina talc; correct? 12 A That's my recollection. 13 Q Okay. I invite your attention to paragraph 68 14 of your declaration. 15 A Okay. I am there. 16 Q In that -- in that paragraph of your 17 declaration you state: 18 "Evaluate the onset, duration, 19 frequency, regularity, intensity 20 in nature and proximity of 21 exposures to each specific 22 product." 23 Do you see where I am at? 24 A So, hold on. Now I did. I just -- so you are 25 on line 18?

Page 158 1 Q Yes, sir. 2 With me so far? 3 A Um, right. So it -- I mean that's kind of 4 mid-sentence you started it here. But I do see the 5 sentence -- that one sentence that you have mentioned. 6 Q Okay. Then you said: 7 "Making a qualitative risk 8 assessment of the exposure and 9 dose relative to the 10 peer-reviewed literature, 11 including epidemiological 12 literature on these asbestos 13 exposures are shown to cause 14 pleural and peritoneal 15 mesothelioma." 16 Did I read that right? 17 A Well, you took it -- you took part of a 18 sentence completely out of context. But the 19 out-of-context part was, I believe, read correctly. 20 Q Well, we can do the whole sentence. The only 21 part I missed is: 22 "Just as I do and the mainstream 23 scientific community does with my 24 -- with any other 25 asbestos-containing product"?	Page 160 1 exposed? How often? How regular? Was -- you know, was 2 there visible dust? How close was the exposure? What 3 was the nature of the exposure? Is there a use of 4 respiratory protective equipment or other sort of 5 protective environmental hygiene practices involved in 6 the exposure? 7 We look at what was -- what material it was, 8 what the concentration of asbestos in that was. You 9 know, was it indoors or outdoors? There is lots of 10 things you look at or I would look at when I am looking 11 at that exposure and in trying to decide -- then also 12 how that type of exposure -- where -- where does that 13 type of exposure fall in relationship to either known 14 doses or similar types of exposures. 15 And to make an assessment as to, you know, 16 is -- is this a significant exposure? And is it -- does 17 that exposure then allow me to conclude that that 18 exposure, either in whole or in part, was significant to 19 the disease depending on what the disease was. 20 Q Okay. So have you done a qualitative list 21 assessment with respect to Avon, on Ms. Moore's use of 22 Avon products? 23 MS. DEAN: Objection; form. 24 THE WITNESS: I did. 25 ///
Page 159 1 A No. Actually, that isn't the only part -- as 2 far as -- maybe I missed -- you heard it -- but I heard 3 you starting with the next sentence over with ignoring 4 the: 5 "Along with such information 6 which had to do with making a 7 qualitative assessment and 8 considering the application 9 process, the asbestos in the 10 product and other factors, 11 looking at then onset, duration, 12 frequency, regularity, intensity, 13 nature and proximity of 14 exposures, to then make a 15 qualitative assessment." 16 Q What is a qualitative assessment? 17 A What is it? 18 Q Yeah. 19 A A qualitative assessment is what -- is an 20 assessment that physicians, like myself, as a 21 pulmonologist will do because most of the time, you 22 know, there are no dose reconstructions or industrial 23 hygienists involved. 24 So what we do, as physicians, is we will look 25 at when was the exposure? How long was the person	Page 161 1 BY MR. AMEELE: 2 Q Was that the opinion that we discussed 3 earlier? Would you like me -- strike that. 4 Why don't you provide your opinion to me now 5 of the qualitative risk assessment for Avon products? 6 A Right. Well, I think that, you know, we have 7 got -- she is -- let me just pull up the time period. 8 Hold on a second here. 9 Q Are you looking at your declaration? 10 A I am going back to my declaration and I am 11 going to page -- paragraph 26. 12 Q Okay. 13 A So -- so -- not 26. Sorry. Sorry. 16. 14 So she has got, like, 50 years of -- 40 to 50 15 years of exposure. So we have got a long duration of 16 exposure. We have onset beginning -- well, 60 years 17 before her development of mesothelioma. So we have 18 sufficient latency. 19 And she was -- you know, in her -- she is 20 using this product on a daily basis. So we have got 21 regular and frequent. She is doing it indoors. It's 22 proximal because she is doing it herself. She is arms' 23 length away. 24 And so we have got onset. We have got 25 duration. We have frequency. We have regularity.

Page 162 1 Intensity. She is producing dust. The nature is that 2 she is shaking this product. And it's proximal. 3 And you know, if you look at the studies, both 4 published and unpublished, on the types of exposure 5 levels, as well as, you know, you can compare that to 6 similar types of exposures in products that have a low 7 trace levels of asbestos, and but produce danger of 8 asbestos-related disease, putting those together, that 9 her exposures to Avon were a substantial and significant 10 contribution to her total dose, and therefore, 11 significant factors in causing her meso. 12 Q The published studies that you are relying on 13 for airborne concentrations exposures, are those the 14 ones listed in paragraph 68, Steffen 2020, and Gordon 15 2014 and the unpublished MAS and MBA analysis? 16 A Well, there is -- there is other ones as well. 17 Q Okay. What are those that you are relying on? 18 A Well, you had Addison in '88. You had 19 Mattenklott in '07. Finkelstein in '19 or '20. There 20 was -- 21 Q What was Finkelstein? My apologies. 22 A 2019 or 2020. 23 Q Okay. 24 A I don't recall the date. You have got, um, 25 Anderson, 2017.	Page 164 1 BY MR. AMEELE: 2 Q Please, don't do that. 3 Go ahead, Doctor. 4 A I was going to say -- 5 MS. DEAN: Sorry, Dr. Haber. Any time there is 6 something like "please, don't do that," I am going to 7 make an objection where there is a vague and confusing 8 and show the basis of it. It is my job. 9 BY MR. AMEELE: 10 Q Okay. Go ahead, Doctor. 11 A I was going to say that my recollection is 12 that it's an incredibly long document and I don't know 13 which specific assessment that you were talking about. 14 I do know that one of the other things -- the 15 FDA in '72 said that even trace levels of asbestos in 16 talc would produce levels above the then OSHA PEL. 17 Q What did the FDA say about asbestos and talc 18 in 1986 and whether one was necessary? 19 MS. DEAN: Objection; form. Overly broad. 20 THE WITNESS: I don't recall. 21 BY MR. AMEELE: 22 Q Okay. 23 A It's a very long document. 24 Q Have you considered the 1986 response of the 25 Citizen's Petition in your reference materials?
Page 163 1 Q Okay. 2 A You have got Dement and NIOSH in the early 3 '70s. 4 Q Okay. 5 A There was a Dr. Taylor in the Citizen's 6 Petition in Johnson & Johnson. 7 Q You are talking about the Citizen's Petition 8 that the FDA responded to in 1986? 9 A I don't recall the date. 10 Q Have you read the quantitative risk assessment 11 that FDA did that was attached to the response to the 12 Citizen's Petition in 1986? 13 A I am sure I have. I don't recall. I am 14 just -- you are -- you are changing the subject on me. 15 Are we done with this question or -- 16 Q Almost. 17 Do you know what level of asbestos they assume 18 for the quantitative risk assessment for the FDA in 19 1985? 20 MS. DEAN: Objection -- objection; form. 21 The Citizen's Petition that you are 22 referencing is an over 180-page document. There are 23 more than one risk assessments contained therein and the 24 doctor isn't being shown what you are asking about. 25 ///	Page 165 1 A It is -- I have considered it and it is 2 probably in the reference material. 3 Q Okay. What are your opinions on it? 4 MS. DEAN: Objection; form. Overly broad. 5 THE WITNESS: It's such a long document, I am not 6 sure I can be able to sit there and, off the top of my 7 head -- I don't want to, just off the top of my head, 8 start trying to guess what I think I remember about that 9 document. 10 BY MR. AMEELE: 11 Q Do you have any opinions on that document as 12 you sit here? 13 MS. DEAN: Objection; form. Vague without context. 14 It's 190 pages. 15 THE WITNESS: I would need some context. I 16 don't -- without any context and without any idea of 17 what it is that you are even specifically talking about, 18 I can't start, just off the top of my head, labeling or 19 naming things off. 20 BY MR. AMEELE: 21 Q Did the FDA grant or deny the petition to 22 place a warning on cosmetic talc in 1986? 23 A I don't recall. 24 Q For your qualitative risk assessment as to 25 Avon what level of contamination do you assume?

Page 166 1 MS. DEAN: Objection; form. Overly broad. Again, 2 there is 30 years' products, multiple products, 3 different source mines. 4 It's compound. 5 THE WITNESS: Okay. I was going for ask you -- I 6 don't know what you mean by contamination. As far as I 7 know, no one has adulterated Avon's talc. But if you 8 are asking about what percentage of their -- what was 9 the percentage of asbestos is contained within Avon's 10 talc, is that your question? 11 BY MR. AMEELE: 12 Q Well, my understanding is that you have done a 13 qualitative risk assessment as to Avon; right? You 14 provided me that opinion. Do you remember that? 15 A Right. I am just trying to get clarification 16 on your question, sir. You said "contamination." I am 17 trying to understand what you mean by contamination 18 because I am not aware that -- that Avon's talc was -- 19 was -- was adulterated. 20 But if you mean contains asbestos, then maybe 21 we are on the same page. I want to make sure I am 22 understanding you, sir. 23 Q Sure. Let's use your term. 24 If you believe that the Avon bottles at issue 25 that Mrs. Moore had contained asbestos, then for your	Page 168 1 talc. So over -- it had over 10 percent impurities in 2 it. 3 So, you know, it really is going to depend 4 upon which -- which source it was. So there may be some 5 sources that are going to be trace to sub-trace but 6 there may be some sources that were, like, industrial 7 talcs with very high concentration. 8 Q The tests you are referring to, is that 9 tremolite by X-ray diffraction; Doctor? 10 MS. DEAN: Objection; form. Compound. Also vague 11 and confusing, if you mean by that alone. 12 THE WITNESS: My recollection is there was multiple 13 tests made. And I do know that Avon did do testing with 14 XRD. There has -- that would be another example of I'd 15 like to see the benchmark data on their follow-up 16 optical microscopy. 17 But they certainly did do some testing with 18 XRD. Unfortunately, they did not do TEM but a few 19 times. 20 BY MR. AMEELE: 21 Q So when you find tremolite by X-ray 22 diffraction do you think that means you find asbestos? 23 A Well, I -- it's, A, the first prong of a 24 prong. 25 B, I think if you are looking for the presence
Page 167 1 qualitative risk assessment, what levels of asbestos 2 have you assumed? 3 MS. DEAN: Same objection. Also object to the use 4 of the word "assumed." 5 THE WITNESS: The -- number one, you said "bottle." 6 My understanding is that she used a lot more than just 7 one bottle. 8 And No. 2, she was using this product from the 9 1940s to the 2000s -- sorry -- 1960s to the 2000s, which 10 covers a lot of different mine sources including -- from 11 my understanding is going to include talc from Grantham 12 mine in California which is going to be significantly 13 dirtier than, perhaps, some other mines. 14 So where the mine was and when it was, is 15 going to make a difference. 16 BY MR. AMEELE: 17 Q Okay. So I am just asking if you assumed a 18 number for your qualitative risk assessment. It sounds 19 like you have not; is that fair to say? 20 A There are some tests of Avon that -- that 21 showed analyses that showed tremolite so high and the 22 asbestos content so high that it would be considered to 23 be an industrial talc. 24 So based on, you know, even, you know, your 25 expert's definition of what constituted an industrial	Page 169 1 of asbestos and you run a test or run tests to look for 2 that source -- for that asbestos, and then report that 3 you found tremolite. 4 If you didn't do the follow-up testing to 5 prove it, then what are you -- what is the company doing 6 to say that they don't have any asbestos. If they are 7 finding -- and if they are reporting tremolite when they 8 are saying, "hey, we are looking for asbestos," it seems 9 to me to make sense that why else would they be 10 reporting finding tremolite? 11 Thirdly, we know -- this is, you know, from 12 Dr. Bailey, as well as -- even the American Thoracic 13 Society has talked about this issue in particular with 14 tremolite, is that when you have non-asbestiform -- if 15 you want to use that term I don't like -- but if you -- 16 if you have one form of tremolite you are going to see 17 all -- it's going to be mixed. And OSHA says that if 18 you got a mixed, you got a problem because that's a 19 health risk. 20 Q What OSHA citation is that? 21 A That would be '94 OSHA. 22 Q So are you going to be providing an opinion at 23 the time of trial that elongated mineral particles or 24 cleavage fragments increase the risk for the development 25 of mesothelioma?

Page 170 1 MS. DEAN: Let me object both to compound, vague 2 and confusing in terms of what you mean by those terms. 3 BY MR. AMEELE: 4 Q Go ahead, Doctor. 5 A I was going to ask you, when you are saying, 6 first off, elongated mineral particle, can you please 7 define that. And when you say "cleavage fragment," 8 please define that? 9 Q How do you define cleavage fragments? 10 A A cleavage fragment is -- if a cleavage 11 fragment is a chunk, it is not dangerous. 12 If a -- if a cleavage fragment is a fiber, 13 then -- and it's greater than 3 to 1 -- and certainly 14 greater than 5 to 1, it's not a cleavage fragment, it's 15 asbestos. And it's dangerous. 16 And again, if you have got a mixed population 17 which is the most likely, you have got a problem because 18 that's a health risk because those fibers are 19 respirable. 20 Q So you believe if a cleavage fragment -- I 21 want to make sure I understand this right. 22 If a cleavage fragment is a fiber and it's 23 3 to 1 aspect ratio or greater, it poses a health risk; 24 is that your testimony? 25 MS. DEAN: Let me object that it misstates	Page 172 1 or it might not be asbestos. 2 BY MR. AMEELE: 3 Q Okay. And how do you define asbestos? 4 A Asbestos is one of the six minerals in a 5 fibrous form. That's the same definition that published 6 literature like Mattenklott uses and the same definition 7 I have seen used by companies like Johnson & Johnson, I 8 believe even Avon documents I have seen. 9 Q What is the aspect ratio you utilize to define 10 asbestos fiber? 11 A It's -- 12 MS. DEAN: Objection; form. 13 THE WITNESS: -- greater than 3 to 1. 14 BY MR. AMEELE: 15 Q Okay. Are you going to provide an opinion 16 that a certain percentage of Avon bottles utilized by 17 Mrs. Moore were contaminated -- I am sorry -- contained 18 asbestos? 19 MS. DEAN: Objection; form. Sorry. Vague and 20 ambiguous. I think he needs the question again. 21 THE WITNESS: I was going to say "objection, 22 mumbled." I couldn't hear you, sir, after "do you have 23 an opinion" -- 24 THE COURT REPORTER: Keith, could you slow down a 25 little bit.
Page 171 1 testimony. To some extent it's asked and answered and 2 still confusing as to what you mean by "cleavage 3 fragment." 4 BY MR. AMEELE: 5 Q Go ahead, Doctor. 6 A Yeah -- I -- in this scenario here -- so I 7 mean cleavage fragment from what? 8 So if I have got -- if I have got -- you are 9 talking about from asbestos? 10 Q Well, you have told me that where you find the 11 tremolite your concern is that it may indicate that you 12 would be finding asbestos; is that fair? 13 A That -- that is what the American Thoracic 14 Society and others have said. Yes. 15 Q Okay. Do you agree that tremolite appears in 16 asbestiform in a non-asbestiform habit? 17 MS. DEAN: Objection; form, in terms of what you 18 mean by those terms. Vague and confusing. 19 THE WITNESS: Yeah. I don't know what you mean by 20 a "habit." 21 You know, in the medical literature where 22 asbestos -- you know, the distinction based on habit is 23 not something that doctors at all care about. Nor does 24 their medical literature ever discuss habit. 25 But I am aware that tremolite can be asbestos	Page 173 1 MR. AMEELE: Sure. 2 THE COURT REPORTER: Your questions are getting 3 faster and faster. 4 BY MR. AMEELE: 5 Q Are you going to provide an opinion that a 6 certain percentage utilized by Mrs. Moore contained 7 asbestos? 8 MS. DEAN: Same objections. 9 THE WITNESS: Not a specific percentage of bottles, 10 but I think based on the information that I have 11 discussed in the declaration and we have been discussing 12 today and based on her frequency and use of this product 13 over a prolonged period of time that she had a 14 significant exposure from the Avon products. 15 But not -- I am not going to give you a 16 specific number of bottles that she used. 17 MR. AMEELE: Okay. Thank you, Doctor. I will pass 18 the witness. 19 MS. DEAN: We have been going about an hour. When 20 the next person gets up, do you guys want to take a 21 10-15 minute break? 22 THE COURT REPORTER: Sounds good. 23 MS. DEAN: Okay. 24 THE VIDEOGRAPHER: Off the record. The time is 25 3:32 p.m.

Page 174 1 (Whereupon, a recess was taken 2 from 3:32 p.m. until 3:52 p.m.) 3 MR. SLAUGHTER: I can go. 4 MR. MASSENBURG: Ed, I already showed my face. Do 5 you mind if I jump in? 6 THE VIDEOGRAPHER: We are back on the record. The 7 time is 3:52 p.m. 8 9 EXAMINATION 10 BY MR. MASSENBURG: 11 Q Dr. Haber, Chris Massenburg. I represent 12 Chanel. It's good to talk to you this evening -- at 13 least this evening for me. It's almost 7:00. 14 A You are east coast, right? 15 Q I am east coast today. 16 Let me ask you first, you testified in 17 response to some of Mr. Ameele's questions that you 18 testified on behalf of plaintiffs and defendants in 19 litigation. Did I understand that correctly? 20 A Yes. 21 Q Is it only in the realm of silica litigation 22 that you have testified for defendants or have you 23 testified for defendants in litigation other than 24 silica-related litigation? 25 A Other than -- well, in addition to.	Page 176 1 you can't understand what is being said. I don't know. 2 MR. MASSENBURG: Great. 3 MS. DEAN: Yeah. Sorry. 4 THE WITNESS: I said sleep apnea. 5 BY MR. MASSENBURG: 6 Q I caught that one. Are you hearing me okay? 7 A I am now. But you cut in and out a couple of 8 times. 9 MR. MASSENBURG: If that happens again, Sandy, will 10 you raise your hand and I will stop? 11 THE COURT REPORTER: Sure. 12 BY MR. MASSENBURG: 13 Q The earliest transcript I have of you, 14 Dr. Haber -- that at least I could find -- is 2006. 15 That was in silica litigation. Do you recall testifying 16 earlier than 2006 in any silica-related litigation? 17 MS. DEAN: Asked and answered. 18 THE WITNESS: Yes. 19 BY MR. MASSENBURG: 20 Q Do you recall testifying earlier than 2006 in 21 any asbestos litigation? 22 MS. DEAN: Asked and answered. 23 THE WITNESS: I am pretty sure, yes. 24 BY MR. MASSENBURG: 25 Q Have you ever -- I apologize. I understood
Page 175 1 Q In addition to? 2 A Yeah. 3 Q Either, or, and -- or. 4 A Yes. 5 Q What other areas of litigation have you 6 testified on behalf of defendants in litigation besides 7 silica litigation? 8 A Asbestos. Smoke. Carbon monoxide. Alumina. 9 Bauxite. Chlorine. Ammonia. Ozone. There is others 10 too. But -- 11 Q Okay. 12 A I have done medical malpractice as well for 13 defense. I have done that as well. 14 Q Okay. If any other topics come up as I ask 15 you some questions about this, let me know. 16 Do you recall -- I understand you don't 17 maintain -- 18 A There is some more then. Sleep apnea. 19 Q That broke up. 20 A Sorry? You cut -- 21 Q Your words -- your words -- I didn't catch it. 22 I apologize. 23 MS. DEAN: Chris, your computer -- 24 THE WITNESS: It's yours. 25 MS. DEAN: -- is twice now going in and out. So	Page 177 1 and wrote down in my notes that you do not maintain a 2 list of testimony? 3 A No. I -- I do. But it's -- it's for the last 4 four years. 5 MS. DEAN: And it's attached as Exhibit 9 6 BY MR. MASSENBURG: 7 Q Okay. Prior versions that existed before the 8 last four years, Dr. Haber, do you have any old physical 9 copies or digital copies of any of your prior list of 10 testimony outside of the last four years? 11 A It's always the last four years because to the 12 extent that I have ever -- that I keep a list -- which I 13 don't necessarily always keep it perfectly up-to-date 14 but I try -- but it's just a work in progress. 15 Q Okay. The reason I ask that is I would 16 imagine -- but correct me if I am wrong -- your list of 17 testimony over the last four years is maintained 18 digitally. Am I correct? 19 A Right. It's on a -- it's Word or some -- 20 whatever program. 21 Q And the reason I ask is if you don't have a 22 physical copy, do you have older versions of your list 23 of testimony that are just stored at some point in a 24 server or another location that although it's not 25 technically the last four years and the most recent

Page 178 1 iteration, it would -- it would include prior list of 2 testimony going back other years maintained digitally? 3 A No. There is no such thing. It's just the 4 same thing. I just take off the older and put on a new, 5 whatever -- if that happens to be the case. 6 Q And those older versions are just saved over 7 with the new version? 8 A Well, I don't know what you mean by older 9 version. But it's just like any -- you know, if you 10 are -- I mean we are in the computer age. We don't have 11 to sit there and start printing things out. So I don't 12 print them out. It's just on the computer. I will 13 print it out if someone wants it. But otherwise, if 14 I -- as it progresses in time, then I just maintain that 15 it's the same document -- just maintains the last four 16 years. 17 Q I guess -- I guess to the heart of my question 18 is, then, when you are updating it if a year falls 19 outside of the four years, you would just delete that 20 data and maintain it as it carries to the current four 21 years; is that right? 22 A Yes. 23 Q Okay. And there are no prior versions saved 24 or stored in any form or fashion by you in any way 25 related to prior testimony that is not limited to just	Page 180 1 for a plaintiff in that litigation? 2 A I am not 100 percent sure, but I am 55 percent 3 sure that the first time in asbestos was for plaintiff. 4 But don't ask me who. 5 Q Okay. No problem. 6 You told Mr. Ameele that the names of the 7 firms at least and some companies that you recall 8 testifying for as it relates to asbestos litigation -- 9 as it relates to asbestos litigation -- I am not saying 10 talc, I am saying asbestos litigation -- when is the 11 last time that you recall providing testimony 12 specifically in an asbestos case? 13 A It was probably within the past couple of 14 months but I don't -- I mean it would be on exhibit 15 whatever the exhibit is. It should be on there. It's 16 probably within the past couple of months. I would say 17 the last four months. 18 Q Do you know, as we sit here today, how much of 19 your income on an annual basis is related to testifying 20 in asbestos or talc-related litigation? 21 A Well, talc would be minimal because I have 22 only testified just a few times. And as far as 23 asbestos, you know, I mean it varies from year to year. 24 So I don't think I can necessarily say -- I mean there 25 are some years that, you know, I may only testify in
Page 179 1 the last four years; is that fair? 2 A That is correct. I do not have any other copy 3 other than the copy that I have got right now. 4 Q Okay. When is the first year that you 5 testified that you recall, in asbestos litigation on 6 behalf of a defendant? 7 A I mean it was in the early 2000s. You know, I 8 did some silica. I think it was even 2003 or 2004 9 timeframe. But you know, for asbestos it may have been 10 shortly thereafter-wards. I don't -- I am not exactly 11 sure. 12 Q In the early 2000s -- and let's categorize it 13 up to 2003 time period, were you testifying exclusively 14 for defendants in asbestos litigation, for plaintiffs, 15 or was it a blend, as far as your testimony goes? 16 A Well, I said previously -- I don't know if you 17 heard -- that I started doing asbestos and silica work 18 in around the 2002 -- end of 2002 or early 2003 19 timeframe. So if you are making the assumption that 20 early 2003 is -- or that early 2000s is considered up to 21 2003, that doesn't give me much room for having done 22 hardly any work at all. 23 Q Okay. Let's -- let me break it out then as 24 far as when you first testified in asbestos litigation. 25 Did you testify for a defendant in that litigation or	Page 181 1 asbestos, you know, three or four or five times in -- in 2 the year. So you know, it's going to vary. 3 But as far as my work is concerned, you know, 4 the minority of time is related to asbestos. Probably 5 only 10 or 15 percent of my time. 6 Q And as far as 10 to 15 percent would that 7 include the work in talc-related litigation as well? 8 A Yes. I think it would. Now, that's -- that's 9 as far as -- you know, I mean I have spent a lot of time 10 on my own researching and reading and going through 11 documents. I don't consider that to be -- I mean that's 12 on my own time. But you know -- or reading up on 13 asbestos. 14 But as far as the time for you know a 15 particular case, yeah. That would include that. 16 Q Okay. And what is the remaining 85 to 17 90 percent of your time spent on annually? 18 A So about 70 percent of my time is as a -- is 19 in my practice seeing patients, doing procedures, doing, 20 you know, consultations. Taking care of patients in the 21 hospital. Being on call. That sort of thing. 22 I also -- part of that is also -- I have got 23 committee work for hospitals, for the Texas Medical 24 Association, for Harris County Medical Association. 25 For -- I am on committees for emergency preparedness,

Page 182 1 committee for Harris County. 2 And then I also spend time doing B-reads for 3 OSHA, mandated silica surveillance. That's on a daily 4 basis. 5 Then about 30 percent of my time is in 6 medical-legal. And it's probably, you know, about, you 7 know, 40 percent silica, 40 percent asbestos and 8 20 percent other. That's the other 30 percent. 9 Q Of the 30 percent. Do you include, in the 10 20 percent, that is asbestos, of that 30 percent -- 11 A No. 40 percent of the -- 40 silica -- you 12 know, silica and asbestos are pretty close. And then 13 there's other ones as well. 14 Q Okay. Sorry. 40 percent silica, 40 percent 15 asbestos, 20 percent other of the 30 percent 16 medical-legal consult? 17 A Yes. 18 Q Okay. Do you include talc litigation in that 19 asbestos estimate? 20 A Yes. 21 Q The other 20 percent, those would be composed 22 of the various other areas you mentioned: Smoke, carbon 23 monoxide, aluminum (sic), bauxite, chlorine, ammonia, 24 ozone, medical malpractice and sleep apnea? 25 A Well, those. And I have had, you know,	Page 184 1 Q Okay. And so since this is involving 2 litigation -- I mean somebody has claimed to have been 3 injured by the mold and they're suing somebody as a 4 result of it? 5 A Yes. 6 Q And what type of -- 7 A Or -- or -- or might be -- or is threatening 8 to sue. I don't know how -- it's not necessarily has 9 to -- I mean I might sometimes get approached by a 10 defendant proactively. 11 Q What type of -- in your experience in your 12 medical-legal consult related to mold, what type of 13 diseases are people alleging are caused by exposure to 14 mold as to the defendants that you have represented -- 15 or worked for? 16 A We are really going to spend all this time on 17 mold? Okay. 18 So I have had allegations of development of 19 asthma. And other -- there have been a whole host of 20 allegations of various things from, I can't concentrate 21 to, I don't feel well, to all kinds of nonspecific 22 issues, GI complaints, neurological complaints. But 23 most of them, at least somewhat, respiratory related. 24 Q Any claims of cancer -- 25 A No.
Page 183 1 other -- I mean there has been lots of cases that, you 2 know, don't necessarily, you know, go to trial but other 3 inhalational injuries. 4 So you know, whether it's -- you know, we have 5 had -- I have been involved in some cases where there 6 was explosions in the area and people have gotten 7 inhalation of various toxic gasses. I have been 8 involved in some mold cases where people were alleging 9 injury from mold and I have done defense work. That 10 would be another, I guess, area that I have done defense 11 work for. 12 Q So when you are talking about mold exposures 13 and work doing defense work what kind of litigation 14 consult? Is that testimony and consultation? 15 A Yes. 16 Q Anything including reports that you would 17 generate? 18 A Yes. 19 Q And generally speaking, what type of 20 defendants are you working for in mold litigation? 21 A Apartment owners. Landlords or businesses. I 22 think I have had some various businesses that were 23 alleged to have had mold on premises. I think a boating 24 company or a couple of boating companies that had 25 alleged mold in their -- in their boats or ships.	Page 185 1 Q -- related to mold exposure in your consult? 2 A No. I never heard of such a thing. 3 Q And in those instances in which you are 4 representing a defendant in mold litigation, regardless 5 of the allegations, has it been your position that the 6 allegations as to the injuries claimed are not -- are 7 not correct in that the exposure to mold, if any, 8 related to the companies that you have worked for did 9 not contribute to their various ailments, whether it's 10 asthma, concentrations, G.I. issues, or respiratory 11 issues? 12 A Well, that's going to depend. So you know, 13 the American College of Occupational Environmental 14 Medicine and other scientists in the American Academy of 15 Allergy and Immunology have statements showing that -- 16 that some of these allegations are of absolute hogwash 17 and have no scientific basis. 18 So to the extent that someone is claiming some 19 sort of injury that has nothing whatsoever to do with 20 any science, then those would be cases that I would say, 21 yeah -- I would tell the person, look, there is no 22 science here. The TMA, the World Health Organization, 23 all kinds -- everyone has said, "there is just -- there 24 is no -- there is nothing here to cause it." 25 Now, there may be issues if someone has

Page 186 1 preexisting asthma and they have gotten an exacerbation 2 because -- or worsening of asthma because of mold 3 exposure, I might say, "hey, there is science here that, 4 you know, asthma can be exacerbated by mold." And if 5 that's what the case is, I will tell them what the case 6 is. 7 It's the same thing I do for any defendant 8 when I am working for them. I will tell them if there 9 is -- if there is science behind the claim or there is 10 not. 11 Q Right. So not -- not for those claims where 12 there is no scientific basis for the alleged injury, 13 but instead those that claim a respiratory illness 14 related to mold exposure for one or more of the 15 defendants that you have represented, have you ever 16 authored a report or testified in deposition that those 17 exposures, related to the claimed respiratory illness, 18 were not sufficient to cause that disease? 19 A Well, first off, the vast majority of the 20 cases I have been involved in are the bologna ones. 21 And as far as giving testimony in that 22 particular scenario that you gave, I don't recall 23 anything like that. It's really not the way these 24 exposures work. I mean it's either you have got a link 25 or -- or you don't.	Page 188 1 testified in mold-related litigation? 2 A It's been at least a couple of years. It's 3 pre -- pre-Covid for sure. 4 Q If we looked at your testimony list would you 5 be able to identify which case or cases are the mold 6 cases? 7 A Well, I don't know if I have testified in the 8 past four years on a mold case. But -- so I don't know 9 if there is a mold case on there or not. 10 Q Okay. Can we take a look at it and take a 11 look at that testimony list, because it will be helpful 12 to us going forward to talk about some of the other 13 categories besides just the mold litigation. 14 Do you have a copy of that with you, sir -- as 15 part of your declaration? 16 A Let me -- let me -- hold on a second. 17 Do you guys have one? 18 MS. DEAN: I suggest, if you can, to E-mail it to 19 me. There was a request to attach it as Exhibit 9 20 Then I can relabel it as Exhibit 9 and put it in chat so 21 everybody can grab it. 22 THE WITNESS: All right. Hold on a second. 23 MS. DEAN: If you have it handy. 24 THE WITNESS: I am trying to -- 25 ///
Page 187 1 Q Okay. I don't mean just testimony. I want to 2 make sure I am clear since you said that. I am also 3 talking about reports. 4 Have you authored reports that claimed a 5 plaintiff's claimed respiratory problems related to what 6 they claim to be mold associated with your defendant 7 that you are working for -- your company that you are 8 working for -- where you authored a report that said 9 that those exposures to mold were not sufficient to be a 10 contributory factor to their claimed illnesses? 11 A Well, so first off, that wasn't your question. 12 You asked specifically about testimony. 13 But with regard to this question, that's not 14 how -- you know, there is no such thing as a -- there is 15 no dose. I mean if the person legitimately got exposed 16 to mold, we would have to look to see what mold it was 17 and whether -- you know, what was going on and how it -- 18 how the case is. 19 But there is not like a dose of mold. I mean, 20 it's -- so it's just -- it's a nonsensical question to 21 this particular scenario. So, no. I have not testified 22 to that particular issue like that because it's not part 23 of how -- how the science works for this. 24 Q When was the last time that you have authored 25 a report or testified? So there is a report or	Page 189 1 BY MR. MASSENBURG: 2 Q I can put up what I think it is. I think it's 3 Exhibit 3 Is that the same one? 4 A What is your -- what does it start with? 5 Q 3-14-17 deposition in the Cleveland Wilson 6 versus 3M case. 7 A Yeah. No. I have got a -- it's a little bit 8 more -- 9 So let me just E-mail this to Ms. Dean. 10 Q Okay. 11 A And -- okay. 12 Q I heard it go out. That was pretty neat. Was 13 that AOL you are using or something? 14 A No. 15 Q I thought it was funny. 16 A Okay. So let me look to see if I recognize 17 anything that has to do with mold. 18 Q Yes, sir. Please, and thank you. 19 Dr. Haber, could you walk and chew gum at the 20 same time? 21 A No. 22 Q Me neither. I won't ask you any questions 23 then while you are doing that. 24 MS. DEAN: I have put in the chat what he just sent 25 me and labeled it as Exhibit 9 so it would be easy to

Page 190 1 reference for the court reporter and others. 2 MR. MASSENBURG: Thank you, Jessica. 3 MS. DEAN: I also have in chat Exhibit 7 which was 4 the invoices requested. I have stated this in other 5 depositions, but if anybody wants updated ones, as long 6 as you E-mail me, I can send you updates as they come 7 in. But that's what we have to date. 8 THE WITNESS: As far as I can tell, there is 9 nothing related to mold in any of this testimony. It's 10 been quite some time, I think as far as testimony is 11 concerned. 12 BY MR. MASSENBURG: 13 Q Okay. As far as reports that you have 14 authored related to mold, those are within pre-Covid but 15 within the last couple of years; is that fair? 16 A No. 17 Q That's what you said. You said it was the 18 last couple years, pre-Covid? 19 A Okay. Well -- 20 MS. DEAN: Objection; form. 21 THE WITNESS: I think I said that it was definitely 22 before Covid. I don't think I said it was just 23 within -- and the way you said pre-Covid within the last 24 few years. 25 So no, I would say somewhere between two to	Page 192 1 somewhere in the range of two to six years. I don't 2 want to say, okay, it was two years because then you go, 3 wow, where is the report from two years ago? 4 So, no -- 5 Q That's exactly what I am asking. 6 A Well, I don't know. I don't even know who it 7 was that it was for, if there was even a report. It may 8 have been -- lots of times the defendants don't even 9 want a report. They just want an opinion over the 10 phone. 11 But as far as my involvement in mold, my 12 recollection is, is it was somewhere between pre-Covid 13 going back about four or five years, whatever that math 14 ends up being. 15 Q Let me make it easy for you, Dr. Haber. Have 16 you authored a report for a lawyer in Baton Rouge, 17 Louisiana, in the last three years, related to mold? 18 A I don't know. 19 Q How about in the last four years? 20 A In Baton Rouge? 21 Q How about just Louisiana, have you authored a 22 report on mold as an expert in the state of Louisiana in 23 the last five years? 24 A Don't know. I don't know who -- what attorney 25 it is that you are talking about. I can't say that I
Page 191 1 six years. But in my career that's beyond the 30 years. 2 It's probably in that timeframe. I don't know. It's 3 not a very common issue currently. 4 BY MR. MASSENBURG: 5 Q Okay. So without -- not having a live record 6 from Sandy, without burdening Sandy to give the 7 testimony you just gave before we were looking through 8 the testimony list marked as Exhibit 9 to this 9 deposition, if it's two to six years, would you agree 10 with me that you have authored reports in the last four 11 years related to mold litigation that you were 12 consulting in? 13 A Possibly between the last four to -- if we are 14 talking about two to six years pre-Covid and we are 15 already basically at year two, so somewhere between four 16 and ten years ago. 17 Q So now it's four to ten years ago is the 18 last -- 19 A It's not now, sir. That's kind of being a 20 little bit -- I don't know -- abusive. 21 I said previously that it was more than -- it 22 was pre-Covid for sure. Then I said it's somewhere 23 between -- the case is somewhere -- we are just going 24 based on my total Gestalt on this because you are just 25 asking for reports to an attorney. I am saying it's	Page 193 1 have or haven't. 2 Q Okay. When you consult -- you mentioned 3 smoke. When you consult in smoke litigation is that 4 smoking litigation or is that related to carbon monoxide 5 inhalation or injury from smoke? 6 A Right. Fire or smoke inhalation, it's not 7 cigarette smoke. I have never been involved in any of 8 the -- I mean obviously a lot of cases involve cigarette 9 smoke with asbestos. So to the extent that there is 10 synergy and discussion with -- as far as the 11 relationship of asbestos and tobacco, but solely 12 tobacco, no. 13 Q Have you -- when you are talking about smoke 14 inhalation and carbon monoxide injury related to smoke 15 inhalation, that's consultation and litigation; is that 16 right? 17 A Yes. 18 Q And so that means a lawsuit has been filed 19 because a person claims injury related to carbon 20 monoxide and smoke inhalation; is that right? 21 A I don't know if that's right or not. 22 Q Well, the cases that you consult in and 23 testify and consult in for smoke inhalation and carbon 24 monoxide poisoning, what are they about? What is your 25 role?

Page 194 1 MS. DEAN: Objection; form. Compound. Overly 2 broad. Relevance. 3 THE WITNESS: It depends on what the case is. I 4 mean sometimes I am asked to just look at somebody to 5 let them know whether or not -- you know, do an 6 independent medical evaluation or do pulmonary function 7 testing. Maybe I am asked to review records. 8 It may not be there is a lawsuit at all. This 9 may be something that is -- you know, in my experience I 10 have had cases where, you know, I am asked to review 11 things before any lawsuit has been filed. 12 So, no, I don't necessarily agree that it was 13 always after a lawsuit has been filed. 14 BY MR. MASSENBURG: 15 Q I didn't -- I didn't mean it after -- 16 necessarily it's always after a lawsuit has been filed. 17 But in those instances in which a lawsuit has been 18 filed, you have been hired as an expert for companies in 19 response to lawsuits that have been filed related to 20 smoke inhalation and carbon monoxide poisoning; am I 21 correct? 22 A Yes. 23 Q And in those instances what is your role? 24 A It depends upon what the case is. I mean 25 it --	Page 196 1 and a pulmonary function test and other tests on the 2 individual plaintiffs that have been filed -- had filed 3 that lawsuit against the defendant you were working for; 4 is that fair? 5 A I might. 6 Q Okay. And in those instances as you authored 7 reports following the examination of those plaintiffs; 8 correct? 9 A I might. 10 Q Are there any circumstances in litigation 11 where a lawsuit has been filed and you have been 12 retained by a defendant company in relation to that 13 litigation alleging injury from smoke inhalation and 14 carbon monoxide poisoning, where after you examined the 15 plaintiff you would not have authored a report? 16 MS. DEAN: Objection; form. Compound. Overly 17 broad. 18 THE WITNESS: I am not sure. 19 BY MR. MASSENBURG: 20 Q So when you do author a report in that regard, 21 is that a report you would turn over to your client at 22 that point? 23 A Well, it wouldn't be -- it's not my client. 24 But if an attorney asked me whether I am a consulting 25 expert or a -- or a testifying expert -- I have had
Page 195 1 Q You mentioned -- 2 A Let me just finish then. 3 It would be related to, you know -- generally 4 going to be related to a pulmonary opinion or pulmonary 5 evaluation or maybe both. It may be related to a 6 specific question that the attorney wants answered. I 7 don't think there is any generality. There -- it just 8 depends on the specific case. They are not -- not one 9 case that is going to be alike. 10 Q Absolutely. You mentioned an I.M.E. or an 11 independent medical exam, pulmonary function test. Is 12 that where you would see an individual plaintiff in your 13 offices and perform various tests to see what, if any, 14 injuries they may have related to smoke inhalation, 15 carbon monoxide poisoning? 16 A It might be or it might not be a plaintiff. 17 But it might be an individual who is not a plaintiff. 18 Q Okay. I am talking about -- I'm limiting my 19 questions to when you were acting as an expert for a 20 company, for a defendant company in litigation where a 21 lawsuit had been filed related to smoke inhalation and 22 carbon monoxide poisoning. 23 In those instances, Dr. Haber, you would be 24 performing -- in some cases at least, you would be 25 performing an independent medical exam or medical exam	Page 197 1 times where lawyers have asked for a report. I have had 2 times where they haven't asked for a report. But if 3 they ask for a report, I will provide the attorney a 4 report. 5 I don't send it -- I don't usually send it to 6 the -- to the company. I will send it to the attorney 7 who asked me to review the case. 8 Q The attorney that represents the company; 9 fair? 10 A Um, or the attorney that contacted me on 11 behalf of that -- I am not sure whether they represent 12 or who -- or whatever. I wouldn't have no idea what 13 their representation is or relationship is, but 14 obviously they are contacting me on behalf of somebody. 15 Q Well, when I was asking you these questions 16 about the areas of litigation you have testified and 17 been a consulting expert and a testifying expert on 18 behalf of defendants. You listed asbestos, smoke, 19 carbon monoxide, aluminum (sic), bauxite, chlorine, 20 ammonia, ozone, medical malpractice, sleep apnea and 21 mold. 22 Are those accurate? 23 MS. DEAN: Objection. Asked and answered. 24 Dinosaur. 25 THE WITNESS: Yes.

Page 198 1 BY MR. MASSENBURG: 2 Q Okay. 3 A (Inaudible.) 4 Q Yes, sir. 5 THE COURT REPORTER: I didn't -- I didn't hear the 6 answer. 7 THE WITNESS: I said as far as I can remember. 8 BY MR. MASSENBURG: 9 Q So, Dr. Haber, I am talking to you about the 10 times where you have been retained by a defendant 11 company in litigation where a lawsuit was pending 12 relating to smoke inhalation and carbon monoxide 13 poisoning from an individual plaintiff where you 14 performed an examination, including a pulmonary function 15 test and other tests on that individual and authored a 16 report for the lawyer on behalf of the company that 17 retained your services. 18 Are we clear on that part? 19 A Well, I am clear with your scenario. I am not 20 clear that that scenario actually happened in that 21 particular -- I mean -- 22 I can't tell you -- I have done IME's and I 23 have never said specifically what specific reason I have 24 done IME's for. So I don't know if it's -- that has -- 25 that scenario, with regard to carbon monoxide, has ever	Page 200 1 MR. MASSENBURG: Well, I'm sorry, but I have never 2 talked to Dr. Haber before as far as all of these areas 3 that he has testified on behalf of defendants in 4 litigation. And I am trying to seek clarification on 5 that. 6 How Dr. Haber answers the questions is up to 7 Dr. Haber. I am entitled to answers to my questions. 8 BY MR. MASSENBURG: 9 Q So Dr. Haber, let me ask you, have you been 10 retained by a defendant company in litigation related to 11 smoke and carbon monoxide poisoning? 12 MS. DEAN: Same objections. Vague and confusing. 13 Compound, overbroad, enumerated on a number of cases. 14 THE WITNESS: I believe so. 15 BY MR. MASSENBURG: 16 Q Okay. And although you were retained by a 17 company -- a defendant company in that litigation -- it 18 was a lawyer that contacted you on behalf of that 19 company; is that fair? 20 A I don't have an independent recollection of 21 that. 22 Q Did the company retain you directly or did a 23 lawyer for the company retain you -- 24 MS. DEAN: Asked and answered. 25 ///
Page 199 1 occurred -- 2 MS. DEAN: Let me -- I didn't get my objection in. 3 But let me object as vague and confusing if 4 various criteria is met with any prior case. And if you 5 don't know, you don't know. 6 MR. MASSENBURG: Well, Ms. Dean, please don't 7 instruct the witness on what to answer. 8 MS. DEAN: He already answered. 9 MR. MASSENBURG: I respectfully disagree as far as 10 I am trying to narrow it down where I am at as far as 11 the scope of the questions. I think Dr. Haber has just 12 elucidated another area. So I want to make sure I am 13 clear on that. 14 All I am asking -- obviously you have to do 15 more than objection to form, Ms. Dean, in California, as 16 you know. But please don't instruct him to say "I don't 17 know." 18 THE WITNESS: She didn't instruct me. I answered 19 the question before she even objected. 20 MS. DEAN: And I will note that asking six random 21 criterias if they fit some unknown set of cases in the 22 past is borderline harassing and where there are a lot 23 of people on the phone that haven't even asked 24 questions, I am very concerned with the use of time 25 right now.	Page 201 1 BY MR. MASSENBURG: 2 Q -- in relation to smoke inhalation and carbon 3 monoxide poisoning litigation? 4 MS. DEAN: Same objection. 5 THE WITNESS: I don't have any independent 6 recollection of who or when or what case. It's just in 7 the back of my mind a recollection. I have no idea when 8 that was or who it was for or what case it was for. 9 BY MR. MASSENBURG: 10 Q When is the last time you recall consulting or 11 appearing as an expert in any form or fashion for a 12 defendant in litigation related to smoke inhalation and 13 carbon monoxide poisoning? 14 A I -- 15 MS. DEAN: I didn't hear. I could tell by your 16 gestures, but I couldn't hear it. 17 THE WITNESS: I said "I don't know." 18 MS. DEAN: Okay. Sorry to interrupt. 19 BY MR. MASSENBURG: 20 Q Do you know whether it's even in the last 21 decade? 22 A I would believe so, but I don't know. 23 Q Okay. Same question as to aluminum (sic) 24 litigation. Is it your testimony, as I appreciate it, 25 that you have testified or been retained as an expert by

Page 202 1 a defendant in aluminum-related litigation. Did I 2 understand you correctly? 3 A No. 4 Q Oh, in what context had you testified or 5 consulted as an expert in aluminum-related exposure 6 cases? 7 A I just finished saying that you are saying -- 8 no. You did not understand me correctly. I said 9 alumina, not aluminum. 10 Q What is the difference? 11 A I am not a mineralogist, but they are 12 different. 13 Q Okay. 14 A You make aluminum partly out of bauxite and 15 alumina and other substances. But it's not aluminum, 16 it's alumina. 17 Q Okay. You have testified on behalf of 18 defendant companies in alumina-related litigation. Did 19 I understand you correctly? 20 A Well, I am -- I am -- I don't remember if I 21 ever had to testify but I have been -- I have been an 22 expert in relation to alumina. 23 Q Is that the same cases where you also were 24 involved also involved bauxite? 25 A No. But -- but it was in a different	Page 204 1 THE WITNESS: Well, there is -- there is -- there 2 is a number of issues that I have been retained in these 3 cases to discuss. 4 Whether or not there is pneumoconiosis 5 present, the methodology of the testing, but I believe 6 they do have other experts as far as dose is concerned. 7 But my issue has been primarily looking at methodology 8 and looking at the -- at the medical records and the 9 testing of individuals and my evaluation of -- of the 10 plaintiffs. 11 BY MR. MASSENBURG: 12 Q The methodology of the experts that have 13 tested the plaintiffs and claim they do have 14 pneumoconiosis related to alumina or bauxite exposure; 15 correct? 16 A Right or -- or other dusts. Yes. 17 Q And you evaluate the methodologies used by 18 those experts and in your reports for the defendant 19 companies in those cases come to the conclusion that 20 those individuals do not have the pneumoconiosis claimed 21 by the plaintiff's medical experts in those cases; 22 correct? 23 A Well, no. My evaluation of the methodology 24 would have nothing to do with that. But my evaluation 25 of the plaintiff would be what -- and their medical
Page 203 1 timeframe. 2 Q Have you authored reports as an expert for a 3 defendant company in relation to alumina litigation? 4 A Yes. 5 Q Same question as to bauxite? 6 A Yes. 7 Q How long ago since you last authored a report 8 for a defendant company in litigation related to 9 alumina? 10 A The last report would have been either last 11 year or this year. It's been within that timeframe. 12 Q Same as to bauxite? 13 A Yes. 14 Q And what are the allegations in alumina or 15 bauxite litigation for the cases that you have consulted 16 in as an expert and authored reports for defendant 17 companies? 18 A Pneumoconiosis. 19 Q In those instances which you offered a report 20 for defendant companies in alumina or bauxite 21 litigation, is it your opinion that the exposures in 22 question at issue in those cases were not sufficient to 23 cause pneumoconiosis at issue with the plaintiffs? 24 MS. DEAN: Objection; form. Compound. Vague. 25 Confusing.	Page 205 1 records and their X-rays would be what allows me to 2 determine whether or not they do or don't have 3 pneumoconiosis. 4 Q And -- those instances which you have authored 5 reports for the defendant companies you have worked for 6 and the litigation related to alumina or bauxite 7 exposures, after evaluating the methodologies of the 8 experts, the medical records, and the X-rays, and in 9 some cases at least the individuals, themselves, it's 10 your opinion that the plaintiff's medical experts are 11 incorrect and their pneumoconiosis either doesn't exist 12 or is not related to the bauxite or alumina exposure 13 from the defendant you represent; correct? 14 MS. DEAN: Same objections. Compound. 15 THE WITNESS: Well, it depends on the case. If -- 16 if the case does -- the person does have evidence of 17 lung disease, then I will let them know. If -- if the 18 case -- I don't find evidence and the CAT scans are 19 negative, then, you know -- and their PFTs are normal, 20 then I will tell the attorney that that's the case. It 21 just depends on the individual. 22 BY MR. MASSENBURG: 23 Q Have you ever authored a report for a 24 defendant that hired you in alumina litigation where you 25 said the person did have pneumoconiosis and that

Page 206 1 pneumoconiosis was related to the alumina for which your 2 client was alleged to be responsible? 3 A I don't know. 4 Q Same question as to bauxite. 5 A Right. Again, I don't have any -- these 6 are -- you know, there is -- there is no way for me to 7 remember every single case that I have ever seen and 8 what my opinions are on an individual. So it's just -- 9 I can't tell you that. I just don't know. 10 Q As you sit here today, can you recall even one 11 report in which you authored that said the client that 12 hired you in the alumina-related litigation was 13 responsible for, in any way, that individual's disease? 14 MS. DEAN: Objection. 15 THE WITNESS: Again, I -- as far as that -- those 16 series of cases, no. 17 I know for asbestos I have absolutely done 18 that for defendants and told them, you know, "there is 19 disease here." But I am not sure if that has happened 20 with you know, with -- whether it was a mixed dust 21 pneumoconiosis. I don't recall. 22 BY MR. MASSENBURG: 23 Q What companies have you authored reports for 24 in alumina-related litigation? 25 A Glencore. Martin Murietta. There were some	Page 208 1 me that if it's over and they tell me not to, you know, 2 maintain records, then I won't. So I can't tell you 3 yes. 4 Q I would ask you, Dr. Haber -- at least right 5 now -- that from today's date at least, please do not 6 discard or delete any expert reports that you have 7 prepared on behalf of Glencore or Martin Murietta as it 8 relates to alumina or bauxite litigation that you have 9 worked with them on. I am just making that request on 10 the record and to you professionally. 11 A Well, I would have to -- I would have to 12 discuss that with the attorneys whether that's something 13 that they are fine with. But I understand your request. 14 Q Same question as to chlorine litigation. Who 15 have you consulted with -- what defendant companies have 16 you consulted with in chlorine litigation? 17 A That was -- that was one of the railroads. I 18 don't recall. 19 Q Were these employees of the railroads that 20 were plaintiffs in the case or was it personal injury 21 cases that were related to chlorine exposures? 22 A The latter, I believe. 23 Q And your work was on behalf of the railroads? 24 A Yes. 25 Q What railroads?
Page 207 1 other ones too. I don't recall. 2 Q For either Glencore or Martin Murietta, you 3 maintain those reports that you have authored for them 4 in the litigation related to alumina, were those reports 5 that were something that was produced in the case and 6 that you ultimately testified about? 7 A I don't think I have given any testimony. 8 Q Okay. Do you know whether those reports were 9 disclosed to the other parties in those cases for which 10 you worked for Glencore or Martin Murietta? 11 MS. DEAN: Objection; form. Compound. 12 THE WITNESS: No. 13 BY MR. MASSENBURG: 14 Q What about for bauxite, what companies have 15 you been retained by? 16 A It's the same -- this is -- this is all out of 17 the Alcoa -- well, it's changed names a bunch of names. 18 But out in St. Croix in the Virgin Islands. 19 It's just a number of different dusts that -- 20 Q Got it. 21 Do you maintain reports that you draft for 22 defendants Glencore and Martin Murietta in the regular 23 course of your business? 24 A I don't know the answer to that. It just 25 depends on whether the case is something that they tell	Page 209 1 A The railroad. I said -- I already said I 2 don't recall. 3 Q Okay. When is the last time that you did any 4 work related to chlorine exposure for the railroad 5 company that was a defendant? 6 A Probably over 10 or 15 years ago. 7 Q Was this a group of people of individuals that 8 were making claims or was it separate rail -- same 9 railroad but separate locations all over the country? 10 A I am sorry. What are my two options? 11 Q Well, it's any option. Where was -- where was 12 this litigation based? 13 A I think it was Texas. 14 Q Was it all the same location? 15 A Well, in Texas, if that's what you mean. 16 Q Okay. It's a big state. Do you agree? 17 A What is your point, sir? 18 Q My point is: I am asking you where the 19 litigation was based. You are saying it's in Texas. I 20 am asking you -- 21 A Correct. 22 Q -- if the railroad at issue -- which you don't 23 recall the name of -- were all of the exposures to 24 chlorine of these personal injury actions out of the 25 same location in Texas, Doctor? Do you understand that?

Page 210 1 MS. DEAN: Dinosaur. I would like a video clip if 2 the videographer can note the time so I can get the last 3 15 seconds. That would be appreciated. 4 MR. MASSENBURG: We'll have to video a lot of this. 5 I will ask the same thing from the videographer. 6 THE WITNESS: The location -- my recollection is -- 7 is that the location was all within Texas. I don't 8 recall where within Texas. And the plaintiffs would 9 have been somewhere within the vicinity of the incident 10 which I don't recall where it was in Texas. 11 BY MR. MASSENBURG: 12 Q Do you recall geographically whether it was 13 northeast Texas, was it west Texas? Was it southeast 14 Texas, like Houston area? Austin? 15 A Well -- 16 Q Dallas? Tyler? 17 MS. DEAN: Asked and answered. 18 THE WITNESS: I have already said -- I think three 19 times -- I don't remember where in Texas the incident 20 occurred. 21 BY MR. MASSENBURG: 22 Q Understood. 23 Were those cases also related to the ammonia 24 cases for which you did expert work on behalf of 25 defendants?	Page 212 1 A Come on. 2 Q -- do you recall the name? 3 A That -- sir, now you are kind of getting a 4 little bit ridiculous. But, no. 5 MS. DEAN: Dr. Haber -- 6 THE WITNESS: Yes. 7 MS. DEAN: -- if he doesn't want you to look and he 8 doesn't want to get full information, that's his choice. 9 Just follow -- 10 You answered the question he asked. He gets 11 to choose what he asked and what he does with his time. 12 THE WITNESS: Without looking back, no, I can't 13 tell you off the top of my head. 14 BY MR. MASSENBURG: 15 Q That is what I wanted, Dr. Haber. It's not if 16 you look and read a list because you remember a name but 17 particularly if you -- without looking and having any 18 names given to you, can you remember the name? Thank 19 you for answering that question. 20 Same question as to the mold litigation. 21 A Actually, I do have -- I do remember one name 22 in asbestos, actually. 23 Q Okay. 24 A Warboys. 25 Q Okay. The Warboys case, is that on the list,
Page 211 1 A No. 2 Q Or was it different? 3 A That's different. 4 Q Okay. So do you recall how long the 5 litigation that you did for the railroad in Texas, 6 related to the chlorine exposure, about how long that 7 litigation lasted? 8 A No. 9 Q Do you recall the name of any of the 10 plaintiffs? 11 A No. 12 Q Do you recall the name of any of the 13 plaintiffs in the alumina, bauxite or carbon monoxide 14 cases? 15 A No. 16 Q Do you recall the names of any of the 17 plaintiffs in any of the asbestos cases for which you 18 have consulted? 19 MS. DEAN: Sorry. 20 BY MR. MASSENBURG: 21 Q Dr. Haber, without looking obviously -- 22 A No. I was looking at my -- what we have 23 already marked as an exhibit. Am I not allowed to look 24 at an exhibit? 25 Q I am asking without looking at any exhibits --	Page 213 1 Exhibit 9? 2 A Which is Exhibit 9? The testimony list? 3 MS. DEAN: It is. 4 THE WITNESS: If it was within the last four years, 5 it would be. 6 BY MR. MASSENBURG: 7 Q Okay. What do you remember about the Warboys 8 case? 9 A It was a woman who had alleged -- I don't 10 remember if it was asbestos-related pleural disease or 11 asbestosis. I don't recall. 12 Q Okay. 13 A -- related disease, non-malignant. 14 Q When was that? 15 A Again, I don't recall without being allowed to 16 look whether it was within the past four years or not. 17 Q Okay. What about mold litigation, do you 18 remember any names of any plaintiffs that were involved 19 in any of the litigation you worked for defendant 20 companies in in mold litigation? 21 A No. That would be way too -- way too long ago 22 and way too infrequent. 23 Q What about any of the plaintiffs in the 24 medical malpractice cases for which you consulted for 25 defendants?

Page 214 1 A I remember the doctor. I am trying to think 2 of the plaintiff. 3 No. Not coming to me. 4 Q Sleep apnea cases? 5 A I can't remember the -- hold on. It's almost 6 on the tip of my tongue. I do remember one of the 7 malpractice cases was Sellers. But the sleep apnea, I 8 can't recall. It might pop back in my brain. 9 Q Okay. What was the Sellers case about? 10 A Complications after a surgery, I believe -- my 11 recollection. 12 Q Do you recall what kind of surgery? 13 A No. 14 Q Do you remember approximately when the 15 Sellers' plaintiff's case was that you were dealing 16 with? 17 A Past couple of years. 18 Q Okay. All right. What about the ozone cases, 19 what defendants or defendant company did you work for -- 20 were you retained by in the ozone-related litigation? 21 A That was -- um -- I forget the name of the 22 attorney but -- I forget the name of the company, but 23 they made an ozonator which was some sort of equipment 24 to reduce odors. 25 Q And was --	Page 216 1 A No. 2 Q Dr. Haber, in the short -- I understand we 3 have to stop at 5:00 your time and 8:00 my time; is that 4 correct? 5 A Well, I don't know because it's 7:00 my time. 6 Q Oh, good. Can we go to 8:00 your time or is 7 it 8:00 Pacific time? I thought I had a note that we 8 had to end at 8:00 my time and 5:00 Pacific time? 9 MS. DEAN: I had stated in the beginning that my 10 understanding is that he can go to 5:00 or 5:30 Pacific, 11 which is 7:00 or 7:30 his time. 12 MS. DEAN: Okay. 13 BY MR. MASSENBURG: 14 Q Okay. Is that still the case, Dr. Haber? 15 A Yes. 16 Q Looking at your declaration -- I represent 17 Chanel in this case -- is it correct that the only 18 document you have specific to Chanel testing is the 19 declaration of Dr. Longo from another case dated August 20 of 2020? 21 MS. DEAN: Objection; form. Vague as to the 22 meaning of "specific." Overly broad. 23 THE WITNESS: So I am looking here that -- the 24 answer I guess would be no. That's not the only 25 document.
Page 215 1 A I don't recall. 2 Q Was it, like, an air purifier type of 3 situation or was it something bigger in an industrial 4 setting? 5 A No. This was a small home unit, but I 6 don't -- it was ozone not an air purifier. But I don't 7 recall the name of the -- of the company. But that case 8 is still chugging along. It's not -- it's not over. 9 Q Okay. Have you authored any report in that 10 case? 11 A I don't think so. 12 Q Just one case? 13 A As far as ozone I think that is correct. 14 Q What about the ammonia litigation, what 15 defendant company or companies did you work for or were 16 you retained by related to ammonia exposures? 17 MS. DEAN: Objection; asked and answered. 18 THE WITNESS: I don't remember. 19 BY MR. MASSENBURG: 20 Q I don't know if I asked you, but as far as the 21 carbon monoxide, smoke inhalation, do you recall the 22 names of any of those companies that you worked for -- 23 MS. DEAN: Same objection. 24 BY MR. MASSENBURG: 25 Q -- or were you retained by?	Page 217 1 /// 2 BY MR. MASSENBURG: 3 Q Okay. What testing of a Chanel-specific 4 product do you have? 5 A Well, that -- as far as a Chanel-specific 6 product, that would be it. But as far as related, in my 7 opinion, to Chanel is related to Italian and Australian 8 and Chinese talc, as I explained in my declaration and I 9 explained, I think, earlier today my methodology. So 10 those -- to the extent that Ms. Moore had exposures to 11 Chanel products based on the time of use that used 12 Italian or Australian or Chinese talc, then the testing 13 on those talcs also help in forming my opinions. 14 Q Understood. I am sorry that I in-artfully 15 worded my original question. Let me make sure I am 16 clear. 17 The only Chanel-specific testing you are aware 18 of was provided to you by Ms. Dean's firm and it 19 consists solely of the affidavit or declaration of 20 Dr. William Longo dated August of 2020; is that correct? 21 MS. DEAN: Objection; form. 22 THE WITNESS: I don't -- 23 MS. DEAN: -- as to specific. 24 THE WITNESS: I am not sure what you mean by 25 specific. Again, my opinions, with regard to Chanel,

Page 218 1 are absolutely related to the talc source. So my 2 opinion regarding Chanel are going to be also contained 3 within the testing of that same source mine. 4 BY MR. MASSENBURG: 5 Q Okay. So I'm going to put the source mine -- 6 you agree Chanel is not a mine; right? 7 A Right. I agree. 8 Q Right? So you are talking about you have 9 opinions based on the testing of talc from the 10 Val Chison talc mine that went into Chanel products, as 11 you understand it, during the relevant time periods; is 12 that accurate? 13 A That's one of the -- 14 MS. DEAN: Objection. 15 THE WITNESS: -- one of the sources that I 16 mentioned. 17 BY MR. MASSENBURG: 18 Q Yeah. Okay. So now I want to talk about not 19 talc testing, not testing on another talc-containing 20 material that another manufacturer or retailer or 21 somebody else made or sold. I want to talk about 22 Chanel-specific -- Chanel product testing. Okay? 23 A So a specific -- when you are saying 24 "specific" you mean something that has a label of 25 Chanel?	Page 220 1 information regarding talc mines and testings and those 2 things are laid out in your declaration. 3 Let me make this very clear. I am asking you, 4 is it true that the only documents you have showing 5 testing on a Chanel product comes from -- solely comes 6 from the August 2020 affidavit of Dr. William Longo 7 which you cite to in your declaration? 8 MS. DEAN: Objection; asked and answered -- asked 9 and answered. Excuse me. 10 THE WITNESS: With that limitation, and not 11 including the other sources, yes. 12 BY MR. MASSENBURG: 13 Q Okay. You came into possession of that 14 August 2020 affidavit from Ms. Dean's law firm; correct? 15 A Probably. 16 Q Do you know of any other way you would have 17 gotten it? 18 A I don't recall. 19 Q Okay. It's true that you have not seen or 20 read any of the separate reports that are referenced in 21 that August 2020 affidavit of Dr. Longo; correct? 22 MS. DEAN: Objection; form. Compound. 23 THE WITNESS: I am not sure I can answer that. I 24 don't know off the top of my head. 25
Page 219 1 Q A Chanel product. That would include 2 something that had a label on it from Chanel. I guess 3 that's -- that's fair. 4 A All right. I understand the basis of your 5 question. What is your question? 6 Q Okay. My question is: Is it accurate that 7 the only thing you have in your possession that you have 8 seen specifically related to a Chanel product -- a 9 Chanel finished product -- is the declaration or 10 affidavit of Dr. William Longo that is dated August of 11 2020? 12 MS. DEAN: Objection; vague and confusing. The 13 context has been about testing, but the question is not. 14 THE WITNESS: If you are excluding all of the 15 information which I feel is entirely informative about 16 the sources and strictly excluding everything other than 17 the testing of a labeled final product, the answer is 18 that's the only other information I have. But it is not 19 all of the information that has been informative of my 20 opinions. 21 MR. MASSENBURG: Let me object to the nonresponsive 22 portion of the question and move to strike. 23 BY MR. MASSENBURG: 24 Q Dr. Haber, I am asking you -- I know you have 25 information about testing of other products, you have	Page 221 1 BY MR. MASSENBURG: 2 Q You didn't include them in any of your 3 reliance materials or documents produced to us in this 4 case. If you look on your computer now, Dr. Haber, can 5 you find those reports? Is there some way we can 6 determine whether you have any of those underlying 7 reports that are referenced in that August 2020 8 affidavit? 9 A I don't know what you are asking so I don't 10 know. 11 Q Well, I asked you if you have ever seen any of 12 those reports from Dr. Longo or MAS. You referenced an 13 affidavit, a declaration, that references or summarizes 14 a portion of those reports. I am asking if you have or 15 have reviewed any of those actual reports. 16 MS. DEAN: One, compound. Two, misstates the 17 evidence. And three, to some extent, asked and 18 answered. 19 BY MR. MASSENBURG: 20 Q Dr. Haber, are you reading anything? 21 A No. I am thinking in my brain here. I 22 don't -- I don't -- I just don't recall whether or not 23 that's the sole thing that I have seen or if I have seen 24 these other underlying reports. I don't remember. 25

Page 222 1 Q Do you remember looking at the August 2020 2 declaration or affidavit of Dr. Longo that you cite in 3 your declaration? 4 A No. I don't recall when I saw that last. 5 Q Do you recall ever seeing it? 6 A I am sure I have looked at it. I wouldn't 7 have cited from it, but I don't recall when that was. 8 Q I am not asking when at this point. I am just 9 asking if you actually looked at it. Did you look at 10 it? 11 A I am sure I did. 12 Q Okay. What about the reports, any one of them 13 that are referenced within that declaration, have you 14 ever seen any of those reports? 15 A I don't know. 16 Q Okay. So you do recall that you have seen the 17 declaration that you cite in your report -- I am 18 sorry -- you have seen the affidavit of Dr. Longo that 19 you cite in your declaration but you do not, as we sit 20 here today, recall if you have ever seen any of the 21 actual reports of Dr. Longo that he summarizes in that 22 affidavit; correct? 23 MS. DEAN: Let me first just object to this exactly 24 being asked and answered. And second, the last three 25 questions or so my objections have overlapped with the	Page 224 1 "As of August 2020 MAS had 2 reported on testing approximately 3 42 containers of Chanel talc 4 containing loose powder products, 5 finding asbestos in about 6 95 percent." 7 Did I read that correctly? 8 A Yes. 9 Q "Of those, from Italian or 10 Italian and Australian talc 11 sources, 90 percent had 12 asbestos." 13 Did I read that correctly? 14 A Talc source. 15 Q Right. 16 That comes from the declaration or affidavit 17 of Dr. Longo dated August 2020; correct, Dr. Haber? 18 A I don't recall. 19 Q Do you agree with me that everything you 20 looked at in order to form the basis of your opinions 21 against the various defendants was included in your 22 declaration? 23 MS. DEAN: Objection; form. Asked and answered. 24 Misstates testimony on this exact question. 25 THE WITNESS: No. There is lots of -- lots of
Page 223 1 answers and even before the answer is done the next 2 question is happening. 3 It's been a long day and I think for the 4 court reporter we need to make sure we are slowing down. 5 But asked and answered. 6 BY MR. MASSENBURG: 7 Q Okay. Did you get it? 8 A Yeah -- I may just be getting foggy brained 9 here. Maybe we need to -- I don't know -- I don't -- I 10 can't even recall specifically whether or not I can say 11 that that's a fair thing or not. 12 Without -- if you want to show me the document 13 and refresh my memory, but I have seen so many thousands 14 of documents related to asbestos and talc, there is no 15 way for me to remember them -- every single one to this 16 degree off the top of my head. I would have to look at 17 it. 18 Q Sure. I am showing you your declaration. Can 19 you see it? 20 A What page are you on? So I -- that's -- 21 Q It's paragraph 24. What is it, page 10? 22 A Okay. I am on page 24. 23 Q Not page 24. 24 A Paragraph 24. 25 Q Yeah.	Page 225 1 information that is not contained within this 2 declaration. I have already said that earlier today. 3 /// 4 BY MR. MASSENBURG: 5 Q Okay. What I am trying to find out is you 6 told me you definitely remember seeing the affidavit of 7 Dr. Longo dated August of 2020 and the summary table. 8 That's what you are referencing here in your report. 9 You told me you don't recall seeing any of the 10 underlining testing or that you don't know if you have 11 ever seen it. 12 Am I understanding you correctly? 13 MS. DEAN: It's been asked and answered three 14 times. 15 THE WITNESS: I do not remember, without looking at 16 the documents off the top of my head. I have seen 17 thousands of documents. I don't recall whether that is 18 true or not true. 19 BY MR. MASSENBURG: 20 Q Okay. Do you -- have you ever testified in a 21 case in which Dr. Longo was an expert witness in talc 22 litigation? 23 A I don't know if -- 24 MS. DEAN: Calls for speculation. 25 THE WITNESS: I don't know if that's -- if that's

Page 226 1 ever happened. 2 BY MR. MASSENBURG: 3 Q Okay. Do you know anything about the chain of 4 custody of any of the documents that were tested by MAS 5 that are referenced in paragraph 24 of your declaration? 6 A Not off the top of my head. 7 Q Do you know anything about the methodologies 8 utilized in any of the individual tests or reports that 9 are referenced in paragraph 24 of your declaration for 10 Chanel MAS testing? 11 MS. DEAN: Objection. Again he has asked several 12 times for the documentation. No, he doesn't have it. 13 Overly broad. 14 THE WITNESS: I -- I have seen examples of MAS 15 doing very sophisticated and state-of-the-art testing, 16 but on that particular affidavit or that declaration I 17 don't recall specific -- what testing that was 18 performed. 19 BY MR. MASSENBURG: 20 Q Do you -- you have no idea right now, as we 21 sit here, what methodologies were utilized by MAS in any 22 testing specific to Chanel; is that correct? 23 MS. DEAN: Objection. Same objections. Plus asked 24 and answered. 25 THE WITNESS: Not off the top of my head, without	Page 228 1 A So yeah, I mean Exhibit C is mine. There are 2 hundreds of references there. 3 MS. DEAN: Which is the answer he gave when we 4 started today. 5 BY MR. MASSENBURG: 6 Q Well, what I am trying to find out is -- you 7 supplied that to Ms. Dean. What I am trying to find out 8 is, can you search on your computer there and let me 9 know if you have anything on your computer related to 10 MAS testing of Chanel besides that August 2020 11 declaration, Dr. Haber? 12 MS. DEAN: Objection; form. 13 THE WITNESS: I don't know. 14 BY MR. MASSENBURG: 15 Q Okay. 16 A I mean I can look into it. 17 Q Please do. 18 A There are other sources that -- that I may not 19 have put it onto my computer that I -- if I had seen it. 20 So -- 21 Q I just want to know -- just if you can look on 22 your computer, that would be great. Thank you. 23 MS. DEAN: We have been going over an hour. While 24 he looks does anyone object to a ten-minute break? 25 MR. MASSENBURG: I do, because I have a question
Page 227 1 looking at the underlying report again. 2 BY MR. MASSENBURG: 3 Q Okay. The documents that Mr. Ameele was 4 asking you about, Ms. Dean's firm turned over to us 5 referenced materials that were cited by you in your 6 declaration and the attachments to your declaration the 7 reference materials that are cited by you. 8 A I am sorry. Could you start again, sir. I am 9 sorry. 10 Q Sure. Sure. 11 A This is long. 12 Q Did you provide, to Ms. Dean's firm, any of 13 the materials that are referenced and cited to 14 specifically in your declaration? 15 MS. DEAN: Objection; form. This is asked for 16 the -- asked and answered. Overly broad. Relates to 17 over 100 exhibits. 18 THE WITNESS: Yes. 19 MS. DEAN: Compound. 20 THE WITNESS: The -- as far as -- you're saying as 21 far as the exhibits are concerned? 22 BY MR. MASSENBURG: 23 Q The references that are attached footnoted. 24 A Yes. 25 Q Yes.	Page 229 1 pending. 2 MS. DEAN: So you want to stay on the record while 3 he is doing a search? 4 MR. MASSENBURG: I do. 5 MS. DEAN: Okay. 6 MR. MASSENBURG: Jessica, are you still there? 7 MS. DEAN: Yes. 8 MR. MASSENBURG: You disappeared. 9 MS. DEAN: I need to go to the bathroom. You won't 10 go off the record. Hopefully this is not too disturbing 11 to everyone else. 12 THE WITNESS: So is it okay for me to answer? 13 Or -- 14 MR. MASSENBURG: I think we might -- 15 MS. DEAN: Wait a second. 16 MR. MASSENBURG: Until Ms. Dean gets back -- 17 MS. DEAN: I haven't gone anywhere, but give me one 18 moment. 19 Okay. I am back. 20 BY MR. MASSENBURG: 21 Q Go ahead, Doctor. 22 A Okay. So yes, I have found the Longo 23 declaration and the data on what was -- which Chanel 24 products were tested and what the findings were. 25 Q Okay. Do you have -- in that finding do you

Page 230 1 have any of the full reports that are referenced -- the 2 data is the summary that you have; correct? 3 MS. DEAN: Objection; form. 4 THE WITNESS: So I have got -- for -- a number of, 5 like, 42 products. Where they came from, what the 6 source was, what the vintage was, the talc source -- 7 BY MR. MASSENBURG: 8 Q Yes. 9 A -- the asbestos by TEM, PLM, using the 10 I.S.O. or Blount. You know, whatever the testing was, I 11 have got all of those listed. And then I have got the 12 declaration which then provides his certified results of 13 that. 14 Q Okay. What you are talking about when you 15 have the 42 products, you are talking about a summary 16 table? 17 A Well, it's a chart. 18 Q The chart. Okay. Potato-potato. 19 You have a chart and you have a declaration or 20 an affidavit from Dr. Longo; is that right? 21 A Yes. 22 Q What are the total pages of that pdf you are 23 looking at, sir? 24 MS. DEAN: Objection; form. Confusing. 25	Page 232 1 additions so part of it is asked and answered, and it's 2 certainly compound. 3 THE WITNESS: So I have seen -- again, I think I 4 said this already here -- reports from MAS or Longo 5 discussing the technique of using the -- that they were 6 using including concentration method, et cetera. But 7 here what I have got on this -- what I managed to find, 8 I don't have anything else. 9 BY MR. MASSENBURG: 10 Q Okay. As far as any MAS testing of Chanel, 11 aside from the document you just described, the 12 declaration and the chart, you can't find any other 13 documents; correct? Chanel-specific MAS. 14 MS. DEAN: Objection; form. 15 THE WITNESS: Well, I don't -- I don't know if 16 that's true, but I am just looking -- this is what I 17 found right now. 18 BY MR. MASSENBURG: 19 Q Looking on your computer? 20 A That's what I found right now. 21 Q And you searched -- how did you search to find 22 what you are looking at right now? 23 A It -- it was actually under Longo, but I don't 24 know if that's the only way -- that's how I managed to 25 find it.
Page 231 1 BY MR. MASSENBURG: 2 Q If you are looking at a pdf, at the top in the 3 middle it will have a number of page you are on and a 4 slash and the total number of pages. Do you see that? 5 A No. It doesn't do that on mine. 6 Q Okay. 7 A I am having to count. 8 Q Oh, goodness. 9 A Twelve. 10 Q Twelve pages including his affidavit and the 11 chart? 12 A That's best of my count. Yes. 13 Q Okay. And you found that on your computer; is 14 that correct? 15 A Yes. 16 Q Okay. In looking, did you find any report 17 from MAS, or William Longo, specifically detailing all 18 of the tests done, images, chain of custody, testing 19 methodologies, how samples were prepared related to 20 anything contained in that summary chart? 21 MS. DEAN: I am going to object to that as being 22 compound to many of those things. It's already been 23 asked and answered. In other words, the testing method 24 used. 25 He explicitly discussed there has been no	Page 233 1 Q Okay. Have you seen the videos of -- video 2 testimony of Ms. Mae Moore or any of the fact witnesses 3 in this case? 4 MS. DEAN: Objection; form. 5 THE WITNESS: No. I have read the depositions. I 6 have not watched the videos. 7 BY MR. MASSENBURG: 8 Q Since the invoice that we have attached as 9 Exhibit 7 to the deposition has been issued -- and 10 that's through July of this year -- you have done 11 additional work in the Moore case; correct? 12 A Yes. 13 Q Approximately -- approximately, how many hours 14 specific to the Moore case have you spent reviewing 15 deposition testimony, if you know? 16 A I -- I don't -- I am not sure if that's -- 17 that wasn't inclusive of what has been -- what has been 18 billed. So I don't -- I don't know offhand how long I 19 spent reviewing the deposition testimony. 20 Q I respect that, Doctor. 21 So all I see on the invoice that is Exhibit 7 22 is medical record review. 23 A That's what it would look like. 24 Q Okay. So -- all right. It looks like -- it 25 looks like a total of six hours including telephone

Page 234 1 interview. You talked to Mr. Ameele about other 2 interviews or discussions you had with Ms. Dean. 3 This invoice is dated July 19. It's been 4 almost four months since then. Do you anticipate 5 sending another invoice to Ms. Dean's firm related to 6 your work, the recent time at least, in the Mae Moore 7 case? 8 MS. DEAN: Asked and answered. And I have stated 9 on the record when we received I would send them if 10 anyone asked. 11 THE WITNESS: So first off, the thing about the -- 12 the phone interview was not with Ms. Moore -- with 13 Ms. Dean, it was with Ms. Moore. I think you said it 14 was with Ms. Dean. 15 But, yeah. I would imagine at some point I 16 will send another invoice. 17 BY MR. MASSENBURG: 18 Q Okay. As typical in your medical-legal 19 practice how often do you invoice your clients? 20 MS. DEAN: Objection; form. 21 THE WITNESS: Well, I don't know what you mean by 22 "client," but if I have been asked to review a case for 23 an attorney sometimes -- you know, I have had times 24 where I am doing that every few months. It might be, 25 you know, every six months. I mean, it just depends on Page 235	Page 236 1 ten years. 2 BY MR. MASSENBURG: 3 Q The vast majority of mesothelioma have a 4 latency of exposure greater than 20 years from 5 diagnosis; correct? 6 A Well, the average is close to 50 years, so 7 there would be some that are 70 and some that are 30. 8 But yeah, I would think that in most studies you see 9 it's more than -- generally more than 20 years from 10 first exposure to diagnosis. 11 Q In paragraph 11 of your declaration on page 6, 12 Dr. Haber, it's the last paragraph of that block 13 numbered 11, you detail Ms. Moore's occupational history 14 and you -- I am focused on the last paragraph. I know 15 you set forth in the preceding paragraph: 16 "No construction work or 17 sandblasting or welding or 18 jack hammering, grinding, stone 19 cutting or masonry work, 20 smelting, mining, metal working, 21 electric work, pottery or ceramic 22 manufacturing, glass 23 manufacturing, cotton processing, 24 automotive work, drywall, sheet 25 rock or plastering, electronics Page 237
1 the case. 2 Sometimes I forget to invoice for a long time. 3 Sometimes I have had it where someone might provide a 4 retainer and then I don't invoice at all for -- until a 5 retainer needs to be replenished. 6 BY MR. MASSENBURG: 7 Q Do you agree that direct occupational 8 exposures to asbestos and indirect exposures, including 9 para-occupational exposures, can result in mesothelioma 10 under certain circumstances? 11 A Well, if by direct you mean that it is 12 asbestos coming from the person handling themselves and 13 asbestos-containing product and indirect meaning that 14 the asbestos is either because someone else nearby is 15 working with it or has brought it into the home, for 16 example, if that's your direct and indirect then, yes, I 17 do. Provided it's sufficient -- sufficient latency for 18 causation, yes. 19 Q And your latency for mesothelioma is at least 20 exposures that occurred greater than ten years before 21 diagnosis? 22 MS. DEAN: Objection; form. 23 THE WITNESS: That's a barebones minimum. 24 Typically mesothelioma occurs with a much, much, much 25 later latency. But a barebones would be -- would be at	1 manufacturing, foundry work, 2 professional farming, dye 3 manufacturing, rubber product 4 manufacturing, work as a barber, 5 work as an insulator pipefitter, 6 boilermaker, plumber, millwright 7 or machinist, demolition work, 8 work in a refinery, power plant 9 or paper mill, railroad work, 10 work as a butcher, offshore work 11 or work in the plastic or textile 12 industry." 13 Did you outline all of those in the second 14 paragraph under No. 11 on page 6 because those are all 15 areas in which occupational and para-occupational 16 exposure to asbestos has been shown to contribute to an 17 increased risk of mesothelioma? 18 A No. 19 MS. DEAN: Objection; form. Compound. Misleading. 20 BY MR. MASSENBURG: 21 Q Why did you outline all of those various areas 22 in which she has never done work? 23 A Well, I -- I do that basically for all of the 24 patients that I, you know, looking at for -- when I am 25 looking at an occupational history. Some of these are

Page 238 1 clearly relate -- might be relatable to asbestos 2 exposure. You know, insulated pipefitter, boilermaker, 3 obviously. 4 But some of them are related to other 5 exposures. For example, you know, cotton. You are 6 looking at, you know, asthma conditions or -- so there 7 may be, you know, other -- plastics, looking again 8 for -- you know, it can be cause for asthma. 9 Sandblasting can be related to silica exposure. 10 So there is -- there is other potentials. I 11 am just being thorough as far as when I get an 12 occupational history, I -- I generally will go through 13 and make sure because I have had many times where 14 someone tells me what they did and I go, "well, did you 15 ever do this?" 16 They are like, "oh. Yeah. I forgot, I did 17 that when I was 17. I did that for three summers." 18 "Oh, that's important." 19 So I always just go through a lot of different 20 occupations and/or occupational environments. 21 Q Would foundry work be included in an area in 22 which occupational and para-occupational exposure would 23 result in increased incidents of mesothelioma based upon 24 your review of the literature? 25 MS. DEAN: Objection. Incomplete hypothetical.	Page 240 1 worked at a foundry -- brake shoe foundry in Pine Bluff, 2 Arkansas while she lived at home? 3 MS. DEAN: Objection to compound. And also 4 misrepresenting to the doctor that she lived with her 5 grandfather. Directly contrary to the testimony. 6 THE WITNESS: Yeah. I was going to say that when I 7 took her history she -- she lived with her grandmother 8 and two aunts. 9 BY MR. MASSENBURG: 10 Q Okay. Do you -- do you know whether or not 11 any of her family members ever worked at a foundry 12 brake -- Standard Brake and Foundry in Pine Bluff, 13 Arkansas when she was a resident with that individual? 14 MS. DEAN: Same objections. 15 THE WITNESS: I am not sure what you mean by a 16 "resident." 17 When I asked her about the people where she 18 was -- when -- she was living with, I did not get any 19 history of -- that there was asbestos exposure from 20 someone that she was living with. 21 BY MR. MASSENBURG: 22 Q You talk about taking a detailed history which 23 is why you included a lot of these areas in your 24 paragraph 11. 25 How many patients have you diagnosed with
Page 239 1 Vague and compound. 2 THE WITNESS: Depending upon -- I mean generally 3 foundry work you are looking at silica related. 4 But depending on where they are in the foundry 5 there can be -- you know, it's a hot process. There 6 might be asbestos being used. So if someone was working 7 with an insulation product or -- or, you know, was 8 installing or removing insulation, depending on when 9 that occurred, yeah, I am sure there would probably be a 10 potential given the certain scenario. 11 BY MR. MASSENBURG: 12 Q What about a brake shoe foundry in the 1940s 13 or '50s? 14 A I am sorry. A what? 15 Q A brake shoe foundry. 16 A Okay. 17 MS. DEAN: Objection. Confusing. 18 THE WITNESS: I am not sure exactly what that is. 19 BY MR. MASSENBURG: 20 Q Okay. Have you ever heard of Standard Brake 21 and Foundry in Pine Bluff, Arkansas? 22 A Sounds familiar. 23 Q But are you familiar with whether or not 24 Ms. Moore ever had any of her family or relatives that 25 she lived with as a child, including her grandfather,	Page 241 1 mesothelioma in your career? 2 A Oh, I don't know. I am not sure I can hazard 3 a guess. 4 Q Is it in the tens or the hundreds? 5 A Probably be in the -- in the tens and under 6 100, I would think. 7 Q Is that still something for which you examined 8 or diagnosed patients today, mesothelioma? 9 A Yes. 10 Q Prior to 2018 when you took detailed exposure 11 histories of your patients that you diagnosed with 12 mesothelioma, did you ever ask about use of cosmetic 13 talcs? 14 MS. DEAN: Objection; form. 15 THE WITNESS: I am not sure if it was 2017, 2018 16 but prior to around that timeframe, I don't think so, 17 no. 18 BY MR. MASSENBURG: 19 Q Okay. And did you also have an intake form 20 when you would deal with patients you were determining 21 or diagnosing with a disease and specifically with 22 mesothelioma where they would outline various areas in 23 which they might have been exposed, directly or 24 indirectly, occupationally or para-occupationally or 25 even environmentally to asbestos?

Page 242 1 A No, I don't -- I have never used those. 2 Q That would have been all verbal; correct? 3 A Right. When I am taking a history I take it 4 directly myself. 5 Q Do you have a nurse that scribes for you 6 during those interviews or is that something that you 7 record and then put into your -- the summary? 8 A No. And I don't know what you mean. 9 Q You take the occupational and exposure history 10 yourself and you put that into a report? 11 A Well, or the medical record. I don't know 12 what you -- you know, but I don't know what you mean by 13 "record." That's why I was, like, trying to figure 14 out -- I mean I don't take a tape recorder and start 15 taping my patients. 16 But no, I will take the information and I put 17 it into the medical record. 18 Q Okay. Around the time that you started asking 19 about use of cosmetic talc, what prompted that change in 20 your practice? 21 MS. DEAN: Objection; form. 22 THE WITNESS: Well, around that time I remember 23 seeing some articles that were published from Reuters 24 about Johnson & Johnson. And I started seeing more 25 information -- I think it was -- I don't know if there	Page 244 1 lead, benzene, carbon, 2 tetrachloride, radiation, 3 benzene, or pesticides." 4 A Oops. I put benzene twice. Yes, I do see 5 that. 6 Q Double benzene. 7 Dr. Haber, are any of those minerals, besides 8 asbestos -- or those substances, I should say -- related 9 to mesothelioma? 10 A No. 11 Q Why did you outline no occupational exposures 12 to the various other substances in the last paragraph 13 under 11 on page 6 of your declaration if they had 14 nothing to do with -- 15 A Actually, I shouldn't say that. The answer is 16 yes. I am sorry. I amend my question -- my answer. 17 Q Radiation, was that the other one? 18 A Yes. 19 Q Radiation for treatment of cancer has been 20 shown to induce mesothelioma in the published and 21 peer-reviewed literature if sufficient latency is 22 present; is that correct? 23 A Well, it -- it depends on the amount of 24 radiation and the type of radiation. More modern 25 techniques, IMRT, et cetera, are not associated with
Page 243 1 was an editorial or an article from Dr. Eagleman and 2 maybe some other ones that I started seeing more and 3 more literature -- scientific literature coming out more 4 and more on the adverse effects of asbestos on health 5 and from inside of talc. 6 And then at around, you know, shortly 7 there-afterwards I -- I was approached by Ms. Dean. And 8 I have said, you know, before I am willing to -- to get 9 involved in this, I need to -- I need some data. And, 10 boy, did she give me data. 11 So I spent a long time looking at a lot of 12 data from testing of Johnson & Johnson and others. And 13 so that's all been kind of a work in progress since the 14 2017-2018 timeframe. 15 BY MR. MASSENBURG: 16 Q Dr. Haber, in the paragraph 11 again on page 17 6, the last paragraph under 11, you said -- referring to 18 Ms. Moore: 19 "She has had no known 20 occupational exposures to 21 asbestos, silica, beryllium 22 chromium, cadmium, nickel, 23 isocyanates --" 24 A Uh-huh. 25 Q "-- diesel exhaust fumes, arsenic, solvents,	Page 245 1 mesothelioma. But the older and heavier doses, 2 particularly to the cobalt radiation from the '30s and 3 '40s and '50s in some papers have been -- there is no 4 epidemiological studies to show -- because these are all 5 individual type of reports or there are a few case 6 series. But they have been suggested to -- to be a 7 source of mesothelioma depending on the dose and the 8 type and when it was. 9 Q Dr. Haber, I know we might be short on time. 10 I wanted to ask you, you don't -- you have not 11 performed -- I know you have analyzed some other 12 experts' dose or dose risk assessment, dose 13 calculations. But you have not performed an exposure 14 assessment or dose -- cumulative dose calculation for 15 Ms. Haber's (sic) use of cosmetic talc powder, have you? 16 MS. DEAN: I will object to form to the extent that 17 this was asked and answered and a qualitative assessment 18 given, specifically in relation to Avon's questions. 19 THE WITNESS: I also object that you said 20 "Ms. Haber's use." So if you are talking about -- 21 BY MR. MASSENBURG: 22 Q Ms. Moore's use is what I intended. Sorry 23 about that. 24 A Ms. Moore's use. 25 No, I am not aware of anyone having done a

Page 246 1 dose reconstruction and I did not perform a dose 2 reconstruction. 3 Q Based upon your review of the testimony and 4 documentation cited to in your declaration, are you able 5 to say whether or not Ms. Moore was exposed to asbestos 6 from any individual talc product at greater than three 7 fiber cc years? 8 MS. DEAN: Objection; form. Vague and confusing. 9 THE WITNESS: I -- I do not have -- I have not 10 prepared any sort of dose reconstruction. I have not -- 11 whether that's a total dose or to any specific 12 individual dose, either way, I have not prepared any 13 sort of dose reconstruction. 14 BY MR. MASSENBURG: 15 Q If we look at -- I don't want to step on 16 anybody else's toes. But as we look at paragraphs 23 -- 17 you looked at 24 related to Chanel. And look at 18 paragraph 25 and paragraph 26 is where I want to focus 19 my next few questions. 20 As it relates to Cashmere Bouquet in paragraph 21 23, you reference a June 2021 -- MAS reported on testing 22 approximately 91 containers. Do you see that sentence? 23 A Yes. 24 Q Similar to what I was asking you as to Chanel, 25 have you seen the actual reports from MAS related to	Page 247 1 that testing or just his declaration and chart? 2 A I don't remember. 3 Q Same question as to the Jean Nate in paragraph 4 25. You reference 15 historical Jean Nate cosmetic 5 powder products. Is that based on your review of the 6 actual reports or is that just a declaration that you 7 reviewed? 8 MS. DEAN: Objection; form. 9 THE WITNESS: Again, I don't recall and the -- I 10 would have to look through Exhibit B or Exhibit C. 11 BY MR. MASSENBURG: 12 Q Okay. Have you been involved in cases 13 involving asbestos exposure from insulation materials? 14 A I am sure I have. 15 Q As part of the work in those cases, have you 16 reviewed the published and unpublished data related to 17 exposures directly and as bystander to insulation work? 18 A I am sorry. The -- published and unpublished 19 data on -- 20 Q On exposure -- the ranges of exposure from 21 work with asbestos insulation either directly or as a 22 bystander. Not necessarily every single one. But have 23 you seen published and unpublished data in that regard? 24 A I don't know if I can -- if I can say "yes" or 25 "no." That's more of an industrial hygiene issue, but I
	Page 248 1 just don't know. 2 Q And an industrial hygienist would talk about 3 those exposures, but I think as you have outlined in 4 your declaration as an expert in medicine you rely on 5 other experts to formulate some of your opinions; 6 correct? 7 A Sure. I think that as a physician, physicians 8 rely on other physicians or other scientists to, you 9 know, on -- in areas that -- related to, you know, their 10 care of patients. And as far as an expert, yes, I think 11 the same way. 12 I would rely on, you know, the expertise of 13 others. But I still look at -- I don't ignore my own 14 understanding and take that information from other 15 experts and -- 16 MS. DEAN: Both because we have not -- 17 THE WITNESS: And -- 18 MS. DEAN: Sorry. I didn't mean to interrupt you, 19 Dr. Haber. Were you done? 20 THE WITNESS: I was just saying I would incorporate 21 the use of, you know, information from other experts. 22 MS. DEAN: We have gone for an hour and-a-half 23 without a break. It's after 7:30 and we have been 24 almost six hours on the record. And we have been here 25 for nearly seven hours with less than an hour of breaks.
	Page 249 1 So I think this is all we are going to do today. 2 THE WITNESS: Yeah. This is -- I am getting -- I 3 am kind of getting a little -- I need a break. 4 MS. DEAN: Sorry. I know I was supposed to stop 5 ten minutes ago. I lost track of time. I apologize. 6 THE VIDEOGRAPHER: So off the record? 7 MS. DEAN: Yeah, sorry. I forget -- 8 MR. MASSENBURG: Off the video record at least. 9 THE VIDEOGRAPHER: This ends the deposition of 10 Dr. Steven Haber on November 15th, 2021. We are off the 11 record at 5:39 p.m. 12 (Deposition adjourned at 5:39 p.m.) 13 14 15 16 17 18 19 20 21 22 23 24 25

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1 STATE OF CALIFORNIA) 2) ss. 3 COUNTY OF LOS ANGELES) 4 I, SANDRA D. DUBIN, Certified Shorthand Reporter, 5 No. 5535, do hereby certify: 6 I am the deposition officer who Stenographically 7 recorded the foregoing deposition; 8 Written notice pursuant to Code of Civil 9 Procedure, Section 2025.520, having been sent to the 10 deponent, the deponent: 11 12 () IN PERSON MADE THE CHANGES SET FORTH 13 IN THE FOREGOING TRANSCRIPT; 14 15 () APPROVED THE TRANSCRIPT BY SIGNING IT; 16 17 () FAILED OR REFUSED TO SIGN THE 18 TRANSCRIPT BY NOT SIGNING IT; 19 20 () BY SIGNED LETTER ATTACHED HERETO, MADE 21 THE CHANGES SET FORTH THEREIN AND 22 APPROVED, OR REFUSED TO APPROVE, THE 23 TRANSCRIPT; 24 25 () FAILED TO CONTACT THE DEPOSITION OFFICER WITHIN THE ALLOTTED TIME PERIOD. DATED: _____ _____ (DEPOSITION OFFICER)	1 STATE OF CALIFORNIA) 2)ss. 3 COUNTY OF LOS ANGELES) 4 I, SANDRA D. DUBIN, Certified Shorthand Reporter, 5 No. 5535, do hereby certify: 6 That prior to being examined, the witness 7 named in the foregoing deposition was by me duly sworn 8 to testify to the truth, the whole truth and nothing but 9 the truth; 10 That said deposition was taken down by me in 11 shorthand at the time and place therein named, and 12 thereafter reduced to print by means of computer-aided 13 transcription; and the same is a true, correct and 14 complete transcript of said proceedings. 15 I further certify that I am not interested 16 in the outcome of the action. 17 Witness my hand this Sunday, November 21, 18 2021. 19  20 21 SANDRA D. DUBIN 22 Certified Shorthand Reporter 23 in and for the State of California 24 License No. 5535 25 iDepo Reporters 323-393-3768 or 1-888-99-iDEPO
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1 DECLARATION UNDER PENALTY OF PERJURY 2 3 I, STEVEN HABER, M.D., do hereby certify under 4 penalty of perjury, that I have read the foregoing 5 transcript of my deposition taken on November 15, 2021; 6 that I have made such corrections as appear noted herein; 7 that my testimony as contained herein, as corrected, is 8 true and correct. 9 Dated this ____ day of _____ 10 2021 at _____, California. 11 12 _____ 13 STEVEN HABER, M.D. 14 15 16 17 18 19 20 21 22 23 24 25	1 Errata List 2 3 Page/Line From To 4 _____ 5 _____ 6 _____ 7 _____ 8 _____ 9 _____ 10 _____ 11 _____ 12 _____ 13 _____ 14 _____ 15 _____ 16 _____ 17 _____ 18 _____ 19 _____ 20 _____ 21 _____ 22 _____ 23 _____ 24 _____ 25 _____

EXHIBIT 12

Correspondence

ERRATUM: SMOOTH REFERENCE EQUATIONS FOR SLOW VITAL CAPACITY AND FLOW-VOLUME CURVE INDEXES

From the Authors:

Upon notification from a reader of our article (1), the authors have found three incorrect coefficients in Table 3, on page 901 entitled "Coefficients associated to the independent variables estimated for different regressions of eight lung function indices separately for the two sexes." The incorrect coefficients are those in the "Height-squared" row for "VC", "FEV₁", and "FVC" in males.

The published coefficients cause erroneous predicted values, as shown in the following example for a male 40 years of age whose height and weight are 180 cm and 75 kg, respectively:

	Published Incorrect Coefficient	Correct Coefficient
VC predicted, L	-8.32	5.60
FEV ₁ predicted, L	-10.10	4.24
FVC predicted, L	-7.01	5.53

We had not previously discovered the errors because we kept applying the reference equations by using the values directly derived from the output of the datafile, instead of those published.

We apologize for the mistake, which was not due to the printing procedures of the *American Journal of Respiratory and Critical Care Medicine*, but to an error in the transcription of the coefficients from the output of the datafile to the original submitted manuscript.

We include below the relevant part of Table 3, after correction. We think that it may be more useful for the readers rather than publishing only the correct coefficients by themselves.

FRANCESCO PISTELLI
Institute of Clinical Physiology
Pisa, Italy

1. Pistelli F, Bottai M, Viegi G, DiPede F, Carrozzi L, Baldacci S, Pedreschi M, Giuntini C. Smooth reference equations for slow vital capacity and flow-volume curve indexes. *Am J Respir Crit Care Med* 2000;161:899-905.

TABLE 3. COEFFICIENTS ASSOCIATED TO THE INDEPENDENT VARIABLES ESTIMATED FOR DIFFERENT REGRESSIONS OF EIGHT LUNG FUNCTION INDICES SEPARATELY FOR THE TWO SEXES

	VC	FEV ₁	FVC
Males			
Constant	12.11066	6.760398	11.70785
BMI	0.2394851	0.1879899	0.2819616
BMI-squared	-0.0043891	-0.0036597	-0.0054501
Height	-0.218829	-0.1368342	-0.2186871
Height-squared	0.000821	0.000548	0.0008324
Age	0.1927431	0.1459458	0.1659875
Spline ₁ (Age)	0.0011271	0.0010309	0.0011508
Spline ₂ (Age)	-0.0007911	-0.0007106	-0.0008498
(break-points)	(20, 25)	(19, 24)	(20, 24)
Normal 95th percentile, %	83	82	82
95% confidence interval	81-85	80-84	80-84

INCREASED MATRIX METALLOPROTEINASE (MMP)-9 IN THE AIRWAY AFTER ALLERGEN CHALLENGE

To the Editor:

In regard to the article by Kelly and colleagues (1) showing increased gelatinase B or matrix metalloproteinase (MMP)-9 levels and lack of its activation in airway after allergen challenge, we wish to point out the crucial role of timing in the collection of bronchoalveolar lavage fluid (BALF) when assessing

the degree of MMP-9 activation following allergen challenge studies. Increased levels and degree of activation of neutrophil-derived MMPs (MMP-8 and MMP-9) in particular in BALF have been shown to be associated with human and equine inflammatory lung diseases (2-4), and pathologically elevated levels of MMP activation may reflect the active phase of lung inflammation as well as the severity of the ongoing inflammatory response.

Kelly and colleagues (1) demonstrated that increased levels of MMP-9, eventually originating from degranulating activated neutrophils, was present in allergen-challenged airways mainly in latent form, as determined from BALF collected 5 min and 48 h after challenge. In our recent study, applying different and more frequent timing of BALF sample collection (0 h, 5 h, 24 h, and 48 h) we have demonstrated a significantly elevated degree of activation of MMP-9 when horses with heaves (organic dust-induced asthma) in disease remission were challenged with inhaled organic dusts and inhaled endotoxin. The significant activation of MMP-9 was evident especially in BALF collected at 5 h after challenge, and was accompanied by elevation of proMMP-9, whereas elevation of proMMP-9, but not activation of MMP-9, was still evident 48 h after challenge. Additionally we have demonstrated pathologically elevated and activated levels of both MMP-9 in BALF from steroid-naïve human asthmatic patients (median [range]; asthmatics: n = 10, pro-MMP-9 3.10 [1.04-9.18], active MMP-9 0.14 [0-3.73]; healthy controls: n = 10, pro-MMP-9 1.45 [0-2.52], active MMP-9 0 [0-0]) and MMP-8 in BALF collected from human bronchiectatic patients (2). In agreement with Kelly and co-workers (1) the functional significance of MMP-9 in BALF remains to be determined. Nonetheless, appropriate timing of BALF sampling in relation to allergen challenging evidences MMP-9 activation and permits investigation and identification of the potential pro-MMP-9 activators such as serine proteinases and/or reactive oxygen metabolites (5, 6). Furthermore, MMP-9 activation and its activators may prove to be useful tools to diagnose the active phase of inflammatory lung diseases.

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From the Authors:

We thank Dr. Maisi and colleagues for their comments concerning the kinetics of the presence of activated MMP-9 in the airway following broncho-

provocation. In our recently published study (1), we demonstrated increased bronchoalveolar lavage (BAL) fluid levels of MMP-9 48 h after airway allergen challenge. Our intent was not to determine the activation status of MMP-9; however, zymographic analysis suggested a predominance of the latent form. Dr. Maisi has kindly provided us with preprints of his submitted manuscripts (2–4). In these studies, he and his colleagues have shown increased BAL fluid levels of MMP-9, but not MMP-2 or MMP-14 in horses with “chronic obstructive pulmonary disease” compared with normal healthy animals (2). In another study, horses with “COPD” were given an inhalation challenge with moldy straw/hay dust or lipopolysaccharide (LPS) and BAL was performed at 5 h, 24 h, 4 d, 7 d, and 14 d after challenge (3). At 5 h after challenge, dust or LPS-challenged horses showed increased BAL fluid levels of the activated form of MMP-9. They also conducted studies in patients with bronchiectasis. Both pro and latent MMP-8 were detectable in BAL fluid (Western blot analysis) and immunoreactive MMP-8 (immunohistochemistry) in bronchial biopsies from these patients. Studies of asthmatics were not included in this report. It should be emphasized that the studies by Maisi differ from ours in a number of key aspects. First, our study was conducted in atopic humans challenged with allergen, their study in bronchiectasis patients or in horses challenged with hay dust or LPS. Second, our protocol was designed to induce airway eosinophilia, their protocol was designed to induce airway neutrophilia. Finally, because of safety concerns for our human subjects, BAL was only performed at 5 min and 48 h (time of peak airway eosinophilia) after challenge, while BAL was performed at 5 time points, including 5 h post challenge in their study of horses.

Our study clearly demonstrated that MMP-9 is increased 48 h after allergen challenge of atopic individuals; however, we agree with Dr. Maisi, that we might have seen more active enzyme if BAL were performed 4–6 h after challenge, as this time point typically coincides with peak airway neutrophilia (5, 6). It is not clear whether the persistence of the latent form at 48 h is merely a marker of an earlier influx of airway neutrophils, or if it can be subsequently activated to contribute to tissue injury and repair.

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TALC SHOULD NOT BE USED FOR PLEURODESIS IN PATIENTS WITH NONMALIGNANT PLEURAL EFFUSIONS

To the Editor:

In the debate regarding the use of talc in pleurodesis, respiratory failure after intrapleural injection was cited as that complication potentially limiting employment of this agent (1, 2). We agree with this appraisal in the treatment of patients with malignant recurrent effusions. However, there should continue to be concern regarding the use of talc for pleurodesis in individuals with nonmalignant pleural effusions and spontaneous pneumothorax. This dilemma results from a possible increased risk of malignant mesothelioma in those patients treated with talc. Consequently, an alternative agent should be employed in any individual without malignancy requiring pleurodesis.

Talc is not a uniform substance, and varies significantly in size and chemical composition, with the latter depending on geologic origin. This sheet silicate can be contaminated by asbestos. An association between carcinogenesis and exposure to asbestos included in talc appears credible. Certainly, noncarci-

nogenic effects of asbestos (pleural plaque formation) have been reported in patients instilled with talc for pleurodesis. The paucity of evidence of malignant mesothelioma occurring after the use of talc for pleurodesis may reflect either an inadequate latency period or an insufficient number in the investigations conducted. Assuming a risk of the same magnitude as that seen in the cohort of asbestos-exposed insulation workers (3), less than one case of mesothelioma would have been expected in the two investigations of patients exposed to talc used in pleurodesis (4, 5). However, case reports of malignant mesothelioma after occupational exposure to talc suggest a potential association (6). Furthermore, epidemiologic studies demonstrate an excess mortality from lung and pleural carcinomas in talc miners and millers, while animal studies confirm an induction of mesothelioma after intrapleural injection of talc.

The assertion that contemporary purified preparations of talc do not contain asbestos, therefore eliminating a risk of mesothelioma, should be closely examined prior to its acceptance for clinical application. The methodology used to confirm the lack of asbestiform minerals in a finished product (i.e., X-ray diffraction, optical microscopy, and electron microscopy techniques) and its sensitivity must be provided. Even if the product is “asbestos-free,” the mechanism of cancer induction by asbestos (i.e., metal-catalyzed radical generation) is similarly pertinent to talc and the occurrence of fibrous forms of the sheet silicate itself (Figures E1 and E2 in the online data supplement to this letter) raises issues about clearance and long-term safety. Simply stating that the talc is “asbestos-free” should not release us from a responsibility to the patient, especially when safe alternatives are available.

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From the Authors:

I appreciate the comments of Drs. Ghio and Roggli concerning our article. I agree that talc should not be used to produce pleurodesis in patients with nonmalignant diseases such as spontaneous pneumothorax or recurrent nonmalignant pleural effusion. If talc should not be used to produce pleurodesis in patients with malignant disease because it might produce acute respiratory failure, it should not be used for pleurodesis in other situations for the same reasons.

Drs. Ghio and Roggli maintain that another reason talc should not be used in patients with nonmalignant disease is the possible increased risk of mesothelioma after the administration of talc intrapleurally. Talc can be contaminated with asbestos, which is known to be associated with the development of mesothelioma. Although previous studies have found no increased incidence of mesothelioma in patients who received talc intrapleurally, the authors rightly point out that the number of patients included in the studies was small. I believe that the risk of mesothelioma from talc pleurodesis is very small since, to my knowledge, there is not even a case report of such an occurrence. Nevertheless, the fact that the possibility exists provides another reason to not use talc for pleurodesis in nonmalignant conditions.

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Dr. Sahn was given an opportunity to respond, but declined.